

GENERAL CONDITIONS (DIAMOND) VERSION 17 (January 2020)

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.

3.2 The Supplier shall make all appropriate PAYE deductions and account to HMRC in a timely manner for tax and National Insurance contributions (employer and employee) and levies (including Apprenticeship Levy) from or in respect of (as applicable) the remuneration or fees it pays its Supplier Personnel (none of whom shall be employees of BT) or their intermediary (such as a personal service company) and will procure that Subcontractors do the same.

- 3.3 The Supplier will pay to BT an amount equivalent to any costs (including taxes, interests and penalties) incurred by BT in respect of any claims that may be made by the relevant authorities against BT in respect of tax demands or National Insurance (or similar) contributions, or levies (including Apprenticeship Levy) relating to the Supplier Personnel or, where the Supplier is a partnership, relating to any partner in the Supplier.
- 3.4 Supplier shall upon request at any time:
- 3.4.1 confirm to BT whether the Agency Tax Rules apply and are being complied with; and
- 3.4.2 confirm to BT whether the provision of Goods, Software or Services are the supply of goods or “outsourced” services or whether they constitute a “labour supply” in accordance with any guidance provided by HMRC pursuant to the Off Payroll Working Rules; and
- 3.4.3 confirm that it is in compliance with Clause 3.2; and
- 3.4.4 and on a monthly basis, provide details of Supplier Personnel engaged via an intermediary (including without limitation a personal service company, a managed service company or umbrella company), and provide to BT such evidence and information as BT may reasonably require to check the accuracy of such confirmations and/or details and BT may audit such matters in accordance with Clause 7.
- 3.5 In the event that the Agency Tax Rules do not apply and the provision of Goods, Software and/or Services constitute a labour supply then Supplier will promptly provide and will procure that Subcontractors and Supplier Personnel (or their intermediary company) promptly provide such information as BT may reasonably request in order to make a SDS / status determination statement pursuant to the Off Payroll Working Rules (“SDS”).
- 3.6 In the event that BT issues a SDS in respect of Supplier Personnel:
- 3.6.1 Supplier will and will procure that Subcontractors will: (i) pass on such SDS to the Fee Payer (as defined in the Off Payroll Working Rules); and (ii) apply the Off-Payroll Working Rules as applicable to the outcome of such SDS in accordance with Clause 3.2 and procure the Fee Payer (as defined in the Off-Payroll Working Rules) does so, even if such SDS is the subject of challenge with BT or HMRC, pending the outcome of such challenge;
- 3.6.2 should any Supplier Personnel or Fee Payer wish to raise a status disagreement pursuant to the Off-Payroll Working Rules in respect of such SDS this will be raised by email to ir35suppliercare@bt.com, setting out the reasons for such challenge. A SDS may only be challenged: (i) whilst the particular Supplier Personnel is engaged in the performance of the Contract; (ii) once in any rolling 12 month period; and (iii) once in the four weeks following any material change in the arrangements provided that such material change is reasonably likely to affect such SDS. BT’s response to such a status disagreement is final and any further disagreements will be regarded as a separate challenge. Supplier will continue to comply with Clause 3.6.1, pending BT’s response to the status disagreement, notwithstanding any such challenge;
- 3.6.3 and Supplier Personnel (or their intermediary company), or Fee Payer challenges a SDS with HMRC directly, Supplier will notify (and will procure that the Supplier Personnel (or their intermediary) or Subcontractor notifies) BT of such challenge and the reasons for such challenge at least 2 weeks prior to submitting such challenge, and the outcome within 4 weeks of receiving it, by emailing ir35suppliercare@bt.com. Supplier will comply with Clause 3.6.1 pending the outcome of such challenge, notwithstanding any such challenge.

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 Licensed 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 (and accuracy of information provided 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, 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 by or on behalf of Supplier Personnel relating to the provision of the Goods, Software or Services or termination of this Contract or any Purchase Order or cessation of the provision of any Goods, Software or Services (or part thereof), including without limitation any complaint (as amended from time to time), any claim for employment or worker status or associated rights, or any claim arising at common law and/or in relation to 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;
- 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; and
- 13.1.5 any breach of Clause 3.

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*); 13.1.4 (*Third Party IPR Indemnity*) and 13.1.5 (*Tax 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, workers, 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 PROTECTION¹

- 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 for any reason it transpires that the Supplier is, or has been, Processing Personal Data on BT's behalf as Processor, then the data protection obligations applicable to the Supplier set out in "Schedule 1" (Data Processing Addendum) to these General Conditions will apply until such time as the Processing ceases or 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.

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
 - 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.

¹ Important Note: Where the Supplier Processes Personal Data on behalf of BT as a Processor then additional provisions will be required as per Clause 19.3.

- 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;
- "Agency Tax Rules"** means the rules set out in section 44 of Part 2, Chapter 7 of ITEPA;
- "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 (i) the GDPR; (ii) national law implementing the ePrivacy Directive; (iii) any other applicable national privacy laws; (iv) any successor or replacement laws; and (v) 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;

"ePrivacy Directive" means the Directive on Privacy and Electronic Communications (2002/58/EC);

"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;

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003 (as may be amended from time to time);

"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>;

"Off-Payroll Working Rules" means ss.[x to x] of the [Finance Bill 2019/2020] as enacted (and as may be amended from time to time);

"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 scheduled described in Clause 19.4 and attached hereto;

"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 any party 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 (including without limitation, a subcontractor of the Supplier and their subcontractors);

"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 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

"**Transfer**" or "**Transferred**" means the provision of access to and/or the transfer of Personal Data by or to a Recipient.

"**TUPE Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as may be amended from time to time).

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 1
DATA PROCESSING ADDENDUM

1. SCOPE

1.1 This Data Processing Addendum ("DPA") applies to the Processing of Personal Data by Supplier ("you" "your") on behalf of BT ("we", "us", "our") pursuant to the General Conditions. This DPA does not apply where you are a Controller of Personal Data.

2. PROCESSING

2.1 You will implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the relevant Data Protection Legislation and ensure the protection of the rights of the data subject and the standard of protection will be at least comparable to the protection required under the relevant Data Protection Legislation.

2.2 You will not engage another Processor without our prior specific or general written authorisation. In the case of general written authorisation, you will inform us of any intended changes concerning the addition or replacement of other Processors, giving us the opportunity to object to proposed changes as described in clause 2.4 below.

2.3 Your Processing will be governed by this DPA. In particular, you will:

- a) Process the Personal Data only on our documented instructions, including Transfers of Personal Data to a third country or an international organisation, unless you are required to do so under Data Protection Legislation; in such a case, you will inform us of that legal requirement before Processing, unless prohibited from doing so under Data Protection Legislation;
- b) ensure that persons authorised to Process the Personal Data will be bound by a duty of confidentiality;
- c) take all measures required pursuant to Article 32 of the GDPR;
- d) assist us in responding to requests from data subjects exercising their rights pursuant to Chapter III of the GDPR;
- e) assist us in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR;
- f) at our choice, delete or return to us all of the Personal Data after the end of the provision of services and delete existing copies unless required to retain it under Data Protection Legislation;
- g) make available to us all information necessary to demonstrate compliance with the obligations set out in Article 28 of the GDPR;
- h) allow for and contribute to audits, including inspections, conducted by us or an auditor appointed by us; and,
- i) immediately inform us if, in your opinion, an instruction from us infringes the GDPR or other Applicable Law.

2.4 Where you engage another Processor for carrying out specific Processing activities on our behalf, you will:

- a) enter into a written contract with the other Processor, which contains equivalent provisions and obligations as this DPA; and
- b) remain fully liable to us for the performance of those obligations by the other Processor.

2.5 The subject matter of your Processing is the Personal Data provided to you in respect of the Services you provide under the Purchase Order. The duration of the Processing is the duration of the provision of the Services under the Purchase Order. The nature and purpose of the Processing is in connection with the provision of the Services under the Purchase Order. The types of Personal Data Processed are names; contact details; government-issued identification; date of birth; place of birth; and other types of Personal Data submitted to the Services. The categories of data subjects are your representatives, users of the Services, and clients, prospects, suppliers, business partners and others whose Personal Data is Processed as part of the Services.

2.6 The General Conditions, including this DPA, along with our use of the Services, are our complete and final documented instructions to you for the Processing of Personal Data. Additional or alternate instructions must be agreed upon separately by the Parties. You will ensure that Supplier Personnel engaged in the Processing of Personal Data will Process Personal Data only on our documented instructions, unless required to do so by Data Protection Legislation.

2.7 On expiry or termination of our use of the Services, you will delete or return Personal Data at our choice in accordance with the terms and timelines set out in this DPA, unless you are required to retain it pursuant to Applicable Law.

3. SUBPROCESSING

3.1 We hereby provide you with general authorisation to engage other Processors for the Processing of Personal Data in accordance with this DPA. You will maintain a list of such Processors which is made available to us upon demand. At least 14 days before authorising any new Processor to Process our Personal Data, you will notify us. We may object to the

change without penalty by notifying you within 14 days following notification. Without prejudice to any applicable refund or termination rights you have under the Contract, you will use reasonable endeavours to avoid Processing of Personal Data by any new Processor to which we reasonably object.

4. DATA SUBJECT RIGHTS

4.1 You will, to the extent legally permitted, promptly notify us of any data subject requests you receive and reasonably cooperate with us to fulfil our obligations under the Data Protection Legislation in relation to such requests. We will be responsible for any reasonable costs arising from your providing assistance to us to fulfil such obligations.

5. TRANSFER

5.1 You will ensure that, to the extent that any Personal Data is Transferred to a country or territory outside the EEA that has not received a binding adequacy decision by the European Commission or a competent national data protection authority, such Transfer will be subject to appropriate safeguards in accordance with the Data Protection Legislation (including Article 46 of the GDPR).

6. SECURITY OF PROCESSING

6.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Parties will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- a) the pseudonymisation and encryption of Personal Data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
- c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and,
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

6.2 In assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.

6.3 The Parties will take steps to ensure that any natural person acting under the authority of either Party who has access to Personal Data does not Process them except on instructions from you, unless he or she is required to do so by Applicable Law.

7. PERSONAL DATA BREACH

7.1 You will notify us without undue delay after becoming aware of a Personal Data Breach and will reasonably respond to our requests for further information to assist us in fulfilling our obligations under the Data Protection Legislation (including Articles 33 and 34 of the GDPR as applicable).

8. RECORDS OF PROCESSING ACTIVITIES

8.1 You will maintain all records required by the Data Protection Legislation (including Article 30(2) of the GDPR as applicable) and, to the extent applicable to the Processing of Personal Data on our behalf, make them available to us as required.

9. AUDIT

9.1 Audits will be:

- a) subject to the execution of appropriate confidentiality undertakings;
- b) conducted no more than once per year, unless a demonstrated reasonable belief of non-compliance with the Agreement has been made, upon thirty (30) days written notice and having provided a plan for such review; and,
- c) conducted at a mutually agreed upon time and in an agreed upon manner.

10. CONFLICT

10.1 If there is any conflict or inconsistency between the terms of this DPA and the General Conditions, the terms of this DPA shall take precedence.