

BT Products and Services Agreement

BT Reference No. []

This Products and Services Agreement is entered into on the [PLEASE INSERT DATE] _____ day of [PLEASE INSERT MONTH AND YEAR], by and between BT and the Customer, both of whose details are set out in the table below, and consists of the attached General Terms and Conditions together with the Schedules (if any) appended to them or any which are subsequently executed by the parties and any and all Order for Products and Services entered into by the parties or their Affiliates (collectively, the “**Agreement**”).

CUSTOMER:	BT:
	BT Japan Corporation
Registered Address:	Registered Address:
Registered Company Number: Country of Registration:	ARK Mori Building, 24th Floor 12-32 Akasaka 1-Chome Minato-Ku Tokyo 107 Japan Country of Registration: Japan
Customer Contact	BT Contact
Name: Title: Telephone: Fax: Email:	Name: Title: Telephone: Fax: Email:

(Authorised Signature)	(Authorised Signature)
_____	_____
(Typed or Printed Name)	(Typed or Printed Name)
_____	_____
(Title)	(Title)
_____	_____
(Date)	(Date)
_____	_____

General Terms and Conditions

1A 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.

"BT" means, with respect to the General Terms and Conditions, the BT entity that signs the cover sheet.

"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 by the following Business Day.

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

"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 a Party that are disclosed in confidence by the 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 the Customer entity that signs the cover sheet.

"Customer Data" means all data, including personal data or personal information, processed or handled on behalf of the Customer by BT under this Agreement.

"Customer Equipment" means equipment (including software), other than BT Equipment, used by the Customer in connection with a Service.

"General Terms and Conditions" means these terms and conditions.

"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 Customer by BT.

"Order" means an order signed by both Parties under this Agreement.

"Party" means either BT or the Customer and **"Parties"** means both BT and the Customer.

"Products" means equipment and/or Software sold to the Customer as set out in an Order.

"Regulated Service" shall mean, 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.

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

"Service" means each service described in any Schedule and/or Service Annex and/or applicable Order(s).

"Service Annex" means any annexure to any Schedule.

"Site" means the place specified in an Order or Schedule at which BT provides a Product or Service.

"Software" means the software to be licensed to the Customer as specified in an Order or Schedule (as applicable) together with any embedded software and necessary for the use of, the BT Equipment.

"User" means any end-user who is allowed 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.

1 Order of Precedence

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

- (a) Any provisions (including any tariff(s)) that apply to Regulated Services set out in a Schedule;
- (b) Service Annex
- (c) Schedules;
- (d) These General Terms and Conditions;

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(e) Orders.

2 Effective Date

This Agreement is effective when executed by authorised representatives of both Parties and shall continue until terminated in accordance with its terms.

3 BT's Obligations

3.1 BT shall provide the Products and Services to the Customer in accordance with the Agreement. The duration of each Service will be set out in the applicable Schedule or Order.

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

3.3 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.

3.4 BT will use reasonable care in the removal of any BT Equipment.

3.5 Provided that BT gives the Customer as much notice as reasonably practicable, BT may occasionally:

- (a) 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;
- (b) 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
- (c) provide an alternative, equivalent service, where it becomes necessary to do so.

4 The Customer's Obligations

4.1 Without prejudice to Clause 9.1, where the Customer is responsible for any preparatory activities required by BT in order to supply the Products and/or Services, the Customer shall ensure that all such preparatory work, information, items or consents are completed, made available or obtained (as relevant) at its own cost in sufficient time to allow BT to complete its work and deliver the relevant Products and/or Services. If the Customer 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 Customer.

4.2 Subject to Clause 14, If the Customer delays or fails to perform its obligations under Clauses 4.1 or 9.1, then at BT's option, BT may: (i) change the delivery date or cancel the relevant Order(s) and charge the Customer for any applicable termination Charges; or (ii) invoice the Customer for any reasonable Charges incurred for any work that is performed by BT on behalf of the Customer

and that is directly attributable to the Customer'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 Customer in advance of its intention to invoke this clause.

4.3 If BT must change a Product or Service due to incomplete or inaccurate information provided by the Customer, additional one-time and/or recurring Charges may be applied, within BT's reasonable discretion.

4.4 The Customer will comply with BT's reasonable requests that are necessary for reasons of health and safety, environment, sustainability, security or the quality and/or performance of any Products and/or Services provided to the Customer. The Customer 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 Orders

5.1 Unless otherwise stated in a Schedule or Order, the Customer may cancel the delivery of Products or provision of Services before the relevant OSD, but will be responsible for any cancellation charges as 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.

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

6 Charges

6.1 The Charges for the Products and Services are set out in the applicable Schedule or Order.

6.2 The Customer 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 Customer against any amounts owed by the Customer 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 fourteen (14) percentage points, compounded daily, or the maximum rate permitted by law, whichever is less.

6.3 Unless provided otherwise in a Schedule or Order, BT will invoice and the Customer will pay all Charges in Japanese Yen. 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 Customer 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

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the Customer, 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 Products or Services supplied under this Agreement, except to the extent a valid exemption certificate is provided by the Customer to BT prior to the delivery of any Products or Services.

6.4 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 Customer undertakes to pay to BT and/or 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 Customer 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, or otherwise include such amounts on its 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 Customer will provide BT free of charge with appropriate certificate(s) from the relevant authorities confirming the amount of the taxes, deduction, levies or similar payments withheld by the Customer.

6.5 The Customer 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 Customer must pay all undisputed amounts in accordance with Clause 6.2 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 the resolved amount, if any, 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.

6.6 Should the Customer 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 they 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 Customer agrees to bear those additional costs.

6.7 Without prejudice to any other provision of this Agreement, BT reserves the right to treat failure to pay by the Customer as a material breach of this Agreement. If the Customer commits such material breach, BT's

rights are set out in Clause 12. Additionally, BT reserves the right to:

- (a) 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;
- (b) in accordance with Clause 12.7, terminate this Agreement without liability to the Customer and without prejudice to BT's rights to be paid sums due; and/or
- (c) recover any BT Equipment; where such recovery takes place, the Customer shall pay to BT such recovery Charges as may be specified in the applicable Schedule or as otherwise notified by BT to the Customer.

6.8 Unless otherwise agreed in writing, a failure by BT to include the Customer references on the invoice shall not constitute a valid reason by the Customer to withhold payment due under the invoice. The Customer shall make payment in accordance with Clause 6.2 and the instructions set out on the invoice, and where the Customer makes an aggregated payment in respect of more than one invoice, the Customer shall submit a remittance slip to show amounts paid in relation to each individual invoice.

7 Use of the Service

7.1 Except as set out in Clause 17, the obligations of BT under this Agreement are solely to the Customer and not to any third party. The Customer may use any Service for its own business purposes, provided that the Customer: (a) complies with, and ensures that any User complies with the terms of any applicable legislation and any licence applicable to the Customer in any country where the Service is provided; (b) shall remain responsible for: (i) access and use of the Service by Users; (ii) all Charges incurred in connection with the Services; and (iii) compliance with all terms and conditions of this Agreement by it and Users; (c) ensures that its list of Users is kept current, and that the Customer terminates access immediately for anyone who is no longer a User; and (d) complies with the provisions of any Software licences provided with or as part of the Service.

7.2 The Customer shall keep harmless, defend and indemnify BT, its Affiliates and the BT Parties against any claims, losses, costs and liabilities arising from any claims by any third party, including Users, in connection with the use or misuse of the Product or Services in breach of Clause 7.1.

8 Connection of Customer Equipment to the Products and/or Services

8.1 The Customer 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 Customer shall ensure that any the Customer Equipment connected to or used with the Product and/or Service is connected and used in accordance with any instructions and safety

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and security procedures applicable to the use of that Customer Equipment.

8.2 The Customer 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 Customer may rely upon BT's representations as to such compatibility and compliance, as of the date of provision.

9 BT Equipment and Products

9.1 If BT is required to install any BT Equipment or Products at a Site, the Customer will, prior to installation and at its own expense:

- (a) 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 Customer's Site;
- (b) 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;
- (c) provide a suitable and safe working environment, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards;
- (d) provide any electricity and telecommunication connection points required by BT;
- (e) provide any openings in buildings required to connect such BT Equipment or Products to appropriate telecommunications facilities;
- (f) provide internal cabling between the BT Equipment and any Customer Equipment, as appropriate;
- (g) 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
- (h) 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 4.2 shall apply.

9.2 Risk of loss of the BT Equipment and Products will pass to the Customer upon delivery, whether or not the BT Equipment or Products have been installed. Title to Products sold under this Agreement shall pass to the Customer upon payment of the applicable Charges. In relation to a cross-country border supply of Products, title will pass to the Customer 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.

9.3 The Customer is responsible for the BT Equipment and must not move, add to, modify or in any way interfere with the BT Equipment, nor allow anyone else (other than someone authorised by BT) to do so. The Customer 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.

9.4 Upon termination of this Agreement, if the Customer 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.

9.5 In the event that the Customer fails to notify BT in accordance with Clause 9.4 and disposes of the Products itself, the Customer 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 Customer's breach of that Clause.

9.6 The Parties agree that the UN Convention on the Sales of Goods shall not apply to this Agreement.

10 Confidentiality

10.1 BT and the Customer shall keep in confidence all Confidential Information obtained under or in connection with this Agreement and will not disclose it to any party other than in confidence to (a) their employees or employees of their Affiliates; or (b) their professional advisors; or (c) in the case of BT, employees of their 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 Service and/or Product.

10.2 This Clause 10 shall not apply to information that is: (a) in the public domain other than in breach of this Agreement; (b) in the possession of the receiving Party before such divulgence has taken place; (c) obtained from a third party who is free to divulge the same; or (d) developed by the receiving party independently of and without access to Confidential Information obtained under this Agreement.

10.3 If either BT or the Customer 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 (a) satisfied itself that the demand is lawful; (b) where possible, given the other party the maximum written notice permissible under the demand in which to make representations; and (c) marked the required information as the Confidential Information of the other party.

10.4 The receiving Party must, for a period of three (3) years following the termination of this Agreement, comply with this Clause 10 with respect to Confidential Information it receives under this Agreement.

10.5 The receiving Party shall return or destroy any Confidential Information upon the request of the disclosing Party.

10.6 The Parties acknowledge that a violation of this Clause 10 may cause irreparable harm to the disclosing Party, for which monetary damages would be

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inadequate, and injunctive relief may be sought for a breach of this Clause 10.

11 Intellectual Property Rights

11.1 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.

11.2 Without prejudice to any open source software licence terms, which terms shall apply independent of this licence grant,

(a) BT grants the Customer 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 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 usage of the Products or Services; and

(b) The Customer undertakes not to 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.

11.3 The term of any licence granted by BT under Clause 11.2 is coterminous with the term for the Service with which the Software is associated or in relation to which any Product is supplied.

11.4 Excluding any open source Software that may be made available by BT to the Customer in connection with the delivery of the Services, BT will indemnify the Customer against all third party claims and proceedings arising from infringement of any third party's IPR by the Customer's receipt of any Services only to the extent that the Customer promptly notifies BT in writing of any such claim, that BT is given immediate and complete control of any such claim, that the Customer does not make any public statements related to the claim or in any way prejudice BT's defence of such claim, and that the Customer 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.

11.5 The indemnity set out in Clause 11.4 shall not apply to claims or proceedings arising from: (a) 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; (b) any unauthorised alteration or modification of the Service, Product or any Software; (c) Content, designs or specifications supplied by or on behalf of The Customer; or (d) use of the Service, any Product or any Software other than in accordance with this Agreement.

11.6 The Customer will indemnify and hold BT harmless against all such claims, losses, costs and liabilities arising from the matters set out in Clause 11.5 (a), (b), (c) and (d) above that are attributable to the Customer or its agents or Users and will, immediately upon

notification of any such claim by BT, cease any activity that gave rise to the claim.

11.7 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 11.4, BT, at its option and expense, may: (a) secure for the Customer 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.

11.8 The indemnity in Clause 11.4 sets out the Customer's sole and exclusive remedy for claims of infringement of intellectual property rights.

12 Termination of Service and the Agreement

12.1 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 at any time by giving ninety (90) days' written notice to the other; provided, however, that where the Customer exercises its rights under this Clause 12.1, the Customer shall be liable for payment to BT of any outstanding Charges by way of compensation and any applicable termination compensation as set out in the applicable Schedule or Order.

12.2 Termination of any individual Service or Order will not affect the Parties' rights and obligations with regard to any other Service or Order.

12.3 Either Party may immediately by notice terminate any affected Order(s) if one of the following events occurs: (a) the other Party commits a material breach and has failed to rectify the breach within thirty (30) days after the terminating Party has given its notice of default; (b) an event as set out in Clause 14 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 thirty (30) days after the date on which it should have been performed; (c) 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;

(d) any of the authorisations or regulatory formalities required was or is not obtained, is withdrawn or is no longer valid for whatever reason; or

12.4 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

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equivalent of any such event in the jurisdiction of such other Party).

12.5 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.

12.6 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 Customer shall cooperate fully with BT to recover any BT Equipment.

12.7 In the event of termination of this Agreement or any Order by BT for cause, BT shall be entitled to all termination Charges from the Customer as if the Customer had terminated for convenience at that point in time, as set out in the applicable Schedule(s) or Order(s).

13 Limitation of Liability

13.1 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.

13.2 Subject to Clause 13.1, 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, contracts, anticipated savings, reputation, opportunity, goodwill (including pecuniary losses arising from loss of goodwill), or revenue; (b) any loss incurred as a result of business interruption, expenditure of time by personnel or wasted expenditure; (c) any loss or corruption or destruction of data; (d) any special, indirect or consequential loss or damage whatsoever; and/or (e) any loss arising from the transmission of viruses, in all cases set out in this Clause 13.2, whether or not that Party was advised in advance of the possibility of such loss or damage.

13.3 Subject to any other limitations of liability that are set out in the relevant Schedule, if a Party is in breach of any obligations hereunder, or if any other liability however arising, whether deliberate or unintentional (including liability for negligence or breach of statutory duty) arises in connection with an Order or with these General Terms and Conditions, then, subject to Clauses 13.1 and 13.2 of this Agreement, such Party's liability to the other Party shall be limited to JPY 10,000,000 for any one event or series of connected events and to JPY 20,000,000 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.

13.4 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 in the event of any unauthorized access in spite of BT's reasonable precautions.

14 Force Majeure: Matters Beyond the Reasonable Control of Either Party

14.1 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.

14.2 BT will have no liability to the Customer for failure to supply the Service or a Product if (a) 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 (b) BT is prevented by legal or regulatory restrictions from supplying the Service or a Product.

15 Dispute Resolution

The Parties will use all reasonable efforts to amicably resolve any dispute. The Parties will, at a minimum, use the following the 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 thirty (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

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imminent harm to that Party exists and no appropriate remedy for such harm exists under the Agreement.

16 Notices

16.1 Except for notices given in accordance with Clause 3.5, all notices given under this Agreement shall be in writing, in the 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: (a) the other Party to an Order at the address; fax number or email address set out on the Order; (b) the other Party to these General Terms and Conditions at the address; fax number or email address set out on the cover page; or (c) either the Party or any other addressee at any other address that a Party has given to the other for that purpose.

16.2 Notices given under this Agreement are deemed to be given by the sender and received by the addressee: (a) if sent by prepaid post, three (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 pm 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.

17 Assignment/Subcontracting

17.1 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.

17.2 This Agreement will be binding on, and inure to the benefit of, the Parties and their successors and permitted assigns.

17.3 BT may subcontract the performance of any of its obligations under this Agreement, but without relieving BT from any of its obligations to the Customer. The Customer 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.

17.4 The Parties acknowledge and agree that the BT Affiliates and Customer Affiliates may agree to 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 17.1, 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.

17.5 In respect of the provision of Service in the United States of America the following additional provisions will apply: (a) the Customer agrees that on signature of this Agreement the part of this Agreement relating to Service in the United States of America is assigned to BT Americas Inc; and (b) the Customer acknowledges that any claims or disputes relating to this Agreement, including any part of the Service assigned must be made against BT.

18 Governing Law and Jurisdiction

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 Japan. The Tokyo District Court and its appellate courts shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement to which the Parties irrevocably submit.

19 Miscellaneous Provisions

19.1 **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.

19.2 **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.

19.3 Data:

19.3.1 The Customer acknowledges that for BT to perform the Services and/or provide the Products Customer Data will reside on internal BT systems and databases in a variety of countries worldwide.

19.3.2 The Parties agree that Customer Data: (i) hosted on the Customer's behalf will be held at a location set out in the Service Schedule and/or Service Annex; (ii) may be held on systems and databases used by BT help desks, service desks and/or network management centres used for providing the Service and the Products and/or used for billing, sales, technical, commercial and/or procurement purposes. Such Customer data may be located, hosted or managed and access worldwide; (iii) may be transferred by BT to a subcontractor or supplier to the extent necessary to allow that subcontractor or supplier to perform its obligations in respect of the Service and/or the Products. BT may transmit such Customer Data to the country or countries where the subcontractor or supplier will perform the services.

19.3.3 Terms used in this provision are as defined in the Personal Information Protection Law (Japan) [2005] and subsequent enactments. At all times both Parties will

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comply with their respective obligations under applicable data protection and privacy legislation including the Personal Information Protection Law.

19.3.4 The Customer shall provide sufficient notice to, and obtain sufficient consent and authorisation, under applicable laws, from the person on whom it holds personal information to permit the handling of the personal information by the Customer and BT, their respective Affiliates and BT Parties as contemplated by this Agreement. The Customer agrees that BT will not be liable for any complaint, claim or action brought by a person arising from any action or omission by BT to the extent that such action or omission resulted from any failure by the Customer to comply with this Clause 19.3 and the Customer shall indemnify, hold harmless and defend BT from and against any claims or actions brought against BT arising out of such failure.

19.4 Legal and Regulatory Compliance:

19.4.1 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.

19.5 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.

19.6 **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.

19.7 **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 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 Customer 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 Customer 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.

19.8 **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 Customer on any alternative Service or on any appropriate migration away from that Regulated Service so as to minimize any disruption to the Customer.

19.9 **Where BT acts as Customer's Agent for Third Party Service:** It may be necessary in certain jurisdictions, including for regulatory, licensing or tax reasons, for the Customer to obtain the Service, or part of the Service, directly from a third party service provider under a separate agreement. Where BT manages such

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agreement on behalf of the Customer, it will only do so as an agent of the Customer whereby BT's responsibility will be limited to performance of the specific obligations as set out in the applicable Schedule, and BT will not assume any liability under such agreement.

19.10 Capacity: Each Party warrants that it has the necessary rights, licences and permissions to enter into and perform its obligations under this Agreement.

19.11 Inducement: The Parties acknowledge and agree that they have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into the agreement, except that nothing in this clause shall limit or exclude any liability for fraud.

19.12 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.

19.13 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.

19.14 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.

19.15 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. This Agreement may not be amended, modified or supplemented except by a document in writing signed by authorised representatives of both Parties executing these General Terms and Conditions. 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.

