

Schedule 9

Licence

1. Order Handling

- 1.1 This Schedule 9 contains the terms and conditions under which the Customer occupies each and every Facility in respect of which a Licence has been granted.
- 1.2 Prior to the Licence Completion Date the Customer shall provide to BT the Build Completion Pack detailing the construction of the Facility which is the subject of an Order. Upon receipt of the Build Completion Pack BT will subject to paragraph 1.3 confirm the Licence Completion Date provided that any acknowledgment or confirmation from BT shall in no way imply, warrant or represent that BT has checked and approved the details of the Build Completion Pack or any work by Customer Personnel at, on or in the Facility.
- 1.3 BT may upon receipt of the Build Completion Pack request information and assistance from the Customer to understand and ensure the extent to which the Customer has met their obligations under the Agreement. The Customer must provide reasonable information and assistance in response to a reasonable request from BT on or relating to the Build Completion Pack.
- 1.4 Notwithstanding the confirmation of Licence Completion Date BT reserves the right to audit and check the Facility and require the Customer to provide reasonable information and reasonable assistance (at the Customer's cost and expense) to explain any work by Customer Personnel at the Facility the subject of the Licence.
- 1.5 The Customer shall maintain (and ensure that the Customer's Personnel shall maintain) throughout the period of each and every Licence compliance with all Applicable Laws or other requirements relating to access or the carrying out of BT's reasonable access requirements, reasonable working practices, reasonable instructions and any other reasonable local instructions each as published and notified to the Customer by BT from time to time.

2. Licence

- 2.1 Subject to the terms and conditions of this Agreement and in consideration of each respective Licence Fee BT grants to the Customer a Licence in respect of each Facility with effect from the Licence Completion Date which grant provides consent to the Customer:

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- (a) in common with BT and all others authorised by BT (including the employees of BT, BT's sub-contractors and agents (and each of their employees, sub-contractors and agents)) to inspect, keep, maintain or repair, the Facility; and
- (b) to the exclusive use of the Facility to install, inspect, keep, maintain, adjust, repair, alter, replace or remove Customer Apparatus;

for the Permitted Use.

- 2.2 The Customer shall commence to pay to BT the Licence Fee in relation to the relevant Facility from the Licence Completion Date whether or not the Customer takes occupation on that date.
- 2.3 The Customer shall (and shall ensure that the Customer's Personnel shall) access only those parts of the Physical Infrastructure necessary for the purposes of this Agreement.

3. BT's Obligations

3.1 BT shall:

- (a) not interfere with any Facility or Customer Apparatus or the operation of any Customer Apparatus except where specifically permitted by the terms of this Schedule 9, paragraph 8.3 of Schedule 5, clause 14.6 of the Conditions or the audit process set out in the Product Description;
- (b) maintain and repair the Physical Infrastructure in accordance with Good Industry Practice and the terms of this Agreement so that the rights granted in a Licence can be exercised for the duration of the Licence in relation to the Facility in question;
- (c) shall indemnify the Customer against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands ("liabilities") in relation to physical damage to property arising directly out of a breach of the Licence or negligence on the part of BT. BT's liability under this indemnity is limited to the property damage cap set out in Clause 24.5 of the Conditions; and

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- (d) Nothing in paragraph 3.1(c) above shall restrict or limit BT's or the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the indemnity.

4. Customer's Obligations

4.1 The Customer shall:

- (a) pay to BT the Licence Fee in respect of each Facility from the Licence Completion Date.
- (b) pay any rates and/or taxes which shall be properly charged assessed or imposed upon the rights granted by a Licence or upon the Customer's occupation of the relevant Facility or upon any Customer Apparatus or in the event that they are not separately assessed to pay on demand a fair proportion of those rates and/or taxes levied on BT such amount or proportion to be assessed by BT whose decision shall be final and binding save in case of manifest error;
- (c) for the duration of the Licence, comply in all respects with the requirements set out in this Agreement in relation to any work carried out at the Facility;
- (d) comply with the Whereabouts Requirements where Customer Personnel visits the Facility or any part of it in accordance with the requirements of this Agreement;
- (e) install all Customer Apparatus in accordance with Good Industry Practice and the terms of this Agreement and ensure it is connected to a PECN within the Build Period as set out in paragraph 7.1(c) of Schedule 5 and remains connected thereafter;
- (f) maintain the Customer Apparatus and how it is installed in or on the Physical Infrastructure in good and proper repair and working order in accordance with Good Industry Practice and the terms of this Agreement;
- (g) ensure that the Customer Apparatus or the installation or operation of the Customer Apparatus at the Facility shall not put any person in danger of death or injury or cause any damage to the BT Network or to other BT property or to telecommunication apparatus operated by BT or by any third party and shall not impair the quality of service provided by BT or any third party by such telecommunication apparatus;

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- (h) label the Facility with the Customer's name and maintain the records provided to BT under this Agreement as to the identity of Customer Apparatus comprised in the Facility;
- (i) comply in all respects (and ensure the Customer's Personnel comply in all respects) with the provisions of all Applicable Laws including without limitation statutes relating to the environment, health and safety at work, carrying out street works, the handling, transportation, storage and disposal of waste and special waste, any regulations or orders made under such statutes and further, without limitation, with BT's reasonable access requirements, reasonable working practices, reasonable instructions, the Engineering Principles, Accreditation Guidelines, and any other safety instructions each as published and notified by BT from time to time so far as the same relate to or affect any Facility, Customer Apparatus or the consents granted under a Licence.
- (j) ensure that the Customer's Personnel are issued with passes bearing the photograph and signature of the holder in accordance with Schedule 3;
- (k) not use or permit the use of a Facility or any Customer Apparatus otherwise than for the Permitted Use and in compliance with the provisions of this Agreement and a Licence;
- (l) subject to the rights granted by BT to the Customer herein, not impede or interfere with BT's rights of possession and control of the BT Network;
- (m) not obstruct or interfere with (and ensure the Customer's Personnel do not obstruct or interfere with) any fire or other safety equipment installed in any BT Network or the operation of any such equipment;
- (n) forthwith to report (and ensure the Customer's Personnel forthwith report) to BT any accidents occurring at a Facility or within the BT Network;
- (o) not to make any application for planning permission in relation to the Facility occupied under the terms of a Licence;
- (p) not to (and to ensure that the Customer's Personnel do not) deposit or leave rubbish or waste in or around the BT Network;
- (q) save for such warning and safety notices and signs as the Customer may by law be required to install or as the Customer may reasonably require for the purposes of health and safety or as the Customer may be required to display under this Agreement or this Schedule 9, not to display any signs notices manufacturers motifs or advertising material of any kind on or at any Facility;

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- (r) on request from BT and where BT reasonably believes that an end customer at a Premise wants to take service from BT or another communications provider confirm in writing to BT if it has any Inactive Drop Wire to that Premise and if it has and on notice from BT remove the Inactive Drop Wire in the same time period as BT removes its Inactive Drop Wires;
 - (s) indemnify and hold harmless BT against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands ("liabilities") in relation to interruption to service arising directly out of a breach of the Licence or negligence on the part of the Customer. The Customer's liability under this indemnity is limited to the property damage cap set out in Clause 24.5 of the Conditions;
 - (t) indemnify BT against all losses, costs, claims (including claims from third parties), expenses, liabilities and demands ("liabilities") in relation to physical damage to property arising directly out of a breach of the Licence or negligence on the part of the Customer. The Customer's liability under this indemnity is limited to the property damage cap set out in Clause 24.5 of the Conditions.
 - (u) Nothing in paragraphs 4.1(s) or 4.1(t) above shall restrict or limit BT's or the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under the relevant indemnity
- 4.2 Each Licence is personal to the Customer and the Customer shall not assign or transfer a Licence or the benefit of the rights granted under a Licence either in whole or in part nor grant any sub-licence or agreement except in accordance with paragraphs 4.3-4.5 below.
- 4.3 The Customer may, subject to the provisions for termination in this Schedule 9, request that a Licence be terminated as a result of the Customer agreeing with a third party communications provider that the third party communications provider will take a licence of all or part of the Facility.
- 4.4 BT may refuse the Customer's request under paragraph 4.3 if:
- (a) the third party communications provider is not willing to take over the Customer's obligations which relate to the Facility; or

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- (b) the third party communications provider would, on the grant of a new licence, immediately be in breach of its obligations to BT under the terms of an agreement similar to this Agreement; or
- (c) the Customer is not willing to enter into a new Licence of the remainder of the Facility

and shall notify the Customer of such refusal and the reasons for refusal.

4.5 If BT notifies the Customer that the Customer's request under paragraph 4.3 is acceptable:

- (a) BT shall offer the third party communications provider a licence of the whole or part of the Facility, as appropriate, on BT's standard terms, conditions and charges for physical infrastructure access available on or via the Openreach Website;
- (b) If a part only of a Facility is to be granted to a third party communications provider BT shall grant to the Customer a new Licence of the remainder of the Facility at a licence fee reviewed and determined in accordance with the charges set out in the Openreach Price List;
- (c) The Customer shall discharge all obligations concerning the payment of monies accrued and invoiced in relation to the Facility up to the date of completion of the new licence to the third party communications provider and the grant of any new Licence to the Customer prior to the date of such completion and on completion the Customer shall be released;
- (d) Any Network Adjustment Limit which relates to the Facility will be cancelled and set to zero for any future Network Adjustments which may arise in respect of the Facility; and
- (e) Prior to the date of such completion, the Customer shall pay BT's charges in relation to the grant of a new Licence to the third party communications provider and the grant of any new Licence to the Customer as set out in the Openreach Price List; and
- (f) the Customer and the third party communications provider shall comply with the BT novation process and execute any documents that BT reasonably requires to give effect to the request.

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- 4.6 In the event that a Licence is terminated pursuant to paragraph 7 of this Schedule 9 the Customer shall discharge all obligations concerning the payment of moneys accrued in relation to the relevant Facility up to the date of termination.

5. Agreements and Declarations

- 5.1 BT and the Customer agree and declare that Licences are granted in pursuance of the provisions of Physical Infrastructure Access and the Agreement and the Customer shall not have or exercise any rights it may otherwise have in respect of the use and occupation of the Facility other than for the Permitted Use.
- 5.2 BT does not give any warranty or assurance that the use of a Facility authorised under a Licence is or will continue to be authorised under any planning statute or other planning legislation. BT will, however, make reasonable endeavours to provide such information it receives which may affect the Facility or Customer Apparatus.
- 5.3 BT may at any time and from time to time temporarily suspend access to any part of the Physical Infrastructure and/or access to the Facility and Customer Apparatus or any part of it for safety reasons for such periods as it may reasonably deem necessary without incurring liability to the Customer or any third party in respect of any disturbance or reduction in or loss of business consequent thereon. BT shall give the Customer reasonable notice (where possible not less than five Working Days) of such suspension and liaise with the Customer to minimise the effect such suspension might have on the Customer. Where prior notice cannot be given in any emergency BT shall advise the Customer as soon as reasonably possible giving reasons for the suspension and shall re-open the Physical Infrastructure and/or access to a Facility and Customer Apparatus as soon as reasonably practicable.
- 5.4 The Customer shall, if reasonably required, demonstrate to BT's reasonable satisfaction that, before entry to any part of the Physical Infrastructure, the Customer's Personnel comply in all relevant respects with the terms of this Agreement and the Accreditation Guidelines and have the appropriate qualifications, skills and competence in all respects acceptable to BT and in compliance with all Applicable Laws including without limitation those relating to the environment, health and safety at work, carrying out street works, the handling, transportation, storage and disposal of waste and special waste, any regulations or orders made under such Applicable Laws and further, without limitation, with BT's reasonable access requirements,

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reasonable working practices instructions, Engineering Principles, and any other reasonable local instructions each as published by BT from time to time so far as the same relate to or affect any Facility, Customer Apparatus or the consents granted under a Licence. BT shall have the right acting reasonably to refuse admittance and re-admittance to or order removal from any part of the Physical Infrastructure of any of the Customer Personnel who in the opinion of BT (which shall be final and conclusive) is not conforming to all safety, security and works regulations and such other local instructions or is not a fit person to have access to the Physical Infrastructure. Action taken under this paragraph 5.4 shall be notified in writing to the Customer by BT.

- 5.5 The Customer shall provide a Facility and any Customer Apparatus at its own expense and at its own risk. Customer Apparatus shall be the property of the Customer at all times.
- 5.6 For the duration of a Licence BT shall not be liable to the Customer for any damage or loss (howsoever caused save for damage or loss caused by BT's negligence or which is caused wilfully and intentionally by an employee, servant, agent or contractor of BT) to the Facility or the Customer Apparatus.
- 5.7 Any waiver by either party of a breach of any provision of this Schedule 9 shall be limited to the particular breach and shall not operate in any way in respect of any future breach by that party, and no delay on the part of either party to act upon a breach shall be deemed a waiver of that breach.
- 5.8 Nothing in any Licence or this Schedule 9 or done under it shall create any tenancy of any part of any of the BT Network or confer upon the Customer any right to the exclusive possession or use of any part of the BT Network other than as expressly provided in this Schedule 9.

6. Diversionary Works

- 6.1 If the landowner, highway authority or other appropriate body requires the relocation of network apparatus, the Customer agrees that it will move its Facility and Customer Apparatus in the affected area and will pay a proportion of the costs (which costs shall not include any costs to move the Physical Infrastructure and which may be properly recoverable from the landowner, highway authority or other appropriate body) in relation to the percentage of occupancy of the relevant part of the Physical Infrastructure. The Customer will also be liable to pay any additional costs as a result of its action or inaction in relation to such diversionary works.

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- 6.2 The Customer is entitled to reinstall its Facility and Customer Apparatus in the new allocated section of the Physical Infrastructure. BT will give the Customer as much notice as possible prior to the date of the anticipated Physical Infrastructure alteration. If the Customer chooses not to reinstall its Facility and Customer Apparatus in the new allocated section of the Physical Infrastructure then it must notify BT as soon as possible that it wants to terminate the relevant Licence and in those cases BT will not seek to apply any early termination charges.
- 6.3 If BT itself wishes to make an alteration to the Physical Infrastructure that may affect the Customer's Facility or Customer Apparatus, it will give the Customer reasonable written notice prior to the date of the anticipated Physical Infrastructure alteration as set out in the Product Description. The notice shall specify the details and the anticipated date of the Physical Infrastructure alteration. Following such notification, BT shall supply the Customer such information as the Customer may reasonably request. The Customer shall notify BT as soon as practicable after receipt of such notice, of any alterations to the Customer Apparatus as a result of the proposed Physical Infrastructure alteration and, subject to paragraph 6.4 below, a quotation for the cost of such alterations on the basis of the minimum cost consistent with good engineering practice. The Customer shall not be entitled to reimbursement for the cost of alterations under this Agreement if and to the extent that those costs have been reimbursed under other agreements between BT and the Customer. BT will make suitable arrangements where alterations are made to the Physical Infrastructure so that where the Customer is required to relocate Customer Apparatus the Customer may benefit to the same extent as under the current Licence as set out in the Product Description and will not be the subject of additional charges to the extent those additional charges arise as a direct result of Physical Infrastructure alteration being made by BT pursuant to this paragraph. The parties shall agree a plan and carry out such alterations in accordance with the agreed plan. For the avoidance of doubt this paragraph will only apply where BT wants to make an alteration to the Physical Infrastructure and not to any alteration required by a third party under paragraph 6.1 or as a direct result of damage to the Physical Infrastructure.
- 6.4 Each party shall pay its own costs arising out of the network alteration if:
- (a) the parties agree in writing to carry out their respective alterations for their mutual benefit; or
 - (b) the network alteration is lawfully directed by Ofcom which also lawfully directs each party to pay its own costs; or

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- (c) the Licence Completion Date is later than publication by BT that it proposes to carry out a network alteration pursuant to paragraph 6.3 above in that part of the Physical Infrastructure in which the Customer has placed an Order.

6.5 BT accepts no liability for any interruption of the Customer's services under this paragraph 6. If the Customer has installed Customer Apparatus in Physical Infrastructure or has a licence to use the Physical Infrastructure and BT reasonably believes that the item of Physical Infrastructure must be replaced due to damage or relocated pursuant to paragraphs 6.1 and 6.3 then both parties must comply with the process set out or referred to in the Product Description. For the avoidance of doubt and notwithstanding any other term to the contrary BT reserves the right to remove Customer Apparatus from the item of Physical Infrastructure and dispose of it without any liability to the Customer in circumstances where the Customer fails to remove the Customer Apparatus from the item of Physical Infrastructure on or prior to any reasonable dates set by BT pursuant to the process set out or referred to in the Product Description

7. Duration

7.1 Each Licence shall commence on the Licence Completion Date and shall continue thereafter until terminated under the terms contained in a Licence.

8. TERMINATION

8.1 Every Licence will terminate on termination of the Agreement but in any such case without prejudice to the respective rights of either party in respect of any antecedent claim or breach of contract.

8.2 The Customer may terminate a Licence on not less than six months' notice expiring at any time on or after the expiry of the Minimum Licence Period provided that the Customer will not be liable to pay early termination charges where it terminates the Service in response to an Inactive Drop Wire under 4.1(r) above.

8.3 BT may terminate a Licence:

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- (a) on not less than twelve months' notice expiring at any time on or after the expiry of the Minimum Licence Period if BT is no longer required to provide Physical Infrastructure Access under regulation;
- (b) on reasonable (and in any event not less than one month's) notice expiring at any time if:
 - (i) BT is required by law or lawful instruction of any competent authority to regain occupation of a Facility; or
 - (ii) Ofcom directs that a Licence of one or more Facility shall be terminated.
- (c) on reasonable (and in any event not less than one month's) notice if the Customer:
 - (i) 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; or
 - (ii) purports to transfer the benefit and/or burden of a Licence without BT's prior written consent; or
 - (iii) fails or ceases to use a Facility as part of a PECN and there is congestion in the BT Network at the location and/or for a period and in the circumstances set out in the Product Description.

8.4 The provisions of this Schedule 9 (insofar as they relate to an individual Licence) shall (without prejudice to any pre-existing right of action of either party in respect of any breach by the other party of its obligations hereunder) immediately terminate on expiry of the relevant notice and cease to have effect and the parties shall be released from any further liability under this Schedule 9 (insofar as it relates to that individual Licence).

8.5 In the event of:

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- (a) a breach on the part of the Customer of its obligations in this Schedule 9 which is not remedied within a reasonable time after notice from BT; or
- (b) recurring or persistent breaches on the part of the Customer of its obligations in respect of a Licence which give BT a right to issue a notice requiring remedy (including, without limitation, repeated late payment of sums due)

then the provisions of this Schedule 9 (insofar as they relate to an individual Licence) shall (without prejudice to any pre-existing right of action of any Party in respect of any breach by any other Party of its obligations hereunder) once they have complied with paragraph 9 below immediately terminate on written notice and cease to have effect and the Parties will be released from any further liability under this Schedule 9 (insofar as it relates to that individual Licence).

8.6 In the event of:

- (a) a breach on the part of BT of its obligations in this Schedule 9 which is not remedied within a reasonable time after notice from the Customer; or
- (b) recurring or persistent breaches on the part of BT of its obligations in respect of a Licence which give the Customer a right to issue a notice requiring remedy

then the provisions of this Schedule 9 (insofar as they relate to an individual Licence) shall (without prejudice to any pre-existing right of action of any Party in respect of any breach by any other Party of its obligations hereunder) once they have complied with paragraph 9 below immediately terminate on written notice and cease to have effect and the Parties will be released from any further liability under this Schedule 9 (insofar as it relates to that individual Licence).

9. Consequences of Termination

9.1 On the termination (for whatever reason) of a Licence:

- (a) title and risk in the Facility shall pass to BT;
- (b) the Customer shall forthwith remove all Customer Apparatus and make good all damage caused by such removal to BT's reasonable satisfaction; and

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- (c) the Customer shall pay to BT upon demand:
 - (i) the costs properly and reasonably incurred by BT in removing the Customer Apparatus if the Customer fails to do so within a reasonable time or in reinstating the Facility and in the event that BT carries out such reinstatement (which it may or may not do at its absolute discretion); and
 - (ii) if applicable, the early termination charges.