

## 1. Explanation of certain words

### 1.1 In this Agreement:

#### "AIT"

means Artificially Inflated Traffic and occurs where the flow of calls to any particular revenue share service is, as a result of any activity on or on behalf of the party operating that revenue share service, disproportionate to the flow of calls which would be expected from good faith commercial practice and usage of the network.

#### "Affiliate"

means any company which is an Associated Company of either party as the term Associated Company is defined under section 416 of the Income and Corporation Taxes Act 1988.

#### "Agreement"

means these terms, and any amendments to these terms agreed with the Customer.

#### "Airtime"

means wireless airtime and network capacity procured from the Network Operator.

#### "Airtime Account"

means a notional account set up by O2 to accrue credits owing to the Customer from which Airtime can be purchased from O2 by the Customer.

#### "Airtime Application"

means the O2 Airtime Application form, or any other O2 application form used by the Customer to apply for the Wireless Services.

#### "Charges"

means the charges for Wireless Services and for Value Added Wireless Services payable to O2 by the Customer in accordance with clause 7.1.

#### "Commencement Date"

means the date upon which Wireless Services are first provided to the Customer pursuant to this Agreement and in the event that Wireless Services have not been provided shall mean the date of signature of the Airtime Application by the Customer.

#### "Customer"

means the customer of O2 whose details appear on the Airtime Application.

#### "Device"

means a wireless device, or Equipment incorporating a SIM Card.

#### "Disconnection Notice"

means a notice to disconnect one or more SIM Cards from the Wireless Services given pursuant to clause 6.1.

#### "Equipment"

means the items supplied by O2 to the Customer under this Agreement and includes any Software (but not End-User Licensed Software) and documentation supplied under this Agreement.

#### "End-User Licensed Software"

means any software, the licence terms for 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.

"Equipment Account"

means a notional account set up by O2 to accrue credits owing to the Customer from which Equipment can be purchased from O2 by the Customer.

"GSM Gateway"

means a device (not designed or adapted to be capable of being used whilst in motion) for wireless telegraphy designed or adapted to be connected by wireless telegraphy to the O2 wireless telecommunications network or the wireless telecommunications system of another network operator and used solely for the purpose of sending and receiving messages conveyed by means of the O2 wireless telecommunications.

"Line Rental Charge"

means the non-usage dependent part of the Charges, payable on a monthly basis per SIM Card.

"Minimum Period"

means the minimum number of months each SIM Card provided under this Agreement must remain connected to the Wireless Services, which unless agreed otherwise in writing shall be 12 months.

"Minimum Term"

means the term of 12 months from the Commencement Date or such other period as is agreed in writing.

"Mobile Extension"

means the service which uses certain wireless extension technology in conjunction with a private circuit or virtual private circuit and that enables certain Devices to operate as part of the Customer's wireless private or virtual private voice network.

"Network Operator"

means the network operator who operates the wireless network or networks to which the SIM Cards are connected.

"Numbers"

means the numbers allocated to O2 by the Network Operator and in turn allocated by O2 to SIM Cards.

"O2"

means Telefónica O2 UK Limited of 260 Bath Road, Slough SL1 4DX.

"O2 Price List"

means the notes, descriptions of, criteria for use of, and the list of prices and tariffs which are charged to customers for Equipment, Wireless Services and Value Added Wireless Services and which is supplementary to the Charges. The O2 Price List is available at <http://www.O2.co.uk>.

"Order"

means a request by the Customer for Equipment or Wireless Services or a change or variation in respect of the same (but not a disconnection).

"Replacement List Price"

means the Charges applicable to Equipment which is not supplied in conjunction with a new SIM Card and which Charges shall be available from O2 upon request from the Customer.

"SIM Card"

means the subscriber identity module supplied by the Network Operator (and which shall at all times remain the property of the Network Operator), which is allocated to the Customer by O2, and which contains the Number.

"SMS"

means the short message service, which enables text messages to be sent to, and received from Devices.

"Software"

means any software (excluding End-User Licensed Software) supplied to the Customer by O2, the Network Operator or any other supplier under the terms of or in respect of this Agreement.

"Termination Fee"

means the standard O2 Price List Line Rental Charges (as stated in the O2 Price List at the date of disconnection which are applicable to the tariff to which the SIM Card was connected prior to disconnection) for the period from the date of disconnection of a SIM Card to the end of the Minimum Period in respect of that SIM Card.

"Termination Notice"

means written notice to terminate this Agreement.

"Wireless Service Period"

means the period commencing on the Commencement Date and ending on the date this Agreement is terminated, during which period the Wireless Services are provided by O2 to the Customer pursuant to this Agreement.

"Wireless Services"

means the provision by O2 to the Customer of Airtime, Equipment, GPRS bearer, Mobile Extension, Mobile Web, SMS, SMS Land to Mobile Text Messaging Service and/or any other Wireless Services, which O2 may from time to time provide.

"Value Added Wireless Services"

means the value added Wireless Services such as installation, insurance, field services, repair etc. as may be made available from time to time by O2 to Business Customers on a non discriminatory basis and details of which appear on the O2 Price List.

## 2. Orders

2.1 O2 agrees subject to acceptance by O2 of an Order, to supply to the Customer the Wireless Services requested in that Order under the terms and conditions contained in this Agreement, and at the Charges specified in the O2 Price List, and O2 undertakes to use all reasonable endeavours to fulfil any Order as soon as reasonably practicable and if possible by the requested dates for delivery/commencement.

2.2 All Orders shall be subject only to the terms of this Agreement. 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

## 3. Equipment

3.1 Title in the Equipment shall not pass to the Customer except that title in Equipment which is not a Device (for example hardware accessories) shall pass to the Customer upon payment in full for such Equipment.

3.2 Notwithstanding clause 3.1, acceptance of the Equipment by the Customer shall take place when the Customer takes delivery or possession of the Equipment. Risk in the Equipment will pass to the Customer upon delivery and the Customer will be liable for any loss or damage of the same as and from the time when the Equipment is delivered to the delivery location specified in the Order unless the damage is caused by the negligence of O2.

3.3 O2 warrants that each item of Equipment will conform in all material respects to the manufacturer's specification for a period of 12 months (but in the case of Software 90 days) from the date on which each item of Equipment is despatched to the Customer by O2 (the "Warranty Period") unless special conditions associated with certain Equipment apply.

3.4 If, within the Warranty Period, the Customer notifies O2 of any defect or fault in the Equipment arising under normal use in consequence of which it fails to conform in any material respect with the manufacturer's specification O2 shall, at O2's option either: repair the faulty Equipment; or, replace the faulty Equipment with the same or an equivalent item of Equipment which may be a new or refurbished item. In the event that Equipment is provided to replace Equipment which has failed during its Warranty Period, the replacement Equipment will be provided with its own Warranty Period which shall last for the greater of: a) 3 months from the date on which the replacement Equipment is despatched to the Customer; or b) the outstanding period of the original Warranty Period.

3.5 Following the expiry of the Warranty Period of Equipment provided under this Agreement in which O2 retains title, O2 will extend the Warranty Period in respect of such Equipment until the end of the Minimum Term ("Extended Warranty Period"). Upon expiry of the Minimum Term, or termination of this Agreement, the Extended Warranty Period shall cease.

3.6 The warranty obligations set out in clauses 3.4 and 3.5 shall not apply in the event that the Customer, or anyone acting with the authority of the Customer, has amended or damaged the Equipment, or used it for a purpose or in a context, other than in accordance with O2's or the manufacturer's instructions and advice.

3.7 Following any upgrade or replacement of Equipment or disconnection of Equipment from the Wireless Services, O2 shall reserve the right to request the safe return of any such Equipment in which O2 retains title pursuant to clause 3.1 from the Customer to O2 at the Customer's expense.

3.8 The Customer undertakes in respect of Equipment in which O2 retains title pursuant to clause 3.1 not to sell, transfer, lease, charge, assign by way of security or otherwise deal in or encumber the same in any way and that it shall keep such Equipment in good working order allowing for fair wear and tear during the period of use by the Customer.

3.9 O2 reserves the right to charge the Customer the Replacement List Price or repair charges as set out from time to time in the O2 Price List for any Equipment that is not returned to O2 in accordance with the provisions of clause 3.7 or where the Customer fails to fulfil its obligations under clause 3.8.

3.10 O2 reserves the right to add to, substitute, or to discontinue any item of Equipment at any time. O2 does not guarantee the continuing availability of any particular item of Equipment.

4. Agreement for the provision of Airtime and Wireless Services.

4.1 O2 agrees to provide the Wireless Services during the Wireless Services Period.

4.2 O2 reserves the right to add to, substitute, or to discontinue any Value Added Wireless Service at any time. O2 does not guarantee the continuing availability of any particular Value Added Wireless Service.

4.3 The Customer agrees not to use SMS for the purpose of marketing or advertising anything to users of wireless services without the consent of those users.

4.4 The Customer agrees that in respect of SMS, O2 is acting as a wireless service provider and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Customer's SIM Cards, which do not originate from O2.

4.5 Certain elements of the Wireless Services are dependent on the Customer having suitable infrastructure available and/or using an appropriate Device and in the event that the Customer is unable to provide suitable infrastructure, or fails to use an appropriate Device, then:

4.5.1 some of the Wireless Services may not function correctly ("the Affected Services");

4.5.2 O2 reserves the right not to provide the Customer with the Affected Services; and

4.5.3 O2 shall have no liability for the Customer's inability to receive the Affected Services.

4.6 During the Minimum Period, the Customer shall not be permitted to transfer a SIM Card from the tariff which that SIM Card was originally connected to under this Agreement to another tariff except where O2 at O2's absolute discretion agrees to do so and confirms such a change in writing to the Customer.

4.7 O2 cannot set usage limits and the Customer will be liable for all Charges incurred by its use of the Wireless Services. O2 may monitor the Customer's usage of the Wireless Services for the purpose of controlling O2's credit risk and the Customer's exposure to fraudulent usage.

4.8 O2 reserves the right to bar service to any Equipment supplied under this Agreement where in O2's opinion that Equipment is not being used in a manner which O2 would reasonably expect including but not limited to where the Equipment is:

4.8.1 used in conjunction with a SIM Card connected to a tariff other than one which the Customer has ordered under this Agreement;

4.8.2 used in conjunction with a SIM Card allocated to any other O2 customer's account;

4.8.3 used solely or predominantly on a roaming basis; or

4.8.4 not used on the O2 Network within 45 days from the date of despatch by O2, or during any other period of 30 consecutive days;

unless O2 and the Customer have agreed in writing otherwise.

4.9 O2 reserves the right to bar a SIM Card from making calls (other than calls to emergency services) and/or disconnect any SIM Card supplied under this Agreement if such SIM Card is not being actively used in a manner which O2 would reasonably expect to be proper use including but not limited to where the SIM Card has not been used:

4.9.1 within 30 days of activation of the SIM Card by O2 on the tariff which the Customer has ordered under this Agreement; or

4.9.2 for any subsequent 30 day period thereafter;

and O2 will only unbar/reconnect any such SIM Card once O2 is satisfied, acting reasonably, that the SIM Card is to be used properly by the Customer to make use of the Wireless Services provided under this Agreement, which proper use must be explained to O2 within 30 days of the date on which the SIM Card is barred/disconnected.

4.10 The Customer, at the Customer's expense, shall return to O2 any Equipment, supplied by O2, which Equipment:

4.10.1 have been barred pursuant to clause 4.8;

4.10.2 was Equipment supplied in conjunction with a SIM Card which has been disconnected pursuant to clause 4.9 and which has not been reconnected by O2;

and in the event that the Customer fails to return any such Equipment within two (2) weeks of written notice from O2 to do so, then the Customer agrees to pay O2 the Replacement List Price of the Equipment as specified in the O2 Price List.

4.11 In the event that the Customer sells any Equipment in breach of clause 9.4 of this Agreement, the Customer agrees that liquidated damages equal to the Replacement List Price of the Equipment, as set out in the O2 Price List at the date on which O2 invokes its right to recover liquidated damages under this clause 4.11, shall immediately be due and payable from the Customer to O2.

## 5. Service Standards

5.1 O2 warrants that it will perform its obligations in this Agreement with the reasonable skill and care of a competent wireless telecommunications service provider and warrants that the Wireless Services will conform in all material respects to the description of the same in the O2 Price List.

5.2 The Customer acknowledges that the provision of Airtime is subject to the geographic extent of Airtime coverage and local geography, topography and/or atmospheric conditions and/or other physical or electromagnetic interference and/or the number of users trying to access the Wireless Services in any particular location that may from time to time adversely affect the provision of the Airtime in terms of line clarity and call interference.

5.3 O2 may, where reasonable, from time to time and without notice suspend the Wireless Services and at its discretion disconnect a SIM Card in any of the following circumstances without prejudice to its rights hereunder, provided that it shall use reasonable endeavours to restore the Wireless Services and reconnect the SIM Card as soon as reasonably practicable:

5.3.1 during any technical failure, modification or maintenance of the telecommunications systems by which the Wireless Services are provided; and/or

5.3.2 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 sums due hereunder)

until such failure to comply is remedied; and/or

5.3.3 if the Customer allows to be done anything which in O2's reasonable opinion may have the effect of jeopardising the operation of the Wireless Services, or the Wireless Services are being used in a manner prejudicial to the interest of the Customer and/or O2; and/or

5.3.4 because of an emergency or upon instruction by emergency services or any government or appropriate authority (including the Network Operator) or for the Customer's own security.

5.4 O2 can at its discretion suspend any SIM Card from making calls (other than to the emergency services) and disconnect any SIM Card from the Wireless Services if O2 has reasonable cause to suspect fraudulent use of the SIM Card or the Device, or either are identified as being stolen.

5.5 During any period of suspension arising from the circumstances detailed in clauses 5.3.2 to 5.3.4 inclusive, or clause 5.4, the Customer shall remain liable for all Charges levied in accordance with this Agreement.

## 6. Disconnection of SIM Cards

6.1 A Disconnection Notice may be given by the Customer in respect of a SIM Card at any time.

6.2 Within 30 days from receipt of a Disconnection Notice O2 will disconnect the relevant SIM Card or SIM Cards from the Wireless Services.

6.3 In the event that the Customer gives a Disconnection Notice resulting in disconnection of a SIM Card prior to the expiry of the Minimum Period for that SIM Card, the Customer will pay to O2 any applicable Termination Fee.

## 7. Basis of Charges

7.1 The prices and tariffs payable by the Customer to O2 for Equipment and Airtime are as set out in the Airtime Application and any prices and tariffs not set out in the Airtime Application shall be as set out in the O2 Price List.

7.2 The Charges are exclusive of Value Added Tax which will be charged to the Customer at the prevailing rate

7.3 All Charges shall be based upon call and billing data recorded by O2. The Customer acknowledges that roaming calls may take longer to be billed than other types of calls.

7.4 Any credits accrued in the Equipment Account and/or Airtime Account may be used solely for the purposes of offsetting Charges for Equipment and or Airtime respectively, do not have any monetary value, and the Customer is not entitled to:

7.4.1 use any credits accrued in the Equipment Account to offset Airtime Charges or vice versa; or

7.4.2 offset any credits accrued in the Equipment Account or the Airtime Account against any outstanding debt; or

7.4.3 any payments from any credits accrued in the Equipment Account or the Airtime Account; or

7.4.4 any future use of credits accrued in the Equipment Account or the Airtime Account upon termination of this Agreement.

## 8. Billing Arrangements

8.1 O2 shall on a monthly basis, submit to the Customer one or more invoice(s) which shall itemise Charges for the Wireless Services.

8.2 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 of the overdue debt to the Customer O2 shall be entitled to:

(a) charge interest (both before and after any judgement) on amounts overdue from the Customer under this Agreement from the due date until the payment is actually made at the rate of 2% per annum over the base rate of HSBC Bank plc for the time being during the relevant period; and

(b) suspend the provision of the Wireless Services, the performance of customer services and/or disconnect SIM Cards or Equipment from the Wireless Services until such time as all payments due including all interest accrued has been paid and satisfied in full.

8.3 O2 reserves the right to review any credit applied to this Agreement. O2 may require from the Customer a deposit as security for payment of Charges. The Customer may request the return of any deposit paid at the expiry of any 12 month period but the decision to return any deposit prior to termination of the Agreement will be at the discretion of O2. O2 reserves the right to set off any deposit against the Charges. O2 may require the Customer to pay by Direct Debit.

8.4 If the parties agree that payments of the Charges to O2 are to be made by credit card and if payments of 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.

8.5 Unless otherwise stated in the O2 Price List, call prices are quoted by the minute. The duration of each call is measured in one second increments, and then rounded up to the nearest second. Each call is charged excluding VAT. Based on the duration, the Ex VAT cost of each call is then calculated and the result rounded up to the nearest penny. VAT is then added where applicable to the total of all charges on the Customer's invoice.

8.6 Unless otherwise stated in the O2 Price List all calls are subject to a minimum Charge of £0.02.

8.7 Unless otherwise stated in the O2 Price List Peak rate call Charges apply from 07:00 to 19:00, Monday to Friday; Weekend rate call Charges apply from midnight on Friday to midnight on Sunday and Off Peak rate call Charges apply at all times when Peak or Weekend call Charges do not apply.

8.8 The Customer hereby agrees to pay the Charges in full without any deduction or set off to O2 within 30 days following the date of invoice for such Charges.

## 9. Obligations of the Customer

9.1 The Customer undertakes with O2 that throughout the Wireless Service Period it will use its reasonable endeavours to:

9.1.1 provide O2 with such information as O2 reasonably request in connection with this Agreement; and

9.1.2 not use the SIM Card and/or Devices and/or other Equipment and the Wireless Services for any purpose other than that for which it was designed or intended; and

9.1.3 notify O2 immediately (and to confirm in writing) on becoming aware that any Device or SIM Card has been lost or stolen or that any person is making improper or illegal use of the Device, SIM Card or the Wireless Services. The Customer will be responsible for any Charges incurred as a

result of unauthorised use of any Device, or SIM Card, or the information contained within a SIM Card, until O2 has received a request from the Customer to suspend the Wireless Services to that Device or SIM Card. If the Customer has purchased the O2 Insure Premier, Standard or any other applicable O2 Insure mobile insurance after 14 January 2005 and makes a claim under the policy for theft of the Device, which is approved by the insurer or an agent of the insurer, ("the Insurer") O2 will reimburse the Customer against the cost of unauthorised calls made on the Device up to the following limits: Premier policy- up to £3,000; Standard policy - up to £1,000; other applicable O2 Insure policy - up to the amount O2 notifies the Customer in connection with that product. In each case these figures include any taxes and network or service provider charges. In return:

(a) the Customer agrees to provide the Insurer with an itemised account from its network or service provider clearly showing the unauthorised calls made and their value within 2 months of your discovery of the theft of the Device:

(b) the Customer agrees to notify the Insurer of the theft of the Device as required by the terms of the Premier, Standard or any other applicable O2 Insure policy (as the case may be) in force at the time of the theft and the Customer agrees to notify O2 of the theft of the Device when you notify the Insurer under the Premier, Standard or other applicable O2 Insure policy;

(c) the Customer agrees that the same exclusions set out in the Premier, Standard or any other applicable O2 Insure policy (as the case may be) in force at the time of the theft apply, and where they do O2 will not reimburse the Customer for the cost of the unauthorised calls.

9.2 The Customer undertakes with O2 that throughout the Wireless Service Period it will and will take all reasonable steps to ensure that its employees will:

9.2.1 pay the standard charges levied by O2 from time to time applicable to repair work on Equipment which is outside (in scope or time) the warranty provided under this Agreement; and

9.2.2 use the Equipment and any Software (including any End-User Licensed Software) in accordance with any user guide or other reasonable instruction of any manufacturer or supplier of the same or reasonable instruction of O2 and not to copy, reverse engineer or modify the Software or the End-User Licensed Software in any way save as permitted by law.

9.2.3 not use the Service in any way to generate AIT;

9.2.4 not, without the prior written consent of O2 which may be withheld at O2's absolute discretion, establish, install or use a GSM Gateway so that telecommunication services are provided via the GSM Gateway to third parties; and

9.2.5 not use the Wireless Services in a manner which is inconsistent with a reasonable customer's good faith use of the Wireless Services or the O2 cellular telecommunications network;

9.2.6 not use the Wireless Services fraudulently or in connection with a criminal offence or for the purpose of sending unsolicited text messages or any material which is offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or which breaches any person's intellectual property rights or rights of privacy or is otherwise unlawful; and

9.2.7 not use the Wireless Services in any way which causes annoyance, inconvenience or needless anxiety as set out in the Communications Act 2003.

9.3 The Customer may establish, install or use a GSM Gateway for its own private purposes only, provided that it adheres at all times to O2's policies in respect of the use of private GSM Gateways

9.4 The Customer agrees that it is procuring the SIM Cards, Equipment and Wireless Services solely for its own use and furthermore that it will not resell or otherwise act as any form of distributor in respect of the SIM Card, the Equipment, or the Wireless Services.

9.5 The Customer recognises that the Wireless Services may be dependent upon End-User Licensed Software 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 Wireless Services to the Customer where the Wireless Services depend on the use of End-User Licensed Software.

9.6 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.

9.7 In the event that the Customer is subject to a claim in respect of any alleged infringement of any trademark, patent, registered design or copyright arising from its normal use or possession of the Equipment or Software then O2 will indemnify the Customer in relation to such claim provided that the Customer promptly notifies O2 of such claim, makes no admission in respect of such claim, allows O2 to conduct all negotiations and proceedings (providing O2 with all reasonable assistance) and allows O2 at O2's own discretion and expense to modify or replace the Equipment or Software so as to avoid any continuing infringement. This indemnity does not apply to any infringements caused by the Customer's own breach of the terms of this Agreement or the operation or use of the Equipment or Software in conjunction with other equipment and software 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.

9.8 The terms of this Agreement shall also apply to any Orders placed by any Customer Affiliate. The Customer agrees that it will be liable to O2 for: all claims, losses and expenses arising out of the breach of the terms of this Agreement by any of its Affiliates (including but not limited to the non-payment by the Affiliate of Charges and Termination Fees, which the Customer agrees to pay in full within 30 days of notice from O2 of the amount outstanding) related to an Affiliate's use of the Wireless Services; ensuring that its Affiliates are aware of and comply with the terms of this Agreement; and, all losses, costs and expenses resulting from any claims against O2 made by any of its Affiliates or any other third party whom the Customer has permitted to use or procure the Equipment or the Wireless Services, to the extent that such claims exceed the financial caps and other limitations on liability as set out in this Agreement.

## 10. Duration and Termination

10.1 This Agreement shall commence on the Commencement Date and shall continue for the Minimum Term and thereafter throughout the Wireless Service Period until the same is brought to an end by means of a Termination Notice.

10.2 A Termination Notice may be given by either party and the Agreement terminated forthwith if:

10.2.1 the other party is in material breach, and the breach is capable of remedy and the party in breach shall have failed to remedy the breach within thirty (30) days of written notice specifying the breach and requiring its remedy, or the breach is not capable of remedy; or

10.2.2 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.

10.3 A Termination Notice may be given to O2 under the circumstances set out in Clause 19.2 at any time by the Customer and the Agreement terminated 30 days thereafter, if O2 increases its prices or tariffs in respect of Airtime or Equipment to the Customer's material disadvantage or substantially varies these terms to the Customer's material disadvantage other than where such increases in prices or tariffs or change to these terms arises as a consequence of a change in prices, tariffs, terms or otherwise made or requested by third party manufacturers or suppliers, or a regulatory body.

10.4 In addition to a party's right to terminate in accordance with clauses 10.2 and 10.3, at any time during the Wireless Service Period:

10.4.1 the Customer may serve on O2 a Termination Notice on a minimum of 30 days notice and the Customer shall be liable for any applicable Termination Fee; or

10.4.2 O2 may serve on the Customer a Termination Notice on a minimum of 30 days notice and the Customer shall not be liable for any applicable Termination Fee.

10.5 Upon the expiry of any Termination Notice or otherwise upon the termination of this Agreement O2 will disconnect all SIM Cards, (and any other Equipment) from the Wireless Services and the Customer will pay to O2 any applicable Termination Fee.

10.6 This Agreement will automatically terminate upon the disconnection of the last SIM Card from the Wireless Services.

10.7 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 industry practice.

## 11. Ownership

11.1 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, associated documents and all parts thereof, directly against the Customer.

11.2 Except as expressly provided in this Agreement, nothing in this Agreement will be deemed to or require O2 to transfer, assign or license any intellectual property rights to the Customer.

11.3 The Customer will not be entitled to 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 part of O2 so that any person might reasonably import a connection between those goods or services and O2 or any part of O2. The Customer also agrees

not to infringe any copyright, or registered or unregistered Trademark rights belonging to any third party in respect of any Device and/or other Equipment.

11.4 All information or materials supplied to O2 by the Customer in connection with the Agreement, together with the copyright therein, will remain the property of the Customer and will, if the Customer so requires, be returned to the Customer on termination of the Agreement.

11.5 Any Software supplied is provided on the terms of a non-exclusive, non-transferable licence and such Software is to be used for the sole purpose of operating the Equipment in order to be able to obtain the Wireless Services and/or any Value Added Wireless Services.

## 12. Confidentiality

12.1 The parties will each keep confidential any 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 reasonably identified by either party as commercially confidential or which is obviously confidential in nature and neither will divulge the same to any third party except such of its employees contractors and agents as may need to know the same for the purposes of the implementation of this Agreement and who agree to be bound by the provisions of this clause without the consent in writing of the other.

12.2 The obligations aforesaid shall not apply to any material or information which is in the public domain (other than as a result of a breach of this Agreement); or, already known to the receiving party; or, lawfully received from a third party and/or ordered to be disclosed by any court or other tribunal or regulatory authority of competent jurisdiction.

## 13. Limitation of Liability

13.1 Subject to clauses 13.3 and 13.4, 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 or otherwise for any loss (whether direct or indirect) of profit, business, revenue, anticipated savings, goodwill or any loss or corruption of data, or any indirect or consequential loss or damage whatsoever.

13.2 Subject to clauses 13.1, 13.3 and 13.4, O2's aggregate liability of any sort resulting from O2's negligence or otherwise arising in connection with this Agreement shall be limited in respect of all claims arising in each Year to the greater of:

13.2.1 the sum of £50,000; or

13.2.2 an amount equal to the Annual Agreement Value;

where the "Annual Agreement Value" means: (i) the total Charges paid or payable by the Customer in the Year prior to the Year in which any claim arises; or (ii) 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 first claim made by the Customer in the first Year arose;

and "Year" means the first, and each subsequent, consecutive period of 12 months of this Agreement commencing on the Commencement Date.

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

13.3.1 death or personal injury resulting from that party's negligence;

13.3.2 claims in respect of Customer's liability under clause 9.8;

13.3.3 for breach of any implied term as to title or quiet enjoyment arising out of section 12 Sale of Goods Act 1979; or

13.3.4 fraud or fraudulent misrepresentation.

13.4 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.

13.5 Subject to clauses 13.3 and 13.4, 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.

13.6 O2 does not accept liability 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 performing O2's obligations under this Agreement.

#### 14. Matters Beyond the Parties Reasonable Control

14.1 Neither party to this Agreement 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, epidemic, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce).

#### 15. Assignment

15.1 The Customer shall not assign or transfer the benefit of this Agreement to any third party without the prior written consent of O2, such consent not to be unreasonably withheld or delayed.

15.2 O2 may assign or transfer the benefit of this Agreement to any third party and may subcontract the performance of all or part of the same.

#### 16. Entire Agreement

16.1 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.

16.2 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 shall, however, operate to limit or exclude any liability for fraudulent misrepresentation.

#### 17. Invalidity

17.1 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, the validity or enforceability of the remaining provisions shall not in any way be affected or impaired. In any 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.

## 18. Waiver

18.1 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.

## 19. Changes to These Terms

19.1 It is the policy of O2 to continually review the charges it makes and the terms upon which it contracts with customers in order to maintain a competitive advantage over other providers of services similar to the Wireless Services and O2 accordingly reserves the right to vary its prices and tariffs as set out in the O2 Price List and these Terms from time to time.

19.2 In the event that O2 changes its prices and tariffs within the O2 Price List such variations or changes will be published at <http://www.O2.co.uk> at least 28 days before any such changes take place and come into effect, and in the event that O2 changes the terms of this Agreement O2 will provide the Customer with 28 days notice of such change or, in either case, as much notice as is reasonably practicable where such change arises as a consequence of changes imposed by third party manufacturers or suppliers, or a regulatory body.

## 20. Use and Disclosure of Information

20.1 O2 operates in accordance with the Data Protection Act 1998 as updated or amended from time to time. The Customer agrees that its details, or those of its users may be used by O2 for marketing purposes and to inform the Customer and its users from time to time about other Wireless 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 in this way then the Customer should contact the O2 Data Controller at Telefónica O2 UK Limited, 260 Bath Road, Slough, SL1 4DX.

## 21. Export Control

21.1 Delivery of the Equipment or the End-User Licensed Software to the Customer may be subject to export control law and regulations. O2 does not represent that any necessary approvals and licences have been obtained or will be granted.

21.2 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.

21.3 In the event that the Customer procures Equipment, including "xda" Equipment or similar computer technology from O2, the Customer agrees that in signing this Agreement the Customer accepts the terms of the following end-user undertaking: the Customer certifies that it will be the end-user of the Equipment and further certifies that it shall use the Equipment only for the

purposes of allowing its employees to send, receive, store and process data and voice Wireless Services in order to perform their every day contractual duties; that the Equipment will not be used for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; that the 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 Equipment, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle activity; and agrees to sign a formal 'End-User Undertaking' in a format specified by the United Kingdom Department of Trade and Industry if requested to do so by O2.

## 22. No Partnership

22.1 Nothing in this Agreement shall create, or be deemed to create, a partnership between the parties.

## 23. Notices

23.1 Any notice or other communication required or permitted under this Agreement to 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 if properly addressed and posted by first class mail in England within two business days of posting and/or if sent by facsimile upon being sent or if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.

## 24. No Third Party Rights

24.1 Save as provided by the terms of 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 but this does not affect any right or remedy of a third party which exists or is available apart from by that Act.

## 25. Operative Law

25.1 This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English courts to which both parties hereby submit.