

## 1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Telefonica PTs the following words and phrases shall have the following meanings:

**Acceptance** has the meaning given to it in Schedules 1, 2, and/or 3 (as appropriate);

**Agreement** means an agreement between Telefonica and Supplier made via a PO;

**Bespoke IPR** means any and all new IPRs created by or on behalf of Supplier, or jointly by or on behalf of Supplier and Telefonica, in the performance of its obligations under an Agreement;

**Change of Control** occurs if any entity or person obtains ownership of more than 50% of shares carrying a right to vote in the Supplier or its Holding Company (as defined in Section 1159 of the Companies Act 2006 as amended) or if there is a change in the ownership of the legal power to direct, or cause the direction of, the general management of policies of the Supplier;

**Charges** means charges payable for the Deliverables as agreed between the Parties;

**Completion Date(s)** means dates set for the delivery and/or provision of Deliverables in the PO, an Agreement, or as otherwise agreed by the Parties;

**Confidential Information** has the meaning given to it in clause 28;

**Data Protection Legislation** means (a) all applicable laws and regulations relating to the processing of Personal Data and privacy in the UK including the Data Protection Act 2018, the General Data Protection Regulation 2016/679 ("GDPR"), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. (b) all retained EU law as defined in the European Union (Withdrawal) Act 2018 and any other future EU law relating to personal data that becomes applicable in the UK as amended from time to time to the extent applicable to the processing activities or obligations under or pursuant to this Agreement. The terms "Personal Data", "Controller", "Processor", "Data Subject" and "process" (in the context of usage of Personal Data) shall have the meanings given to them in the Data Protection Legislation;

**Defect** means a material error, omission, failure, inefficiency or inconsistency in a Deliverable (and "Defective" is construed accordingly);

**Deliverables** means Goods, Services and/or Software (as the context requires);

**Documentation** means documentation, if any, required for the proper use of the Deliverables;

**EFM** means an event of force majeure being one or more of the following: riot; civil unrest, military action, terrorism, earthquake, storm, flood, inability to obtain supplies of power, fuel, or transport; exercise of emergency powers by any governmental authority;

**Employment Liabilities** means losses, costs, claims, demands, awards, fines, liabilities or expenses (including reasonable legal expenses) arising from the employment of any person, the termination of such employment, the operation and/or termination of any collective agreement, any dispute which relates to such employment or collective agreement or their termination and any failure to discharge in full any obligation to inform or consult appropriate representatives or any person about the transfer of employees under TUPE;

**Future Supplier** means any third party providing deliverables to Telefonica similar to the Deliverables (or any part of the Deliverables) following the expiry or termination of an Agreement (in whole or in part);

**Goods** means goods to be supplied under an Agreement, and where relevant includes any Documentation supplied to aid use of such goods;

**Group** means in respect of a Party, any company which is a subsidiary or a holding (including ultimate holding) company of that Party, and any company which is a subsidiary of such holding company, (the terms subsidiary and holding company having the meanings given in Section 1159 of the Companies Act 2006 as amended);

**Information Retention Policy** means the Telefonica data retention policy as set out at:

[https://www.telefonica.com/en/web/about\\_telefonica/suppliers/supplier-policies](https://www.telefonica.com/en/web/about_telefonica/suppliers/supplier-policies)

and which is one of the Telefonica Policies;

**IPRs** means any (and any rights subsisting in any) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, moral rights, database rights, know-how and Confidential Information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights;

**IR35 Rules** means Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (as amended from time to time) and the Social Security Contributions (Intermediaries) Regulations (SI 2000/727) (as amended from time to time);

**Manufacturer** means the manufacturer of Goods (whether or not Supplier);

**Media** means any media on which any Software and/or related Documentation are recorded or printed as provided by Supplier to Telefonica;

**Party** means either Telefonica or Supplier and "Parties" shall mean both of them;

**Personal Data Breach** means any breach of security leading to the accidental or unauthorised destruction, loss, alteration, disclosure of, or access to, Personal Data;

**PO** means a Telefonica purchase order;

**Services** means the services to be provided under an Agreement and where relevant includes any Documentation supplied in respect of such Services;

**Software** means the software to be supplied (whether licensed or assigned) under an Agreement and where relevant, includes any Documentation supplied to aid use of such software;

**Specifications** means the description or specification of the Deliverables as agreed between Telefonica and Supplier in writing (if any);

**Supplier** means the supplier named in the PO;

**Supplier IPR** means any and all IPRs owned or controlled by Supplier that exist prior to the date of an Agreement or are created after the date of an Agreement from developments unconnected with that Agreement;

**Supplier Personnel** means any person used by Supplier (whether directly or indirectly including any employee, consultant, agent or subcontractor (or any employee or consultant thereof)) to perform any of its obligations under an Agreement;

**Telefonica** means the company in whose name a PO (by which an Agreement is made) is placed, in the relevant Agreement which shall be either: (a) Telefonica UK Limited a company registered in England and Wales (company number 1743099) having its registered office at 260 Bath Road, Slough, Berkshire, SL1 4DX; or (b) O2 Holdings Limited a company registered in England and Wales (company number 2604354) whose registered office is at 260 Bath Road, Slough, Berkshire, SL1 4DX; or (c) Telefonica Digital Limited a company registered in England and Wales (company number 7884976) having its registered office at Highdown House, Yeoman Way, Worthing, West Sussex, United Kingdom, BN99 3HH; or (d) or Giffgaff Limited a company registered in England and Wales (company number 04196996) having its registered office at 260 Bath Road, Slough, Berkshire, SL1 4DX; or (e) Wayra UK Limited (company number 08083534) having its registered office at Highdown House, Yeoman Way, Worthing, West Sussex, United Kingdom, BN99 3HH;

**Telefonica IPR** means any and all IPRs owned or controlled by Telefonica that exist prior to the date of an Agreement or are created after the date of an Agreement from developments unconnected with that Agreement;

**Telefonica Policies** means all policies as set out at

[https://www.telefonica.com/en/web/about\\_telefonica/suppliers/supplier-policies](https://www.telefonica.com/en/web/about_telefonica/suppliers/supplier-policies)

and which shall apply equally to each of the companies listed in the definition of Telefonica above (notwithstanding any reference on such website to such policies applying only to Telefonica UK Limited or such policies not making express reference to their application in respect of such other company) and any other relevant policies as advised by Telefonica from time to time;

**Telefonica Premises** means premises belonging to or in the control of

Telefonica or such other premises as may be agreed between the Parties; **Telefonica PTs** means these Telefonica purchasing terms as the same may be varied from time to time pursuant to clause 2, a copy of which appears on the Telefonica Website;

**Telefonica Website** means

[https://www.telefonica.com/en/web/about\\_telefonica/suppliers/supplier-policies](https://www.telefonica.com/en/web/about_telefonica/suppliers/supplier-policies);

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as re-enacted, amended or consolidated from time to time;

**VAT** means VAT chargeable under the VAT Act 1994 and any subsequent amendments;

**Warranties** means the warranties provided by Supplier in relation to the Deliverables and those set out in Schedules 1, 2, and/or 3 (as appropriate), and "**Warranty**" shall mean each of them; **Warranty Period** has the meaning given to it Schedules 1 and/or 3 (as appropriate); and

**Working Day** means between the hours of 0900 and 1730 on any day (other than a Saturday or Sunday) on which the clearing banks are open for normal banking business in England.

1.2 In these Telefonica PTs (unless the context requires otherwise): (a) references to any statute, statutory provision or statutory instrument include a reference to that statute, statutory provision or statutory instrument together with all rules and regulations made under it all as from time to time amended, consolidated or re-enacted; (b) "including" or "include" means "including but not limited to"; (c) examples are illustrative and are not the sole examples of a particular concept; (d) any reference to a document is a reference to that document as modified or replaced from time to time; (e) references to "in writing" or "written" shall include communication by email; and (f) save as expressly provided to the contrary, each of the Warranties is, and shall be construed as, separate and distinct from the other Warranties. Accordingly, a Warranty shall not be limited or restricted by reference to, or inference from, the terms of any other Warranty or any other term of an Agreement.

## 2. INCORPORATION OF TERMS AND ORDER OF PRECEDENCE

2.1 These Telefonica PTs are incorporated into and shall govern (to the exclusion of all other terms which relate to the same subject matter, including without limitation any terms appearing on Supplier's invoices or other paperwork) each and every Agreement unless the Parties agree and sign up to separate terms and conditions. No conduct by Telefonica shall be deemed to constitute acceptance of any terms put forward by Supplier or any other terms.

2.2 Telefonica shall be entitled to vary the terms and conditions set out herein from time to time and any such variation shall be binding upon Supplier with effect from the date at which the Telefonica PTs, as set out on the Telefonica Website, are updated to reflect the relevant variation. It shall be the Supplier's responsibility to visit the Telefonica Website periodically for the purpose of familiarising itself with the then current Telefonica PTs. Where a change to the Telefonica PTs (a) has a direct, material and significant impact on the Supplier's provision of the Services; and (b) will unduly and unreasonably prejudice the Supplier, such change will be subject to mutual agreement. If the Parties cannot reach mutual agreement, the Supplier shall be entitled to terminate the Agreement upon 30 days' written notice to Telefonica.

2.3 Telefonica agrees to buy, and Supplier agrees to supply the Deliverables in accordance with and subject to this clause. Telefonica shall be entitled to resell the Deliverables either on a standalone basis or as part of a package along with other goods and services. To the extent that any of the terms agreed and set out in a PO is inconsistent with any provision of these Telefonica PTs (other than in respect of Charges which shall be those as are agreed between the Parties in an Agreement), the variable details set out in a PO shall prevail. In the event of any inconsistency between an Agreement and another agreement which has been entered into between Telefonica and Supplier which relates to the same subject matter and which has been signed by authorised signatories of both

Parties, the terms of such agreement shall prevail. For the avoidance of doubt, Supplier's Agreement is with Telefonica and nothing contained herein shall amount to a guarantee of Telefonica's obligations by any other member of the Telefonica Group.

## 3. CHANGES IN REQUIREMENTS

3.1 Acting reasonably, Telefonica may at any time direct, by prior notice in writing, changes to the Deliverables and /or Specification. If any such change causes an increase or decrease in the cost of or timing required to provide the Deliverables, either Party (acting reasonably) shall be entitled to request an equitable adjustment to the Charges or Completion Date or both. Any request by Supplier for adjustment under this clause must be made within 15 days from the date of receipt by Telefonica of the notification of change.

3.2 Supplier shall not change Specifications of Deliverables without the prior written consent of Telefonica (such consent not to be unreasonably withheld).

## 4. RELEVANCE OF SCHEDULES

4.1 These Telefonica PTs (including the Schedules) shall apply to the sale and purchase of Deliverables as follows:

- The supply of Goods shall be subject to the additional terms of Schedule 1.
- The provision of Services shall be subject to the additional terms of Schedule 2.
- The licence of Software shall be subject to the additional terms of Schedule 3.

4.2 For the avoidance of doubt, Schedules 1 to 3 are not mutually exclusive. Accordingly, one or more of Schedules 1 to 3 may apply to the supply of each Deliverable (or part thereof).

4.3 If an Agreement does not relate to either Goods or Services or Software, then the above referenced schedule(s) shall not apply to that Agreement.

## 5. TELEFONICA POLICIES

5.1 In providing Deliverables, Supplier shall use its best endeavours to observe the Telefonica Policies in all material respects.

5.2 If so required by Telefonica, the Supplier will demonstrate to Telefonica that it maintains policies which align with the requirements of the Telefonica Policies to the extent they are applicable to the activities carried out by the Supplier.

5.3 Telefonica may terminate any Agreement immediately by notice in writing by Telefonica if Supplier is in material or continuing breach of the Telefonica Policies.

## 6. CHARGES AND PAYMENT TERMS

6.1 Subject to clause 3.1 Charges shall be as set out in an Agreement and shall remain fixed until completion of an Agreement. Except as expressly stated herein, all Charges are exclusive of VAT (if any) but otherwise fully inclusive including without limitation: (a) all royalties, licences fees or other expenses arising from the use or sub-licence (if permitted) by Telefonica, any member of the Telefonica Group, their employees, subcontractors or agents of any IPRs supplied by Supplier for the purpose of performing an Agreement, (b) supply and, where applicable delivery, off-loading and installation, (c) customs, duties and all other taxes or import levies, and (d) in the case of Goods, delivery DDP to Telefonica's premises per Incoterms 2020 (as may be renewed or replaced). Supplier shall, following Acceptance of any Deliverables, be entitled to submit an invoice

for the appropriate Charges. Each VAT invoice shall contain the particulars required by statute in respect of VAT, the PO number and any other particulars prescribed in the PO and shall be sent to the invoice address specified in the PO. Telefonica will pay Supplier within such period agreed between the Parties from time to time (including as specified on the PO or in an Agreement) or, in the absence of such agreement, by the first Friday after expiry of 45 calendar days from the date of receipt of a correct invoice submitted in accordance with this clause. Telefonica reserves the right to refuse payment of part or all of any invoice which is not submitted in accordance with these Telefonica PTs. If either party fails to pay any correct and undisputed amount due on time, the other party shall be entitled to charge and receive interest at a rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc. Such interest shall accrue from the due date until the date of payment and shall be calculated on a daily basis. For the avoidance of doubt, any credit notes issued by the Supplier shall be due immediately.

6.2 Telefonica and the Supplier agree that the remedies set out in an Agreement and/or the PO (Liquidated Damages) (if any) are reasonable and proportionate to protect Telefonica's legitimate interest in performing an Agreement.

6.3 The PO may refer to an amount which exceeds the Charges agreed between the Parties and those set out in an Agreement. For the avoidance of doubt, and in the event of inconsistency, the agreed Charges shall take precedence over the amount set out in a PO.

6.4 On Telefonica's request, both Telefonica and Supplier shall register for and use the electronic procedures of the Adquira e-commerce platform ("**Adquira**") for the purpose of raising POs and submitting and viewing invoices under an Agreement. In such circumstances, the Supplier agrees that it shall formalise its relationship with Telefonica Compras Electrónicas, S.L. through a corresponding contract and acknowledges and agrees that in doing so, it shall be required to pay certain upfront and recurring fees to Telefonica Compras Electrónicas, S.L. Where Supplier registers to use Adquira, all invoices subsequently submitted by Supplier to Telefonica must be submitted via Adquira, unless otherwise instructed by Telefonica.

6.5. Supplier shall provide a statement of account promptly upon request from Telefonica.

## 7. TERMINATION

7.1 Any Agreement may be terminated immediately by notice in writing by either Party if the other Party commits a material, persistent or continuing breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) the other Party fails to remedy that breach within 30 days after being notified in writing to do so.

7.2 Any Agreement may be terminated by either Party if any of the following events occurs in respect of the other Party (or any event analogous to any of the following occurs in respect of the other Party in a jurisdiction other than England and Wales): (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or for the assignment for the benefit of, its creditors; (b) a shareholder's meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or for the making of an administration order, or an application is made for the appointment of a provisional liquidator or a creditor's meeting is convened pursuant to s.98 of Insolvency Act 1986; (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or (e) it is or becomes insolvent within the meaning of s.123 Insolvency Act 1986.

7.3 In the case of an Agreement related to Goods, Telefonica shall be entitled without cost or liability to terminate an Agreement in respect of all or part of a PO at any time up to 30 Working Days prior to the agreed date for shipping of the Goods on giving written notice to the Supplier. In the case of an Agreement relating to Deliverables other than Goods, Telefonica shall be entitled without cost or liability to terminate the Agreement in respect of all or part of a PO at any time on giving 30 Working Days' notice to the Supplier. In the event that Telefonica terminates an Agreement or any part of an Agreement pursuant to this clause and without limiting clause 7.5 below, Telefonica shall pay the reasonable costs and expenses incurred by the Supplier in connection with the Agreement or part which has been terminated up to the date of termination provided always that the Supplier shall have an obligation to mitigate such costs and expenses and to demonstrate to Telefonica's reasonable satisfaction that the same have been incurred.

7.4 If at any time during the term of an Agreement the Supplier is subject to a Change of Control, Telefonica shall be entitled to terminate absolutely that Agreement without penalty immediately by notice in writing.

7.5 If an Agreement is terminated for any reason: (a) any sums due to Telefonica shall become immediately payable by Supplier without set-off or deduction; (b) Supplier shall return to Telefonica all tangible property and Confidential Information belonging to Telefonica in its possession, custody or control and Telefonica shall return to Supplier all of its tangible property and Confidential Information in its possession, custody or control; (c) each Party will cease use of the other Party's Confidential Information and IPR; and (d) each Party will, at its sole option, either return or destroy all records, documentation, data, and any other information and all copies thereof which are owned by or licensed to the other Party ("**Information**"), and on the other Party's request, a director of the recipient Party shall certify in writing that the Party has complied with this clause.

7.5A Notwithstanding clause 7.5(d), a Party shall be permitted to retain one copy of Information received under the Agreement for a period of five (5) years after the expiry of the Agreement (the "**Retention Period**") solely for the purpose of satisfying legal disclosure obligations (the "**Retained Information**") and provided that at all times (i) the recipient Party maintains the Retained Information in confidence and exercises in relation to the Retained Information no lesser security measures and degree of care than those which it applies to its own confidential information; and (ii) any access to the Retained Information is on terms no less strict than this Agreement. Following the expiry of the Retention Period, the recipient Party shall either return or destroy the Retained Information, and on the other Party's request, a director of the recipient Party shall certify in writing that the Recipient has complied with this obligation.

7.6 Termination will not prejudice or affect any right of action or remedy already accrued to either Party.

7.7 Notwithstanding any termination of an Agreement the provisions which by their nature are intended to survive such termination will remain in full force and effect including without limitation the obligations of confidentiality.

7.8 If a Party (the first Party) is prevented, hindered or delayed from performing any of its obligations under an Agreement by an EFM which continues for more than 30 days then the other Party may immediately terminate that Agreement without liability to the first Party on giving written notice of termination to the first Party.

7.9 In the event of expiry or termination of an Agreement, upon request from Telefonica, the Parties shall agree in good faith a timetable for: (i) the provision of exit support by Supplier; and (ii) the migration of the Services to Telefonica or a Future Supplier, such that migration shall be completed by the end of the migration period, as agreed between the Parties.

## 8. FORCE MAJEURE

8.1 Subject to the remaining provisions of this clause, to the extent that either Party is prevented, hindered or delayed from performing any of its obligations under an Agreement by an EFM beyond such Party's reasonable control, such Party's obligation to perform its obligations under that Agreement will (during the continuation of the EFM) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances.

8.2 Notwithstanding clause 8.1, if Supplier claims that it is affected by an EFM, such claim shall be valid only to the extent that a prudent supplier operating to standards expected of a leading supplier of the Deliverables in question could not have foreseen and prevented or avoided the effect of such EFM.

8.3 A Party claiming to be affected by an EFM will not be entitled to invoke the provisions of clause 8.1 unless it performs fully the following obligations: (a) on becoming aware of any EFM it shall have notified the other Party by the most expeditious method then available, giving details of the EFM, the obligations on its part which are affected and its reasonable estimate of the period for which such failure or delay will continue; (b) it takes all reasonable steps to prevent, avoid, overcome and mitigate the effects of such EFM; and (c) as soon as reasonably practicable after the end of the EFM shall notify the other Party in writing that the EFM has ended and resume performance of its obligations under this Agreement.

## 9. INDEMNITY

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

9.2 The following matters shall be excluded from the indemnity contained in clause 9.1 above (except to the extent that such matters are contemplated and agreed by the Parties having regard to the provisions of an Agreement, and Supplier's actual knowledge of Telefonica's intentions as to the use of Deliverables): (i) infringements arising directly from the use of Confidential Information supplied by Telefonica, where Supplier's use of such Confidential Information in the performance of an Agreement and in accordance with the terms of the Agreement is the sole and direct cause of such infringement; (ii) infringements arising from the modification of the Deliverables or Documentation by Telefonica where

such modification is not authorised by or within the reasonable contemplation of Supplier and the claimed infringement arises solely and directly from such modification; (iii) infringements arising from the combination, operation or use of the Deliverables or Documentation with any hardware, software or other device not furnished by the Supplier; and (iv) infringements arising from Telefonica's failure to promptly implement an update or modification to the Deliverable which has been communicated by the Supplier to Telefonica in writing.

## 10. LIMITATION OF LIABILITY

10.1 Nothing shall exclude or limit the liability of either Party for death or personal injury caused by its negligence, or for fraud, fraudulent misstatement or for any other liability that may not be excluded or limited by law.

10.2 Except for the liability of the Supplier under clauses 9, 21, 25.1 or 26 the aggregate liability of either Party to the other under an Agreement for all losses, damages, costs, claims or expenses suffered by the other arising out of or in connection with any breach by such Party of the terms of an Agreement or any tort or breach of statutory duty in connection with such Party's obligations under an Agreement shall be limited in the following ways: (a) the amount recoverable shall be no more than the greater of £2,000,000 or 125% of the total of all sums paid or due to Supplier for Deliverables in the previous 12 month period in which the circumstances giving rise to such claim(s) arise(s), and (b) neither Party shall be liable to the other in respect of any indirect or consequential loss, irrespective of whether such loss was foreseeable or whether the Party has been advised of the possibility that such loss may be incurred.

## 11. ENTIRE AGREEMENT

11.1 Each Agreement (including the terms of any relevant PO) constitutes the entire agreement between the Parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the Parties, whether oral or written, in relation to such subject matter.

11.2 Each Party acknowledges that in entering into an Agreement, including a PO, it has not relied upon, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other Party unless expressly set out in the relevant Agreement, PO or Specification.

## 12. SEVERABILITY

If any of the provisions of an Agreement is invalid, illegal or unenforceable, the rest of an Agreement will remain in effect and such provision(s) will be deemed modified to the extent necessary to render such term or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the Parties as set out in such Agreement.

## 13. WAIVER

No failure or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

## 14. RELATIONSHIP OF THE PARTIES

The relationship between Telefonica and Supplier is that of purchaser and supplier. Nothing in an Agreement is intended to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other. Save where expressly so stated in an



Agreement neither Party will have authority to act in the name of or on behalf of or otherwise to bind the other.

## 15. ASSIGNMENT AND SUB-CONTRACTING

15.1 Subject to clause 15.2, neither Party shall be entitled to assign, novate or otherwise to transfer any of its rights and/or obligations under an Agreement without the prior written consent of the other Party (not to be unreasonably withheld).

15.2 Telefonica shall be entitled to assign, novate or otherwise to transfer any or all of its rights and/or obligations under an Agreement to any member of the Telefonica Group provided that it shall give written notification to Supplier of any exercise of its rights under this clause.

15.3 For the avoidance of doubt, the Supplier shall not sell, assign, novate or otherwise transfer (including by way of power of attorney) its present and/or future rights of payment under this Agreement without the prior written consent of Telefonica.

## 16. THIRD PARTY RIGHTS

Save as expressly set out in an Agreement, the Parties intend that a person who is not a Party to an Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of an Agreement.

## 17. NOTICES

Any notice given under an Agreement by either Party to the other must be in writing and must be delivered either personally or by recorded delivery post or first class post. In the case of notices to Telefonica a copy of any notice shall also be sent by email to: legalnotices@telefonica.com. In the case of post such notice will be deemed to have been given 2 Working Days after the date of posting. Notices will be delivered or sent to the addresses of the Parties on the PO or to any replacement address notified in writing by either Party. Each Party may specify by notice in writing to the other a particular individual or office holder to whom any notices served on it are to be addressed in which event a notice will not be validly given unless so addressed.

## 18. DOCUMENTATION

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

## 19. SECURITY

19.1 Supplier shall ensure that Supplier Personnel conform to all security, safety and works regulations and such other local instructions, as may be notified by whilst on any Telefonica Premises or customer premises. Telefonica may (a) remove from and refuse entry and re-admission to any Telefonica Premises, any person who is, in the reasonable opinion of Telefonica, not conforming with these requirements or is otherwise not a fit person to be allowed on premises; and/or (b) search any Supplier Personnel, their vehicles, or Goods upon any Telefonica Premises or upon entry to and departure from any Telefonica Premises.

19.2 Supplier shall use its best endeavours to ensure that Supplier Personnel are aware of and comply with these requirements and that no Supplier Personnel unwilling to comply will be employed on any Telefonica Premises.

## 20. AUDIT AND PROVISION OF INFORMATION

20.1 Supplier shall, subject to agreeing confidentiality terms substantially similar to those in an Agreement, permit Telefonica (and its agents), as well as any representative of any regulatory authority with jurisdiction over any member of the Telefonica Group, to inspect, review, verify and take copies of any associated records and documentation in the control or possession of Supplier and/or Supplier Personnel relating to the provision of the Deliverables or the processing of Personal Data for the purpose of auditing the work provided for under an Agreement (including the accuracy of any amounts invoiced under an Agreement), or to audit as required to fulfil any legal, regulatory, statutory or reporting obligation, or obligations to members, shareholders or clients of any member of the Telefonica Group. Telefonica shall where reasonably possible provide 30 days' written notice to the Supplier prior to conducting an audit. Telefonica shall have the right to audit the Supplier once in any 12 month period, unless otherwise required by law, regulation or an investigation. Supplier shall provide Telefonica and its authorised representatives all reasonable assistance in exercising its right of audit under this clause 20.

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

20.3 Supplier shall at no additional cost, provide such information and assistance to Telefonica as Telefonica may reasonably require, and within the timescales reasonably specified by Telefonica, in connection with any third party or internal audit or compliance request.

## 21. EMPLOYMENT LIABILITIES

If at any time during the course of an Agreement or following the termination or expiry of an Agreement it is found or alleged that any Supplier Personnel is or has become an employee of Telefonica or a Future Supplier pursuant to TUPE or otherwise then Supplier shall indemnify Telefonica (for itself and as trustee for any Future Supplier) and keep it indemnified in full against any and all Employment Liabilities arising out of or in connection with any claim or demand by such Supplier Personnel or any trade union, staff association, worker's committee or any other worker representative who represents or purports to represent any or all of the Supplier Personnel.

## 22. SET-OFF

22.1 Each Party shall be entitled to set off any liability owed to it by the other Party against any liability it may owe to such other Party.

22.2 In the case of any member of Telefonica's Group, it shall further be entitled to set off any liability that it owes to the other Party against any liability such party owes to any member of Telefonica's Group.

22.3 Any exercise by a party of its rights under this clause shall be without prejudice to any other rights or remedies available to it under an Agreement.

## 23. ANNOUNCEMENTS AND PUBLICITY

Supplier shall not make any announcement relating to an Agreement or its subject matter without the prior written approval of Telefonica except as required by law or regulatory authority.

## 24. GOVERNING LAW AND JURISDICTION

Each Agreement and any issues or disputes arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and interpreted in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts provided that Telefonica may apply to any court of competent jurisdiction to defend its IPRs.

## 25. COMPLIANCE WITH LAWS

25.1 In performing its obligations under an Agreement, Supplier shall comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance (including any health and safety legislation and environmental legislation) and shall not, by any act or omission, place Telefonica in violation of any applicable laws or regulations.

25.2 Any breach by the Supplier of clause 25.1 shall be deemed to be a material breach of this Agreement for the purposes of clause 7.1.

25.3 In addition to and without prejudice to clause 25.1, the Parties each agree and undertake to the other that in connection with an Agreement and the transactions contemplated by an Agreement, they will each respectively comply with all applicable laws, rules, regulations of the United Kingdom relating to anti-bribery and anti-money laundering and preventing the facilitation of tax evasion.

25.4 In the event that Telefonica has any basis for a good faith belief that the Supplier may not be in compliance with the undertakings and/or requirements set out in clause 25.3, Telefonica shall advise the Supplier in writing of its good faith belief and the Supplier shall cooperate fully with any and all enquiries undertaken by or on behalf of Telefonica in connection therewith, including by making available the Supplier's relevant personnel and supporting documents if reasonably deemed necessary by Telefonica.

25.5 During the term of this Agreement, the Supplier shall not act for, or directly or indirectly provide any services, to any person or entity that:

- (a) is the subject of any economic or financial sanctions or trade embargoes implemented, administered or enforced by the United Nations Security Council, the European Union, Her Majesty's Treasury or any other UK government authority, the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Departments of State or Commerce or any other US government authority; or
- (b) would (or would be likely to) conflict with the Supplier's obligations under this Agreement or impair the impartial performance by the Supplier of its obligations under this Agreement.

## 26. DATA PROTECTION AND INFORMATION RETENTION

26.1 For the purposes of an Agreement, both Parties may receive Personal Data. Where a Party receives Personal Data as a Processor, the Parties shall agree in writing signed by a duly authorised representative of each Party (including in the relevant PO or by email) a description of the Personal Data as required by the Data Protection Legislation. Such description shall, as a minimum, contain such information set out in Schedule 4 below. In this regard, the Processor shall comply with Data Protection Legislation when processing the Personal Data and that Party shall:

- (a) act solely on the instructions of the Party providing the Personal Data in relation to the processing of that Personal Data. In the event that a legal requirement prevents the Processor from complying with such instructions or requires the Processor to process the Personal Data otherwise than in accordance with such instructions, the Processor shall, unless such legal requirement prohibits it from doing so, inform the other party of the relevant legal requirement before carrying out the relevant processing activities;
- (b) at all times, ensure that the necessary technical and organisational measures are in place to prevent unauthorised, accidental or unlawful processing or disclosure of such Personal Data and such measures shall include but not limited to taking reasonable steps to ensure the reliability of any of its staff who may have access to the Personal Data and ensuring that such staff are subject to appropriate confidentiality undertakings or are under an appropriate statutory obligation of confidentiality. The Processor shall, save where prohibited by law and as soon as reasonably practical, notify the other Party of any legal obligation which requires the Processor to disclose the Personal Data to a third party;
- (c) not transfer the Personal Data outside of the United Kingdom or the European Economic Area (as such term is commonly understood) or to any third party without the other Party's prior written consent and, where such consent is granted, the Processor shall put in place such measures and enter into such agreements as the other Party may request in order to ensure that the transfer complies with the requirements of the Data Protection Legislation and any related guidance on personal data transfers outside of the United Kingdom and the EEA;
- (d) send to the other Party any communications received from Data Subjects in relation to their Personal Data without undue delay. Taking into account the nature of the processing, the Processor shall provide such reasonable assistance as the other Party may reasonably request to enable it to satisfy its obligations with respect to responding to any Data Subjects exercising their rights under the Data Protection Legislation;
- (e) give the other Party reasonable assistance in relation to its compliance with Data Protection Legislation;
- (f) take reasonable steps to ensure the confidentiality, integrity, availability and resilience of processing systems and services associated with the processing of Personal Data;
- (g) in addition to any audit rights granted pursuant to clause 20 of this Agreement, co-operate with and provide such information and access to any facilities, premises or equipment from or on which the Personal Data is, has been, or is to be processed pursuant to this Agreement (including any such facilities, premises or equipment used by staff and / or sub-contractors) as the other Party may reasonably require to enable it to monitor compliance by the Processor with the obligations in this clause 26.1 and the Data Protection Legislation;
- (h) notify the other Party without undue delay, and in any event within 24 hours, of any Personal Data Breach and assist the other Party with any investigation into and remediation of a Personal Data Breach, including but not limited to assistance to enable the other Party to satisfy its obligations under the Data Protection Legislation with respect to notifications to a regulatory authority and/or the affected Data Subjects;
- (i) notwithstanding any other clause in this Agreement, not subcontract any of its obligations under this Agreement regarding the processing of Personal Data to a third party (a "Sub-Processor") without the prior written consent of the other Party. Where consent is provided, the Processor shall be liable for the acts and omissions of the Sub-Processor as if they were the acts or omissions of the Processor itself and the Processor shall ensure that there is a written contract executed between the Processor and the Sub-Processor that contains essentially equivalent protections for the Personal Data as are set out in this Agreement; and
- (j) on request by the other Party or otherwise upon termination or expiry of this Agreement, immediately cease processing the Personal Data and immediately supply or return any Personal Data to the other party or delete all Personal Data (including any copies thereof) in accordance with the other Party's instructions, unless a legal requirement requires retention of the Personal Data.

26.2 Where applicable the Supplier shall comply with all payment card scheme rules and regulations and required certifications as such rules and regulations apply to the provision of the Services, including but not limited to the most recent version of the Payment Card Industry Data Security Standard as promulgated by the PCI Security Standards Council as updated from time to time ("**PCI DSS**"). Telefonica may request Supplier to provide written proof of such compliance which Supplier shall provide within one (1) month of Telefonica's request. The Supplier shall perform annual reviews of their card holder environments in accordance to the PCI DSS requirements, reporting to Telefonica any identified vulnerability or non-compliance as per the PCI DSS standard.

26.3 The Supplier shall comply with Telefonica's Information Retention Policy (as amended from time to time) and will notify Telefonica of any law in the jurisdiction (s) in which the Supplier operates which would prevent the Supplier from complying with Telefonica's Information Retention Policy.

26.4 The Supplier shall maintain and keep up to date a list detailing the location of all Telefonica data (including Personal Data) together with details of any third party sub-contractors or third parties with whom the Supplier has shared any Telefonica data.

26.5 Any breach by the Supplier of clauses 26 shall be deemed to be a material breach of this Agreement for the purposes of clause 7.1.

## 27. REMEDIATION

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

## 28. CONFIDENTIALITY

28.1 Each Party shall ensure that disclosure of the Confidential Information is restricted to those employees, directors or contractors, and/or members of its Group who need access to the Confidential Information for the purposes of an Agreement. Copies or reproductions of the Confidential Information shall not be permitted except to the extent reasonably necessary for the purposes of such Agreement and all copies made shall remain the property of the disclosing party.

28.2 In this clause "**Confidential Information**" shall mean product, business, market, strategic or other information or data (including but not limited to information retained on all types of medium including written, diagrammatical, software or other storage medium) relating to an Agreement or the business or affairs of the Party disclosed whether in writing, orally or by any other means, and whether or not that information is marked "confidential" excluding any information which: (a) at the time of receipt by the recipient is in the public domain, or subsequently comes into the public domain through no fault of the recipient or its personnel; (b) is lawfully received by the recipient from a third party on an unrestricted basis; (c) is already known to the recipient before receipt under an Agreement; (d) is required by law, regulation or order of a competent authority to be disclosed by the recipient provided that the disclosing party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same; or (e) is disclosed by the recipient with the prior written approval of the other Party in accordance with the terms of such written approval.

28.3 Each Party shall maintain Confidential Information in confidence and shall exercise in relation to the Confidential Information no lesser security

measures and degree of care than those which it applies to its own confidential information, which each Party warrants as providing the protection required by these Telefonica PTs against unauthorised disclosure, copying or use.

## 29. INSURANCE

Supplier shall have in force and shall maintain a policy of insurance in respect of its liabilities under an Agreement with a limit of indemnity not less than £2,000,000 for any one claim arising out of any one incident or event and without limit as to the number of claims during the period of insurance.

## 30. IPR

30.1 Any Telefonica IPRs supplied to the Supplier by Telefonica and/or its sub-contractor(s) are supplied solely for the purposes of the Supplier performing its obligations under the Agreement. Telefonica IPR vests in and remains with Telefonica and nothing in this Agreement shall transfer ownership, or any aspect of ownership in and to Telefonica's IPRs to Supplier or be deemed to grant to Supplier any rights or interest or a licence of Telefonica's IPR except as expressly set out herein.

30.2 The Supplier warrants that all Supplier IPRs vest in and remain with the Supplier and/or its sub-contractor(s) as the case may be and Supplier warrants that:

- (a) it has the right to use and/or exploit such Supplier IPRs as envisaged under this Agreement; and
- (b) that the Supplier IPRs and the use by Telefonica of Supplier IPRs does not infringe the rights of any third party.

30.3 Without prejudice to clause 10.2 above, Telefonica's remedy and the Supplier's liability, for any breach of this clause 30.3 will be as set forth in clause 9.1(B) above.

30.4 Supplier grants to Telefonica an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Supplier IPR and to allow members of the Telefonica Group to do the same. Telefonica may also assign or sub-licence its licence to use the Supplier IPR (or any part thereof) to any third party supplier to whom it may outsource the operation of a part of Telefonica's operations or business or to a third party customer to whom Telefonica may provide services provided that such third party's use, copying, installation, maintenance, modification, enhancement and adaptation is solely for the purpose of, in the case of a Telefonica Supplier, providing a service to Telefonica and, in the case of a Telefonica customer, using the services provided by Telefonica.

30.5 In respect of Bespoke IPR, the Parties shall clearly identify in writing which of the IPRs ownership options set out in clause 30.6 shall apply. If the Parties fail to enter into discussions or to reach agreement in relation to the ownership of such Bespoke IPR, clause 30.6(a) below shall apply.

30.6 The options for ownership of Bespoke IPR shall be as follows:

- (a) Telefonica exclusively owns the Bespoke IPR (in which case Supplier agrees to take all such actions and to execute all such documents, including but not limited to an assignment of all future rights in and to the Bespoke IPR, as may be necessary to enable Telefonica to obtain, defend or enforce its rights to use the Bespoke IPR, and shall not do or fail to do any act which would or might prejudice Telefonica's rights).
- (b) Supplier exclusively owns the Bespoke IPR (in which case Supplier grants to Telefonica an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Bespoke IPR and to allow members of the Telefonica Group to do the same).

- (c) The Bespoke IPR is owned jointly by both Parties. In this case each Party grants the other Party a royalty free, irrevocable, perpetual and transferable licence to use the Bespoke IPR.

### **31. SURVIVAL OF PROVISIONS**

Clauses 1, 7, 9, 10, 11, 12, 13, 16, 20, 21, 23, 24, 26.1 (to the extent that a Party retains Personal Data provided by the other Party), 28, 30, 31 and paragraph 3 of Schedule 3 of an Agreement shall survive termination of that Agreement, for whatever reason.

### **32. MITIGATION**

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

### **33. EXECUTION**

An Agreement may be executed using electronic signatures, electronic copies, and counterparts.



## SCHEDULE 1 - ADDITIONAL TERMS RELATING TO THE SUPPLY OF GOODS

### 1. RIGHT TO INSPECT

Supplier shall, at Telefonica's request, allow Telefonica to inspect and test the Goods prior to despatch to the Telefonica Premises. If as a result of any inspection or testing Telefonica is not satisfied that the Goods will comply in all material respects with an Agreement, and Telefonica so informs Supplier within 7 days of such inspection or testing, Telefonica shall not be deemed to have accepted such Goods, and Telefonica shall not be obliged to pay any relevant Charges until the non-compliance is remedied. No such inspection shall diminish or otherwise affect Supplier's obligations.

### 2. DELIVERY AND ACCEPTANCE

2.1 Supplier shall, at its own expense, deliver the Goods during a Working Day, properly packed and secured to the place specified in the PO or such other location in the UK as may subsequently be advised in writing by Telefonica to Supplier. All Goods shall be delivered by the relevant Completion Dates, and time shall be of the essence in relation to delivery of the Goods.

2.2 Supplier shall supply Telefonica in good time with any instruction or other information required to enable Telefonica to take delivery of the Goods.

2.3 Telefonica shall accept Goods immediately after Supplier has demonstrated to Telefonica's satisfaction that the Goods (i) comply with the PO pursuant to which they are supplied; (ii) comply with the relevant Agreement; and (iii) are in accordance with the Specification, and "Acceptance" shall be construed accordingly for the purposes of this Schedule 1.

2.4 Telefonica may reject any Goods delivered earlier or later than the relevant Completion Date, unless previously agreed in writing by the Parties provided that Telefonica shall use its reasonable endeavours to accommodate deliveries effected prior to the relevant Completion Date.

2.5 If the Goods (or any parts of them) are not delivered by the relevant Completion Date, Telefonica may terminate in whole or in part the relevant Agreement without cost or liability. Where Telefonica exercises this option: (a) Supplier shall refund to Telefonica in full any payments made by Telefonica to Supplier in respect of such Goods; (b) no further payment will be due from Telefonica in respect of such Goods; (c) following receipt of payment in full of all monies due to it in relation to the Goods in respect of which an Agreement has been terminated (whether in whole or in part) Telefonica shall make such Goods available for collection by Supplier and Supplier shall collect such Goods at its own expense within 5 Working Days of the payment, and if Supplier fails to collect within this period, Telefonica may dispose of such Goods in its absolute discretion without notice or liability to Supplier; (d) title in the Goods will revert to Supplier following receipt by Telefonica from Supplier of payment in full of the refund due to Telefonica; and (e) risk in the Goods shall revert immediately to Supplier.

2.6 Supplier undertakes at its own expense to repair or replace (at the option of Telefonica) Goods lost or damaged in transit, and Acceptance will not be deemed to have taken place until replacement or repaired items have been delivered to the satisfaction of Telefonica.

### 3. RISK AND TITLE

Without prejudice to Telefonica's other rights under an Agreement: (a) title in the Goods shall pass to Telefonica on payment for the relevant Goods, and (b) risk in the Goods shall pass to Telefonica on Acceptance save where the Agreement includes installation, in which case risk shall not pass to Telefonica until completion of the installation work.

### 4. WARRANTIES

4.1 Supplier shall provide Telefonica with the benefit of any Manufacturer's warranties in respect of the Goods and additionally Supplier warrants to Telefonica as follows: (a) Supplier holds absolute legal and beneficial title in and to the Goods and has the unfettered right to sell and supply them and to pass good unencumbered title to Telefonica, (b) the Goods are manufactured, supplied and installed in accordance with Telefonica Policies, new and unused, of satisfactory quality and conform in all respects to their description and with the Specification, (c) the Goods will be free from Defects whether actual or latent and whether in design, material or workmanship (d) the Goods will comply in all material respects with all relevant statutory requirements and standards issued from time to time by the International Organisation for Standards (ISO), ITU-T and any other applicable organisation or recognised standards body, (e) the Documentation provided by Supplier in respect of the Goods are or will be of such a standard as to enable suitably trained personnel of Telefonica to understand, operate and maintain the Goods to a level of competence sufficient for Telefonica's business purposes, (f) where Supplier modifies the Goods or any part of the Goods for Telefonica, such modification will not materially reduce the functionality of the Goods save to the extent that may be agreed by Telefonica in writing prior to Supplier carrying out such modification, (g) the Goods do not contain any of the Conflict Minerals (as defined in the relevant Telefonica Policy); and (h) it has and will maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under this Agreement, a PO or a Specification. The Goods shall conform with each Warranty for 12 months or such other period agreed to in writing by the Parties from the date of Acceptance (the "Warranty Period").

4.2 If any of the Goods are in breach of any Warranty during the Warranty Period, Supplier will (at Telefonica's option and without prejudice to its other rights or remedies): (a) repair the Goods promptly at Telefonica's premises (and where that is not possible repair the Goods and redeliver to Telefonica) or (b) replace the Goods promptly with Goods that conform with the Warranties. This shall be at no cost to Telefonica. If Supplier fails to repair or replace any Goods within a reasonable period determined by Telefonica, Telefonica may either itself or through a third party, repair or replace the Goods and set off the cost of doing so against any sum Telefonica owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. Telefonica's rights and remedies are in addition and without prejudice to its other rights and remedies at law.

4.3 The Warranties apply equally to any Goods repaired or replaced in which case the Warranty Period shall be the longer of the remainder of the original Warranty Period or 6 months from the date of receipt of the repaired or replaced Goods by Telefonica (or such other period agreed to in writing by the Parties).

4.4 Telefonica's rights under an Agreement are in addition to the statutory conditions (if any) implied in favour of Telefonica by the Sale of Goods Act 1979, the Consumer Rights Act 2015, Supply of Goods and Services Act 1982, and any successor or equivalent legislation.

## SCHEDULE 2 - ADDITIONAL TERMS RELATING TO THE PROVISION OF SERVICES

### 1. GENERAL

Supplier shall provide the Services during Working Day(s) (unless otherwise agreed with Telefonica) at the place specified in the PO or such other location as may subsequently be advised in writing by Telefonica to Supplier. All Services shall be delivered by the relevant Completion Dates, and time shall be of the essence. If the Services (or any parts of them) are not provided by the relevant Completion Date, Telefonica may terminate in whole or in part the relevant Agreement without cost or liability. Where Telefonica exercises this option: (a) Supplier shall refund to Telefonica in full all payments made by Telefonica to Supplier in respect of any Services; (b) no further payment will be due from Telefonica in respect of any Services; and (c) a full refund shall be due to Telefonica in respect of any payments already made. Where Supplier is in possession of Telefonica's property in pursuance of providing the Services, it shall at its own expense repair or replace (at the option of Telefonica) any such property that is lost or damaged while in Supplier's possession to the satisfaction of Telefonica.

Telefonica shall accept Services immediately after Supplier has demonstrated to Telefonica's satisfaction that the Services (i) comply with the PO pursuant to which they are supplied; (ii) comply with the relevant Agreement; and (iii) are in accordance with the Specification, and "**Acceptance**" shall be construed accordingly for the purposes of this Schedule 2.

### 2. WARRANTIES

2.1 Supplier warrants to Telefonica: (a) that it will ensure that Supplier Personnel will use the skill, care and diligence as would be expected from a skilled and experienced supplier engaged in the same type of business as Supplier and will be performed by employees, authorised agents and sub-contractors possessing the appropriate accreditations, skills and experience for all tasks assigned to them; (b) that Supplier Personnel will carry out the Services in such a way as (i) not to cause any material fault or malfunction in the Deliverables (ii) not to cause any material interruption to Telefonica's business (other than any agreed downtime and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner) (iii) to comply in all material respects with Telefonica Policies (iv) to work in a co-operative manner with Telefonica and Telefonica's suppliers (where the provision of the Services interact with services of such other suppliers) and ensure the effective performance of the Services (v) to comply with the service levels (if any); (c) that the Services will conform in all material respects to the relevant Specification and service levels (if any) and will comply in all material respects at the time the relevant Service is performed with all statutory requirements or regulations or any other standards relating to the Services and their supply, that have been issued by any recognised and appropriate standards bodies; (d) that any Deliverables produced by Supplier in the course of performing Services shall comply with the applicable Warranties set out elsewhere in these Telefonica PTs; (e) it will operate PAYE in respect of all income received by individuals involved in the supply of Deliverable and/or performance of an Agreement; (f) it has not entered into and will not enter into any contracts or arrangements with any third party in connection with an Agreement that give rise or will give rise to any obligation of Telefonica under the IR35 Rules; (g) it will respond to Telefonica upon request from time to time to confirm that the circumstances described in paragraphs 2.1(e) and (f) of this Schedule 2 still exist; and (h) has and will maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under this Agreement, a PO or a Specification.

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

Telefonica's rights and remedies are in addition and without prejudice to its other rights and remedies at law.

2.3 The Warranties apply equally to Services re-performed.

### 3. SUPPLIER OBLIGATIONS

3.1 The Supplier shall use reasonable endeavours to continuously improve the Services and the service levels (if any) and the efficiency and cost effectiveness of the provision of the Services such that, as practical and appropriate, the Charges can be reduced or the value for money to Telefonica of the Services can otherwise be improved. The Supplier shall, at Telefonica's request, prepare a written plan which shall include a plan for identifying, monitoring and achieving continuous Service delivery, service level improvement (if any) and cost improvements and efficiencies. The Supplier shall report the results of such plan to Telefonica (at Telefonica's request). If Telefonica wishes to implement any improvements, the Supplier shall use all reasonable endeavours to implement the improvements as soon as possible, at a cost to be agreed by the Parties (and to be borne by Telefonica).

3.2 The Supplier shall take all reasonable efforts to ensure continuity of Supplier Personnel, and shall notify Telefonica (where possible, with 30 days' written notice) if any key Personnel are replaced or are to be replaced, where such replacement would materially affect the Supplier's performance of their obligations under this Agreement.

## SCHEDULE 3 – SOFTWARE LICENCE TERMS

### 1. DELIVERY AND ACCEPTANCE

Supplier shall deliver the Software to Telefonica and (where required (for example, if not pre-installed by Supplier or installed by Telefonica)) install the same at Telefonica's Premises in accordance with the relevant PO, Agreement and the Specification. Supplier shall, in accordance with an acceptance plan mutually agreed between the Parties, conduct acceptance tests in respect of the Software at Telefonica's Premises during a 14 calendar day acceptance period (or such other acceptance period as the Parties may agree in writing), such acceptance period to commence once the Software is operational. Telefonica shall accept the Software immediately after Supplier has demonstrated to Telefonica's satisfaction that the relevant Software (i) complies with the PO pursuant to which it is supplied; (ii) complies with the relevant Agreement; and (iii) is in accordance with the Specification, and "**Acceptance**" shall be construed accordingly for the purposes of this Schedule 3. Upon Acceptance, Telefonica shall, if requested by Supplier, sign an acceptance certificate acknowledging Acceptance of the relevant Software by Telefonica.

### 2. RISK AND TITLE

Risk in and title to any Media shall pass to Telefonica on the date of Acceptance. If any part of the Media shall thereafter be lost, destroyed or damaged by Telefonica, Supplier shall at the request of Telefonica replace the same promptly subject to Telefonica paying the reasonable costs associated with such replacement. Supplier shall at all times retain ownership of the Software.

### 3. LICENCE

Supplier grants to Telefonica an irrevocable, non-exclusive, perpetual licence to use, copy, install, maintain, modify, enhance and adapt the Software throughout the world and to allow members of the Telefonica Group to do the same. Telefonica may also assign its licence to use the Software (or any part thereof) to any third party to which it may outsource the operation of a part of Telefonica's operations or business provided such third party enters into a direct undertaking to respect the terms of this Schedule 3 with Supplier. The grant of rights in this paragraph 3 shall also include implementation (in accordance with the reasonable written instructions of Telefonica) of new releases, versions and upgrades to the Software.

### 4. WARRANTIES

4.1 Supplier shall provide Telefonica with the benefit of any Manufacturer's warranties in respect of the Software (if any) and additionally Supplier warrants to Telefonica as follows: (a) Supplier's title to and property in and to the Software is free and unencumbered, and Supplier has the right, power and authority to licence the same to Telefonica; (b) the Software conforms in all material respects to their descriptions (if any) and with the Specification; (c) the Software will be free from Defects which materially affect the performance or functionality of the Software; (d) the Software will comply in all material respects with all relevant statutory requirements and any relevant industry standards issued by any applicable organisation or recognised standards body; (e) the Software will be supplied free of any known computer code programming instruction or set of instructions that damages, interferes with, or otherwise adversely affects computer

program data files, or hardware, without the consent of the computer user, including self-propagating program instructions (all commonly called "**Viruses**") and when providing Services, Supplier will not knowingly introduce any Viruses to any of Telefonica's computer systems; (f) any new software releases, versions or upgrades supplied to Telefonica under an Agreement will include any data conversion software required to enable Telefonica to continue reading and writing data using the Software in the same manner as previous software releases, versions or upgrades; (g) new releases, versions and upgrades shall not cause a material diminution in the functionality or the performance of the Software; (h) neither the performance nor functionality of the Software will be adversely affected by dates, and all relevant years will be recognised as leap years; (i) the Software is capable of performing its functions for more than one currency and also for the Euro, and will comply with all legal requirements applicable to the Euro; and (j) has and will maintain all necessary licenses, consents and permissions necessary for the performance of its obligations under this Agreement, a PO or a Specification.

4.2 The Software shall conform to each of the Warranties set out in paragraph 4.1 from Acceptance for the longer of 12 months (or such other period agreed to in writing by the Parties) or the period of any standard warranty as applies to any Software supplied by Supplier ("**Warranty Period**"). The Warranties in paragraph 4.1 shall not apply to the extent that Telefonica makes or causes to be made to the defective Software any modifications in breach of this licence or if Software has been altered, repaired, installed or relocated by any party other than Supplier or Supplier's agents unless such alteration, repair, installation or relocation shall have been performed in accordance with Supplier's standards therefor.

4.3 If any Software is in breach of any Warranty during the Warranty Period, Supplier shall, at Telefonica's option and at Supplier's own expense: (a) carry out all such alterations or corrections as are necessary to cause the Software or Media to comply fully with this Schedule 3 by repairing or replacing it; or (b) refund to Telefonica any and all Charges paid by Telefonica for the Software. If Supplier fails to repair or replace the Software within a reasonable period determined by Telefonica, Telefonica may do so either itself or through a third party and set off the cost of doing so against any sum Telefonica owes or will owe to Supplier and recover any further amount outstanding from Supplier as a debt. Telefonica's rights and remedies are in addition and without prejudice to its other rights and remedies at law.

4.4 The Warranties apply equally to Software and Media which have been repaired or replaced, in which case the Warranty Period shall be the longer of the remainder of the original Warranty Period or 6 months from the date of repair or replacement (or such other period agreed to in writing by the Parties).

### 5. TRAINING AND MAINTENANCE SERVICES

Supplier shall provide such reasonable training in respect of the Software as is necessary to allow Telefonica to use it. At Telefonica's request, Supplier shall provide such Software maintenance services as Telefonica may require and in the event of such a request by Telefonica, the Parties shall (acting reasonably) negotiate in good faith to agree Charges in respect of the same.

## SCHEDULE 4

### Data Processing - Template

For the avoidance of doubt **[INSERT] is the Data Controller** and **[INSERT] is/are the Data Processor/s**. Capitalised terms shall be defined in the Agreement or Data Protection Legislation.

|  |   |
|--|---|
| <b>Nature &amp; Purpose(s) of Processing</b>   |   |
| <b>Duration of the Processing</b>  | The duration of the Processing will be limited to the earlier of, expiry of the term or termination of the Agreement.   |
| <b>Data Subjects</b>   | The Personal Data processed shall concern the following categories of Data Subjects only (please specify):<br><br><b>[INSERT]</b> .   |
| <b>Categories of Personal Data</b>   | The Personal Data processed shall concern the following categories of data only (please specify):<br><br><b>[INSERT]</b>  |
| <b>Special categories of data (if applicable)</b>                                      | The Personal Data processed shall concern the following special categories of data only (please specify):<br><br><b>[INSERT]</b>  |
| <b>Processing operations</b>   | The Personal Data processed will be subject to the following basic processing activities (please specify):<br><br><b>[INSERT]</b>   |
| <b>Plan for the return or destruction of Personal Data once processing is complete</b> | The Personal Data <b>[returned / destroyed]</b> once processing is complete within <b>[INSERT TIME PERIOD]</b>  |
| <b>Processing Locations</b>  | The processing activities will be carried out in the following locations (please specify). Where the location is outside of the UK or the European Economic Area please specify the proposed transfer mechanism and security measures used, if different to those set out below.<br><br><b>[INSERT]</b> |

#### Sub-Processors

The processing activities will be carried out using the sub-processors in the table below, in order to perform the services described above and in accordance with the terms and conditions applicable to the subcontracting parties as described in the Agreement.

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

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

There follows a description of the minimum technical and organisational security measures which must be implemented by Data Processor pursuant to Clause 26.1(b) of the Telefonica PTs and the Security Policy which can be viewed here: [https://www.telefonica.com/en/web/about\\_telefonica/suppliers/](https://www.telefonica.com/en/web/about_telefonica/suppliers/):

- *[Relevant security measures to be inserted].*