



# *BDUK Subsea Cable Access Contract*

## *Schedule 1 – Definitions*

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### 1. DEFINITIONS

#### 1.1 In this Contract:

**“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;

**“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;

**“BDUK Subsea Cable”** means the relevant subsea cables in the Intervention Area where public funding has been taken which includes funding from Broadband Development UK (“BDUK”) for the installed subsea cable;

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

**“BT Equipment”** means equipment (including any software), fibre, duct routes, joint boxes, manholes provided by BT to deliver the Service;

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

**“BT Network”** means BT’s public electronic communications network;

**“BT Privacy Policy”** means the policy that BT has implemented and may update from time to time on how it Processes Personal Data;

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

**“Charge/s”** is the sum payable by the Customer in accordance with the BT Quotation Form for provisioning of the Service or in the Openreach Price List;

**“Commission Decision”** means the European Commission decision of 20 November 2012 in Case State aid SA.33671 (2012/N);

**“Contract”** means the Conditions, Schedule 1, the BT Quotation Form, the Data Protection Schedule, the Customer Quotation Acceptance Form, Technical Specification, Delivery Plan detailed at Appendix C of the Offer Letter and the Site Identification Template detailed at Appendix A of the Offer Letter;

**“Customer Due Date or CDD”** means the estimated completion dates for Sites dates as detailed in the BT Quotation Form;

**“Customer’s NGA Infrastructure”** means the Customer’s network being built to provide superfast broadband within the Intervention Area utilising BDUK Subsea Cable;

**“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.



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

“**Customer**” means the person who signs this Contract with BT;

“**Customer End User**” means a third party receiving the Customer Service from the Customer;

“**Customer Personal Data**” means the proportion of Personal Data that is Controlled by the Communications Provider and that BT needs to Process on the Communications Provider’s behalf as a Processor in providing the Services to the Communications Provider under the Contract;

“**Customer Service**” means the service provided to the Customer End User by the Customer;

“**Data Protection Legislation**” means collectively (i) the GDPR, and any successor legislation or regulation, (ii) other applicable legislation of the European Union, (iii) applicable local legislation relating to the Processing of Personal Data and/or the protection of an individual’s privacy, (iv) any binding guidance or code of practice issued by a Supervisory Authority;

“**Effective Date**” means the date that the Customer Quotation Acceptance Form is signed by a duly authorised representative of the Customer and accepted by BT;

“**Emergency**” means a serious situation or occurrence that happens unexpectedly, demands immediate action and:

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

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

“**Event and Time Related Charges**” means Time Related Charges, Abortive Visit Charges, Excess Construction Charges as these charges appear or are referred to in the BT Quotation Form and any other charges the parties have agreed will be treated as Event and Time Related Charges;

“**Excess Construction Charges**” means the charges referred to in the BT Quotation Form;

“**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;



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

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

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

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

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

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

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

**“Intervention Area”** means an area defined, set and published by a Local Body within which public funds have been made available for the deployment and installation of the Customer’s NGA Infrastructure

**“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.;

**“Invoice Dispute”** means for the purposes of Clause 12 a dispute taken in good faith by the Customer 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;

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

**“Service”** means the products and services detailed in the BT Quotation Form. The Service remains the property of BT at all times;

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



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“**Site**” means a Customer, Customer End User or any other place at which BT agrees in writing to provide the Service details of which are set out in the BT Quotation Form;

“**Sub-Processor**” means a BT Affiliate or BT’s supplier or subcontractor that BT engages to Process Customer Personal Data for the purposes of the Contract;

“**Technical Specification**” means the document located on the section relating to the Service on the BT Website which details the technical criteria that will apply to the delivery of the Service;

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

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