



# Trial General Terms

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# Trial General Terms

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## The Basics

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These are the General Terms that apply to the Trial Service. The Schedule to the Trial Service contains more detailed terms.

### 1 WHAT WORDS MEAN

- 1.1 Some of the words and phrases in this document mean specific things. They are capitalised all the way through and explained in the Defined Terms section at the end of this document.
- 1.2 The words below have the following meanings:
  - 1.2.1 'You' and 'your' mean the Customer.
  - 1.2.2 Phrases that refer to 'we', 'our', 'us', 'each of us', 'each of our', 'both of us', 'we each', 'we will each', 'we will both', 'whichever of us', 'one of us', 'neither of us', 'either of us', 'either of our', 'either one of us' or 'we both' mean one or both of EE and the Customer, whichever makes sense in the context of the sentence.
- 1.3 The words 'include' or 'including' do not limit something to just the examples that follow.
- 1.4 Any time either of us has a right or obligation that we "may" exercise or perform, then whether either of us chooses to exercise or perform that right or obligation will be in that party's sole discretion.

### 2 ORDER OF DOCUMENTS

If there is a conflict between any of the documents, the order of priority, highest first, is:

- 2.1 any Annexes;
- 2.2 the Schedule; and
- 2.3 these General Terms;

### 3 WHEN THE CONTRACT STARTS AND HOW LONG IT LASTS

- 3.1 The Contract starts on the Effective Date and will carry on until:
  - 3.1.1 one of us ends it (in a way that the Contract allows);
  - 3.1.2 it expires; or
  - 3.1.3 EE is no longer providing you with the Trial Service.
- 3.2 If you would like to use the Trial Service, or any part of it, after the Trial Period, you will purchase those services from EE under a separate contract.

### 4 SOME BASIC PRINCIPLES

- 4.1 EE confirms that it is a legal corporation, authorised to agree the Contract and provide the Trial Service.
- 4.2 If you are entering the Contract on behalf of a company, you confirm you are legally set up as a business, authorised to agree the Contract and carry out your responsibilities under it.

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## The Trial Service

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### 5 WHAT EE HAS TO DO

- 5.1 EE will:

- 5.1.1 provide the Trial Service with the care and skill that would reasonably be expected in the circumstances;
- 5.1.2 comply with Applicable Law;
- 5.1.3 comply with, and may exercise EE's rights in, the Compliance Obligations; and
- 5.1.4 if applicable to a Trial Service, take reasonable steps to stop anyone getting unauthorised access to any part of the EE Network.

- 5.2 The Trial Service may be changed by EE at any time and you are deemed to have agreed to the changes if you continue to use the Trial Service. These sorts of changes might include:

- 5.2.1 introducing or removing features of the Trial Service; or
- 5.2.2 replacing the Trial Service with a materially equivalent Trial Service.

### 6 WHAT YOU HAVE TO DO

You will:

- 6.1 cooperate with EE and comply with any reasonable requests EE makes to help EE provide the Trial Service;
- 6.2 comply with the Acceptable Use Policy and Applicable Law, and make sure that your Users do as well;
- 6.3 comply with the Compliance Obligations;
- 6.4 provide EE with all relevant information in relation to health and safety and the environment and give EE any other information and materials EE asks for, within reason to enable EE to provide the Trial Service, and you will make sure the information provided is accurate and complete; and
- 6.5 for Sites not under EE's control, get all the consents, licences, permissions and authorisations we both need so EE can provide the Trial Service at the Sites and keep them up to date, including for:
  - 6.5.1 making alterations to buildings;
  - 6.5.2 getting into property;
  - 6.5.3 dealing with local authorities, landlords or owners;
  - 6.5.4 installing EE Equipment or Purchased Equipment; and
  - 6.5.5 using the Trial Service over your network or at a Site;
- 6.6 use the Trial Service only for the purposes that EE has agreed and make sure that your Users do as well.

### 7 WHAT YOU HAVE TO DO

You will:

- 7.1 cooperate with EE and comply with any reasonable requests EE makes to help EE provide the Trial Service;
- 7.2 comply with the Acceptable Use Policy and Applicable Law, and make sure that your Users do as well;
- 7.3 comply with the Compliance Obligations;
- 7.4 provide EE with all relevant information in relation to health and safety and the environment and give EE any other information and materials EE asks for, within reason to enable EE to provide the Trial Service, and you will make

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sure the information provided is accurate and complete; and

- 7.5 for Sites not under EE's control, get all the consents, licences, permissions and authorisations we both need so EE can provide the Trial Service at the Sites and keep them up to date, including for:
- 7.5.1 making alterations to buildings;
  - 7.5.2 getting into property;
  - 7.5.3 dealing with local authorities, landlords or owners;
  - 7.5.4 installing EE Equipment or Purchased Equipment; and
  - 7.5.5 using the Trial Service over your network or at a Site;
- 7.6 use the Trial Service only for the purposes that EE has agreed and make sure that your Users do as well.

## 8 IF YOU DO NOT COMPLY WITH THE ACCEPTABLE USE POLICY

If you or your Users do not comply with the Acceptable Use Policy, you will indemnify EE for any Claims, losses, costs or liabilities EE incurs as a result.

## 9 WHEN EE IS NOT TO BLAME

EE will not be liable if it fails to do or not do something that EE is supposed to under this Contract (including not carrying out any of EE's responsibilities, carrying them out late), whether or not there is a Force Majeure Event (in which case, Clause 23 applies), to the extent EE's failure is due to:

- 9.1 your failure to carry out any of your responsibilities under this Contract, or you carrying them out late, in which case you will pay EE for any reasonable costs EE incurs as a result of your failure;
- 9.2 anyone other than EE, EE's Affiliates, subcontractors or suppliers doing something, or not doing something they need to do; or
- 9.3 restriction or prevention by Applicable Law, a court order, an application for interlocutory relief.

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## Payments

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### 10 PAYING WHAT YOU OWE EE

- 10.1 You will be responsible for and will pay the Charges as set out in the Schedule, whether the Trial Service is used by you or someone else. This includes all Charges resulting from unauthorised or fraudulent use.
- 10.2 EE will invoice you, and you will pay EE, in pounds sterling.
- 10.3 EE will work out the Charges based on details EE records or that are recorded for EE.
- 10.4 If EE issues an invoice online, EE will email you when EE has done so.
- 10.5 Unless you are disputing an invoice (see Clause 12), you will pay each invoice EE sends you within 28 days of the date on it. You will pay the full amount in cleared funds into EE's bank account, without any set-off, counterclaim, deduction or withholding, unless you legally have to take something off.
- 10.6 If you make a payment covering more than one invoice:

10.6.1 you will tell EE which amounts to apply to which invoices; and

10.6.2 if you do not tell EE, EE may apply the payment to any unpaid invoices at its discretion.

10.7 Charges do not include any Transaction Taxes. If EE sends you a valid tax invoice, you will pay all of the Transaction Taxes due, including those EE has paid or will pay that EE is allowed, by Applicable Law, to pass on to you, and that telecommunications providers normally pass on to their customers. EE will not charge any Transaction Taxes on the Trial Service where you have already given EE a valid tax exemption certificate.

10.8 You will make any deductions for Withholding Tax from your payments to EE that are required by Applicable Law and pay such sums to the relevant taxing authority within the period for payment permitted by Applicable Law.

10.9 If you deduct Withholding Tax from your payments to EE, you will:

10.9.1 gross up your payments to EE so that the net amount EE receives is equal to the amount EE would have received had there been no deduction or withholding; or

10.9.2 indemnify EE for the amounts you have deducted from your payments to EE.

10.10 If EE receives a Claim from a taxing authority alleging that it has not received Withholding Tax due on or in connection with payments from you to EE, you will indemnify EE for the amount of the Withholding Tax due together with any interest, fines and penalties relating to the late payment or non-payment of the Withholding Tax and any costs of defending the Claim against the taxing authority.

10.11 If you ask for any change to be made to the agreed billing arrangements for the Trial Service, and that change results in additional Transaction Tax or Withholding Tax to EE or any EE Affiliates that they are unable to fully recover, then, regardless of what it may say elsewhere in this Contract, EE may modify the Charges to reflect the impact of the change and you will pay EE any additional amounts due.

### 11 WHAT HAPPENS IF YOU DO NOT PAY EE

11.1 If you do not pay an invoice by the date it is due and you are not disputing the invoice in accordance with Clause 12, EE may:

11.1.1 charge you either:

(a) a late payment charge, which may be described in the Schedule; or

(b) interest on the unpaid amount at the annual rate of 4 per cent above the Bank of England's base lending rate at the date of calculation, or at the maximum rate allowed by Applicable Law, whichever is less. The interest will build up and be compounded each day, from the date the invoice was due to the date you pay EE; and

11.1.2 restrict or suspend the Trial Service until you have paid in full.

11.2 You will pay EE any reasonable costs that EE incurs when recovering any amount you owe EE, including deEE collection agency and legal costs.

### 12 DISPUTING AN INVOICE

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- 12.1 If you do not agree with something in an invoice EE sends you before you have made payment, you will give EE Notice within 14 Days after the date of the invoice.
- 12.2 You will always pay the undisputed amount of an invoice, and any disputed amount that is less than five per cent of the total invoice, in accordance with Clause 10.5.
- 12.3 We will both settle an invoice dispute in accordance with Clause 24.2 and you will pay the amount we both finally agree on within seven days of both of us agreeing it.
- 12.4 EE may still charge you a late payment fee or interest on amounts in accordance with see Clause 11.1.1 for any amount we both agree under Clause 12.3.

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## Protecting Information

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### 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 Intellectual Property Rights will carry on being their original owner's property whether the rights existed before the Contract or came after it.
- 13.2 If EE provides you with Software so you can use the Trial Service, EE gives you a non-transferable and non-exclusive licence to use the Software only for the purposes and in the manner set out in the Schedule. As well as any terms of the Contract, you will also comply with any third party terms that EE makes known to you that apply to the use of the Software or Trial Service.
- 13.3 You will not copy, decompile, modify or reverse engineer any Software or any part of the Trial Service, or knowingly let anyone else do that, unless it is allowed by law or EE has given you permission in writing.
- 13.4 You will not access or use the Trial Service to build or assist someone else to build products or services that compete with any EE product and services, or knowingly let anyone else do that.
- 13.5 The licence EE gives you in Clause 13.2 will last as long as EE provides you with the Trial Service.
- 13.6 If your use of the Trial Service leads to a Claim of infringement of someone's else's Intellectual Property Rights against you, or EE thinks it is likely to lead to one, EE may, at EE's expense:
  - 13.6.1 get you the right to carry on using the Trial Service; or
  - 13.6.2 modify or replace the relevant parts of the Trial Service so that using it no longer infringes another someone else's Intellectual Property Rights.
- 13.7 The actions in Clause 13.6 are the only remedies you will have for Claims for infringement of someone else's Intellectual Property Rights.

### 14 KEEPING THINGS CONFIDENTIAL

- 14.1 We will both keep all Confidential Information confidential and neither of us will disclose it, unless one of us needs to do that:
  - 14.1.1 to meet our responsibilities or to receive any benefit under the Contract, and then only to our employees, agents, Affiliates, officers, directors, advisers and, for EE only, EE's subcontractors and suppliers, who need to know. The one of us disclosing the Confidential Information will ensure

that the people receiving it comply with this Clause 14; or

- 14.1.2 because Applicable Law, a government or regulatory authority, or court of competent jurisdiction says we have to and the one of us disclosing it will give the other as much notice as reasonably possible before any disclosure.
- 14.2 Each of us will return or destroy any of the other's Confidential Information within a reasonable time when the other asks in writing.
- 14.3 This Clause 14 will stay in place for a period of three years following the end of this Contract.
- 14.4 Neither of us will publicise this Contract or your participation and experiences in using the Trial Service or refer to each other in any marketing material, unless:
  - 14.4.1 the one of us publicising it has been given permission in writing by the other party to do so; or
  - 14.4.2 any Applicable Law, a government or regulatory authority, or court of competent jurisdiction says we have to and the one of us disclosing it will give the other as much notice as reasonably possible before any disclosure.

### 15 DATA PROTECTION

- 15.1 In this Contract, the following terms each have the meaning given to it in the GDPR: "Binding Corporate Rules", "Controller", "Data Subject", "Personal Data", "Personal Data Breach", "Processing", "Processor" and "Supervisory Authority".
- 15.2 Whether or not any other provision in the Contract may say something different, for EE to provide a Trial Service, Personal Data may be:
  - 15.2.1 used, managed, accessed, transferred or held on a variety of systems, networks and facilities (including databases) worldwide; or
  - 15.2.2 transferred by EE worldwide to the extent necessary to allow EE to fulfil its obligations under this Contract and you appoint EE to perform each transfer in order to provide the Trial Services provided that EE will rely on appropriate transfer mechanisms permitted by Data Protection Legislation, including:
    - (a) BT Group's Binding Corporate Rules (for transfers among EE's Affiliates);
    - (b) agreements incorporating the relevant standard data protection clauses adopted by the European Commission; and
    - (c) where applicable, the EU-US Privacy Shield.
- 15.3 EE will be either Controller, Processor or both under the Contract depending on the type of Personal Data Processed and the purpose of the Processing.
- 15.4 If EE acts as a Controller:
  - 15.4.1 EE may collect, Process, use or share Personal Data with EE Affiliates and Sub-Processors, within or outside the country of origin in order to do any or all of the following:
    - (a) administer, track and fulfil Orders for the Trial Service;
    - (b) implement the Trial Service;

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- (c) manage and protect the security and resilience of any EE Equipment, the EE Network and the Trial Services;
  - (d) manage, track and resolve Incidents (as defined in the Schedule) with the Trial Service as set out in the Schedule(s);
  - (e) administer access to online portals relating to the Trial Service;
  - (f) compile, dispatch and manage the payment of invoices;
  - (g) manage the Contract and resolve any disputes relating to it;
  - (h) respond to general queries relating to the Trial Service or Contract; or
  - (i) comply with Applicable Law;
- 15.4.2 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, BT Group's Binding Corporate Rules; and
- 15.4.3 EE may, from time to time, contact the Customer Contact, or other network, IT or procurement manager involved in the procurement or management of the Trial Service, to provide additional information concerning the Trial Service or other similar services.
- 15.5 If EE acts as a Processor:
- 15.5.1 the subject-matter, duration, nature and purpose of the Processing, the type of Customer Personal Data and categories of Data Subjects will be set out in the applicable Annex that can be found online at [www.EE.com/terms](http://www.EE.com/terms);
- 15.5.2 in order to perform its obligations under the Contract, EE will:
- (a) Process the Customer Personal Data on your behalf in accordance with your documented instructions as set out in Clause 15.5.11, except where:
    - (i) Applicable Law requires EE to Process the Customer Personal Data otherwise, in which case, EE will notify you of that requirement before Processing, unless to do so would be contrary to that Applicable Law on important grounds of public interest;
    - (ii) in EE's reasonable opinion an additional instruction or a change to the instructions provided by you in accordance with Clause 15.5.11 infringes the Data Protection Legislation and EE will inform you of its opinion without undue delay and will not be required to comply with that instruction;
  - (b) to protect the Customer Personal Data against a Personal Data Breach, implement technical and organisational security measures, including those that may be set out in the Schedule, that are appropriate to the risk represented by EE's Processing and the nature of the Customer Personal Data being Processed;
- (c) provide Notice to you without undue delay after becoming aware of a Personal Data Breach affecting the Customer Personal Data;
  - (d) only use the Sub-Processors approved by you by entering into the Contract or in accordance with Clause 15.5.9; and
  - (e) assist you in your compliance with the Data Protection Legislation, taking into account the nature of the Processing of the Customer Personal Data and the information available to EE, relating to:
    - (i) its obligation to respond to lawful requests from a Data Subject, to the extent practicable;
    - (ii) the security of the Processing of the Customer Personal Data;
    - (iii) notification of a Personal Data Breach affecting the Customer Personal Data to the Supervisory Authority or the Data Subjects; and
    - (iv) a data protection impact assessment as may be required by Article 35 of the GDPR and prior consultation with the Supervisory Authority,and you will reimburse EE's reasonable costs for this assistance except for the assistance set out in Clause 15.5.2(e)(iii) where a Personal Data Breach affecting the Customer Personal Data occurred as a direct result of a breach of EE's obligations set out in Clause 15.5.2(b);
- 15.5.3 unless Applicable Law requires EE to store a copy of the Customer Personal Data, upon expiry or termination of the Contract and at your option, EE will delete or return the Customer Personal Data within a reasonable time period and you will reimburse EE's reasonable costs for this deletion or return of the Customer Personal Data;
- 15.5.4 EE will make available to you the information demonstrating EE's compliance with its obligations set out in Clause 15.5, and, subject to 30 days' Notice from you, allow for and reasonably cooperate with you (or a third party auditor appointed by you) to audit this compliance at reasonable intervals (but not more than once per year), so long as:
- (a) the audit will:
    - (i) not disrupt EE's business;
    - (ii) be conducted during Business Days;
    - (iii) not interfere with the interests of EE's other customers;
    - (iv) not cause EE to breach its confidentiality obligations with its other customers, suppliers or any other organisation; and
    - (v) not exceed a period of two successive Business Days;
  - (b) you (or your third party auditor) will comply with EE's relevant security policies and appropriate confidentiality obligations; and
  - (c) you will reimburse EE's reasonable costs associated with the audit and, where EE conducts an audit of its Sub-Processors to

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- demonstrate EE's compliance with its obligations set out in Clause 15.5, those of its Sub-Processors.
- 15.5.5 EE may demonstrate its compliance with its obligations set out in Clause 15.5 by adhering to an approved code of conduct, by obtaining an approved certification or by providing you with an audit report issued by an independent third party auditor (provided that you will comply with appropriate confidentiality obligations and not use this audit report for any other purpose);
- 15.5.6 EE will not disclose Customer Personal Data to a third party unless required for the performance of the Trial Service, permitted under the Contract or otherwise required by Applicable Law;
- 15.5.7 EE will ensure that persons authorised by EE to Process the Customer Personal Data will be bound by a duty of confidentiality;
- 15.5.8 EE may use Sub-Processors in accordance with Clause 26.2 and will ensure that data protection obligations in respect of Processing Customer Personal Data equivalent to those set out in Clause 14.5 will be imposed on any Sub-Processors;
- 15.5.9 EE will inform you of proposed changes to EE's Sub-Processors from time to time by either:
- (a) providing you with online notice of the intended changes at [www.EE.com/terms](http://www.EE.com/terms) and you will have 30 days starting from the first Business Day of the calendar month following the date of the online notice to object to the change; or,
  - (b) giving you Notice in accordance with Clause 25 and you will have 30 days starting from the date of the Notice to object to the change, and
- if you do not object in accordance with Clauses 15.5.9(a) or 15.5.9(b), you will be deemed to have authorised the use of the new Sub-Processors;
- 15.5.10 you may object to the use of a new Sub-Processor by giving Notice in accordance with Clause 25 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 15.5.9, we will both address your objection in accordance with the process set out in Clause 24 and EE may use the relevant Sub-Processor to provide the Trial Service until the objection is resolved in accordance with Clause 24;
- 15.5.11 the Contract contains your complete instructions to EE for the Processing of Customer Personal Data and any additional instructions or changes to the instructions will be incorporated into this Contract in accordance with Clause 32 to take account of any resulting change in the Charges or the Trial Service;
- 15.5.12 you will comply with applicable Data Protection Legislation and will fulfil all the requirements necessary for the provision of the Trial Service by EE, including providing any notifications and obtaining any regulatory approvals or consents required when sharing Personal Data with EE; and
- 15.5.13 you will only disclose to EE the Personal Data that EE requires to perform the Trial Service.
- 15.6 If permitted by Applicable Law:
- 15.6.1 a party in breach of the Data Protection Legislation or this Clause 15 will be liable to the other for any losses, costs and liabilities (including those arising from Claims) 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
- 15.6.2 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 Claim caused by or relating to the Processing of Personal Data, without the prior written agreement of the other party.
- 15.7 Where each party acts as a Controller in relation to the Processing of Personal Data under the Contract, the parties will not act as joint Controllers for the purposes of Article 26 of the GDPR in relation to such Processing.
- 15.8 If, in accordance with Clause 31, EE proposes amendments to the Contract to reflect changes to EE's security measures, policies and processes to enable EE to comply with the Data Protection Legislation, you will act reasonably and in good faith to negotiate those amendments in a timely manner with EE.

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## Ending the Trial Service or the Contract

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### 16 WHEN EE MAY RESTRICT OR SUSPEND THE TRIAL SERVICE

- 16.1 EE may restrict or suspend any Trial Service:
- 16.1.1 if EE needs to do Maintenance;
  - 16.1.2 to implement a change under Clause 5.2;
  - 16.1.3 if you do not pay EE on time and in the way described in Clause 10.1; and
  - 16.1.4 if EE reasonably believes:
    - (a) you or your users have not followed the Acceptable Use Policy; or
    - (b) EE needs to in order to protect the integrity or security of the EE Network.
- 16.2 If EE restricts or suspends the Trial Service because of the reasons in Clauses 16.1.3 or 16.1.4:
- 16.2.1 you will still have to pay the Charges that are payable for the Trial Service until the Trial Service ends; and
  - 16.2.2 EE may charge a re-installation fee to start the Trial Service again.
- 16.3 If EE decides to restrict or suspend the Trial Service for any of the above reasons, EE will let you know beforehand as soon as it reasonably can.

### 17 IF EITHER OF US WANT TO TERMINATE THE CONTRACT

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- 17.1 Either of us can terminate the Contract by giving Notice in accordance with Clause 17.2 and we will each have to pay the other the amounts in Clause 21.
- 17.2 The required Notice period for terminating under Clause 17.1 is:
- 17.2.1 as set out in Part A of the Schedule; or
  - 17.2.2 if it is not set out in the Schedule, 30 days.
- 17.3 As long as you pay the amounts set out in Clauses 21.1 you may, if EE agrees give EE Notice as set out in Clause 17.1 with either:
- 17.3.1 a shorter Notice period than as set out Clause 17.2 or
  - 17.3.2 with no advance Notice period.

## 18 TERMINATING THE CONTRACT WHEN SOMETHING HAS GONE WRONG

Either of us can terminate the Contract straightaway by giving the other Notice to terminate if:

- 18.1 the other materially breaches the Contract and, where it is possible, they do not put the situation right:
- 18.1.1 within the period set out in the Schedule; or
  - 18.1.2 If not specified in the Schedule, within 30 days after Notice of their breach;
- 18.2 the other materially breaches the Contract and the situation cannot be put right; or
- 18.3 an Insolvency Event applies to the other,
- and we will each have to pay the other the amounts referred to in Clause 21.1.

## 19 TERMINATING THE CONTRACT IF THERE IS AN EVENT BEYOND EITHER OF OUR CONTROL

- 19.1 Unless a Schedule says something different, if a Force Majeure Event means the Trial Service is completely and continuously unavailable for more than 30 days, either of us can terminate the Contract straightaway by giving the other Notice, as long as the Force Majeure Event is still having an effect when the Notice is received, and we will each have to pay the other the amounts referred to in Clause 21.1.
- 19.2 If the Force Majeure Event has ceased before any Notice to terminate is received by one of us, the right set out in Clause 19.1 will end and the Notice will have no effect.

## 20 WHAT HAPPENS WHEN THE CONTRACT IS TERMINATED

- 20.1 If the Contract is terminated or expires for any reason, it will not affect any rights that either of us have up to that point.

## 21 WHAT WE BOTH NEED TO PAY WHEN THE CONTRACT IS TERMINATED

- 21.1 If the Contract is terminated or expires for any reason, each of us will immediately pay the other any money and interest that is due on the date of termination.
- 21.2 If you terminate the Contract using your rights set out in Clause 17, you will pay EE:
- 21.2.1 the Termination Charges; and
  - 21.2.2 all Charges for the Trial Service that are or would have been performed during the Notice period set

out in Clause 17.2, whether or not such Notice period is actually given.

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## If Something Goes Wrong

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### 22 HOW FAR EACH OF US CAN BE HELD RESPONSIBLE

- 22.1 The Contract excludes, as far as the law allows, any warranties, conditions or other terms that might be implied by statute or common law.
- 22.2 Nothing in the Contract excludes or limits the liability of either of us for:
- 22.2.1 death or personal injury caused by either of us being negligent;
  - 22.2.2 fraud or fraudulent misrepresentation; or
  - 22.2.3 any other liability that cannot be excluded or limited under Applicable Law.
- 22.3 Other than for those matters set out in Clause 22.2, neither of us will be held liable, regardless of how that liability arose, under or in connection with the Contract, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, for:
- 22.3.1 any of the following losses, no matter if those losses are direct or indirect:
    - (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, destruction or corruption of data;
    - (f) liability to any third parties unless a Clause in the Contract says something different; and
    - (g) any special, indirect or consequential loss or damage.
  - 22.3.2 Other than for those matters set out in Clause 22.2 and 22.6, the total liability of each of us, regardless of how that liability arose, and regardless of the number of claims, under or in connection with the Contract, and whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution, or in any other way, will be limited to the greater of:
    - (a) £25,000; and
    - (b) an amount equal to:
      - (i) where an incident arises in the first 12 months of the Contract, the Charges for the Trial Service that were paid or payable by you in the first month of the Contract, multiplied by 12; or
      - (ii) at any other time, the mean monthly Charges for the Trial Service that were paid or payable by you, as calculated from the Effective Date up to the date when either of us became liable, multiplied by 12.
- 22.4 Your obligations to:
- 22.4.1 pay any Charges due under the Contract including interest payable under Clause 11.1.1(b) and any taxes due in connection with the Charges, together

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with any interest, fines and penalties payable due to your failure to correctly withhold and pay taxes where applicable;

22.4.2 Refund any Service Credits; or

22.4.3 pay any Termination Charges

are in addition to and will not be counted towards the limitations set out in Clause 22.3.

22.5 Regardless of what it may say elsewhere in the Contract, both of us will take reasonable steps to mitigate each of our losses, even where that loss occurs as a result of anything that may give rise to a Claim under an indemnity.

22.6 If either of us has agreed to indemnify the other under the terms of the Contract, that indemnity is only given as long as the party being indemnified:

22.6.1 tells the party giving the indemnity promptly about the Claim;

22.6.2 gives the party giving the indemnity complete control of the Claim straightaway;

22.6.3 does not say anything publicly about the Claim, or do anything that harms the defence of it; and

22.6.4 does what it can to help the party giving the indemnity with the Claim.

22.7 EE recommends that you obtain business continuity (or other) insurance that is appropriate for the nature of your business, just in case something goes wrong.

22.8 Provided EE has complied with its obligation set out in Clause 5.1.4, EE will not be held responsible for any loss or damage caused by unauthorised access to any part of the EE Network.

## 23 FORCE MAJEURE EVENTS

If there is a Force Majeure Event the party whose performance is affected by the Force Majeure Event will:

23.1 not be liable for failing to do something they should have done, or for not doing it completely or on time to the extent that it is caused by the Force Majeure Event ; and

23.2 get a reasonable amount of extra time to

23.3 perform the obligation that is affected by the Force Majeure Event.

## 24 SETTLING DISPUTES

24.1 We will both do what we reasonably can to settle any dispute or claim that occurs under or in relation to this Contract, and to avoid having to get the courts or regulatory authorities involved.

24.2 We will both use the following dispute resolution process:

24.2.1 whichever of us is affected will provide Notice of the complaint that clearly sets out the full facts and includes relevant supporting documents;

24.2.2 we will both use reasonable endeavours to settle the dispute within 14 days of getting the complaint and will make sure to give regular updates to the other during the 14 days;

24.2.3 if the dispute is not settled after 14 days (or any other period agreed by both of us in writing), the dispute can be escalated to a senior executive of either of us (someone at vice president level or above); and

24.2.4 if the dispute still is not settled 14 days after it is escalated, we will both consider mediation.

24.3 After complying with Clause 24.2, either of us may start mediation by giving Notice to the other, in which case:

24.3.1 unless we both agree to another date, it will start no later than 15 days after the date of the Notice;

24.3.2 unless we both agree otherwise, any mediation will happen in London, in English; and

24.3.3 we will both share the costs of mediation equally, unless the relevant mediator or a later court of competent jurisdiction decides something else.

24.4 Nothing in this Clause 24 stops either of us:

24.4.1 seeking interlocutory or other immediate relief if one of us is at risk of imminent harm, unless something in the Contract already provides an adequate remedy;

24.4.2 going to a court of competent jurisdiction if either of us considers it reasonable; or

24.4.3 doing anything else this Contract lets us do.

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## Everything Else

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### 25 SENDING NOTICES UNDER THE CONTRACT

25.1 If one of us needs to give the other Notice, they will do it in writing, in English and:

25.1.1 send it by email;

25.1.2 deliver it by hand; or

25.1.3 send it by first class post, recorded delivery or courier.

25.2 Notices need to be sent to:

25.2.1 the recipient's current registered address; or

25.2.2 any other address or email address the recipient gives in a Notice to the sender.

25.3 If either of our contact details change, we will both tell the other straightaway by giving Notice.

25.4 The recipient is deemed to have received the Notice on the date (or if the date is not a Business Day, then on the next Business Day) that:

25.4.1 the recipient acknowledges it by manual reply or an automatic read receipt, if it is an email;

25.4.2 the Notice is left at the address or someone signs for it on behalf of the addressee, if it is delivered by hand or sent by courier; or

25.4.3 is three days after posting, if it is sent by first-class post or recorded delivery.

### 26 TRANSFERRING TO ANOTHER PARTY

26.1 Either of us may assign the benefit of the Contract to an Affiliate by giving the other Notice, but if either of us chooses to assign the benefit of the Contract to an entity that is not an Affiliate, they need to get the other's permission in writing beforehand.

26.2 EE may subcontract any of its responsibilities under the Contract to another entity, including to a EE Affiliate, but if it does, it will still be responsible to you under the Contract.

26.3 If EE subcontracts the performance of any of its rights or obligations to a EE Affiliate as described in Clause 26.2, you

# Trial General Terms

will, once you receive Notice from EE, deal directly with the EE Affiliate for ordering, provisioning or maintaining the Trial Services.

- 26.4 By giving you Notice, EE can novate the Contract or a Trial Service to a EE Affiliate. If EE does, all EE's rights, responsibilities and liabilities will transfer to the EE Affiliate and you will need to deal with the EE Affiliate instead of EE as EE will no longer be a party to the Contract in relation to the Trial Service.
- 26.5 We both agree that either of us, or an Affiliate of either of us, may enter into a separate contract with an Affiliate of the other, which will incorporate these Trial General Terms and the Schedules ("**Affiliate Contract**").
- 26.6 Either of us can assign or transfer our right to collect payments, receivables or other assets arising as a result of the Contract.

## 27 THIRD PARTIES' RIGHTS

A person who is not a party to the Contract will not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, even if a term seems to give the party a particular benefit.

## 28 NO PARTNERSHIP OR AGENCY ARRANGEMENT

Unless a Clause in the Contract says something different, the Contract does not:

- 28.1 set up any partnership, exclusive arrangement or joint venture between us;
- 28.2 make one of us the agent of the other; or
- 28.3 authorise either of us to enter any commitments for, or on the behalf of, the other.

## 29 NO WAIVER

If either of us does not do, or delays doing, something that this Contract allows, they will not have waived their right to do it, unless the Contract says something different.

## 30 WHAT HAPPENS IF PART OF THE CONTRACT IS ILLEGAL, INVALID OR UNENFORCEABLE

- 30.1 If any court of competent jurisdiction finds that any part of the Contract is illegal, invalid or unenforceable, that part will be considered removed, but no other part of the Contract will be affected.
- 30.2 If any illegal, invalid or unenforceable part of the Contract would be legal, valid or enforceable if part of it were removed, we both will negotiate in good faith to change the Contract so it reflects what we both originally intended as much as possible.

## 31 MAKING CHANGES TO THE CONTRACT

- 31.1 Unless a Schedule says something different, Changes to the Contract will only be effective if they are in writing and are signed by both of us.
- 31.2 Neither of us needs the consent of any Affiliate to vary or terminate the Contract. Any termination of the Contract will not terminate any individual Affiliate Contracts.

## 32 AFTER THE CONTRACT ENDS

At the end of the Contract, provisions in the Contract that we both expect to remain in place after it ends will stay in place.

## 33 THE CONTRACT STANDS ON ITS OWN

- 33.1 The Contract sets out the whole agreement between both of us and replaces any previous communication between us.
- 33.2 Your own standard terms are not part of the Contract even if you provided them to EE before signing the Contract, or if you send them to EE or refer to them in an Order.
- 33.3 By agreeing the Contract, each of us acknowledges they have not relied on any representation, warranty, collateral contract or other assurance (made negligently or innocently) except for the ones in the Contract. Each of us also waives all rights and legal remedies they might have had if it were not for this Clause 33.

## 34 CHOICE OF LAW AND COURTS

- 34.1 The laws of England and Wales will apply to the Contract and any disputes or claims in connection with it or our relationship, including non-contractual ones.
- 34.2 Only the courts of England and Wales will be able to rule on any disputes or claims in connection with the Contract or our relationship, including non-contractual ones.
- 34.3 The parties to an Affiliate Contract may agree that a local court of competent jurisdiction will have jurisdiction in relation to that Affiliate Contract.

## 35 COUNTERPARTS

The Contract can be signed on one or more copies. Any single counterpart, or a set of counterparts signed, in either case, by both of us will constitute a full original of the Contract for all purposes.

## Defined Terms

"**Acceptable Use Policy**" means specific rules that you and your Users have to follow when using the Trial Service. You can find the policy at [www.BT.com/acceptableuse](http://www.BT.com/acceptableuse) (or any other online address that EE may advise you).

"**Affiliate**" means any entity that directly or indirectly controls or is controlled by either one of us, or is jointly controlled with either you or EE.

"**Affiliate Contract**" has the meaning given in Clause 26.5.

"**Annex**" means any annex to a Schedule that describes the Trial Service or sets out the specific terms that apply to it.

"**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 Trial 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.

"**EE Equipment**" means any equipment and any related Software that EE owns or that is licensed to EE and that EE uses to provide the Trial Service.

"**BT Group**" means BT Group plc and its Affiliates.

"**EE Network**" means the communications network owned or leased by EE and used to provide the Trial Service.

"**EE Privacy Policy**" means the policy that EE has implemented and may update from time to time on how it Processes Personal Data and that is set out at:

<http://explore.ee.co.uk/privacy>

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**“Business Day”** means any day generally seen locally in the place where a Trial Service is provided as a working day and excluding national, public and bank holidays. If one of us is supposed to do something on a day that is not a Business Day, then they will need to do it on the next Business Day.

**“Charges”** means the fees and charges that you pay in relation to the Trial Service as set out in the Schedule.

**“Claim”** means any legal claims, actions or proceedings against one of us, whether threatened or actual, whether by a third party or the other party to this Contract.

**“Compliance Obligations”** mean those provisions, obligations and rights set out under the drop-down heading ‘Compliance Obligations’ at [www.globalservices.BT.com/uk/en/footer\\_links/terms](http://www.globalservices.BT.com/uk/en/footer_links/terms) (or any other online address that EE may advise you).

**“Confidential Information”** means confidential information either of us (or each of our officers, employees, agents, subcontractors, suppliers, advisers or Affiliates) gives the other after the date of the Contract, no matter how it is recorded, stored or disclosed and includes:

- (a) the Contract;
- (b) information about technical or commercial know-how, specifications, inventions, processes or initiatives; or
- (c) any information a reasonable business person would see as confidential about:
  - (i) the business, affairs, customers, clients, subcontractors, suppliers, plans or strategy of either of us or our Affiliates; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of either of us or our Affiliates,

but it does not include:

- (a) information that is available to the public, or becomes available, unless it is because one of us breaches the Contract;
- (b) information that was already available on a non-confidential basis;
- (c) information we both agree in writing is not confidential information; or
- (d) information that was developed by or for the receiving party independently of the information disclosed by whoever disclosed it.

**“Contract”** means the agreement between you and EE that is made up of these Trial General Terms, the Schedule and the Cover Page.

**“Customer Personal Data”** means only the proportion of Personal Data where you are the Controller and that EE needs to Process on your behalf as a Processor in providing the Services to you under the Contract.

**“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.

**“Effective Date”** is the date as agreed between us as set out in the Order.

**“EU-US Privacy Shield”** means a legal framework adopted by the European Commission in its adequacy decision of 12 July 2016 that ensures an adequate level of protection for Personal Data transferred from the European Union to organisations in the United States that have self-certified to the EU-US Privacy Shield.

**“Force Majeure Event”** means any event that neither of us can control and that stops or delays one of us from doing something, including:

- (a) natural event including a flood, a storm, lightning, a drought, an earthquake, seismic activity;
- (b) an epidemic or a pandemic;
- (c) a terrorist attack, civil war, civil commotion or riots, war, the threat of war, preparation for war, an armed conflict, an imposition of sanctions, an embargo or a breaking-off of diplomatic relations;
- (d) any law made or any action taken by a government or public authority, including not granting or revoking a licence or a consent;
- (e) collapsing buildings, a fire, explosion or accident; or
- (f) any labour or trade dispute, a strike, industrial action or lockouts.

**“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).

**“General Terms”** means these terms.

**“Insolvency Event”** means any of the following events that occurs where one of us:

- (a) becomes the subject of a bankruptcy order;
- (b) becomes insolvent;
- (c) makes any arrangement or composition with its creditors, or assignment for the benefit of its creditors;
- (d) goes into voluntary or compulsory liquidation, except for reconstruction or amalgamation purposes;
- (e) stops trading or operating;
- (f) owns any assets that are material to the operations of all or substantially all of its business that are seized or have a receiver or administrator appointed over them; or
- (g) faces any of these situations because a notice is given, a petition is issued, a resolution is passed, or any other step is taken in their jurisdiction.

**“Intellectual Property Rights”** means any trademark, service mark, trade and business name, patent, petty patent, copyright, database right, design right, community design right, semiconductor topography right, registered design, right in Confidential Information, internet domain name, moral right and know-how, or any similar right in any part of the world. Any applications for registering any of these rights that can be registered in any part of the world are also included.

**“Maintenance”** means any work on the EE Network or Trial Service, including to maintain, repair or improve the performance of the EE Network or the Trial Service.

**“Notice”** means any notice to be given by one of us to the other under the Contract in accordance with Clause 25.

**“Open Source Software”** means software EE has distributed to you that is licensed under a separate open source licence.

**“Purchased Equipment”** means any equipment, including any Software, that EE sells or licenses to you.

**“Schedule”** means the schedule that describes the Trial Service and sets out the specific terms that apply to it, and includes any Annexes for the Trial Service except for the purposes of Clause 2.

**“Site”** means any place identified in a Schedule from or to which EE provides the Trial Service.

**“Software”** means any software in object code format only, and related documentation (whether on tangible or intangible media)

# Trial General Terms

that EE provides to you as part of a Trial Service. It includes any embedded software, but it excludes Open Source Software.

**“Sub-Processor”** means a EE Affiliate or EE’s supplier or subcontractor that EE engages to Process Customer Personal Data for the purposes of the Contract.

**“Termination Charges”** means any compensatory charges payable by you to EE on termination of the Contract or a Trial Service in accordance with Clause 17 and as set out in a Schedule.

**“Transaction Taxes”** mean value added tax (VAT), goods and services tax (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 Trial Services.

**Trial Period** has the meaning given to it in the Schedule.

**Trial Service** means the service that EE provides under the Contract as set further described in the Schedule. If relevant, it includes a part or component of the Trial Service.

**“User”** means any person who is your employee that you allow to use the Trial Service.

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