

Contract for Access Locate Services

Schedule 1 – Definitions

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, as set out in the Flexible Comingling Product Description, or the Comingling Product Description;

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“**Access Locate Plus**” means a variant of the Service as set out in the Flexible Comingling Product Description, or the Comingling Product Description;

“**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;

“**Ancillary Documents**” means those documents specifically listed on Openreach’s Website that contain information about the Service;

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

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

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

“**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;

“**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 containing an MUA;

~~“**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 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;~~

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“**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;

“**Communications Provider Equipment Room**” means the room (which for the avoidance of doubt includes a Co-location Hostel) within an MDF Site in which the Communications Provider has a Specified Floor Area;

“**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 and/or connected from time-to-time by the CP or the CP Visitors in a ~~Facility Point of Presence 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, Schedule 1, Schedule 2, Schedule 3, Schedule 4 and (where applicable) Schedule 5, the relevant sections of the Openreach Price List, the elements of the Ancillary Documents that are expressly incorporated by reference into this Contract, the Contract Form and the Order;

~~“**Contract**” 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~~

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

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

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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;

“Emergency” means a serious situation or occurrence that:

(a) threatens life and limb; or

(b) may cause or threaten to cause damage to physical property or systems; or

(c) happens unexpectedly

“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;
- (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);

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- (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;

~~**“Index”** means the "all items" figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry, department or agency;~~

~~**“Infrastructure Services”** means Licences provided under the RANFA and Locate contracts as amended from time to time. The RANFA is published on the Openreach Website;~~

~~**“Integrated Equipment”** equipment managed by a common element management system~~

“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 the Bank of England or such other bank which is a member of CHAPS Limited as BT may from time to time nominate in writing giving 28 days' notice;~~

“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 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

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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;

"KCI" means the Keep the Customer Informed messages provided by BT to the Communications Provider

"Licence" means a licence of a Facility-Point of Presence 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-Point of Presence 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;

"Non Permitted Use" means the equipment the CP shall not locate in the CP Point of Presence to use for the following purposes:

- (i) location of core network equipment;
- (ii) data warehousing;
- (iii) content and web hosting, except for caching or any other Network Function Virtualisation (NFV), Software Defined Network (SDN) or similar function, where such functions are used as part of efficient, resilient and robust network design;
- (iv) points of mutual interconnect, namely public and private peering;
- (vi) provision of wireless telegraphy as defined in the Wireless Telegraphy Act 1949 (unless such equipment is the Indoor units connected to outdoor units on fibre, and hence not generating any Radio Frequency (RF));

"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);

"Open Market Value of the Consents" means the value that might reasonably be achieved for the grant by a willing licensor to a willing licensee of the consents for occupation of a Specified Floor Area or of a space for general light industrial use within a reasonable distance of the relevant MDF Site granted on the terms of Part III except as to the amount of the Licence Fee (but including the provisions for review);

"BT Openreach 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;

"Order" means an advanced capacity order for the Service received from the CP in accordance with the Handbook Co-mingling and Access Locate End to End Process Manual;

"Parties or partyParty" 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;~~

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“Permitted CP Equipment” means ~~equipment or functions contained within equipment located in a BT Building, 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), including;:~~

- ~~(i) Aggregating Ethernet switches, routers, Voice Session border controllers, Synchronous Digital Hierarchy (SDH)/Wave Division Multiplexing (WDM)/Optical Add Drop Multiplexer (OADM) equipment chassis and/or cards and other devices to connect to the individual dark fibre access (DFX), , physical infrastructure service, applicable connectivity services products and GEA Handover services, (including, but not limited to traffic shaping, Deep Packet Inspection (DPI), wavelength management, congestion management, video caching, Domain Name System (DNS) caching)~~
- ~~(ii) Test, measurement and service monitoring necessary for CPs to measure and report on the performance of the CP services and equipment (including, but not limited to copper test heads, Ethernet Operations, Administration Management (OAM) test points, fibre Optical Time Domain Reflectometer (OTDR) testers, power/ environmental monitors, broadband simulators, download testers, equipment to monitor latency/jitter/packet loss, voice simulators)~~
- ~~(iii) Clock / timing equipment, associated antennae and cabling on or within the BT exchange, to permit the CP to install and operate CP clocking and synchronisation~~
- ~~(iv) Network and Service Security (including but not limited to anti-Distributed Denial of Service (DDoS) equipment, intrusion detection equipment, firewalls, legal intercept and capture equipment, “out-of-band” management router and lines to maintain control outside of main traffic pipes, CESG CAS(T), IL2, IL3 encryption devices or equivalent encryption standards)~~
- ~~(v) Radio indoor units connected to outdoor units on fibre, and not generating any Radio Frequency (RF) themselves;~~
- ~~(vi) Deployment of equipment using Network Function Virtualisation (NFV), Software Defined Network (SDN) or similar virtualisation techniques for functions such as above providing that, for the purposes of calculating applicable charges: where DPI Congestion Management, Wavelength Management, Anti-DDOS, Intrusion Detection or Video Caching functionality is within Integrated Equipment interfacing with the regulated access product, it shall be categorised as Access Locate; but if the equipment for these is Standalone Equipment, then it should be categorised as Access Locate Plus.~~

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

“Point of Presence (“PoP”) means ~~the provision by BT of infrastructure within a licensed area provided to the CP at an MUA;~~

“Priority A Fault” means faults that ~~(i) affects~~ the operation of a ~~Facility Point of Presence~~ and ~~there is including~~ a total loss of standby ac power or BT provided dc power to the ~~Point of Presence Facility that (ii) impacts~~ on ~~the~~ operation of CP Equipment or ~~(iii) have has~~ an immediate health and safety impact;

“Priority B Fault” means faults that potentially ~~(i) affects~~ the operation of a ~~Point of Presence Facility that (ii) impacts~~ on operation of CP Equipment or ~~(iii) have~~ a potential health and safety impact. In the event that a Priority B Fault

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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 Point of Presence 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 Point of Presence 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;

“**Review Date**” means the 1 April in each year throughout the duration of a Licence and where applicable the date of the grant of a new Licence to the Communications Provider following a termination of part of a Specified Floor Area;

“**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 Point of Presence 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 Point of Presence;

“**Standalone Equipment**” equipment not managed by a common element management system

“**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, as set out in Schedule 3 of this Contract;

“**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.

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