



# Conditions for NGA Broadband Bulk Information Service

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## 1 PARTIES

1.1 The parties to these terms and conditions are British Telecommunications plc (“BT”) and the party (“Communications Provider”) specified on the Contract Form and hereafter the terms “BT” and “Communications Provider” shall be construed accordingly in all clauses of these terms and conditions.

## 2 INTERPRETATION

2.1 In these terms and conditions:

“**BT 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

“**Contract**” means these terms and conditions, the relevant sections of the Openreach Price List, the Contract Form and the Order.

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

“**Data**” means the broadband speed information supplied by BT in response to a request from the Communications Provider in accordance with this Contract.

“**End User**” means a customer of the Communications Provider.

“**Handbook**” means the *Generic Ethernet Access over Fibre To The Cabinet (GEA over FTTC) Bulk Checker Product Description and User Guide* as may be amended from time to time containing information relating to the Service. The Handbook is available on the BT Website.

“**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.

“**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).

“**Order**” means an order for the Service received from the Communications Provider in accordance with the Handbook.

“**Service**” means NGA Broadband Bulk Information service as further described in the Handbook.

2.2 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.

2.3 The headings in this Contract are for convenience only and shall not affect its interpretation.

2.4 Words importing singular include plural and vice versa.

2.5 The terms “party” or “the parties” shall mean BT and/or the Communications Provider.

2.6 If there is a conflict between these terms and conditions and the Handbook, the order of precedence shall be as follows:



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- (a) the terms and conditions
- (b) the relevant sections of the Openreach Price List
- (c) the Contract Form
- (d) the elements of the Handbook that are incorporated by reference into this Contract.

## **3. SERVICE DESCRIPTION**

- 3.1 The Service enables the Communications Provider to check a quantity of directory numbers for broadband availability in locations where BT has notified communications providers that it is to provide its Generic Ethernet Access service.

## **4 SERVICE AVAILABILITY**

- 4.1 The Service is available only to those communications providers which supply telecommunications service(s) to the addresses for which they are seeking information under the Service. The Communications Provider warrants that it currently supplies telecommunications service(s) to those addresses for which it submits the directory numbers in order to receive information from BT under the Service.

## **5 SERVICE PROVISION**

- 5.1 The Communications Provider is required to sign a Contract Form to commence Service. The Communications Provider shall order the Service and submit requests in accordance with the procedures as more fully described in the Handbook.
- 5.2 BT agrees to:
- (a) provide the Communications Provider with the Service on the terms and conditions of this Contract which set out the entire agreement between BT and the Communications Provider;
  - (b) exercise the reasonable skill and care of a competent communications provider in providing the Service.
- 5.3 It is technically impracticable to provide a fault free Service and BT does not warrant that the Data is free from errors or inaccuracies. BT shall use reasonable endeavours to ensure the Data supplied under this Contract is accurate.
- 5.4 BT will provide the Service only in the Territory.

## **6 CUSTOMER OBLIGATIONS**

- 6.1 The Communications Provider must:
- (a) in using the Data supplied to it by BT under this Contract, comply with all relevant legislation and codes of practice relating to its marketing and advertising, including without limitation:
    - (i) the Code of Advertising Practice
    - (ii) the Telephone Preference Scheme and other industry guidelines that may be specified to protect the privacy of residential telephone subscribers;



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- (b) obtain all necessary agreements and permissions needed to use the Service;
- (c) comply with all reasonable instructions which BT may give from time to time with regard to the use of the Service.

6.2 The Communications Provider must not:

- (a) use the Service in a way that brings BT into disrepute;
- (b) use the Service or the Data provided for any purpose except in accordance with the terms and conditions set out in this Contract;
- (c) misrepresent to any person the nature or level of detail of information supplied to it by BT as part of the Service.

6.3 The Communications Provider acknowledges and accepts that BT may suspend, or change the Service from time to time, or impose conditions and instructions as to its use if it reasonably considers this necessary in order to comply with any applicable law or codes of practice, including without limitation, law and practice relating to data protection.

6.4 The Communications Provider is responsible for compliance with any conditions and instructions contained in these terms and conditions and is responsible for the acts and omissions of its employees in connection with the Service and is liable for any failure by its employees to perform or observe the terms and conditions of this Agreement, including any instructions issued under clause 6.3 above.

## 7 DATA PROTECTION

7.1 BT and the Communications Provider each agree to comply with their respective obligations under applicable data protection legislation and maintain all relevant registrations and notifications, including (in relation to the Communications Provider) such registrations, notifications and consents as the Communications Provider should obtain and maintain to enable BT to process the personal data of End Users for the purposes of the performance by BT of its obligations under this Agreement. If the parties to this Agreement act as a data controller and a data processor (as such terms are defined in the Data Protection Act 1998) respectively in connection with the provision or use of the Service, the party acting as the data processor shall, in the processing of personal data on behalf of the other party, act only on instructions from that other party and shall comply with the obligations imposed on a data controller by the seventh principle set out in Part 1 of Schedule 1 of the Data Protection Act 1998.

7.2 The Communications Provider 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 Communications Provider 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.

7.3 BT agrees to indemnify the Communications Provider 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 Communications Provider by a third party because BT is in breach of sub-clause 7.1 above. The limitation of liability provisions of this Contract apply to this indemnity. The Communications Provider shall have a duty to mitigate any loss in the circumstances covered by this indemnity.

7.4 The limitations and exclusions of liability contained in clause 11 do not apply to sub-clauses 7.2 and 7.3 above.



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## 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Communications Provider 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 or otherwise giving the Communications Provider any rights in BT's Intellectual Property Rights except as provided in this clause 8.
- 8.2 BT grants the Communications Provider a non-exclusive non-transferable licence to use the Service or documentation in connection with the Service.
- 8.3 BT agrees to indemnify the Communications Provider 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 Communications Provider. This indemnity does not apply to infringements or claims or legal proceedings which arise as a result of the use of the Service otherwise than in accordance with the terms of this Contract. As a condition of this indemnity the Communications Provider will:
- (a) notify BT promptly in writing of any allegation of infringement;
  - (b) make no admission relating to the infringement;
  - (c) allow BT to conduct all negotiations and proceedings and give BT all reasonable assistance in doing so (BT will pay the Communications Provider's reasonable expenses for such assistance and will have due regard to the Communications Provider's representations for such negotiations and proceedings); and
  - (d) allow BT to modify the Service, or any item provided as part of the Service, so as to avoid the infringement.
- 8.4 The Communications Provider agrees to indemnify BT against all claims and proceedings arising from infringement of any third party Intellectual Property Rights by reason of the Communications Provider's use of the Service. As a condition of this indemnity BT will:
- (a) notify the Communications Provider promptly in writing of any allegation of infringement;
  - (b) make no admission relating to the infringement; and
  - (c) actively consult with the Communications Provider regarding the conduct of any action and have due regard to the Communications Provider's representations, and not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the agreement of the Communications Provider, which shall not be unreasonably withheld.
- 8.5 The limitations and exclusions of liability contained in clause 11 do not apply to sub-clauses 8.3 and 8.4 above.

## 9. CONFIDENTIALITY

- 9.1 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 those of its employees who are directly involved or engaged for the purposes of the Agreement and who need to know the same and will ensure that such employees are aware of and comply with these obligations of confidentiality.



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- (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 Communications Provider, the employees of a Communications Provider 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.

9.2 Sub-clause 9.1 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 required by law to disclose.

## 10 CHARGES

10.1 The Communications Provider 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.

10.2 The Communications Provider 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.

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

## 11 LIMITATION OF LIABILITY

11.1 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.

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

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



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- (g) of data;
- (h) of revenue.

11.3 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;
- (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.

11.4 Subject to any express terms and conditions of this Contract to the contrary either party's liability to the other (other than any liability of the Communications Provider to pay the charges for the Service when due and payable) in contract, tort (including negligence), breach of statutory duty or otherwise in relation to direct:

- (a) loss of profits; or
- (b) loss of or physical damage to any tangible property; or
- (c) loss reasonably incurred as a result of having the Service completed to a similar standard;

is limited to the value of the Service provided under these terms and conditions.

11.5 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.

## 12 CHANGES TO THIS CONTRACT



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- 12.1 BT may change the charges payable under this Contract at any time prior by giving notice to the Communications Provider.
- 12.2 BT may change this Contract at any time by giving not less than 28 calendar days notice before the change takes effect in order to:
- (a) comply with any legal or regulatory obligation; or
  - (b) introduce or withdraw Service features.

### **13 TRANSFER OF RIGHTS AND OBLIGATIONS**

- 13.1 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 Communications Provider may transfer its rights and obligations by way of novation to an eligible Communications Provider 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 Communications Provider that it has done so.

### **14 ENTIRE AGREEMENT**

- 14.1 This Contract contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 14.2 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.

### **15 LAW**

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