



1. DEFINITIONS AND INTERPRETATION

1.1 This Data Protection Clause applies to EE business customers who are on standard terms, or who have otherwise been notified that it applies to their Agreement. It does not apply to EE small business customers on an EE "business service/upgrade agreement".

1.2 The definitions set out below apply for the interpretation of this Data Protection Clause only.

Agreement means the contract between the Customer and EE for Services.

Applicable Law means the laws of England and Wales and any laws and regulations, as may be amended from time to time, that apply to the provision or receipt of a Service, including:

(a) anti-corruption laws set out in the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 of the United States of America; and

(b) all applicable export laws and regulations, including those of the United States of America.

Call Data Records means, in relation to the conveyance of any call or other communication over the Network, any data that constitutes traffic data as defined in the Privacy and Electronic Communications (EC Directive) Regulations 2003.

Charge means the fees and monies paid by a Customer in exchange for the provision of Services by EE.

Customer means the party EE contracts with to provide the Service to.

Customer Representative means a representative of the Customer with the authority to bind the Customer in relation to the Agreement.

Data Protection Clause means these provisions that amend the Agreement.

Data Protection Legislation means collectively (i) any applicable laws of the European Union, (ii) any applicable local laws relating to the Processing of Personal Data and the protection of an individual's privacy, (iii) the GDPR, and (iv) any binding guidance or code of practice issued by a Supervisory Authority.

EE Privacy Policy means EE's privacy policy (as amended from time to time) that the Customer can access at ee.co.uk/privacy (or any other online address that EE may advise the Customer).

Equipment means any equipment, that may be supplied by EE to enable the Customer to access Services, as agreed between the parties from time to time.

EU-US Privacy Shield means a legal framework adopted by the European Commission in its adequacy decision of 12 July 2016.

GDPR means the General Data Protection Regulation (EU) 2016/679 and any amendment or replacement to it, (including any corresponding or equivalent national law or regulation that implements the GDPR).

GDPR Processing Annex means the document setting out detailed information on the Processing of Personal Data for the Services that can be found at www.ee.co.uk/business/terms.

Group any entity or person controlled by, controlling or under common control with EE or the Customer (as applicable), from time to time. For the purpose of this definition the term "control" means ownership, directly or indirectly, of: (i) equity securities entitling it to exercise, in aggregate, 50% or more of the voting power in such corporation or other entity; (ii) 50% or more of the interest in the profit or income in the case of a business entity other than a corporation; or (iii) in the case of a partnership, any other comparable interest in the general partnership.

Network means the electronic communications systems by which EE makes Services available in the United Kingdom and any other type of communications system that may be provided by EE.

Service(s) the service(s) set out in an order or that may be agreed between the parties from time to time, provided by EE to the Customer for an agreed Charge.

Solution a business solution (which may include Services and Equipment) to which additional requirements, technical details, commercial and support arrangements, terms and conditions may apply as set out in the Solution Terms.

Solution Terms means the terms and conditions governing a Solution that are available at www.ee.co.uk/business/terms or otherwise provided separately to the Customer.

Sub-Processor means an EE Group or EE's supplier or subcontractor that EE engages to Process User Personal Data for the purposes of the Agreement.

User Personal Data means only the proportion of Personal Data where the Customer is the Controller and that EE needs to Process on the Customer's behalf as a Processor in providing Services to the Customer under the Agreement.

Working Days any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day that is a bank holiday in the UK.

1.3 The Agreement will be amended as set out in this Data Protection Clause and will be deemed to have been amended on and from the 25 May 2018.



- 1.4 If there is a conflict between any of the documents in the Agreement and this Data Protection Clause, this Data Protection Clause takes precedence.
- 1.5 This Data Protection Clause is in addition to the terms in the Agreement and will be read as one document together with the Agreement and the Agreement will continue in full force and effect except as amended by this Data Protection Clause.
- 2. DATA PROTECTION**
- 2.1 In this Agreement, the following terms each have the meaning given to it in the GDPR: “Binding Corporate Rules”, “Controller”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Process”, “Processing”, “Processor” and “Supervisory Authority”.
- 2.2 Notwithstanding any other provision in the Agreement, for EE to provide a Service, Personal Data may be:
- a. used, managed, accessed, transferred or held on a variety of systems, networks and facilities (including databases) worldwide; or
 - b. transferred by EE worldwide to the extent necessary to allow EE to fulfil its obligations under this Agreement and the Customer appoints EE to perform each transfer in order to provide the Services provided that EE will rely on appropriate transfer mechanisms permitted by Data Protection Legislation, including:
 - i. EE Group’s Binding Corporate Rules (for transfers among EE’s Group);
 - ii. agreements incorporating the relevant standard data protection clauses adopted by the European Commission; and
 - iii. where applicable, the EU-US Privacy Shield.
- 2.3 The Customer will ensure that Personal Data is accurate and up to date when disclosed to EE.
- 2.4 The Customer acknowledges and agrees that EE is the data Controller of Personal Data generated by EE in providing the Services including Call Data Records.
- 2.5 The Customer will bring the EE Privacy Policy to the attention of its Users.
- 2.6 EE will be Controller, Processor or both under the Agreement depending on type of Personal Data Processed and the purpose of the Processing.
- 2.7 If EE acts as a Controller:
- a. EE may collect, Process, use or share Personal Data with the EE Group and Sub-Processors, within or outside the country of origin in order to do any or all of the following:
 - i. administer, track and fulfil a Service;
 - ii. market EE products to Users;
 - iii. implement the Service;
 - iv. manage and protect the security and resilience of any Equipment, the Network and the Services;
 - v. manage, track and resolve faults with the Service as set out in this Agreement;
 - vi. where applicable, administer access to online portals relating to the Service;
 - vii. compile, dispatch and manage the payment of invoices;
 - viii. manage the Agreement and resolve any disputes relating to it;
 - ix. respond to general queries relating to the Service or Agreement; or
 - x. comply with Applicable Law.
 - b. EE will Process the Personal Data in accordance with applicable Data Protection Legislation and as set out in the EE Privacy Policy and, where applicable, EE Group’s Binding Corporate Rules; and
 - c. EE may, from time to time, contact the Customer Representative, or other network, IT or procurement manager involved in the procurement or management of the Service, to provide additional information concerning the Service, or other similar services.
- 2.8 If EE acts as a Processor:
- a. the subject-matter, duration, nature and purpose of the Processing, the type of User Personal Data and categories of Data Subjects will be set out in the GDPR Processing Annex;
 - b. in order to perform its obligations under the Agreement, EE will:
 - i. Process the User Personal Data on behalf of the Customer in accordance with the Customer’s documented instructions as set out in Clause 2.8k, except where:
 - (A) Applicable Law requires EE to Process the User Personal Data otherwise, in which case, EE will notify the Customer of that requirement before Processing, unless to do so would be contrary to that Applicable Law on important grounds of public interest; or
 - (B) in EE’s reasonable opinion an additional instruction or a change to the instructions provided by the Customer in accordance with Clause 2.8k infringes the Data Protection Legislation and EE will inform the Customer of its opinion without undue delay and will not be required to comply with that instruction.
 - ii. to protect the User Personal Data against a Personal Data Breach, implement technical and organisational security measures, including those that may be set out in the Solution Terms, that are



appropriate to the risk represented by EE's Processing and the nature of the User Personal Data being Processed;

iii. provide notice to the Customer without undue delay after becoming aware of a Personal Data Breach affecting the User Personal Data;

iv. only use the Sub-Processors approved by the Customer by entering into the Agreement or in accordance with Clause 2.8i; and

v. assist the Customer in its compliance with the Data Protection Legislation, taking into account the nature of the Processing of the User Personal Data and the information available to EE, relating to:

(A) its obligation to respond to lawful requests from a Data Subject, to the extent practicable;

(B) the security of the Processing of the User Personal Data;

(C) notification of a Personal Data Breach affecting the User Personal Data to the Supervisory Authority or the Data Subjects; and

(D) a data protection impact assessment as may be required by Article 35 of the GDPR and prior consultation with the Supervisory Authority,

and the Customer will reimburse EE's reasonable costs for this assistance except for the assistance set out in Clause 2.8b,v(B) where a Personal Data Breach affecting the User Personal Data occurred as a direct result of a breach of EE's obligations set out in Clause 2.8b,ii;

c. unless Applicable Law requires EE to store a copy of the User Personal Data, upon expiry or termination of the Agreement and at the Customer's option, EE will delete or return the User Personal Data within a reasonable time period and the Customer will reimburse EE's reasonable costs for this deletion or return of the User Personal Data;

d. EE will make available to the Customer the information demonstrating EE's compliance with its obligations set out in Clause 2.8, and, subject to 30 days' Notice from the Customer, allow for and reasonably cooperate with the Customer (or a third party auditor appointed by the Customer) to audit this compliance at reasonable intervals (but not more than once per year), so long as:

i. the audit will:

(A) not disrupt EE's business;

(B) be conducted during Working Days;

(C) not interfere with the interests of EE's other customers;

(D) not cause EE to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and

(E) not exceed a period of two successive Working Days.

ii. the Customer (or its third party auditor) will comply with EE's relevant security policies and appropriate confidentiality obligations; and

iii. the Customer will reimburse EE's reasonable costs associated with the audit and, where EE conducts an audit of its Sub-Processors to demonstrate EE's compliance with its obligations set out in Clause 2.8, those of its Sub-Processors.

e. EE may demonstrate its compliance with its obligations set out in Clause 2.8 by adhering to an approved code of conduct, by obtaining an approved certification or by providing the Customer with an audit report issued by an independent third party auditor (provided that the Customer will comply with appropriate confidentiality obligations and not use this audit report for any other purpose);

f. EE will not disclose User Personal Data to a third party unless required for the performance of the Service, permitted under the Agreement or otherwise required by Applicable Law;

g. EE will ensure that persons authorised by EE to Process the User Personal Data will be bound by a duty of confidentiality;

h. EE may use Sub-Processors in accordance with the Agreement and will ensure that data protection obligations in respect of Processing User Personal Data equivalent to those set out in Clause 2.8 of the Agreement will be imposed on any Sub-Processors;

i. EE will inform the Customer of proposed changes to its Sub-Processors from time to time by either:

i. providing the Customer with online notice of the intended changes at www.ee.co.uk/business/terms and the Customer will have 30 days starting from the first Working Day of the calendar month following the date of the online notice to object to the change; or,

ii. giving the notice (other than online) and the Customer will have 30 days starting from the date of the notice to object to the change, and

if the Customer does not object in accordance with Clauses 2.8.i or 2.8.ii the Customer will be deemed to have authorised the use of the new Sub-Processors;

j. the Customer may object to the use of a new Sub-Processor by giving notice in accordance with the Agreement documenting material concerns that the Sub-Processor will not be able to comply with the Data Protection Legislation and if such notice is received within the time required by Clause 2.8i, EE and the Customer will both address the Customer's objection in accordance with the dispute process set out in the Agreement and EE may use the relevant Sub-Processor



to provide the Service until the objection is resolved in accordance with such dispute process;

about EE or EE Group products, services and offers that may be of particular interest.

- k. this Agreement contains the Customer's complete instructions to EE for the Processing of User Personal Data and any additional instructions or changes to the instructions will be incorporated into this Agreement in accordance with the Agreement to take account of any resulting change in the Charges or the Service;
- l. the Customer will comply with applicable Data Protection Legislation and will fulfil all the requirements necessary for the provision of the Service by EE, including providing any notifications and obtaining any regulatory approvals or consents required when sharing Personal Data with EE; and
- m. the Customer will only disclose to EE the Personal Data that EE requires to perform the Service.

2.9 If permitted by Applicable Law:

- a. a party in breach of the Data Protection Legislation or this Data Protection Clause will be liable to the other for any losses, costs and liabilities incurred or suffered by the other party where those losses, costs and liabilities are caused by, or in connection with, that breach including where the parties are jointly and severally liable; and
- b. where the parties are jointly and severally liable for a claim caused by Processing neither party will make any payment or any offer of payment to any Data Subject (including third parties acting on behalf of any Data Subject) in response to any complaint or claim for compensation caused by or relating to the Processing of Personal Data, without the prior written agreement of the other party.

2.10 Where each party acts as a Controller in relation to the Processing of Personal Data under the Agreement, the parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.

2.11 If, in accordance with the Agreement, EE proposes amendments to the Agreement to reflect changes to EE's security measures, policies and processes to enable EE to comply with the Data Protection Legislation, the Customer will act reasonably and in good faith to negotiate those amendments in a timely manner with EE.

2.12 Any disclosure of Users' Call Data Records by EE to the Customer will be subject to the Customer completing and submitting to EE a request for those records, EE's policies for disclosures of Call Data Records, as amended from time to time, and any applicable legal and regulatory restrictions. Any request must be in writing using EE's current standard format (which is available on request).

2.13 Nothing in this Agreement shall prevent EE from processing User's data for internal business analytics purposes and for products and services offered to third parties provided that such data will only be shared with third parties in a form that does not enable the third party to identify an individual User.

2.14 EE or an EE Group company may contact the Customer and its Users by telephone, mail or electronically, online or via any other interactive media, to let the Customer and/or Users know