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1 INTERPRETATION

- 1.1 The words and expressions set out in Schedule 1 shall have the meaning given to them in that Schedule.
- 1.2 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.3 The headings in this Contract are for convenience only and shall not affect its interpretation.
- 1.4 Words importing singular include plural and vice versa.
- 1.5 The terms "party" or "the parties" shall mean BT and/or the Communications Provider.
- 1.6 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) Schedules 2, 3, 4, 5 and 6
 - (c) the relevant sections of the Openreach Price List
 - (d) the Contract Form
 - (e) the Order
 - (f) the elements of the Ancillary Documents that are expressly incorporated by reference into this Contract.

2. COMMENCEMENT AND TERMINATION

- 2.1 This Contract begins on the date that the Contract Form is accepted when signed by duly authorised representatives of BT and the Communications Provider and shall continue thereafter until terminated in accordance with this Contract.
- 2.2 The Communications Provider may terminate the provisions of this Contract in relation to a Service on:
- (a) not less than one month's notice if BT materially changes the terms and conditions of this Contract or increases the charges, to the Communications Provider's detriment 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 3 months' notice for any other reason if the Service is Ethernet Backhaul Direct Service, Ethernet Access Direct Service, Openreach Network Backhaul Service, Optical Spectrum Service or Cablelink Service; or
 - (c) not less than 3 months' notice for any other reason if the Service is Wholesale Extension Service, WEES Service, Backhaul Extension Service, Broadcast Access Service, Street Access Service or CCTV Access Service.
- 2.3 The Communications Provider may terminate any Service to any individual Site on not less than 30 calendar days notice provided that such notice extends the termination date in respect of that Service to an individual Site beyond the Minimum Period. If the Communications Provider terminates an individual circuit Order with a 12 month Minimum Period within that Minimum Period then the Communications Provider

must pay the rental and other charges (including any Connection Charge) for the remainder of the Minimum Period at the rate in force at termination as provided in the Openreach Price List. Where the Communications Provider terminates an Order with a 36 month or 60 month Minimum Period within that Minimum Period the Communications Provider will pay the rental and other charges payable for the first 12 months and then a sum equal to 20% of the rental being the rental applicable on the date of termination and calculated for the remainder of the Minimum Period (including any Connection Charge) except that for an EAD 1 Gb Order (including EAD 1 Gb local access, extended reach and resilient option 1), an EAD 10Gb with a 60 month Minimum Period, an EAD 1 Gb Service Order (for the variants detailed in the Openreach Price List), an EAD 10Gb Service Order with an 84 month Minimum Period, Optical Spectrum Access Filter Connect Service with an 84 month Minimum Period, a TDM Access Service Order with a 60 month Minimum Period, a Street Access Service 1 Gb or 100 Mb Order with a 60 month Minimum Period, a Street Access Service 1 Gb Order with a 36 month Minimum Period, or Optical Spectrum Extended Access Filter Connect Lite Service with a 60 or 84 month Minimum Period then if the Communications Provider terminates a Service within that Minimum Period the Communications Provider will pay the charge as detailed in the Openreach Price List. If the Communications Provider terminates a BNS Order within a Fixed Period the Communications Provider will pay a sum equal to 20% of the rental being the rental applicable on the date of termination and calculated for the remainder of the Fixed Period (including any Connection Charge). The Communication Provider may optionally choose to move Optical Spectrum Access Filter Connect Service with a 60 month Minimum Period to the termination schedule detailed in the Openreach Price List.

2.4 BT may terminate the provisions of this Contract in relation to the Service:

- (a) on not less than one month's notice if BT does not receive an Order for the Service from the Communications Provider within 12 months, within 3 months in the case of Cablelink Service or within 3 months in the case of Backhaul Network Service, Broadcast Access Service, Street Access Service or CCTV Access Service of the commencement of this Contract ("Minimum Term");
- (b) immediately upon notice if the Communications Provider is suspended or prohibited from providing the CP Service by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003, and shall immediately reinstate the Service as soon as reasonably practicable upon receipt of notice from the Communications Provider confirming that Ofcom has lifted the suspension;
- (c) on not less than 12 months' notice, or 3 months' notice in the case of Broadcast Access Service, Street Access Service, CCTV Access Service or Cablelink Service for any other reason provided that such notice shall not expire before the end of the latest Minimum Period as at the date of notice, If BT serves a notice to terminate pursuant to this sub-clause 2.4(c) it will, if the Communications Provider requests, discuss suitable alternative services where migration charges may be kept to a minimum.
- (d) immediately, or from an Ofcom specified date, on notice if BT is directed by Ofcom to cease the Service or the provision of the Service or any part of it.

2.5 If a party is prevented, hindered or delayed in performing an obligation under this Contract, because of Force Majeure, for a period exceeding three months, either party may terminate this Contract by giving not less than one month's notice and provided the Force Majeure has not ceased prior to expiry of the notice this Contract shall terminate. Where the Force Majeure event is specific to an individual circuit then the right to terminate will apply to the individual circuit only.

- 2.6 If the Communications Provider terminates this Contract during a Minimum Period, other than because BT has materially breached this Contract or increased its charges or has materially changed the conditions of this Contract to the Communications Provider's detriment or because the Contract is terminated under Force Majeure, the Communications Provider must pay BT the rental and other charges for the remainder of any Minimum Period at the rate in force at termination or as otherwise provided in the Openreach Price List. In this situation the individual circuit termination provisions detailed in clause 2.3 apply.
- 2.7 BT agrees to repay or credit the Communications Provider for the period from which the Communications Provider's liability to pay ceases for any charges or deposits paid in advance other than for any part of the Minimum Period if termination charges are payable. This repayment will be paid on the next applicable invoice where this is practicable, or a separate credit note within a reasonable period where the Contract is terminated.
- 2.8 If the Licensed Facility is terminated, the provision of the Service to the Site under this Contract shall automatically be terminated on the same date as termination of the Licensed Facility. If termination under this clause occurs during a Minimum Period, the Communications Provider must pay BT the rental and other charges for the remainder of any Minimum Period at the rate in force at termination or as otherwise provided in the Openreach Price List, except the Communications Provider will not be liable to pay BT the rental for the remainder of any Minimum Period if termination results from:
- (a) termination by BT of the licence at the Site under the relevant Licensed Facility Agreement;
 - (b) termination by the Communications Provider of the relevant Licensed Facility Agreement due to a material breach by BT of that agreement;
 - (c) termination under the force majeure provisions of the relevant Licensed Facility Agreement.
- 2.9 If a valid breach notice is served on the Communications Provider and the Communications Provider has not remedied the breach after the expiry of the period specified for remedy in the breach notice then BT may immediately upon giving notice in writing 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, maintenance of existing services, or for the monitoring of existing Orders and suspend such other services or facilities available to the Communications Provider as shall be reasonable in the circumstances. The Communications Provider agrees to pay the charges for the Service until this Contract is terminated.
- 2.10 If BT is directed to cease the provision of the Service or any part of it, or if the Communications Provider is suspended or prohibited from providing the CP Service by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003, BT may at its sole discretion refuse to accept any Orders or that part of it that it is directed to cease immediately for the Service immediately on notice to the Communications Provider. BT shall re-instate the Service as soon as practicable on receipt of notice from the Communications Provider if Ofcom ceases such suspension.
- 2.11 Either party may terminate this Contract or the Service (where the breach relates to that Service) provided under it immediately, on notice in writing, if the other:
- (a) commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within the following periods from the date of the notice from the other party:
 - (i) save in respect of monies the Communications Provider is entitled to withhold under clause 13.9, 14 calendar days, where there is a failure to pay a sum due under this Contract or at

the sole discretion of the party to whom the sum is owed 14 days in the first instance of a failure to pay a sum due and 7 days in the second instance in separate payment months within 12 months of the first instance providing notices are served on each occasion; or

- (ii) 30 calendar days; or
- (b) commits a material breach of this Contract which cannot be remedied; or
- (c) is repeatedly in material breach of this Contract (including without limitation repeatedly late in paying sums due under this Contract); or
- (d) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of such other party; or
- (e) ceases to carry on business.

A breach which relates to one individual Order only will not be considered as material for the purposes of this clause 2.11 (a) to (c) except where it relates to a failure to pay a sum under this Contract.

- 2.12 Termination or expiry of this Contract shall not be deemed a waiver of a breach of any term or condition of this Contract and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry
- 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 the Service under this Contract is delivered to an End User Site and BT terminates this Contract on the grounds of insolvency specified above, BT may communicate directly with End Users to inform them of the termination of the Service and how this will affect the communications services they receive from the Communications Provider and/or BT including the options available to End Users in order to avoid disconnection or interruption to End Users' existing communications services. Such communication will not favour BT's own products and services. This sub-clause will survive termination of the Contract.
- 2.15 BT may suspend the provision of the Service as shall be reasonable under the circumstances on notice in the case of Emergency. BT will provide as much notice as is reasonably practicable and will restore the Service as soon as possible after the Emergency has ceased.

3. PROVISION OF THE SERVICE

3.1 BT agrees to:

- (a) provide the Communications Provider with the Service on the terms of this Contract;

- (b) exercise the reasonable skill and care of a competent communications provider in providing the Service and if required, in determining how best to provide the Service to a Site;
 - (c) grant the Communications Provider a non-exclusive right to use the Service for the sole purpose of enabling the Communications Provider to provide the CP Service;
 - (d) use reasonable endeavours to provide the Service by the Contractual Delivery Date or Customer Committed Date in accordance with the service levels set out in Schedule 4 but all dates are estimates and except as set out in the service guarantee provisions of Schedule 4B,C or D BT has no liability for failure to meet any date provided that BT has complied with its obligations to use reasonable endeavours to meet the aforementioned dates;
 - (e) notify the Communications Provider of any CP Requirement Date (via CDD or CCD correspondence) and any Operational Effective Date.
- 3.2 It is technically impracticable to provide a fault free Service and BT does not undertake to do so. BT agrees to repair any faults in accordance with Schedules 2 and 4.
- 3.3 BT will provide the Service only in the Territory.

4 SERVICE MANAGEMENT

- 4.1 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, without limitation, Service upgrades upon giving not less than 28 calendar days notice from the date of the BT briefing, and communicated where practicable at the monthly Connectivity Services commercial and product 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 Communications Provider instructions which it reasonably believes are necessary for reasons of health, safety or the quality of the Service and it is the Communications Provider's responsibility to ensure these are adhered to; or
 - (c) interrupt the Service for operational reasons (such as planned maintenance or Service upgrades) or because of an Emergency. BT agrees to restore the interrupted Service as quickly as possible. BT will give the Communications Provider as much notice as possible and shall give the Communications Provider at least 15 calendar days' notice of any interruption to the Service for planned maintenance and upgrade work. Where practicable, BT will agree with the Communications Provider when the Service will be interrupted. If there has been an interruption to the Service for Emergency reasons, BT will inform the Communications Provider that there has been an interruption as soon as reasonably practicable.
- but BT agrees to use reasonable endeavours to provide an uninterrupted Service to the Communications Provider.
- 4.2 BT shall give the Communications Provider the following notice periods relating to Scheduled Outages in the System :

Type of Service	Notice Period
EMP - Major Changes	At least 150 calendar days prior to the outage date
EMP – Interim Changes	At least 20 Working Days prior to the outage date
EMP – 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.

If the Weekly Maintenance Outage period will be extended BT shall give the Communications Provider 5 Working Days notice.

Any notice given under this clause 4.2 shall provide as much information as reasonably possible.

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

- 4.3 If the Communications Provider reports a fault in the Service, BT agrees to respond in line with the service levels in Schedule 4.
- 4.4 The Communications Provider agrees to provide a Forecast to BT as detailed in Schedule 3.
- 4.5 The Communications Provider and BT agree to complete a Customer Service Plan if one does not already exist and both parties agree to use their reasonable endeavours to keep the Customer Service Plan up to date.

5 BT EQUIPMENT

- 5.1 BT Equipment remains the property of BT at all times.
- 5.2 The Communications Provider agrees to:
- (a) prepare the Site and provide a suitable place, conditions, connection points and electricity for BT Equipment at the Site in accordance with BT's reasonable instructions, if any; and
 - (b) obtain all necessary consents, including for example, consents for any necessary alterations to buildings, permission to cross other people's land or permission to put BT Equipment on their property and at the Site. This includes, if applicable, the Communications Provider being responsible for obtaining all consents and permissions required from local authorities (or any other third party) which may be necessary for the provision by BT of BT Equipment at a Street Furniture Site.
- 5.3 The Communications Provider is responsible for BT Equipment and agrees to take reasonable steps to ensure that nobody (other than someone authorised by BT) adds to, modifies or in any way interferes with it. The Communications Provider will be liable to BT for any loss of or damage to BT Equipment, except where such loss or damage is due to fair wear and tear or is caused by BT, or anyone acting on BT's

behalf. The Communication Provider's liability under this sub-clause 5.3 is limited to the replacement value of the BT Equipment together with any associated reasonable costs of replacement.

6. CONNECTION OF EQUIPMENT TO THE SERVICE

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

(a) connected and used in line with any relevant instructions provided by the manufacturer or the CP; 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 2 set under section 45 of the Communications Act 2003; and

(c) technically compatible with the Service and connected and used in line with any relevant standards including any standards set out in the relevant SIN; and in order of precedence set out below :

(i) any legal requirements imposed upon the parties including requirements arising from General Condition 2 set under section 45 of the Communications Act 2003;

(ii) any relevant specification notified by Ofcom in implementation of the recommendations of the Network Interoperability Consultative Committee;

(iii) any relevant recommendations or standards by the European Telecommunications Standards Institute; and

(iv) any relevant recommendations by the Telecommunications Standards Bureau (formerly the International Telegraph and Telephone Consultative Committee) of the International Telecommunication Union.

6.2 The Communications Provider agrees to connect equipment to the Service only by using the NTE (where applicable) provided by BT with the Service.

6.3 If upon becoming aware that the equipment does not meet the relevant instructions, standards or laws, the Communications Provider must immediately disconnect it or BT will do so, at the Communications Provider's expense. If the Communications Provider asks BT to test the equipment to make sure that it meets the relevant instructions, standards or laws, the Communications Provider agrees to pay BT any time related charges set out in the Openreach Price List.

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

7. ACCESS AND SITE REGULATIONS

- 7.1 The Communications Provider agrees to take reasonable steps to provide access to the Communications Provider's Site and, where Service is to be delivered to an End User Site, to ensure that the End User provides BT with access to the End User Site including for the purpose of installation and use of the BT Equipment at the Communications Provider's Site and at the End User Site.
- 7.2 BT agrees to comply with (and shall procure that its employees, agents, subcontractors and officers shall comply) the Communications Provider's and if Service is delivered to an End User Site, the End User's reasonable Site safety and security requirements made known and brought to the attention of the BT personnel at the Site.
- 7.3 The Communications Provider agrees to provide a suitable and safe working environment for BT at the Communications Provider's Site and, if Service is delivered to an End User Site, will take reasonable steps to procure that the End User provides a suitable and safe working environment for BT at the End User's Site.
- 7.4 BT shall not tamper or interfere with any CP Equipment save to the extent it is necessary to provide, repair or maintain the Service. BT shall have no liability to the Communications Provider in respect of decorator's work or any making good whatsoever, except to the extent that property damage is caused by BT's negligence.

8. USE OF THE SERVICE

- 8.1 The Communications Provider must take reasonable steps to procure that the CP Service is not used:
- (a) unlawfully or fraudulently or in breach of any legislation; or
 - (b) to send, knowingly receive, upload, download, use or re-use material which is grossly offensive, indecent, defamatory, obscene or menacing; or
 - (c) contrary to any reasonable instructions given by BT pursuant to clause 4.1(b) in relation to health and safety.

If BT notifies the Communications Provider or if the Communications Provider is aware that the End User has used the Service for any of the purposes listed in (a) to (c) of this sub-clause 8.1 then the Communications Provider will co-operate with BT and take reasonable steps to address the breach within a time limit which is reasonable under the circumstances including, at BT's request, asking the End User to cease using the service in breach of this sub-clause 8.1 and notifying the End User that the Service will be disconnected if the End User continues to use the Service for any of the purposes listed in (a) to (c) of this sub-clause 8.1. If the End User continues to use the CP service in breach, the Communications Provider will disconnect the End User's service and if the Communications Provider does not disconnect the End User's service then it will be disconnected by BT. The Communications Provider agrees to indemnify BT against all loss, damages, reasonable costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against BT by a third party if there is a breach of this sub-clause 8.1. The Communications Provider's liability under this indemnity is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in the 12 calendar months immediately preceding either the relevant event (single or unconnected) or in the case of a series of connected events, the first event. BT shall have a duty to mitigate its loss in the circumstances covered by this indemnity

- 8.2 If a Communications Provider uses the Service in breach of sub-clause 8.1 or supplies the CP Service to an End User (or reseller) who is in breach of sub-clause 8.1, BT may on notice where reasonably practicable suspend the Service, to the extent necessary to bring the breach to an end, without prejudice to BT's rights of termination under this Contract. Provided that where reasonably practicable, BT shall warn the Communications Provider that it is in breach of sub-clause 8.1 and that BT may suspend the Service. If the Service is suspended in accordance with this sub-clause 8.2 the Service, or relevant part thereof, will be reinstated on provision of evidence by the Communications Provider that the breach has been remedied. Evidence that a breach has been remedied may include :
- (a) if the breach is by an End User (or reseller), that the Communications Provider has taken such actions as are necessary to notify the End User (or reseller) of the breach and received assurances from the End User (or reseller) that the breach had been brought to an end; or
 - (b) if the breach is by the Communications Provider, that the Communications Provider has taken such actions as are necessary to bring the breach to an end.
- 8.3 The Communications Provider agrees to include and maintain in its contracts with all resellers of the CP Service, conditions equivalent to those contained in sub-clause 8.1 above, and undertakes to enforce such conditions, including if appropriate suspending or terminating the provision of the services under such reseller agreement.

9 INTELLECTUAL PROPERTY RIGHTS AND BT CORPORATE MARKS

- 9.1 The Communications Provider acknowledges that all Intellectual Property Rights in or relating to the Service vest in or are licensed to BT and nothing in this Contract is to be construed as and it shall not have the effect of assigning or otherwise giving the Communications Provider any rights in BT's Intellectual Property Rights except as provided in this clause 9.
- 9.2 The Communications Provider only has the right to use the Service and 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 to provide the CP Service and for its own internal use in connection with its obligations under this Contract.
- 9.3 All rights in any developments, improvements or variations to BT's Intellectual Property Rights will vest in BT.
- 9.4 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.
- 9.5 Except where BT has provided its prior written consent, the Communications Providers shall not use any photographs or representations of any BT building including in any promotional literature.
- 9.6 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

- 9.7 If authorised to use the letters "BT", the Communications Provider 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.
- 9.8 The Communications Provider agrees to include and maintain in its contracts with any resellers of the CP Service, conditions equivalent to those contained in sub-clauses 9.4 , 9.5 and 9.6 above, and undertakes to diligently and properly enforce such conditions including if appropriate by suspending or terminating the provision of the services under such reseller agreement.
- 9.9 This clause 9 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 third party's registered trade mark or common law rights.
- 9.10 BT agrees to indemnify the Communications Provider against all claims and proceedings arising from infringement of any third party Intellectual Property Rights by reason of BT's provision of the Service to the Communications Provider.
- 9.11 The indemnity in sub-clause 9.10 above does not apply to actions claims or legal proceedings to the extent that they are:
- (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
 - (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 Communications Provider, other than where such designs or specifications are made as part of the Service on behalf of the Communications Provider by BT; or
 - (d) which arise as a result of the use of the Service otherwise than in accordance with the terms of this Contract.
- 9.12 The limitations and exclusions of liability contained in clause 14 do not apply to sub-clauses 9.10 and 9.11 above, except for sub-clause 14.1.

10. DATA PROTECTION

- 10.1. In this Contract, 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".
- 10.2 Save where otherwise prohibited under this Contract BT may Process Personal Data for the purposes of providing the Service, by:
- 10.2.1 using, managing, accessing, transferring or holding Personal Data on a variety of systems, networks and facilities (including databases); and / or

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- 10.2.2 transferring Personal Data worldwide to the extent necessary to allow BT to fulfil its obligations under this Contract, and the Communications Provider appoints BT to perform each transfer in order to provide the Services provided that BT shall not transfer Personal Data unless it has implemented appropriate transfer mechanisms permitted by Data Protection Legislation, including:
- (a) BT Group's Binding Corporate Rules (for transfers among BT's Affiliates);
 - (b) agreements incorporating the relevant standard data protection clauses adopted by the European Commission; and
 - (c) where applicable, the EU-US Privacy Shield or any equivalent safeguard mechanism that replaces it.
- 10.3. Where each party acts as a Controller in relation to the Processing of Personal Data under the Contract, the Parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.
- 10.4. The Parties acknowledge that, in respect of all End User Data provided by the Communications Provider, the Communications Provider is the data controller and BT is the data processor.
- 10.5. Without limiting clause 10.4, 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.
- 10.6. BT shall Process Personal Data in accordance with applicable Data Protection Legislation and as set out in the BT Privacy Policy and, where applicable, BT Group's Binding Corporate Rules.
- 10.7. Where BT acts as a Processor:
- 10.7.1 the subject-matter, duration, nature and purpose of the Processing, the type of End User Data and categories of Data Subjects will be set out in Schedule 6;
- 10.7.2 In performing its obligations under the Contract, BT shall:
- (a) Process the End User Data on behalf of the Communications Provider in accordance with the Communications Provider's documented instructions as set out in this clause 10, except where:
 - (b) Applicable Law requires BT to Process the End User Data otherwise, in which case, BT shall notify the Communications Provider of that requirement as soon as reasonably practicable before Processing unless to do so would be contrary to that Applicable Law on important grounds of public interest; and / or
 - (iii) in BT's reasonable opinion an additional instruction or a change to the instructions provided by the Communications Provider infringes the Data Protection Legislation and in which case BT shall inform the Communications Provider of its opinion without undue delay and, if agreed between the Parties, BT will not be required to comply with that instruction;
 - b) to protect the End User Data against a Personal Data Breach implement technical and organisational security measures as required by Article 32 of the GDPR.
 - c) provide Notice to the Communications Provider without undue delay (and, in any event, no later than 24 hours) of becoming aware of a Personal Data Breach affecting the End User Data;

- d) only use the Sub-Processors approved by the Communications Provider or in accordance with Clause 10.7.10; and
- e) In relation to any Data Security Incident, BT shall:
 - (i) take all reasonable steps to identify and correct the underlying cause of the Personal Data Breach so as to eliminate or minimise the risk of its repetition and the occurrence of similar Personal Data Breach;
 - (ii) take such steps as the Communications Provider may reasonably request and BT may reasonably be able to take to assist the Communications Provider in addressing the adverse consequences for the Communications Provider and its affiliates of, and complying with the Communications Provider and its affiliates' obligations under Data Protection Legislation in relation to, the Personal Data Breach; and
 - (iii) report to the Communications Provider affected by the Personal Data Breach, and/or at its direction to it and another person, promptly and at regular intervals, on the steps taken to identify and correct a Personal Data Breach and their results; and
- (d) assist the Communications Provider in its compliance with the Data Protection Legislation, taking into account the nature of the Processing of the End User Data and the information available to BT, relating to:
 - (i) the Communications Provider's obligation to respond to lawful requests from a Data Subject for access to, or 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 Communications Provider's obligation to respond to requests from a Data Subject to exercise his or her right under the Data Protection Legislation) but BT shall not respond to any such request except with the Communications Provider's prior written consent.
 - (ii) the security of the Processing of the End User Data;
 - (iii) notification of a Personal Data Breach affecting the End User Data to the Supervisory Authority or the Data Subjects; and
 - (iv) a data protection impact assessment as may be required by Article 35 of the GDPR and prior consultation with the Supervisory Authority;

10.7.3 unless Applicable Law requires BT to store a copy of the End User Data, upon expiry or termination of the Contract and at the Communications Provider's option, BT shall delete or return the End User Data within a reasonable time period.;

10.7.4 BT shall make available to the Communications Provider the information demonstrating BT's compliance with its obligations set out in Clauses 10.2.2, 10.6 and 10.7.

10.7.5 The Communications Provider may, subject to 30 days' Notice (or if an audit needs to be conducted on an Emergency basis, then as much prior Notice as is reasonably practicable), audit BT's compliance with clauses 10.2.2, 10.6 and 10.7. BT shall allow for and reasonably cooperate with the Communications Provider (or a third party auditor appointed by the Communications Provider) to audit BT's compliance, so long as:

- (a) the Communications Provider
 - (i) uses its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt BT's business;
 - (ii) conducts the audit during business hours, unless the audit needs to be conducted on an Emergency basis and the Communications Provider has given Notice to BT that an Emergency audit is required;
 - (ii) uses its reasonable endeavours to ensure that the conduct of each audit does not cause BT to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and
 - (iii) BT shall provide the Communications Provider with the necessary instructions and copies of BT's security policies which apply to the Communications Provider (or its third party auditor) undertaking the audit and the Communications Provider or its third party auditors shall comply with BT's security policies and appropriate confidentiality obligations provided to the Communications Provider by BT.
- 10.7.6 Without prejudice to the Communications Provider's rights of audit under clause 10.7.5 and BT's obligation to rectify issues identified by any such audit adherence by BT to an approved code of conduct or an approved certification mechanism may be used by BT as an element by which to demonstrate compliance with its obligations set out in Clause 10.2.2, 10.6 and 10.7;
- 10.7.7 the Communications Provider may conduct an audit of BT's compliance with its obligations set out in clause 10 only once per Contract Year, except for any additional audits which:
- (a) the Communications Provider reasonably considers necessary because of genuine and evidentially supported concerns as to BT's compliance with Clauses 10.2.2, 10.6 and 10.7 that cannot be resolved without an audit; or
 - (b) the Communications Provider is required to conduct an audit by Applicable Law or a competent data privacy or other regulatory authority.
- 10.7.8 without limiting BT's other obligations under this clause 10, BT shall not disclose End User Data to a third party unless required for the performance of the Service, permitted under the Contract or otherwise required by Applicable Law. If required by Applicable Law BT shall provide as much prior Notice as reasonably practicable; and
- 10.7.9 BT shall ensure that persons authorised by, or on behalf of, BT to Process the End User Data will be bound by a duty of confidentiality.
- 10.7.10 BT shall notify the Communications Provider of proposed changes to its Sub-Processors from time to time, either by providing the Communications Provider with online access to intended changes at <https://www.openreach.co.uk/orpg/customerzone/products/dataprotection/dataprivacy.do>, or by such other means as BT may determine and agreed with the Communications Provider provided that:
- (a) The Communications Provider shall have 90 days from the date of this Notice to object to the use of the new Sub-Processor. BT may use the Sub-Processor during the notification period.

- b) if the Communications Provider does not give Notice of an objection to the proposed Sub-Processors or changes to those Sub-Processors change within 90 days of the date of this Notice, the Communications Provider will be deemed to have authorised the use of those Sub-Processors or changes;
- (c) if the Communications Provider does object to the use of a new Sub-Processor, the Communications Provider shall give Notice in accordance with clause 21 documenting reasonable concerns why the Sub-Processor will not be able to comply with the Data Protection Legislation; and
- (d) if such Notice is received within the 90 days set out in clause 10.7.10(a), the parties will address the Communications Provider's objection in accordance with the dispute resolution set out in clause 17 and BT may use the relevant Sub-Processor to provide the Service until the objection is resolved in accordance with clause 17;

- 10.7.11 BT may use Sub-Processors in accordance with Clause 10.7.2(d) and will remain responsible to the Communications Provider for the compliance by any Sub-Processor with the terms of this clause 10.7 and the Data Protection Legislation (including by ensuring that data protection obligations in respect of Processing End User Data equivalent to those set out in clause 10.7 of the Contract will be imposed on any Sub-Processors);
- 10.7.12 This Contract contains the Communications Provider's complete instructions to BT for the Processing of End User Data. If the Communications Provider requires any additional instructions or changes to the instructions the Communications Provider will raise a Statement of Requirement following the process set out in the Statement of Requirements process for Openreach products document. If the additional instructions or changes to the instructions are accepted by BT the additional instructions, or change(s) will be incorporated into this Contract in accordance with clause 18 to take account of any resulting change to the Contract, the resulting changes to the Contract not being unreasonably withheld by BT.
- 10.7.13 the Communications Provider and BT shall comply with applicable Data Protection Legislation; and
- 10.7.14 the Communications Provider shall not disclose to BT any Personal Data other than the Personal Data required by BT to perform the Service.
- 10.8. To the extent permitted by Applicable Law and subject to clause 14,
- 10.8.1. a party in breach of the Data Protection Legislation or this clause 10 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
- 10.8.2. where the Parties are jointly and severally liable for a Claim caused by Processing neither party will make any payment or any offer of payment to any Data Subject (including third parties acting on behalf of any Data Subject) in response to any complaint or claim for compensation caused by or relating to the Processing of Personal Data, without the prior written agreement of the other party, such agreement not being unreasonably withheld.

11 CONFIDENTIALITY

11.1 The parties agree to keep in confidence any information (whether written or oral) of a confidential nature obtained under or in connection with this Contract or the Service. The parties agree not, without the written consent of the other party, to 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; and
- (c) in the case of the Communications Provider, the employees of a Communications Provider Group Company or its or their sub-contractors or End Users or resellers.

Any disclosure in (a) to (c) above can only be made in order for the party to fulfil its obligations under this Contract or in relation to this Contract.

11.2 The parties agree not to, without the written consent of the other party, use information of a confidential nature referred to in sub-clause 11.1 above, for the commercial advantage of their retail businesses.

11.3 Sub-clause 11.1 will not apply to:

- (a) any information which is in the public domain other than through a breach of this Contract;
- (b) information lawfully in the possession of the recipient before the disclosure under this Contract took place;
- (c) information obtained from a third party who is free to disclose it; and
- (d) information which a party is required by law to disclose or by any order authority or court of competent jurisdiction provided that prior to such disclosure the party required to disclose the information shall consult with the other as to the proposed form, nature and purpose of the disclosure.

11.4 This clause 11 will remain in effect for 5 years after the termination of this Contract.

12. MARKETING AND MISREPRESENTATION

12.1 The parties undertake (in the case of the Communications Provider, the Communications Provider undertakes for itself and any reseller of the CP Service) that in relation to their dealings with Third Party CPs, End Users and/or potential End Users they will not:

- (a) represent themselves as each other; or
- (b) misrepresent their relationship with each other; or
- (c) misrepresent the nature and/or effect of their contracts with Third Party CPs or End Users; or
- (d) assert that they have any authority to provide or promote any products or services on behalf of each other.

12.2 The Communications Provider also agrees not to represent that:

- (a) the CP Service is a service provided by BT, except where authorisation has been obtained in accordance with clause 9.7; or

(b) the Third Party CP or End User has access to a dedicated BT customer service.

12.3 The Communications Provider agrees to use reasonable endeavours to include and maintain in its contracts with any reseller of the CP Service, conditions equivalent to those contained in sub-clauses 12.1 and 12.2 above, and to enforce such conditions including if appropriate by suspending or terminating the provision of the services under such reseller agreement.

13. CHARGES

Payment and Billing

13.1 The Communications Provider agrees to pay all charges for the Service as shown in the Openreach Price List (or as otherwise agreed in writing) and calculated using the details recorded by BT.

13.2 The Communications Provider agrees to pay the charges within 30 calendar days of the date of BT's invoice.

13.3 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the Communications Provider. BT will provide a valid tax invoice in accordance with the applicable invoicing requirements. Charges that are compensatory are not subject to VAT.

13.4 Rental for the Service will be chargeable from, and shall accrue from, the Operational Effective Date, and shall be payable in accordance with BT's invoice and sub-clause 13.2 above.

13.5 The Connection Charge will be chargeable from, and be accrue from, the Operational Effective Date and shall be payable in accordance with BT's invoice and sub-clause 13.2,above, which will be the first invoice raised following the Operational Effective Date.

13.6 The Communications Provider agrees to pay rental 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 rental, BT will apportion rental on a daily basis for the incomplete period. Rental will be payable in quarterly or monthly (depending upon the option chosen by the Communications Provider) instalments in advance but BT may on occasion bill the Communications Provider in arrears. In the case of Openreach Network Backhaul Service, Backhaul Network Service and Cablelink Service, rental will be payable in quarterly instalments in advance only and in the case of Broadcast Access Services and CCTV Access Service, rental will automatically be payable in quarterly instalments in advance unless the Communications Provider requests payment in monthly instalments.

13.7 BT:

(a) may charge daily interest on late payments not the subject of an Invoice Dispute or 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 Communications Provider shall only be obliged to make payment, if the charge is raised within the periods specified above.

13.8 If the Communications Provider disputes any invoice, it will notify BT in writing within twelve (12) months of the date of the invoice giving its reasons. Notification of an Invoice Dispute under this Clause 13.8 is without prejudice to either party's right to refer the subject matter of that Invoice Dispute to Ofcom.

The amount in dispute may be withheld by the Communications Provider until the Invoice Dispute is resolved and the balance shall be due and payable on the due date. The Communications Provider is not entitled to withhold payment of any amount not in Invoice Dispute. The Communications Provider is not entitled to withhold any payments to BT on the grounds that the Communications Provider has a dispute with the End User(s) or reseller(s).

Payment of the invoice in whole, or in part, by the Communications Provider does not affect the right of the Communications Provider to dispute all or some of the charges of an invoice at a later date in accordance with this sub-clause 13.8.

13.9 BT may make an Invoice Correction to an invoice sent to the Communications Provider providing it notifies the Communications Provider within twelve (12) months of the date of the invoice giving its reasons.

13.10 Subject to sub-clause 13.14, if a refund, payment or credit is due to the Communications Provider by BT (unless that overpayment results from information provided by the Communications Provider which is not attributable to information provided by BT), the Communications Provider may charge daily interest on late repayment at the Interest Rate for the period beginning on the date on which the parties acting reasonably agree BT 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 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

13.11 During the term of this Contract, the Communications Provider 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 Communications Provider's financial position which results in a reduction in the Communications Provider's issued credit rating or (in the absence of such a credit rating) a financial score provided by an accredited ratings agency; and
- (b) there has been a recent or subsequent non-payment or partial non-payment (by five days or more) of an invoice (where the non-payment or partial non-payment is not the subject of a bona fide dispute) for the Services under this Contract.

- 13.12 BT may acting reasonably and subject to the requirements of sub-clause 13.13 below, require that the Communications Provider provides a deposit or guarantee or payment for the Service in advance. If the Communications Provider 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.
- 13.13 Any deposit or guarantee or payment for the Service in advance required to be provided by the Communications Provider under sub-clause 13.12 above, shall be no greater than the reasonably estimated value of charges under this Contract for three months and the amount or requirement for the deposit or guarantee or payment for the Service in advance shall be reviewed by the parties at regular intervals (and at least annually).
- 13.14 Where the Communications Provider provides a deposit it will be held until 12 consecutive months of payments have been paid on or by the due date after which the Communications Provider 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.
- 13.15 BT shall advise of any proposed update to the BT Credit Vetting Policy by issuing an industry briefing at least 28 calendar days prior to such update taking effect. Where the Communications Provider has nominated a finance contact, BT shall also issue the update via email to the nominated finance contact.
- 13.16 This clause 13 shall continue in force after the termination or expiry of this Contract.

14. LIMITATION OF LIABILITY

- 14.1 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.
- 14.2 Except as set out in clause 14.1 and subject to express terms and conditions of this Contract 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 time (whether direct or indirect);
 - (b) wasted expenditure (whether direct or indirect);
 - (c) loss of anticipated savings (whether direct or indirect);
 - (d) loss of opportunity (whether direct or indirect);
 - (e) loss and/or corruption of data (whether direct or indirect);

- (f) loss of revenue (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).
- 14.3 Notwithstanding clause 14.2 and subject to clause 14.4 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.
- 14.4 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 Contract 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 14.5) for all events of liability connected or unconnected in each Contract Year is limited to the liability cap. In each Contract Year, other than the first Contract Year, the liability cap will be £25 million in total or an amount equal to the Annual Revenue, whichever is the lesser but not less than £250 000 and in the first Contract Year the liability cap will be £25 million in total.
- 14.5 If a party is liable to the other party in relation to any claim by the other party for damage to, loss or destruction of real property or tangible property, the first party's liability shall be limited to £1 million for all such claims connected or unconnected in any Contract Year.
- 14.6 If the Communications Provider is entitled to an allowance or payment under Schedule 4 the parties agree that, subject to sub-clause 14.1 and Schedule 4C, BT's liability in relation to each entitlement to an allowance or payment shall be limited to the compensation for that particular entitlement and that an allowance or payment is made in full and final settlement in relation to all matters relating to such entitlement.
- 14.7 Any amounts paid out by BT pursuant to Schedule 4C are subject to a maximum sum per calendar year and apply to the following Services only:
- 14.7.1 the sum of £10 million for Ethernet Backhaul Direct, Bulk and Ethernet Access Direct;
 - 14.7.2 the sum of £10 million for Backhaul Extension Services;
 - 14.7.3 the sum of £10 million for Wholesale Extension Services and Wholesale End to End Ethernet Services.
- 14.8 Subject to the exclusions in clause 14.2, each Party's liability to the other in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss or damage in connection with a breach of Clause 10 and/or a claim under Clauses 14.10 or 14.11 below (a "Relevant Event") for all Relevant Events connected or unconnected in each Contract Year is limited, in the aggregate in each Contract Year, to £70 million – being an amount equal to the total of the cap set out in clause 14.4 and £45 million.
- 14.9 Notwithstanding clause 14.8, a Party's liability under or in connection with this Agreement for a Fine shall not exceed £45 million in each Contract Year.

14.10 Subject to Clause 14.9 above and Clause 14.11 below, if either Party (the "Fined Party") incurs a fine or other monetary penalties or compensatory awards issued by a court or regulatory body (a "Competent Authority") as a result (in whole or in part) of the other Party's ("Breaching Party") act or omission in connection with its obligations under Data Protection Legislation ("Fine"), and the Competent Authority elects not to issue that Fine to the Breaching Party directly then subject to: (i) the exclusions in clause 14.2; and (ii) the liability caps set out in clauses 14.8 and 14.9 above, the Breaching Party shall, to the extent that its act or omission can be evidenced to be the cause of the Fine, indemnify the Fined Party for that proportion of the Fine that the Breaching Party would have been responsible for if the Competent Authority had issued a Fine to the Breaching Party in respect of its act or omission directly and for any incidental costs necessarily incurred by the Fined Party directly relating to the same.

14.11 The Fined Party may claim the benefits of the indemnity in Clause 14.10 only if, where requested to do so by the Breaching Party promptly following notification by the Fined Party of the Fine:

- (a) the Fined Party has used reasonable endeavours to ensure that the Breaching Party has been given the opportunity to make representations to the Competent Authority either directly or through the Fined Party (or its third party) concerning the circumstances of any breach; and
- (b) the Fined Party initiates (either itself or through a third party) judicial review of the Fine and, where possible, gives the Breaching Party either sole conduct of the proceedings or, if the Fined Party wishes to be involved in the judicial review or also wishes to challenge the determination, joint control,

provided that :

- (i) the Breaching Party: shall indemnify the Fined Party for any costs reasonably and properly incurred by the Fined Party in acting pursuant to this Clause 14.11; and
- (ii) the obligation in clause 14.11(b) shall not apply unless the Breaching Party produces evidence to the Fined Party's reasonable satisfaction that judicial review of the Fine would not be considered vexatious.

14.12 Notwithstanding clauses 14.8, 14.9, 14.10 and 14.11, to the extent that there is a loss or corruption of Personal Data arising out of or in connection with a breach of clause 10, the exclusion in clause 14.2(e) shall not apply.

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

14.14 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.

14.15 This clause 14 shall continue in force after the termination or expiry of this Contract.

15. FORCE MAJEURE

15.1 To the extent a party is delayed in meeting or fails to perform an obligation under this Contract directly caused by Force Majeure, the party affected shall have no liability to the other for such delay or failure to

perform provided that:

15.1.1 the affected party shall continue performing those obligations under this Contract 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.

15.1.2 the affected party shall promptly notify the other party of the Force Majeure, 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.

15.2 If the affected party is prevented from or delayed in performing its obligations under this Contract 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. -

15.3 Upon cessation of the effects of Force Majeure any party relying on it must forthwith give notice to the other party of such cessation.

15.4 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.

15.5 Any party affected by Force Majeure shall use reasonable endeavours to mitigate as soon as practicable those consequences of that Force Majeure event which have affected its obligations under the Contract. The affected party shall provide an estimated time of clearance for any Force Majeure event. If those times are missed information shall be provided detailing the reasons. The affected party shall at regular intervals which are proportionate to the forecast period of the Force Majeure event, (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.

15.6 At the time of notification by BT of Force Majeure, the Communications Provider immediately have the right to challenge BT's notice of Force Majeure. Where a Communications Provider challenges a Force Majeure notice at the time of notification, BT must provide the Communications Provider with all the evidence BT has relied on to support the notice. If, following this, the Communications Provider still disputes the Force Majeure notice the Communications Provider shall be entitled to escalate the disputed Force Majeure notice in accordance with the process set out at clause 17. The procedures to be followed in relation to such notifications and challenges shall be consistent with any industry-agreed processes that have been established.

15.7 If BT seeks to rely on Force Majeure in relation to failure to meet any Service Level Agreement or to avoid payment of any Service Level Guarantees the Communications Provider may dispute that notice. If disputed, the notice will be subject to independent verification in accordance with an escalation process set out at clause 17 or any industry-agreed process for escalation. The parties agree that the outcome of that independent verification shall determine whether clause 15.1 applies in relation to 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).

16. CONDUCT OF INDEMNIFIED EVENTS

16.1 The indemnified party must notify the indemnifying party of any related claims or legal proceedings and use reasonable endeavours to do so within 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.

16.2 The indemnifying party may assume conduct of the claim providing it notifies the indemnified party of such intention within 5 days of receipt of the notification in 16.1. 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.

16.3 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 prior written 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 prior written consent of the other party, which shall not be unreasonably withheld.

17. ESCALATION AND DISPUTE RESOLUTION

17.1 Each party shall use 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.

17.2 If the dispute is not resolved within 30 calendar days of the matter being raised and it relates to the accuracy of an invoice delivered under this Contract 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.

17.3 For any dispute not covered by sub-clause 17.2, if the dispute is not resolved within 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 sub-clause 17.4; or
- (b) referral of the dispute for early neutral evaluation; or
- (c) pursuing any other dispute resolution option which the parties agree is appropriate.

17.4 If the dispute is referred to a mediator:

- (a) the mediator will be appointed by agreement of the parties. If the parties fail to agree within 3 calendar days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR);
 - (b) all negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings; and
 - (c) if the parties reach agreement on the resolution of the dispute, the agreement will be put in writing and once signed by the parties will be binding on them. Any such agreement will constitute confidential information for the purposes of the confidentiality provisions in this Contract.
- 17.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within 2 months of the mediator being appointed, then either party may exercise any remedy that it has under this Contract.
- 17.6 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 17 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.
- 17.7 Nothing in this clause 17 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.

18. CHANGES TO THIS CONTRACT

- 18.1 BT may change this Contract at any time by giving not less than the Relevant Notice Period before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation; or
 - (b) change the charges payable under this Contract; or
 - (c) maintain the integrity or security of the Service or BT Network; 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) introduce process changes to improve the quality of the Service; or
 - (g) make corrections to typographical errors;
- providing that the changes in sub-clauses (c) to (g) inclusive shall not materially adversely affect the Service.
- 18.2 BT may also introduce changes to this Contract at any time which are proposed by BT or the Communications Provider and which are agreed by the parties in accordance with this clause 18.2. For any such proposed changes BT agrees to negotiate in good faith with a group of communications providers which it reasonably believes represents the Communications Provider industry ("Communications Provider Contracts Group") and/or the Ethernet Products and Commercial Group or its successor body. BT will give

the CP written notice of the proposed changes and publish details of those changes on the BT Website for at least the Relevant Notice Period before the date the changes are proposed to take effect. The Communications Provider may, within the Relevant Notice Period of the service of BT's notice of the proposed changes, serve a notice on BT stating its objections to the proposed changes. If there are no objections to the proposed changes within that Relevant Notice Period from the Communications Provider or from anyone who has a contract for the Service, the Communications Provider agrees that the changes shall take effect from the proposed effective date. If there are any objections to the proposed changes within the Relevant Notice Period under this clause 18.2, BT shall invite the objector and any interested parties from the Communications Provider Contracts Group to participate in a discussion on the objection during the Relevant Notice Period, If the parties (including the objector) cannot reach an agreement by the end of the Relevant Notice Period, BT shall not introduce that change into this Contract.

- 18.3 A party may initiate a general review of this Contract by serving a review notice not less than 3 months prior to every 2nd anniversary of 1st March 2012. Following a notice of review, BT agrees to negotiate in good faith with a group of Communications Providers which it reasonably believes represents the Communications Provider industry ("Communications Provider Contracts Group"). If the parties fail to reach agreement on elements of the subject matter of the review within 6 months of commencing negotiations (or such longer period as may be agreed by BT and all members of the Communications Provider Contracts Group), either party may escalate the dispute for resolution in accordance with the escalation and dispute resolution provisions in clause 17 of this Contract. Any change resulting from negotiation or resolution with the Communications Provider Contracts Group shall be deemed agreement with the Communications Provider to that contractual change. Any change will be notified to the Communications Provider 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.
- 18.4 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 reasonable written notice of any such changes and publish details of those changes on the BT Website before the changes take effect. If a 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 17 above.
- 18.5 Nothing in this clause 18 shall prevent either party from referring a dispute to Ofcom in accordance with any right either party may have to request a determination or from taking any other appropriate steps for its resolution.
- 18.6 For the purpose of this clause 18 the "Relevant Notice Period" shall mean not less than 28 calendar days notice or such other period of notice that BT is directed or required to provide by Ofcom.

19. TRANSFER OF RIGHTS AND OBLIGATIONS

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

- (a) the Communications Provider may transfer its rights and obligations by way of novation to an eligible Communications Provider 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 Communications Provider in writing in advance that it intends to do so.

20. ENTIRE AGREEMENT

- 20.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 20.2 The parties acknowledge and agree that:
 - (a) the parties have not been induced to enter into this Contract by, nor have relied on any statement, representation, warranty or other assurance not expressly incorporated into it; and
 - (b) in connection with this Contract the only rights and remedies of the parties in relation to any statement, representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded.
- 20.3 Nothing contained in sub-clauses 20.1 and 20.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.
- 20.4 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

21. NOTICES

- 21.1 All notices given under this Contract must be in writing and may be delivered by hand, fax, e-mail or first class post to the following:
 - (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 Communications Provider, to the Communications Provider's BT Customer Business Manager;
 - (c) for all other matters, in the case of notices from BT, to the Communications Provider's registered office address or a fax number at its registered office or any alternative address or fax number or e-mail address which the Communications Provider notifies to BT.

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

- 21.2 Subject to clause 21.1 above, a notice is duly served:
 - (a) if delivered by hand, at the time of delivery;
 - (b) if sent by first class post, three Working Days after the date of posting;
 - (c) if sent by fax, at the time of transmission; and

(d) if sent by email, at the time of transmission.

22. SEVERABILITY

If any Court of competent jurisdiction holds any provision of this Contract 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 Contract had been executed with the invalid, illegal or unenforceable provision omitted.

23. NO WAIVER

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

24. LAW

The law of England and Wales governs this Contract and both parties submit to the exclusive jurisdiction of the English Courts.