

SUBJECT TO CONTRACT

DATED #[DATED]

**BT STANDARD PPC HANDOVER
AGREEMENT**

between

#[OPERATOR]

and

BRITISH TELECOMMUNICATIONS plc

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THIS AGREEMENT is made the #[DAY] of #[MONTH] 200#[YEAR]
between

#[OPERATOR] registered in #[REGISTERED_IN] No. #[NUMBER] having its registered
office at #[ADDRESS]

and

BRITISH TELECOMMUNICATIONS public limited company registered in England No.
1800000 having its registered office at 81 Newgate Street, London, EC1A 7AJ.

Whereas

- A The Operator provides a Public Electronic Communications Network.
- B BT provides a Public Electronic Communications Network.
- C The Parties have agreed to connect the Operator System to the BT System and to the supply of services and facilities by BT on the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except if the context requires otherwise, words and expressions are as defined in Annex D.
- 1.2 The Interpretation Act 1978 shall apply for the purpose of interpreting this Agreement as if this Agreement were an Act of Parliament.
- 1.3 The following documents form part of this Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless expressly stated to the contrary) be as follows:
 - 1. main body of this Agreement
 - 2. Annex D
 - 3. Annexes A, B, C, E and F
 - 4. Specifications
 - 5. Carrier Price List
 - 6. The elements of the Ancillary Documents that are expressly incorporated by reference into this Agreement.
- 1.4 The contents of the Ancillary Documents (unless highlighted in grey) including diagrams, tables or other illustrations (unless marked “for information purposes only”) form part of this Agreement.(A)——It is hereby expressly agreed that the Manuals, the

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~~Technical Master Plan and the Customer Service Plan are not legally binding. Nevertheless BT undertakes to inform the Operator in advance of changes to these none legally binding documents.~~

- ~~(B) BT shall be entitled to amend the Manuals, the Technical Master Plan and the Customer Service Plan at BT's sole discretion and if BT believes, acting reasonably in all the circumstances, such amendment would:~~
- ~~i. be likely to have a material impact on the service provided to the Operator, BT will inform in advance such amendments and shall consult with the industry appropriately before making such amendments (unless it is unreasonable to do so); or~~
 - ~~ii. not be likely to have a material impact on the service provided to the Operator, BT will provide reasonable notice of such amendment;~~
- ~~by bringing them to the attention of the Operator through a BT Wholesale electronic industry briefing note, or any other form of notification the Parties may agree.~~
- ~~(C) If, within a reasonable amount of time of notice of the amendment under clause 1.4(B) an Operator believes it will be materially impacted by such, the Operator shall provide suitable evidence to BT as to the material impact and, if appropriate, BT shall reconsider the amendment. For the avoidance of doubt, notwithstanding BT reconsidering any such amendment, such amendment shall continue to be effective unless (and if so, until) any such future amendment comes into effect under clause 1.4(B).~~

1.5 BT may amend, change, remove, or replace those parts of an Ancillary Document which do not form part of the Agreement without prior agreement from an Operator. BT will give reasonable written notice of any such changes and publish details of those changes on the BT Website before the changes take effect. If the Operator considers any such changes to an Ancillary document would change the Agreement or materially and adversely affect the Service then on or before the expiry of the 28th Working Day of any such changes taking effect, the Operator may dispute any such changes to an Ancillary Document via the dispute resolution process set out in paragraph 21. BT shall provide access to superseded versions of all Ancillary Documents upon request and also consistent with BT's document retention policy and any agreed industry process for such access (such as publication on BT's website or other online resources for Operators).

1.6 If BT changes an Ancillary Document in accordance with paragraph 1.5 then BT will, subject to any notification period, update the BT Website (and consistent with any agreed industry process, notify Operators who have requested that facility via the BT website).

2. COMMENCEMENT AND DURATION

2.1 This Agreement takes effect on the date hereof and shall continue until termination pursuant to this Agreement.

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- 2.2 In the event that either Party's entitlement to provide all or a material part of its Public Electronic Communications Network is suspended by OFCOM, the Party whose entitlement is not so suspended may terminate the Agreement (or such part thereof as may be reasonable in the circumstances) without advance notice.
- 2.3 A Party may terminate this Agreement by giving at any time to the other not less than 24 months' written notice to terminate.
- 2.4 In the event that BT provides notice as set out in paragraph 2.3 as a result of it withdrawing fully from supplying the Partial Private Circuit product and all associated services and facilities provided under this Agreement, then BT will within the 24 month notice period provide the Operator with no less than 12 months' written notice of the last date on which an Order Request will be accepted by BT.
- 2.45 After a notice has been given pursuant to paragraph 2.3 a Party may request the other Party to carry on good faith negotiations with a view to entering into a new agreement.
- 2.56 Following a request pursuant to paragraph 2.45 by the Operator, if, on termination of this Agreement BT would be obliged under a Condition to enter into a new interconnection agreement with the Operator the Parties shall carry on good faith negotiations with a view to entering into a new agreement within a reasonable period ~~, and in the case of paragraphs 2.3~~ with a view to that agreement taking effect on termination of this Agreement.
- 2.7 In the event that paragraph 2.4 applies, BT will provide reasonable support and assistance to the Operator up to the expiry of the notice period set out in paragraph 2.3 in order to migrate the Operator from the Partial Private Circuit product to an alternative BT product where such migration is technically feasible.

3. SCOPE AND STANDARDS

- 3.1 BT shall provide the services and facilities ordered by the Operator, and the Operator shall pay for such services and facilities, in accordance with the provisions of this Agreement.
- 3.2 Each Party shall comply with the Specifications in so far as they apply to the provision of services pursuant to this Agreement.
- 3.3 In the practical implementation of the Specifications relating to the interconnection of the BT System and the Operator System the Parties shall apply standards and operating guidelines which in the first instance have due regard to the following in the order of precedence specified below:
- 3.3.1 any legal requirements imposed upon each of them including requirements arising from General Condition 2; and

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3.3.2 any relevant specification notified by OFCOM in implementation of the recommendations of the NICC; and

3.3.3 any relevant recommendations by ETSI; and

3.3.4 any relevant recommendations by ITU-T.

4. SYSTEM ALTERATION

4.1 A Party wishing to make a System Alteration shall give to the other Party not less than 7 months written notice prior to the date of the anticipated System Alteration. The notice shall specify the technical details of the System Alteration and the date of the anticipated System Alteration. Following such notification each Party shall supply to the other such information as the other may reasonably request including in the case of the Party giving the notice, to the extent reasonably practicable, the potential impact on the other Party's System.

4.2 The Party receiving the notice pursuant to paragraph 4.1 shall notify the other as soon as practicable, but in any event not more than one month after receipt of such notice, of any alterations required to that Party's System as a result of the proposed System Alteration and, if the provisions in paragraph 4.6 do not apply, a quotation for the cost of such alterations calculated on the basis of the minimum cost consistent with good engineering practice.

4.3 If the Party giving the notice pursuant to paragraph 4.1 agrees the alterations required to the other Party's System and agrees the quotation (if any), the Parties shall agree a plan within three months of receipt of the notice referred to in paragraph 4.2 to implement the System Alteration and the other Party shall carry out such alterations in accordance with the agreed plan.

4.4 If the provisions in paragraph 4.6 do not apply, and if the Party giving the notice pursuant to paragraph 4.1 does not agree the alterations required and/or the quotation (if any), that Party shall so notify the other Party, and the Parties agree to treat the matter as a Dispute. The Party giving the notice pursuant to paragraph 4.1 shall not implement the relevant System Alteration until the Dispute is resolved.

4.5 On completion of the relevant alteration the Party receiving the notice pursuant to paragraph 4.1 shall invoice the other Party for such alteration for an amount not exceeding the quotation agreed under paragraph 4.3.

4.6 Each Party shall pay its own costs arising out of the System Alteration if:

4.6.1 the Parties agree in writing to change their respective Systems for their mutual benefit and such agreement in writing cross refers to this paragraph 4.6.1; or

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- 4.6.2 the System Alteration is lawfully directed by OFCOM who also lawfully directs each Party to pay its own costs; or
- 4.6.3 the System Alteration is to implement a standard unanimously agreed by NICC; or
- 4.6.4 the altering Party is BT and the System Alteration is a change to the signalling system, which change is in accordance with a standard agreed by NICC and the timing of the implementation of the proposed change is reasonable.
- 4.7 The Parties shall amend and agree the Specifications prior to a System Alteration.

5. **PROVISION OF NEW SERVICES**

- 5.1 If the Operator reasonably requests from BT an agreement for the provision of a Partial Private Circuit service or facility which is not made available under this Agreement, the Parties shall proceed in accordance with the new products requirements process set out in the New Services Manual.

6. **FORECASTS AND CAPACITY**

- 6.1 Unless otherwise agreed between the Parties, ~~the~~ Operator shall supply to BT forecasts in accordance with Annex A and as may be required in a Schedule.
- 6.2 BT shall provide capacity ordered by the Operator in accordance with Annex A and the Schedules.

7. **PROVISION OF INFORMATION**

- 7.1 The Parties shall provide free of charge, one copy of the information specified in paragraph 7.2 of the main body and in paragraph 3 of Annex A, and such other information as is reasonably required from time to time by the other Party for interconnection of the Systems and the provision of services or facilities pursuant to this Agreement.
- 7.2 Subject to a Party's obligations of confidentiality to a third party, a Party may request and the other Party shall provide information on protocols in use by that other Party which are required for Handover or the provision of services specified in this Agreement if such other Party has relevant information and the provision of such information is necessary as a consequence of the absence of international standards.
- 7.3 Notwithstanding any provision of this Agreement a Party shall not be obliged to provide information which is subject to a confidentiality obligation to a third party unless such third party consents to such disclosure.

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- 7.4 The Disclosing Party will use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.
- 7.5 If a Disclosing Party provides information to a Receiving Party, the Disclosing Party shall have obtained all appropriate third party consents.
- 7.6 Subject to the limitation of liability set out in paragraph 18, the Receiving Party shall indemnify the Disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Party to comply with the reasonable conditions imposed and identified at the time when the information was provided.
- 7.7 Nothing in this Agreement shall require a Party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to the Data Protection Act 1998, a Condition as appropriate or any code of practice on the confidentiality of customer information issued by OFCOM.

8. SERVICE LEVEL COMMITMENT

- 8.1 Without prejudice to any specific obligation on BT contained or referred to in this Agreement, the Operator shall be entitled to the quality of service that BT provides from time to time for comparable services and facilities generally, including to BT itself.
- 8.2 The service level commitment for CSH Links, ISH Links, Third Party Links and Partial Private Circuits is as detailed in Annex E and the Schedules.
- 8.3 BT warrants that:
- (a) it shall provide the service in an efficient and timely manner;
 - (b) it has the necessary skills, experience and expertise to provide the service;
 - (c) (as it is technically impracticable to provide a fault free service and BT does not undertake to do so), insofar as is reasonably possible, the service will be free from faults; and
 - (d) any goods supplied to the Operator or used to provide the service under this Agreement (whether or not title is transferred) are safe, of satisfactory quality, and fit for purpose.
- 8.4 Subject to the provisions of Annex E, BT warrants it will take reasonable steps to restore the service as quickly as possible in the event of a service failure.

9. **BT SERVICES CHARGES**

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- 9.1 ~~The Operator shall pay to BT the charges specified from time to time in the Carrier Price List for the services and facilities ordered by the Operator. Unless otherwise agreed between the Parties and subject to clause 10 the charges set out from time to time in the Carrier Price List for the services and facilities ordered by the Operator shall apply.~~
- 9.2 BT may from time to time vary the charge for a BT service or facility or introduce a new charge for a new BT service or facility by publication in the Carrier Price List and such new charge shall take effect on the Effective Date, being a date:
- not less than 28 calendar days after the date of such publication, unless a period other than 28 calendar days is expressly specified in a Schedule or Annex to this Agreement.
- 9.3 Notwithstanding the provisions of paragraph 9.2, BT may vary a charge which has retrospective effect for a BT service or facility by publication in the Carrier Price List if the variation is as a result of an order, direction, determination or requirement of OFCOM or any other regulatory authority, court, or body of competent jurisdiction.
- 9.4 The date of publication in the Carrier Price List shall be the date that BT first makes the contents of the Carrier Price List available on the BT Website and commences notification by e-mail of the amendments to the Carrier Price List containing the relevant entries to the Operator.
- 9.5 As soon as reasonably practicable following an order, direction, determination or consent (for the purposes of this paragraph 9 a “determination” which expression includes a redetermination referred to in paragraph 9.6) by OFCOM of a charge (or the means of calculating that charge) for a BT service or facility, BT shall make any necessary alterations to the Carrier Price List so that it accords with such determination.
- 9.6 If a determination referred to in paragraph 9.5 is subject to a legal challenge, the Parties shall, without prejudice, treat the determination as valid until the conclusion of the legal proceedings, unless the court otherwise directs. If the court finds the determination to be unlawful then the Parties agree to revert to the charges payable immediately prior to such determination being made and BT shall make any necessary alterations to the Carrier Price List unless the court otherwise directs. As soon as reasonably practicable following a re-determination by OFCOM (as a result of a legal challenge) of a charge (or the means of calculating that charge) for a BT service or facility, BT shall make any necessary alterations to the Carrier Price List so that it accords with such re-determination.
- 9.7 If any charge (or the means of calculating that charge) for a BT service or facility has retrospective effect then BT shall, as soon as reasonably practicable following publication in the Carrier Price List, adjust and recalculate the charges in respect

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of such service or facility using the new charge and calculate the interest for any sum overpaid or underpaid at the ~~Ofel-Adjustment~~ Interest Rate.

- 9.8 BT shall ensure that a charge for a BT service or facility specified in the Carrier Price List accords with the relevant Conditions applying to that BT service or facility.
- 9.9 If there is a difference between a charge for a BT service or facility specified in the Carrier Price List and a charge determined by OFCOM the charge determined by OFCOM shall prevail.
- 9.10 The provisions of this paragraph 9 are not intended to prejudice the rights, liabilities and obligations of the Parties created by and under a Condition.

10. EVENT AND TIME RELATED CHARGES AND PAYMENT

10.1 ~~The Operator shall pay the charges calculated in accordance with, and within the time specified in, this Agreement. The Operator agrees to pay to BT the charges set out from time to time in the Openreach Price List at Abortive Visit Charges, where access has been arranged to the Operator's, or a Third Party's, premises for BT to provide a service or facility ordered by the Operator under this Agreement, and BT is unable to gain access to the relevant premises. In such circumstances, unless the Operator or the Third Party has notified BT that access will not be possible prior to BT informing the Operator or the Third Party that the engineer has been dispatched by BT, the Operator shall pay the abortive end user site visit charge as detailed in the Openreach Price List at Abortive Visit Charge as set out at Abortive Visit Charge, or such other web link as may be communicated by BT to the Operator from time to time.~~

10.2 ~~No charges shall be payable under this Agreement by one Party to the other unless such charges are specifically referred to in this Agreement. The Operator agrees to pay to BT the charges set out from time to time in the Openreach Price List at Time Related Charges as set out at Time Related Charges, or such other web link as may be communicated by BT to the Operator from time to time:~~

10.2.1 with respect to provision and re-arrangement work, where the Operator requests BT to undertake an activity where:

- a) BT does not have a published price in Part B8.06 part 5 of the Carrier Price List;
- b) the work is to be carried out outside the normal working day or earlier than within BT's standard timescales; or
- c) the Operator requests that the work is to be carried out on provision and rearrangement on Third Party customer sites where there is no fixed price, including work on private networks.

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10.2.2 with respect to repair work, where:

- a) BT agrees to carry out work at specific times which are not covered within the terms of the service guarantee or maintenance or rental agreement;
- b) the fault is found not to be with any BT service or equipment. In particular this covers the situation where no fault is found, or the fault is found to be on non-BT equipment, or is due to damage caused by someone at the Third Party customer's premises, or due to theft, loss or removal of equipment, or in the case of Third Party customer owned or rented equipment (but not BT's network) faults caused by damage by external or environmental factors (e.g. lightning, electrical surges or floods);
- a)c) call-outs to repair faults or damage associated with a Partial Private Circuit, including any network, cabling, drop wire or underground feeds within a Third Party customer's curtilage up to and including the Network Terminating Point.

~~10.3 The charges in this Agreement are exclusive of VAT unless such charges are stated to be inclusive of VAT. If in BT's reasonable opinion the work required to provide a service or facility under this Agreement exceeds the Partial Private Circuit circuit provisioning price and/or requires BT to undertake other activities set out in the Openreach Price List at Excess Construction Charges then BT will calculate the Excess Construction Charges payable to BT by the Operator in accordance with the Openreach Price List at Excess Construction Charges as set out at Excess Construction Charges, or such other web link as may be communicated by BT to the Operator from time to time. The Operator will confirm acceptance of the charges prior to BT undertaking any activity attracting Excess Construction Charges.~~

~~10.4 Invoices are due and payable in pounds sterling.~~

~~10.5 The Operator acknowledges that it may be subject to BT's credit vetting policy procedures. Should BT consider it necessary following the application of such procedures or should the Operator fail to pay the charges due under or in connection with this Agreement, BT may (without prejudice to any other rights and remedies available to BT), at any time, require the Operator to pay a deposit or provide a guarantee as security for payment of future charges. The Operator agrees to pay such deposit or provide such guarantee within 28 calendar days of receiving notice from BT requiring it to do so, failing which BT reserves the right, without prejudice to any other rights and remedies available to it under this Agreement to refuse to accept any further orders under the Agreement and to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances until such deposit or guarantee is forthcoming.~~

11. BILLING AND PAYMENT

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11.1 BT shall provide to the Operator invoices of all amounts due to BT, calculated in accordance with the provisions of Annex B and the relevant Price List.

11.2 The Operator agrees to pay all charges for the Service as shown in the relevant Price List (or as otherwise agreed) and calculated using the details recorded by BT. Payment shall be by way of electronic transfer unless otherwise agreed in accordance with the BT Credit Vetting Policy. Where applicable the Operator shall maintain the Direct Debit instruction at all times up to date and in effect.

11.3 Invoices are due and payable in pounds sterling.

11.4 No charges shall be payable under this Agreement by one Party to the other unless such charges are specifically referred to in this Agreement.

11.5 If the Operator disputes the accuracy of an invoice the process set out in Annex B will apply.

Credit vetting

11.6 During the term of this Agreement the Operator acknowledges that it may become subject to BT's Credit Vetting Policy if the following circumstances apply:

11.6.1 there is material adverse change in the Operator's financial position which results in a reduction in the Operator's issued credit rating or (in the absence of such a credit rating) a financial score provided by an accredited ratings agency; and

11.6.2 there has been a recent, subsequent or recurring non-payment of an invoice (which is not the subject of a bona fide dispute) for the services and facilities provided by BT under this Agreement.

11.7 BT may, acting reasonably and subject to the requirements of paragraph 11.8, require that the Operator provides a deposit or guarantee or payment in advance for the services and facilities provided by BT under this Agreement. If the Operator refuses to pay such deposit, guarantee or advance payment BT may refuse to accept any orders under this Agreement until such deposit, guarantee or advance payment is provided or the outstanding non-disputed charges are fully paid, whichever is earlier.

11.8 Any deposit or guarantee or advance payment required to be provided by the Operator under paragraph 11.7 shall be no greater than the estimated value of charges under this Agreement for three months and the amount or requirement for the deposit or guarantee or advance payment should be reviewed by the Parties at regular intervals (and at least annually).

11.9 Where the Operator provides a deposit it will be held until twelve (12) consecutive months of payments have been paid on or by the due date after which the Operator

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will have the value of their deposit credited against BT invoices from that date. If BT will not be issuing any further invoices to the Operator then BT will repay the deposit to the Operator. Interest on deposits held by BT will be paid at the Bank of England Base interest rate. Interest will be calculated on a daily basis and will not be compounded.

11.10 BT shall advise any proposed update to the BT Credit Vetting Policy by issuing an industry briefing at least 30 calendar days prior to such update taking effect.

12. SYSTEM PROTECTION AND SAFETY

12.1 Each Party is responsible for the safe operation of its System and shall take all reasonable and necessary steps in its operation and implementation of this Agreement to ensure that nothing is done by that Party or its contractors, agents or Customers to:

12.1.1 endanger the safety or health of employees, contractors, agents or Customers of the other Party; or

12.1.2 damage, interfere with or cause any deterioration in the operation of the other Party's System or, where applicable under this Agreement, the telecommunications systems or apparatus of that other Party's Customers.

12.2 Neither Party shall knowingly connect or permit the use pursuant to this Agreement of any apparatus that does not meet the relevant standards or any licences applicable to that Party, or where applicable to that Party's Customer.

13. ACCOMMODATION AND ACCESS

13.1 In respect of the provision of services under Schedules 01 and 03 (Operator building):

13.1.1 the Operator shall provide suitable agreed accommodation at an Operator building for BT equipment, for the purposes of service under this Agreement at no expense to BT.

13.1.2 The Operator shall prepare such accommodation before the provision of service in accordance with any reasonable instructions by BT. BT shall undertake any necessary work in a tidy and workmanlike manner. When BT's work is completed, the Operator shall be responsible for putting items back and for any necessary redecoration.

13.1.3 The Operator shall provide BT with access to such Operator building at all reasonable times to facilitate the provision and maintenance of equipment required for the provision of service. If consent is required from a third party for such access, the Operator shall procure such consent.

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- 13.1.4 Other than consents for access to the Operator building pursuant to paragraph 13.1.3 and except as provided in paragraph 13.2.3, BT shall use reasonable endeavours to obtain all other necessary consents. If BT is unable to obtain such consents, BT shall notify the Operator in writing, and advise when it can expect the necessary consents to be available.
- 13.1.5 If any BT equipment accommodated at the Operator building requires a continuous mains electricity supply and electricity connection points, they shall be supplied, where specified by BT, by the Operator at its expense. Such electricity shall be available at the same level of supply, protection and continuity as that available to the Operator equipment.
- 13.1.6 The Operator shall provide and maintain, at its expense, any of its own equipment connected to the CSH Link at the Point of Handover.
- 13.2 In respect of the provision of services under Schedules 03 and 04 (Third Party building):
- 13.2.1 the Operator shall procure suitable agreed accommodation at a Third Party building for BT equipment, for the purposes of service under this Agreement, at no expense to BT;
- 13.2.2 the Operator shall procure the preparation of such accommodation before the provision of service in accordance with any reasonable instructions by BT. BT shall undertake any necessary work in a tidy and workmanlike manner. When BT's work is completed, BT shall not be responsible for putting items back nor for any necessary redecoration.
- 13.2.3 the Operator shall procure for BT reasonable access to such Third Party building to facilitate the provision and maintenance of equipment required for the provision of service. If consent is required from a third party for such access, the Operator shall procure such consent.
- 13.2.4 other than consents for access to the Third Party building pursuant to paragraph 13.2.3 and except as provided in paragraph 13.1.3, BT shall use reasonable endeavours to obtain all other necessary consents. If BT is unable to obtain such consents, BT shall notify the Operator in writing, and advise when it can expect the necessary consents to be available.
- 13.2.5 If any BT equipment accommodated at the Third Party building requires a continuous mains electricity supply and electricity connection points, the Operator shall procure their supply, where specified by BT, at no expense to BT. Such electricity shall be available at the same level of supply, protection and continuity as that available to any Third Party equipment or Operator equipment at such location.

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- 13.2.6 The Operator shall procure the provision and maintenance, at its expense, of any equipment connected to the Third Party Link at the Third Party building.
- 13.3 The Operator shall be solely responsible for any loss, theft or destruction of, or damage (reasonable wear and tear excepted) to any BT equipment accommodated at the Operator building or a Third Party building, howsoever caused (unless caused by BT or its employees, agents and contractors), occurring at any time while such BT equipment is so located.
- 13.4 BT undertakes not to damage or destroy equipment at the Operator building or a Third Party building whilst providing or maintaining service under this Agreement. If such damage or destruction does occur, then subject to the provisions of the main body of the Agreement, BT shall pay the reasonable cost of repair or replacement of such equipment, fair wear and tear excepted.
- 13.5 BT shall have no liability to a Third Party in respect of any decorator's work or any making good whatsoever, except to the extent that property damage is caused by BT's negligence.
- 13.~~5~~6 BT agrees that while its employees, agents and contractors have access to the Operator or Third Party building, it will comply with any reasonable rules (of which it is made aware) at the Operator or Third Party building and its employees, agents and contractors will comply with the highest standards of personal conduct and courtesy.

14. REVIEW

- 14.1 A Party may seek to amend this Agreement by serving on the other a review notice if:
- 14.1.1 a Condition is materially modified (whether by amendment or replacement); or
- 14.1.2 a material change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing telecommunications in the United Kingdom; or
- 14.1.3 this Agreement makes express provision for a review, or the Parties agree in writing that there should be a review; or
- 14.1.4 a material change (including enforcement action by any regulatory authority) occurs which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement; or
- 14.1.5 this Agreement is assigned or transferred by the other Party except if prior written consent to the assignment or transfer is not required under paragraph 20.1; or

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- 14.1.6 there is a general review pursuant to paragraph 14.4; or
- 14.1.7 either party reasonably believes this Agreement or any part thereof is not or has ceased to be reasonable.
- 14.2 A review notice shall set out in reasonable detail the issues to be discussed between the Parties.
- 14.3 Save as provided in paragraph 14.4, a Party shall serve a review notice not later than the expiration of a 6 month period commencing on the date set opposite each paragraph as follows:

Paragraph	Period commencing on the date:
14.1.1	of publication of the modifications to the Conditions
14.1.2	of occurrence of material change
14.1.3	of entitlement or occurrence of the date of written agreement
14.1.4	of occurrence of the material change
14.1.5	of notification of assignment or transfer
14.1.7	of the Agreement or any part thereof has ceased to be reasonable

- 14.4 A Party may initiate a general review of this Agreement by serving a review notice during the period of three months commencing on 1 April 2002 and 1 April every 2 years thereafter. On service of a review notice, BT and the Operator agree to negotiate in good faith with other interested parties that are contracted to BT under the Agreement (“Negotiating Group”) with a view to agreeing relevant amendments to this Agreement.
- 14.5 ~~On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement. If the parties fail to reach agreement on elements of the subject matter of the review within 6 months of commencing negotiations (or such longer period as may be agreed by BT and all members of the Negotiating Group) either Party may request the matter to be determined in accordance with paragraph 15.~~
- 14.6 For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Agreement shall remain in full force and effect.
- 14.7 On completion of the negotiations referred to in paragraph 14.5~~4~~, in accordance with the PPC Contract Review Guidelines, the relevant amendments agreed by a majority of the ~~parties actively participating in the review~~ Negotiating Group shall

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be notified in writing by BT. Unless the Operator objects in writing to one or more of the relevant amendments, by serving a written notice of objection not later than 30 calendar days following the date of service of BT's notification, the relevant amendment set out in such review notice as between BT and the Operator shall vary this Agreement on the first day of the first complete calendar month following the date of service of BT's notification, and the provisions of paragraph 25 shall not apply to the variation of this Agreement under this paragraph 14.7.

15. DETERMINATION

- 15.1 If the Parties fail to reach agreement on the subject matter of a review notice pursuant to paragraph 14 within 3 months (or 6 months or such longer period as agreed by the Negotiating Group for a review notice under paragraph 14.4) in each case from the date of service of such review notice, either Party may, not later than 3 months after the expiration of the relevant period, request in writing OFCOM to determine the matters upon which the Parties have failed to agree.
- 15.2 The Parties shall enter into an agreement to modify or replace the Agreement in accordance with any order, direction, determination or consent of OFCOM unless such order, direction, determination or consent is subject to a legal challenge.
- 15.3 If the order, direction, determination or consent is subject to a legal challenge then the Parties shall modify or replace the Agreement at the conclusion of the legal proceedings in accordance with OFCOM's order, direction, determination or consent and the result of the legal proceedings.
- 15.4 For the avoidance of doubt, order, direction, determination or consent of a charge may include an order, direction, determination or consent of the basis for calculating that charge.
- 15.5 The provisions of these paragraphs 14 and 15 are intended to establish a framework for the review and determination of the provisions of this Agreement, but are not intended to prejudice the rights, liabilities and obligations of the Parties created by and a Condition.

16. CONFIDENTIALITY

- 16.1 Subject to the following provisions of this paragraph 16, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its reasonable endeavours to ensure that its directors, employees, and professional advisers will not) disclose such information to any third party.
- 16.2 A Receiving Party shall exercise no lesser degree of care of Confidential Information than would a reasonable person with knowledge of the confidential nature of the information. A Receiving Party shall exercise no lesser security or degree of care than that Party applies to its own Confidential Information of an equivalent nature.

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- 16.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other Party to those persons who have a reasonable need to know. Confidential Information shall be used solely for the purposes for which it was disclosed.
- 16.4 A Receiving Party may disclose Confidential Information to an Associated Company, subject to the Associated Company undertaking to comply with obligations equivalent to these contained in this paragraph 16.
- 16.5 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent undertaking to comply with obligations equivalent to those contained in this paragraph 16.
- 16.6 The following shall not constitute a breach of this paragraph 16:
- 16.6.1 a disclosure authorised in writing by the Disclosing Party to the extent of that authority; or
- 16.6.2 a disclosure to an Emergency Organisation; or
- 16.6.3 publication of all or part of this Agreement or details of it pursuant to a Condition, or publication in the Carrier Price List; or
- 16.6.4 a disclosure which is properly made pursuant to a Condition or a relevant statutory or other regulatory obligation; or
- 16.6.5 a disclosure properly and reasonably made to OFCOM, or to an arbitrator, expert or any person appointed by the Parties for the resolution of a Dispute; or
- 16.6.6 a disclosure to obtain or maintain any listing on any recognised stock exchange,
- subject to in the case of any disclosure specified in paragraphs 16.6.4 to 16.6.6 the Receiving Party informing the Disclosing Party as soon as reasonably practical, after such disclosure.
- 16.7 Unless otherwise agreed in writing, a Receiving Party shall not use the other Party's Confidential Information to provide commercial advantage to its retail business.

16A DATA PROTECTION

- 16A.1 In order for the Parties to provide and support the Service, they may need to collect, Process and use Personal Data in order to:
- 16A.1.1 process, track and fulfil orders;
- 16A.1.2 deliver and commission the Service, either remotely or at the Site(s);
- 16A.1.3 process, track and resolve faults with the Service, either remotely or at the Site(s);

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- 16A.1.4 administer access to online portals relating to the Service;
- 16A.1.5 compile, dispatch and manage the payment of invoices relating to the Service;
- 16A.1.6 manage the Agreement and resolve any disputes relating to it; or
- 16A.1.7 respond to general queries relating to the Service.
- 16A.2 The Parties will Process this Personal Data in accordance with applicable Data Protection Legislation.
- 16A.3 The Parties may be required to share this information with other relevant parties, within or outside the European Economic Area, in order to carry out these activities, but in doing so, they will ensure that the sharing and use of this information is compliant with applicable Data Protection Legislation.
- 16A.4 The Parties will ensure that they disclose to each other only the Personal Data that is required in order to perform the Service.
- 16A.5 To the extent that, for the provision of the Service, BT is required to Process Customer Personal Data on behalf of the Operator, BT will:
- 16A.5.1 Process the Customer Personal Data only on the instructions of the Operator and to the extent necessary for the performance of this Agreement;
- 16A.5.2 implement technical and organisational security measures appropriate to the risk represented by the Processing and the nature of the Customer Personal Data, to protect the Customer Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access;
- 16A.5.3 not disclose the Customer Personal Data to a third party save as is necessary for the performance of the Service, as otherwise provided under the Agreement, or as required by Applicable Law.
- 16A.6 Notwithstanding any other provision in the Agreement, the Operator agrees that, for BT to provide the Service, Customer Personal Data may be:
- 16A.6.1 used, managed, accessed or transferred and held on a variety of systems, networks and facilities (including databases) worldwide;
- 16A.6.2 provided or transferred by BT to any BT Affiliate, subcontractor or supplier worldwide to the extent necessary to allow that BT Affiliate, subcontractor or supplier to perform its obligations in respect of the Service(s) and the Operator appoints BT to perform any such transfer in order to provide the Services, provided that BT takes appropriate steps and enters into appropriate agreements with its BT Associated Company, subcontractors or suppliers, as required, for such transfer to be adequately protected.

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16A.7 The Operator agrees that BT, to the extent permitted by Applicable Law, will not be liable for any claim, whether threatened or actual, arising out of or in connection with any action or omission by BT, to the extent that such action or omission:

16A.7.1. results from any failure by the Operator to comply with this paragraph 16A; or

16A.7.2. results from BT complying with any instructions from the Operator, and

the Operator will indemnify, hold harmless and defend BT from and against any such claim brought against BT by any third party, including a Data Subject.

17. FORCE MAJEURE

17.1 To the extent that it is prevented from complying with its obligations neither Party shall be liable for any breach of this Agreement caused by matters outside its reasonable control which may include an act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory obligation, industrial disputes of any kind (whether or not involving such Party's employees provided that in circumstances where the industrial dispute involves its own employees, the Party relying on the force majeure must have taken all reasonable actions to prevent such industrial disputes from arising), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omissions of persons for whom such Party is not responsible or any other cause whether similar or dissimilar and any such event or circumstance is a force majeure.

17.2 If as a result of a force majeure, the performance by the Party relying on the force majeure under this Agreement is affected, such Party shall, subject to the provisions of paragraph 17.4, perform those of its obligations not affected by a force majeure. In performing those of its obligations not affected by a force majeure, the Party relying on the force majeure shall deploy its resources such that (when taken together with other obligations to its Customers and third parties) there is no undue discrimination against the other Party. Both Parties shall use all reasonable endeavours to mitigate the effect of the force majeure event.

17.3 A Party seeking to rely on this paragraph 17 shall give notice to the other Party as soon as the Party relying on the force majeure event considers it is reasonably practicable after commencement of the force majeure event.

17.4 To the extent that BT is prevented as a result of a force majeure from providing any of the services or facilities to be provided under this Agreement, the Operator shall be released to the equivalent extent from its obligations to make payment for such services or facilities or complying with its obligations in relation thereto.

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- 17.5 If the effects of such force majeure continue for a continuous period of 3 months or more either Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 days written notice to the other Party.
- 17.6 When the force majeure event has ceased the affected Party shall as soon as is reasonably possible notify the other Party that the terms of the Agreement shall be reinstated in full.

18. LIMITATION OF LIABILITY

~~18.1 Save as expressly provided in this Agreement, neither Party has an obligation of any kind to the other Party beyond the obligations to exercise the reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement.~~

~~18.2 Subject to paragraph 18.3 if a Party is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay moneys in the ordinary course of business), or is otherwise liable to the other Party by reason of or in connection with this Agreement (including liability for negligence or breach of statutory duty) such Party's liability to the other Party shall be limited to two million pounds sterling (Stg £2,000,000) for any one event or series of connected events and four million pounds sterling (Stg £4,000,000) for all events (connected or unconnected) in any period of 12 calendar months.~~

~~18.3 Neither Party excludes or restricts its liability for death or personal injury caused by its own negligence or for fraud or to any extent otherwise not permitted by law.~~

~~18.4 Subject to the express terms and conditions of this Agreement neither Party shall be liable to the other Party under or in connection with this Agreement or otherwise for any indirect or consequential loss or damage, in each case whatsoever and howsoever caused, including without limitation by reason of misrepresentation (whether made prior to or in this Agreement), negligence, other tort, breach of contract or breach of statutory duty for any indirect loss of:~~

- ~~(i) profit,~~
- ~~(ii) anticipated profit,~~
- ~~(iii) time,~~
- ~~(iv) business interruption,~~
- ~~(v) business or anticipated savings,~~
- ~~(vi) wasted expenditure~~

18.1 Neither party excludes or restricts its liability for:

- (a) death or personal injury caused by its negligence or that of its employees, subcontractors or agents acting in the course of their employment or agency;
- (b) any fraudulent act or omission;
- (c) fraudulent misrepresentation or misstatement; or
- (d) any liability that may not otherwise be limited or excluded by law.

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18.2 Except as set out in paragraph 18.1 and subject to express terms and conditions of this Agreement to the contrary, neither party shall be liable whether based on a claim in contract, tort (including negligence) breach of statutory duty, misrepresentation or otherwise arising out of, or in relation to this Agreement, for:

- (a) loss of time (whether direct or indirect);
- (b) wasted expenditure (whether direct or indirect);
- (c) loss of anticipated savings (whether direct or indirect);
- (d) loss of opportunity (whether direct or indirect);
- (e) loss and/or corruption of data (whether direct or indirect);
- (f) loss of revenue (whether direct or indirect); or
- (g) any indirect or consequential loss whatsoever (even if the liable party has been advised of the possibility of such loss).

18.3 Notwithstanding paragraph 18.2 and subject to paragraph 18.4 a party may claim for the following direct losses:

- (a) loss of profit;
- (b) increased costs of customer handling;
- (c) damage to, loss or destruction of real property or tangible property; and/or
- (d) internal costs incurred in procuring services substantially similar to the Services provided under this Agreement.

18.4 Subject to any express terms and conditions of this Agreement to the contrary, in relation to any liability arising out of or in relation to this Agreement, either party's liability to the other party in contract, tort (including negligence), breach of statutory duty, or otherwise, for direct loss or damage howsoever arising (other than loss or damage of the type referred to in paragraph 18.5) for all events of liability connected or unconnected in each Contract Year is limited to the liability cap. In each Contract Year, other than the first Contract Year, the liability cap will be £25 million in total or an amount equal to Annual Revenue, whichever is the lesser, but not less than £250,000 and in the first Contract Year the liability cap will be £25 million in total.

18.5 If a party is liable to the other party in relation to any claim by the other party for damage to, loss or destruction of real property or tangible property, the first party's liability shall be limited to £1,000,000 for all such claims connected or unconnected in any Contract Year.

"Annual Revenue" means the total charges levied, exclusive of VAT, from the Operator for the services and facilities provided to the Operator under this Agreement in any Contract Year.

"Contract Year" means each consecutive 12 calendar month period commencing from the date of the Agreement and then on each anniversary of the date of the Agreement.

18.65 Each provision of this paragraph 18 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

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18A CONDUCT OF INDEMNIFIED EVENTS

- 18A.1 As a condition of any indemnity given by the Operator or by BT in this Agreement, the indemnified Party shall:
- 18A.1.1 notify the other Party promptly of any related claims or legal proceedings or allegation of infringement upon becoming aware of the same;
 - 18A.1.2 actively consult with the other Party regarding the conduct of any action and take its views into account;
 - 18A.1.3 make no admissions relating to any claims or legal proceedings or allegations of infringement without the consent of the other Party, which consent shall not be unreasonably withheld;
 - 18A.1.4 not agree any settlement or compromise of such claims or legal proceedings nor make any payment on account of them without the consent of the other Party, which consent shall not be unreasonably withheld;
 - 18A.1.5 allow BT to modify any services or facilities provided pursuant to this Agreement so as to avoid the infringement; and
 - 18A.1.6 allow the other Party at the other Party's reasonable request to conduct all negotiations and proceedings providing that the other Party consults with the indemnified Party and keeps the indemnified Party fully informed with respect to a claim, legal proceedings or an allegation of infringement and obtains the indemnified Party's approval (such approval not to be unreasonably withheld or delayed) to all material steps taken in the conduct of the defence of a claim, legal proceedings or an allegation of an infringement. The indemnified Party shall give the other Party all reasonable assistance in these matters providing the other Party agrees to pay the indemnified Party's reasonable expenses for such assistance.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 Except as expressly provided otherwise in this Agreement, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one Party to the other Party.

19.2 BT agrees to indemnify the Operator against ~~all direct and indirect:~~

~~19.2.1 loss;~~

~~19.2.2 damages;~~

~~19.2.3 costs (including without limitation costs on an indemnity costs basis); and~~

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~~19.2.4 expenses (including without limitation other professional adviser's fees)~~

~~arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against the Operator by a third party arising from infringement of any third party Intellectual Property Rights by reasons of BT's provision of the service to the Operator pursuant to this Agreement. all claims and proceedings arising from infringement of any Intellectual Property Rights by reason of BT's provision of the services and facilities provided to the Operator under this Agreement.~~

19.3 The indemnity ~~set out in clause paragraph~~ 19.2 does not apply to actions, claims or legal proceedings:

~~19.3.1(a) caused by the use of the services and facilities provided under this Agreement in conjunction with other equipment or software or any other service not supplied or approved by BT or the Operator or not otherwise authorised or contemplated by this Agreement; or~~

~~19.3.2(b) caused by reason of any alteration or modification which was not made by BT or which are made without BT's prior written consent; or~~

~~19.3.3(c) caused by designs or specifications made by, or on behalf of, the Operator, other than where such designs or specifications are made as part of the service and facilities on behalf of the Operator by BT; or~~

~~19.3.4(d) which arise as a result of the use of the services and facilities provided under this Agreement otherwise than in accordance with the terms of this Agreement.~~

19.4 ~~Except for liability relating to death or personal injury (or any circumstances in which liability for personal injury may not be limited by law), in connection with any liability arising out of or in connection with this paragraph 19, BT's liability is limited to one million pounds sterling (Stg £1,000,000) for any one event or series of connected events and two million pounds sterling (Stg £2,000,000) for all events (connected or unconnected) in any period of 12 calendar months. The limitations and exclusions of liability contained in paragraph 18 do not apply to paragraphs 19.2 and 19.3.~~

20. ASSIGNMENT

20.1 This Agreement is personal to the Parties and unless otherwise agreed in writing, and subject to this paragraph 20, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by a Party without the prior written consent of the other Party, such consent not to be unreasonably withheld.

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- 20.2 No consent is required under paragraph 20.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a successor to all or substantially all of the assigning Party's System provided that such successor is an Associated Company.
- 20.3 If consent in writing is given under paragraph 20.1 or if no consent is required under paragraph 20.2, in either case, it is a condition precedent that the assigning Party shall procure that the assignee enters into a novation agreement between the Parties and the assignee/successor to observe and perform the terms and conditions of this Agreement.
- 20.4 The assigning Party shall promptly give notice to the other Party of any assignment permitted to be made without the other Party's consent. No assignment shall be valid unless the assignee/successor agrees in writing pursuant to the novation agreement to be entered into pursuant to paragraph 20.3 above, to be bound by the provisions of this Agreement.

21. DISPUTES

- 21.1 If a Party (the “disputing Party”) wishes to invoke the dispute procedure specified in this paragraph, it shall send written notice of the Dispute to the other Party’s commercial contact (the “receiving Party”). The notice shall contain all relevant details including the nature and extent of the Dispute. The receiving Party shall acknowledge the receipt of such notice of the Dispute within two Working Days. This paragraph 21 does not apply to disputes relating to:
- (a) the accuracy of an invoices, to which paragraph 4 of Annex B shall apply;
 - (b) the application of BT's credit vetting policies in accordance with paragraph ~~10.5~~11.7, to which the dispute resolution procedures set out in BT's relevant credit vetting policy will apply.
- 21.2 The name of each Party’s commercial contact shall be as specified from time to time in the Customer Service Plan. For the purposes of this paragraph 21 no change to a commercial contact shall be effective until it has been notified to the other Party.
- 21.3 Following notice under paragraph 21.1, the Parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within 14 days, the Dispute may be escalated by either Party under paragraph 21.4.
- 21.4 If the Dispute is not resolved under paragraph 21.3, either Party may send written notice to the other Party’s commercial contact requiring the Dispute to be escalated and stating to whom that Party has escalated the Dispute. The commercial contact receiving such a notice shall acknowledge the receipt of such notice within four Working Days and state to whom the Dispute has been escalated.

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21.5 Following notice under paragraph 21.4, the Parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.

21.6 If the Parties do not resolve the Dispute in accordance with paragraph 21.5, the Parties may pursue such other alternative dispute resolution procedure as the Parties agree is appropriate. For the avoidance of doubt, nothing in this paragraph 21 obliges either Party to participate in alternative dispute resolution.

21.7 If the Parties agree to use alternative dispute resolution, the ~~following shall apply:~~

~~21.7.1 If appropriate, alternative dispute resolution shall be conducted in accordance with the following Parties agree to consider resolving the dispute by an alternative dispute resolution mechanism, including but not limited to:~~

- (a) Early neutral evaluation in accordance with the Disputes Resolution Services (“IDRS”)-CIArb cost-controlled model early neutral evaluation procedure;
- (b) Expert non-binding determination in accordance with the IDRS-CIArb cost-controlled expert determination procedure; or
- (c) Mediation in accordance with the IDRS-CIArb cost-controlled mediation procedure;

~~21.7.1 Any alternative dispute resolution shall be conducted in London and in the English language.~~

21.7.2 In the absence of contrary instructions arising from the alternative dispute resolution the Parties shall bear their own costs of any alternative dispute resolution procedure adopted in accordance with this clause and all negotiations connected with the Dispute will be conducted in confidence and without prejudice to the rights of the Parties in any further or other proceedings.

21.7.3 ~~If~~ the Parties reach agreement on the resolution of the Dispute, the agreement shall be in writing and signed by the Parties and be binding on them. Such agreement will constitute “Confidential Information” for the purposes of this Agreement; ~~and~~

21.7.4 ~~The~~ Parties will act in good faith to attempt to reach agreement within 2 months of the matter being referred to alternative dispute resolution.

21.8 If the Dispute is not resolved at any time, either Party may refer the Dispute to OFCOM and shall forthwith send a copy of the referral to the other Party.

21.9 The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement

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- 21.10 Nothing herein shall prevent a Party from:
- 21.10.1 seeking (including obtaining or implementing) interlocutory provisional relief or other immediate relief;
- 21.10.2 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.

22. BREACH, SUSPENSION AND TERMINATION

- 22.1 If a Party's System or any other telecommunications apparatus used by that Party, its contractors, agents or contractors, in connection with this Agreement adversely affects the normal operation of the other Party's System, or is a threat to any person's safety, the other Party may suspend, to the extent necessary, such of its obligations hereunder, and for such period as may be reasonable to ensure the normal operation of its System or reduce the threat to safety. The suspending Party will restore the normal operation of its System as quickly as possible.
- 22.2 If a Party is in material breach of (including failure to pay a sum due under) this Agreement (other than a failure to pay a sum which is subject to an invoice dispute under paragraph 4.2 of Annex B), the other Party may serve a written notice (the "breach notice") on the Party in breach specifying the breach and requiring it to be remedied within:
- 22.2.1 14 calendar days from the date of receipt of such breach notice for a failure to pay a sum under this Agreement; or
- 22.2.2 in case of emergency, such period as the Party not in breach may reasonably specify, or
- 22.2.3 21 calendar days from the date of receipt of such breach notice for any other breach arising under this Agreement.
- 22.3 If the Party in breach fails to remedy the breach within such period as may be specified by the Party not in breach pursuant to paragraph 22.2, the Party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances (other than any obligation to pay a sum due or to become due under the terms of this Agreement).
- 22.4 If the Party in breach fails to remedy the breach within the period stated in the breach notice the Party not in breach may terminate this Agreement on three months' written notice to the Party in breach provided always that if the Party in breach remedies the breach within such three months' notice period, this Agreement shall not terminate as a result of such notice.

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- 22.5 This Agreement may be terminated by either Party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other Party:
- 22.5.1 is unable to pay its debts within the meaning of section 123 (1) (e) of the Insolvency Act 1986; or
 - 22.5.2 has a receiver or administrative receiver appointed in relation to all or any of its assets; or
 - 22.5.3 has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
 - 22.5.4 has an administration order made in respect of its business; or
 - 22.5.5 enters into a voluntary arrangement under section 1 of the Insolvency Act 1986; or
 - 22.5.6 has anything which occurs in relation to it which is analogous to any of the foregoing under the law of any relevant jurisdiction; or
 - 22.5.7 ceases to carry on business.
 - 22.5.8 being the Operator, fails to place an order for Partial Private Circuits within 12 months from the date of this Agreement; or
 - 22.5.9 being the Operator, has placed an order for Partial Private Circuits and subsequently places an order for the cessation of all Partial Private Circuits. Termination under this sub-paragraph 22.5.9 may only be exercised following expiry of 3 months from the date of the cessation of the final circuit to be ceased.
- 22.6 Upon termination or expiry of this Agreement each Party shall take such steps and provide or procure such facilities as are reasonably necessary for recovery by the other Party of equipment (if any) supplied by that other Party as soon as reasonably practicable. Each Party shall use reasonable endeavours to recover equipment made available by it.
- 22.7 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination or expiry.
- 22.8 Notwithstanding the termination or expiry of this Agreement paragraphs 9.6, 17, 18, 19, 22.6 to 22.9 inclusive shall continue in full force and effect.

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22.9 Each of the Parties' right to terminate or suspend performance of this Agreement pursuant to this paragraph 22 is without prejudice to any other rights or remedies available to either Party.

23. NOTICES

23.1 A notice shall be duly served if:

23.1.1 delivered by hand, at the time of actual delivery;

23.1.2 sent by facsimile, upon its receipt being confirmed;

23.1.3 sent by recorded delivery post, on the fourth calendar day after the day of posting;

23.1.4 sent by pre-paid first class post, on the fourth calendar day after the day of posting;

23.1.5 sent by email, at the time of transmission.

23.2 Except if specifically provided in paragraph 23.3 or otherwise in this Agreement all notices and other communications relating to this Agreement shall be in writing and may be delivered by hand, fax, recorded delivery post, pre-paid first class post or email (in accordance with the specified address) to the following:

23.2.1 to the appropriate person for that matter indicated in the Customer Service Plan or as otherwise agreed by the parties; or

23.2.2 for all other matters:

If to the Operator:

#[OPERATOR]

If to BT:

Commercial Legal Team, Legal Business Services,
BT Wholesale, Legal and Business Services,
British Telecommunications plc,
BT Centre,
PP 6A, 81 Newgate Street,
London EC1A 7AJ

Facsimile: 01332 822344

or to such other addresses as the Parties may notify from time to time pursuant to this paragraph 23.

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23.3 Notices pursuant to paragraphs 21 and 22 (breach, suspension or termination) and any document concerning legal proceedings may not be delivered by email.

24. ENTIRE AGREEMENT

24.1 This Agreement contains the whole agreement between the Parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, other than any fraudulent misrepresentation, in relation to the subject matter of this Agreement.

25. VARIATIONS

25.1 Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless agreed in writing by the Parties and signed by a person nominated in writing on behalf of:

25.1.1 BT, by the Managing Director, BT Wholesale Products and Strategy (or their successors); and

25.1.2 the Operator, by a director or the company secretary (or equivalent office holder) of the Operator.

26. WAIVER

26.1 The waiver of any breach of, or failure to enforce, any term or condition of this Agreement shall not be construed as a waiver or a waiver of any other breach of the same or any other term or condition of this Agreement. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

27. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

27.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than a Party shall have any rights under it nor shall it be enforceable by any person other than a Party.

28. INDEPENDENT CONTRACTORS AND AGENCY

28.1 Each of the Parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither Party is authorised and neither of the Parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations. Neither Party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of the other Party. Nothing in this Agreement shall be deemed to constitute a partnership between the Parties.

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28.2 If either Party appoints an agent for the purposes of this Agreement, and notifies the other Party, then the other Party shall deal with the appointed agent for such purposes until the first Party notifies the other Party that the appointment has been terminated.

29. SEVERABILITY

29.1 The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

30. GOVERNING LAW

30.1 The interpretation, validity and performance of this Agreement shall be governed in all respects by the laws of England and Wales (“Applicable Law”) and the Parties submit to the exclusive jurisdiction of the English Courts.

IN WITNESS WHEREOF THIS AGREEMENT was entered into the day and year first before written.

SIGNED for and on behalf of
#[OPERATOR]
Signed: _____
Name: _____
Position: _____

SIGNED for and on behalf of
BRITISH TELECOMMUNICATIONS plc
Signed: _____
Name: _____
Position: _____