

1. DEFINITIONS

1.1 In this Contract:

"Abortive Visit Charge" means the charge specified in the Openreach Price List;

"Access Locate" means a product supplied under the Contract for Access Locate Services for the Communications Provider to locate certain equipment in a BT exchange;

"Access Serving Node Site" means

- (i) with respect to the Ethernet Backhaul Direct Service, detailed in Schedule 2 the Site of a BT operational building (serving exchange) that houses an access serving node, the location and availability of such Sites are as published by BT from time to time at url: <http://www.openreach.co.uk/orpg/customerzone/products/ethernet-services/ethernet-services-secure/sitedata.do>
- (ii) with respect to the Ethernet Access Direct Service detailed in Schedule 2 the Site of a BT operational building (serving exchange) that houses an access serving node, and which is not an Aggregation Node Site/site;
- (iii) with respect to the TDM Access Service detailed in Schedule 2 the Site of BT operational building (serving exchange) that houses an access serving node;

"Adjustment Interest Rate" means one per cent above the official Bank Rate from time to time in force of the Bank of England unless an alternative interest rate is stipulated to apply by Ofcom or other regulatory authority or body of competent jurisdiction pursuant to a determination made in accordance with sub-clause 12.10;

"Aggregation Node Site/site" means the list of Sites/sites detailed at URL <http://www.openreach.co.uk/orpg/home/products/ethernet-services/ethernet-access-direct/ead.do> which will vary from time to time;

"Ancillary Documents" means those documents specifically listed on BT's Website that contain information about the Service;

"Annual Revenue" means the total charges levied exclusive of VAT from the Communications Provider for the Service in any Contract Year;

"Applicable Law" means the laws of England and Wales and any laws and regulations, as may be amended from time to time, that apply to the provision or receipt of a Service, including:

- (a) anti-corruption laws set out in the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 of the United States of America; and
- (b) all applicable export laws and regulations, including those of the United States of America;

"Authorised Users" means those persons authorised by the Communications Provider in writing to BT to gain access to the Gateway;

"Backhaul Extension Service" means the Backhaul Extension Service detailed in Schedule 2;

"Backhaul Network Service" means the Backhaul Network Service detailed in Schedule 2;

"Bearer" means the dense wavelength division multiplexing line system which can support a multiple mix of 2.5Gbit/s and 10Gbit/s wavelengths;

"Binding Corporate Rules" means a set of internal rules adopted by BT and approved by the appropriate data protection regulator(s), allowing the transfer and processing of personal data outside of the European Economic Area ("EEA") in compliance with Data Protection Legislation and set out in the Privacy Policy. The Communications Provider may request a copy from Openreach information assurance at dataprivacy@openreach.co.uk;

"Broadcast Access Service" means the Point-to Point Broadcast Access Service or Outside Broadcast Access Service detailed in Schedule 2;

"Broadcast Van" means, in relation to Broadcast Access Service, a van provided by the Communication Provider used for facilitating the transmission of the Communication Provider's feed from the End User's broadcast van to the BT Local Exchange according to the specification set out in the Handbook;

"BT" means British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ registered in England No. 1800000;

"BT Equipment" means equipment (including any software) placed by BT at a Site to provide the Service;

"BT Group" means BT Group plc and its Affiliates from time to time;

"BT Local Exchange" includes the telephone exchanges located in the Territory owned and operated by BT;

"BT Locate" means an arrangement for the Communications Provider to locate certain CP equipment in a BT exchange under BT's terms and conditions for BT Locate Solutions Data Suite Services Agreement and BT Locate Solutions Data Suite Services MUA Agreement;

"BT Network" means BT's public electronic communications network;

"BT Website" or "Openreach Website" means the website located at URL <http://www.openreach.co.uk> or such other website or URL as BT may notify the Communications Provider from time to time;

"Category" means the following :

Category 2.1 where there is a requirement for cabling/tubing work within existing access duct and no need for new access duct nor any spine or core network infrastructure

"Cell Site" means the Communication Provider's radio base station premises or Third Party CP radio base station premises;

"Circuit ID" means the unique identifier for the Service;

"CMC" means the Customer Management Centre nominated by BT;

"Co-location" which is an arrangement for the Communications Provider to occupy co-location facilities at a Site under the terms of a Revised Agreement for Access Network Facilities Services;

"Communications Provider" or **"CP"** means the person who signs this Contract with BT and is a person who provides a Public Electronic Communications Network;

"Communications Provider Contracts Group" means representatives from the Communication Providers which BT reasonably believes have a remit to discuss the Connectivity Services contract issues on behalf of Industry;

"Communications Provider Site" means the CP's premises;

"Connection Charge" is the sum payable by the Communications Provider in accordance with the Openreach Price List for provisioning of the Service;

"Contract" means the Conditions, Schedule 1, Schedule 2, Schedule 3, Schedule 4, Schedule 5 (where applicable) and Schedule 6, the relevant sections of the Openreach Price List, the elements of the Ancillary Documents that are expressly incorporated by reference into this Contract, the Contract Form and the Order;

"Contract Form" means the form signed by the Communications Provider and BT to enter into this Contract;

"Contractual Delivery Date" or **"CDD"** means:

- (a) the 57th Working Day after the Street Access, Broadcast Access or CCTV Access Service Order is Processed by BT on the Legacy Platform;
- (b) the 35th Working Day after the Optical Spectrum Access Service Order or Optical Spectrum Access with Filter Connect Service Order is Processed by BT on the Legacy Platform.;
- (c) the 60th Working Day after the Optical Spectrum Extended Access Service Order or Optical Spectrum Extended Access with Filter Connect Order is Processed by BT on the Legacy Platform;

or such later date as may be agreed in writing by BT and the Communications Provider or such other reasonable later date as may be notified in writing by BT to the Communications Provider; or

- (e) the 30th Working Day after the Ethernet Backhaul Direct Service, Wholesale Extension Service, WEES Service, Backhaul Extension Service Order, or TDM Access Service Order is Processed by BT on the Legacy Platform;
- (f) the 30th Working Day after the Ethernet Access Direct Service Order is Processed by BT on the Legacy Platform, except that in relation to Category 2.1 circuits where cabling/tubing activity is required the CDD means :
 - (i) the 57th Working Day after the Ethernet Access Direct Service Category 2.1 Order is Processed by BT on the Legacy Platform;
 - (ii) the 30th Working Day after the Ethernet Access Direct Service Category 2.1 Order is Processed by BT on the Legacy Platform if the Communications Provider has selected this option in writing in accordance with Schedule 4C(i) paragraph 2.1 (b);

or such later date where consent is obtained or deemed pursuant to paragraph 2.3 of Schedule 4C (i);

"Contract Year" means each consecutive 12 calendar month period commencing from the date of this Contract and then on each anniversary of the date of this Contract.

"Core Node" means a node in the BT Network whose primary function is not to support the provision of access services to end users but to switch or route traffic between other nodes in the network;

"Corporate Marks" means the registered or unregistered trade marks and service marks, house marks and marks of ownership, trading names, brand names, distinctive colour schemes, devices, styles, emblems and other manifestations associated with BT and/or the Communications Provider and in the case of BT including logotype comprising the letters BT and the piper device and/or letters BT and the connected world device and/or any elements of these marks;"

"CP Service" means the service provided to the End User or reseller by the Communications Provider;

"CRF" means a customer requirement form or its electronic equivalent in a form stipulated by BT for an individual Order;

"CP Requirement Date" or **"CRD"** is the date the Communications Provider requests the Service should be installed and commissioned by BT and be available for use by the Communications Provider;

"Customer Committed Date" or **"CCD"** means:

- (a) the 30th Working Day after the Ethernet Backhaul Direct Service Order is Processed by BT on EMP;
- (b) the 30th Working Day (or an earlier date notified by BT as the CCD) after the Ethernet Access Direct Service Order is Processed by BT on EMP, except that in relation to Category 2.1 circuits where cabling/tubing activity is required the CCD means :
 - (i) the 57th Working Day (or an earlier date notified by BT as the CCD) after the Ethernet Access Direct Service Category 2.1 Order is Processed by BT on EMP;
 - (ii) the 30th Working Day (or an earlier date notified by BT as the CCD) after the Ethernet Access Direct Service Category 2.1 Order is Processed by BT on EMP if the Communications Provider has selected this option in writing in accordance with Schedule 4C(ii) paragraph 2.1;

or such later date where consent is obtained or deemed pursuant to paragraph 2.3 of Schedule 4C (ii);

"Customer Service Plan" means a document containing details of the contacts for the support of the Service;

"Data Protection Legislation" 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;

"Emergency" means a serious situation or occurrence that :

- (a) threatens life and limb; or
- (b) may cause or threaten to cause damage to physical property or systems; or
- (c) happens unexpectedly

and demands immediate action;

"EMP" means the Equivalence Management Platform;

“End User(s)” means a third party taking the CP Service;

“End User Data” means personal data, (including sensitive personal data) of End Users (including prospective End Users) that the Communications Provider provides or makes available to BT for the purposes of this Contract;

“End User Site” means the End User’s business premises;

“Ethernet Access Direct Service” means the Service as detailed in Schedule 2;

“Ethernet Backhaul Direct Service” means the Service detailed in Schedule 2;

“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;

“Event and Time Related Charges” means 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” means the charges referred to in the Openreach Price List, Schedule 2 and Schedule 4;

“Fixed Period” means a period of 12, 36 or 60 months from the Operational Effective Date for the Backhaul Network Service (BNS) only;

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

- (a) an act of God or force of nature (including fire, earthquake, flood, lightning, landslide and weather of exceptional severity);
- (b) serious incident, the cause of which is unconnected to the Party relying on the Force Majeure (including but not limited to explosion and radioactive contamination);
- (c) a change of law that is applicable to the affected party and the change was not reasonably foreseeable;
- (d) epidemic, or national or local emergency (whether in fact or law);
- (e) sabotage, riot, insurrection, terrorism or civil disorder;
- (f) military operations or war (whether declared or not); or
- (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 itself is affected by a Force Majeure), employees, servants and agents),
- (h) industrial disputes including industrial disputes involving that party’s own employees, providing that such party has used reasonable endeavours to resolve such industrial disputes or prevent them from occurring, or
- (i) acts of animals.

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

"Forecast" means the forecast to be provided by the Communications Provider to BT as detailed in Schedule 3;

"Forecast Period" means the period of three calendar months for which a Forecast is provided;

"Forecasting Manual" means the Ethernet services forecasting manual as may be amended from time to time containing information relating to making forecasts of Orders for the Service. The Forecasting Manual is available on the BT Website;

"Gateway" means the BT electronic gateway, used for all ordering or fault reporting as described in the relevant section of the Handbook;

"GDPR" means the General Data Protection Regulation (EU) 2016/679, and any amendment or replacement to it, (including any corresponding or equivalent national law or regulation which implements the GDPR);

"Group Company" means any direct or indirect subsidiary or any direct or indirect holding company or any such subsidiary of any such holding company or any such holding company of such subsidiary, "subsidiary" and "holding company" having the meanings defined in Section 1159 of the Companies Act 2006 as amended;

"Handbook" or **"Product Handbook"** means the appropriate product description document and business process document (depending upon the Service) as may be amended from time to time containing information relating to the Service. The Handbook is available on the BT Website;

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

"Intellectual Property Rights" means any patent, petty patent, copyright, design right, community design right, database right, semiconductor topography right, registered design, rights in know-how, or any similar right in any part of the world and shall include any application for the registration of any patents or registered designs or similar rights capable of registration in any part of the world;

"Interest Rate" means four per cent above the base lending rate from time to time in force at the Bank of England;

"Invoice Correction" means to correct the amount charged for a Service and/or Event and Time Related Charge previously raised in an invoice but does not include adding a new charge (i.e. a charge for any additional Service or Event and Time Related Charge) not previously invoiced. Where a correction seeks to amend a charge in respect of an End User's service then such corrections will only be valid if the correction identifies the services provided, the End User's identity, location and charges applicable;

"Invoice Dispute" means for the purposes of Clause 12 a dispute taken in good faith by the Communications Provider in relation to the accuracy of the contents of an invoice and excludes a dispute that is or could be referred to Ofcom under the Communications Act 2003;

"Legacy Platform" means eCo or manual CRF;

"Licensed Facility" means any of Netlocate, BT Locate, Co-location or Access Locate, depending upon the allowable equipment and usage detailed in the Agreements referred to above;

"Local Access" Service in relation to Broadcast Access Service starts from the End User Site and terminates in the serving BT Local Exchange;

"Local Access Outside Broadcast" The Local Access product will be an 'own exchange' service in relation to Broadcast Access Service, where the Outside Broadcast Location is located in the same exchange area as the terminating BT Local Exchange site;

"Metro Node Site" means a BT metro node site as published by BT from time to time;

"Minimum Period" means:

- (a) a period of 12 months in the case of Ethernet Backhaul Direct Service, Ethernet Access Direct Service, Openreach Network Backhaul Service, Wholesale Ethernet Service, WEES, Street Access Service, and CCTV Access Service starting from the Operational Effective Date (or Service Establishment Date in the case of Broadcast Access Service or Cablelink Service); or
- (b) a period of 12, 36 or 60 months for the Backhaul Extension Service and Optical Spectrum Service (except for the XG210 variant of the Optical Spectrum Access Filter Connect product which only has a 36 and 60 month Minimum Period) starting from the Operational Effective Date (depending upon the option chosen by the Communications Provider) and in relation to Backhaul Extension Service, where an existing circuit is moving from an existing 12 month Minimum Period to either a 36 month or 60 month Minimum Period (depending upon the option chosen by the Communications Provider) then that new Minimum Period will commence on the date that the amended Backhaul Extension Service circuit Order is accepted by BT, with no carry forward of residual Minimum Periods. Backhaul Extension Service Minimum Periods of 36 and 60 months will only be available for those qualifying circuits identified in the Openreach Price List;
- (c) a period of 60 months for the EAD 1 Gb Service (which includes local access, extended reach and resilient option 1) and EAD 10Gb Service starting from the Operational Effective Date, where the 60 month Minimum Period option has been chosen by the Communications Provider;
- (d) a period of 60 months for the TDM Access Service starting from the Operational Effective Date;
- (e) a period of 84 months for the Ethernet Access Direct 1 Gb Service (for variants detailed in the Openreach Price List), Optical Spectrum Access Filter Connect Service and Ethernet Access Direct 10Gb Service starting from the Operational Effective Date, where this 84 month Minimum Period option has been chosen by the Communications Provider.
- (f) a period of 60 months for the Street Access 1Gb and 100 Mb Service starting from the Operational Effective Date where this option has been chosen by the Communications Provider.
- (g) a period of 36 months for the Street Access 1Gb Service starting from the Operational Effective Date where this option has been chosen by the Communications Provider.

"Mobile Vehicle" means in relation to 1G Street Access Service, a mobile vehicle provided by the Communications Provider used for facilitating the transmission of the Communications Provider's feed from the End User's mobile vehicle to the BT Local Exchange according to the specification set out in the Handbook;

"MSAN" means, for the purposes of this Contract, the equipment comprised in a multi service access node;

"MSAN Site" means, for the purposes of this Contract, the Site of a BT operational building that houses an MSAN;

"Netlocate" means an arrangement for the Communications Provider to locate certain equipment in a BT exchange under BT's terms and conditions for BT Locate Solutions Netlocate Services MUA Agreement;

"NTE" means network terminating equipment;

"Ofcom" means the Office of Communications or its competent successor body or authority;

"Openreach Handover Point Site" means an Openreach handover Site (referred to in Schedule 2 in relation to Ethernet Backhaul Direct Service and Bulk Transport Link Service) at a BT operational building, the location and availability of such Sites are as published by BT from time to time at URL <http://www.openreach.co.uk/orpg/customerzone/products/ethernet-services/ethernet-services-secure/secure/site-data.do>, or such other website or URL as BT may notify the Communications Provider from time to time;

"Openreach Network Backhaul Service" means the Service detailed in Schedule 2;

"Openreach Price List" means 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> (or any other on-line address that BT may advise the Communications Provider);

"Operational Data" means personal data provided or made available by one party to the other which is operationally required for the performance of the Contract (business contact information such as names, email addresses, telephone numbers and fax numbers) relating to the Party's employees or representatives;

"Operational Effective Date" means the relevant date or dates when the Service is installed and commissioned by BT and the Communications Provider is notified in writing (which may be by e-mail or similar), and is available and ready to use;

"Optical Spectrum Access"/"OSA" means a variant of the Optical Spectrum Service;

"Optical Spectrum Access/OSA with Filter Connect" means a variant of the Optical Spectrum Access Service as detailed in the Optical Spectrum Access Service Product Description and detailed in Schedule 2;

"Optical Spectrum Extended Access"/"OSEA" means a variant of the Optical Spectrum Services;

"Optical Spectrum Extended Access/OSEA with Filter Connect" means a variant of the Optical Spectrum Extended Access Service as detailed in the Optical Spectrum Extended Access Service Product Description and detailed in Schedule 2;

"Optical Spectrum Service" means the Optical Spectrum Service detailed in Schedule 2;

"Order" means an individual circuit or connectivity order that is consistent with the allowable connectivity in Schedule 2, received from the Communications Provider in accordance with the Handbook. BT will allocate each order with a PSID (product and service identifier number);

"Outside Broadcast Event" means, in relation to Broadcast Access Service, a broadcast event at a location within the Territory for a limited duration as requested in the Order;

"Outside Broadcast Location" means, in relation to Broadcast Access Service, the location within the Territory as requested in the Order;

"Own Exchange End User Service" Service, in relation to Broadcast Access Service, starts from one End User Site and terminates in a different End User Site within the same BT Local Exchange area;

"Own Exchange Service" can be either uncompressed analogue or compressed digital CCTV Access which starts from one End User Site and terminates in a different End User Site within the same BT Local Exchange area;

"Point of Handover" means, in the case of Cablelink Service, a physical point where the Communications Provider's duct is joined to the wall of the BT jointing chamber and BT Cablelink terminates;

“Privacy Policy” means the policy that Openreach has implemented and may update from time to time on how it Processes Personal Data and that is set out at: <https://www.homeandbusiness.openreach.co.uk/privacy-policy>

“Process(ed)” means an Order which has been given an order number;

“Public Electronic Communications Network” means a “Public Electronic Communications Network” as defined in part 1 of the Schedule to the notification setting the general conditions under section 45 of the Communications Act 2003;

“Public Electronic Communications Service” means any electronic communications service that is provided so as to be available for use by members of the public;

“Remote Access” Service, in relation to Broadcast Access Service, starts from the End User Site and terminates in an adjacent BT Local Exchange;

“Remote Access Outside Broadcast” Service, in relation to Broadcast Access Service, starts from the Outside Broadcast Location and terminates in an adjacent BT Local Exchange;

“Resilience” means the provision by BT at the request of a Communications Provider of diverse paths as further set out in the applicable Handbook;

“Resilience Handbook” means the document detailing the Resilience Service provided by BT as may be amended from time to time. The Resilience Handbook is available on the BT Website;

“Scheduled Outage” means the period that the System is not available for use by the Communications Provider in order for BT to perform certain tasks including, but not limited to, routine maintenance, testing, changing configurations, software upgrades and updating facilities as detailed in sub clause 4.2. The System may be taken out of service for routine maintenance from 00:01 to 04:00 hours each Thursday;

The following definitions apply to Scheduled Outages of the System :

“EMP Major Change ” means major functional changes to the EMP platform;

“EMP Interim Change” means additional functionality normally associated with an EMP Major Change;

“EMP Weekly Maintenance Outage” means a maintenance release used to deploy fixes and non-functional changes to the EMP platform;

“Service” means the supply of:

- a) Ethernet Backhaul Direct (EBD) Service;
- b) Ethernet Access Direct (EAD) Service;
- c) Openreach Network Backhaul (ONBS) Service;
- d) Wholesale Extension Service (WES) ;
- e) Wholesale End to End Ethernet Service(WEES) ;
- f) Backhaul Extension Service (BES);
- g) Backhaul Network Service (BNS);
- h) Broadcast Access Service (BAS);
- i) Optical Spectrum Service (OSS);
- j) Street Access Service (SAS);
- k) CCTV Access Service (CCTVA);

- l) TDM Access Service; and/or
- m) Cablelink Service;

as described in Schedule 2, the SINs and the relevant parts of the Handbook.

"Service Establishment Date" means, in relation to Broadcast Access Service or Cablelink Service, the date when the Service is installed and commissioned by BT and is available for use by the Communications Provider;

"Series" means a group of Event and Time Related Charges or Services that BT notifies the Communications Provider (on or around the date the order is placed) would be grouped into a single invoice. An invoice for a series of Event and Time Related Charges or Services shall not include any charge previously invoiced or recurring charges such as rental;

"SIN" means the Suppliers' Information Notes used by BT to publish the technical descriptions of the Service;

"Site" means a place at which BT agrees to provide the Service;

"Standard End User Service" means, in relation to Broadcast Access Service, the service would comprise of two End User Sites located in two different BT Local Exchange areas connected by a main link;

"Standard Service" means either an uncompressed analogue or compressed digital CCTV access service located in two End User Sites located in two different BT Local Exchange areas connected by a main link;

"Street Access Service" means the Street Access Service or the 1G Street Access Service detailed in Schedule 2;

"Street Cabinet" means Communications Provider Sites of existing street cabinets owned and controlled by the Communications Provider (or local authority) and located in the street and which are used to host BT Equipment;

"Street Furniture" means Street Cabinet or Street Lamp Post (or other street furniture as may be agreed by BT on a case by case basis);

"Street Lamp Post" means Communications Provider Sites of existing lamp posts owned and controlled by the Communications Provider (or local authority) which are used to host BT Equipment;

"Sub-Processor" means a BT Affiliate or BT's supplier or subcontractor that BT engages to Process End User Data for the purposes of the Contract;

"System" means the EMP system;

"TDM Access Service" means the Time Division Multiplex Access Bearer Service as detailed in Schedule 2;

"Territory" means United Kingdom but not including the Hull Area;

"Third Party CP" means a person who provides a Public Electronic Communications Network but is not a signatory to this Contract;

"User Guide(s)" means the documents or user instructions available to the Communications Provider via the BT Website giving instructions on how to use the Gateway;

“Wavelength” means, in relation to the Optical Spectrum Service, the end-to-end connectivity of a specific bandwidth;

“WEES Service” means the Wholesale End to End Ethernet Service detailed in Schedule 2;

“WES Service” means the Wholesale Extension Service detailed in Schedule 2;

“Working Day” means any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom