

## 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
“Additional Connection”	means the Services provided to Users who are permitted by O2 and the Customer;
“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 3 of these General Conditions;
“Airtime”	means mobile airtime and Network capacity;
“AIT”	means artificially inflated traffic which occurs when the flow of calls to any particular revenue share service is, as a result of any activity by or on or behalf of the entity operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith usage of the Network;
“Business Essentials Device Portal”	means the online area where the Customer’s Credit Agreement is accessed and stored.
“Change in Control”	means where any shareholder of the Customer transfers (whether by a single transfer or a series of transfers at different times) shares constituting, in aggregate, 30% or more in nominal value of the Customer's issued ordinary share capital;
“Charges”	means all charges associated with Service(s) described in this Agreement, the Credit Agreement, the Business Essentials Device Portal, on O2's website and/or in any marketing materials;
“Commencement Date”	means the date upon which this Agreement has been signed by the Customer;
“Confidential Information”	means proprietary information and/or any information obtained from the other party 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”	as identified in the Credit Agreement;

TERM / EXPRESSION	MEANING
"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 Service Charter"	means O2's standard customer service charter as amended by O2 from time to time and which is non-binding;
"Credit Agreement"	means a fixed sum loan agreement regulated by the Consumer Credit Act 1974 which specifies the terms under which the Customer will pay in instalments for the Device(s);
"Credit Agreement Charge"	means the monthly non-usage dependent part of the Charges for the Services which arise under the terms of the Credit Agreement;
"Data Connection"	means any connection and/or communication between devices by which data is either transmitted and/or received;
"Device"	means Mobile Equipment, capable of incorporating a SIM Card;
"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;
"Gateway"	means any equipment containing one or more SIM Card(s) for one or more mobile networks, which enables the routing of calls and/or SMS and/or any other form of communication from fixed apparatus to mobile equipment, by establishing a mobile to mobile call, or Data Connection;
"General Conditions"	means this document entitled General Conditions for Business Customers;
"Internet"	means the global data network comprising interconnected networks using the TCP/IP protocol suite;
"Minimum Period"	means the shortest period the Customer can fully repay the sums owed under the Credit Agreement;
"Mobile Data Services"	means the Mobile Services under which O2 supplies the Customer with Airtime enabling the Customer to transfer data on the Network;
"Mobile Equipment"	means hardware (including mobile phones) or equipment purchased by the Customer, or provided to the customer by O2 under this Agreement which may be used in the provision of the Services and Mobile Services;
"Mobile Equipment Terms"	means this document entitled "Mobile Equipment Terms."
"Mobile Services"	means those Services identified as a "Mobile Service" in the Mobile Terms;

TERM / EXPRESSION	MEANING
“Mobile Terms”	means this document entitled “Mobile Terms”;
“Network”	means the O2 network and the network of any Third Party used by O2 to supply the Services, as applicable;
“O2”	means Telefonica UK Limited as set out in front of this Agreement in the section entitled “Your Agreement;”
“O2 Representative”	means a representative of O2 and which includes a representative of O2’s suppliers;
“RPI Change”	means an increase or a decrease as described in clause 6.5;
“RPI Rate”	means the “RPI Percentage change over 12 months: monthly rate” announced by the Office for National Statistics;
“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) provided by O2 to the Customer as such service(s) are described in the Mobile Terms, Mobile Equipment Terms 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 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);
“SIM Card”	means a subscriber identity module card supplied to the Customer by O2;
“Site”	means (where applicable) a physical location at which any Mobile Equipment shall be located and/or at or to which a Service shall be provided;
“SMS” and / or “MMS”	means the short message service and multimedia message service which allows text messages and/or pictures to be sent and received from mobile equipment;
“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”;

TERM / EXPRESSION	MEANING
“Successor Supplier”	means any entity (including the Customer where relevant) which provides the Replacement Services;
“Terms”	means documents entitled “Terms” containing additional terms relating to particular Services or equipment which shall form part of this Agreement;
“Third Party”	means a person 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, subcontractors, agents or anyone else who is permitted by the Customer to use the Service;
“Value Added Mobile Services”	means the value added services in relation to Mobile Services, such as installation, insurance, repair etc. as may be made generally available from time to time by O2 to business customers, the details of which appear on O2's website or are available upon request from O2;
“Voice Services”	means the Mobile Services under which O2 supplies the Customer with Airtime enabling the Customer to make and receive mobile voice calls and SMS texts on the Network; 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 refer, unless otherwise stated, to clauses and sub-clauses of, and schedules to, this Agreement.
- 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

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

## 3 PRIORITY OF DOCUMENTS FORMING THIS AGREEMENT

- 3.1 This Agreement is recorded in the following documents:

- a) these General Conditions;
  - b) the Mobile Equipment Terms. For the avoidance of doubt, the Mobile Equipment Terms should not be confused with the Credit Agreement;
  - c) the Mobile Terms;
  - d) the Business Essentials – Additional Connection (Consumer Terms)
  - e) any other document incorporated by reference to this Agreement.
- 3.2 All of these documents make up this Agreement and cover how O2 will supply Mobile Equipment and Services to the Customer.
- 3.3 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 3.1 of these General Conditions (in order of decreasing precedence) unless explicitly stated otherwise. In any event, in the event of any conflict between the provisions of this Agreement and the Credit Agreement, the provisions of the Credit Agreement shall prevail.

#### **4 SUPPLY OF SERVICES AND/OR EQUIPMENT**

- 4.1 In consideration of the Customer paying the Charges and fulfilling all of its commitments as set out in this Agreement and the Credit Agreement, O2 shall supply the Services and Mobile Equipment as applicable in accordance with the terms of the Agreement.
- 4.2 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.
- 4.3 Customer agrees and acknowledges that it is acting in the course of its business when purchasing Services and/or Mobile Equipment under this Agreement.

#### **5 O2 OBLIGATIONS**

- 5.1 O2 will supply the Services with the reasonable skill and care of a competent telecommunications Service Provider.
- 5.2 O2 does not guarantee that the Services will be continuously available and/or fault-free. The Customer acknowledges that faults may occur from time to time.
- 5.3 O2 will use reasonable endeavours to provide the Services subject to technical and commercial feasibility.
- 5.4 O2 shall be entitled to change the way it provides a Service, provided that any change to the way it provides such Service does not have a materially detrimental effect on the Customer.
- 5.5 O2 shall use reasonable endeavours to provide the Services and/or Mobile Equipment within any time periods and/or by any date indicated to the Customer, but all time periods and dates 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.

#### **6 THE CHARGES**

- 6.1 The Charges for Services and Mobile Equipment are available subject to the Customer fulfilling all of its commitments as set out in this Agreement and the Credit Agreement, including but not limited to paying the Charges in accordance with this Agreement and the Credit Agreement.
- 6.2 The Customer shall pay the Charges for:
- a) each Service (whether or not the Service is used by the Customer);
  - b) where applicable, the Mobile Equipment; and
  - c) any other products or services agreed between the parties from time to time,

in accordance with this clause 6.

- 6.3 Usage based Charges shall be based upon data recorded by or on behalf of O2.
- 6.4 Except where specifically stated otherwise in this Agreement, the Charges are exclusive of VAT which will be charged at the prevailing rate and paid by the Customer, upon receipt of a valid VAT invoice, in addition to the Charges.
- 6.5 In relation to Customers with 10 or fewer employees, O2 will increase or decrease monthly subscription charges, by the RPI Rate. O2 will publish the relevant RPI rate on its website as soon as it becomes available (hereinafter referred to as an “**RPI Change**”).

## **7 INVOICING AND PAYMENT**

- 7.1 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 Mobile Equipment one or more invoice(s) which shall set out the Charges due in accordance with this Agreement and where applicable, the Credit Agreement.
- 7.2 The Customer shall pay:
  - a) monthly, quarterly or annually (as applicable) in advance for Credit Agreement Charges and other recurring Charges (including inclusive usage Charges); and
  - b) monthly, quarterly or annually (as applicable) in arrears for usage (excluding inclusive usage Charges), connection and other non-recurring Charges.
- 7.3 The Customer shall pay each invoice issued by O2 under this Agreement within 30 days of the date of invoice which will be available on the Business Essentials Device Portal.
- 7.4 The Customer shall pay the Charges in full without any deduction or set off.
- 7.5 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**

- 7.6 Without prejudice to any other rights of O2, 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:
  - a) 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. For the avoidance of doubt, O2 will not impose any Charges for overdue debt owed under the Credit Agreement; and
  - b) 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, where applicable all interest accrued has been paid and satisfied in full.
- 7.7 For the avoidance of doubt, O2 reserves the right to decline payment by credit card in respect to any Charges.

### **Credit limit**

- 7.8 Prior to O2's acceptance of a Customer's application for Services and/or following any credit check described in clause 28 of these General Conditions, O2 reserves the right to set a credit limit on the Charges that can be accrued under this Agreement and O2 can review any such credit limit at any time. For the avoidance of doubt, this does not apply to the Credit Agreement.
- 7.9 O2 may require from the Customer a deposit as security for payment of Charges (excluding those arising in respect to the Credit Agreement). The Customer may request the return of any deposit paid at the expiry of each 12 month period after the deposit was taken but the decision to return

any deposit prior to termination of the Agreement will be at the discretion of O2. For the avoidance of doubt, such a deposit will not be applied against any Charges relating to the Credit Agreement.

## 8 NEW SERVICES

### New services

- 8.1 The Customer may request new services on the terms set out on O2's website or made available to the Customer by O2 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:
- the new Service shall be deemed added to the Agreement; and
  - 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.

### Additional Connections

- 8.2 The Customer may request Additional Connections pursuant to this Agreement. O2 shall be entitled to accept or reject a request for an Additional Connection.
- 8.3 The Customer acknowledges and agrees that Additional Connections which are business Users will be subject to the terms and conditions set out in this Agreement.
- 8.4 The Customer acknowledges and agrees that for Additional Connections which are permitted consumer Users the Customers (and the individual consumers) use of the Services and the Mobile Equipment will be subject to the Business Essentials – Additional Connections (Consumer Terms). For a copy of these terms please go to <http://www.o2.co.uk/termsandconditions/business>
- 8.5 For the avoidance of doubt, the Customer acknowledges and agrees that all liability for Additional Connections will at all times remain with the Customer.

## 9 CUSTOMER OBLIGATIONS

- 9.1 The Customer shall and shall procure that Users (or anyone having access to the Services), shall:
- comply with any reasonable instructions (including health and safety, security, use of Network and fair usage policies) from O2 relating to the use of the Services, Mobile Equipment and/or Software;
  - not use the Services, Mobile Equipment and Software 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, Mobile Equipment and Software (including spamming and the sending of unsolicited advertising or promotional material), and/or adversely affects the provision of the Services, Mobile Equipment and Software to other customers;
  - not use the Services, Mobile Equipment and Software fraudulently or in connection with a criminal offence;
  - not use the Services Mobile Equipment and Software in a way that contravenes any Third Party's rights or any licence, code of practice, instructions or guidelines issued by a relevant regulatory authority;
  - 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 Mobile Equipment and Software;
  - notify O2 of any methods of doing business which may affect the Customer's use of the Services, Mobile Equipment and Software or the Customer's ability to comply with the terms of this Agreement; and
  - comply with all applicable laws and regulatory provisions.
- 9.2 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 provide O2 with any and all information and/or assistance that O2 may require in order to perform the Services. 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 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.
- 9.4 The Customer shall notify O2 immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.
- 9.5 The Customer agrees and acknowledges that O2 and/or a supplier of O2 may monitor and record calls or other communications including in relation to O2's customer services.
- 9.6 The Customer acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Customer's risk and subject to all applicable laws. O2 has no responsibility for any information, software, services, goods or other materials obtained by the Customer using the Internet.
- 9.7 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 that is not provided by O2 under this Agreement is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.
- 9.8 When the Customer is a body corporate, it shall notify O2 immediately if there is a Change of Control. The Customer shall also promptly notify O2 of any changes to its directors or partners or principal place of business.

## 10 ANTI-BRIBERY AND CORRUPTION

- 10.1 In addition to and without prejudice to clause 9.1(g) 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, rules, regulations 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 co-operate 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 14.7(a) and 14.8 (a) of these General Conditions.

## 11 VARIATIONS TO THE AGREEMENT

- 11.1 O2 reserves the right from time to time to vary the Agreement as explicitly stated in this Agreement, including as follows:
- Subject to clause 6.3(a) of these General Conditions, O2 shall be entitled to vary the Customer Service Charter. Such variations shall be published at <http://www.o2.co.uk/termsandconditions> at least 28 days before such changes come into effect or, where the variation arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable; and
  - O2 shall be entitled to vary the provisions of this Agreement (including for the avoidance of doubt, the Charges, with the exception of the Charges owed under the Credit Agreement). O2 will provide to the Customer 28 days' notice in writing of any such variation or, where the variation



arises due to changes imposed by Third Party manufacturers, Third Party suppliers or a regulatory body, as much notice as is reasonably practicable.

## 12 SUSPENSION

### Planned Outages

- 12.1 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

- 12.2 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.
- 12.3 O2 shall use reasonable endeavours to restore the Services suspended in accordance with clause 12.1 or 12.2 of these General Conditions as soon as reasonably practicable.
- 12.4 The Customer shall remain liable for all Charges levied in accordance with this Agreement during any period of suspension arising from the circumstances described in clause 12.1 or 12.2 of these General Conditions.

### Actions of the Customer

- 12.5 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 but not limited to failure to pay any Charges due hereunder);
  - b) if the Customer fails to comply with the terms of the Credit Agreement; or
  - c) 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.
- 12.6 If O2 has suspended the Services in accordance with clause 13.5 of these General Conditions, O2 shall restore the Services when the circumstance described in clause 13.5 of these General Conditions is remedied.
- 12.7 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,

where such suspension or disconnection arises from the circumstances described in clause 13.5 of these General Conditions.

### Actions of O2's suppliers

- 12.8 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

- 12.9 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.

## 13 TERMINATION

### Termination for convenience

- 13.1 The Customer may terminate a Voice Service by providing to O2 30 days notice in writing. The right to terminate a Voice Service in this clause 13.1 shall not apply where the Customer only receives one Voice Service or the termination of such Voice Service(s) would result in the Customer not receiving any Voice Services from O2. If a customer terminates all their Voice Services, this Agreement will be automatically terminated and the customer will be required to immediately repay the outstanding balance of the Credit Agreement.
- 13.2 Subject to clause 13.1 of these General Conditions, the Customer may terminate this Agreement (in whole or in relation to a particular Service, including Mobile Services) by:
- a) providing to O2 30 Working Days notice in writing; and
  - b) providing O2 with written notice after full early repayment of the Credit Agreement in accordance with clause 10 of the Credit Agreement.
- 13.3 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.

### Termination resulting from changes to the Agreement

- 13.4 Subject to clause 13.5 of these General Conditions, the Customer shall be entitled to terminate any individual Service by providing 30 days' notice in writing if:
- a) O2 increases the prices and/or the Charges in respect of that specific Service pursuant to clause 12 of these General Conditions and that increase is to the material disadvantage of the Customer; or
  - b) O2 substantially varies the terms of this Agreement that relate to that specific Service pursuant to clause 11 of these General Conditions and that variation is to the Customer's material disadvantage,

provided that such notice is provided to O2 within 30 days of the date that the change is notified to the Customer.

For the avoidance of doubt, any price or Charges increases 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 under this clause 13.4.

- 13.5 The right to terminate a Service in clause 13.4 above shall not apply where the increases in prices or Charges or the variation of the terms of the Agreement have been agreed by the Customer (including an RPI Change) and/or arise as a consequence of a change in prices, terms or otherwise made by Third Party manufacturers, Third Party suppliers or a regulatory body.
- 13.6 Termination of a Service in accordance with clause 13.4 of these General Conditions will not affect the Customer's requirement to pay the Charges relating to that Service incurred prior to the date of termination.

### Termination for cause

- 13.7 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.
- 13.8 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 9.1(c), 9.1(d), 9.1(g) and/or 13.5(b) of these General Conditions occurs.

#### **Insolvency**

- 13.9 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**

- 13.10 Subject to clause 13.1 and 13.2, if this Agreement or a Voice Service 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.
- 13.11 For the avoidance of doubt, if this Agreement is terminated by the Customer the termination consequences set out in the Credit Agreement shall apply, including having to immediately repay the outstanding balance.
- 13.12 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.
- 13.13 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, and/or Charges for any costs incurred by O2 in relation to Mobile 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.

### **14 INTELLECTUAL PROPERTY**

- 14.1 Title to, and all intellectual property rights in the Software, 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, 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, or associated documents and all parts thereof, directly against the Customer.
- 14.2 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.

- 14.3 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.
- 14.4 O2 grants to the Customer a non-exclusive, non-transferable licence to use, in object code form, any Software and the Mobile 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), unless expressly permitted to do so by O2 or by relevant law. This licence will terminate on the termination of this Agreement (or any relevant part of this Agreement).
- 14.5 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 relevant law.
- 14.6 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 Mobile 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 Mobile 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, Mobile 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 claims, proceedings and expenses arising from any such infringement by the Customer.
- 14.7 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 14.7(a) of these General Conditions; and/or
  - c) authorise any Third Party to do anything referred to in clause 14.7(a) of these General Conditions.
- The Customer further agrees not to infringe any copyright, or registered or unregistered trademark rights belonging to any Third Party in respect of any Mobile Equipment or Software.

#### **End User Licensed Software**

- 14.8 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.
- 14.9 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.

- 14.10 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.

## 15 CONFIDENTIALITY

- 15.1 Neither party will divulge Confidential Information to any Third Party except such of its employees, contractors, suppliers and agents as may need to know the same for the purposes of the implementation and/or performance of this Agreement and in each case who agree to be bound by the provisions of this clause 15.1.
- 15.2 The obligation of confidence set out in clause 15.1 of these General Conditions shall not apply to any material or information which is:
- a) in the public domain (other than as a result of a breach of this Agreement);
  - b) already known to the receiving party prior to the Commencement Date;
  - c) lawfully received from a Third Party; or
  - d) required to be disclosed pursuant to the order of a court or other tribunal or regulatory authority of competent jurisdiction.
- 15.3 The obligation of confidence set out in this clause 15 shall apply in the period commencing on the Commencement Date and ending three years after the termination or expiry of this Agreement.

## 16 LIMITATION OF LIABILITY

- 16.1 This clause 16 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.
- 16.2 Subject to clauses 16.4 and 16.5 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.
- 16.3 Subject to clauses 16.2, 16.4 and 16.5 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, 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 £50,000; 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 in the first Year); and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.
- 16.4 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) any and all damage to any equipment belonging to O2 or the Network caused by the Customer's breach of this Agreement; breach of any implied term as to title or quiet enjoyment arising out of section 12 of the Sale of Goods Act 1979; or
  - c) fraud or fraudulent misrepresentation.

- 16.5 Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.
- 16.6 Nothing in this clause 16 shall apply to the payment of the Charges.
- 16.7 Subject to clauses 16.4 and 16.5 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.
- 16.8 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 Mobile Equipment on an economic basis without such limitations.

#### **Liability for third parties**

- 16.9 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.

### **17 ASSIGNMENT**

- 17.1 The Customer shall not assign or transfer this Agreement to any Third Party.
- 17.2 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.

### **18 ENTIRE AGREEMENT**

- 18.1 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.
- 18.2 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 18.2 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

### **19 INVALIDITY**

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.

### **20 WAIVER**

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.

### **21 DATA PROTECTION**

- 21.1 O2 operates in accordance with the Data Protection Act 1998 ("DPA") as updated or amended from time to time. 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. If the Customer or a User does not want its details, or, in the case of the Customer those details of its

Users to be used for direct marketing purposes in this way then the Customer should contact the O2 Data Controller at Telefonica UK Limited, 260 Bath Road, Slough, SL1 4DX.

- 21.2 The Customer will ensure that its Users have consented to the use of their details in accordance with clause 22.1 of these General Conditions. Customer details and that of its Users shall be treated in accordance with O2's Privacy Policy at [www.o2.co.uk/termsandconditions/privacy-policy](http://www.o2.co.uk/termsandconditions/privacy-policy).
- 21.3 To the extent that O2 is required as part of the Services to process Personal Data only as a Data Processor (each as defined in the DPA), O2 shall:
- a) process the Personal Data only on behalf of the Customer (or, if so directed by the Customer), for the purposes of performing this Agreement and in accordance with instructions contained in this Agreement or the reasonably practicable instructions received from the Customer from time to time;
  - b) at all times comply with the provisions of the Seventh Data Protection Principle set out in schedule 1 of the DPA and shall take reasonable steps to:
    - 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;
    - ii) take reasonable steps to ensure the reliability of personnel, suppliers and subcontractors who may process Personal Data.
- 21.4 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:
- a) take 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) comply with the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred.
- 21.5 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.

## **22 MATTERS BEYOND THE PARTIES' REASONABLE CONTROL**

- 22.1 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).
- 22.2 The Customer agrees that O2 shall have no liability for improper, incorrect or unauthorised use of the Services or Mobile Equipment by the Customer or any Third Party.

## **23 EXPORT CONTROL**

- 23.1 In the event that the Customer proposes to export any Mobile 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.
- 23.2 In the event that the Customer procures Mobile Equipment, the Customer agrees that in entering into this Agreement the Customer accepts the terms of the following end-user undertaking: The

Customer certifies that it is or will be the end-user of the Mobile Equipment and further certifies that it shall use the Mobile Equipment only for the purposes of allowing its employees to send, receive, store and process data and voice mobile services in order to perform their everyday contractual duties; that the Mobile 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 Mobile 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 Mobile Equipment, or any replica of it, will not be used in any nuclear explosive activity or un-safeguarded nuclear fuel cycle activity.

## **24 RELATIONSHIP OF THE PARTIES**

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.

## **25 NOTICES**

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 by which O2 may reasonably use to communicate with the Customer upon such communication being acknowledged as having been received.

## **26 NO THIRD PARTY RIGHTS**

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.

## **27 TUPE**

- 27.1 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 at the commencement of this Agreement, however and whenever such transfer takes effect.
- 27.2 If, notwithstanding the warranties given by the Customer and/or the intention of the parties stated in clause 27.1 and 27.2 of these General Conditions, either at the commencement of this Agreement or during the term of this Agreement, 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 costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) 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).
- 27.3 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.
- 27.4 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 27.3 of these General Conditions.

- 27.5 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.
- 27.6 If, notwithstanding the intention of the parties stated in clause 27.5 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 costs, claims, liabilities and expenses of any nature (including legal costs on an indemnity basis) 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).
- 27.7 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.
- 27.8 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 27.7 of these General Conditions.
- 27.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause 27 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 27; 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 27,
- in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

## 28 CREDIT CHECKS AND FRAUD PREVENTION

- 28.1 O2's acceptance of Customer's application for Services, may be subject to O2 checking the following records about the Customer and the Customer's business partners:
- a) O2's own records;
  - b) business records at credit reference agencies ("**CRAs**") including both public (including the electoral register) and fraud prevention information. When CRAs receive a search from O2 they will place a search footprint on the Customer's business credit file that may be seen by other lenders;
  - c) records held by fraud prevention agencies ("**FPAs**"); and
  - d) if the Customer contact is a director, O2 may seek confirmation, from CRAs that the residential address that is provided is the same as that shown on the restricted register of directors' usual addresses at Companies House.
- 28.2 The Customer hereby agrees that O2 can search records at CRAs and FPAs and that it can keep a record of such searches.

- 28.3 O2 may also make checks such as assessing the Customer's application for Services and verifying identities to prevent and detect crime and money laundering. O2 may also make periodic searches at CRAs and FPAs to manage the Customer's O2 account.
- 28.4 More specifically, before a Customer enters into a Credit Agreement, O2 is required by law to conduct a creditworthiness assessment on the Customer. For these purposes, O2 will search the Customer's record with a CRA and possibly records of those with whom the Customer is linked financially with.
- 28.5 CRAs who will supply O2 with information in order for O2 to make its assessment. Information held about the Customer by CRAs may already be linked to records relating to one or more other individuals or entities and the Customer may be treated as financially linked, which means that the Customer's credit application will be assessed with reference to any associated records. The CRA will record details of the search and this could impact the Customer's ability to obtain credit elsewhere within a short period of time. O2 may use credit scoring or other automated decision-making systems when assessing the Customer's application for credit under the Credit Agreement.
- 28.6 O2 will add to the Customer's record with the relevant CRA details of the Credit Agreement and the payments made under it. O2 will also send information on the Customer's applications, O2 account and how the Customer manages its account to CRAs which may record such information, including information on the Customer's business and its proprietors. The CRAs may create a record of the name and address of the Customer and its proprietors if there is not one already.
- 28.7 Please be aware that O2 can give CRAs default information about the Customer's debts if the Customer has fallen behind with its payments, the amount owed is not disputed by the Customer and the Customer has not made a proposal that satisfies O2 for repaying the debt following O2's formal demand.
- 28.8 Information provided by O2 regarding the Customer and/or those financial linked to the Customer may be supplied to other organisations by CRAs and FPAs and may be used for debt tracing and/or the prevention of money laundering and/or terrorist financing.
- 28.9 If the Customer gives O2 false or inaccurate information and O2 suspect or identify fraud O2 will record this and may also pass this information to FPAs and other organisations involved in crime and fraud prevention.
- 28.10 O2 and other organisations may access and use from other countries the information recorded by FPAs.
- 28.11 Customer data may also be used for other purposes for which the Customer or any User gives its specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the Data Protection Act 1998. To read the full details of how data may be used please visit our website at [www.o2.co.uk](http://www.o2.co.uk).
- 28.12 The Customer can contact the CRAs currently operating in the UK, including CallCredit (Consumer Services Team, PO Box 491, Leeds, LS3 1WZ or call 0870 0601414); Equifax PLC, (Credit File Advice Centre, PO Box 3001, Bradford, BD1 5US; 0870 010 0583; [www.myequifax.co.uk](http://www.myequifax.co.uk)); and Experian (Consumer Help Service, PO Box 8000, Nottingham NG80 7WF; 0844 4818000; [www.experian.co.uk](http://www.experian.co.uk)). The information they hold may not be the same. They will charge a small statutory fee for access to their Records. Details of the relevant fraud prevention agencies are available from O2 on request.

## 29 GOVERNING LAW

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. The Parties submit to the exclusive jurisdiction of the courts of England.

