

ORDER FORM
FRAMEWORK AGREEMENT (INSERT REF: 000976)

FROM

Contracting Authority	Department of Health and Social Care
Address	39 Victoria Street, Westminster, London, SW1H 0EU 2NS
Invoice Address	itpurchaserequests@dhsc.gov.uk and copied to accountspayable@dhsc.gov.uk
Contact Ref:	████████████████████ ████████████████ ████████████████████

TO

Provider:	Telefonica UK Limited
Address:	260 Bath Road Slough Berkshire SL1 4DX
Contact Details	████████████████ ████████████████ ████████████████████
Provider Reference	██████████

1. TERM

1.1 Commencement Date

1.1.1 This Call-Off Contract shall commence on: 10 December 2022

1.2 Expiry Date

1.2.1 This Call-Off Contract shall expire on: 9 December 2024

2. GOODS AND/OR SERVICES REQUIRED

The Provider has offered terms in line with the Framework Agreement. Other than the Minimum Commitments set out below, all other elements of the commercial offer remain as per the Pricing Schedule for Lot 7 set out in the Pricing Matrices.

Subject to the Contracting Authority committing to the Minimum Commitments, the following Mobile Voice and Data tariffs will be available to the Contracting Authority:

Mobile Voice & Data: YPO Unlimited Voice & 2GB Data

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Minimum Commitments:

Mobile Contract Period: 24 Months

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Digital Workplace Minimum Holding:

- Asavie MODA: 3000 Licences
- Managed Logistics: 3000 Devices
- SandBlast: 3000 Licences

█

Full details of the Charges related to this Call-Off Contract are as set out in the Commercial Schedule at Appendix 2 to this Order Form.

3. AMENDMENTS TO TERMS AND CONDITIONS

3.1 The parties agree that the following clauses of Schedule 7 (Call-Off Terms and Conditions) will not apply to the Call-Off Contract:

- a) Clause 32.4
- b) Clause 37.1.1
- c) Clause 37.1.2
- d) Clause 37.1.4

3.2 The parties agree that the following clause amendments to Schedule 7 (Call-Off Terms and Conditions) will apply to this Call-Off Contract:

(a)

Clause 14 (Guarantee) shall be deleted in its entirety and replaced with the following revised clause 14:

14.1 The provisions of Annex B paragraph 6 shall apply except where and to the extent the Call-Off Contract states otherwise in relation to particular Goods or software.

(b) Clause 19.6 shall be revised as follows:

19.6 Except for suspension rights as set out in the Annexes to the Contract, the Provider shall not suspend the supply of the Goods and/or Services unless the Provider is entitled to terminate the Contract under Clause 45 (Termination) for failure to pay undisputed sums of money.

(c) Clause 25.2 shall be revised as follows:

25.2 Where Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call-Off Contract, the Parties acknowledge that the Contracting Authority and the Provider shall be the Data Controllers (the "Controller"). The Provider is also the Data Processor (the "Processor") when acting upon the Contracting Authority's instructions to connect Users to the Services provided by the Provider. The Provider shall treat any Personal Data in accordance with this Contract and in particular this clause 25. The Contracting Authority shall

ensure that its Users have been notified of the Provider's Privacy Policy subject to having been provided by the Provider to the Contracting Authority.

(d) Clause 25.8 shall be amended by deleting clause 25.8.1 and 25.8.2 in their entirety.

(e) Clause 32.3 shall be deleted in its entirety and replaced with the following revised clause 32.3:

32.3 The Provider shall on request, subject to no more than one request per year, provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Contracting Authority, the Contracting Authority's representatives and/or the Auditor upon thirty days' notice and subject to reasonable confidentiality undertakings, provided that (a) the Provider shall not be required to provide and (b) the Contracting Authority, the Contracting Authority's representatives and/or the Auditor shall not disclose such records and accounts to any direct competitor of the Provider.

(f) Clause 32.5 shall be deleted in its entirety and replaced with the following revised clause 32.5:

32.5 Subject to the Contracting Authority's obligations in respect Confidential Information, the Provider shall on demand complete an Auditor's annual audit assurance questionnaire.

(g) clause 33.1 shall be amended by substituting words "shall not assign" with "shall be able to assign".

(h) Clause 33.3 shall be deleted in its entirety and replaced with the following revised clause 33.3:

33.3 Where the Provider enters into a sub-contract which is specific for the provision of Services to the Contracting Authority, and does not relate to any of the Provider's other customers or any other third party, copies of each sub-contract shall, at the reasonable request of the Contracting Authority, be sent by the Provider to the Contracting Authority as soon as reasonably practicable. The Contracting Authority acknowledges that the copy provided may be subject to such redactions as the Provider and the sub-contractor may reasonably require in order to protect either or both of their respective commercial interests. In relation to any sub-contract which relates to not less than 25% of the value of the Call-Off Contract but is not specific to the provision of Services to the Contracting Authority, the Contracting Authority may request the identity of the relevant subcontractor and, subject to the Provider's obligations of confidentiality to the sub-contractor, the Provider's other customers and other relevant third parties, the Provider shall use reasonable endeavours to provide the Contracting Authority with such information in relation to such sub-contractors as the Contracting Authority may reasonably require for the purposes of its compliance with applicable law or regulation relating to supply chain assurance.

(i) Clause 46 shall be revised by adding "subject to any Termination Fees due to the Provider under Appendix 2" after "the Provider".

(j) Clause 50.2 shall be revised as follows:

If the Provider fails to comply with Clause 50.1 the Client may recover possession thereof and the Provider grants a licence (unless unable to do so for security reasons acting reasonably) to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or, if within the Provider's control, its permitted Providers or sub-contractors where any such items may be held.

4. PAYMENT PROVISIONS

Contract Price	The total Call-Off Contract value cannot be accurately stated as there is an element of usage under this Call-Off Contract. However the estimated total Call-Off Contract value based on the estimated quantity of connections and an estimated usage amount is £540,546.00 T(Ex VAT).
Funding	Not Applicable
Invoicing Arrangements	Payment shall be made by Direct Debit or electronic transfer within thirty (30) days of a valid invoice.

5. SPECIAL TERMS AND CONDITIONS

Including Third-Party Licences as are required to be agreed by the Contracting Authority:

There are no Special Terms and Conditions applicable to this Call-Off Contract.

The Mobile Terms, Mobile Equipment Terms, Asavie MODA Service Schedule, Managed Logistics Service Schedule, SandBlast Mobile from Check Point Service Schedule as set out in Appendix 4 Provider's Terms and Conditions shall apply.

6. HIRE OR LEASE TERMS (IF APPLICABLE)

Not Applicable

7. CONFIDENTIAL INFORMATION

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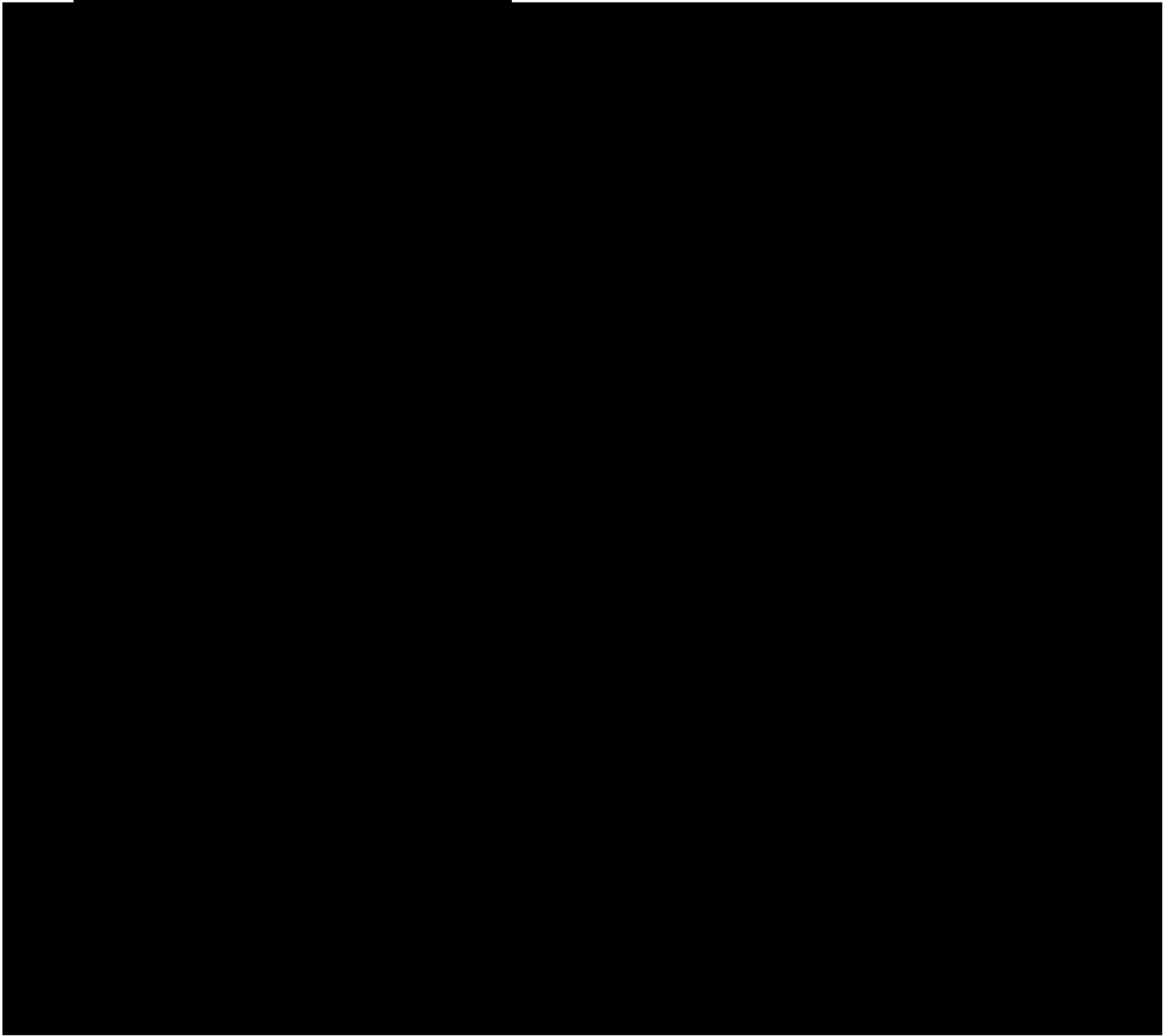
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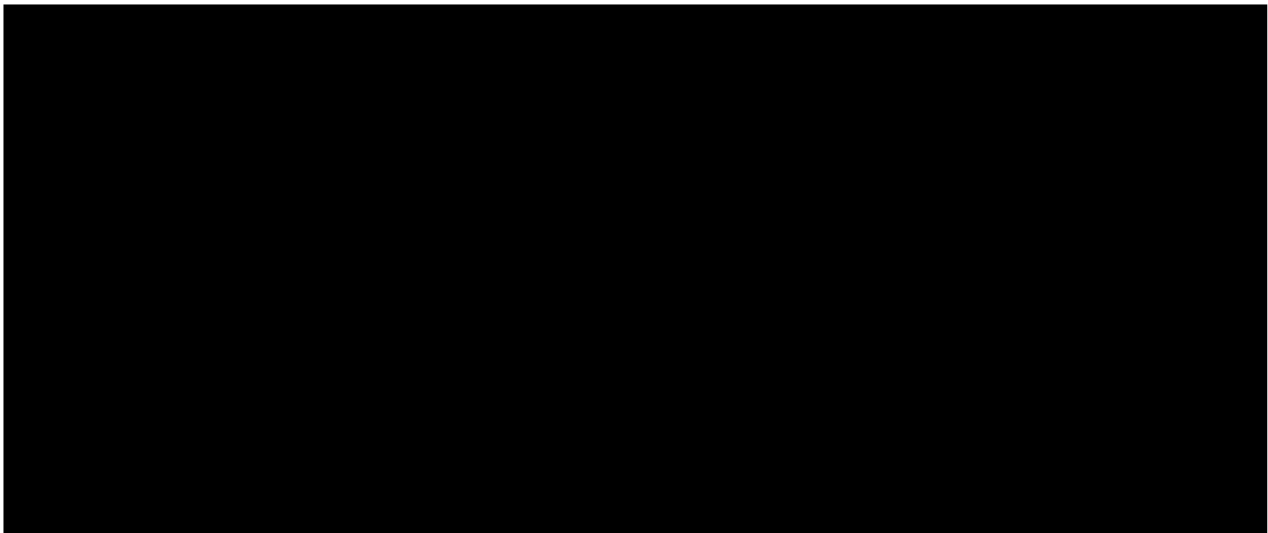


APPENDIX 2

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2 MINIMUM COMMITMENTS AND TERMINATION FEES

The following Minimum Commitment(s) shall apply to the Services under this Call-off Contract:

Table One

Contract Period (Months)	24
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2.1 Minimum Commitments – Mobile Services

Table Two

Service	Minimum Service Period (Months)	Minimum Period (Months)	Minimum Period Termination Fees	Co-Term Details
Voice & Data	24	1	Rental Charges	Absolute Co-Terminous

Table Three

Service	Minimum Spend amount (£)	Minimum Spend Termination Fees	Minimum Spend roll-over time period	Charges which contribute to the Minimum Spend
Mobile Services		Balance of commitment in full	N/A	Mobile originating call charges, Land originating call charges via call access, voice line rental, Primary and Secondary data line rental, Data Bolt Ons, and any chargeable Service set out in the Mobile Bespoke Add Ons and Services Table. Excludes Data Roaming Charges.

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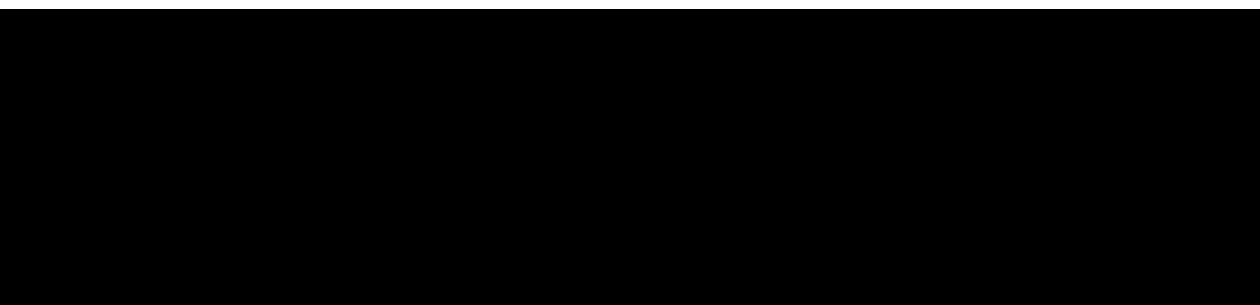
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- i) The Charges set out above do not incorporate mobile data roaming rates for roaming outside the Europe Zone. Mobile Data roaming Charges for roaming outside the Europe Zone are detailed in sections 3.2 and 3.4.
- j) Depending on the tariff selected the Contracting Authority may receive an alert once the mobile data allowance has been reached and be charged for the any additional mobile data used, in accordance with the terms of the tariff.
- k) 5G Services are subject to the following terms:
 - i) Upon receipt of a request from the Contracting Authority the Provider will enable the 5G Service within a timescale to be advised, subject to the Contracting Authority:
 - 1) procuring a compatible tariff or requesting that the 5G Service be added to an existing compatible 4G tariff; and
 - 2) complying with any further instructions the Provider may provide to the Contracting Authority.
 - ii) The 5G Service is available on tariffs with a minimum monthly allowance of 6GB of data. No minimum data allowance is required for Users on shared or aggregated data tariffs.
 - iii) 5G services are only available in the UK. Roaming is not currently available with the 5G services.
 - iv) the Provider may elect to implement 5G speed caps at any time at its sole discretion.
 - v) the Provider reserves the right to charge an additional monthly Charge for access to 5G Services which will be notified to the Contracting Authority prior to the 5G Services being enabled on their SIM Card(s).
 - vi) 5G Services are only accessible via a compatible Device and SIM Card.
 - vii) Once the Provider has provided access to the 5G Services to the Contracting Authority, the Contracting Authority will be able to access mobile data over the 5G network whenever there is 5G coverage available.
 - viii) Access to 5G Services will be provided at the Provider's sole discretion, and is not currently compatible with private APNs.

3.2 Mobile Tariff Bolt-ons



- a) The Bolt-ons described as 'Provisional' in the table above (where applicable) are only available on request. To add a provisional Bolt-on to a compatible tariff the Contracting Authority shall request this in writing and the Provider shall make such Bolt-on available within a reasonable period agreed with the Contracting Authority.

Rest of World Bolt-ons

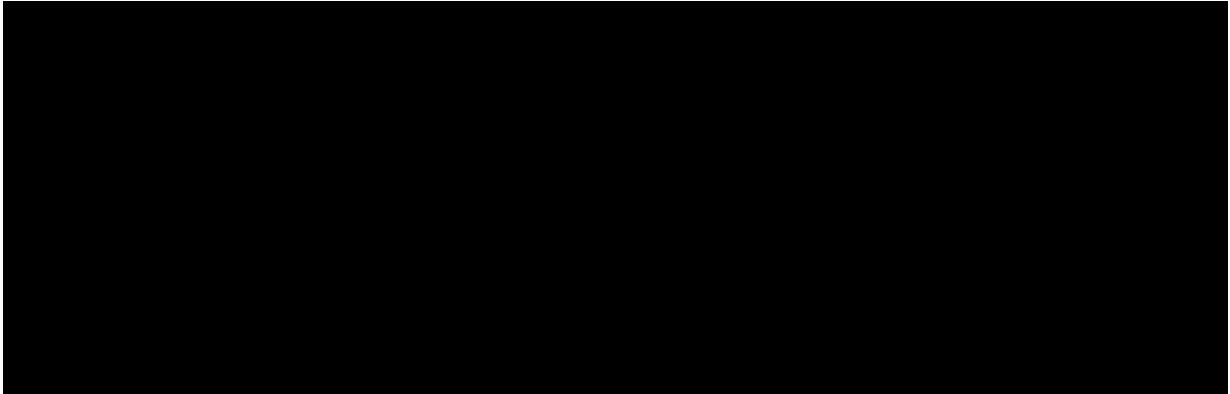
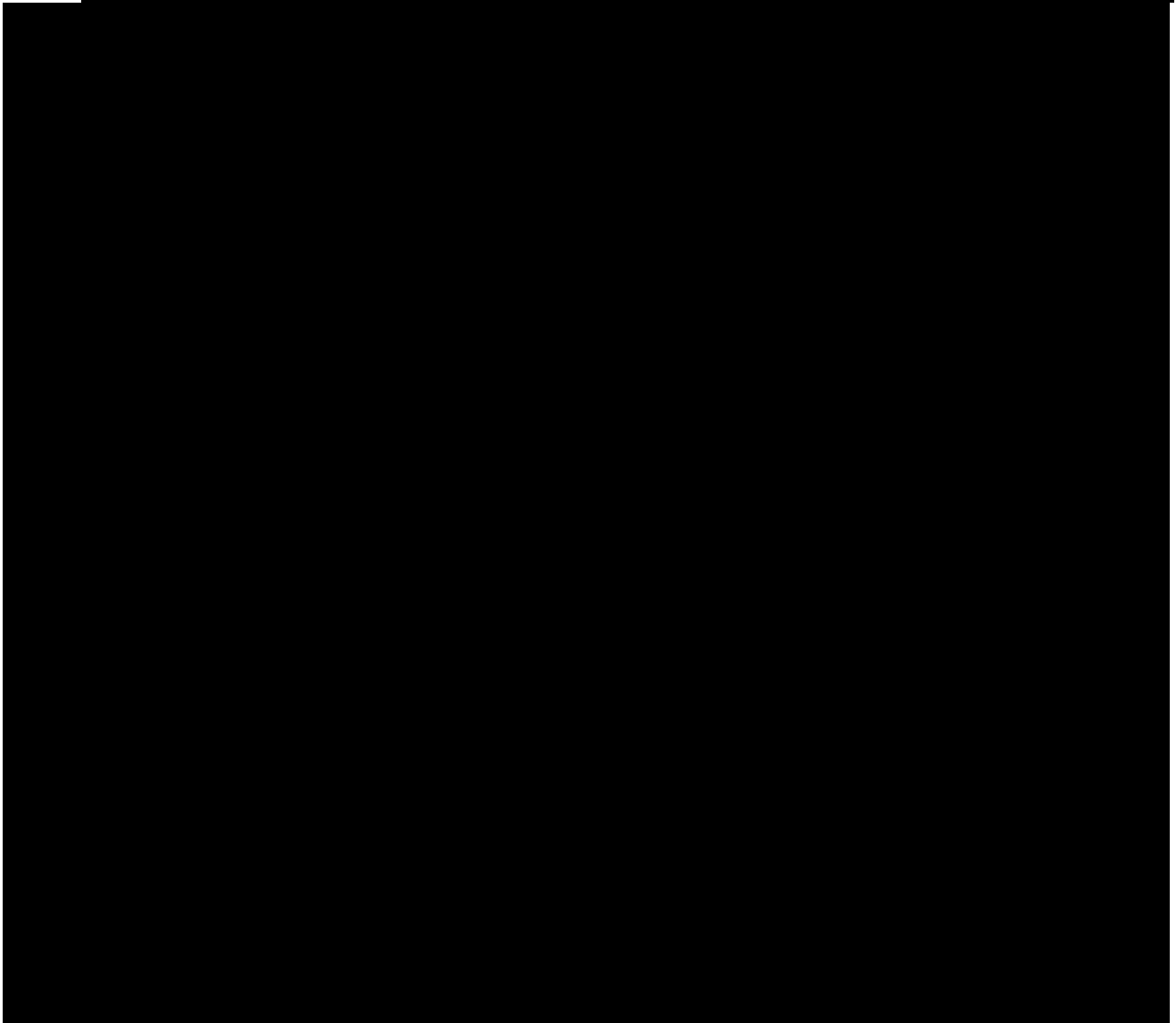
- b) Rest of World Pass will be added to all SIM Cards connected to the tariffs set out in section 3.1. Further detail on Rest of World Pass can be found in section 3.4.

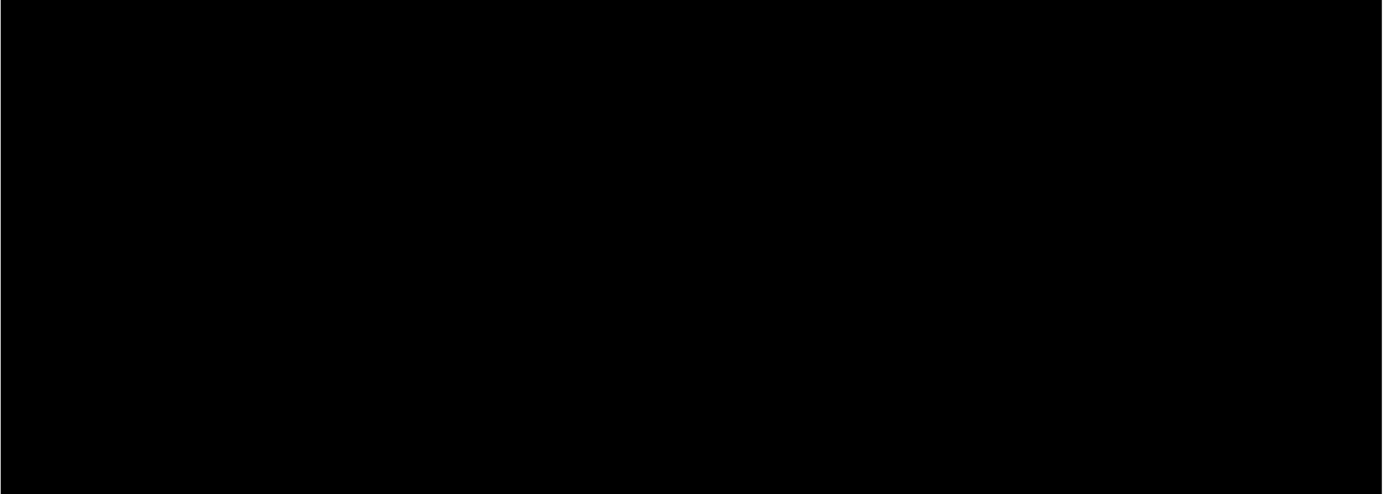
Wi-Fi Calling Bolt-on

- c) Wi-Fi Calling is available to the Contracting Authority if the Big Business or Just Data Voice Services tariff has been selected and is set out in section 3.1 above. Wi-Fi Calling is subject to the terms and conditions set out on the O2 Website and is not compatible with Voice Only, Big Business Extra, or Best for Business tariffs, or the Mobile Voice Recording and Just Call Me Services.

3.3 Mobile Call Charges within the UK

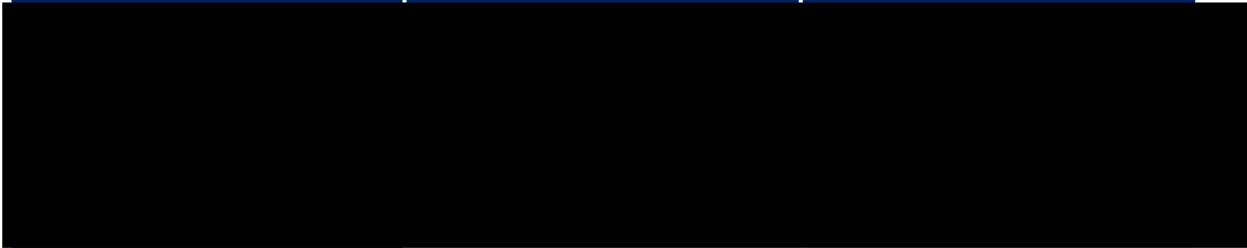
UK Mobile originating calls (Charge per minute / per SMS)

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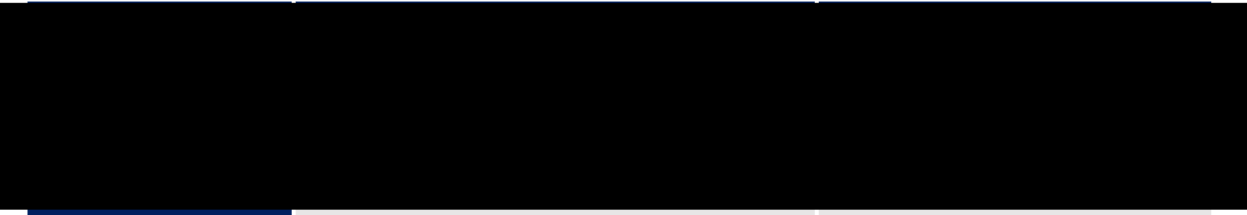
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- g) Voicemail retrieval calls made within the Europe Zone will be Charged at the O2 to other network call Charge set out in section 3.3 of this Commercial Schedule.
 - h) Charges for calls to UK premium rate and non-geographic number (NGN) services whilst roaming will be Charged:
 - i) in the Europe Zone at the rates set out on the O2 Website; or
 - ii) in the rest of the world at the rates set out on the O2 Website plus the call Charge in the table above.

Rest of World Pass Bolt-on

- i) Rest of World Pass is available in three zones ("**ROW Zones**"). The countries in each ROW Zone can be found on the O2 Website.
- j) The following allowances apply to each 24 hour Rest of World Pass:

- 
- i) The Rest of World Pass will trigger the Charge as set out in section 3.2 at the point a User uses the first 50KB of data. If in ROW Zone 1 the Charge will also trigger if a User makes or receives a call, or sends an SMS message. The pass is valid for a period of 24 hours or until the data allowance has been fully used, whichever is the sooner. Any unused allowances will not carry over to the following 24 hour period.
 - ii) There are 2 data caps available on the 24 hour Rest of the World Pass:
 - 1) the default cap is one 24 hour pass per User per 24 hour period; or
 - 2) an optional cap of two 24 hour passes per User per 24 hour period.

- k) The following allowances apply to each 30 day Rest of World Pass:

- 
- i) The Rest of World Pass will trigger the Charge as set out in section 3.2 at the point a User uses the first 50KB of data. If in ROW Zone 1 the Charge will also trigger if a User makes or receives a call, or sends an SMS message. The pass is valid for a period of 30 consecutive days or until

the data allowance has been fully used, whichever is the sooner. Any unused allowances will not carry over to the following 30 day period.

- ii) A cap may be applied to the Rest of World 30 Day Pass. Contracting Authorities may limit usage to one 30 day Rest of World Pass per User per billing cycle.
- l) The Rest of World Pass call allowance can be used to make and receive calls within country and back to the UK. The SMS message allowance can be used to send SMS messages worldwide. There is no upper limit or Charge for additional usage over the call and SMS allowance but in the event that a User's usage is higher than the allowance the User will be reminded by SMS that their allowance has been exceeded. If the User continues to exceed the allowance, the Provider shall exercise its discretion to remove the pass and inform the User with any further usage being charged at the rates within this Commercial Schedule.
- m) If a User moves between ROW Zones during the validity of a pass and the data allowance changes, the same percentage of the data allowance used in the first ROW Zone will be removed from the data allowance available in the second ROW Zone. For example, on a 24 hour Rest Of World Pass using 250MB of the 500MB data allowance in ROW Zone 1, then moving to ROW Zone 2, will mean the User will be allowed 50% of the 50MB data allowance in ROW Zone 2 for the remainder of that 24 hour period (so 25MB).
- n) The Provider reserves the right to:
 - i) amend the terms relating to Rest of World Pass from time to time;
 - ii) remove or discontinue Rest of World Pass at any time upon prior written notice; and
 - iii) terminate a User's use of Rest of World Pass if, in the Provider's reasonable opinion, the User is using the service contrary to the intended purpose.
- o) Subject to any Rest of World Pass capping option selected by the Contracting Authority:
 - i) where a User is connected to the 24 hour Rest of World Pass and the User exceeds the inclusive data allowance and then subsequently uses additional data, the Contracting Authority shall automatically purchase another 24 hour Rest of World Pass for that User; or
 - ii) where a User is connected to the 30 day Rest of World Pass and the User exceeds the inclusive data allowance and then subsequently uses additional data, the Contracting Authority shall automatically purchase another 30 day Rest of World Pass for that User.
- p) Within ROW Zone 3, Users in Andorra, Greenland, Lebanon and Sudan will be able to use email, internet and social media at normal data speeds (150Kbps). All other usage, including but not limited to video streaming, VOIP calling and gaming, will be subject to traffic management procedures. Data speeds for these services will be reduced to 15kbps. Slower speeds may affect user experience.
- q) Rest of World Pass is not compatible with private APN's or O2 Telematics SIM Cards.

3.5 Mobile Equipment Charges

- a) The Charges relating to Mobile Equipment, Accessories and associated products and Services are as detailed below:

	Charges
Mobile Equipment	As set out in the business customer pricelist, available from Customer Services
Mobile Equipment Accessories	As set out in the business customer pricelist, available from Customer Services
Car Kit Installations, De-Installations and De and Re- installations (during the same engineer visit)	As set out in the business customer pricelist, available from Customer Services

4 DIGITAL WORKPLACE SERVICES


The Charges relating to the Digital Workplace Services are as set out below and shall apply subject to the Contracting Authority meeting, or committing to meet, the commitments set out in section 2 above.

- a) Service elements shall be charged for at the frequency set out in the table above.
- b) The Initial Licence Base shall be charged for irrespective of whether the Initial Licence Base is fully utilised from the Service Commencement Date under this Call-Off Contract.
- c) Each Licence may only be used on one Device at a time.
- d) The Contracting Authority can purchase Additional Licences, subject to the minimum order volume set out in Table Three and Charges for Additional Licences will be advised at the time of order.
- e) Where the Contracting Authority purchases Additional Licences, such Additional Licences shall have the same Charge Frequency as shown in the table above.
- f) Licences will terminate at the end of the Licence Period, as set out in the table above, unless the Contracting Authority opts to renew the Licence. Renewed Licences will be subject to a new 12 month Minimum Period unless otherwise agreed by Provider.

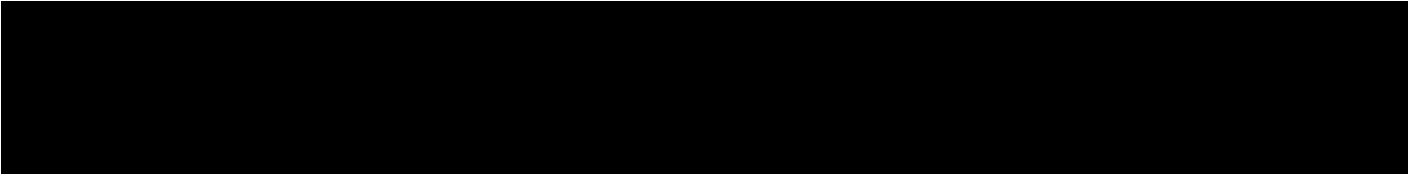
- a) Service elements shall be charged for at the frequency set out in the table above.
- b) The Charges set out above are subject to the Gold Build and any changes to the Gold Build may result in a change in the Charges.
- c) The Provider will use its reasonable endeavours to fulfil any other bespoke Contracting Authority request for Deployment Services, for which pricing is not included in the table above. Pricing for such additional requests will be provided on application.
- d) The Initial Licence Base required to receive the Deployment Service is shown in Table Three and relates to the minimum number of Devices to which the Service can be applied.

4.3 Managed Logistics Service In-Life Service

The Charges relating to the Managed Logistics Service In-Life Service shall apply from the Service Commencement Date. Charges for Devices are not included in the Managed Logistics Service. Devices shall be charged as per the Mobile Equipment section of the Commercial Schedule.



4.4 Sandblast Mobile Service Charges

- a) The following are the Charges relating to SandBlast Mobile Services available to the Contracting Authority from the Service Commencement Date subject to the Contracting Authority meeting and/or committing to meet the commitments detailed in the Commitments section above:
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- c) The Licence Charge set out above applies on a per Licence per annum basis.
- d) Each Licence may be applied for use on one Device.
- e) Each Licence includes a break/fix Service as part of the Licence Charge.
- f) The Contracting Authority can purchase additional Licences in blocks of 10. Additional Licenses purchased will be subject to a new Minimum Period.
- g) The Charges above shall be payable in advance for the Minimum Period and shall be invoiced upon signature of this Call-off Contract.
- h) A Licence will terminate at the end of the Minimum Period unless the Contracting Authority opts to renew the Licence.
- i) Licence Charges are non-refundable.

CALL-OFF TERMS AND CONDITIONS

(FOR USE BETWEEN THE CONTRACTING AUTHORITY AND THE PROVIDER)

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1. INTERPRETATION

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below: -

"Approval" and "Approved"	means the written consent of the Contracting Authority not to be unreasonably withheld or delayed
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Contracting Authority
"Commencement Date"	means the date set out in the Order Form
"Commercially Sensitive Information"	means the Confidential Information listed in the Order Form comprised of information which is provided by the Provider and designated as commercially sensitive information by the Contracting Authority for the period set out in that Order Form
"Confidential Information"	<p>means: -</p> <ul style="list-style-type: none">(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party; and(b) the Commercially Sensitive Information, <p>and does not include any information: -</p> <ul style="list-style-type: none">(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 28 (Confidential Information));(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or(iv) is independently developed without access to the Confidential Information
"Contract"	means the written agreement between the Contracting Authority and the Provider consisting of the Order Form and these clauses save that for the purposes of Clause Interpretation only, reference to Contract shall not include the Order Form
"Contract Period"	<p>means the period from the Commencement Date to: -</p> <ul style="list-style-type: none">(a) the date of expiry set out in the Order Form; or

- (b) following an extension pursuant to Clause 3 (Extension of Initial Contract Period), the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract

"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Provider by the Contracting Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Contract
"Contracting Authority"	means the Contracting Authority(s) identified in the Order Form
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular Authorities, persons, commissions or agencies from time to time carrying out functions on its behalf
"Data Controller"	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data breach
"Data Processor"	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Data Protection Legislation"	means the General Data Protection Regulations 2016 (Regulation (EU) 2016/679) , the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation
"Data Subject"	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access his or her Personal Data
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
"Deliverables"	means those deliverables listed in the Order Form

"EIR"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
"Equipment"	means the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
"Force Majeure"	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> - (a) any industrial action occurring within the Provider's or any sub-contractor's organisation; or (b) the failure by any sub-contractor to perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure); (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent
"Framework Agreement"	means the framework agreement for the provision Goods and/or Services between YPO and the Provider
"Fraud"	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud YPO, a Contracting Authority or the Contracting Authority
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Contracting Authority engaged in a similar type of undertaking under the same or similar circumstances
"Goods and/or Services"	means the Goods and/or Services between YPO and the Provider
"Improvement Notice"	means a notice issued on the Provider to improve minor defaults of the Framework Agreement, the Contract or the Order Form instructing the Provider to improve or remedy any minor defaults in the provision of the Services

"Information"	has the meaning given under section 84 of the FOIA
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Authority of which the Provider is bound to comply
"Material Default"	means any breach of Clauses 10 (Conflict of Interest), 21 (Prevention of Bribery and Corruption), 24 (Health and Safety), 25 (Data Protection Act), 26 (Freedom of Information Act and Environmental Information Regulations), 27 (Official Secrets Act), 32 (Records and Audit Access), 33 (Transfer and Sub-Contracting), 42 (Warranties and Representations)
"Minor Default"	means any breach of the Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default
"Month"	means calendar month
"Order"	means the order submitted by the Contracting Authority to the Provider in accordance with the Framework Agreement
"Order Form"	means the order submitted to the Provider by the Contracting Authority in accordance with the Framework Agreement which sets out the description of the Goods and/or Services to be supplied including, where appropriate, the Premises, the timeframe, and the Deliverables
"Parent Company"	means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Provider or the Contracting Authority
"Personal Data"	has the meaning given to it in the Data Protection Legislation as amended from time to time
"Premises"	means the location where the Goods and/or Services are to be supplied, as set out in the Order Form
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both

	<p>manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly</p> <p>means any of the following acts, as described in the Bribery Act 2010:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by YPO or another Contracting Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Call-off Contract; or <p>defrauding, attempting to defraud or conspiring to defraud YPO or any other Contracting Authority.</p>
"Property"	<p>means the property, other than real property, issued or made available to the Provider by the Contracting Authority in connection with the Contract</p>
"Provider"	<p>means the person, firm or company or organisation whom executes this Contract and includes any employee, agent, servant, sub-contractor or representative of the Provider or person employed by on or on behalf of the Provider to provide the Services</p>
"Provider's Contract Manager"	<p>means the person appointed by the Provider to manage the Contract</p>
"Provider's Terms and Conditions"	<p>means the Terms and Conditions of the Provider contained at Appendix 4 supplementing the clauses of the Contract, subject to Clause 7.4</p>
"Replacement Provider"	<p>means any third-party Provider appointed by the Contracting Authority, to supply substantially similar Goods and/or Services, and which the Contracting Authority receives in substitution for any of the Goods and/or Services following the expiry, termination or partial termination of the Contract</p>

"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)
"Sub-Processor"	means any third Party appointed to Process Personal Data on behalf of the Provider related to this Call Off Contract
"Staff"	means all persons employed by the Provider to perform its obligations under the Contract together with the Provider's servants, agents, Providers and sub-contractors used in the performance of its obligations under the Contract
"Staff Vetting Procedures"	means the Contracting Authority's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including, the provisions of the Official Secrets Act 1911 to 1989
"Tender"	means the document(s) submitted by the Provider to the Contracting Authority in response to the Contracting Authority's invitation to Providers for formal offers to supply it with the Services
"Term"	means the period commencing on the Commencement Date and ending on the expiry date set out in section 1.2 of the Order Form or on earlier termination of this Call Off Contract
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales
"Year"	means a calendar year
"YPO"	means YPO, any employee, agent servant or representative of YPO or any other public authority or person employed on behalf of YPO

The interpretation and construction of the Contract shall be subject to the following provisions: -

- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;

- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.8 Reference to any employees of the Provider shall be deemed to include the Provider's agents and sub-contractors unless expressly stated otherwise.
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

2. INITIAL CONTRACT PERIOD

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

3. EXTENSION OF INITIAL CONTRACT PERIOD

- 3.1 Subject to satisfactory performance of its obligations under the Contract by the Provider during the Initial Contract Period, the Contracting Authority may, by giving written notice to the Provider not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

4. PROVIDERS STATUS

- 4.1 At all times during the Contract Period the Provider shall be an independent Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

5. PROVISION OF MANAGEMENT INFORMATION

- 5.1 The Provider shall submit Management Information to the Contracting Authority in the format and frequency agreed by both Parties prior to the start of the Contract.
- 5.2 The Contracting Authority may make reasonable changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) Month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the Provider.

6. CONTRACTING AUTHORITY OBLIGATIONS

- 6.1 Save as otherwise expressly provided, the obligations of the Contracting Authority under the Contract are obligations of the Contracting Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Contracting Authority in any other capacity, nor shall the exercise by the Contracting Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Contracting Authority to the Provider.
- 6.2 The Contracting Authority will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.3 The Contracting Authority shall respond to any reasonable request for information from the Provider.

- 6.4 The Contracting Authority will assign an authorised representative who will liaise with the Provider's Contract Manager, to ensure both parties use reasonable endeavours to meet their contractual obligations.
- 6.5 The Contracting Authority shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).
- 6.6 The Contracting Authority shall comply with all reasonable obligations as set out in the Provider Terms and Conditions which would be deemed material if breached, provided that those obligations do not contradict the remaining clauses of this Contract.

7. ENTIRE AGREEMENT

- 7.1 Subject to the provisions of the Framework Agreement relating to Call-off Contracts, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
 - 7.4.1 the Order Form;
 - 7.4.2 the clauses of the Contract;
 - 7.4.3 the Provider's Terms and Conditions;
 - 7.4.4 the terms of the Framework Agreement;
 - 7.4.5 the Schedules to the Framework Agreement;
 - 7.4.6 any other document referred to in the clauses of the Contract.
- 7.5 For the avoidance of doubt any terms that the Provider may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.
- 7.6 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts together shall constitute the one agreement.

8. NOTICES

- 8.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by

electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

8.3 For the purposes of Clause 8.2, the address of each Party shall be:

8.3.1 For the Contracting Authority: the address set out in the Order Form.

8.3.2 For the Provider: the address set out in the Framework Agreement.

8.4 Either Party may change its address for service by serving a notice in accordance with this clause.

9. MISTAKES IN INFORMATION

9.1 The Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Contracting Authority by the Provider in connection with the supply of the Goods and/or Services and shall pay the Contracting Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

9.2 The Provider will not be responsible for any extra costs in respect of Clause 9.1 above where the Provider can prove that the inaccuracy is the result of inaccurate information provided to it by the Contracting Authority.

10. CONFLICTS OF INTEREST

10.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Contracting Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Contracting Authority under the provisions of the Contract.

10.2 The Provider shall promptly notify the Contracting Authority (and provide full particulars to the Contracting Authority) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.

10.3 A Provider may be considered to have a conflict of interest if the Provider:

- (a) directly or indirectly controls, is controlled by or is under common control with another Provider
- (b) receives or has received any direct or indirect subsidy from another Provider
- (c) has the same legal representative as another Provider
- (d) has a relationship with another Provider, directly or through common third parties, that puts it in a position to influence another Provider regarding the provision of Goods and/or Services under this Contract; and/or
- (e) has a close business or family relationship with an employee of a Contracting Authority involved in the tendering of this Contract.

10.4 The Contracting Authority reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Contracting Authority under the provisions of the Contract. The actions of the

Contracting Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority.

11. PREVENTION OF FRAUD

- 11.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Contracting Authority.
- 11.2 The Provider shall notify the Contracting Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 11.3 If the Provider or its Staff commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Contracting Authority, the Contracting Authority may: -
 - 11.3.1 terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Contracting Authority resulting from the termination including the cost reasonably incurred by the Contracting Authority of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period; and/or
 - 11.3.2 recover in full from the Provider any other loss sustained by the Contracting Authority in consequence of any breach of this clause.

12. SPECIAL TERMS AND CONDITIONS – FUNDING

- 12.1 **WHERE A CONTRACTING AUTHORITY IS ABLE TO ACCESS GRANT FUNDING FOR ANY ELEMENT OF THE PROVISION OF GOODS AND/OR SERVICES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT, THEY ARE OBLIGATED BY THE FUNDING STREAM TO PASS ON CERTAIN GRANT FUNDING TERMS AND CONDITIONS (SPECIAL TERMS AND CONDITIONS).**
- 12.2 **TO ENABLE CONTRACTING AUTHORITIES TO BE ABLE TO INCLUDE SPECIAL TERMS AND CONDITIONS INTO THE CALL-OFF TERMS AND CONDITIONS AN ADDITIONAL SECTION HAS BEEN INCLUDED IN THE ORDER FORM AT APPENDIX 1 SECTION 5 (SPECIAL TERMS AND CONDITIONS).**
- 12.3 **ANY SPECIAL TERMS AND CONDITIONS INCLUDED IN THE ORDER FORM AT APPENDICES 1 AND 3 MUST RELATE SOLELY TO THE FUNDING TERMS AND CONDITIONS IMPOSED ON THE CONTRACTING AUTHORITY**
- 12.4 **THE PROVIDER SHOULD ENSURE WHEN ACCEPTING A CALL-OFF ORDER FOR GOODS AND/OR SERVICES THEY TAKE INTO ACCOUNT THE IMPACT AND ADDITIONAL COSTS OF COMPLYING WITH ANY SPECIAL TERMS AND CONDITIONS.**
- 12.5 **THE PROVIDERS ATTENTION IS SPECIFICALLY DRAWN TO THE ORDER FORM, APPENDIX 1 SECTION 5 AS UNDER THE SPECIAL TERMS AND CONDITIONS SHOULD THE PROVIDER FAIL TO MEET THEIR OBLIGATIONS OF THE SPECIAL TERMS AND CONDITIONS SECTION 5 OR APPENDIX 4 IN ITS ENTIRETY), THE CONTRACTING AUTHORITY CAN CLAWBACK ANY OF THE MONIES DUE IN WHOLE OR IN PART TO ENABLE THEM TO COMPLY WITH THE OBLIGATIONS PLACED ON THEM BY THE FUNDING STREAM.**
- 12.6 **IF THE PROVIDER DOES NOT WANT TO ACCEPT THE SPECIAL TERMS AND CONDITIONS, THEY ARE NOT OBLIGATED TO ACCEPT A PARTICULAR CALL-OFF.**

SUPPLY OF GOODS AND/OR SERVICES

13. MANNER OF PROVIDING THE GOODS AND/OR SERVICES

- 13.1 The Provider shall provide the Goods and/or Services, and where relevant, install the Goods in accordance with the specification in the Framework Agreement, the Invitation to Tender, the Order Form, and the Provider's Terms and Conditions at Appendix 4 of the Contract.
- 13.2 The Provider shall deliver the Goods and/or Services at the time(s) and date(s) specified in the Order Form and within such lead times indicated in the Invitation to Tender.
- 13.3 The Provider acknowledges that the Contracting Authority relies on the skill and judgment of the Provider in the provision of the Goods and/or Services and the performance of its obligations under the Contract

14. GUARANTEE

- 14.1 The Provider hereby guarantees the Goods for the period from the date of delivery to the Contracting Authority or the end user to the date of either: -
 - 14.1.1 twelve (12) Months thereafter;
 - 14.1.2 or such other guarantee period or warranty period notified by the Provider in their response to the Invitation to Tender against faulty materials or workmanship;
- 14.2 If the Contracting Authority shall within such guarantee period give notice in writing to the Provider of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Provider shall (without prejudice to any other rights and remedies which the Contracting Authority may have) promptly remedy such defects (whether by repair or replacement as the Contracting Authority shall elect) free of charge.

15. CONTRACT PERFORMANCE

- 15.1 In supplying the Goods and/or Services, the Provider shall perform its obligations under the Contract:
 - 15.1.1 with appropriately experienced, accredited, qualified, and trained Staff with all due care and attention;
 - 15.1.2 in a timely manner; and
 - 15.1.3 in compliance with applicable Laws, including any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.
- 15.2 The Provider shall ensure that:
 - 15.2.1 the Goods and/or Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement or any sample approved by the Contracting Authority;
 - 15.2.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;
 - 15.2.3 the Goods and/or Services conform in all respects with all applicable Laws; and
 - 15.2.4 the Goods and/or Services are free from defects in design and workmanship and are fit for purpose for which such Goods and/or Services are ordinarily used and for any particular purpose made known to the Provider by the Contracting Authority.

- 15.3 the Provider shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

16. PROVIDER'S STAFF

- 16.1 The Contracting Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises: -

16.1.1 any member of the Staff; or

16.1.2 any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Contracting Authority, be undesirable.

- 16.2 At the Contracting Authority's written request, the Provider shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Contracting Authority may reasonably request.

- 16.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.

- 16.4 If the Provider fails to comply with Clause 16.2 within two (2) Months of the date of the request, the Contracting Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority.

- 16.5 The decision of the Contracting Authority as to whether any person is to be refused access to the Premises and as to whether the Provider has failed to comply with Clause 16.2 shall be final and conclusive.

- 16.6 The Provider shall comply with the Staff Vetting Procedures in respect of all Provider Staff employed or engaged by the Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

17. INSPECTION OF PREMISES

- 17.1 Save as the Contracting Authority may otherwise direct, the Provider is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

PAYMENT AND CONTRACT PRICE

18. CONTRACT PRICE

- 18.1 In consideration of the Provider's performance of its obligations under the Contract, the Contracting Authority shall pay the Contract Price in accordance with Clause 19 (Payment and VAT).

- 18.2 The Contracting Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.

- 18.3 Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the Provider will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Framework Agreement, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Contracting Authority or any other appropriate means.

19. PAYMENT AND VAT

- 19.1 The Contracting Authority shall pay all sums due to the Provider in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile set out in the Order Form.
- 19.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and/or Services supplied and that it is supported by any other documentation reasonably required by the Contracting Authority to substantiate the invoice.
- 19.3 Where the Provider enters into a sub-contract with a provider for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days of a valid undisputed invoice, as defined by the sub-contract requirements.
- 19.4 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 19.5 The Provider shall indemnify YPO and the Contracting Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Contracting Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this Clause 19.5 shall be paid by the Provider to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Authority.
- 19.6 The Provider shall not suspend the supply of the Goods and/or Services unless the Provider is entitled to terminate the Contract under Clause 45 (Termination) for failure to pay undisputed sums of money.
- 19.7 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

20. SET OFF

- 20.1 The Parties shall not be entitled to retain or set-off any amount due to the other under this Contract.

STATUTORY OBLIGATIONS AND REGULATIONS

21. PREVENTION OF BRIBERY AND CORRUPTION

- 21.1 The Provider warrants and represents that it:
- 21.1.1 has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Contract;
 - 21.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010

- 21.1.3 is not aware of any financial or other advantage being given to any person working for or engaged by YPO or the Contracting Authority or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Contracting Authority, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Contracting Authority prior to the execution of this Contract.
- 21.2 The Provider will upon request provide the Contracting Authority with all reasonable assistance to enable the Contracting Authority to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Contracting Authority by any relevant government or agency in any relevant jurisdiction. Should the Contracting Authority request such assistance the Contracting Authority shall pay the reasonable expenses of the Provider arising as a result.
- 21.3 The Provider will provide to the Contracting Authority certification (if requested to do so), in writing in such form as may be provided by the Contracting Authority, to be signed by an officer of the Provider, of the compliance with this Clause 21 by:
- 21.3.1 the Provider and
- 21.3.2 all persons associated with the Provider; and
- 21.3.3 any other persons who are supplying Goods and/or Services in connection with this Contract.
- 21.4 Certification (if requested) will be provided by the Contracting Authority within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Provider will provide any evidence of compliance as may reasonably be requested by the Contracting Authority.
- 21.5 The Provider will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Contracting Authority and enforced by the Provider where appropriate.
- 21.6 Should the Provider become aware of or suspect any breach of Clause 21.1 it will notify the Contracting Authority immediately.
- 21.7 Following notification under Clause 21.6 the Provider will respond promptly and fully to the enquiries of the Contracting Authority, cooperate with any investigation undertaken by the Contracting Authority and allow the Contracting Authority to audit any books, records and other relevant documentation. The Provider's obligations under this Clause 21.7 shall survive the expiry or termination of this Contract for a further period of six (6) years.
- 21.8 The Contracting Authority may recover in full from the Provider and the Provider shall indemnify the Contracting Authority in full from and against any other loss sustained by the Contracting Authority in consequence of any breach of this Clause 21 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.
- 21.9 The Contracting Authority may terminate this Contract and any Order immediately upon serving written notice if the Provider or its Staff whether or not acting with the Provider's knowledge, breaches Clause 21. Before exercising its right of termination under this Clause 21.9 the Contracting Authority will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 21.9.1 the Provider or a senior officer of the Provider; or
- 21.9.2 a member of Staff who is not acting independently of the Provider. The expression 'not acting independently of' (when used in relation to the Provider or its Staff) means and shall be construed as acting;

- (a) with the authority of; or
- (b) with the actual knowledge; of any one or more of the Provider's or Staff (as applicable) directors or partners or
- (c) in circumstances where any one or more of the directors (or partners) of the Provider or its Staff (as applicable) ought reasonably to have had knowledge.

21.10 Any notice of termination by the Contracting Authority under Clause 21.9 must specify:

21.10.1 The nature of the Prohibited Act; and

21.10.2 The identity of the person whom the Contracting Authority believes has committed the Prohibited Act; and

21.10.3 The date on which the Contract will terminate.

21.11 Termination under Clause 21.9 will:

21.11.1 Be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Contracting Authority under this Contract;

21.11.2 prohibit the Provider from claiming any damages for early termination;

21.11.3 allow the Contracting Authority to recover from the Provider the amount of any loss suffered by the Contracting Authority resulting from the termination; and

21.11.4 entitle the Contracting Authority to be indemnified by the Provider for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods and/or Services from another party.

22. DISCRIMINATION

22.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

22.2 The Provider shall take all reasonable steps to secure the observance of Clause 22.1 by all its Staff and servants, employees, or agents of the Provider and all Providers and Staff employed in the execution of the Contract.

23. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999

23.1 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

24. HEALTH AND SAFETY

24.1 The Provider shall promptly notify the Contracting Authority of any health and safety hazards which may reasonably arise in connection with the performance of its obligations under the Contract. The Contracting Authority shall promptly notify the Provider of those health and safety hazards which may affect the Provider in the performance of its obligations under the Contract.

24.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Contracting Authority in respect of Staff and other persons working there.

- 24.3 The Provider shall notify the Contracting Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 24.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Services under the Contract.
- 24.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Contracting Authority on request.

PROTECTION OF INFORMATION

25. DATA PROTECTION

- 25.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 25 is in addition to, and does not relieve, remove, or replace a Party's obligations or rights under the Data Protection Legislation.
- 25.2 Where Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Contracting Authority is the Data Controller (the "Controller") and the Provider is the Data Processor (the "Processor").
- 25.3 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract: -
- 25.3.1 Process the Personal Data only in accordance with the Controller's written instructions which are set out in Appendix 5 unless the Processor is required by Law to otherwise Process the Personal Data. Where the Processor relies on Law as the basis for Processing Personal Data, the Processor shall promptly notify the Controller prior to Processing, unless the Law prohibits the Processor from so notifying the Controller;
 - 25.3.2 ensure that at all times it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected , having regard to the state of technological development and the cost of implementing any measures;
 - 25.3.3 ensure that all Processor Staff who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential;
 - 25.3.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Data Controller (save where such disclosure or transfer is specifically authorised under this Contract)
 - 25.3.5 not transfer any Personal Data outside of the UK or European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;

- (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 25.3.6 assist the Controller in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 25.3.7 take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Processor's duties under the Contract;
 - (b) are subject to appropriate confidentiality undertakings with the Processor and/or Sub-Processor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 25.3.8 notify the Data Controller without undue delay if it becomes aware of a Data Loss Event or if it:
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law
- 25.3.9 taking into account the nature of the Processing, provide the Data Controller with full cooperation and assistance (within the timescales reasonably required by them) in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made (as referred to at Clause 25.3.8 including by promptly providing to the Controller:
 - (a) full details and copies of the complaint, communication, or request;
 - (b) such assistance as is reasonably requested to enable compliance with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

- (c) at its request, any Personal Data it holds in relation to a Data Subject;
- (d) such assistance as requested following a Data Loss Event; and
- (e) such assistance as requested with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office

25.3.10 if requested by the Data Controller, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 25 and provide copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

25.4 The Processor shall immediately inform the Controller if, in the opinion of the Processor, an instruction infringes the Data Protection Legislation.

25.5 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 25 and allow for audits by the Controller or the Controller's designated auditor.

25.6 The Parties shall use reasonable endeavours to assist each other to comply with any obligations under the Data Protection Legislation and shall not perform their obligations under this Contract in such a way as to cause either Party to breach any of their obligations under the Data Protection Legislation to the extent the other is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

25.7 The Parties shall each designate a data protection officer if required by the Data Protection Legislation. Details of each Party's data protection officer (if required) are outlined below:

For the Provider: -	For the Contracting Authority: -
Ian Roy	
DPO_Office@o2.com	data_protection@dhsc.gov.uk
07860 444464	

25.8 Before allowing any Sub-Processor to Process any Personal Data related to this Contract, the Processor must:

- 25.8.1 notify the Controller in writing of the proposed Sub-Processor and Processing;
- 25.8.2 obtain the written consent of the Controller; and
- 25.8.3 enter into a written agreement with the Sub-Processor incorporating terms which are substantially similar to those set out in Clause 25 and either case which the Processor undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation

25.9 The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.

25.10 The Controller may, at any time on not less than thirty (30) days' notice, revise this Clause 25 by replacing it with any applicable controller to processor standard clauses or similar terms

forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract.

26. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 26.1 The Provider acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Contracting Authority to enable them to comply with its Information disclosure obligations.
- 26.2 The Provider shall and shall procure that its Staff shall:
 - 26.2.1 transfer to the Contracting Authority all Requests for Information that it receives as soon as practicable;
 - 26.2.2 provide the Contracting Authority with a copy of all Information in its possession or power in the form that the Contracting Authority requires within five (5) Working Days (or such other period as the Contracting Authority may reasonably specify) of the Contracting Authority's request; and
 - 26.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.
- 26.3 The Contracting Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 26.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.
- 26.5 The Provider acknowledges that (notwithstanding the provisions of Clause 26.2) the Contracting Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Provider of the Goods and/or Services:
 - 26.5.1 in certain circumstances without consulting the Provider; or
 - 26.5.2 following consultation with the Provider and having taken their views into account;
 - 26.5.3 provided always that where Clause 26.2 applies the Contracting Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 26.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Contracting Authority to inspect such records as requested from time to time.
- 26.7 The Provider acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Contracting Authority may be obliged to disclose it in accordance with Clause 26.5

27. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

- 27.1 The Provider shall, where the Contracting Authority has informed the Provider that this Clause 27 applies, comply with and shall ensure that its Staff comply with, the provisions of:
 - 27.1.1 the Official Secrets Acts 1911 to 1989; and

27.1.2 Section 182 of the Finance Act 1989

27.2 In the event that the Provider or its Staff fail to comply with this Clause, the Contracting Authority reserves the right to terminate the Contract by giving notice in writing to the Provider.

28. CONFIDENTIAL INFORMATION

28.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

28.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

28.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

28.2 Clause 28.1 shall not apply to the extent that:

28.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 26 (Freedom of Information and Environment Information Regulations);

28.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

28.2.3 such information was obtained from a third party without obligation of confidentiality;

28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

28.2.5 it is independently developed without access to the other party's Confidential Information.

28.3 The Provider may only disclose the Contracting Authority's Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

28.4 The Provider shall not, and shall procure that its Staff do not, use any of the Contracting Authority's Confidential Information received otherwise than for the purposes of this Contract

28.5 At the written request of the Contracting Authority, the Provider shall procure that those members of the Staff identified in the Contracting Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

28.6 Nothing in this Contract shall prevent the Contracting Authority from disclosing the Provider's Confidential Information:

28.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

28.6.2 to any consultant, Provider or other person engaged by the Contracting Authority or any person conducting a gateway review, subject to any such consultant, provider or other person being subject to binding obligations in respect of the handling of Confidential Information that are equivalent to those contained within this Clause 28;

28.6.3 for the purpose of the examination and certification of the Contracting Authority's accounts;

28.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law-making similar provision with regard to the Contracting Authority of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources.

28.7 The Contracting Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Providers Confidential Information is disclosed pursuant to Clause 28.6 is made aware of the Contracting Authority's obligations of confidentiality.

28.8 Nothing in this Clause 28 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

28.9 The Provider shall not without the prior written consent of the Contracting Authority divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.

28.10 In the event that the Provider fails to comply with this Clause 28 the Contracting Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

28.11 The provisions of this Clause 28 shall apply notwithstanding termination of the Contract.

29. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

29.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Contracting Authority's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 29.1.

29.2 The Contracting Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Contracting Authority, including any examination of the Contract by the Auditor.

29.3 The Providers shall not do anything or cause anything to be done, which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

30. SECURITY

30.1 The Contracting Authority shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Contracting Authority while on the premises and shall ensure that all Staff comply with such requirements.

30.2 The Contracting Authority shall provide to the Provider upon request copies of its written security procedures and shall afford the Provider upon request an opportunity to inspect its physical security arrangements.

31. INTELLECTUAL PROPERTY RIGHTS

31.1 Save as granted elsewhere under the Contract, neither the Contracting Authority nor the Provider shall acquire any right, title, or interest in the other's IPR.

31.2 The Parties shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any other parties IPRs to any third party.

- 31.3 Prior to using any third-party Intellectual Property Rights, the Provider shall ensure that they have all necessary third-party licences to enable them to use the third-party Intellectual Property Rights to carry out its obligations under the Contract.
- 31.4 Where the Provider is granted Approval by the Contracting Authority to use the third-party rights, the Provider shall procure that the owner of third-party rights grants to the Contracting Authority a licence upon the terms informed to the Contracting Authority when seeking the Approval.
- 31.5 Where having obtained a licence for the Contracting Authority in accordance with clause 31.4, the Contracting Authority shall not do anything which may jeopardise the Providers continued use of the third-party licence and the Contracting Authority warrants that it will comply in full with the terms of the third-party licence as supplied by the Provider prior to their acceptance.
- 31.6 The Parties acknowledge that where using a third-party licence, the licence terms may change from time to time and agree that where such change renders the third-party Intellectual Property Rights irrelevant for the purposes of delivering the Services, that the parties will work together to find an alternative delivery solution or otherwise will commence the Dispute Resolution Procedure as set out in this Contract at Clause 54.
- 31.7 Provide details of any third party licences required on request in order to deliver the Services, including licences relating to software or hardware supplied by the Provider shall be set out in the order form and as supplied by the Provider to the Contracting Authority prior to acceptance of the same.
- 31.8 The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Contracting Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Authority may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or supply of the Deliverables and/or the possession or use by the Contracting Authority of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 31.8.1 items or materials based upon designs supplied by the Contracting Authority;
 - 31.8.2 the use of data supplied by the Contracting Authority which is not required to be verified by the Provider under any provision of the Contract;
 - 31.8.3 circumstances where the software as a service and/or products are put to a use other than their appropriate authorised use;
 - 31.8.4 the Contracting Authority or third party modifying the software as a service and/or products without the Provider's consent;
 - 31.8.5 the software as a service and/or products being used in combination with hardware or software, other than third party products, not supplied by the Provider or made known to the Provider under the Contract; or
 - 31.8.6 the Contracting Authority's breach of this Clause 31
- 31.9 The Contracting Authority shall notify the Provider in writing of the Claim and the Contracting Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:
- 31.9.1 shall consult the Contracting Authority on all substantive issues which arise during the conduct of such litigation and negotiations; and
 - 31.9.2 shall take due and proper account of the interests of the Contracting Authority.

31.10 If a Claim is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Contracting Authority and, at its own expense use all reasonable endeavours to: -

31.10.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

31.10.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Contracting Authority,

31.11 In the event that the Provider is unable to comply with Clauses 31.10.1 or 31.10.2 within twenty (20) Working Days or any other reasonable period agreed between the Parties in writing, starting on the date of receipt of the Provider's notification the Contracting Authority may terminate the Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Contracting Authority with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

31.12 In the event that a modification or substitution in accordance with Clause 31.10.1 is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with Clause 31.10.2 the Contracting Authority shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.

31.13 This Clause 31 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.

32. RECORDS AND AUDIT ACCESS

32.1 The Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including, the Goods and/or Services supplied under it, the Call-Off Contracts entered into with YPO and each individual Contracting Authority and the amounts paid by each Contracting Authority.

32.2 The Provider shall keep the records and accounts referred to in Clause 32.1 above in accordance with good accountancy practice.

32.3 The Provider shall on request provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Contracting Authority, the Contracting Authority's representatives and/or the Auditor as may be required from time to time, upon reasonable notice and subject to reasonable confidentiality undertakings.

32.4 The Contracting Authority shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Provider or delay the provision or supply of Goods and/or Services save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Contracting Authority. The Contracting Authority will use reasonable endeavours to ensure that all Audits are carried out during normal business hours (Monday to Friday 9am-5pm) and on reasonable notice.

32.5 Subject to the Contracting Authority's rights of Confidential Information, the Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including: -

- 32.5.1 all information requested by the Contracting Authority within the scope of the audit;
- 32.5.2 reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Goods and/or Services; and
- 32.5.3 access to the Staff.

32.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 32, unless the audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit.

CONTROL OF THE CONTRACT

33. TRANSFER AND SUB-CONTRACTING

- 33.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any obligation or duty attributable to the Provider under the Contract.
- 33.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are it's the actions and or omissions of its own Staff.
- 33.3 Where the Contracting Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Contracting Authority, be sent by the Provider to the Contracting Authority as soon as reasonably practicable.
- 33.4 Subject to Clause 33.6, the Contracting Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - 33.4.1 any Contracting Authority; or
 - 33.4.2 any other Authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Contracting Authority; or
 - 33.4.3 any private sector Authority which substantially performs the functions of the Contracting Authority,provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- 33.5 Any change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 33.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Contracting Authority.
- 33.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 33.4 to a Authority which is not a Contracting Authority or if there is a change in the legal status of the Contracting Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):
 - 33.6.1 the rights of termination of the Contracting Authority in Clause 45 shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

33.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.

33.7 The Contracting Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under the Contract. In such circumstances the Contracting Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

33.8 Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

34. WAIVER

34.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8 (Notices).

34.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

35. VARIATION

35.1 Subject to the provisions of this Clause 35, the Contracting Authority may request a variation to the Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

35.2 The Contracting Authority may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 ("**the Variation Form**") to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

35.3 In the event that the Provider is unable to provide the Variation to the Goods and/or Services or where the Parties are unable to agree a change to the Contract Price, the Contracting Authority may:

35.3.1 agree to allow the Provider to continue to perform their obligations under the Contract without the Variation; or

35.3.2 terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 54.

35.3.3 If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

36. SEVERABILITY

36.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

36.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Contracting Authority and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

37. REMEDIES IN THE EVENT OF DEFECTIVE GOODS AND/OR INADEQUATE PERFORMANCE OF THE SERVICES

37.1 Without prejudice to any other right or remedy which the Contracting Authority may have, if any Goods and/or Services are not supplied in accordance with, or the Provider fails to comply with any of the terms of the Contract, the Contracting Authority shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Contracting Authority:

37.1.1 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Contracting Authority that the Provider will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;

37.1.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services;

37.1.3 terminate, in accordance with Clause 45(Termination), the whole of the Contract; and/or

37.1.4 charge the Provider for and the Provider shall pay any costs reasonably incurred by the Contracting Authority (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Contracting Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Goods and/or Services and provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

37.2 If the Provider fails to supply any of the Goods and/or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Contracting Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Contracting Authority's instructions or such other period of time as the Contracting Authority may direct.

37.3 In the event that the Provider

37.3.1 fails to comply with Clause 37.2 above and the failure is materially adverse to the interests of the Contracting Authority or prevents the Contracting Authority from discharging a statutory duty; or

37.3.2 persistently fails to comply with Clause 37.2 above

the Contracting Authority may terminate the Contract with immediate effect by giving the Provider notice in writing.

38. CUMULATIVE REMEDIES

- 38.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

39. MONITORING OF CONTRACT PERFORMANCE

- 39.1 The Provider shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the Provider may be required to produce under the Contract.

LIABILITIES

40. LIABILITY, INDEMNITY, AND INSURANCE

- 40.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 40.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 40.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 40.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods and/or Services Act 1979.
- 40.2 Subject to Clause 40.3 and Clause 40.4, the Provider shall indemnify and keep indemnified the Contracting Authority in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods and/or Services by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Authority or by breach by the Contracting Authority of its obligations under the Contract.
- 40.3 Subject always to Clause 40.4 and Clause 40.5, the liability of either Party under or in connection with this Contract (including, for the avoidance of doubt, in respect of any indemnities given under this Contract) shall be subject to the following financial limits:
- 40.3.1 the aggregate liability of either Party under or in connection with this Contract for all direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed 100 per cent of the Contract Price; and
 - 40.3.2 the annual aggregate liability under or in connection with the Contract shall in no event exceed the greater of £500,000 or 100 per cent of the Contract Price payable by the Contracting Authority to the Provider in the year in which the liability arises.
- 40.4 Subject to Clause 40.1, in no event shall either Party be liable to the other for any:
- 40.4.1 loss of profits;
 - 40.4.2 loss of business;

- 40.4.3 loss of revenue;
- 40.4.4 loss of or damage to goodwill;
- 40.4.5 loss of savings (whether anticipated or otherwise); and/or
- 40.4.6 any indirect or consequential loss or damage

40.5 The Contracting Authority may, amongst other things, recover as a direct loss:

- 40.5.1 any reasonable additional operational and/or administrative expenses arising from the Provider's default;
- 40.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Authority arising from the Provider's default; and
- 40.5.3 the additional reasonable cost of procuring replacement Goods and/or Services for the remainder of the Contract Period following termination of the Contract as a result of a default by the Provider.

40.6 Nothing in the Contract shall impose any liability on the Contracting Authority in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Authority to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Contracting Authority, or the Contracting Authority's employees, servants or agents.

40.7 The Provider shall affect and maintain policies of insurance to provide a level of cover sufficient for risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract including death or personal injury, or loss of or damage to property.

40.8 The Provider shall affect and maintain, where required, the following insurances for the duration of the Contract in relation to the performance of the Contract: -

- 40.8.1 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000), or such higher limit as the Contracting Authority may reasonably require (and as required by law) from time to time;
- 40.8.2 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000), or such higher limit as the Contracting Authority may reasonably require (and as required by law) from time to time; and
- 40.8.3 product liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000), or such higher limit as the Contracting Authority may reasonably require (and as required by law) from time to time

40.9 Any excess or deductibles under such insurance (referred to in Clauses 40.7, 40.8 and 41.1) shall be the sole and exclusive responsibility of the Provider.

40.10 The Provider shall give the Contracting Authority, on request, copies of all insurance policies referred to in this clause or a brokers verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

40.11 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Authority may make alternative

arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

40.12 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

40.13 The Provider shall maintain the insurances referred to in Clause 40.8 above for a minimum of six (6) years following the expiry or earlier termination of the Contract.

41. PROFESSIONAL INDEMNITY (IF APPLICABLE)

41.1 The Provider shall affect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Goods and/or Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Provider shall ensure professional indemnity insurance held by the Provider and by any agent, sub-contractor or consultant involved in the supply of the Goods and/or Services has cover (for a single event or a series of related events and in the aggregate) of not less than two million pounds (£2,000,000), or such higher limit as the Contracting Authority may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

42. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

42.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment. The Provider shall at all times indemnify the Contracting Authority and keep the Contracting Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Contracting Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

43. WARRANTIES AND REPRESENTATIONS

43.1 The Provider warrants and represents that:

43.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

43.1.2 the Contract is executed by a duly authorised representative of the Provider;

43.1.3 in entering the Contract, it has not committed any Fraud;

43.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender response for the Goods and/or Services are, in all material aspects, true, accurate and not misleading save as may have been specifically disclosed in writing to the Contracting Authority prior to execution of the Contract and it will advise the Contracting Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

43.1.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

43.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

43.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

43.1.8 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

43.1.9 the Goods and/or Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

43.2 In the three (3) years prior to the date of the Contract:

43.2.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

43.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

43.2.3 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION

44. SUSPENSION

44.1 Where the Contracting Authority acquires the right to terminate the Contract in accordance with Clause 45 below, it may instead where appropriate based on the reasons for the right to terminate and agreed with the Provider, suspend the Provider's appointment to supply Goods and/or Services by giving notice in writing to the Provider.

44.2 If the Contracting Authority provides notice to the Provider in accordance with this Clause 44, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Contracting Authority in writing from time to time.

44.2.1 Such period shall be reasonable so as to not place an unnecessary burden on the Provider to continue to hold or retain resources including Staff and Goods during the suspension period.

44.3 Should the Contracting Authority request product or installation testing for any reason whatsoever the Provider will be suspended from the Contract whilst this testing takes place. For the avoidance of doubt, installation testing does not include acceptance testing and refers to any installation problems that may come to light following acceptance testing sign off.

44.4 Following suspension of a Provider's appointment under this Clause 44 the Provider will be informed of the outcome as soon as possible and be advised whether or not they the Contract has been terminated with immediate effect in accordance with Clause 45.9.

44.5 The Provider reserves the right to suspend this Contract where the Contracting Authority fails to comply with Clause 6.6.

45. TERMINATION

Termination - Insolvency and Change of Control

45.1 The Contracting Authority may terminate the Contract with immediate effect by giving notice in writing where the Provider is a company and in respect of the Provider:

- 45.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- 45.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 45.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
- 45.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 45.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 45.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
- 45.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 45.1.8 any event similar to those listed in Clause 45.1 occurs under the law of any other jurisdiction.

45.2 The Contracting Authority may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

- 45.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors;
- 45.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy;
- 45.2.3 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- 45.2.4 the Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
- 45.2.5 a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days;
- 45.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

45.2.7 the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

45.3 The Provider shall notify the Contracting Authority immediately if the Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Contracting Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

45.3.1 being notified that a Change of Control has occurred; or

45.3.2 where no notification has been made, the date that the Contracting Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

45.4 The Contracting Authority may terminate the Contract with immediate effect by notice in writing where:

45.4.1 the Provider are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods and/or Services;

45.4.2 the Provider and its Staff employed in connection with the Goods and/or Services have failed to comply with the relevant Law governing the delivery of the Goods and/or Services.

Termination on Default – Minor Defaults

45.5 Where the Provider commits a Minor Default of the Contract, the Contracting Authority shall be entitled to issue the Provider with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Default and give the Provider a minimum of twenty (20) working days to remedy the Minor Default.

45.6 If the Provider commits three (3) Minor Defaults in a twelve (12) month rolling period, this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 45.7.3.

Termination on Default – Material Default

45.7 The Contracting Authority may terminate the Contract by serving written notice on the Provider with effect from the date specified in such notice, where the Provider commits a Material Default and:

45.7.1 the Provider has not remedied the Material Default to the satisfaction of the Contracting Authority within twenty (20) Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the Material Default and requesting it to be remedied;

45.7.2 the Material Default is not, in the reasonable opinion of the Contracting Authority, capable of remedy;

45.7.3 if the Provider has committed three (3) or more Minor Defaults within a twelve (12) month rolling period;

45.7.4 where any Contracting Authority terminates a Call-Off Contract awarded to the Provider under this Contract as a consequence of a default by the Provider

45.8 If the Contracting Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Contracting Authority in writing of such failure to pay. If the Contracting

Authority fails to pay such undisputed sums within sixty (60) days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect.

45.9 If the Provider has been suspended in accordance with Clause 44 and the outcome following such suspension shows the Provider to be at fault, to have provided Services not to the required specification or that the Provider has acted in breach of this Contract and/or the Framework Agreement

45.10 Any of the provisions in Regulation 73(1) of the Regulations apply

46. BREAK

46.1 Without affecting any other right available to it, the Contracting Authority shall have the right to terminate the Contract at any time by giving six (6) Months written notice to the Provider.

47. FRAMEWORK AGREEMENT

47.1 The Contracting Authority may terminate the Contract by giving written notice to the Provider with immediate effect if the Framework Agreement is terminated for any reason, except where such termination is without cause.

48. CONSEQUENCES OF EXPIRY OR TERMINATION

48.1 Where the Contracting Authority terminates the Contract under Clause 45 and then makes other arrangements for the supply of the Goods and/or Services, the Contracting Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period. The Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 45, no further payments shall be payable by the Contracting Authority to the Provider until the Contracting Authority has established the final cost of making those other arrangements.

48.2 Where the Contracting Authority terminates the Contract under Clause 46 or 35.3.2, the Contracting Authority shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and valued list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under Clause 46.

48.3 The Contracting Authority shall not be liable under Clause 48.2 **Error! Reference source not found.** to pay any sum which:

48.3.1 was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

48.3.2 when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

48.4 Save as otherwise expressly provided in the Contract:

48.4.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry;

- 48.4.2 within thirty (30) Working Days of the date of termination or expiry of the Contract, the Contracting Authority shall return to the Provider any hired equipment in the Contracting Authority's possession, power, or control;
- 48.4.3 Within thirty (30) Working Days of the date of termination or expiry of the Contract, the Provider shall return to the Contracting Authority any data and Confidential Information belonging to the Contracting Authority that is in the Provider's possession, power or control, either in its then current format or in a format nominated by Contracting Authority, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Contracting Authority, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance. In respect of any Personal Data in the Provider's possession at the date of termination or expiry, the return or destruction of such Personal Data shall be determined by Appendix 5 of this Contract.
- 48.5 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Contracting Authority or the Provider under Clauses 19 (Payment and VAT), 21 (Prevention of Bribery and Corruption), 25 (Data Protection), 26 (Freedom of Information and Environmental Information Regulations), 27 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 28 (Confidential Information), 30 (Intellectual Property Rights), 32 (Records and Audit Access), 38 (Cumulative Remedies), 40 (Liability, Indemnity and Insurance), 41 (Professional Indemnity (if applicable)), 48 (Consequences of Expiry or Termination), 50 (Recovery upon Termination) and 52 (Governing Law).

49. DISRUPTION

- 49.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Contracting Authority, its employees or any other Provider employed by the Contracting Authority.
- 49.2 The Provider shall immediately inform the Contracting Authority of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 49.3 In the event of industrial action by the Staff, the Provider shall seek the Contracting Authority's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 49.4 If the Provider's proposals referred to in Clause 49.3 are considered insufficient or unacceptable by the Contracting Authority acting reasonably then the Contract may be terminated with immediate effect by the Contracting Authority by notice in writing.
- 49.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Authority, an appropriate allowance by way of extension of time will be Approved by the Contracting Authority. In addition, the Contracting Authority will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

50. RECOVERY UPON TERMINATION

- 50.1 On the termination of the Contract for any reason, the Provider shall:
- 50.1.1 immediately return to the Contracting Authority all Confidential Information, Personal Data in its possession or in the possession or under the control of any permitted Providers or sub-contractors, which was obtained or produced in the course of providing the Services;

- 50.1.2 immediately deliver to the Contracting Authority all Property (including materials, documents, information and access keys) provided to the Provider under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 50.1.3 assist and co-operate with the Contracting Authority to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Provider and/or the completion of any work in progress.
 - 50.1.4 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Contracting Authority for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Contracting Authority or the Replacement Provider to conduct due diligence.
- 50.2 If the Provider fails to comply with Clause 50.1 the Client may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Providers or sub-contractors where any such items may be held.
- 50.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under Clause 50.1 free of charge. Otherwise, the Contracting Authority shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.
- 50.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 30 shall automatically terminate without the need to serve notice.

51. FORCE MAJEURE

- 51.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 51.2 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent or sub-contractor shall be regarded as due to Force Majeure only if that agent or sub-contractor is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 51.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 51.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 51.4 It is expressly agreed that any failure by the Provider to perform or any delay by the Provider in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Provider shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 51.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

DISPUTES AND LAW

52. GOVERNING LAW

- 52.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.
- 52.2 This Contract is binding on the Contracting Authority and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

53. TUPE

- 53.1 During the period of six (6) Months preceding the expiry of this Contract or after the Contracting Authority has given notice to terminate the Contract or the Provider stops trading, and within twenty (20) Working Days of being so requested by the Contracting Authority, the Provider shall fully and accurately disclose to the Contracting Authority, for the purposes of TUPE and subject to compliance with applicable Laws and the Data Protection Legislation, all information relating to its Staff engaged in providing the Goods and/or Services under the Contract, in particular but not necessarily restricted to, the following:
 - 53.1.1 the total number of Staff whose employment with the Provider (or its sub-contractors) whose roles are likely to be protected by operation of TUPE;
 - 53.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates, but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given) which information shall be held by the Contracting Authority in strict compliance with the Data Protection Legislation;
 - 53.1.3 full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;
 - 53.1.4 details of pensions entitlements, if any; and
 - 53.1.5 job titles of the members of Staff affected and the qualifications required for each position.
- 53.2 The Provider shall permit the Contracting Authority to use the information for the purposes of TUPE and of re-tendering. The Provider will co-operate with the re-tendering of the Service following award of new contract by allowing the transferee to communicate with and meet the affected Staff and/or their representatives
- 53.3 The Provider agrees to indemnify the Contracting Authority fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 53, other than a breach, by the Contracting Authority or a subsequent provider, of any obligation under the Data Protection Legislation.
- 53.4 The Contracting Authority agrees to indemnify the Provider fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the a breach, by the Contracting Authority or a subsequent provider, of any obligation under the Data Protection Legislation with respect to the information under Clause 53.
- 53.5 In the event that the information provided by the Provider in accordance with Clause 53.1 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate,

the Provider shall notify the Contracting Authority of the inaccuracies and provide the amended information.

- 53.6 The provisions of this Clause 53 shall apply during the continuance of the Contract and for a period of one (1) Year after termination or expiry of the Contract.

54. DISPUTE RESOLUTION

- 54.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

- 54.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 54.3 If the dispute cannot be resolved by the Parties pursuant to Clause 54.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 54.5 unless:

54.3.1 the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or

54.3.2 the Provider does not agree to mediation.

- 54.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.

- 54.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

54.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within then (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to specify relevant mediation Provider to appoint a Mediator;

54.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;

54.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

54.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

54.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

54.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

APPENDIX 4

PROVIDER'S TERMS AND CONDITIONS

LOT	DOCUMENT NAME	DOCUMENT
7	Mobile Terms	Mobile Terms as set out at Annex A
7	Mobile Equipment Terms	Mobile Equipment Terms as set out at Annex B
7	Asavie MODA Service Schedule	Asavie MODA Service Schedule as set out at Annex C
7	Managed Logistics Service Schedule	Managed Logistics Service Schedule as set out at Annex D
7	SandBlast Mobile from Check Point Service Schedule	SandBlast Mobile from Check Point Service Schedule as set out at Annex E

1. DEFINITIONS

In these Mobile Terms, in addition to those terms set out in the Call Off Contract, the following terms and expressions apply:

“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);

“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;

“Charges” means the monies payable by the Contracting Authority to the Supplier in respect of: (a) each Service provided by the Supplier (whether or not the Service is used by the Contracting Authority); (b) where applicable, the O2 Supplied Equipment; and (c) any other products or services which the Supplier may agree to supply to the Contracting Authority from time to time under the Call Off Contract, as set out in the Order Form, the relevant Service Schedule, on the O2 Website or as otherwise agreed by the parties in writing from time to time (as amended from time to time in accordance with the terms of the Call Off Contract);

“Data Connection” means any connection and/or communication between Devices by which data is either transmitted and/or received;

“Device” means Equipment or other mobile device, capable of incorporating a SIM Card;

“Europe Zone” means the countries listed as being included in the Europe Zone on the O2 Website as updated by the Supplier from time to time;

“Equipment” means equipment purchased by the Contracting Authority from the Provider under the Call-Off Contract which may be used in the provision of the Services, as detailed in the Order Form or other document agreed between the parties from time to time;

“Gateway” means any equipment containing one or more SIM Cards 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, SMS Text message or Data Connection;

“Minimum Holding Period” means, in relation to a particular Service, the number of months from the Service Commencement Date within which the Contracting Authority is required to connect the Minimum Holding(s) as specified in the Order Form;

“Minimum Period” means the minimum number of months a particular Service or instance of a Service must be in operation for which, unless specified otherwise in the Order Form, shall be a minimum of 30 days from the Service Commencement Date;

“Mobile Equipment” has the meaning set out in the Mobile Equipment Terms and which shall, for the avoidance of doubt, constitute “O2 Equipment”;

“Mobile Data Services” means the Mobile Services under which the Provider supplies the Contracting Authority with Airtime enabling the Contracting Authority to transfer data on the Network;

“Mobile Services” means those Services identified as a “Mobile Service” in these Mobile Terms and the Service Schedules;

“Mobile Terms” means this document entitled “Mobile Terms”;

“Network” means the Provider Network and the network of any Third Party used by the Provider to supply the Services, as applicable;

“New Connection” (including New SIM Only Connections and New Connections With Device) means a new SIM Card which connects to the Network under the Call-Off Contract which was not immediately prior to the Call-Off Contract connected to the Network except where the SIM Cards were formerly provided to the Contracting Authority by means of a Reseller;

“New Connection With Device” means a New Connection in conjunction with which the Provider is providing a Device at the New Connection rate for Mobile Equipment specified in the Order Form;

“New SIM Only Connection” means a New Connection in conjunction with which Provider is not providing a Device at the New Connection rate for Mobile Equipment specified in the Order Form;

“O2 Website” means www.o2.co.uk;

“Rental Charge(s)” means the monthly non-usage dependent part of the Charges for the Services, as specified in the Order Form or otherwise agreed by the parties in writing from time to time;

“Reseller” means any Third Party acting as an agent or distributor on behalf of the Provider;

“Re-Sign Connection” (including Re-Sign SIM Only Connections or Re-Sign Connections With Device) means the transfer of a SIM Card which was, immediately prior to the Call-Off Contract, connected under an agreement between the Provider (directly, and not via a third party);

“Re-Sign Connection With Device” means the transfer of a SIM Card which was, immediately prior to the Call-Off Contract, connected under an agreement between the Provider (directly, and not via a third party) and the Contracting Authority and in conjunction with which the Provider is providing Mobile Equipment;

“Re-Sign SIM Only Connection” means the transfer of a SIM Card which was, immediately prior to the Call-Off Contract, connected under an agreement between the Provider (directly, and not via a Third Party) and the Contracting Authority, and in conjunction with which the Provider is not providing Mobile Equipment at the New Connection rate for Mobile Equipment specified in the Order Form;

“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 Contracting Authority, or as otherwise explicitly set out in the Order Form;

“Service Schedule” means any document entitled “Service Schedule” containing additional terms relating to a particular Service which schedule shall form part of the Call-Off Contract;

“SIM Card” means a subscriber identity module card supplied to the Contracting Authority by the Provider and which, for the avoidance of doubt, is included in the definition of O2 Equipment in this Call Off Contract;

“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;

“Spend Cap” means the Contracting Authority’s ability to limit the cost of their bill as further defined in Sections 124S and 124T of the Communications Act 2003;

“Third Party” means a person other than the Provider or Contracting Authority;

“User” means Contracting Authority Employees, Contracting Authority Affiliates, subcontractors, agents and anyone else who in each case is permitted by the Contracting Authority to use the Service;

“Value Added Mobile Services” means the value added services in relation to Mobile Services, such as installation and repair etc as may be made generally available from time to time by the Provider to business customers, the details of which appear on the O2 Website (<https://psc.business-o2.co.uk/#overview>); and

“Voice Services” means the Mobile Services under which the Provider supplies the Contracting Authority with Airtime enabling the Contracting Authority to make and receive mobile voice calls and SMS texts on the Network.

2. MOBILE SERVICE STANDARDS

The Contracting Authority acknowledges that provision of the Mobile Services is subject to the geographic extent of Network 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 Mobile Services in any particular location that may, from time to time, adversely affect the provision of the Mobile Services in terms of availability, line clarity and call interference.

3. SIMS CARDS AND NUMBERS

3.1 Where the Contracting Authority is not already a Provider customer, the Provider will supply to the Contracting Authority such number of SIM Cards as is necessary for the Contracting Authority to receive the Mobile Services to be provided under the relevant Call-Off Contract.

3.2 The Provider shall:

(a) provide to the Contracting Authority such mobile numbers as are necessary for the Contracting Authority to receive the Mobile Services; or

(b) port mobile numbers from another mobile network in accordance with standard porting procedures between mobile networks in the United Kingdom.

3.3 Nothing in the Call-Off Contract shall be construed as to grant the Contracting Authority any right in relation to the mobile numbers other than to receive the Mobile Services as described in the Call-Off Contract.

4. CHARGES

4.1 Unless otherwise stated in the Order Form the following apply to UK domestic calls:

(a) call prices are quoted by the minute;

(b) the duration of each call shall be measured in whole seconds, any part second will be rounded up to the next whole second;

(c) each call shall be 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 Contracting Authority's invoice;

(d) 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 rate or weekend rate call Charges do not apply; and

(e) all calls are subject to a minimum Charge.

4.2 Full details of international and roaming call Charges (including rounding policies) are available on the O2 Website.

4.3 The Contracting Authority acknowledges that roaming calls may take longer to be billed than other types of calls.

4.4 The Provider may monitor the Contracting Authority's usage of the Mobile Services for the purpose of controlling the Provider's credit risk and the Contracting Authority's exposure to fraudulent usage.

4.5 The Contracting Authority will be liable for any Charges incurred as a result of unauthorised use of the Mobile Services (including any SIM Card) until the Provider has received a request from the Contracting Authority to suspend the provision of such Mobile Services.

4.6 For the avoidance of doubt, where the Contracting Authority exercises its right to terminate the Call-Off Contract under clause 35.3.2 or 45.8 within the Call-Off Contract Period then the Contracting Authority shall not be entitled to a refund of any Call-Off Contract Charges paid in advance by the Contracting Authority to the Provider under this Call-Off Contract.

4.7 The Contracting Authority agrees that the Termination Fees stated herein are a reasonable pre-estimate of the Losses suffered by the Provider in the event that the Contracting Authority terminates the Call-Off Contract (in whole or part) under clause 35.3.2 or 45.8.

4.8 The Termination Fee will be invoiced by the Provider and paid by the Contracting Authority as if it were a Charge under the Call-Off Contract, and the terms relating to payment of Charges apply mutatis mutandis to the payment of the Termination Fee.

5. DISCONNECTION OF SIM CARDS

5.1 The Contracting Authority may serve on the Provider a disconnection notice in respect of a SIM Card(s) at any time.

5.2 The Provider will, within 30 days from receipt of a disconnection notice, disconnect the relevant SIM Card(s) from the Mobile Services.

5.3 In the event that the Contracting Authority gives a disconnection notice resulting in disconnection of a SIM Card prior to the expiry of its Minimum Period (as set out in the Order Form, the Contracting Authority will pay to the Provider any applicable Termination Fee.

6. OBLIGATIONS OF THE BUYER

6.1 The Contracting Authority shall notify the Provider immediately (and confirm in writing) on becoming aware that any SIM Card has been lost or stolen or that any person is making improper or illegal use of a SIM Card and shall remain liable for any Charges incurred in respect of and any information contained within that SIM card up until the Provider has received a request from the Contracting Authority to suspend the provision of the Mobile Services to that SIM Card.

6.2 The Contracting Authority shall, and shall take all reasonable steps to ensure that Users (or anyone having access to the Services) will:

(a) not use the Mobile Services in any way to generate AIT; and

(b) not, without the prior written consent of the Provider which may be withheld at the Provider's absolute discretion, establish, install or use a Gateway so that telecommunication services are provided via the Gateway;

(c) not use SMS or MMS for the purpose of marketing or advertising anything to users of mobile services without the consent of those users.

(d) not make nuisance calls or use the Services to spam or to send unsolicited advertising or promotional material;

6.3 The Contracting Authority agrees that in respect of SMS and MMS, the Provider is acting as a network operator and as such has no knowledge of, involvement with, or liability for the specific content of any text messages sent to the Contracting Authority's SIM Cards, which do not originate from the Provider.

6.4 The Contracting Authority shall not be permitted to transfer a SIM Card from the tariff which that SIM Card was originally connected to under the Call-Off Contract to another tariff except where Provider

at the Provider's absolute discretion agrees to do so and confirms such a change in writing to the Contracting Authority.

6.5 The Provider can at its discretion suspend any SIM Card from making calls (other than to emergency services) and disconnect any SIM Card from the Mobile Services if the Provider has reasonable cause to suspect fraudulent use of the SIM Card or relevant Mobile Equipment, or either are identified as being stolen. The Contracting Authority shall remain liable for all Charges levied in accordance with the Call-Off Contract during any period of suspension.

6.6 The Contracting Authority shall and shall procure that Users (or anyone having access to the Services), shall:

a) comply with any reasonable instructions from the Provider and with any health and safety, security, use of Network and fair usage policies as may be implemented and/or amended from time to time relating to the use of the Services, and/or Equipment;

b) not use the Services and/or Equipment in a manner which damages the reputation of the Provider or the Provider's suppliers, is inconsistent with a reasonable buyer's good faith use of the Services and/or Equipment (including spamming and the sending of unsolicited advertising or promotional material), and/or adversely affects the provision of the Services and/or Equipment to other buyers or O2 customers;

c) not use the Services and/or Equipment fraudulently, or in connection with a criminal offence;

d) not use the Services and/or Equipment 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;

e) hold and will continue to hold any licences, consents and/or notifications required under any applicable legislation, regulation and/or administrative order to receive and use the Services and/or Equipment;

f) notify the Provider of any methods of doing business which may affect the Contracting Authority's use of the Services and/or Equipment or the Contracting Authority's ability to comply with the terms of the Call-Off Contract; and

g) comply with all applicable laws and regulatory provisions.

6.8 Subject to clause 10 of these Mobile Terms, the Contracting Authority 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.

6.9 The Contracting Authority shall provide the Provider with any and all information and/or assistance that the Provider may require in order to perform the Services. The Contracting Authority shall ensure the information is complete and accurate. The Provider 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 Contracting Authority's failure to provide the Provider with the required information and/or assistance. The Contracting Authority shall reimburse the Provider for any administrative charges that it incurs as a result of information that it receives in accordance with this clause 6.0 that is incomplete or inaccurate.

6.10 The Contracting Authority shall notify the Provider immediately (and confirm in writing) on becoming aware that any person is making improper or illegal use of the Services.

6.11 The Contracting Authority agrees and acknowledges that the Provider and/or a supplier of the Provider may monitor and record calls or other communications including in relation to O2's customer services.

6.12 The Contracting Authority acknowledges that some of the Services enable access to the Internet and that use of the Internet is solely at the Contracting Authority's risk and subject to all applicable laws. The Provider has no responsibility for any information, software, services, goods or other materials obtained by the Contracting Authority using the Internet.

6.13 The Contracting Authority warrants to the Provider 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 the Provider under the Call-Off Contract is not infected by viruses and/or logic bombs, worms, trojan horses and any other types of disruptive, destructive or nuisance programs.

7. VALUE ADDED SERVICES

7.1 The Contracting Authority may order Value Added Mobile Services and the Provider may accept or decline such Orders.

7.2 The Provider reserves the right to add to, substitute, or to discontinue any Value Added Mobile Service at any time. The Provider does not guarantee the continuing availability of any particular Value Added Mobile Service.

8. BUYER EQUIPMENT

8.1 Certain elements of the Mobile Services are dependent on the Contracting Authority having suitable buyer equipment available and in the event that the Contracting Authority is unable to provide such buyer equipment, then:

- (a) some of the Mobile Services may not function correctly (the “**Affected Services**”);
- (b) The Provider may choose not to provide the Contracting Authority with the Affected Services; and
- (c) The Provider shall have no liability for the Contracting Authority’s inability to receive those Affected Services.

8.2 Any buyer equipment must be:

- (a) technically compatible with the Network and the relevant Mobile Service and shall not harm the Network or equipment belonging to another customer;
- (b) connected to the Network strictly in accordance with the instructions of the Provider; and
- (c) used by the Contracting Authority in compliance with any relevant instructions, standards and laws.

9. SUSPENSION

Planned Outages

9.1 The Provider 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 Contracting Authority, shall have no liability in relation to such suspension.

Unplanned Outages

9.2 The Provider may, from time to time and without notice or liability to the Contracting Authority, 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 Contracting Authority’s or Users’ own security.

9.3 The Provider shall use reasonable endeavours to restore the Services suspended in accordance with clause 9.1 or 9.2 of these Mobile Terms as soon as reasonably practicable.

9.4 The Contracting Authority shall remain liable for all Charges levied in accordance with this Call-Off Contract during any period of suspension arising from the circumstances described in clause 9.1 or 9.2 of these Mobile Terms.

Actions of the Buyer

9.5 The Provider may, without prejudice to its other rights hereunder, suspend or disconnect the Services without notice in any of the following circumstances:

- a) if the Contracting Authority fails to comply with any material terms of the Call Off Contract after being given written notice of its failure (including but not limited to failure to pay any Charges due hereunder); or
- b) if the Contracting Authority allows anything to be done which in the Provider'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 the Provider and/or a supplier of the Provider.

9.6 If the Provider has suspended the Services in accordance with clause 9.5 above, the Provider shall restore the Services when the circumstance described in clause 9.5 above is remedied.

9.7 The Contracting Authority shall remain liable for:

- a) all Charges levied in accordance with the Call Off Contract during any period of suspension; and
- b) all reasonable costs and expenses incurred by the Provider in the implementation of such suspension or disconnection, where such suspension or disconnection arises from the circumstances described in clause 9.5 of these Mobile Terms.

Actions of O2's suppliers

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

Actions by regulators

9.9 The Provider 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 the Call-Off Contract.

10. USERS

10.1 The Provider acknowledges that the Contracting Authority may permit its Users to use the Services and/or Equipment supplied by the Provider to the Contracting Authority under the Call-Off Contract. However, no such User shall have any right to enforce the Contracting Authority's rights under the Call-off Contract against the Provider directly, and the Contracting Authority shall procure that any claim in relation to the subject matter of the Call-Off Contract in respect of any such User is brought solely by the Contracting Authority on behalf of any such User.

10.2 The Contracting Authority will procure that all Users are aware of and comply with the terms of the Call-Off Contract and any act or omission of any User in relation to the Call-Off Contract shall be treated as the act or omission of the Contracting Authority.

10.3 The Contracting Authority shall indemnify and hold harmless the Provider against any Losses suffered or incurred by the Provider arising from any claims made against the Provider directly by a User of the Contracting Authority arising out of or in connection with their use of the Services and/or Equipment under the Call-Off Contract.

10.4 The limitations and exclusions of liability contained in the Call-Off Contract shall apply to any claims brought by or on behalf of the Contracting Authority and/or Users, and the involvement of one or more of its Users shall not give rise to any increase in or multiplication of any cap placed upon the Provider's liability.

10.5 This clause **Error! Reference source not found.** shall remain in full force and effect notwithstanding any termination of the Call-Off Contract.

ANNEX B - MOBILE EQUIPMENT TERMS

The following additional terms and conditions apply to the provision by the Provider to the Contracting Authority of Mobile Equipment specified in the Order Form or as otherwise agreed by the parties in writing from time to time.

1 DEFINITIONS

- 1.1 In these Mobile Equipment Terms, in addition to those terms set out in the Call Off Terms and Conditions and the Mobile Services Terms, the following terms and expressions apply:

TERM / EXPRESSION	MEANING
"Accessory"	means an item of equipment sold separately for use with Mobile Equipment but which is not on its own Mobile Equipment (such as phone cases or phone chargers which are supplied in addition to those packaged along with a phone) and which cannot be used without Mobile Equipment in connection with the Mobile Services;
"Mobile Equipment"	means any phones and related items (including, but not limited to USB modems and phone chargers packaged along with a phone) or other equipment provided by the Provider to the Contracting Authority under the Call-off Contract for use in connection with the Mobile Services and which shall, for the avoidance of doubt, constitute O2 Supplied Equipment; and
"Mobile Equipment Terms"	means this document entitled "Mobile Equipment Terms".
"SIM Card"	means subscriber identity module being a physical item of Mobile Equipment which allows access to the Network when used with Mobile Equipment.

- 1.2 References to clauses and sub-clauses refer, unless otherwise stated, to clauses and sub-clauses of these Mobile Equipment Terms; references to schedules are to the schedules of the Call-off Contract and references to paragraphs are to the paragraphs of the Service Schedules.

2 AVAILABILITY OF MOBILE EQUIPMENT

- 2.1 The Provider reserves the right to add to, substitute, or to discontinue any item of Mobile Equipment at any time. The Provider does not guarantee the continuing availability of any particular item of Mobile Equipment.

3 DELIVERY, ACCEPTANCE AND RISK

- 3.1 The Provider will deliver the Mobile Equipment to the address specified in the Order Form or as otherwise agreed by the parties in writing from time to time provided that address is within the United Kingdom.
- 3.2 The Contracting Authority shall be deemed to have accepted an item of Mobile Equipment:
- a) when that item of Mobile Equipment has been delivered, if the Provider is to deliver the item of Mobile Equipment; or
 - b) when the Contracting Authority takes possession of that item of Mobile Equipment, if the item of Mobile Equipment is to be collected by the Contracting Authority.
- 3.3 Risk in an item of Mobile Equipment will pass to the Contracting Authority when the item of Mobile Equipment is accepted by the Contracting Authority. The Contracting Authority shall not be liable for any loss or damage to the item of Mobile Equipment to the extent that such loss or damage is caused by the negligence of the Provider or its suppliers.

4 TITLE IN THE MOBILE EQUIPMENT

- 4.1 Title in any Mobile Equipment and/or any Accessories provided by the Provider to the Contracting Authority under a Call-off Contract shall pass to the Contracting Authority upon receipt of payment in full and cleared funds by the Provider.

5 OBLIGATIONS OF THE CONTRACTING AUTHORITY

- 5.1 The Contracting Authority will:
- a) only use Mobile Equipment for the purposes of receiving or using the Mobile Services in accordance with the Call-off Contract; and
 - b) comply with any instructions provided by the Provider or a Provider Representative from time to time in respect of the Mobile Equipment (including in relation to the return of any Mobile Equipment).
- 5.2 The Contracting Authority will, and shall take all reasonable steps to ensure that its Users will pay the standard charges levied by the Provider from time to time applicable to repair work on Mobile Equipment which is outside (in scope or time) the warranty provided under the Call-off Contract.
- 5.3 The Provider reserves the right to bar service to any Mobile Equipment supplied under the Call-off Contract to which the Provider retains title where in the Provider's reasonable opinion that Mobile Equipment is not being used in a manner which the Provider would expect including where the Mobile Equipment is:
- a) used in conjunction with a SIM Card connected to a tariff other than one which the Contracting Authority has ordered under the Call-off Contract;
 - b) used in conjunction with a SIM Card allocated to any other O2 customer's account;
 - c) used solely or predominantly on a roaming basis;
 - d) not, or the SIM Card supplied in conjunction with such Mobile Equipment is not, used on the Network within forty-five (45) days from the date of despatch by the Provider, or during any other period of 30 consecutive days; or
 - e) not used in accordance with the Contracting Authority's obligations in clause 5.1 of these Mobile Equipment Terms, unless the Provider and the Contracting Authority have agreed otherwise.
- 5.4 At the Contracting Authority's expense, the Contracting Authority shall return to the Provider any Mobile Equipment to which the Provider retains title where such Mobile Equipment has been:
- a) barred pursuant to clause 5.3 of these Mobile Equipment Terms and to which the Provider retains title; or
 - b) upgraded, replaced or disconnected from the Mobile Services.
- 5.5 the Provider reserves the right by giving written notice to the Contracting Authority to charge the Contracting Authority liquidated damages equal to the Device price list as provided by the Provider from time to time or the prevailing list rate on the date such notice is given for any Mobile Equipment:
- a) that is not returned to the Provider within fourteen (14) days of the Provider's request pursuant to clause 5.2 of these Mobile Equipment Terms;
 - b) in respect of which the Contracting Authority has failed to fulfil its obligations under clause 5 of these Mobile Equipment Terms; or
 - c) which the Contracting Authority sells in breach of clause 5 of these Mobile Equipment Terms, and such liquidated damages shall immediately be due and payable from the Contracting Authority to the Provider.
- 5.6 The parties acknowledge and agree that the Provider has a legitimate interest in ensuring the Contracting Authority complies with its obligations under this clause 5 of these Mobile Equipment Terms and the liquidated damages referred to in clause 5.5 are a reasonable reflection of the loss that the Provider will suffer if the Contracting Authority fails to comply with such obligations.
- 5.7 The Contracting Authority shall ensure that their Mobile Equipment is up to date with the latest available version of the manufacturer's Software. Any failure by the Contracting Authority to ensure

their Mobile Equipment Software is maintained on the latest version may result in performance issues which the Provider shall not be liable for.

6 WARRANTIES

- 6.1 The Provider warrants that each item of Mobile Equipment will conform in all material respects to the manufacturer's specification for a period of twelve (12) months from the date on which such item of Mobile Equipment is despatched to the Contracting Authority by the Provider (a "**Warranty Period**") unless special conditions associated with certain Mobile Equipment apply.
- 6.2 The Provider warrants that any Software will conform in all material respects to the manufacturer's specification for a period of three months from the date on which such Software is despatched to the Contracting Authority by the Provider (also a "**Warranty Period**") unless special conditions associated with certain Software apply.
- 6.3 Following the expiry of the Warranty Period for Mobile Equipment provided under the Call-off Contract in which the Provider retains title, the Provider will extend the Warranty Period in respect of such Mobile Equipment until the end of the Call-Off Contract Period ("**Extended Warranty Period**"). Upon expiry of the Call-Off Contract Period, or termination of the Call-off Contract, the Extended Warranty Period shall cease.
- 6.4 If, within the relevant Warranty Period or Extended Warranty Period, the Contracting Authority notifies the Provider of any defect or fault in the Mobile Equipment or Software arising under normal use in consequence of which it fails to conform in any material respect with the manufacturer's specification the Provider shall, at the Provider's option either: repair the faulty Mobile Equipment or Software; or, replace the faulty Mobile Equipment or Software with the same or an equivalent item of Mobile Equipment or Software which may be a new or refurbished item. In the event that Mobile Equipment or Software is provided to replace Mobile Equipment or Software which has failed during its Warranty Period, the replacement Mobile Equipment or Software will be provided with its own Warranty Period which shall last for the greater of: a) three months from the date on which the replacement Mobile Equipment or Software is despatched to the Contracting Authority; or b) the outstanding period of the original Warranty Period.
- 6.5 The warranty obligations set out in clause 6.4 of these Mobile Equipment Terms shall not apply in the event that a person has: (a) altered or damaged the Mobile Equipment or Software; (b) serviced or repaired it without the Provider's authorisation; (c) not complied with its obligations under clause 5.7; or (d) used the Mobile Equipment or Software for a purpose or in a context, other than in accordance with the Provider's or the manufacturer's instructions and advice.
- 6.6 If the Contracting Authority reports a defect or fault in the Mobile Equipment or Software to the Provider, and is provided with a replacement item pursuant to clause 6.4 above, the Provider reserves the right to charge the Contracting Authority for the replacement item in the following circumstances:
 - a) where the faulty or defective Mobile Equipment is not returned to the Provider within fourteen (14) days of provision to the Contracting Authority of a replacement for the faulty Mobile Equipment or Software;
 - b) where the Provider considers that the defect or fault in the Mobile Equipment or Software is caused by use, amendment or damage described in clause 6.5, above; or
 - c) where no fault or defect is detected in the Mobile Equipment or Software.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Service Schedule, in addition to those terms defined in the Call Off Terms and Conditions, the Mobile Terms and the Mobile Equipment Terms, the following terms and expressions apply:

TERM / EXPRESSION	MEANING
“Administrator”	means a designated Contracting Authority contact who is responsible for managing the Service on behalf of the Contracting Authority;
“Aggressive Signaling”	means where a Device is repeatedly attempting to contact an APN service on the O2 mobile data network for which its SIM has not provisioned, and thereby generating excessive traffic to the detriment of other users;
“Asavie”	means Asavie Technologies Limited;
“APN”	means the Access Point Name service provided by the Provider to Asavie which enables Devices to connect to the Service over the O2 3G/4G mobile data network;
“Device”	means any device (mobile or fixed) that uses a SIM, with a configurable APN, as part of its communication protocols, as outlined in Appendix 2;
“End User”	means an employee of the Contracting Authority that has been designated to be within scope of the Service;
“EULA”	means the Asavie End User License Agreement terms of use for the Service, as set out in Appendix 4;
“Exclusion”	means a specific element or service of a Device or the Provider network that is considered to be “out of scope” or rendered non-operational due to the implementation of the Service;
“L0 Triage”	means the initial evaluation and identification of a potential issue with the service;
“MODA Trial Proposal”	means the document that outlines the primary Contracting Authority contact information and the criteria by which a successful Trial will be judged;
“Service”	means the Asavie MODA service, as described in Appendix 1, which includes the Software;
“Service Commencement Date”	means the date from which the Contracting Authority receives the chargeable Service;
“Software”	means the software which is part of the Service, and is described in Appendix 1;
“Support Handbook”	means a document that is supplied to the Contracting Authority which outlines key processes with regards to the support offered as part of the Service;
“Trial”	means an initial period of 30 days during which the Contracting Authority will receive the Service free of charge for a specified number of End Users in order to assess the Service.

- 1.2 References to clauses and sub-clauses refer, unless otherwise stated, to clauses and sub-clauses of this Service Schedule; references to appendices are to the appendices to this Service Schedule, references to schedules are to the schedules of the Call-off Contract and references to paragraphs are to the paragraphs of the appendices to this Service Schedule.

2 MOBILE SERVICE

- 2.1 This Service is a "Mobile Service" and the Mobile Terms will apply to this Service.

3 CUSTOMER DEPENDENCIES

- 3.1 The Contracting Authority acknowledges and agrees that the provision of the Service is subject to the Contracting Authority:
- a) complying at all times with the provisions of the Call-off Contract;
 - b) complying at all times with the provisions of the EULA, which the Administrator shall accept before using the Service;
 - c) paying the Charges in accordance with the Call Off Contract;
 - d) having in place the necessary technical requirements, systems, capacities and facilities as set out in Appendix 2 or advised by the Provider from time to time. the Provider shall not be required to supply the Service if the Contracting Authority does not have such requirements, systems, capacities and/or facilities; and
- 3.2 ensuring that the SIM card has been provisioned and the Device APN has been configured in accordance with Appendix 2.
- 3.3 The Contracting Authority can undertake a 30 day Trial prior to the deployment of the Service in accordance with the provisions of Appendix 2. Prior to completion of the Trial, the Contracting Authority shall notify the Provider in writing whether or not it wishes to proceed to full Service deployment. If the Contracting Authority wishes to proceed, the Service shall be fully deployed in accordance with the Call Off Contract and the Contracting Authority shall pay the Charges for the Service as set out in the Order Form from the Service Commencement Date. If the Contracting Authority does not wish to proceed to full Service deployment the Contracting Authority shall, at the end of the Trial period, immediately cease using the Service unless agreed otherwise in writing.

4 EXCLUSIONS

- 4.1 Apple iPhone devices require multiple APN's to ensure background services such as Visual Voicemail (VVM) and Multimedia Messages (MMS) can operate and so must continue to be enabled along with the MODA Service APN. Data passing through these other APNs or through non-3G/4G network connections (such as Bluetooth) are outside the control of the MODA Service. Neither the Provider nor Asavie will be liable for any data usage through these APN's. Incorrect implementation of an APN on the Provider network may result in termination of the Service.

5 CHARGES

- 5.1 The Charges for the Service are set out in the Order Form.

6 SERVICE SUPPORT

- 6.1 Support for the Service shall be performed in accordance with Appendix 3. Support is offered on a helpdesk-to-helpdesk basis, with the Contracting Authority expected to manage L0 Triage prior to escalation to either Asavie or the Provider.

7 DOCUMENTATION

- 7.1 In respect of any documentation supplied to the Contracting Authority relating to the Service, the Devices or the Software, the Contracting Authority shall have the right to copy, reproduce and generally use this documentation for the purposes of using the Services, the Devices (if any) and the Software (if any) but the Contracting Authority shall not be entitled to copy, reproduce or use the documentation for any other reason or for disclosure to any third parties.

APPENDIX ONE SERVICE OVERVIEW

The Service MODA™ (“MODA”), is a cloud-based data connectivity management tool developed and managed by Asavie Technologies™ (“Asavie”). MODA enables direct management of mobile data and internet service access.

The Service requires:

1. An individual SIM being provisioned with the appropriate APN;
2. The inputting of an appropriate APN on the Device; and
3. Registering of individual SIMs within the MODA system.

Some Devices require multiple APN's for services to operate effectively. Any data transfer utilising APN's other than those listed within Appendix 2 will not be subject to the policies implemented through the Service and are an Exclusion.

Neither, the Provider or Asavie will be liable for any data overage charges that occur due to any of the above requirements being incorrectly implemented or data being carried on a non-MODA APN.

The key features of MODA are:

- 1) Enterprise secure self-management – the Contracting Authority can access a secure web based tool to manage each Device profile within their enterprise that is registered to the Service;
- 2) Usage statistics through the web portal;
- 3) Flexible ‘Department’ Functions – Devices can be managed individually or as a group / department;
- 4) Flexible Control Points – controls can be implemented for all mobile data communication using an internet policy engine that can be configured with different rules for each department. The controls can also support different rules when the Device roams to a different mobile network;
- 5) Support of any mobile data network which can support the Asavie APN;
- 6) Real Time – changes to controls are implemented immediately; and
- 7) Business Intelligence – solution includes granular insights into how the mobile data is being used, assisting tariff adjustment for users / user groups.

MODA™ online portal is distinguished into 2 parts:

1. Configuration Module of the online portal allows the Contracting Authority to define controls around data, groups, zones and policies.
2. Reporting Module of the online portal allows the Contracting Authority to provide live reports, historical reports, filters, navigation between reports and extracts of reports.

APPENDIX TWO

SERVICE TECHNICAL REQUIREMENTS

1 DEVICE COMPATIBILITY

The Service is provisioned to a SIM and can be enabled on any Device with a configurable APN, including, but not limited to:

- Mobile phones and tablets
- Laptops
- Mobile hotspot devices
- USB modems
- Routers

Operating Systems include:

- Apple iOS
- Android
- Microsoft Windows

EXCLUSION: Apple iPhone devices require multiple APN's to ensure background services such as Visual Voicemail (VVM) and Multimedia Messages (MMS) can operate and so must continue to be enabled along with the MODA Service APN. Data passing through these other APNs or through non-3G/4G network connections (such as Bluetooth) are outside the control of the MODA Service.

2 SERVICE TRIAL AND IMPLEMENTATION

Prior to implementation of the Service the Contracting Authority will first undertake a Trial of the Service with the Provider.

The Contracting Authority shall:

- 1) Support the Trial and implementation of the Service;
- 2) Identify an Administrator and identify the End Users and Devices and notify the Provider with a list of Contracting Authority numbers to be provisioned for the Service;
- 3) Modify the selected Device(s) APNs either manually or through the Contracting Authority's Mobile Device Management solution, if available; and
- 4) Ensure any applications requiring pre-existing APNs configured in the Devices are not rendered inoperable by enabling the MODA APN setting on the Device.

The Provider shall:

- 1) Support the Trial and implementation of the Service;
- 2) Provide Asavie with a list of Contracting Authority mobile numbers, End User names and Device types; and
- 3) Upon instruction by the Contracting Authority as per section 2 above, re-provision existing O2 SIMs with the required MODA APN.

Asavie shall:

- 1) Support the Trial and implementation of the Service;
- 2) Configure and create a Contracting Authority account for use by the Contracting Authority's MODA Administrator;
- 3) Provide the Contracting Authority with a secure username and password to access the Service; and
- 4) Configure the Contracting Authority's Service with the specified user phone numbers as instructed in section 3 above.

The Contracting Authority acknowledges and agrees that in order to deploy the Service a SIM card must be provisioned and a Device APN must be changed as noted below:

Settings required are:

- j) APN Name: MODA (if required, can be any name you prefer)
- k) APN URL: vpn.amylan.co.uk (if SIM is on a 3G tariff)

- l) APN URL: vpn.amylan (if SIM is on a 4G tariff)
- m) Username: iosmoda2
- n) Password: iosmoda2

The Contracting Authority acknowledges and agrees that upon completion of a successful Trial, as defined and agreed within the 'MODA Trial Proposal' document, it shall:

- 1) Receive continued access to the Service for those End-Users involved in the Trial until the Service is implemented.
- 2) Ensure that all End-Users who will be registered on the Service are made aware of the scope of the Service and the policies to which they will be added.

Provision of support for the Service during the Trial phase will be on a reasonable endeavours basis only. The Support provisions detailed in Appendix 3 will apply once implementation of the Service has been completed and the initial Devices have been connected to the MODA Service for 48 hours. In the event that the Contracting Authority changes their billing date with the Provider, the Contracting Authority shall inform Asavie (via the support methods listed out below) of said change. Failure to do so may result in inaccurate billing which the Contracting Authority will be responsible for, due to the billing periods not synchronizing in the Provider and Asavie systems.

O2 ENTERPRISE SUPPORT DESK – network and connectivity issues

The Provider is responsible for support in relation to Device and network connectivity only.

All support requests in relation to MODA must be directed to the Asavie customer service team.

In the event of a connectivity issue, the Contracting Authority agrees for Asavie to be added to the Contracting Authority O2 profile allowing Asavie to interface directly with the O2 helpdesk for queries related the operation of the MODA Service only. Asavie shall not make fundamental changes to the Service including, but not limited to, ordering of new Services or Devices on behalf of the Contracting Authority, changes to any network tariff or alterations to any billing information.

ASAVIE CUSTOMER SERVICE

The information below outlines Asavie support team availability during and out of business hours.

Asavie support is offered on a helpdesk-to-helpdesk basis and the Contracting Authority must ensure their helpdesk is trained so that they are able to offer L0 Triage on all queries as set out within the Support Handbook.

All times below are in Greenwich Mean Time (GMT) and British Summer Time (BST) when in effect. Note GMT is used below to refer to both. Business Hours Support.

Incidents: **P1-P4**
Periods: Monday to Friday: 09:00 to 18:00
Contact: Telephone: 0845 468 0668 / +353 1 6763585
E-mail: support@asavie.com

1.1 Out of Hours Logging of Critical Incidents - P1 Only

For out of hours urgent (P1) issue reporting the Contracting Authority should contact the out of hours helpdesk by telephone, using the detailed provided below.

The caller will be asked to provide the following information:

- Company name
- Contact name
- Contact phone number
- Contact email address
- Brief description of the problem with the current impact to services
- What is the priority or criticality level of this issue

The caller will then be contacted by a Service Engineer who will take further details on the issue and commence work on restoration of the Service.

Out of Hours Helpdesk

Incidents: **P1 only**
Periods: Monday-Friday 18:00-09:00
Saturday & Sunday
Public Holidays
Contact: Telephone +353 1 5250600 <For critical P1 issues do not email>

1.2 Out of Hours Logging of Non-Critical Incidents – P2, P3 and P4

For out of hours non-urgent (P2/P3/P4) issue reporting the Contracting Authority should contact the Asavie support desk via email, using the details provided below.

In order to ensure an efficient response please contact the Asavie helpdesk by email including the following information:

- Company name
- Contact name
- Contact phone number
- Contact email address
- Brief description of the problem
- Priority level of the issue

Incidents: **P2, P3 and P4**
Periods: Monday-Friday 2200-0900
Saturday & Sunday
Public Holidays
Contact: E-mail support at support@asavie.com
The helpdesk team will respond during the next Working Day.

Asavie Event Severity Levels

Priority Levels	Definition
P1	CRITICAL DEFECT – Defined as the entire Asavie MODA service being unusable, causing immediate and significant business impact affecting ALL users. Not applicable to single user issues or subsets.
P2	MAJOR DEFECT - A significant, but not immediately critical, part of the Asavie MODA Service is unusable, creating some business impact and affecting multiple users, (e.g. >10%). No single user issues.
P3	MINOR DEFECT - Disruption of a single element of the Asavie MODA product, e.g. single user issue
P4	NON SERVICE AFFECTING DEFECT - Non-urgent or cosmetic problems for the Asavie MODA Service, queries, causing inconvenience only.

APPENDIX FOUR END USER LICENCE AGREEMENT

The EULA for MODA is available at <http://modasupport.asavie.com/service-support/>. Please check online for the latest version of the EULA.

The Administrator is required to accept the EULA online before utilising the Service online portal for the first time.

The Administrator, by accepting the EULA, accepts the terms and conditions outlined within the EULA on behalf of the Contracting Authority and all End Users associated to MODA through the online portal.

The following additional terms and conditions apply to the provision of Managed Logistics Service.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Service Schedule, in addition to those terms defined in the Call Off Terms and Conditions, the Mobile Terms and the Mobile Equipment Terms, the following terms and expressions apply:

TERM / EXPRESSION	MEANING
"Apple"	means Apple Inc;
"Apple Device Enrolment"	means the Apple device enrolment program as further set out in the O2 Apple Device Enrolment terms and conditions at: https://www.o2.co.uk/termsandconditions/business/Apple-dep-service-schedule ;
"Android Zero-touch Enrolment"	means the Android Zero-touch device enrolment program as further set out in the O2 Android Zero-touch terms and conditions at: https://www.o2.co.uk/termsandconditions/business/android-zero-touch-enrollment ;
"Asset Database"	means a database of the Contracting Authority's MLS Devices that captures shipping information when a new MLS Device is deployed, and in respect of the In-Life Service, when a Replacement MLS Device is issued;
"Asset Tags"	means tags that are attached to MLS Devices for useful in-life identification and inventory control and which are provided by the Contracting Authority to the Provider using the Contracting Authority's own identification or naming convention;
"BER"	means where an MLS Device is beyond economic repair either by virtue of the fact it cannot be repaired or the cost of the Repair or Replacement exceeds the Contracting Authority Repair limit set out in the CBD;
"Boot Stock"	means a number of additional MLS Devices purchased by the Contracting Authority and held by the Provider to fulfil Replacement requests for faulty or damaged MLS Devices where the In-Life Service has been purchased;
"Bulk Order"	means a single post-deployment order for 10 or more MLS Devices, whether to a single or multiple delivery addresses;
"Bulk Return"	means the return of more than a single MLS Device to the Provider in a single delivery;
"Business Applications"	means any application that forms part of the Device configuration requirements as designated in the CBD;

TERM / EXPRESSION	MEANING
"Catastrophic Damage"	means an Apple MLS Device that has been destroyed or forcibly separated into multiple pieces or cannot be repaired and may include: disassembled units or missing parts; destroyed or forcibly separated into multiple parts; counterfeit parts; damage caused by counterfeit parts, third party parts or unauthorised modifications;
"CBD"	means the Customer Build Document, developed by the Provider for its internal use and which scopes the components of the Managed Logistics Service for the Deployment Only Service and, where applicable, the rules for managing the MLS Devices during the In Life Service;
"Change Process"	means the process by which any change to the Managed Logistics Service is requested in writing by the Contracting Authority to the Provider, and under which the Provider assesses the impact of the requested change and if such change agreed by the Provider, it shall be reflected in the CBD;
"Configuration"	means 'on-device' set-up and staging as described in the CBD, including for example account set-up, set-up of Business Applications, configuring device settings outside of factory defaults and wi-fi set-up;
"Delivery Manager"	means the Provider appointed delivery manager who will produce and agree the Delivery Plan with the Contracting Authority, and manage the deployment of the Managed Logistics Services in line with such Delivery Plan;
"Delivery Plan"	means the specified plan and execution schedule for the deployment of Managed Logistics Services, as agreed with the Contracting Authority;
"Deployment Service"	means the Configuration and/or kitting of MLS Devices for deployment following an order, as further described in Appendix 1;
"Device Build"	means the customisation of Devices with specific Business Applications and settings for the Contracting Authority in accordance with the CBD;
"Device Wipe"	means an action to remove all Contracting Authority data, including personally identifiable information, from an MLS Device in accordance with the device manufacturer's process leaving only the device operating system on such MLS Device;
"Disposal"	means the basic secure destruction and recycling of an MLS Device in line with the Waste Electrical and Electronics Equipment Directive 2012/19/EU;
"Gold Build"	means an MLS Device purchased by the Contracting Authority to test the Device Build script end to end to ensure that the content is both valid and accurate;
"IMEI"	means the unique International Mobile Equipment Identifier number associated with an individual MLS Device;

TERM / EXPRESSION	MEANING
"In-Life Service"	means the lifecycle management of MLS Devices consisting of replacing faulty or damaged MLS Devices with preconfigured Replacement MLS Devices (taken from Boot Stock) which are configured in accordance with the CBD, as further described in Appendix 1;
"Knox Mobile Enrolment"	means the Samsung device enrolment program as further set out in the O2 Knox Mobile Enrolment terms and conditions at: https://www.o2.co.uk/documents/456036/1002045/Samsung_KME_%28Knox_Mobile_Enrolment%29_Service_Schedule_from_09_May_2019.pdf/9320c171-1638-2111-7012-2fbbd9657160?version=1.0&t=1615798181200 ;
"Locked"	means an MLS Device that has a security feature or any other feature enabled that prevents the MLS Device being used by anyone other than the Contracting Authority's User;
"Managed Logistics Service"	means the Service described in this Service Schedule comprising the Deployment Service only or the Deployment Service and In-Life Service, as applicable;
"Minor Damage"	means damage to an Apple MLS Device which is not Catastrophic Damage and may include: liquid damage; chips/screen cracks; hairline crack due to impact; audio/lightning connector damage; extreme abrasion or button damage; bent or split enclosure; or microphone/speaker grill damage;
"MLS Device"	means a device which is included in the MLS Service in accordance with the terms of this Service Schedule;
"Non-Bulk Order"	means a single order for 9 or fewer MLS Devices;
"Non-Portfolio Devices"	means devices which are not O2 Portfolio Devices;
"O2 Managed Logistics Service Charter"	means the document entitled "O2 Managed Logistics Service Charter" which details the service support for the In-Life Service and is provided to the Contracting Authority at the Service Commencement Date;
"O2 Portfolio Devices"	means a device of model and type which is offered to O2 Business customers via the Provider's standard device portfolio;
"O2 Recycle"	means the process to recycle or dispose of MLS Devices via the O2 Recycle scheme, details of which can be found at https://www.o2recycle4business.co.uk/ ;
"Refurbish" or "Refurbishment"	means the restoration of the MLS Device to the standard specified in the applicable CBD;
"Repair"	means the restoration by the Provider of a faulty or damaged MLS Device to good working order;
"Replace" or "Replacement"	means an MLS Device which is added to Boot Stock in exchange for a returned MLS Device which is not capable of Repair;

TERM / EXPRESSION	MEANING
"Samsung Knox Solutions"	means the mobile cloud based solutions provided by Samsung and which collectively are; Knox Platform for Enterprise, Knox Manage, Knox Configure, Knox Enterprise Firmware-Over-The-Air, Knox Suite, Knox Capture and Knox Guard;
"Serial Number"	means the unique identifier assigned by the device manufacturer to a device;
"SDM"	means the Service Delivery Manager assigned to Contracting Authorities taking the In-Life Service, and who shall support the Contracting Authority, hold and manage regular service reviews;
"SKU"	means the stock keeping unit code that allows the Provider to build, identify and manage an MLS Device and the rules associated with that MLS Device as defined in the CBD; and
"Supported Hours"	means Monday to Friday 0800-1800hrs excluding UK bank and public holidays.

- 1.2 References to clauses and sub-clauses refer, unless otherwise stated, to clauses and sub-clauses of this Service Schedule; references to appendices are to the appendices to this Service Schedule, references to schedules are to the schedules of the Call-off Contract (as applicable) and references to paragraphs are to the paragraphs of the appendices to this Service Schedule.

2 MOBILE SERVICE

- 2.1 The Managed Logistics Service is a "Mobile Service" and the Mobile Terms and Mobile Equipment Terms apply to this Service.

3 SERVICE DESCRIPTION

- 3.1 The Managed Logistics Service consists of:
- a) the Deployment Service (as further described in Appendix 1); and
 - b) the In-Life Service (as further described in Appendix 2).
- 3.2 The Contracting Authority may purchase the:
- a) Deployment Service only; or
 - b) the Deployment Service and the In-Life Service together.
- 3.3 The variant of the Managed Logistics Service purchased by the Contracting Authority shall be set out in the Commercial Schedule or Order Form.
- 3.4 Where the Contracting Authority is taking the Managed Logistics Service with Apple Device Enrolment, Knox Mobile Enrolment or Android Zero-touch Enrolment the associated device enrolment Service Schedule terms shall also apply in respect of those MLS Devices.

4 CBD AND GOLD BUILD

- 4.1 The Provider will create one or more CBD(s) in conjunction with the Contracting Authority. In support of this the Contracting Authority agrees that it will:
- a) provide input as requested by the Provider in order that a CBD is created for each Device Build. The Provider shall have no obligation to provide the Managed Logistics Service until the input required from the Contracting Authority for each CBD has been provided;
 - b) where a Device Build requires Configuration, and unless otherwise agreed with the Provider, purchase a single Gold Build for each unique Device Build variant. MLS Devices shall be ordered by the Contracting Authority for this purpose and the Contracting Authority agrees that the

Deployment Service cannot commence until the Gold Build for each Device Build has been completed and accepted by both parties;

- c) notify the Provider if a subsequent change to the Device Build is required, allowing time for the Change Process to be actioned and for the Gold Build to be tested (if applicable), including any changes to Business Applications that form part of the Device Build; and
- d) purchase a subsequent Gold Build as required to cater for changes to the original Device Build requested by the Contracting Authority, or where a new Device Build is required due to existing MLS Devices being unavailable or end of life.

4.2 In the event of a major operating system version release which adversely affects the operation of Contracting Authority's MLS Devices such that the Gold Build no longer functions in accordance with the CBD, the Provider reserves the right to increase the Charges to reflect any additional effort that may be required to support the operating system major release on new, existing or Replacement MLS Devices.

4.3 Each CBD must be for a minimum deployment order of 100 MLS Devices (excluding Boot Stock) of the same device type and specification.

4.4 The Provider shall be entitled to reject a Contracting Authority's order in the event the Provider cannot fulfil a Contracting Authority requirement requested for inclusion in the proposed CBD.

5 CONTRACTING AUTHORITY OBLIGATIONS

5.1 Provision of both the Deployment Service and the In-Life Service is subject to the Contracting Authority:

- a) purchasing sufficient MLS Devices to enable the Provider to fulfil the CBD requirements and provide the Deployment Service and/or the In-Life Service, as applicable;
- b) where required by the CBD, purchasing Accessories and at all times ensuring sufficient stock, as advised by the SDM, is available for all deployments either by purchasing Accessories from the Provider or from a Third Party;
- c) where required by the CBD, provide Asset Tags and ship such Asset Tags to the receiving address advised by the Delivery Manager or SDM; and
- d) where the Contracting Authority has purchased devices and/or Accessories from a Third Party, shipping the devices to the receiving address advised by the Delivery Manager or SDM.

6 EXCLUSIONS

6.1 The Provider shall have no liability in respect of a failure to provide the Managed Logistics Service where such failure arises due to:

- a) the use by the Contracting Authority of applications, programmes or software on their MLS Devices that may adversely affect the provision of the Managed Logistics Service;
- b) scheduled or notified downtime of the Managed Logistics Service or its supporting systems;
- c) failures or delays by the Contracting Authority (including its agents or contractors) in providing any information requested by the Provider in support of the Deployment Service or the In-Life Service; and
- d) failures or delays in providing or shipping devices and/or Accessories to the receiving address advised by the Provider where these have been purchased by the Contracting Authority from a Third Party.

6.2 Subject to paragraph 6.4, in respect of the Deployment Service, only O2 Portfolio Devices procured from the Provider or alternatively Non-Portfolio Devices procured from the Provider shall be accepted as MLS Devices.

6.3 Subject to paragraph 6.4, in respect of the In-Life Service, only O2 Portfolio Devices procured from the Provider or Non-Portfolio Devices procured from the Provider, either of which must have been subject to the Deployment Service, shall be accepted as MLS Devices.

6.4 Where Contracting Authority devices do not fall within the categories set out in paragraphs 6.2 and 6.3, the Provider in conjunction with the Contracting Authority will assess the feasibility of those devices becoming MLS Devices.

- 6.5 The Provider shall only provide support to the Contracting Authority's designated first line support helpdesk and not directly to individual Users.
- 6.6 The following activities do not fall within the scope of the MLS Service:
- a) Devices not included in the Asset Database;
 - b) Queries relating to the operation of MLS Devices and mobile voice and data services;
 - c) Management of changes to Contracting Authority user names or cost centres;
 - d) Tariff and SIM changes for MLS Devices or related queries;
 - e) Any presence of Provider's Employees at the Contracting Authority's site unless otherwise agreed between the parties;
 - f) Management or administration of Contracting Authority operating systems; and
 - g) Third party application support including Business Applications.

7 INSURANCE

- 7.1 The Provider will insure on a 'like for like' basis any loss and/or damage to MLS Devices belonging to the Contracting Authority that are under the care, custody and control of the Provider during the provision of the Managed Logistics Service as set out in this Service Schedule.

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99. [REDACTED]

100. [REDACTED]

the 'information' and 'communication' fields. The 'information' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'communication' field is defined as:

...the study of the processes of communication production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information science' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information studies' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information technology' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information systems' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information management' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information policy' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

The 'information law' field is defined as:

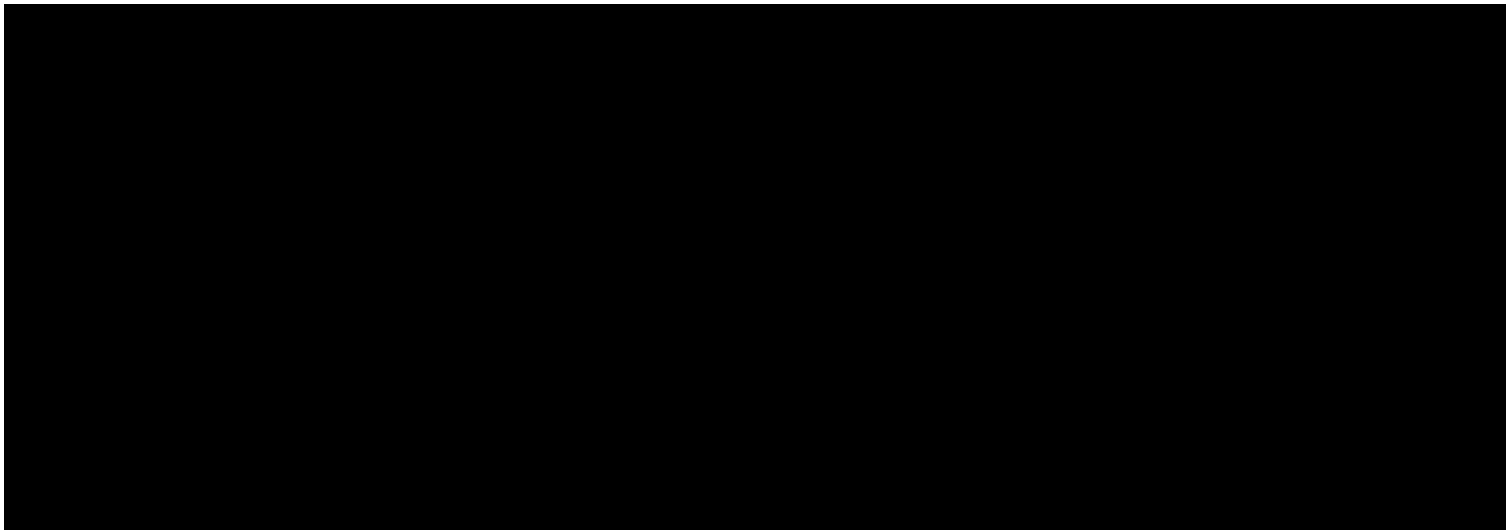
...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

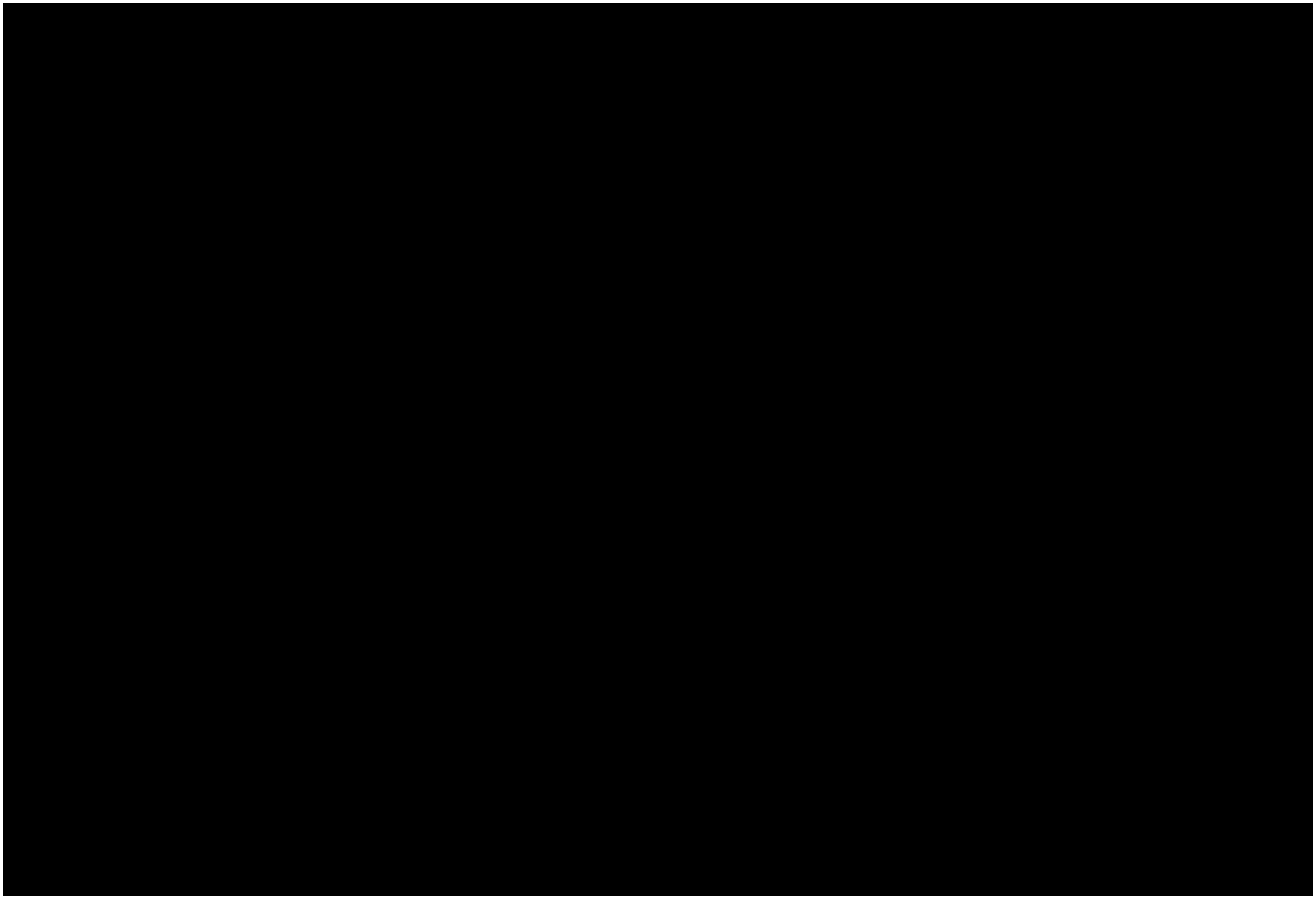
The 'information ethics' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)

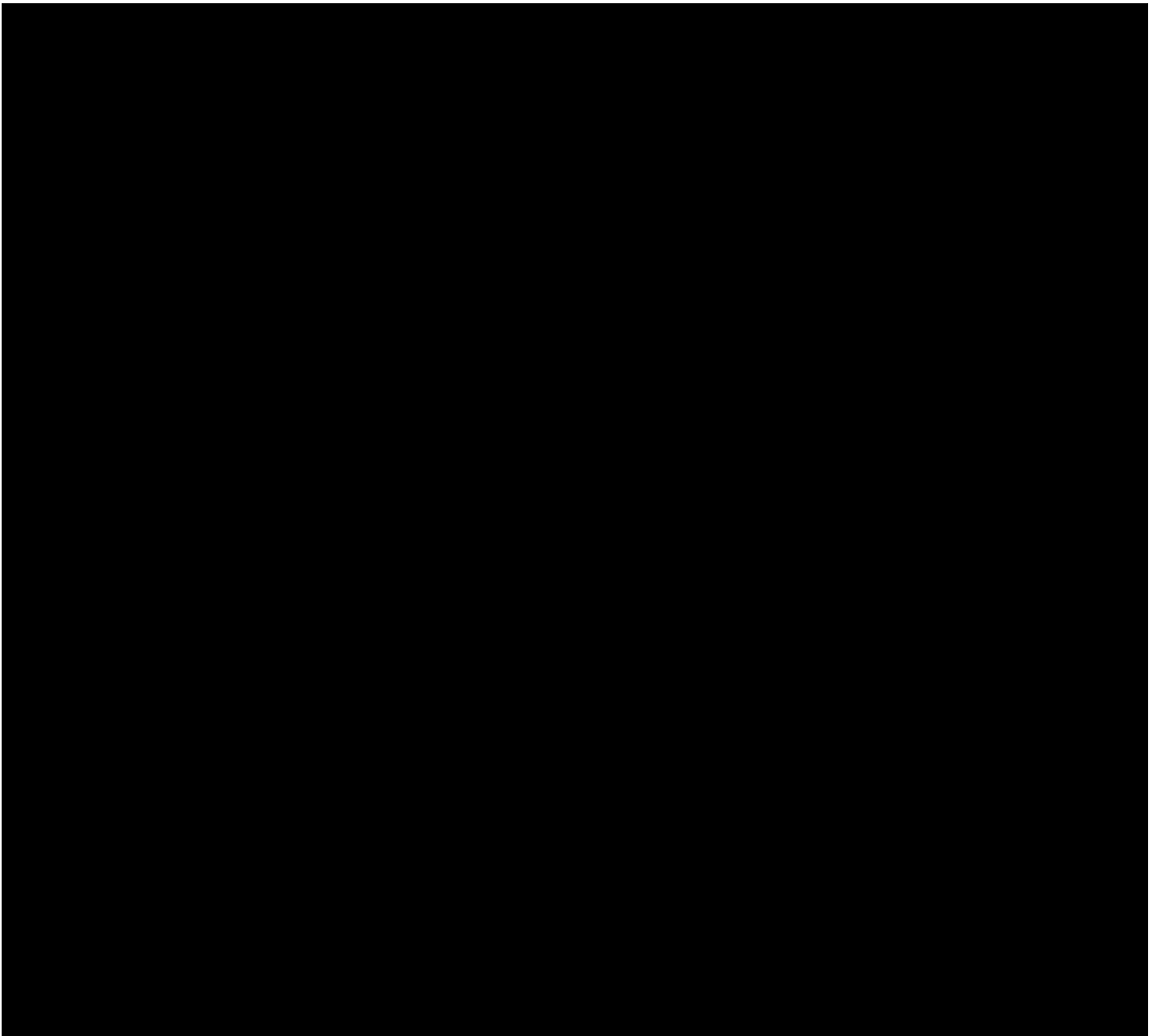
The 'information education' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 10)











APPENDIX 5

DETAILS OF PERMITTED PROCESSING

Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation:</p> <ul style="list-style-type: none">• the Provider is the Controller of personal data collected in the course of providing regulated mobile telecommunication services to Users, whereupon this Appendix 5 does not apply.• the Contracting Authority is the Controller in accordance with Clause 25.1 of the Core Terms and the Provider is the Processor, where the Contracting Authority transfers personal data to the Provider for the purpose of administering and setting up the Call Off Deliverables only, whereupon this Appendix 5 will apply.
Subject matter of the Processing	To connect data subjects to the Services pursuant to the Call-Off Contract.
Duration of the Processing	Processing will take place until the Call-Off Deliverables are no longer provided (either, as a result of termination or expiry of the Term of the Call Off Contract) except where processing of personal data is required for audit, professional and legal purposes.
Nature and purposes of the Processing	<p>For the purposes of administering and setting up the Call-Off Deliverables, namely:</p> <ul style="list-style-type: none">• allocating Users and mobile numbers;• connecting allocated mobile numbers to Provider's mobile telecommunication's network; and• if supplied as part of the Call-Off Deliverables, arranging delivery and returns of hardware.
Type of Personal Data	<p>The Contracting Authority shall only transfer personal data necessary to administer and set up the Call-Off Deliverables, including:</p> <ul style="list-style-type: none">• User name• User telephone number• User cost centre,

	<ul style="list-style-type: none"> • User / employee reference; • User home address if required for hardware delivery.
Categories of Data Subject	<p>Contracting Authority personal data - for incidental processing connected with the processing of this Contract only;</p> <p>User personal data – for the purposes of administering and setting up the Call-Off Deliverables.</p> <p>“User” means the Contracting Authority’s employees, contractors or other persons authorised by the Contracting Authority to use the Provider’s Call-Off Deliverables.</p>
Plan for return or destruction of Personal Data	<p>Personal data processed by the Provider in accordance with this Appendix 5 will be erased once processing is complete, except where retention of personal data is required for audit, professional and legal purposes or where personal data is controlled by the Provider, in which case it will be retained in accordance with the Provider’s retention policy.</p>