

DATED

2021

THE SECRETARY OF STATE FOR JUSTICE

and

VODAFONE LIMITED

**COLLATERAL AGREEMENT RELATING TO
THE CONTRACT FOR VVI SERVICES DATED 8
DECEMBER 2021**

[REDACTED]

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THIS COLLATERAL AGREEMENT is made on

2021

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** whose principal place of business is 102 Petty France, London, SW1H 2AJ acting as part of the Crown (the "**Authority**"); and
- (2) **VODAFONE LIMITED**, a company incorporated under the laws of England and Wales (company number 01471587) whose registered office is at Vodafone House, The Connection, Newbury, Berkshire RG14 2FN (the "**VVI Supplier**")

(individually a "**Party**" and together the "**Parties**").

WHEREAS:

- (A) The Parties have entered into an agreement for the provision of VVI Services on the date of this Collateral Agreement (the "**Agreement**").
- (B) The Agreement and this Collateral Agreement are entered into in reliance on Regulation 32 (2)(b)(ii) of the Public Contracts Regulations 2015. The Parties are entering into this Collateral Agreement to set out various rights and consequences relating to early termination of the Agreement in the event of a bona fide and substantive legal or procurement challenge.

IN CONSIDERATION OF THE SUM OF £10, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED BY THE AUTHORITY, IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Collateral Agreement, unless the context otherwise requires:

"Affiliate" in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Agreement Breakage Costs" means any costs (such as the VVI Supplier's own redundancy costs, and costs payable for early termination of contracts entered into by the VVI Supplier prior to receipt of the Termination Notice) incurred by the VVI Supplier directly as a result of the termination of the Agreement which:

- (a) would not have been incurred had the Agreement continued until its natural expiry;
- (b) relate directly to the termination of the VVI Services;
- (c) are unavoidable, proven, reasonable, and not capable of recovery;
- (d) are incurred under arrangements or agreements that are consistent with the terms of the Agreement and on reasonable

commercial terms; and

- (e) do not relate to contracts or subcontracts with Affiliates of the VVI Supplier;

and the VVI Supplier and any relevant subcontractor shall each use their reasonable endeavours to mitigate the costs in accordance with Paragraph 4 of Schedule 7.2 (Payments on Termination) to the Agreement;

“Agreement Termination Date”

has the meaning given to it in Clause 3.2;

“Agreement Termination Payments”

means regardless of the notice period given, the VVI Supplier may submit a termination charge specifically where any unrecoverable expenditure has been incurred in relation to on-going projects (including the deployment of project assets) that will not now achieve completion under the Agreement due directly to the termination;

“Collateral Agreement”

means this collateral agreement;

“Collateral Agreement Effective Date”

means the date on which this Collateral Agreement is signed by both Parties;

“Control”

that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

"Regulatory Authority"

means any government departments and regulatory, statutory or other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in the Agreement, or this Collateral Agreement or other affairs of the Authority including any court of competent jurisdiction and any competition authority.

- 1.2 Save for the definitions and interpretive provisions set out in this Clause 1, the provisions set out in Schedule 1 (Definitions) of the Agreement shall have effect with respect to the interpretation of this Collateral Agreement, except where the context otherwise requires.

- 1.3 In this Collateral Agreement, unless the context otherwise requires, a reference to:

- 1.3.1 a Clause is a reference to a clause of this Collateral Agreement;

- 1.3.2 a person includes an individual, partnership, unincorporated association or body corporate wherever incorporated or situated and, in the case of an individual, that person's legal personal representatives; and
- 1.3.3 a party includes its permitted successors and assigns.
- 1.4 The headings in this Collateral Agreement are for ease of reference only and shall not affect the interpretation or construction of this Collateral Agreement.
- 1.5 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and the words following any of those terms will not limit the sense of the words preceding those terms.

2. TERM

This Collateral Agreement shall commence on the Collateral Agreement Effective Date and will be effective from the date the Agreement is signed by both Parties and will continue in full force for the period of six (6) months beginning with the day after the Collateral Agreement Effective Date unless terminated at an earlier date by operation of law or by agreement in writing and signed by or on behalf of each of the Parties.

3. TERMINATION OF THE AGREEMENT

- 3.1 In the event that the Agreement:
 - 3.1.1 is subject to a credible claim made challenging the lawfulness of the Agreement; and/or
 - 3.1.2 is subject to a declaration of ineffectiveness made by a Regulatory Authority; and/or
 - 3.1.3 is deemed by a Regulatory Authority to be in breach of or contrary to any law or regulation,

(the “**Procurement Challenge**”), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Procurement Challenge. This may include meeting to discuss in good faith varying the Agreement where reasonably possible in such a manner as to avoid giving grounds for a Procurement Challenge.

- 3.2 Subject to Clause 3.1 above, in the event that the Agreement is subject to a Procurement Challenge, then the Authority may terminate the Agreement immediately (the “**Agreement Termination Date**”). If the Authority does serve a notice to terminate the Agreement (the “**Termination Notice**”), or a declaration of ineffectiveness is made by a Regulatory Authority, the Authority shall within 14 days of such Agreement Termination Date and subject to the limit set out in clause 42.4.2 (Limitations on Liability) of the Agreement, pay to the VVI Supplier in full and final settlement of all and/or any actions, claims, rights and/or demands by the VVI Supplier against the Authority to the extent they arise out of the early termination of the Agreement as a result of the Procurement Challenge, the Agreement Breakage Costs and the Agreement Termination Payment. For the avoidance of doubt, no Compensation Payment shall be payable by the Authority.

- 3.3 Except as provided for within Clause 3.2, the Authority shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses in respect of this Collateral Agreement however arising.
- 3.4 Notwithstanding Clause 3.3, nothing in this Collateral Agreement excludes or limits the liability of the Authority for:
- (a) death or personal injury caused by the Authority's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot lawfully be excluded or limited.
- 3.5 For the purposes of this Collateral Agreement, a "**credible claim**" means where there is correspondence or any proceedings or procedure which challenges the lawfulness of the Agreement and Counsel suitably experienced in procurement law instructed by the Authority advises in writing that the claim has a more than 20% prospect of success.
- 3.6 The Authority shall notify the VVI Supplier as soon as reasonably possible if it becomes aware of a potential, threatened or actual claim which could give rise to a credible claim which challenges the lawfulness of the Agreement, provided that any failure to do so shall not affect the operation of Clause 3.2 above.

4. GENERAL

Variation

- 4.1 No variation of this Collateral Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

Third Party Rights

- 4.2 A person who is not a party to this Collateral Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to enforce any term of this Collateral Agreement. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

Waiver

- 4.3 A failure by a Party to exercise, or a delay in exercising, any right or remedy under this Collateral Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which that Party may otherwise have and no single or partial exercise of any right or remedy under this Collateral Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 4.4 Any waiver of a breach of any of the terms of this Collateral Agreement or of any default under this Collateral Agreement shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of this Collateral Agreement.

- 4.5 The rights and remedies of either Party contained in this Collateral Agreement are in addition to, and not exclusive of, any other rights or remedies available at law.

Assignment

- 4.6 Neither Party shall assign or transfer or purport to assign or transfer any of its rights or obligations under this Collateral Agreement except, in each case, with the prior written consent of the other Party.

Entire Agreement

- 4.7 This Collateral Agreement together with the Agreement and all other documents specifically referred to in this Collateral Agreement as governing the relationship between the Parties constitute the entire understanding between the Parties with respect to its subject matter and supersedes all prior agreements in relation thereto.

Severability

- 4.8 If any provision of this Collateral Agreement is held to be unenforceable or illegal, in whole or in part, such provision or part shall be deemed excluded from this Collateral Agreement but the enforceability of the remainder of its terms shall remain unaffected.

Governing Law and Jurisdiction

- 4.9 This Collateral Agreement shall be governed by and interpreted in accordance with the laws of England.
- 4.10 The courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with this Collateral Agreement and the Parties (and their associated companies) submit to the exclusive jurisdiction of the English courts.

No Double Recovery

- 4.11 Notwithstanding any other provision of this Collateral Agreement, neither Party shall be entitled to recover compensation or make a claim under this Collateral Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Collateral Agreement or the Agreement.

IN WITNESS WHEREOF the Parties have executed this Collateral Agreement on the day and year first above written.

SIGNED for and on behalf of the **Secretary of State for Justice**:

Signature... [REDACTED]

Name: ... [REDACTED]

Position: ... [REDACTED]

Date... [REDACTED]

SIGNED for and on behalf of **Vodafone Limited**:

Signature. [REDACTED]

Name: [REDACTED]

Position: [REDACTED]

Date [REDACTED]