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**AGREEMENT**

**for the provision of Physical Infrastructure Access**

**between**

**[PECN CP]**

**and**

**BRITISH TELECOMMUNICATIONS plc**

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- 2.1 This Agreement begins on the date that it is signed by duly authorised representatives of both parties ("Commencement Date") and shall continue until terminated in accordance with this Agreement.
- 2.2 As soon as reasonably practicable:
- 2.2.1 on or before the Commencement Date and if required by BT, the Customer shall provide BT with a fully executed version of a Deed of Guarantee guaranteeing all of the Customer's obligations and liabilities under this Agreement, the terms of which are set out in Schedule 12 (Form of parent company guarantee); and
- 2.2.2 on or after the Commencement Date the parties shall co-operate to produce a Customer Service Plan and keep the information up to date during this Agreement. The Customer Service Plan shall contain details of the points of contact within the Customer's and BT's organisations.
- 2.3 Either party may terminate this Agreement or the Service provided under it immediately, on notice, if the other:
- (a) commits a breach of this Agreement, 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 days where there is a failure to pay a sum due under this Agreement or at the sole discretion of the party to whom the sum is owed, 14 days in the first instance of a failure to pay a sum due and 7 days in the second instance in separate payment months within 12 months of the first instance; or
    - (ii) 30 days; or
    - (iii) a shorter time, reasonably specified in the notice, in the case of emergency which is a serious situation or occurrence that happens unexpectedly and demands immediate action; or
  - (b) commits a breach of this Agreement which cannot be remedied; or
  - (c) is repeatedly in breach of this Agreement (including without limitation repeatedly late in paying sums due under this Agreement); or
  - (d) has bankruptcy or insolvency proceedings brought against it; or if it does not make any payment under a judgement of a court on time, or it makes an arrangement with its creditors; or a receiver, an administrative receiver or an administrator is appointed over any of its assets; or it goes into liquidation; or there is a corresponding event under the law of any other country; or
  - (e) ceases to carry on business.
- 2.4 BT may terminate this Agreement:
- (a) immediately if there is a failure to pay a sum due under this Agreement by the due date on three or more occasions in separate payment months within a 24 month period providing notices are served upon the first two occasions in accordance with clause 2.2;
  - (b) immediately upon notice if the Customer is suspended or prohibited from providing telecommunications service(s) by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003 or loses its Code Powers;

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- (c) on not less than one month's notice if BT does not receive an Order from the Customer within 6 months of the Commencement Date;
  - (d) immediately on notice if BT is directed by Ofcom to cease the Physical Infrastructure Access Service or the provision of Physical Infrastructure Access;
  - (e) on not less than 12 months' notice for any other reason.
- 2.5 Exchange Access Link Service at any Local Access Node may be terminated under the provisions of Schedule 8.
- 2.6 Individual Licences may be terminated under the provisions of Schedule 9.
- 2.7 The Customer may terminate this Agreement on not less than 12 months' notice for any reason. If the Customer terminates this Agreement during a Minimum Licence Period other than because BT has breached this Agreement, the Customer must pay BT the appropriate termination charges in accordance with this Agreement.
- 2.8 If a breach notice is served on the Customer then BT may at its sole discretion refuse to accept new Orders and suspend access to the Gateway except for the processing of Orders which relate to cessation of Services or for the monitoring of existing Orders and suspend such other services or facilities available to the Customer as shall be reasonable in the circumstances:
- (a) immediately upon giving notice if the Customer fails to comply with the provisions of this Agreement headed Intellectual Property Rights; and
  - (b) for all other breaches immediately upon giving notice, after the period specified for remedy of the breach in the breach notice expires, if the Customer has not remedied the breach.
- 2.9 If a party is prevented, hindered or delayed in performing an obligation under this Agreement, because of Force Majeure, for a period exceeding six months, either party may terminate this Agreement by giving not less than one month's notice and provided the Force Majeure has not ceased prior to expiry of the notice this Agreement shall terminate.
- 2.10 The Customer agrees to pay the charges for the Services until this Agreement is terminated. BT agrees to repay or credit the Customer with the appropriate proportion of any annual or recurring charges paid in advance for the period ending after the Customer's liability to pay such charges ceases.
- 2.11 If BT is directed to cease the provision of Physical Infrastructure Access, or if the Customer is suspended or prohibited from providing telecommunications service(s) by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003 and/or ceases to hold Code Powers, BT may at its sole discretion refuse to accept any Orders for the Services immediately on notice to the Customer.
- 2.12 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry. If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.
- 2.13 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.

### 3. Scope

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- 3.1 BT shall provide and the Customer shall pay for the Service set out in Schedules 2, 4 and 5-9 (inclusive) in accordance with this Agreement. The Customer warrants that it will use the Services solely for the provision of its own Next Generation Access Services and for no other purpose whatsoever, in particular not for leased line or fixed or mobile backhaul services or for the provision of uncontended service between two business end user premises, and that if it uses the Services for any other purpose than for its own Next Generation Access Services, this will be a breach of this Agreement which is not capable of remedy.
- 3.2 For the purposes of this Agreement, the provision of Next Generation Access Services means those broadband, telephony or cable television services provided:
- 3.2.1 over fibre cables in the Access Network either deployed as fibre to the premises (FTTP) or fibre to the cabinet (FTTC) technology; or
- 3.2.2 over coaxial cable in the Access Network for cable television services

offered or offered to not less than 50 premises (which shall include residential premises) or not less than twenty percent (20%) of the addressable market to be served in a location, each location being served by means only of telecommunications apparatus (which in the Customer's case shall mean Customer Apparatus) installed in the spine duct in the Physical Infrastructure within the Access Network connected to a Local Access Node.

#### 4. Connection to the BT System

- 4.1 BT allows (so far as it can and is able to do so) the Customer, subject to the Customer first undergoing and being fully compliant with NAIF, interconnection with BT Systems and access to BT Information solely for the proper performance by the Customer of its obligations under this Agreement.
- 4.2 In relation to interconnection with BT Systems and access to BT Information, the Customer shall (and, where relevant, shall procure that all Customer Personnel shall) comply with the provisions of Schedule 10.
- 4.3 The Customer shall not (and, where relevant, shall procure that any Customer Personnel shall not) without the prior written consent of the BT Security Contact connect any equipment not supplied by BT to any BT LAN port.
- 4.4 The Customer shall indemnify BT and BT Affiliates for any breach of this clause 4 by the Customer or Customer Personnel from and against any costs, losses, damages, proceedings, claims, expenses or demands incurred or suffered by BT which arise as a result of any such breach. The provisions of clause 24 of the conditions do not apply to this clause 4.4.
- 4.5 The Customer shall inform the BT Security Contact immediately upon its becoming aware of any actual or suspected unauthorised interconnection with BT Systems and access to BT Information or misuse of BT Systems or BT Information or breach of any of the Customer's obligations under this clause 4.
- 4.6 The Customer consents to BT gathering information relating to interconnection with BT Systems and access to BT Information. This information may be collected, retained and analysed to identify potential security risks and may include, but is not limited to trace files, statistics, network addresses, and the actual data or screens accessed or transferred.
- 4.7 The Customer shall demonstrate to BT that it has either achieved security standard IS027001 or is working towards such achievement.

#### 5. Quality assurance

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- 5.1 The Customer shall implement a system of quality assurance which ensures timely performance and provision conforming to the requirements of this Agreement and all Applicable Laws, including without limitation compliance with any quality assurance policies, standards and procedures that shall be provided by BT to the Customer from time to time.

### **6. Provision of information**

- 6.1 BT shall supply Network Plans to the Customer in accordance with the provisions of Schedule 4 and Information. The Network Plans are provided for the sole purpose of enabling the Customer to consider whether to request Services in accordance with Schedules 5-9 (inclusive) under this Agreement. Information is provided solely in relation to the Services under this Agreement.
- 6.2 The Customer shall maintain an audit trail which provides detailed records of all downloads and copies of the Information provided by BT and the details of holders and Customer Personnel who have access to this Information. The audit trail shall be made available to BT on request in accordance with the provisions of clause 7.
- 6.3 On termination of this Agreement, the Customer shall destroy any copies of BT's Confidential Information and Sensitive Information in the Customer's possession and shall certify to BT that this has been done.
- 6.4 Notwithstanding any provision of this Agreement, BT shall not be obliged to provide Information which is subject to a confidentiality obligation to a third party unless such third party consents to such disclosure.
- 6.5 BT will use reasonable endeavours to ensure that Information disclosed is correct to the best of its knowledge at the time of provision of the Information but cannot warrant that the Information is free from errors or omissions. The Customer shall inform BT in writing of any mistakes in the Information the Customer becomes aware of provided by BT within a reasonable time of receiving it. BT will endeavour to correct any mistakes as soon as is reasonably practicable.
- 6.6 The Customer shall indemnify BT and keep BT indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Customer to comply with the conditions reasonably imposed and identified at the time when the Confidential Information or Sensitive Information was provided. The provisions of clause 24 of the conditions do not apply to this clause.
- 6.7 Nothing in this Agreement shall require either party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to the Data Protection Act 1998 or any code of practice on the confidentiality of customer information issued by the Information Commissioner.

### **7. Audits and record-keeping**

- 7.1 The Customer shall install and maintain suitable procedures and processes to allow accurate records to be taken of the Customer's performance under this Agreement.
- 7.2 The Customer shall keep or cause to be kept complete and accurate Relevant Records in electronic and hard copy format (with backup) for at least seven (7) years from the relevant date that the Relevant Record was created.
- 7.3 BT may at any time and on reasonable notice, access the Customer's premises and review and/or audit any information, records, matter or item relating to the performance by the Customer of its obligations under this Agreement in order to:
- 7.3.1 verify that the Customer is performing its obligations under this Agreement;

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- 7.3.2 inspect any BT Data, or BT Confidential Information in the Customer's possession or control;
- 7.3.3 verify that the Customer is protecting the integrity, operational availability, confidentiality and security of data (in particular, BT Data) in accordance with this Agreement;
- 7.3.4 verify compliance with any and/or all of BT's policies and standards set out or referred to under this Agreement or provided by BT from time to time, each as may be amended from time to time;
- 7.3.5 verify compliance with clauses 9 (Personnel Provisions), 11 (Disaster Recovery), 13 (Safeguarding Data) and 14 (Security of Information);
- (each an "Audit").
- 7.4 BT may carry out two (2) Audits per calendar year except that this limit shall not apply to any audit required by any Authority or under Applicable Laws.
- 7.5 The Customer shall (and shall ensure that any of its subcontractors with whom it enters into an agreement following the Commencement Date shall grant to BT (and any internal and external auditors, personnel and authorised employees of BT and any Authority (statutory or regulatory) auditors), the right to carry out audits in accordance with this clause 7 and shall promptly:
- 7.5.1 grant access to any site, Customer Personnel, Customer's systems and Relevant Records;
- 7.5.2 if necessary, grant a right to copy the Relevant Records; and
- 7.5.3 co-operate and provide all documentation and other information (including management information) and assistance as may be reasonably requested by BT and/or its auditors.
- 7.6 The Customer shall ensure that the rights of access and obligations to provide assistance and information set out in this clause 7 are the same as those granted and/or provided by the Customer to its own internal and external auditors.
- 7.7 The Customer and BT shall meet to review each Audit report promptly and to mutually agree upon an appropriate and effective manner in which to respond to any deficiencies identified and changes suggested by the audit report.
- 7.8 The Customer shall make available promptly to BT the results of any reviews or audits conducted by the Customer, its subcontractors or their agents or representatives (including internal and external auditors), relating to the Customer's operating practices and procedures to the extent relevant to the Customer's obligations under this Agreement.
- 7.9 Each party shall bear its own costs and expenses in relation to any Audit undertaken in accordance with this clause 7 unless:
- 7.9 the Audit was undertaken due to and/or reveals a significant breach of this Agreement by the Customer; or
- 7.9.2 a significant error adverse to BT is found in relation to any of the matters which were subject to an Audit in accordance with this clause 7;

in which case the Customer shall be responsible for and shall pay promptly to BT BT's reasonable costs of undertaking the Audit, including the reasonable costs of any third party

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advisers, any agreed remedial actions, and the costs of any further inspection or audit required as a result of the error or breach, subject to the terms of this Agreement.

- 7.10 The Customer shall comply with BT's record retention policies, including the Information Retention Policy and any and all other policies and standards described or referred to in this Agreement or provided by BT from time to time as such may be amended from time to time and maintain and provide access upon request to the records, documents, and other information required to meet BT's Audit rights under this Agreement.

### **8. Forecasts and capacity**

- 8.1 The Customer shall provide forecasts to BT in accordance with the provisions of Schedule 2.
- 8.2 The Customer shall submit Orders and BT shall provide Physical Infrastructure Access in accordance with the provisions of the relevant Schedules.

### **9. Personnel provisions**

- 9.1 In relation to Customer Personnel who are assigned by the Customer to carry out activities pursuant to Schedule 5 (Surveys) and/or Schedule 7 (Installation of Customer Apparatus) and/or Schedule 9 (Licence), the Customer shall ensure:
- 9.1.1 shall ensure the Customer Personnel are accredited, trained and qualified to perform work in accordance with this Agreement including accreditation requirements under Schedule 3;
- 9.1.2 if BT determines that the continued assignment of any Customer Personnel is not in accordance with the requirements of this Agreement, immediately remove any member(s) of the Customer Personnel from any Site or any Facility, provided that BT has first given written notice to the Customer requesting the removal or replacement of the identified member(s) of the Customer Personnel.
- 9.2 The Customer shall ensure that Customer Personnel comply with any BT policies and codes of conduct relating to access, security, safety and works regulations and identification as BT may reasonably require when they attend Sites or Facilities.
- 9.3 The Customer shall (and shall ensure that the Customer Personnel shall) access only those parts of the Access Network which are strictly necessary for the purposes of carrying work in accordance with this Agreement.
- 9.4 BT reserves the right at any time to refuse entry and re-admission to, any Site or Facility, any person who in BT's opinion is unsuitable to be engaged in, or continue to be engaged in, carrying out work in accordance with this Agreement.
- 9.5 BT reserves the right to challenge the Customer Personnel whereby they may be compelled to explain what they are doing in a particular Site or Facility if a BT employee is unsure whether they are entitled to be there.
- 9.6 The Customer shall not, nor allow any Customer Personnel to, use or remove from the Site or Facility any BT owned equipment, facilities and materials, without specific written notification and permission from BT.
- 9.7 The Customer shall give full co-operation to BT to investigate any breaches and suspected breaches of security in relation to this Agreement.
- 9.8 BT shall not be responsible for safeguarding any property (including money) brought onto the premises by the Customer, Customer Personnel or their representatives.

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- 9.9 The Customer shall issue to all Customer Personnel who are engaged to carry out work in accordance with this Agreement, including foremen and agents, a personal identification card. Each identification card shall:
- 9.9.1 be fully surface laminated;
  - 9.9.2 be individually numbered;
  - 9.9.3 state the employee's name;
  - 9.9.4 show a recent photograph of the employee;
  - 9.9.5 state the Customer's name, address and telephone number;
  - 9.9.6 state an expiry date in letters five (5) mm or more, no more than four (4) years ahead; and
  - 9.9.7 contain a statement confirming that the employee has been adequately trained in:
    - (a) the location of all underground services;
    - (b) testing for the presence of all types of gases;
    - (c) all aspects of roadworks signing and guarding;
    - (d) indicate whether the employee holds a prescribed qualification as a trained operative or supervisor for the purposes of sections 67 and 126 of the New Roads and Street Works Act 1991; andand include a 24 hours per day 7 days per week contact telephone number which may be used to confirm the identity of the employee and the reason that employee has been granted access to the Site or Facility.
- 9.10 BT reserves the right to audit compliance with the provisions of clauses 9.2 – 9.9 (inclusive) at any time throughout the term of this Agreement.
- 9.11 The Customer shall be liable for any act or omission by Customer Personnel in relation to any activities not pursuant to and in accordance with this Agreement and as a consequence harms or causes losses to BT or third parties.

## 10. Access and site regulations

- 10.1 The Customer shall be deemed to have examined any Site or Facility and BT shall not be liable for any claim from the Customer in relation to its misinterpretation of any Site-related or Facility-related matter, or any other matter in respect of which the Customer could reasonably have satisfied itself by a visit, reference to BT or otherwise. BT makes no warranty as to the existence of any easements, wayleaves, agreements, statutory entitlements, or other freedoms of access to Sites or Facilities.

## 11. Business continuity incident management

- 11.1 The Customer shall comply with BS 25999 (British Standard for business continuity management) and BT's Business Continuity and Disaster Recovery processes notified to the Customer by BT and will document its Business Continuity Plan and Disaster Recovery Plan to ensure it is consistent with and shall operate in conjunction with BT's Business Continuity and Disaster Recovery policies relating to the Physical Infrastructure. The Customer acknowledges that all incidents and Risk Events will be managed by BT in accordance with BS 25999 and BT's Business Continuity and Disaster Recovery processes.

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- 11.2 In the event of a Risk Event, the Customer shall maintain facilities and resources to ensure continuity of telecommunications services provided by either party or a third party by means of cables and related facilities installed within the Physical Infrastructure. The parties shall co-operate to minimise the impact of such Risk Event.
- 11.3 The Customer shall immediately notify BT of an incident which may be an event or series of events which arise from external or internal sources and have the potential to cause disruption or have a negative impact on BT by deliberate or accidental circumstances, by adversely affecting BT and without limitation its personnel, its premises, customers (including other communications providers), suppliers, systems, networks, data and reputation. The Customer shall also immediately notify BT if it becomes aware of or suspects a Risk Event. Such notification may result in the formal declaration of a Risk Event by BT (acting reasonably) and the Customer shall be obliged to implement the Business Continuity Plan and Disaster Recovery Plan under such circumstances.

### 12. Safety

- 12.1 The Customer shall in connection with this Agreement:
- 12.1.1 take, and shall ensure that its Customer Personnel take, all reasonable precautions to protect themselves, the employees and individual contractors of BT, members of the general public and the environment; and, without limitation,
- 12.1.2 comply, and ensure that the Customer Personnel comply, with all applicable laws relating to health and safety and any other health and safety provisions that may be set out in this Agreement.
- 12.2 The Customer shall, in addition, comply (and shall ensure its Customer Personnel comply) with the BT Contractor Safety Information and Guidelines and any other health and safety policies referred to and/or set out in this Agreement, each as such may be updated by BT from time to time.
- 12.3 Any failure by the Customer to comply with any health and safety requirements described in this Agreement shall be deemed to be a breach of this Agreement and the provisions of clause 2.2 shall apply.
- 12.4 At all Sites, including Sensitive Areas, where unique safe working systems are in operation, the Customer shall conform to such systems or other requirements specified by the site managers (including where necessary, special indemnity or insurance arrangements) at its own cost.

### 13. Safeguarding data

- 13.1 Ownership of BT Data
- 13.1.1 BT Data is, or shall be, and shall remain the sole and exclusive property of BT and shall be deemed Confidential Information of BT.
- 13.1.2 All information specific to BT relating to the Services which is collected or otherwise processed by the Customer, including information presented to BT in reports (including site surveys and service desk call records) shall constitute BT Data. To the extent permitted by Applicable Laws, the Customer hereby irrevocably assigns, transfers and conveys, and shall cause each member of the Customer Personnel to assign, transfer and convey, to BT without further consideration of its and their right, title and interest in and to the BT Data.
- 13.1.3 Without BT's approval (in its sole discretion), the BT Data shall not be:

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- (a) used by the Customer and/or the Customer Personnel other than as may be strictly necessary in connection with the Services;
- (b) disclosed, sold, assigned, leased or otherwise provided to third parties by the Customer and/or the Customer Personnel; and/or
- (c) commercially exploited by or on behalf of the Customer and/or the Customer Personnel.

13.1.4 Each party shall comply with its obligations under any relevant Data Protection Legislation, and neither party shall do any act which puts the other party in breach of such Data Protection Legislation.

13.1.5 The Customer shall procure that its Customer Personnel who handle any BT Data carry out any work in connection with this Agreement in compliance with any relevant Data Protection Legislation.

13.1.6 The Customer shall, and shall procure that each member of the Customer Personnel who handles any BT Data, obtain and maintain during this Agreement all registrations and notifications that they are obliged to obtain and maintain pursuant to any relevant Data Protection Legislation in relation to the provision of the Services.

13.1.7 The Customer shall, and shall procure that each member of the Customer Personnel shall:

- (a) take appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of BT Data and against accidental loss, alteration or destruction of, or damage to, BT Data and shall ensure that such measures are no less rigorous than those required in accordance with Good Industry Practice from time to time and are no less rigorous than those maintained by the Customer in respect of the Customer's own information and data (including Personal Data);
- (b) only process BT Data in accordance with BT's written instructions and not for the Customer's own purposes, including marketing purposes, other than in connection with the work to be undertaken under this Agreement;
- (c) comply with all of BT's data protection policies and procedures and in particular its policy relating to the safeguarding of BT Data as such may be notified to the Customer from time to time;
- (d) not attempt to access, or allow access to, BT Data to which it is not entitled or that is not required for the performance of work in relation to the Services;
- (e) not transfer any BT Data to any third party or to any country outside the European Economic Area;
- (f) implement appropriate systems and procedures, and shall allow BT and its representatives access to such systems where required by BT, to ensure that any Personal Data which it processes in the course of the Services are adequate, relevant, not excessive, accurate, and where necessary kept up to date, and not retained for longer than is necessary;
- (g) include in any contract with subcontractors which will process BT Data directly or indirectly, provisions in favour of BT which are equivalent to those in this clause 13; and
- (h) promptly notify BT of (and provide assistance with) any queries from data subjects, the Information Commissioner or any other law enforcement or regulatory authority, which BT may decide to resolve at its discretion.

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- 13.1.8 The Customer shall promptly notify BT of any errors or inaccuracies in the BT Data that it finds or is caused by the Customer or the Customer Personnel.
- 13.1.9 The Customer shall, and shall procure that its Customer Personnel shall, assist (at the Customer's own cost) BT to demonstrate its compliance with any legislative or regulatory responsibilities or liabilities under any relevant Data Protection Legislation that cannot be delegated by BT to the Customer for discharge or fulfilment by the Customer in the proper performance of its obligations under the Agreement.
- 13.1.10 Upon request by BT, the Customer shall execute and deliver, and shall cause the Customer Personnel to execute and deliver, any financing statements or other documents that may be necessary or desirable under any Applicable Law to preserve or enable BT to enforce its rights under this Agreement with respect to the BT Data.

### 13.2 Return of Data

- 13.2.1 The Customer shall, as soon as reasonably practicable, and/or upon request by BT at any time during the term and upon termination of this Agreement or when BT Data is no longer required by the Customer, in connection with this Agreement:
- (a) promptly return to BT, in the format and on the media requested by BT, all or any part of the BT Data; and
  - (b) erase or destroy all or any part of the BT Data in Customer's possession, in each case

to the extent so requested by BT (and in the case of such destruction, certify, on reasonable notice, that such destruction has taken place). Any archival tapes containing the BT Data shall be used by Customer and/or the Customer Personnel solely for back-up purposes.

## 14. Security of information

- 14.1 The Customer must not use BT's Information for any purpose other than the purpose for which it was provided to the Customer by BT and/or only to the extent necessary to enable the Customer to order and consume Service and to perform its obligations under this Agreement.
- 14.2 The Customer shall take all steps reasonably necessary and consistent with its obligations under this Agreement to ensure that BT's Information is protected, and in particular the Customer shall:
- 14.2.1 identify to BT on the Commencement Date details of the Customer Security Contact who shall act as a single point of contact for any security issues;
  - 14.2.2 record and maintain details of all Customer Personnel who are authorised to access, and use, BT's Information;
  - 14.2.3 ensure each member of the Customer Personnel receives appropriate security training in accordance with the requirements of this clause 14 and shall maintain the records of training which shall be made available for audit by BT;
  - 14.2.4 ensure that all security requirements in this Agreement are communicated and published to all Customer Personnel in relation to their role;
  - 14.2.5 ensure that all Customer Personnel maintain a clear-desk and a clear-screen policy to protect BT's Information;

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- 14.2.6 ensure it has formal security incident management procedures with defined responsibilities and any information on the incident shall be treated as Confidential Information and the terms of clause 17 (Confidentiality) shall apply;
- 14.2.7 ensure it operates a proactive strategy to minimise the risk and effects of fraud and other security risks and maintain processes to monitor such activities;
- 14.2.8 ensure procedures and controls are in place to protect the exchange of information through the use of emails, voice, facsimile and video communications facilities;
- 14.2.9 ensure any use of diagnostic tools is securely controlled;
- 14.2.10 ensure that access to the Customer's audit tools are restricted to authorised Customer Personnel and their use monitored regularly; and
- 14.2.11 comply with the provisions of the Information Security Guide.
- 14.3 The Customer shall ensure that BT's Information is logically separated in a secure manner from all other information created or maintained by the Customer.
- 14.4 The Customer shall implement security measures across all supplied components, such that it safeguards the confidentiality, availability and integrity of BT's Information.
- 14.5 The Customer shall provide BT with full documentation in relation to the implementation of logical security in relation to delivery of Services and shall ensure that the implementation and management of security of BT's Information:
  - 14.5.1 reduces the risk of misuse of BT Systems and/or BT's Information, which could potentially cause loss of revenue or service, by those individuals who are authorised to access it; and
  - 14.5.2 detects any security breaches that do occur enabling quick rectification of any problems that result and identification of the individuals who obtained access and determination of how they obtained it.
- 14.6 The Customer shall use physical and electronic security measures to protect BT's Information, or where Customer Systems provide access to any BT's Information, to prevent loss or corruption or unauthorised use of or access to BT's Information. The Customer shall maintain processes which detect and record any attempted damage, amendment or unauthorised access to BT's Information.
- 14.7 The Customer shall implement a controlled exit procedure in respect of Customer Personnel who had access to BT's Information, and leave the employment of the Customer or are no longer engaged in connection with this Agreement. The controlled exit procedure shall include the return of BT's Information in the possession of the Customer Personnel. Such controlled exit procedure shall include a written communication by the Customer Security Contact to BT Security Contact of this removal.
- 14.8 If the Customer uses subcontractors, it shall procure that formal contracts containing all security requirements within this clause 14, to the extent they are relevant to the subcontractor, must be put in place between the Customer and its subcontractor before the subcontractor can access BT's Information.
- 14.9 The Access made by any Customer Personnel shall be audited regularly, and reauthorisation of Access rights to BT's Information shall be carried out annually as a minimum.
- 14.10 If Access by Customer Personnel is via Customer Systems, the Customer shall comply with the provisions of Schedule 10.
- 14.11 The Customer shall report to the BT Security Contact promptly when it becomes aware of:

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- 14.11.1 any potential misuse of BT's Information or improper or unauthorised access to BT's Information;
  - 14.11.2 anything that may have a material adverse effect on the Customer's ability to perform its obligations under this Agreement, or is experiencing an incident of a severity where it is judged that it is possible that BT's business may be impacted; or
  - 14.11.3 any loss or corruption of BT's Information caused by the Customer's negligence or its unauthorised use of or access to BT's Information.
- 14.12 Upon request, the Customer shall promptly provide to BT a written report with details of the incident, a remedial plan and a timetable for achievement of the planned improvements and steps to be taken to avoid a repeat of the incident. If any audit or investigation reveals that there is a potential risk to the confidentiality, integrity or availability of BT's Information in the Customer's processes or Customer Systems, the Customer shall promptly correct any security risk in the Customer's processes or Customer Systems. If BT discovers that BT Information has not or is not being used in accordance with this Agreement, the Customer shall, upon request of BT, delete and procure that all third parties shall delete and/or destroy all such BT Information.
- 14.13 The Customer shall give to (or procure the giving to) BT (or any person authorised by BT) such access at all reasonable times to the Customer's and any subcontractor's records and premises as BT may require from time to time to assess the Customer's compliance with this clause 14.
- 14.14 The Customer shall (to the extent it caused such loss, corruption or unauthorised use) at its own cost and expense take all steps necessary to restore the lost or corrupted data to the last back-up and/or terminate the unauthorised use of or access to BT's Information.

## 15. Security

- 15.1 The Customer shall observe the provisions set out in Schedule 10 (Security).
- 15.2 The Customer agrees that it will inform BT of a known material security risk and if it wilfully fails to inform BT of such known material security risk that then manifests itself, it shall expect to be held liable for the consequences on itself and on BT. If the Customer refuses to accept the existence of a risk (and implement necessary protective security measures) identified and insisted upon by BT, it shall indemnify BT against the consequences of the manifestation of such risk.
- 15.3 The Customer shall, at its own cost, implement policies relating to security identified in this Agreement and shall indemnify BT against any loss or injury incurred to BT or any third party if the Customer wilfully fails to inform BT or fails to implement appropriate security policies as notified by BT from time to time.
- 15.4 The Customer shall be responsible for and shall indemnify BT for loss or damage as a result of any action it or its Customer Personnel take (directly or indirectly) in connection with a security threat that:
- 15.4.1 has been identified in a risk assessment; and
  - 15.4.2 has exploited a vulnerability in the Customer Systems.

## 16. Charges and payment

- 16.1 The Customer agrees to pay all charges for the Services as shown in the Openreach Price List (or as otherwise agreed in writing) and calculated using the details recorded by BT.

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- 16.2 The Customer agrees to pay the charges within 30 calendar days of the date of BT's invoice. BT may charge daily interest on late payments not the subject of a bona fide 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.
- 16.3 If a refund 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 payments not the subject of a bona fide dispute at the Interest Rate for the period beginning on the date on which the parties agree BT shall make the repayment and ending on the date BT actually makes payment. If any charge is recalculated or adjusted with retrospective effect under an order, direction, determination or requirement of Ofcom, or any other regulatory authority or body of competent jurisdiction, the parties agree that interest will not be payable on any amount due to either party as a result of that recalculation or adjustment.
- 16.4 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the Customer.
- 16.5 The Licence Fee will commence on the Licence Completion Date and shall be payable in accordance with BT's invoice.
- 16.6 The Customer shall pay the Licence Fees and Exchange Access Link rental in accordance with BT's billing cycle. If BT begins, or ceases, the Service on a day which is not the first or last day of the period by reference to which BT charges Licence Fees and Exchange Access Link rental, BT will apportion the Licence Fees and rental on a daily basis for the incomplete period. The Licence Fees, Reservation Fees and Exchange Access Link rental will be payable in monthly instalments in advance but BT may on occasion bill the Customer in arrears.
- 16.7 All other charges for provision of Service shall be due on the date that the Service is made available to the Customer, including the start date of the reservation by the Customer of space within the Physical Infrastructure. The Customer shall be liable to pay the Cancellation Charges in accordance with BT's invoice.
- 16.8 The Customer acknowledges that it may be subject to BT's credit vetting policy procedures. Should BT consider it necessary following the application of such procedures or should the Customer fail to pay the charges due under or in connection with this Agreement, BT may (without prejudice to any other rights and remedies available to BT), at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future charges. The Customer agrees to pay such deposit or provide such guarantee within 28 calendar days of receiving notice from BT requiring it to do so, failing which BT reserves the right, without prejudice to any other rights and remedies available to it under this Agreement to refuse to accept any further orders under the Agreement and to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances until such deposit or guarantee is provided.
- 16.9 If the Customer disputes any invoice, it will notify BT in writing within 30 days of the date of the relevant BT invoice giving its reasons. The Customer is not entitled to withhold:
- (a) payment of any amount not in dispute; and /or
  - (b) any payment to BT on the grounds that the Customer has a dispute with its customer(s) or reseller(s).

If the amount in dispute is:

- (a) less than £250,000 and less than 5 per cent of the total amount of the relevant invoice (excluding VAT), the total amount invoiced shall be due and payable on the due date; or

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- (b) of at least £250,000 (excluding VAT) or 5 per cent or more of the total amount of the relevant invoice (excluding VAT),

the amount in dispute may be withheld by the Customer until the dispute is resolved and the balance shall be due and payable on the due date.

- 16.10 BT may correct an invoice sent to the Customer providing it notifies the Customer within 12 months of the date of the invoice giving its reasons.
- 16.11 This clause 16 shall continue in force after the termination or expiry of this Agreement.

### 17. Confidentiality

- 17.1 The parties agree to keep in confidence any Information of a confidential nature obtained under or in connection with this Agreement. Neither party shall without the written consent of the other party 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.

Any disclosure under sub-clauses 17.1 (a), (b) or (c) above can only be made in order for the party to fulfil its obligations under this Agreement.

- 17.2 Sub-clause 17.1 shall not apply to:

- (a) any information which is in the public domain other than through a breach of this Agreement;
- (b) information lawfully in the possession of the recipient before the disclosure under this Agreement took place;
- (c) information obtained from a third party who is free to disclose it; and
- (d) information which a party is requested to disclose and, if it did not, would be required by law to do so;
- (e) any information which has been replicated independently by someone without access or knowledge of the Information.

- 17.3 The disclosure of BT's Information may prejudice BT's commercial interests. For these reasons, BT believes that such information will be exempt from the duty to confirm or deny, and from disclosure, under the Freedom of Information Act 2000. If the Customer receives a request under the Freedom of Information Act 2000 which encompasses any Information held by the Customer which was provided to them by BT in connection with this Agreement, the Customer shall notify BT of the request and allow BT not less than 10 Working Days in which to make representations.

- 17.4 The Customer agrees that, either upon learning of or upon a showing by BT of, any threatened or actual unauthorised use or disclosure of BT Information by the Customer or Customer Personnel, or in the event of any loss of, or inability to account for, any such BT Information, the Customer shall notify BT thereof and shall cooperate as reasonably requested by BT to seek appropriate injunctive relief against the Customer or applicable Customer Personnel or otherwise to prevent or curtail such threatened or actual unauthorised use or disclosure, or to recover such Information.

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- 17.5 The Customer acknowledges that if it breaches any of the confidentiality provisions set out in this Agreement, damages may not be an adequate remedy for BT and BT shall (without prejudice to any other rights and remedies) have the right to apply for injunctive relief or for specific performance of the Customer's obligations.
- 17.6 The Customer shall comply, and shall ensure that the Customer Personnel comply, with the BT Information Security Policies and in particular BT's Information Sharing Policy at all times.
- 17.7 The Customer shall implement and maintain an appropriate security program for BT Information to:
- 17.7.1 ensure the security and confidentiality of such BT confidential Information;
  - 17.7.2 protect against any threats or hazards to the security or integrity of such BT confidential Information; and
  - 17.7.3 prevent unauthorised access to or use of such BT confidential Information.
- 17.8 The Customer shall immediately notify BT of:
- 17.8.1 any disclosure, access to or use of any BT confidential Information in breach of this Agreement;
  - 17.8.2 any unauthorised intrusion into systems containing BT confidential Information; and
  - 17.8.3 any disclosure of any BT confidential Information to the Customer where the purpose of such disclosure is not known to the Customer.
- 17.9 BT reserves the right to review the Customer's policies and procedures used to maintain the security and confidentiality of BT Information.
- 17.10 The Customer shall hold, maintain and control a full and accurate list of its representatives that "need to have access" to the confidential Information in accordance with the provisions of this clause 17, and shall make such list available to BT on request.
- 17.11 This clause 17 shall remain in effect for 5 years after the termination of this Agreement.

### **18. Force majeure**

- 18.1 If a party is delayed in meeting or fails to perform an obligation under this Agreement because of Force Majeure, the party affected shall have no liability to the other for such delay or failure to perform.
- 18.2 If as a result of Force Majeure, the affected party is prevented or delayed in performing its obligations under this Agreement, it shall continue performing those obligations under this Agreement 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 against the other party.

### **19. Undertakings and warranties**

- 19.1 Each party warrants that it has the requisite power and authority to enter into this Agreement and to carry out its obligations as contemplated by this Agreement.
- 19.2 The Customer represents and warrants to BT that:

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- 19.2.1 it shall perform any work in connection with this Agreement in accordance with all Applicable Laws, the Customer's appropriate internal procedures and Good Industry Practice;
- 19.2.2 it shall perform all work using a sufficient number of appropriately qualified and skilled personnel who have accreditation in accordance with Schedule 3.

### **20. Conduct of indemnified events**

- 20.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use its 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.
- 20.2 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 clause 20.1. 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.
- 20.3 The party assuming conduct of the claim must:
- 20.3.1 actively consult with the other party regarding the conduct of any action and take their views into account; and
- 20.3.2 make no admissions relating to any claims or legal proceeding without the consent of the other party which shall not be unreasonably withheld; and
- 20.3.3 not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the consent of the other party, which shall not be unreasonably withheld.

### **21. Limitation of liability**

- 21.1 Save as expressly provided in this Agreement BT has no obligation of any kind to the Customer beyond the obligations to exercise the reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement.
- 21.2 Each party shall be responsible for and indemnify and hold harmless the other party against all claims, proceedings, losses, liabilities, costs, damages and expenses caused by that first party's negligence, other default or deliberate act arising out of or in connection with this Agreement as a result of:
- 21.2.1 loss of or physical damage to any tangible property of the other party;
- 21.2.2 personal injury, including death or disease, of any employee servant, agent or contractor of the other party;
- 21.2.3 personal injury, including death or disease, and/or damage to any third party tangible property.
- 21.3 Subject to clause 21.5 if either party is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay monies in the ordinary course of business and excluding liabilities under clause 21.2) or otherwise liable to the other party (including liability for negligence or breach of statutory duty) such party's liability to the other shall be limited to £20 million pounds sterling (Stg £20,000,000) for all events (connected or unconnected) in any period of 12 calendar months.

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- 21.4 Nothing in this Agreement shall limit liability for loss or damage arising out of or in connection with:
- 21.4.1 either party's liability in respect of death or personal injury caused by its (or its agents' and subcontractors') negligence;
  - 21.4.2 the Customer's liability in respect of a breach of clause 23 (Intellectual Property Rights) and sub-clauses 13.1.3, 13.1.5, 13.1.6 and 13.1.8.5 of clause 13 (Safeguarding Data);
  - 21.4.3 either party's liability in respect of fraud;
  - 21.4.4 either party's liability in respect of fraudulent misrepresentation; or
  - 21.4.5 either party's liability in respect of any other liability that cannot be excluded under Applicable Law.
- 21.5 Subject to the express terms and conditions of this Agreement to the contrary, neither party shall be liable to the other party under or in connection with this Agreement or otherwise for any consequential loss, loss of profit or anticipated profit (whether direct or indirect), loss of time, loss of use or business interruption, loss of business or anticipated savings, wasted expenditure or for any indirect or other consequential loss in each case whatsoever and howsoever caused, including without limitation, by reason of misrepresentation (whether made prior to or in this Agreement), negligence, other tort, breach of contract or breach of statutory duty.
- 21.6 Notwithstanding the provisions of clause 21.5 above each Party shall be liable to the other Party for its [that Party's] direct loss of revenue or profit (where not already included in loss of revenue) arising under or in connection with this Agreement caused by reason of negligence, other tort, breach of contract or breach of statutory duty.
- 21.6 Each provision of this clause 21 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

## **22. Insurance and risk**

- 22.1 The Customer shall at its own expense maintain for the duration of this Agreement public liability insurance coverage to the value of not less than £20,000,000 for each and every claim.
- 22.2 The Customer shall at its own expense maintain for the term of this Agreement such insurance as is legally required and appropriate in respect of its own obligations which shall not be deemed a limitation of Customer's liability under this Agreement, including without limitation:
- 22.2.1 professional indemnity insurance coverage to the value of not less than £10,000,000 for each and every claim, subject to a maximum of £20,000,000 in aggregate in respect of all claims in any twelve (12) month period;
  - 22.2.2 employer's liability coverage to the value of not less than the minimum statutory amounts for each and every claim; and
  - 22.2.3 contractors' all risk coverage to the value of not less than £2,500,000 for each and every claim.
- 22.3 To the extent public liability insurance is obtained or maintained pursuant to this Agreement, the Customer shall, upon BT's request, furnish to BT certificates of insurance evidencing all coverages referenced in this Agreement.

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22.4 The Customer shall provide to BT thirty (30) Working Days' notice prior to coverage cancellation or material alteration of the coverage by either:

22.4.1 the Customer, its agents and/or subcontractors; or

22.4.2 the applicable insurer,

that would cause the Customer to be non-compliant with this clause 22. Such cancellation or material alteration shall not relieve the Customer of its continuing obligation to maintain insurance coverage in accordance with this clause 22.

22.5 The amounts of required insurance specified above are minimum requirements and the Customer shall be responsible for providing any additional insurance that may be reasonably necessary to protect the Customer's interests from other hazards or claims in excess of the minimum coverage. The liability of the Customer to BT shall not be limited to the Customer's insurance coverage.

22.6 Unless expressly stated otherwise, each party shall be responsible for the risk of loss of, and damage to, any Sites, equipment, Software, Materials and/or Work Products in its possession or under its control except to the extent that such loss or damage is caused by the other party.

22.7 The Customer shall procure, at no cost to BT, in respect of each of the insurances listed in clauses 22.1 and 22.2 above that:

22.7.1 each such insurance shall be extended automatically to indemnify BT as Additional Insured, to the extent of BT's insurable interest; and

22.7.2 the insurers of each such insurance shall waive all right of subrogation or action that insurers may acquire against BT,

provided that BT shall as though it was the insured under each such insurance, observe, fulfil and be subject to the terms, exclusions, conditions and endorsements of each such insurance so far as they can apply. The Customer shall notify BT of all such terms, including any changes from time to time.

22.8 BT may purchase (if possible) any of the insurances listed in clauses 22.1 and 22.2 above which the Customer has failed to maintain in full force and effect pursuant to this Agreement. BT may recover the premium and other costs incurred in doing so as a debt due from the Customer.

### **23. Intellectual property rights**

23.1 The Customer acknowledges that all Intellectual Property Rights in or relating to Physical Infrastructure Access vest in or are licensed to BT and nothing in this Agreement 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 23.

23.2 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) and to make copies of those documents and manuals, to the extent necessary to provide the Customer's Next Generation Access services and for its own internal use in connection with its obligations under this Agreement.

23.3 All rights in any developments, improvements or variations to BT's Intellectual Property Rights will vest in BT.

23.4 The Customer agrees not, without the prior written consent of BT, to:

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- (a) use any of the BT Corporate Marks; or
- (b) authorise any third party to use any of the BT Corporate Marks; or
- (c) use any photographs or representations of any BT buildings or network,

including in any promotional literature.

- 23.5 The Customer agrees 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 BT Corporate Marks.
- 23.6 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.
- 23.7 This clause 23 does not prevent any legitimate use of the term "BT" in any comparison of services and tariffs, in accordance with the Trade Marks Act 1994.
- 23.8 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.
- 23.9 The indemnity in sub-clause 23.8 above does not apply to infringements or claims or legal proceedings:
- (a) 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) caused by reason of any alteration or modification which was not made by BT or with BT's prior written consent; or
  - (c) 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) which arise as a result of the use of the Service otherwise than in accordance with the terms of this Agreement.
- 23.10 The limitations and exclusions of liability contained in clause 21 (Limitation of liability) do not apply to sub-clauses 23.8 and 23.9 above.

## **24. Escalation and dispute resolution**

- 24.1 Each party shall use its reasonable endeavours to resolve disputes with the other. A dispute will first be escalated to the nominated contacts for disputes set out in the Customer Service Plan.
- 24.2 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 Agreement 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.
- 24.3 For any dispute not covered by sub-clause 24.2, 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 24.4; or

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- (b) referral of the dispute for early neutral evaluation; or
- (c) pursuing any other dispute resolution option which the parties agree is appropriate.

24.4 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 Agreement.

24.5 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 Agreement.

24.6 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 24 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.

24.7 Nothing in this clause 24 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.

## 25. Changes to the Agreement

25.1 Without prejudice to sub-clause 25.2 below BT may introduce changes to this Agreement at any time which are proposed by BT or the Customer and agreed by the parties. BT will give the Customer written notice of the proposed changes and publish details of those changes on the BT Website. The changes will not take effect until expiry of the relevant Notice Period. BT agrees to negotiate in good faith with a group of Customers which it reasonably believes represents the relevant interested industry members ("Physical Infrastructure Access Contract Group"). The Customer may, within the Notice Period, serve a notice on BT stating its objections to the proposed changes. If there are no objections to the proposed changes within that period from the Customer or from anyone who has a contract for the Service, the Customer agrees that the changes shall take effect from the proposed effective date. If there are any objections to the proposed changes within the Notice Period BT shall not introduce that change into this Agreement under this clause 25.1 unless the objector(s) agrees to the proposed change.

25.2 BT may also change this Agreement at any time by giving not less than the relevant Notice Period (or such other notice period as may be directed or otherwise specified by Ofcom) before the change takes effect in order to:

- (a) comply with any legal or regulatory obligation; or
- (b) change the charges including the Reservation Fees and Licence Fees payable under this Agreement; or

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- (c) protect the use of the BT Corporate Marks; or
- (d) introduce or withdraw Service features (subject to such notice as is required under the applicable regulatory requirements); or
- (e) introduce improved service levels; or
- (f) maintain the integrity or security of the Service or BT Network; or
- (g) introduce process changes to improve the quality of the Service; or
- (h) improve clarity, or make corrections to typographical errors;

providing that the changes in sub-clauses (d) to (h) inclusive, shall not unreasonably affect the Service.

- 25.3 BT will give the Customer written notice of any changes made under clause 25.2 above not less than the relevant Notice Period (or such other period as may be directed by Ofcom) before the change is to take effect. The change will take effect at the expiry of the Notice Period or such other period as may be directed or otherwise specified by Ofcom.
- 25.4 A party may initiate a general review of this Agreement by serving a review notice not less than 3 months prior to 1 July 2012 and not less than 3 months prior to every 2nd anniversary of 1 July 2012. Following a notice of review, BT agrees to negotiate in good faith with a group of customers which it reasonably believes represents the relevant interested industry members ("Physical Infrastructure Access Contract Group"). If the parties fail to reach agreement on the subject matter of the review within 3 months of commencing negotiations, the parties will resolve the dispute in accordance with the escalation and dispute resolution provisions in clause 24 of this Agreement. Any change resulting from negotiation or resolution with the Physical Infrastructure Access Contract Group shall be deemed agreement with the Customer to that contractual change. Any change will be notified to the Customer and BT will publish details of any change on the BT Website not less than the relevant Notice Period before the change is to take effect.
- 25.5 For the purpose of this clause 25 the term "Notice Period" means a period of at least 28 calendar days (including related changes such as charges and terms and conditions) unless otherwise directed or otherwise specified by Ofcom.

## 26. Transfer of rights and obligations

- 26.1 Neither party may transfer any of its rights or obligations under this Agreement 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 credit vetting by BT 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 that it has done so.

## 27. Entire agreement

- 27.1 This Agreement contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 27.2 The parties acknowledge and agree that:

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

27.3 Nothing contained in sub-clauses 27.1 and 27.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.

27.4 If there is any inconsistency between this Agreement and any other document, agreement or understanding between BT and the Customer which relates to the subject matter of this Agreement, the terms of this Agreement shall prevail.

### **28. Notices**

28.1 All notices given under this Agreement 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 indicated on the Customer Service Plan;
- (b) for all other matters, in the case of notices from the Customer, to the Customer's BT Sales and Relationship 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.

28.2 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;
- (c) if sent by fax, at the time of transmission; and
- (d) if sent by email, at the time of transmission.

### **29. Relationship of the parties**

29.1 Each of the parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees, subcontractors or agents). Neither party is authorised and neither of the parties nor their employees, subcontractors, agents or representatives shall at any time attempt to act or act on behalf of the other party to bind the other party in any manner whatsoever to any obligations. Neither party nor its employees, subcontractors, agents or representatives shall engage in any acts which may lead any person to believe that such party is an employee, agent or representative of the other party. Nothing in this Agreement shall be deemed to constitute a partnership between the parties.

29.2 If either party appoints an agent for the purposes of this Agreement, and notifies the other party, then the other party shall deal with the appointed agent for such purposes until the first party notifies the other party that the appointment has been terminated.

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### **30. Cumulative remedies**

- 30.1 Except where this Agreement provides otherwise, the rights, powers and remedies provided to the parties in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement between the parties.

### **31. Rights of third parties**

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

### **32. Waiver**

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

### **33. Survivability**

- 33.1 The provisions relating to confidentiality, indemnities and limitation of liability shall survive any completion, rescission, expiration or termination of this Agreement. In addition, all rights and restrictions relating to any perpetual licenses and all payment terms relating to any outstanding payments shall survive.

### **34. Severability**

- 34.1 If any Court of competent jurisdiction holds any provision of this Agreement 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 Agreement had been executed with the invalid, illegal or unenforceable provision omitted.

### **35. Governing law and jurisdiction**

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