



Single Order Transitional Access Product (SOTAP) Conditions and Schedules

By
British Telecommunications PLC

To
Communications Providers

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BACKGROUND

- A. The parties are providers of Public Electronic Communications Services and Public Electronic Communications Networks in the United Kingdom.
- B. The Communications Provider wishes to take advantage of the wholesale Services offered by BT under this agreement.
- C. BT has, pursuant to the Commitments made to Ofcom on 1 October 2018, procured Openreach Limited to manage the Services provided under or in connection with this agreement on BT's behalf.
- D. The parties have agreed to enter into this agreement on the terms and conditions set out below.

The parties hereby agree:

1 Interpretation

- 1.1 The words and expressions set out in Schedule 1 have the meaning given to them in that Schedule.
- 1.2 Any reference in this agreement 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, internal hyperlinks, and screen-tips in this agreement are for convenience only and do not affect its interpretation.
- 1.4 Words importing the singular include the plural and vice versa.
- 1.5 The terms "party" or "the parties" shall mean BT and/or the Communications Provider.
- 1.6 This agreement consists of the documents listed in paragraphs (a) to (f) of this clause 1.6. If there is a conflict between them the order of precedence is as follows:
 - (a) these Conditions and Schedule 1;
 - (b) Schedule 2, Schedule 3, Schedule 4, and Schedule 5;
 - (c) the relevant sections of the Openreach Price List;
 - (d) the Contract Form;
 - (e) an Order; and
 - (f) the elements of the Ancillary Documents that are expressly incorporated by reference into this agreement.

2 **Commencement and Termination**

- 2.1 This agreement begins on the date that a correctly completed Contract Form is accepted and signed by a duly authorised representatives of BT and the Communications Provider and continues thereafter until terminated in accordance with this agreement.
- 2.2 The Communications Provider may terminate this agreement on:
- (a) not less than one month's notice if BT materially changes the terms and conditions of this agreement to the Communications Provider's detriment provided that such notice to terminate must be served on BT no later than 28 days from the date the change comes into effect; or
 - (b) not less than three months' notice for any other reason.
- 2.3 BT may terminate this agreement and/or any Service (or part thereof):
- (a) if there is a failure to pay a sum due under this agreement 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 2.10(a)(i);
 - (b) immediately upon notice if the Communications Provider is suspended or prohibited from providing the CP Service by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003;
 - (c) on not less than one month's notice if BT does not receive an Order from the Communications Provider within 6 months of the commencement of this agreement;
 - (d) immediately on notice if BT is directed by Ofcom to Cease the Service or the provision of the Service or any part of it; or
 - (e) on not less than 12 months' notice for any other reason.
- 2.4 If a party is prevented, hindered or delayed in performing an obligation under this agreement because of Force Majeure for a period exceeding three months, either party may terminate this agreement by giving not less than one months' notice. Provided the Force Majeure has not ceased prior to expiry of the notice this agreement will terminate. Where the Force Majeure event is specific to an individual circuit then the right to terminate will apply to the individual circuit only.
- 2.5 BT shall repay or credit the Communications Provider for the period from which the Communications Provider's liability to pay ceases for any Charges or deposits paid in advance.
- 2.6 If a valid breach notice is served on the Communications Provider and the Communications Provider has not remedied the breach after expiry of the period specified for remedy in the breach

notice then BT may, immediately upon giving notice, at its sole discretion refuse to accept new Orders and suspend access to the Gateway (except for the processing of Orders that relate to cessation of Services, or for the monitoring of existing Orders) and suspend such other services or facilities available to the Communications Provider as is reasonable in the circumstances. BT shall lift any suspension put in place pursuant to this clause as soon as reasonably possible once the Communications Provider has remedied the breach or breaches to BT's reasonable satisfaction. The Communications Provider shall pay all Charges for the Service incurred notwithstanding any suspension.

- 2.7 If;
- a) BT is directed to cease the provision of the Service or any part of it by Ofcom, or;
 - b) if the Communications Provider is suspended or prohibited from providing the CP Service by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003, BT may at its sole discretion refuse to accept any Orders for the Service immediately on notice to the Communications Provider. BT shall re-instate the Service as soon as practicable on receipt of notice from the Communications Provider if Ofcom ceases such suspension.
- 2.8 To consume Services provided under this agreement the Communications Provider must also be a party to a Licenced Facility agreement.
- 2.9 If the Licensed Facility agreement is terminated for any reason, the provision of the Service to the Site under this agreement terminates on the same date as termination of the Licensed Facility. If termination under this clause occurs during a Minimum Period, the Communications Provider shall pay BT the rental and other Charges for the remainder of any Minimum Period at the rate in force at the date of termination or as otherwise provided in the Openreach Price List, except in the case of:
- (a) termination by BT of the licence at the Site under the relevant Licensed Facility Agreement;
 - (b) termination by the Communications Provider of the Licensed Facility Agreement due to a material breach by BT of that agreement;
 - (c) termination under the force majeure provisions of the relevant Licensed Facility Agreement.
- 2.10 Either party may terminate this agreement or the Service provided under it immediately, on notice, if the other
- (a) commits a material breach of this agreement that 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 providing notices are served on each occasion; or
 - (ii) 30 days;
- (b) commits a material breach of this agreement which cannot be remedied; or
- (c) is repeatedly in material breach of this agreement (including without limitation repeatedly late in paying sums due under this agreement as set out in clause 2.3 (a); 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.

- 2.11 If BT terminates this agreement on the grounds of insolvency specified above without, in the reasonable opinion of BT, the Communications Provider having made adequate provision for the continuation of Service to the End User, BT may communicate directly with End Users to inform them of the termination of the Service and how this will affect the communications services they receive from the Communications Provider and/or BT, including the options available to End Users to avoid disconnection or interruption to existing communications services. BT shall ensure that such communication does not favour BT's own products and services. This clause will survive termination of this agreement.
- 2.12 BT may suspend the provision of Service as is reasonable under the circumstances on notice in the case of Emergency. BT shall provide as much notice as is reasonably practicable and will restore Service as soon as possible after the Emergency has ceased.
- 2.13 Termination or expiry of this agreement will not be deemed a waiver of a breach of any term or condition of this agreement and will be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry.
- 2.14 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.

3 **Provision of the Service**

3.1 BT shall:

- (a) provide the Communications Provider with the Service on the terms of this agreement;
- (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; and
- (c) grant the Communications Provider a non-exclusive non-transferable right to use the Service for the sole purpose of enabling the Communications Provider to provide the CP Service.

3.2 The Communications Provider acknowledges that it is technically impracticable to provide a fault-free Service, and BT does not undertake to do so. BT shall repair any faults in accordance with Schedule 2.

3.3 The Service is only available in the Serving Area.

4 **Service Management**

4.1 Subject to clauses 3.2 and 4.2 BT shall use reasonable efforts to provide an uninterrupted Service to the Communications Provider.

4.2 BT may:

- (a) introduce or withdraw Service features, introduce process changes to improve the quality of the Service, change the technical specification of the Service (including, without limitation, Service upgrades) provided that any such changes do not have a materially adverse effect on the performance or provision of the Service. BT will raise any changes at the appropriate industry working group and, following discussion at such forum, will give not less than 28 days' notice of any change;
- (b) give the Communications Provider instructions that it reasonably believes are necessary for reasons of health, safety, security, or the quality of the Service and the Communications Provider shall adhere to such instructions; or
- (c) interrupt the Service for operational reasons (such as maintenance or Service upgrades) or because of an Emergency. BT shall restore the interrupted Service as quickly as possible. BT shall give the Communications Provider as much notice as possible and shall give the Communications Provider at least 14 days' notice of any interruption to the Service for operational reasons. BT shall, where practicable, agree in advance with the Communications Provider when the Service will be interrupted. If there has been an interruption to the

Service for operational or Emergency reasons, BT shall inform the Communications Provider that there has been an interruption as soon as reasonably practicable.

4.3 BT shall give the Communications Provider notice of a Scheduled Outage not less than:

Type of Service	Notification Period
EMP - major changes	150 calendar days from the outage date
EMP – interim changes	20 Working Days from the outage date
EMP – weekly maintenance outage	2 Working Days from the outage date

The routine weekly maintenance outages from 00:01 to 04:00 hours each Thursday. BT shall give the Communications Provider at least 5 Working Days' notice if the weekly maintenance outage period will be extended.

BT shall provide as much information as possible in any notice given under this clause 4.3. Any waiver of BT's requirement to provide notice under this clause shall be agreed with the Copper and Fibre Products Commercial Group ("CFPCG"), and other relevant industry commercial group, or their successor bodies.

4.4 If, due to circumstances beyond BT's reasonable control, the continued operation of EMP is threatened unless immediate action is taken, BT shall give the CP such notice as is reasonably practical of the changes required to ensure the continued operation of EMP.

4.5 If the Communications Provider reports a fault in the Service, BT shall, subject to the exclusions in clause 6.4 and clause 16, respond in line with the Service Levels in Schedule 4.

4.6 BT shall provide a Customer Service Plan for the Communications Provider (if one does not already exist) and shall use its reasonable endeavours to keep the Customer Service Plan up to date. Both parties shall comply with the contacts and guidance set out in the Customer Service Plan.

5 **BT Equipment**

5.1 BT Equipment always remains the property of BT.

5.2 The Communications Provider will take reasonable steps to ensure End Users will:

- (a) prepare the Site and provide a suitable place, conditions, connection points and electricity for BT Equipment at the Site in accordance with BT's reasonable instructions, if any;
- (b) in relation to the Site and any third-party premises or land on which the Site is situated, obtain all necessary consents, including for example, consents for any necessary alterations

to buildings, permission to cross other people's land or permission to put BT Equipment on their property; and

- (c) provide a suitable place and conditions for BT Equipment including connection points required by BT and electricity.

5.3 The Communications Provider shall take reasonable steps to ensure that nobody (other than someone authorised by BT) adds to, modifies, or in any way interferes with BT Equipment located at a Site. The Communications Provider will be liable to BT for any loss of or damage to BT Equipment, except where such loss or damage is due to fair wear and tear or is caused by BT, or anyone acting on BT's behalf. The Communication Provider's liability under this clause 5.3 is limited to the replacement value of the BT Equipment together with any associated costs of replacement.

6 Connection of Equipment to the Service

6.1 Any equipment connected to the Service must not harm the BT Network, the Service or BT Equipment or another communications provider's network or equipment and must be:

- (a) connected and used in line with any relevant instructions provided by the manufacturer or the Communications Provider;
- (b) connected and used in line with any relevant laws or regulatory requirements, including any legal requirements imposed upon the parties including requirements arising from General Condition A2 set under section 45 of the Communications Act 2003; and
- (c) technically compatible with the Service and connected and used in line with any relevant standards including any standards set out in the relevant SIN.

6.2 Further to clause 6.1 above, if the Communications Provider becomes aware that the equipment connected to the Service at a Site does not meet the relevant instructions, standards, or laws, the Communications Provider shall use its reasonable endeavours to procure that the End User will disconnect it.

6.3 If BT becomes aware that equipment connected to the Service at a Site is materially affecting the Service to the detriment of other End Users, BT may (after obtaining the Communications Provider's prior agreement) suspend any such End User from the Service. The Communications Provider shall not unreasonably withhold its agreement to a request by BT made under or in connection with this clause 6.3. The Communications Provider hereby indemnifies BT against all loss, damages, reasonable costs and expenses arising out of or in connection with any failure by the Communications Provider to act when reasonably requested by BT to do so under this clause.

6.4 BT will not be liable for failure to meet any service level or other obligations under this agreement to the extent that the failure is caused by equipment found to be connected otherwise than in accordance with this clause 6 and/or Schedule 4.

7 Access and Site Regulations

7.1 BT's normal working hours for Site visits are 0800 – 1700 on Working Days. If the Communications Provider requests (and BT agrees to) work outside of these hours, the Communications Provider shall pay the additional Charges set out in the Openreach Price List.

7.2 If it is necessary for BT to obtain access to the Site, the Communications Provider shall take reasonable steps to ensure that the End User provides BT with access to the Site.

7.3 BT shall comply with the End User's reasonable Site safety and security requirements made known and brought to the attention of the BT personnel at the Site in advance of any appointed visit by BT. BT will not be liable for any breach of this agreement that arises because of conflict between any Site regulations and this agreement.

7.4 If BT requires access to the Site as set out in clause 7.2 above, the Communications Provider will take reasonable steps to procure that the End User provides a suitable and safe working environment for BT at the Site.

7.5 BT has no liability whatsoever to the Communications Provider in respect of any decorator's work or any making good required at a Site, except to the extent that property damage is caused by BT's negligence. BT's sole liability for negligently damaging a Site is the reasonable cost of restoring the property to the condition it was in prior to BT causing the damage.

8 Use of the Service

8.1 The Communications Provider shall take reasonable steps to procure that the CP Service is not used:

- (a) to make nuisance calls;
- (b) unlawfully or fraudulently or in breach of any legislation;
- (c) to send, knowingly receive, upload, download, use or re-use material that is grossly offensive or of an indecent, defamatory, obscene or menacing character;
- (d) to distribute malicious software;
- (e) for hacking or unauthorised modification of any equipment or software or the BT Network;
or
- (f) contrary to any reasonable instructions given by BT.

- 8.2 If BT notifies the Communications Provider (or if the Communications Provider is otherwise aware) that an End User has used the Service for any of the purposes listed in clause 8.1(a) to 8.1(f) above then the Communications Provider shall co-operate with BT and take reasonable steps to address the breach within a time period that is reasonable under the circumstances including, at BT's request, asking the End User to cease using the Service in breach of clause 8.1 and notifying the End User that the CP Service will be disconnected if it continues to use the CP Service for any of the purposes listed in clauses 8.1(a) to 8.1(f) inclusive. If the End User continues to use the CP Service for any of the purposes listed in clauses 8.1(a) to 8.1(f), the Communication's Provider shall disconnect the End User's Service. If the Communication's Provider does not disconnect the End User's Service, then BT may disconnect the End User's Service.
- 8.3 The Communications Provider hereby indemnifies BT against all loss, damages, reasonable costs and expenses arising or incurred in respect of any actions, Claims or legal proceedings that are brought or threatened against BT by a third party if there is a breach of clause 8.1. The Communications Provider's liability under this indemnity is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in the 12 calendar months immediately preceding either the relevant event (single or unconnected) or in the case of a series of connected events, the first event. BT shall take all reasonable steps to mitigate its loss in the circumstances covered by this indemnity.
- 8.4 If a Communications Provider uses the Service in breach of clause 8.1 or supplies the CP Service to an End User who is in breach of clause 8.1, BT may (without prejudice to BT's rights of termination under this agreement) on notice to the Communications Provider (where it is reasonably practicable to give such notice) suspend the Service to the extent necessary to bring the breach to an end. In any notice issued pursuant to this clause 8.4 BT shall warn the Communications Provider that it is in breach of clause 8.1 and that BT may suspend the Service to the extent necessary to bring the breach to an end. If the Service is suspended in accordance with this clause 8.4, the Service (or relevant part thereof) will be reinstated on provision of evidence by the Communications Provider that the breach has been remedied. Evidence that a breach has been remedied may include:
- (a) if the breach is by an End User, that the Communications Provider has taken such actions as are necessary to notify the End User or reseller of the breach and received assurances from the End User that the breach has been brought to an end; or
 - (b) if the breach is by the Communications Provider, that the Communications Provider has taken such actions as are necessary to bring the breach to an end.

8.5 The Communications Provider shall include and maintain in its contracts with all resellers of the Service conditions equivalent to those contained in clause 8.1 above and undertakes to enforce such conditions including (if appropriate) suspending or terminating the provision of the Service under such reseller agreement.

9 **BT Contact with End Users**

9.1 BT may contact End Users directly:

- (a) in relation to operational or Emergency reasons incidental to or arising from BT's service management of the BT Network;
- (b) if the Communications Provider has asked BT to contact the End User;
- (c) subject to clause 9.3, in relation to appointments, changes to appointments, and access arrangements for engineering visits;
- (d) in relation to the safety or wellbeing of any BT engineer;
- (e) to assist with the provision, repair, or maintenance of the Service; and
- (f) if BT is to withdraw the Service.

9.2 If BT contacts End Users directly, BT shall explain the respective roles and obligations of the Openreach Division and the Communications Provider in relation to the provision of the Service and the CP Service to End Users.

9.3 BT shall in its communications with End Users comply with any regulatory obligation or code of conduct that BT has in writing agreed with the Communications Provider.

9.4 The Communications Provider shall not, without BT's prior written consent, publish or give to any End User contact details for any BT or Openreach personnel.

10 **Intellectual Property Rights**

10.1 Each Party's Intellectual Property Rights, whether pre-existing or created by a party during or arising out of or in connection with the performance of this agreement, will remain the absolute property of that party or its licensors.

10.2 Where BT provides software to the Communications Provider to enable use of a Service, BT gives the Communications Provider a non-transferable and non-exclusive licence to use the software, solely as necessary for receipt or use of the Services as set out in Schedule 2. In addition to the Communications Provider's compliance with this agreement, the Communications Provider shall comply with any third-party terms that BT makes known to the Communications Provider that apply to the use of the software or Service.

- 10.3 The Communications Provider will not and will ensure that anyone it authorises to use software does not copy, decompile, modify or reverse engineer any software or allow otherwise unless allowed by law or where BT has given the Communications Provider permission in writing.
- 10.4 The term of any licence granted by BT under clause 10.2 will terminate on the date that this agreement is terminated.
- 10.5 Neither party may use the other's Corporate Marks without the prior written consent of the owner of the relevant Corporate Mark, such consent not to be unreasonably withheld or delayed. Consent must be obtained to each different usage.
- 10.6 BT will indemnify, hold harmless and defend the Communications Provider from and against any Claims, losses, costs or liabilities brought against the Communications Provider by a third party for infringement or alleged infringement of that third party's Intellectual Property Rights by the Communications Provider receipt of any Services provided that, for each Claim the Communications Provider complies with the terms set out in Clause 17.
- 10.7 The indemnity set out in clause 10.6 will not apply to any part of a Claim arising out of or in connection with:
- (a) the use of any Services in conjunction or combination with other equipment or software or any other services not supplied by BT;
 - (b) any unauthorised alteration or modification of any Services;
 - (c) content, designs or specifications supplied by, or on behalf of, the Communications Provider; or
 - (d) use of any Service other than in accordance with this agreement.
- 10.8 The Communications Provider will indemnify BT against all Claims, losses, costs and liabilities brought against BT arising out of or in connection with the matters set out in clause 10.7 that are attributable to the Communications Provider or its agents or employees and will cease any such activity immediately upon notice from BT or at such time as the Communications Provider becomes aware, that the activity had given rise to the Claim against BT.
- 10.9 If any Service becomes, or BT reasonably believes it is likely to become, the subject of a Claim of infringement of any third party's Intellectual Property Rights against the Communications Provider as referred to in clause 10.6, BT may, at its own expense:
- (a) secure for the Communications Provider a right of continued use; or

- (b) modify or replace the relevant parts of the Service so that using the Service no longer infringes any third party's Intellectual Property Rights, provided that that modification or replacement will not materially affect the performance of the relevant parts of the Service.

10.10 The indemnity in clause 10.6 and the actions in clause 10.9 will be the Communications Provider's sole and exclusive remedies for any Claims arising out of or in connection with an infringement of a third party's Intellectual Property Rights.

11 Data Protection

11.1 In this agreement the following terms each have the meaning given to them in the GDPR: "**Data Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Process**", "**Data Processor**", "**Special Categories of Personal Data**", and "**Supervisory Authority**".

11.2 Save where otherwise prohibited under this agreement, BT may Process Personal Data for the purposes of providing the Service by:

- (a) Using, managing, accessing, transferring or holding Personal Data on a variety of systems, networks and facilities (including databases); and / or
- (b) Transferring Personal Data worldwide to the extent necessary to allow BT to fulfil its obligations under this agreement, and the Communications Provider appoints BT to perform each transfer to provide the Services, provided that BT shall not transfer Personal Data unless it has implemented appropriate transfer mechanisms permitted by the Data Protection Legislation, including:
 - (i) BT Group's Binding Corporate Rules (for transfers among BT Group companies);
 - (ii) agreements incorporating the relevant standard data protection clauses adopted by the European Commission; and

11.3 Where each party acts as a Controller in relation to the Processing of Personal Data under this agreement, the parties will not act as joint Controllers for the purposes of Article 26 of GDPR in relation to such processing.

11.4 The parties acknowledge that, in respect of the End User Data provided by the Communications Provider, the Communications Provider is the Data Controller and BT is the Data Processor.

- (a) Without limiting clause 11.4, the parties acknowledge and agree that the parties will need to share Operational Data between them. Operational. Data will be shared based on a transfer from Data Controller to Data Controller, and each party will assume responsibility for its own compliance with Data Protection Legislation.

- 11.5 BT shall Process Personal Data in accordance with applicable Data Protection Legislation and as set out in BT's Privacy Policy and, where applicable, BT Group's Binding Corporate Rules.
- 11.6 Clauses 11.7 to 11.20 (inclusive) apply where and to the extent that BT acts as a Data Processor under or in connection with this agreement.
- 11.7 The subject matter, duration, nature and purpose of the Processing, the type of End User Data and categories of Data Subjects is set out in Schedule 5.
- 11.8 In performing its obligations under this agreement BT shall:
- (a) Process the End User Data on behalf of the Communications Provider in accordance with the Communications Provider's documented instructions set out in this clause 11 and Schedule 5 to this agreement, 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 Applicable Law on important grounds of public interest; or
 - (ii) In BT's reasonable opinion an additional instruction or a change to the instructions provided by the Communications Provider 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 measures as required by Article 32 of the GDPR;
 - (c) Provide Notice to the Communications Provider without undue delay (and, in any event, 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 11.16;
 - (e) In relation to any Personal Data Breach, BT shall:
 - (i) Take all reasonable steps to identify and correct the underlying cause of the Personal Data Breach to eliminate or minimise the risk of its repletion and the occurrence of similar Personal Data Breaches;

- (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 Personal Data Breach; and
 - (iii) Report to the Communications Provider affected by the Personal Data Breach, and / or at its direction to it and another person, promptly and at regular intervals, on the steps taken to identify and correct a Personal Data Breach and their results; and
- (f) Assist the Communications Provider in its compliance with Data Protection Legislation, considering 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 reactivation, erasure or portability or restriction of, or objection to and 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 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 GDPR and prior consultation with the Supervisory Authority.

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

11.10 BT shall make available to the Communications Provider the information demonstrating BT's compliance with its obligations set out in clauses 11.2(b), 11.5, and 11.7 to 11.20 inclusive.

11.11 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 clauses 11.2(b), 11.5, and 11.7 to 11.20 inclusive. BT shall act reasonably

and cooperate with the Communications Provider (or a third-party auditor appointed by the Communications Provider) to audit BT's compliance, so long as the Communications Provider:

- (a) Uses its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt BT's business;
- (b) 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;
- (c) 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
- (d) BT shall provide the Communications Provider with the necessary instructions and copies of BT's security policies that 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.

11.12 Without prejudice to the Communications Provider's rights of audit under clause 11.11 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 11.2(b), 11.5, and 11.7 to 11.20.

11.13 The Communications Provider may conduct an audit of BT's compliance with its obligations set out in Clause 11 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 clauses 11.2(b), 11.5, and 11.7 to 11.20 (inclusive) 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;

11.14 Without limiting BT's other obligations under this Clause 11, BT shall not disclose End User Data to a third party unless required for the performance of the Service, permitted under this agreement or otherwise required by Applicable Law. If required by Applicable Law, BT shall provide as much prior notice as reasonably practicable;

11.15 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;

- 11.16 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.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) the Communications Provider shall have 90 days from the date of this notice to object to the use of the new Sub-Processor. BT may use the Sub-Processor during the notification period;
 - (b) 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;
 - (c) if the Communications Provider does object to the use of a new Sub-Processor, the Communications Provider shall give notice in accordance with clause 22 documenting reasonable concerns why the Sub-Processor will not be able to comply with the Data Protection Legislation; and
 - (d) if such notice is received within the 90 days set out in clause 11.16(a), the parties will address the Communications Provider's objection in accordance with the dispute resolution set out in clause 18 and BT may use the relevant Sub-Processor to provide the Service until the objection is resolved in accordance with clause 18;
- 11.17 BT may use Sub-Processors in accordance with clause 11.8(d) and will remain responsible to the Communications Provider for the compliance by any Sub-Processor with the terms of this clauses 11.7 to 11.20 (inclusive) 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 clauses 11.7 to 11.20 of this agreement will be imposed on any Sub-Processors);
- 11.18 This agreement 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 the additional instructions or changes to the instructions are accepted by BT the additional instructions, or change(s) will be incorporated into this agreement in accordance with clause 19 to take account of any resulting change to this agreement, the resulting changes to this agreement not being unreasonably withheld by BT;
- 11.19 The Communications Provider and BT shall comply with applicable Data Protection Legislation; and

- 11.20 The Communications Provider shall not disclose to BT any Personal Data other than the Personal Data required by BT to perform the Service.
- 11.21 To the extent permitted by Applicable Law and subject to clause 15:
- (a) a party in breach of the Data Protection Legislation or this clause 11 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
 - (b) 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.
- 12 **Confidentiality**
- 12.1 The parties shall treat all Confidential Information as confidential and shall: (i) protect such Confidential Information; and (ii) not, without the prior written consent of the other party, use Confidential Information except as necessary for the purposes of fulfilling obligations under or in relation to this agreement.
- 12.2 Neither party is obliged to provide Confidential Information where a duty of confidentiality is owed to a third-party, unless such third-party consents to the disclosure.
- 12.3 Both parties shall use reasonable endeavours to ensure that Confidential Information disclosed is accurate at the time of provision but do not warrant that the Confidential Information is free from errors or omissions. If the receiving party identifies any mistakes in the Confidential Information, the receiving party shall inform the disclosing party of such mistakes. The disclosing party shall endeavour to correct any mistakes as soon as is reasonably practical.
- 12.4 Neither party may, without the written consent of the other party, disclose Confidential Information except:
- (a) to the receiving party's own employees, employees of any Group Company, auditors, professional advisors, contractors, sub-contractors, or the Communication Provider's resellers or End Users who need to know it for the purposes of fulfilling obligations under or in relation to this agreement; or
 - (b) to the extent required:

- (i) by law or regulation, or to meet an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction; or
- (ii) by the rules of any listing authority or stock exchange on which its shares or those of its Group Companies are listed or traded.

12.5 Before a party discloses any Confidential Information pursuant to clause 12.4(b) it shall, to the extent permitted by law, use reasonable endeavours to give the other party as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 12.4(b), that party shall consider the reasonable requests of the other party in relation to the content of this disclosure.

12.6 Each party shall make any person mentioned in clauses 12.4(a) and 12.4(b) aware, prior to any disclosure of Confidential Information that such information is confidential and that a duty of confidentiality is owed to the owner of such Confidential Information. The receiving party shall be responsible for procuring that each of the persons in clause 12.4(a) complies with the duties of confidentiality imposed by this agreement as if they were a party to it.

12.7 Clause 12 does not apply to information that the receiving party can show by reference to documentary or other evidence:

- (a) was lawfully in its possession prior to disclosure to it by the other party;
- (b) is already in the public domain, or which becomes so at a future date (otherwise than because of breach of this agreement);
- (c) is received from a third party who is not under an obligation of confidentiality in relation to the information;
- (d) is developed independently without access to, or use or knowledge of, the Confidential Information;
- (e) is trivial or obvious; or
- (f) the parties agree in writing need not be kept confidential.

12.8 BT shall in dealing with the Communications Provider's Confidential Information comply with BT's obligations under the Commitments. BT shall subject to clause 12.9 always ensure that its Openreach Division protects the Communications Provider's Confidential Information.

12.9 The parties shall not, without the written consent of the other party, use Confidential Information for the commercial advantage of their retail businesses. This clause 12.9 does not prevent the

Communications Provider from using Confidential Information provided by BT in a way that is contemplated by this agreement, including BT's infrastructure discovery information and information provided through any Reporting Tools.

- 12.10 The parties shall ensure that all Confidential Information belonging to the other party that is no longer required for the purposes of this agreement is returned, erased or destroyed and that such Confidential Information is not recoverable. This clause 12 shall survive termination of this agreement for a period of five years.
- 12.11 Nothing in this agreement requires 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 Data Protection Legislation.

13 Marketing and Misrepresentation

- 13.1 The parties undertake that in relation to their dealings with End Users and/or potential 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 End Users; or
 - (d) assert that they have any authority to provide or promote any products or services on behalf of each other.
- 13.2 The Communications Provider also shall not represent that:
- (a) the CP Service is a service provided by BT; or
 - (b) the End User has access to a dedicated BT customer service.
- 13.3 The Communications Provider shall use all reasonable endeavours to include and maintain in its contracts with any reseller of the CP Service, conditions equivalent to those contained in clauses 13.1 and 13.2 above, and to enforce such conditions including (if appropriate) by suspending or terminating the provision of the CP Service under such reseller agreement.

14 Charges

- 14.1 The Communications Provider shall pay the Charges for the Service as shown in the Openreach Price List (or as otherwise agreed in writing) and calculated using the details recorded by BT.

- 14.2 The Communications Provider must undertake to make all payments for the Service when due without any set-off, deduction and/or counterclaim and may not withhold any amounts for the Service on the basis of an Invoice Dispute.
- 14.3 The Communications Provider shall pay the Charges in cleared funds within 30 calendar days of the date of BT's invoice. If the 30th calendar day falls on a non-banking day then cleared funds shall be paid to BT no later than the last banking day before the payment is due.
- 14.4 All Charges exclude value added tax ("VAT"), which is charged at the applicable rate and is payable by the Communications Provider. BT shall provide a valid tax invoice in accordance with the applicable invoicing requirements. Charges that are compensatory are not subject to VAT.
- 14.5 Rental for the Service commences on the Operational Effective Date.
- 14.6 The Connection Charge is due on the Operational Effective Date.
- 14.7 The Communications Provider shall pay rental at the prevailing rate set out in the Openreach Price List from time to time in accordance with BT's billing cycle. If BT begins (or Ceases) the Service on a day that is not the first or last day of the period by reference to which BT Charges rental, BT shall apportion rental on a daily basis for the incomplete period. Rental will be payable in monthly instalments in advance, but BT may on occasion bill the Communications Provider in arrears.
- 14.8 BT:
- (a) may Charge daily interest on late payments at the Interest Rate for the period beginning on the date on which payment is due and ending on the date payment is made; and
 - (b) shall issue an invoice within twelve (12) months of the date the Charge for a Service was incurred (in the case of a recurring Charge) or the Service was supplied (in other cases);
 - (c) shall for Event and Time Related Charges issue an invoice within six (6) months of the date a Charge is incurred. In the case of a Series of Event and Time Related Charges and/or Services, BT shall issue the invoice within six (6) months of the date the last Charge in the Series was incurred.
 - (d) If a Charge is raised outside the periods in this clause 14.8, the Communications Provider is not obliged to make payment in respect of that Charge. The validity of the remainder of the invoice will not be affected if it contains a late Charge and will remain due and payable in accordance with clause 14.3.
- 14.9 The Communications Provider shall in writing notify BT of any Invoice Dispute within twelve (12) months of the date of the invoice containing the disputed Charge(s) giving its reasons for raising

an Invoice Dispute. If the Communications Provider believes it has an Invoice Dispute then it must provide as part of the Invoice Dispute full details of:

- (a) the invoice;
- (b) the invoice error which must be limited to an error in either the charges in an invoice or in the calculation of the amount of an invoice ("Invoice Error");
- (c) the grounds for the Communications Provider's belief that the Invoice Error exists; and
- (d) the amount by which the Communications Provider believes that BT has overcharged or undercharged it by reason of the Invoice Error

and any such notice will be dealt with as a dispute under and in accordance with Clause 18 below

Notification of an Invoice Dispute under this clause 14.9 is without prejudice to either party's right to refer the subject matter of that Invoice Dispute to Ofcom. The Communications Provider shall not withhold any payments to BT on the grounds that the Communications Provider has a dispute with the End User(s) or reseller(s). Payment of the invoice by the Communications Provider does not affect the Communications Provider's right to dispute in accordance with this clause 14.9 all (or some) of the Charges in an invoice at a later date.

- 14.10 BT may make an Invoice Correction to an invoice sent to the Communications Provider providing it notifies the Communications Provider, giving its reasons, within twelve (12) months of the date of the invoice.
- 14.11 Subject to clause 14.15, if a refund, payment or credit is due to the Communications Provider by BT (unless that overpayment results from information provided by the Communications Provider that is not attributable to information provided by BT), the Communications Provider 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 will 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 ('determination'), or any other regulatory authority or body of competent jurisdiction, interest will be payable from the date specified in that determination (or if no date is specified, from the date the recalculated or adjusted Charge takes effect to the date of refund or payment in full) on any amount due to either party as a result of that recalculation or adjustment at the Adjustment Interest Rate.
- 14.12 The Communications Provider may become subject to BT's Credit Vetting Policy if the following circumstances apply:

- (a) there is material adverse change in the Communications Provider's financial position that results in a reduction in the Communications Provider's 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 agreement.

14.13 BT may, acting reasonably and subject to clause 14.14 below, require that the Communications Provider provides a deposit, guarantee, or payment for the Service in advance. If the Communications Provider refuses to provide such deposit, guarantee, or payment for the Service in advance, BT may refuse to accept any orders for the Service until such deposit, guarantee, or payment for the Service in advance is provided or the outstanding undisputed Charges are fully paid, whichever is earlier.

14.14 The maximum deposit, guarantee, or payment for the Service in advance BT can require under clause 14.13 is the reasonably estimated value of Charges under this agreement for three months. BT shall at regular intervals (not less frequently than annually) review the amount (or requirement for) the deposit, guarantee, or payment for the Service in advance.

14.15 If the Communications Provider provides a deposit it will be held until twelve (12) consecutive months of payments have been paid on or by the due date, after which BT shall credit the value of the deposit against future invoices issued by BT to the Communications Provider. BT shall pay interest on deposits held by BT at the Adjustment Interest Rate. Such interest will be added to the value of the deposit when the Communications Provider has satisfied the requirements under this clause 14.15.

14.16 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 Communications Provider has nominated a finance contact, BT shall also issue the update via email to the nominated finance contact.

14.17 This clause 14 continues in force after the termination or expiry of this agreement.

15 **Limitation of Liability**

15.1 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.

15.2 Except as set out in clause 15.1 and subject to express terms and conditions of this agreement 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 revenue (whether direct or indirect);
- (b) loss of time (whether direct or indirect);
- (c) wasted expenditure (whether direct or indirect);
- (d) loss of anticipated savings (whether direct or indirect);
- (e) loss of opportunity (whether direct or indirect);
- (f) loss and/or corruption of data (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).

15.3 Notwithstanding clause 15.2 and subject to clause 15.4, 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.

15.4 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 agreement either party's liability to the other 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 15.5) for all events of liability connected or unconnected in each Contract Year is limited to the liability cap. In each Contract Year, other than the first Contract Year, the liability cap will be £25 million in total or an amount equal to the Annual Revenue, whichever is the lesser but not less than £250,000.00. In the first Contract Year the liability cap will be £25 million in total.

- 15.5 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.
- 15.6 If the Communications Provider is entitled to an allowance or payment under Schedule 4 the parties agree that, subject to clause 15.4, BT's liability in relation to each entitlement to an allowance or payment shall be limited to the compensation for that particular entitlement and that an allowance or payment is made in full and final settlement in relation to all matters relating to such entitlement.
- 15.7 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.
- 15.8 Subject to the exclusions in clause 15.2 and subject to clause 15.9, each party's liability to the other in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss or damage in connection with a breach of Clause 11 and/or a Claim under Clauses 15.10 or 15.11 below (a "Relevant Event") for all Relevant Events connected or unconnected in each Contract Year is limited, in the aggregate in each Contract Year, to £70 million – being an amount equal to the total of the cap set out in clause 15.4 and £45 million.
- 15.9 Notwithstanding clause 15.8, a party's liability under or in connection with this Agreement for a Fine (as defined in clause 15.10) shall not exceed £45 million in each Contract Year.
- 15.10 Subject to clause 15.9 above, and clause 15.11 and 17 below, if either party (the "Fined Party") incurs a fine or other monetary penalties or compensatory awards issued by a court or regulatory body (a "Competent Authority") as a result (in whole or in part) of the other party's ("Breaching Party") act or omission in connection with its obligations under Data Protection Legislation ("Fine"), and the Competent Authority elects not to issue that Fine to the Breaching Party directly then subject to: (i) the exclusions in clause 15.2; and (ii) the liability caps set out in clauses 15.8 and 15.9 above, the Breaching Party shall, to the extent that its act or omission can be evidenced to be the cause of the Fine, indemnify the Fined Party for that proportion of the Fine that the Breaching Party would have been responsible for if the Competent Authority had issued a Fine to the Breaching Party in respect of its act or omission directly and for any incidental costs necessarily incurred by the Fined Party directly relating to the same.
- 15.11 The Fined Party may claim the benefits of the indemnity in Clause 15.10 only if, where requested to do so by the Breaching Party promptly following notification by the Fined Party of the Fine:
- (a) the Fined Party has used reasonable endeavours to ensure that the Breaching Party has been given the opportunity to make representations to the Competent Authority either

directly or through the Fined Party (or its third party) concerning the circumstances of any breach; and

- (b) the Fined Party initiates (either itself or through a third party) judicial review of the Fine and, where possible, gives the Breaching Party either sole conduct of the proceedings or, if the Fined Party wishes to be involved in the judicial review or also wishes to challenge the determination, joint control, provided that:
 - (i) the Breaching Party: shall indemnify the Fined Party for any costs reasonably and properly incurred by the Fined Party in acting pursuant to this Clause 15.11; and
 - (ii) the obligation in clause 15.11(b) will not apply unless the Breaching Party produces evidence to the Fined Party's reasonable satisfaction that judicial review of the Fine would not be considered vexatious.

15.12 Notwithstanding clauses 15.8, 15.9, 15.10, and 15.11, to the extent that there is a loss or corruption of Personal Data arising out of or in connection with a breach of clause 11, the exclusion in clause 15.2(f) will not apply.

15.13 For the avoidance of doubt a Fine will be deemed to be a direct loss or damage in respect of this Agreement.

15.14 This clause 15 continues in force after the termination or expiry of this agreement.

16 **Force Majeure**

16.1 To the extent a party is delayed in meeting (or fails to perform) an obligation under this agreement and such delay or failure is directly caused by Force Majeure, the party affected has no liability to the other for such delay or failure to perform provided that:

- (a) The affected party 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;
- (b) The affected party shall promptly notify the other party of the Force Majeure event, 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. The format and detail of notice must be consistent with any industry-agreed arrangements governing such notifications. The scope of any Force Majeure notice must be no more than necessary to particularise the impact of the event that is beyond that parties' control.

- 16.2 If the affected party is prevented from or delayed in performing its obligations under this agreement as a result of Force Majeure, the other party shall be released to the equivalent extent from its obligation (including to pay any Charge for a service that is not provided) in relation thereto.
- 16.3 Upon cessation of the effects of Force Majeure any party relying on it must forthwith give notice to the other party of such cessation.
- 16.4 Force Majeure does not discharge any party relying on it from any obligation accrued beforehand. Any party relying on Force Majeure must continue to perform those of its obligations not affected by Force Majeure.
- 16.5 Any party affected by Force Majeure shall use reasonable endeavours to mitigate as soon as practicable those consequences of the Force Majeure event that have affected its obligations under this agreement. The affected party shall provide an estimated time of clearance for any Force Majeure event. If those times are missed the affected party shall provide information detailing the reasons. The affected party shall, at regular intervals proportionate to the forecast period of the Force Majeure event (and in any event, in accordance with any industry agreed arrangements) keep the other party fully informed about the status of the Force Majeure event and the extent to which it is preventing the first party from performing those obligations.
- 16.6 At the time of notice by BT of Force Majeure, the Communications Provider immediately has the right to challenge BT's notice of Force Majeure. Where a Communications Provider challenges a Force Majeure notice at the time of notification, BT shall provide the Communications Provider with all the evidence (in any event in accordance with any industry agreed arrangements) BT has relied on to support the notice. If, following this, the Communications Provider still disputes the Force Majeure notice the Communications Provider may escalate the disputed Force Majeure notice in accordance with the process set out at clause 18. The procedures to be followed in relation to such notifications and challenges shall be consistent with any industry-agreed processes that have been established.
- 16.7 If BT seeks to rely on Force Majeure in relation to failure to meet any service level agreement or to avoid payment of any service level guarantees the Communications Provider may dispute that notice. If disputed, the notice will be subject to independent verification in accordance with an escalation process set out at clause 18 or any industry-agreed process for escalation. The outcome of that independent verification determines whether clause 16.1 applies in relation to the event described in that notice. Subject to any industry-agreed processes, 'independent verification' can

include, at the option of either party, adjudication by the Office of the Telecommunications Adjudicator.

17 Conduct of Indemnified Events

- 17.1 The indemnified party shall notify the indemnifying party of any related Claims or legal proceedings and use its reasonable endeavours to do so within 14 days of receipt. If the indemnified party fails to give such notice within 14 days, the indemnifying party may deduct from the indemnified sum any additional cost reasonably incurred because of that failure.
- 17.2 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 17.1. 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.
- 17.3 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 proceedings without the 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 consent of the other party, which shall not be unreasonably withheld.

18 Escalation and Dispute Resolution

- 18.1 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.
- 18.2 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 may refer the dispute for investigation and resolution by mutually agreed chartered accountants 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 act as an expert (not as an arbitrator) and the parties hereby agree to accept any decision, in the absence of evidence of manifest error, as final and binding.
- 18.3 If any dispute not covered by clause 18.2 is not resolved within 30 calendar days of the matter being raised, then the parties may:

- (a) refer the dispute to a mediator in accordance with clause 18.4; or
- (b) refer the dispute for early neutral evaluation; or
- (c) pursue any other dispute resolution option that the parties agree is appropriate.

18.4 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 constitutes Confidential Information for the purposes of clause 12.

18.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within two months of the mediator being appointed, then either party may exercise any remedy that it has under this agreement.

18.6 The parties shall share the costs of alternative dispute resolution equally unless determined otherwise by competent or authorised bodies.

18.7 Nothing in this clause 18 prevents either party from:

- (a) referring a dispute to Ofcom in accordance with any right either party has to request a determination; or
- (b) taking any other steps appropriate for resolution of a dispute.

19 **Changes to this Agreement**

19.1 BT may change this agreement at any time by giving not less than the Relevant Notice Period before the change takes effect to:

- (a) comply with any legal or regulatory obligation; or
- (b) change the Charges payable under or in connection with this agreement; or
- (c) maintain the integrity, safety and/or security of the Service or BT Network; or
- (d) change, replace, introduce or withdraw Service features (subject to such notice as is required under the applicable regulatory requirements); or

- (e) introduce improved and/or amend the service levels and/or any compensation under Schedule 4; or
- (f) introduce process changes to improve the quality of the Service; or
- (g) make corrections to typographical errors,
- (h) reflect and implement development in or changes to technology used to provide the Service;
- (i) substitute and/or replace BT Equipment

providing that any changes made pursuant to sub-clauses 19.1(c) to 19.1(g) (inclusive) must not materially adversely affect the Service.

- 19.2 Subject to clause 19.7, BT may introduce changes to this agreement by agreement with the Communications Provider. For any such proposed changes the parties in good faith negotiate with a group of communications providers that BT reasonably believes represents the Communications Provider industry ("Communications Provider Contracts Group"), the CFPCG (or its successor body), or any other relevant industry forum. BT shall give written notice of the proposed changes and publish details of those changes on the Openreach Website for at least the Relevant Notice Period before the date the changes are proposed to take effect.
- 19.3 A party may initiate a general review of this agreement by serving a review notice not less than 3 months prior to every 2nd anniversary of January 2024. Following a notice of review, BT shall in good faith negotiate with the Communications Provider Contracts Group. If the Communications Provider is a member of the Communications Provider Contracts Group, the Communications Provider shall also in good faith negotiate with BT. If the parties fail to reach agreement on elements of the subject matter of the review within 6 months of commencing negotiations (or such longer period as may be agreed by BT and all members of the Communications Provider Contracts Group), either party may escalate the dispute for resolution in accordance with clause 18 of this agreement. The Communications Provider hereby accepts any change resulting from negotiation or resolution with the Communications Provider Contracts Group as being agreement with the Communications Provider to that contractual change. BT shall: (i) notify any change to the Communications Provider; and (ii) publish details of any change on the Openreach Website not less than the Relevant Notice Period before the change is to take effect.
- 19.4 Nothing in this clause 19 prevents either party from referring a 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.

- 19.5 For this clause 19 the "Relevant Notice Period" means not less than 28 calendar days' notice, or such other period of notice that BT is directed or required to provide by Ofcom.
- 19.6 Subject to clause 19.7, BT may, without prior agreement from a Communications Provider, amend, change, remove, or replace those parts of an Ancillary Document that are not expressly incorporated into this agreement by reference. BT shall give reasonable notice of any such changes by publishing details of those changes on the Openreach Website before the changes take effect. The Communications Provider may on or before the expiry of the 28th Working Day after such changes taking effect, and in accordance with the process set out in clause 18 above, dispute any such changes if it considers that proposed changes to an Ancillary Document would change this agreement or materially and adversely affect the Service.
- 19.7 The Communications Provider may in good faith, within the Relevant Notice Period, serve a notice on BT stating its objections to proposed changes. If BT does not receive a relevant objection to the proposed changes within that Relevant Notice Period, the changes will take effect from the proposed effective date. If BT does receive objections to the proposed changes within the Relevant Notice Period, BT shall not introduce that change into this agreement or the Ancillary Documents (as appropriate) unless the objector(s) agree to the proposed change. If there are any objections to the proposed changes within the Relevant Notice Period, BT shall invite the objector and any interested parties from the Communications Provider Contracts Group (or, where relevant, the CFPCG or its successor body, or any other relevant industry forum) to participate in a discussion on the objection as soon as is reasonably practicable. If the parties (including the objector) cannot reach an agreement, BT shall not introduce that change.
- 19.8 The parties may agree to continue discussion of specific issues arising out of any notified changes that are made by BT pursuant to clause 19.6, and in which case the Communications Provider shall not prevent such notified changes completing their notification period.

20 **Transfer of Rights and Obligations**

- 20.1 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 Communications Provider may (subject to BT's Credit Vetting Policy and the signing of a novation agreement in such form as BT reasonably requires and the payment of any novation charges) transfer its rights and obligations by way of novation to an eligible Communications Provider Group Company; and

- (b) BT may transfer its rights or obligations (or both) to a BT Group Company without consent if it notifies the Communications Provider that it has done so.

21 **Entire Agreement**

- 21.1 This agreement contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 21.2 The parties acknowledge and agree that:
 - (a) they 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 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.
- 21.3 Nothing contained in clauses 21.1 and 21.2 above affects the rights or remedies of the parties in respect of any fraudulent misrepresentation.
- 21.4 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.
- 21.5 If there is any inconsistency between this agreement and any other document, agreement or understanding between BT and the Communications Provider that relates to the subject matter of this agreement, the terms of this agreement prevail.

22 **Notices**

- 22.1 All notices given under this agreement must be in writing and delivered by hand, e-mail, or first-class post, to:
 - (a) the appropriate person for that matter indicated on the Customer Service Plan;
 - (b) for all other matters not covered by the Customer Service Plan, in the case of notices from the Communications Provider, to the Communications Provider's BT account manager;
 - (c) for all other matters not covered by the Customer Service Plan, in the case of notices from BT, to the Communications Provider's registered office address or any alternative address, or e-mail address, that the Communications Provider notifies to BT;
- 22.2 provided that any notice relating to termination of this agreement, suspension, or breach, must be delivered by hand or first-class post.

- 22.3 Subject to clause 22.1 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;
 - (c) if sent by email, at the time of transmission.
- 22.4 If, a party (the "Notifying Party") receives notice that an email sent in accordance with clause 22.1 has not been delivered this does not invalidate the service of the original email notice (including as to time of effectiveness) but the Notifying Party shall either: (i) promptly identify an alternative email recipient (including any updates to the Customer Service Plan in accordance with clause 4.5 above, as appropriate); or (ii) send the relevant notice by another method of service listed in this clause 22.
- 23 **Waiver**
- 23.1 No failure to exercise or 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.
- 24 **Severability**
- 24.1 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.
- 25 **Governing Law**
- 25.1 The law of England and Wales governs this agreement and both parties submit to the exclusive jurisdiction of the English Courts.

Schedule 1 Definitions

Definitions

In this agreement the following terms will have the associated meanings:

"Access Locate"	means the product supplied pursuant to BT's Contract for Access Locate Services;
"Adjustment Interest Rate"	means one per cent above the official bank rate from time to time in force of the Bank of England unless an alternative interest rate is stipulated to apply by Ofcom or other regulatory authority or body of competent jurisdiction pursuant to a determination made in accordance with clause 14.11;
"Ancillary Documents"	means those documents specifically listed as such on Openreach's Website that contain information about the Service;
"Annual Revenue"	means the total Charges paid, exclusive of VAT, by the Communications Provider for the Service in any Contract Year;
"Applicable Law"	<p>means the laws of England and Wales and any laws and regulations, as may be amended from time to time, that apply to the provision or receipt of a Service, including:</p> <p>(a) anti-corruption laws set out in the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 of the United States of America; and</p> <p>(b) all applicable export laws and regulations, including those of the United States of America;</p>
"Automatic Compensation"	means additional compensation payments described in Section B of Schedule 4 that BT agrees to make to Relevant Communications Providers;
"Automatic Compensation Messages"	means the KCI messages sent to the Relevant Communications Provider following an Automatic Compensation service level failure;
"Binding Corporate Rules"	means a set of internal rules adopted by BT and approved by the appropriate data protection regulator(s), allowing the transfer and processing of personal data outside of the European Economic Area in compliance with Data Protection Legislation and set out in the Privacy Policy. The Communications Provider may

request a copy from Openreach information assurance at
dataprivacy@openreach.co.uk;

"BT"	means British Telecommunications plc of 1 Braham Street, London, E1 8EE, registered in England No. 1800000;
"BT Equipment"	means equipment (including any software) placed by BT at a Site to provide the Service;
"BT Exchange"	means an exchange from which BT provides the Service to the Communications Provider;
"BT Group"	means BT and its Group Companies from time to time;
"BT Network"	means BT's Public Electronic Communications Network;
"BT Range Number"	means a telephone number that is part of the range of numbers that Ofcom has issued to BT to manage;
"CCD" or "Customer Confirmed Date"	means the date on which BT shall provide the Service;
"Cease"	has the meaning set out in the SOTAP Product Description and Process Description;
"Charges"	means the sums payable under or in connection with this agreement from time to time;
"Claim"	means any legal claims, actions or proceedings against either party, whether threatened or actual, whether by a third party or the other party to this agreement;
"Clear Code"	means the reference allocated by BT to describe the way in which a fault has been closed;
"CMC"	means the customer management centre nominated by BT;
"Commitments"	means the Commitments as adopted by BT on 30 September 2018 with effect from 1 st October 2018, as may be amended (or revoked) by BT from time to time;

"Committed Forecast"	means the binding component of any Forecast submitted to BT by the Communications Provider, as described in the Copper Forecasting Manual;
"Common Fault Reference"	means the identifying code allocated to multiple faults caused by a common underlying reason;
"Communications Provider"	means the person who signs this agreement with BT and is a person who provides a Public Electronic Communications Network;
"Conditions"	means the terms and conditions that make up the front-end of this agreement;
"Confidential Information"	means any commercial or technical information in whatever form that is disclosed by one party to the other party and that would be regarded as confidential by a reasonable business person including (without limitation) all business, statistical, financial, marketing, personal information, customer or supplier details, know-how, designs, trade secrets, or software, of the disclosing party or any Group Company;
"Connection Charge"	means the sum payable by the Communications Provider in accordance with the Openreach Price List for provisioning of the Service;
"Contract Form"	means the form signed by the Communications Provider and BT to enter into this agreement;
"Contract Year"	means each consecutive 12 calendar month period commencing from the date of this agreement and then on each anniversary of the date of this agreement;
"Corporate Marks"	means the registered or unregistered trademarks and service marks, house marks and marks of ownership, trading names, brand names, domain names, distinctive colour schemes, devices, styles, emblems and other manifestations associated with either party;
"CP Requirement Date"	is the date the Communications Provider requests the Service should be installed and commissioned by BT and be available for use by the Communications Provider;
"CP Service"	means the service provided to the End User or reseller by the Communications Provider;

"Customer Service Plan"	means a document containing details of the contacts for the support of the Service;
"Data Protection Legislation"	means collectively (i) the GDPR and (ii) the Data Protection Act and (iii) any Applicable Laws and any binding guidance issued by a Supervisory Authority relating to the Processing of Personal Data and/or the protection of an individual's privacy;
"Dialogue Services"	means the services provided by BT to give the Communications Provider information about potential availability of the Services at a Site, as further set out in the Dialogue Services product description;
"Earliest Available Date"	means the first appointment date available to the Relevant Communications Provider
"Emergency"	means a serious situation or occurrence that: <ul style="list-style-type: none"> (a) threatens life and limb; or (b) may cause or threaten to cause damage to physical property or systems; or (c) happens unexpectedly; <ul style="list-style-type: none"> and demands immediate action;
"EMP"	means BT's equivalence management platform;
"End User"	means the Communications Provider's customer that is consuming the CP Service.
"Event and Time Related Charges"	means 'Time Related Charges, Abortive Visit Charges, Excess Construction Charges, Line Right When Tested, Cancel Order, Order Amend, Visit Assure, NTE Shift Charges, Bandwidth Modify Charge, as these Charges appear in the Openreach Price List and any other Charges the parties have agreed will be treated as Event and Time Related Charges;
"Fault Not Found"	means, where a line test indicates a fault in the BT Network, the Clear Code(s) allocated by BT to close that fault report in circumstances where the fault

cannot be found on the BT Network as more fully described in the Event and Time Related Charges document;

“Force Majeure”

means a matter beyond a party’s reasonable control and may include, but is not limited to (to the extent such events are beyond the reasonable control of the affected Party):

- (a) an act of God or force of nature (including fire, earthquake, flood, lightning, landslide and weather of exceptional severity);
- (b) serious incident, the cause of which is unconnected to the party relying on the Force Majeure (including but not limited to explosion and radioactive contamination);
- (c) a change of law that is applicable to the affected party and the change was not reasonably foreseeable;
- (d) epidemic, or national or local emergency (whether in fact or law);
- (e) sabotage, riot, insurrection, terrorism or civil disorder;
- (f) military operations or war (whether declared or not);
- (g) acts, omissions or delays of third parties (including without limitation local or central government or other competent authorities) for whom the party relying on the Force Majeure is not responsible. For the avoidance of doubt, the Communications Provider and BT are responsible for all of their respective contractors including suppliers (except where that supplier itself is affected by a Force Majeure event), employees, servants and agents,
- (h) industrial disputes (including industrial disputes involving that party’s own employees, provided that such party has used reasonable endeavours to resolve such industrial disputes or prevent them from occurring); or
- (i) acts of animals.

but does not include any event the effects of which the party relying on the Force Majeure could have avoided or overcome by exercising a standard of reasonable care at a reasonable cost;

"Forecast"	means the forecast to be provided by the Communications Provider to BT as detailed in Schedule 3;
"Forecast Period"	means the period of three calendar months for which a Forecast is provided;
"Forecasting Manual"	means the <i>Copper Forecasting Manual</i> containing information relating to provision of Forecasts of Orders for the Service as may be amended from time to time. The <i>Copper Forecasting Manual</i> is available on the Openreach Website;
"Gateway"	means the Dialogue Service known as the BT electronic gateway, used for all ordering and repair reporting;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679, and any amendment or replacement to it, (including any corresponding or equivalent national law or regulation which implements the GDPR);
"Group Company"	means any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company or any such holding company of such subsidiary, "subsidiary" and "holding company" having the meanings defined in Section 1159 of the Companies Act 2006 as amended;
"In Home Clear"	means the Clear Code(s) allocated by BT to close a fault in circumstances where BT has cleared a fault in the End User premises;
"Intellectual Property Rights"	means any patent, petty patent, copyright, design right, community design right, database right, semiconductor topography right, registered design, rights in know-how, or any similar right in any part of the world and shall include any application for the registration of any patents or registered designs or similar rights capable of registration in any part of the world;
"Interest Rate"	means four percent above the base lending rate from time to time in force of the Bank of England;
"Invoice Correction"	means to correct the amount charged for a Service and/or Event and Time Related Charge previously raised in an invoice but does not include adding a new Charge (i.e. a Charge for any additional Service or Event and Time Related Charge) not previously invoiced. Where a correction seeks to amend a Charge in respect of an End User's Service then such corrections will only be valid if the

correction identifies the services provided, the End User's identity, location and Charges applicable;

"Invoice Dispute"	means for the purposes of clause 14 a dispute taken in good faith by the Communications Provider in relation to the accuracy of the contents of an invoice and excludes a dispute that is or could be referred to Ofcom under the Communications Act 2003;
"KCI"	means 'keep customer informed' messages, which are automatic messages designed to inform the Communications Provider of BT's progress fulfilling an Order or other request;
"Licensed Facility"	means the licence granted pursuant to the Access Locate agreement or the Revised Access Network Facilities Agreement.
"Managed Install"	means where an Openreach engineer is required to install the Service at the Site;
"Minimum Period"	means the minimum amount of time for which the Communications Provider commits to receive a particular Service;
"New Line Provide"	Has the meaning set out in the SOTAP Product Description and the SOTAP Process Description;
"NTE"	means the BT Network terminating equipment at an End User's Site;
"NTP"	means the BT Network termination point at an End User's Site;
"Ofcom"	means the Office of Communications or its competent successor body or authority;
"Openreach Division"	means the Openreach Line of Business as operated by Openreach Limited.
"Openreach Limited"	means Openreach Limited, a company registered in England and Wales under registration number 10690039 with its registered office at Kelvin House, 123 Judd Street, London WC1H 9NP;
"Openreach Line of Business"	has the meaning given to it in the Commitments (and, for the avoidance of doubt, does not include Openreach Northern Ireland), and as the scope of such line of business is varied from time to time.

"Openreach Price List"	means the documents containing a list of BT's Charges and terms that apply to the Service, which can be seen at Pricing (openreach.co.uk) (or any other on-line address that BT may advise the Communications Provider);
"Openreach Website"	means the website located at http://www.openreach.co.uk/orpg/home/home.do or such other website or URL as BT may notify to the Communications Provider from time to time;
"Operational Data"	means Personal Data provided or made available by one party to the other which is operationally required for the performance of this agreement (business contact information such as names, email addresses, and telephone numbers) relating to the party's employees or representatives;
"Operational Effective Date"	means the relevant date the Communications Provider is notified by BT that the Service is available and ready to use;
"Order"	means an order that BT receives for the Service from the Communications Provider;
"Privacy Policy"	means the policy that the Openreach Division has implemented and may update from time to time on how it Processes Personal Data and that is set out at: https://www.homeandbusiness.openreach.co.uk/privacy-policy ;
"Proactive Fault Report"	Means a fault with the Service which is reported to BT and which has not been initiated by an End User;
"Proactive Fault Reporting Process"	means the process for reporting Proactive Fault Reports and set out in the Proactive Fault Reporting Process Document;
"Process(ed)"	means an Order that BT has committed to delivering;
"Public Electronic Communications Network"	means a "Public Electronic Communications Network" as defined in part 1 of the Schedule to the notification setting the general conditions under section 45 of the Communications Act 2003;
"Public Electronic Communications Service"	has the meaning given to it in the general conditions set pursuant to section 45 of the Communications Act 2003;

"Region"	means the geographical areas, as set out in the Copper Forecasting Manual;
"Relevant Communications Provider"	means a communications provider participating in the industry scheme as set out in the "Automatic Compensation - protecting consumers from service quality problems statement published by Ofcom 10 November 2017", which has registered its participation in the scheme with BT;
"Reporting Tools"	means Heads Up Display (HUD);.
"Right When Tested"	means the Clear Code(s) allocated by BT to close a 'visit assure' appointment in circumstances where a test is undertaken, and the results shows that the Service is working in the BT Network as more fully described in the Event and Time Related Charges document;
"Scheduled Outage"	means the period that EMP is not available for use by the Communications Provider in order for BT to perform certain tasks including, but not limited to, routine maintenance, testing, changing configurations, software upgrades and updating facilities as notified by BT in accordance with clause 4.2(c) of this agreement;
"Self Install"	means an Order to provide the Service to a Site where the BT engineer attendance is only at the BT Exchange, and the BT engineer does not need to attend the Site;
"Series"	means a group of Event and Time Related Charges or Services that BT notifies the Communications Provider (on or around the date the order is placed) would be grouped into a single invoice. An invoice for a series of Event and Time Related Charges or Services must not include any Charge previously invoiced or recurring Charges, such as rental;
"Service"	means the supply of any one or more of the services as set out in Schedule 2, and as described in the relevant SIN;
"Service ID"	means the unique identifier for the Service;
"Service Maintenance Level"	means the relevant period for the clearance of a fault, as described in the Service Maintenance Level product description and in the Maintenance Options SLA Rules, both as published on the Openreach Website;

"Service Maintenance Level 1"	Means the clearance of a fault by 23:59 on the later of: (i) the second Working Day following the day BT receives the fault; or (ii) the agreed appointment day;
"Service Maintenance Level 2"	Means the clearance of a fault by 23:59 on the later of: (i) the next day following the day BT receives the fault (excluding Sundays and bank, public, and regional holidays); or (ii) the agreed appointment day;
"Service Maintenance Level 3"	Means the clearance of a fault by 23:59 on the later of: (i) the same day if BT receives the fault before 12:59, or by 12:59 the next day if BT receives the fault between 13:00 and 23:59; or (ii) the agreed appointment day;
"Service Maintenance Level 4"	Means clearance of a fault within 6 hours of BT receiving the fault, or (if later) by 23:59 on the agreed appointment day;
"Serving Area"	means an area, or areas, as may be amended by BT from time to time, where the Service is potentially available, as published by BT through the Dialogue Services;
"SIN"	means the 'suppliers' information notes' used by BT to publish the technical descriptions of the Service, available at https://www.btplc.com/sinet/ or such other URL as BT advises;
"Site"	means a place at which BT agrees to provide the Service;
"SOTAP"	means Single Order Transitional Access Product as set out in the SOTAP Product Description
"Start of Stopped Line Provide"	means an order to provide the Service using a Stopped Line, as further set out in the SOTAP Product Description and Process Description;
"Statement of Requirements"	means a written proposal by either party for a change to any part of the Services.
"Sub-Processor"	means a BT Affiliate or BT's supplier or subcontractor that BT engages to Process End User Data for the purposes of the Contract;

"Tie Cable"	means a as described in Schedule 2;
"Tie Pair"	means a specific pair of wires within a Tie Cable;
"Working Day"	means any day other than Saturdays, Sundays, public or, bank holidays in the relevant part of the United Kingdom.

Schedule 2 Services

The Services comprise one or more of the following Tie Cables and SOTAP. The Communications Provider must order new, or have existing Tie Cables to be able to consume the SOTAP at each Site.

Tie Cables

1. Tie Cable Availability

1.1. Tie Cables are available in the Serving Area.

1.2. The Tie Cable product description document referred to in this Schedule 2 is an Ancillary Document and is available on the Openreach Website at:

<https://www.openreach.co.uk/cpportal/products/exchange-based-products/internal-tie-cable>

1.3. Tie Cable Provision

1.4. Tie Cables provide a connection between the Licensed Facility at a BT Exchange and the Communications Provider's equipment located at a point of handover within the same BT Exchange. Tie Cables will be provided and maintained by BT as set out in the Tie Cable product description.

1.5. The CP will order a new Licensed Facility under Access Locate, or have an existing Licensed Facility and an HDF for BT to provide the Tie Cable.

1.6. If the CP has placed an order for new accommodation under Access Locate the CCD shall be the delivery date of the accommodation. If the Tie Cable is an additional Tie Cable then the CCD for Tie Cable will be no earlier than the 40 days from the day that BT Processes the Order.

1.7. BT shall provide the Communications Provider with a fault reporting facility as set out in the Tie Cable product description.

1.8. The Communications Provider is responsible for:

- i. compliance with any instructions set out in the Tie Cable product description and the terms of this agreement;
- ii. the acts and omissions of its employees and agents in connection with the repair and/or any other alternative process set out in the Tie Cable product description;
- iii. managing the tie cable capacity on the Tie Cable; and
- iv. unless otherwise agreed by the parties, connection of the Tie Cable to the Communications Provider's equipment.

1.9. BT offers the Tie Cable capacity set out in the Tie Cable product description and the relevant SIN.

2. Order Handling

- 2.1. The Communications Provider shall place Orders using the process as set out in the Tie Cable product description.
- 2.2. BT may reject an Order if any information is illegible, inaccurate, incomplete, incorrect, or if it is a duplicate Order.
- 2.3. BT process all Orders in the order received.
- 2.4. BT shall complete all Orders within the periods set out in clause 1.6, or such longer period as agreed with or notified to the Communications Provider.
- 2.5. BT shall terminate and commission the Tie Cable on the handover distribution frame in accordance with the Tie Cable Product Description.

3. Cancellation

- 3.1. If the Communications Provider cancels an Order before the CCD, the Communications Provider shall reimburse BT the cancellation charge set out in the Openreach Price List.

4. Cessations

- 4.1. The Communications Provider may place Orders for cessation by following the process set out in Tie Cable Product Description. BT will cease the Tie Cable on the date set out in the CP cessation order. If applicable the CP shall pay the early cessation charge set out in the Openreach Price List.

5. Service assurance and problem management

- 5.1. BT accepts fault reports only directly from the Communications Provider. If the fault is not attributable to the BT Network, BT may charge the Site Visit Charge, as set out in Openreach Price List.
- 5.2. The Communications Provider shall report all faults in accordance with the Tie Cable product description.

Single Order Transitional Access Product

6. Service Availability and Constraints

- 6.1. The Service will be available in the Serving Area.
- 6.2. SOTAP is a copper access product extending from the NTP within the NTE at the Site to the Handover Distribution Frame (HDF) or Customer Management Frame (CMF), via an appropriate connecting cable and connected to the Communications Provider's Multi-Subscriber Access Node, or Digital Subscriber Line Access Multiplexer at a BT Exchange.
- 6.3. The Communications Provider acknowledges that:
 - 6.3.1. the Service is only a broadband access service and does not include a voice service;

- 6.4. Some technical limitations within the BT Network might not become apparent until after the Service has been installed and working for some time. In such circumstances, the Service for some individual End Users might need to be withdrawn. BT shall:
- 6.4.1. provide as much notice to the Communications Provider as is reasonably practical of such withdrawal;
 - 6.4.2. refund to the Communications Provider any connection, rental and Cease Charges paid by the Communications Provider in respect of that Service; and
 - 6.4.3. advise the Communications Provider of what (if any) suitable alternative services the Communications Provider could order from BT;
 - 6.4.4. there are certain BT services that are incompatible with the Service. These incompatible BT services are set out in the SOTAP Product Description;
 - 6.4.5. the performance of some end user equipment might be affected by the Service.
- 6.5. BT has no liability to the Communications Provider under or in connection with this agreement with respect to any technical issues relating to or arising out of the limitations set out in this Schedule .

7. SOTAP Ordering

- 7.1. The Communications Provider shall, before placing an Order, check the availability of the Service at the premises using the Enhanced Managed Line Checker ("eMLC") Dialogue Service and ensure that the Communications Provider has a Tie Pair available at the relevant BT Exchange.
- 7.2. The Communications Provider shall place Orders for the Service using the Gateway. If the Communications Provider fails to follow the process for placing an Order as set out in the SOTAP Process Description BT will have no liability under or in connection with this agreement for any delay or failure in accepting the Order.
- 7.3. The Communications Provider shall specify whether its Order is a:
- a) New Line Provide;
 - b) Start of Stopped Line Provide;
 - c) Migration;
 - d) Cease,
- each as further described in the SOTAP Product and Process Description;
- 7.4. BT may reject and/or cancel an Order if:
- 7.4.1. there is a service or services that are incompatible with the Service, as described in the SOTAP Product Description;
 - 7.4.2. the Communications Provider has cancelled its own Order;

- 7.4.3. any information is inaccurate, incomplete, or if it is a duplicate Order;
 - 7.4.4. where there is insufficient capacity in the BT Network to fulfil the Order; or
 - 7.4.5. it is unable to obtain any necessary consents and/or permissions.
- 7.5. If BT rejects and/or cancels an Order, BT shall notify the Communications Provider of the reason for the rejection. BT may Charge a 'Cancel/Amend/Modify' Charge (as set out in the Openreach Price List) in relation to any Order correctly rejected in accordance with paragraph 7.4 above but excluding any orders BT cancels under paragraph 7.4.5.
- 7.6. BT Processes Orders in the order they are received by BT.

8. New Line Provide

- 8.1. If the Order is a New Provide, the Communications Provider shall indicate the Excess Construction Charge band it would pay for provision of SOTAP. If BT (acting reasonably) considers the cost of the work that is likely to be required to complete the provision of a new line will exceed the Excess Construction Charges the Communications Provider has indicated it is willing to pay, BT shall reject the New Provide Order and inform the Communications Provider.
- 8.2. The Communications Provider shall submit to BT for each New Line Provide an address key obtained from the address matching Dialogue Service provided by BT.
- 8.3. If the Communications Provider places a New Line Provide and BT identifies a Stopped Line at the Site, BT may (unless the Communications Provider has provided any additional Site visit reason as part of its New Line Provide) convert the Order to a Start of Stopped Line Provide Order and shall Charge the Communications Provider accordingly.
- 8.4. The Communications Provider may (except where network build is required) in accordance with paragraph 9.4 request BT to expedite a New Line Provide.

8.5. Start of Stopped Line Provide

- 8.6. If a Start of a Stopped Line Provide Order requires an engineering visit, the New Provide Charge set out in the Openreach Price List applies, not the sum of the Stopped Line Provide and NTE shift Charges.

9. Date of Delivery

- 9.1. If the Communications Provider requests a Managed Install the CCD will be:
- 9.1.1. The CP Requirement Date if the Communications Provider has made a valid appointment reservation for that date; or

- 9.1.2. the next available appointment after the CP Requirement Date if the Communications Provider has not made a valid appointment reservation and the CP Requirement Date is not available.
- 9.2. notwithstanding paragraphs 9.1.1 and 9.1.2 if an Order requires BT to undertake network build BT will (subject to paragraph 8) notify the Communications Provider of the CCD after completing a Site survey.
- 9.3. If the Communications Provider requests a Self Install connection the CCD will be:
- 9.3.1. the appointed slot on the CP Requirement Date if the Communications Provider has made a valid appointment reservation for that date;
- 9.3.2. the CP Requirement Date if the Communications Provider has not made a valid appointment reservation but has included a specific appointment preference on the Order and that preference is available; or
- 9.3.3. the next available appointment after the CP Requirement Date if the Communications Provider has not made a valid appointment reservation or indicated an appointment preference or set the appointment preference to 'Daily'.
- 9.4. If the Communications Provider requires a delivery date earlier than that proposed by BT, the Communications Provider may request BT to expedite the Order. BT shall use its reasonable endeavours to allocate an earlier appointment. If such earlier appointment is accepted by the Communications Provider, that will become the CCD and the Communications Provider shall (in addition to the appropriate Connection Charge) pay the expedite Charge set out in the Openreach Price List. If BT fails (as a result of its own action or inaction) to deliver the Service on the revised CCD, the expedite Charge is not payable and the provisions of Schedule 4 apply.
- 9.5. Notwithstanding anything in paragraphs 9.1, 9.3, and 9.4 the CCD will be subject to any applicable minimum lead time as described in the SOTAP Process Description for the relevant Order type.
- 9.6. The Communications Provider shall when submitting an Order to BT specify the Service Maintenance Level it wishes to allocate to the Service. If no Service Maintenance Level is specified, Service Maintenance Level 1 applies. If the Communications Provider selects a Service Maintenance Level other than Service Maintenance Level 1, the Communications Provider shall pay the Charge associated with the selected Service Maintenance Level, as set out in the Openreach Price List. The Service Maintenance Levels are as described in the Service Maintenance Levels Product Description.
- 9.7. The Communications Provider may Order a change to the then current Service Maintenance Level for the Service. Any such change will be effective no more than one Working Day after the Order is Processed by BT and the Communications Provider shall pay the Charges associated with the new Service Maintenance Level as set out in the Openreach Price List.
- 9.8. If the Communications Provider cancels a provision Order (or any part of it) before 18:00 on the Working Day before the CCD the Communications Provider shall by way of compensation to BT pay the cancellation Charge

set out in the Openreach Price List. If the Communications Provider cancels an Order after 18:00 the Working Day before the CCD, the Communications Provider shall pay the full connection charge..

10. Provision

- 10.1. BT shall provide the Service as set out in paragraph 6.2 of this Schedule.
- 10.2. Prior to placing an Order the Communications Provider must have a Tie Cable (as set out in this Schedule 2) within the BT Exchange that the Service is provided from. If the Order is a New Provide then at the time of placing the New Provide Order the Communications Provider must (if it does not already have a Tie Cable in the relevant BT Exchange) have placed an Order for a Tie Cable in the BT Exchange that the Service will be provided from. If the Communications Provider uses a temporary reference to a Tie Pair in an Order, the Communications Provider shall amend the Order with a valid Tie Pair reference no later than 10 Working Days of BT informing them of the relevant routing. If the Communications Provider fails to do so, BT shall cancel the Order.
- 10.3. BT shall provide Communications Provider with:
 - 10.3.1. access to the Gateway; and
 - 10.3.2. a user guide for the Gateway.

11. Number Portability

- 11.1. Neither party has title in any telephone number.
- 11.2. To the extent that a telephone number assigned to a line is a BT Range Number, BT shall, on request by the Communications Provider, facilitate the transfer of a telephone number to a service of the Communications Provider's choice in accordance with the SOTAP Product Description and Process Description.
- 11.3. If a telephone number assigned to a line is not a BT Range Number, BT cannot provide assistance with the transfer of that number.

12. Installation

- 12.1. BT shall:
 - 12.1.1. provide the Ordered Service to the Communications Provider on the CCD; and
 - 12.1.2. inform the Communications Provider when the Service has been provided.
 - 12.1.3. If the Communications Provider orders a Managed Install the BT engineer, on agreement with the End User, shall carry out the tasks associated with the type of Managed Install ordered by the Communications Provider (standard or premium) as described in the SOTAP Process Description.
- 12.2. The Communications Provider shall provide all elements of the network required for consumption of the Service beyond the NTP including a CP Device.

- 12.3. If the Communications Provider has Ordered a Managed Install, BT shall (if requested by the Communications Provider, and provided that the Communications Provider equipment is available to BT at the Site at the time of the Managed Install) install the Communications Provider equipment. If such Communications Provider equipment is not available to the BT engineer on the CCD, BT shall provide the Service and carry out all other work. The Communications Provider shall pay the applicable Charge for the type of Managed Install, as set out in the Openreach Price List. BT shall, as set out in the SOTAP Process Description, also connect End User equipment that was connected to the BT Network immediately prior to provisioning. The Communications Provider acknowledges that BT cannot demonstrate to the End User a working service if the Communications Provider equipment is not available at the time of the Managed Install.
- 12.4. If the Communications Provider has Ordered a Self Install variant, BT does not visit the Site. BT shall provide the Service on the CCD by completing the necessary work in the BT Network as described in the SOTAP Process Description. If the Communications Provider so requests in its Order BT shall commence the Self Install task only within the relevant appointment slot on the CCD. The Communications Provider shall pay the Charges set out in the Openreach Price List.

13. Cancellation of Order

- 13.1. If the Communications Provider cancels the Order before 18:00 on the Working Day before the CCD, the Communications Provider shall pay:

- a) Excess Construction Charges (where applicable); and
- b) Cancellation of SOTAP Order charge

at the as set out in the Openreach Price List point of cancellation

- 13.2. If the Communications Provider cancels the Order after 18:00 on the Working Day before the CCD (a "Late Cancellation"), the Communications Provider shall pay:

- a) Excess Construction Charges (where applicable);
- b) The relevant Late Cancellation of SOTAP Connect Connection charge as set out in the Openreach Price List; and
- c) Abortive Visit Charge as set out in the Openreach Price List, but only in the event that the engineer visits the End Customer premises and in accordance with the TRC, Events and Periodic Charges Ancillary Document.

as set out in the Openreach Price List. BT will take reasonable steps to mitigate the amount of such costs and expenses.

- 13.3. If BT is unable to complete an installation in the circumstances set out in paragraph 12.1, and the Communications Provider has within 15 days from the previously appointed date failed to agree with BT a new installation appointment date, BT will cancel any work at the End User's Site. The Communications Provider will be charged:

- a) the Late cancellation - SOTAP Connection charges where there is no missed appointment during the progress of the Order; or
- b) the Cancellation of SOTAP Order charges where there is a missed appointment during the progress of the Order

set out in the Openreach Price List.

14. Modification and Cessation of Service

14.1. After provision of the Service, the Communications Provider may place Orders to:

- b) Modify the Tie Pair; or
- c) Modify the Service Maintenance Level; or
- d) Shift the NTE; or
- e) cease the Service

and shall follow the process set out in the SOTAP process description.

15. Service Assurance and Problem Management

15.1. If an installation or repair appointment is agreed with BT for work at the Site, and BT is unable to carry out the work at, or gain access to, the Site due to an act or omission by the Communications Provider or End User, BT may Charge the Communications Provider an Abortive Visit Charge, as set out in the Openreach Price List and the Events and Time Related Charges document.

15.2. The Communications Provider shall use the Gateway to test and report all faults with the Service and to request updates on reported faults. The Communications Provider may during the hours described in the Customer Service Plan contact the CMC:

15.2.1. once the fault is registered on the Gateway and no update has been provided by BT on HUD; or

15.2.2. if the Gateway is unavailable.

15.3. Except as set out in clause 16.1.3, the Communications Provider may request information in relation to a particular premises under the Dialogue Services only if the Communications Provider has obtained the prior consent of the End User for BT to provide the information requested. The Communications Provider shall use data provided by BT through the Dialogue Services only for the purpose for which it is provided, as set out in the Dialogue Services Product Guide published on the Openreach Website.

16. Proactive Fault Reporting

16.1. The Communications Provider may submit Proactive Fault Reports to BT subject to the following conditions:

16.1.1. prior to doing so the Communications Provider has successfully completed the accreditation process set out in the Proactive Fault Reporting Process Document; and

16.1.2. at all times the Communications Provider complies with the Proactive Fault Reporting Process.

Except as provided for in this clause 16.1, the Communications Provider shall not submit Proactive Fault Reports and may only submit fault reports relating to the Service where the fault has been initiated by the End User.

16.1.3. BT agrees that the Communications Provider may use the Copper Line Test without the End User consent for the purposes of placing a Proactive Fault Report.

16.2. If BT notifies a Force Majeure event for one, or more geographic areas the Communications Provider shall cease placing Proactive Fault Reports for the duration of the Force Majeure event in those geographic areas. If the Communications Provider raises Proactive Fault Reports during the period of time and in the geographic areas in which the Force Majeure event applies, BT may reject those Proactive Fault Reports.

16.3. Consequences of failure

If, in the reasonable opinion of BT using information available to it, BT determines that the Communications Provider has or is failing to comply with the provisions of clause 16.1 then BT shall inform the CP of this and then;

- a) The parties shall as soon as reasonably practicably discuss the matter in good faith in order to determine the reasons for non-compliance with the Proactive Fault Reporting Process and to agree the remedial actions (and timescale for their implementation) required of each party to achieve compliance;
- b) If the parties are unable to reach agreement pursuant to clause 16.3 a) within 30 calendar days (or within such other period agreed between the parties) then either party may refer the matter to the Office of the Telecommunications Adjudicator (the OTA) and invite them to review and assist the parties to reach a resolution;
- c) If, following a further period of 30 calendar days (or within such other period agreed between the parties) of referral to the OTA the parties are still unable to agree a resolution then BT reserves the right to suspend agreement for the Communications Provider to place Proactive Fault Reports.

16.4. If, using information available to it BT reasonably determines that the Communications Provider has submitted Proactive Fault Reports in breach of clause 16.1, then BT reserves the right to reject the Proactive Fault Reports before BT has responded or charge the Communications Provider Time Related Charges for each Proactive Fault Report BT has responded to.

- 16.5. If BT is called out to repair a fault and such fault is not attributable to the BT Network, or is otherwise attributable to part of the Service that BT is not responsible for, the Communications Provider shall pay the Charges set out in the Event and Time Related Charges document. Such Charges will not apply if the Site visit was requested due to an incorrect fault diagnosis on BT's line testing system.
- 16.6. The Communications Provider acknowledges that it might be necessary for BT to interrupt the Service to repair a fault. BT shall endeavour to minimise any such disruption as far as is reasonably practicable.

17. Fair Use of Systems

- 17.1. BT may temporarily suspend the Communications Provider's access to BT's IT systems and Reporting Tools if the Communications Provider's manner of use of such systems in BT's opinion is detrimentally affecting other communications provider's ability to use those systems. In the event of any such suspension, the parties will work together to ensure that access is restored as soon as practicable and that the Communications Provider's use of the systems does not detrimentally impact other communications providers after restoration.
- 17.2. BT shall:
- 17.2.1. wherever practicable give advance notice of any suspension under paragraph 17.1, but the CP acknowledges that advance notice might not always be possible; and
- 17.2.2. minimise (as far as is technically practicable) the scope of any suspension implemented under paragraph 17.1 to the access necessary to directly address the issues causing problems for other communications providers.

18. Service Tools

- 18.1. BT shall on and subject to the terms and conditions set out in this paragraph 18 provide the Reporting Tools to the Communications Provider.
- 18.2. The Communications Provider acknowledges that the Reporting Tools are subject to service limitations inherent to the world wide web and that BT does not guarantee that the Reporting Tools will be available and transmit information uninterrupted or error-free.
- 18.3. BT may suspend, modify, remove, or add to the Reporting Tools at its sole discretion with reasonable notice to the Communications Provider.
- 18.4. BT has no liability to the Communications Provider with respect to or arising out of:
- 18.4.1. the Reporting Tools being unavailable for any reason;
- 18.4.2. any inaccuracy in the contents of the Reporting Tools, and all representations and warranties as to fitness for purpose, quality, and accuracy are hereby excluded; and
- 18.4.3. any action taken by BT pursuant to paragraph 18.3 above.

- 18.5. Reporting Tools contain only general information on Orders and fault reports. Nothing in it constitutes advice. The Communications Provider should neither act, nor refrain from acting, on the basis of information contained in the Reporting Tools.
- 18.6. BT cannot guarantee that the Reporting Tools are free from viruses, worms, and trojan horses and accepts no liability for any damage that might result from the transmission of viruses via the Reporting Tools. The Communications Provider is solely responsible for its own cyber-security.

Schedule 3 Forecasting

1 Provision of Forecast

- 1.1 BT shall confirm to the Communications Provider whether it is required to provide a Forecast. The provisions of this Schedule 3 apply only to the extent that the Communications Provider is required to provide Forecasts.
- 1.2 The Communications Provider shall provide its first Forecast within 3 calendar months of being required to provide a Forecast.
- 1.3 The Communications Provider shall monitor the level of provision Orders that require an engineering visit and calculate whether the level will reach, or exceed the forecast threshold level based on criteria defined in the Forecasting Manual. The Communications Provider shall notify BT when it calculates that its level of provision Orders will reach or exceed the forecast threshold level in accordance with the Forecasting Manual.
- 1.4 During the term of this agreement the Communications Provider shall, quarterly in advance, provide its Openreach Sales and Relationship Manager (SRM) with a Committed Forecast of the number of provision Orders requiring an engineering visit it will make during the relevant Forecast Period under this agreement. The Communications Provider shall detail in each Forecast the anticipated provision Orders requiring an engineering visit on a regional basis as defined in the Forecasting Manual.
- 1.5 The Forecast shall be provided in the form and at the specified times in accordance with the provisions of the Forecasting Manual.
- 1.6 After a Forecast has been submitted, the Communications Provider may amend the Forecast only in accordance with the Forecasting Manual.
- 1.7 The parties agree that a Forecast is not a commitment to make a minimum number of Orders during any Forecast Period.
- 1.8 BT shall no later than each subsequent April confirm to the Communications Provider either: (i) that its obligation to Forecast continues in accordance with this Schedule for a further 12 calendar months; or (ii) that the Communications Provider is not required to provide a Forecast until the Communications Provider's level of provision Orders has once again exceeded the forecast threshold and the terms of this Schedule apply.

2 Effect of Inaccurate Forecasts

- 2.1 For each provision Order requiring an engineering visit in excess of the last updated Forecast, both parties shall (acting reasonably) agree a CCD. If the parties are unable to agree a CCD, BT may provide a CCD.

- 2.2 This Schedule 3 does not affect any of the service level guarantees for repair of the Service set out in Schedule 4.
- 2.3 If the Communications Provider submits a total number of Orders in a Region during any Forecast Period that is above or below the Forecasted number of provision Orders requiring an engineer visit for a Region, for that Forecast Period by more than the margin of error of 10% then the service level agreement for appointment availability set out in clause 7 of Schedule 4 will not apply for that Region for that Forecast Period.

Schedule 4 Service Level Agreement

1 Introduction

- 1.1 This Schedule contains the Service Level Agreements between BT and the Communications Provider for:
- (a) the Service (see Section A), and
 - (b) the Automatic Compensation service level (See Section B)
 - (c) the EMP system (see Section C).
- 1.2 All the measurement criteria detailed in this Schedule applied to the Service are applied on an individual Service basis.
- 1.3 BT reserves the right to make changes to Sections A and C of this Schedule with a minimum of 12 months notice.
- 1.4 Any amount paid subject to this Schedule are compensatory.

SECTION A: THE SERVICE

2 Background (Section A)

- 2.1 The Parties shall comply with their respective obligations set out in the SLA/SLG Policy, Business Rules Overview document.

3 Order Processing

- 3.1 Subject to paragraph 12, BT aims to:
- (a) provide a KCI 1 to acknowledge an Order for the Service or an error message within 1 (one) hour of the XML file being received for 99% of Orders;
 - (b) provide a KCI 2 to confirm that the Order has been Processed and the CCD or an error message by 17:00 hours on the next Working Day following the day the KCI 1 is sent.

4 Provision

- 4.1 Subject to paragraph 12, BT shall provide the SOTAP Service on the CCD.
- 4.2 If BT fails to provide the SOTAP Service on the CCD, subject to any limitations set out in paragraph 0, BT shall pay the Communications Provider £8 for each day or part day BT is late in meeting the commitment for the affected Service.

5 Time to Repair

5.1 Subject to paragraph 12 of Schedule 4 and the Service Harmonisation Service Level Agreement Rules & 'Parked Time' examples (published on the Openreach Website) BT shall in accordance with the appropriate Service Maintenance Level repair a fault in the SOTAP Service in a part of the BT Network for which BT is responsible. If BT fails to repair the SOTAP Service then, subject to any limitations set out in paragraph 12, BT shall pay the Communications Provider for each day or part day BT is late in clearing a fault:

- (a) For Service Maintenance Level 1 and 2, an amount equal to one month's rental for the relevant Service; and
- (b) For Service Maintenance Level 3 and 4, an amount equal to 1 month's line rental charge and 1 month's rental charge for the applicable Service Maintenance Level.

6 Non-operational SOTAP Service

6.1 Subject to paragraph 12 of Section A, if, within 8 Working Days of the date an Engineer Install or Self Install SOTAP Service was delivered, the Communications Provider gives BT notice that the service has failed, and this is due to BT's act, error, or omission, then BT shall pay to the Communications Provider fixed compensation of £12.

Repeat Faults

6.2 Except as set out in paragraph 6.3, if the Communications Provider raises a fault for the SOTAP Service that is closed by BT, and the Communications Provider raises a subsequent fault for the same SOTAP Service within 28 days of the closure of the previous fault and the subsequent fault is closed by BT; and/or;

- (a) both the original and subsequent faults have been closed by BT using the combinations of Clear Codes in the table below; or;
 - (b) the subsequent fault is in the same point of the BT Network as the original fault,
- this will be considered a repeat fault. If the repeat fault is due to BT's act, error or omission, then BT shall pay fixed compensation of £10 to the Communications Provider. The payment of compensation to the Communications Provider for In Home Clear followed by a network fault in the BT Network, is subject to the process set out in the SLA/SLG Policy, Business Rules Overview:

network fault in the BT Network, followed by a network fault in the BT Network using the same Clear Code
A fault report closed with Right When Tested followed by a network fault in the BT Network
Fault Not Found followed by a network fault in the BT Network
In Home Clear followed by a network fault in the BT Network

- 6.3 No compensation is payable in connection with paragraph 6.2 if the fault arises from damage (other than damage which has been caused by BT) to the BT Network as more fully described in the TRCs, Events and Periodic Charges document or where the fault has been allocated to a Common Fault Reference.

7 Appointment Availability for the SOTAP Service

- 7.1 BT shall make an appointment available to the Communications Provider within 12 Working Days of the date of order placement for the provision of the SOTAP Service (or if the order is placed on the 'waiting' list as described in the SOTAP Product Description, within 12 Working Days of the initial confirmation of CCD). Subject to paragraph 7.2, if BT fails to do this, and the cause of that failure is within BT's reasonable control, BT shall, if the first available appointment BT offers the Communications Provider is:
- (a) 13, 14 or 15 Working Days from the Communications Provider's Order placement, BT shall, in respect of that Forecasted Order pay £2 per Working Day until the next available appointment with effect from and including the 13th Working Day, or;
 - (b) 16 Working Days or later, BT shall, in respect of that Forecasted Order pay £4 per Working Day until the next available appointment with effect from and including the 13th Working Day.
- 7.2 If the Communications Provider has been notified that it is obliged to provide a Forecast in accordance with paragraph 1 of Schedule 3, and the Communications Provider submits a total number of Orders in a Region during any Forecast Period that is above or below the forecasted number of Orders for a Region, for that Forecast Period by more than the margin of 10%, then the fixed compensation for appointment availability set out in paragraph 7.1 will not apply for that Region for that Forecast Period.

8 Keeping Appointments

8.1 If BT commits to an appointment and fails to keep the appointment to:

- (a) provide the Service (including when the provision Order is cancelled following a missed appointment); or
- (b) repair the Service, including when the fault report is cancelled following a missed appointment and the Communications Provider reports a fault within 28 days of the date the fault report is cancelled and BT completes the repair,

and the cause of that failure is within BT's reasonable control BT shall pay the Communications Provider £56 for each missed appointment.

8.2 If the Communications Provider does not report a fault within 28 days of the date the fault report is cancelled, or the subsequent fault report is also cancelled the Communications Provider will have no entitlement to the compensation set out paragraph 8.1.

9 Proactive Repair

9.1 BT shall repair the SOTAP Service in respect of Proactive Fault Reports located in a part of the BT Network for which BT is responsible within 4 Working Days from the date the Proactive Fault Report is placed with BT. If BT fails to repair the SOTAP Service within this period then, subject to any limitations set out in Schedule 2, and paragraph 12 of this Schedule, BT shall pay the Communications Provider an amount equal to 75% of one month's line for the relevant Service for each Working Day, or part Working Day BT is late in clearing the fault.

10 Limits on Compensation

10.1 There is no cap on the compensation payable under paragraphs 4 and 5 for the SOTAP Service.

11 How BT Will Pay Compensation

11.1 BT shall monitor its performance of those issues under paragraphs 4, 5, 6 and 8, and compensate the Communications Provider proactively should it fail to meet those commitments.

11.2 BT processes compensation payable in the month after which it became due. Compensation payments will normally be included in the next available invoice after processing.

11.3 BT may offset all or part of any compensation against any outstanding amounts due for the Service that have not been paid by the Communications Provider.

12 What Is Not Covered

12.1 To the extent that it affects any compensation payable, the service levels under this agreement will not apply if:

- (a) BT's failure is due to the performance of the public internet;
- (b) BT's failure is due to the Communications Provider's own network or equipment or any other network or equipment outside the BT Network; or
- (c) the Communications Provider is in breach of any part of this agreement or BT suspends the Service or any part of it in accordance with this agreement; or
- (d) through no fault of its own or because of circumstances beyond its reasonable control, BT is unable to carry out any necessary work at, or gain access to the Site or the Communications Provider fails to agree an appointment date or work is aborted by the Communications Provider, End User or a third party that BT reasonably assumes to be in authority; or
- (e) the Communications Provider and BT agree a different timescale for performance of the Service; or
- (f) reasonable assistance is required, or information is reasonably requested by BT from the Communications Provider or a third party and such assistance or information is not provided; or
- (g) the fault has been reported other than in response to a complaint by an End User; or
- (h) through no fault of its own, BT is unable to obtain any necessary permissions or consents required in connection with the performance of a particular service level; or
- (i) the failure is due to a Force Majeure event; or
- (j) the failure is due to a planned or Emergency Service interruption; or
- (k) the failure is due to a Scheduled Outage or an outage of the EMP system notified in accordance with this agreement; or
- (l) the failure is due to an inaccurate Order being submitted by the Communications Provider; or
- (m) the fault is not reported in accordance with the fault reporting provisions in Schedule 2.

SECTION B Automatic Compensation Service Levels

13 End User Automatic Compensation

13.1 BT will monitor service levels and provide Automatic Compensation Messages in a timely manner and, where applicable, will pay compensation under the service level guarantees in this Section B solely to the Relevant Communications Provider.

- 13.2 If the Relevant Communications Provider fails to provide to Ofcom the information specified in "Choosing the Best Broadband, Mobile and Landline Provider, comparing service quality" report, or fails to provide to BT evidence of its payment of Automatic Compensation to its End Users, BT may withhold and/or set-off the total sum of Automatic Compensation fixed compensation paid, or payable to the Relevant Communications Provider for events in the preceding 12 month period. BT may withhold subsequent Automatic Compensation fixed compensation until the Relevant Communications Provider provides BT with evidence of its payment of Automatic Compensation fixed compensation payments to its End Users.
- 13.3 BT will provide the Relevant Communications Provider messages as set out in the Automatic Compensation Business Rules document.

14 Automatic Compensation Provision Service Level

- 14.1 Subject to paragraph 17.1, if BT fails to provide SOTAP by 23:59 on the CCD:
- (a) and the product is provided on a later date, BT shall pay the Relevant Communications Provider the rate set out in table A below per day until the date the product is provided, including the date of provision, but excluding the committed date, or if the product is not provided following a missed appointment BT shall pay the Relevant Communications Provider the rate set out in table A until the Earliest Available Date; or
 - (b) if the Relevant Communications Provider cancels the provision Order on the committed date, BT shall pay the Relevant Communications Provider set out in table A below; or
 - (c) if the Relevant Communications Provider cancels the provision Order after the Automatic Compensation service level failure, BT shall pay the Relevant Communications Provider the rate set out in table A below until the date the cancellation is completed, including the date of cancellation but excluding the committed date.

Automatic Compensation SLA and time period	Rate
Orders placed and completed	£4.32
Orders placed and cancelled	£4.32

15 Automatic Compensation Repair Service Level

- 15.1 Subject to paragraphs 17.1, if BT fails to repair SOTAP within two Working Days (excluding the day the fault is placed) of the fault being placed with BT by the Relevant Communications Provider and the product is subsequently repaired by BT;
- a) BT shall pay the Relevant Communications Provider

- i. If the fault is raised as a standard repair the rate set out in table B below per day, until the date the service is repaired; or
 - ii. If the fault is raised as an SFI the rate set out in table B below until the date the service is repaired
- b) If the Automatic Compensation service level failure in paragraph 15.1 follows a missed appointment BT shall pay the Relevant Communications Provider the rate set out in table B below per day:
- i. If the fault is raised as a standard repair the rate set out in table B below per day until the Earliest Available Date; or
 - ii. if the fault is raised an SFI the rate set out in table B below until the date the service is repaired.
- c) If the Relevant Communications Provider places a Cease Order for the service during the Automatic Compensation service level failure period either:
- (i) the Relevant Communications Provider will cancel the fault, or;
 - (ii) If the Relevant Communications Provider does not cancel the fault, BT will cancel the fault,
- And BT shall pay the Relevant Communications Provider
- (iii) If the fault is raised a standard repair the rate set out in table B below until the date the fault report is cancelled; or
 - (iv) if the fault is raised as an SFI the rate set out in table B below until the date the fault report is cancelled.

Table B

Automatic Compensation SLA and time period	Rate
faults (standard repair including following a missed appointment)	£4.79
Faults subsequently cancelled	£5.15
SFI (including following subsequently cancelled)	£7.36

16 Automatic Compensation Missed Appointment Service Level

- 16.1 If BT fails to keep an appointment to provide, or repair SOTAP or BT amends, or cancels the appointment without the Relevant Communications Provider's consent during the 24 hours prior to the date of the engineer visit, BT will pay the Relevant Communications Provider £19.91 for each missed appointment

17 Exceptions

17.1 To the extent that it affects any compensation payable, the service levels in this Section B will not apply if:

- (a) the failure by BT is due to the Relevant Communications Provider's own network or equipment, or any other network or equipment outside the BT Network; or
- (b) the failure is due to the industry number portability processes; or
- (c) a fault is due to the error, act or omission of the End User; or
- (d) due to the error, act or omission of the Relevant Communications Provider, or the End User, BT is unable to carry out necessary work, or gain access to an End User Site; or
- (e) The Relevant Communications Provider fails to agree an appointment date or work is aborted by the Relevant Communications Provider or End User or a third party that BT reasonably assumes to be in authority; or
- (f) The Relevant Communications Provider and BT agree a different timescale for performance of the service level; or
- (g) the failure is due to an inaccurate Order, or the fault is not reported in accordance with the Business Process (E2E) for SOTAP by the Relevant Communications Provider; or
- (h) if BT requires permission from the End User to put BT Equipment at the End User Site or any necessary alterations to buildings, or if a Site specific method statement is required; or
- (i) the failure is due to a Force Majeure event; or
- (j) the failure is due to an Emergency service interruption, Scheduled Outage or an outage of the EMP System notified in accordance with this agreement.

Section C: The EMP System

18 Background (Section C)

18.1 This Section C contains the Service Level Agreement between BT and the Communications Provider for the EMP system.

18.2 The Service Level Agreement applies to the EMP system in relation to the SOTAP Service.

19 Definitions

19.1 In this section C:

"Assure Facility" means the facility which BT provides for a Communications Provider to place a fault report in respect of the Service;

"EMP Services" means Key Dialogue Services, Assure Facility and the Order Facility;

"Fault" means an inability to submit a Transaction and receive a Valid Response;

"Key Dialogue Services" means eMLC, Address Matching, Appointing and Service Test;

"Loss of Service" means a Fault affecting one or more of the EMP Services excluding periods of Scheduled Outages;

"Measurement Period" means the period of time over which BT will measure Loss of Service. The Measurement Period shall be calendar months;

"Order Facility" means the facility BT provides for a Communications Provider to place a, provision, transfer, cessation or migration order in respect of the Service using EMP;

"Service Credit" means the compensation BT will pay to the Communications Provider if it fails to meet the Service Level as set out at paragraph 21 below and calculated in accordance with paragraph 21.2;

"Service Level" means the level of performance for the EMP Services set out in Section C;

"Transaction" means submission of a request using the EMP Services; and

"Valid Response" means the result of a Key Dialogue Service or in respect of the Assure Facility and Order Facility the sending of the relevant acknowledgment.

20 Measurement

- 20.1 Loss of Service will be calculated for each Measurement Period on a per communications provider basis and excludes any measurement relating to a failure directly attributable to the Communications Provider or any third party.
- 20.2 Loss of Service is measured from the point at which the public internet meets EMP Services. The measurement criteria do not include the link to or from the Communications Provider's own equipment.

21 Service Level

- 21.1 If there is a Loss of Service then subject to the other terms of Section C (including, without limitation, the exclusions at paragraph 24) BT shall pay the Communications Provider for any Measurement Period a sum calculated in accordance with the relevant formulae set out in paragraph 21.2 below where:

a = the number of valid provide, transfer and migration Transactions submitted by the Communications Provider in the previous Measurement Period using the Order Facility (i.e. the month immediately prior to the relevant calendar month)

b = the number of valid assurance Transactions submitted by the Communications Provider in the previous Measurement Period using the Assure Facility (i.e. the month immediately prior to the relevant calendar month)

c = total number of hours in the previous Measurement Period

d = the duration of the Loss of Service (expressed as a number of hours rounded to 2 decimal points) calculated on a per-incident basis

e = the greater of a or b for the Communications Provider during the previous Measurement Period

f = the fulfilment order run rate for the previous Measurement Period calculated using the formula: $f = a / c$

g = the assurance order run rate for the previous Measurement Period calculated using the formula: $g = b / c$

h = the Dialogue Services run rate for the previous Measurement Period calculated using the formula: $h = e / c$

21.2 If there is a Loss of Service, BT shall pay the Communications Provider Service Credits depending on the EMP Service that has been affected by the Loss of Service as follows:

(a) Order Facility = $f \times d \times £20$

(b) Assure Facility = $g \times d \times £20$

(c) One or more Key Dialogue Services = $h \times \text{multiplier} \times d \times £20$

For the purposes of the Key Dialogue Services formula above the multiplier set out in the table below will apply.

DURATION OF THE LOSS OF SERVICE (in hours)	MULTIPLIER
Up to 2	1
2 or more but less than 4	2
4 or more but less than 6	3

6 or more but less than 8	4
8>	5

21.3 The Communications Provider will only receive Service Credits if it is using the affected EMP Service during the relevant Measurement Period.

21.4 If during a Measurement Period BT fails to meet the Service Level the Communications Provider's entitlement for Service Credits is subject to the following principles:

- (a) If a Loss of Service affects an EMP Service the Service Credit will be based on the affected EMP Service using the relevant formula shown at paragraph 21.2 above;
- (b) If a Loss of Service affects the Order Facility and the Assure Facility the Service Credit will be calculated using the formula at sub-paragraphs 21.2(a) and 21.2(b) above;

21.5 If a Loss of Service affects all of the EMP Services the Service Credit will be based on the greater of either the:

- (a) Order Facility and the Assure Facility using the formula at sub-paragraphs 21.2(a) and 21.2(b) above; or
- (b) the Key Dialogue Services using the formula at sub-paragraph 21.2(c) above.

21.6 The level of Service Credit is subject to a maximum Loss of Service of 48 hours in relation to any single incident.

22 Dialogue Services provided through the Gateway

22.1 The following Dialogue Services have the following target Transaction completion times (measured and averaged across all Communications Providers):

(a) for access via the portal or the web:

Dialogue Service	Target mean Transaction time per Measurement Period
Copper Line Test	81 seconds
GEA Service Test	201 seconds
Address Matching	16 seconds
Appointing	12 seconds
eMLC availability	12 seconds

(b) for access via B2B or xml:

Dialogue Service	Target mean Transaction time per Measurement Period
Copper Line Test	84 seconds
GEA Service Test	204 seconds
Address Matching	19 seconds
Appointing	15 seconds
eMLC availability	15 seconds

23 How BT Will Pay Service Credits

23.1 BT shall monitor its performance against the Service Levels under this Section C and proactively provide Service Credits to the Communications Provider if BT fails to meet those commitments.

23.2 BT may offset all or part of any Service Credit against any outstanding amounts due to BT for the Service that have not been paid by the Communications Provider.

23.3 Any Service Credits payable under this Section C are without prejudice to any right of either party to Claim for additional loss.

24 Exclusions

24.1 The Service Levels and the corresponding Service Credits will not apply if:

- (a) the failure by BT is due to the performance of the public internet;
- (b) the failure by BT is due to the Communications Provider's own network or equipment or any other network or equipment outside the BT Network;
- (c) the failure is due to a reason covered by clause 16 (Force Majeure) of the Conditions;
- (d) the failure is due to a Scheduled Outage;
- (e) the Loss of Service was caused by activity that intentionally or accidentally removes or disrupts, or intentionally or accidentally attempts to remove or disrupt normal EMP system service and/or EMP system security, and this exclusion includes the time required to re-affirm or re-establish the normal EMP system service or EMP system security;
- (f) emergency action is necessary;
- (g) it is necessary to restrict the volume of Transactions (including but not limited to system recovery) to the extent necessary to safeguard the integrity of the EMP system;
- (h) BT needs to undertake disaster recovery activity.

Schedule 5 Data Processing

1 Subject Matter of the Processing of Personal Data

- 1.1 This Data Processing Schedule sets out the details regarding how End User Data is Processed when providing the Service.

2 Duration of The Processing of Personal Data

- 2.1 BT or its Sub-Processor will Process the End User Data to provide the Service as set out in this Schedule for as long as BT provides the Service and for as long as BT may be required to Process the End User Data in accordance with Applicable Law as set out in Openreach Data Processing Guidelines for CPs.

3 Nature and Purpose of The Processing of Personal Data

- 3.1 The nature of the Processing of End User Data by BT includes:
- (a) BT processes the End User Data provided to BT by the Communications Provider, as set out in paragraph 4 of this Schedule; and
 - (b) BT hosts this information as part of its provision of the Service.
- 3.2 BT processes the End User Data for the following purposes:
- (a) deliver and maintain the Service;
 - (b) to contact the End User for access, arranging and confirming appointments and to confirm the status of the Service;
 - (c) manage and resolve contractual and billing disputes;
 - (d) respond to general queries relating to the Service or agreement;
 - (e) where the Communications Provider has agreed, to contact an end user to complete a survey relating to engineer activities; and
 - (f) ` comply with Applicable Law.

4 Types and Categories of Personal Data

- 4.1 The types of End User Data Processed by BT or its Sub-Processors will be:
- (a) title
 - (b) name;
 - (c) job title;
 - (d) address;

- (e) telephone number related to the Service;
- (f) contact telephone number;
- (g) email address;
- (h) Access Line ID/Service ID/OGEA; and
- (i) Special Categories of Personal Data.

4.2 The End User Data will concern the following categories of Data Subjects:

- (a) the Communications Provider's staff (including employees, advisors, temporary workers and contractors); and
- (b) the End User.