

Agreement for Physical Infrastructure Access – Conditions

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DATED

AGREEMENT

for the provision of Physical Infrastructure Access

between

[PECN CP]

and

BRITISH TELECOMMUNICATIONS plc

Agreement for Physical Infrastructure Access – Conditions

Agreement for Physical Infrastructure Access – Conditions

CONTENTS

CLAUSE

1.	Interpretation	4
2.	Commencement and Termination	5
3.	Customer Service Plan	8
4.	Scope	8
5.	Service Management	8
6.	Connection to the BT System	10
7.	Provision of information	10
8.	Audits and record-keeping	11
9.	Forecasts and capacity	12
10.	Use of the Service	12
11.	Personnel provisions	12
12.	Access and Site Regulations	14
13.	Business Continuity Incident Management	14
14.	Safety	15
15.	Installation of Customer Apparatus in or on Physical Infrastructure	16
16.	Safeguarding data	16
17.	Security of information	21
18.	Security	22
19.	Charges	23
20.	Confidentiality	26
21.	Force Majeure	27
22.	Undertakings and warranties	29
23.	Conduct of indemnified events	29
24.	Limitation of liability	30
25.	Insurance and risk	31

Agreement for Physical Infrastructure Access – Conditions

26.	Intellectual property rights.....	31
27.	Escalation and dispute resolution.....	33
28.	Changes to the Agreement.....	34
29.	Transfer of rights and obligations	36
30.	Entire agreement.....	36
31.	Notices	36
32.	Relationship of the parties	37
33.	Cumulative remedies.....	37
34.	Rights of third parties.....	38
35.	Waiver	38
36.	Survivability	38
37.	Severability.....	38
38.	Governing law and jurisdiction	38

SCHEDULE

Schedule 1	Definitions.....	41
Schedule 2	Forecasts.....	42
Schedule 3	Accreditation	43
Schedule 4	Information Provisions.....	44
Schedule 5	Survey, Plan and Build	45
Schedule 6	Network Adjustments.....	45
Schedule 7	Service Levels	46
Schedule 8	Pull-Through Services at Sensitive Areas	46
Schedule 9	Licence.....	46
Schedule 10	Security.....	46

Agreement for Physical Infrastructure Access – Conditions

- 1.7 If there is a conflict between the Conditions, the Schedules and/or the Ancillary Documents, the order of precedence shall be as follows:
- (a) the Conditions and Schedule 1
 - (b) the Schedules
 - (c) the relevant sections of the Openreach Price List
 - (d) the Order
 - (e) the Ancillary Documents.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and Termination

- 2.1 This Agreement begins on the date that it is signed by duly authorised representatives of both parties (“Commencement Date”) and shall continue until terminated in accordance with this Agreement.
- 2.2 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, which is capable of remedy, and fails to remedy the breach within thirty (30) days from the date of the notice from the other party; or
 - (b) fails to pay a sum when due (save in respect of monies the Customer is entitled to withhold under clause 19.9) within 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
 - (c) commits a material breach of this Agreement which cannot be remedied; or
 - (d) is repeatedly in material breach of this Agreement and the other party has served notice on each occasion; or
 - (e) 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

Agreement for Physical Infrastructure Access – Conditions

any of its assets; or it goes into liquidation; or there is a corresponding event under the law of any other country; or

- (f) ceases to carry on business.

2.3 BT may terminate this Agreement:

- (a) immediately if there is a failure to pay a sum due under this Agreement by the due date on three or more occasions in separate payment months within a twenty four (24) month period providing notices are served upon the first two occasions in accordance with clause 2.2(b);
- (b) upon notice if the Customer is prohibited from providing telecommunications service(s) by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003, such termination to be in accordance with the timescales set out in Ofcom's direction. BT may immediately reject Orders for Service under such circumstances;
- (c) on not less than one month's notice if BT does not receive an Order from the Customer within 12 months of the Commencement Date;
- (d) on notice, and in accordance with the timescales set out in Ofcom's direction (if any), if BT is directed by Ofcom to cease the Physical Infrastructure Access Service or the provision of Physical Infrastructure Access, BT may immediately reject Orders for Service under such circumstances;
- (e) on not less than 12 months' notice for any other reason provided that: i) such notice shall not expire before the end date of the latest Minimum Licence Period as at the date of the notice; and ii) BT is no longer obliged by Ofcom to provide Physical Infrastructure Access.

2.4 Individual Licences may be terminated under the provisions of Schedule 9.

2.5 The Customer may terminate this Agreement on:

- (a) not less than one month's notice if BT changes the terms and conditions of this Agreement to the Customer's material detriment, or increases the charges, provided that such notice to terminate shall be served on BT no later than two months from the date the change comes into effect; or
- (b) not less than 12 months' notice for any other reason.

2.6 If the Customer terminates this Agreement during a Minimum Licence Period other than because BT has materially breached this Agreement, the Customer must pay BT the appropriate termination charges as set out in the Openreach Price List.

Agreement for Physical Infrastructure Access – Conditions

- 2.7 If a breach notice is served on the Customer then BT may at its sole discretion refuse to accept new Orders and suspend access to the Gateway except for the processing of Orders which relate to cessation of Services or for the monitoring of existing Orders and suspend such other services or facilities available to the Customer as shall be reasonable in the circumstances:
- (a) immediately upon giving notice if the Customer fails to comply with the provisions of this Agreement headed Intellectual Property Rights; and
 - (b) for all other breaches immediately upon giving notice, after the period specified for remedy of the breach in the breach notice expires but only if the Customer has not remedied the breach within this period.

If the Customer remedies the breach to BT's reasonable satisfaction BT will accept new orders and reinstate access to the Gateway as soon as reasonably practicable.

- 2.8 If a party is prevented, hindered or delayed in performing an obligation under this Agreement, because of Force Majeure, for a period exceeding six months, either party may terminate that part of the Agreement or the Services which is subject to Force Majeure by giving not less than one month's notice and provided the Force Majeure has not ceased prior to expiry of the notice that part of the Agreement shall terminate.
- 2.9 The Customer agrees to pay the charges for the Services. BT agrees to repay or credit the Customer with the appropriate proportion of any annual or recurring charges paid in advance for the period ending after the Customer's liability to pay such charges ceases.
- 2.10 If the Customer is suspended from providing telecommunications service(s) by Ofcom, BT may suspend its provision of Service in accordance with such Ofcom suspension and may, at its sole discretion refuse to accept any Orders for the Services on notice to the Customer. BT will restore provision of Service as soon as reasonably practicable if Ofcom ceases such suspension.
- 2.11 BT may suspend the provision of Service without liability to the Customer as shall be reasonable under the circumstances on notice in the case of emergency, which is a serious situation or occurrence that happens unexpectedly and demands an immediate suspension of the Service. BT will provide as much notice as is reasonably practicable and will restore Service as soon as possible after the emergency has ceased.
- 2.12 Termination, expiry or suspension of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry. If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement that waiver is limited to that particular breach.

Agreement for Physical Infrastructure Access – Conditions

- 2.13 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.
- 2.14 If this Agreement is terminated for any reason the Customer shall remove Customer Apparatus from the Physical Infrastructure as set out in Schedule 9 (Licence).
- 2.15 Without prejudice to BT's rights under clause 2.7 above if the Customer is subject to three or more breach notices from BT in a Forecast Area (as such term is defined in Schedule 2) in a rolling twelve months period then BT reserves the right to suspend the Customer's ability to place new Orders (including Orders for Network Adjustments) in that Forecast Area until such time as the Customer remedies the breaches to BT's reasonable satisfaction and provides written undertakings to BT, in a form which are reasonably acceptable to BT in respect of their future compliance with the terms of the Agreement in that Forecast Area.
- 2.16 The current process that Openreach will use where it reasonably believes the Customer is in breach of any obligation under this Agreement is set out in the Customer Service Plan and referred to as the 'Graduated Response Process' provided Openreach reserves the right, at any time and at its sole and absolute discretion to:
- (a) amend the Graduated Response Process; and
 - (b) determine which tier of the Graduated Response Process to apply to the facts, (in both cases, acting reasonably and in good faith).

3. Customer Service Plan

- 3.1 As soon as reasonably practicable on or after the Commencement Date the parties shall cooperate to produce a Customer Service Plan and keep the information up to date during this Agreement. The Customer Service Plan shall contain current and up-to-date details of the points of contact within the Customer's and BT's organisations for security, service, health and safety and quality of work.
- 3.2 The Customer Service Plan shall also include details of the emergency safety arrangements that the Customer has in place as set out at clause 14.5 below.

4. Scope

- 4.1 BT shall provide and the Customer shall pay for and use the Service in accordance with the terms and conditions of this Agreement.
- 4.2 The Customer represents and warrants that it will use the Service for the Permitted Use. The Customer may not use the Service for advertising and marketing purposes and the size and scope

Agreement for Physical Infrastructure Access – Conditions

of any label that the Customer attaches to the Physical Infrastructure must be no more than is reasonably necessary to meet the Traceability Requirements.

5. Service Management

5.1 BT may:

- (a) occasionally, for operational reasons, introduce or withdraw Service features, introduce process changes to improve the quality of the Service, change the technical specification of the Service including Service upgrades upon giving not less than twenty eight (28) calendar days' notice from the date of the BT briefing, and communicated where practicable at the monthly Physical Infrastructure Access Product and Commercial Group provided that any such changes do not have a materially adverse effect on the performance or provision of the Service; or
- (b) give the Customer instructions which it reasonably believes are necessary for reasons of health, safety or the quality of the Service and it is the Customer's responsibility to ensure these are adhered to.

5.2 BT shall give the Customer the following notice periods relating to Scheduled Outages in the BT System:

Type of Service	Notice Period
BT System Major Changes	At least 150 calendar days prior to the outage date
BT System Interim Changes	At least 20 Working Days prior to the outage date
BT System Weekly Maintenance Outage	At least 2 Working Days prior to the outage date

as set out in the definition of Scheduled Outage in Schedule 1.

- 5.3 If the System Weekly Maintenance Outage period will be extended BT shall give the Customer five (5) Working Days' notice.
- 5.4 Any notice given under Clause 5.2 shall provide as much information as reasonably practicable.
- 5.5 If, due to circumstances beyond BT's control, the continued operation of the BT System is threatened unless immediate action is taken, BT shall give the Customer such notice as is reasonably practical of the changes required to ensure the continued operation of the BT System.

Agreement for Physical Infrastructure Access – Conditions

6. Connection to the BT System

- 6.1 BT allows (so far as it can and is able to do so) the Customer connection to BT Systems and access to BT Information solely for the proper performance by the Customer of its obligations under this Agreement.
- 6.2 In relation to connection to BT Systems and access to BT Information, the Customer shall (and, where relevant, shall procure that all Customer Personnel shall) comply with the provisions of Schedule 10.
- 6.3 The Customer shall inform the BT Security Contact as soon as reasonably practicable upon its becoming aware of any actual or suspected unauthorised connection with BT Systems and access to BT Information or misuse of BT Systems or BT Information or breach of any of the Customer's obligations under this clause 6.
- 6.4 The Customer consents to BT gathering information relating to any access to BT Systems under this Agreement which is reasonably required to identify potential security risks. This information may be collected, retained and analysed to identify potential security risks and may include trace files, statistics, network addresses, and the actual data or screens accessed or transferred.

7. Provision of information

- 7.1 BT shall supply Network Plans to the Customer in accordance with the provisions of Schedule 4 (Duct and Pole Sharing Information Provision). The Network Plans are provided for the sole purpose of enabling the Customer to use the Services in accordance with this Agreement and shall be deemed Confidential Information.
- 7.2 The Customer shall maintain an audit trail which provides detailed records of all downloads and copies of the Information provided by BT and the details of holders and Customer Personnel who have access to this Information. The audit trail shall be made available to BT on reasonable request in accordance with the provisions of clause 8.
- 7.3 On termination of this Agreement, each party shall destroy any copies of the other party's Confidential Information in their possession and provided under this Agreement save to the extent it is and remains necessary to comply with any legal or regulatory requirement or in respect of any terms which survive the termination of this Agreement and shall certify to the other party that this has been done.
- 7.4 Notwithstanding any provision of this Agreement, BT shall not be obliged to provide Information which is subject to a confidentiality obligation to a third party unless such third-party consents to such disclosure.

Agreement for Physical Infrastructure Access – Conditions

- 7.5 BT will use reasonable endeavours to ensure that BT Information disclosed is correct to the best of its knowledge at the time of provision of the information but cannot warrant that the BT Information is free from errors or omissions. The Customer shall inform BT in writing of any mistakes in the BT Information that the Customer becomes aware of within a reasonable time of receiving it. BT will endeavour to correct any mistakes as soon as is reasonably practicable.
- 7.6 Nothing in this Agreement shall require either party to do anything in breach of any statutory or regulatory obligation of confidentiality.
- 8. Audits and record-keeping**
- 8.1 BT reserves the right at any time, acting reasonably, to audit and review the Customer's use of the Service including any use of the Physical Infrastructure. The Customer shall provide such assistance and information as BT may reasonably require to enable BT to fully and properly monitor and check the Customer's compliance with the terms of this Agreement. The Customer shall comply with the process set out in the Product Description for any audit and BT will take steps to ensure that any audit does not unreasonably interfere with the Customer's network build provided that the build is done in accordance with the terms of this Agreement.
- 8.2 The Customer shall have and maintain full and accurate records of any and all use of the Physical Infrastructure including full details of;
- (a) Location of any Customer Apparatus in the Physical Infrastructure (with O/S coordinates);
 - (b) Physical Infrastructure being used by the Customer including whether spine, chamber, lead-in or Pole;
 - (c) the Customer Apparatus at each location;
 - (d) Photographic Evidence of any installation or repair work the Customer or Customer Personnel has done on or in the Physical Infrastructure;
 - (e) the date Customer Apparatus was installed at the location and if relevant removed;
 - (f) the diameter of any cables installed by the Customer; and
 - (g) any work the Customer or any Customer Personnel have done on or in the Physical Infrastructure including details of Customer Personnel who did the work together with location, dates and times.
- 8.3 The Customer shall keep and maintain the records referred to in clause 8.2 for the period of this Agreement and for three years thereafter (two years thereafter in the case of 8.2(g)) and shall provide to BT on reasonable request a current copy of those records.

Agreement for Physical Infrastructure Access – Conditions

9. Forecasts and capacity

9.1 Subject to clause 9.2 and 9.3 the Customer shall provide Forecasts to BT in accordance with the provisions of Schedule 2.

9.2 The Customer shall not be required to provide a Forecast where the Customer in good faith and acting reasonably notifies BT in writing on or before the Forecast Date that it does not intend to use in each calendar month in that Fixed Forecast Period:

- (a) more than twenty-five (25) kilometres of Spine Duct; and
- (b) any Pole

across all Forecast Areas (“Minimum Forecast Threshold Notice”) provided the Customer must continue to provide a Monthly Build Report as set out in Schedule 2.

9.3 If the Customer provides a Minimum Forecast Threshold Notice but then, in that Fixed Forecast Period, exceeds the amounts set out in clause 9.2 above then the Service Levels at Schedule 7 will not apply to any order for Network Adjustments in that Fixed Forecast Period.

9.4 For the purposes of this clause 9 the terms ‘Forecast Areas’, ‘Forecast Date’, ‘Fixed Forecast Period’ and ‘Monthly Build Report’ are as defined in Schedule 2.

10. Use of the Service

10.1 The Customer and any Customer Personnel must when using the Service and in respect of any survey, plan and build activity comply with the terms of this Agreement and in particular Schedule 3 (Accreditation), Schedule 5 (Survey, Plan and Build) and Schedule 9 (Licence). The Customer must when using the Physical Infrastructure comply with the Engineering Principles, Good Industry Practice and any specifications for use of the Service all as may be published or available on or via the Openreach Website from time to time.

10.2 The Service is subject to the Service Levels set out in Schedule 7.

11. Personnel provisions

11.1 In relation to Customer Personnel who are assigned by the Customer to carry out activities on or in the BT Network pursuant to this Agreement, the Customer shall ensure that:

- (a) the Customer Personnel are accredited, trained and qualified to perform work in accordance with this Agreement including accreditation requirements under Schedule 3;
- (b) if BT reasonably determines that the continued assignment of any Customer Personnel is not in accordance with the requirements of this Agreement, it immediately removes

Agreement for Physical Infrastructure Access – Conditions

any member(s) of the Customer Personnel from any Site or any Facility, provided that BT has first given written notice to the Customer requesting the removal or replacement of the identified member(s) of the Customer Personnel.

- 11.2 The Customer shall ensure that Customer Personnel comply with all relevant laws and regulations, the Engineering Principles, Accreditation Guidelines and any relevant safety or security requirements notified to the Customer from time to time which BT may reasonably require when they attend Sites or Facilities.
- 11.3 The Customer shall (and shall ensure that the Customer Personnel shall) access only those parts of the Physical Infrastructure which are strictly necessary for the purposes of carrying work in accordance with this Agreement. The Customer shall not access those parts of the BT Network which are shown as being Sensitive Areas on the Network Plans without BT's prior written agreement. The Customer must request pull through service under Schedule 8 for Sensitive Areas.
- 11.4 BT reserves the right at any time to refuse entry and re-admission to, any Site or Facility, any person who in BT's reasonable opinion is unsuitable to be engaged in, or continue to be engaged in, carrying out work in accordance with this Agreement.
- 11.5 BT reserves the right on reasonable grounds to challenge the Customer Personnel whereby they may be compelled to explain what they are doing in a particular Site or Facility if a BT employee is unsure whether they are entitled to be there.
- 11.6 The Customer shall not, nor allow any Customer Personnel to, use or remove from the Site or Facility any BT owned equipment, facilities and materials, without specific written notification and permission from BT.
- 11.7 Each party shall provide to the other full co-operation to investigate any breaches and suspected breaches of security in relation to this Agreement.
- 11.8 BT shall not be responsible for safeguarding any property (including money) brought onto the Site or Facility by the Customer, Customer Personnel or their representatives.
- 11.9 The Customer shall issue to all Customer Personnel who are engaged to carry out work on or in the Physical Infrastructure in accordance with this Agreement, including foremen and agents, a personal identification card which contains the photo, name, contractor and Customer details. Customer Personnel must have and be prepared to show to BT on request, such personal identification card at any time where they are working on or in the Physical Infrastructure.
- 11.10 BT reserves the right to audit compliance with the provisions of clauses 11.2 - 11.9 (inclusive) at any time throughout the duration of this Agreement. In exercising and without prejudice to this right BT shall not unduly interfere with the Customer's work programme provided it is done in accordance with the terms of this Agreement.

Agreement for Physical Infrastructure Access – Conditions

- 11.11 The Customer shall be liable for any act or omission by Customer Personnel in relation to any activities on or in the BT Network not done pursuant to and in accordance with this Agreement and as a consequence causes harm or losses to BT or third parties.
- 11.12 The Customer shall comply with the Whereabouts Requirements and provide the notice and information as set out in the Product Description. The Customer must subject to clause 11.13 notify and provide the information to BT as set out in the Whereabout Requirements before doing any work on or in the Physical Infrastructure and may only do work on or in the Physical Infrastructure where it has a valid and complete Order for the location which has been received and acknowledged by BT.
- 11.13 In the case of urgent repairs on Customer Apparatus at a Facility the Customer must notify BT as soon as reasonably practicable.
- 11.14 The notice referred to at clauses 11.12 and 11.13 above is subject to the Whereabout Requirements.

12. Access and Site Regulations

- 12.1 The Customer shall be deemed to have examined any Site or Facility and BT shall not be liable for any claim from the Customer in relation to its misinterpretation of any Site-related or Facility-related matter, or any other matter in respect of which the Customer could reasonably have satisfied itself by a visit, reference to BT or otherwise. BT will provide such information reasonably required by the Customer in relation to the Site or Facility that it is able to do at the time of the request but BT makes no warranty as to the existence of any easements, wayleaves, agreements, statutory entitlements, or other freedoms of access to Sites or Facilities.
- 12.2 The Physical Infrastructure remains the property of BT at all times.
- 12.3 The Customer shall obtain all necessary consents, permission or wayleaves including for example, consents for any necessary alterations to buildings, permission to cross other people's land or permission to survey, install and maintain Customer Apparatus at the Site and Facility. This includes the Customer being responsible for obtaining all consents and permissions required from local authorities (or any other third party) which may be necessary for the Customer to survey, install and maintain Customer Apparatus at a Site and Facility.

13. Business Continuity Incident Management

- 13.1 The Customer shall comply with or work to ISO 22301 (International Standard for business continuity management) or the most recent version thereof with regard to Incident Management and Disaster Recovery save to the extent it has and will maintain for the duration of this Agreement processes and standards to a similar level as set out in the responses made to BT on business

Agreement for Physical Infrastructure Access – Conditions

continuity when being established as a customer of BT for this product. The Customer shall provide BT with contact details of two people with knowledge of and responsibility for Incident Management and Disaster Recovery at the customer establishment stage and shall promptly notify BT in writing of any changes to these personnel.

- 13.2 The Customer shall immediately notify BT in accordance with the process set out or referred to in the Product Description of any actual or suspected damage to or unlawful interference with the Physical Infrastructure. The Customer shall also immediately notify BT if it becomes aware of or suspects a Risk Event. Such notification may result in the formal declaration by BT (acting reasonably) of an incident as set out in the Product Description.
- 13.3 In the event of an incident being declared by BT as set out in the Product Description, the Customer shall inform BT of all Customer Apparatus affected by the incident so that BT may assess and determine priority access to the Physical Infrastructure for the purposes of restoration of telecommunications services provided by either party or a third party by means of cables and related facilities installed within the Physical Infrastructure. The Customer acknowledges that all incidents will be managed by BT in accordance with ISO 22301. The Parties shall co-operate to minimise the impact of such incident or Risk Event as set out in the Product Description.

14. Safety

- 14.1 The Customer shall in connection with this Agreement:
- (a) take, and shall ensure that its Customer Personnel take, all reasonable precautions to protect themselves, the employees and individual contractors of BT, members of the general public and the environment; and, without limitation,
 - (b) comply, and ensure that the Customer Personnel comply, with all Applicable Laws relating to health and safety and any other health and safety provisions that may be set out in or referred to by this Agreement.
- 14.2 The Customer shall, in addition, comply (and shall ensure its Customer Personnel comply) with any safety requirements contained or referred to in the Engineering Principles and any other health and safety policies referred to and/or set out in this Agreement, each as published by BT from time to time.
- 14.3 Any failure by the Customer to comply with any health and safety requirements described in this Agreement shall be deemed to be a breach of this Agreement.
- 14.4 At all Sites, including Sensitive Areas, where unique safe working systems are in operation, the Customer shall conform to such systems or other requirements specified by the site managers (including where necessary, special indemnity or insurance arrangements) at its own cost.
- 14.5 The Customer must have and maintain for the duration of this Agreement emergency call out arrangements with Customer Personnel to rectify and make safe any work done by Customer

Agreement for Physical Infrastructure Access – Conditions

Personnel on or in the Physical Infrastructure which, in BT's reasonable opinion, presents an immediate or serious threat of physical harm or damage to person or property. The details of those arrangements which should operate and be available at all times should be included in the Customer Service Plan and kept up-to-date.

- 14.6 Notwithstanding any other term to the contrary BT reserves the right to remove and make safe any Customer Apparatus in or on Physical Infrastructure if it reasonably believes it poses an immediate or serious threat of physical harm or damage to person or property and the Customer will be liable for BT's reasonable costs and expenses of doing such work.
- 14.7 Notwithstanding the Customer's obligations under this Agreement, the Customer acknowledges that any health and safety documents and policies set out or referred to by BT under this Agreement are provided in order to give the Customer guidance and does not relieve the Customer of its obligations to comply with all Applicable Laws including without limitation relevant environmental, health and safety legislation.

15. Installation of Customer Apparatus in or on Physical Infrastructure

- 15.1 Any Customer Apparatus must not harm the BT Network, the Service or another customer's network or equipment and must be:
- (a) connected and used in line with any relevant instructions provided by the manufacturer and the Engineering Principles; and
 - (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 A1.3 set under 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 ANFP and the Electromagnetic Compatibility Regulations. 2016.
- 15.2 Upon becoming aware that the Customer Apparatus does not meet the relevant manufacturer's instructions, Engineering Principles, standards or laws, the Communications Provider must immediately rectify or disconnect the Customer Apparatus or BT will do so, at the Customer's cost and expense.
- 15.3 Customer Apparatus will remain the property of the Customer at all times.

16. Safeguarding data

- 16.1 The Customer shall promptly notify BT of any errors or inaccuracies in the BT Data that it finds or is caused by the Customer or the Customer Personnel.

Agreement for Physical Infrastructure Access – Conditions

- 16.2 In this Agreement, the following terms each have the meaning given to it in the GDPR: “Binding Corporate Rules”, “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Processing”, “Processor”, “Special Categories of Personal Data” and “Supervisory Authority”.
- 16.3 Save where otherwise prohibited under this Agreement either Party may process Personal Data for the purposes of providing the Service (in the case of BT) or receiving and using the Service (in the case of the Customer), 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 to the extent necessary to allow a Party to fulfil its obligations under this Agreement, provided that neither Party shall transfer Personal Data unless it has implemented appropriate transfer mechanisms permitted by Data Protection Legislation, including:
 - (i) BT Group’s Binding Corporate Rules (for transfers by BT and among BT’s Affiliates);
 - (ii) The Customer’s Binding Corporate Rules (for transfers by the Customer and among Customer Affiliates);
 - (iii) agreements incorporating the relevant standard data protection clauses adopted by the European Commission; and
 - (iv) where applicable, the EU-US Privacy Shield or any equivalent safeguard mechanism that replaces it.
- 16.4 Where each party acts as a Controller in relation to the Processing of Personal Data under the Agreement, the Parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.
- 16.5 The Parties acknowledge and agree that the Parties will need to share Operational Data between them. Operational Data will be shared on the basis of a transfer from data controller to data controller, and each Party will assume responsibility for its own compliance with the Data Protection Legislation.
- 16.6 Each party shall comply with and Process Personal Data in accordance with applicable Data Protection Legislation.
- 16.7 In performing obligations under the Agreement and where the Receiving Party acquires Information which is Personal Data from the Disclosing Party pursuant to this Agreement it shall:
- (a) process the Personal Data on behalf of the Disclosing Party in accordance with the Disclosing Party’s documented instructions as set out in Clause 16.15, except where:
 - (i) Applicable Law requires the Receiving Party to Process the Personal Data otherwise, in which case, the Receiving Party shall notify the Disclosing Party of

Agreement for Physical Infrastructure Access – Conditions

that requirement as soon as reasonably practicable before Processing unless to do so would be contrary to that Applicable Law on important grounds of public interest; and / or

- (ii) in the Receiving Party's reasonable opinion an additional instruction or a change to the instructions provided by the Disclosing Party in accordance with Clause 16.15 infringes the Data Protection Legislation and in which case the Receiving Party shall inform the Disclosing Party of its opinion without undue delay and, if agreed between the Parties, the Receiving Party will not be required to comply with that instruction;
- (b) to protect the Personal Data against a Personal Data Breach implement technical and organisational security measures required by Article 32 of the GDPR
- (c) provide Notice to the Disclosing Party without undue delay and no later than 24 hours of becoming aware of a Personal Data Breach affecting the Personal Data;
- (d) in relation to any Data Security Incident, the Receiving Party shall:
 - (i) take all reasonable steps to identify and correct the underlying cause of the Data Security Incident so as to eliminate or minimise the risk of its repetition and the occurrence of similar Data Security Incidents;
 - (ii) take such steps as the Disclosing Party may reasonably request and the Receiving Party may reasonably be able to take to assist the Disclosing Party in addressing the adverse consequences for the Disclosing Party and its affiliates of, and complying with the Disclosing Party's and its affiliates' obligations under Data Protection Legislation in relation to, the Data Security Incident; and
 - (iii) report to the Disclosing Party affected by the Data Security Incident, and/or at its direction to it and another person, promptly and at regular intervals, on the steps taken to identify and correct a Data Security Incident and their results;
- (e) assist the Disclosing Party in its compliance with the Data Protection Legislation, taking into account the nature of the Processing of the Personal Data and the information available to the Receiving Party, relating to:
 - (i) the Disclosing Party's obligation to respond to lawful requests from a Data Subject for access to, or rectification, erasure or portability or restriction of, or objection to any Processing of their Personal Data, to the extent practicable (including by having appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Disclosing Party's obligation to respond to requests from a Data Subject to exercise his or her right under the Data Protection Legislation) but the Receiving Party shall not respond to any such request except with the Disclosing Party's prior written consent.
 - (ii) the security of the Processing of the Personal Data;

Agreement for Physical Infrastructure Access – Conditions

- (iii) notification of a Personal Data Breach affecting the Personal Data to the Supervisory Authority or the Data Subjects; and
 - (iv) a data protection impact assessment as may be required by Article 35 of the GDPR and prior consultation with the Supervisory Authority;
 - (f) unless Applicable Law requires the Receiving Party to store a copy of the Personal Data, upon expiry or termination of the Agreement and at the Disclosing Party's option, the Receiving Party shall delete or return the Personal Data within a reasonable time period;
- 16.8 The Receiving Party shall make available to the Disclosing Party the information demonstrating the Receiving Party's compliance with its obligations set out in this Clause 16.
- 16.9 The Disclosing Party 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 the Receiving Party's compliance with this Clause 16. The Receiving Party shall allow for and reasonably cooperate with the Disclosing Party (or a third party auditor appointed by the Disclosing Party) to audit the Receiving Party's compliance, so long as:
- (a) the Disclosing Party
 - (i) uses its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Receiving Party's business;
 - (ii) conducts the audit during business hours, unless the audit needs to be conducted on an emergency basis and the Disclosing Party has given Notice to the Receiving Party that an emergency audit is required;
 - (iii) uses its reasonable endeavours to ensure that the conduct of each audit does not cause the Receiving Party to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and
 - (iv) the Receiving Party shall provide the Disclosing Party with the necessary instructions and copies of the Receiving Party's security policies which apply to the Disclosing Party (or its third party auditor) undertaking the audit and the Disclosing Party or its third party auditors shall comply with the Disclosing Party's security policies and appropriate confidentiality obligations provided to the Receiving Party by the Disclosing Party.
- 16.10 Without prejudice to the Disclosing Party's rights of audit under Clause 16.9 and the Receiving Party's obligation to rectify issues identified by any such audit adherence by the Receiving Party to an approved code of conduct or an approved certification mechanism may be used by the Receiving Party as an element by which to demonstrate compliance with its obligations set out in Clause 16.9;
- 16.11 The Disclosing Party may conduct an audit of the Receiving Party's compliance with its obligations set out in Clause 16 only once per Contract Year, except for any additional audits which:

Agreement for Physical Infrastructure Access – Conditions

- (a) the Disclosing Party reasonably considers necessary because of genuine and evidentially supported concerns as to the Receiving Party's compliance with this Clause 16 that cannot be resolved without an audit; or
 - (b) the Disclosing Party is required to conduct an audit by Applicable Law or a competent data privacy or other regulatory authority.
- 16.12 Without limiting the Receiving Party's other obligations under this Clause 16, the Receiving Party shall not disclose Personal Data to a third party unless required for the performance of the Service (in the case of BT) or use of the Service (in the case of the Customer), permitted under the Agreement or otherwise required by Applicable Law. If required by Applicable Law the Receiving Party shall provide as much prior Notice as reasonably practicable; and
- 16.13 The Receiving Party shall ensure that persons authorised by, or on behalf of, the Receiving Party to Process the Personal Data will be bound by a duty of confidentiality.
- 16.14 Either party may use Sub-Processors and will remain responsible to the Disclosing Party for the compliance by any Sub-Processor with the terms of this Clause 16 and the Data Protection Legislation (including by ensuring that data protection obligations in respect of Processing Personal Data equivalent to those set out in Clause 16 of the Agreement will be imposed on any Sub-Processors);
- 16.15 This Agreement contains the Disclosing Party's complete instructions to the Receiving Party for the Processing of Personal Data. If the Disclosing Party requires any additional instructions or changes to the instructions the Disclosing Party shall submit such request in writing to the Receiving Party. If change to the instructions is accepted in writing by both parties then it will be incorporated into this Agreement in accordance with Clause 28.
- 16.16 The parties shall comply with applicable Data Protection Legislation.
- 16.17 Neither party shall disclose to the other party any Personal Data other than the Personal Data required by BT to perform or verify use of the Service or required by the Customer to use the Service.
- 16.18 To the extent permitted by Applicable Law and subject to Clause 24:
 - (a) a party in breach of the Data Protection Legislation or this clause 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

Agreement for Physical Infrastructure Access – Conditions

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.

17. Security of information

- 17.1 Neither party shall use the other party's Information for any purpose other than the purpose for which it was provided and/or only to the extent necessary to enable each party to perform its obligations under this Agreement.
- 17.2 The Receiving Party shall take all steps reasonably necessary and consistent with its obligations under this Agreement to ensure that the Disclosing Party's Information is protected, and in particular the Receiving Party shall:
- (a) identify to the Disclosing Party on the Commencement Date details of the Receiving Party's Security Contact who shall act as a single point of contact for any security issues and the details for both parties Security Contacts shall be contained in the Customer Service Plan pursuant to clause 3;
 - (b) record and maintain details of all personnel who are authorised to access, and use, the Disclosing Party's Information;
 - (c) ensure each member of their personnel who has access to the other Party's Information receives appropriate security training in accordance with the requirements of this clause 17 and shall maintain the records of training;
 - (d) ensure that all personnel who have access to the other Party's Information maintain a clear-desk and a clear-screen policy to protect BT's Information;
 - (e) ensure it has formal security incident management procedures with defined responsibilities and any information on the incident shall be treated as Confidential Information and the terms of clause 17 (Confidentiality) shall apply;
 - (f) ensure it operates a proactive strategy to minimise the risk and effects of fraud and other security risks and maintain processes to monitor such activities;
 - (g) ensure procedures and controls are in place to protect the exchange of information through the use of emails, voice, facsimile and video communications facilities; and
 - (h) ensure any use of diagnostic tools is securely controlled.
- 17.3 The Customer shall ensure that BT's Information is logically separated in a secure manner from all other information created or maintained by the Customer.
- 17.4 The Receiving Party shall implement security measures across all supplied components, such that it safeguards the confidentiality, availability and integrity of the Disclosing Party's Information.
- 17.5 The Receiving Party shall ensure that the implementation and management of security of the Disclosing Party's Information:

Agreement for Physical Infrastructure Access – Conditions

- (a) reduces the risk of misuse of the other party's systems and/or Information, which could potentially cause loss of revenue or service, by those individuals who are authorised to access it; and
 - (b) detects any security breaches that do occur enabling quick rectification of any problems that result and identification of the individuals who obtained access and determination of how they obtained it.
- 17.6 The Receiving Party shall maintain processes which detect and record any attempted damage, amendment or unauthorised access to the Disclosing Party's Information.
- 17.7 The Receiving Party shall implement a controlled exit procedure in respect of any person who had access to the Disclosing Party's Information, and leave the employment of Receiving Party or are no longer engaged in connection with this Agreement. The controlled exit procedure shall include the return of the Information in the possession of the Receiving Party.
- 17.8 If the Receiving Party uses subcontractors, it shall procure that formal contracts containing all security requirements within this clause 17, to the extent they are relevant to the subcontractor, must be put in place between the Receiving Party and its subcontractor before the subcontractor can access the Disclosing Party's Information.
- 17.9 If Access by Customer Personnel is via Customer Systems, the Customer shall comply with the provisions of Schedule 10.
- 17.10 The Receiving Party shall report to the Disclosing Party promptly when it becomes aware of:
 - (a) any potential misuse of the Receiving Party's Information or improper or unauthorised access to the Receiving Party's Information;
 - (b) any loss or corruption of the Receiving Party's Information caused by the Disclosing Party's negligence or its unauthorised use of or access to the Receiving Party's Information.
- 18. Security**
- 18.1 The Customer shall observe the provisions set out in Schedule 10 (Security).
- 18.2 The Customer agrees that it will inform BT of a material security risk to the extent it believes it may have an impact on the Service.
- 18.3 The Customer shall, at its own cost, implement policies relating to security identified in this Agreement.

Agreement for Physical Infrastructure Access – Conditions

19. Charges

PAYMENT AND BILLING

19.1 The Customer:

- (a) agrees to pay all charges for the Services as shown in the Openreach Price List (or as otherwise agreed in writing) and calculated using the details recorded by BT and set out in the NOI/Order and Customer Connection Report;
- (b) agrees to pay the charges within thirty (30) calendar days of the date of BT's invoice; and
- (c) shall pay the Licence Fees in accordance with BT's billing cycle. If BT begins, or ceases, the Service on a day which is not the first or last day of the period by reference to which BT charges Licence Fees, BT will apportion the Licence Fees on a daily basis for the incomplete period. The Licence Fees will be payable in monthly instalments in advance but BT may on occasion bill the Customer in arrears.

19.2 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the Customer.

19.3 Save as set out in Schedule 6 (Network Adjustments) the Customer is liable to pay charges for any work it Orders from BT on or in the Physical Infrastructure and a description of the work available is set out in the Product Description.

19.4 The Licence Fees will commence:

- (a) on the Licence Completion Date for Spine Duct and Poles; and
- (b) from the date of the Customer's use for Lead-in Duct and/or drop wires from Poles

and shall be payable in accordance with clause 19.1(b) above.

19.5 Licence Fees are calculated and based on data in the Network Plans:

- (a) on the Licence Completion Date for Spine Duct and Poles; and
- (b) on the date of the Customer's use of the Lead-in Duct and/or drop wires from Poles

or as amended pursuant to the missing inventory process set out in the Product Description prior to these dates.

19.6 All other charges for the provision of the Service shall except in the case of Network Adjustments be chargeable from the date that the Service is made available to the Customer. The Customer shall be liable to pay the Cancellation Charges in accordance with BT's invoice.

Agreement for Physical Infrastructure Access – Conditions

- 19.7 Any charges for Network Adjustments shall be chargeable from the earlier of:
- (a) when BT receives and accepts the Build Completion Pack from the Customer; or
 - (b) when the relevant Order for the Network Adjustment is cancelled, terminated or expires
- and shall be payable in accordance with clause 19.1(b) above.
- 19.8 BT:
- (a) may charge daily interest on late payments not the subject of a Dispute at the Interest Rate both before and after any judgement for the period beginning on the date on which payment is due and ending on the date payment is actually made.
 - (b) must 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) except for Event and Time Related Charges for which BT must 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 must issue the invoice within six (6) months of the date the last charge in the series was incurred. A charge shall only be valid, and the Customer shall only be obliged to make payment, if the charge is raised within the periods specified above.
- 19.9 If the Customer has an Invoice Dispute, it will notify BT in writing within six (6) months of the date of the invoice giving its reasons. Notification of an Invoice Dispute under this clause 19.9 is without prejudice to either party's right to refer the subject matter of that Invoice Dispute to Ofcom. The amount in an Invoice Dispute may be withheld by the Customer until the Invoice Dispute is resolved and the balance shall be due and payable on the due date. The Customer is not entitled to withhold payment of any amount not in the Invoice Dispute. The Customer is not entitled to withhold any payments to BT on the grounds that the Customer has a dispute with the end user(s) or reseller(s). Payment of the invoice in whole, or in part, by the Customer does not affect the right of the Customer to dispute all or some of the charges of an invoice at a later date in accordance with this clause 19.9.
- 19.10 BT may make an Invoice Correction to an invoice sent to the Customer providing it notifies the Customer within six (6) months of the date of the invoice giving its reasons.
- 19.11 Subject to Clause 19.15 below, if a refund, payment or credit is due to the Customer by BT (unless that overpayment results from information provided by the Customer which is not attributable to information provided by BT), the Customer may charge daily interest on late repayment at the Interest Rate for the period beginning on the date on which the parties acting reasonably agree BT shall make the repayment and ending on the date BT actually makes payment. 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, the parties agree that interest will be payable on any amount due to either party as a

Agreement for Physical Infrastructure Access – Conditions

result of that recalculation or adjustment at the Adjustment Interest Rate 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.

CREDIT VETTING

- 19.12 During the term of this Agreement the Customer acknowledges that it may become subject to BT's Credit Vetting Policy if the following circumstances apply:
- (a) there is material adverse change in the Customer's financial position which results in a reduction in the Customer'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.
- 19.13 BT may acting reasonably and subject to the requirements of clause 19.14 below, require that the Customer provides a deposit or guarantee or payment for the Service in advance. If the Customer refuses to provide such deposit or guarantee or payment for the Service in advance, BT may refuse to accept any orders for the Service until such deposit or guarantee or payment for the Service in advance is provided or the outstanding non-disputed charges are fully paid, whichever is earlier.
- 19.14 Any deposit or guarantee or payment for the Service in advance required to be provided by the Customer under clause 19.13 above, shall be calculated based on the greater of the estimated value of charges under this Agreement for three (3) months or the reasonable amount for BT to safely remove the Customer Apparatus from the Physical Infrastructure and the amount or requirement for the deposit or guarantee or payment for the Service in advance should be reviewed by the parties at regular intervals (and at least annually).
- 19.15 Where the Customer provides a deposit it will be held until twelve (12) consecutive months of payments have been paid on or by the due date for each NOI after which the Customer will have the value of their deposit credited against BT invoices from that date. Interest on deposits held by BT will be paid at the Adjustment Interest Rate.
- 19.16 BT shall advise of any proposed update to the BT Credit Vetting Policy by issuing an industry briefing at least twenty-eight (28) calendar days prior to such update taking effect. Where the Customer has nominated a finance contact, BT shall also issue the update via email to the nominated finance contact.
- 19.17 This clause 19 shall continue in force after the termination or expiry of this Agreement.

Agreement for Physical Infrastructure Access – Conditions

20. Confidentiality

20.1 The parties agree to keep in confidence any Information of a confidential nature obtained under or in connection with this Agreement. Neither party shall without the written consent of the other party disclose that Information to any person other than:

- (a) their employees or professional advisers;
- (b) in the case of BT, the employees of a BT Group Company or its or their suppliers;
- (c) in the case of BT, a third party in respect of any claim and/or allegation by that third party relating to damage and/or loss and/or injury to person and/or property and/or a failure to comply with Applicable Law; and
- (d) in the case of the Customer, the employees of a Customer Group Company or its or their sub-contractors.

provided that any disclosure under sub-clauses 20.1(a), (b) or (d) above can only be made in order for the party to fulfil its obligations under this Agreement and any disclosure under 20.1(b) will not include the disclosure by Openreach to another part of BT any information obtained from the Customer under Schedule 2 (Forecasts) and any disclosure under 20.1(c) will be no more than is necessary to allow the third party to contact the Customer.

20.2 Clause 20.1 shall not apply to:

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

20.3 The disclosure of the Disclosing Party's Information may prejudice the Disclosing Party's commercial interests. For these reasons, the Disclosing Party believes that such information will be exempt from the duty to confirm or deny, and from disclosure, under the Freedom of

Agreement for Physical Infrastructure Access – Conditions

Information Act 2000. If the Receiving Party receives a request under the Freedom of Information Act 2000 which encompasses any Information held by the Receiving Party which was provided to them by the Disclosing Party in connection with this Agreement, the Receiving Party shall notify the Disclosing Party of the request and allow the Disclosing Party not less than 5 Working Days in which to make representations.

- 20.4 Each party acknowledges that if it breaches any of the confidentiality provisions set out in this Agreement, damages may not be an adequate remedy for the other party and the other party shall (without prejudice to any other rights and remedies) have the right to apply for injunctive relief or for specific performance of the first party's obligations.
- 20.5 The Receiving Party shall implement and maintain an appropriate security program for Information belonging to the Disclosing Party to:
- (a) ensure the security and confidentiality of such Information;
 - (b) protect against any threats or hazards to the security or integrity of such Information; and
 - (c) prevent unauthorised access to or use of such Information.
- 20.6 The Receiving Party shall as soon as it becomes aware, notify the Disclosing Party of:
- (a) any disclosure, access to or use of any of the Disclosing Party's Information in breach of this Agreement;
 - (b) any unauthorised intrusion into systems containing the Disclosing Party's Information; and
 - (c) any disclosure of any of the Disclosing Party's Information to the Receiving Party where the purpose of such disclosure is not known to the Receiving Party.
- 20.7 The Receiving Party shall hold, maintain and control a full and accurate list of its representatives that need to have access to the confidential Information in accordance with the provisions of this clause 20, and shall make such list available to the Disclosing Party on request.
- 20.8 This clause 20 shall remain in effect for five (5) years after the termination of this Agreement.

21. Force Majeure

- 21.1 To the extent a party is delayed in meeting or fails to perform an obligation under this Agreement directly caused by Force Majeure, the party affected shall have 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.

Agreement for Physical Infrastructure Access – Conditions

- (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 shall 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.
- 21.2 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.
- 21.3 Upon cessation of the effects of Force Majeure any party relying on it must forthwith give notice to the other party of such cessation.
- 21.4 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.
- 21.5 Any party affected by Force Majeure shall use reasonable endeavours to mitigate as soon as practicable those consequences of the Force Majeure event which have affected its obligations under this Agreement. The affected party should provide an estimated time of clearance for any Force Majeure event. If those times are missed information must be provided 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.
- 21.6 At the time of notice by BT of Force Majeure the Customer immediately has the right to challenge BT's notice of Force Majeure. Where a Customer challenges a Force Majeure notice at the time of notification, BT must provide the Customer with all the evidence (and, in any event, in accordance with any industry agreed arrangements) BT has relied on to support the notice. If, following this, the Customer still disputes the Force Majeure notice the Customer shall be entitled to escalate the disputed Force Majeure notice in accordance with the process set out at clause 27. The procedures to be followed in relation to such notifications and challenges shall be consistent with any industry-agreed processes that have been established.
- 21.7 If either party seeks to rely on Force Majeure in relation to any failure to meet any Service Levels or to avoid payment of any compensation for failing to meet any Service Levels, the other party may dispute that notice. If disputed, the notice will be subject to independent verification in accordance with an escalation process set out at clause 27 or any industry-agreed process for escalation. The parties agree that the outcome of that independent verification shall determine

Agreement for Physical Infrastructure Access – Conditions

whether clause 21.1 applies in relation to the event described in that notice. Subject to any industry-agreed processes, 'independent verification' shall include, at the option of either party, adjudication by the Office of the Telecommunications Adjudicator ('OTA').

21.8 Termination rights related to Force Majeure are detailed in clause 2.8.

22. Undertakings and warranties

22.1 Each party warrants that it has the requisite power and authority to enter into this Agreement and to carry out its obligations as contemplated by this Agreement.

22.2 Each party represents and warrants to the other party that:

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

23. Conduct of indemnified events

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

23.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within five (5) days of receipt of the notification in clause 23.1 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.

23.3 The party assuming conduct of the claim must:

- (a) actively consult with the other party regarding the conduct of any action and take their views into account; and
- (b) make no admissions relating to any claims or legal proceeding without the 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.

Agreement for Physical Infrastructure Access – Conditions

24. Limitation of liability

24.1 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.

24.2 Except as set out in clause 24.1 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).

24.3 Notwithstanding clause 24.2 and subject to clause 24.4, 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.

24.4 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 party in contract, tort (including negligence), breach of statutory duty or otherwise for direct loss or damage howsoever arising (other than loss or damage of the type referred to in clause 24.5) 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

Agreement for Physical Infrastructure Access – Conditions

or an amount equal to the Annual Revenue, whichever is the lesser but not less than £1 million and in the first Contract Year the liability cap will be £25 million in total.

- 24.5 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 £10 million for all such claims connected or unconnected in any Contract Year.
- 24.6 Each provision excluding or limiting liability operates separately. If any provision (or part thereof) is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.
- 24.7 This clause 24 shall continue in force after the termination or expiry of this Agreement.

25. Insurance and risk

- 25.1 Each party shall procure and maintain for the duration of this Agreement policies of insurance to cover its liabilities set out in clause 24. The terms of such policies of insurance shall include provisions whereby, in the event of any claim or proceedings in respect of which a party would be entitled to receive indemnity under the policy, being brought or made against the other party, the insurers shall indemnify the other party against any costs, charges and expenses thereof and whereby the insurers give a waiver of subrogation in respect of any indemnity given by a party to the other party.
- 25.2 Each party shall provide, on reasonable request, evidence of the insurance cover referred to in clause 25.1 on or before the Commencement Date and thereafter at any time during the period of this Agreement as the other party shall reasonably require. If a party is unable to demonstrate to the other party's reasonable satisfaction that it has a reasonable level of insurance, with a reputable insurer, in respect of its liabilities under clause 24, the other party shall be entitled to effect insurance against all claims, proceedings, losses, liabilities, costs, damages and expenses caused by that party's negligence, other default or deliberate act arising out of or in connection with this Agreement and to recover the reasonable cost of such insurance from that party.

26. Intellectual property rights

- 26.1 The Customer acknowledges that all Intellectual Property Rights in or relating to Physical Infrastructure Access vest in or are licensed to BT and nothing in this Agreement is to be construed as and it shall not have the effect of assigning or otherwise giving the Customer any rights in BT's Intellectual Property Rights except as provided in this clause 26.
- 26.2 BT grants the Customer for the duration of this Agreement a non-exclusive, non-transferable licence to use any documentation and manuals relating to the Service (including those on the BT Website) and to make copies of those documents and manuals, to the extent necessary in connection with its obligations under this Agreement.

Agreement for Physical Infrastructure Access – Conditions

- 26.3 All rights in any developments, improvements or variations to BT's Intellectual Property Rights will vest in BT.
- 26.4 Without the prior written consent of the other party, neither party shall:
- (a) use any of the Corporate Marks of the other party; or
 - (b) authorise any third party to use any of the Corporate Marks of the other party;
- except where:
- (a) it is necessary in order to fulfil a contractual obligation under this Agreement; or
 - (b) BT has provided its prior written consent.
- 26.5 The Customer shall not use any photographs or representations of any BT buildings or network including in any promotional literature.
- 26.6 The parties agree not to use or register or attempt to register as a trade mark, company name or domain name, anything that is identical to, similar to, or likely to be confused with any of the Corporate Marks of the other party.
- 26.7 If authorised to use the letters "BT", the Customer will ensure that the letters "BT" will be no more prominent than the immediately surrounding letters and in no case greater than the surrounding typeface.
- 26.8 This clause 26 does not prevent any legitimate use of a party's name or any other trade mark in any comparison of services and tariffs, in accordance with the Trade Marks Act 1994 or in any other way which does not constitute an infringement of a party's registered trade mark or common law rights.
- 26.9 The Customer agrees to include and maintain in its contracts with any agent, distributor, reseller or contractor appointed by the Customer, conditions equivalent to those contained in clauses 26.4 – 26.7(inclusive) and undertakes to diligently and properly enforce such conditions including if appropriate by suspending or terminating the provision of the services under such customer agreement.
- 26.10 BT agrees to indemnify the Customer against all claims and proceedings arising from infringement of any Intellectual Property Rights by reason of BT's provision of the Service to the Customer subject to the following conditions:
- (a) the Customer shall notify BT in writing of any allegations of infringement referred to in this clause 26.10 received by the Customer and shall not make any admissions unless BT gives prior written consent;

Agreement for Physical Infrastructure Access – Conditions

- (b) at BT's request and expense, the Customer shall permit BT to conduct all negotiations and litigation. The Customer shall give all reasonable assistance and BT shall pay the Customer's reasonable costs and expenses so incurred; and
 - (c) BT may, at its expense, modify or replace the Service to avoid any alleged or actual infringement or breach. The modification or replacement must not materially affect the performance of the Service.
- 26.11 The indemnity in sub-clause 26.10 above does not apply to actions, claims or legal proceedings:
- (a) caused by the use of the Service in conjunction with other equipment or software or any other service not supplied or approved by BT or the Customer or not otherwise authorised or contemplated by this Agreement; or
 - (b) caused by reason of any alteration or modification which was not made by BT or with BT's prior written consent; or
 - (c) caused by designs or specifications made by, or on behalf of, the Customer, other than where such designs or specifications are made as part of the Service on behalf of the Customer by BT; or
 - (d) which arise as a result of the use of the Service otherwise than in accordance with the terms of this Agreement.
- 26.12 The limitations and exclusions of liability contained in clause 24 do not apply to clause 26.10 above.
- 27. Escalation and dispute resolution**
- 27.1 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.
- 27.2 If the dispute is not resolved within thirty (30) calendar days of the matter being raised and it relates to the accuracy of an invoice delivered under this Agreement then the parties shall refer the dispute for investigation and resolution by such chartered accountants as the parties may agree, or in default of agreement, as may be nominated by the President of the Institute of Chartered Accountants in England and Wales. Such chartered accountants shall act as an expert and not as an arbitrator and their decision, in the absence of evidence of manifest error, shall be final and binding.
- 27.3 For any dispute not covered by clause 27.2, if the dispute is not resolved within thirty (30) calendar days of the matter being raised then the parties (if they agree) shall have the option of:
- (a) referral of the dispute to a mediator in accordance with clause 27.4; or
 - (b) referral of the dispute for early neutral evaluation; or

Agreement for Physical Infrastructure Access – Conditions

- (c) pursuing any other dispute resolution option which the parties agree is appropriate.

27.4 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 three (3) calendar days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR);
- (b) all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings; and
- (c) if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and once signed by the parties will be binding on them. Any such agreement will constitute confidential information for the purposes of the confidentiality provisions in this Agreement.

27.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within two (2) months of the mediator being appointed, then either party may exercise any remedy that it has under this Agreement.

27.6 The third party costs of alternative dispute resolution shall be shared equally between the parties unless determined otherwise by competent or authorised bodies. Nothing in this clause 27 shall prevent the parties from agreeing that any mediator, adjudicator, arbitrator, court or other competent person or body selected by the parties for the purposes of alternative dispute resolution may require the costs of the alternative dispute resolution to be paid by one of the parties on the resolution of the dispute.

27.7 The parties will comply with the Third Party Claims process where BT receives a claim and/or allegation from a third party relating to damage and/or loss and/or injury to person and/or property and/or a failure to comply with Applicable Law.

27.8 Nothing in this clause 27 shall prevent either party from referring the dispute to Ofcom in accordance with any right either party may have to request a determination or from taking any other appropriate steps for its resolution.

28. Changes to the Agreement

28.1 Without prejudice to clause 28.2 below BT may introduce changes to this Agreement at any time which are proposed by BT or the Customer and agreed by the parties. BT will give the Customer written notice of the proposed changes and publish details of those changes on the BT Website. The changes will not take effect until expiry of the relevant Notice Period. BT agrees to negotiate in good faith with a group of Customers which it reasonably believes represents the relevant interested industry members (“Physical Infrastructure Access Contract Group”). The Customer may, within the Notice Period, serve a notice on BT stating its objections to the proposed changes. If there are no objections to the proposed changes within that period from the Customer or from

Agreement for Physical Infrastructure Access – Conditions

anyone who has a contract for the Service, the Customer agrees that the changes shall take effect from the proposed effective date. If there are any objections to the proposed changes within the Notice Period BT shall not introduce that change into this Agreement under this clause 28.1 unless the objector(s) agrees to the proposed change.

- 28.2 BT may also change this Agreement at any time by giving not less than the relevant Notice Period (or such other notice period as may be directed or otherwise specified by Ofcom) before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation; or
 - (b) change the charges including the Licence Fees payable under this Agreement; or
 - (c) protect the use of the BT Corporate Marks; or
 - (d) introduce or withdraw Service features (subject to such notice as is required under the applicable regulatory requirements); or
 - (e) introduce improved service levels; or
 - (f) maintain the integrity or security of the Service or BT Network; or
 - (g) introduce process changes to improve the quality of the Service; or
 - (h) make corrections to typographical errors;

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

- 28.3 BT will give the Customer written notice of any changes made under clause 28.2 above not less than the relevant Notice Period (or such other period as may be directed or specified by Ofcom) before the change is to take effect. The change will take effect at the expiry of the Notice Period or such other period as may be directed or otherwise specified by Ofcom.
- 28.4 A party may initiate a general review of this Agreement by serving a review notice not less than 3 months prior to 1 April 2022 and not less than 3 months prior to every 2nd anniversary of 1 April 2022. Following a notice of review, BT agrees to negotiate in good faith with a group of customers which it reasonably believes represents the relevant interested industry members (“Physical Infrastructure Access Contract Group”). If the parties fail to reach agreement on the subject matter of the review within three (3) months of commencing negotiations, the parties will resolve the dispute in accordance with the escalation and dispute resolution provisions in clause 27 of this Agreement. Any change resulting from negotiation or resolution with the Physical Infrastructure Access Contract Group shall be deemed agreement with the Customer to that contractual change. Any change will be notified to the Customer and BT will publish details of any change on the BT Website not less than the relevant Notice Period before the change is to take effect.
- 28.5 BT may amend, change, remove, or replace those parts of an Ancillary Document which do not form part of the Contract without prior agreement from a Communications Provider. BT will give

Agreement for Physical Infrastructure Access – Conditions

reasonable written notice of any such changes and publish details of those changes on the Openreach Website before the changes take effect. If the Communications Provider considers any such changes to an Ancillary Document would change the Contract or materially and adversely affect the Service, then on or before the expiry of the 28th Working Day of any such changes taking effect, the Communications Provider may dispute any such changes to an Ancillary Document via the dispute resolution process set out in clause 27 above.

29. Transfer of rights and obligations

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

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

30. Entire agreement

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

30.2 The parties acknowledge and agree that the parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it.

30.3 Nothing contained in clauses 30.1 and 30.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.

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

31. Notices

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

Agreement for Physical Infrastructure Access – Conditions

- (a) to the appropriate person for that matter indicated on the Customer Service Plan;
- (b) for all other matters, in the case of notices from the Customer, to the Customer's BT Sales and Relationship Manager;
- (c) for all other matters, in the case of notices from BT, to the Customer's registered office address or any alternative address or e-mail address which the Customer notifies to BT

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

31.2 A notice is duly served:

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

32. Relationship of the parties

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

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

33. Cumulative remedies

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

Agreement for Physical Infrastructure Access – Conditions

34. Rights of third parties

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

35. Waiver

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

36. Survivability

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

37. Severability

- 37.1 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.

38. Governing law and jurisdiction

- 38.1 Subject to the provisions of clauses 38.2 and 38.3, the law of England and Wales governs this Agreement and both parties submit to the exclusive jurisdiction of the English Courts.
- 38.2 Assurances and leases of properties situated in Scotland and the interpretation of their terms, any matter of conveyancing law and practice relating to the Physical Infrastructure located in Scotland, any matters of landlord and tenant law and practice relating to the Physical Infrastructure located in Scotland, any matters which themselves are subject to the exclusive jurisdiction rules of the lex situs on account of the fact that they relate to immovable property situated in Scotland (and so much of any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to such matters) shall be governed by and construed in accordance with the law of Scotland.
- 38.3 So much of this Agreement as relates to matters of Northern Irish real property law or conveyancing practice (and so much of any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to such matters) shall be governed by and construed in accordance with Northern Irish law.

Agreement for Physical Infrastructure Access – Conditions

Agreement for Physical Infrastructure Access – Conditions

Agreement for Physical Infrastructure Access – Conditions

Schedule 1 Definitions

Agreement for Physical Infrastructure Access – Conditions

Schedule 2 Forecasts

Agreement for Physical Infrastructure Access – Conditions

Schedule 3 Accreditation

Agreement for Physical Infrastructure Access – Conditions

Schedule 4 Information Provisions

Agreement for Physical Infrastructure Access – Conditions

Schedule 5 Survey, Plan and Build

Schedule 6 Network Adjustments

Agreement for Physical Infrastructure Access – Conditions

Schedule 7 Service Levels

Schedule 8 Pull-Through Services at Sensitive Areas

Schedule 9 Licence

Schedule 10 Security

Signature

Signed by [NAME] for and on
behalf of British
Telecommunications plc

.....

Title

Signed by [NAME] for and on
behalf of [NAME OF
CUSTOMER]

.....

Title