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1. INTERPRETATION

In this Contract:

“**ADSL**” means asymmetric digital subscriber line.

“**Access Network Frequency Plan**” means the UK Access Network Frequency Plan as published by the National Regulatory Authority.

“**Annex(es)**” means the annex(es) to the Service Schedule.

“**Broadband Access Server**” means a remote access server, a component in the BT Network and which is used for the Service.

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

“**Broadband Availability Checker**” means the interface and tool provided by BT to assess ADSL availability as further detailed in paragraph 9.1(b)(ii) to (iv) of Schedule 1 and the Handbook.

“**Broadband Availability Checker User Guide**” means the guide titled “ADSL checker service provider usage document” which can be found on the BT Website.

“**BT Central**” means the physical network and protocol which connects a Customer NTE to the Broadband Access Server.

“**BT Central Plus**” means the physical network and protocol which aggregates the Customer’s ADSL End User Accesses and then connects them via the Broadband Access Server, directly to the Internet.

“**BT Central Plus Interface**” means an interface option provided in accordance with SIN 329, for use with BT Central Plus as further detailed in the Handbook.

“**BT Central Plus Static IP**” means a static IP addressing option for use with a BT Central Plus, as further detailed in the Handbook.

“**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.

“**BT Datastream**” means the BT Datastream service supplied by BT on the terms and conditions for the service notified by BT from time to time and available on the BT Website.

“**BT Equipment**” means equipment (including any software) placed on a Site by BT for the provision of the Service including (without limitation) the End User NTE and (in the case of a BT Central only) the Customer NTE, as such terms are defined in these Conditions.

“**BT Group Company**” means a BT subsidiary or holding company, including without limitation a holding company of BT or any subsidiary of any such holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989.

“**BT IPstream-Advanced Services**” means the BT IPstream Service functionalities of End User Speed Control (“EUSC”) and Down Stream Quality of Service (“QOS”) as described in Annex 1 of the Service Schedule.

“**BT Network**” means BT’s telecommunications network.

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“**BT Price List**” means the service provider price list located at URL www.btwholesale.com/pricing and as may be amended by BT from time to time.

“**Bulk Migration**” means the bulk transfer, in accordance with the BT Bulk Migration process detailed on the BT Website, of at least 10 BT Datastream or IPstream ADSL End User Accesses to the Customer Service, at the request of the Customer, and with the written consent of the BT Datastream or BT IPstream customer from whom the ADSL End User Accesses are being migrated.

“**BT Website**” means the website located at URL www.btwholesale.com/broadband or such other website or URL as BT may notify the Customer from time to time.

“**Contract**” means these Conditions, the Schedules and Annex(es), the relevant sections of the BT Price List, the relevant Order Form(s) and CRF(s) which, in the event of conflict, rank in this order of precedence.

“**CRF**” means a Customer Requirement Form, or its electronic equivalent, in a form stipulated by BT, for an End User Access, a Migration, a BT Central, a BT Central Plus, BT Central Plus Interface, BT Central Plus Static IP or BT IPstream-Advanced Services.

“**Customer**” means the person with whom BT makes this Contract.

“**Customer Group Company**” means a Customer subsidiary or holding company, or any subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985 as amended by the Companies Act 1989.

“**Customer NTE**” means the BT Network terminating equipment on the Customer’s Site.

“**Customer Service**” means the service provided to the End User by the Customer using the Service provided by BT.

“**End User**” means a person taking the Customer Service.

“**End User Access**” means the physical network (excluding the Metallic Pair in the case of ADSL only) between the Broadband Access Server and an End User’s Site. The End User Access is also known as “BT IPstream S”, “BT IPstream 500”, “BT IPstream Home”, “BT IPstream Office”, “BT IPstream Symmetric” and “BT IPstream Max”.

“**End User NTE**” means the BT Network terminating equipment on an End User’s Site, excluding any Ethernet cable which may also be provided.

“**EUSC**” means the BT IPstream Service functionality of End User Speed Control as detailed in the Handbook.

“**Fault Handling System**” means the fault handling tool stipulated in the Handbook.

“**Gaining Customer**” means either the Customer requesting the Migration of another customer’s BT IPstream or BT Datastream ADSL end user to its Customer Service, or another BT IPstream or BT Datastream customer requesting the Migration of one of the Customer’s BT IPstream ADSL End Users to its customer service.

“**Gateway**” means the BT electronic gateway, being part of the Order Handling System and Fault Handling System, to enable the Customer to place End User Access repair and provision orders using a web based or XML based interface.

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“**Handbook**” means the BT IPstream handbook, the BT IPstream Max handbook and the BT IPstream-Advanced Services handbook as may be amended from time to time containing information relating to the Service to assist the Customer. The Handbook is available on the BT Website.

“**Migration**” means the transfer, in accordance with the BT Migration process detailed in the Handbook, of an existing ADSL End User Access (including the remaining applicable Minimum Period) to the Gaining Customer’s service.

“**Minimum Period**” means the applicable minimum period or periods of the Service or any part of the Service commencing on the relevant Operational Service Date as set out in the BT Price List.

“**Nominated Contacts**” means the person or persons referred to in paragraph 4 of these Conditions.

“**National Regulatory Authority**” means The Office of Communications or its competent successor body or authority.

“**Operational Service Date**” means the relevant date or dates when the Service, or any part of it, is installed and commissioned by BT.

“**Order Form**” means the BT AX8330 form to be completed by the Customer in respect of a request for Service.

“**Order Handling System**” means the electronic order handling tool stipulated in the Handbook to enable the Customer to order the Service.

“**PSTN**” means the public switched telephone network forming part of the BT Network.

“**QOS**” means the BT IPstream Service functionality of Downstream Quality of Service as detailed in the Handbook.

“**Service**” means BT IPstream Service as described in Schedule 1 and the Annex(es) to Schedule 1.

“**SIN**” means a Suppliers Information Note, issued by BT and published at URL www.sinet.bt.com

“**Site**” means a place to and from which BT agrees to provide the Service.

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2. COMMENCEMENT AND DURATION OF THIS CONTRACT

This Contract commences on the date that the first Order Form is signed by duly authorised representatives of BT and the Customer. BT will not accept any orders for Service until any deposit requested in accordance with BT's applicable published Policy for Credit Vetting and Security Deposits is paid in full and the first Order Form is accepted and signed by BT. This Contract will continue unless terminated by either party under the terms of this Contract.

(ii) in the case of an ADSL End User Access only, the duration of the End User's contract (whether with BT or a third party) for the use of a BT provided analogue direct exchange line on which the Customer Service depends and which terminates on a BT public switched telephone network master socket forming part of the BT Network; or

(iii) the duration of this Contract.

3. PROVISION OF THE SERVICE

3.1. BT will:

(a) provide the Customer with the Service on the conditions of this Contract;

(b) exercise the reasonable skill and care of a competent telecommunications service provider in providing the Service and if required in determining how best to provide the Service to a Site;

(c) use its reasonable endeavours to provide the Service by the date agreed with the Customer in accordance with Schedule 1, but except as stated in Schedule 2 all dates are estimates and BT has no liability for any failure to meet any date;

(d) grant the Customer a non-exclusive non-transferable right to use the BT Network for the sole purpose of enabling the Customer to provide the Customer Service to one or more Sites. BT will only provide the Service to a Site for whichever is the shortest of:

(i) the duration of the Customer's contract with an End User for the Customer Service at that Site; or

(e) comply with all laws and regulations enforceable at law relevant to the provision of the Service.

3.2 Subject always to paragraph 3.1(b) above occasionally BT may:

(a) for operational reasons, change the technical specification of the End User Access, BT Central, BT Central Plus or BT IPstream-Advanced Services 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 any other telecommunications services provided by BT to the Customer or any other customer; or

(c) suspend the Service for operational reasons (such as maintenance or Service upgrades) or because of an emergency and BT will use reasonable endeavours to resume the provision of Service as soon as the grounds for suspension no longer exist.

But before doing any of these things, BT will give the Customer as much notice as possible and whenever practicable will

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- agree with the Customer when the Service will be suspended.
- 3.3 Without prejudice to paragraph 3.1(b) above, it is technically impracticable to provide a fault free Service and BT does not undertake to do so. BT will however repair any faults in accordance with Schedule 1 and Schedule 2.
- 3.4 The Customer will use its reasonable endeavours to provide such information as BT may reasonably require, in order for BT to perform its obligations under this Contract.
- 4. NOMINATED CONTACTS**
- 4.1.** The Customer and BT will each:
- (a) appoint a person or persons as Nominated Contacts who will be the central point of liaison between BT and the Customer for all issues regarding this Contract and the Service; and
- (b) notify each other of the contact details of the Nominated Contacts and with the contact details of any other person or persons to act as the Nominated Contacts should the primary Nominated Contacts be unavailable. The Customer and BT will notify each other of any changes to these details.
- 4.2.** The Nominated Contacts will attend review meetings covering all matters in relation to the Service and this Contract not less than once in every calendar month (or at such other frequency as BT and the Customer agree).
- 4.3.** The Nominated Contacts will have authority to act for and on behalf of the parties in respect of all matters for which they have been appointed in accordance with paragraph 4.1(a) above. If Nominated Contacts have been appointed for the purposes of paragraph 20.1 below, then they will have authority to act for and on behalf of the parties in respect of that paragraph.
- 5. BT EQUIPMENT**
- 5.1.** The BT Equipment remains the property of BT at all times.
- 5.2.** If required, to allow the installation and use of the BT Equipment at the Customer's Site and the End Users' Sites, the Customer will at its own expense and will use reasonable endeavours to procure that the End Users will:
- (a) obtain all necessary consents, including consents for any necessary alterations to buildings;
- (b) provide any electricity and connection points required by BT; and
- (c) provide an appropriate environment for the installation in accordance with the minimum requirements described by BT for this purpose in the Handbook and which BT advises are necessary, and carry out afterwards any making good or decorator's work required.
- All such preliminaries must be completed in advance of any installation work.
- 5.3.** The Customer is responsible for the BT Equipment and must 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 the 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.
- 6. CONNECTION OF EQUIPMENT TO THE SERVICE**
- 6.1** Any equipment connected (directly or indirectly) to or used with the Service must be connected and used in accordance with any published instructions, safety and security procedures applicable to the use of that equipment.
- 6.2** Any equipment connected (directly or indirectly) to or used with the Service must be technically compatible with the Service and approved for that purpose under any relevant legislation or telecommunications

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industry standards (including the Access Network Frequency Plan).

public telecommunications operator; or

7. ACCESS AND SITE REGULATIONS

7.1. At a reasonable time agreed with BT and to enable BT to carry out its obligations under this Contract, the Customer will use its reasonable endeavours to provide and will use its reasonable endeavours to procure, that End Users will provide BT employees and anyone acting on BT's behalf, who produces a valid identity card, with access to any Site. BT will normally only require access during BT Normal Working Hours (as such term is defined in Schedule 1) but may, on reasonable notice, require the Customer to provide access at other times. BT may agree to work outside BT Normal Working Hours but the Customer must pay BT's additional charges for doing so as detailed in the BT Price List.

(c) to send, knowingly receive, upload, download, use or re-use material which is abusive, indecent, defamatory, obscene or menacing, or in breach of copyright, confidence, privacy or any other rights; or

(d) in a way that does not comply with any instructions given under paragraphs 3.2(b) and 6.1 above; or

(e) in a way that in BT's reasonable opinion could materially affect the quality of any telecommunications service, including the Service, provided by BT.

7.2. BT employees and anyone acting on BT's behalf will observe the Customer's or End User's reasonable Site regulations as previously advised in writing to BT. BT will not be liable for any breach of this Contract, which arises as a result of conflict between any Site regulations and these Conditions.

8.2. The Customer agrees to include and maintain in its contracts with End Users conditions equivalent to those contained in paragraph 8.1 above, and undertakes to BT to diligently and properly enforce such conditions within its contracts with its End Users that it knows are in breach of such obligations.

7.3. The Customer will provide a suitable and safe working environment for BT employees and anyone acting on BT's behalf at the Customer's Site.

8.3. BT and the Customer 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 Customer) such registrations, notifications and consents as the Customer should obtain and maintain to enable BT to process the personal data of End Users (including, but not limited to advising the Customer of changes to the End User's PSTN telephone number) and providing incompatible product information and other associated information as detailed in paragraph 9.1 (b) (iii) Schedule 1 via the Broadband Availability Checker for the purposes of the performance by BT of its obligations under this Contract.

8. USE OF THE SERVICE

8.1. The Customer must not use the Service and must take reasonable steps to ensure that the Customer Service, is not used:

(a) in a way that does not comply with the terms of any legislation or any licence applicable to the Customer or End User (as appropriate) or that is in any way unlawful or fraudulent or, to the knowledge of the Customer, has any unlawful or fraudulent purpose or effect; or

(b) in connection with (without prejudice to the generality of paragraph 8.1(a) above) the carrying out of a fraud or criminal offence against BT, or any other

8.4. The Customer will indemnify BT against any claims or legal proceedings, which are brought or threatened against BT by a third party:

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- (a) because the Service is used by the Customer in breach of paragraphs 8.1(a) to (e) above inclusive; or
- (b) in circumstances where the Customer is in breach of paragraph 8.2 above.

8.5. As a condition of the indemnity in paragraph 8.4 above BT must:

- (a) notify the Customer promptly of any such claims or legal proceedings upon becoming aware of the same;
- (b) make no admission relating to such claims or legal proceedings without the agreement of the Customer, which shall not be unreasonably withheld; and
- (c) actively consult with the Customer regarding the conduct of any action and have due regard to the Customer'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 Customer, which shall not be unreasonably withheld.

8.6 Any change in an End User's PSTN telephone number provided by BT to the Customer in connection with the Service shall:

- a) only be used by the Customer for the purpose of updating the Customer's records for that End User's Customer Service; and
- b) not be used for any other purpose (including but not limited to contacting the End User directly and/or for marketing).

9. INTELLECTUAL PROPERTY RIGHTS

9.1. Where software is provided to enable the Customer to use the Service, BT grants the Customer, for the duration of this Contract, a non-exclusive, non-transferable (save as provided in this paragraph 9.1) licence to use the software for that purpose. Any charges in respect of such software will be included within BT's charges for the Service payable under paragraph 13 below. In the

event that any such software is supplied to an End User to enable that End User to use the Customer Service then BT grants to the Customer a right to sub-licence the use of the software only to the End User on a non-exclusive, non-transferable basis for the duration of their contract with the End User or for the duration of this Contract whichever is the shorter.

9.2. The Customer will sign, and will use all reasonable endeavours to procure that any End User will sign, any agreement containing reasonable terms which is reasonably required by the owner of the copyright in the software to protect the owner's interest in that software provided that any charges payable under the terms of such agreement will be included within BT's charges for the Service payable under paragraph 13 below.

9.3 Except as permitted by applicable law or as expressly permitted under this Contract the Customer must not, without BT's prior written consent, copy, de-compile or modify the software, nor copy the manuals or documentation, nor knowingly allow or permit any End User to do so. The Customer can make such number of copies of the software for the purpose of back-up or disaster recovery as is reasonably necessary for the lawful use of the software in accordance with the Service.

9.4 Except as provided in this paragraph 9, nothing in this Contract entitles the Customer or an End User to use and the Customer will not use or permit any End User to use, BT's name, logo, or trademark or any BT intellectual property in connection with the Service (including in any of the Customer's promotional literature relating to the Customer Service) without the prior written consent of BT. Any breach of this paragraph 9.4 will be a material breach of this Contract for the purposes of paragraph 19.2(a) below.

9.5 The Customer may not claim that:

- (a) it is part of BT or the BT Group; or
- (b) it has any form of partnership or joint venture with BT; or

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- (c) it has been appointed by BT as any form of distributor, dealer or service provider, nor that it provides any service on behalf of BT.
- 9.6 The Customer will not:
- (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; or
 - (d) 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 without first obtaining the prior written approval of BT; or
 - (e) claim that the Customer Service is the same as, or equivalent to, any service provided by BT.
- 9.7 The Customer is permitted, subject to the provisions contained in this paragraph, to state that:
- (a) it is provided with the Service by BT but strictly and at all times referring only to the Service by the full name of that Service as defined in paragraph 1 above, and not by any abbreviation of that name;
 - (b) the fault repair service is provided by BT;
 - (c) installation of the BT Equipment is carried out by BT; and
 - (d) disconnection and recovery of the BT Equipment is carried out by BT.
- In relation to paragraphs 9.7 (b), (c) and (d) above the Customer may make other reasonable statements conveying a substantially similar meaning.
- 9.8 The Customer must ensure that the letters "BT" must be no more prominent than the immediately surrounding letters and in no case greater than the surrounding typeface.
- 9.9 The Customer may use the text "Broadband enabled by BT Wholesale". The use of the text is subject to written approval under the BT Wholesale Endorsement Mark Policy – xDSL which can be found on the BT Website. BT reserves the right to withhold or withdraw its approval where it believes that the text will be used or is being used in contravention of the BT Wholesale Endorsement Mark Policy – xDSL.
- 9.10 This paragraph 9 does not prevent any other legitimate use of the term "BT" in any comparison of services and tariffs, in accordance with the Trade Mark Act 1994 and the legislation referred to in paragraph 12 below.
- 9.11 Nothing in this Contract entitles BT to use and BT will not use the Customer's name, logo, or trademark or any of the Customer's intellectual property in connection with the Service (including in any of BT's promotional literature relating to the Service) without the prior written consent of the Customer. Any breach of this paragraph 9.11 will be a material breach of this Contract for the purposes of paragraph 19.2(a) below.
- 10. INTELLECTUAL PROPERTY RIGHT INDEMNITIES**
- 10.1.** BT will indemnify the Customer against all claims and proceedings arising from infringement of any intellectual property rights by reason of BT's provision of the Service to the Customer and the Customer's use of the Service in accordance with the terms of this Contract. As a condition of this indemnity the Customer must:
- (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 Customer's reasonable expenses for such

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assistance and will have due regard to the Customer'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 provided that the modification does not materially affect the performance of the Service.

10.2. The indemnity in paragraph 10.1 above does not apply to infringements caused by equipment or software not supplied by BT which is used by the Customer in conjunction with the Service, or to infringements 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. The Customer will indemnify BT against all claims, proceedings and expenses arising from such infringements subject to BT complying with the conditions set out in paragraphs 8.5(a), (b) and (c) above and subject to BT allowing the Customer to modify or replace the infringing equipment or software so as to avoid the infringement.

10.3. The limitations and exclusions of liability contained in paragraph 14 below do not apply to this paragraph 10.

11. CONFIDENTIALITY

11.1. The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under or in connection with this Contract or the Service and will not without the written consent (such consent not to be unreasonably withheld or delayed) of the other party disclose that information to any person other than:

- (a) their employees or professional advisers who need to know the information;
- (b) in the case of BT, the employees of a BT Group Company or their suppliers, who need to know the information; and

- (c) in the case of the Customer, the employees of a Customer Group Company or its or their sub-contractors or End Users who need to know the information.

In this paragraph 11.1 the phrase "need to know the information" shall mean having a need to know the information in order to fulfil the party's obligations under this Contract or in order to receive the Service or the Customer Service and BT shall ensure that Customer's confidential information is not used to give a commercial advantage to BT's retail business and shall be used solely for the purpose for which it was disclosed.

11.2. This paragraph 11 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;
- (d) information which a party is requested to disclose and, if it did not, would be required by law to do so; and
- (e) any information which has been replicated independently by someone without access to or knowledge of the information.

11.3. This paragraph 11 will remain in effect for 2 years after the termination of this Contract.

12. MARKETING, ADVERTISING STANDARDS AND COMPLIANCE

12.1. The Customer will comply with:

- (a) the instructions set out in paragraph 9. BT may change paragraphs 9.5, 9.6, 9.7, 9.8, 9.9 and 9.10 on 28 days notice to the Customer. BT will not enforce its rights in respect of a breach of this paragraph if such a breach occurs during a period of 28 days following

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expiry of such notice if such a breach occurs solely as a result of the change to paragraphs 9.5, 9.6, 9.7, 9.8, 9.9 and 9.10 as notified; and

- (b) all relevant legislation and codes of practice relating to its marketing and advertising of the Customer Service, including without limitation the Code of Advertising Practice.

12.2. The Customer will ensure that it has in place at all times processes to monitor and enforce compliance by its staff and agents with the legislation and codes of practice referred to in paragraph 12.1 (b) above and to receive and take prompt and effective action on complaints from BT or other parties who are authorised to enforce such compliance.

12.3. Neither party has authority to enter into any contractual arrangements with third parties on behalf of the other party. The parties undertake that they will not represent themselves as each other or assert that they have any authority to provide or promote any products or services on behalf of each other. Any breach of this paragraph 12.3 will be a material breach of this Contract which cannot be remedied for the purposes of paragraph 19.2(b) below.

13. CHARGES AND DEPOSITS

13.1. The charges for the Service will be calculated in accordance with the BT Price List. Charging will begin on the Operational Service Date. Charges will be calculated in accordance with details recorded by, or on behalf of, BT.

13.2. Subject to paragraph 13.8 below, the Customer will pay the charges within 28 days of the date of BT's invoice. BT may charge daily interest on late payments at a rate equal to 4% per annum above the base-lending rate of HSBC Bank plc.

13.3. All charges exclude Value Added Tax (VAT) at the applicable rate, unless stated otherwise.

13.4. The Customer acknowledges that it will be subject to BT's applicable published Policy

for Credit Vetting and Security Deposits. Should BT consider it necessary following the application of this policy or should the Customer fail to pay the charges for the Service in accordance with paragraph 13.2 above, BT may (without prejudice to any other rights and remedies available to BT under this Contract), at any time in accordance with its applicable published Policy for Credit Vetting and Security Deposits, require the Customer to pay a deposit or provide a guarantee as security for payment of future charges.

13.5. Any requirement to pay a deposit as a result of the Customer failing to pay charges shall be notified to the Customer by BT within 6 months of the date that such charges became overdue for payment to BT.

13.6. The Customer agrees to pay such deposit or provide such guarantee within 28 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 orders for the Service and to suspend the provision of fault repair and management facilities in relation to the Service until such deposit or guarantee is forthcoming.

13.7. In the event of any conflict between this Contract and the terms of BT's applicable published Policy for Credit Vetting and Security Deposits, the terms of this Contract shall take precedence.

13.8. If the Customer disputes any invoice from BT relating to the Service, it will notify BT within 28 days giving written reasons for such dispute and, without prejudice to paragraph 13.9 below, will not withhold payment of any amount not in dispute. Such dispute will then be dealt with in accordance with paragraph 16 below.

13.9. The Customer will not be entitled to withhold any payment to BT on the grounds that the Customer has a dispute with End Users in respect of the provision of the Customer Service to End Users.

14. LIMITATION OF LIABILITY

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- 14.1.** BT accepts liability for the late provision of End User Access orders and the late clearance of reported End User Access faults, unless for a reason covered by paragraph 15, but only to the extent set out in Schedule 2 and in this paragraph 14.
- 14.2.** BT and the Customer accept unlimited liability for death or personal injury resulting from its negligence.
- 14.3.** Except as stated in the service guarantee in Schedule 2, BT and the Customer are not liable to each other, either in contract, tort (including negligence) or otherwise for indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of data.
- 14.4.** BT accepts liability for the late provision of a BT Central or a BT Central Plus and the late clearance of a BT Central or a BT Central Plus reported fault, unless for a reason covered by paragraph 15, but only to the extent set out in Schedule 2 and in this paragraph 14.
- 14.5.** Notwithstanding paragraph 14.6 below, BT's liability to the Customer in terms of breach of contract, tort (including negligence) or otherwise in relation to direct loss of revenue suffered by the Customer as a result of the failure of BT's Order Handling System or Fault Handling System attributable to such breach of contract, tort (including negligence) or otherwise, is limited in relation to any one incident or series of related incidents to £100,000 and to £500,000 for all such incidents in any period of 12 months. For the purpose of this paragraph 14.5 only, a failure of the BT Order Handling System shall mean any loss or failure of, disruption to or malfunction in the BT Order Handling System which prevents the Customer from ordering the Service and a failure of the BT Fault Handling System shall mean any loss or failure of, disruption to or malfunction in the BT Fault Handling System which prevents the Customer from receiving any fault handling related service.
- 14.6.** Except as stated in paragraphs 14.1 to and including 14.5 above, the liability of BT and the Customer to each other in contract, tort (including negligence) or otherwise in relation to this Contract is limited (other than any liability of the Customer to pay the charges for the Service when due and payable) to £2 million for any one incident or series of related incidents and to £5 million for all incidents in any period of 12 months.
- 14.7.** Each provision of this paragraph, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts will continue to apply.
- 15. MATTERS BEYOND THE REASONABLE CONTROL OF EITHER PARTY**
- 15.1.** If either party is unable to perform any obligation under this Contract because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (including industrial disputes involving that party's own employees where that industrial dispute is beyond the reasonable control of that party) or acts of local or central Government or other competent authorities or events beyond the reasonable control of that party's suppliers, the party will have no liability to the other for that failure to perform.
- 15.2.** If as a result of a matter beyond the reasonable control of a party, the affected party is unable to do or delayed in doing what it has agreed under this Contract, it shall continue performing those obligations under this Contract that are not affected by the matter beyond its reasonable control and in performing those obligations shall use reasonable efforts to deploy its resources so that (when taken with obligations to third parties) there is no undue discrimination against the other party.
- 15.3.** If the affected party is unable to do or delayed in doing what it has agreed under this Contract because of a matter beyond its reasonable control, the other party shall be released to the equivalent extent from its obligation to make payment for such services or facilities or complying with its obligation in relation to them.

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15.4. If any of the events detailed in paragraph 15.1 above continue for more than 3 months either party may serve notice on the other terminating this Contract.

15.5. If any of the events detailed in paragraph 15.1 above continue for more than 28 days and such event has caused a total loss of the Service for the duration of that 28 day period, the Customer may serve notice on BT terminating this Contract.

16. ESCALATION AND DISPUTE RESOLUTION

16.1. If a dispute arises between the parties to this Contract, the parties will use their reasonable endeavours to settle the dispute in accordance with the following procedures:

(a) a dispute which has not been settled by the Customer's representative and the BT representative within 7 days of the matter being raised, may be escalated by either party to the first level by written notice to the other party; and

(b) if the dispute is not resolved at the first level within 7 days of escalation either party may refer the dispute to the second level.

The representatives of the parties and the people to whom a dispute must be escalated at the first and second levels are as notified by either party to the other from time to time.

16.2. If a dispute is not resolved after the procedures set out in paragraph 16.1 above have been followed then, if the parties agree, the dispute will be referred to a mediator:

(a) the mediator will be appointed by agreement of the parties. In the event of a failure to agree within 3 days of a proposal by one party, the mediator will be appointed by the Centre for Dispute Resolution (CEDR);

(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;

(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 paragraph 11.1 above, and paragraph 11.3 above will not apply; and

(d) if the parties are not prepared to agree to the dispute being referred to a mediator or fail to reach agreement within 2 months of the mediator being appointed, then either party may exercise any remedy that it has under this Contract.

16.3. Nothing in this paragraph 16 shall prevent either party from referring the dispute to Ofcom in accordance with any right (if any) either party may have to request a determination or other appropriate steps for its resolution.

17. CANCELLATION

The Customer may cancel the Service or any part of it at any time before the Operational Service Date. If the Customer cancels the Service, or any part of it before the Operational Service Date, it must pay BT the cancellation charges specified in the BT Price List.

18. TERMINATION OF THIS CONTRACT BY NOTICE

18.1. BT may terminate this Contract on 12 months notice to the Customer.

18.2. The Customer may terminate this Contract on 3 months notice to BT.

18.3. The Customer may terminate this Contract on 7 days notice if:

(a) BT increases the charges for the Service by more than 5% above the rise in the Retail Price Index (RPI), such rise being measured

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over the immediately preceding 12 month period; or

- (b) BT increases the charges for the Service by such amount which, when aggregated with any other price increases for the Service over the immediately preceding 12 month period, means that the charges for the Service over such 12 month period have increased by an amount greater than the RPI plus 5%; or
- (c) BT materially changes the conditions of this Contract to the Customer's detriment in accordance with paragraph 20.2 below;

provided that such notice to terminate shall be served on BT no later than 28 days from the date the change comes into effect.

18.4. If the Customer terminates this Contract during the Minimum Period other than because BT has increased its charges, or has materially changed the conditions of this Contract to the Customer's detriment, or because the Contract is terminated under paragraphs 15.2 or 15.3 above, the Customer must pay BT the appropriate termination charges specified in the BT Price List.

18.5. BT will repay or credit the Customer with the appropriate proportion of any rental paid in advance (other than for any part of the Minimum Period if termination charges are payable under paragraph 18.4 above) for the period ending after the Customer's liability to pay rental ceases.

19. BREACHES OF THIS CONTRACT

19.1. In the event that;

- (a) BT is directed by the National Regulatory Authority or any competent authority to cease the provision of the Service or any part of it; or
- (b) the Customer fails to pay any charges for the Service not in dispute following a reminder notice sent by BT not less than 10

working days before BT exercises its rights under this paragraph 19; or

- (c) the Customer fails to comply with the instructions governing the use of BT Name and Trade Marks in paragraph 12 above and paragraph 9; or
- (d) the Customer fails to enforce the relevant conditions in its contracts with End Users as required by paragraph 8.2 above;

then BT may at its sole discretion;

- (i) in the event of a direction under paragraph 19.1(a) above, refuse to accept any orders for the Service or that part of it that it is directed to cease; and
- (ii) in the circumstances referred to in paragraph 19.1(b) above, refuse to take any new orders for the Service in relation to the Customer until such time as payment is received in full; and
- (iii) in any of the circumstances referred to in paragraphs 19.1(a), (b), (c) or (d) above, exercise its rights under paragraphs 19.2 and 19.3 below.

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

- (a) commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within a reasonable time specified in a written notice from the other party to do so; or
- (b) commits a material breach of this Contract which cannot be remedied; or
- (c) is repeatedly in breach of this Contract; or

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(d) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over its assets.

19.3. If any of the events detailed in paragraph 19.2 above occur as a result of Customer default, BT may by notice to the Customer (setting out the reasons) suspend the Service or any part of it without prejudice to its right to terminate this Contract. Where the Service or any part of it is suspended under this paragraph 19.3 the Customer must pay the charges for the Service until this Contract is terminated. If the Service is suspended under this paragraph 19.3 (but not if BT suspends part of the Service) for a continuous period of 28 days then the Customer may give notice to BT to terminate this Contract.

19.4. If this Contract is terminated by BT during a Minimum Period because of an event specified in paragraphs 19.1(b), (c) and (d) or 19.2 above, or by the Customer under paragraph 19.3 above, the Customer must pay BT the termination charges specified in the BT Price List.

19.5. 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.

20. CHANGES TO THIS CONTRACT

20.1. If the Customer asks BT to make any change to the Service BT may ask the Customer to confirm the request in writing. If BT agrees to a change, this Contract will be amended from the date when BT confirms the change in writing to the Customer.

20.2. BT may change this Contract at any time in order to:

(a) comply with any legal or statutory obligation including, but not limited to, any requirements from time to time under the Telecommunications Act 1984; or

(b) comply with the applicable regulatory requirements; or

(c) comply with any final order, provisional order, direction, notice, specification, designation or consent made by the National Regulatory Authority relating to the Service; or

(d) change the charges payable under this Contract; or

(e) introduce new Service features (subject to such notice as is required under the applicable regulatory requirements); or

(f) withdraw Service features (subject to such notice as is required under the applicable regulatory requirements); or

(g) introduce new or improved service levels or service level guarantees; or

(h) maintain the integrity or security of the Service or BT Network; or

(i) introduce process changes, provided they are not to the Customer's material detriment; or

(j) improve clarity, or make corrections to typographical errors; or

(k) protect the use of the BT name and Trade Marks;

provided that any change introduced for the reasons set out in paragraphs (e) to (k) inclusive, above, shall not materially affect the Service or the performance of the Service except insofar as it is reasonable to do so. BT will give the Customer notice of the changes at least 28 days before the changes are to take effect.

20.3. In addition to BT's right to change this Contract under paragraph 20.2 above, BT may also change this Contract at any time

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with the agreement of the Customer. BT will give the Customer written notice of the changes and publish details of any change on the BT Website at least 28 days before the change is to take effect. The Customer may, within 28 days of the service of BT's notice of the changes, serve a notice on BT stating its objection to the proposed changes.

21. TRANSFER OF RIGHTS AND OBLIGATIONS

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 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.

22. ENTIRE AGREEMENT

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

22.2. The parties acknowledge and agree that:

- (a) the parties have not been induced to enter into this Contract by any 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 representation, warranty or other assurance are for breach of this Contract and that all other rights and remedies are excluded.

22.3. Nothing contained in paragraphs 22.1 and 22.2 above shall affect the rights or remedies of the parties in respect of any fraudulent misrepresentation.

22.4. A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

23. NOTICES

Notices given under paragraphs 12.1, 15.2, 15.3, 18, 19, 20.2, 20.3, 21 above, and paragraph 24 below of these Conditions must be in writing and may be delivered:

- (a) by hand, or first class post to BT at the address of the BT office shown on the Order Form or any alternative address which BT notifies to the Customer;
- (b) by hand, or first class post to the Customer at the address to which the Customer asks BT to send invoices, the address of the Customer's premises, or, if the Customer is a limited company, its registered office or any alternative address which the Customer notifies to BT;
- (c) in the case of notices given under paragraphs 20.2 and 20.3 only, by fax or by electronic e-mail to:
 - (i) BT at the e-mail address or fax number of BT's Nominated Contact or any other e-mail or fax number as notified by BT from time to time;
 - (ii) the Customer at the e-mail address or fax number of the Customer's Nominated Contact.
- (d) A notice shall be duly served:
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by first class post, three working days after the date of posting;
 - (iii) if delivered by e-mail, at the time of transmission; and
 - (iv) if delivered by fax, at the time of transmission.

24. NOTICE OF WITHDRAWAL OF THE SERVICE

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Where BT intends to withdraw the Service in its entirety and not offer a similar version, BT will give the Customer such notice as is required under the applicable regulatory requirements and BT will refund any charges paid in advance in respect of any period which ends after the date of withdrawal.

25. SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, 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.

26. LAW

This Contract is governed by the law of England and Wales and both parties submit to the exclusive jurisdiction of the English Courts.