

BT Product and Services Agreement – BT Private Compute on-premises and BT Private Compute orchestrate

BT PSA Reference No. **_****_****

The following applies where the Customer is ordering BT Private Compute on-premises;

1 Definitions

“Compute Management System” or “CMS” means the portal, application catalogue and the automation/orchestration system which allows the Customer to place orders.

“Delivery Date” means the Working Day upon which BT will deliver or attempt to deliver the Product or the Working Day BT makes the Product available for collection by the Customer.

“Maintenance Agreement” means a separate agreement with the Product Manufacturer for the maintenance of the Product, details of which are available at: http://www.globalservices.bt.com/uk/en/footer_links/end-user-license-agreements-and-maintenance-agreements

“Manufacturer’s Warranty” means the warranty granted by the Product Manufacturer details of which can be found at: http://www.globalservices.bt.com/uk/en/footer_links/end-user-license-agreements-and-maintenance-agreements

“Online Order” means a Customer request for the Product. The Online Order facility is only available online via the CMS, in accordance with the process outlined in clause 3 of this Schedule.

“Product” means the networking, compute and storage infrastructure and software ordered by the Customer and set out in the Online order

“Product Manufacturer” means the manufacturer of the Product.

“Terms of Use” means the terms and conditions applicable to the use of the CMS.

“Working Day” means any working day 09:00 to 17:30 local time where the Product is provided excluding bank and public holidays.

2 Summary

2.1 BT will sell Product to the Customer. Staging, configuration, installation and/or maintenance of the Product is subject to a separate contract.

3 Order Process

3.1 The Customer is responsible for opening an account with BT to gain access to the CMS to enable online ordering. The Customer will accept the Terms of Use upon registration.

3.2 The CMS is an online system which allows a Customer to place and amend an Online Order and view the status of existing Online Orders.

3.3 Upon acceptance of the Online Order by BT, BT will provide the Product as set out in the Online Order.

4 Supply of Product

4.1 Unless otherwise agreed in writing, BT will deliver the Product to the Site set out in the Online Order. Alternatively the Customer may collect the Product by arrangement with BT.

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- 4.2 BT will use its reasonable endeavours to deliver the Product or where applicable make the Product available for collection by the date(s) requested by the Customer but all dates are estimates and BT has no liability if it does not meet the date(s). BT may in its sole discretion make delivery in multiple consignments.
- 4.3 The Product will be delivered in the Product Manufacturer's original wrapping to the Customer at the Site stated in the Online Order. The Customer will on the day of delivery inform BT if:
- 4.3.1 the quantity of packages delivered is different from the quantity shown on the delivery note; and/or
- 4.3.2 there is any damage to the packages or boxes.
- 4.4 The Customer will inform BT in writing of any damage to any of the Product or any other discrepancy in the Product delivered or collected, other than damage caused by any act or omission by the Customer, within 5 (five) Working Days from the date of delivery or collection. Notification will include model and part numbers of affected Product and identity of any software application.
- 4.5 The Customer will follow BT's instructions when returning the Product about which it has informed BT as set out in clause 4.4 of this Schedule. The Customer will ensure that the Product, including any manuals and other associated documentation, is returned in "as new" condition, in its original packaging and that the seal is not broken for any Software, unless the Software is faulty. BT may in its sole discretion either reject any returns that are not made in accordance with its instructions or that are incomplete, or charge a restocking fee.
- 4.6 BT's entire liability for incomplete or damaged Product is to replace the Product at its own expense. BT will have no further liability to the Customer where the Customer has not informed BT as set out in clause 4.4 of this Schedule.
- 4.7 If the Customer delays delivery or collection of the Product, BT may in its sole discretion claim a reasonable extension to any date agreed under clause 4.1 of this Schedule.

5 Acceptance of the Product

- 5.1 Acceptance of the Product will take place on signature by the Customer:
- 5.1.1 for delivery at the Site; or
- 5.1.2 for collection by the Customer.

6 Risk and Ownership

- 6.1 Risk will pass to the Customer upon delivery or collection by the Customer and title in the Product excluding the licensed Software, will pass to the Customer in accordance with Clause 9.2 of the General Terms and Conditions.
- 6.2 Until BT receives payment in full:
- 6.2.1 the Customer must record BT's ownership and/or interest in the Product in Customer's books of record ; and
- 6.2.2 if there is a threatened seizure of the Product, or anything listed in clause 12.4 of the General Terms and Conditions applies to the Customer, the Customer must immediately:

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6.2.2.1 notify BT so that BT may take action to repossess the Product; and

6.2.2.2 notify interested third parties of BT's ownership of the Product.

6.3 After payment in full, and where relevant, the Customer will be granted a non-exclusive, non-transferable license from the Product Manufacturer to use the Software.

7 Product Warranty

7.1 If during the period of any relevant Manufacturer's Warranty BT is notified of a fault in the Product which is due to faulty design, manufacture or materials, or the negligence of BT, BT will by arrangement with the Product Manufacturer and the Customer, replace or (at its option) repair the faulty part free of charge provided that:

7.1.1 the Product has been properly kept, used and maintained in accordance with the Product Manufacturer's or BT's instructions, if any, and has not been modified except with BT's consent;

7.1.2 the fault is not due to accidental or wilful damage (including lightning and electrical damage); interference with or maintenance by anyone except BT, BT's agents or subcontractors;

7.1.3 the fault is not due to faulty design by the Customer if the Product has been manufactured to the Customer's design.

7.2 This warranty does not cover fair wear and tear.

7.3 Where the Product is installed by the Customer, the Customer must return the faulty Product to BT, unless BT specifies otherwise.

7.4 BT does not warrant that the embedded software supplied with the Product will be free of all faults or that its use will be uninterrupted. BT will remedy any defects which significantly impair performance within a reasonable time.

7.5 BT may make minor alterations to the specification of Product which does not affect the Product's performance.

7.6 Any warranty, statement or promise other than the Manufacturer's Warranty regarding the Product is only valid if given in writing by BT.

7.7 The date upon which the Manufacturer's Warranty commences is set out in the Manufacturer's Warranty.

8 Customer Responsibilities

8.1 The Customer is responsible for maintenance of the Product. The Customer will enter into a Maintenance Agreement within 30 days of delivery or collection of the Product. If the Customer has not entered into a Maintenance Agreement and/or does not give BT details of the Maintenance Agreement, then the Customer may be liable for additional fees chargeable to BT by the Product Manufacturer.

8.2 Where the Customer is importer of record for the Product, the Customer is responsible for and must comply with destination country laws and regulations, including any trade and legal restrictions applicable to the Product.

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9 Charges and Payment Terms

- 9.1 BT will send invoices to the address advised by the Customer to BT.
- 9.2 Unless otherwise agreed in writing BT will invoice the Customer for the full value of the Product:
- 9.2.1 upon delivery; or
 - 9.2.2 upon collection by the Customer.
- 9.3 The Customer is liable for any additional charges for delivery outside of a Working Day.
- 9.4 If BT is unable to deliver the Product on the Delivery Date because the Customer delays delivery or due to an act or omission of the Customer or the Customer does not collect the Product and the delay continues for more than 10 Working Days from the Delivery Date, BT is entitled to send the invoice for the charges attributable to the Product. In addition BT may in its sole discretion charge a reasonable amount as a storage charge for holding the Product as a result of the Customer's delay.

10 Cancellation and Termination

- 10.1 Prior to the delivery or self-collection by the Customer of the Product, BT may in its sole discretion, end the Online Order at any time with seven days written notice to the Customer.
- 10.2 In addition to the Customer's rights under Clauses 12.3 and 12.4 of the General Terms & Conditions, the Customer may cancel an Online Order prior to delivery or collection and in the event of such cancellation will pay BT, by way of compensation, a cancellation charge which may include:
- 10.2.1 BT's charges for order processing and management; and/or,
 - 10.2.2 any restocking charge incurred by BT for the return of the Product; and/or
 - 10.2.3 any amounts paid or payable by BT to any third party supplier in anticipation of the supply of the Product.
- BT will keep the charges to a minimum.
- 10.3 NOT USED
- 10.4 BT will not accept cancellation from the Customer for Product that has been delivered or is in the process of being shipped. In such event the Customer is liable for the full charge(s) specified on the Online Order for the Product.

11 Intellectual Property in the Product

- 11.1 In addition to the provisions of the General Terms and Conditions:
- 11.1.1 where the Software or any part of it, including without limitation Software that is pre-loaded or embedded in the Product, is licensed by a third party who requires the Customer to accept their terms of use, the Customer's use of the Software and any upgrade of it is subject to the Customer's acceptance of those terms of use, whether or not in the form of a separate end user licence agreement, and the Customer will comply with those terms. Where BT installs the Product and where the third party's terms of use are presented in the form of a 'click to accept' function or equivalent the Customer expressly authorises

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BT to bind the Customer to the third party's terms of use. Third party terms of use are located at: http://www.globalservices.bt.com/uk/en/footer_links/end-user-license-agreements-and-maintenance-agreements or may be available upon application in writing to BT.

11.1.2 the Customer will keep the embedded software, any operating manuals and any other documentation provided confidential, and will not disclose them other than to its employees, agents or contractors who need to use them to operate the Product. The Customer will ensure that such employees, agents and contractors abide by the provisions of this clause 11.1.2.

11.1.3 The Customer will contact the Product Manufacturer directly and promptly (and shall notify BT, copying any correspondence to BT), in the event of any breach or potential breach of the Software Licence.

12 Waste Electrical or Electronic Equipment (WEEE)

12.1 The Customer agrees to comply with any law or regulation pertaining to waste and / or recycling of electronic equipment in the territory where the Product is supplied.

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The following applies where the Customer is ordering BT Private Compute orchestrate:

1 Definitions

The following definitions apply in addition to those in the General Terms and Conditions, the BT Cloud Compute terms and conditions and the BT Private Compute terms and conditions:

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

“BT Cloud Compute” means the BT Cloud based service providing the Customer with a self-service capability to browse, select, provision, and deploy virtual infrastructure including Virtual Machines, network, Storage and security.

“BT Hardware” means the equipment used by BT to provide the BT Private Compute service, as described in the BT Private Compute Service Annex, and which is BT Equipment.

“BT Private Compute” means the BT service providing the Customer with an IT infrastructure of either dedicated or virtualised servers (on dedicated servers) with a standard operating system at a BT data centre on which it can run its applications.

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

“Cloud Management System (CMS)” means the Portal and the automation / orchestration system that manages and drives the Service.

“Customer Availability Zone” means the configuration of Customer hardware and software to create a platform where the Virtual Machines are deployed created using the Customer Infrastructure and/or Product purchased under BT Private Compute on-premises, BT Hardware or any other Customer Equipment BT agrees may be used with the Service.

“Customer VPN” means a Virtual Private Network which may be required between BT and the Customer’s Infrastructure. This is not provided by BT as part of this Service.

“Dashboard” means an area of the CMS that the Customer can access to see the overall status of the Service.

“Elements” means the component parts of the Service that can be seen in the Catalogue and configured together to create an Order for the Service.

“Infrastructure” means the Customer VPN, Product purchased under BT Private Compute on-premises, and any other Customer Equipment that BT has agreed may be used with the Service excluding any BT Equipment.

“Order” means an Online Order or a Paper Order.

“Orchestration” means the automated processes used to coordinate and manage the creation of the Customer’s virtualised infrastructure within their Customer Availability Zone.

“Paper Order” means an order for the Service which by agreement with BT is not placed via the CMS.

“Product Manufacturer” means the manufacturer of the Product or Customer Equipment.

“Service” has the meaning given in clause 2.1.

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“**Virtual Machine “VM”** means a self-contained operating system environment(s) that behaves as if it were a separate server.

2 Service Summary

- 2.1 BT Private Compute orchestrate is a cloud based orchestration service providing the Customer with a self-service capability to browse, select, provision, and deploy virtual infrastructure including Virtual Machines, network, Storage and security within their existing Infrastructure (“Service”).
- 2.2 The Service is available with and dependent on BT Cloud Compute being Ordered and the different types of equipment set out in Clause 2.3.
- 2.3 The Service is available with:
- (a) BT Hardware made available to the Customer under BT Private Compute; or
 - (b) Customer Equipment including Product purchased under BT Cloud Compute on-premises.
- 2.4 The terms and conditions set out in this Schedule apply in addition to the terms and conditions set out below:
- (a) the terms and conditions applicable to BT Cloud Compute; and
 - (b) where BT Hardware is to be used with the Service, the terms and conditions applicable to BT Private Compute.

3 Service Components

- 3.1 The Service comprises access to the CMS (including the Catalogue to select the Elements of the virtualised infrastructure) and Availability Zones in which to deploy the Virtual Machines. Use of the CMS is subject to Terms of Use which the Customer must accept upon registration.
- 3.2 The Availability Zone and Customer Availability Zone is the platform where the Customer’s Order is deployed. Once the Customer selects the Elements they are automatically provisioned within the Customer’s chosen Availability Zone or Customer Availability Zone. BT will provide a number of BT Availability Zones around the world and connectivity to a Customer Availability Zone.
- 3.3 BT will not charge for Virtual Machines and Elements ordered for deployment within the Customer Availability Zone as part of this Service but the Customer may be charged under the Customer’s BT Cloud Compute service for Virtual Machines and Elements not deployed within a Customer Availability Zone.

4 Service Elements

4.1 My Templates

If the Customer wants to make a “My Template” available to all Users the Customer will contact the Service Desk to request this.

5 Commencement

NOT USED

- 5.2 The Service will commence on the Operational Service Date.

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6 Technical Requirements

- 6.1 The Customer is required to have Internet access, all computer hardware, software and telecommunications equipment and services necessary to access and use the Service.
- 6.2 The Customer will provide a suitable Infrastructure that it will build in accordance with the BT design parameters agreed with BT.

7 BT Service Management Boundary (SMB)

- 7.1 BT's responsibility for the Service is for the management of the Elements. The Operating System is outside the SMB unless specifically described within the Catalogue.
- 7.2 BT will have no responsibility under this Schedule for the Service (including any responsibility to meet any Service Levels) outside the Service Management Boundary or for the Infrastructure or for BT Hardware.
- 7.3 The Service does not include the delivery or installation of Customer Equipment (including Product obtained under BT Private Compute on-premises) or BT Equipment.

8 Ordering Process

- 8.1 The Customer will order the Service through an Order.
- 8.2 On receipt of an Order BT will configure the Service as defined by the Customer provided that the Customer's Infrastructure is available. Once the Order is configured the OSD occurs and the Customer can start using the Service.

9 In Life Management

- 9.1 The CMS operates a Dashboard that allows the Customer to see how many Virtual Machines are running, and Storage and networks provisioned across both the Availability Zones and Customer Availability Zone.

10. Incident Repair Service

- 10.1 The Incident Repair Service detailed in the BT Cloud Compute Service Schedule applies.

11 The Customer's Responsibilities

- 11.1 The Customer is responsible for:
 - (a) providing the Infrastructure to provide connectivity between the Infrastructure and the CMS via the Customer VPN or an appropriate MPLS connection to support a Customer Availability Zone;
 - (b) maintaining the Infrastructure in accordance with the Product Manufacturer instructions, Customer VPN supplier's instructions or any instructions issued by BT;
 - (c) capacity planning, monitoring and management for which BT will have no responsibility;

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- (d) obtaining access to BT Hardware under BT Private Compute where the Service is to be used with BT Hardware and complying with the terms and conditions applicable to BT Private Compute.

12 Charges

12.1 Charges for the Service are set out in the CMS or the Paper Order.

12.2 BT will invoice Charges on or after the dates set out below:

- (a) one-off Charges on the OSD of the relevant Order;
- (b) annual charge on the OSD of the relevant Order and thereafter on the anniversary of the OSD;

12.3 Usage or other recurring Charges based upon the number of CPUs that form the Infrastructure on the OSD and thereafter monthly in advance.

13 Termination of Service

13.1 Where the Customer terminates an Order between the placing of the Order and the OSD the Customer will pay BT by way of compensation a cancellation charge which may include BT's charges for order processing and management.

13.2 The Customer acknowledges and agrees that:

- (a) termination of the BT Cloud Compute Service for whatever reason will automatically terminate BT Private Compute orchestrate; and
- (b) where the Customer is including BT Equipment within the Service the availability of which is subject to the Customer having in place the BT Private Compute service, the Service will no longer be available to the Customer.

13.3 Upon termination of the Service the Customer will pay BT any Charges already incurred under the Agreement including any Charges already billed.

14 Service Level and Service Credit Claims

14.1 Clauses 26.1 to 26.9 of the BT Cloud Compute Service Schedule apply to the Service. For the avoidance of doubt the Infrastructure supporting the Customer Availability Zone is not included within the availability target set out in Clause 26 of the BT Cloud Compute Service.

14.2 Exclusions

14.2.1 In addition to the exclusions set out in the BT Cloud Compute Service Schedule, the availability Service Level set out in the BT Cloud Compute Service Schedule does not apply to:

- (a) any incident caused by the Customer's failure to:
 - (i) maintain the Infrastructure in accordance with Clause 11.1 if this Schedule; or
 - (ii) capacity plan, monitor and manage;
- (b) an incident associated with the BT Hardware in which case the Service Level set out in the BT Private Compute terms and conditions will apply.