

1. DEFINITIONS

1.1 In this Contract:

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

"Active NTE" means the ONT at the End Customer's Site;

"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 12.10;

"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;

"Authorised Users" means those persons authorised by the Communications Provider in writing to BT to gain access to the Gateway;

"automatic compensation messages" means the KCI messages sent to the Relevant Communications Provider following an Automatic Compensation SLA failure;

"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;

"Brownfield" means a location where there is existing BT Network infrastructure;

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

"BT Equipment" means equipment (including any software) placed by BT at a Site to provide the Service;

"BT Exchange" means an exchange from which BT provides the Service to the Communications Provider;

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

"BT Network" means BT's Public Electronic Communications Network;

"BT Network Upgrade" means any change to the BT Network software or hardware made to improve, maintain and/or correct the GEA-FTTC Service. Four major network firmware upgrades are planned every year and will be notified by BT in accordance with Schedule 2B;

"BT Website" or **"Openreach's Website"** means the website located at URL <http://www.openreach.co.uk/orpg/home/home.do> or such other website or URL as BT may notify the Communications Provider from time to time;

"CCD" or **"Customer Confirmed Date"** means the date on which BT will provide the Service;

"Clear Code" means the reference allocated by BT to describe the way in which a fault has been closed;

"CMC" means the Customer Management Centre nominated by BT;

"Common Fault Reference" means the identifying code] allocated to multiple faults caused by a common underlying reason;

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

"Connection Charge" is the sum payable by the Communications Provider in accordance with the Openreach Price List for provisioning of the Service;

"Contract" means the Conditions, Schedule 1, Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6, 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 Form" means the form signed by the Communications Provider and BT to enter into this Contract;

"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;

“Corporate Marks” means the registered or unregistered trademarks and service marks, house marks and marks of ownership, trading names, brand names, domain 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 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;

“CP Device” means both the hardware and firmware constituting a VDSL modem directly sourced by the Communications Provider that conforms to BT SIN498;

“CP Requirement Date” is the date the Communications Provider requests the Service should be installed and commissioned by BT and be available for use by the Communications Provider;

“CP Service” means the service provided to the End Customer or reseller by the Communications Provider;

“Customer Service Plan” means a document containing details of the contacts for the 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; **“Dialogue Services and Pre-Validation Services”** means the services provided by BT as further set out in the GEA-FTTC product description and the GEA-FTTP product description;

“Earliest Available Date” means the first appointment date available to the Relevant Communications Provider;

“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;

“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;
- and demands immediate action;

“EMP” means Equivalence Management Platform;

“End User(s)/End Customer(s)” means a third party taking the CP Service from the Communications Provider or the Communications Provider’s resellers;

“Engineer Install” means where an Openreach engineer is required to install the Service at the End Customer Site;

“Excess Construction Charges” means the charges referred to in the Openreach Price List and Schedule 2C;

“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, Line Right When Tested, Cancel Order, Order Amend, Visit Assure, NTE Shift, Bandwidth modify charge, 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;

“Fault Not Found” means the Clear Code(s) allocated by BT to close a fault report in circumstances where the fault cannot be found on the BT network as more fully described in the Events Charges and TRCs document;

“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);
- (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 or overcome by exercising a standard of reasonable care at a reasonable cost;

"Forecast" means the forecast to be provided by the Communications provider to BT as detailed in Schedule 3;

"Forecast Period" means the period of three calendar months for which a Forecast is provided;

"Forecasting Manual" means the *Generic Ethernet Access Service Forecasting Manual* containing information relating to provision of forecasts of Orders for the Service as may be amended from time to time. The *Generic Ethernet Access Service Forecasting Manual* is available on the BT Website;

"FTTP on Demand" means the Generic Ethernet Access provided over Fibre to the Premise 330/30 service option provided under Schedule 2C;

"Functional Internet Access" means telephony services provided in accordance with guidelines published by Ofcom;

"Gateway" means the BT electronic gateway, used for all ordering and repair reporting;

"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);

"GEA-FTTC Service" means the Generic Ethernet Access provided over Fibre to the Cabinet service provided under Schedule 2;

"GEA-FTTP Service" means the Generic Ethernet Access provided over Fibre to the Premises service provided under Schedule 2;

"GEA Cablelink" means the connection between the Communications Provider's equipment and the BT Network provided under Schedule 2;

“Greenfield” means a location where no BT Network has previously been deployed;

“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;

“In Home Clear” means the Clear Code(s) allocated by BT to close a fault in circumstances where BT has cleared a fault in the end customer premises;

“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 percent above the base lending rate from time to time in force of the Bank of England;

“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 Customer’s service then such corrections will only be valid if the correction identifies the services provided, the End Customer’s identity, location and charges applicable;

“Invoice Dispute” means for the purposes of clause 12 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;

“MDU” means a building which is designated by BT as a multiple dwelling unit (also known as an MOU);

“MOU” means a building which is designated by BT as a multiple occupancy unit (also known as an MDU);

“Modem Bank” means a repository of reference devices which represent a significant proportion of the devices on live GEA-FTTC lines and is kept by BT for the purposes of regression testing of new hardware and firmware changes that are undertaken within the BT Network;

“MPF” means Metallic Path Facility as provided under the BT’s *Revised Agreement for Access Network Facilities Services*;

“Multicast Service” means the dynamic point to multipoint network layer provided under Schedule 2D;

“Network Upgrade Notice” has the meaning given to that term in paragraph 4.30 of Schedule 2B;

“NGA OLT” means the next generation access optical line termination as set out in the GEA Cablelink product description;

“Non Served Premises” means premises that have not previously had a fixed line telephone service. They would normally be uninhabited/unmanned, not governed by the conditions of the Health & Safety at Work Act, or not comply with the conditions as defined by local councils as habitable, including having toilet and welfare facilities;

“NTE” means the BT Network terminating equipment at an End Customer’s Site, excluding any Ethernet cable which may be provided;

“NTP” means the BT network termination point at an End Customer’s Site;

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

“ONT” means the optical network termination equipment;

“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/orpg/downloads/docs/> (or any other on-line address that BT may advise the Communications Provider);

“Operational Data” means personal data provided or made available by one Party to the other which is operationally required for the performance of this Contract (business contact information such as names, email addresses, telephone and fax numbers) relating to the Party’s employees or representatives;

“Operational Effective Date” means the relevant date when the Service is installed and commissioned by BT and the Communications Provider is notified that it is available and ready to use;

“Order” means an order for the Service received from the Communications Provider

"PCP" means the Primary Cross-Connection Point;

"PCP Only" means where BT engineer attendance is limited to the PCP and the BT engineer does not need to attend the End Customer's Site;

"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>

"Process(ed)" means an Order which has been given an order number;

"Public Electronic Communications Network" means a "Public Electronic Communications Network" as defined in part 1 of the Schedule to the notification setting the general conditions under section 45 of the Communications Act 2003;

"Region" means the geographical area as set out in the Forecasting Manual;

"Relevant Communications Provider" means a communications provider participating in the industry scheme as set out in the "Automatic Compensation - protecting consumers from service quality problems statement published by OFCOM 10 November 2017", which has registered its participation in the scheme with BT;

"Right When Tested" means the Clear Code(s) allocated by BT to close a Visit Assure in circumstances where a test is undertaken and the results shows that the service is working in the BT network as more fully described in the Events Charges and TRCs document;

"Scheduled Outage" means the period that the System is not available for use by the Communications Provider in order for BT to perform certain tasks including, but not limited to, routine maintenance, testing, changing configurations, software upgrades and updating facilities as notified by BT in accordance with clause 4.2 of the Conditions;

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

"Service" means the supply of:

- (a) Generic Ethernet Access over Fibre to the Cabinet (GEA-FTTC) Service;
- (b) Generic Ethernet Access over Fibre to the Premises (GEA-FTTP) Service;
- (c) Multicast for GEA (Multicast) Service; and/or
- (d) GEA Cablelink Service

as set out in Schedule 2 and the SIN;

"Service Maintenance Level" means the relevant period for the clearance of a fault;

"Service Maintenance Level 2" means the clearance of a fault no later than 23:59 hours on the day following the day the fault report is received by BT, excluding Sunday, Bank and Public Holidays or 23:59 hours on the agreed appointment day, whichever is the later;

"Service Maintenance Level 3" means:

- (a) the clearance of a fault no later than 23:59 hours on the same day if the fault is received by BT before 13:00 hours, or
- (b) the clearance of a fault no later than 12:59 hours on the next day following the fault report is received by BT if the fault is reported between 13:00 hours and 23:59 hours, or
- (c) 23:59 hours on the agreed appointment day,

whichever is the latest;

"Service Maintenance Level 4" means the clearance of a fault no later than 6 hours from the fault being received by BT or 23:59 hours on the agreed appointment day, whichever is the later;

"SSFP" means service specific front plate;

"Serving Area" means an area, or areas, as may be amended by BT from time to time, where the Service is potentially available, being defined by a set of postcodes (within a BT exchange area) as published from time to time on the BT Website;

"SIN" means the Suppliers' Information Notes used by BT to publish the technical descriptions of the Service;

"Site" means a place at which BT agrees to provide the Service;

"SMC Working Day" means 08:00 to 18:00 hours, Monday to Friday excluding public or bank holidays in the United Kingdom;

"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;

"System" means the EMP system;

"Territory" means United Kingdom but not including the Hull Area;

"User Guide(s)" means the documents available to the Communications Provider via the BT Web Site giving instructions on how to use the Gateway and/or eCo Repair;

“Verification Testing” means testing by BT of a CP Device in accordance with BT SIN498 and as described in Schedule 2B. Verification Testing is also known as modem conformance testing (or MCT);

“VLAN” means the Virtual Local Access Network;

“WLR” means Wholesale Line Rental as provided under BT’s *Contract for WLR3*; and

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