

## GENERAL CONDITIONS VERSION 14 (MAY 2018)

These General Conditions are entered into by and between British Telecommunications plc, a company incorporated in England and Wales (registered no. 1800000) having its registered office at 81 Newgate Street, London EC1A 7AJ (“BT”) and the Supplier (each a “Party” and together the “Parties”). Each Party agrees to these General Conditions.

### 1. STRUCTURE AND SCOPE

1.1 The contract between BT and the Supplier comprises the following documents (the “Contract”):

1.1.1 these General Conditions;

1.1.2 the Purchase Order; and

1.1.3 any Supplier’s standard terms attached to, enclosed with, or referred to in the Contract.

If there is any conflict or inconsistency in or between any parts of the Contract, the order of precedence of these documents will be in the order listed above.

1.2 Unless expressly stated otherwise, nothing in the Contract will be construed as requiring BT to give the Supplier any rights of exclusivity or preferred supplier status.

### 2. CHARGES AND PAYMENT

2.1 The charges for the Goods, Software and/or Services will be calculated in accordance with the Contract. No further amounts will be payable by BT for such Goods, Software and/or Services or the performance of the Supplier’s obligations under the Contract.

2.2 BT will, on or before the second Monday (or, if that Monday is a public holiday, on the next day that is not a public holiday) after the expiration of forty-two (42) days from the date BT receives each due, valid and undisputed invoice submitted in accordance with this Clause 2, instruct its bank to pay such invoice, provided always that BT will make earlier payment if required to do so by Applicable Law. If BT disputes an invoice, it will notify the Supplier as soon as reasonably practicable in writing giving clear reasons. BT may withhold from payment on the due date that part of any invoice which it disputes until the dispute is resolved.

2.3 Except as expressly stated otherwise in the Contract:

2.3.1 payment will not become due to the Supplier and the Supplier will not submit invoices for payment:

2.3.1.1 until the Supplier has fully completed its obligations under and in accordance with the Contract;  
or

2.3.1.2 if the Supplier is in breach of any provision of the Contract; and

2.3.2 the Supplier will submit invoices within one (1) year of the date upon which the payment they relate to becomes due to the Supplier. BT will have no liability to make payments in respect of invoices submitted outside of this time period.

2.4 If either Party fails to make any payment under the Contract on or before the due date, the Party entitled to payment may charge interest at the rate of two (2) per cent per annum above the base rate from time to time of the Bank of England on the outstanding amount from the day after the due date until the date of payment (both before and after judgment) and it will accrue (but not compound) from day to day. The Parties agree that such interest rate is in substitution for any statutory interest that may be applicable to the Contract in question and both it and the payment period set out in Clause 2.2 are fair and reasonable.

2.5 Except for the payment of the Charges, the Supplier will not charge BT for any Goods, Software or Services or other activities provided under or in connection with the Contract or for any costs the Supplier may incur in fulfilling any of its obligations under the Contract and BT will not pay for any costs incurred by the Supplier in remedying any failure to perform its obligations under the Contract.

### 3. TAXES

3.1 The Charges, unless otherwise expressly stated in the Contract, will:

3.1.1 be inclusive, where relevant, of all packing, delivery to address specified in the Contract or BT’s nominated agent freight agent in the country of despatch, any licence fees and all other charges associated with the Goods, Software and/or Services; and

3.1.2 exclude any Transaction Tax imposed in the UK on the sale or measured by the sales price that is legally the liability of BT, which BT will pay in the manner prescribed by law against delivery by the Supplier of tax invoices in proper form except to the extent that a valid exemption certificate is provided by BT to the Supplier, but are inclusive of all other taxes, duties, fees or surcharges of whatever nature.

### 4. TITLE AND RISK

4.1 Without prejudice to BT’s right to reject:

4.1.1 title in the Goods will pass to BT on the earlier of:

4.1.1.1 physical delivery to the delivery address specified in the Contract; or

- 4.1.1.2 payment (or part payment) of the Charges in accordance with the Contract; and
- 4.1.2 risk in the Goods will pass on physical delivery to the delivery address specified in the Contract.

## 5. DELIVERY

- 5.1 The Supplier will:
  - 5.1.1 deliver the Goods to BT to the delivery address specified in the Contract during normal business hours and will provide all equipment and labour for their conveyance and unloading at the delivery address; and
  - 5.1.2 make the Software and/or Licensed Materials available for download by BT or as otherwise agreed by BT on the delivery date specified in the Contract (and should BT subsequently require access to re-download the Software and/or Licensed Materials, make such access available).

## 6. WARRANTY PERIOD

- 6.1 The Supplier will at its own cost promptly remedy any Defects in the Goods or Software notified by BT and which become apparent by, at BT's option, repairing or replacing such Defective Goods or Software within:
  - 6.1.1 in relation to Goods, two (2) years of the date of acceptance of the Goods or such other period specified in the Contract; and
  - 6.1.2 in relation to Software, within one (1) year from the later of:
    - 6.1.2.1 the date of acceptance of the Software; and
    - 6.1.2.2 the point at which the Software is first used in a live, non-test environment using real data or such other period specified in the Contract.
- 6.2 The Supplier will:
  - 6.2.1 ensure that any remedied or replaced part of the Goods or Software is compatible with all Goods or Software;
  - 6.2.2 complete the remedy or replacement to the reasonable satisfaction of BT within the timescales specified in the Contract (or, if none are specified, within a reasonable time);
  - 6.2.3 ensure that Defective Goods or Software are not remedied or replaced on a BT Site without BT's consent, unless, for operational or technical reasons they can only be removed or replaced with difficulty;
  - 6.2.4 cause the minimum of disruption to BT and/or BT Customers in effecting any remedy; and
  - 6.2.5 ensure that the time at which any remedy is to be effected is agreed with BT and BT may at its discretion direct the Supplier to work outside normal working hours at no cost to BT.
- 6.3 All repaired or replacement Goods or Software will benefit from the provisions of this Clause 6.

## 7. AUDIT RIGHTS

- 7.1 The Supplier will, and will ensure that any Subcontractors will, grant to BT (and to its representatives) the right of access to any records, documents, Supplier Sites, Supplier Personnel, Systems, facilities, equipment, information and software and any other relevant information:
  - 7.1.1 at any time for the duration of the Contract and for a period of twelve (12) months following their termination or expiry, to audit the Supplier's performance of its obligations under the Contract, the Charges and taxes charged to BT; and
  - 7.1.2 at any time for the duration of the Contract and for a period of six (6) years following their termination or expiry, to comply with any request by, requirement of, or duty to, any Authority in the course of carrying out its regulatory functions or the requirements of Applicable Law.

Each Party will bear its own costs of participation in any of such audits.

## 8. AMENDMENT

- 8.1 No amendment to the Contract will be effective unless agreed in writing and signed by the authorised representatives of each of the Parties.

## 9. COMPLIANCE REQUIREMENTS

- 9.1 The Supplier will and will procure that its Supplier Personnel comply with all Applicable Law in the performance of the Supplier's obligations under the Contract.
- 9.2 The Supplier will, and will procure that all Supplier Personnel will, comply with the Policies, provided that:
  - 9.2.1 where any such Policy is expressed to apply to BT, the Supplier will comply and procure that all Supplier Personnel comply with such Policy as though such Policy applied to and had been adopted by the Supplier;
  - 9.2.2 the Supplier will be granted a reasonable period from notification (or such other period as specified in the Policy) in which to implement any changes required to comply with any new or amended Policy; and

9.2.3 the Supplier will not be deemed to be in breach of this Clause 9.2 where it is able to demonstrate that its performance in connection with the Contract is compliant with its own policies provided that such policies are no less stringent than the relevant Policies.

## 10. SUPPLIER PERSONNEL

10.1 The Supplier will ensure that all Supplier Personnel are competent and appropriately qualified to provide the Goods, Software and/or Services in accordance with Good Industry Practice.

10.2 BT accepts no liability for any loss or damage to the Supplier or Supplier Personnel's property that occurs whilst at a BT Site.

## 11. BT ITEMS

11.1 Any BT Items will remain the property of BT or its licensors and the Supplier will:

11.1.1 use the BT Items only as necessary for the performance of the Contract;

11.1.2 return all BT Items to BT upon expiry or termination of the Contract or earlier on reasonable request by BT;

11.1.3 keep them securely and in good condition as bailee, segregated and clearly marked as BT property; and

11.1.4 be fully liable for any loss of or damage to them.

11.2 The Supplier will not:

11.2.1 have or allow any Supplier Personnel or any third party to take any title or lien over any BT Items; or

11.2.2 allow any third party to use, take possession of any BT Items save for Supplier Personnel expressly permitted to do so in the Contract.

## 12. WARRANTIES

12.1 The Supplier represents, warrants and undertakes that:

12.1.1 it will provide the Goods, Software and Services in compliance with the requirements of the Contract, in accordance with Good Industry Practice and to the reasonable satisfaction of BT;

12.1.2 if the Goods, Software and/or Services include carrying out work on BT Sites or other third party sites that is unsupervised by BT or a BT Customer, it has achieved health and safety accreditation by a member of a recognised safety scheme (Safety Schemes in Procurement (SSIP) in the UK) and it will maintain such accreditation throughout the term of the Contract. The Supplier will upon request provide written evidence to BT of such health and safety accreditation;

12.1.3 it will at all times possess all rights (including Intellectual Property Rights), licences, approvals, permits or authorisations (in each case) required to perform its obligations under the Contract including the unrestricted export of the Goods, Software or Services to BT for the destination and use that BT has made known to the Supplier, and export or re-export to such countries as BT will have notified to the Supplier at any time before delivery to BT; and

12.1.4 it will, and will procure that the Supplier Personnel will, comply fully and to BT's reasonable satisfaction with all obligations or restrictions relating to Open Source Software. The use of Open Source Software will not affect the Supplier's performance of its obligations under the Contract.

## 13. INDEMNITIES

13.1 Without prejudice to any other rights or remedies available to BT, the Supplier indemnifies BT and any BT Beneficiary against all Liabilities arising out of or in connection with:

13.1.1 any complaint made under the Employment Rights Act 1996 (as amended or replaced from time to time) by any Supplier Personnel whether in any competent court as a result of any claim or demand by any Supplier Personnel for wrongful dismissal, breach of contract or any other claim arising at common law and/or discrimination of any type whether arising under UK or European law;

13.1.2 Part 1 of the Consumer Protection Act 1987 (or any equivalent product liability legislation) and the Consumer Rights Act 2015 in relation to the Goods, Software or Services;

13.1.3 loss of or damage to any property to the extent arising as a result of the negligence or wilful acts or omissions of the Supplier or Supplier Personnel in relation to the performance of the Contract; and

13.1.4 any actual or alleged infringement of a third party's Intellectual Property Rights or duty of confidentiality towards a third party by the possession or use or any other act (including sale) permitted under the Contract any of the Goods, Software, Services, Supplier Materials and/or Deliverables anywhere in the world.

## 14. LIMITATION OF LIABILITY

14.1 Subject to Clause 14.3, neither Party will be liable under or in connection with the Contract for any indirect, special or consequential loss or damage.

- 14.2 Subject to Clauses 14.1 and 14.3 and to the maximum extent permitted by law, the aggregate liability including for all Liabilities, whether in contract (including under any warranty), in tort (including negligence) under statute or otherwise, of each Party under or in connection with the Contract will be limited to an amount equal to the greater of:
- 14.2.1 one million (1,000,000) pounds; and
  - 14.2.2 one hundred and fifty (150) per cent of the total aggregate Spend under the Contract to the date upon which the event giving rise to such liability occurred (with such amount pro-rated to represent a twelve (12) month period if such event occurs prior to the first anniversary of the Purchase Order).
- 14.3 Nothing in the Contract will exclude or in any way limit:
- 14.3.1 the Supplier's liability for any breach of Clause 18 (*Intellectual Property Rights*) or Clause 19 (*Data Protection*);
  - 14.3.2 either Party's liability for any breach of Clause 20 (*Confidentiality*);
  - 14.3.3 the Supplier's liability under the indemnities set out in Clauses 13.1.1 (*Employment Rights Indemnity*) and 13.1.4 (*Third Party IPR Indemnity*);
  - 14.3.4 the Supplier's liability for any fines, levies, penalties, sanctions or similar amounts imposed upon any BT Group Company or any BT Customer by any government body or regulator resulting directly from a breach of Applicable Law by the Supplier or any Supplier Personnel;
  - 14.3.5 the Supplier's liability for wilful misconduct, wilful default or wilful abandonment; or
  - 14.3.6 either Party's liability that cannot be excluded or limited under Applicable Law.
15. **FORCE MAJEURE**
- 15.1 If a Party is prevented from performing any of its obligations by the occurrence of a Force Majeure Event, that Party ("**Affected Party**") may, as soon as it becomes aware of the Force Majeure Event, claim relief from liability in respect of any delay in performance or any non-performance of any such obligation to the extent that the delay or non-performance is due to a Force Majeure Event, provided that the Affected Party promptly notifies the other Party in writing, in any case no later than one (1) day, after becoming aware that such delay was likely to occur, of the cause of the delay or non-performance and the likely duration of the delay or non-performance.
16. **TERMINATION**
- 16.1 If either Party commits a material breach of the Contract (or any part of it), the other Party will have the right at any time to terminate the whole or any part of the Contract immediately if:
- 16.1.1 such breach is irremediable; or
  - 16.1.2 such breach is capable of remedy and the relevant Party has failed to remedy such breach within ten (10) Business Days after the issue of a written notice requiring it to do so.
- 16.2 The Supplier will not be entitled to terminate the whole or any part of the Contract under Clause 16.1 if at such date BT is in a genuine dispute with the Supplier or such termination is due to a failure by BT to pay any Charges.
- 16.3 Either Party will have the right at any time to terminate the Contract (or any part of it) immediately if the other Party is affected by an Insolvency Event.
- 16.4 BT may at any time on written notice terminate the Contract (or any part of it) immediately if:
- 16.4.1 the Supplier is in persistent breach of the Contract (or any part of it) which in aggregate constitute a material breach;
  - 16.4.2 the Supplier is prevented from performing substantially all of its obligations by a Force Majeure Event for a continuous period of more than thirty (30) days;
  - 16.4.3 the Supplier's ownership or control is materially changed to (in BT's reasonable opinion) BT's detriment; or
  - 16.4.4 an Authority notifies BT that it should terminate the Contract (or any part of them) or if required by BT to comply with Applicable Law or BT is reprimanded or fined by an Authority as a result of an act or omission of the Supplier or Supplier Personnel.
- 16.5 BT may terminate the Contract (or any part of it) at any time on written notice on the date specified in such notice. In such event BT will be liable to pay the Charges to the Supplier on a pro-rata basis so that BT is only obliged to pay the Supplier for the Goods, Software and/or Services actually delivered or provided to BT in accordance with the Contract or the relevant part of it at the date of termination.
17. **ASSIGNMENT, NOVATION AND SUBCONTRACTING**
- 17.1 The Supplier will not:
- 17.1.1 assign the benefit of the Contract (or any part of it) to any third party without the prior written consent of BT;

- 17.1.2 novate the whole or any part of the Contract to any third party without the prior written consent of BT;
- 17.1.3 subcontract the whole or any part of its obligations under the Contract without obtaining the prior written consent of BT, which, if given, will not affect the Supplier's obligations or liabilities under the Contract and the Supplier will be fully responsible for the acts or omissions of its Subcontractors and their employees, agents and contractors and for ensuring they perform to the standards required by and in accordance with the Contract; or
- 17.1.4 move any Supplier Site from a location in one country to another country.

## 18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Subject to any restrictions expressly set out in the Contract, the Supplier grants a non-exclusive, royalty-free, perpetual, irrevocable worldwide licence to BT and each BT Group Company, by themselves or by third parties on their behalf, free of any additional payment, to:
  - 18.1.1 use the Goods, Software and Services without restriction;
  - 18.1.2 use the Supplier Materials to the extent necessary to receive the benefit of the Goods, Software and Services; and
  - 18.1.3 use the Documentation for BT's use of the Goods, Software and/or Services.

## 19. DATA PROTECTION<sup>1</sup>

- 19.1 This Clause 19 will apply only to the extent that Personal Data is provided by BT to the Supplier or otherwise acquired by the Supplier in relation to the Contract. For the purposes of this Clause 19, "BT" will also mean any company that is from time to time in the same group (as defined by s.474(1) Companies Act 2006) as BT which provides Personal Data to the Supplier or in relation to which the Supplier acquires or generates Personal Data in relation to the Contract.
- 19.2 The Supplier will only Process Personal Data (limited to business contact details) of BT's personnel (employees, agents and subcontractors) as Controller for purposes of contract administration and it will do so strictly in accordance with Data Protection Legislation. In the event of a Personal Data Breach, the Supplier will promptly notify BT of the Personal Data Breach and provide any information BT may reasonably require relating to that Personal Data Breach.
- 19.3 Neither Party will Process Personal Data on behalf of the other Party as Processor for the purposes of the Contract. If either Party anticipates that any change (a) to the Goods, Software and/or Services; or (b) to the interpretation of the Goods, Software and/or Services under the Data Protection Legislation, would require the Processing of Personal Data by the Supplier on BT's behalf as Processor, then the relevant Party will immediately notify the other in writing and the Parties will negotiate in good faith to incorporate appropriate data protection provisions into the Contract in accordance with Data Protection Legislation. No such changes will be made until appropriate data protection provisions have been agreed by the Parties.
- 19.4 Without prejudice to Clause 19.3, where these General Conditions replace any prior version of this document in respect of a Purchase Order placed before 25 May 2018 and where the Supplier is Processing Personal Data on BT's behalf as Processor on or after 25 May 2018, then the data protection obligations applicable to the Supplier set out in the "Schedule" to these General Conditions (being the previous Protection of Personal Data condition in version 13 (October 2016) of the general conditions) will continue to apply until such time as appropriate replacement data protection provisions regarding the Processing of Personal Data by the Supplier on BT's behalf as Processor are agreed in writing by the Parties. For the avoidance of doubt, the terms "controller", "data subject", "personal data" "processor", "processing" and "Data Protection Legislation" in the Schedule will have the meanings set out in these General Conditions.

## 20. CONFIDENTIALITY

- 20.1 Each Party will keep in strict confidence all Confidential Information disclosed to it and will:
  - 20.1.1 only disclose Confidential Information to those of its employees, agents, Group Companies, officers, directors, advisers, insurers, Subcontractors and suppliers, who need to know it for the purpose of that Party discharging its obligations or receiving a benefit under the Contract, and will ensure that those receiving Confidential Information under this Clause 20.1 comply with the obligations set out in this Clause 20 as though they were a party to the Contract;
  - 20.1.2 only disclose Confidential Information as required by Applicable Law, any Authority or by a court of competent jurisdiction; or

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<sup>1</sup> Important Note: Where the Supplier Processes Personal Data on behalf of BT as a Processor then additional provisions will be required as set out in Clause 19.3.

- 20.1.3 not use or exploit the Confidential Information in any way except as necessary for the purpose of that Party discharging its obligations or receiving a benefit under the Contract.
- 20.2 Clause 20.1 will not apply to Confidential Information that:
- 20.2.1 is or becomes available to the public other than as a result of a breach of the Contract;
- 20.2.2 was lawfully available to a Party on a non-confidential basis prior to disclosure by the disclosing Party;
- 20.2.3 the Parties agree in writing is not Confidential Information; or
- 20.2.4 was developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 20.3 Upon written request from a Party, the other Party will return or destroy any Confidential Information received from the requesting Party within a reasonable time period and provide written confirmation on request by the requesting party.
- 20.4 The Parties agree that if either of them breaches this Clause 20, damages may not be an adequate remedy for the disclosing party and it will have the right to apply for injunctive relief or specific performance of the recipient's obligations.

## 21. TRANSFER OF UNDERTAKINGS

- 21.1 The Supplier indemnifies BT, any BT Group Company and any successor supplier to the Supplier against any Liabilities arising out of, or in connection with, any claim or decision by a court or tribunal that the contract of employment of any of its employees or any Liabilities in relation to the employees have transferred to BT, any BT Group Company or any successor supplier to the Supplier under the TUPE Regulations or otherwise, including any Liabilities for failure to inform and consult under the TUPE Regulations, such that BT, any BT Group Company and any successor supplier to the Supplier are each placed in no worse a position financially than they would have been had such Liabilities not existed.

## 22. GENERAL

- 22.1 Except as otherwise specifically provided in the Contract, no failure to exercise, or delay in exercising, any right or privilege will operate as a waiver of any right or privilege.
- 22.2 If any court or competent authority finds that any provision (or part of any provision) of the Contract is illegal, invalid or unenforceable, that provision or part provision, to the extent required, will be deemed to be deleted. The legality, validity or enforceability of any other provision of the Contract will not be affected.
- 22.3 The provisions of Clauses 2 (Charges and Payment), 3 (Taxes), 7 (Audit Rights), 8 (Amendment), 11 (BT Items), 13 (Indemnities) to 15 (Force Majeure), 17 (Assignment, Novation and Subcontracting) to 23 (Defined Terms and Interpretation) will survive the termination or expiry of the Contract.
- 22.4 The Contract 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. Nothing in the Contract 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.
- 22.5 The Contract does not create any right or benefit enforceable by any person not a Party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).
- 22.6 The Contract is governed by and construed in accordance with the laws of England and Wales. 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 Contract or their subject matter or formation (including non-contractual disputes or claims).

## 23. DEFINED TERMS AND INTERPRETATION

- 23.1 The following terms and expressions will have the following meanings:

**"Affiliate"** means, in relation to a Party, any company, partnership or other entity which from time to time (a) owns (directly or indirectly) at least twenty (20) per cent of the voting stock of another entity; (b) has the power (directly or indirectly) to appoint the majority of the board of directors or power (directly or indirectly) to control the general management of another entity; or (c) both BT and the Supplier agree in writing may be considered as under control of that Party for the purposes of the Contract;

**"Applicable Law"** means laws, regulations, regulatory guidance, obligations, enactments, statutory duties, or rules (including mandatory and legally required industry codes, binding codes of conduct and binding statements of principle incorporated and contained in such rules) applicable to the existence or operation of the Contract or the supply of the Goods, Software or Services from time to time, including (a) as modified, re-enacted or consolidated from time to time; and (b) any applicable subordinate legislation made from time to time;

**"Authority"** means any regulatory, governmental and/or judicial authority (including any public prosecution service) or any self-regulatory organisation, securities exchange, securities association or agency charged with enforcing the Applicable Laws and/or any Regulatory Matters from time to time. For the avoidance of doubt, the term Authority includes any replacement or successor of an Authority;

**"BT Customer"** means an existing or potential BT customer;

**"BT Group"** means British Telecommunications plc and its Affiliates from time to time and **"BT Group Company"** means any company or corporation within the BT Group;

**"BT Items"** means all tangible property provided by BT to the Supplier and all items held by the Supplier which belong to, or are licensed by, BT in order to provide the Goods, Software or Services;

**"BT Site"** means all locations, sites and premises (a) to which the Goods, Software or Services are to be supplied, including BT Customer sites, and/or (b) identified by BT to the Supplier as a BT Site;

**"Business Day"** means a day other than a normal weekend day or public or bank holiday in the country or locality in which the Goods, Software or Services are received by BT or the relevant BT Group Company;

**"Charges"** mean the fees and charges payable by BT to the Supplier in relation to the relevant Goods, Software or Services as set out in the Contract;

**"Confidential Information"** means any and all Information, however it is conveyed and whether or not it is designated as "confidential", disclosed by one Party or its employees, agents, Group Companies, officers or advisers, to the other Party under or in connection with the Contract and whether disclosed before, on or after the date of any such agreement including whether in tangible or other form (a) the terms of the Contract; (b) all technical or commercial know-how, Intellectual Property Rights, pricing, specifications, reports, data, notes, documentation, drawings, computer programs, computer outputs, designs, circuit diagrams, models, patterns, samples, inventions (whether capable of being patented or not), developments, trade secrets, processes or initiatives that are of a confidential nature; (c) any information that ought to be reasonably regarded as confidential and relating to the business, affairs, customers, personnel, clients, suppliers, plans or strategy of the disclosing Party or its Group Companies; (d) the operations, product information, designs, trade secrets or software of the disclosing Party or its Group Companies; and (e) any Information disclosed by a BT Customer to the Supplier;

**"Controller", "Personal Data", "Personal Data Breach" "Process/Processing" and "Processor"** will have the meanings ascribed to them in the Directive, and/or in the GDPR;

**"Data Protection Legislation"** means collectively (a) the GDPR, and any successor legislation or regulation; (b) other applicable legislation of the European Union; (c) applicable local legislation relating to the Processing of Personal Data and/or the protection of an individual's privacy; and (d) any binding guidance or code of practice issued by a Supervisory Authority;

**"Defect"** means (a) the failure of any of the Goods or Software or, in BT's reasonable opinion, the likely failure of any of the Goods or Software to conform or operate in accordance with the Contract; or (b) where the quality of any of the Goods or Software (including its development, performance or output) (i) is such that they are not as a person may be generally and/or reasonably entitled to expect; (ii) is not satisfactory for any purposes for which such Goods or Software are usually purchased or used; (iii) does not meet the BT Requirements; or (iv) is not otherwise in accordance with the Contract, and **"Defective"** will be construed accordingly;

**"Deliverable"** means Materials which are to be prepared or created by or on behalf of the Supplier, a Supplier Group Company or any Subcontractor in the course of fulfilling the obligations under the Contract;

**"Directive"** means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995;

**"Documentation"** means the installation, user and maintenance guides, promotional literature and/or other documentation relating to the use, maintenance and/or operation of the Goods, Software or Services;

**"Force Majeure Event"** means any circumstance beyond a Party's reasonable control that hinders, delays or prevents that Party from performing any of its obligations under the Contract including nuclear accident, acts of God, fire, flood, storm, drought, natural disaster, terrorist attack, civil commotion or armed conflict. For the avoidance of doubt, the mere shortage of labour, materials, equipment or supplies (unless caused by events or circumstances which are themselves Force Majeure Events), strikes, lock-outs or other industrial disputes involving the work force of the party so prevented or of any of its Subcontractors or suppliers will not constitute a Force Majeure Event;

**"GDPR"** means General Data Protection Regulation (EU) 2016/679 repealing the Directive, and any amendment or replacement to it (including any corresponding or equivalent national law or regulation which implements the GDPR);

**"General Conditions"** means this document comprising Clauses 1 to 23 and the Schedule;

**"Good Industry Practice"** means the exercise of that degree of skill, care, diligence, prudence, timeliness, efficiency, foresight and judgement which would reasonably be expected from appropriately skilled, experienced and competent operators engaged in the provision of products or services similar to the Goods, Software and/or Services under similar circumstances;

**"Goods"** means the goods (including any firmware and associated software) as set out in the Contract (but excludes any Software to the extent it is licensed separately);

**"Group Company"** means any BT Group Company or Supplier Group Company;

**"Information"** means information whether in tangible or any other form, including, without limitation, specifications, reports, data, notes, documentation, drawings, software, computer outputs, designs, circuit diagrams, models, patterns, samples, inventions, (whether capable of being patented or not) and know-how, and the media (if any) upon which such information is supplied;

**"Intellectual Property Rights"** means any trade mark, service mark, trade and business name, internet domain names, patent, petty patent, copyright and related rights, database right, rights in designs, semiconductor topography right, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), or any similar intellectual property rights in any part of the world, whether registered or unregistered, including any applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights which subsist or will subsist now or in the future in any part of the world;

**"Insolvency Event"** means any of the following in relation to a Party (or any analogous event in a jurisdiction other than England and Wales) (a) becomes the subject of a bankruptcy order or becomes insolvent; (b) makes any arrangement or composition with or assignment for the benefit of its creditors; (c) goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory; (d) ceases to trade or operate; (e) owns any assets that are material to the operations of all or substantially all of its business that are the subject of any form of seizure or have a receiver or administrator appointed over them; or (f) a notice is given, a petition issued, a resolution passed or any other step is taken to commence any of the procedures listed above in the jurisdiction of that other Party;

**"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;

**"Licensed Materials"** means the materials and Information intended to assist the user of the Software in the use or maintenance of the Software and constitutes Documentation;

**"Materials"** means literary or other works of authorship including Information, specifications, software, routines, codes (including source code), interfaces, job control and other logs, databases, module, compilations of data, program listings, software tools, methodologies, tool kit, processes, scripts, manuals (including user and reference manuals), reports, plans, process and/or procedure documents, drawings, images, sound and other written documentation in any media and machine-readable text and files;

**"Open Source Software"** means any software licensed to the Supplier in accordance with the "Open Source Definition" at <http://www.opensource.org/osd.html>;

**"Policy"** and **"Policies"** means the policies and generic standards of BT and the BT Group accessible on the Policies Portal (as each policy or generic standard is amended by BT and notified to the Supplier from time to time through the Policies Portal);

**"Policies Portal"** means the online repository for the Policies accessible at <https://groupertranet.bt.com/selling2bt/PoliciesPortal/index.html> or any other URL that may be notified to the Supplier from time to time;

**"Purchase Order"** means an order or part of an order given by BT and accepted by the Supplier for one or more Goods, Software or Services including but not limited to any purchase order, which expressly refers to these General Conditions;

**"Schedule"** means the schedule described in Clause 19.4 and attached to these General Conditions;

**"Services"** means any or all of the services as set out in the Contract including the provision of Supplier Materials and/or Deliverables;

**"Software"** means such computer programs including graphical user interfaces, listings, data files or parts of them) in any language, form or medium (including in object code and source code format) together with all programming documentation that are provided by or on behalf of the Supplier under the Contract including all modifications, enhancements, updates and upgrades to it;

**"Spend"** means the sum of (a) all amounts paid by BT to the Supplier; (b) all amounts invoiced by the Supplier but not yet paid; and (c) the value of all Purchase Orders issued (less any amounts that have been paid or invoiced against such Purchase Orders);

**"Subcontractor"** means a subcontractor of the Supplier which performs or is involved in the provision of the Goods, Software or Services or which employs or engages persons engaged in the provision of the Goods, Software or Services;

**"Supervisory Authority"** means any competent authority responsible for supervising compliance with Data Protection Legislation;

**"Supplier"** means the supplier of the Goods, Software or Services named in the Purchase Order;

"**Supplier Group**" means the Supplier and its Affiliates from time to time and "**Supplier Group Company**" means any company or corporation within the Supplier Group;

"**Supplier Materials**" means Materials in which the Intellectual Property Rights are owned by the Supplier, a Supplier Group Company, a Subcontractor or any of their third party licensors, and which are used in the provision or performance of the Goods, Software or Services, or required for the use and/or receipt of the Goods, Software or Services;

"**Supplier Personnel**" means any persons engaged by the Supplier or its Subcontractors in the performance of the Supplier's obligations under the Contract;

"**Supplier Site**" means each site from which (a) the Goods, Software or Services are supplied from time to time by the Supplier and/or its Subcontractors and any location at which the technology supporting the Goods, Software and/or Services is located; or (b) any of BT's Confidential Information in the Supplier's and/or its Subcontractors' possession is stored, used or held;

"**Systems**" means all computer hardware, databases, software, backups, devices, consumables, firmware, peripheral equipment, networks (internal and external), communications systems and other equipment of any nature;

"**Transaction Tax**" means value added tax, goods and services tax, general sales tax, sales tax, consumption, use or other similar taxes relating to the provision of the Goods, Software and/or Services; and

"**TUPE Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

#### **Interpretation**

- 23.2 References to any legislation includes any modifications, re-enactments or consolidation made to such legislation from time to time.
- 23.3 Any words following the terms "including", "include", "in particular", "for example" or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 23.4 Any time a Party's right or obligation is expressed as one that they "may" exercise or perform, the option to exercise or perform that right or obligation will be in that Party's sole discretion.

## SCHEDULE

### EXTRACT FROM BT GENERAL CONDITIONS VERSION 13 (OCTOBER 2016)

#### Protection of Personal Data

The provisions of this Condition shall apply only to the extent that personal data (as defined below) is provided by BT to the Supplier or otherwise acquired by the Supplier in relation to the Contract.

In this Condition, the following terms shall have the following meanings:

“controller”, “data subject”, “personal data” “processor” and “processing” shall have the meanings ascribed to them in Directive 95/46/EC or any subsequent legislation in relation thereto (“The Directive”) and derivative expressions shall be construed accordingly;

“Data Protection Legislation” shall mean collectively the Directive and applicable local legislation, which includes in respect of personal data originating in the UK, the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Computer Misuse Act 1990 and the Regulation of Investigatory Powers Act 2000; and

“Transfer” shall mean the provision of access to and/or the transfer of the personal data.

The Parties acknowledge that BT is the controller and the Supplier is the processor in respect of all personal data processed by the Supplier for the purpose of the Contract and BT alone as controller shall determine the purposes for which and the manner in which such personal data will be processed by the Supplier.

Without prejudice to any other right of audit that BT may have, the Supplier shall, upon BT giving reasonable notice, allow BT or its nominated representatives such access to its (and its agents', subsidiaries' and subcontractors') premises, facilities, equipment, information and records as may be reasonably required by BT from time to time to assess the Supplier's and/or Contract Personnel's compliance with this Condition.

The Supplier shall:

- process the personal data only on and in accordance with the instructions of BT and to the extent necessary for the proper performance of the Contract and shall not process the personal data for any other purpose;
- not modify, amend or alter the contents of the personal data except as required or permitted by the Contract or with BT's prior written consent;
- implement the appropriate technical and organisational measures (including, where relevant, those prescribed elsewhere in the Contract) to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of processing;
- ensure that it takes reasonable steps to ensure the reliability of any of the Contract Personnel who have access to the personal data; that only those Contract Personnel who need to have access to the personal data are granted access to it; that such access is granted only for the purposes of the proper performance of the Contract; and that the Contract Personnel are informed of the confidential nature of the personal data and comply with the obligations set out in this Condition;
- notify BT forthwith, and in any event, no later than 12 hours from the time it comes to the Supplier's attention, that any personal data has been the subject of accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, or any other unlawful form of processing;
- notify BT within 7 days of receipt by it of a request or notice from any data subject to have access to that person's personal data held by it; and provide BT with full co-operation and assistance in relation to any complaint or request, including providing BT with any relevant personal data it holds, within the timescales provided by the request or notice or as otherwise required by BT;
- not retain the personal data for longer than is necessary to properly perform the Contract and upon expiry of the Contract for whatever reason, or at any other time at BT's request, securely destroy or immediately return to BT all the personal data and certify that no copies have been made or retained by the Supplier or any third party acting on its behalf, provided that such secure destruction or return does not prevent the Supplier from fulfilling its obligations under the Contract; and
- comply with all Data Protection Legislation.

In respect of any Transfer:

- the Supplier shall obtain BT's prior written consent before any Transfer of personal data to any third party;
- before any Transfer to a subcontractor, the Supplier shall ensure that the subcontractor enters into a contract on terms which provide that the subcontractor has the same (mutatis mutandis) obligations as the Supplier as are set out in this Condition;
- in the event of a Transfer from a country within the European Economic Area (“EEA”) to a country outside the EEA (except if the Transfer is to a country that the European Commission has recognised as providing adequate protection) that Transfer shall be on the basis of the Model Contract Clauses as issued by the European Commission pursuant to the Directive except where the relevant Data Protection Legislation provides for a derogation from this requirement.

Any breach of this Condition by the Supplier shall be deemed to be a material breach of the Contract and the Supplier shall indemnify BT from and against any costs, losses, damages, proceedings, claims, expenses or demands incurred or suffered by BT which arise as a result of such breach.

In the event of any change in the Data Protection Legislation subsequent to the effective date of this Contract (including the application of the European General Data Protection Regulation), the Supplier shall take such steps (including agreeing to additional obligations, executing additional documents and/or doing all such acts and things) as may be requested by BT to ensure that the processing of personal data under this Contract continues to comply with the Data Protection Legislation.