

GENERAL CONDITIONS FOR BUSINESS CUSTOMERS

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following terms and expressions shall have the following meanings unless the context otherwise requires:

Term / Expression	Meaning
"Affiliate"	means any undertaking which is a subsidiary undertaking or parent undertaking (including the ultimate parent undertaking) of the relevant party and any company which is a subsidiary undertaking of such parent undertaking (the terms subsidiary undertaking and parent undertaking company having the meanings set out in Section 1162 of the Companies Act 2006);
"Agreement"	means this agreement between the Customer and O2 recorded in the documents described in clause 29 of these General Conditions;
"Applicable Laws"	in any jurisdiction in which the Services are to be performed any and all applicable laws, regulations and any applicable and binding industry standards, judgment or orders of a relevant court of law;
"Charges"	means the monies payable by the Customer to O2 in respect of (a) each Service provided by O2 (whether or not the Service is used by the Customer); (b) where applicable, the O2 Supplied Equipment; and (c) any other products or services which O2 may agree to supply to the Customer from time to time under the Agreement, as set out in the Commercial Schedule, the relevant Service Schedule, on the O2 Website or as otherwise agreed by the parties in writing from time to time (as amended from time to time in accordance with the terms of this Agreement);
"Commencement Date"	means the date upon which this Agreement has been signed by the Customer;
"Commercial Schedule"	means the document or documents entitled Commercial Schedule, which set out the Charges associated with a O2's provision of a particular Service or o2 Supplied Equipment and other relevant commercial terms, all of which shall form part of this Agreement;
"Confidential Information"	means proprietary information and/or any information obtained from the other in connection with this Agreement (including for the avoidance of doubt details of the Customer's employees) which is: (i) reasonably identified by either party as commercially sensitive or confidential; (ii) obviously confidential in nature; or (iii) given in circumstances giving rise to an obligation of confidence;
"Customer"	has the meaning set out in front of this Agreement in the section entitled "Your Agreement";
"Customer Employee"	means any employee, consultant, agent or sub-contractor (or an employee or consultant thereof) engaged or employed by the Customer or any Third Party to provide a Service or services similar to a Service or any part of a Service;
"Customer Equipment"	means any hardware, software, cabling and related facilities provided by the Customer and used by the Customer in relation to a Service;
"Customer Request Form"	means a document which can be submitted electronically or manually by a Customer to O2 containing the detailed information necessary to fulfil a Customer's order for Services, in the form notified by O2 to the Customer from time to time;
"Data Protection Laws"	means all applicable laws and regulations relating to the processing of personal data and privacy including the Data Protection Act 2018, the General Data Protection Regulation 2016/679 ("GDPR") and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms "Data Controller", "Data Processor", "Data Subjects" and "Personal Data" shall have the meaning given to them in the DPA or GDPR;

Term / Expression	Meaning
"Employee Liability Information"	shall have the meaning ascribed to it in the TUPE Regulations, as amended from time to time;
"End User Licensed Software"	means any software, the licence terms of which are governed by a separate agreement with the licensor of such software, typically by means of a "click wrap" or "shrink wrap" licence agreement;
"O2 Supplied Equipment"	means equipment provided to the Customer by O2 under this Agreement which may be used in the provision of the Services, as detailed in the Commercial Schedule, order form or other document agreed between the parties from time to time;
"General Conditions"	means this document entitled "General Conditions for Business Customers";
"Incident"	means any reported event which is not part of the standard operation of a Service and which causes disruption to or a reduction in the quality of such Service;
"Internet"	means the global data network comprising interconnected networks using the TCP/IP protocol suite;
"Losses"	any and all actions, awards, costs, claims, damages, losses (excluding those losses liability for which are excluded in accordance with clause 18.2), demands, expenses, fines, judgments, penalties and proceedings (including any and all liabilities arising from the employment or engagement (or the termination thereof) of any individual as provided for in clause 30), and any other losses or liabilities;
"Minimum Holding"	means the minimum number of instances of a Service (e.g. lines) which must remain connected to a particular Service as specified in the Commercial Schedule, the relevant Service Schedule or as otherwise agreed by the parties in writing from time to time;
"Minimum Holding Charge"	means, in relation to a particular Service, the Charges payable for that Service for a failure to reach and maintain the Minimum Holding(s), as specified in the Commercial Schedule or as otherwise agreed by the parties in writing from time to time;;
"Minimum Holding Period"	means, in relation to a particular Service, the number of months from the Service Commencement Date within which the Customer is required to connect the Minimum Holding(s), as specified in the Commercial Schedule, the relevant Service Schedule or as otherwise agreed by the parties in writing from time to time;;
"Minimum Period"	means the minimum number of months a particular Service or instance of a Service must be in operation for which, unless specified otherwise in any Terms, a Service Schedule, the Commercial Schedule, or agreed by the parties in writing from time to time, shall be 12 months from the Service Commencement Date;
"Minimum Spend"	means the minimum total expenditure which must be incurred by the Customer prior to the expiry of the Minimum Term, in relation to all or a particular Service or Services excluding, unless otherwise specified, any Equipment Charges), as set out in the Commercial Schedule(s), the relevant Service Schedule or as otherwise agreed by the parties in writing from time to time;
"Minimum Term"	means the initial period of this Agreement as specified in the Commercial Schedule or as otherwise agreed by the parties in writing from time to time;
"Network"	means the O2 network and the network of any Third Party used by O2 to supply the Services, as applicable;
"O2"	means Telefónica UK Limited as set out in front of this Agreement in the section entitled "Your Agreement";
"O2 Employee"	means any employee or other staff of O2 or an O2 Affiliate or any employee or other staff of any direct or indirect subcontractor or supplier of O2 or an O2 Affiliate who provides the Services on behalf of O2;
"O2 Representative"	means a representative of O2 and which includes a representative of O2's suppliers;
"O2 Website"	means www.o2.co.uk;

Term / Expression	Meaning
"Personal Data Breach"	means any breach of security leading to the accidental or unauthorised destruction, loss, alteration, disclosure of, or access to, Personal Data;
"Rental Charge(s)"	means the monthly non-usage dependent part of the Charges for the Services, as specified in the Commercial Schedule or otherwise agreed by the parties in writing from time to time; and;
"Replacement Services"	means all or part of the Services or services substantially similar to all or part of the Services which are provided by an entity other than O2 following the termination of this Agreement (or the relevant part of this Agreement) or the termination of any or all of the Services;
"Service(s)"	means the service(s) identified in the Commercial Schedule(s) and provided by O2 as such service(s) are described in the Terms, Service Schedules and/or Commercial Schedule as applicable and any other services agreed by the parties from time to time;
"Service Commencement Date"	in respect of a Service or a particular instance of a Service means the date on which that particular Service or particular instance of a Service is first provided to the Customer, or as otherwise explicitly set out in this Agreement;
"Services Provider"	means a provider of telecommunications services or other services similar to the Services, including O2 or an O2 Affiliate or any direct or indirect supplier of O2 or an O2 Affiliate;
"Service Schedule"	means any document entitled "Service Schedule" containing additional terms relating to a particular Service which schedule shall form part of this Agreement;
"Service Transfer"	means the transfer of a Service (or any part of a Service) that had been provided pursuant to this Agreement (as a result of termination of this Agreement or otherwise);
"Site"	means (where applicable) a physical location at which any O2 Supplied Equipment shall be located and/or at or to which a Service shall be provided;
"Software"	means any software, excluding End User Licensed Software, supplied to the Customer by O2 under this Agreement and includes all other software identified in this Agreement as "Software";
"Spend Cap"	means the Customer's ability to limit the cost of their bill as further defined in Sections 124S and 124T of the Communications Act 2003
"Successor Supplier"	means any entity (including the Customer where relevant) which provides the Replacement Services;
"Target Delivery Date"	in respect of a Service means the date for the commencement of the provision of the relevant Service as specified by O2;
"Termination Fee"	in respect of a Service, means the termination fee set out in the Commercial Schedule, or otherwise agreed by the parties in writing ;
"Terms"	means documents entitled "Terms" containing additional terms relating to particular Services or O2 Supplied Equipment which shall form part of this Agreement;
"Third Party"	means a person, company or entity other than O2 or the Customer;
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, (as amended, re-enacted or extended from time to time);
"User"	means Customer Employees, Customer Affiliates, subcontractors, agents and anyone else who is permitted by the Customer to use the Service; and
"Working Day"	means Monday to Friday (excluding UK bank and public holidays).

- 1.2 The headings in this Agreement are for ease of reference only and shall not affect its construction.
- 1.3 References in this Agreement to any statute or statutory instrument shall include any re-enactment, modifications or amendments thereto for the time being in force.

- 1.4 References to clauses, sub-clauses, paragraphs, Terms and Service Schedules refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, this Agreement, and paragraphs to the Service Schedules.
- 1.5 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.6 Any obligation (including an obligation to "procure" or "ensure") assumed by an obligor under this Agreement takes effect as a primary obligation.
- 1.7 References in this Agreement to a Service shall include any instance of such Service as applicable (for example, reference to a landline Service shall include both all landline Services provided to the Customer and/or each individual landline, as the context requires).
- 1.8 Where a term or acronym appears in capital letters and is not specifically defined in this Agreement it shall have its industry standard meaning as would be reasonably understood by a customer or supplier of telecommunications or information technology services.

2 COMMENCEMENT AND TERM

- 2.1 This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter until the last remaining Service is terminated in accordance with this Agreement.

3 SUPPLY OF SERVICES AND/OR EQUIPMENT

- 3.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in this Agreement, O2 shall supply the Services and/or O2 Supplied Equipment as applicable in accordance with the terms of the Agreement.
- 3.2 O2 shall commence supplying a Service on the relevant Service Commencement Date and shall supply those Services for the relevant Minimum Period and thereafter until terminated by either party in accordance with the provisions of this Agreement.

4 O2 OBLIGATIONS

- 4.1 O2 will supply the Services:
 - a) with the reasonable skill and care of a competent telecommunications service provider;
 - b) using appropriately trained, qualified and experienced personnel; and
 - c) in accordance with Applicable Laws.
- 4.2 O2 will hold and continue to hold any licences, consents and/or notifications required under any Applicable Laws to provide the Services and/or O2 Supplied Equipment
- 4.3 O2 does not guarantee that the Services will be continuously available and/or fault-free, but this will not affect any specific availability or service levels which may be agreed between the parties in respect of a particular Service as set out in the Commercial Schedule, a Service Schedule or as otherwise agreed in writing by the parties from time to time, .
- 4.4 O2 shall use reasonable endeavours to provide the Services and/or O2 Supplied Equipment within any time periods and/or by any date indicated to the Customer, but all time periods and dates (including the Target Delivery Date) are estimates and except where explicitly stated O2 shall have no liability for any failure to meet any date or perform any of its obligations within the time period indicated.
- 4.5 O2 shall co-operate, and use commercially reasonable endeavours to procure that each O2 supplier co-operates, with the Customer and any Third Party specified in the Commercial Schedule, a Service Schedule or otherwise agreed by the parties in writing from time to time and engaged by the Customer to provide related services to the Customer, so as to integrate (where reasonably requested by the Customer) other services, technologies, products, materials or Customer Equipment supplied by the Customer or any Third Party with the relevant Services.

- 4.6 The co-operation referred to in clause 3.5 shall only apply where the need to integrate the Services is set out clearly in the Commercial Schedule, the Service Schedule or otherwise agreed by the parties in writing from time to time and the costs of such co-operation shall be charged by O2 and paid by the Customer. O2 will not be required to integrate or interface the Services with any of the Customer's other services, technologies, products, materials or Customer Equipment.

5 THE CHARGES

- 5.1 Most Charges are set out in the Commercial Schedule(s). Where a Charge is not set out in the Commercial Schedule, the Charge shall be:
- as set out on the O2 Website at the time the O2 Supplied Equipment, Service or other agreed product or service was supplied; or
 - as notified to the Customer by O2 (including in a Service Schedule) from time to time.

6 INVOICING AND PAYMENT

- 6.1 Unless otherwise agreed with the Customer, O2 may issue to the Customer on a monthly basis in relation to Services and on delivery in relation to O2 Supplied Equipment one or more invoice(s) which shall set out the Charges due in accordance with this Agreement. The Customer shall pay the Charges with the frequency set out in the Commercial Schedule or as otherwise agreed by the parties in writing from time to time.
- 6.2 If the parties agree that payments of the Charges to O2 are to be made by credit card and if payments of such Charges are not made on the due date, O2 is authorised to debit the Customer's nominated credit card company with all Charges due and payable to O2.
- 6.3 The Customer shall pay each invoice issued by O2 under this Agreement (including any invoice relating to Termination Fees) within 30 days of the date of invoice or such other payment terms as are specified in the Commercial Schedule or otherwise agreed by the parties in writing from time to time. The invoice shall be deemed paid once O2 receives such payment as cleared funds in its nominated bank account.
- 6.4 The Customer shall pay the Charges (including any Termination Fees) in full without any deduction or set off.
- 6.5 O2 may, without prejudice to any other rights it may have, set off any liability of the Customer to O2 against any liability of O2 to the Customer.

Late payment

- 6.6 Without prejudice to any other rights of O2 but subject to clause 6.7 below, in the event of the Customer failing to pay any sums due to O2 on time or at all, notwithstanding notification by O2 of the overdue debt to the Customer, O2 shall be entitled to:
- charge interest (both before and after any judgment) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 4% per annum over the base rate of the Bank Of England for the time being during the relevant period; and
 - suspend the provision of the relevant Service(s) with as much prior notice as O2 considers to be reasonably practicable, until such time as all payments due including all interest accrued has been paid and satisfied in full.
- 6.7 The provisions of clause 6.6 shall not apply to any sums disputed by the Customer if:
- the dispute is reasonable and bona fide; and
 - the Customer notifies O2 of the disputed sum within 30 days of the date of the relevant invoice.

Separate invoicing arrangements

- 6.8 If O2 and the Customer agree in writing that O2 will issue individual invoices for certain Services for all or some of the Customer's Users, the Customer will:

- a) ensure that each User pays O2 within 30 days of the invoice date either by direct debit or by continuous credit card authority (and updates O2 promptly if their direct debit or credit card details change); and
 - b) remain liable to O2 for all Charges whether or not invoiced to Users in accordance with clause 6.8a). If Users do not pay their individual invoices within thirty (30) days of the invoice date, the Customer must pay them within seven (7) days thereafter.
- 6.9 If the Customer, in breach of clause 6.8a) , does not ensure that all Users pay by direct debit or by continuous credit card authority, O2 may charge the Customer for the additional cost of processing non-electronic payments from Users.

7 NEW SERVICES

New services on the terms of the O2 Website

- 7.1 The Customer may request new services on the terms set out on the O2 Website by placing a new service order under this Agreement. O2 shall be entitled to accept or reject a new service order. Once a new service order is accepted by O2:
- a) the new Service shall be deemed added to the Agreement (including for the avoidance of doubt, the terms of the O2 Website applicable to the Service as well as any applicable Service Schedule(s)); and
 - b) O2 shall supply to the Customer the Services requested in that new service order on the terms and conditions of this Agreement and any alternative terms appearing on or referred to in any other communication, (whether oral, in writing or by electronic means) by the Customer for the purpose of placing orders shall be ineffective.

New services on bespoke terms

- 7.2 The Customer may request a new service at any time on terms other than those set out on the O2 Website. In the event that O2 and the Customer agree the terms that would apply to such new services, those terms will be added to this Agreement by execution of a formal variation.

8 PUBLICITY AND CASE STUDIES

- 8.1 O2 may reference the Customer in written or verbal company announcements and/or communications (for example, company results updates or annual company reports), provided that such reference is limited to the use of the Customer's name only.
- 8.2 The Customer agrees to engage with O2 for the purposes of creating a case study in relation to the Services. Accordingly, O2 may contact the Customer to produce a case study during the first 6 months following implementation of the Services. O2 shall not release any such case study until the Customer has approved the content.

9 CUSTOMER OBLIGATIONS

- 9.1 The Customer shall and shall procure that Users (or anyone having access to the Services and/or the O2 Supplied Equipment), shall:
- a) co-operate with O2 in all matters relating to the Services and/or the O2 Supplied Equipment;
 - b) comply with any reasonable instructions from O2 or any O2 Representative and with any health and safety, security, use of Network, acceptable use and fair usage policies as may be implemented and/or amended from time to time relating to the use of the Services, and/or the O2 Supplied Equipment;
 - c) make available to O2 and O2 Representatives such access to staff of the Customer who are familiar with the Customer's systems and equipment and software as O2 may reasonably require in connection with the supply of the Services;
 - d) not use the Services and/or Equipment in a manner which damages the reputation of O2 or O2's suppliers, is inconsistent with a reasonable customer's good faith use of the Services and/or the O2 Supplied Equipment, and/or adversely affects the provision of the Services and/or O2 Supplied Equipment to other customers;

- e) not use the Services and/or O2 Supplied Equipment fraudulently, or in connection with a criminal offence;
 - f) not use the Services and/or O2 Supplied Equipment in a way that contravenes any Third Party's rights or any Applicable Laws, licence, code of practice, instructions or guidelines issued by a relevant regulatory authority;
 - g) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or the O2 Supplied Equipment;
 - h) use O2 Supplied Equipment for the purposes of receiving or using the Services in accordance with the Agreement and for no other purpose;
 - i) be responsible for the O2 Supplied Equipment when it is on the Site and will not move, add to, modify or in any way interfere with the O2 Supplied Equipment (including to not remove, tamper with and/or obliterate any words or labels on it), nor allow anyone else (other than someone authorised by O2) to do so;
 - j) not have the O2 Supplied Equipment repaired or serviced except as authorised by O2;
 - k) keep the O2 Supplied Equipment fully insured for risk of loss, theft, destruction, damage and to inform O2 if the O2 Supplied Equipment is lost, stolen or damaged;
 - l) permit O2, O2 Representatives and/or O2's suppliers to inspect or test the O2 Supplied Equipment at all times on reasonable notice and, following the termination of the Services, to recover it;
 - m) if requested by O2, return, or arrange for the return of, O2 Supplied Equipment to O2 or O2 Representatives strictly in line with O2's instructions;
 - n) notify O2 of any methods of doing business which may affect the Customer's use of the Services and/or the O2 Supplied Equipment or the Customer's ability to comply with the terms of the Call-off Contract; and
 - o) notify O2 immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.
- 9.2 Subject to clause 11 of these General Conditions, the Customer agrees that it is procuring the Services solely for its own use and that it will not re-sell or otherwise act as any form of distributor in respect of the Services.
- 9.3 The Customer shall not create or allow any charges, liens, pledges or other encumbrances to be created over the O2 Supplied Equipment.
- 9.4 The Customer shall provide O2 with any and all information and/or assistance that O2 may require in order to perform the Services and/or supply the O2 Supplied Equipment. The Customer shall ensure the information is complete and accurate. O2 shall not be responsible for any failure and/or delay to provide the Services or the O2 Supplied Equipment if such failure and/or delay is a result of the Customer's failure to provide O2 with the required information and/or assistance. The Customer shall reimburse O2 for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 9.3 that is incomplete or inaccurate.
- 9.5 O2 does not guarantee that any Software supplied as part of the O2 Supplied Equipment will be uninterrupted or error free and O2 is not responsible for fixing any bugs, errors or omissions in the Software.
- 9.6 The Customer warrants to O2 that it will take all reasonable steps (including testing with up-to-date commercially available virus detection software) to ensure that any software used with or in connection with the Services and/or the O2 Supplied Equipment is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs. O2 shall not be responsible for any pre-existing viruses or any viruses introduced by the Customer to the O2 Supplied Equipment (including any related Software).

10 ANTI-BRIBERY AND CORRUPTION

- 10.1 In addition to and without prejudice to clause 9.1a) and e) of these General Conditions, O2 and the Customer each agree and undertake to the other that in connection with this Agreement and the

transactions contemplated by this Agreement, they will each respectively comply with all Applicable Laws of the United Kingdom relating to anti-bribery and anti-money laundering.

- 10.2 In the event that O2 or the Customer (as applicable) (the "Enquirer") has any basis for a good faith belief that the other party may not be in compliance with the undertakings and/or requirements set out in clause 10.1 of these General Conditions, the Enquirer shall advise the other party in writing and the other party shall cooperate fully with any and all enquiries undertaken by or on behalf of the Enquirer in connection therewith, including by making available the other party's relevant personnel and supporting documents if reasonably deemed necessary by the Enquirer.
- 10.3 Any breach by a party of this clause 10 of these General Conditions shall be deemed to be a material breach of this Agreement not capable of remedy for the purposes of clause 14.3a) of these General Conditions.

11 CUSTOMER AFFILIATES

- 11.1 O2 acknowledges that the Customer may permit its Users to use the Services and/or O2 Supplied Equipment supplied by O2 to the Customer under the Agreement. However, no such User shall have any right to enforce the Customer's rights under the Agreement against O2 directly, and the Customer shall procure that any claim in relation to the subject matter of the Agreement in respect of any such User is brought solely by the Customer on behalf of any such User.
- 11.2 The Customer will procure that all Users are aware of and comply with the terms of the Agreement and any act or omission of any User in relation to the Agreement shall be treated as the act or omission of the Customer.
- 11.3 The Customer shall indemnify and hold harmless O2 against any Losses suffered or incurred by O2 arising from any claims made against O2 directly by a User of the Customer arising out of or in connection with their use of the Services and/or O2 Supplied Equipment under the Agreement.
- 11.4 The limitations and exclusions of liability contained in the Agreement shall apply to any claims brought by or on behalf of the Customer and/or Users, and the involvement of one or more of its Users shall not give rise to any increase in or multiplication of any cap placed upon O2's liability.
- 11.5 This clause 11 shall remain in full force and effect notwithstanding any termination of this Agreement.

12 VARIATIONS TO THE AGREEMENT

- 12.1 Subject to any specific procedures otherwise set out in the Agreement, the Customer may request a change to the Agreement by submitting a request in writing.
- 12.2 O2 shall supply to the Customer a written response confirming whether or not O2 would be prepared to accept the changes and setting out:
- a) any additional Charges that would result from the change (e.g. Termination Fees in the case of termination of an instance of a Service) and/or any changes to existing Charges;
 - b) any Customer dependencies relating to the change; and
 - c) the timescales for the delivery of the change which shall, unless otherwise stated in O2's written response run from the date on which the Customer notifies O2 that it wishes to proceed with the change.
- 12.3 The Customer shall confirm to O2 in writing within fourteen (14) days of the date that it receives O2's response whether or not it would like to proceed with the change and, if O2 considers that the Customer's request requires the execution of a formal variation to the Agreement, the Customer shall execute such change control documentation or variation setting out any additional or alternative terms as O2 shall stipulate.
- 12.4 Until the Customer provides written confirmation that it wants to proceed or, if later executes the application documentation requested by O2, O2 will continue to implement, deliver and/or support the Services as detailed in the Agreement and the Customer shall continue to meet its obligations under the Agreement.

- 12.5 Subject to any specific procedures otherwise set out in the Agreement, O2 reserves the right from time to time to vary (i) how it provides the Services; (ii) the Charges; and/or (iii) any other provision of the Agreement:
- a) by giving as much notice as is reasonably practicable where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers, a regulatory body or a legal or regulatory change; and
 - b) in all other circumstances, by giving the Customer thirty (30) days' notice in writing of such variation, or in the case of any provisions or Charges set out on the O2 Website, by publishing the variations on the O2 Website at least thirty (30) days before such changes come into effect.
- 12.6 The Customer shall be entitled to terminate any individual Service by providing thirty (30) days' notice in writing to O2 if O2 makes any variation to (i) how it provides the Services; (ii) the Charges; and/or (iii) any other provision of the Agreement pursuant to clause 12.5 and such variation is to the material disadvantage of the Customer provided that such notice is given to O2 within thirty (30) days of the date that the change is notified to the Customer. This right to terminate a Service shall not apply where the increases in Charges or the variation of the Agreement arise pursuant to a circumstance outlined in clause 12.5a).
- 12.7 For the purpose of clause 12.6 any variation to the Charges that would not have increased the Customer's immediately previous monthly total bill for that specific Service (if the increase(s) had applied for the whole of that month) by more than the greater of: (i) the Retail Price Index (RPI); or (ii) the Consumer Price Index (CPI) annual inflation rate at the date O2 notifies the Customer of the applicable price increase; or (iii) 10%, shall not constitute a material disadvantage to the Customer.
- 12.8 Termination of a Service in accordance with clause 12.6 will not affect the Customer's obligation to pay the Charges relating to that Service incurred prior to the date of termination, but, in this event, the Customer shall not be liable for any Termination Fees.
- 12.9 No other variations of the Agreement shall be effective unless it is in writing, refers to the Agreement and is signed by each party (or its authorised representative).

13 SUSPENSION

Planned Outages

- 13.1 O2 may, from time to time, upon reasonable notice where practicable, suspend the Services during any modification or maintenance of the Network and, unless specifically agreed with the Customer, shall have no liability in relation to such suspension.

Unplanned Outages

- 13.2 O2 may, from time to time and without notice or liability to the Customer, suspend the Services during any technical failure of the Network, because of an emergency or upon instruction by emergency services or any government or appropriate authority or for the Customer's or Users' own security.
- 13.3 O2 shall use reasonable endeavours to restore the Services suspended in accordance with clause 13.1 or 13.2 of these General Conditions as soon as reasonably practicable.

Actions of the Customer

- 13.4 O2 may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:
- a) if the Customer fails to comply with the terms of this Agreement after being given written notice of its failure (including failure to pay any Charges due hereunder); or
 - b) if the Customer allows anything to be done which in O2's reasonable opinion may have the effect of jeopardising the operation of the Services or Network if applicable, or if the Services are being used in a manner prejudicial to the interests of O2 and/or a supplier of O2.
- 13.5 If O2 has suspended the Services in accordance with clause 13.4 of these General Conditions, O2 shall restore the Services when the circumstance described in clause 13.4 of these General Conditions is remedied.

Actions of O2's suppliers

- 13.6 O2 may, without prejudice to its other rights hereunder, suspend or terminate a Service if an O2 supplier suspends, terminates or lets expire the provision of services to O2 which O2 requires to provide such Service and for which O2 is unable to find a replacement supplier, having used its reasonable endeavours. O2 will provide as much notice as is reasonably possible.

Actions by regulators

- 13.7 O2 may, where requested by or on behalf of a regulatory body (including because of fraud or misuse) or required to do so by law, suspend any Services provided under this Agreement.

Consequences of suspension

- 13.8 The Customer shall remain liable for:
- a) all Charges levied in accordance with this Agreement during any period of suspension; and
 - b) all reasonable costs and expenses incurred by O2 in the implementation of such suspension or disconnection,
 - c) where such suspension or disconnection arises from the circumstances described in clause 13.4 of these General Conditions, all reasonable costs and expenses incurred by O2 in the implementation of such suspension or disconnection,

14 TERMINATION

Termination for convenience

- 14.1 The Customer may terminate this Agreement (in whole or in relation to a particular Service) by:

- a) providing to O2 30 Working Days' notice in writing; and
- b) paying O2 the applicable Termination Fees in respect of the Service or Services being terminated.

For the avoidance of doubt, Termination Fees may be payable in accordance with the Service Schedule, the Commercial Schedule or as otherwise agreed in writing by the parties from time to time if the Customer terminates an order for Services prior to the Service Commencement Date; prior to the expiry of any applicable Minimum Term or before any other agreed metrics have been achieved.

- 14.2 Unless specified otherwise in a Service Schedule, the Commercial Schedule or agreed in writing by the parties and without prejudice to any other O2's rights to terminate this Agreement, O2 may terminate this Agreement (in whole or in relation to a particular Service) by providing to the Customer 30 days' notice and, in this event, the Customer shall not be liable for any Termination Fees.

Termination for cause

- 14.3 The Customer may terminate this Agreement by providing to O2 30 days' notice in writing in the event that O2:

- a) has committed a material breach of this Agreement that is incapable of remedy; or
- b) has committed a material breach of this Agreement that is capable of remedy and O2 has failed to remedy that breach within 30 days of the Customer supplying written notice specifying the breach and requiring its remedy.

- 14.4 O2 may terminate this Agreement (in whole or in relation to a particular Service) by providing 30 days' notice in writing:

- a) in the event that the Customer has committed a material breach of this Agreement that is incapable of remedy;
- b) in the event that the Customer has committed a material breach of this Agreement that is capable of remedy and the Customer has failed to remedy that breach within 30 days of O2 supplying written notice specifying the breach and requiring its remedy; or
- c) if any of the events described in clauses 9.1e), 9.1 f), 10 and/or 13.4b) of these General Conditions occurs.

Insolvency

- 14.5 A party to this Agreement may terminate this Agreement by providing 30 days' notice in writing in the event that bankruptcy or insolvency proceedings are brought against the other party, or if an arrangement with creditors is made, or a receiver or administrator is appointed over any of the other party's assets, or the other party goes into liquidation.

Consequences of termination

- 14.6 If this Agreement is terminated and the Customer wishes to transfer to another service provider, O2 will provide reasonable assistance to the Customer in respect of the transfer of the Customer's service in accordance with standard telecommunications industry practice.
- 14.7 Termination or expiry of this Agreement for whatever reason shall not affect:
- a) the rights and obligations of the parties which have accrued prior to such termination or expiry; or
 - b) any provisions of this Agreement which are of a continuing nature and any other provisions of this Agreement necessary for their interpretation or enforcement.
- 14.8 On termination or expiry of this Agreement (in whole or in relation to a particular Service):
- a) any sums properly due from one party to the other will become immediately due and payable (including Charges for the Service(s) up to the date of termination, Termination Fees relating to the Service(s) and/or Charges for any costs incurred by O2 in relation to O2 Supplied Equipment or Services ordered by the Customer but yet to be supplied by O2);
 - b) the Customer shall cease using the Service(s); and
 - c) each party will, on request, promptly return to the other all Confidential Information and other property belonging to the other relating to the Service(s) which is in its custody or control or will destroy such Confidential Information and certify such destruction to the other party.

15 EQUIPMENT

- 15.1 Certain elements of Services are dependent on the Customer using the O2 Supplied Equipment or having suitable Customer Equipment available and in the event that the Customer does not use the correct O2 Supplied Equipment or is unable to provide the Applicable Customer Equipment, then:
- a) the Services may not function correctly;
 - b) O2 may choose not to provide the Customer with the relevant Services; and
 - c) O2 shall have no liability for the Customer's inability to receive those Services and the Customer remains liable for the relevant Charges.
- 15.2 The Customer shall ensure that any Customer Equipment:
- a) is technically compatible with the Network and the relevant Service including conforming to any interface specifications and/or routing protocols specified by or on behalf of O2;
 - b) does not harm the Network or equipment belonging to any Third Party;
 - c) is connected to the Network and the relevant Service strictly in accordance with the instructions of O2; and
 - d) is used by the Customer in compliance with any Applicable Laws and with any instructions, safety and security procedures, licences and standards.
- 15.3 If the Customer Equipment does not meet the requirements set out in clause 15.2, the Customer must immediately disconnect the Customer Equipment from the Network, the O2 Supplied Equipment and the Services.
- 15.4 O2 may disconnect the Customer Equipment, at the Customer's expense (providing as much prior notice as reasonably possible to the Customer) in the case of emergency or where the disconnection is required by Applicable Laws.
- 15.5 If the Customer asks O2 to test the Customer Equipment to make sure that it complies with the requirements set out in clause 15.2, the Customer must pay O2 the applicable Charges set out in

the Commercial Schedule, on the O2 Website or otherwise agreed by the parties in writing from time to time.

16 INTELLECTUAL PROPERTY

- 16.1 All intellectual property rights in the Software, O2 Supplied Equipment, associated documents and all parts thereof will be and remain vested in and be the absolute property of the owner of the copyright in the Software, O2 Supplied Equipment or associated documents as appropriate, which owner shall be entitled to enforce any of the terms of this Agreement relating to the Customer's use of that Software, O2 Supplied Equipment, associated documents and all parts thereof, directly against the Customer.
- 16.2 Unless otherwise specified in this Agreement, all intellectual property developed in the provision of any Service will vest in O2 or its licensors. O2 may use know-how acquired, principles learned or developed or experience gained during the performance of any Service, to perform work for other customers.
- 16.3 All information or materials exchanged between O2 and the Customer in connection with the Agreement, together with the copyright therein, will remain the property of O2, O2's suppliers or the Customer as applicable and will be returned to the owning party on termination of the Agreement, if requested by such party.
- 16.4 O2 grants to the Customer a non-exclusive, non-transferable licence to use, in object code form, any Software and the O2 Supplied Equipment provided by O2 or its suppliers solely in the United Kingdom in connection with the proper use of the Services. The Customer undertakes not to copy, alter, adapt, translate, software develop, decompile, license, sub-license, reverse engineer or resell any Software (or any part of the Software), or permit the whole or any part of the Software to be incorporated into any other computer programs, unless expressly permitted to do so by O2 or by Applicable Law. This licence will terminate on the termination of this Agreement (or any relevant part of this Agreement).
- 16.5 The Customer shall accept and comply with all licence terms required from time to time by any Third Party provider of any Software or materials as agreed between the relevant Third Party and O2 and notified or otherwise provided to the Customer by O2.
- 16.6 O2 grants to the Customer a non-exclusive, non-transferable royalty free licence for the term of this Agreement (in whole or in relation to a particular Service(s)) to use any information or materials provided by O2 to the Customer under this Agreement to the extent necessary for the Customer to receive the benefit of the Service(s). The Customer must not copy, reproduce, distribute, alter, adapt, translate, develop, decompile, license, sub-license, reverse engineer or resell any such information or materials (or any part thereof), unless expressly permitted to do so by O2 or Applicable Laws.
- 16.7 In the event that the Customer is subject to a claim by a Third Party in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the O2 Supplied Equipment, Software, information or materials provided by O2 then O2 will indemnify the Customer in relation to sums awarded or paid in settlement for such claim provided that the Customer promptly notifies O2 of such claim, makes no admission in respect of such claim, the Customer seeks to mitigate the loss where it can do so without unreasonable inconvenience or cost, allows O2 or its licensor to conduct all negotiations and proceedings (providing O2 or its licensor with all reasonable assistance) and allows O2 at O2's own discretion and expense to modify or replace the O2 Supplied Equipment, Software, information or materials so as to avoid any continuing infringement. This indemnity does not apply to any such infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the O2 Supplied Equipment, Software, information or materials in conjunction with other equipment and software or Services not supplied by O2 pursuant to this Agreement in which event the Customer shall indemnify O2 in respect of any Losses arising from any such infringement by the Customer.
- 16.8 The Customer will not be entitled to and agrees not to:
- a) use in the course of trade or otherwise in relation to any goods or services of the Customer any registered or unregistered trademark, logotype or abbreviation of the name of O2 (or any of its

- suppliers) or any part thereof so that any person might reasonably import a connection between those goods or services and O2 (or any of its suppliers) or any part thereof;
- b) register or attempt to register as a trade mark anything referred to in clause 16.8a) of these General Conditions; and/or
 - c) authorise any Third Party to do anything referred to in clause 16.8a) of these General Conditions.
- 16.9 The Customer further agrees not to infringe any copyright, or registered or unregistered trademark rights belonging to any Third Party in respect of any O2 Supplied Equipment.

End User Licensed Software

- 16.10 The Customer recognises that the Services may be dependent upon End-User Licensed Software (e.g. click-through licences) and if the Customer does not accept the licence terms relating to any End-User Licensed Software, O2 shall have no liability whatsoever for any failure to provide the Services to the Customer where the Services depend on the use of End-User Licensed Software.
- 16.11 Where the Customer accepts the terms of a licence in respect of any End-User Licensed Software, then those licence terms shall take precedence over any terms within this Agreement relating to End-User Licensed Software and shall exclusively comprise the Customer's sole rights and remedies in respect of such End-User Licensed Software.

17 CONFIDENTIALITY

- 17.1 Either party receiving Confidential Information (the "**Recipient**") from the other (the "**Disclosing Party**") shall not, without the Disclosing Party's prior written consent, use that Confidential Information for any purpose other than for the purposes of fulfilling a party's obligations under this Agreement, or disclose such Confidential Information to any person other than employees, officers, officers and authorised subcontractors and suppliers ("**Authorised Personnel**") who have a need to know that information.
- 17.2 Clause 17.1 shall not prohibit use or disclosure of Confidential Information by either party to the extent:
- a) the Confidential Information is published by or on behalf of the Disclosing Party or becomes generally known to the public otherwise than as a result of a breach of this Agreement or any other obligation of confidentiality;
 - b) such Confidential Information was lawfully known to the Recipient prior to the time of disclosure by the Disclosing Party and is not subject to any obligations of confidentiality;
 - c) the Confidential Information was lawfully disclosed to the Recipient by a third party that was not itself under any obligations of confidentiality;
 - d) the Confidential Information is replicated or developed independently by or on behalf of the Recipient without access to or knowledge of the Confidential Information;
 - e) the disclosure is made to the professional advisers of a party provided that such professional advisers are made expressly aware of the confidential nature of the Confidential Information;
 - f) the disclosure of Confidential Information is required for the purposes of any judicial proceedings arising out of a breach of this Agreement or any other agreement entered into under or pursuant to this Agreement; or
 - g) the Confidential Information is required to be disclosed by any Applicable Laws by any governmental or regulatory body, or by or in connection with the rules of any stock exchange on which the shares of either party or its holding company are listed (including where disclosure is required as part of any actual or potential offering, placing and/or sale of securities of either party or its holding company),
- provided however that prior to the disclosure or use of any Confidential Information in the circumstances described in clauses 17.2 (f) or 17.2 (g), the party concerned shall, where not prevented by Applicable Law consults with the other party about the nature and extent of the required use or disclosure insofar as is reasonably practicable.
- 17.3 Upon termination of the Agreement, for whatever cause, the Recipient will:

- a) cease to use the Confidential Information given to them by the Disclosing Party for any purpose;
 - b) return to the Disclosing Party or destroy all documents and all other materials containing or reflecting any Confidential Information, together with any copies, which are in the Recipient's possession or control or in the possession or control of any of the Recipient's Authorised Personnel and which are in a form capable of delivery and destruction; and
 - c) expunge all Confidential Information from any computer, word processor or similar device into which it was programmed by the Recipient or any of the Recipient's Authorised Personnel,
- provided, however, that the Recipient will be permitted to retain any computer records and files containing any Confidential Information which have been created pursuant to its automatic archiving and back-up procedures ("**Information Archives**").

17.4 The Recipient acknowledges that neither the return nor the destruction of any Confidential Information in accordance with clause 17.3(b) nor the expunging of any Confidential Information in accordance with clause 17.3(c) will release the Recipient from its obligations under this Agreement. Any Confidential Information retained on a Recipient's Information Archives shall be kept strictly confidential and shall not be used for any purpose, other than as required by Applicable Laws.

18 LIMITATION OF LIABILITY

18.1 This clause 18 of these General Conditions sets out each party's entire liability (including any liability for the acts and omissions of each party's employees, agents or sub-contractors) to the other party in tort, contract or otherwise, arising out of or in connection with the performance or contemplated performance or non-performance of this Agreement.

18.2 Subject to clauses 18.4 and **Error! Reference source not found.** of these General Conditions, neither party shall be liable to the other in respect of any matter arising out of or in connection with this Agreement in contract or tort (including negligence) or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill, business interruption, from wasted expenditure or any loss or corruption of data, or for any indirect or consequential loss or damage whatsoever.

18.3 Subject to clauses 18.2, 18.4 and **Error! Reference source not found.** of these General Conditions, O2's aggregate liability of any sort resulting from breach of contract or negligence, under any indemnity or otherwise arising in connection with this Agreement (whether to the Customer, any Customer Affiliate, Users or otherwise) shall be limited in respect of all claims arising in a Year ("**Relevant Year**") to the greater of:

- a) the sum of £500,000; or
- b) an amount equal to the Annual Agreement Value,

where the "**Annual Agreement Value**" means the total Charges paid or payable by the Customer in the Year prior to the Relevant Year (or where a claim arises during the first Year of this Agreement, the Charges paid or payable up to the date on which the Customer's right to take action in respect of the claim arose and subject always to O2's aggregate liability for claims in the first Year being no greater than the total Charges paid or payable by the Customer during such first Year); and "**Year**" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.

18.4 Nothing in this Agreement shall exclude or restrict the liability of either party for:

- a) death or personal injury resulting from that party's negligence;
- b) claims in respect of the Customer's liability under clause 11 of these General Conditions;
- c) breach of any implied term as to title or quiet enjoyment arising out of section 12 of the Sale of Goods Act 1979; or
- d) fraud or fraudulent misrepresentation.

18.5 Nothing in this clause 18 shall apply to the payment of the Charges.

- 18.6 Subject to clauses 18.4 e) of these General Conditions, the express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 18.7 The limited warranty, exclusive remedies and limited liability set forth above are fundamental elements of the basis of the Agreement between O2 and the Customer. O2 would not be able to provide the Services and/or the O2 Supplied Equipment on an economic basis without such limitations.

Liability for third parties

- 18.8 O2 shall not be liable for the acts or omissions of other providers of telecommunication services unless such other providers have been specifically engaged by O2 as subcontractors or assignees in respect of the performance of O2's obligations under this Agreement.

19 ASSIGNMENT

- 19.1 The Customer shall not assign or transfer this Agreement to any Third Party, provided that the Customer may assign or transfer this agreement to a Customer Affiliate with the prior written consent of O2 (such consent not to be unreasonably withheld or delayed).
- 19.2 O2 may assign or transfer this Agreement to any Affiliate and may subcontract the performance of all or part of the same, provided that O2 shall remain liable for the acts and omissions of its subcontractors.

20 ENTIRE AGREEMENT

- 20.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements whether written or oral relating to the subject matter of this Agreement.
- 20.2 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause 20 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

21 INVALIDITY

- 21.1 If any of the provisions of this Agreement become invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In such circumstances, the parties shall negotiate in good faith in order to agree the terms of a mutual satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the provision which is found to be invalid, illegal or unenforceable.

22 WAIVER

- 22.1 The failure or delay by either party to this Agreement to exercise or enforce any right, power or remedy under this Agreement shall not be deemed to operate as a waiver of any such right, power or remedy; nor shall any single or partial exercise by any party operate so as to bar the exercise or enforcement thereof or of any right, power or remedy on any later occasion.

23 DATA PROTECTION

- 23.1 The parties operate in accordance with Data Protection Laws. The Customer and O2, who shall be Data Controllers, agree to fully comply with the provisions of or standards required by Data Protection Laws. O2 shall also act as a Data Processor for the Customer when acting upon the Customer's instructions to connect Users to the Service.
- 23.2 The Customer agrees that its details or those of its Users may be used and disclosed by O2 for the purposes of this Agreement and for marketing purposes including informing the Customer and its Users from time to time about other Services or associated technologies. The Customer will ensure

that any disclosure of Users' Personal Data by the Customer to O2 is compliant with Data Protection Laws and that Users have been notified of O2's Privacy Policy at o2.co.uk/termsandconditions/privacy-policy. If a User does not want its details to be used for direct marketing purposes, the Customer should contact its designated O2 account manager or the O2 Data Controller at Telefónica UK Limited, 260 Bath Road, Slough, SL1 4DX.

- 23.3 To the extent that O2 is required as part of the Services to process Personal Data as a Data Processor only, O2 shall:
- a) process the Personal Data only on behalf of the Customer (or, if so directed by the Customer, Customer Affiliates), for the purposes of performing this Agreement and in accordance with instructions contained in this Agreement or the lawful instructions received from the Customer from time to time. O2 shall notify the Customer in the event that it becomes aware of Applicable Laws which prevent O2 from complying with the Customer's lawful instructions;
 - b) at all times comply with the data security related requirements of Data Protection Laws and shall (i) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and (ii) take reasonable steps to ensure the reliability of personnel, suppliers and subcontractors who may process Personal Data and ensure that all such personnel are bound by a duty of confidence to maintain the confidentiality of the Personal Data;
 - c) at the Customer's expense, provide reasonable assistance with the Customer's compliance with any exercise by Data Subjects of their rights under Data Protection Laws;
 - d) put in place a process whereby the Customer will be provided with access to a list of sub-processors processing Personal Data in relation to the Customer. In the event that the Customer objects to the use of a sub-processor the Customer shall be entitled to terminate the Agreement in accordance with clause 14.1. In relation to such sub-processors O2 shall ensure that any such processing is carried out in accordance with the requirements of Data Protection Laws including ensuring that a contract is in place providing (1) sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of Data Protection Laws; (2) prohibiting the sub processor from sharing any Personal Data with any third party without the prior authorisation of O2 or from using the Personal Data for any purpose other than as authorised by O2; and (3) obligations which are no less onerous than those placed on O2 under the terms of this clause 23.3;
 - e) in the event that O2 becomes aware of a Personal Data Breach, notify the Customer of the Personal Data Breach without undue delay;
 - f) provide the Customer with reasonable assistance with the Customer's obligations under Data Protection Laws to notify data protection authorities and / or affected Data Subjects in the event of a Personal Data Breach;
 - g) at the Customer's request and expense, provide the Customer with such information as the Customer may reasonably request to enable the Customer to demonstrate compliance with its obligations under Data Protection Laws, to the extent that O2 is able to provide such information. Such information will include reasonable evidence of the results of any applicable third party audit commissioned by O2 to verify its information security controls. The Customer shall comply with any reasonable security instructions, confidentiality requirements and policies notified to it by O2 in connection with the review referred to in this clause 23.3(g); and
 - h) on termination or expiry of this Agreement cease processing the Personal Data and delete such Personal Data from its systems (subject to any legal obligation that requires such Personal Data to be retained).
- 23.4 Subject to clause 23.3(d) O2 may transfer Personal Data in connection with the provision of the Services, including to any subcontractor, and such transfer may be outside the European Economic Area. In such circumstances O2 will comply with its obligations under Data Protection Laws by:
- a) taking reasonable steps to ensure the reliability of such subcontractors and prior to any such transfer will enter into a written agreement with such subcontractor containing contractual provisions which ensure an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of the Personal Data; and

- b) complying with the requirement in Data Protection Laws to ensure an adequate level of protection to any Personal Data that is transferred.
- 23.5 The Customer acknowledges that when acting as a Data Processor, O2 is reliant on the Customer for direction as to the extent O2 is entitled to use and process the Personal Data in connection with the Services. Consequently, O2 shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to O2's actions to the extent that such actions result from instructions received from the Customer or any breach of this clause 23 by the Customer.
- 23.6 The Customer further acknowledges and agrees that:
- a) O2 may use and share the Customer's details (including those of its Users) with O2's suppliers for the purposes of meeting O2's obligations under the Agreement. The Customer acknowledges and agrees that O2's suppliers may contact the Customer directly; and
- 23.7 O2 and/or a supplier of O2 may monitor and record calls or other communications including in relation to O2's customer services.

24 MATTERS BEYOND THE PARTIES' REASONABLE CONTROL

- 24.1 Neither party shall be deemed in default or liable to the other party for any matter whatsoever for any delays in performance or from failure to perform or comply with the terms of this Agreement due to any cause beyond that party's reasonable control including, without limitation, acts of God, acts of Government or other competent regulatory authority, telecommunications network operators, war or national emergency, riots, civil commotion, fire, explosion, flood, lightning, extremely severe weather, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).
- 24.2 The Customer agrees that O2 shall have no liability for improper, incorrect or unauthorised use of the Services or Equipment by the Customer or any Third Party.

25 EXPORT CONTROL

- 25.1 In the event that the Customer proposes to export any O2 Supplied Equipment or other equipment supplied by O2 pursuant to this Agreement, the Customer agrees to comply with any applicable export or re-export laws, regulations, prohibitions or embargoes of any country, including obtaining written authority from any relevant licensing authority where necessary.
- 25.2 The Customer agrees that in entering into this Agreement under which it procures O2 Supplied Equipment it accepts the terms of the following end-user undertaking: The Customer certifies that it is or will be the end-user of the O2 Supplied Equipment and further certifies that it shall use the O2 Supplied Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice services in order to perform their everyday contractual duties; that the O2 Supplied Equipment will not be used for any purpose connected with explosives, chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the O2 Supplied Equipment will not be re-exported or otherwise re-sold or transferred if it is known or suspected that they are intended or likely to be used for such purposes; and that the O2 Supplied Equipment, or any replica of it, will not be used in any nuclear explosive activity or un-safeguarded nuclear fuel cycle activity.

26 RELATIONSHIP OF THE PARTIES

- 26.1 Nothing in this Agreement shall create, or be deemed to create; a partnership or joint venture between the parties and nothing in this Agreement shall be construed to appoint one party as the distributor, dealer or agent of the other.

27 NOTICES

- 27.1 Any notice or other communication required or permitted under this Agreement to be given in writing shall be given in writing to the address of the recipient stipulated herein or as notified from time to time and will be deemed to have been given or made: when delivered personally; or, if properly addressed and posted by first class mail in the United Kingdom within two Working Days of posting; or, if sent by facsimile upon being sent; or, if sent by e-mail or other electronic means at the time of transmission provided the sender can provide proof the notice was properly addressed.

28 NO THIRD PARTY RIGHTS

- 28.1 Except as otherwise explicitly set out in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. For the avoidance of doubt, Customer Affiliates shall have no rights to enforce any term of this Agreement.

29 PRIORITY OF DOCUMENTS FORMING THIS AGREEMENT

- 29.1 This Agreement is recorded in the following documents:
- a) these General Conditions;
 - b) the Commercial Schedule;
 - c) the applicable Terms;
 - d) the applicable Service Schedule(s) or quotation;
 - e) any other document incorporated by reference in Terms or Service Schedules; and
 - f) the O2 Website;
- 29.2 In the event of any conflict between provisions of the documents making up this Agreement, the order of precedence shall be as set out in clause 29.1 of these General Conditions (in order of decreasing precedence) unless explicitly stated otherwise.

30 TUPE

- 30.1 The Customer warrants that it has taken all reasonable steps to verify and, following such investigation, has no grounds to believe that any Customer Employee's employment shall transfer from the Customer or any Third Party to a Services Provider pursuant to the TUPE Regulations as a result of a Service Transfer, however and whenever such Service Transfer takes effect.
- 30.2 If, notwithstanding the warranties given by the Customer and/or the intention of the parties stated in clause 30.1 and 30.2 of these General Conditions, as a result of a Service Transfer, any Customer Employee claims or it is determined that his contract of employment has been transferred from the Customer or any Third Party to a Services Provider pursuant to the TUPE Regulations or otherwise or any Customer Employee claims or it is determined that any liability regarding his employment has so transferred then:
- a) the Services Provider may terminate any such contract forthwith; and
 - b) the Customer shall indemnify and hold harmless the Services Provider against any Losses arising out of such termination and against sums payable to or on behalf of such employee in respect of his employment whether arising before or after the transfer of his employment (or alleged transfer of employment) to the Services Provider (including for the avoidance of doubt any liability arising from a failure to comply with any information or consultation requirements under the TUPE Regulations).
- 30.3 O2 warrants that no Services Provider shall bring any claim under the TUPE Regulations arising out of or in connection with any actual or alleged failure of the Customer or any Third Party to provide Employee Liability Information in accordance with the TUPE Regulations.
- 30.4 O2 will indemnify and keep indemnified the Customer against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) which the Customer or its incumbent supplier may suffer or incur arising out of any breach of clause 30.3 of these General Conditions.
- 30.5 The parties intend that no O2 Employee's employment shall transfer from a Services Provider to the Successor Supplier pursuant to the TUPE Regulations as a result of the commencement of the provision of the Replacement Services by a Successor Supplier, however and whenever such commencement takes effect.
- 30.6 If, notwithstanding the intention of the parties stated in clause 30.5 of these General Conditions, as a result of the commencement of the provision of the Replacement Services by the Successor Supplier, any O2 Employee claims or it is determined that his contract of employment has been transferred from a Services Provider to the Successor Supplier pursuant to the TUPE Regulations

or otherwise or any O2 Employee claims or it is determined that any liability regarding his employment has so transferred then:

- a) the Successor Supplier may terminate any such contract forthwith; and
 - b) O2 shall indemnify and hold harmless the Customer against any Losses incurred or suffered by the Successor Supplier arising out of such termination and against sums payable to or on behalf of such employee in respect of his employment whether arising before or after the transfer of his employment (or alleged transfer of employment) to the Successor Supplier (including for the avoidance of doubt any liability arising from a failure to comply with any information or consultation requirements under the TUPE Regulations).
- 30.7 The Customer warrants that no Successor Supplier shall bring any claim under the TUPE Regulations arising out of or in connection with any actual or alleged failure of the Services Provider to provide Employee Liability Information in accordance with the TUPE Regulations.
- 30.8 The Customer will indemnify and keep indemnified O2 against any costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) which the Services Provider may suffer or incur arising out of any breach of clause 30.7 of these General Conditions.
- 30.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause 30 to the extent necessary to ensure that:
- a) any Services Provider shall have the right to enforce the obligations owed to, and indemnities given to, O2 by the Customer under this clause 30; and
 - b) any Successor Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Customer by O2 under this clause 30,
- in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

31 CREDIT CHECKS AND FRAUD PREVENTION

- 31.1 O2's acceptance of Customer's application for Services and the ongoing provision of Services to the Customer, may be subject to O2 carrying out satisfactory due diligence relating to the Customer's credit history, verifying identities to prevent and detect crime, money laundering or fraudulent activity.
- 31.2 O2 will send information on the Customer's applications, O2 account and how the Customer manages its account to credit reference agencies ("CRAs") and, where relevant, to fraud prevention agencies ("FPA's") which may record such information, including information on the Customer's business and its proprietors. The CRAs and FPAs may create a record of the name and address of the Customer and its proprietors if there is not one already.
- 31.3 O2 may also monitor the Customer's usage of the Services for the purpose of controlling O2's credit risk and the Customers exposure to fraudulent usage.

32 GOVERNING LAW

- 32.1 This Agreement, and any issues or disputes of whatever nature arising out of or in any way relating to it or its formation (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales.