

# PCMS Reseller Service Schedule to the Products and Services Agreement

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## A note on 'you'

'You' and 'your' mean the Customer.

## Words defined in the General Terms and Conditions

Words that are capitalised but have not been defined in this Schedule have the meanings given to them in the General Terms and Conditions.

## Part A The PCMS Reseller Service Summary

### 1 Service Summary

- 1.1 BT will provide you with a right to use a business "Platform as a Service" capability called the Personalised Compute Management System ("PCMS") comprising:
- 1.1.1 the Standard Service Components; and
  - 1.1.2 any of the Service Options that are selected by you as set out in any applicable Order, up to the point of the Service Management Boundary as set out in Paragraph 4.
- (the "PCMS Reseller Service").

### 2 Standard Service Components

BT will provide you with web portal access to the following standard service components ("Standard Service Components") in accordance with the details as set out in any applicable Order.

- 2.1 **Identity Management:** The Identity Management System ("IDM") will provide a portal where Users can authenticate their access to the PCMS. The IDM will validate Users access to the Reseller Services set out in the Order.
- 2.1.1 User Access: User access can be gained through a single factor username/password combination.
  - 2.1.2 User information: The IDM will store the username and password in an encrypted format as well as information about the Reseller Services that the User contracts for to facilitate the validation of the Users access to the PCMS Service.
  - 2.1.3 Service Access Validation: Users access to the PCMS Service is validated using a SAML validation protocol each and every time the User accesses the PCMS Service.
- 2.2 **Product Management:** BT will create and administrate on behalf of the Customer a catalogue to contain the Reseller Services. You will provide BT with the catalogue entry naming, contractual terms and pricing for each Reseller Service to be resold and these will be implemented onto the PCMS by BT on your behalf.
- 2.3 **Customer Management:** User information stored on the PCMS will be formed of account details, Users details, payment details and contact details.
- 2.3.1 Self-Registration: The User will create an account on the PCMS by completing the registration process. The details captured will be defined by the Reseller and implemented onto the PCMS by BT during the initial configuration of the PCMS Service.
- 2.4 **Order Management:** BT will provide an order management capability to handle the end-to-end process of a User's request for Reseller Services. It breaks down the Reseller Service into individual components and tracks the process of service activation.
- 2.4.1 Order Capture: The PCMS will provide an order capture capability which will control the process of capturing the User's order information.
  - 2.4.2 Order Management: The order management capability will include task and notification management that will cover interactions with the User and the PCMS.
  - 2.4.3 Shopping Cart: The order capture process will provide a shopping cart experience to which the User will add their Reseller Services to. Once the cart is submitted the order will be deemed to be placed and the process of automated delivery will commence.
- 2.5 **Billing Management:** BT will invoice the Customer for the PCMS Reseller Service and any Reseller Services that are purchased by Users. In addition BT will provide the Customer with the data relating to Reseller Services purchased by Users that will enable the Customer to bill their Users through the Customer's own billing system.
- 2.5.1 Billing Data Mediation: BT will provide a mediation capability that will collect and handle usage from the Reseller Service feeds and transform it to the PCMS internal unified data record (UDR) format.

### 3 Service Options

BT will provide you with any of the following options as set out in any applicable Order (“**Service Options**”) and in accordance with the details as set out in that Order (Service Options may not be available in all countries):

- 3.1 **Community Portal:** BT will provide a closed, secure portal that integrates a social network environment and knowledge base.
- 3.2 **Reseller Services:** You can select what Reseller Services you will resell by selecting the appropriate Reseller Service on the Order.

### 4 Service Management Boundary

- 4.1 BT will provide and manage the PCMS Reseller Service in accordance with Parts B and C of this Schedule and as set out in any applicable Order (“**Service Management Boundary**”).
- 4.2 BT will have no responsibility for the PCMS Reseller Service outside the Service Management Boundary.
- 4.3 BT does not make any representations, whether express or implied, about whether the PCMS Reseller Service will operate in combination with any Customer Equipment or other equipment and software.

### 5 Associated Services

- 5.1 If BT provides you with any services other than the PCMS Reseller Service and Reseller Services this Schedule will not apply to those services and those services will be governed by their separate terms.
- 5.2 BT will provide you with the Reseller Services in accordance with the terms set out in the appropriate Service Annex.

### 6 Equipment

#### 6.1 Use of BT Equipment

In relation to BT Equipment, you will:

- 6.1.1 only use the BT Equipment, or allow it to be used, in accordance with any instructions or authorisation BT may give and for the purpose for which it is designed;
- 6.1.2 not make any alterations or attachments to, or otherwise interfere with, the BT Equipment, nor permit any person (other than a person authorised by BT) to do so, without BT’s prior written consent and, if BT gives its consent, agree that any alterations or attachments are part of the BT Equipment;
- 6.1.3 not sell, charge, assign, transfer or dispose of or part with possession of the BT Equipment or any part of it;
- 6.1.4 not allow any lien, encumbrance or security interest over the BT Equipment, nor pledge the credit of BT for the repair of the BT Equipment or otherwise;
- 6.1.5 not claim to be the owner of the BT Equipment;
- 6.1.6 obtain appropriate insurance against any damage to or loss of the BT Equipment, including damage or loss of Software caused by viruses; and
- 6.1.7 in addition to any other rights that BT may have, reimburse BT for any losses, costs or liabilities arising from your use or misuse of the BT Equipment.

#### 6.2 BT Equipment

BT Equipment will remain BT’s property at all times.

#### 6.3 Consumer Regulations

Where you place an Order acting for purposes that are related to your trade, business or profession, this is a business to business transaction to which the Consumer Agreements (Information, Cancellation and Additional Charges) Regulations 2013 do not apply.

#### 6.4 Sale of Goods

The UN Convention on Agreements for the International Sale of Goods will not apply to the Agreement.

## 7 Specific Terms

### 7.1 Minimum Period of Service and Renewal Periods

- 7.1.1 At the end of the Minimum Period of Service, unless one of us gives Notice to the other of an intention to terminate the PCMS Reseller Service in accordance with Clause 12.1 of the General Terms and Conditions, BT will continue to provide the PCMS Reseller Service and both of us will continue to perform each of our obligations in accordance with the Agreement.
- 7.1.2 BT may propose changes to this Schedule or the Charges (or both) by giving you at least 30 days' Notice ("Notice to Amend").
- 7.1.3 Within 14 days of any Notice to Amend, you will provide BT Notice:
- (a) agreeing to the changes BT proposed, in which case those changes will apply from the date stated on the Notice to Amend or if no date is stated then the date you agree to the changes;
  - (b) requesting revisions to the changes BT proposed, in which case both of us will enter into good faith negotiations for the remainder of that Minimum Period of Service and, if agreement is reached, the agreed changes will apply from date of written agreement; or
  - (c) terminating the Agreement at the end of the Minimum Period of Service or as set out in Clause 12.1 of the General Terms and Conditions.
- 7.1.4 If we have not reached agreement in accordance with Paragraph 7.1.3(b) the Parties will follow the dispute process set out in Clause 15 of the General Terms and Conditions.

### 7.2 IP Addresses

- 7.2.1 IP Addresses available with the PCMS Reseller Service and the Reseller Services will at all times remain BT's property or the property of BT's suppliers and are non-transferable.
- 7.2.2 All of your rights to use IP Addresses will cease on termination or expiration of the PCMS Reseller Service.

### 7.3 Invoicing

- 7.3.1 Unless set out otherwise in any applicable Order, BT will invoice you for the following Charges in the amounts set out in any applicable Order:
- (a) A Set-up Charge;
  - (b) A Management Charge;
  - (c) A Reseller Charge; and
  - (d) any Termination Charges incurred in accordance with Paragraph 7.4.1 upon termination of the PCMS Reseller Service.
- 7.3.2 BT may invoice you for any of the following Charges in addition to those set out in any applicable Order:
- (a) Charges for investigating Incidents that you report to BT where BT finds no Incident or that the Incident is caused by something for which BT is not responsible under the Agreement;
  - (b) Charges for commissioning the PCMS Reseller Service in accordance with Paragraph 8.2 outside of Business Hours;
  - (c) Charges for restoring the PCMS Reseller Service where it has been suspended in accordance with Clause 6.6(a) of the General Terms and Conditions.
  - (d) any other Charges as set out in any applicable Order or as otherwise agreed between both of us.

### 7.4 Cancellation and Termination Charges at the end of the Agreement

#### 7.4.1 Termination Charges

If you terminate the Agreement, the PCMS Reseller Service or any applicable Order for convenience in accordance with Clause 12.1 of the General Terms and Conditions you will pay BT:

- (a) all outstanding Charges for service rendered;
  - (b) any remaining Charges outstanding with regard to BT Equipment;
  - (c) any additional amounts due under the Agreement;
  - (d) any other Charges as set out in any applicable Order; and
  - (e) any charges reasonably incurred by BT from a supplier as a result of the early termination.
- 7.4.2 BT will refund to you any money you have paid in advance after deducting any Charges or other payments due to BT under the Agreement.

## 7.5 Service Amendment

- 7.5.1 You may request, by giving BT Notice, a change to:
- (a) an Order for the PCMS Reseller Service (or part of an Order) at any time before the applicable Operational Service Date; or
  - (b) the PCMS Reseller Service at any time after the Operational Service Date.
- 7.5.2 If you request a change in accordance with Paragraph 7.5.1, except where a change results from BT's failure to comply with its obligations under the Agreement, BT will, within a reasonable time, provide you with a written estimate, including:
- (a) the likely time required to deliver the changed PCMS Reseller Service; and
  - (b) any changes to the Charges due to the changed PCMS Reseller Service.
- 7.5.3 BT has no obligation to proceed with any change that you request in accordance with Paragraph 7.5.1, unless and until the necessary changes to the Charges, implementation timetable and any other relevant terms of the Agreement to take account of the change are agreed between both of us in writing.
- 7.5.4 If BT changes the PCMS Reseller Service prior to the Operational Service Date because you have given BT incomplete or inaccurate information, BT may, acting reasonably, apply additional Charges.

## 7.6 Amendments to the General Terms and Conditions

- 7.6.1 The wording in Clause 19.3 of the General Terms and Conditions is deleted and replaced with the following:

### 19.3 Data:

- 19.3.1 BT may need to collect, Process and use Personal Data in order to:

- (a) administer, track and fulfil Orders for a Service;
- (b) deliver and commission a Service, either remotely or at a Site;
- (c) manage, track and resolve faults with a Service, either remotely or at a Site;
- (d) administer access to online portals relating to a Service;
- (e) compile, dispatch and manage the payment of invoices relating to a Service;
- (f) manage the Agreement and resolve any disputes relating to it;
- (g) respond to general queries relating to a Service; or
- (h) comply with BT's legal and regulatory obligations.

19.3.2 BT will Process this Personal Data in accordance with applicable Data Protection Legislation. BT's relevant privacy policy, which forms part of these General Terms and Conditions, also governs how BT uses your Personal Data and includes more details around what BT can do with it, your rights and BT's obligations. You can access BT's privacy policy by clicking the link labelled 'privacy' at <http://www.btplc.com/privacycentre/index.htm>.

19.3.3 BT may be required to share this Personal Data with BT's Affiliates and other relevant parties, within or outside the country of origin, in order to carry out the activities in this Clause 19.3. When doing so, BT will ensure that the sharing and use of this data complies with applicable Data Protection Legislation.

19.3.4 BT may, from time to time, contact the Customer Contact (as defined in the Schedules), or other network manager or procurement manager involved in the procurement or management of a Service, to provide additional information concerning a Service, or other similar services. If this information includes marketing materials, BT will provide a mechanism for you to elect not to receive such communications in the future.

19.3.5 The Customer will comply with all applicable Data Protection Legislation and will ensure that all criteria necessary for the provision of a Service by BT (for example notifications, consents etc.) are fulfilled before sharing your Personal Data with BT.

19.3.6 The Customer will disclose to BT only the Personal Data that BT requires in order to perform any Service.

19.3.7 Where, for the provision of a Service, BT is required to Process Customer Personal Data on the Customer's behalf, BT will:

- (a) only Process Customer Personal Data on the Customer's instructions and as needed to perform BT's responsibilities under the Agreement;
- (b) put in place technical and organisational security measures appropriate to the risk represented by the Processing and the nature of Customer Personal Data, to protect Customer Personal Data from being accidentally or unlawfully disclosed, accessed, changed, lost or destroyed; and
- (c) not disclose Customer Personal Data to a third party unless required to provide a Service, allowed by the Agreement or otherwise required by Applicable Law.

19.3.8 Regardless of what it may say elsewhere in the Agreement, the Customer agrees that, for BT to provide a Service, Customer Personal Data may be:

- (a) used, managed, accessed, transferred or held on a variety of systems, networks and facilities (including databases) worldwide; and
- (b) provided or transferred by BT to any of BT's Affiliates, subcontractors or suppliers worldwide as needed to allow that BT Affiliate, subcontractor or supplier to perform its obligations in respect of the Services. The Customer appoints BT to perform each transfer in order to provide the Services. BT agrees to take appropriate steps and enter into appropriate agreements with BT's Affiliates, subcontractors or suppliers, as required, for each transfer to be adequately protected.

19.3.9 The Customer will obtain or submit promptly any regulatory approvals or notifications required under the Data Protection Legislation.

19.3.10 Where allowed by Applicable Law:

- (a) BT will not be liable for any part of a Claim that is caused by or in connection with any act or omission by BT where that act or omission results from a failure by the Customer to comply with this Clause 19.3; and
- (b) both Parties will be liable to the other for any Claims, losses, costs or liabilities incurred or suffered by the other Party where those Claims, losses, costs or liabilities are caused by, or in connection with, any breach of the Data Protection Legislation or this Clause 19.3.

19.3.11 Unless required to do so by a competent authority or Applicable Law, neither Party will make any payment or any offer of payment to any Data Subject (including third parties acting on behalf of any Data Subject) in response to any complaint or claim for compensation caused by or relating to the Processing of Personal Data, without the prior written agreement of the other Party where the Parties are jointly and severally liable for the payment of that compensation.

19.3.12 Where both Parties are jointly and severally liable for a complaint or a claim for compensation under Applicable Law, both Parties will be liable to the other for any payment required to be made under Applicable Law by the other if and to the extent that those payments are caused by any breach of the Data Protection Legislation or this Clause 19.3.

7.6.2 The definition of BT Equipment is deleted in its entirety and replaced with "“BT Equipment” means any equipment and any Software that BT owns or that is licensed to BT and that BT uses to provide the Service.”

7.6.3 Add the following definitions to the Definitions and Interpretation section:

- (a) “Applicable Law” means the laws of England and Wales and any other laws and regulations that apply to providing or receiving a Service, including:
  - (a) the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 of the United States of America; and
  - (b) any relevant export laws and regulations, including ones in the United States of America.
- (b) “Claim” means any legal claims, actions or proceedings against either Party, whether threatened or actual, whether by a third party or the other Party to this Agreement.
- (c) “Customer Personal Data” means only the proportion of Personal Data of which only the Customer is the Data Controller and which BT needs to Process on the Customer's behalf, as a Data Processor in providing the Services to the Customer under the Agreement.
- (d) “Data Controller”, “Data Processor” and “Data Subject” each has the meaning given to it in the Data Protection Legislation.

- (e) "Data Protection Legislation" means the Applicable Laws and regulations relating to the Processing of Personal Data that may exist in the relevant jurisdictions.
- (f) "Personal Data" has the meaning given to it in the Data Protection Legislation.
- (g) "Process" and "Processing" have the meanings given to them in the Data Protection Legislation.
- (h) "Termination Charges" means any compensatory charges payable by the Customer to BT on termination of the Agreement in whole or in part or a Service, in accordance with Clause 12 and as set out in a Schedule.

**7.7 Claims for breach**

- 7.7.1 Any claim made under the Reseller Terms shall be subject to the Reseller Terms only and neither of us shall be able to claim for the same breach twice under the Reseller Terms and the PCMS Service Schedule.



## Part B – Service Delivery and Management

### 8 BT's Obligations

#### 8.1 Service Delivery

Before the Operational Service Date and, where applicable, throughout the provision of the PCMS Reseller Service, BT:

- 8.1.1 will provide you with contact details for the Service Desk which will provide second line support for Incidents raised by you; and
- 8.1.2 will perform any BT obligations set out in an Order.

#### 8.2 Commissioning of the Service

Before the Operational Service Date, BT will:

- 8.2.1 configure the PCMS Reseller Service;
- 8.2.2 conduct a series of standard tests on the PCMS Reseller Service to test that it is configured correctly; and
- 8.2.3 on the date that BT has completed the activities in this Paragraph 8.2, confirm to you that the PCMS Reseller Service is available for performance of any Acceptance Tests in accordance with Paragraph 9.2.

#### 8.3 During Operation

On and from the Operational Service Date, BT:

- 8.3.1 may carry out Planned Maintenance from time to time and will use reasonable endeavours to inform you at least five Business Days before any Planned Maintenance on the PCMS Reseller Service or BT Equipment, however, BT may inform you with less notice than normal where Maintenance is required in an emergency;
- 8.3.2 may, in the event of a security breach affecting the PCMS Reseller Service, require you to change any or all of your passwords; and
- 8.3.3 will back up the configuration of the PCMS to facilitate recovery of the PCMS Reseller Service in the event of a failure.

#### 8.4 The End of the Service

On termination of the PCMS Reseller Service by either of us, BT:

- 8.4.1 can provide configuration information relating to the PCMS Reseller Service in a format that BT reasonably specifies if required by you;
- 8.4.2 may disconnect and remove any BT Equipment;
- 8.4.3 may delete any Content;
- 8.4.4 may disconnect, including by removal of network/VPN/firewall policies, any Reseller Services present on the PCMS Reseller Service;
- 8.4.5 will either destroy or promptly return to you all copies of any Customer Information or User Information, except that BT will be permitted to retain one copy of all the aforementioned for BT's own record keeping purposes; and
- 8.4.6 will provide you with all work in progress or portions thereof, including all incomplete work.

### 9 Your Obligations

#### 9.1 Service Delivery

Before the Operational Service Date and, where applicable, throughout the provision of the PCMS Reseller Service, you will:

- 9.1.1 provide BT with the configuration information requested in order to apply your branding to the PCMS. Branding will be limited to standard Cascading Style Sheets (CSS) which may contain images and styles but not HTML Code (with the exception of any PCMS header and footer content);
- 9.1.2 provide BT with the naming, contractual terms and the pricing required to build the Reseller Services catalogue onto the PCMS;

- 9.1.3 provide BT with the names and contact details of the Customer Contact but BT may also, in our discretion, accept instructions from a person who BT reasonably believes is acting with your authority;
- 9.1.4 provide BT with any information reasonably required without undue delay;
- 9.1.5 complete any preparation activities that BT may request to enable you to receive the PCMS Reseller Service promptly and in accordance with any reasonable timescales;
- 9.1.6 ensure that any applications you use are compatible with the PCMS Reseller Service;
- 9.1.7 will provide a first line support helpdesk for Users to report Incidents and provide BT with the details of the team or group authorised to raised Incidents on the Users behalf;
- 9.1.8 ensure that you have Internet access, all computer hardware, software and telecommunications equipment and services necessary to access and use the PCMS Reseller Service;
- 9.1.9 grant to BT the non-exclusive right to use User Information for the sole purpose of and only to the extent necessary for BT to provide the PCMS Reseller Service;
- 9.1.10 be responsible for the accuracy, maintenance, quality and legality of User Information, the means by which it was acquired and for providing it to BT and for entering it into the PCMS Reseller Service; and
- 9.1.11 ensure Users of the PCMS and associated Reseller Services accept and comply with the terms of use (as applicable) that contain, as a minimum, the terms set out in the Reseller Terms and the BT Acceptable Use Policy.

## 9.2 Acceptance Tests

- 9.2.1 You will carry out the Acceptance Tests for the PCMS Reseller Service within five Business Days after receiving Notice from BT in accordance with Paragraph 8.2.3 (“Acceptance Test Period”).
- 9.2.2 The PCMS Reseller Service is accepted by you if you confirm acceptance in writing during the Acceptance Test Period or is treated as being accepted by you if you do not provide BT with Notice to the contrary by the end of the Acceptance Test Period.
- 9.2.3 Subject to Paragraph 9.2.4, the Operational Service Date will be the earlier of the following:
  - (a) the date that you confirm acceptance of the PCMS Reseller Service in writing in accordance with Paragraph 9.2.2; or
  - (b) the date of the first day following the Acceptance Test Period.
- 9.2.4 If, during the Acceptance Test Period, you provide BT Notice that the Acceptance Tests have not been passed, BT will remedy the non-conformance without undue delay and provide you Notice that BT has remedied the non-conformance and inform you of the Operational Service Date.
- 9.2.5 You agree that any Feedback provided by you to BT will be the:
  - (a) exclusive property of BT;
  - (b) BT Confidential Information; and
  - (c) assigned by you to BT at no cost.

## 9.3 During Operation

On and from the Operational Service Date, you will:

- 9.3.1 monitor and maintain any Customer Equipment connected to the PCMS Reseller Service or used in connection with a PCMS Reseller Service;
- 9.3.2 ensure that any Customer Equipment that is connected to the PCMS Reseller Service or that you use, directly or indirectly, in relation to the PCMS Reseller Service is:
  - (a) adequately protected against viruses and other breaches of security;
  - (b) technically compatible with the PCMS Reseller Service and will not harm or damage BT Equipment or any of BT’s suppliers’ or subcontractors’ equipment; and
  - (c) approved and used in accordance with relevant instructions, standards and Applicable Law and any safety and security procedures applicable to the use of that Customer Equipment;
- 9.3.3 immediately disconnect any Customer Equipment, or advise BT to do so at your expense, where Customer Equipment does not meet any relevant instructions, standards or Applicable Law;
- 9.3.4 ensure the security and proper use of all valid User access profiles, passwords and other systems information used in connection with the PCMS Reseller Service and:

- (a) inform BT, when you become aware, of any person who is no longer a User so BT can terminate access;
  - (b) inform BT immediately if a User's ID or password has, or is likely to, become known to an unauthorised person, or is being or may be used in an unauthorised way;
  - (c) take all reasonable steps to prevent unauthorised access to the PCMS Reseller Service;
  - (d) satisfy BT's security checks if a password is lost or forgotten; and
  - (e) change any or all passwords or other systems information used in connection with the PCMS Reseller Service if BT requests you to do so in order to ensure the security or integrity of the PCMS Reseller Service.
- 9.3.5 not allow any User specific subscription to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case you will ensure the prior User will no longer have any right to access or use the PCMS Reseller Service;
- 9.3.6 inform BT within five Business Days if the number of Users increases by more than five per cent from the number of Users as set out in any applicable Order and, in these circumstances, or if BT can demonstrate by management reports that the number of Users exceeds that limit, BT may increase the Charges proportionately;
- 9.3.7 acquire open-source software from the respective licensor of the open-source software that is either:
- (a) made available under separate license terms outside the scope of this Agreement; and
  - (b) identified in a list of the open-source software components required for use of the PCMS Reseller Service; and
- 9.3.8 ensure that Users do not contact the Service Desk.
- 9.4 **The End of the Service**
- 9.4.1 You will delete all applicable Customer Information and User Information that is stored on the PCMS Reseller Service within 14 days of termination of this Agreement. If you want to retain your Customer Information you shall notify BT and BT will assist in the retrieval, at your cost.

## 10 Notification of Incidents

Where you become aware of an Incident:

- 10.1 Your service desk will report it to the BT Service Desk;
- 10.2 BT will log an Incident on our trouble-ticketing system;
- 10.3 BT will inform you when it believes the Incident is cleared and will close the Incident ticket entry when:
- 10.3.1 you confirm that the Incident is cleared within 24 hours after having been informed; or
  - 10.3.2 BT has attempted unsuccessfully to contact you, in the way agreed between both of us in relation to the Incident, and you have not responded within 24 hours following BT's attempt to contact you.
- 10.4 If you confirm that the Incident is not cleared within 24 hours after having been informed, the Incident will remain open, and BT will continue to work to resolve it.

**Part C – Service Levels**

**11 Service Availability**

**11.1 Availability Service Level**

From the Operational Service Date, BT will provide the PCMS Reseller Service with a target availability for the PCMS Reseller Service as set out in the table below (“**Availability Service Level**”):

Availability Annual Target	Maximum Monthly Availability downtime Target	Service Credit Interval
≥ 98.00%	14.4 hours	1 hour

**11.2 Availability Service Credits**

- 11.2.1 If a Severity Level 1 Incident occurs, BT will measure the Availability Downtime for the PCMS Reseller Service starting from when you report a Qualifying Incident, and ending when BT closes the Incident in accordance with Paragraph 10.3.
- 11.2.2 BT will calculate the cumulative Availability Downtime for the calendar months in which the Severity Level 1 Incident occurred (“Cumulative Monthly Availability Downtime”).
- 11.2.3 If the Cumulative Monthly Availability Downtime of the PCMS Reseller Service exceeds the Maximum Monthly Availability Downtime, you may request Availability Service Credits for each Service Credit Interval of 0.5 per cent of the Management Charge.

11.3 Any Service Levels set out in this Paragraph 11 are for the PCMS Reseller Service only and do not apply to any Reseller Services. Service Levels for Resellers Services will be set out in the Reseller Terms, if applicable.

**12 Requests for Service Credits**

- 12.1 You may request applicable Service Credits within 28 days of the end of the calendar month in which a Qualifying Incident occurred by providing details of the reason for the claim. Any failure by you to submit a request in accordance with this Paragraph 12.1 will constitute a waiver of any claim for Service Credits for that calendar month.
- 12.2 Upon receipt of a valid request for Service Credits in accordance with Paragraph 12.1:
  - 12.2.1 BT will issue you with the applicable Service Credits by deducting those Service Credits from your invoice within two billing cycles of the request being received; and
  - 12.2.2 following expiry or termination of the Agreement where no further invoices are due to be issued by BT, BT will pay you the Service Credits in a reasonable period of time.
- 12.3 Service Credits for the Service Level are available up to a maximum amount equal to 5 per cent of the Management Charge for the PCMS Reseller Service.
- 12.4 All Service Levels and Service Credits will be calculated in accordance with information recorded by, or on behalf of, BT.
- 12.5 The Service Levels under this Schedule will not apply to:
  - 12.5.1 any Severity Level 1 Incident due to matters beyond BT’s reasonable control, or breach of Agreement in accordance with the General Terms and Conditions;
  - 12.5.2 any Severity Level 1 Incident directly or indirectly as a result of BT’s suspension of Service under any provision of this Agreement;
  - 12.5.3 any scheduled downtime for Planned Maintenance (including emergency maintenance) or any other purpose agreed between BT and the Customer;
  - 12.5.4 any delay relating to problems with or failure of the Internet;
  - 12.5.5 any delay directly or indirectly caused by the Customer or User;
  - 12.5.6 an incident caused by the Customers failure to comply with any reasonable instruction from BT;
  - 12.5.7 any incident caused by the Customers failure to observe any of its obligations under the Agreement;
  - 12.5.8 interference caused by a third party;

- 12.5.9 an incident that is due to incorrect configuration of the Service by the Customer or any unauthorised activity or access taken by the Customer;
- 12.5.10 an incident that has not been confirmed by a BT fault reference number;
- 12.5.11 a fault that is found to have the same root cause as a previous fault shall be classed as the same fault;
- 12.5.12 any incident that is due to incorrect information provided by, or on behalf of, the Customer;
- 12.5.13 any incident that is due to applications or data provided by, or on behalf of, the Customer;
- 12.5.14 any incident that is due to management of the PCMS Reseller Service by, or on behalf of, the Customer; and
- 12.5.15 any reported Incident where BT can find no fault.

## Part D – Defined Terms

### 13 Defined Terms

In addition to the defined terms in the General Terms and Conditions, capitalised terms in this Schedule will have the below meanings (and in the case of conflict between these defined terms and the defined terms in the General Terms and Conditions, these defined terms will take precedence for the purposes of this Schedule). BT has repeated some definitions in this Schedule that are already defined in the General Terms and Conditions. This is to make it easier for you to find the definitions when reading this Schedule.

**“Acceptance Test Period”** has the meaning given in Paragraph 9.2.1.

**“Acceptance Tests”** means those objective tests agreed between the Parties and conducted by you in accordance with industry standard practices that when passed confirm that you accept the PCMS Reseller Service and that the PCMS Reseller Service is ready for use save for any minor non-conformities that will be resolved as an Incident in accordance with Paragraph 10.

**“Availability”** means the period of time when the PCMS Reseller Service is functioning.

**“Availability Annual Target”** has the meaning given in the table at Paragraph 11.1.

**“Availability Downtime”** means the period of time during which a Severity Level 1 Incident exists as measured by BT in accordance with Paragraph 11.2.1.

**“Availability Service Credit”** means the Service Credit available for a failure to meet the Availability Service Level, as set out in Paragraph 11.2.3

**“Availability Service Level”** has the meaning given in in Paragraph 11.1.

**“BT Acceptable Use Policy”** means the applicable policy found at [www.bt.com/acceptableuse](http://www.bt.com/acceptableuse) that sets out the rules that you and your Users are required to comply with in relation to receipt and use of the PCMS Reseller Service.

**“Business Hours”** means between the hours of 0800 and 1700 in a Business Day.

**“Cumulative Monthly Availability Downtime”** has the meaning given in Paragraph 11.2.2.

**“Customer Contact”** means any individuals authorised to act on your behalf for PCMS Reseller Service management matters, including conducting the Acceptance Tests.

**“Customer Equipment”** means any equipment including any Software, other than BT Equipment, used by you in connection with the PCMS Reseller Service.

**“Feedback”** means all test results, error data, data, reports, materials or other information produced, acquired or received by Customer in any form in relation to the Acceptance Tests, any other tests, evaluations and use of the PCMS Reseller Service.

**“Incident”** means an unplanned interruption to, or a reduction in the quality of, the PCMS Reseller Service or particular element of the PCMS Reseller Service.

**“Internet”** means a global system of interconnected networks that use a standard Internet Protocol to link devices worldwide.

**“Internet Protocol”** or **“IP”** means a communications protocol for devices connected to the Internet that specifies the format for addresses and units of transmitted data.

**“IP Address”** means a unique number on the Internet of a network card or controller that identifies a device and is visible by all other devices on the Internet.

**“Maintenance”** means any work on the PCMS Reseller Services, including to maintain, repair or improve the performance of the PCMS Reseller Services.

**“Management Charge”** means the amount payable by you, monthly in arrears, for BT’s management of the PCMS Reseller Service and is calculated as a percentage (as set out in the Rate Card) of your billed revenues for the previous month for all Users of the Reseller Services.

**“Maximum Monthly Availability Downtime”** has the meaning given in the table at Paragraph 11.1.

**“Minimum Period of Service”** means the period stated in the Order beginning on the Operational Service Date.

**“Notice”** means any notice to be given by one of us to the other under the Agreement in accordance with Clause 16 of the General Terms and Conditions.

**“Notice to Amend”** has the meaning given in Paragraph 7.1.2

**“PCMS Reseller Service”** has the meaning given in Paragraph 1.

**“Planned Maintenance”** means any Maintenance BT has planned to do in advance.

**“Qualifying Incident”** means an Incident, except where any of the following events have occurred:

- (a) the PCMS Reseller Service has been modified or altered in any way by you, or by BT in accordance with your instructions;

- (b) Planned Maintenance;
- (c) you have performed any network configurations that BT did not approve;
- (d) an Incident has been reported and BT cannot confirm that an Incident exists after performing tests; or
- (e) you requested BT to test the PCMS Reseller Service at a time when no Incident has been detected or reported.

**“Rate Card”** means the document that sets out the percentage payment tiers for the Management Charge and the Reseller Charge.

**“Reseller Charge”** means the charge (discounted from BT RRP at the rates set out in the Rate Card) you will pay to BT, monthly in arrears, for the Reseller Services.

**“Reseller Services”** means those BT services set out in the Reseller Terms that you agree to resell for BT in accordance with the terms of this Agreement and the Reseller Terms.

**“Reseller Terms”** means the terms set out in an applicable Service Annex that apply to any Reseller Service that you resell to Users using the PCMS Reseller Service;

**“Service Care Levels”** means the times to respond to or repair an Incident that BT will endeavour to achieve in response to a fault report as set out in Paragraph 11.1

**“Service Credit”** means any agreed remedy for failure by BT to meet a Service Level.

**“Service Credit Interval”** has the meaning given in the table at Paragraph 11.1

**“Service Desk”** means the BT helpdesk that you are able to contact to submit service requests, report Incidents and ask questions about the PCMS Reseller Service.

**“Service Level”** means the Availability Service Level.

**“Service Management Boundary”** has the meaning given in Paragraph 4.1.

**“Service Options”** has the meaning given in Paragraph 3.

**“Set-up Charge”** means the amount payable by you for the initial set-up of the PCMS Reseller Service as set out in the Order and payable either as a one-off payment on the Operational Service Date or as a monthly re-occurring charge payable in advance from the Operational Service Date.

**“Severity Level 1 Incident”** means a Qualifying Incident that cannot be circumvented and that constitutes a complete loss of the PCMS Reseller Service.

**“Standard Service Components”** has the meaning given in Paragraph 2.

**“User”** means your customer that you resell the Reseller Services to.

**“User Information”** means Users’ business or scientific data, information, Content, video, graphics, sound, music, photographs, software and any other materials published or otherwise made available by or on behalf of the User concerning, but not limited to, its operations, customers or prospects, products, employees or any third parties with which the User is doing business.

## SERVICE ANNEX TO THE PCMS RESELLER SERVICE SCHEDULE

# RESELLER TERMS

### Interpretation

This Service Annex contains the terms that apply to the Reseller Services. Whilst it is a Service Annex to the PCMS Schedule it is structured as a set of General Terms and Conditions for Resellers with appropriate Schedules. Therefore defined terms used in this Service Annex will differ from those used in the PCMS Schedule and the definitions set out in this Service Annex take precedence over the definitions in the PCMS Service Schedule only for terms used in this Service Annex.

### Example of defined terms

Customer in the PCMS Reseller Schedule and Reseller in this Service Annex mean the same.

User in the PCMS Reseller Schedule and Customer in this Service Annex mean the same.

General Terms and Conditions are the terms that govern the PCMS Reseller Schedule.

General Terms and Conditions for Resellers are the terms set out in this Service Annex that govern the Reseller Services.



## General Terms and Conditions for Resellers

### Definitions and Interpretation

In this Agreement, the following definitions apply:

**"Affiliate"** of a Party means any legal entity controlling, controlled by, or under common control with such Party.

**"Agreement"** means this Products and Services Agreement for Resellers which consists of these General Terms and Conditions for Resellers, any Schedules and any Orders.

**"Applicable Law"** means the laws of England and Wales and any other laws and regulations that apply to providing or receiving a Service, including:

- (a) the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 of the United States of America; and
- (b) any relevant export laws and regulations, including ones in the United States of America.

**"BT"** means British Telecommunications plc.

**"BT Equipment"** means equipment (including any Software) owned or licensed by BT and placed on the Customer's premises by BT for the provision of a Service.

**"BT Parties"** means the employees, agents and subcontractors of BT or its Affiliates.

**"Business Day"** means any day which is customarily regarded in the country or locality in which the Products or Services are being provided as a day when business is undertaken, excluding national, public, or bank holidays. If the day on or by which anything is to be performed is not a Business Day, it must be done on or before the following Business Day.

**"Charges"** means the fees payable under this Agreement for Products or Services as set out in the Order or the applicable Schedule.

**"Claim"** means any legal claims, actions or proceedings against either Party, whether threatened or actual, whether by a third party or the Reseller or BT.

**"Confidential Information"** means all documentation, technical information, software, know how, business information or other materials (whether written, oral or in electronic form) concerning the business of the Party that are disclosed in confidence by that Party to the other during the term of this Agreement.

**"Content"** means information made available, displayed or transmitted in connection with a Service (including information made available by means of an HTML "hyperlink", third party posting or similar means) including all IPR contained in it, as well as the contents of any bulletin boards or chat forums, and all upgrades, updates, modifications and other versions of them.

**"Customer"** means any customer that the Reseller resells the Service to.

**"Customer Equipment"** means equipment (including Software), other than BT Equipment, used in connection with a Service.

**"Customer Information"** means data, information, video, graphics, sound, music, photographs, software and any other materials published or otherwise made available by or on behalf of the Customer by using the Service.

**"Customer Personal Data"** means only the proportion of Personal Data of which:

- (a) only the Reseller is the Data Controller; and
- (b) the Reseller is processing Personal Data on behalf of its Customers,

**"Data Controller", "Data Processor" and "Data Subject"** each has the meaning given to it in the Data Protection Legislation.

**"Data Protection Legislation"** means the Applicable Laws and regulations relating to the Processing of Personal Data that may exist in the relevant jurisdictions.

**"General Terms and Conditions for Resellers"** means these clauses 1 to 20.

**"Internet"** means the global data network comprising interconnected networks using TCP/IP protocol suite.

**"IPR"** means any patent, copyright, database right, design right, community design right, semiconductor topography right, registered design, rights in confidential information and know-how, or any similar right in any part of the world and shall include any applications for the registration of any such rights capable of registration in any part of the world.

**"Minimum Period of Service"** means a period of time beginning on the OSD during which a Service will be provided by BT. The Minimum Period of Service will be specified in a Schedule, Service Annex or Order.

**"Operational Service Date" or "OSD"** means the date on which any Service or part of a Service is first made available to the Reseller by BT.

**“Order”** means an order under this Agreement for Products or Services signed by both Parties or on-line order as further defined in the relevant Schedule as applicable.

**“Party”** means either BT or the Reseller and **“Parties”** means both BT and the Reseller.

**“Personal Data”** has the meaning given to it in the Data Protection Legislation.

**“Portal”** means the online system that allows the Customer to place Online Orders, change Online Orders, see the status of the Service and access certain systems (depending on the Service option chosen by the Reseller).

**“Process”** and **“Processing”** have the meanings given to them in the Data Protection Legislation.

**“Products”** means equipment and/or Software sold to the Reseller under this Agreement as set out in an Order.

**“Regulated Service”** means, in the UK, any Services that are subject to: (i) conditions that are imposed by Ofcom on BT either specifically or generally under Section 45 of the Communications Act 2003 and any notifications, determinations, directions, decisions and the like related thereto; (ii) a specific ruling against BT under the Competition Act 1998 by Ofcom or other relevant governmental body in the UK; and/or (iii) any formal or informal undertakings or assurances (however described) governing the conduct of BT’s electronic communications business, including without limitation the undertakings given by BT to Ofcom under the Enterprise Act 2002, which took effect on 22 September 2005 and in other locations outside of the UK shall mean any Service that is subject to tariff or other analogous regulation issued by a regulatory authority within the territory in which the Service is provided having jurisdiction over telecommunications services or any statute applicable to the provision of such Services.

**“Reseller”** means a non-exclusive reseller for the marketing, promotion and sale of the Services to Customers.

**“Reseller Information”** means data, information, video, graphics, sound, music, photographs, software and any other materials published or otherwise made available by or on behalf of the Reseller by procuring the Service.”

**“Reseller Personal Data”** means only the proportion of Personal Data of which only the Reseller is the Data Controller and which BT needs to Process on the Reseller’s behalf, as a Data Processor in providing the Services to the Reseller under the Agreement.

**“Schedule”** means one or more schedules (including any Service Annexes) that form part of this Agreement describing the Products or Services.

**“Service”** means each service provided by BT under this Agreement as described in any Schedule and/or Service Annex and/or Order as applicable.

**“Service Annex”** means any annexure to any Schedule.

**“Service Level”** means the agreed minimum level of performance BT will provide for a Service.

**“Service Level Agreement”** means any agreement set out in a Schedule that details credits payable for failure to meet Service Levels.

**“Site”** means the location specified in an Order or Schedule at which BT provides a Product or Service.

**“Software”** means the software to be licensed to the Reseller as specified in an Order or Schedule (as applicable) together with any embedded software necessary for the use of the BT Equipment.

**“Third Party Information”** means data, information, video, photographs, software and any other materials (in whatever form) not owned or generated by or on behalf of the Reseller or Customer, including information belonging to a User which is not Reseller Information or Customer Information, published or otherwise made available by the Reseller or Customer using the Service.

**“User”** means any person who is permitted by the Customer to use or access a Service or Product.

In this Agreement, headings and bold type are for convenience only and do not affect the interpretation of this Agreement and unless the context otherwise requires, words importing the singular include the plural and vice-versa, and the term “includes” is not a word of limitation.

## 1 Order of Precedence

1.1 In the event of a conflict among the documents constituting this Agreement, the order of precedence shall be as follows, in decreasing order:

- 1.1.1 Any provisions (including any tariff(s)) that apply to Regulated Services set out in a Schedule;
- 1.1.2 Service Annex(es);
- 1.1.3 Schedules;
- 1.1.4 These General Terms and Conditions for Resellers;

1.1.5 Orders.

## **2 Effective Date**

2.1 This Agreement is effective as of the date the Reseller ordered the Service and agreed to these General Terms and Conditions for Resellers as well as the service specific terms and conditions outlined in the respective Schedule and/or Annexes by clicking the "Submit Order" box and shall continue until terminated in accordance with its terms.

## **3 Appointment of Reseller**

3.1 From the Effective Date BT appoints the other Party as a Reseller.

3.2 BT may, at any time:

3.2.1 appoint another Reseller or distributor of the Services; or

3.2.2 sell the Service itself.

3.3 Nothing in this Agreement will prevent either BT or the Reseller from entering into similar arrangements with, or otherwise providing services to, any other person.

3.4 Nothing in this Agreement will stop either BT or Reseller from marketing, offering, selling or otherwise providing services that are directly or indirectly competitive with the services offered by the other Party.

3.5 The Reseller shall not sell any of the Services through a third-party without BT's express prior written permission. If BT provides such permission, the Reseller will enter into a written contract with the third party on terms that provide at least the same level of protection to BT as set out in this Agreement.

## **4 BT's Obligations**

4.1 BT shall provide the Products and Services to the Reseller in accordance with the Agreement.

4.2 BT shall provide each Service from the OSD for the duration as set out in the applicable Schedule or Order.

4.3 BT shall use reasonable endeavours to meet any performance dates or service levels specified in the Agreement but, unless otherwise expressly agreed within a Schedule, all timescales shall be estimates only.

4.4 BT shall comply with all reasonable health and safety rules and regulations and security requirements that apply at a Site that have been notified to and agreed by BT in writing. BT shall not be liable if, as a result of any such compliance, it is in breach of any of its obligations under this Agreement.

4.5 Provided that BT gives the Reseller as much notice as reasonably practicable, BT may occasionally:

4.5.1 suspend a Service in an event of emergency and/or to safeguard the integrity and security of its network and/or repair or enhance the performance of its network;

4.5.2 for operational reasons, change the technical specification of the Service, provided that any such change does not materially decrease or impair performance of the Service; or

4.5.3 provide an alternative, equivalent service, where it becomes necessary to do so.

4.6 BT shall implement reasonable precautions to prevent any unauthorised access by third parties to any part of the telecommunications network used to provide the Services to the Reseller and Customer, but BT shall not be liable for any loss or damage sustained by the Reseller or Customer in the event of any unauthorized access in spite of BT's reasonable precautions.

## **5 The Reseller's Obligations**

5.1 The Reseller will, and where applicable the Reseller will make sure that its Customers will:

5.1.1 promote, distribute, market and sell the Services and to maintain good relations with Users;

5.1.2 when the Reseller enter into contracts with Customers for Services, the Reseller will ensure that those contracts flow through to the Customers the Resellers obligations and responsibilities to BT under this Agreement, to enable the Reseller to comply with this Agreement;

5.1.3 where a Customer has to do or not to do something in this Agreement, the Reseller will ensure that the Customer complies with those obligations and if the Customer does not comply, the Reseller will be liable under this Agreement for any loss BT incurs as a result;

5.1.4 where an obligation set out in the Agreement is an obligation of the Reseller, the Reseller will ensure the Customer also complies with such obligation where appropriate; and

5.1.5 be responsible for all Customer support activities.

- 5.2 Without prejudice to Clause 5.6 where the Reseller is responsible for any preparatory activities required by BT in order to supply the Products and/or Services, the Reseller shall ensure that all such preparatory work, information, items or consents required in order to supply the Products and/or Services are completed, made available or obtained (as relevant) at the Reseller's own cost in sufficient time to allow BT to complete its work and deliver the relevant Products and/or Services.
- 5.3 If the Reseller moves or changes the location of any BT Equipment without BT's prior written consent, BT may recover any additional cost or expense incurred by BT as a result of any lost or wasted time associated with attempting to locate the BT Equipment or any failed visits as a consequence of that action by the Reseller. In addition, if BT must change a Product or Service due to incomplete or inaccurate information provided by the Reseller, BT may in its reasonable discretion, apply additional one time and/or recurring Charges.
- 5.4 The Reseller will comply with BT's reasonable requests that are necessary for the reasons of health and safety, environment, sustainability, security or quality or performance of any Products and/or Services.
- 5.5 The Reseller will, upon reasonable notice from BT, allow BT and BT Parties access to the Sites as may be reasonably necessary for the performance by BT of its obligations under this Agreement, including the installation or maintenance of BT Equipment or Products and the recovery or removal of any BT Equipment.
- 5.6 If BT is required to install any BT Equipment or Products at a Site, the Reseller will, prior to installation and at its own expense:
- 5.6.1 obtain all necessary consents, including consents for any necessary alterations to buildings and any consents required for the installation and use of any BT Equipment or the relevant Products over the Customer's network or at the Site;
  - 5.6.2 permit access to BT and any BT Parties to the relevant Site as may be required by BT or BT Parties to install the BT Equipment or Products;
  - 5.6.3 provide a suitable and safe working environment, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards;
  - 5.6.4 provide any electricity and telecommunication connection points required by BT;
  - 5.6.5 provide any openings in buildings required to connect such BT Equipment or Products to appropriate telecommunications facilities;
  - 5.6.6 provide internal cabling between the BT Equipment and any Customer Equipment, as appropriate;
  - 5.6.7 take up or remove any fitted or fixed floor coverings, ceiling tiles and partition covers in time to allow BT to undertake any necessary installation or maintenance Services and carry out afterwards any work that may be required to make good any cosmetic damage caused during the installation or maintenance Services; and
  - 5.6.8 ensure that any floor loading limits will not be exceeded.
- The above actions must be completed in advance of any installation work by BT; otherwise the provisions in Clause 5.3 above shall apply.
- 5.7 Subject to Clause 15, if the Reseller delays or fails to perform its obligations under this Clause 5, then at BT's option, BT may:
- 5.7.1 change the delivery date or cancel the relevant Order(s) and charge the Reseller for any applicable termination Charges; or
  - 5.7.2 invoice the Reseller for any reasonable Charges incurred for any work that is performed by BT on behalf of the Reseller and that is directly attributable to the Reseller's failure to perform or delay where such work is necessary to provide the Products and/or the Services. Except in the case of an emergency, BT shall seek to notify the Reseller in advance of its intention to invoke this clause.

## 6 Orders

- 6.1 Unless otherwise stated in a Schedule or Order, the Reseller may cancel the delivery of Products or provision of Services before the relevant OSD, on payment of any cancellation charges set out in the applicable Schedule or Order or, if none are specified, as reasonably imposed by BT provided there shall be no right to cancel the delivery of any Products that have been ordered or shipped from a third party manufacturer unless otherwise agreed with that third party manufacturer.

6.2 BT may accept instructions from a person who BT reasonably believes is acting with the Reseller's authority.

## 7 Charges

- 7.1 The Charges for the Products and Services are set out in the applicable Schedule or Order. The Reseller shall pay all Charges for the Products and Services within thirty (30) days of the date of BT's invoice, without any set-off, counterclaim or deduction. Where applicable, BT may set-off any amounts it owes to the Reseller against any amounts owed by the Reseller to BT under this Agreement. BT may, in its discretion, add interest charges, from the due date, to any past due amounts at a per annum rate of seven (7) percentage points above the base lending rate of the European Central Bank, compounded daily, or the maximum rate permitted by law, whichever is less.
- 7.2 The Reseller will be responsible for setting prices to Customers and invoicing Customers. The Reseller will be responsible for all credit risk associated with that invoicing. The Reseller does not need to follow the recommended retail prices that BT may give to the Reseller and can sell the Services to Customers at the prices that the Reseller determines, except where regulatory or legal requirements say that the Reseller has to charge Customers in a different way or at a different amount.
- 7.3 Unless provided otherwise in a Schedule or Order, BT will invoice and the Reseller will pay all Charges in Pounds Sterling. Charges are exclusive of all applicable taxes (including but not limited to value-added, sales, use and excise taxes), customs duties, and regulatory and other fees or surcharges (together "Taxes"), relating to the provision of Products and Services under this Agreement. The Reseller will pay all such Taxes including those paid or payable by BT that under applicable law are permitted to be passed on by BT to the Reseller, and are customarily passed on to customers by telecommunication service providers (but for the avoidance of doubt exclusive of taxes on the net income or net worth of BT), and any related interest and penalties for the Products or Services under this Agreement, except to the extent a valid exemption certificate is provided by the Reseller to BT prior to the delivery of any Products or Services.
- 7.4 In the event that payment of any amount of the Charges becomes subject to withholding tax, deduction, levy or similar payment obligation on sums due to BT, the Reseller will indemnify BT for such additional amounts as are necessary in order that the net amounts received by BT after all deductions and withholdings shall be not less than what would have been received in the absence of any such requirement to make such deduction or withholding. Should the Reseller withhold any amounts without first grossing up its payments, or indicate that it will do so, BT may gross up its Charges to reflect such withholding amount, or otherwise include such amounts on BT's invoices (resulting in BT being subject to tax by reference to the grossed up amount, whilst only receiving the net amount). In all cases, the Reseller will provide BT free of charge with appropriate certificates from the relevant authorities confirming the amount of the taxes, deduction, levies or similar payments withheld by the Reseller.
- 7.5 The Reseller will promptly, but in no event later than fourteen (14) days from the date of invoice, notify BT in writing of any disputed invoice, together with all information relevant to the dispute, including the account numbers, circuit identification, and trouble ticket numbers, if any, and an explanation of the amount disputed and the reasons. The Reseller must pay all undisputed amounts in accordance with Clause 7.1 unless the disputed amount is less than 5% of the total invoice amount in which case the total invoice amount shall be due and payable by the due date. Disputes shall be resolved promptly and any resolved amount, payable within fourteen (14) Business Days after resolution. Interest will accrue from the due date on subsequent payments of amounts withheld or credits on overpayments refunded.
- 7.6 Should the Reseller initiate any change to the agreed billing arrangements (whether by assignment or otherwise) for the Products and/or Services, and such change results in additional Tax and/or withholding tax costs to BT and/or its Affiliates that BT and/or its Affiliates are unable to fully recover (including as a result of any impact with respect to how BT is able to bill for the Products and Services due to regulatory requirements), BT reserves the right to modify the Charges for such Products and Services accordingly and the Reseller agrees to pay those additional costs.
- 7.7 Without prejudice to any other provision of this Agreement, BT reserves the right to treat failure to pay an invoice (other than those amounts subject to a bona fide dispute in accordance with Clause 7.5) by the Reseller within 30 days of the due date of the invoice as a material breach of this Agreement. If the Reseller commits such material breach, BT's rights are set out in Clause 13. Additionally, BT reserves the right to:
- 7.7.1 restrict, suspend or terminate provision of the relevant Service or Order and BT shall be released from its obligations under this Agreement with respect to such Service or Order until any balance due is paid;
  - 7.7.2 in accordance with Clause 13.3, terminate this Agreement without liability to the Reseller and without prejudice to BT's rights to be paid sums due and
  - 7.7.3 recover any BT Equipment; where such recovery takes place, the Reseller shall pay to BT such recovery Charges as may be specified in the applicable Schedule or as otherwise notified by BT to the Reseller.

- 7.8 Unless otherwise agreed a failure by BT to include the Reseller references on the invoice shall not constitute a valid reason by the Reseller to withhold payment due under the invoice.
- 7.9 The Reseller shall make payment in accordance with Clause 7.1 and the instructions set out on the invoice, and where the Reseller shall submit a remittance slip to show amounts paid in relation to each individual invoice.

## **8 Use of the Service**

- 8.1 The obligations of BT under this Agreement are solely to the Reseller and not to any third party, including the Customer. The Reseller may use the Service for the Reseller's own business purposes, provided that the Reseller:
- 8.1.1 complies with, and ensures that any Customer and User complies with the terms of any applicable legislation and any licence applicable to the Customer in any country where the Service is provided;
  - 8.1.2 shall remain responsible for:
    - (a) access and use of the Service by Users;
    - (b) all Charges incurred in connection with the Services; and
    - (c) compliance with this Agreement by the Customer and Users;
  - 8.1.3 ensures that the Reseller's list of Users is kept current, and that the Reseller terminates access immediately for anyone who is no longer a User; and
  - 8.1.4 complies with the provisions of any Software licences provided with or as part of the Service.
- 8.2 The Reseller shall keep harmless, defend and indemnify BT, BT Affiliates and the BT Parties against any claims, losses, costs and liabilities arising from any claims by any third party, including Users and Customers, in connection with the use or misuse of the Product or Services in breach of Clause 8.1.

## **9 Connection of Customer Equipment to the Products and/or Services**

- 9.1 The Reseller is responsible for the provision, installation, configuration, monitoring and maintenance of any Customer Equipment connected to the Service or used in connection with a Product. The Reseller shall ensure that any Customer Equipment connected to or used with the Product and/or Service is connected and used in accordance with any instructions and safety and security procedures applicable to the use of that Customer Equipment.
- 9.2 The Reseller shall ensure that any Customer Equipment attached (directly or indirectly) to the Product and/or Service by the Customer is technically compatible with the Service and approved for that purpose under any applicable law or regulation. BT does not make any commitment with respect to the interoperability between the Product and/or Service and Customer Equipment. In the case of Products sold for the purpose of the Customer's use with the Service, the Reseller may rely upon BT's representations as to such compatibility and compliance, as of the date of provision.

## **10 BT Equipment and Products**

- 10.1 Risk of loss of the BT Equipment and Products will pass to the Reseller upon delivery, whether or not the BT Equipment or Products have been installed. Title to Products shall pass to the Reseller upon payment of the applicable Charges. In relation to a cross-country border supply of Products, title will pass to the Reseller upon delivery to a common carrier in accordance with the Free Carrier Alongside 'FCA' named place of delivery shipping point (as that term is defined by Incoterms 2010). In no event will the carrier be deemed to be an agent of BT.
- 10.2 The Reseller is responsible for the BT Equipment and must not move, add to, modify or in any way interfere with the BT Equipment, nor permit any other person (other than a person authorised by BT) to do so. The Reseller will be liable to BT for any loss of or damage to the BT Equipment, except where the loss or damage is due to fair wear and tear or is caused by BT or any BT Party. If the Reseller moves or changes the location of any BT Equipment without BT's prior written consent, BT may recover any failed visits as a consequence or additional cost or expense incurred by BT as a result of any lost or wasted time locating the BT Equipment.
- 10.3 Upon termination of this Agreement, if the Reseller wishes to dispose of any Products, then it shall notify BT accordingly and allow BT to collect such Products if BT elects to do so.
- 10.4 In the event that the Reseller fails to notify BT in accordance with Clause 10.3 and disposes of the Products itself, the Reseller shall indemnify BT against all claims, losses, costs, expenses and liabilities (including any fines levied upon BT) incurred by BT as a result of the Reseller's breach of that Clause.
- 10.5 The Parties agree that the UN Convention on the Sales of Goods shall not apply to this Agreement.

## **11 Confidentiality**

- 11.1 Each Party (“Recipient”) shall keep in confidence all Confidential Information of the other Party (“Discloser”) obtained under or in connection with this Agreement and will not disclose it other than in confidence to:
- 11.1.1 the Recipient’s employees or employees of the Recipient’s Affiliates; or
  - 11.1.2 the Recipient’s professional advisors; or
  - 11.1.3 where the Recipient is BT, employees of BT’s subcontractors, in each case only to those who have a need to know such Confidential Information and to the extent necessary for performance of this Agreement or the use of the Services and/or Products.
- 11.2 This Clause 11 shall not apply to information that is:
- 11.2.1 in the public domain other than in breach of this Agreement;
  - 11.2.2 in the possession of the Recipient before such divulgence has taken place;
  - 11.2.3 obtained from a third party who is free to divulge the same; or
  - 11.2.4 developed by the receiving party independently of and without access to Confidential Information obtained under this Agreement.
- 11.3 If either BT or the Reseller receives a demand from a lawful authority, regulatory authority or court to disclose any Confidential Information provided to it by the other, it may comply with such demand if it has:
- 11.3.1 satisfied itself that the demand is lawful;
  - 11.3.2 where possible, given the other party the maximum written notice permissible under the demand in which to make representations; and
  - 11.3.3 marked the required information as the Confidential Information of the other party.
- 11.4 The receiving Party must, comply with this Clause 11 for a period of three years following the termination of this Agreement.
- 11.5 The Parties acknowledge that a violation of this Clause 11 may cause irreparable harm to the disclosing Party, for which monetary damages would be inadequate, and injunctive relief may be sought for a breach of this Clause 11.

## **12 Intellectual Property Rights**

- 12.1 All IPR of either Party either pre-existing or created by either Party during or arising from the performance of this Agreement shall remain the absolute property of that Party or its licensors.
- 12.2 Without prejudice to any open source software licence terms, which terms shall apply independent of this licence BT grants the Reseller and the Customers a non-transferable and non-exclusive licence to use in object code form, all Software and associated documentation that may be supplied by BT, subject to the Reseller’s and the Customer’s compliance with the Agreement, any third party terms and conditions that apply to the use of the Software, and associated documentation, solely as necessary for receipt or use of the Products or Services.
- 12.3 The Reseller will not, and make sure that the Customers will not copy, decompile or modify or reverse engineer any Software or knowingly allow or permit anyone else to do so, except as expressly permitted by BT in writing or otherwise provided at law.
- 12.4 The term of any licence granted by BT under Clause 12.2 is coterminous with the term for the Service with which the Software is associated or in relation to which any Product is supplied.
- 12.5 Excluding any open source Software that may be made available by BT to the Reseller in connection with the delivery of the Services, BT will indemnify the Reseller against all third party claims and proceedings arising from infringement of any third party’s IPR by the Reseller’s receipt of any Services or Products only to the extent that the Reseller promptly notifies BT in writing of any such claim, that BT is given immediate and complete control of any such claim, that the Reseller does not make any public statements related to the claim or in any way prejudice BT’s defence of such claim, and that the Reseller gives BT all reasonable assistance with such claim. All costs incurred or recovered in such negotiations, litigation, and settlements shall be for BT’s account.
- 12.6 The indemnity set out in Clause 12.5 shall not apply to claims or proceedings arising from:
- 12.6.1 use of any BT Equipment, Products, Services or any Software in conjunction or combination with other equipment or software or any other service not supplied by BT;
  - 12.6.2 any unauthorised alteration or modification of the Service, Product or any Software;
  - 12.6.3 Content, designs or specifications supplied by or on behalf of the Reseller; or
  - 12.6.4 use of the Service, any Product or any Software other than in accordance with this Agreement.

- 12.7 The Reseller will indemnify and hold BT harmless against all such claims, losses, costs and liabilities arising from the matters set out in Clause 12.6 that are attributable to the Reseller or its agents, Customers or Users and will, immediately upon notification of any such claim by BT, cease any activity that gave rise to the claim.
- 12.8 If any Product or Service becomes, or BT believes it is likely to become, the subject of a claim of infringement of any IPR as referred to in Clause 12.5, BT, at its option and expense, may: (a) secure for the Reseller a right of continued use; or (b) modify or replace the Product or Service so that it is no longer infringing, provided that such modification or replacement shall not materially affect the performance of the Product or Service.
- 12.9 The indemnity in Clause 12.5 sets out the Reseller's sole and exclusive remedy for claims of infringement of intellectual property rights.

### 13 Termination of Service and the Agreement

- 13.1 Subject to any Minimum Period of Service that may apply and unless otherwise specified in a Schedule or Order, either Party may terminate any Service or Order at any time after the Minimum Period of Service by giving 90 days' written notice to the other; provided that where the Reseller exercises its rights under this Clause 13.1, the Reseller shall be liable for any outstanding Charges for Products or Services received and any applicable termination compensation as set out in the applicable Schedule or Order.
- 13.2 Except as set out in Clause 13.8, termination of any individual Service or Order will not affect the Parties' rights and obligations with regard to any other Service or Order.
- 13.3 Either Party may immediately by notice terminate any affected Order(s) if one of the following events occurs:
- 13.3.1 the other Party commits a material breach and has failed to rectify the breach within 30 days after the terminating Party has given its notice of default;
- 13.3.2 an event set out in Clause 15 prevents the performance of the whole or a substantial part of the other Party's obligations in relation to that Service or Product for a continuous period of 30 days after the date on which it should have been performed; or
- 13.3.3 any governmental or regulatory authority with competence and/or jurisdiction over the Parties decides that the provision of the relevant Service or Product under this Agreement is contrary to existing laws, rules or regulations or any decision, law or other official governmental order makes the provision of the Products or Service illegal. In such case no damages shall be due;
- 13.3.4 any of the authorisation or regulatory formalities required was or is not obtained, is withdrawn or is no longer valid for whatever reason.
- 13.4 A party may immediately by notice terminate this Agreement if the other Party is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory or if a receiver or administrator is appointed over its assets (or the equivalent of any such event in the jurisdiction of such other Party).
- 13.5 Upon termination of this Agreement for any reason other than for cause, all Orders that have been executed prior to the date of termination shall remain unaffected and continue in full force and effect until termination or expiry of each Order in accordance with the terms of that Order and the terms of this Agreement shall continue to apply to that Order.
- 13.6 Upon termination of this Agreement (including any affected Order executed under it): (a) the rights of the Parties accrued up to the date of such termination shall remain unaffected; and (b) the Reseller shall co-operate fully with BT to recover any BT Equipment.
- 13.7 In the event of termination of this Agreement or any Order by BT for cause, BT shall be entitled to all termination compensation from the Reseller under Clause 13.1 as if the Reseller had terminated for convenience at that point in time, as set out in the applicable Schedule(s) or Order(s).
- 13.8 If the Agreement is terminated or expires the Reseller will no longer identify BT as one of its providers or promote, market or advertise the Services or make any use of BT's Intellectual Property Rights other than in support of the Services which have already been ordered from and accepted by BT before the termination or expiry of the Agreement.

### 14 Limitation of Liability



- 14.1 Neither Party excludes or restricts in any way its liability for death or personal injury resulting from its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation, wilful failure or gross negligence.
- 14.2 Subject to Clause 14.1, neither Party shall be liable to the other, whether in contract, tort, under statute or otherwise howsoever arising under or in connection with this Agreement (including in each case negligence): (a) any loss of profits, business, goodwill (including pecuniary losses arising from loss of goodwill), or revenue; (b) any loss or corruption or destruction of data; (c) any special, indirect or consequential loss or damage whatsoever; and/or (d) any loss arising from the transmission of viruses, in all cases set out in this Clause 14.2, whether or not that Party was advised in advance of the possibility of such loss or damage.
- 14.3 Subject to any other limitations of liability that are set out in this Agreement and/or the relevant Schedule, if a Party is in breach of any obligations under this Agreement, or if any other liability however arising, whether deliberate or unintentional (including liability for negligence or breach of statutory duty) arises in connection with this Agreement, then, subject to Clauses 14.1 and 14.2, such Party's liability to the other Party shall be limited to £1,000,000 for any one event or series of connected events and to £2,000,000 for all events (connected or unconnected) in any period of twelve (12) consecutive months; provided, however, that any remedies contained in any Service Level Agreement shall be the sole and exclusive remedies for any failure to meet the performance obligations under that Service Level Agreement.
- 14.4 BT excludes all liability of any kind in respect of Reseller Information, Customer Information, Third Party Information, and any other material on the Internet which can be accessed using the Service. BT is not responsible in any way for any goods (including software) or services provided by third parties and advertised, sold or otherwise made available by means of the Service or on the Internet.
- 14.5 BT is not liable to the Reseller either in contract, tort (including negligence) or otherwise for the acts or omissions of other providers of telecommunications or Internet services (including domain name registration authorities) or for faults or failures of their equipment.
- 14.6 BT shall implement reasonable precautions to prevent any unauthorized access by third parties to any part of the telecommunications network used to provide the Services to the Customer, but BT shall not be liable for any loss or damage sustained by the Customer or Reseller in the event of any unauthorised access in spite of BT's reasonable precautions.

## 15 Force Majeure: Matters Beyond the Reasonable Control of Either Party

- 15.1 Neither Party shall be liable for failure or delay in the performance of its obligations caused by or resulting from force majeure which shall include, but not be limited to events that are unpredictable, unforeseeable or irresistible, such as any extremely severe weather, flood, landslide, earthquake, storm, lightning, fire, subsidence, epidemic, acts of terrorism, biological warfare, outbreak of military hostilities (whether or not war is declared), riot, explosions, strikes or other labour unrest, civil disturbance, sabotage, expropriation by governmental authorities and any other act or any event that is outside the reasonable control of the concerned Party.
- 15.2 BT shall have no liability to the Reseller or Customer for failure to supply the Service or a Product if:
- 15.2.1 a third person is unable or refuses to supply or delays supplying a Service or Product to BT and there is no alternative available to BT at reasonable cost; or
- 15.2.2 BT is prevented by legal or regulatory restrictions from supplying the Service or a Product.

## 16 Dispute Resolution

- 16.1 The Parties will use all reasonable efforts to amicably resolve any dispute. The Parties will, at a minimum, use the following procedure in the event a dispute arises with respect to any aspect of this Agreement. Upon written notification by one Party to the other that a dispute exists, working level managers of the respective Parties will attempt in good faith to work out a resolution within 30 days following the day of written notification of a dispute. If an agreement cannot be reached by the end of the aforementioned period, the Parties shall prepare a document containing information that is designed to assist resolution of the dispute containing what has been agreed and what remains in dispute between them. No later than two weeks thereafter, or at some other time as mutually agreed by the Parties, representatives of the Parties at Vice President level or above shall meet to further attempt to resolve the matter or to agree on a course of action to resolve the matter. Such course of action may include use of formal dispute resolution processes, including but not limited to non-binding mediation or binding or non-binding arbitration. In the event that the Parties are unable to resolve the matter or agree on a course of action at this executive level within thirty 30 days, either Party shall have the right to pursue legal or equitable remedies as it sees fit. Nothing contained herein shall preclude either Party from seeking equitable relief at any time in a court having jurisdiction under the terms of this

Agreement in the event that a risk of imminent harm to that Party exists and no appropriate remedy for such harm exists under the Agreement.

## 17 Notices

- 17.1 Except for notices given in accordance with Clause 4.5, all notices given under this Agreement shall be in writing and in English language, unless the Parties agree otherwise or local law and regulations provide otherwise, and shall be sent by prepaid post, facsimile or by electronic mail to the other Party at the address, fax number or email address set out in these General Terms and Conditions for Resellers or any other address given notified from time to time including as updated on an Order.
- 17.2 Notices given under this Agreement are deemed to be given by the sender and received by the addressee: (a) if sent by prepaid post, 3 Business Days from and including the date of postage; or (b) if sent by facsimile, when transmitted to the addressee; but if transmission is on a day that is not a Business Day or after 4 p.m. in the addressee's time zone, it is deemed to be duly given and received on the next Business Day; or (c) if sent by electronic mail, when sent to the addressee.

## 18 Assignment/Subcontracting

- 18.1 Either Party reserves the right to assign all or part of this Agreement at any time to any Affiliate, subject to providing the other Party prior written notice of such assignment. Any assignment to a party other than an Affiliate requires the prior written agreement of the other Party.
- 18.2 This Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.
- 18.3 BT may subcontract the performance of any of its obligations under this Agreement, but without relieving BT from any of its obligations to the Reseller. The Reseller agrees and understands that it may need to interact directly with such BT Party for ordering, provisioning or maintaining the Products or Service as directed by BT.
- 18.4 The Parties acknowledge and agree that the BT Affiliates and Reseller Affiliates may agree to (or where required by law, will) enter into Schedules or Orders under this PSA for the provision of Products and/or Services in any country or region outside of Great Britain, and that in all such cases, upon execution of that Schedule or Order: (a) the provision of that Product and/or Service shall be deemed subcontracted by BT to that BT Affiliate, (b) the Parties shall have been deemed to have assigned the benefit received under this Agreement to their respective Affiliates in accordance with Clause 18.1, and (c) the Parties are the only persons who may enforce any and all rights arising out of or in connection with this Agreement and shall have sole conduct of all claims and/or proceedings involving any of their respective Affiliates.

## 19 Governing Law and Jurisdiction

- 19.1 Unless otherwise agreed in writing this Agreement and any claims or disputes arising out of, relating to or in connection with it, shall be governed by the laws of England and Wales. The Courts of England shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement to which the Parties irrevocably submit.

## 20 Miscellaneous Provisions

- 20.1 **Publicity:** Neither Party may publish or use any advertising, sales promotions, press releases, announcements, or other publicity that relates to this Agreement or that uses the trademark, service mark, trade name, logo or other indicia of origin of the other Party or its Affiliates in connection with this Agreement or any Products or Services provided under this Agreement, without the prior written approval of the other Party which shall not unreasonably be withheld.
- 20.2 **Customer Satisfaction Surveys:** Each Party agrees to co-operate with the reasonable requirements of the other Party in relation to customer satisfaction surveys organised by or on behalf of that Party.
- 20.3 **Data:**
- 20.3.1 BT may need to collect, Process and use Personal Data in order to:
- (a) administer, track and fulfil Orders for a Service;
  - (b) deliver and commission a Service, either remotely or at a Site;
  - (c) manage, track and resolve faults with a Service, either remotely or at a Site;
  - (d) administer access to online portals relating to a Service;
  - (e) compile, dispatch and manage the payment of invoices relating to a Service;
  - (f) manage the Agreement and resolve any disputes relating to it;
  - (g) respond to general queries relating to a Service; or
  - (h) comply with BT's legal and regulatory obligations.

- 20.3.2 BT will Process this Personal Data in accordance with applicable Data Protection Legislation. BT's relevant privacy policy, which forms part of these General Terms and Conditions, also governs how BT uses the Resellers Personal Data and includes more details around what BT can do with it, the Resellers rights and BT's obligations. The Reseller can access BT's privacy policy by clicking the link labelled 'privacy' at <http://www.btplc.com/privacycentre/index.htm>.
- 20.3.3 BT may be required to share this Personal Data with BT's Affiliates and other relevant parties, within or outside the country of origin, in order to carry out the activities in this Clause 20.3. When doing so, BT will ensure that the sharing and use of this data complies with applicable Data Protection Legislation.
- 20.3.4 BT may, from time to time, contact the Reseller Contact (as defined in the Schedules), or other network manager or procurement manager involved in the procurement or management of a Service, to provide additional information concerning a Service, or other similar services. If this information includes marketing materials, BT will provide a mechanism for the Reseller to elect not to receive such communications in the future.
- 20.3.5 The Reseller will comply with all applicable Data Protection Legislation and will ensure that all criteria necessary for the provision of a Service by BT (for example notifications, consents etc.) are fulfilled before sharing Reseller or Customer Personal Data with BT.
- 20.3.6 The Reseller will disclose to BT only the Personal Data that BT requires in order to perform any Service.
- 20.3.7 Where, for the provision of a Service, BT is required to Process Customer Personal Data on the Reseller's behalf, BT will:
- (a) only Process Reseller or Customer Personal Data on the Reseller's instructions and as needed to perform BT's responsibilities under the Agreement;
  - (b) put in place technical and organisational security measures appropriate to the risk represented by the Processing and the nature of Reseller and Customer Personal Data, to protect Reseller and Customer Personal Data from being accidentally or unlawfully disclosed, accessed, changed, lost or destroyed; and
  - (c) not disclose Reseller and Customer Personal Data to a third party unless required to provide a Service, allowed by the Agreement or otherwise required by Applicable Law.
- 20.3.8 Regardless of what it may say elsewhere in the Agreement, the Reseller agrees that, for BT to provide a Service, Reseller and Customer Personal Data may be:
- (a) used, managed, accessed, transferred or held on a variety of systems, networks and facilities (including databases) worldwide; and
  - (b) provided or transferred by BT to any of BT's Affiliates, subcontractors or suppliers worldwide as needed to allow that BT Affiliate, subcontractor or supplier to perform its obligations in respect of the Services. The Reseller appoints BT to perform each transfer in order to provide the Services. BT agrees to take appropriate steps and enter into appropriate agreements with BT's Affiliates, subcontractors or suppliers, as required, for each transfer to be adequately protected.
- 20.3.9 The Reseller will obtain or submit promptly any regulatory approvals or notifications required under the Data Protection Legislation.
- 20.3.10 Where allowed by Applicable Law:
- (a) BT will not be liable for any part of a Claim that is caused by or in connection with any act or omission by BT where that act or omission results from a failure by the Reseller to comply with this Clause 20.3; and
  - (b) both Parties will be liable to the other for any Claims, losses, costs or liabilities incurred or suffered by the other Party where those Claims, losses, costs or liabilities are caused by, or in connection with, any breach of the Data Protection Legislation or this Clause 20.3.
- 20.3.11 Unless required to do so by a competent authority or Applicable Law, neither Party will make any payment or any offer of payment to any Data Subject (including third parties acting on behalf of any Data Subject) in response to any complaint or claim for compensation caused by or relating to the Processing of Personal Data, without the prior written agreement of the other Party where the Parties are jointly and severally liable for the payment of that compensation.
- 20.3.12 Where both Parties are jointly and severally liable for a complaint or a claim for compensation under Applicable Law, both Parties will be liable to the other for any payment required to be made under Applicable Law by the other if and to the extent that those payments are caused by any breach of the Data Protection Legislation or this Clause 20.3.

- 20.4 **Legal and Regulatory Compliance:**
- 20.4.1 Each Party will comply with all laws and regulations that apply to its activities under this Agreement, including any that apply to the Products and Services provided under this Agreement.
- 20.5 **Anti-Corruption and Bribery Act Compliance:** In connection with any actions or activities associated with this Agreement or in connection with the relationship between the Parties, neither Party shall engage in any unlawful trade practices or any other practices that are in violation of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act of 2010, or any other law that prohibits bribery or similar activity. Each Party shall ensure that neither it nor its Affiliates, subcontractors and agents: either directly or indirectly, seek, receive, accept, give, offer, agree or promise to give any money, facilitation payment, or other thing of value from or to anyone (including but not limited to government or corporate officials or agents) as an improper inducement or reward for or otherwise on account of favourable action or forbearance from action or the exercise of influence; or fail to establish appropriate safeguards to protect against such prohibited actions. Each Party shall, upon request from the other Party, provide evidence of the steps being taken to avoid prohibited actions, including the establishment of policies, practices, and/or business controls with respect to these laws. To the extent permitted by the relevant authority, each party shall promptly inform the other Party of any official investigation with regard to alleged breaches of the above laws that are related in any way to this Agreement.
- 20.6 **Export Control:** The Parties acknowledge that Products, Software, and technical information (including, but not limited to, service, technical assistance and training) provided under this Agreement may be subject to export laws and regulations of other countries, and any use or transfer of the such Products, Software, and technical information must be in compliance with all applicable regulations and international trade sanctions. The Parties will not use, distribute, transfer, or transmit the Products, Software, or technical information (even if incorporated into other products) except in compliance with all applicable export regulations and trade sanctions. If requested by either Party, the other Party also agrees to sign written assurances and other export-related documents as may be required to comply with all applicable export regulations.
- 20.7 **UK Regulatory Compliance:** Where Regulated Service(s) are to be provided within the UK under this Agreement, the terms and conditions and prices for Regulated Service are published on BT's website at [www.bt.com](http://www.bt.com) and may be amended by BT from time to time. For the avoidance of doubt, the terms and conditions and prices published on BT's website for Regulated Service, and any amendments thereto, shall govern the provision of Regulated Service to the exclusion of all other terms and conditions and prices in this Agreement. If BT is required in order to comply with law or regulation to modify the Service or amend the terms and conditions or prices, BT reserves the right to do so and notify the Reseller as soon as possible of any such modification and any terms and conditions (including Charges) associated with such modification, except in the case of Regulated Service where any such changes will be published as set out in this Clause. If a legal or regulatory intervention or ruling of any sort prevents the accomplishment of the purpose of this Agreement, the Reseller and BT shall immediately commence good faith negotiations to explore whether a similar economic effect can be obtained consistent with the applicable legal or regulatory requirements. The delay or failure by BT to perform any of its obligations under this Agreement that is caused by or materially contributed to by a restriction of a legal or regulatory nature that affects, wholly or partly, the provision of the Service, shall not constitute a breach of this Agreement.
- 20.8 **Non-UK Regulatory Compliance:** Where Regulated Service(s) are to be provided outside of the UK under this Agreement, the Parties shall comply with the terms and conditions and prices, if applicable, of any applicable tariffs, regulations, or statutes. In the event of changes to such tariffs, regulations, or statutes during the term of any Order for such Regulated Services, such changes shall be effective pursuant to their terms. If a legal or regulatory intervention or ruling of any sort prevents the continued provision of any Regulated Service or materially changes the Regulated Service so that it is no longer consistent with the purpose of this Agreement, BT shall promptly commence good faith discussions with the Reseller on any alternative Service or on any appropriate migration away from that Regulated Service so as to minimize any disruption to the Reseller.
- 20.9 **Capacity:** Each Party warrants that it has the necessary rights, licences and permissions to enter into and perform its obligations under this Agreement.
- 20.10 **Rights of Third Parties:** This Agreement does not create any right enforceable by any party who is not the Reseller or BT ("Third Party") under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a Third Party which exists or is available apart from that Act.
- 20.11 **No Waiver:** Except as otherwise specifically provided in this Agreement, no failure to exercise, or delay in exercising, any right, power or privilege set out in this Agreement will operate as a waiver of any right, power or privilege.



- 20.12 **Severance:** If any provision of this Agreement is held to be invalid or unenforceable, it will be severed from this Agreement, the remaining provisions will remain in full force and effect, and the Parties will use reasonable endeavours to promptly negotiate a replacement in good faith.
- 20.13 **Survival of Obligations:** The Parties' rights and obligations, whose nature is such that they should continue beyond the termination of this Agreement, shall survive termination of this Agreement.
- 20.14 **Entire Agreement:** This Agreement supersedes all prior oral or written understandings and/or representations between the Parties (unless specifically incorporated into this Agreement) and constitutes the entire agreement with respect to its subject matter. Each Party acknowledges that in entering into this Agreement that it has not relied on any representation, warranty, collateral contract or other assurance other than those set out in this Agreement, and waives all rights and remedies which, but for this clause might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. Each Party acknowledges that its legal advisers have explained to it the effect of this clause.
- 20.15 **Agreement:** This Agreement may not be amended, modified or supplemented except by a document in writing signed by authorised representatives of both Parties. The Parties to an Order may amend, modify or supplement the terms of that Order by a document in writing executed by authorised representatives of both Parties to that Order.

## Schedule – Cloud Compute Reseller Schedule

### Definitions

The following definitions apply, in addition to those in the General Terms and Conditions for Resellers.

**“Agent”** means software which is installed on a Virtual Machine, operating system or application to provide specific functionality.

**“API”** means the Application Programming Interface which enables the Customer to manage the service through an Application.

**“Application”** means a software program designed to carry out operations for specific tasks.

**“Availability Zone”** means the configuration of hardware and software to create a platform where the Virtual Machines are deployed.

**“Back End Connection”** means a dedicated network service provided by BT or another telecommunications service provider to provide connectivity between the Service and the Customer’s site.

**“BT Security”** means the security organisation based within BT.

**“Catalogue”** means the display of available Elements in the Portal.

**“Checkword”** means a word or phrase chosen by the Reseller during the online registration process for the Portal that can be used by the BT Service Desk to verify the authority of the caller to raise incidents on behalf of the Reseller.

**“Cloud”** means the delivery of computing and storage capacity as a service to a heterogeneous community of end-recipients or Customers.

**“Cloud Connect”** means the physical and logical connection point between the Service and an external IP based network.

**“Compute Management System (CMS)”** means the portal and the automation / orchestration system that manages and drives the Service and is provided by BT to the Reseller as part of the PCMS Reseller Service.

**“Console”** means console server access directly into the Virtual Machine’s system console.

**“CPU”** means central processing unit.

**“Dashboard”** means an area of the Portal that the Reseller and Customer can access to see the overall status of the Service.

**“Domain Name”** means a name registered with an Internet registration authority for use as part of the Customer’s URL.

**“Domain Name Server (DNS)”** means a local cache to ensure that DNS resolution times are kept to a minimum.

**“Elements”** means those parts of the Service that can be selected and configured via the Portal or API to create an Online Order for the Service.

**“Failure of Service”** means the Reseller or the Customer experiences a continuous loss of Service that cannot be circumvented.

**“Featured Templates”** means pre-defined operating systems created by BT to be used with a specific Hypervisor.

**“Firewall”** means a device or software service that is designed to block unauthorised access, whilst allowing authorised access, to the Service.

**“Hypervisor”** means the software that provides the capability to deliver Virtual Machines.

**“Incident”** means an incident which is not part of the standard operation of a Service and which causes, or may cause, an interruption to, or a reduction in the quality of that Service.

**“Incident Repair Service”** means the service set out in Clause 15.2 of this Schedule.

**“IP”** means Internet protocol, a protocol that was designed to interconnect networks and is part of a suite of protocols known as TCP/IP, where “TCP” means transmission control protocol, a reliable connection-based protocol.

**“Isolated Network”** means a virtual network that can be attached to a cloud server. It keeps a cloud server separate from other networks or the internet, or both.

**“ISO”** means the International Organization for Standardization.

**“Load Balancing”** means the load balancing of incoming Internet requests between all Virtual Machine in a group, on a least connection, round robin or source IP basis.

“**MPLS**” means multi-protocol labelling switching, a virtual private network service which can be purchased from BT.

“**Month**” means a calendar month.

“**My Templates**” means a Template that has been created for a single User account.

“**Network Time Protocol (NTP)**” means a feature that enables the Reseller to synchronise its servers with the central network Internet time.

“**Online Order**” means a Customer request for the Service. The Online Order is only available online via the Portal or API, in accordance with the process outlined in Clause 2.

“**Operating System**” means a set of software that manages computer hardware resources and provides common services for computer programs.

“**Planned Maintenance**” means any work that is planned in advance to be carried out by BT or on its behalf that causes the Service to be suspended.

“**Portal**” means the Compute Management System and the graphical user interfaces of the individual services made available via the Compute Management System.

“**RAM**” means the virtualised memory available to a Virtual Machine.

“**Reseller Committed Date**” means the date provided by BT on which delivery of the Service (or each part of the Service, including to each Site) is due to start.

“**Reseller Contact**” means any individuals authorised to act on the Resellers behalf for Service management matters.

“**Reseller Data**” has the meaning given in the General Terms and Conditions for Resellers.

“**Service**” has the meaning given in Clause 1.1.

“**Service Desk**” means the facility provided by BT to handle enquiries and administration for the Service.

“**Service Level**” means the level of Service which is applicable to the Service, as set out in Clause 25.

“**Service Operational Data**” means all personal data provided by the Reseller to BT which is operationally required for BT in order to contact the Reseller for the provision of the Services and/or Products such as email addresses, contact names, site addresses, telephone and fax numbers.

“**Shared MPLS Network**” means a service where bandwidth is shared amongst customers so it depends on the traffic at any given time as to how much bandwidth a particular customer will get.

“**Snap Shot (Backup)**” means a copy of Customers Data in the Storage environments at a point in time.

“**Storage**” means storage for recording and storing information and data.

“**System Administrator**” means a person named by the Reseller to be the Reseller’s point of contact with BT for matters relating to the management of the Service.

“**Template**” means a reusable configuration for Virtual Machines.

“**Utility Rate Card**” means information available via the Portal that shows the Charges for the Elements of the service on an hourly basis.

“**URL**” means Uniform Resource Locator, which is the full address for the Reseller’s website.

“**User ID**” means the identification number provided to the Reseller by BT for the purposes of security in the provision of the Service.

“**Virtual Machine (VM)**” means a self-contained operating system that functions as a separate server.

“**VM Snapshot**” has the meaning given in Clause 3.15.

## 1 Service Summary

- 1.1 BT will provide the Reseller with a service that allows the provision and management of virtual infrastructure including Virtual Machine(s), network, Storage and security devices (“Service”) through a self-service Portal for the Reseller to resell to Customers.

## 2 Service Components

- 2.1 Customers can use the Portal to order Elements within an Availability Zone.
- 2.2 Elements, Availability Zones and type of virtual infrastructure may be updated by BT at any time.

- 2.3 The Customer may subsequently add to and/or remove any Elements it has ordered via the Portal, using the Online Order.
- 2.4 The Portal will show the up-to-date list of available Elements and Availability Zones. The Portal will show the prevailing charges that the Reseller sets for Elements.

### 3 Service Elements

The following Elements may be available within an Availability Zone. In some cases multiple Elements may be available within the same Availability Zone:

#### 3.1 Firewall per Isolated Network

The Customer may:

- 3.1.1 add, delete and/or change access control lists,
- 3.1.2 add, delete and/or change port forwarding rules and
- 3.1.3 add, delete and/or change virtual private networks access (VPN)

#### 3.2 Network

- 3.2.1 The standard network service used by BT to deliver data to and from the Service is the Internet.
- 3.2.2 The Service supports connectivity for other IP connected devices including networks. The connected apparatus is subject to separate terms and conditions.

#### 3.3 Internet

- 3.3.1 Internet usage (data in and out) is charged at the Utility Rate Card which is displayed in the Portal to the Reseller. Internet service usage Charges are charged for data usage in and out of the Service. Data transfer speeds may vary.
- 3.3.2 The Reseller acknowledges and will make sure that the Customers acknowledge that:
  - (a) the Internet is independent of the Service and neither the Reseller nor BT have any responsibility for provision of the Internet; and
  - (b) use of the Internet is solely at the Customer's risk and subject to all applicable laws. BT has no responsibility for any information, software, services or other materials obtained, downloaded, shared and transmitted by the Customer using the Internet.

#### 3.4 Load Balancing

- 3.4.1 The Service supports creation of a load balanced groups of Virtual Machines with the choice of the following load balance options:
  - (a) Round Robin
  - (b) Least Connection
  - (c) Source IP
- 3.4.2 Load balancing is performed at the public IP Address level and therefore all Virtual Machines will share the same IP address. Additional Virtual Machines outside of the load balancing group are subject to additional public IP Addresses (which must be ordered separately) and any additional applicable Charges.

#### 3.5 IP Addresses

- 3.5.1 A single public IP address is deployed per Online Order for those Elements that require public IP addressing. Following deployment the Customer may request additional IP Addresses which will be subject to a separate Order and additional Charges.
- 3.5.2 IP addresses allocated to the Customer are only for use in connection with the Service. The Reseller will ensure that the Customer acknowledges that all title and rights in those IP addresses, including the right to recover or change such IP addresses, belong to BT or its applicable suppliers and BT cannot transfer any title or rights in any IP address to the Customer. The Reseller shall ensure that the Customer cannot sell or agree to transfer them to anyone else. On the termination of the Agreement or the Service, for any reason, the Reseller shall ensure that the Customer immediately ceases using the IP addresses.

#### 3.6 Virtual Machine

- 3.6.1 The Service enables the Customer to self-provision their virtual infrastructure through the use of the Portal or an API. Using the Portal, the Customer selects the Elements it requires in order to provision the Virtual Machine.



The Catalogue specifies the Elements that are available to create the Virtual Machine. The following standard Elements are available in order to create a Virtual Machine:

- (a) Operating System via a Template or ISO;
- (b) Compute components vCPUs, vRAM, C drive / root storage etc;
- (c) Additional storage;
- (d) Affinity rules;
- (e) Network.

3.6.2 Other Elements are available after the Virtual Machine has been created.

### 3.7 Hypervisor

3.7.1 The Service can support a number of different Hypervisors. The Hypervisor which is used will depend on the Availability Zone selected by the Customer. The Hypervisor provides the capability to deliver a Virtual Machine.

### 3.8 Operating System

3.8.1 In order to build the Service the Customer must first select the Operating System for the Virtual Machine being created. The Operating Systems are presented to the Customer as templates. The choices available are dependent upon the Catalogue and are defined as “Featured Templates”, “My Templates”, and “ISOs” (ISO Images). With the exception of Microsoft Operating Systems, the Customer is required (where appropriate) to provide a valid license key, obtained from the software vendor or software vendors representative. Featured Templates represent pre-defined Operating Systems created by BT and vary dependent upon Hypervisor compatibility. The choice of Operating Systems will be displayed for the Customer to select.

### 3.9 My Templates

3.9.1 “My Templates” are templates that have previously been created or uploaded by the Customer and saved. They may have been originally created as “Feature Templates” and then saved by the Customer or previously created by the Customer by uploading their own template or directly from an ISO image.

### 3.10 ISO Images

3.10.1 Where a particular Operating System is not shown within Featured Templates but required by the Customer, the Customer can create one from an ISO image.

### 3.11 Virtual Machine Type

3.11.1 The Customer will select a Virtual Machine from the Virtual Machine attributes displayed within the Catalogue. A build consists of a number of processors, amount of RAM, C: drive / root storage. To increase or decrease the size of the Virtual Machine (in terms of CPU and RAM), the Customer must either build a new Virtual Machine or modify the current Virtual Machine via a separate Online Order. This process is simplified as the existing server can be copied and either saved as a Template or reinstalled on to a larger (or smaller) Virtual Machine as required.

### 3.12 Storage (C: / root)

3.12.1 The Virtual Machine will include storage allocation, a C:/ root drive where the Operating System will reside.

3.12.2 Additional Storage may be added in the form of additional drives. A number of different size drives are made available with an option for a Customer defined disk. Additional disks can be added and are subject to a separate Online Order and additional Charges.

### 3.13 Common Services

3.13.1 If required, BT can supply Domain Name Server (DNS) for DNS lookup only and Network Time Protocol (NTP). These items are included in the Charges for the Service.

### 3.14 Snap Shot (Backup)

3.14.1 Snap Shots provide back up for the Service. The Customer may take a point in time “copy” of the VM disk volumes.

3.14.2 Snap Shots are defined per Virtual Machine disk volume and can be manually initiated or scheduled as required by the Customer. The Customer may define how often and when a Snap Shot is taken or instantly take a Snap Shot when required.

3.14.3 Each Snap Shot is a copy of the disk volume stored within the same data centre environment as the original Customer Data.

- 3.14.4 Snap Shots will be listed within the same area as the requests and can be restored by selecting the desired snap and selecting restore.
- 3.14.5 The number of Snap Shots held within the system is set based on the schedule chosen for those Snap Shots. When the maximum number is reached as defined by the schedule then the Snap Shots are deleted based on a first in first out basis. If a manual Snap Shot is taken not using the schedule then this Snap Shot will be held until the Customer deletes it or the Service is terminated.
- 3.15 **VM Snap Shot**
  - 3.15.1 A VM Snap Shot will record the state and data of a VM at a particular point in time, so the same state can be returned to repeatedly if required. The VM Snap Shot is not a copy of the VM's disk volume but a change log file from the moment in time when the VM Snap Shot was taken.
  - 3.15.2 The Customer
    - (a) may take a Snap Shot of a VM at any time and revert to that Snap Shot at any time;
    - (b) may take a maximum of three (3) VM Snap Shots per VM;
    - (c) will delete a VM Snap Shot before a new one may be taken, once the maximum number is reached;
    - (d) will not use a VM Snap Shot as a backup service; and
    - (e) will remove a VM Snap Shot when it is no longer required in order to minimise its effect on the performance of the VM.

#### **4 Back End Connection**

- 4.1 A Back End Connection is the connection of a WAN service to the Service. The WAN connection can be a physical network connection provided by BT (or another licensed operator) or a connection from another BT platform delivered within the same data centre.
- 4.2 A Back End Connection is not part of the Service and must be ordered separately by the Reseller and is subject to separate conditions and Charges. The connectivity between the two (2) services is achieved through Cloud Connect or Cloud On-Net. Additional Charges will apply for Cloud Connect and Cloud On-Net and delivery times for this work are outside the scope of the Service.

#### **5 Cloud Connect**

- 5.1 Cloud Connect provides the ability to connect the Service to external IP services through the provision of an external connection / port. The external IP service is not part of this Service and needs to be ordered separately and additional Charges will apply.

#### **6 Cloud On-Net**

- 6.1 Cloud On-Net consists of connecting a Customer's Shared Network to a Shared MPLS Network.

#### **7 Commencement and Term**

- 7.1 The Agreement is effective once the Reseller submits an Online Order on the Portal.
- 7.2 The Service will commence on the Operational Service Date.

#### **8 Technical Requirements**

- 8.1 The Reseller is responsible for ensuring that the Customer will have Internet access, all computer hardware, software and telecommunications equipment and services which are necessary to access and use the Service.

#### **9 BT Service Management Boundary (SMB)**

- 9.1 BT's responsibility for the Service is for the management of the Elements in the combination ordered by the Reseller but the Operating System is outside the SMB unless specifically described within the Catalogue. BT will have no responsibility for the Service (including any responsibility to meet any Service Levels) outside the Service Management Boundary.

#### **10 Ordering Process**

- 10.1 BT will add and configure the Service as defined by the Reseller onto their Portal. Once this has been completed the OSD will commence and the Reseller can start to resell the Service.

#### **11 Not Used**

## **12 Virtual Server Management**

- 12.1 The Customer may select an individual Virtual Machine and stop, start or restart the Virtual Machine using the Dashboard. The status of the Virtual Machines will be shown on the Dashboard as “running” and “stopped” Virtual Machines. In addition, the Reseller can gain Console access to each of the individual Virtual Machines and/or create a remote management connection to the Virtual Machine in order to carry out administration functions.

## **13 Firewall Management**

- 13.1 In order for the Virtual Machines to be accessible by the Customer over the Internet, the Reseller is responsible for ensuring they set up Firewall access list and port forwarding rules.

## **14 Reporting**

- 14.1 Virtual Machine utilisation reports are provided within the Portal showing the CPU and RAM utilisation of each Virtual Machine.

## **15 Service Management**

### **15.1 Service Desk Support**

- 15.1.1 BT will provide a Service Desk operating twenty four hours per day, seven days per week, including national, public or bank holidays, which will receive and record Service incident reports from the Reseller.

### **15.2 Incident Repair Service**

- 15.2.1 If BT detects, or if the Reseller reports an Incident to the Service Desk, BT will respond to the Incident without undue delay. BT will perform tests to determine the cause of the Incident, and will notify the Reseller by telephone or e-mail.
- 15.2.2 The Service Desk will keep the Reseller updated at regular intervals until the Incident is resolved.
- 15.2.3 BT will raise additional Charges for work performed and money spent to address incidents resulting from Service failures caused by the Reseller or the Customer on a time and material basis at the prevailing Charges.
- 15.2.4 If the Reseller asks BT to perform any additional work this will be subject to prior written agreement between the Parties and additional Charges will apply.

## **16 Planned Maintenance**

- 16.1 The Reseller acknowledges and accepts that occasionally BT may have to carry out routine or emergency maintenance, updates and other procedures for reasons of health, safety, security or otherwise to protect the Service, and which may cause a disruption to the Service (“Planned Maintenance”). BT will provide the Reseller with as much prior notice as practicable with respect to Planned Maintenance.

## **17 Service Updates**

- 17.1 BT may make updates to the Service from time to time provided that such updates do not materially decrease or impair performance of the Service.

## **18 Security**

- 18.1 The Reseller is responsible for the security and proper use of all User IDs, Checkwords and passwords. BT reserves the right to suspend access to the Service at any time if BT has reason to believe that there is, or is likely to be, a breach of security or misuse of the Service. BT will notify the Reseller as soon as possible after it has done so.
- 18.2 The Reseller must immediately inform BT if there is any reason to believe that a User ID, password, or Checkword allocated by BT has, or is likely to, become known to someone not authorised to use it or is being, or is likely to be, used in an unauthorised way.
- 18.3 BT reserves the right to require the Reseller to change any or all of the Checkwords or passwords associated with the Service and used by the Reseller in connection with the Service.
- 18.4 The Service is delivered within a secure BT data centre with a security policy for the protection of Site, infrastructure and network. Although BT will use reasonable care and skill in carrying out its obligations under this Agreement in accordance with BT’s security policy, it is not possible to guarantee that all instances of fraud, misuse, unwanted or unauthorised activity or access to the Customer’s Information will be prevented or detected. Whenever BT becomes aware that security has been compromised, BT will take actions in order to limit any further occurrences of fraud, misuse, unwanted or unauthorised activity or access to the Customer’s Information. Nevertheless, BT accepts no liability

for any such incidents, or for any loss or damage suffered by the Reseller or the Customer. The Reseller shall therefore take responsibility for the security of the Reseller Information, Customer Information, Content and application of security policies designed to prevent unwanted or unauthorised activity or access to the Customer's Information.

## **19 BT's use of Service Operational and Reseller Data**

- 19.1 In order for BT to provide and support the Service, BT may use Service Operational Data, (typically name, email address, telephone number and business and/or Site(s) address), of Users within the Reseller's organisation or Customers control in order to:
- 19.1.1 process, track and fulfil Online Orders for the Service;
  - 19.1.2 deliver and commission the Service,
  - 19.1.3 process, track and resolve Incidents with the Service,
  - 19.1.4 administer access to the online portals relating to the Service;
  - 19.1.5 compile, dispatch and manage the payment of invoices relating to the Service;
  - 19.1.6 manage the contract and resolve any disputes relating to it;
  - 19.1.7 respond to general queries relating to the Service;
  - 19.1.8 provide security and technical support.
- 19.2 BT may also send the Reseller additional information concerning the Service, or related services. This information will typically be sent to the Reseller Contact, involved in the procurement or management of the Service.
- 19.3 Any personal Data that may be collected and processed by BT (including payment data) is subject to the BT Privacy Policy set out at <http://www.btplc.com/Privacycentre/index.htm>.
- 19.4 BT will have no access to the Customer Information or Reseller Information stored by the Reseller.
- 19.5 The location and access points of the Customer Information and Reseller Information are defined by the Reseller and as such the Reseller needs to ensure compliance with relevant laws and regulations.
- 19.6 BT will not change the country where the Customer Information or Reseller Information resides without providing notice to the Reseller, unless required to do so in order to comply with applicable laws and regulations.

## **20 The Reseller's Responsibilities**

- 20.1 The Service does not provide the Reseller with any backup software other than that which is provided within the Operating System. If the Reseller has ordered the BT Snap Shot Backup Element from the Catalogue BT will provide this Service Element to allow the Reseller to backup data. However, the data backed up using this Service Element is entirely the Reseller's responsibility and BT does not assume responsibility and/or liability for the quality of such data.
- 20.2 The Reseller acknowledges and agrees that use of Snap Shots does not provide complete data protection. If complete data protection is required, the Reseller acknowledges and agrees that it is the Reseller's responsibility to ensure that it has data replicated or protected through additional means implemented by the Reseller separately from the Service.
- 20.3 The Reseller acknowledges that the Service is provided solely for the Customer's own use including use by Users and the Reseller will not, and will ensure that the Customer will not, assign, resell, reproduce, copy, duplicate, transfer, lease, distribute, display, disclose, trade or otherwise commercially exploit the Service (or any part thereof) for any purpose, or otherwise make the Service available to any third party except Users.
- 20.4 The Reseller is solely responsible for any obligation or liability arising out of transactions of any kind entered into between the Reseller and any third party accessing or relying on the Service, Customer Information, or Third Party Information. BT will not be a party to, or in any way responsible for, any transaction between the Reseller and any third party.
- 20.5 The Reseller is responsible for the creation, design and maintenance of all Reseller Information and Customer Information.
- 20.6 The Reseller will ensure that the Reseller Information, Customer Information and any Third Party Information does not include any information or material, which could be illegal or could lead to a legal dispute.
- 20.7 The Reseller irrevocably and unconditionally agrees to indemnify and keep indemnified and to hold BT, BT Group Companies and their officers, directors and employees harmless against claims, losses, damages, costs, expenses and liability arising from or in connection with:
- 20.7.1 any Reseller Information, Customer Information, Third Party Information or other content or communication sent, provided or stored in connection with the Service;

- 20.7.2 the installation, maintenance or use of any software or other material installed by or on behalf of the Reseller or the Customer;
  - 20.7.3 any injury to persons, or damage to the Site or the BT Equipment used for the provision of this Service or other equipment belonging to BT or a third party which is located on the Site, as a result of action taken by or on behalf of the Reseller or the Customer;
  - 20.7.4 any actions taken by or on behalf of the Reseller or the Customer with respect to the Firewall; or
  - 20.7.5 any breach of confidence or infringement of intellectual property rights.
- 20.8 The Reseller is solely responsible for all aspects of Reseller Information and Customer Information which are not specifically set out in this Schedule as being BT's responsibility.
- 20.9 The Reseller is responsible for making sure that the Customer provides all computer hardware, software and telecommunications equipment and services necessary to access and use the Service, other than as specified as a BT responsibility in this Schedule.
- 20.10 The Reseller will ensure that the Customer warrants that it is the owner of any domain name they use within the Service, or that it is duly authorised by the owner of, any trade mark or name that it wishes to use as its Domain Name and use as part of its URL.
- 20.11 The Reseller will ensure that the Customer does not use a Domain Name or URL that infringes the rights of any person in a corresponding trade mark or trade name or otherwise.
- 20.12 BT reserves the right to require the Reseller to select a replacement Domain Name or URL that the Customer uses and BT may either refuse to provide or may suspend the Service if, in BT's opinion the Domain Name or URL is, or is likely to be, offensive, abusive, defamatory, obscene, illegal or otherwise actionable at law.
- 20.13 The Reseller is responsible for ensuring that the System Administrator will report all service repair incidents using the reporting procedures notified to the Reseller by BT, and will be available for all subsequent Incident management communications.
- 20.14 The Reseller will comply with the provisions of any Software licences provided with or as part of the Service.
- 20.15 The Reseller is responsible for ensuring that the System Administrator will report all service repair incidents using the reporting procedures notified to the Reseller by BT, and will be available for all subsequent Incident management communications.

## **21 BT's Acceptable Use Policy**

- 21.1 The Reseller is solely responsible for all aspects of Reseller Information and Customer Information which are not specifically set out in this Schedule as being BT's responsibility. The Reseller acknowledges that it has read and agrees to be bound by and to ensure that any Customers and Users will comply with this BT Acceptable Use Policy ("AUP") and generally accepted Internet standards.
- 21.2 The Service must not be used:
- 21.2.1 fraudulently or in connection with a criminal offence under the laws of any country where the Service is provided;
  - 21.2.2 to send, receive, upload, download, use or re-use any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights;
  - 21.2.3 in contravention of any instructions that BT has given under the Agreement;
  - 21.2.4 to cause annoyance, inconvenience or needless anxiety;
  - 21.2.5 to send or provide or receive unsolicited advertising or promotional material;
- 21.3 The Reseller will ensure that Customer does not use a Domain Name which infringes the rights of any person in a corresponding trade mark or name.
- 21.4 If the Reseller or anyone else, (with or without the Reseller's knowledge or approval) uses the Service in contravention of the AUP; or uses the Service in any way which, is, or is likely to be, detrimental to the provision of the Service to the Reseller or any other customer and fails to take corrective action within a reasonable period of receiving notice from BT, then BT can treat the contravention as a material breach and as such BT may either suspend the Service or terminate the Service pursuant to the General Terms and Conditions for Resellers. If Service is suspended it will not be restored until the Reseller provides an acceptable assurance that there will be no further contravention.

**22 Charges**

- 22.1 Charges for the Service are set out in the Rate Card.
- 22.2 BT will invoice Charges on or after the dates set out below to the Reseller. The Reseller will receive a file containing billing data so that they can onward bill the Customer.
  - 22.2.1 One-off Charges on the OSD of the relevant Online Order;
  - 22.2.2 Usage or other recurring Charges on the OSD and thereafter monthly in arrears.
- 22.3 Charges for some of the Service are calculated on an hourly basis against the prevailing Utility Rate Card on the Portal. Usage Charges will apply as shown on the Utility Rate Card on the Portal.
- 22.4 Where the Reseller allows its Customers to purchase monthly allowances that can be carried over any termination of the monthly allowance will result in the loss of any accrued or residual allowances.
- 22.5 BT may invoice the Reseller for Charges for investigating Reseller reported Incidents where BT finds no Incident or that the Incident is outside the Service Management Boundary.
- 22.6 BT may at any time review the Charges for the Service and will provide the Reseller with 30 days’ prior written notice of any such change in Charges. If the Reseller objects to the change in Charges it may exercise its termination rights under Clause 23 of this Schedule.
- 22.7 Notwithstanding any other provision in the Agreement, BT may delay or bring forward the sending of invoices to coincide with billing cycles from time to time. The Reseller acknowledges that the first and last invoice in relation to a particular Service may include Charges due for more or less than one complete billing cycle according to when such Service is connected and/or terminated.

**23 Termination of Service**

- 23.1 The following clause will replace and supersede Clause 12.1 of the General Terms and Conditions for Resellers.
- 23.2 The Reseller may terminate Elements from the Service or the entire Service via the Portal at any time, provided that the Reseller agrees:
  - 23.2.1 to pay any outstanding Charges or interest properly due and payable for each Element up to the date of termination; and
  - 23.2.2 that there will be no refund of Charges which have been paid in advance.
- 23.3 BT may terminate this Agreement or the Service at any time by giving at least 90 days’ notice to the Reseller.

**24 Suspension of Service**

- 24.1 BT may suspend Service(s) or terminate this Agreement immediately on notice to the Reseller where the Reseller is in material breach of this Agreement and if the breach is capable of remedy, fails to remedy the breach within a reasonable time of being requested by BT to do so.
- 24.2 Where a Service is suspended because the Reseller is in material breach of this Agreement, the Reseller must pay the Charges for that Service until this Agreement is terminated.

**25 Service Level**

- 25.1 BT aims to provide the Service within an availability target of 99.95%. For the avoidance of doubt the Portal is not included within this availability target.
- 25.2 If BT fails to meet the availability target of 99.95% then the Charges for the affected Service will be credited as follows:

Availability Target	Credit
For every reported instance Incident that BT is below target	1 day’s recurring Charge

- 25.3 The credit will be applied to the monthly Charge for the Service. The credit per reported instance that BT is below target will be capped at a maximum of one Month’s Charges.
- 25.4 Service Credits are the Reseller’s sole right and remedy if BT does not meet the Service Level. Any failure by BT to meet the Service Level specified in this Clause 25 shall not be considered a material breach of the Agreement.

- 25.5 The parties acknowledge that each Service Credit is a genuine pre-estimate of the loss likely to be suffered by the Reseller and not a penalty.
- 25.6 The Service Level is measured as the combined availability of the ordered Elements to deliver Service to the network (Internet or WAN) interface connected to the Service in the BT data centre. Individual or combined Element failures will not constitute an Incident for Service Level calculations unless the Element(s) failure causes a total loss of Service.
- 25.7 Availability of the Service will be measured as a proportion of time in a Month starting from the first day of the relevant Month. Where a failure occurs at the end of a Month then it will be carried forward to the next Month.
- 25.8 The Reseller will report any Incident to BT. The measurement of Service unavailability starts when BT acknowledges the Reseller's Incident report. On confirmation of an Incident BT will start the Incident Repair Service. The period of unavailability will end when BT informs the Reseller that the Service is available, unless the Reseller advises BT that the Service remains unavailable.

**25.9 Service Credit Claims**

- 25.9.1 The Reseller must make claims for Service Credits via their Service Desk under this Clause 25 in writing, within one (1) Month of the end of the Month in respect of which the claim is being made, either:
- 25.9.2 BT will acknowledge the claim and send a response letter to the Reseller. The Reseller must notify BT in writing within one month from the date of BT's response if there is a dispute or query relating to the claim.
- 25.9.3 BT will calculate a credit payment in accordance with the provisions of this Clause 25 which will be paid on the Reseller's next applicable invoice. Such credit will be in full and final settlement of BT's liability for failure to provide or repair Service or for failure to meet the availability or performance targets.

**25.10 Exclusions**

- 25.10.1 The availability Service level shown in this Clause 25 will not apply in respect of all the following:
- (a) Any Failure of Service due to matters beyond BT's reasonable control, or breach of Agreement in accordance with the General Terms and Conditions for Resellers;
  - (b) Any Failure of Service directly or indirectly as a result of BT's suspension of Service under any provision of this Agreement;
  - (c) Any scheduled downtime for Planned Maintenance (including emergency maintenance) or any other purpose agreed between BT and the Reseller;
  - (d) Any delay relating to problems with or failure of the Internet;
  - (e) Any delay directly or indirectly caused by the Reseller;
  - (f) An incident caused by the Reseller's failure to comply with any reasonable instruction from BT;
  - (g) Any fault caused by the Reseller's failure to observe any of its obligations under the Agreement, in particular the Reseller Responsibilities described in Clause 20 of this Schedule;
  - (h) Interference caused by a third party;
  - (i) An incident that is due to incorrect configuration of the Service by the Reseller or any unauthorised activity or access taken by the Reseller;
  - (j) An incident that has not been confirmed by a BT fault reference number;
  - (k) Any outage time as a result of service being suspended in accordance with the General Terms and Conditions for Resellers and Clause 24 of this Schedule;
  - (l) A fault that is found to have the same root cause as a previous fault shall be classed as the same fault;
  - (m) Any incident that is due to Incorrect information provided by, or on behalf of, the Reseller;
  - (n) Any incident that is due to Applications or data provided by, or on behalf of, the Reseller;
  - (o) Any incident that is due to management of the Service by, or on behalf of, the Reseller;
  - (p) Any reported Incident where BT can find no fault.