



## **VIRGIN MEDIA O2**

### **SUPPLIER PURCHASING TERMS AND CONDITIONS**

#### **1. RECITALS**

- 1.1. Virgin Media Limited (registered in England and Wales (Company No: 02591237)) having its registered office at 500 Brook Drive, Reading, United Kingdom, RG2 6UU (“**VM**”) and Telefonica UK Limited (registered in England and Wales (Company No: 1743099)) having its registered office at 500 Brook Drive, Reading, United Kingdom, RG2 6UU (“**O2**”) are part of a joint venture organisation, VMED O2 UK Limited. VMO2 is in the business of supplying; (i) broadband connectively to consumers and businesses, and (ii) providing telecommunications services to consumers and businesses. These standard terms govern the purchase and supply of Goods, Services and/or Software by VMO2 from Supplier, and the Supplier agrees to be bound by these standard terms and conditions (the “**Standard Terms**”). VM and/or O2 will be entitled to submit a PO to the Supplier any PO placed by VM or O2 will incorporate these Standard Terms, and the PO shall form a separate contract with the Parties stated on the PO. These Standard Terms which will prevail over any other standard terms and conditions referenced by the Supplier (including without limitation, in any documentation, proposal, invoices or any other paperwork). For the avoidance of doubt, no conduct or acceptance of a Supplier invoice will constitute the acceptance by VMO2 or an Affiliate of any Supplier terms and conditions at any point in time.
- 1.2. VMO2 will be entitled to vary the Standard Terms set out herein from time-to-time and any such variation will be binding upon Supplier with effect from the date at which the Standard Terms are uploaded to the Website. It will be the Supplier's responsibility to visit the VM or O2 Website periodically for the purpose of familiarising itself with the then current Standard Terms. Where a change to the Standard Terms: (a) has a direct, material and significant impact on the Supplier's provision of the Services or the PO, and (b) will unduly and unreasonably prejudice the Supplier, such change will be subject to mutual written agreement. If the Parties cannot reach mutual agreement, the Supplier will be entitled to terminate the PO or Services upon 30 days' written notice to the VMO2 entity named on the PO.
- 1.3. To the extent that any of the terms agreed and set out in a PO are inconsistent with any provision of these Standard Terms (other than in respect of Charges which will be stated in a PO), the variable details set out in a PO will prevail. In the event of any inconsistency between a PO and another agreement which has been entered into between VMO2 and Supplier which relates to the same subject matter and which has been signed by authorised signatories of both Parties, the terms of such agreement will prevail. For the avoidance of doubt, Supplier's agreement is with the relevant VMO2 Group entity stated on the PO and nothing contained herein will amount to a guarantee by any other VMO2 Group entity. Notwithstanding the former, the benefit of the Goods, Services or Software may be used by any entity in the VMO2 Group.

#### **2. DEFINITIONS**

The following definitions will apply to these Standard Terms:

“**Acceptance**” has the meaning given to it in Schedules 1 and/or 2 (as appropriate); “**Acquired Rights Directives**” means the Acquired Rights Directive (Council Directive (77/187/EEC) and amending Directive 98/50/EC and amending Directive 2001/23/EC; “**Affiliate**” means an entity that control, are controlled by or are under the common control of a Party and who form part of a Party's Group; “**Authorised Users**” those employees, agents, consultants and contractors of VMO2 and its Affiliates, who are authorised by VMO2 to use the Services and the Documentation; “**Bespoke IPR**” means any and all new IPRs created by or on behalf of Supplier, or jointly by or on behalf of Supplier and the relevant VMO2 Group entity, in the performance of its obligations under a PO; “**Change of Control**” occurs if any entity or person obtains ownership of more than 50% of shares carrying a right to vote in the Supplier or its holding entity or if there is a change in the ownership of the legal power to direct, or change the direction of, the general management of the Supplier; “**Charges**” means charges payable for the Deliverables as agreed between the Parties; “**Completion Date(s)**” means dates set for the delivery and/or provision of Deliverables in the PO or as otherwise agreed by the Parties in writing; “**Confidential Information**” has the meaning given to it in Clause 22.2; “**Data**” means all data, information, text, drawings and other materials which are embodied in any medium including all electronic, optical, magnetic or tangible media and which are supplied to the Supplier by VMO2 or any of its Affiliates or which the Supplier and/or any subcontractors are required to generate, collect, process, store or transmit in connection within these Standard Terms; “**Data Protection Legislation**” means all applicable laws and regulations relating to the processing of personal data and privacy in the UK including the Data Protection Act 2018, the General Data Protection Regulation 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (“**GDPR**”), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated,. The terms “**Personal Data**”, “**Controller**”, “**Processor**”, “**Data Subject**” and “**process**” (in the context of usage of Personal Data) will have the meanings given to them in the Data Protection Legislation; “**Defect**” means a material error, omission, failure, inefficiency or inconsistency in a Deliverable (and “**Defective**” is construed accordingly); “**Deliverables**” means Goods, Services or Software (as the context requires); “**Documentation**” means documentation, if any, required for the proper use of the Deliverables; “**EFM**” means an event of force majeure being one or more of the following; act of God, riot, civil unrest, military action, terrorism, earthquake, storm, flood, inability to obtain supplies of power, fuel, or transport; exercise of emergency powers by any





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governmental authority; **“Employment Liabilities”** means losses, costs, claims, demands, awards, fines, liabilities or expenses (including reasonable legal expenses) arising from the employment of any person, the termination of such employment, the operation and/or termination of any collective agreement, any dispute which relates to such employment or collective agreement or their termination and any failure to discharge in full any obligation to inform or consult appropriate representatives or any person about the transfer of employees under TUPE; **“Future Supplier”** means any third party providing deliverables to VMO2 similar to the Deliverables (or any part of the Deliverables) following the expiry or termination of a PO (in whole or in part); **“Goods”** means hardware or equipment supplied under a PO; **“Good Industry Practice”** means, in relation to any undertaking and any circumstances, the exercise of the skill, care, prudence, efficiency, foresight and timeliness which would be expected from a highly skilled, trained and experienced person under the same or similar circumstances; **“Group”** means in respect of a Party, any entity which is a subsidiary or a holding entity (including ultimate holding), and any entity which is a subsidiary of such holding entity, (the terms subsidiary and holding entity having the meanings given in Section 1159 of the Companies Act 2006 as amended), and any companies within VMED O2 UK Limited Group; **“Implementation Services”** means the professional services provided by the Supplier to VMO2 together with any related support services or training provided to VMO2 with respect to Software under Schedule 4; **“Information Retention Policy”** means the VMO2 data retention policy as set out on the Website; **“IPRs”** means any (and any rights subsisting in any) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, moral rights, database rights, know-how and Confidential Information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights; **“IR35 Rules”** means Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (as amended from time to time) and the Social Security Contributions (Intermediaries) Regulations (SI 2000/727) (as amended from time to time); **“Manufacturer”** means the manufacturer of Goods (whether or not Supplier); **“Media”** means any storage media on which any software and/or related Documentation are recorded or printed as provided by Supplier to VMO2; **“Party”** means either VM, O2, an Affiliate or Supplier and **“Parties”** will mean the Parties under a PO; **“Personal Data Breach”** means any breach of security leading to the accidental or unauthorised destruction, loss, alteration, disclosure of, or access to, Personal Data; **“PO”** means a VMO2 purchase order issued by VM or O2 for the purchase of Goods, Services or Software that references these Standard Terms; **“Premises”**

means a premises belonging to or in the control of VMO2 or such other premises as may be agreed between the Parties; **“Project Plan”** means the plan for the delivery of the Services or Software under a PO; **“Services”** means: (i) the services to be provided under a PO, or (ii) any services related to Software or the provision of Software, and where relevant includes any Documentation supplied in respect of such Services; **“Security Schedule”** as listed on the Website and updated from time-to-time. The Security Schedule is incorporated into these Standard Terms by reference. The Supplier acknowledges receipt of the Security Schedule and may at any time request VMO2 to provide it with a copy; **“Specifications”** means the description or specification of the Deliverables as agreed between VMO2 and Supplier in writing (if any); **“Software”** means the software applications provided by the Supplier as part of the Services which could include, but not be limited to, software-as-a-service, off-the-shelf software, or platform-as-a-service; **“Subscription”** the subscriptions purchased by VMO2 pursuant to a PO which entitle Authorised Users to access and use the Services and the Documentation in accordance with these Standard Terms; **“Subscription Term”** means the period of time the Authorised Users have access to the Software or the Services as stated on the PO or other Documentation; **“Supplier”** means the supplier named in the PO; **“Supplier IPR”** means any and all IPRs owned or controlled by Supplier that exist prior to the date of a PO or created after the date of a PO from developments unconnected with the Deliverables; **“Supplier Personnel”** means any person used by Supplier (directly or indirectly including any employee, consultant, agent or sub-contractor (or any employee or consultant thereof)) to perform any of its obligations under a PO; **“Support Services Specification”** means the Supplier's service standards for providing support in relation to the Services as more particularly described in a PO or other Documentation; **“Systems”** means telecommunication systems, computer programs, Software, computer and communications networks, hardware, firmware, servers, devices, cabling and related equipment, databases, the tangible media on which they are recorded and their supporting documentation, including input and output format, program listings, narrative descriptions, source code, executable code, operating instructions and user manuals; **“Third Party”** means any person or entity which is not a party to these Standard Terms, including as “Third Parties” any Affiliates of either party and contractors (including Subcontractors); **“Third Party Systems”** means Systems, the IPRs in which are owned by a third party or third parties; **“Transfer Regulations”** means: (a) the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended (“TUPE”); and (b) laws or regulations equivalent to TUPE and/or implementing the Acquired Rights Directive in countries in the European Union other than the United Kingdom; (c) and any codes, regulations or legislation that require or





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- operate to transfer the employment or engagement of employees and/or their claims in any other country; “**Website**” means <https://news.virginmediao2.co.uk/suppliers/>; “**Virus**” means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise), or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; and “**VMO2**” means jointly or singularly (as context and as per the terms of the PO dictate) VM, O2 and/or any other Affiliate who form part of the Virgin Media O2 Group and brand and place a PO with the Supplier; “**VMO2 IPR**” means any and all IPRs owned or controlled by VMO2 that exist prior to the date of a PO or are created after the date of a PO from developments unconnected with that agreement; “**VMO2 Policies**” means all policies on the Website, and any other relevant policies as advised by VMO2 from time to time. VMO2 Policies are incorporated into these Standard Terms by reference. The Supplier acknowledges receipt of the VMO2 Policies and may at any time request VMO2 to provide it with a copy; “**Warranty(ies)**” means the warranty(ies) provided by Supplier in relation to the Deliverables and those set out in Schedules 1 and/or 2 (as appropriate); “**Warranty Period**” has the meaning given to it Schedules 1 and/or 2 (as appropriate); and “**Working Day**” means between the hours of 0900 and 1730 on any day (other than a Saturday or Sunday) on which the clearing banks are open for normal banking business in England.
3. **CHANGE IN REQUIREMENTS**
- 3.1. Acting reasonably, VMO2 may at any time direct, by prior notice in writing, changes to the Deliverables and/or Specification. If any such change causes an increase or decrease in the cost or timing required to provide the Deliverables, either Party (acting reasonably) will be entitled to request an equitable adjustment to the Charges, or Completion Date, or both. Any request by Supplier for adjustment under this clause must be made within 15 calendar days from the date of receipt by VMO2 of the notification of change.
- 3.2. Supplier will not change Specifications of Deliverables without the prior written consent of VMO2 (such consent not to be unreasonably withheld).
4. **RELEVANCE OF SCHEDULES**
- 4.1. These Standard Terms (including the Schedules) will apply to the sale and purchase of Deliverables as follows:
- 4.1.1. The supply of Goods will be subject to the additional terms of Schedule 1;
- 4.1.2. The provision of Services will be subject to the additional terms of Schedule 2; and
- 4.1.3. The provision of Software will be subject to the additional terms of Schedule 3.
- 4.2. For the avoidance of doubt, Schedules 1, 2 and 3 are not mutually exclusive. Accordingly, one or more of Schedules 1, 2 or 3 may apply to the supply of each Deliverable (or part thereof).
- 4.3. If a PO does not relate to either Goods, Services or Software then the above referenced schedule(s) will not apply to that PO.
5. **VMO2 POLICIES**
- 5.1. In providing Goods, Services or Software, Supplier will comply with all VMO2 Policies. The Supplier will demonstrate to VMO2 when requested that it maintains policies which materially align with the standards and requirements of the VMO2 Policies to the extent they are applicable to the activities carried out by the Supplier. VMO2 may terminate any PO immediately by notice in writing if Supplier is in material or continuing breach of the VMO2 Policies.
6. **CHARGES AND PAYMENT TERMS**
- 6.1. Subject to Clause 3.1, Charges will be as set out in a PO and will remain fixed until completion of a PO. Except as expressly stated herein, all Charges are exclusive of VAT (if any) but otherwise fully inclusive including without limitation: (a) supply and (where applicable) delivery, off-loading and installation, (b) customs, duties and all other taxes or import levies, and (c) in the case of Goods, delivery DDP (Incoterms 2020 as may be renewed or replaced) to the relevant Premises.
- 6.2. Supplier will, following Acceptance of any Deliverables, be entitled to submit an invoice for the Charges. Each VAT invoice will include VAT amount, the PO number and any other particulars required in the PO and will be sent to the invoice address specified in the PO. VMO2 will pay Supplier within 90 calendar days from the date of receipt of a correct invoice submitted in accordance with this clause, or such other period agreed between the Parties from time to time (including as specified on the PO).
- 6.3. VMO2 reserves the right to refuse payment of part or all of any invoice which is not submitted in accordance with these Standard Terms. If either Party fails to pay any correct and undisputed amount, the other Party will be entitled to charge interest at a rate of: (i) 2% above the base rate of the Bank of England per annum (ii) 12% per annum, whichever is lower. Such interest will accrue from the due date until the date of payment. For the avoidance of doubt, any credit notes issued by the Supplier will be due immediately.
- 6.4. VMO2 and the Supplier agree that the remedies set out in the PO (including liquidated damages) (if any) are reasonable and proportionate to protect VMO2’s legitimate interest in performing as compensation.
- 6.5. Where Supplier is transacting with O2, Supplier will register for and use the electronic procedures of the Adquira e-commerce platform (“**Adquira**”) for the purpose of receiving POs and submitting and viewing invoices. In such circumstances, the Supplier agrees that it will formalise its relationship with Telefonica Compras Electrónicas, S.L. through a corresponding contract and acknowledges and agrees that in doing so, it will be required to pay certain upfront and recurring fees to Telefonica Compras Electrónicas, S.L. Where Supplier registers to use Adquira, all invoices subsequently submitted by Supplier to O2





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- must be submitted via Adquira, unless otherwise instructed by O2.
- 6.6. Where Supplier is transacting with VM, Supplier will submit all invoices to the following email address: [invoices@virginmedia.co.uk](mailto:invoices@virginmedia.co.uk).
- 6.7. Supplier will provide a statement of account promptly upon request from VMO2.
- 6.8. Where a PO is placed and the Deliverables are being provided to two or more VMO2 companies, VMO2 are entitled to split the Charges between them and will state the amount to be paid by the relevant VMO2 entity on the PO for the Supplier's invoicing purposes. For the avoidance of doubt, the VMO2 companies will have joint and several liability to the Supplier, only in this circumstance.
- 7. TERMINATION**
- 7.1. Any PO may be terminated immediately by notice in writing by either Party if the other Party commits a material, persistent or continuing breach of any term of the PO which breach is irremediable or (if such breach is remediable) the other Party fails to remedy that breach within 30 calendar days after being notified in writing to do so.
- 7.2. Any PO may be terminated by either Party if any of the following events occurs in respect of the other Party (or similar event): (a) a proposal is made for a voluntary arrangement of its affairs or of any other composition scheme or arrangement with, or for the assignment for the benefit of, its creditors; (b) a shareholder's 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); (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or for the making of an administration order, or an application is made for the appointment of a provisional liquidator; (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or (e) it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986.
- 7.3. In the case of a PO related to Goods, VMO2 will be entitled without cost or liability to terminate a PO in respect of all or part of a PO at any time up to 30 calendar days prior to the agreed date for shipping of the Goods on giving written notice to the Supplier. In the event that VMO2 terminates a PO or any part of a PO pursuant to this clause and without limiting Clause 7.5 below, VMO2 will pay the reasonable costs and expenses incurred by the Supplier in connection with the PO or part which has been terminated up to the effective date of termination provided always that the Supplier will have an obligation to mitigate such costs and expenses and to demonstrate to VMO2's reasonable satisfaction that the same have been incurred.
- 7.4. In the case of a PO relating to Software and/or Services, VMO2 will be entitled without cost or liability to terminate the PO in respect of all or part of a PO at any time on giving 30 calendar days' notice to the Supplier.
- 7.5. If at any time during the term of a PO the Supplier is subject to a Change of Control, VMO2 will be entitled to terminate that PO without penalty immediately by notice in writing.
- 7.6. If a PO is terminated for any reason: (a) any sums due to VMO2 will become immediately payable by Supplier without set-off or deduction; (b) Supplier will return all tangible property and Confidential Information belonging to VMO2 in its possession, custody or control and VMO2 will return to Supplier all of its tangible property and Confidential Information in its possession, custody or control; (c) each Party will cease use of the other Party's Confidential Information and IPRs; and (d) each Party will, at its sole option, either return or destroy all records, documentation, data, and any other information and all copies thereof which are owned by or licensed to the other Party, and on the other Party's request, a director of the recipient Party will certify in writing that the Party has complied with this clause.
- 7.7. Notwithstanding clause 7.6(d), a Party will be permitted to retain one archival copy of Confidential Information received under the PO for a period of five (5) years after the expiry of the PO (the "Retention Period") solely for the purpose of satisfying legal disclosure obligations (the "Retained Information") and provided that at all times: (i) the recipient Party maintains the Retained Information in confidence and exercises no lesser security measures and degree of care than those which it applies to its own Confidential Information; and (ii) any access to the Retained Information is on terms no less strict than these Standard Terms. Following the expiry of the Retention Period, the recipient Party will either return or destroy the Retained Information, and on the other Party's request, a director of the recipient Party will certify in writing that the Recipient has complied with this obligation.
- 7.8. Termination will not prejudice or affect any right of action or remedy already accrued to either Party.
- 7.9. Notwithstanding any termination of a PO the provisions which by their nature are intended to survive such termination will remain in full force and effect including without limitation the obligations of confidentiality.
- 7.10. Without prejudice to clause 8, If a Party (the first Party) is prevented, hindered or delayed from performing any of its obligations under a PO by an EFM which continues for more than 30 calendar days, then the other Party may immediately terminate that PO without liability to the first Party on giving written notice of termination to the first Party.
- 7.11. In the event of expiry or termination of a PO, upon request from VMO2, the Parties will agree in good faith a timetable for: (i) the provision of exit support by Supplier; and (ii) the migration of the Services to VMO2 or a Future Supplier, such migration to be completed by the end of the migration period, as agreed between the Parties.
- 8. FORCE MAJEURE**
- 8.1. Subject to the remaining provisions of this clause, to the extent that a Party is prevented, hindered or delayed from performing any of its obligations under a PO by an EFM beyond such Party's reasonable control, such Party's obligation to perform its obligations under that PO will (during the continuation of the EFM) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances.
- 8.2. Notwithstanding Clause 8.1, if Supplier claims that it is affected by an EFM, such claim will be valid only to the extent that a prudent supplier operating to standards expected of a leading supplier of the Deliverables in question could not have foreseen and prevented or avoided the effect of such EFM.
- 8.3. A Party claiming to be affected by an EFM will not be entitled to invoke the provisions of Clause 8.1 unless it performs fully the following obligations: (a) on becoming aware of any EFM it will







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have notified the other Party by the most expeditious method then available, giving details of the EFM, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue; (b) it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such EFM; and (c) as soon as reasonably practicable after the end of the EFM will notify the other Party in writing that the EFM has ended and resume performance of its obligations under these Standard Terms.

#### **9. INDEMNITY**

- 9.1. Supplier will be liable to VMO2 and (and in respect of any third party claims against VMO2), will indemnify VMO2 and hold VMO2 harmless against: (a) all claims, liability, demands, awards, proceedings, costs and expenses arising as a result of any act or omission of Supplier in the performance or purported performance of its obligations under a PO, except to the extent such claims, liability, demands, proceedings, costs or expenses are directly attributable to the proven negligence of VMO2; and (b) any costs, damages, liabilities, losses or expenses (including legal expenses) incurred by VMO2 and arising from any legal actions, claims or demands brought against VMO2 by any third party which state that VMO2's (or its sub-contractor's or agent's) possession and/or use of the Deliverables or Documentation (or any part thereof) infringes any IPRs of a third party (a "Claim").
- 9.2. If a Claim is made: (A) VMO2 will: (i) inform Supplier of it; (ii) provide Supplier (at Supplier's expense) with such assistance as Supplier may reasonably require in connection with defending the same; and (iii) make no admission of liability without Supplier's prior written consent (such consent not to be unreasonably withheld); and (B) Supplier will (i) replace the infringing material with non-infringing material that functions and performs at least as well as the infringing material and complies with any relevant Specification or other requirements of a PO, or (ii) obtain the right for VMO2 lawfully to possess and use in accordance with the provisions of these Standard Terms all the relevant Deliverables and/or documentation and to exercise the rights granted under a PO. In the event that Supplier is unable to provide either of the remedies set out in B(i) or B(ii) above to VMO2's satisfaction, Supplier will refund to VMO2 all amounts paid to Supplier under the applicable PO.

#### **10. LIMITATION OF LIABILITY**

- 10.1. Nothing will exclude or limit the liability of either Party for death or personal injury caused by its negligence, or for fraud, fraudulent misstatement or for any other liability that may not be excluded or limited by law.
- 10.2. Except for any indemnities provided by the Supplier under these Standard Terms, the aggregate liability of either Party to the other under a PO for all losses, damages, costs, claims or expenses suffered by the other arising out of or in connection with any breach by such Party of the terms of a PO or any tort or breach of statutory duty in connection with such Party's obligations under a PO will be limited to: (a) the amount recoverable will be no more than the greater of £2,000,000, or (b) 200% of the total of all sums paid or due to Supplier for Deliverables in the previous 12 month period in which the circumstances giving rise to such claim(s) arise(s). Neither Party will be liable to the other in respect of any indirect or consequential loss, irrespective of whether such loss was

foreseeable or whether the Party has been advised of the possibility that such loss may be incurred.

#### **11. MISCELLANEOUS**

- 11.1. **Entire Agreement.** Each agreement (including the terms of any relevant PO) constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the Parties, whether oral or written, in relation to such subject matter. Each Party acknowledges that in entering into a PO, including a PO, it has not relied upon, and will have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other Party unless expressly set out in the relevant agreement, PO or Specification.
- 11.2. **Severability.** If any of the provisions of a PO is invalid, illegal or unenforceable, the rest of the PO will remain in effect and such provision(s) will be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties as set out in such PO.
- 11.3. **Waiver.** No failure or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 11.4. **Relationship of the Parties.** The relationship between VMO2 and Supplier is that of purchaser(s) and supplier. Nothing in a PO is intended to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other.
- 11.5. **Assignment and Sub-contracting.** Neither Party will be entitled to assign, novate or otherwise to transfer any of its rights and/or obligations under a PO without the prior written consent of the other Party (not to be unreasonably withheld). VMO2 will be entitled to assign, novate or otherwise to transfer any or all of its rights and/or obligations under a PO to any entity of the VMO2 Group provided that it will give written notification to Supplier of any exercise of its rights under this clause. For the avoidance of doubt, the Supplier will not sell, assign, novate or otherwise transfer (including by way of power of attorney) its present and/or future rights of payment under these Standard Terms without the prior written consent of VMO2.
- 11.6. **Third Party Rights.** Save as expressly set out in a PO, the Parties intend that a person who is not a Party to a PO will have no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of a PO.
- 11.7. **Non-exclusivity.** The Supplier acknowledges that it is not the exclusive supplier to VMO2 of services the same as or similar to the Services and that VMO2 is entitled to source the same or similar services from any third party. VMO2 cannot predict the volume or value of its requirements for Services under these Standard Terms. None is guaranteed, and VMO2 makes no representation to Supplier or its Affiliate as to any minimum value or volume of business.
- 11.8. **Notices.** Any notice given under a PO by either Party to the other must be in writing and must be delivered either personally or by recorded delivery post or first class post. For notices to O2, a





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copy of any notice will also be sent by email to: [legalnotices@O2.com](mailto:legalnotices@O2.com). For notices to VM, a copy of any notice will also be sent by email to: [General.Counsel@virginmedia.co.uk](mailto:General.Counsel@virginmedia.co.uk). In the case of post, such notice will be deemed to have been served 2 Working Days after the date of posting. Notices will be delivered or sent to the addresses of the Parties on the PO or to any replacement address notified in writing by either Party. Each Party may specify by notice in writing to the other a particular individual or office holder to whom any notices served on it are to be addressed in which event a notice will not be validly given unless so addressed.

#### **12. DOCUMENTATION**

- 12.1. Supplier will provide VMO2 with all information required in order to enable VMO2 to understand and operate the Deliverable(s) (including, but not limited to installation, commissioning, operation and maintenance). VMO2 will have the right to copy, reproduce and generally use the Documentation for VMO2's own business purposes and the implementation and operation of the Goods, Services or Software. The right to copy, reproduce and use the Documentation will also extend to the VMO2's third party suppliers provided that such use is required for the purposes of providing services to VMO2 or VMO2's customers.

#### **13. SECURITY**

- 13.1. The Supplier will comply with the requirements within the Security Schedule.
- 13.2. Supplier will ensure that Supplier Personnel conform to all security, safety and works regulations and such other local instructions, as may be notified by whilst on any Premises or VMO2 customer premises. VMO2 may; (a) remove from and refuse entry and re-admission to any Premises any person who is, in the reasonable opinion of VMO2, not conforming with these requirements or is otherwise not a fit person to be allowed on premises; and/or (b) search any Supplier Personnel, their vehicles, or Goods upon entry to and departure from any Premises.
- 13.3. Supplier will use its best endeavours to ensure that Supplier Personnel are aware of and comply with these requirements and that no Supplier Personnel unwilling to comply will be engaged on any Premises.
- 13.4. The Supplier will be liable to, indemnify and hold harmless VMO2 and VMO2 Group against all: claims, liability, losses demands, awards, proceedings, costs and expenses suffered or incurred by VMO2 or the VMO2 Group arising out of or in connection with any failure to comply with the requirements of the Security Schedule.

#### **14. AUDIT AND PROVISION OF INFORMATION**

- 14.1. Supplier will, subject to agreeing confidentiality terms substantially similar to those in a PO, permit VMO2 (and its agents), as well as any representative of any regulatory authority with jurisdiction over any entity of the VMO2 Group, to inspect, review, verify and take copies of any associated records and documentation in the control or possession of Supplier and/or Supplier Personnel relating to the provision of the Deliverables or the processing of Personal Data for the purpose of auditing the work provided (including the accuracy of any amounts

invoiced under a PO), or to audit as required to fulfil any legal, regulatory, statutory or reporting obligation, or obligations to members, shareholders or clients of any entity of the VMO2 Group. VMO2 will, where reasonably possible, provide 30 calendar days' written notice to the Supplier prior to conducting an audit. Supplier will provide VMO2, at no additional cost, and its authorised representatives all reasonable assistance and information in exercising its right of audit under this Clause 14 in connection with any third party or internal audit or compliance request.

- 14.2. If an audit reveals that there has been any overpayment of the Charges, the amount of the overpayment will be reimbursed (including interest accrued at the rate set out in Clause 6) by the Supplier within 30 days of receipt of VMO2's invoice for such sum. This is without prejudice to VMO2's other rights in relation to such breach. Where the audit reveals a significant overpayment by VMO2 (in excess of 5% of the Charges properly due in the period covered by the audit), the Supplier will also reimburse the costs and expenses incurred by VMO2 in conducting the audit.

#### **15. EMPLOYMENT LIABILITIES**

- 15.1. The Parties agree that on the expiry or termination of these Standard Terms and/or Purchase Order (as the case may be), there will be no relevant transfer as defined in the Transfer Regulations and as a result no Supplier Personnel or any other individual shall transfer their employment to VMO2, VMO2 Affiliate or any Future Supplier.
- 15.2. In the event that any Supplier Personnel or any other individual brings any claim whatsoever against either VMO2, VMO2 Affiliate or any Future Supplier asserting that their employment or any liability connected with it has transferred to VMO2, VMO2 Affiliates or any Future Supplier, the Supplier shall indemnify and hold harmless VMO2, VMO2 Affiliate (for itself and as trustee for any Future Supplier), its officers, agents and employees from and against any damages, liabilities and expenses (including all legal fees and any liabilities arising as a result of any indemnity given by VMO2 to any Future Supplier) arising in relation to any such claim.

#### **16. SET-OFF**

- 16.1. Each Party will be entitled to set off any liability owed to it by the other Party against any liability it may owe to such other Party. In the case of any entity of VMO2's Group, it will further be entitled to set off any liability that it owes to the other Party against any liability such party owes to any entity of VMO2's Group. Any exercise by a party of its rights under this clause will be without prejudice to any other rights or remedies available to it under a PO.

#### **17. ANNOUNCEMENTS AND PUBLICITY**

- 17.1. Supplier will not make any announcement relating to a PO or its subject matter without the prior written approval of VMO2 except as required by law or regulatory authority.

#### **18. GOVERNING LAW AND JURISDICTION**

- 18.1. Each agreement or PO and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) will be governed by and





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interpreted in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts provided that VMO2 may apply to any court of competent jurisdiction to defend its IPRs.

#### **19. COMPLIANCE WITH LAWS**

- 19.1. In performing its obligations under a PO, Supplier will comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance (including any health and safety legislation and environmental legislation) and will not, by any act or omission, place VMO2 in violation of any applicable laws or regulations.
- 19.2. Any breach by the Supplier of Clause 19.1 will be deemed to be a material breach of these Standard Terms for the purposes of Clause 7.1.
- 19.3. In addition to and without prejudice to Clause 19.1, the Parties each agree and undertake to the other that in connection with a PO and the transactions contemplated, they will each respectively comply with all applicable laws, rules, regulations of the United Kingdom relating to anti-bribery and anti-money laundering and preventing the facilitation of tax evasion.
- 19.4. In the event that VMO2 believes in good faith that the Supplier may not be in compliance under this clause, VMO2 will advise the Supplier in writing and the Supplier will cooperate fully with any and all enquiries undertaken by or on behalf of VMO2 in connection therewith, including by making available the Supplier's Personnel and supporting documents if reasonably deemed necessary by VMO2.
- 19.5. During the term of these Standard Terms, the Supplier will not act for, or directly or indirectly provide any services, to any person or entity that:
- 19.5.1. is the subject of any economic or financial sanctions or trade embargoes implemented, administered or enforced by the United Nations Security Council, the European Union, the United Kingdom Government or any other UK government authority, the U.S. Department of the Treasury's Office of Foreign Assets Control or any other U.S. government authority; or
- 19.5.2. would (or would be likely to) conflict with the Supplier's obligations under these Standard Terms or impair the impartial performance by the Supplier of its obligations under these Standard Terms.

#### **20. DATA PROTECTION AND INFORMATION RETENTION**

- 20.1. To the extent that Supplier processes Personal Data on behalf of VMO2, VMO2 and the Supplier agree and acknowledge that for the purpose of the Data Protection Legislation, VMO2 is the Data Controller (including any Additional Data Controller) and the Supplier is the Data Processor.
- 20.2. The Supplier will only Process the Personal Data in accordance with the terms set out in Schedule 3 (Data Processing Terms) and VMO2's written instructions as provided from time to time.
- 20.3. Each of the parties shall comply with their respective obligations and may exercise their respective rights and remedies set out in Schedule 3 (Data Processing Terms).
- 20.4. The Supplier shall indemnify VMO2 and the VMO2 Group for any and all: claims, liability, losses demands, awards, proceedings, costs and expenses suffered or incurred by VMO2 or the VMO2 Group arising out of or in connection with the Supplier's acts or omissions relating to this Clause 20 and its obligations in Schedule 3 (Data Processing Terms).

- 20.5. To the extent the Supplier is an independent Data Controller in respect of any Personal Data received from VMO2 or generated by the Supplier in connection with the provision of the Goods, Services and/or Software, the parties will each be independent Data Controllers for any business contact information that is shared between them under these Standard Terms and each party will comply with the Data Protection Legislation accordingly.

#### **21. REMEDIATION**

- 21.1. If the Supplier commits a default of these Standard Terms and the default is capable of remedy, VMO2 may, at its election: (i) issue the Supplier with a remediation plan; or (ii) require that Supplier provides a remediation plan. Such remediation plan will describe the default and the actions the Supplier needs to take with respect to remedying the default (the "**Remediation Plan**"). The Supplier will carry out the actions set out in the Remediation Plan as soon as reasonably practicable (or within the time period specified in the Remediation Plan), and will take all necessary steps to ensure that the same or similar default does not occur again (such steps to be evidenced to VMO2 upon request).

#### **22. CONFIDENTIALITY**

- 22.1. Each Party will ensure that disclosure of the Confidential Information is restricted to those employees, directors or contractors, and/or members of its Group who need access to the Confidential Information for the purposes of the PO. Copies or reproductions of the Confidential Information will not be permitted except to the extent reasonably necessary for the purposes of such PO and all copies made will remain the property of the disclosing party.
- 22.2. In this clause "**Confidential Information**" will mean product, business, market, strategic or other information or data (including but not limited to information retained on all types of medium including written, diagrammatical, software or other storage medium) relating to a PO or the business or affairs of the Party disclosed whether in writing, orally or by any other means, and whether or not that information is marked "confidential" excluding any information which: (a) at the time of receipt by the recipient is in the public domain, or subsequently comes into the public domain through no fault of the recipient or its personnel; (b) is lawfully received by the recipient from a third party on an unrestricted basis; (c) is already known to the recipient before receipt under a PO; (d) is required by law, regulation or order of a competent authority to be disclosed by the recipient provided that the disclosing party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same; or (e) is disclosed by the recipient with the prior written approval of the other Party in accordance with the terms of such written approval.
- 22.3. Each Party will maintain Confidential Information in confidence and will exercise in relation to the Confidential Information no lesser security measures and degree of care than those which it applies to its own confidential information, which each Party warrants as providing the protection required by these Standard Terms against unauthorised disclosure, copying or use.

#### **23. INSURANCE**

- 23.1. The Supplier shall during the Term of these Standard Terms maintain in force at all times appropriate policies of insurance, providing in each case a range and amount of cover sufficient to





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meet the liabilities that the Supplier may incur under or in connection with these Standard Terms. The Supplier shall on request of VMO2 from time to time, provide VMO2 with certificates of insurance for each type of insurance held.

**24. IPR**

- 24.1. Any VMO2 IPRs supplied to the Supplier by VMO2 and/or its sub-contractor(s) are supplied solely for the purposes of the Supplier performing its obligations under the PO. VMO2 IPR vests in and remains with VMO2 and nothing in these Standard Terms will transfer ownership, or any aspect of ownership in and to VMO2's IPRs to Supplier or be deemed to grant to Supplier any rights or interest or a licence of VMO2's IPR except as expressly set out herein.
- 24.2. The Supplier warrants that all Supplier IPRs vest in and remain with the Supplier and/or its sub-contractor(s) as the case may be and Supplier warrants that:
- 24.2.1. it has the right to use and/or exploit such Supplier IPRs as envisaged under these Standard Terms; and
- 24.2.2. the Supplier IPRs and the use by VMO2 of Supplier IPRs does not infringe the rights of any third party.
- 24.3. Without prejudice to clause 10.2 above, VMO2's remedy and the Supplier's liability, for any breach of this Clause 24 will be as set forth in clause 9.1(B) above.
- 24.4. Supplier grants to VMO2 an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Supplier IPR and to allow members of the VMO2 Group to do the same. VMO2 may also assign or sub-licence its licence to use the Supplier IPR (or any part thereof) to any third party supplier to whom it may outsource the operation of a part of VMO2's operations or business or to a third party customer to whom VMO2 may provide services provided that such third party's use, copying, installation, maintenance, modification, enhancement and adaptation is solely for the purpose of, in the case of a VMO2 Supplier, providing a service to VMO2 and, in the case of a VMO2 customer, using the services provided by VMO2.
- 24.5. In respect of Bespoke IPR, the Parties will clearly identify in writing which of the IPRs ownership options set out in clause 24.6 will apply. If the Parties fail to enter into discussions or to reach agreement in relation to the ownership of such Bespoke IPR, clause 24.6(a) below will apply.
- 24.6. The options for ownership of Bespoke IPR will be as follows:

- 24.6.1. VMO2 exclusively owns the Bespoke IPR (in which case Supplier agrees to take all such actions and to execute all such documents, including but not limited to an assignment of all future rights in and to the Bespoke IPR, as may be necessary to enable VMO2 to obtain, defend or enforce its rights to use the Bespoke IPR, and will not do or fail to do any act which would or might prejudice VMO2's rights);
- 24.6.2. Supplier exclusively owns the Bespoke IPR (in which case Supplier grants to VMO2 an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Bespoke IPR and to allow members of the VMO2 Group to do the same); or
- 24.6.3. The Bespoke IPR is owned jointly by both Parties. In this case each Party grants the other Party a royalty free, irrevocable, perpetual and transferable licence to use the Bespoke IPR.

**25. SURVIVAL OF PROVISIONS**

- 25.1. Clauses 1, 6, 7, 9, 10, 11, 13, 14, 15 16, 18, 20 (to the extent that a Party retains Personal Data provided by the other Party), 22, 24 and 26 will survive termination of that PO, for whatever reason.

**26. MITIGATION**

- 26.1. Each Party will use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with these Standard Terms, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in these Standard Terms. Each Party will act in good faith when exercising its rights under these Standard Terms.

**27. EXECUTION**

- 27.1. A PO may be executed using electronic signatures, electronic copies, and counterparts. Any acceptance of a PO by the Supplier in writing or by their positive act of performing or supplying the Deliverables will be deemed acceptance of these Standard Terms.







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#### **SCHEDULE 1**

#### **TERMS SPECIFIC TO GOODS**

**1. RIGHT TO INSPECT**

- 1.1. Supplier will, at VMO2's request and where possible, allow VMO2 to inspect and test the Goods prior to despatch to the Premises. If as a result of any inspection or testing VMO2 is not satisfied with the Goods, and VMO2 so informs Supplier within 7 calendar days of such inspection or testing, VMO2 will not be deemed to have accepted such Goods, and VMO2 will not be obliged to pay any relevant Charges until the non-compliance is remedied. No such inspection will diminish or otherwise affect Supplier's obligations. VMO2 will also be entitled to terminate the PO at its sole discretion.

**2. DELIVERY AND ACCEPTANCE**

- 2.1. Supplier will, at its own expense, deliver the Goods during a Working Day, properly packed in accordance with industry standards and secured to the place specified in the PO or such other location in the UK as may subsequently be advised in writing by VMO2. All Goods will be delivered by the relevant Completion Dates, and time will be of the essence in relation to delivery of the Goods.
- 2.2. Supplier will supply VMO2 in good time with any instruction or other information required to enable VMO2 to take delivery of the Goods.
- 2.3. VMO2 will accept Goods after Supplier has demonstrated to VMO2's satisfaction that the Goods: (i) comply with the PO; (ii) are in accordance with the Specification, and "**Acceptance**" will be construed accordingly.
- 2.4. VMO2 may reject any Goods delivered earlier or later than the relevant Completion Date, unless previously agreed in writing by the Parties provided that VMO2 will use its reasonable endeavours to accommodate deliveries effected prior to the relevant Completion Date.
- 2.5. If the Goods (or any parts of them) are not delivered by the relevant Completion Date, VMO2 may terminate in whole or in part the relevant PO without cost or liability. Where VMO2 exercises this option: (a) Supplier will refund to VMO2 in full any payments made by VMO2 to Supplier in respect of such Goods; (b) no further payment will be due from VMO2; (c) following receipt of payment in full by VMO2 of all monies due to it in relation to the Goods in respect of which a PO has been terminated (whether in whole or in part), VMO2 will make such Goods available for collection by Supplier and Supplier, will collect such Goods at its own expense within 5 Working Days of payment, and if Supplier fails to collect within this period, VMO2 may dispose of such Goods in its absolute discretion without notice or liability to Supplier; (d) title in the Goods will revert to Supplier following receipt by VMO2 from Supplier of payment in full of the refund due to VMO2; and (e) risk in the Goods will revert immediately to Supplier.
- 2.6. Supplier undertakes at its own expense to repair or replace (at the option of VMO2) Goods lost or damaged in transit, and Acceptance will not be deemed to have taken place until

replacement or repaired items have been delivered to the satisfaction of VMO2.

**3. RISK AND TITLE**

- 3.1. Without prejudice to VMO2's other rights under a PO: (a) title in the Goods will pass to VMO2 on delivery of the relevant Goods, and (b) risk in the Goods will pass to VMO2 on Acceptance save where the PO includes installation, in which case risk will not pass to VMO2 until completion of the installation work.
- 3.2. VMO2 will be entitled to resell the Goods either on a standalone basis or as part of a package along with other goods and services.

**4. WARRANTIES**

- 4.1. Supplier will provide VMO2 with the benefit of any Manufacturer's warranties in respect of the Goods and additionally Supplier warrants to VMO2 as follows: (a) Supplier holds absolute legal and beneficial title in and to the Goods and has the unfettered right to sell and supply them and to pass good unencumbered title to VMO2, (b) the Goods are manufactured, supplied and installed in accordance with VMO2 Policies, new and unused, of satisfactory quality and conform in all respects to their description and with the Specification, (c) the Goods will be free from Defects whether actual or latent and whether in design, material or workmanship (d) the Goods will comply in all material respects with all relevant statutory requirements and standards issued from time to time by the International Organisation for Standards (ISO), ITU-T and any other applicable organisation or recognised standards body, (e) the Documentation provided by Supplier in respect of the Goods are or will be of such a standard as to enable suitably trained personnel of VMO2 to understand, operate and maintain the Goods to a level of competence sufficient for VMO2's business purposes, (f) where Supplier modifies the Goods or any part of the Goods for VMO2, such modification will not materially reduce the functionality of the Goods save to the extent that may be agreed by VMO2 in writing prior to Supplier carrying out such modification, (g) the Goods do not contain any of the Conflict Minerals (as defined in the relevant VMO2 Policy); and (h) it has and will maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under these Standard Terms, a PO or a Specification. The Goods will conform with each Warranty for 12 months or such other period agreed to in writing by the Parties from the date of Acceptance (the "**Warranty Period**").
- 4.2. If any of the Goods are in breach of any Warranty during the Warranty Period, Supplier will (at VMO2's option and without prejudice to any of its other rights or remedies): (a) repair the Goods promptly at the Premises (and where that is not possible repair the Goods and redeliver to VMO2) or (b) replace the Goods promptly with Goods that conform with the Warranties. This will be at no cost to VMO2. If Supplier fails to repair or replace any Goods within a reasonable period determined by





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- VM02, VM02 may either itself or through a third party, repair or replace the Goods and set off the cost of doing so against any sum VM02 owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. VM02's rights and remedies are in addition and without prejudice to its other rights and remedies at law.
- 4.3. The Warranties apply equally to any Goods repaired or replaced in which case the Warranty Period will be the longer of the remainder of the original Warranty Period or 6 months from the date of receipt of the repaired or replaced Goods by VM02 (or such other period agreed to in writing by the Parties).
- 4.4. VM02's rights under a PO are in addition to the statutory conditions (if any) implied in favour of VM02 by the Sale of Goods Act 1979, the Consumer Rights Act 2015, Supply of Goods and Services Act 1982, and any successor or equivalent legislation.





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#### **SCHEDULE 2**

#### **TERMS SPECIFIC TO SERVICES**

##### **1. GENERAL**

- 1.1. Supplier will provide the Services during Working Day(s) (unless otherwise agreed with VMO2) at the place specified in the PO or such other location as may subsequently be advised in writing by VMO2. All Services will be delivered by the relevant Completion Dates, and time will be of the essence. If the Services (or any parts of them) are not provided by the relevant Completion Date, VMO2 may terminate in whole or in part the relevant PO without cost or liability. Where VMO2 exercises this option: (a) Supplier will refund to VMO2 in full all payments made by VMO2 to Supplier in respect of any Services; (b) no further payment will be due from VMO2 in respect of any Services and Supplier will continue to provide the Services free of charge until the Service are completed; and (c) a full refund will be due to VMO2 in respect of any payments already made. Where Supplier is in possession of VMO2's property in pursuance of providing the Services, it will at its own expense repair or replace (at the option of VMO2) any such property that is lost or damaged while in Supplier's possession to the satisfaction of VMO2.
- 1.2. VMO2 will accept Services immediately after Supplier has demonstrated to VMO2's satisfaction that the Services: (i) comply with the PO pursuant to which they are supplied; (ii) comply with the relevant PO; and (iii) are in accordance with the Specification, and "Acceptance" will be construed accordingly for the purposes of this Schedule 2.

##### **2. WARRANTIES**

- 2.1. Supplier warrants to VMO2: (a) that it will ensure that Supplier Personnel will use all skill, care and diligence as would be expected from a skilled and experienced supplier engaged in the same type of business as Supplier and will be performed by employees, authorised agents and sub-contractors possessing the appropriate accreditations, skills and experience for all tasks assigned to them; (b) that Supplier Personnel will carry out the Services in such a way as, (i) not to cause any material fault or malfunction in the Deliverables, (ii) not to cause any material interruption to VMO2's business (other than any agreed downtime and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner), (iii) to comply in all material respects with VMO2 Policies, (iv) to work in a co-operative manner with VMO2 and VMO2's suppliers (where the provision of the Services interact with services of other suppliers) and ensure the effective performance of the Services, and (v) to comply with the service levels (if any); (c) that the Services will conform in all material respects to the relevant Specification and service levels (if any) and will comply in all material respects at the time the relevant Service is performed with all statutory requirements or regulations or any other standards relating to the Services and their supply, that have been issued by any recognised and appropriate standards bodies; (d) that any Deliverables produced by Supplier in the course of performing Services will comply with the applicable Warranties set out elsewhere in these VMO2 Standard Terms;

(e) it will operate PAYE in respect of all income received by individuals involved in the supply of Deliverable and/or performance of a PO; (f) it has not entered into and will not enter into any contracts or arrangements with any third party in connection with a PO that give rise or will give rise to any obligation of VMO2 under the IR35 Rules; (g) it will respond to VMO2 upon request from time to time to confirm that the circumstances described in paragraphs 2.1(e) and (f) of this Schedule 2 still exist; and (h) has and will maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under these Standard Terms, a PO or a Specification.

- 2.2. If any of the Services performed are found to be in breach of any Warranty, Supplier will (without prejudice to its other rights or remedies) re-perform the Services promptly at the Premises. This will be at no cost to VMO2. If Supplier fails to re-perform the Services within a reasonable period determined by VMO2, VMO2 may either itself or through a third party, re-perform the Services and set off the cost of doing so against any sum VMO2 owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. VMO2's rights and remedies are in addition and without prejudice to its other rights and remedies at law.
- 2.3. The Warranties apply equally to Services re-performed.

##### **3. SUPPLIER OBLIGATIONS**

- 3.1. The Supplier will use all commercially reasonable endeavours to continuously improve the Services and the service levels (if any) and the efficiency and cost effectiveness of the provision of the Services such that, as practical and appropriate, the Charges can be reduced or the value for money to VMO2 of the Services can otherwise be improved. The Supplier will, at VMO2's request, prepare a written plan which will include a plan for identifying, monitoring and achieving continuous Service delivery, service level improvement (if any) and cost improvements and efficiencies. The Supplier will report the results of such plan to VMO2 (at VMO2's request). If VMO2 wishes to implement any improvements, the Supplier will use all commercially reasonable endeavours to implement the improvements as soon as possible, at a cost to be agreed by the Parties (and to be borne by VMO2).
- 3.2. The Supplier will take all reasonable efforts to ensure continuity of Supplier Personnel, and will notify VMO2 (where possible, with 30 calendar days' written notice) if any key Supplier Personnel are replaced or are to be replaced, where such replacement would materially affect the Supplier's performance of their obligations under these Standard Terms.



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**SCHEDULE 3**

**TERMS SPECIFIC TO SOFTWARE**

**1. SUBSCRIPTION**

- 1.1. The Supplier grants to VMO2 and its Authorised Users a non-exclusive, non-transferable right to access and use the Software, Services and the Documentation during the Subscription Term for VMO2's business operations.
- 1.2. VMO2 shall not knowingly: (A) distribute or transmit to the Supplier, via the Services, any Viruses; (B) store, access, publish, disseminate, distribute or transmit via the Services any material which: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or (vi) is otherwise illegal or causes damage or injury to any person or property; and the Supplier reserves the right, on no less than thirty (30) days' prior written notice to VMO2, such notice specifying the breach of this clause and requiring it to be remedied within the thirty (30) day period, to disable VMO2's access to the Services for the duration of time that the breach remains unremedied.
- 1.3. VMO2 shall not:
  - 1.3.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Standard Terms, attempt to decompile, disassemble, reverse engineer or otherwise attempt to derive source code from the Software;
  - 1.3.2. use the Services and/or Documentation to provide software-as-a-service, for any service bureau or time-sharing purposes, or in any other way allowing third parties to exploit the Software;
  - 1.3.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
  - 1.3.4. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this paragraph 1.3.
- 1.4. VMO2 shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, if there is any such unauthorised access or use, promptly notify the Supplier.
- 1.5. The rights provided under this paragraph 1 are granted to VMO2 and any member of VMO2 Group.

**2. SERVICE LEVELS AND SUPPORT SERVICES**

- 2.1. The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to VMO2 on and subject to the terms of these Standard Terms.
- 2.2. The Supplier shall make the Services available in accordance with any services levels in the PO or the Documentation.
- 2.3. Unless stated otherwise on the PO or in agreed Documentation, the Supplier warrants and guarantees the Services availability will not drop below 99.9% per month. If the Services availability drops below 99.9% during three (3) consecutive calendar months, VMO2 may terminate the PO on notice in writing to the Supplier.
- 2.4. The Supplier will, as part of the Services and at no additional cost to VMO2, provide VMO2 with the Supplier's standard maintenance (including bug fixes, maintenance releases, new versions, major releases or other updates of the Software that it makes commercially available to any of Supplier's customers) and support services during normal business hours in a Working Day in accordance with the Supplier's Support Services Specification ("Support Services").
- 2.5. Without limiting any of the Supplier's other obligations under these Standard Terms, as part of the Support Services the Supplier shall utilise and implement such tools and procedures as are reasonably necessary to:
  - 2.5.1. monitor, manage, measure and report on the performance of the Services in relation to the Service Levels and otherwise in accordance with these Standard Terms; and
  - 2.5.2. detect, prevent, minimise and remedy any problems with, or disruption to, the Services.

**3. IMPLEMENTATION SERVICES (IF APPLICABLE)**

- 3.1. In accordance with the Project Plan, the Supplier shall perform Implementation Services as is necessary to configure and prepare the Software to enable VMO2 to use the Services by or on the Subscription start date. The Supplier shall:
  - 3.1.1. provide the Implementation Services promptly, efficiently, and with all due skill, care and diligence, in a good and workmanlike manner and at a minimum in accordance with Good Industry Practice;
  - 3.1.2. ensure the Supplier Personnel possess the relevant qualifications, professional competence and experience at a level appropriate to perform the Implementation Services in accordance with Good Industry Practice;
  - 3.1.3. assume full responsibility for the management of all Supplier Personnel;





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- 3.1.4. be responsible for the acts and omissions of the Supplier Personnel; and
- 3.1.5. ensure that the Supplier Personnel pro-actively and fully co-operate with VMO2 employees, consultants, and agents and any VMO2 Third Parties and comply with the reasonable instructions of VMO2 in providing the Implementation Services.
- 3.2. The Software shall be subject to Acceptance testing and the Supplier shall, at its own cost, provide VMO2 with all information, materials and assistance reasonably required in connection with the granting of Acceptance for the Software and “Acceptance” will be construed accordingly for the purposes of this Schedule 3.
- 3.3. If VMO2 notifies the Supplier that it rejects the Software, the Supplier shall within three (3) Working Days of receipt of such notice, at its own cost remedy and resubmit the Software for Acceptance. If Acceptance of the Software has not been given within five (5) Working Days of the resubmission, VMO2 may elect to:
  - 3.3.1. require further remediation and resubmission of the Software by the Supplier (in which case this paragraph shall apply to the Software upon each resubmission);
  - 3.3.2. accept the Software at a reduced price agreed between the parties; or
  - 3.3.3. reject the Software and, without prejudice to any other remedy VMO2 may have, terminate these Standard Terms or the relevant PO.
- 3.4. The Supplier shall not be entitled to charge for any costs incurred in correcting defects or re-submitting the Software for Acceptance.
- 3.5. Acceptance of Software shall take place when VMO2 notifies the Supplier in writing of such Acceptance. Acceptance of the Software shall in no circumstances be deemed to have taken place in the absence of express written notification of such Acceptance by VMO2.

#### **4. SUPPLIER’S OBLIGATIONS**

- 4.1. The Supplier shall provide the Services and Implementation Services (if applicable) in accordance with: (i) the terms of these Standard Terms and the relevant PO or Documentation; (ii) the Services Specification; (iii) the Project Plan; (iv) the service levels; and (v) Good Industry Practice.
- 4.2. The Supplier represents and warrants that: (i) the Services be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier in writing prior to entering the relevant agreement or PO; (ii) it shall comply with VMO2 Policies; (iii) it shall comply with (and not cause or lead VMO2 to be in breach of) any Applicable Laws or any relevant union and industry agreements; and (iv) the Services will not in any manner or way infringe or violate any Intellectual Property Rights, trade secrets, or rights in proprietary information, nor any contractual, employment

or property rights, duties of non-disclosure or other rights of any third parties.

#### **5. VMO2’S OBLIGATIONS**

- 5.1. VMO2 shall:
  - 5.1.1. provide the Supplier with: (i) all necessary co-operation in relation to these Standard Terms; and (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to VMO2 Data, security access information and configuration services; and
  - 5.1.2. ensure that its Systems comply with the relevant specifications provided by the Supplier.

#### **6. VMO2 DATA AND IT SECURITY REQUIREMENTS**

- 6.1. The Supplier acknowledges and agrees that VMO2 possesses and retains all right, title and interest in and to VMO2 Data, and the Supplier’s use and possession thereof is solely on VMO2’s behalf and Supplier shall not use VMO2 Data for any purpose other than for the purpose of providing the Services.
- 6.2. The Supplier shall be certified and maintain any relevant industry/ISO standard and accreditation applicable to the Services and shall provide evidence of such certification(s) and accreditation(s) upon the request of VMO2.
- 6.3. The Supplier shall (and shall ensure each of its Supplier Personnel):
  - 6.3.1. comply with any security requirements of VMO2 in place from time-to-time;
  - 6.3.2. ensure that only those of its personnel access the VMO2 Systems and VMO2 Data as are necessary to provide the Implementation Services;
  - 6.3.3. take all necessary steps (and ensure that its personnel take all necessary steps) to: (i) ensure that no Virus is contained in or affects the Services as at the date of delivery by the Supplier to VMO2 of such items; (ii) prevent any Viruses being introduced via the Supplier owned Systems into VMO2’s Systems; and
  - 6.3.4. use the current release of recognised market leading Virus detection software.
- 6.4. If a Virus is contained in or affects the Services and this is caused by any act or omission of the Supplier, the Supplier shall immediately notify VMO2 and shall take all necessary steps to remedy the problem, remove the Virus and prevent its reoccurrence.
- 6.5. The Supplier shall indemnify VMO2 Group for any and all losses incurred or suffered by them as a result of the Supplier’s breach of this paragraph 6.
- 6.6. For the avoidance of doubt, the Supplier’s obligations under this paragraph 6 are in addition to its obligations under Clause 20 (Data Protection and Information Retention) of these Standard Terms and Schedule 4 (including to the



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extent that any VMO2 Data is “**Personal Data**” under the Data Protection Legislation).

#### **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. VMO2 acknowledges and agrees that the Supplier and/or its licensors own all IPRs in the Services and the Documentation. Except as expressly stated in these Standard Terms, these Standard Terms do not grant VMO2 any rights to, under or in, any IPRs or any other rights or licences in respect of the Services or the Documentation.
- 7.2. The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with these Standard Terms

#### **8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 8.1. The Supplier shall defend and indemnify VMO2, the Authorised Users, its officers, directors and employees against any and all claims, liability, losses, demands, awards, proceedings, costs and expenses suffered or incurred or paid by VMO2 arising out of or in connection with any claim brought against VMO2 for actual or alleged infringement of a third party's IPRs in any jurisdiction.
- 8.2. If the Supplier is required to indemnify VMO2 under this paragraph 8, VMO2 shall:
- 8.2.1. notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at paragraph 8.1) (“**IPR Claim**”);
  - 8.2.2. allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Supplier shall obtain VMO2's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - 8.2.3. provide the Supplier with such reasonable assistance regarding the IPR Claim as is required by the Supplier, subject to reimbursement by the Supplier of VMO2's costs so incurred; and
  - 8.2.4. not, without prior consultation with the Supplier, make any admission relating to the IPR Claim or attempt to settle it, provided that the Supplier considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of VMO2 into disrepute.
- 8.3. If any IPR Claim is made or in VMO2's reasonable opinion, is likely to be made against VMO2 or any member of VMO2 Group, the Supplier shall: (i) procure the right for VMO2 to continue using the Services; or (ii) replace or modify the Services without a reduction or alteration in functionality, compatibility or use of the Services so that they become non-infringing and in any event the indemnity given by the Supplier under this paragraph shall also apply to any such modification or replacement.
- 8.4. If the Supplier fails to comply with paragraphs 8.3(i) or 8.3(ii) within thirty (30) days of notice of an IPR Claim then

without prejudice to VMO2's other rights and remedies under any provision of these Standard Terms (including the indemnity given by the Supplier in Clause 9), VMO2 shall be entitled:

- 8.4.1. to a refund from the Supplier for that proportion of the Charges paid by VMO2 having regard to the length of time for which VMO2 has used the Services which are subject to the IPR Claim; and
  - 8.4.2. to terminate the relevant PO (in whole or in part) by notice with immediate effect.
- 8.5. The Supplier shall not be liable to VMO2 under the indemnity given by it in paragraph 8 to the extent that the infringement is based on: (i) a modification of the Services or Documentation by anyone other than the Supplier or its agents, subcontractors or partners or without the Supplier's consent or approval; or (ii) VMO2's use of the Services or Documentation otherwise than in accordance with the Documentation; or (iii) VMO2's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier.

#### **9. REPRESENTATIONS AND WARRANTIES BY THE SUPPLIER**

- 9.1. In addition to any other warranties and representations given by the Supplier elsewhere in these Standard Terms, the Supplier represents and warrants to VMO2 that:
- 9.1.1. it has full capacity, power and authority to enter into, deliver and perform its obligations under and in accordance with these Standard Terms and each PO (and all other documents to be entered into by it under these Standard Terms);
  - 9.1.2. there are no existing agreements or arrangements with third parties or orders, judgements or decrees the terms of which prevent the Supplier from entering into these Standard Terms and each PO;
  - 9.1.3. it has (and will continue to have or hold) all necessary licences, permits, consents and regulatory approvals from relevant regulators necessary to perform its obligations under these Standard Terms;
  - 9.1.4. it will co-operate with VMO2 in all matters relating to the Services and comply with VMO2's reasonable instructions;
  - 9.1.5. it will not do or omit to do anything which may cause VMO2 to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
  - 9.1.6. it will notify VMO2 in writing immediately upon the occurrence of a Change of Control of the Supplier.



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**SCHEDULE 4**

**DATA PROCESSING TERMS**

1. **Definitions**

<b>"Additional Data Controller"</b>	an Affiliate listed in Appendix 1 of this Schedule that is not a party to these Standard Terms, but is a Data Controller in relation to its own Personal Data which it provides to the Data Processor;
<b>"Appropriate Technical and Organisational Measures"</b>	<p>means processes and procedures such that having regard to the state of technological development and the cost of implementing them, the nature of the Personal Data and the Processing that will be undertaken in relation to the Personal Data, will ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing of, or accidental loss or destruction of, or damage to, the Personal Data. Such measures shall comprise the following and any additional measures from time to time notified in writing by the Data Controller to the Data Processor:</p> <ul style="list-style-type: none"><li>(a) treating and safeguarding the Personal Data as strictly private and confidential and taking all steps necessary to preserve such confidentiality;</li><li>(b) using the Personal Data only for the purpose(s) prescribed by the Data Controller and for not any other purposes;</li><li>(c) minimising, to the fullest extent possible, the disclosure of Personal Data to third parties; (such disclosure to be strictly as is necessary to enable the Data Processor to discharge its obligations to the Data Controller and undertaken only once the Data Controller's consent has been obtained in accordance with paragraph 3.2.4);</li><li>(d) informing the Data Controller, as soon as reasonably practical, if the Data Processor becomes aware of or suspects that a Personal Data Breach has occurred;</li><li>(e) making the Personal Data available to Personnel strictly on a 'need to know' basis and procuring that all Personnel members to whom it discloses Personal Data are made aware that the Personal Data is Confidential Information and subject to the obligations set out in this Schedule and the Standard Terms or PO;</li><li>(f) ensuring that all Personnel and Sub-Processors comply with this Schedule;</li><li>(g) copying, reproducing or distributing Personal Data only to the extent necessary to enable the discharge of obligations under this Schedule and for no other purpose; and</li><li>(h) ensuring the ongoing confidentiality, integrity, availability and resilience of processing systems and services associated with the Processing of the Personal Data;</li><li>(i) maintaining the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident affecting the Processing of the Personal Data; and</li><li>(i) maintaining a process for regular testing, assessment and evaluation of the security measures required by this Schedule.</li></ul>
<b>"Data Controller"</b>	has the meaning given in the Data Protection Legislation;
<b>"Data Processor"</b>	has the meaning given in the Data Protection Legislation;
<b>"Data Protection Legislation"</b>	means all applicable laws and regulations relating to the processing of personal data and privacy in the UK including the Data Protection Act 2018, the General Data Protection Regulation 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("GDPR"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated;
<b>"Data Subject"</b>	has the meaning given in the Data Protection Legislation;
<b>"Personnel"</b>	means all employees, officers, contractors, consultants, agency workers and agents of the Data Processor and/or of any Sub-Processor;



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<b>"Personal Data"</b>	means any personal data or sensitive personal data (as defined in the Data Protection Legislation) which are subject to, or intended to be subject to, Processing by the Data Processor for or on behalf of the Data Controller;
<b>"Personal Data Breach"</b>	means any breach of security leading to the accidental or unauthorised destruction, loss, alteration, disclosure of, or access to, Personal Data;
<b>"Processing"</b>	has the meaning given in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;
<b>"Restricted Transfer"</b>	means a transfer of Personal Data outside of the UK to a country which is not deemed to provide an 'adequate' standard of protection of personal data by the UK Government;
<b>"Sub-Processor"</b>	means any Processor engaged by the Supplier (or by any other Sub-Processor) for carrying out any processing activities in respect of the Personal Data and authorized by the Data Controller in accordance with 3.2.4; and
<b>"UK SCCs"</b>	means the International Data Transfer Addendum to the Standard Contractual Clauses as approved by the European Commission by its Implementing Decision (EU) 2021/914 of 04 June 2021 ("EU SCCs"), issued by the ICO on 21 March 2022 for the transfer of personal data in the UK to third countries, as updated from time to time.

1.1 Unless otherwise expressly defined or stated in this Schedule:

1.1.1 references to any paragraphs in this Schedule are to paragraphs within this Schedule. Any references to Clauses in this Schedule are to clauses within the UK SCCs;

1.1.2 defined terms in this Schedule shall have the same meaning given in the Standard Terms or PO; and

1.1.3 the Supplier's obligations and VMO2's rights and remedies under this Schedule are cumulative with, and additional to, one another and those under any other provisions of these Standard Terms.

## 2. **SCOPE**

2.1 VMO2 and the Supplier agree and acknowledge that for the purpose of the Data Protection Legislation, VMO2 is the Data Controller (including any Additional Data Controller) and the Supplier is the Data Processor and each party (and each of Supplier Personnel) will comply with the Data Protection Legislation in connection with the Processing of Personal Data and the provision of the Services.

2.2 The Data Controller retains control of the Personal Data and the Data Processor will only Process the Personal Data as is necessary to provide the Services in accordance with the terms and conditions of the PO and any separate written instructions of the Data Controller. The Data Processor will not Process the Personal Data for any other purpose or in a way that does not comply with the terms of this Schedule or the Data Protection Legislation.

## 3. **PROCESSING OF PERSONAL DATA**

3.1 The Data Processor agrees and warrants that it:

3.1.1 is subject to the restrictions on the categories of Data Subjects, categories of Personal Data and Processing

activities as set out in Appendix 1;

3.1.2 has implemented the technical and organisational security measures specified in Appendix 2 before Processing the Personal Data and the Data Processor shall maintain such measures for as long as it is Processing the Personal Data;

3.1.3 shall, as soon as reasonably practical, notify the Data Controller about:

a) any request for disclosure of the Personal Data by a law enforcement authority or any non-legally binding request, unless otherwise prohibited;

b) any Personal Data Breach; and

c) any request received directly from the Data Subjects without responding to that request, unless it has been authorised by the Data Controller to do so.

3.2 The Data Processor shall, at no additional cost:

3.2.1 act only in accordance with the Data Controller's written instructions (which may be specific instructions or instructions of a general nature as set out in Appendix 1 or as otherwise notified by Data Controller to the Data Processor during the Term) as part of providing the Services to Data Controller (including without limitation, instructions in relation to the return or destruction of Personal Data). In the event that a legal requirement prevents the Data Processor from complying with such instructions the Data Processor shall, unless such legal requirement prohibits it from doing so, immediately inform the Data Controller of the relevant legal requirement before carrying out the relevant processing activities;





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- 3.2.2 undertake to ensure the reliability of Supplier Personnel engaged in the performance of the Services and this Schedule who have access to or process the Personal Data processed as part of providing the Services and further undertakes to make those Supplier Personnel aware of its obligations under this Schedule, particularly with regard to the confidentiality and security of, and the requirement to process, the Personal Data only in accordance with this Schedule and Data Protection Legislation;
- 3.2.3 at all times during which the Data Processor is Processing Personal Data, implement, regularly test and maintain Appropriate Technical and Organisational Measures to protect against and prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, personal data, including, but not limited to, the measures set out in this Schedule and in Appendix 2;
- 3.2.4 not sub-contract any of its data processing obligations to another party without the prior written consent of the Data Controller. Notwithstanding the foregoing, as at the date of the PO, the Data Controller has pre-approved the Sub-Processors listed in Appendix 1. Where Data Controller gives such written consent to any proposed Sub-Processor, and prior to the Data Processor allowing a Sub-Processor to access or process the Personal Data, the Data Processor shall in all cases:
- a) be fully liable to Data Controller for the performance of a Sub-Processor's obligations and for the acts and omissions of a Sub-Processor as if they were the acts or omissions of the Data Processor itself; and
  - b) ensure that the Sub-Processor is bound by data protection obligations and written terms that are substantially the same as the obligations and terms contained in this Schedule;
  - c) notify the Data Controller of any changes to the Sub-Processors listed in Appendix 1 (including the proposed appointment of any new Sub-Processors) at least 60 days prior to any change taking effect, and the Data Controller shall have 30 days to notify the Data Processor of any reasonable objections to the proposed change or appointment of Sub-Processor. The Data Processor shall not allow any proposed Sub-Processor to Process any Personal Data until it has taken the steps to address any objections raised by the Data Controller to the satisfaction of the Data Controller.
- 3.2.5 save for the passing of Personal Data to Sub-Processors approved by the Data Controller to the extent required for the purpose of performing the Services, not disclose the Personal Data to any third party in any circumstances other than in compliance with the Data Controller's prior written consent and/or instructions or in compliance with a legal obligation. The Data Processor shall, save where prohibited by law and as soon as reasonably practical, notify the Data Controller of any legal obligation which requires the Data Processor to disclose the Personal Data to a third party;
- 3.2.6 as necessary co-operate with and assist the Data Controller promptly to enable Data Subjects to exercise their rights under the Data Protection Legislation, within the timescales reasonably specified by Data Controller, including without limitation in connection with any of the following types of request:
- a) rights of Data Subjects, pursuant to paragraph 6.2.8;
  - b) notices served by the Information Commissioner or any other regulator of Data Protection Legislation; and
  - c) Articles 32-36 (inclusive) of UK GDPR;
- 3.2.7 promptly, but always within 1 Business Day of receipt, forward to Data Controller any requests, complaints, notices or other communication from Data Subjects, the Information Commissioner or any other law enforcement agency relating to Personal Data for Data Controller to resolve and:
- a) not respond directly to the Data Subject unless otherwise agreed by an authorised representative of Data Controller;
  - b) provide to Data Controller all the information necessary or take all necessary action to fulfil a Data Subject Request within a timeframe sufficient to enable Data Controller to respond to the Data Subject Request within 14 days; and
  - c) comply with any supplementary requests from Data Controller arising from any unresolved Data Subject Request.
- 3.2.8 permit Data Controller (and procure that its Sub-Processors permit Data Controller) access to any facilities, premises or equipment from or on which Personal Data is, has been, or is to be Processed pursuant to this Schedule (including any such facilities, premises or equipment used by Supplier Personnel and/or Sub-Processors) as the Data Controller may reasonably require to enable it to monitor compliance by the Data Processor with the obligations in this Schedule;
- 3.2.9 as soon as practicable, and in any event within 24 hours, notify Data Controller of any Personal Data Breach. The Data Processor shall assist the Data Controller with any investigation into and remediation of a Personal Data Breach. The Data Processor shall also provide the Data Controller with reasonable assistance with any notifications made to relevant authorities and/or Data Subjects in relation to a Personal Data Breach;
- 3.2.10 comply with the provisions of any of Data Controller's data protection policies as notified from time to time; and
- 3.2.11 The parties agree that where the transfer of Personal Data from the Data Controller to the Data Processor would involve a Restricted Transfer:



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- a) the UK SCCs shall apply, together with the relevant details set out in Appendix 3 (the UK Addendum to the EU SCCs);
- b) where requested by the Data Controller the Data Processor (and its Sub-Processors (as applicable)) shall, assist the Data Controller with any transfer impact assessment the Data Controller undertakes; and
- c) the Data Processor (and its Sub-Processors (as applicable)) will comply with the safeguards set out in paragraphs below and provide the Data Controller the information and documentation reasonably requested to demonstrate compliance with these safeguards.

3.2.12 Where there is a Restricted Transfer of Personal Data from the Data Controller to the Data Processor, the Data Processor agrees on behalf of itself and its Sub-Processors (as applicable):

- a) it shall regularly review and assess the applicable law(s) governing access to the Personal Data by any governmental or public authorities in countries in which it processes the Personal Data, and will promptly inform the Data Controller in the event of a change in applicable law that would materially and adversely impact the rights and freedoms of data subjects and the level of protection for the Personal Data and/or has the consequence that the Data Processor cannot comply with its commitments under this Schedule (a "Material Adverse Change"); and
- b) in the event of a Material Adverse Change, the parties shall discuss the situation and the Data Processor shall use all reasonable endeavours to identify and implement appropriate measures promptly to the Data Controller's reasonable satisfaction to ensure continued adequate protection for the Personal Data, such as additional or alternative technical and organisational measures, taking into account state of the art, the costs of implementation and the nature, scope, context and purposes of Processing;
- c) in the event that the Data Processor receives a non-legally binding request from a public authority or other third party for disclosure of the Personal Data ("Non-Binding Request"), the Data Processor shall discuss such request with the Data Controller and the parties shall agree on an appropriate response taking into account applicable Data Protection Legislation. A data access or disclosure request by a public authority may also qualify as a Non-Binding Request if the public authority that issued the request has no competence or jurisdiction to make a legally binding data access or disclosure request in the country in which the entity receiving the order is located or if the data

access or disclosure request was not served in compliance with applicable laws; and

- d) in the event that Data Processor receives a legally binding data access or disclosure request or demand, including legally binding from a jurisdictional perspective ("Binding Request"), by a public authority or other third party to disclose the Personal Data, Data Processor shall comply with the following procedure set out below in addition to the requirements under Clause 15 of the EU SCCs:
  - (i) the Data Processor shall notify the Data Controller promptly, unless prohibited under applicable law, and, if prohibited from notifying the Data Controller, use all reasonable and lawful endeavours to obtain the right to waive the prohibition in order to communicate as much information to the Data Controller as is possible;
  - (ii) the Data Processor shall use all reasonable endeavours to redirect the third party to request data directly to the Data Controller;
  - (iii) the Data Processor shall carefully review each and every Binding Request individually and, on a case-by-case basis, determine whether any further legal actions or challenges are available under applicable law to object to the Binding Request and thereby to prevent the disclosure of the Personal Data to the public authority or third party. The Data Processor shall use all reasonable and lawful endeavours to challenge the order for disclosure on the basis of any legal deficiencies under the laws of the requesting party or any relevant conflicts with the law of the UK;
  - (iv) the Data Processor shall use all reasonable endeavours to assist the Data Controller and the data subjects concerned in exercising rights, including data subject rights, including help with seeking redress before a court and/or data protection authority;
  - (v) when disclosing any Personal Data to a public authority or other third party based on a Binding Request, the Data Processor shall ensure that it only discloses the minimum amount of the Personal Data possible by diligently reviewing and determining the scope and nature of the Binding Request. In the case of uncertainty and/or an unspecified scope, Data Processor shall clarify the scope of the Binding Request (in particular, regarding the categories of Personal Data and affected data subjects) with the



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- public authority or other third party to reduce the disclosure of the Personal Data to the absolute minimum; and
- (vi) before disclosing any Personal Data to a public authority or other third party, the Data Processor shall notify and provide the Data Controller with the details of the proposed response to the Binding Request;
- 3.2.13 The Data Processor warrants for itself and its Sub-Processor(s), as applicable, that they:
- a) have not purposefully created, or are not legally required by applicable law to create or maintain, any means by which a public authority or third party can bypass their security mechanisms, authentication procedures and/or software to gain access to and/or use their systems and/or the Personal Data, such as a back door or similar programming, or the handover of the encryption key to access the Personal Data;
  - b) have not purposefully created or changed their business processes, security mechanisms, software and/or authentication procedures in a manner that facilitates access to their systems and/or the Personal Data by public authorities or third parties; and
  - c) have not and shall not purposefully create or change its business processes in a manner that facilitates access by third parties to the Data Controller Personal Data not in accordance with this Schedule.
- 3.2.14 If the Data Controller becomes aware of the existence of a backdoor or similar programming as described above, the Data Controller is entitled to suspend the transfer of the Personal Data. With regard to Personal Data already transferred to the Data Processor, the Data Processor shall promptly securely encrypt the Personal Data which are accessible via backdoors, hand over the encryption key to the Data Controller and delete the encryption key immediately. Data Processor and the Data Controller shall enter in good faith negotiations on how to proceed.
- 3.2.15 Nothing in paragraphs 3.2.12, 3.2.13 or 3.2.14 shall require Data Processor to take action that would be in breach of applicable laws and / or result in civil or criminal penalties such as contempt of court under the laws of the relevant jurisdiction.
- 3.2.16 The Data Processor (and its Sub-Processor(s), as applicable), shall adopt any additional supplementary measures to protect the Personal Data in accordance with the requirements of applicable Data Protection Legislation, including by implementing Appropriate Technical and Organizational Measures, such as encryption or similar technologies, access controls or other compensating controls, to protect the Personal Data against any interference that goes beyond what is necessary in a democratic society to safeguard national security, defence and public security.
- 3.2.17 The Data Processor shall put in place such measures and enter into such agreements in order to ensure that any transfer of Personal Data outside of the United Kingdom complies with the requirements of the Data Protection Legislation on Personal Data transfers outside of the United Kingdom.
- 3.2.18 The Data Processor shall only process or transfer the Personal Data outside of the United Kingdom or to any third party if and for so long as:
- a) The UK Government has deemed that an adequate level of data protection legislation is in place (an "Adequacy Decision") in the territory to which the Personal Data is transferred; or
  - b) the international transfer or onward international transfer is subject to a derogation in accordance with Article 49 UK GDPR; or
  - c) it is made in accordance with Article 46 UK GDPR (including where (i) UK SCCs are in place between the data sender and data recipient or (ii) pursuant to any Binding Corporate Rules that are in place).
- 3.2.19 In the event that the Data Processor (and/or its Sub-Processor(s), as applicable) cannot provide any of the safeguards set out in this Schedule (or alternative appropriate safeguards in a timely manner), the Data Controller may terminate the agreement, PO or the relevant Services at its discretion at any time without any liability towards the Data Processor.
4. **OWNERSHIP OF DATA**
- 4.1 The Data Processor acknowledges and agrees that the Personal Data and all other material and data supplied to the Data Processor by the Data Controller pursuant to this Schedule are and shall remain the absolute property of the Data Controller and the Data Processor shall never at any time have any rights or title to the Personal Data.
5. **ASSISTANCE AND WARRANTIES**
- 5.1 The Data Processor shall give the Data Controller reasonable assistance in relation to the Data Controller's compliance with Data Protection Legislation in relation to the Personal Data. This shall include, without limitation, providing the Data Controller, with reasonable assistance in relation to any privacy impact assessments required by Data Protection Legislation.
- 5.2 The Data Processor represents and warrants that the Processing of Personal Data by the Data Processor in accordance with this Schedule shall not cause the Data Controller or require any person to be in breach of the Data Protection Legislation.
6. **TERM**
- 6.1 This Schedule will remain in full force and effect so long as:
- 6.1.1 the agreement, PO or Services remain in effect; or
  - 6.1.2 the Data Processor retains any of the Personal Data related to the agreement or PO in its possession or control (Term).



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**7. DELETION/RETURN**

- 7.1 At the end of the Term, the Data Processor shall immediately cease Processing the Personal Data and securely delete the Personal Data (unless the Data Controller directs otherwise in writing), including any Personal Data held in physical form and all electronic forms of the Personal Data held in its databases and destroy all backup or archive copies of the Personal Data and furnish the Data Controller with a certificate signed by a duly authorised director of the Data Processor certifying the same has been done unless a legal requirement entitles the Data Processor to retain the Personal Data in which case, the Data Processor shall inform Data Controller of such legal requirement.

**8. SURVIVAL**

- 8.1 This Schedule shall survive termination or expiry of these Standard Terms for any reason.





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**APPENDIX 1**

**Data Processing Details**

The Data Processor may only process Personal Data for the purposes set out in this Appendix 1 and the agreement or PO. The Data Processor warrants and agrees that it is subject to the restrictions on the categories of data subject, categories of personal data, subject matter and nature of processing and the processing activities as set out in this Appendix. Capitalised terms shall be as defined in the Schedule or, failing that, as defined in Data Protection Legislation.

<b>Data Controller</b>	[INSERT].
<b>Additional Data Controller(s)</b>	[INSERT].
<b>Data Processor(s)</b>	[INSERT].
<b>Subject Matter of Processing</b>	[INSERT].
<b>Nature &amp; Purpose(s) of Processing</b>	[INSERT].
<b>Duration of the Processing</b>	The duration of the Processing will be limited to the earlier of, expiry of the term or termination of the Schedule.
<b>Data Subjects</b>	The Personal Data processed shall concern the following categories of Data Subjects only (please specify): [INSERT].
<b>Categories of Personal Data</b>	The Personal Data processed shall concern the following categories of data only (please specify): [INSERT]
<b>Special categories of data (if applicable)</b>	The Personal Data processed shall concern the following special categories of data only (please specify): [INSERT]
<b>Processing operations</b>	The Personal Data processed will be subject to the following basic processing activities (please specify): [INSERT]
<b>Data Retention once processing is complete</b>	The Personal Data shall be deleted immediately once Processing is complete (unless the Data Controller instructs otherwise in writing).
<b>Processing Locations</b>	The Processing activities will be carried out in the following locations (please specify). Where the location is outside of the UK or the European Economic Area please specify the proposed transfer mechanism and security measures used, if different to Appendix 2. [INSERT]



**VIRGIN MEDIA O2**  
**SUPPLIER PURCHASING TERMS AND CONDITIONS**

**Sub-Processors**

The Processing activities will be carried out using the Sub-Processors in the table below, in order to perform the Services and in accordance with the terms and conditions applicable to the Sub-Processors as described in this Appendix.

SUB-PROCESSOR	PROCESSING ACTIVITIES	CATEGORIES OF PERSONAL DATA	LOCATION OF DATA PROCESSING	TRANSFER MECHANISM (IF APPLICABLE)



**VIRGIN MEDIA O2**  
**SUPPLIER PURCHASING TERMS AND CONDITIONS**

**APPENDIX 2**

**Technical and Organisation Measures to Safeguard Personal Data**

The Data Processor shall implement and maintain the technical and organisational security measures set out in VMO2 Security Schedule which can be found here: [Supplier Policy and Contracting Conditions | About O2](#)



**VIRGIN MEDIA O2**  
**SUPPLIER PURCHASING TERMS AND CONDITIONS**

**APPENDIX 3**

**UK SCCs – Details to be Incorporated**  
**(International Data Transfer - Addendum to EU SCCs)**

VERSION B1.0, in force 21 March 2022

**Part 1: Tables**

**Table 1: Parties**

The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
<b>Parties' details</b>	Full legal name: see Appendix 1 Trading name (if different): N/A Main address (if a company registered address): see agreement or PO Official registration number (if any) (company number or similar identifier): See agreement or PO	Full legal name: see Appendix 1 Trading name (if different): N/A Main address (if a company registered address): see agreement or PO Official registration number (if any) (company number or similar identifier): see agreement or PO
<b>Key Contact</b>	Full Name (optional): Job Title: Data Protection Officer Contact details including email: <a href="mailto:DPO@virginmedia.co.uk">DPO@virginmedia.co.uk</a>	Full Name (optional): Job Title: Contact details including email:

**Table 2: Selected SCCs, Modules and Selected Clauses**

<b>Addendum EU SCCs</b>		<input type="checkbox"/> The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information:  Date:  Reference (if any):  Other identifier (if any):  Or  <input checked="" type="checkbox"/> the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum:				
Module	Module in operation	Clause 7 (Docking Clause)	Clause 11 (Option)	Clause 9a (Prior Authorisation or General Authorisation)	Clause 9a (Time period)	Is personal data received from the Importer combined with personal data collected by the Exporter?





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1	N/A – Module not in use	N/A – Module not in use	N/A – Module not in use	N/A	N/A	N/A
2	X	Not applied	Not applied	Prior Authorisation	30 (thirty) days	N/A
3	N/A – Module not in use	N/A – Module not in use	N/A – Module not in use	N/A – Module not in use	N/A – Module not in use	N/A
4	N/A – Module not in use	N/A – Module not in use	N/A – Module not in use	N/A	N/A	N/A – Module not in use

**Table 3: Appendix Information**

“**Appendix Information**” means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

Annex 1A: List of Parties: The parties listed in Table 1

Annex 1B: Description of Transfer: See Appendix 1

Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data: See Appendix 2

Annex III: List of Sub processors (Modules 2 and 3 only): See Appendix 1

**Table 4: Ending this Addendum when the Approved Addendum Changes**

<b>Ending this Addendum when the Approved Addendum changes</b>	Which Parties may end this Addendum as set out in Section 19: <input type="checkbox"/> Importer <input checked="" type="checkbox"/> Exporter <input type="checkbox"/> neither Party
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**Part 2: Mandatory Clauses**

Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.