



Contract for Fibre Integrated Reception System Service Conditions

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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 Customer.
- 1.6 If there is a conflict between the Conditions, the Schedules and/or the Handbook, the order of precedence shall be as follows:
- (a) the Conditions and Schedule 1
 - (b) Schedules 2, 3 and 4
 - (c) the relevant sections of the Openreach Price List
 - (d) the Contract Form
 - (e) the Order
 - (f) the elements of the Handbook that are incorporated by reference into this Contract.

2. COMMENCEMENT AND TERMINATION

- 2.1 The Customer is required to sign a Contract Form to commence Service. This Contract begins on the date that the Contract Form is accepted and signed by duly authorised representatives of BT and the Customer and shall continue thereafter until terminated in accordance with this Contract.
- 2.2 The Customer may terminate this Contract on:
- (a) not less than two months’ notice if BT materially changes the terms and conditions of this Contract to the Customer’s detriment provided that such notice to terminate shall be served on BT no later than 28 days from the date the change comes into effect; or
 - (b) not less than three months’ notice for any other reason.
- 2.3 BT may terminate this Contract:
- (a) immediately if there is a failure to pay a sum due under this Contract on three or more occasions in separate payment months within a 24 month period providing notices are served upon the first two occasions in accordance with clause 2.8;
 - (b) immediately upon notice if the Customer is suspended or prohibited from providing the Customer Service by Ofcom and/or ceases to be a communications provider as defined by section 405(1) of the Communications Act 2003;
 - (c) on not less than one month’s notice if BT does not receive an Order from the Customer within 6 months of the commencement of this Contract;



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(d) immediately on notice if BT is directed by Ofcom to cease the Service or the provision of the Service or any part of it;

(e) on not less than 12 months' notice for any other reason.

2.4 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.

2.5 BT agrees to repay or credit the Customer with the appropriate proportion of any rental paid in advance for the period ending after the Customer's liability to pay rental ceases.

2.6 If a valid breach notice is served on the Customer then BT may 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 or for the monitoring of existing Orders and suspend such other services or facilities available to the Customer as shall be reasonable in the circumstances:

(a) immediately upon giving notice if the Customer fails to comply with the provisions of this Contract headed Intellectual Property Rights and BT Corporate Marks or Marketing and Misrepresentation; and

(b) for all other breaches immediately upon giving notice, after the period specified for remedy of the breach in the breach notice expires, if the Customer has not remedied the breach.

The Customer agrees to pay the charges for the Service until this Contract is terminated.

2.7 If BT is directed to cease the provision of the Service or any part of it, or if the Customer is suspended or prohibited from providing the Customer 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 for the Service immediately on notice to the Customer.

2.8 Either party may terminate this Contract or the Service provided under it immediately, on notice, if the other:

(a) commits a 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) 14 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 24 months of the first instance; or

(ii) 30 days; or

(iii) a shorter time, reasonably specified in the notice, in the case of emergency; or

(b) commits a 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) has bankruptcy or insolvency proceedings brought against it; or if it does not make any payment under a judgement of a Court on time, or it makes an arrangement with its creditors; or a receiver,



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an administrative receiver or an administrator is appointed over any of its assets; or it goes into liquidation; or there is a corresponding event under the law of any other country; or

(e) ceases to carry on business.

2.9 If 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 Customer 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.

2.10 The Customer agrees that if this Contract is terminated for any reason, it will inform the End User that the Customer Service may be terminated and the End User needs to make alternative arrangements. This sub-clause will survive termination of the Contract.

2.11 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. If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract that waiver is limited to that particular breach.

2.12 Each of the parties' rights to terminate or suspend performance is without prejudice to any other rights or remedies available to either party.

3. PROVISION OF THE SERVICE

3.1 BT agrees to:

- (a) provide the Customer 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 Customer a non-exclusive non-transferable right to use the Service for the sole purpose of enabling the Customer to provide the Customer Service; and
- (d) use its reasonable endeavours to provide the Service by the Contractual Delivery Date or the Customer Requirement Date whichever is the later and in accordance with the service levels set out in Schedule 4 but all dates are estimates and except as set out in the service level provisions in Schedule 4, BT has no liability for failure to meet any 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:



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- (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 days notice, provided that any such changes do not have a materially adverse effect on the performance or provision of the Service; or
- (b) give the Customer instructions which it believes are necessary for reasons of health, safety or the quality of the Service and it is the Customer's responsibility to ensure these are adhered to; or
- (c) interrupt the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency. BT agrees to restore the interrupted Service as quickly as possible. Where practicable, BT will give the Customer as much notice as possible and aims to give the Customer at least 14 days notice of any interruption to the Service for operational reasons. Where practicable, BT will agree with the Customer when the Service will be interrupted. If there has been an interruption to the Service for operational or emergency reasons, BT will inform the Customer that there has been an interruption as soon as reasonably practicable.

but BT agrees to use reasonable efforts to provide an uninterrupted Service to the Customer.

- 4.2 If the Customer reports a fault in the Service, BT agrees to respond in line with the service levels at Schedule 4.
- 4.3 The Customer 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.
- 4.4 BT and the Customer each agree to comply with their respective obligations under applicable data protection legislation including, but not limited to, the Data Protection Act 1998 and maintain all relevant registrations and notifications. The Customer agrees to obtain and maintain all registrations, notifications and consents that it needs to enable BT to process the personal data of End Users for the purposes of the performance by BT of its obligations under this Contract.
- 4.5 The Customer agrees to indemnify BT against all loss, damages, costs, liabilities 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 because the Customer is in breach of the immediately preceding sub-clause. The limitation of liability provisions of this Contract apply to this indemnity. BT shall have a duty to mitigate any loss in the circumstances covered by this indemnity.
- 4.6 BT agrees to indemnify the Customer against all loss, damages, costs, liabilities and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Customer by a third party because BT is in breach of sub-clause 4.4 above. The limitation of liability provisions of this Contract apply to this indemnity. The Customer shall have a duty to mitigate any loss in the circumstances covered by this indemnity.

5 BT EQUIPMENT

- 5.1 BT Equipment remains the property of BT at all times.
- 5.2 The Customer 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;



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- (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
- (c) provide a suitable place and conditions for BT Equipment including connection points required by BT and electricity.

5.3 The Customer 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 Customer 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 costs of replacement.

6. CONNECTION OF EQUIPMENT TO THE SERVICE

6.1 Any equipment connected to the Service must be:

- (a) technically compatible with the Service and not harm the BT Network, the Service or BT Equipment or another customer's network or equipment;
- (b) connected and used in line with any relevant instructions or laws; and
- (c) connected and used in line with any relevant standards including any standards set out in the relevant SIN and any legal requirements imposed upon the parties including requirements arising from General Condition 2 set under section 45 of the Communications Act 2003.

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

6.3 If the equipment does not meet the relevant instructions, standards or laws, the Customer must immediately disconnect it, or BT will do so at the Customer's expense. If the Customer asks BT to test the equipment to make sure that it meets the relevant instructions, standards or laws, the Customer agrees to pay BT any applicable 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 if any equipment is found to be connected otherwise than in accordance with this clause.

7. ACCESS AND SITE REGULATIONS

7.1 The Customer shall take reasonable steps 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.

7.2 BT will observe 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 Customer will take reasonable steps to ensure that the End User provides a suitable and safe working environment for BT at the End User's Site. The Customer will indemnify BT against all loss, damages, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are



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brought or threatened against BT where the Customer is in breach of this clause. Except for clause 13.1, the limitations and exclusions of liability contained in clause 13 below do not apply to this indemnity. Any liability arising out of this clause which is for property damage is limited to £1 million for any one event or series of connected events and £2 million for all events (connected or unconnected) in any period of 12 calendar months. BT shall have a duty to mitigate its loss in the circumstances covered by this indemnity.

- 7.4 It is the responsibility of the End User to carry out any making good or decorator's work required but BT accepts responsibility for any property damage caused by BT's negligence subject to the limitation of liability provisions of this Contract.

8. USE OF THE SERVICE

- 8.1 The Customer agrees not to use the Service and agrees to take reasonable steps to ensure that the Customer Service is not used:

- (a) unlawfully or fraudulently or in breach of any legislation; or
- (b) contrary to any reasonable instructions given by BT.

- 8.2 If BT notifies the Customer or if the Customer is aware that an End User has used the Service in breach of sub-clause 8.1 then the Customer will take all reasonable steps to co-operate with BT and agrees to send warning letters to the user of the Service or the Customer Service that its service will be disconnected if it continues to use the Service or the Customer Service in that way. If the End User continues to use the Service or the Customer Service in breach, the End User's service will be disconnected by BT.

- 8.3 If the Customer uses the Service in breach of sub-clause 8.1 or supplies the Customer Service to an End User who is in breach of clause 8.1, BT may on notice where reasonably practicable suspend the Service, in so far as it is reasonable in the circumstances, without prejudice to BT's rights of termination under this Contract provided that where reasonably practicable, BT shall warn the Customer that it is in breach of clause 8.1 and that BT may suspend the Service.

- 8.4 The Customer agrees to indemnify BT against all loss, damages, costs, liabilities 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 the Service or the Customer Service is used in breach of sub-clause 8.1(a) and/or clause 8.2 above. Except for sub-clause 13.1 the limitation of liability provisions of this Contract do not apply to this indemnity.

- 8.5 The Customer agrees to indemnify BT against all loss, damages, costs, liabilities 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 the Service or the Customer Service is used in breach of sub-clause 8.1 (b) above. Except for sub-clause 13.1 the limitations and exclusions of liability contained in clause 13 below do not apply to this indemnity. The Communication Provider's liability under this clause is limited to £1 million for each Service supplied under this Contract, for any one event or series of connected events and £2 million for all events (connected or unconnected) in any period of 12 calendar months. BT shall have a duty to mitigate its loss in the circumstances covered by the indemnity.

9 INTELLECTUAL PROPERTY RIGHTS AND BT CORPORATE MARKS

- 9.1 The Customer 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



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- or otherwise giving the Customer any rights in BT's Intellectual Property Rights except as provided in this clause 9.
- 9.2 The Customer 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 Customer 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 The Customer agrees not, without the prior written consent of BT, to:
- (a) use any of the BT Corporate Marks; or
 - (b) authorise any third party to use any of the BT Corporate Marks; or
 - (c) use any photographs or representations of any BT buildings,
- including in any promotional literature.
- 9.5 The Customer agrees 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 BT Corporate Marks.
- 9.6 If authorised to use the letters "BT", the Customer 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.
- 9.7 The Customer agrees to include and maintain in its contracts with any resellers of the Customer Service, conditions equivalent to those contained in sub-clauses 9.4 and 9.5 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.
- 9.8 This clause 9 does not prevent any legitimate use of the term "BT" in any comparison of services and tariffs, in accordance with the Trade Marks Act 1994.
- 9.9 BT agrees to indemnify the Customer 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 Customer.
- 9.10 The indemnity in sub-clause 9.9 above does not apply to infringements or claims or legal proceedings:
- (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 Customer, other than where such designs or specifications are made as part of the Service on behalf of the Customer 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.



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9.11 The limitations and exclusions of liability contained in clause 13 do not apply to sub-clauses 9.9 and 9.10 above.

10 CONFIDENTIALITY

10.1 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 Customer, the employees of a Customer 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.

10.2 The parties agree not to, without the written consent of the other party, use information of a confidential nature referred to in sub-clause 10.1 above, for the commercial advantage of their retail businesses.

10.3 Sub-clause 10.1 will not apply to:

- (a) any information which has been published 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 requested to disclose and, if it did not, would be required by law to disclose;

10.4 This clause 10 will remain in effect for 5 years after the termination of this Contract.

11. MARKETING AND MISREPRESENTATION

11.1 The parties undertake (in the case of the Customer, the Customer undertakes for itself and any reseller of the Customer Service) that in relation to their dealings with 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 End Users; or
- (d) assert that they have any authority to provide or promote any products or services on behalf of each other.

11.2 The Customer also agrees not to represent that:



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- (a) the Customer Service is a service provided by BT; or
- (b) the End User has access to a dedicated BT customer service.

11.3 The Customer agrees to use all reasonable endeavours to include and maintain in its contracts with any reseller of the Customer Service, conditions equivalent to those contained in sub-clauses 11.1 and 11.2 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.

12. CHARGES AND DEPOSITS

12.1 The Customer 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.

12.2 The Customer agrees to pay the charges within 30 calendar days of the date of BT's invoice. BT may charge daily interest on late payments not the subject of a bona fide dispute in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 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.

12.3 If a refund is due to the Customer by BT (unless that overpayment results from information provided by the Customer which is not attributable to information provided by BT), the Customer may charge daily interest on late payments not the subject of a bona fide dispute in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 for the period beginning on the date on which the parties 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, or any other regulatory authority or body of competent jurisdiction, the parties agree that interest will not be payable on any amount due to either party as a result of that recalculation or adjustment.

12.4 All charges exclude Value Added Tax (VAT) which is charged at the applicable rate and is payable by the Customer.

12.5 Rental for the Service will commence on the Operational Effective Date and shall be payable in accordance with BT's invoice.

12.6 The Connection Charge shall be due on the Operational Effective Date and shall be payable in accordance with BT's invoice.

12.7 The Customer 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 monthly instalments in advance but BT may on occasion bill the Customer in arrears.

12.8 The Customer acknowledges that it may be subject to BT's credit vetting policy procedures. Should BT consider it necessary following the application of such procedures or should the Customer fail to pay the charges due under or in connection with this Contract, BT may (without prejudice to any other rights and remedies available to BT), at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future charges. The Customer agrees to pay such deposit or provide such guarantee within 28 calendar days of receiving notice from BT requiring it to do so, failing which BT reserves the right, without prejudice to any other rights and remedies available to it under this Contract to refuse to accept any further orders under the Contract and to suspend performance of such of its obligations under this Contract as is reasonable in the circumstances until such deposit or guarantee is provided.



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12.9 If the Customer disputes any invoice, it will notify BT in writing within 30 calendar days of the date of the relevant BT invoice giving its reasons. The Customer is not entitled to withhold:

- (a) payment of any amount not in dispute; and /or
- (b) any payment to BT on the grounds that the Customer has a dispute with End User(s) or reseller(s).

If the amount in dispute represents a sum : (a) less than £250,000 and less than 5 per cent of the total amount of the relevant invoice (excluding VAT), the total amount invoiced shall be due and payable on the due date; or (b) of at least £250,000 (excluding VAT) or 5 per cent or more of the total amount of the relevant invoice (excluding VAT), the amount in dispute may be withheld by the Communication Provider until the dispute is resolved and the balance shall be due and payable on the due date.

12.10 BT may correct an invoice sent to the Customer providing it notifies the Customer within 12 months of the date of the invoice giving its reasons.

12.11 This clause 12 shall continue in force after the termination or expiry of this Contract.

13. LIMITATION OF LIABILITY

13.1 Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency or for fraud or to any extent not permitted by law.

13.2 Subject to express provisions of this clause 13, neither party shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any direct loss, including but not limited to direct loss:

- (a) of time;
- (b) from wasted expenditure;
- (c) of anticipated savings;
- (d) of anticipated profits;
- (e) of anticipated revenue;
- (f) of opportunity;
- (g) of data;
- (h) of revenue.

13.3 Neither party shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for indirect or consequential loss:

- (a) of profit;
- (b) of revenue;



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- (c) of time;
- (d) from wasted expenditure;
- (e) of anticipated savings;
- (f) of anticipated profit;
- (g) of anticipated revenue;
- (h) of opportunity;
- (i) of data;
- (j) of use;
- (k) from business interruption;
- (l) of business;

or any other indirect or consequential loss or punitive damages which may arise.

13.4 In relation to any liability arising out of or in connection with this Contract, each party's liability to the other (other than any liability of the Customer to pay the charges for the Service when due and payable) in contract, tort (including negligence), for breach of statutory duty or otherwise for direct:

- (a) loss of profits which arise directly and naturally as a result of the breach of this Contract; or
- (b) loss of or physical damage to any tangible property; or
- (c) costs reasonably incurred as a result of having the Service completed to a similar standard by a third party;

is limited to £1 million for any one incident or series of connected incidents and to £2 million for all incidents connected or unconnected in any period of 12 calendar months.

13.5 If the Customer is entitled to an allowance or payment under Schedule 4 the parties agree that, subject to sub-clause 13.4, 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.

13.6 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.

13.7 This clause 13 shall continue in force after the termination or expiry of this Contract.

14. MATTERS BEYOND THE REASONABLE CONTROL OF EITHER PARTY

14.1 If a party is delayed in meeting or fails to perform an obligation under this Contract because of Force Majeure, the party affected shall have no liability to the other for such delay or failure to perform.



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- 14.2 If as a result of Force Majeure, the affected party is prevented or delayed in performing its obligations under this Contract, it 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 against the other party.
- 14.3 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 in relation thereto.

15. CONDUCT OF INDEMNIFIED EVENTS

- 15.1 As a condition of any indemnity given by the Customer in this Contract BT must:
- (a) notify the Customer promptly of any related claims or legal proceedings; and
 - (b) actively consult with the Customer regarding the conduct of any action and take their views into account; and
 - (c) make no admissions relating to any claims or legal proceedings without the consent of the Customer, which shall not be unreasonably withheld; and
 - (d) not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the consent of the Customer, which shall not be unreasonably withheld.

16. ESCALATION AND DISPUTE RESOLUTION

- 16.1 Each party shall use its 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.
- 16.2 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 have the option to 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.
- 16.3 For any dispute not covered by sub-clause 16.2, if the dispute is not resolved within 30 calendar days of the matter being raised then the parties shall have the option of:
- (a) referral of the dispute to a mediator in accordance with sub-clause 16.4; or
 - (b) referral of the dispute for early neutral evaluation; or
 - (c) pursuing any other dispute resolution option which the parties agree is appropriate.
- 16.4 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);



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- (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.

16.5 If the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within two months of the mediator being appointed, then either party may exercise any remedy that it has under this Contract.

16.6 The costs of alternative dispute resolution shall be shared equally between the parties unless determined otherwise by competent or authorised bodies.

16.7 Nothing in this clause 16 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.

17. CHANGES TO THIS CONTRACT

17.1 BT may change the charges payable under this Contract at any time by giving notice to the Customer. The period of notice provided shall be that which applies under the relevant regulatory obligation.

17.2 BT may change this Contract at any time by giving not less than 28 calendar days notice (or such other notice period as may be directed by Ofcom) before the change takes effect in order to:

- (a) comply with any legal or regulatory obligation; or
- (b) introduce or withdraw Service features (subject to such notice as is required under the applicable regulatory requirements); or
- (c) introduce improved service levels; or
- (d) maintain the integrity or security of the Service or BT Network; or
- (e) introduce process changes to improve the quality of the Service; or
- (f) improve clarity, or make corrections to typographical errors;

providing that the changes in sub-clauses (b) to (f) inclusive shall not unreasonably affect the Service.

17.3 BT will give the Customer written notice of any changes made under clause 17.1 above not less than 28 days (or such other period as may be directed by Ofcom) before the change is to take effect. The change will take effect at the expiry of the 28 day period or such other period as may be directed by Ofcom.

17.4 BT may also introduce changes to this Contract at any time which are proposed by BT or the Customer and agreed by the parties. BT will give the Customer written notice of the proposed changes and publish details of those changes on the BT Website at least 28 calendar days before the date the changes are proposed to take effect. BT agrees to negotiate in good faith with a group of Customers which it reasonably believes represents the Customer industry ("Customer Contracts Group"). The Customer may, within 28 calendar days 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 period from the



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Customer or from anyone who has a contract for the Service, the Customer agrees that the changes shall take effect from the proposed effective date. If there are any objections to the proposed changes within the 28 calendar day period of BT's notice of a proposed change, BT shall not introduce that change into this Contract under this clause 17.4 unless the objector(s) agrees to the proposed change.

- 17.4 A party may initiate a general review of this Contract by serving a review notice not less than 3 months prior to 31st March 2009 and not less than 3 months prior to every 2nd anniversary of 31st March 2009. Following a notice of review, BT agrees to negotiate in good faith with a group of Customers which it reasonably believes represents the Customer industry ("Customer Contracts Group"). If the parties fail to reach agreement on the subject matter of the review within 3 months of commencing negotiations, the parties will resolve the dispute in accordance with the escalation and dispute resolution provisions in clause 16 of this Contract. Any change resulting from negotiation or resolution with the Customer Contracts Group shall be deemed agreement with the Customer to that contractual change. Any change will be notified to the Customer and BT will publish details of any change on the BT Website not less than 28 calendar days before the change is to take effect.

18. TRANSFER OF RIGHTS AND OBLIGATIONS

- 18.1 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 Customer may transfer its rights and obligations by way of novation to an eligible Customer Group Company subject to credit vetting by BT 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 Customer that it has done so.

19. ENTIRE AGREEMENT

- 19.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 19.2 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.
- 19.3 Nothing contained in sub-clauses 19.1 and 19.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.
- 19.4 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.
- 19.5 If there is any inconsistency between this Contract and any other document, agreement or understanding between BT and the Customer which relates to the subject matter of this Contract, the terms of this Contract shall prevail.



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20. NOTICES

20.1 All notices given under this Contract must be in writing and may be delivered by hand, 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 Customer, to the Customer's BT account manager;
- (c) for all other matters, in the case of notices from BT, to the Customer's registered office address or any alternative address or fax number or e-mail address which the Customer notifies to BT.

20.2 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 email, at the time of transmission.

21. 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.

22. LAW

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