

In this Agreement, words and expressions have the following meanings:

"Access"	Connection to the BT Systems to provide "read only" access to BT Information;
"Accreditation Guidelines"	means BT's rules for obtaining and maintaining various modules of accreditation to work on the Physical Infrastructure as set out on or from the Openreach Website;
"Adjustment Rate"	Interest 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 19.10 of the Conditions;
"Agreement"	those items referred to in clause 1.7 of the conditions;
"Ancillary Documents"	those documents specifically listed on Openreach's Website that contain information about the Service;
"Annual Revenue"	the total charges levied, exclusive of VAT, from the Customer for the Service in any Contract Year;
"Applicable Laws"	all and any statutes, regulations, byelaws or subordinate legislation in force from time to time to which a party is subject including determinations, directions, court orders, judgements or decree decisions governing or affecting the conduct of either party's business;
"Authority"	without limitation, any court, legislative or governmental body or regulatory authority having authority over or in respect of either party, including any replacement or successor of an Authority;
"Binding Corporate Rules"	means a set of internal rules adopted by a Party and approved by the appropriate data protection regulator(s), allowing the transfer and processing of personal data outside of the European Economic Area ("EEA") in compliance with Data Protection Legislation and set out in the Party's Privacy Policy a copy of which is available on request;
"BT Affiliate"	a company in which BT owns from time to time, directly or indirectly, at least 20% of the voting share capital;
"BT Building"	a BT operational building which is a Site;
"BT Data"	any Information specific to BT relating to the Services and which is collected or otherwise processed by the Customer, including information presented to BT in reports (including site surveys and service desk call records);
"BT Exchange Area"	means those areas defined as such by BT for the Service as set out in or from the Openreach Website;

"BT Information"	Information of BT's which may include BT Data;
"BT Network"	BT's Public Electronic Communications Network;
"BT Security Contact"	the BT Security Incident Centre (telephone number: 0800 321 999/+44 1908 641100) or such other contact which details shall be notified by BT to the Customer from time to time;
"BT System"	any BT computer(s) application(s) or computer network(s) or such other computer system(s) as shall be notified by BT to the Customer from time to time for use with the Service;
"BT Website" or "Openreach Website"	the website located at URL http://www.openreach.co.uk or such other website or URL as BT may notify the Customer from time to time;
"Build Period"	means a period of twelve (12) months from acknowledgment of the Order by BT or as extended pursuant to paragraph 6 of Schedule 5;
"Build Completion"	means where the Customer completes the installation of Customer Apparatus in or on the Physical Infrastructure in accordance with the terms of this Agreement and which is the subject of a valid Order;
"Build Completion Pack"	means the information the Customer must supply to BT on Build Completion for an Order (NOI) and as set out in the Product Description;
"Cancellation Charges"	the charges for cancellation, cessation and early termination (as appropriate) published in the Openreach Price List from time to time;
"CCD" or Customer Confirmed Date"	means the date on which BT will provide the Network Adjustment Service;
"Charging Point"	means the relevant measurement point upon which Licence Fees are calculated and payable as set out in the Openreach Price List.
"Confidential Information"	<p>any information, in whatever form, which in the case of written or electronic information is clearly designated as confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as being confidential or is by its nature confidential and including such Confidential Information already disclosed by either Party to the other prior to the date of this Agreement but excluding any information which:</p> <p>(a) is in or comes into the public domain other than by reason of a breach of this Agreement; or</p> <p>(b) is previously known on a non-confidential basis to the Receiving Party at the time of its receipt; or</p> <p>(c) is independently generated, developed or discovered at any time by or for the Receiving Party; or</p>

	(d) is subsequently received from a third party without any restriction on disclosure;
"Contract Year"	each consecutive twelve (12) calendar month period commencing from the date of this Agreement and then on each anniversary of the date of this Agreement;
"Corporate Marks"	the registered or unregistered trade marks 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 BT and/or the Customer and including the logotype and any other specific distinguishing features;
"Customer"	the party (other than BT) to this Agreement;
"Customer Apparatus"	all Customer telecommunications apparatus, including cables, in-line joints, joints, in-line splices and splices in manholes and jointing chambers, installed within and ancillary to a Facility from time to time under this Agreement;
"Customer Connection Report"	means the Customer's report on its use of Lead-in Duct and drop wires from Poles as described in paragraph 9.8 of Schedule 5 and the Product Description;
"Customer Personnel"	the employees of the Customer, the Customer's sub-contractors and agents (and each of their employees, sub-contractors and agents);
"Customer Service Plan"	a document containing details of individuals, addresses and telephone numbers for the purposes of ordering or maintenance of the services provided under this Agreement;
"Customer System"	any Customer owned computer system or application;
"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;
"Defective Pole"	means a Pole that BT has identified as unsuitable for additional connections due to the Pole being decayed, damaged or otherwise defective;
"Disclosing Party"	a party disclosing Information to the other party;
"End User"	means a person who is a party to a contract with the Customer for the supply of Public Electronic Communications Services;
"Electronic Communications Network"	shall have the meaning at Section 32 of the Communications Act 2003;
"Duct Response Notice"	means a response from BT to an Order for Network Adjustment (other than in relation to a Pole) which confirms either: (a) that the request has been accepted by BT and how BT proposes to provide the Network Adjustment; or (b) that the request has been refused by BT;

"Engineering Principles"	the standards and principles set out in the documents contained under the heading 'Engineering Principles' as published on the Openreach Website from time to time;
"Event and Time Related Charges"	Time Related Charges, Abortive Visit Charges, Excess Construction Charges, 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;
"Excess Construction Charges"	the charges published in the Openreach Price List from time to time;
"Excused Delay"	means a delay directly caused by and attributable to Force Majeure;
"EU-US Privacy Shield"	means a legal framework adopted by the European Commission by its adequacy decision of 12 July 2016 that ensures an adequate level of protection for Personal Data transferred from the European Union to organisations in the United States that have self-certified to the EU-US Privacy Shield;
"Facility"	each individual route approved by BT under this Agreement, comprising sub-duct, other tubing, attachments in manholes, footway boxes and on poles, or other means of installation as shall be agreed between the parties, which has been constructed or installed by the Customer in the Physical Infrastructure in accordance with this Agreement for the Permitted Use;
"Force Majeure"	<p>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):</p> <ul style="list-style-type: none">(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 Customer and BT are responsible for all of their respective contractors (including suppliers (except where that supplier

Agreement for Physical Infrastructure Access

Schedule 1 – Definitions

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"

the forecast to be provided by the Customer to BT as detailed and subject to the terms set out in Schedule 2;

"Gateway"

the BT electronic gateway, used for ordering as described more fully in the Product Description;

"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);

"General Condition"

a general condition set under section 45 of the Communications Act 2003;

"Good Industry Practice"

in relation to any undertaking and any circumstances, the exercise of that degree of skill, care, prudence and foresight which could reasonably be expected of a highly skilled and experienced professional;

"Group Company"

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;

"Inactive Drop Wire"

any drop wire from a Pole to a Premise which is not subject to an obligation to supply services to the premise and which is not subject to an ongoing dispute;

"Information"

information, whether written or oral, including documentation, specifications, reports, data, notes, text, drawings, diagrams, images or sound or other computer outputs, designs, circuit diagrams, inventions (whether patentable or not) and know-how and the media (if any) on which such information is supplied excluding all Software;

"Information Commissioner"

a person appointed by the UK government responsible for the enforcement of the Data Protection Legislation and the Freedom of Information Act 2000;

"Intellectual Property Rights"

any patent, petty patent, registered design, registered trade or service mark, copyright, database right, design right, community design right, semi-conductor topography right, rights in know-how or any similar right exercisable in any part

	of the world and shall include any applications for the registration of any patents or registered designs or similar rights capable of registration in any part of the world;
"Interest Rate"	four per cent above the base lending rate from time to time in force of HSBC PLC or such other bank which is a member of CHAPS Limited as BT may from time to time nominate in writing;
"Invoice Correction"	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.
"Invoice Dispute"	for the purposes of Clause 19 of the Conditions means a dispute taken in good faith by the Customer 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;
"Lead-in Duct"	duct that connects or is intended to connect a distribution point to a Network Termination Point to the extent it forms part of the Physical Infrastructure;
"Licence"	a licence granted under the terms and conditions set out in Schedule 9;
"Licence Completion Date"	the date a Licence is granted by BT which is the date that BT provides an acknowledgement of receipt of the Customer's relevant Build Completion Pack;
"Licence Fee"	the licence fee payable by the Customer for each Licence granted or as revised from time to time under this Agreement which shall include the fees for Spine Duct and Lead-in Duct and fees for multi end user attachment and single end user attachment together with fees for attachments, hosting of in-line splices, cable coils and sub-duct within manholes and jointing chambers, all as published in the Openreach Price List from time to time;
"Minimum Licence Period"	<p>a period of:</p> <ul style="list-style-type: none">(a) five (5) years for Spine Duct and poles; and(b) twelve (12) months for Lead-in Duct <p>commencing on a Licence Completion Date;</p>
"Minimum Unauthorised Use"	<p>means where there are no more than five (5) incidents of Unauthorised Use over a rolling twelve (12) calendar months period and where the Unauthorised Use is no more than a maximum of ten (10) metres from Physical Infrastructure which is the subject of a valid NOI/Order placed in good faith by the Customer prior to the Unauthorised Use and where an incident means:</p> <p>Spine Duct – each contiguous cable (but not longer than one hundred (100) metres in length), coil of cable or apparatus is one incident; Pole – each use is one incident; Lead-in – each drop wire (OH) or lead-in duct (UG) counts as one incident</p>

	provided always that BT shall be solely responsible in determining whether Unauthorised Use meets the above criteria;
"Network Adjustment"	means permanent repairs to or measures taken to relieve congestion on or in existing Physical Infrastructure as more particularly set out in the Product Description and subject to the terms set out in Schedule 6;
"Network Adjustment Criteria"	means where Network Adjustments are, in BT's reasonable opinion, necessary, feasible and efficient when compared with alternative engineering options available to the Customer;
"Network Adjustment Limit"	has the meaning as set out in paragraph 7.10 of Schedule 6 (Network Adjustments) and subject to the terms set out in that Schedule;
"Network Adjustment Services"	means those Services the details of which are set out in the Product Description that BT provides in response to an Order for Network Adjustments that BT accepts pursuant to Schedule 6 of this Agreement;
"Network Adjustment Verification Charge" "Network Plans"	means the charges payable by the Customer to BT as set out in or referred to from the Openreach Price List; the Information provided by BT to the Customer under Schedule 4;
"Network Termination Point"	the physical point at which an End User is provided with access to a Public Electronic Communications Network;
"NICC"	Network Interoperability Consultative Committee;
"Not to Exceed Amount"	the capped amount that BT shall pay to the Customer in respect of a Self-Provide Order and as may be varied only with the express agreement of BT in writing;
"Notice Period"	a period of at least 28 calendar days for new services (including related changes such as charges) and a period of 90 calendar days for changes to the Service (including related changes such as charges and terms and conditions) unless otherwise directed or otherwise specified by Ofcom;
"Ofcom"	the Office of Communications;
"Openreach Assist"	the Service as set out in this Agreement which includes the direct physical supervision by a person nominated for that purpose by BT of Customer Personnel in the Physical Infrastructure;
"Openreach Price List"	the document containing a list of BT's charges and terms that apply to the Service and which can be seen at http://www.openreach.co.uk/orpg/downloads/docs/ (or any other on-line address that BT may advise the Customer);
"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,

	and details of personnel working on or in the BT Network) relating to the Party's employees or representatives;
"Order"	an order for the Service including a Notice of Intent (NOI) which meets the terms of this Agreement and which is received by BT from the Customer in accordance with the Product Description;
"Permitted Use"	use of the Facility and the Customer Apparatus to provide Public Electronic Communications Services and/or a Public Electronic Communications Network;
"Personal Data"	shall have the meaning described in the Data Protection Act 2018;
"Photographic Evidence"	means high quality, clear, precise and accurate photographic proof taken using a camera by Customer Personnel at the Site (not imported from Google Street View or similar) which includes creation date and time and location in respect of the particular photograph and is in focus, in colour with no effects or filters, at least 600 pixels wide and 750 pixels tall, at least 50kb and no more than 10mb, capable of being printed to a good evidentiary standard, clear and in focus, well-lit and in colour, and unaltered by computer software save where used to add annotations to aid interpretation provided any such annotation does not obscure, alter or reduce the quality of the photograph;
"Physical Infrastructure"	means any network element deployed for the purposes of deploying a fixed telecommunications network (excluding the area of Kingston-Upon-Hull) and which is intended to host other network elements and which is not itself active including any conduit, tunnel, subway, pipe, structure, pole or other thing owned and controlled by BT in, on, by or from which an Electronic Communications Network is or may be installed, supported, carried or suspended and the term excludes cables (including strands of optical fibre), anything within a building or premise and any active network element;
"Physical Infrastructure Access"	means network access comprising of the provision of space, anchorage, attachment facilities and/or such other facilities as may be reasonably necessary to permit a third party to occupy parts of BT's Physical Infrastructure sufficient to facilitate the establishment, installation, operation and maintenance of the Electronic Communications Network of a third party at that location;
"Pole"	means a pole to the extent it forms part of the Physical Infrastructure;
"Pole Response Notice"	means a response from BT to an Order for a Network Adjustment on a Pole which confirms either: (a) that the request has been accepted by BT and how BT proposes to provide the Network Adjustment; or (b) that the request has been refused by BT.
"Product Description"	the document entitled PIA Product Description as published on the BT website from time to time;

"Project Funds"	the process by which the Customer may combine Network Adjustment Limits from multiple Orders subject to the terms and rules set out in the Product Description;
"Premise"	means a single residential, commercial or public sector premise with a Unique Property Reference Number;
"Process(ed)"	an Order which has been given an order number;
"Public Electronic Communication Network" or "PECN"	shall have the meaning in section 151 of the Communications Act 2003;
"Public Electronic Communications Service"	shall have the meaning in section 151 of the Communications Act 2003;
"Receiving Party"	a party receiving Information from the Disclosing Party;
"Response Notice"	means either a Pole Response Notice or a Duct Response Notice as the case may be.
"Risk Event"	a crisis, disaster, emergency or any other event or potential event (including a Force Majeure event) which is reasonably likely to have a material and adverse effect on a party's ability to meet its obligations under this Agreement;
"Schedule"	a schedule under this Agreement;
"Scheduled Outage"	<p>the period that the BT System is not available for use by the Customer in order for BT to perform certain tasks including, but not limited to, routine maintenance, testing, changing configurations, software upgrades and updating facilities. The System may be taken out of service for routine maintenance from 00:01 to 04:00 hours each Thursday;</p> <p>The following definitions apply to Scheduled Outages of the BT System:</p> <p>"BT System Major Change" means major functional changes to the BT System or platform;</p> <p>"BT System Interim Change" means additional functionality normally associated with a BT System;</p> <p>"BT System Weekly Maintenance Outage" means a maintenance release used to deploy fixes and non- functional changes to the BT System or platform;</p>
"Security Contact"	the person notified by a party as fulfilling that role on behalf of that party under this Agreement and specified as such in the Customer Service Plan;
"Sensitive Activities"	<p>activities which involve Customer Personnel:</p> <ul style="list-style-type: none">(a) having access to BT Building and premises;(b) having access to BT Systems; and

(c) carrying out activities in Sensitive Areas;

"Sensitive Area"

a Site which is declared by BT from time to time as a security or safety sensitive site including:

- (a) an area notified by BT from time to time as being a BT defined network security area (and which may exist in an end user defined network security area) which shall include without limitation some areas of the BT Network such as exchange manholes, manholes outside data centres, cable chambers and extensions, internal cable runs in BT exchanges and vulnerable joint boxes; and
- (b) an area notified by BT from time to time as being an end user defined network security area which shall include without limitation some areas of the BT Network serving airports, Ministry of Defence and other government establishments, energy generating installations, chemical plants and other premises or industrial sites;

"Series"

a group of Event and Time Related Charges or Services that BT notifies the Customer (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 shall not include any charge previously invoiced or recurring charges such as rental;

"Service"

any of the Physical Infrastructure Access services provided under the Schedules or any part thereof and as set out in the Product Description;

"Service Levels"

those levels of service or performance set out in Schedule 7 (Service Levels) which apply to BT and the Customer;

"Site"

a place at which BT agrees to provide any of the Services;

"Software"

any computer programme or programming (including source code and object code) and also including any programme interfaces, software tools or object libraries embedded in such software and all materials relating to that software and/or its design, development, modification, operation, support or maintenance;

"Specification"

the technical specifications set out or referred to in the Engineering Principles document for sub-ducting, tubing, jointing chamber occupancy, ducts and poles as amended from time to time;

"Spine Duct"

means duct, other than Lead-in Duct, to the extent it forms part of the Physical Infrastructure;

"Sub-Processor"

means a subcontractor that the Receiving Party engages to Process Personal Data for the purposes of the Agreement;

"Third Party Claims Process"	means the process and terms set out as an annex to the Product Description with the same name;
"Traceability Requirements"	means the obligations on the Customer to clearly identify Customer Apparatus in or on the Physical Infrastructure as being the property of the Customer at regular intervals along the length of the route and at every access point to the Physical Infrastructure including all joint boxes and poles and as set out in the Product Description and the Engineering Principles;
"Unauthorised Use"	means where the Customer fails to place or have a valid Order and/or Licence for the Physical Infrastructure prior to using that Physical Infrastructure and/or where the Customer fails to comply with the terms set out in paragraph 9.8 of Schedule 5 for end customer connections but excludes use of items of Physical Infrastructure that are not in the Network Plans provided the Customer notifies BT of the items promptly on discovery and in accordance with the missing inventory process set out in or referred to from the Product Description;
"Virus"	<ul style="list-style-type: none">(a) any programme code or programming instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programmes, data files, equipment or operations; or(b) any other code typically designed to be a virus, worm or logic bomb, disabling code or routine or similar;
"Whereabouts Requirements"	those requirements on a Customer to inform and provide the information to BT as set out in Clause 11 of the Conditions and the Product Description prior to working on or in the Physical Infrastructure;
"Working Day"	any day other than Saturdays, Sunday, public or bank holidays in the United Kingdom;
"Working Hours"	means 0800-1700 on a Working Day.