

## Standard Terms and Conditions of KCOM Group PLC for the provision of Mobile Services

### 1 TERM

- 1.1 This Contract will come into effect on the date it is signed by both parties and continue until the expiry of all of the Unit Agreements.
- 1.2 The Unit Agreements will commence on the Service Start Date and continue for the Initial Term. Following the expiry of the Initial Term the Unit Agreement will continue unless and until terminated by either party giving the other no less than 30 days' prior written notice, such notice to expire on or after the expiry of the Initial Term.
- 1.3 If We agree to upgrade one of Your Mobile Handsets then the Initial Term of the applicable Unit Agreement will re-commence from the date that upgrade is made. We may make an additional charge for upgrading your Mobile Handset. We will always give you notice of the amount of any additional charges before agreeing to make the upgrade.
- 1.4 If We agree to upgrade one of your Mobile Handsets so that it can support a new Mobile Data Service connection, then the Initial Term of the applicable Unit Agreement will re-commence from the date that upgrade is made. The Initial Term will not be extended in this way where We are able to provide a new Mobile Data Service connection to an existing Mobile Handset.

### 2 SUPPLY OF MOBILE COMMUNICATIONS EQUIPMENT

- 2.1 We will supply to You the Mobile Communications Equipment specified on the signature page or ordered pursuant to clause 4.
- 2.2 Delivery of the Mobile Communications Equipment will occur at the time it is delivered to the address which You specify.
- 2.3 If You:
  - (a) fail to give Us all the necessary instructions and documents to effect delivery of the Mobile Communications Equipment or otherwise cause or request a delay; or
  - (b) fail to take delivery of the Mobile Communications Equipment on the date of delivery,
 

We will be entitled (but not obliged) to store the Mobile Communications Equipment at your risk and You will pay all reasonable costs and expenses of such storage and any additional costs of carriage incurred.
- 2.4 Where We are responsible for the transportation and delivery of the Mobile Communications Equipment, You will notify any claim in respect of non-delivery, loss and/or damage to the Mobile Communications Equipment as soon as You become aware (or ought reasonably to have become aware) of such non-delivery, loss or damage and in any event within 3 calendar days of the date (or expected date) of delivery of the Mobile Communications Equipment.
- 2.5 Risk in the Mobile Communications Equipment will pass to You upon delivery.
- 2.6 Title in the Mobile Handset will pass following payment of the Charges pursuant to clause 6.4
- 2.7 In the event that there is a material defect in any Mobile Communications Equipment so that it no longer conforms to the manufacturer's specification in a material way, We will replace the Mobile Communications Equipment provided that:
  - (a) You make a full inspection of the Mobile Communications Equipment as soon as reasonably practicable after delivery;
  - (b) You do not use the Mobile Communications Equipment in any way except in accordance with the User Guide and any additional instructions or advice given by the manufacturer;
  - (c) You do not tamper with or alter the Mobile Communications Equipment in any way;
  - (d) You notify Our Customer Care Team immediately You become aware of a defect; and
  - (e) the Mobile Communications Equipment is returned to Us.
 

If at the time your replacement is delivered, You do not make the defective Mobile Communications Equipment available for our collection, You must return the defective Mobile Communications Equipment to Us immediately at your expense.
- 2.8 We will have no liability for any defect with any Mobile Communications Equipment caused by accidental damage or other factors that are external to the equipment, fair wear and tear excepted.
- 2.9 We will have no liability for any defect or breach of warranty under clause 2.7 after 12 months from the Service Start Date of the relevant Unit Agreement or if You

have terminated the relevant Unit Agreement prior to the expiry of that 12 month period.

- 2.10 Where We replace any Mobile Communications Equipment under the warranty given in clause 2.7, we will replace the equipment with an identical or similar item. The replacement equipment may be either a new or refurbished item. We reserve the right to vary, substitute or discontinue the supply of any item of Mobile Communications Equipment at any time.
  - 2.11 Any SIM Card supplied by Us will only enable a Mobile Handset to work within the existing Mobile Network unless Roaming has been added to the Service.
  - 2.12 SIM Cards provided by Us do not belong to You but You must take care of them and do everything reasonable to prevent their theft, loss or unauthorised use. We may recall a SIM Card from You at any time to improve or maintain the quality of Service. On termination of each Unit Agreement, if asked by Us, You must return the respective SIM Card immediately.
  - 2.13 If a SIM Card or Mobile Handset is lost, stolen, damaged, destroyed or is likely to be used in an unauthorised way, You must inform Our Customer Care Team and/or Your internal IT Helpdesk promptly. You will be responsible for all Charges incurred in the period before such notification and We reserve the right to charge You for the cost of a replacement SIM Card or Mobile Handset.
- ### 3 PROVISION OF THE MOBILE SERVICE
- 3.1 We will use reasonable skill and care in the provision of the Service.
  - 3.2 If You wish to have a Mobile Extension or service, O<sub>2</sub> will provide the Link at your request and You must enter into a separate agreement with O<sub>2</sub> for the Link.
  - 3.3 We will use reasonable endeavours to provide the Service to You at all times, however, You acknowledge that:
    - (a) the Service is not available in parts of the United Kingdom outside the range of the Mobile Network;
    - (b) quality or availability of the Service may be affected by matters outside our control including, without limitation,
    - (c) physical obstructions, atmospheric conditions, radio interference and faults on other networks;
    - (d) if Roaming is provided it may not be available in certain areas or certain countries;
    - (e) the Mobile Network may sometimes need maintenance or upgrading and this could mean that the Service will be unavailable from time to time;
    - (f) for operational efficiency We may limit the number and length of any voicemail messages that You may leave on any voicemail facility;
    - (g) We may need to temporarily suspend provision of the Service for operational reasons, in an emergency or for your security;
    - (h) We may have to alter the number of a Mobile Communications Equipment, or any other name, code or number associated with the Service; and
    - (i) We do not warrant error free or uninterrupted use of the Service.
  - 3.4 We do not guarantee the continuing availability of any particular Service and You acknowledge that We may be dependant upon third parties when providing the Service (including, without limitation, O<sub>2</sub>). We are not responsible for any failure related to those services to the extent that such failure is attributable to O<sub>2</sub>. Notwithstanding any other provision of this Contract but subject to clause 12.1 We will not be liable to You in contract, tort (including negligence) or otherwise for the actions of any third party (including without limitation acts or omissions of the Network Operators) that affect or impact upon the provision of the Service.
  - 3.5 You may submit a request to Us to transfer the telephone number(s) for a Mobile Handset to another network. We will use reasonable endeavours to arrange this upon payment of our standard fee for this service and providing that at the time of the request, all Charges which have been invoiced and are due have been paid.
  - 3.6 We cannot guarantee that We can provide Services to a specific Mobile Handset number(s) where such number has been transferred to the KCOM Network from another Network Operator or where there are national code or number changes. We will not be liable for any loss or damage You will incur due to your inability to receive any incoming telephone calls to such Mobile Handset number.

### 4 SALES ORDERS

- 4.1 At any time after the date of signature of this Contract You will be entitled to:
  - (a) request new Unit Agreements;
  - (b) request additional Mobile Communications Equipment; and/or
  - (c) request Additional Services.
- 4.2 Any request, pursuant to clause 4.1, should be made to Our Customer Care Team. You should give details of the Mobile Communications Equipment required, the quantity and the dates from which You would like the Service. We will inform You of any additional Charges and the likely delivery dates.
- 4.3 No order pursuant to clause 4 will be accepted until it has been confirmed by Us to You in writing or by email. We are not obliged to process or accept any order submitted by You.
- 4.4 Unless agreed otherwise in writing any orders will be governed by the terms of this Contract only. If You submit any orders or requests for Additional Services it will always be on the basis that the terms of this Contract apply.

### 5 USE OF THE SERVICE

- 5.1 You will and will procure that any Users use the Mobile Communications Equipment and the Service only in accordance with our instructions as may be notified in writing from time to time, as described in the User Guide, this Contract and in accordance with relevant provisions of the Act, any licences (where applicable) and any Legislation.
  - 5.2 You will not and will procure that any User or third party will not use or permit any User or third party to use the Service in any way in connection with any message or communication which is offensive, abusive, indecent, obscene or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is illegal, fraudulent, defamatory, an act of treason or intended to be a hoax call to any emergency service or which (in our reasonable opinion) brings Our name into disrepute or in any way which intentionally causes damage or disruption to the Service or the Mobile Network.
  - 5.3 You must not disclose to any third party any personal codes, numbers, names or passwords issued by Us to enable You to access the Service. You must not use the Mobile Communications Equipment for any criminal or other illegal activity.
  - 5.4 Both parties agree to co-operate fully with the Police and any other relevant authorities (including, but not limited to, the Inland Revenue, the Trading Standards Service and/or OFCOM and any successor from time to time) in connection with any misuse or suspected misuse of the Service and You consent to Us co-operating with any other telecommunications operators in connection with any fraudulent activity related to or connected with the Service and agree We will be entitled to divulge the name and address of You to any such body and account information relating to the Customer to such third parties.
  - 5.5 If You intend to install a Mobile Handset in a vehicle it is your responsibility to ensure that the vehicle is suitable and that (where required) its owner agrees to such installation. It must be fitted by a competent installer.
  - 5.6 You must inform Us in writing prior to using any SIM card(s) supplied under this Contract in a GSM Gateway Device, so that We may register such usage with O<sub>2</sub>. If You fail to comply with this clause this will be a material breach and will entitle Us to terminate this Contract. O<sub>2</sub> may object to Your use of a GSM Gateway Device and You agree to cease such use in this event. Any unregistered GSM Gateway Devices may result in the Service being disconnected without prior notice.
- ### 6 CHARGES
- 6.1 You will pay Us all appropriate Charges at the times and frequencies as set out in this clause 6.
  - 6.2 You are responsible for all Charges accruing from the delivery of the Mobile Communications Equipment whether or not You personally used the Service.

- 6.3 The rental Charges (set out on the signature page) will be payable monthly in advance commencing on the Service Start Date. The call Charges (as detailed on the signature page) will be payable monthly in arrears.
- 6.4 The Charges for the provision of Mobile Communications Equipment (if any) will be payable following delivery.
- 6.5 Save as permitted by clause 6.6 We will be entitled to vary the Charges, subject to such variations not taking effect prior to the end of the Initial Term (if any). Such variation will be effective not less than 30 days after We have given You written notice of such changes.
- 6.6 We will be entitled to vary the Charges at any time if O<sub>2</sub> varies its charges to Us. Such variations will be effective after We have given You notice of them.
- 6.7 Unless otherwise agreed You must arrange activation of SIM Cards with Us within 90 days of delivery of a Mobile Handset. Failure to do so will entitle Us to start charging You rental Charges from the expiry of that 90 day period.
- 6.8 All Charges due will be payable within 30 days of the date of the relevant invoice or bill and must be paid in full without any set-off, deduction or withholding of any kind. We may reserve the right to charge daily interest on any outstanding amounts until payment is received in full from You at a rate of 2% per annum above the base rate of National Westminster Bank plc as current from time to time whether before or after judgment and/or suspend the Service (either in whole or in part) until all Charges have been paid in full.
- 6.9 We may apply a usage limit to your account and will keep You informed of that limit and any changes to it. If the usage limit is met during any billing period, We will contact You. If agreement cannot then be reached with You, We reserve the right to suspend the Service.
- 6.10 If at any time during this Contract in our reasonable opinion your financial standing changes adversely or You persistently default in paying the Charges, then We may request a security deposit against non-payment. If You fail to pay such security deposit within 10 Working Days then We reserve the right to suspend and/or terminate this Contract with immediate effect by giving written notice.
- 6.11 All Charges are exclusive of value added tax and any other applicable taxes which may be levied from time to time.
- 6.12 You agree that We may invoice You for any call Charges or other usage Charges made under this Contract at any time up to 12 months following on from the date on which the relevant call or other usage occurred.
- 6.13 Where any Charges or other monies properly due to Us or any member of the KCOM Group under this Contract or any other agreements are outstanding We will be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under this Contract or any other agreements under which We or any member of the KCOM Group provide You with telecommunications or data services.
- 7 AGREED USAGE**
- You must use enough minutes to reach the Agreed Usage Charge (if any). In the event that you do not achieve such Agreed Usage Charge for any period, we shall send you a notice setting out the further charges payable due to not achieving such Agreed Usage Charge ("Top Up Usage Charge"). The Top Up Usage Charge will be calculated by deducting the amount paid by You in the relevant period from the Agreed Usage Charge for that period. You will pay Us the Top Up Usage Charge.
- 8 INTRODUCTORY BONUS / HARDWARE FUND**
- 8.1 In consideration of you entering the Unit Agreements specified on the signature page and paying all the Charges in accordance with this Contract, We will grant you either the Introductory Bonus or Hardware Fund (if any), which you may use to either:
- (a) off set the purchase cost of Mobile Communications Equipment under this Contract; and/or
- (b) if You are migrating existing Mobile Communication Services to Us, to pay another network operator's early termination charges for such services.
- Either the Introductory Bonus or Hardware Fund will be credited to your account under this Contract and made available for use during the Bonus Period. Either the Introductory Bonus or Hardware Fund will be paid at our discretion and we reserve the right to withhold payment if your average call spend, minimum holding or call distribution falls below that agreed with us. We will inform you of the date upon which any payments are due as a result of the Introductory Bonus or Hardware Fund. If any of the Introductory Bonus or Hardware Fund remains unused at the expiry of the Bonus Period it shall be cancelled without further liability to you. In no circumstances will you be entitled to cash in lieu of either the Introductory Bonus or Hardware Fund nor will we allow it to be used against any charges other than as stated in this clause 8.1. In the event that either party terminates this Contract for any reason within the Bonus Period, the provisions of clause 12.2 shall apply.
- 8.2 In the event that:
- (a) either party terminates this Contract for any reason within the Bonus Period; or
- (b) the number of Unit Agreements plus Agreed Usage Charge is reduced (for any reason) to less than [fifty per cent] of the number of Unit Agreements plus Agreed Usage Charge specified on the signature page,
- then You shall pay us within 30 days an amount equal to the amount of the Introductory Bonus that You have actually used reduced on a pro rata basis by reference to the proportion of the Bonus Period that has expired.
- 9 RECORDING**
- 9.1 We or our agents may sometimes monitor or record telephone calls made to Our Customer Care Team for training and quality control purposes. These recordings will not be made available to any third party or used for any other purpose.
- 10 SUSPENSION OF SERVICE**
- 10.1 We may at our sole discretion bar Mobile Phone(s) from receiving or making calls (other than to the emergency services) without prejudice to any right to terminate this Contract or a Unit Agreement:
- (a) if We are, or become entitled to terminate this Contract; in accordance with clause 6.9 and 6.10;
- (b) in the event of loss or theft or suspected fraudulent use of a SIM Card or Mobile Handset by You or by a User; or
- (c) if a complaint is made to Us alleging Your or Our improper use of the Service.
- 10.2 If the Service is temporarily barred for the reason set out in clause 10.1(d), We will carry out an investigation promptly. If the complaint is upheld or Service has been suspended for any other reason stated in clause 10.1 We may charge You a re-connection fee if We are prepared to remove the bar on the Mobile Handset(s).
- 10.3 You will remain liable for all Charges accrued during the period of any suspension.
- 11 DISCONNECTION NOTICES**
- 11.1 You may give a Disconnection Notice at any time during which this Contract is in full force and effect. A Disconnection Notice must be made in writing and will specify the number and particulars of the Mobile Handsets to be disconnected.
- 11.2 Upon receipt of a Disconnection Notice We will disconnect the Mobile Handset(s) in accordance with the Disconnection Notice upon the expiry of 30 days from the date of the Disconnection Notice.
- 11.3 You will pay all Charges accrued in respect of the Mobile Handset (in accordance with the terms of clause 6) until the date of expiry of the Disconnection Notice.
- 11.4 If expiry of the Disconnection Notice is before the expiry of the Initial Term of the relevant Unit Agreement or a Unit Agreement is otherwise terminated before the expiry of its Initial Term You will pay:
- (a) the rental Charges that would have been payable up to the expiry of the Initial Term had it not been terminated; minus a 5% deduction for costs not incurred by Us and a 5% deduction for early payment of the invoice; and
- (b) an amount equal to any amount levied on Us by O<sub>2</sub> in respect of your termination.
- 11.5 You acknowledge that the Charges have been calculated on the basis that the Unit Agreements will continue until the expiry of the Initial Term, as We have spent money on set up costs, and You accordingly agree that it is reasonable for Us to require payment of the amounts pursuant to this clause 11.
- 11.6 This Contract will remain in full force and effect in relation to all other Mobile Communications Equipment remaining in Service.
- 12 TERMINATION**
- 12.1 If either party is:
- (a) in breach of any provisions of this Contract (other than any of clauses 5.2, 5.3 or 5.4) and fail to remedy such breach within 30 days of written notice to do so;
- (b) unable to pay its debts as they fall due or threaten to suffer any resolution to wind up its business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets; then the other may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in part) this Contract.
- 12.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- (a) You are in breach (or We reasonably believe You are in breach) of clauses 5.2, 5.3 or 5.4 as such breach may be a criminal offence and/or cause serious harm to our reputation or if You are in breach of clause 5.6;
- (b) Our authorisation to provide the Services are altered in a way that is material to the Service.
- 13 EFFECTS OF TERMINATION**
- 13.1 Upon termination of this Contract You will cease to use the Service and will pay to Us all outstanding Charges due up to and including the date of termination.
- 13.2 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- 13.3 Upon termination of this Contract, the provisions of clauses 8.2 and 11.4 shall apply in accordance with their terms.
- 14 LIMITATION OF LIABILITY**
- 14.1 Nothing in this Contract shall limit either parties' liability for fraud, death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents.
- 14.2 Except as expressly set out in this Contract all conditions, warranties, terms, undertakings and obligations express or implied by statute (including without limitation those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all liabilities in respect of the same (if any) are excluded.
- 14.3 We will in no circumstances be liable to You in contract, tort (including negligence) or otherwise for any loss of business; loss of data; loss of profits; loss of goodwill; loss of anticipated savings even when advised of the possibility; loss of revenue or; any indirect or consequential losses, liabilities or costs.
- 14.4 Both parties accept liability in respect of damage to the others tangible property resulting from its or its employees' negligence up to an aggregate of £2,000,000 (two million pounds sterling).
- 14.5 Other than in respect of clause 14.1 and 14.4 and subject to clause 14.3, our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with, this Contract will, in respect of any and all acts, omissions, defaults or events be limited in aggregate to £500,000 (five hundred thousand pounds sterling).
- 15 FORCE MAJEURE**
- 15.1 We will not be liable to You for any loss or damage caused to or suffered by You as a direct or indirect result of the supply of Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of our control. If either party is prevented from performance of its obligations for a continuous period of 3 months either party may terminate this Contract by giving written notice.
- 16 GENERAL**
- 16.1 This Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract.
- 16.2 Each of the parties acknowledges and agrees that in entering into this Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as set out in this Contract. Nothing will operate to limit or exclude any liability for fraud.
- 16.3 Should any provision of this Contract be held to be void or voidable the remaining provisions of this Contract will continue in full force and effect.
- 16.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Contract will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.
- 16.5 We will use reasonable endeavours to meet any delivery time, date or period. However, such dates will be regarded as estimates and We will have no liability to achieve any such time, dates or periods.
- 16.6 Members of KCOM Group may enforce their rights under 6.12 but no other person or body who is not a party to this Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).
- 16.7 You may not assign the whole or part of this Contract without our prior written consent, such consent not to be unreasonably withheld or delayed.

- 16.8 We may assign this Contract to any company which from time to time is our holding company or subsidiary (as defined in section 736 and 736A of the Companies Act 1985 to include parent and subsidiary undertakings as defined in section 258 Companies Act 1985).
- 16.9 Subject to clause 16.8 We may not assign this Contract to any other third party without your prior written consent, such consent not to be unreasonably withheld or delayed.
- 16.10 We reserve the right to vary these terms and conditions to the extent necessary to take into account any changes to Industry Agreements and any relevant Legislation. Save as permitted by this Contract, any other variations must be in writing and agreed between the parties.
- 16.11 Any notice under or in connection with this Contract shall unless otherwise agreed be in writing and may be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to the Company Secretary at the address of the party concerned set out in this Contract or any other address notified from time to time.
- 16.12 Any notice addressed as provided in clause 16.11 shall be deemed to have been given or made on the second Working Day after posting if sent by first class post upon delivery if delivered by hand and if sent by fax on the next Working Day after the date of transmission provided the sender's facsimile machine produces a report showing successful transmission to the correct facsimile.
- 16.13 Where We are processing data on Your behalf We shall only process such data in accordance with the Data Protection Laws and Our Processing Commitment.
- 16.14 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## 17 ADDITIONAL TERMS FOR BLACKBERRY SERVICES

- 17.1 If You take a BlackBerry Server Product then You will provide first line support to Your employees who use that product. We will provide a group session of training to Your internal IT helpdesk or IT support function to assist them in providing such first line support, where appropriate. This training will not apply to users of the BlackBerry Internet Mail product.
- 17.2 If You take a BlackBerry Server Product, then Your internal IT helpdesk or IT support function should deal with any warranty claim in relation to all BlackBerry products on your behalf. All warranty claims for BlackBerry Internal Mail Users must be dealt with via Our Customer Care Team.
- 17.3 If You have taken a BlackBerry Server Product, then We will provide second line technical support between 9 am and 6 pm Monday to Fridays (excluding UK Public Holidays). This service will only be available to Your internal IT helpdesk or IT support function.
- 17.4 If You take the BlackBerry Internet Mail Service or the BlackBerry Redirector Service, then We will provide first line support to You via Our Customer Care Team between 8 am and 6 pm Monday to Friday (excluding UK Public Holidays).
- 17.5 You acknowledge that Our Customer Care Team may need to contact O2's BlackBerry Technical Support Desk or the manufacturer of the Mobile Communications Equipment with details of You and Your query and that this may delay the resolution of any support issue.
- 17.6 If You have taken the BlackBerry Internet Mail Service, You will be able to integrate Your BlackBerrys with up to a total of 10 of Your work and personal email accounts to receive messages or You could take advantage of the mail forwarding service which will automatically forward any email received by Your other designated email accounts to Your BlackBerrys. Some internet service providers may charge You when You use this service.
- 17.7 In order to use a BlackBerry Server Product:
- Your server must conform to certain specifications which will be notified by Us to You. If You require an upgrade to Your BlackBerry(s), other server specifications may apply;
  - You may be required to undertake some integration work; and
  - You must have an internet connection, a Company Local Area Network and an appropriate email application (as We will specify to You).

- 17.8 If You use Your BlackBerry outside the UK, You will automatically incur a Roaming Charge. If You wish to disable the Roaming function on any of your BlackBerrys You must provide a minimum of 5 Working Days' notice to Our Customer Care Team.
- 17.9 The RIM and BlackBerry families of related marks, images and symbols are the exclusive properties and trademarks of Research in Motion Limited; used by permission. "BlackBerry" and "always on, always connected" are registered with the US patent and trademark office and may be pending or registered in other countries. "Lotus" and "Lotus Notes" are registered trade marks of Lotus Development Corporation and/or IBM Corporation. "Microsoft", "Hotmail", "Exchange, Outlook" and "MSN" are either registered trademarks or trademarks of Microsoft Corporation in the United States and/or other countries.

## 18 DEFINITIONS

- 18.1 Except where the context otherwise requires the following will have the following meanings:
- "Act" the Communications Act 2003, the Telecommunications Act 1984, and the Electronic Communication Act 2000 (each as may be amended from time to time);
- "Accessories" any equipment We provide pursuant to this Contract other than Mobile Handsets;
- "Additional Services" additional services including without limitation, Roaming, international calling or premium rate services which We may agree to provide to You from time to time;
- "Agreed Usage Charge" the agreed usage charge detailed on the signature page (if any);
- "BlackBerry" a hand held BlackBerry device;
- "BlackBerry Internet Mail Service" the BlackBerry internet mail service, as described on the signature page.
- "BlackBerry Redirector Service" means the BlackBerry Redirector Service, as described on the signature page.
- "BlackBerry Server Product" all BlackBerry's that require server software for their use.
- "Bonus Period" means a period equal to the Initial Term commencing on the Commencement Date;
- "Charges" all call charges, connection charges, rental charges, Mobile Communications Equipment charges, delivery charges, any charges for Additional Services or other charges payable by You as detailed on the signature page
- "Contract" these Terms and Conditions, the Data Processing Commitment, together with the other documents referred to on the signature page;
- "Data Processing Commitment" means the Data Processing Commitment contained in this Contract below;
- "Data Protection Laws" means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated and the terms "Data Controller", "Data Processor", "Data Subject", "Data Subject Access Request", "Supervisory Authorities", "process" and "Personal Data" shall have the meanings given to those terms in such data protection laws and regulations;
- "Disconnection Notice" notice to disconnect one or more Mobile Handsets given pursuant to clause 11.1;
- "GSM Gateway Device" any device used to make fixed-line-to mobile calls appear to the Network to be mobile-to-mobile calls;
- "Hardware Fund" the Hardware Fund detailed on the signature page (if any);
- "Industry Agreements" any standard industry agreements or third party agreement which impact upon our ability to provide the Service;
- "Initial Term" the period of time stated on the signature page, such period to commence on the Service Start Date (as may be varied pursuant to clause 1.3);
- "Introductory Bonus" the introductory bonus detailed on

the signature page (if any);

"Customer Care Team" the centre to which all faults, help queries, orders, activation requests and Disconnection Notices should be addressed;

"KCOM Group" KCOM Group PLC, its holding company, its subsidiaries and any subsidiaries of its holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 736 and 736A of the Companies Act 1985 (as amended);

"Legislation" all Acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, treaties, directives and other legislation as any of the same may be amended or replaced from time to time;

"Link" link between O<sub>2</sub> and your telephone system or data network;

"Mobile Extension" mobile extension services;

"Mobile Data Service" enables You to use applications on Your data network from Your Mobile Handset or laptop using 3G, GPRS or GSM technology;

"Mobile Network" the mobile telecommunications systems used by Us to provide the Service;

"Mobile Handset(s)" a cellular phone or device (including, without limitation, a BlackBerry) and a SIM Card;

"Mobile Communications Equipment" the Mobile Handsets, Accessories and other associated equipment for providing Mobile Communication Services;

"Mobile Web" enables You to use the internet and internet based e-mail from Your Mobile Handset or laptop using 3G, GPRS or GSM technology;

"Network Operator(s)" any public telecommunications operator used by Us to deliver the Service;

"O<sub>2</sub>" O<sub>2</sub> (UK) Limited whose registered office is at 260 Bath Road, Slough, SL1 4DX, registered number 1743099;

"OFCOM" the Office of Communications or successors from time to time;

"Roaming" an optional enhancement permitting a Mobile Handset to be used with other networks, principally overseas;

"Service(s)" the provision by Us of a mobile communications service allowing You to make or receive calls using Mobile Handset(s) on the Mobile Network and any other Additional Service (including for the avoidance of doubt, Mobile Extension and GPRS Services) We agree to provide to You as detailed on the signature page;

"Service Start Date" means, with respect to each Unit Agreement, the date on which We first activate the SIM for the Mobile Handset covered by that Unit Agreement;

"SIM Card" the card which identifies a Mobile Handset as belonging to You, and identifies its allocated telephone number;

"Unit Agreements" the individual agreements for each

Mobile Handset to which the terms of this Contract apply;

"User(s)" any individual authorised by You to use a Mobile Handset;

"User Guide" the manufacturer's instructions for Mobile Communications Equipment and any other guides and booklets We provide to You;

"We/Us" KCOM Group PLC, trading KCOM

(Company No 2150618) whose registered office is at 37 Carr Lane, Kingston Upon Hull, HU1 3RE;

"Working Day" Monday to Friday 9.00am to 5.00pm inclusive except for UK bank and public holidays;

"You/Your" the person or company to whom the Services are provided.

# Data Processing Commitment

This Schedule represents Our commitment to You in regard to processing of Personal Data. It forms part of the Contract and should be read in conjunction with the Contract and any associated documentation.

## 1 DEFINITIONS

1.1 In this Data Processing Commitment Schedule, unless the context otherwise requires:

“**Data Subject**” has the meaning given to it in the Data Protection Laws;

“**Data Subject Access Request**” has the meaning given to it in the Data Protection Laws;

“**Personal Data**” has the meaning given to it in the Data Protection Laws;

“**Permitted Sub-Processor**” means any third party supplier or other sub-processor appointed by Us for the provision of Services to You pursuant to the Contract, as such third party supplier or sub-processor is expressly identified to You or as otherwise agreed between the parties.

1.2 Any other definitions used in this Data Processing Commitment Schedule shall have the meaning ascribed to it in the Contract.

## 2 DATA PROTECTION

2.1 Both Parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Contract each Party will comply with the Data Protection Laws.

2.2 Both Parties acknowledge and agree that in relation to Your Personal Data, You are the Data Controller and We are the Data Processor. We agree and accept that We will process the Personal Data pursuant to and in accordance with the Contract, as applicable, and the Data Protection Laws.

2.3 Annex A sets out the information regarding Our processing of Your Personal Data as required by article 28(3) of the General Data Protection Regulation 2016/679. We may make reasonable amendments to Annex A by written notice to You from time to time as We reasonably consider necessary to meet those requirements. Nothing in Annex A (including as amended pursuant to this section 2.3 of this Data Processing Commitment) confers any right or imposes any obligation on either You or Us.

2.4 We shall:

- (a) only process the Personal Data for the purposes of performing its obligations under the Contract, as applicable, and in accordance with Your documented instructions;
- (b) not transfer the Personal Data outside of the EEA, unless permitted to do so as follows:
  - (i) in provision of the Services to the relevant Permitted Sub-Processor, subject to

ensuring that either: (a) such Permitted Sub-Processor implements appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk; or (b) the Sub-Processor enters into the Standard Contractual Clauses for the Processing and transfer of Personal Data outside of the EEA with You; or

- (ii) with Your prior written consent; and/or
- (iii) if required to do so by any legislation or regulation, in which case We shall inform You of such requirement if it is able to do so;
- (c) ensure that all of Our employees who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;
- (d) implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:
  - (i) pseudonymising and encrypting Personal Data, as appropriate;
  - (ii) ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;
  - (iii) enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between Us and You;
  - (iv) regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
  - (v) taking steps to ensure that any of Our employees who have access to Personal Data does so in accordance with Our rights and obligations as expressly detailed in this Data Processing Commitment or otherwise on Your express written instructions unless otherwise required by legislation or other applicable regulation;
  - (e) inform You of any new sub-processor and/or change of a Permitted Sub-Processor. You shall inform Us within five (5) Business Days of any objection to such appointment or change. If You do not raise any such objection, We shall ensure that such sub-processors shall comply with the provisions

of this Schedule or terms which are substantially similar;

- (f) assist You in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
  - (i) where We are required to assist You with a Data Subject Access Request You have received, responding to such request for assistance within twenty (20) days of receiving notice of such request from You;
  - (ii) where We receive a Data Subject Access Request directly from the Data Subject, We shall notify You within one (1) Business Day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws and where You are required to assist Us with such Data Subject Access Request, You shall respond to Us within twenty (20) days of receiving notice of such request from Us;
  - (iii) assisting You, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
  - (iv) enabling You to comply with a request for data portability of a Data Subject;
- (g) assist You in complying with its obligations relating to security of Personal Data as set out in the Contract, as applicable, or as otherwise may be reasonably requested by You, including but not limited to:
  - (i) notifying You of any Personal Data breach as soon as reasonably practicable and no later than twenty four (24) hours after We become aware of the breach (such notice by email and/or telephone and followed up by email), and including all relevant detail. We agree and accept that You may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
  - (ii) at Your request and expense assisting with the communication to the Supervisory Authorities, any of Your customers and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
  - (iii) at Your request and expense, consulting with the Supervisory Authorities and/or assisting You to consult with the Supervisory Authorities, including providing You with any information relating to Our processing of Personal Data and/or Our compliance with the Data Protection Laws as You may be reasonably request.
- (h) upon the expiry or termination of the Contract, delete or return all Personal Data to You (as requested by You), unless otherwise required or permitted by Data

Protection Laws and provide written confirmation You in this respect;

- (i) make available to You all information reasonably necessary to enable You to demonstrate compliance with Your obligations under the Data Protection Laws, including such records of all categories of processing carried out on Your behalf, as such is requested by You;
- (j) co-operate with any request of the Supervisory Authority;
- (k) allow You to undertake audits of Us on 30 days' notice and at Our expense, subject to any reasonable requests We may have regarding the timing and conduct of such audit (including, without limitation, such audits to be conducted during Our Business Hours and allowing Us to supervise such audit), to ensure Our compliance with this Schedule;
- (l) contribute to any audits or inspections carried out on You by any Supervisory Authority or any of Your suppliers or customers, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Your and/or Our obligations in this Data Processing Commitment, subject always to the provisions in Section 2.3(k) above;
- (m) at Your expense, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this Schedule and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by You (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with Section 2.3(l) above, or otherwise as You deem reasonably necessary.
- (n) Subject to clause 14, each Party shall indemnify the other Party in the event of any claim by a third party arising as a consequence of the other Party's breach of this Data Processing Commitment and/or Data Protection Laws.

### **3 GENERAL**

- 3.1 We shall be entitled to amend this Data Processing Commitment either: (i) immediately to ensure Our commitment is in compliance with Data Protection Laws; or (ii) upon giving You 30 days' prior written notice of such change, provided that such change shall not (in Our reasonable opinion) cause a material detrimental effect to You).

## DATA Processing Details

### Annex A

Description	Details
<b>Subject matter of the processing</b>	Provisions of Services pursuant to the Agreement between Us and You
<b>Duration of the processing</b>	During the Term of the Agreement and for up to 7 years after the expiry or termination of the Agreement
<b>Nature and purposes of the processing</b>	<p>Collecting Storing Processing (organising, structuring, adaptation or alteration, retrieval consultation, use) To facilitate the fulfilment of Our obligations arising under the Agreement including</p> <ol style="list-style-type: none"> <li>i. Provision of the Services</li> <li>ii. Ensuring effective communication between Us and You;</li> <li>iii. Maintaining full and accurate records of all Services arising under the Agreement;</li> <li>iv. Dealing with any rights, actions, incidents or disputes arising under the Agreement;</li> </ol>
<b>Type of Personal Data</b>	<p>Name Telephone Number Address Email Address Unique Identifier</p>
<b>Categories of Data Subject</b>	<p>Your employees Employees of End Customer Any member of the general public Includes:</p> <ol style="list-style-type: none"> <li>i. Your directors, employees and/or staff of the Customer concerned with the delivery of the Service</li> <li>ii. The directors, employees and/or staff of Your group and/or associated companies concerned with the delivery of the Service</li> <li>iii. The directors, employees and/or staff of the Your sub-contractors and/or other third parties concerned with either the fulfilment of the Your obligations arising from Agreement or the receipt of Your rights under the Agreement</li> </ol>
<b>Permitted Sub-Processors</b>	EE