

# ***Contract for Access Locate Services***

## ***Schedule 1 – Definitions***

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### **SCHEDULE 1 – DEFINITIONS**

In this Contract:

**"Access Line ID"/"Service ID"/"OGEA"** means the unique identifier for the Service;

**"Access Locate"** means a variant of the Service;

**"Access Locate Plus"** means a variant of the Service;

**"Act"** means the Communications Act 2003;

**"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 10.6;

**"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;

**"Approved Status"** means in relation to any person, either that: (i) that person appears on a list of approved contractors which BT maintains for the purposes of ensuring that only suitable third party individuals are employed to carry out work at its BT Buildings on its behalf; or (ii) that person has satisfied all of the criteria which BT requires to be satisfied for such purpose from time to time;

**"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](mailto:dataprivacy@openreach.co.uk);

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

**"BT Buildings"** means an exchange as defined in the Undertakings;

**"BT 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

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and other manifestations associated with BT including the logotype comprising the letters BT and the piper device and/or the letters BT and the connected world device and/or any elements of these marks;

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

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

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

**"Building Contract"** means a contract based on the JCT Intermediate Form of Building Contract for works of a simple content (IFC98) providing for the carrying out of the building construction element of the Works on behalf of BT;

**"CMC"/"SMC"** means the Customer/Service Management Centre nominated by BT as set out in the Customer Service Plan;

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

**"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;

**"CP Equipment"** means all equipment installed and/or operated by the CP in a Facility from time to time pursuant to this Contract provided always that such equipment is used for the Permitted Use for the appropriate service variant;

**"CP Equipment Room"** means the room within a BT Building in which the CP has a Specified Floor Area;

**"CP Service"** means the service provided to the End User by the CP;

**"CP Visitors"** means anyone visiting any Specified Floor Area within a BT Building for the purposes of installing, inspecting, maintaining, adjusting, repairing, altering, replacing or removing CP Equipment on behalf of or with the authority of the CP;

**"Compliant Equipment"** is as defined in the RANFA such equipment being used solely for multiplexing of copper access tails such as DSLAMs; network functions performed solely for the provision of local loop unbundling services; aggregating fibre tails for the sole purpose of providing backhaul of copper access traffic; translation of protocols and line systems; fall back and system re-routing switch functions as part of network configuration and/or providing resilience to an end user; the capability to support the contention of traffic; the capability to multicast traffic; traffic shaping/grooming; switching and routing facilities that are integrated into a DSLAM; and any other function notified by BT to the CP for the provision of local loop unbundling services;

**"Contract"** means the Conditions, the Schedules, the relevant sections of the Openreach Price List, the Contract Form and the relevant Order and elements of the Handbook that are expressly incorporated by reference;

**"CDD" or "Contractual Delivery Date"** means the agreed date for delivery of the Service by BT to the CP which date

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shall be subject always to:

(a) any extensions of time properly granted under the terms of the Building Contract; and  
(b) extensions of time equivalent to the period or periods during which there is a dispute relating to the carrying out of the Works and which directly and necessarily affects the continuation of the Works; and (c) extensions of time equivalent to any period of time that the Works are prevented by reason of statute or regulation or other binding legal rule or decision from commencing (except where such statute regulation rule or decision only applies due to an act or omission by BT and the circumstances in (a) and (b) do not apply);

**"Customer Service Plan"** means a document containing details of the contacts for the maintenance and 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;

**"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;

**"ETSI"** means the European Telecommunications Standards Institute;

**"EU-US Privacy Shield"** means a legal framework adopted by the European Commission by its adequacy decision of 12 July 2016 that ensures an adequate level of protection for Personal Data transferred from the European Union to organisations in the United States that have self-certified to the EU-US Privacy Shield;

**"Facility"** means each facility within a Multiple User Area as is provided to the CP from time to time for the location of CP Equipment and for the Permitted Use (e.g. rack space or floor space) as further described in the Services Schedule and the Order;

**"End User(s)"** means a person/third party taking the CP Service;

**"Escorted Access"** means the direct physical supervision by a person nominated for that purpose by BT of another person having entered a BT Building;

**"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;

**"Fixed Compensation"** means for each Facility at a BT Building, £80 per consecutive Working Day or part Working Day for a maximum of 42 consecutive Working Days;

**"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;

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- (d) epidemic, or national or local emergency (whether in fact or law);
- (e) sabotage, riot, insurrection, terrorism or civil disorder;
- (f) military operations or war (whether declared or not);
- (g) acts, omissions or delays of third parties (including without limitation local or central government or other competent authorities) for whom the Party relying on the Force Majeure is not responsible (for the avoidance of doubt, the Customer and BT are responsible for all of their respective contractors (including suppliers (except where that supplier itself is affected by a Force Majeure event), employees, servants and agents),
- (h) Industrial disputes (including industrial disputes involving that party's own employees, provided that such party has used reasonable endeavours to resolve such industrial disputes or prevent them from occurring); or
- (i) acts of animals.

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

**"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 736 of the Companies Act 1985 as amended by the Companies Act 1989;

**"GEA Handover Connectivity"** means the connection between the CP's equipment and the BT Network under BT's *Conditions for Generic Ethernet Access*;

**"Handbook"** means the Access Locate and Access Locate Plus Product Handbook as may be amended from time to time by BT 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 Right(s)"** 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 of HSBC PLC or such other bank which is a member of CHAPS Limited as BT may from time to time nominate in writing;

**"Insured Risks"** means fire storm tempest flood earthquake lightning explosion impact aircraft (other than hostile aircraft) and other aerial devices and articles dropped there from riot civil commotion and malicious

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damage acts of terrorism bursting or overflowing of water tanks apparatus or conduits and such other normal commercial risks as BT may in its absolute discretion from time to time determine;

**"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 10 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;

**"Licence"** means a licence of a Facility granted under the terms and conditions set out in Schedule 4;

**"Licence Completion Date"** means the later of the RFI Date or the Contractual Delivery Date;

**"Licence Fee"** means the yearly licence fee payable by the CP for each Facility as set out in the Order for that Facility or as reviewed in accordance with Schedule 4;

**"MUA or Multiple User Area"** means any multiple user area (as that term is commonly known in the industry) operated and managed by BT at a BT Building where BT and its customers may house and operate certain telecommunications equipment;

**"MPF" or "Metallic Path Facility"** means as defined in the RANFA;

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

**"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 CP);

**"Order"** means an order for the Service received from the CP in accordance with the Handbook;

**"Parties or party"** means the parties to this Contract being BT and the CP together and "Party" means either the CP or BT as the context permits;

**"Permitted CP Equipment"** means equipment which falls within the definition of "Equipment" as defined in Annex 4 of the Undertakings and is used only for the purposes set out therein and for no other purposes whatsoever;

**"Permitted Use"** means in the context of:

(a) Access Locate use of the Service by the CP to locate Permitted CP Equipment within the CP's points of presence for the purpose of aggregating:

- (i) Compliant Equipment provided to the CP by BT; or
  - (ii) Ethernet circuits (as notified by BT from time to time) provided to the CP by BT;
- and the location of GEA Handover Connectivity

(b) Access Locate Plus use of the Service by the CP to locate CP Equipment within the CP's point of presence for the purpose of:

- (i) delivery of private circuit termination; or
- (ii) locate video servers; or

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- (iii) locate broadband servers; or
- (iv) terminating MSILS

**"Priority A Fault"** means faults that affect the operation of a Facility and there is a total loss of standby ac power or BT provided dc power to the Facility that impact on operation of CP Equipment or have an immediate health and safety impact;

**"Priority B Fault"** means faults that potentially affect the operation of a Facility that impact on operation of CP Equipment or have a potential health and safety impact. In the event that a Priority B Fault begins to impact on the operation of CP Equipment or begins to have an immediate health and safety impact then it shall be re-classified as a Priority A Fault;

**"Priority C Fault"** means faults which do not adversely affect the operation of a Facility that can be cleared by routine maintenance and do not impact on health and safety;

**"Priority D Fault"** means faults which do not adversely affect the operation of a Facility and can be cleared in time scales mutually agreed by BT and the CP;

**"Process Manual"** means the Co-Mingling and Access Locate End to End Process Manual as may be amended from time to time by BT containing information relating to the Service. The Process Manual is available on the BT Website;

**"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>

**"RANFA"** means the Revised Access Network Facilities Agreement;

**"RFI Date"** means the date on which the Representative certifies in writing that the Works have been completed in accordance with the specification (and the expressions "Ready for Installation" or "RFI" shall be construed accordingly);

**"Representative"** means such firm of consultants as BT may nominate from time to time;

**"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 Services Event and Time Related Charges or shall not include any charge previously invoiced or recurring charges such as rental;

**"Service"** means those services (Access Locate and/or Access Locate Plus) or part thereof provided for each MUA in which a Facility is located (enabling the CP to gain access to their Facility) as described in Schedule 2 and specified in the Order;

**"Service Level"** means the BT targets set by BT in relation to performance of the Service as described in Schedule 3;

**"Specified Floor Area"** means a Facility;

**"Start Date"** means the first Working Day after the end of the week in respect of which an Order has been agreed to be submitted or, where a counter-offer has been made by BT, the Start Date specified by BT in the counter-offer and accepted by the CP;

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**“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;

**“Territory”** means United Kingdom but not including the Hull Area;

**“Third Party”** means a party other than BT or the CP;

**“VAT”** or **“Value Added Tax”** means United Kingdom Value Added Tax or any other tax of a similar nature that may be substituted for or levied in addition to it, in each case at the rate current from time to time;

**“Undertakings”** means the undertakings given to OFCOM by BT pursuant to the Enterprise Act 2002;

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

**“Works”** means the works within the BT Building to provide the Services.