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1 INTERPRETATION

- 1.1 The words and expressions set out in Schedule 1 shall have the meaning given to them in that Schedule.
- 1.2 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in this Contract are for convenience only and shall not affect its interpretation.
- 1.4 Words importing singular include plural and vice versa.
- 1.5 The terms “party” or “the parties” shall mean BT and/or the Customer.

2. COMMENCEMENT AND TERMINATION

- 2.1 This Contract begins on the Effective Date and shall continue thereafter until terminated in accordance with this Contract.
- 2.2 The Customer may terminate the provisions of this Contract on:
 - (a) not less than one month’s notice if BT materially changes the terms and conditions of this Contract to the Customer’s detriment or increases the Charges provided that such notice to terminate shall be served on BT no later than two months from the date the change comes into effect If the Customer terminates the contract on the basis of this clause no termination charges will be levied by BT; or
 - (b) not less than 6 months’ notice for any other reason.
- 2.3 BT may terminate the provisions of this Contract on not less than 12 months’ notice (or such shorter period if directed by Ofcom under Clause 2.3(a)) for:
 - (a) a regulatory matter only if directed by Ofcom to cease the Service or the provision of the Service or any part of it (if applicable); or
 - (b) for any other matter provided termination does not occur before the minimum period has completed

In such circumstances, BT will provide a suitable alternative replacement product to meet the requirements of the Commission Decision.

- 2.4 If a party is prevented, hindered or delayed in performing an obligation under this Contract, because of Force Majeure, for a period exceeding three months, either party may terminate this Contract by giving not less than one month’s notice and provided the Force Majeure has not ceased prior to expiry of the notice this Contract shall terminate.
- 2.5 If the Customer terminates this Contract under Clause 2.2(b), the Customer must pay BT the outstanding Charges at the rate in force at termination or as otherwise provided in or referred to from the BT Quotation Form for work completed by BT, and any other reasonable costs incurred by BT at the date of termination.

- 2.6 If the Customer terminates the Service to a Site the Customer must pay BT the outstanding Charges at the rate in force at termination for that service or as otherwise provided in or referred to from the BT Quotation Form for work completed by BT, and any other reasonable costs incurred by BT at the date of termination of the Service. Where termination of the Service occurs within any minimum period that may have been included within the BT Quotation Form then the Customer will pay any outstanding charges that may apply to termination within that minimum period as detailed in the BT Quotation Form.
- 2.7 If a valid breach notice is served on the Customer and the Customer has not remedied the breach after the expiry of the period specified for remedy in the breach notice then BT may immediately upon giving notice in writing suspend the Service available to the Customer.
- 2.8 Either party may terminate this Contract or the Service (where the breach relates to that Service) provided under it immediately, on notice in writing, if the other:
- (a) commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within the following periods from the date of the notice from the other party:
 - (i) 14 calendar days in the first instance of a failure to pay a sum due and 7 calendar days in the second instance in separate payment months within 12 months of the first instance providing notices are served on each occasion; or
 - (ii) 30 calendar days; or
 - (b) commits a material breach of this Contract which cannot be remedied; or
 - (c) is repeatedly in material breach of this Contract (including without limitation repeatedly late in paying sums due under this Contract); or
 - (d) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of such other party); or
 - (e) ceases to carry on business.
- 2.9 Termination or expiry of this Contract shall not be deemed a waiver of a breach of any term or condition of this Contract and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry
- 2.10 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.
- 2.11 BT may in the case of an Emergency suspend the provision of the Service for such period as shall be reasonable under the circumstances. BT will provide as much notice as is reasonably practicable and will restore the Service as soon as possible after the Emergency has ceased.



3. PROVISION OF THE SERVICE

3.1 BT agrees to:

- (a) provide the Customer with the Service on the terms of this Contract;
- (b) exercise the reasonable skill and care of a competent communications provider in providing the Service and if required, in determining how best to provide the Service to a Site;
- (c) use reasonable endeavours to provide the Service by the CDD.
- (d) provide the Service in accordance with the Technical Specification.

3.2 Subject to Clause 3.3 and Clause 3.4, BT will provide the Service only in the Territory.

3.3 As the Service is intended to meet access obligations to be compliant with BDUK state aid funded projects that are subject to the Commission Decision, availability of the Service within the Territory is limited for up to 3 competing providers in the regions containing BDUK Phase 3 Segments, as notified by BT to the Customer following an initial enquiry by the Customer to BT for the Service with Cabinet Space further limited to where BT has deployed an over ground enclosure for BT's own active and optical equipment as part of the BDUK Phase 3 Segments build.

3.4 If the Customer wishes an individual to be able to have access to the physical infrastructure to perform activities under the Physical Infrastructure Access Agreement on the Customer's behalf akin to those circumstances where allowed under this Service, the Customer must apply for and obtain accreditation of that individual in accordance with the Accreditation Guidelines as detailed on the BT Website.

4 SERVICE MANAGEMENT

4.1 BT agrees to use reasonable endeavours to provide an uninterrupted Service to the Customer however, BT may:

- (a) give the Customer instructions which it reasonably believes are necessary for reasons of health, safety or the quality of the Service and it is the Customer's responsibility to ensure these are adhered to; or
- (b) interrupt the Service for operational reasons (such as planned maintenance or Service upgrades) or because of an Emergency. BT agrees to restore the interrupted Service as quickly as possible. BT will give the Customer as much notice as possible and shall give the Customer at least 15 calendar days' notice of any interruption to the Service for planned maintenance and upgrade work. Where practicable, BT will agree with the Customer when the Service will be interrupted. If there has been an interruption to the Service for Emergency reasons, BT will inform the Customer that there has been an interruption as soon as reasonably practicable.

5 BT EQUIPMENT

5.1 BT Equipment remains the property of BT at all times.

- 5.2 If BT requires a wayleave, consent or permission to install, keep or maintain its apparatus on, under or over land in relation to an Order (including consents for any necessary alterations to buildings, or permission to put BT Equipment at the Site), including the Street Furniture then, if the Communications Provider and/or the End User is:
- (a) the occupier of the Site ("**occupier consent**"), the Communications Provider shall, as appropriate, either: (i) procure that the End User will provide; or (ii) provide; all necessary wayleave(s), consent(s) or permission(s);
 - (b) the occupier of the Site and consent of the relevant landlord or other relevant party is required ("**landlord consent**"), the Communications Provider shall or shall procure that the End User shall identify and provide any existing rights and/or permissions they have on under or over the land on which BT could rely. If an existing right, permission or consent is not available then the Communications Provider shall, or shall procure that the End User shall work with BT to obtain the landlord's consent. BT will provide all reasonable assistance to gain the necessary wayleave, consent or permission to provide the Order. BT will not be liable for any charges or payments in relation to landlord consent(s) or any application to a court where BT is unable to procure a wayleave, consent or permission from the relevant party; or
 - (c) not the occupier of the land ("**transit consent**"), BT will use its reasonable endeavours to obtain a wayleave, consent or permission provided that the Communications Provider shall or shall procure that the End User will use its reasonable endeavours to assist with the identification of existing rights and/or permissions and provide BT with all reasonable assistance to gain the necessary wayleave, consent or permission to provide the Order.

6. ACCESS AND SITE REGULATIONS

- 6.1 The Customer shall take reasonable steps to provide access to the Site to enable BT to provide the Service including but not limited to the purpose of installation and use of the BT Equipment at the Site.
- 6.2 BT shall comply with (and shall procure that its employees, agents, subcontractors and officers shall comply) the Customer's, and if relevant the End User's reasonable Site safety and security requirements made known and brought to the attention of BT prior to attendance at the Site.
- 6.3 The Customer shall provide a suitable and safe working environment for BT at the Site.
- 6.4 BT shall not tamper or interfere with any Customer Equipment save to the extent it is necessary to provide, repair or maintain the Service. BT shall have no liability to the Customer in respect of decorator's work or any making good whatsoever, except to the extent that property damage is caused by BT's negligence.

7. INTELLECTUAL PROPERTY RIGHTS AND BT CORPORATE MARKS

- 7.1 The Customer acknowledges that all Intellectual Property Rights in or relating to the Service vest in or are licensed to BT and nothing in this Contract is to be construed as and it shall not have the effect of assigning or otherwise giving the Customer any rights in BT's Intellectual Property Rights except as provided in this clause 7.



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- 7.2 The Customer only has the right to use the Service and any documentation and manuals relating to the Service (including those on the BT Website) for its own internal use in connection with its obligations under this Contract.
- 7.3 All rights in any developments, improvements or variations to BT's Intellectual Property Rights will vest in BT.
- 7.4 Without the prior written consent of the other party, neither party shall:
- (a) use any of the Corporate Marks of the other party; or
 - (b) authorise any third party to use any of the Corporate Marks of the other party.
- 7.5 Except where BT has provided its prior written consent, the Customer shall not use any photographs or representations of any BT building including in any promotional literature.
- 7.6 The parties agree not to use or register or attempt to register as a trade mark, company name or domain name, anything that is identical to, similar to, or likely to be confused with any of the Corporate Marks of the other party
- 7.7 If authorised to use the letters "BT", the Customer will ensure that the letters "BT" will be no more prominent than the immediately surrounding letters and in no case greater than the surrounding typeface.
- 7.8 The Customer agrees to include and maintain in its contracts with any resellers of the Customer Service, conditions equivalent to those contained in sub-clauses 7.4, 7.5 and 7.6 above, and undertakes to diligently and properly enforce such conditions including if appropriate by suspending or terminating the provision of the services under such reseller agreement.
- 7.9 This clause 7 does not prevent any legitimate use of a party's name or any other trade mark in any comparison of services and tariffs, in accordance with the Trade Marks Act 1994 or in any other way which does not constitute an infringement of a third party's registered trade mark or common law rights.
- 7.10 BT agrees to indemnify the Customer against all claims and proceedings arising from infringement of any third party Intellectual Property Rights by reason of BT's provision of the Service to the Customer.
- 7.11 The indemnity in sub-clause 7.10 above does not apply to actions claims or legal proceedings to the extent that they:
- (a) are caused by the use of the Service in conjunction with other equipment or software or any other service not supplied or approved by BT; or
 - (b) are caused by reason of any alteration or modification which was not made by BT or with BT's prior written consent; or
 - (c) are caused by designs or specifications made by, or on behalf of, the Customer, other than where such designs or specifications are made as part of the Service on behalf of the Customer by BT; or
 - (d) arise as a result of the use of the Service otherwise than in accordance with the terms of this Contract.
- 7.12 The limitations and exclusions of liability contained in clause 12 do not apply to sub-clauses 7.10 and 7.11 above, except for sub-clause 12.1.

8. DATA PROTECTION

- 8.1 In this Contract, the following terms each have the meaning given to it in the GDPR: “Binding Corporate Rules”, “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing”, “Processor”, “Special Categories of Personal Data” and “Supervisory Authority”
- 8.2 Save where otherwise prohibited under this Contract BT may process Personal Data for the purposes of providing the Service worldwide, by:
- 8.2.1 using, managing, accessing, transferring or holding Personal Data on a variety of systems, networks and facilities (including databases); and / or
 - 8.2.2 transferring Personal Data to the extent necessary to allow BT to fulfil its obligations under this Contract, and the Communications Provider appoints BT to perform each transfer in order to provide the Services provided that BT shall not transfer Personal Data unless it has implemented appropriate transfer mechanisms permitted by Data Protection Legislation, including:
 - (a) BT Group’s Binding Corporate Rules (for transfers among BT’s Affiliates);
 - (b) agreements incorporating the relevant standard data protection clauses adopted by the European Commission; and
 - (c) where applicable, the EU-US Privacy Shield or any equivalent safeguard mechanism that replaces it.
- 8.3 Where each party acts as a Controller in relation to the Processing of Personal Data under the Contract, the Parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.
- 8.4 The Parties acknowledge that, in respect of all End User Data provided by the Communications Provider, the Communications Provider is the data controller and BT is the data processor.
- 8.5 The Parties acknowledge and agree that the Parties will need to share Operational Data between them. Operational Data will be shared on the basis of a transfer from data controller to data controller, and each Party will assume responsibility for its own compliance with the Data Protection Legislation.
- 8.6 BT shall Process Personal Data in accordance with applicable Data Protection Legislation and as set out in the BT Privacy Policy and, where applicable, BT Group’s Binding Corporate Rules.
- 8.7 Where BT acts as a Processor:
- 8.7.1 the subject-matter, duration, nature and purpose of the Processing, the type of End User Data and categories of Data Subjects will be set out in Schedule 4;
 - 8.7.2 In performing its obligations under the Contract, BT shall:

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- (a) Process the End User Data on behalf of the Communications Provider in accordance with the Communications Provider's documented instructions as set out in Clause 8.5.10, except where:
- (i) Applicable Law requires BT to Process the End User Data otherwise, in which case, BT shall notify the Communications Provider of that requirement as soon as reasonably practicable before Processing unless to do so would be contrary to that Applicable Law on important grounds of public interest; and / or
 - (ii) in BT's reasonable opinion an additional instruction or a change to the instructions provided by the Communications Provider in accordance with Clause 8.7.12 infringes the Data Protection Legislation and in which case BT shall inform the Communications Provider of its opinion without undue delay and, if agreed between the Parties, BT will not be required to comply with that instruction;
- (b) to protect the End User Data against a Personal Data Breach implement technical and organisational security measures required by Article 32 of the GDPR
- (c) provide Notice to the Communications Provider without undue delay and no later than 24 hours of becoming aware of a Personal Data Breach affecting the End User Data;
- (d) only use the Sub-Processors approved by the Communications Provider or in accordance with Clause 8.5.13 ; and
- (e) In relation to any Data Security Incident, BT shall:
- (i) take all reasonable steps to identify and correct the underlying cause of the Data Security Incident so as to eliminate or minimise the risk of its repetition and the occurrence of similar Data Security Incidents;
 - (ii) take such steps as the Communications Provider may reasonably request and BT may reasonably be able to take to assist the Communications Provider in addressing the adverse consequences for the Communications Provider and its affiliates of, and complying with the Communications Provider and its affiliates' obligations under Data Protection Legislation in relation to, the Data Security Incident;
 - (iii) report to the Communications Provider affected by the Data Security Incident, and/or at its direction to it and another person, promptly and at regular intervals, on the steps taken to identify and correct a Data Security Incident and their results; and

- (f) assist the Communications Provider in its compliance with the Data Protection Legislation, taking into account the nature of the Processing of the End User Data and the information available to BT, relating to:
- (i) the Communications Provider's obligation to respond to lawful requests from a Data Subject for access to, or rectification, erasure or portability or restriction of, or objection to any Processing of their Personal Data, to the extent practicable (including by having appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Communications Provider's obligation to respond to requests from a Data Subject to exercise his or her right under the Data Protection Legislation) but BT shall not respond to any such request except with the Communications Provider's prior written consent.
 - (ii) the security of the Processing of the End User Data;
 - (iii) notification of a Personal Data Breach affecting the End User Data to the Supervisory Authority or the Data Subjects; and
 - (iv) a data protection impact assessment as may be required by Article 35 of the GDPR and prior consultation with the Supervisory Authority;

8.7.3 unless Applicable Law requires BT to store a copy of the End User Data, upon expiry or termination of the Contract and at the Communications Provider's option, BT shall delete or return the End User Data within a reasonable time period.

8.7.4 BT shall make available to the Communications Provider the information demonstrating BT's compliance with its obligations set out in this Clause 8.7.

8.7.5 The Communications Provider may, subject to 30 days' Notice (or if an audit needs to be conducted on an Emergency basis, then as much prior Notice as is reasonably practicable), audit BT's compliance with this clause 8.7. BT shall allow for and reasonably cooperate with the Communications Provider (or a third party auditor appointed by the Communications Provider) to audit BT's compliance, so long as:

(a) the Communications Provider

- (i) uses its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt BT's business;
- (ii) conducts the audit during business hours, unless the audit needs to be conducted on an Emergency basis and the Communications Provider has given Notice to BT that an Emergency audit is required;
- (iii) uses its reasonable endeavours to ensure that the conduct of each audit does not cause BT to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and
- (iv) BT shall provide the Communications Provider with the necessary instructions and copies of BT's security policies which apply to the Communications Provider (or its third party auditor) undertaking the audit and the Communications Provider or its

third party auditors shall comply with BT's security policies and appropriate confidentiality obligations provided to the Communications Provider by BT.

- 8.7.6 Without prejudice to the Communications Provider's rights of audit under clause 8.5.5 and BT's obligation to rectify issues identified by any such audit adherence by BT to an approved code of conduct or an approved certification mechanism may be used by BT as an element by which to demonstrate compliance with its obligations set out in Clause 8.5;
- 8.7.7 the Communications Provider may conduct an audit of BT's compliance with its obligations set out in Clause 8.5 only once per Contract Year, except for any additional audits which:
- (a) the Communications Provider reasonably considers necessary because of genuine and evidentially supported concerns as to BT's compliance with this Clause 8.5 that cannot be resolved without an audit; or
 - (b) the Communications Provider is required to conduct an audit by Applicable Law or a competent data privacy or other regulatory authority.
- 8.7.8 without limiting BT's other obligations under this clause 8, BT shall not disclose End User Data to a third party unless required for the performance of the Service, permitted under the Contract or otherwise required by Applicable Law. If required by Applicable Law BT shall provide as much prior Notice as reasonably practicable; and
- 8.7.9 BT shall ensure that persons authorised by, or on behalf of, BT to Process the End User Data will be bound by a duty of confidentiality.
- 8.7.10 BT shall notify the Communications Provider of proposed changes to its Sub-Processors from time to time, either by providing the Communications Provider with online access to intended changes at <https://www.internal.openreach.co.uk/orpg/customerzone/products/dataprotection/dataprivacy.do> , or by such other means as BT may determine and agreed with the Communications Provider provided that:
- (a) if the Communications Provider does not give Notice of an objection to the proposed Sub-Processors or changes to those Sub-Processors change within 90 days of the date of this notice, the Communications Provider will be deemed to have authorised the use of those Sub-Processors or changes;
 - (b) if the Communications Provider does object to the use of a new Sub-Processor, the Communications Provider shall give Notice in accordance with Clause 16 documenting reasonable concerns why the Sub-Processor will not be able to comply with the Data Protection Legislation; and
 - (c) if such Notice is received within the 90 days set out in Clause 8.5.8 (a), the parties will address the Communications Provider's objection in accordance with the dispute resolution set out in Clause 15 and BT may use the relevant Sub-Processor to provide the Service until the objection is resolved in accordance with Clause 15;
- 8.7.11 BT may use Sub-Processors in accordance with Clause 8.7.10 and will remain responsible to the Communications Provider for the compliance by any Sub-Processor with the terms of this Clause 8.5 and the Data Protection Legislation (including by ensuring that data protection obligations in respect of Processing End User Data equivalent to those set out in Clause 8.5 of the Contract will be imposed on any Sub-Processors);

8.7.12 This Contract contains the Communications Provider's complete instructions to BT for the Processing of End User Data. If the Communications Provider requires any additional instructions or changes to the instructions the Communications Provider will raise a Statement of Requirement following the process set out in the Statement of Requirements process for Openreach products document. If change to the instructions is accepted by BT the change(s) will be incorporated into this Contract in accordance with clause 16 to take account of any resulting change to the Contract, such change not being unreasonably withheld by BT.;

8.7.13 the Communications Provider and BT shall comply with applicable Data Protection Legislation; and

8.7.14 the Communications Provider shall not disclose to BT any Personal Data other than the Personal Data required by BT to perform the Service.

8.8 To the extent permitted by Applicable Law and subject to clause 12,

8.8.1 a party in breach of the Data Protection Legislation or this clause 8 will be liable to the other for any losses, costs and liabilities (including those arising from Claims) incurred or suffered by the other party where those losses, costs and liabilities are caused by, or in connection with, that breach including where the Parties are jointly and severally liable; and

8.8.2 where the Parties are jointly and severally liable for a Claim caused by Processing neither party will make any payment or any offer of payment to any Data Subject (including third parties acting on behalf of any Data Subject) in response to any complaint or claim for compensation caused by or relating to the Processing of Personal Data, without the prior written agreement of the other party, such agreement not being unreasonably withheld.

9 CONFIDENTIALITY

9.1 The parties agree to keep in confidence any information (whether written or oral) of a confidential nature obtained under or in connection with this Contract or the Service. The parties agree not, without the written consent of the other party, to disclose that information to any person other than:

- (a) their employees or professional advisers;
- (b) in the case of BT, the employees of a BT Group Company or its or their suppliers; and
- (c) in the case of the Customer, the employees of a Customer Group Company or its or their sub-contractors or End Users or resellers.

Any disclosure in (a) to (c) above can only be made in order for the party to fulfil its obligations under this Contract or in relation to this Contract.

9.2 The parties agree not to, without the written consent of the other party, use information of a confidential nature referred to in sub-clause 9.1 above, for the commercial advantage of their retail businesses.

9.3 Sub-clause 9.1 will not apply to:

- (a) any information which is in the public domain other than through a breach of this Contract;
- (b) information lawfully in the possession of the recipient before the disclosure under this Contract took place;

- (c) information obtained from a third party who is free to disclose it; and
- (d) information which a party is required by law to disclose or by any order authority or court of competent jurisdiction provided that prior to such disclosure the party required to disclose the information shall consult with the other as to the proposed form, nature and purpose of the disclosure.

9.4 This clause 9 will remain in effect for 5 years after the termination of this Contract.

10. MARKETING AND MISREPRESENTATION

10.1 The parties undertake (in the case of the Customer, the Customer undertakes for itself and any reseller of the Customer Service) that in relation to their dealings with third party Customers, Customer End Users and/or potential Customer End Users they will not:

- (a) represent themselves as each other; or
- (b) misrepresent their relationship with each other; or
- (c) misrepresent the nature and/or effect of their contracts with third party CPs or Customer End Users; or
- (d) assert that they have any authority to provide or promote any products or services on behalf of each other.

10.2 The Customer also agrees not to represent that:

- (a) the Customer Service is a service provided by BT, except where authorisation has been obtained in accordance with clause 7.7; or
- (b) the third party Customer or Customer End User has access to a dedicated BT customer service.

10.3 The Customer agrees to use reasonable endeavours to include and maintain in its contracts with any reseller of the Customer Service, conditions equivalent to those contained in sub-clauses 10.1 and 10.2 above, and to enforce such conditions including if appropriate by suspending or terminating the provision of the services under such reseller agreement.

11. CHARGES

Payment and Billing

11.1 The Customer agrees to pay all charges for the Service as shown in or referred to in the BT Quotation Form (or as otherwise agreed in writing) and calculated using the details recorded by BT.

11.2 The Customer shall pay the Charges within 30 calendar days of the date of BT's invoice.

11.3 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the Customer. BT will provide a valid tax invoice in accordance with the applicable invoicing requirements. Charges that are compensatory are not subject to VAT.



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- 11.4 BT may charge daily interest on late payments not the subject of an Invoice Dispute or dispute at the Interest Rate both before and after any judgement for the period beginning on the date on which payment is due and ending on the date payment is actually made.
- 11.5 BT may make an Invoice Correction to an invoice sent to the Customer providing it notifies the Customer within six (6) months of the date of the invoice giving its reasons.
- 11.6 If a refund, payment or credit is due to the Customer by BT (unless that overpayment results from information provided by the Customer which is not attributable to information provided by BT), the Customer may charge daily interest on late repayment at the Interest Rate for the period beginning on the date on which the parties acting reasonably agree BT shall make the repayment and ending on the date BT actually makes payment.

Credit Vetting

- 11.7 During the term of this Contract, the Customer acknowledges that it may become subject to BT's Credit Vetting Policy if the following circumstances apply:
- (a) there is material adverse change in the Customers financial position which results in a reduction in the Customers issued credit rating or (in the absence of such a credit rating) a financial score provided by an accredited ratings agency; and
 - (b) there has been a recent or subsequent non-payment or partial non-payment (by five days or more) of an invoice (where the non-payment or partial non-payment is not the subject of a bona fide dispute) for the Services under this Contract.
- 11.8 BT may acting reasonably and subject to the requirements of sub-clause 11.11 below, require that the Customer provides a deposit or guarantee or payment for the Service in advance. If the Customer refuses to provide such deposit or guarantee or payment for the Service in advance, BT may refuse to accept any orders for the Service until such deposit or guarantee or payment for the Service in advance is provided or the outstanding non-disputed charges are fully paid, whichever is earlier.
- 11.9 Any deposit or guarantee or payment for the Service in advance required to be provided by the Customer under sub-clause 11.10 above, shall be no greater than the total Charges under this Contract for three months and the amount or requirement for the deposit or guarantee or payment for the Service in advance shall be reviewed by the parties at regular intervals (and at least annually).
- 11.10 Where the Customer provides a deposit it will be held until 12 consecutive months of payments have been paid on or by the due date after which the Customer will have the value of their deposit credited against BT invoices from that date. Interest on deposits held by BT will be paid at the Adjustment Interest Rate.
- 11.12 BT shall advise of any proposed update to the BT Credit Vetting Policy by issuing an industry briefing at least 28 calendar days prior to such update taking effect. Where the Customer has nominated a finance contact, BT shall also issue the update via email to the nominated finance contact.
- 11.13 This clause 11 shall continue in force after the termination or expiry of this Contract.

12. LIMITATION OF LIABILITY

12.1 Neither party excludes or restricts its liability for:

- (a) death or personal injury caused by its negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency;
- (b) any fraudulent act or omission;
- (c) fraudulent misrepresentation or misstatement; or
- (d) any liability that may not otherwise be limited or excluded by law.

12.2 Except as set out in clause 12.1 and subject to express terms and conditions of this Contract to the contrary, neither party shall be liable whether based on a claim in contract, tort (including negligence) breach of statutory duty, misrepresentation or otherwise arising out of, or in relation to this Agreement, for:

- (a) loss of time (whether direct or indirect);
- (b) wasted expenditure (whether direct or indirect);
- (c) loss of anticipated savings (whether direct or indirect);
- (d) loss of opportunity (whether direct or indirect);
- (e) loss and/or corruption of data (whether direct or indirect);
- (f) loss of revenue (whether direct or indirect); or
- (g) any indirect or consequential loss whatsoever (even if the liable party has been advised of the possibility of such loss).

12.3 Notwithstanding clause 12.2 and subject to clause 12.4 a party may claim for the following direct losses:

- (a) loss of profit;
- (b) increased costs of customer handling;
- (c) damage to, loss or destruction of real property or tangible property; and/or
- (d) costs incurred in procuring services substantially similar to the Services provided under this Agreement.

12.4 Subject to any express terms and conditions of this Agreement to the contrary, in relation to any liability arising out of or in relation to this Contract either party's liability to the other party in contract, tort (including negligence), breach of statutory duty or otherwise for direct loss or damage howsoever arising (other than loss or damage of the type referred to in clause 12.5) for all events of liability connected or unconnected in each Contract Year is limited to the liability cap. In each Contract Year the liability cap will be £5 million in total.

12.5 If a party is liable to the other party in relation to any claim by the other party for damage to, loss or destruction of real property or tangible property, the first party's liability shall be limited to £1 million for all such claims connected or unconnected in any Contract Year.

12.6 Each provision excluding or limiting liability operates separately. If any provision (or part thereof) is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

12.7 This clause 12 shall continue in force after the termination or expiry of this Contract.

13. FORCE MAJEURE

13.1 To the extent a party is delayed in meeting or fails to perform an obligation under this Contract directly caused by Force Majeure, the party affected shall have no liability to the other for such delay or failure to



perform provided that:

13.1.1 the affected party shall continue performing those obligations under this Contract that are not affected by Force Majeure and in performing those obligations shall deploy its resources so that (when taken with obligations to third parties) there is no undue discrimination.

13.1.2 the affected party shall promptly notify the other party of the Force Majeure, its geographic scope together with, if practicable, an estimate of the impact on the Service and the extent and duration of its inability to perform or delay in performing its obligations and any mitigating actions it has or is intending to take.

13.2 Any party affected by Force Majeure shall use reasonable endeavours to mitigate as soon as practicable those consequences of that Force Majeure event which have affected its obligations under the Contract.

14. CONDUCT OF INDEMNIFIED EVENTS

14.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use reasonable endeavours to do so within 14 days of receipt and if it fails to do so, any additional cost reasonably incurred as a consequence of that failure may be deducted from the indemnified sum.

14.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within 5 days of receipt of the notification in 14.1. The indemnified party may re-assume conduct of the claim at any time if it reasonably believes a failure to do so would be prejudicial to its interests.

14.3 The party assuming conduct of the claim must:

- (a) actively consult with the other party regarding the conduct of any action and take their views into account; and
- (b) make no admissions relating to any claims or legal proceeding without the prior written consent of the other party which shall not be unreasonably withheld; and
- (c) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the prior written consent of the other party, which shall not be unreasonably withheld.

15. ESCALATION AND DISPUTE RESOLUTION

15.1 Each party shall use reasonable endeavours to resolve disputes with the other. A dispute will first be escalated to the nominated contacts for disputes set out below :

BT		Customer	
Level 1	[]	Level 1	[]
Level 2	[]	Level 2	[]
Level 3	[]	Level 3	[]

- 15.2 If the dispute is not resolved within 30 calendar days of the matter being raised and it relates to the accuracy of an invoice delivered under this Contract then the parties shall refer the dispute for investigation and resolution by such chartered accountants as the parties may agree, or in default of agreement, as may be nominated by the President of the Institute of Chartered Accountants in England and Wales. Such chartered accountants shall act as an expert and not as an arbitrator and their decision, in the absence of evidence of manifest error, shall be final and binding.
- 15.3 For any dispute not covered by sub-clause 15.2, if the dispute is not resolved within 30 calendar days of the matter being raised then the parties (if they agree) shall have the option of:
- (a) referral of the dispute to a mediator in accordance with sub-clause 15.4; or
 - (b) referral of the dispute for early neutral evaluation; or
 - (c) pursuing any other dispute resolution option which the parties agree is appropriate.
- 15.4 If the dispute is referred to a mediator:
- (a) the mediator will be appointed by agreement of the parties. If the parties fail to agree within 3 calendar days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR);
 - (b) all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings; and
 - (c) if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and once signed by the parties will be binding on them. Any such agreement will constitute confidential information for the purposes of the confidentiality provisions in this Contract.
- 15.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within 2 months of the mediator being appointed, then either party may exercise any remedy that it has under this Contract.
- 15.6 The third party costs of alternative dispute resolution shall be shared equally between the parties unless determined otherwise by competent or authorised bodies. Nothing in this clause 15 shall prevent the parties from agreeing that any mediator, adjudicator, arbitrator, court or other competent person or body selected by the parties for the purposes of alternative dispute resolution may require the costs of the alternative dispute resolution to be paid by one of the parties on the resolution of the dispute.
- 15.7 Nothing in this clause 15 shall prevent either party from referring the dispute to Ofcom in accordance with any right either party may have to request a determination or from taking any other appropriate steps for its resolution.

16. CHANGES TO THIS CONTRACT

- 16.1 BT may amend this Contract at any time by giving not less than 28 days' notice before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation;
 - (b) amend the charges payable under the contract;
 - (c) maintain the integrity or security of the Service or BT Network; or
 - (d) introduce process changes to improve the quality of the Service; or
 - (e) make corrections to typographical errors;



providing that the changes in sub-clauses (c) to (e) inclusive shall not materially adversely affect the Service.

16.2 BT or the Customer may change the Contract where a change has been agreed in writing by both parties.

17. TRANSFER OF RIGHTS AND OBLIGATIONS

17.1 Neither party may transfer any of their rights or obligations under this Contract, without the written consent of the other, such consent not to be unreasonably withheld or delayed, except that:

- (a) the Customer may transfer its rights and obligations by way of novation to an eligible Customer Group Company subject to BTs credit vetting policy and the signing of a novation agreement in such form as BT shall reasonably require; and
- (b) BT may transfer its rights or obligations (or both) to a BT Group Company without consent provided that it notifies the Customer in writing in advance that it intends to do so.

18. ENTIRE AGREEMENT

18.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.

18.2 The parties acknowledge and agree that:

- (a) the parties have not been induced to enter into this Contract by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it; and
- (b) in connection with this Contract the only rights and remedies of the parties in relation to any statement, representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded.

18.3 Nothing contained in sub-clauses 18.1 and 18.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.

18.4 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

19. NOTICES

19.1 All notices given under this Contract must be in writing and may be delivered by hand, fax, e-mail or first class post to the following:

- (a) to the appropriate person for that matter as detailed below :

BT

Customer

[]

[]

- (b) for all other matters, in the case of notices from the Customer, to the Customer's BT Customer Business Manager;
- (c) for all other matters, in the case of notices from BT, to the Customer's registered office address or a fax number at its registered office or any alternative address or fax number or e-mail address which the Customer notifies to BT.

provided that any notice relating to contract termination, suspension or breach must be delivered by hand or first class post.

19.2 Subject to clause 19.1 above, a notice is duly served:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by first class post, three Working Days after the date of posting; and
- (c) if sent by email, at the time of transmission.

20. SEVERABILITY

If any Court of competent jurisdiction holds any provision of this Contract invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.

21. NO WAIVER

No failure to exercise nor any delay in exercising any right, power or remedy precludes any other or further exercise of that right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

22. LAW

The law of England and Wales governs this Contract and both parties submit to the exclusive jurisdiction of the English Courts.