



Active Intelligence General Terms

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

Active Intelligence Database: the insights database created by BT concerning its mobile network and mobile user activities from which the Data is extracted and/or the Deliverables are based;

Additional Terms: the “Additional Terms” and “Variations to the General Terms” set out in the SOR;

Affiliate: in relation to a party, any company, partnership or other entity which from time to time:

- (a) owns (directly or indirectly) at least twenty per cent (20%) of the voting stock of another entity;
- (b) has the power (directly or indirectly) to appoint the majority of the board of directors or power (directly or indirectly) to control the general management of another entity; or
- (c) both BT and the Customer agree in writing may be considered as under control of that party for the purposes of the Agreement;

Agreement: the Order Form, the SOR attached at Annex 2 and these General Terms;

Applicable Law(s): laws, regulations, regulatory guidance, obligations, enactments, statutory duties, or rules (including mandatory and legally required industry codes, binding codes of conduct and binding statements of principle incorporated and contained in such rules) applicable to the existence or operation of this Agreement and/or the supply of the Deliverables from time to time, including:

- (a) as modified, re-enacted or consolidated from time to time whether before or after the date of this Agreement; and
- (b) any applicable subordinate legislation made from time to time;

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

Augmented Data: has the meaning given in clause 3.2(d);

BT: British Telecommunications plc, whose registered address is One Braham, 1 Braham Street, London, E1 8EE, United Kingdom and whose registered number is 1800000;

BT Competitor: any company or organisation that offers services or products which are similar to those offered by BT or BT's Affiliates;

BT Network: the communications network owned or leased by BT and its related IT systems;

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Charges: the charges payable by the Customer for the Deliverables as set out in the Order Form;

Client(s): the Customer's customer(s) named in the SOR;

Completion: has the meaning given in clause 2.3;

Confidential Information: any information held on whatever media which is disclosed by one party to the other pursuant to or in connection with this Agreement, whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such, or ought to be reasonably regarded as confidential including without limitation know how

methodology and other proprietary information, business and/or marketing plans, business practices, customer information and the Deliverables;

Customer: means the party detailed in the Order Form and party to the Agreement;

Customer Materials: means any Materials provided by the Customer to BT, or otherwise utilised by the Customer, in connection with BT's provision and the Customer's use of the Deliverables;

Data: data or information, in any aggregated and anonymised form, including image visualisation and sound recording summarisation, relating to EE mobile phone users. For the avoidance of doubt Data shall not include any Personal Data;

Deliverables: (a) the Data; and/or (b) any reports or documents which include the Data, provided by BT under an Order Form and as more detailed in the SOR;

Derivative Works: has the meaning given in clause 3.1(b);

EE: EE Limited whose registered address is One Braham, 1 Braham Street, London, E1 8EE, United Kingdom and whose registered number is 02382161;

Force Majeure Event: any circumstances beyond the reasonable control of a party and unknown to such party at the date of this Agreement, including any fire, flood, earthquake or acts of God, epidemic, pandemic, war, embargo, riot, civil disorder, rebellion or revolution, or any serious industrial dispute;

General Terms: the terms and conditions set out in this Annex 1;

GDPR: the EU General Data Protection Regulation (EU) 2016/679, and any amendment or replacement to it (including any corresponding or equivalent national law or regulation which implements the GDPR) and the UK GDPR, as applicable to the processing;

Incorporated Deliverables: means any Deliverables contained in any: (a) Derivative Works created by the Customer in accordance with clause 3.1(b); or (b) Augmented Data created by the Customer in accordance with clause 3.2(d);

Intellectual Property Rights: patents, trademarks and service marks (whether registered or unregistered), logos, trade names and business names, rights in or to internet domain names and website addresses, copyright (including future copyright), moral rights, database rights, rights in and to confidential information (including know how, business methods, data and trade secrets) and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered);

Licence: has the meaning given in clause 3.1;

Licence Terms: clauses 3.1 and 3.2 of these General Terms;

Licensed Materials: (a) the Deliverables; and (b) the Incorporated Deliverables;

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

Personal Data: has the meaning ascribed to it in the GDPR;

Request for Information: a request for information under the Freedom of Information Act 2000;



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Statement of Requirements or **SOR**: the statement of requirements for the provision of Deliverables under this Agreement, as described within Framework Schedule 6 (Call Off Order Form) CALL OFF DELIVERABLES;

Term: the Initial Term plus each Extended Term;

Transaction Taxes: VAT, GST, sales, consumption, use or other similar taxes, customs duties, excise taxes, and regulatory and other fees or surcharges relating to the provision of the Deliverables;

UK GDPR: the GDPR as applicable as part of UK domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments) (EU Exit) Regulations 2019 (as amended) as amended or replaced; and

Withholding Tax: any tax, deduction, levy or similar payment obligation that is required to be deducted or withheld from a payment under Applicable Law.

1.2 In this Agreement, unless otherwise stated or unless the context otherwise requires:

- (a) words in the singular shall include the plural and vice versa;
- (b) the headings in this Agreement are for convenience only and do not affect its interpretation;
- (c) the words **other**, **includes**, **including**, **for example** and **in particular** do not limit the generality of any preceding words;
- (d) a reference to a statute or statutory provision shall be construed as including a reference to any subordinate legislation made from time to time under that statute or provision and as from time to time modified or consolidated, superseded, re-enacted or replaced after the date of this Agreement; and
- (e) if there is any inconsistency between any of the provisions of these General Terms, the Order Form and/or the SOR, the following order of precedence shall apply:
 - (i) the Additional Terms;
 - (ii) the General Terms;
 - (iii) the Statement of Requirements (excluding the Additional Terms);
 - (iv) the Order Form.

2. TERM AND TERMINATION

- 2.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect for the term set out in the 'Term' section in the Order Form (the "**Initial Term**") when it shall terminate automatically without notice, unless and until terminated earlier by a party in accordance with clause 2.3, 2.5, 2.6 or 2.7.
- 2.2 Notwithstanding clause 2.1, no later than 3 months before the end of the Initial Term (or any Extended Term agreed under this clause 2.2), the parties may agree in writing that the term of this Agreement shall be extended for 12 months ("**Extended Term**"). Unless it is further extended under this clause 2.2 or terminated earlier in accordance with clause 2.3, 2.5, 2.6 or 2.7, this Agreement shall terminate automatically without notice at the end of an Extended Term.
- 2.3 Upon the delivery of the final Deliverable to the Customer this Agreement, BT shall promptly provide the Customer with a written completion statement that states that all

Deliverables have been completed and delivered under this Agreement ("**Completion**").

2.4 Either party may terminate this Agreement immediately by providing written notice to the other party if any of the following events occur (or in the case of (b) any analogous event in a jurisdiction other than England and Wales):

- (a) the other party commits a material breach of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) Business Days after receipt of written notice to do so;
- (b) the other party:
 - (i) becomes the subject of a bankruptcy order or becomes insolvent;
 - (ii) enters into any arrangement or composition with or assignment for the benefit of its creditors;
 - (iii) owns any assets that are material to the operations of all or substantially all of its business that are the subject of any form of seizure or have a receiver or administrator appointed over them;
 - (iv) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - (v) goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory; or
 - (vi) has a resolution for winding up passed in respect of it; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease, to carry on all or a substantial part of its business.

2.5 A party may terminate this Agreement by providing ten (10) Business Days' written notice to the other party if a party is prevented from performing its obligations under this Agreement due to a Force Majeure Event for more than sixty (60) days.

2.6 BT may terminate this Agreement for convenience at any time, without liability to the other party, by giving the other party at least three (3) months' written notice.

2.7 BT may terminate this Agreement immediately by providing written notice to the Customer if an Authority notifies BT that it should terminate this Agreement (or any part of it) or BT is reprimanded or fined by an Authority as a result of an act or omission of the Customer.

3. LICENCE TERMS AND CUSTOMER OBLIGATIONS

3.1 Subject to clause 3.2, BT grants the Customer a limited, non-exclusive and non-transferable licence for the Term within the UK only:

- (a) to use, copy (subject to clause 3.2(g)) and host the Deliverables solely in accordance with the terms of this Agreement:
 - (i) and always and only for Customer's own internal business purposes; and
 - (ii) to fulfil Customer's contract with its Client wherein Derivative Works are a complete deliverable (for clarity at no time shall Customer be permitted to offer a bureau type service using the Deliverables or other service where its own customers, including its Client, can access any



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part of the Deliverables to create their own reports); and

- (iii) as may additionally be agreed and expressly set forth in the SOR;

((i), (ii) and (iii) together being the **“Permitted Purposes”**); and

- (b) with BT’s prior written consent for Customer to create Materials that contain parts of or reference any of the Deliverables in any format (**“Derivative Works”**), provided that:

- (i) such Derivative Works are used solely and strictly for the Permitted Purposes; and
- (ii) the Derivative Works are not capable of use (and will not be used) substantially as a substitute for the Deliverables,

(the **“Licence”**).

3.2 The Customer shall not:

- (a) include any part of the Licensed Materials in any product or service offered to its own customers or third parties;
- (b) sub-license the use of any part of the Licensed Materials to any third party;
- (c) make any part of the Licensed Materials publicly available;
- (d) modify any part of the Deliverables, save that nothing in this Agreement shall restrict the Customer from augmenting the Data by combining it with data from other sources, provided that:
 - (i) the Data is not identifiable in the end result, or otherwise traceable (by reverse engineering or otherwise) to BT or the Active Intelligence Database as the originating source; and
 - (ii) any augmentation of the Data is not capable of use (and will not be used) substantially as a substitute for the Data,(**“Augmented Data”**);
- (e) reverse engineer or attempt to reverse engineer any part of the Deliverables for any purpose including to derive or attempt to derive any Personal Data or otherwise identify any individual from the underlying Data;
- (f) sell or otherwise distribute any part of the Licensed Materials;
- (g) make copies of the Deliverables, save that Customer may make copies of those parts of the Deliverables to the extent reasonably necessary for the purposes of back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing; and
- (h) use any part of the Licensed Materials in any manner which may damage the reputation of BT.

3.3 The Customer shall throughout the Term of this Agreement provide such information and support as may be reasonably requested by BT to enable BT properly and efficiently to perform its obligations under this Agreement.

3.4 The Parties acknowledge that the delivery and use of the Licensed Materials will be guided by and should be conducted in line with ethical principles as follows:

- (a) Oversight: oversight of the use of the Licensed Materials, Derivative Works and Augmented Data;
 - (b) Proportionality: ensuring the Licensed Materials are no more extensive than is legitimately required by the Customer to fulfil the Permitted Purpose;
 - (c) Time-bound: setting appropriate time limits on the supply and reach of the Licensed Materials;
 - (d) Transparency: explaining as and when appropriate to the public the need for and use of the Licensed Materials, Derivative Works and Augmented Data in fulfilment of the Permitted Purpose, and to avoid public misconceptions;
 - (e) Privacy: ensuring no material risk of re-identification of the Data (i.e. no individual should be capable of being identified by the Data) on an ongoing basis, including but not limited to assessing and if necessary amending any stipulated dataset rules, such as minimum numbers to be included in a dataset or minimum geographical areas or demographic categories used;
 - (f) Security: ensuring continuing robust security measures around the handling of the Licensed Materials and Derivative Works; and
 - (g) Consultation: appropriate consultation where required with stakeholder bodies (e.g. ICO, Ofcom),
- (together, the **“Ethical Considerations”**).

3.5 The Customer will use reasonable endeavours to take into account Ethical Considerations in respect of its use of the Licensed Materials in accordance with the Licence Terms.

4. WARRANTIES AND CUSTOMER INDEMNITY

- 4.1 BT warrants that it will perform its obligations under this Agreement with due care, skill and diligence and in accordance with Applicable Laws.
- 4.2 Except as set out in clause 4.1, and to the extent permitted by Applicable Law, BT provides the Deliverables on an “as is” basis and makes no other warranty, including as to whether the information contained in any part of the Licensed Materials is accurate, complete or fit for any purpose.
- 4.3 The Customer warrants that:
 - (a) the Customer will comply with the Licence Terms;
 - (b) the Customer will perform its obligations under this Agreement in accordance with Applicable Laws; and
 - (c) Derivative Works and Augmented Data will not infringe any rights (including Intellectual Property Rights) of any third parties.
- 4.4 The Customer shall indemnify and hold BT harmless against all liabilities, costs, expenses, damages and losses suffered or incurred by BT arising out of or in connection with Customer’s breach of clause 3 and/or clause 4.

5. TECHNICAL FAILURES AND NETWORK OUTAGES

- 5.1 The Customer acknowledges that:
 - (a) the performance of BT’s obligations under this Agreement depends on the operational function of the BT Network; and
 - (b) such BT Network may be subject to occasional performance or operational issues (such as an outage or hardware/software upgrade), which may hinder or delay BT in providing the Deliverables;



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thus BT does not warrant that the supply of the Deliverables will operate without interruption or be error-free.

- 5.2 In the event of any unauthorised access to the BT Network, BT will not be liable for any loss or damage sustained by the Customer.

6. CHARGES AND PAYMENT

- 6.1 The Customer will be liable to pay BT the Charges.
- 6.2 The Customer shall pay BT the Charges (plus any Transaction Taxes payable thereon) as set out in the Order Form within thirty (30) days from the date of BT's invoice (such invoice to be issued by BT in its sole discretion) in cleared funds without any set-off, counterclaim, deduction or withholding (other than as required by Applicable Law or set out within clause 6.13) into BT's bank account.
- 6.3 Where invoices are to be issued online, BT will notify the Customer by email when a new invoice is issued.
- 6.4 BT will invoice and the Customer will pay all Charges in pounds sterling.
- 6.5 BT may reduce the number of days within which the Customer will pay each invoice from thirty (30) days to five (5) days, where:
- (a) the Customer issues a profit warning; or
 - (b) any of the credit agencies of Experia, Equifax and Callcredit reduces the Customer's credit rating; and
- BT reasonably considers that this will affect the Customer's ability to pay invoices.
- 6.6 Where the Customer makes an aggregated payment in respect of more than one invoice:
- (a) the Customer will promptly give BT instructions about which amounts to apply to which invoices; and
 - (b) if the Customer does not give prompt instructions in accordance with clause 6.6(a), BT may apply any amount of the aggregated payment to any unpaid invoices at its discretion.
- 6.7 Each party shall be responsible for its own costs in the performance of its obligations under this Agreement.
- 6.8 The Customer's obligations under this clause 6 shall not be limited by the limitations and exclusions of liability set out in clause 10 of this Agreement.
- 6.9 For any overdue payment, BT may:
- (a) charge the Customer interest at the rate of 2% per annum over Barclays Bank plc's base lending rate on the date on which the relevant amount became overdue, or at the maximum rate permitted by Applicable Law, whichever is less, with such interest compounded daily from the due date of the invoice until paid in full; and
 - (b) restrict or suspend the Licence, and use of, the Licensed Materials as set out in clause 15.
- 6.10 The Customer will pay any reasonable costs BT has incurred in recovering any debt owed by the Customer to BT, including debt collection agency and legal costs.
- 6.11 Charges are exclusive of all applicable Transaction Taxes and the Customer will pay all Transaction Taxes on receipt of a valid tax invoice, including those Transaction Taxes that under Applicable Law BT is entitled to pass on to the Customer and that are customarily passed on to customers by service providers, except to the extent a valid exemption

certificate is provided by the Customer to BT prior to the provision of any Deliverables.

- 6.12 If payment of any of the Charges is subject to Withholding Tax required by Applicable Law, the Customer will deduct the Withholding Tax and pay it to the relevant taxing authority within the period for payment permitted by Applicable Law.
- 6.13 Where the Customer deducts Withholding Tax in accordance with clause 6.12, the Customer will pay to BT such additional amounts as are necessary to ensure receipt by BT of the full amount which BT would have received but for the deduction of that Withholding Tax.
- 6.14 Where BT receives a claim from a taxing Authority alleging that Withholding Tax has not been received on payments by the Customer to BT, the Customer will indemnify BT for the amount of the Withholding Tax due together with any interest, fines and penalties resulting from the late payment or non-payment of the Withholding Tax and any costs of defending the claim against the taxing Authority.
- 6.15 Should the parties mutually agree in writing any change to the agreed billing arrangements for the Deliverables, and such change results in additional Transaction Taxes and/or Withholding Tax to BT that it is unable to fully recover (including as a result of complying with any resulting regulatory requirements), then, notwithstanding any other provisions of this Agreement, BT may modify the Charges for such Deliverables accordingly and the Customer will be liable for those additional amounts.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Nothing in this Agreement shall constitute an assignment of any Intellectual Property Rights by either party.
- 7.2 BT shall own all the Intellectual Property Rights in the Active Intelligence Database and the Licensed Materials. Nothing in this Agreement shall act or be interpreted as transferring any rights in any of BT's Intellectual Property Rights including the Active Intelligence Database and the Licensed Materials. The only licences granted by BT in its Data or its Intellectual Property Rights are as expressly set forth in this Agreement.
- 7.3 Subject to clause 7.2, Customer (or its third party licensors) shall own the Intellectual Property Rights in the Derivative Works, Augmented Data and the Customer Materials, excluding any Incorporated Deliverables.
- 7.4 Notwithstanding clause 9, BT grants the Customer a perpetual, non-exclusive, transferable, royalty-free and worldwide licence to use, copy, modify, adapt, host, commercialise and publish (with the right to sub-license) any Incorporated Deliverables for the Permitted Purposes only to the extent required by the Customer to use the Augmented Data and/or the Derivative Works.
- 7.5 BT reserves exclusively for itself the unfettered right at all times to use or exploit the Deliverables in any manner and for any purpose at its sole discretion.
- 7.6 Any use of the Licensed Materials by the Customer not permitted by the Licence Terms shall constitute an irremediable material breach of this Agreement for the purposes of clause 2.4(a).
- 7.7 The Customer hereby grants BT a limited, non-exclusive, non-transferable, irrevocable, perpetual, worldwide and royalty-free licence to use any Customer Materials provided to BT under this Agreement solely for the purposes of BT:



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- (a) fulfilling its obligations under the terms of this Agreement;
 - (b) showcasing its data analytics business to other customers and potential customers (subject to clause 9.4); and
 - (c) developing its own products and services.
- 7.8 The Customer acknowledges and agrees that it shall have no rights or licences in, or to any part of, the Licensed Materials other than the Licence Terms.
- 7.9 The Customer acknowledges that BT and/or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the underlying Data.
- 7.10 If any unauthorised use is made of the Deliverables and such use is attributable to the act or default of, or access is through, the Customer then, without prejudice to BT's other rights and remedies (including under clause 7.6), the Customer shall immediately be liable to pay BT an amount equal to the Charges that BT would have or has charged the Customer for the Deliverables that are the subject of such unauthorised use, together with interest at the rate provided for in clause 6.9 (except that the base lending rate shall be calculated as on the date on which the unauthorised use commenced), with such interest compounded daily from the start date of that unauthorised use to the date of payment.

8. PROTECTION OF PERSONAL DATA

- 8.1 This clause 8 will apply only to the extent that Personal Data is provided by BT to the Customer or otherwise acquired by the Customer in relation to this Agreement. For the purposes of this clause 8, "**BT**" will also mean any BT Affiliate.
- 8.2 In addition to the terms set out in clause 1 the following terms will have the following meanings:
- (a) "**Controller**", "**Personal Data Breach**" "**Process/Processing**" and "**Processor**" will have the meaning ascribed to them in the GDPR;
 - (b) "**Data Protection Legislation**" means collectively: (i) the GDPR; (ii) national law implementing the ePrivacy Directive; (iii) any other applicable national privacy laws; (iv) any successor or replacement laws; and (v) any binding guidance or code of practice issued by a Supervisory Authority;
 - (c) "**ePrivacy Directive**" means the Directive on Privacy and Electronic Communications (2002/58/EC);
 - (d) "**Supervisory Authority**" means any competent authority responsible for supervising compliance with applicable Data Protection Legislation.
- 8.3 The Customer will only Process Personal Data (limited to business contact details) of BT's personnel (employees, agents and subcontractors) as Controller for purposes of contract administration and it will do so strictly in accordance with Data Protection Legislation. In the event of a Personal Data Breach, the Customer will promptly notify BT of the Personal Data Breach and provide any information BT may reasonably require relating to that Personal Data Breach.
- 8.4 Neither party will Process Personal Data on behalf of the other party as Processor for the purposes of this Agreement.

If either party anticipates that any change to: (a) the Deliverables; or (b) the interpretation of the Deliverables under the Data Protection Legislation, would require the Customer to Process Personal Data: (i) on BT's behalf as a Processor; or (ii) as a Controller for any purpose other than contract administration, then the parties will negotiate in good faith to incorporate appropriate data protection provisions into this Agreement in accordance with Data Protection Legislation.

9. CONFIDENTIALITY AND PUBLICITY

- 9.1 Unless otherwise agreed, each party shall keep confidential all Confidential Information received by it ("**Receiving Party**") from the other party ("**Disclosing Party**") pursuant to this Agreement (including the Active Intelligence Database and the Deliverables which shall be solely confidential to BT) as well as the subject matter and relationship between the parties under this Agreement. Each party shall not provide any Confidential Information to any third party, other than to its employees or contractors who have a need to know for the purposes of performing this Agreement, provided that such employees and contractors are subject to obligations of confidentiality and use on terms no less strict than the terms set out in this Agreement. In any event, a party shall be and remain liable for any breach of a term of this Agreement which is caused by any employee or contractor of the party, as if any such breach had been committed by that party. BT may share the Customer's Confidential Information with an Affiliate on terms no less strict than the terms of this Agreement.
- 9.2 The Customer acknowledges and agrees that the Active Intelligence Database and the Deliverables are BT's Confidential Information, and may not be disclosed save as expressly permitted herein.
- 9.3 The obligations under clause 9.1 do not apply to Confidential Information in any of the following events:
- (a) it becomes part of the public domain through no fault of the Receiving Party;
 - (b) it is obtained by the Receiving Party from a third party without breach of any obligation of confidentiality owed to any third party;
 - (c) it is independently developed by the Receiving Party without any breach of this Agreement;
 - (d) it is approved for public release by the Disclosing Party; or
 - (e) the disclosure of the Confidential Information is a requirement under Applicable Law or by a regulatory body of competent authority or lawful authority imposed on the Receiving Party, provided that, wherever permitted under Applicable Law, as soon as reasonably practicable:
 - (i) the Receiving Party provides the Disclosing Party with details of the nature and contents of such required disclosure;
 - (ii) the Disclosing Party is given the opportunity to discuss and agree any possible limitations or restrictions on such disclosure in advance; and
 - (iii) the Receiving Party uses reasonable endeavours to obtain undertakings of confidentiality in respect of the Confidential Information from the regulatory body or lawful authority to whom disclosure is required.



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- 9.4 No party shall without the prior written consent of the other party:
- (a) issue a press release or make a public statement that mentions the activities pursued by or the relationship between the parties under this Agreement; and/or
 - (b) identify the other party as a customer, supplier or partner or otherwise use any name or trademark of that other party (including making any attributions to the Licensed Materials) or make representations to third parties regarding the subject matter of this Agreement.
- 9.5 Upon written request from a party, the other party will return or destroy any Confidential Information received from the Disclosing Party within a reasonable time period and provide written confirmation on request by the Disclosing party.
- 9.6 The parties agree that if either of them breaches this clause 9, damages may not be an adequate remedy for the Disclosing Party and it will have the right to apply for injunctive relief or specific performance of the Receiving Party's obligations.

10. LIMITATION ON LIABILITY

- 10.1 Without prejudice to the warranties contained in clause 4, this Agreement excludes, to the fullest extent allowed by Applicable Law, any warranties, conditions or other terms that may be implied by statute or common law.
- 10.2 Subject to clauses 6.8 and 10.3, neither party shall be held liable, regardless of how that liability arose, and regardless of the number of claims, under or in connection with the Agreement, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, for any special, indirect or consequential loss or damage, or any of the following direct losses:
- (a) loss of profit, revenue, or anticipated savings;
 - (b) loss of business or contracts;
 - (c) loss of goodwill;
 - (d) loss from wasted expenditure, wasted time or business interruption;
 - (e) loss, corruption or destruction of data; or
 - (f) replacement supplier costs.
- 10.3 Nothing in this Agreement excludes or limits either party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any liability which cannot be limited or excluded by Applicable Law;
 - (d) breach of any of its obligations under clause 9; and
 - (e) in the case of the Customer, any breach by the Customer of clauses 3, 4, or 7.
- 10.4 Subject to clauses 6.8, 10.1, 10.2 and 10.3:
- (a) BT's total and aggregate liability regardless of how that liability arose (whether arising in contract, tort (including negligence), misrepresentation, statutory duty or otherwise) under or in connection with this Agreement, shall be limited to the amount of Charges paid by the Customer under this Agreement; and
 - (b) Customer's total and aggregate liability regardless of how that liability arose (whether arising in contract,

tort (including negligence), misrepresentation, statutory duty or otherwise) under or in connection with this Agreement, shall be limited to two million pounds sterling (£2,000,000).

- 10.5 Nothing in this Agreement will restrict or limit either party's general obligation under Applicable Laws to mitigate a loss.

11. CONSEQUENCES OF TERMINATION

- 11.1 Termination of this Agreement, howsoever arising, shall be without prejudice to the rights, remedies and liabilities of the parties accrued as at the date of termination.
- 11.2 Any clauses which are by their nature intended to survive, or the survival of which is necessary for the interpretation or enforcement of the terms of this Agreement, shall survive termination or expiry of this Agreement.
- 11.3 Immediately upon termination or expiry of this Agreement (for any reason), the licences and rights granted by BT shall terminate (except for the licence of Incorporated Deliverables in clause 7.4) and the Customer shall:
- (a) stop using the Deliverables;
 - (b) not create any new Derivative Works or Augmented Data from the Deliverables; and
 - (c) delete all of the Deliverables (except for the Incorporated Deliverables) received from BT under this Agreement (together with all copies the Deliverables) within ten (10) Business Days of termination or expiry of the Agreement and provide BT with written confirmation of such deletion; and
 - (d) be liable to pay any unpaid Charges in respect of the Deliverables actually delivered by BT and properly invoiced in accordance with this Agreement (and not for any outstanding Deliverables).

12. NOTICES

- 12.1 All notices to be given to a party under this Agreement shall be in writing (which may include email except in the case of notices for termination and/or breach) and shall be marked for the attention of the person, and delivered by hand, prepaid registered post or electronic mail to the addresses or email addresses, as set out in the Order Form, or to any other addresses and UK addresses as such party may have notified the other party in writing of.
- 12.2 Any notice will be deemed to have been served:
- (a) if delivered by hand, at the time of delivery or, if delivered after 4pm UK time, on the next Business Day;
 - (b) if posted, at 10am UK time on the second Business Day after it was put into the post; or
 - (c) if by email, on the date (or if that date is not a Business Day, then on the next Business Day) that receipt of the email is confirmed or acknowledged, including by transmission of an automatic electronic read receipt or manual acknowledgement from the recipient.
- 12.3 Each party will promptly notify the other by giving written notice of any changes to its notice contact details.

13. FORCE MAJEURE

- 13.1 Neither party will be liable to the other party for any delay or non-performance of its obligations under this Agreement to the extent that it arises from a Force Majeure Event provided that the affected party:



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- (a) notifies the other party in writing of the cause of the delay or non-performance and the likely duration of the delay or non-performance; and
- (b) uses reasonable endeavours to limit the effect of the delay or non-performance on the other party.

13.2 A Force Majeure Event does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

14. FREEDOM OF INFORMATION

Where the Customer is subject to the Freedom of Information Act 2000, the Customer:

- (a) acknowledges and agrees that any Confidential Information provided to the Customer under this Agreement is commercially sensitive to EE and any release of such information will prejudice the commercial interests of BT;
- (b) undertakes to notify and consult BT in the event that it receives any Request for Information relating to this Agreement; and
- (c) undertakes to take into account BT's interests in its response to any such Request for Information.

15. SUSPENSION

15.1 BT may restrict or suspend use of or access to any affected Data or Deliverable:

- (a) for any default of any payment in accordance with clause 6.9(b);
- (b) if the Customer fails to comply with any terms of this Agreement; or
- (c) if BT reasonably considers that it is required to do so in order to safeguard the integrity or security of the Data or the BT Network.

15.2 BT will endeavour to notify the Customer in advance of any restriction or suspension for any of the events listed in clause 15.1 as soon as commercially reasonable.

15.3 Where BT exercises its right to restrict or suspend use of or access to any Data or a Deliverable under clause 15.1 and that right arose as a result of a breach of the Agreement by the Customer the Customer will continue to be liable for all applicable Charges for the affected Data or Deliverable(s) until the Agreement is terminated.

16. DISPUTE RESOLUTION

16.1 The parties will use reasonable endeavours to resolve any dispute or claim arising out of or in connection with this Agreement without referral to the courts or applicable regulatory Authority.

16.2 The parties will use the following dispute resolution process:

- (a) either party may initiate a dispute by giving notice to the other party of its complaint and setting out the nature and full particulars of the dispute, together with relevant supporting documents;
- (b) each party will use its reasonable endeavours to resolve the dispute within fourteen (14) days of notification, and will keep the other party informed of developments;
- (c) if the dispute remains unresolved after fourteen (14) days (or any other period agreed in writing between

the parties), it may be escalated to a senior executive of each party (at Director level or above); and

- (d) if the dispute remains unresolved fourteen (14) days after escalation, the parties will consider mediation as set out in clause 16.3.

16.3 Subject to the parties' compliance with clause 16.2, either party may, by giving notice to the other party, propose a mediator, in which case:

- (a) unless both parties agree to an alternative date, the other party will either confirm their acceptance of the mediator or propose an alternative mediator within fifteen (15) days of the date of the notice;
- (b) where both parties cannot agree to the choice of mediator within a further fifteen (15) days, the mediator will be appointed by the London Court of International Arbitration or an equivalent independent body;
- (c) unless both parties agree otherwise, proceedings will be conducted in London and in the English language; and
- (d) unless both parties agree otherwise, the costs of any mediation will be shared equally between the parties.

16.4 Nothing in this clause 16 prevents either party from:

- (a) seeking interlocutory or other immediate relief where a risk of imminent harm exists for that party for which there is no other adequate remedy in the Agreement;
- (b) pursuing court proceedings, where that party considers it reasonable; or
- (c) exercising any rights and remedies that may be available to it in respect of a breach of the provisions of this Agreement.

17. BT SECURITY REQUIREMENTS

17.1 Without prejudice to any obligations of confidentiality it may have, where the Customer has access to BT Information, the Customer shall:

- (a) ensure BT Information is not disclosed to its personnel or accessed unless necessary for the receipt and/or use of the Deliverables; and
- (b) put in place all systems and processes as are required in accordance with Good Industry Security Practice to protect the security and confidentiality of BT Information.

17.2 For the purposes of this clause 17 the following definitions shall apply:

- (a) **BT Customer:** a corporate or individual to whom BT provides goods or services, and includes any prospective customer;
- (b) **BT Information:** all Information relating to BT or a BT Customer provided to the Customer and all Information which is processed or handled by the Customer on behalf of BT or a BT Customer pursuant to the Agreement;
- (c) **Good Industry Security Practices:** in relation to any undertaking and any circumstances, the implementation of the security practices, policies, standards and tooling which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of activity under the same or similar circumstances; and



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

18. TRANSFERS TO THIRD PARTIES

Neither party may assign, transfer, sub-contract or novate any of its rights or obligations under the Agreement without the written consent of the other party (not to be unreasonably withheld), except that:

- 18.1 BT is entitled to assign or transfer the Agreement, or any part of the Agreement, to any of its Affiliates upon written notice to the Customer;
- 18.2 BT may subcontract the performance of any of its obligations under the Agreement to any BT Affiliate or third party subcontractor, although BT will remain responsible for the performance of any acts or omissions of its subcontractors under the Agreement;
- 18.3 BT is entitled to withhold its consent in its absolute discretion to any proposed assignment, transfer, sub-contracting or novation by Customer to: (a) a BT Competitor; and/or (b) any third party whom BT reasonably considers might cause BT reputational damage by association;
- 18.4 BT can assign its right to collect payments under the Agreement upon written notice to the Customer; and
- 18.5 BT may, by giving written notice to the Customer, novate the Agreement, or any part of the Agreement ("**Novation**"), to a BT Affiliate or third party which by purchase, lease, outsourcing agreement or otherwise, assumes the operation, administration and/or management of any portion of the business of BT and its Affiliates ("**Nominee**") as may be nominated by BT ("**Transferee**"), and:
- (a) BT and Customer will promptly do all acts and things necessary to effect the Novation to the Transferee, including the signing of a novation agreement, in such form as BT reasonably requires;
- (b) at BT's written request, the Customer agrees to the replication of the Agreement for any Transferee but excluding the right to replicate as conferred by this clause; and
- (c) regardless of anything to the contrary in the Agreement BT may disclose to any Transferee on a confidential basis all relevant information regarding the Agreement.

19. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, even if any term of the Agreement purports to confer or may be construed as conferring a benefit on a third party.

20. NO EXCLUSIVITY

Nothing in this Agreement shall be deemed to create an exclusive obligation on the part of either party or to prevent or restrict BT from providing similar services, products or

data to the Deliverables provided under this Agreement to any third parties.

21. NO PARTNERSHIP OR AGENCY

21.1 Nothing in the Agreement:

- (a) establishes any partnership, exclusive arrangement or joint venture between the parties;
- (b) constitutes any party the agent of the other party; or
- (c) authorises any party to make or enter into any commitments for or on behalf of any other party.

21.2 Accordingly, neither party shall have any right or authority to act on behalf of the other or to bind the other by contract or otherwise.

22. NO WAIVER

Except as otherwise specifically provided in the Agreement, no delay, neglect, or forbearance on the part of either party in enforcing any term, condition or privilege of this Agreement shall be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No waiver of any rights under or of any breach of this Agreement will be deemed to be a waiver of any other right or of any later breach.

23. SEVERANCE

- 23.1 If any court or competent Authority finds that any provision (or part of any provision) of the Agreement is illegal, invalid or unenforceable, that provision or part provision, to the extent required, will be deemed to be deleted. The legality, validity or enforceability of any other provision of the Agreement will not be affected.
- 23.2 If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the parties will negotiate in good faith to amend the provision so that, as amended, it is legal, valid and enforceable, and to the greatest extent possible, achieves the parties' original commercial intention.

24. AMENDMENT

- 24.1 Any amendment of the Agreement will not be effective unless agreed in writing by, and executed by the authorised signatories of, both parties.
- 24.2 BT and the Customer may vary or terminate the Agreement without the consent of any Affiliate.

25. ENTIRE AGREEMENT

- 25.1 The Agreement constitutes the whole agreement between the parties with respect to the subject matter and supersedes any and all prior oral or written understandings, arrangements, negotiations, communications and/or representations between them in respect of that subject matter.
- 25.2 Any Customer's standard terms attached to, enclosed with, or referred to in any Order Form or in any pre-contractual negotiations will have no effect and will not apply.
- 25.3 Each party acknowledges that, in entering into the Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (made negligently or innocently), other than those set out in the Agreement and waives all rights and remedies that, but for this clause 25, might otherwise be available to it in respect of any such reliance.



26. CHOICE OF LAW AND JURISDICTION

- 26.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England and Wales.
- 26.2 Customer and BT irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

27. COUNTERPARTS AND ELECTRONIC SIGNATURE

- 27.1 The Agreement may be signed in one or more counterparts, which counterparts may be exchanged by email (with pdf scan copy attached). Any single counterpart, or a set of counterparts signed, in either case, by both parties will constitute a full original of the Agreement for all purposes.
- 27.2 Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.