

**Version: 191105 v.01**

## **SME Business Mobile AGREEMENT**

These are the Maintel linked terms and conditions for the provision of Mobile Services to SME  
Businesses

## SME BUSINESS MOBILE AGREEMENT

This **Maintel Linked SME Business Mobile Agreement** is comprised of its schedules and the **SME Business Mobile Order Form**, which shall collectively form (the **"Agreement"**). These documents can be found [HERE](#). Maintel reserve the right (as reasonably required) to update these terms and conditions from time to time (such amendments to fully supersede any previous provisions agreed). In the event of any substantive or material changes (as determined by Maintel) these shall be notified to the Customer via updates to the Maintel Mobile webpage (found here [HERE](#)). The Customer hereby acknowledges and accepts it is responsible for reviewing and ensuring compliance with any changes made. For the avoidance of doubt all definitions and clauses herein shall apply to the Agreement.

### WHEREAS

- (A) The Customer wishes to procure communications services set out in this Agreement on the terms and conditions herein; and
- (B) Maintel has agreed to the supply of mobile and communication services to the Customer and the Customer has agreed to purchase such services on the terms of this Agreement.

The Parties agree as follows:

### 1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions

**"Additional Items Request"** means the Customer's request by e-mail for additional Equipment, new mobile connections or porting mobile connections.

**"Additional Items Order"** means Maintel's written confirmation of acceptance (sent by e-mail) of the Customer's Additional Items Request that shall constitute a variation to this Agreement pursuant to clause 1.8.

**"Agreement"** means this agreement, its Schedules and Order/s.

**"Billed Line Rental Charges"** means the Business Contract Application Tariff Line Rental Charges exclusive of VAT as set out by the MNO.

**"Business Day"** means a day (other than a Saturday or Sunday) when the banks are generally open for normal business in London.

**"Business Hours"** means 0900 to 1700 on a Business Day.

**"Charges"** means the charges for the Customer Purchased Equipment at Maintel's list prices provided from time to time by Maintel to the Customer for this purpose and/or any other Charges set out in the Order Confirmation.

**"Confidential Information"** means any and all information and know-how that one party and/or its agents may from time to time disclose to the other Party in connection with this Agreement or which otherwise becomes known to the other party during the term of this Agreement, whether orally, in writing, digitally, in the form of machine readable code or embodied in hardware or any other physical medium which relates to the business, including but not limited to the business plans, data, know-how, designs, illustrations, drawings, photographs, illustrations, notes, memoranda, terms of business, financial information, financial projections, financial records, customers and suppliers, sales and marketing information, spreadsheets, specifications, technical information and computer software together with all information derived from any such information and any other information clearly designated by one party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential..

**"Connection" or "connection"** means (i) any connection of a new MPN to the MNO network for a Customer user or (ii) any connection of a Customer user that is ported to the MNO mobile network from another MNO.

**“Customer”** means the Party referred to in the Order form.

**“Customer Purchased Equipment”** means any mobile devices or equipment (including software) acquired by the Customer.

**“Delivery Address”** means the location set out in the Order Confirmation.

**“Equipment”** means any equipment (including hardware or software) which is supplied, provided, maintained or managed by Maintel as part of the Services (and for the avoidance of doubt Customer Purchased Equipment forms part of the Equipment).

**“Force Majeure Event”** means an act of God or any other event beyond a Party's reasonable control, including lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial dispute (including an industrial dispute involving that party's own employees where that industrial dispute is beyond the reasonable control of that party), terrorist act, act of Government, a refusal or delay by a third party in supplying telecommunication services to Maintel in circumstances where there is no alternative service available at reasonable cost or restrictions of a legislative or regulatory nature (other than any anticipated on the date of signature of this Agreement), the consequences of which such Party can neither prevent nor avoid. For the avoidance of doubt, any subcontractor delay or failure is not a Force Majeure Event unless such failure or delay is itself due to a Force Majeure Event.

**“Full Service Date”** means the date on which 90% of the MPNs comprising the Customer's mobile communications estate, at the date of this Agreement, have been ported to the MNO by Maintel.

**“Good Industry Practice”** means the standards which would reasonably and ordinarily be expected from a skilled and experienced provider of the same or similar Services under the same or similar circumstances.

**“Group Company”** means a Party's ultimate holding company and any subsidiary company of that ultimate holding company (as these terms are defined in the Companies Act 2006).

**“Implementation Services”** means the supply, configuration and programming of Equipment and/or Services and training where set out in an Order.

**“Initial Term”** means the initial duration of a Service (to commence on the Port Date) as set out in an Order

**“Intellectual Property Rights”** means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, moral rights, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights, rights in any software and all rights in the nature of unfair competition rights or rights to sue for passing off.

**“Mobile Estate”** means those mobile communications devices, including the SIMs, detailed in the Order Confirmation.

**“Mobile Hardware Fund”** means the details and meanings given to it in Schedule 1 (Special Terms for MNO) and the Order.

**“MNO”** means Mobile Network Operator.

**“MPN”** means Mobile Phone Number.

**“O2 Contract”** means either the O2 Business Contract and Business Contract Application form or the Provision of Airtime Agreement; to be signed no later 5 days after the respective Order and usually sent to the Customer alongside the Order. The contract is to be entered into between the Customer and the MNO in respect of Equipment and Services provided under the O2 service option.

“**Order Confirmation**” means a written acknowledgement by Maintel by executing a copy of the Order to the Customer confirming that it has accepted the Order for the Services in accordance with clause 3.1.

“**Order**” means an order under the terms of this Agreement.

“**PAC**” means Porting Authorisation Code, required to transfer a mobile number from one MNO to another.

“**Parties**” means the Customer and Maintel together.

“**Port Date**” means the date that the MPNs are ported, upgraded or newly connected to the MNO or the date the first MPN is ported, upgraded or newly connected if not all on the same date.

“**MNO**” means Telefonica O2 UK Limited (Company Number: 1743099) whose registered office is at 260 Bath Road, Slough, Berkshire, SL1 4DX.

“**MNO Charges**” means the charges payable to MNO set out in the relevant O2 Contract.

“**Services**” means the mobile communications and related services to be supplied by Maintel to the Customer under the terms of this Agreement including the transition of the Customer’s Mobile Estate to the MNO airtime service, but with retention of Customer’s existing mobile numbers as set out in the Order Confirmation; processing Additional Items Requests and inventory management and account review meetings with Customer.

“**SIM**” means Subscriber Identification Module. A SIM card contains a chip with all data that is necessary for operating the mobile device.

“**SMS**” means Short Message Service.

“**Termination Fee**” means any Charges payable by the Customer, in relation to the monthly line rental and any other Charges incurred to the end date of this Agreement, from the point of Maintel acceptance of the Customer termination of this Agreement.

“**Year**” means the twelve month period commencing on the Port Date until the first anniversary of the Port Date and each subsequent twelve month period until the next anniversary of the Port Date.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 References to statutory provisions include those statutory provisions as amended or re-enacted.
- 1.4 The Schedules to this Agreement form part of (and are incorporated into) this Agreement.
- 1.5 Any phrase introduced by the words **including, includes, in particular** or **for example** or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.6 If there is any conflict or ambiguity between the components of this Agreement, the conflict shall be resolved in accordance with the following order of precedence: the Order, Charges (as set out in Schedule 1 and Schedule 2); the terms and conditions of the Maintel Mobile Agreement and Service Description (Schedule 2).
- 1.7 No rule of construction with regards to drafting will apply in the interpretation of any provision of this Agreement, to the advantage of either party.
- 1.8 No variation to these terms and conditions including any Additional Items Requests shall have any effect unless expressly agreed in writing and signed by a duly authorised representative of each of the parties. The Customer shall not vary the O2 Contract without the prior written consent of Maintel, such consent not to be unreasonably withheld or delayed.

## 2. SERVICES MAINTEL’S OBLIGATIONS

- 2.1 Maintel shall carry out the Services with reasonable diligence, skill and expertise, to provide the Services as set out in the Order.
- 2.2 Maintel shall provide the Services in accordance with Good Industry Practice and in accordance with the terms of this Agreement.
- 2.3 Maintel shall supply the Customer Purchased Equipment as specified in the Order. Risk in any Equipment shall pass to the Customer on delivery to the Customer at the Delivery Address.
- 2.4 The Customer acknowledges that the Services in general will not be error free and agrees that the existence of such errors shall not constitute a breach of this Agreement.
- 2.5 To the extent possible, title to the Customer Purchased Equipment shall not pass to the Customer until Maintel has received payment in full (in cash or cleared funds) and upon transfer of title to the Customer, Maintel warrants that the title in such Customer Purchased Equipment will be free and clear of charge or encumbrance.
- 2.6 Maintel shall carry out the Implementation Services during Business Hours but may give the Customer reasonable notice to require access (remote or otherwise) at other times in order to meet its obligations under this Agreement.
- 2.7 If the Customer causes delay in the Implementation Services for any reason, Maintel reserve the right to levy an additional Charge to the Customer to cover such costs.
- 2.8 If Maintel becomes aware of a potential delay in the Implementation Services for any reason, Maintel shall inform the Customer as soon as reasonably possible.
- 2.9 If the Customer requests a delay in the provision of Implementation Services, Maintel will endeavour to accommodate this. However, if this necessitates extra cost, Maintel will provide the Customer with details of these costs and the Customer shall pay the additional costs in addition to the Charges, where such delay is implemented.
- 2.10 Maintel shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Maintel in respect of the Customer Purchased Equipment.
- 2.11 Maintel shall deliver the Customer Purchased Equipment to the Delivery Address. Time shall not be of the essence for delivery of the Customer Purchased Equipment.

#### **THE CUSTOMER'S OBLIGATIONS**

- 2.12 The Customer shall co-operate with Maintel in all matters relating to the Services and shall perform the Customer Obligations and its other obligations set out in this Agreement and the O2 Contract (Schedule 2 herein)..
- 2.13 The Customer shall provide such co-operation, information (including authorisation to obtain the PACs in relation to the Mobile Estate), facilities and access to the Delivery Address to Maintel and Maintel's duly authorised representatives, as is reasonably necessary, for Maintel to perform its obligations under this Agreement.
- 2.14 The Customer shall provide Maintel, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's information, data remote access and other facilities as reasonably required by Maintel to provide the Equipment and/or the Services, or exercise its rights under this Agreement in order to provide the Equipment or Services set out herein.
- 2.15 The Customer shall comply with all licences, legislation, regulations and codes of practice to which it is subject in relation to the Equipment and Customer's receipt of the Services. The Customer shall allow the Equipment supplied by Maintel and/or the Services to be used in any of the following ways:
  - 2.15.1 in breach of any reasonable instruction given by Maintel, or anybody which has regulatory powers relating to the Services; or

- 2.15.2 that causes Maintel to be subject to any criminal prosecution, enforcement action, civil claim or other action or liability.
- 2.16 . The Customer shall not allow the use of any Equipment containing a SIM card which enables the routing of incoming: (i) cross net calls; or (ii) fixed to mobile calls, in such a way as to establish an on-net call on the MNO's network including but not limited to the use of GSM Gateways.
- 2.17 Customer shall comply with Maintel's reasonable instructions as to the use and care of the Equipment. The Customer will pay for any repair or replacement needed if the Equipment is damaged through fair wear and tear, or by any error or omission on the part of Customer.
- 2.18 The Customer shall enter into the O2 Contract within five Business Days of entering into this Agreement.
- 2.19 Maintel may recommend what it believes to be a suitable O2 Contract based upon information provided by the Customer. It is the Customer's responsibility to ensure that any O2 Agreement is a suitable solution prior to entering into this Agreement.
- 2.20 The Customer agrees that unless otherwise specified in this Agreement all charges incurred by terminating, disconnecting or migrating its agreement with its current MNO(s) will be borne and settled by the Customer and that Maintel shall not be responsible for such settlement. The Customer understands that any "estimated figure" regarding the cost of terminating a contract with an existing MNO given to the Customer by Maintel or its representatives is an estimate only and that the Customer is responsible for obtaining more accurate cost information if it considers it necessary.

### **SERVICE EXCLUSIONS**

- 2.21 Maintel shall not be liable for any third party costs, expenses or charges incurred or imposed on the Customer that have not emanated directly from any instructions given by Maintel, as a result of this Agreement.

### **3. TERM AND RENEWAL**

- 3.1 This Agreement will come into force immediately upon issue of the Order Confirmation or provision of the Services by Maintel, whichever is earlier, and will remain in force for the Initial Term unless and until terminated earlier in accordance with clause 14. For the avoidance of doubt this Agreement will commence from either the date of connection, porting or date upon which a new tariff is applied (where this is a renewal of Service).

### **4. PAYMENT OF CHARGES AND THE OPERATION OF REFUNDS**

- 4.1 The Customer shall pay the MNO Charges directly to the MNO. For the avoidance of doubt any Equipment Charges shall be paid to Maintel.
- 4.2 Maintel will invoice Customer for the Charges on the basis of and in accordance with this clause 4. All invoices must be paid in the currency in which they are raised within 30 (thirty) days of the date of the invoice and such payment shall be taken via Direct Debit. The Customer hereby agrees to complete the Direct Debit mandate and return this document with the Order.
- 4.3 Charges are exclusive of all taxes including VAT, which shall be added to all invoices at the prevailing rate.
- 4.4 If the Customer fails to pay any properly due and payable amount under this Agreement by the due date for payment, it shall forthwith on demand by Maintel pay interest, at a rate of 4% (four per cent) above the base lending rate of Royal Bank of Scotland plc., on the overdue amount from the due date for payment up to the date of actual payment.
- 4.5 The Customer may not exercise any right of set off, abatement, counterclaim, retention, deduction or any other withholding against amounts invoiced to it (including where



invoices have been issued late or have been subsequently amended to correct errors) by Maintel.

4.6 Maintel reserves the right to:

4.6.1 adjust the Charges where such changes are enforced on Maintel by regulatory authorities, after providing the Customer with reasonable written notice, imposed on Maintel by such regulatory authorities; and

4.6.2 vary the Charges during the Initial Term or at any other time where such changes are enforced on Maintel by any of its suppliers. In the event that Maintel increases the Charges during the Initial Term more than 25% or more than once within a 12 month period (within the Initial Term) or any 12 month period thereafter, the Customer shall have the right to terminate on 30 days' notice.

4.7 The invoice shall be issued in an electronic format and accessible via the Billing Portal, where the Customer may review the invoice. Where the Customer elects to receive an itemised invoice, such shall attract an administration Charge to be agreed between the Parties.

## 5 ORDERING, CHANGE CONTROL AND ADDITIONAL ITEMS

5.1 An Order constitutes an offer by the Customer under the terms of this Agreement and no Order shall be binding on Maintel until an authorised officer of Maintel has accepted and provided a written Order Confirmation. The Customer shall ensure that the terms of the Order are complete and accurate.

5.2 Maintel may make changes to an Order that are necessary due to changes in the manufacturer's specification to comply with safety or other requirements.

5.3 Certain telecommunication systems and services are subject to regulation by regulatory authorities. Any regulatory authority may from time to time change the regulatory framework within which the Services are provided, and the Customer accepts that Maintel may need to change the Services to comply with such regulatory framework.

5.4 The Customer shall provide a purchase order for every Order placed. The purchase order shall include the full cost of the Charge. The Customer hereby agrees that where no purchase order is provided, any goods and/or Services provided under this Agreement may be delayed or withheld.

5.5 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Customer's documentation.

5.6 The Customer may at any time during the term of this Agreement make an Additional Items Request. Maintel may accept an Additional Items Request by issuing an Additional Items Order.

## 6. CONFIDENTIALITY

6.1 Each Party will keep strictly confidential all Confidential Information of the other received or obtained during the negotiation or performance of this Agreement and, except with the prior written consent of the other or to the extent that disclosure is required by law, will not disclose such Confidential Information to any third party or copy or use it for any purpose other than for the proper performance of its obligations or the proper exercise of its rights under this Agreement.

6.2 Neither Party will acquire any right in nor title to Confidential Information of the other nor any licence in respect of it except as expressly stated in this Agreement. Each Party will protect Confidential Information of the other as if it were its own Confidential Information and will not copy, summarise, modify or disclose it except to the minimum extent necessary to perform its obligations or exercise its rights under this Agreement. Each Party will ensure that all persons to whom it discloses Confidential Information of the other are

bound by obligations of confidentiality and non-disclosure at least equivalent to those in this Agreement.

- 6.3 The duties imposed on the Parties by clauses 6.1 and 6.2 above do not extend to information or data which at the time of its disclosure or use by the receiving Party:
  - 6.3.1 is generally available and known to the public other than by reason of the receiving party's breach of this clause 6;
  - 6.3.2 the receiving Party can demonstrate had previously come lawfully into the receiving Party's possession from a third party under no restriction as to its use or disclosure; or
  - 6.3.3 the receiving Party can demonstrate that it developed independently without reliance on Confidential Information of the other.
- 6.4 Each Party agrees and acknowledges that damages alone may not be an adequate remedy for breach of this clause 6 and that each Party may be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this clause 6.
- 6.5 On termination of this Agreement, each Party shall where relevant (save for the extent necessary for the enforcement of any rights under this Agreement):
  - 6.5.1 erase all of the other Party's Confidential Information from its computer systems (to the extent possible); and
  - 6.5.2 certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.
- 6.6 Notwithstanding Clause 6.1, Maintel may, subject to agreement with the Customer, make reasonable references to the Customer (including the use of the Customer's logo) as a consumer of the Services in its advertising and/or promotional literature and other materials including a press release on contract signature and video and written case studies.

## 7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 As between the Customer and Maintel:
  - 7.1.1 with regard to Customer Purchased Equipment provided by Maintel all title and/or ownership shall vest in Maintel and its licensors until such time as Customer has made full and final payment as solely determined by Maintel; and
  - 7.1.2 all Intellectual Property Rights and all other rights arising out of this Agreement shall be owned by Maintel and its licensors unless otherwise agreed in writing by Maintel. Maintel hereby licences all necessary and relevant rights to the Customer free of charge and on a non-exclusive, non-transferable, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Customer Equipment supplied by Maintel and/or the Services. This licence shall terminate if and when this Agreement and/or the O2 Contract expires or terminates for any reason.
- 7.2 Maintel warrants that its provision of any Equipment supplied by Maintel and/or the Services (including such Equipment supplied by Maintel that is altered, reinstalled, adjusted, repaired or otherwise modified by Maintel in the course of its provision of the Services) will not infringe any third party patent, copyright, and/or trade secret rights existing under the laws of England and Wales.
- 7.3 The Parties agree to defend the other from and against any claim or action by any third party in relation to a breach of any third party intellectual property rights ("**IPR Claim**") and shall indemnify each other against all costs awarded under any final



judgment, court order or settlement arising directly out of or in connection with that IPR Claim.

- 7.4 The indemnity at clause 7.3 above is subject to the following conditions:
- 7.4.1 both Parties hereby agree to give prompt notice to the other in writing as soon as the notifying Party becomes reasonable aware of any IPR Claim or alleged IPR Claim; and
  - 7.4.2 both Parties hereby agree to make no admissions (written or oral) in respect of any IPR Claim without the other Party's prior written consent; and
  - 7.4.3 the indemnified Party must grant the indemnifying party sole control of the defence including conducting any negotiations or litigation including defence of proceedings and/or settlement of any IPR Claim and the costs incurred or recovered in such negotiations or settled claim shall be for the indemnifying Party's account; and
  - 7.4.4 the indemnified Party shall give the indemnifying party all reasonable assistance requested at the indemnified Party's expense save where the infringement was directly caused by the acts or omissions of the indemnifying Party where the indemnifying Party shall pay the indemnified Party's reasonable expenses actually incurred; and
  - 7.4.5 the Customer shall allow Maintel to modify the Equipment supplied by Maintel and/or the Services, or any part thereof, so as to avoid any IPR Claim, provided that the modification does not materially affect the functionality or Charges payable for the Equipment supplied by Maintel and/or the Services.
- 7.5 If the Equipment supplied by Maintel and/or Services become, or in Maintel's opinion are likely to become, the subject of an IPR Claim covered by the indemnity at clause 7.3 Maintel may at its sole option either: (a) repair, replace or modify the affected Equipment supplied by Maintel and/or Services so that they are no longer infringing or (b) procure the right for the Customer to continue to use the Equipment supplied by Maintel and/or the Services or the relevant part thereof or if neither (a) nor (b) above are commercially reasonable, then Maintel may (c) terminate the applicable elements of the Equipment supplied by Maintel and/or Services and refund to the Customer the portion of the Charges paid for that terminated element less the depreciation (calculated on a straight line basis over 2 years from the Effective Date) provided that where such termination materially impacts on the provision of the Services by Maintel to the Customer, Maintel shall compensate the Customer in respect of any losses it incurs as a result of such termination subject at all times to the limitation of liability set out in clause 9.2.
- 7.6 Where Maintel is the indemnifying Party and the Customer is the indemnified Party, the indemnity in clause 7.3 will not apply to any infringement arising from: (a) any modification, alteration, repair, adjustment or configuration made by anyone other than Maintel or under Maintel's direction or instruction; or (b) the Customer's use of the Equipment supplied by Maintel and/or the Services in conjunction with software, hardware or data, where use of such software, hardware or data in combination with the Equipment supplied by Maintel and/or Services gave rise to the infringement; or (c) use of any software other than the most current, unaltered update, if such claim would have been avoided by the use of such update; or (d) compliance by Maintel with designs, plans or specifications furnished by the Customer, or on the Customer's behalf.
- 7.7 Clause 7 states both Parties entire liability for infringement of any third party Intellectual Property Rights.
- 7.8 The Customer hereby warrants that it has the right to grant, and hereby grants to Maintel a revocable, non-transferable, non-exclusive unpaid right and license to use the Software for interoperability purposes, and access to all relevant computer systems in

each case to the extent strictly necessary for the performance by Maintel of the Services. Furthermore, the Customer hereby licences all necessary and relevant rights to Maintel free of charge and on a non-exclusive, non-transferable, worldwide basis to such extent as to enable Maintel to perform its obligations under this Agreement. Such licence shall terminate when this Agreement expires or terminates.

## 8 DATA PROTECTION AND SECURITY

- 8.1 For the purposes of this clause 8, the meaning of personal data, data processor and data controller shall be determined in accordance with the Data Protection Act 2018.
- 8.2 Each Party undertakes to the other Party that it will process personal data in compliance with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) and any codes of conduct or guidelines issued by the relevant regulatory authorities.
- 8.3 The Customer and Maintel acknowledge that for the purposes of the Data Protection Act 2018, the Customer is the data controller and Maintel is the data processor in respect of any personal data.
- 8.4 Maintel shall process the personal data within the United Kingdom and only for the purpose of fulfilling its obligations under this Agreement and/or in accordance with the Customers reasonable instructions from time to time.
- 8.5 Maintel shall ensure its practice of information security standards is in accordance to policy and the application of procedures set out within its ISO27001 certified information security system manual.

### GDPR

8.6 Definitions:

**"Affiliate"** means an entity that owns or controls, is owned or controlled by or is under common control or ownership with Customer, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

**"Applicable Laws"** means (a) EU Data Protection Laws and European Union or Member State laws with respect to any Customer Personal Data in respect of which any Customer is subject; and (b) any other codes of conduct or guidelines promulgated under such laws; and (c) any other applicable law with respect to any Customer Personal Data in respect of which any Customer Group Member is subject;

**"Customer Personal Data"** means any Personal Data Processed or used or intended to be used as part of a filing system by a Contracted Processor on behalf of a Customer pursuant to this Agreement;

**"Contracted Processor"** means supplier or a subprocessor;

**"Data Protection Laws"** means, to the extent applicable, the data protection or privacy laws of any other country;

**"EU Data Protection Laws"** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR;

**"GDPR"** means EU General Data Protection Regulation 2016/679 and any amendments thereto and replacements thereof;

For the avoidance of doubt, any definitions used in the Applicable Laws shall have the same meaning and construction within this clause.

- 8.7 Each Party hereby undertakes to comply with (or cause its Affiliates to comply with) any and all provisions of the Applicable Laws when discharging its obligations under this Agreement.

- 8.8 Each Party recognises that compliance with Applicable Laws includes responsibilities in relation to any relevant third party suppliers and/or subcontractors.

**Processing of Customer Personal Data****CONSENT**

- 8.9 Each Party, on its own behalf and on behalf of its Affiliates, hereby unequivocally and with full knowledge of its obligations under the Applicable Laws will;
- 8.9.1 provide consent to the processing of data by the other Party which is required for such Party to exercise its rights and meet its obligations, pursuant to this Agreement and/or the Applicable Laws; and
  - 8.9.2 obtain appropriate written consent from relevant data subjects; and
  - 8.9.3 promptly notify the other Party of any withdrawal of Consent by any relevant Data Subject; and
  - 8.9.4 confirm that it will only process data as necessary to comply with the legal obligations of such party pursuant to Article 13 of GDPR; and
  - 8.9.5 in circumstances where consent is not appropriate or reasonable to obtain shall rely on and fully abide by one or more of the grounds for lawful processing set out in Article 6 of the GDPR such as legitimate interests and/or performance of a contractual obligation etc. In such circumstances the processing party shall inform the other of same promptly and in writing and do all that is otherwise required to fully comply with the Applicable Laws.
- 8.10 Where required Maintel will advise the Customer that personal data may be transferred to a country or organisation outside of the EEA and confirm that appropriate security safeguards are in place.
- 8.11 For the avoidance of doubt the Customer hereby acknowledges and agrees that failure to provide the required personal data may result in an interruption to the contracted deliverables.
- 8.12 Each party confirms that:
- 8.12.1 It shall provide details of its Data Protection Officer as applicable; and
  - 8.12.2 It will retain the personal data for no longer than is necessary; and
  - 8.12.3 It will comply with fair and transparent processing requirements included in the Applicable Laws; and
  - 8.12.4 To the extent that it intends to transfer the personal data to a third country, it will ensure adequacy conditions in compliance with the Applicable Laws.
- 8.13 As required by clause 8.12 the following information is provided:
- 8.13.1 The Data Protection Officer details are:
    - For Maintel:
    - Name: Kevin Stevens
    - Job Title: Chief Operating Officer
    - Contact Number: 0207 401 4611
    - Email Address: [kevin.stevens@maintel.co.uk](mailto:kevin.stevens@maintel.co.uk)
  - 8.13.2 The period of time the personal data shall be stored, which unless otherwise agreed in writing, shall be the full term of this Agreement, as amended, plus an additional 7 years.
  - 8.13.3 The information required by the data subject to enable each Party to meet the data subjects' rights, under the Applicable Laws are:
    - 8.13.3.1 Right of access by the data subject

- 8.13.3.2 Right to rectification
- 8.13.3.3 Right to restriction of processing
- 8.13.3.4 Right to data portability
- 8.13.3.5 Right to object
- 8.13.3.6 Right to erasure

8.13.4 For the purposes of clarity, the relevant supervisory authority is the Information Commissioner's Office to which the Customer has a right to raise a complaint if required.

## 9 LIMITATION OF LIABILITY

- 9.1. Both Parties accept unlimited liability for:
  - 9.1.1 death or personal injury caused by its negligence; or
  - 9.1.2. fraud or fraudulent misrepresentation; or
  - 9.1.3. any other act or omission for which liability cannot be limited by law.
- 9.2 Subject to clause 9.1 Maintel's entire liability to the Customer in respect of all losses arising out of or in connection with Maintel's performance or non-performance of its obligations under this Agreement;
  - 9.2.1 in respect of the indemnity given by Maintel in clause 7.3 is unlimited; and
  - 9.2.2 in respect of damage to property (both real and personal) shall be limited to £2,000,000 (two million pounds) in the aggregate; and
  - 9.2.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Agreement shall in no event in any year exceed the Charges paid by the Customer in such year.
- 9.3 Subject to clause 9.1 and in respect of payment of the Charges by the Customer, neither Party shall be liable to the other Party, whether in contract, tort (including negligence) or otherwise for loss of revenue, loss of profit, loss of goodwill, loss of reputation, loss of anticipated savings, loss of business, loss, corruption or destruction of data, loss of contracts or any indirect, special or consequential loss or damage.
- 9.4 In no event will Maintel have any liability for non-provision or delay in the provision of the Equipment supplied by Maintel and/or Services which can be attributed to the acts or omissions of the Customer, its employees, sub-contractors, agents or customers; and/or occurs during any period of scheduled maintenance.
- 9.5 Both Parties shall use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by them under or arising out of this Agreement.
- 9.6 Maintel excludes all liabilities, costs, expenses, damages and losses suffered or incurred by the Customer arising out of or in connection with any fraudulent use of the Equipment supplied by Maintel and/or Services by the Customer's officers, agents or employees or any third party including any officers, agents or employees of a third party.
- 9.7 For the avoidance of doubt, Maintel shall have no liability to the Customer in respect of the performance by an MNO of its obligations under any O2 Contract.

### End User Content Indemnity.

- 9.8 The Customer acknowledges and agrees that Maintel does not own or have any control over the content, security or any other aspect of any data, information or material that the Customer enters, uploads or otherwise supplies to Maintel in the course of using the Services ("**End User Content**"). The Customer shall indemnify,

defend, and hold Maintel harmless from any damages incurred by or asserted against Maintel related to, arising out of or in connection with End User Content, including without limitation, any claims: (a) that such End User Content violates or misappropriates the intellectual property or other rights of any third party; (b) in respect of the integrity, deletion, destruction, damage, loss or failure to store End User Content; and (c) any claims in respect of the Customer's use or misuse of End User Content or disclosure of End User Content to third parties; or (d) the Customer's collection or receipt of such End User Content. This clause 9.8 is excluded from any limitation of liability or limitation of damages provision set out in the Agreement.

## **10 WARRANTY**

- 10.1 Maintel warrants that the Services under this Agreement will be performed with reasonable skill and care; in accordance with all applicable regulations; using suitably qualified personnel; and in accordance with the O2 Contract (Schedule 2). The warranty is valid for a period of 90 (ninety) days from the date of performance of the relevant Services.
- 10.2 Where the Customer makes a valid claim under a warranty set out in clause 10.1, Maintel shall, within a reasonable time, and at its option either: correct any defects in such software; re-perform any Service to the extent it considers necessary to remedy any defect; or refund the Customer the amount paid for the affected Service.
- 10.3 Both Parties agree that the warranties set out in this clause 10 are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the merchantability, satisfactory quality or fitness for any particular purpose to the fullest extent permitted by law. The actions set out in this clause 10 shall be the Customer's sole remedy in respect of all warranties under this Agreement.
- 10.4 Maintel does not warrant that any Services provided by Maintel will prevent fraudulent intrusion or hacking and the Customer shall be responsible for putting in place adequate security measures to prevent the fraudulent use of the Customer Equipment and/or the Services including without limitation hacking, toll fraud, rogue dialling or any other form of fraud that causes the Customer to incur charges of which the Customer is not aware.
- 10.5 Maintel shall not assume any liability whatsoever arising from or in connection with any fraudulent use of the Services provided under this Agreement save to the extent that such fraudulent use results directly from wilful misconduct on the part of Maintel.
- 10.6 Maintel specifically denies any implied or express representation that the Services supplied by Maintel will be fit to operate in conjunction with any other hardware item or software products other than with those Services identified in an Order; to operate uninterrupted or error-free; or to have all program defects corrected.
- 10.7 Maintel's obligations under this clause 10 do not extend to any defect caused by fair wear and tear; deliberate, negligent or accidental damage by the Customer or a third party; use or modification unless approved by Maintel in writing; or hacking, virus or malicious computer program.

## **11 ESCALATION AND DISPUTE RESOLUTION**

- 11.1 Any dispute which arises between the parties as to this Agreement or the performance of the parties' respective obligations under this Agreement, shall be discussed, and if possible resolved by appointed representatives of each party, inclusive of mediation where mutually agreed by both parties.

## **12 FORCE MAJEURE**

- 12.1 Neither Party will be liable, except as specified in this clause, for any failure to perform, delay in performing or imperfect performance of any obligation under this Agreement, except for failure to pay the Charges, to the extent that such failure, delay or imperfect performance is caused by a Force Majeure Event.

12.2 If either Party is affected by a Force Majeure Event it shall promptly notify the other Party of the nature of the Force Majeure Event, the nature of any actual or anticipated failure, delay or imperfect performance and the anticipated consequence and length of such failure, delay or imperfect performance.

### 13 SUSPENSION OF SERVICES

13.1 Maintel reserves the right to suspend the Services without liability to the Customer with immediate effect upon notice to the Customer in the event that:

13.1.1 Maintel reasonably believes or has cause to believe that the Services are being used in an unauthorised or illegal manner;

13.1.2 the Customer is in material breach of any of its obligations under this Agreement;

13.1.3 any regulatory authority requires Maintel to suspend the Services;

13.1.4 the Customer fails to make payment within 30 (thirty) days of the due date for such payment, provided always that Maintel has notified the Customer that such payment is overdue.

### 14. TERMINATION

14.1 Maintel may terminate this Agreement by giving not less than six months written notice to Customer to expire after the end of the Initial Term.

14.2 The Customer may terminate this Contract by giving:

(i) 90 days written notice to expire at the end of the Initial Term; where the Initial Term is longer than 90 days; or

(ii) 30 days written notice to expire at the end of the Initial Term conditional on the Initial Term being no longer than 90 days and the Customer moving 90% of their mobile estate contracted herein to a new Maintel contract.

14.3 In the event the Initial Term of this Contract is 90 days (or less) and the Customer wishes to terminate the Contract without adhering to the conditions within clause 14.2 (ii), such termination shall be discussed and agreed between the Parties to align to the intention of the O2 Contract and MNO.

14.4 Maintel may suspend and/or terminate without cause this Agreement at any time.

14.5 Either Party may terminate this Agreement, without prejudice to its other rights or remedies, immediately following written notice if the other Party:

14.5.1 is in material breach of any of its obligations under this Agreement and either that breach is incapable of remedy, or that other party has failed to remedy that breach within 30 (thirty) days after receiving written notice requiring it to do so; or

14.5.2 if the other Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), becomes insolvent, has a receiver, liquidator, administrator or similar officer appointed, is the subject of bankruptcy proceedings, ceases to trade, passes a resolution for or is the subject of a winding up or dissolution order (except where any of the above are for the purpose of a solvent amalgamation or reconstruction), or makes any composition or arrangement with creditors; or

14.5.3 has committed an act of bribery directly linked to this Agreement.

14.6 In the event of termination of this Agreement by Maintel as a result of a breach by the Customer under clause 14.5 above:

14.6.1 the Customer shall immediately pay to Maintel the Termination Fee; and



- 14.6.2 all rights granted to the Customer under any licence granted in this Agreement shall cease and the Customer shall cease all activities authorised by the applicable licence; and
- 14.6.3 to the extent that any Customer Equipment supplied by Maintel has not been paid for in full Maintel may exercise its right to reclaim the Customer Purchased Equipment supplied by Maintel as set out in the Order.
- 14.7 In the event of expiry or termination of the O2 Contract/s where the Customer has not paid the full amount of the minimum spend for whatever reason, then the Customer shall pay the Termination Fee to Maintel within 30 days of the date of termination of the relevant O2 Contract. This obligation shall survive termination of this Agreement for whatever reason.
- 14.8 Termination of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at the date of termination.
- 14.9 On termination of this Agreement for any reason, Maintel may submit invoices for any Charges not yet invoiced and the Customer shall immediately pay these invoices and any outstanding unpaid invoices together with interest due to Maintel.
- 14.10 Other than as set out in this clause 14, neither Party shall have any further obligation to the other under this Agreement after its termination.
- 14.11 The following clauses shall continue to apply after the termination of this Agreement: clauses 1, 4, 6, 7.3, 8, 9, 10, 11, 14, 15, 18 and 20.

## 15. NOTICES

- 15.1 Any notice to be served on Maintel by the Customer under this Agreement shall be in writing and delivered as an attachment to an email to [legalenquiries@maintel.co.uk](mailto:legalenquiries@maintel.co.uk) or to any other address notified in writing to the Customer. The attachment shall be either:
- i) a Customer letterhead; or
  - ii) an otherwise authorised/recognised form (to protect the Customer from unauthorised notifications).
- 15.2 Any notice to be served on the Customer by Maintel under this Agreement shall be in writing and delivered either by email to a nominated email address (or in the absence of a nominated email address) to a recognised email address of the Customer, via the Portal or the Maintel Mobile webpage [HERE](#).
- 15.3 Notices delivered by email are deemed to be served on the date and time of them entering the Parties inbox, where such time is outside of Business Hours, the notice shall be deemed to be served on the next Business Day.

## 16. INSURANCE

- 16.1 Each Party shall during the term of this Agreement maintain in force an insurance policy or policies which cover(s) the following:
- 16.1.1 Employers' Liability £5,000,000 (five million pounds) in any one occurrence;
  - 16.1.2 Public/Products Liability £1,000,000 (one million pounds) in any one occurrence and in the aggregate; and
  - 16.1.3 Professional Indemnity £1,000,000 (one million pounds) in any one occurrence and in the aggregate.

## 17. ASSIGNMENT

- 17.1 The Customer may not assign the whole or any part of this Agreement or any of its rights or obligations hereunder without the prior written consent of Maintel (such consent not to be unreasonably withheld or delayed and provided that in respect of assignment

by the Customer the Customer has paid all Charges owed to Maintel and is not otherwise in breach of this Agreement).

## **18 NON-SOLICITATION**

18.1 The Customer agrees that during the term of this Agreement, and for a period of 12 (twelve) months after this Agreement has expired or has been terminated for any reason whatsoever, the Customer will not directly, or by use of an agent, induce or try to induce any respective employee of Maintel to leave their current employment.

## **19 ANTI-BRIBERY**

19.1 For the purpose of this clause 19, the meaning of adequate procedures and foreign public official shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

19.2 Both Parties:

19.2.1 shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

19.2.2 shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

19.2.3 shall have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010;

19.2.4 shall promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement;

19.2.5 warrant that they have no foreign public officials as officers, employees or direct or indirect owners at the Effective Date of this Agreement and agree to immediately notify the other Party if during the validity of this Agreement a foreign public official becomes an officer or employee or acquires a direct or indirect interest.

19.3 Either Party shall, upon the reasonable written request of the other Party provide such supporting evidence of compliance with this clause 19 as may be reasonably required.

## **20. ENTIRE AGREEMENT**

20.1 This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous discussions, agreements and representations, whether oral or written and whether or not made by the Customer and Maintel. Neither Party places any reliance on any representation, warranty or other statement relating to the subject matter of this Agreement save as expressly set out in this Agreement.

20.2 Neither Party shall have any liability or remedy in tort in respect of any representation, warranty or other statement (including any contained in this Agreement) being false, untrue, inaccurate or incomplete unless it was made fraudulently except to the extent that either Party has any outstanding liability to the other under a previous arrangement or contract.

20.3 If any other document, such as a purchase order, invoice or confirmation contains terms that are in addition to, inconsistent or in conflict with the terms of this Agreement, the Parties hereby agree that such terms shall be null, and void and the terms of this Agreement shall prevail in their entirety.

20.4 To be binding, any variation of this Agreement must be in writing and signed by or on behalf of each Party.

## 21 MISCELLANEOUS GOVERNING LAW

21.1 This Agreement shall be governed by the laws of England and the parties hereby submit to the jurisdiction of the English courts.

### THIRD PARTY RIGHTS

21.2 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

### WAIVER

21.3 Failure or delay of either Party to enforce its rights hereunder shall not be deemed a waiver of such or any other right, including the right to enforce a subsequent breach of the same obligation. This Agreement, or any rights or obligations hereunder, may be amended, waived or modified only in writing and signed by the parties.

### SEVERENCE

21.4 If any provision of this Agreement is to be held by any court of competent jurisdiction to be contrary to applicable law and/or unenforceable, such provision shall be considered severed from this Agreement but all remaining provisions shall continue and remain in full force and effect.

### CUMULATIVE NATURE OF REMEDIES

21.5 Unless there is express provision to the contrary in this Agreement, no remedy conferred by any terms of this Agreement is intended to be exclusive of any other remedy available under this Agreement or at law. Each and every remedy is cumulative and is in addition to each and every other remedy available under this Agreement or existing at law (whether in equity, by statute, at common law or otherwise).

### INDEPENDENT CONTRACTOR

21.6 Maintel and the Customer shall remain independent contractors and nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement, will make any party the agent or employee of the other nor will it create a partnership, joint venture or employment relationship between the Parties.

### POLICIES

21.7 To the extent reasonably necessary Maintel will use all reasonable endeavours to comply with the Maintel policies (as amended from time to time) set out here; <https://www.maintel.co.uk/legal/policies>.

## SCHEDULES

The following Schedules are incorporated into this Agreement by reference. **Schedule 1** – Special Terms for MNO (available [HERE](#))

**Schedule 2** – O2 Contract (available [HERE](#))