

**THIS PARTNER PLUS PROGRAMME AGREEMENT** is made the date of your acceptance of its terms online (“**Effective Date**”)

Your identification details (Company name, registered company number and registered office address) are the same as those you gave when being onboarded by BT as a BT Wholesale customer and as recorded on the existing supply agreement between BT and you and/or on your Account.

This Partner Plus Programme Agreement, which includes the Programme Guide, governs the Partner’s participation in BT Wholesale Partner Programme (“**Partner Plus Programme**”, as further defined below).

By checking online the box indicating that you (“**Partner**”) have read and agreed to the terms of this Agreement, you accept and agree to be bound by the terms of this Agreement.

**THE PARTIES AGREE** as follows:

## **1 DEFINITIONS**

1.1 The following terms and expressions used in this Agreement will have the following meanings:

“**Account**” means an account set up on BT Wholesale Partner Plus Hub for the BT Wholesale customer entering into this Agreement;

“**Agreement**” means this agreement, comprising the General Terms, the Programme Guide as amended from time to time;

“**Applicable Law**” means laws, regulations, regulatory guidance, obligations, enactments, statutory duties, and/or rules applicable to the existence or operation of the Agreement;

“**BT Materials**” means the Programme Guide, sales tools, support services, product training, marketing materials etc. as provided under the Partner Plus Programme;

“**BT Wholesale**” means BT line of business known as "BT Wholesale";

“**BT Wholesale Partner Plus Hub**” means BT hub for BT Wholesale located at <https://www.btwholesale.com/> (or any other successor URL as notified by BT from time to time);

“**BT Wholesale Information**” means information which BT from time to time identifies to the other Party as being commercially confidential, or is by its nature commercially confidential, to BT Wholesale;

“**Business Day**” means a day other than a normal weekend day or public or bank holiday in the United Kingdom and Ireland;

“**Commercial Contact**” means the account manager of either Party;

“**Confidential Information**” means (i) any and all information, whether disclosed orally or in writing or in any other form, and whether disclosed before, on or after the date of this Agreement, owned or controlled by, or relating to the business or affairs of, the Disclosing Party or any of its Group Companies and disclosed by the Disclosing Party to the Recipient in relation to the Purpose; (ii) the existence and terms this Agreement, including the BT Materials; (iii) the Partner Plus Programme; and (c) any non-public information the Partner has access to as a result of its participation in the Partner Plus Programme;

“**Disclosing Party**” means the Party disclosing Confidential Information to the other;

“**General Terms**” means Clauses 1 to 18 inclusive;

“**Group Companies**” means in relation to a Party, its ultimate holding company and the direct and indirect wholly owned subsidiaries (other than such Party) of such holding company;

“**Intellectual Property Rights**” means any trademark, service mark, trade and business name, patent, petty patent, copyright, database right, design right, community design right, semiconductor topography right, registered design, right in Confidential Information (including know-how and trade secrets), internet domain name, moral right and know-how, or any similar right in any part of the world. Any applications for registering any of these rights that can be registered in any part of the world are also included;

“**Liabilities**” means all losses, liabilities, awards, judgements, damages (including any damages awarded by a court of competent jurisdiction), claims, demands, compensation, costs, fines, penalties, levies, interest, expenses (including management time and legal and other professional fees), payments by way of settlement, tribunal awards and charges;

“**Openreach Information**” means information which BT from time to time identifies to the other Party as being commercially confidential, or is by its nature commercially confidential, to the BT Group Company known as “**Openreach**”;

“**Partner Plus Programme**” means the BT Wholesale Partner Programme as defined in Clause 2.1;

**“Programme Guide”** means the Partner Plus Programme guide specifics;

**“Products”** means the BT Enterprise products offered and/or sold via <http://bt.wholesale.com/> by BT to the Partner and other BT Wholesale customers;

**“Purpose”** means the use of Confidential Information for the purposes of the Recipient interacting with BT Wholesale regarding its eligibility to, participation in and use of the Partner Plus Programme and related commitments and benefits, and/or considering whether it should enrol into the Partner Plus Programme, and having discussions with the Disclosing Party about the Partner Plus Programme in general and/or the Programme Guide and related commitments, its achievements and benefits in particular;

**“Recipient”** means the Party receiving Confidential Information from the other Party;

**“Representatives”** means, in relation to a Recipient, its officers, employees and professional advisers (excluding Group Companies) who:

- (i) need to have access to any Confidential Information for the Purpose;
- (ii) have been made aware of the provisions of this Agreement and the Recipient’s obligations under it; and
- (iii) have been and are bound by confidentiality and usage obligations in respect of the Confidential Information no less onerous than the obligations of the Recipient in this Agreement.

## **2 STATUS AND PURPOSE OF THIS AGREEMENT**

- 2.1 The purpose of this Agreement is to define the underlying general terms (**“General Terms”**) governing the relationship between the Partner, a BT Wholesale customer, and BT pursuant to the BT Wholesale Partner Programme. The BT Wholesale Partner Programme (referred throughout this Agreement as **“Partner Plus Programme”**) is the tiered Programme of enablement tools, marketing and account management services provided by BT Wholesale to enrolled Partners for supported Products. The specifics of the BT Products falling under the scope of the Partner Plus Programme commitments, the commitments and benefits of the Partner Plus Programme will be contained in a Programme Guide to be provided separately. The Programme Guide will form an annex to this Agreement, be incorporated by reference into, and form an integral part, of this Agreement.
- 2.2 The following terms will be incorporated into, form part of, and be read as one with, the Agreement:
  - 2.2.1 The General Terms; and
  - 2.2.2 the Programme Guide.
- 2.3 If there is any conflict between any sections of this Agreement, the sections will be applied in the following order of precedence:
  - 2.3.1 the relevant terms of the Programme Guide; and
  - 2.3.2 these General Terms.

## **3 OVERVIEW**

- 3.1 Enrollment. To participate in the Partner Plus Programme, the Partner must be enrolled in a Programme tier. To enrol in the Programme tier, the Partner must fulfill the corresponding eligibility criteria as set out in the then-current version of the Programme Guide in force at the time, and be accepted for such Programme tier by BT. Once accepted for such Programme tier, the Partner becomes a non-exclusive Partner Plus Programme member.
- 3.2 All references to the term “Partner” in the terms and conditions below are meant to be to a Partner accepted by BT as a Partner Plus Programme member.
- 3.3 Ongoing membership. The Partner must at all times fulfil the conditions and requirements set out in this Agreement and the Programme Guide. BT reserves the right, from time to time, to request information from the Partner to confirm that the Partner is fulfilling such conditions and requirements. The Partner agrees to cooperate with BT on all such requests, and to provide BT with all reasonably requested information relevant to the Partner Plus Programme.
- 3.4 The Partner will ensure that it will, and that the Partner employees will, cause no adverse publicity, public criticism or damage to the reputation of BT, Partner Plus Programme, and/or the BT end customers.
- 3.5 Participation in BT Partner Plus Programme is free of charge.

## **4 PARTNER PLUS PROGRAMME BENEFITS**

- 4.1 During the term of this Agreement, the Partner shall have the benefits that BT offers to the members of the relevant tier as specified in the Programme Guide (subject to their achievement of the commitments specified in the Programme Guide). This Agreement does not authorise the resale of Products. Any such resale by the Partner shall be pursuant to the separate supplier agreement between BT (as supplier) and the Partner (as BT Wholesale customer).

## **5 PROGRAMME CHANGES**

- 5.1 BT reserves the right to modify or amend the Partner Plus Programme and the Programme Guide including any condition, requirement or benefit therein and update these General Terms at any time, subject to a five (5) Business Days advance notice by email to the Partner, and Partner's participation in the Partner Plus Programme following the effective date of such modification or update will constitute their acceptance of such amended or updated Partner Plus Programme or Programme Guide or Agreement General Terms. Should the Partner disagree with any such modification, the Partner may terminate this Agreement pursuant to Clause 13 (*Termination*).

## **6 TRAINING**

- 6.1 The Partner will ensure that it will, and that the Partner employees, will cooperate with BT to improve their capability and knowledge about the BT Products from BT in order to better serve BT end customers; and undertake any training as required by and described in the Programme Guide.

## **7 COMMENCEMENT AND DURATION**

- 7.1 The Agreement will commence on its Effective Date and will remain in place until and unless terminated in accordance with its terms.

## **8 RELATIONSHIP OF THE PARTIES**

- 8.1 The Parties understand that notwithstanding the use of the term "partner", this Agreement does not create a partnership, franchise, joint venture, agency or alliance between the Partner and BT, and that each Party shall remain an independent contractor. Neither Party will have, nor represents that it has any power, right or authority to make or enter into any commitments for or on behalf of the other Party.

## **9 SERVICES FEEDBACK**

- 9.1 Partner grants BT a worldwide, perpetual, irrevocable, royalty-free, transferable, sublicensable, license to use and incorporate into its products and services any suggestion, enhancement request, recommendation, correction or other feedback provided by Partner relating to the operation of BT Products or the Partner Plus Programme.

## **10 WARRANTIES**

- 10.1 BT warrants that it has all the rights and licences necessary in the BT Materials, for them to be used by the Partner in accordance with the terms of this Agreement.
- 10.2 Other than as provided under Clause 10.1, the Partner Plus Programme is made available by BT "as is" without any representation or warranty of any kind, whether express, implied, statutory, or otherwise.
- 10.3 In particular, BT disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement with respect to the Partner Plus Programme, and disclaims all warranties in connection with the performance, quality, suitability, reliability of the Partner Plus Programme (and related benefits).

## **11 INDEMNITIES**

- 11.1 Without prejudice to any other rights or remedies available to BT, the Partner indemnifies BT against all Liabilities arising out of or in connection with:
- 11.1.1 any breach of any of the terms of this Agreement;
  - 11.1.2 any acts or omissions of the Partner or Partner employees in connection with its participation in the Partner Plus Programme and/or its obligations under this Agreement;
  - 11.1.3 any actual or alleged infringement of a third party's Intellectual Property Rights by the Partner's trademarks or logos.

### **Conduct of Claims**

- 11.2 If a claim under Clause 11.1.1, 11.1.2 or 11.1.3 is brought by a third party against BT, BT will notify the Partner promptly in writing of any such claim and subject to BT being reasonably satisfied with the Partner's conduct of the defence to such claim:
- 11.2.1 The Partner will indemnify BT in relation to such claim at the Partner's expense, such litigation and negotiations for a settlement of the claim; and
  - 11.2.2 BT will at the request and expense of the Partner, provide the Partner with all assistance as reasonably required by the Partner in support of any such defence or action, provided always that the Partner will not admit or settle any such claim without the prior written consent of BT.

- 11.3 Where the Partner assumes the defence of the claim set out in Clause 11.2 above, the Partner will:
- 11.3.1 promptly and in any event within a period of ten (10) Business Days, notify BT that it has assumed such defence;
  - 11.3.2 at all times have regard for the interests and reputation of BT; and
  - 11.3.3 consult and keep BT regularly informed and updated in relation to any negotiations, settlement or litigation.
- 11.4 If the Partner does not assume the defence of the claim, BT may defend the claim in such manner as it may deem appropriate without the need to consult with the Partner or seek its written consent to any step taken, and the Partner will indemnify BT in relation to such claim regardless.

## 12 LIMITATION OF LIABILITY

### Excluded Loss

- 12.1 Subject to Clause 12.3 (*Exceptions*), neither Party will be liable under or in connection with the Agreement, and whether in contract, in tort (including negligence or breach or statutory duty) or otherwise, for:
- 12.1.1 loss of profit, revenue or anticipated savings;
  - 12.1.2 loss of business or contracts;
  - 12.1.3 loss of goodwill;
  - 12.1.4 loss from wasted expenditure, wasted time, or business interruption;
  - 12.1.5 loss, destruction or corruption of data;
  - 12.1.6 liability to any third parties unless a Clause in the Agreement says something different; and
  - 12.1.7 any special, indirect or consequential loss or damage.

### Limitation of Liability

- 12.2 Subject to Clauses 12.1 (*Excluded Loss*) and 12.3 (*Exceptions*) and to the maximum extent permitted by law, the aggregate liability including for all Liabilities, whether in contract, in tort (including negligence or breach or statutory duty) or otherwise, of each Party under or in connection with the Agreement will be limited to an amount equal to £100,000.

### Exceptions

- 12.3 Nothing in the Agreement will exclude or in any way limit:
- 12.3.1 the Partner's liability for any breach of Clause 14 (*Intellectual Property Rights*);
  - 12.3.2 BT's liability for any breach of Clause 10.1 (*Warranty of all rights and licences in the BT Materials*);
  - 12.3.3 either Party's liability for any breach of Clause 17 (*Confidentiality*);
  - 12.3.4 the Partner's liability under the indemnity set out in Clause 11.1.3 (*Third Party IPR Indemnity*);
  - 12.3.5 death or personal injury caused by either Party's own negligence;
  - 12.3.6 fraud or fraudulent misrepresentation;
  - 12.3.7 any other liability of either Party that cannot be excluded or limited under Applicable Law.

## 13 TERMINATION

- 13.1 Either Party may at any time on written notice terminate the Agreement immediately if:
- 13.1.1 the other Party commits a material breach of the Agreement and such material breach is irremediable; or where such breach is capable of remedy, the other Party has failed to remedy such breach within thirty (30) days after the issue of a written notice requiring it to do so;
  - 13.1.2 if the other Party is affected by an insolvency event.
- 13.2 BT may at any time on written notice terminate the Agreement immediately if:
- 13.2.1 the Partner is prevented from performing substantially all of its obligations by a Force Majeure Event for a continuous period of more than thirty (30) days;
  - 13.2.2 the Partner's ownership or control is materially changed to (in BT's reasonable opinion) BT's detriment.
- 13.3 Each Party may terminate this Agreement for convenience at any time upon a five (5) Business Days written notice by email to the other.
- 13.4 Expiry or termination of the Agreement will not affect or relieve a Party's accrued rights and obligations at the time of expiry or termination.

- 13.5 Upon termination or expiry of the Agreement for any reason, the Partner shall cease to be a participant in the Partner Plus Programme, the Partner's rights to receive the Programme benefits detailed in this Agreement, and each Party's rights to use the other Party's trademarks and logos shall cease.

#### **14 INTELLECTUAL PROPERTY RIGHTS**

- 14.1 The Partner grants a non-exclusive, royalty-free, terminable right to BT and each BT Group Company based in the United Kingdom and Ireland to utilise its trade names, trademarks and logos during the term of this Agreement, for the following purposes:

14.1.1 to represent the Partner as a member of the Partner Plus Programme on all its materials; and

14.1.2 to the extent necessary for BT to perform its obligations under the Agreement.

Any use for a purpose outside of these pre-approved uses will be subject to the prior written approval of the Partner, which will not be unreasonably withheld or delayed.

- 14.2 BT grants to the Partner a non-exclusive limited royalty free right to use the BT Materials solely and only as part of the Partner Plus Programme and for no other purpose whatsoever. The Partner is expressly prohibited from granting any sub-licences in any of the BT Materials. This licence will automatically expire at the end of the Partner Plus Programme or earlier should the Partner exit the Partner Plus Programme for any reason.
- 14.3 Ownership of all Intellectual Property Rights in the BT Materials as well as any BT's trademarks will, remain with BT (or its licensors, as appropriate).
- 14.4 The Partner shall not have any right to use any of BT's trade marks, logos or brands for any purpose without BT's prior written consent and then only if used in compliance with BT's relevant brand guidelines (such brand guidelines to be provided separately to the Partner when consent is granted).
- 14.5 The Partner agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity or enforceability of any Intellectual Property Right belonging to or licensed to BT (including, without limitation, any act, or assistance to any act, which may infringe or lead to the infringement of any such intellectual property right).
- 14.6 The Partner will not remove, alter or obscure any copyright or other proprietary rights notices contained in the BT Materials.

#### **15 DATA PROTECTION**

- 15.1 Each Party will have the rights and obligations given to it in the Data Protection clause in the separate supplier agreement in place between BT and the Partner and will comply with the provisions set out in such clause.
- 15.2 Partner's participation in the Partner Plus Programme will serve as an opt-in to receive BT's communications including but not limited to marketing communications in connection with the Partner Plus Programme and have its information processed and used in the manner and for the purposes described in BT Privacy Policy as amended below.
- 15.3 BT will Process the Personal Data in accordance with applicable Data Protection Legislation and as set out in the BT Privacy Policy dated 17 September 2020 (<https://www.bt.com/privacy-policy/>) referred to on <https://www.btwholesale.com/> amended as follows for purposes of the Partner Plus Programme only. If there is any conflict or inconsistency in or between the BT Privacy Policy dated 17 September 2020 and the following sections, the following sections will prevail:
- 15.3.1 "Our Privacy Policy" section: the scope of the Privacy Policy is extended to include the benefits that the Partner is eligible to under the Partner Plus Programme (subject to their achievement of the commitments specified in the Programme Guide) that BT will provide to the Partner (the "Benefits") and the beneficiaries/data controllers are extended to include the Partner entities set up as companies (whether public or private);
- 15.3.2 All references in the Privacy Policy to the provision by BT or use by the data subject of products and services are amended so as to include the grant/provision by BT to and use by the Partner of the Benefits;
- 15.3.3 "Accessing and updating how we use your information" section: the following amendments are made for purposes of the Partner Plus Programme:
- Instead of using the online form at the link [www.productsandservices.bt.com/consumer/edw/privacy-policy/copyform/bt/](http://www.productsandservices.bt.com/consumer/edw/privacy-policy/copyform/bt/), for all requests regarding its information, and/or any requests to opt-out of receiving marketing from BT, Partner will contact BT Commercial Contact directly.

15.3.4 “What information we collect and what we use it for” section: the following amendments are made for purposes of the Partner Plus Programme:

“BT shall use the following information provided by the Partner under the Partner Plus Programme :

- The Partner’s contact details. This includes the Partner’s name, address, phone number, and email address.
- the Partner’s payment and financial information.
- The Partner’s communications with BT, including emails, webchats and phone calls (and any recordings made). Information from cookies and tags placed on the Partner’s connected devices (See BT cookies policy on <https://www.btwholesale.com/cookie-policy.html> for more details on BT’s use of cookies).
- Details of the BT products and services the Partner bought and how the Partner uses them – including the Partner’s call and browser (including IP address, and static IP address, if it applies).

This means BT will:

- record details about the Benefits the Partner will be granted, their enrolment into and use of the Partner Plus Programme;
- send the Partner related information messages;
- update the Partner on when BT will provide the Partner with the Benefits that the Partner is eligible to.

BT shall use the above information for the following purposes:

**1. to carry out this Agreement, implement and manage the Partner Plus Programme, provide/grant to the Partner the Benefits and manage the Partner account** that the Partner has with BT Wholesale in connection with the BT Wholesale products and services the Partner bought and/or such Benefits. If the Partner doesn’t give BT the correct information or asks BT to delete it, BT might not be able to provide the Partner with the Benefits that the Partner is eligible to under the Partner Plus Programme.

**2. because it is in BT’s legitimate interests as a business to use the Partner’s information:** BT will use the Partner’s information if BT considers it is in its legitimate interests so BT can operate as an efficient and effective business. This entails the following as detailed in this paragraph 2.

BT will use the information to:

- identify, and let the Partner know about, the Partner Plus Programme, the Benefits and the benefits that interests the Partner;
- share within the BT Group for administrative purposes;
- create aggregated and anonymised information for further use;
- detect and prevent fraud.

2.1 BT shall use the information provided by the Partner under the Partner Plus Programme to market to the Partner and to identify benefits that interest the Partner:

This means BT will:

- create a profile about the Partner to better understand the Partner as a customer, their experience and use of the Partner Plus Programme and tailor the communications BT sends the Partner (including our marketing messages);
- tell the Partner about other benefits might be interested in and eligibility criteria, conditions and requirements for those;
- recommend better ways to manage what the Partner spend with BT, like suggesting a more suitable product based on what the Partner uses.

BT will send the Partner information (about the Partner Plus Programme and the benefits BT provides as part of it) by phone, post, email and/or text message. BT will also use the information BT have about the Partner to personalise these messages wherever BT can as BT believe it is important to make them relevant to the Partner. BT does this because BT have a legitimate business interest in keeping the Partner up to date with the Partner Plus Programme, making the overall Partner Plus Programme and related benefits relevant to the Partner. BT also checks that the Partner are happy for us to send you marketing messages by text or email before we do so. In each message BT sends, the Partner also has the option to opt out.

The Partner can ask BT to stop sending them marketing information or withdraw their permission at any time, as set out above.

2.2 BT shall use the information provided by the Partner under the Partner Plus Programme to create aggregated and anonymised data.

BT will use the Partner’s personal information to create aggregated and anonymised information. Nobody can identify the Partner from that information and BT will use it to:

- continuously improve and develop BT products and services for BT's customers;
- run management and corporate reporting, research and analytics, and to improve the business; and
- provide other organisations with aggregated and anonymous reports

2.3 BT has a legitimate interest in generating insights that will help BT operates its network and business or would be useful to other organisations.

- To develop BT business and build a better understanding of what BT customers want.

This means BT will:

- maintain, develop and test BT network, products and services, to provide the Partner with a better service;
- train BT people and suppliers to provide the Partner with products and services (but we make the information anonymous beforehand wherever possible);
- create a profile about the Partner to better understand the Partner as a customer;
- make and defend claims to protect BT business interests;
- share personal information within the BT Group for administrative purposes, such as sharing contact details so BT can get in touch with the Partner; and
- run surveys and market research about BT products and services.

If BT uses this information for market research, training, testing, defend or bring claims, development purposes or to create a profile about you, BT does so because it is in its legitimate business interests of running an efficient and effective business which can adapt to meet BT customers' needs.

- BT creates a profile about the Partner based on what the Partner has ordered from BT and how the Partner uses BT products and services, Benefits, and other benefits that may be of interest to the Partner. This helps BT tailor the offers BT shares with the Partner. The Partner can ask BT to stop profiling you for marketing purposes at any time, as set out above.

See BT cookies policy on <https://www.btwholesale.com/cookie-policy.html> for more details on BT use of cookies.

2.3.1 To run credit and fraud prevention checks.

2.3.2 To prevent and detect crime

2.3.3 To meet BT legal and regulatory obligations.

The existing sections of the Privacy Policy describing the purposes referred to in paragraphs 2.4 to 2.6 above and the "Sharing your information" section will apply mutatis mutandis for purposes of the Partner Plus Programme except that all references to the provision by BT or use by the data subject of products and services are amended so as to include the grant/provision by BT to and use by the Partner of the Benefits."

## 16 CONFIDENTIALITY

16.1 The obligations of the Parties under this Clause 16 will cease to have effect three (3) years after the date of this Agreement. Such cessation shall not, however, prejudice any then accrued rights in respect of any breaches of this Agreement or the continuation in force of any provisions necessary to assert or enforce any such rights.

16.2

16.2.1 Subject to Clause 16.3 below the Recipient shall, and shall procure that its Representatives shall:

- a) use Confidential Information only for the Purpose;
- b) keep Confidential Information confidential;
- c) permit access to Confidential Information only to the Recipient's Representatives for the Purpose;
- d) not copy Confidential Information except as necessary for the Purpose;
- e) not delete any confidentiality and/or proprietary notices or legends appearing on the original Confidential Information as disclosed by or for the Disclosing Party; and
- f) in disclosing any Confidential Information as permitted by this Agreement, comply with any applicable laws controlling or relating to the export of information.

16.2.2 Subject to Clauses 16.2.3 and 16.3 below, the Recipient shall within 10 days following the Disclosing Party's written request:

- a) deliver to the Disclosing Party or, at the Disclosing Party's option, destroy (including the permanent deletion of any electronic copies) all originals and copies of Confidential Information which the Recipient may have or control; and
- b) confirm in writing to the Disclosing Party that the Recipient has complied with such request.

- 16.2.3 Notwithstanding Clause 16.2.2 above, the Recipient may, subject to the other provisions of this Agreement, retain in its records one copy of any Confidential Information that it has been obliged to disclose in accordance with clause 16.3.5 below.
- 16.2.4 Except with BT's prior written consent, and without prejudice to the Recipient's other obligations in this clause 3, the Recipient shall not disclose:
- a) Openreach Information to any BT employee, agent or contractor unless the other Party knows that such BT employee, agent or contractor is employed within or by Openreach; or
  - b) BT Wholesale Information to any BT employee, agent or contractor unless the other Party knows that such BT employee, agent or contractor is employed within or by BT Wholesale.
- 16.3 The Recipient's obligations in Clauses 16.2.1, 16.2.2 and 16.2.3 above shall not apply to Confidential Information to the extent that:
- 16.3.1 it was already in the lawful possession of the Recipient and at its free disposal without any obligation of confidence before the Disclosing Party's first disclosure of it to the Recipient; or
  - 16.3.2 it is or has been lawfully disclosed to the Recipient by a third party without any obligations of confidence; or
  - 16.3.3 it is in or comes into the public domain other than through a breach of this Agreement; or
  - 16.3.4 it is or has been created independently by or for the Recipient without use or knowledge of Confidential Information; or
  - 16.3.5 the Recipient is obliged to disclose it by law or to meet the order or requirements of any competent court of law, governmental or statutory regulatory authority, or stock exchange, to which the Recipient is subject from time to time. Before making any such disclosure, the Recipient shall, to the extent that it is not prevented from doing so by such law, order or requirement:
    - a) first promptly notify the Disclosing Party in writing of the details of the ordered or required disclosure; and
    - b) if so requested and so far as is reasonable, assist the Disclosing Party, at the Disclosing Party's cost, in seeking a protective order or other assurance with respect to maintaining the confidentiality of such Confidential Information.
- 16.3.6 Neither the entry into this Agreement, nor the disclosure or receipt of Confidential Information shall constitute or imply any offer, representation, commitment or promise by either of the Parties:
- a) to enter into any further agreement; or
  - b) to sell or purchase any product or service; or
  - c) (except as expressly provided in Clause 14 above) to grant any intellectual property right or licence.
- 16.5.1 The Disclosing Party gives no representation, warranty or undertaking to the Recipient as to the accuracy or completeness of any Confidential Information (except so far as agreed otherwise by the Disclosing Party in any written agreement for a Transaction), and the Disclosing Party shall be under no obligation to update or correct any Confidential Information.
- 16.5.2 The Recipient acknowledges that if it breaches Clause 16 damages may not be an adequate remedy for the Disclosing Party and that the Disclosing Party shall (without prejudice to any other rights and remedies) have the right to apply for injunctive relief or for specific performance of the Recipient's obligations.
- 16.5.3 Any breach of this Clause 16 by the Partner will be deemed to be a material breach for purposes of Clause 13.1.
- 16.5.4 The rights and obligations in this Clause 16 are in addition to any confidentiality obligations implied or imposed by applicable law.

## **17 NOTICES**

- 17.1 Any notices given under the Agreement will be in writing, in English and delivered by hand, prepaid first class post, recorded delivery, courier or email to the receiving Party's Commercial Contact.
- 17.2 A notice given under the Agreement is deemed to have been duly received on the date (or if that date is not a Business Day, then on the next Business Day) that:
- 17.2.1 where a notice is sent by email, receipt of the email is confirmed or acknowledged, including by transmission of an automatic electronic read receipt or manual acknowledgement from the recipient;
  - 17.2.2 the notice is left at the address and a delivery receipt is signed on behalf of the addressee if delivered by hand or by courier; or
  - 17.2.3 is three (3) days after posting if the notice is sent by prepaid first class post or recorded delivery.
- 17.3 Any notices in relation to legal proceedings or proposed legal proceedings may not be delivered by email.



**18 GENERAL**

- 18.1 This Agreement may only be amended by a written agreement to that effect signed by the authorised representatives of each of the Parties.
- 18.2 The Partner may not assign the benefit of the Agreement (or any part of it) to any third party without the prior written consent of BT.
- 18.3 No failure or delay by either Party in exercising any right or remedy under this Agreement shall operate as a waiver of that right or remedy, and no single or partial exercise of any right or remedy shall preclude any further exercise of any right or remedy under this Agreement.
- 18.4 If any provision of this Agreement is held to be invalid, illegal or unenforceable (the “Invalid Provision”), the remaining provisions shall be unimpaired and the Parties will in good faith negotiate a substitute provision for the Invalid Provision which as closely as possible meets its intent while at the same time being valid, legal and enforceable.
- 18.5 The provisions of Clauses 10 (*Warranties*), 11 (*Indemnities*), 12 (*Limitation of liability*), 13.4, 13.5, 15 (*Data Protection*), 16 (*Confidentiality*), 17 (*Notices*) and 18 (*General*) will survive the termination or expiry of the Agreement.
- 18.6
- 18.6.1 The Agreement constitutes the whole agreement between the Parties with respect to the subject matter and supersedes any and all prior oral or written understandings, arrangements, negotiations, communications and/or representations between them.
- 18.6.2 Each Party acknowledges that, in entering into the Agreement, it has not relied on any representation, warranty, collateral contract or other assurance, other than those set out in the Agreement and waives all rights and remedies that, but for this Clause 18.6, might otherwise be available to it in respect of any such reliance. Nothing in the Agreement will operate to limit or exclude any liability for any fraudulent misrepresentation or for any other matter in respect of which liability cannot lawfully be limited or excluded.
- 18.7 The Agreement is governed by and construed in accordance with the laws of England and Wales.
- 18.8 The Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims). However, nothing in this Agreement shall prevent either Party from applying to any other court for injunctive relief or for specific performance or for the enforcement or execution of any judgement or court order.