



# **Conditions for BT Openzone-In-a-Box (Netgear Model)**

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# Conditions for BT Openzone-In-a-Box

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## 1. INTERPRETATION

“**BT**” means British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ, registered in England No. 1800000 and, for the purposes of performance of its obligations under this Contract, includes any agents or sub-contractors appointed by BT from time to time.

“**Broadband Service**” means a minimum of 512 Kbps broadband Internet connection.

“**BT Group Company**” means a BT subsidiary or holding company, or a subsidiary of that holding company, all as defined by Section 736 of the Companies Act 1985, as amended by the Companies Act 1989.

“**Conditions for BT Openzone Service**” means the conditions for the use of the Wifi Service to be displayed on each Site.

“**Contract**” means, in the order of precedence, these Conditions and the Order.

“**Customer**” means a person or entity with whom BT makes this Contract as set out on the Order.

“**Equipment**” means the equipment (including any software and documentation) supplied by BT to the Customer under this Contract to be installed by the Customer at a Site in order for BT to provide the Wifi Service.

“**Helpdesk**” means BT’s customer service helpdesk as notified to the Customer and Users from time to time.

“**Minimum Period**” means the first twelve (12) months starting from the Wifi Service Commencement Date.

“**Order**” means the order to be completed by the Customer on line at [www.btopenzone.com](http://www.btopenzone.com) (or such other ordering method made available by BT) for the provision of Equipment.

“**Rights**” means the rights granted to BT by the Customer to enable BT to:

- (a) enter a Site to undertake any reasonable market research, assessment or review of the Wifi Service;

- (b) test, if necessary, the Wifi Service from the Customer premises or a Site; and

- (c) include the Customer's Site address in any on line and paper publications detailing sites where the Wifi Service is made available to Users.

“**Site**” or “**Sites**” means the property owned, leased or occupied by the Customer where the Customer installs the Equipment.

“**Wifi Service**” means BT’s public wireless LAN service known as BT Openzone which BT provides to Users.

“**Wifi Service Commencement Date**” means the date when the Wifi Service is first made available or when the Equipment has been installed and registration completed by the Customer in accordance with the instructions on [www.btopenzone.com](http://www.btopenzone.com).

“**Users**” means a person who uses or attempts to use the Wifi Service from a Site.

## 2. COMMENCEMENT AND DURATION OF THE CONTRACT

The Contract begins on the date that BT confirms acceptance of the Order. The Contract is for the Minimum Period and will continue thereafter until terminated by either party in writing to the other.

## 3. SALE OF THE EQUIPMENT

- 3.1 The Customer agrees to purchase the Equipment on the terms of this Contract.

- 3.2 BT will use reasonable endeavours to provide the Equipment by the date agreed with the Customer but all dates are estimates and BT has no liability for any failure to meet any date.

- 3.3 Acceptance of the Equipment by the Customer will take place when the Customer takes delivery of the Equipment.

- 3.4 BT guarantees the Equipment for a period of 12 months from the date of acceptance. If the Customer reports a fault during the guarantee period and the fault is due to faulty design, manufacture, materials or BT’s negligence, BT will repair or (at its option) replace the Equipment provided that it has been properly kept, maintained, and used in accordance with the manufacturer's or BT's instructions and has not been modified except with BT's written

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- agreement. Faults due to damage, fair wear and tear or the actions of anyone other than BT are not covered by this guarantee.
- 3.5 Equipment installed by the Customer must be returned to BT if it needs repair or replacement under the guarantee.
- 3.6 Risk in the Equipment passes to the Customer at the time of delivery, but the Customer will not be liable for any loss or damage caused by BT's negligence.
- 3.7 Where this Contract does not include delivery, risk passes to the Customer when the Customer takes possession of the Equipment.
- 3.8 Where software is supplied to enable the Customer to operate the Equipment, BT grants the Customer a non-exclusive, non-transferable licence to use the software for that purpose. The Customer will not, without BT's prior written consent, copy, decompile or modify the software, nor copy the manuals (except as permitted by law). The Customer will sign any agreement reasonably required by the owner of the software.
- 3.9 Ownership of the Equipment, excluding the software, will pass to the Customer on payment in full.
- 4. PROVISION OF WIFI SERVICE**
- 4.1 The Customer will install the Equipment at the Site for use by BT in accordance with the terms of this Contract. In addition, to enable the use of the Equipment, the Customer must provide, without limitation, the following facilities:
- (a) a Broadband Service;
  - (b) cabling and power supplies;
  - (c) a standard Ethernet port; and
  - (d) operation and maintenance of the Equipment.
- 4.2 BT will make available e-mail and telephone support to the Customer for Equipment. This support is not available to any other hardware not supplied by BT which the Customer connects to the Equipment.
- 4.3 On completion of the installation of the Equipment and registration by the Customer, BT will make available the Wifi Service to the Site to enable Users to access the Wifi Service. The Customer will provide all reasonable assistance to BT to enable the Wifi Service to operate using the Equipment and the Customer's facilities.
- 4.4 BT will use reasonable endeavours to provide the Wifi Service at the Site by the date agreed, but all dates are estimates.
- 4.5 The Customer accepts that the Wifi Service is not fault free. The Customer will report any faults by telephone or email to the Help Desk. BT will have no liability if the Wifi Service is unavailable for any reason but will correct faults as soon as it reasonably can. Faults on Broadband Service are the responsibility of the Customer's broadband supplier.
- 4.6 BT may temporarily suspend the Wifi Service because of an emergency or for operational reasons, maintenance or improvements. The Wifi Service will be restored as soon as possible.
- 4.7 BT will allow Users to access the Wifi Service subject to the Conditions for BT Openzone Service.
- 5. CONTRACT REVIEW**
- 5.1 The Customer agrees to BT's reasonable requests to:
- (a) complete all questionnaires or other documents BT may send to the Customer concerning the Wifi Service;
  - (b) participate in such interviews and discussion groups as BT may arrange from time to time; and
  - (c) provide BT with such information about the use of Wifi Service by Users as BT may reasonably require.
- The Customer acknowledges that such information is necessary to enable BT to promote and evaluate the development of the Wifi Service.
- 6. CUSTOMER'S RESPONSIBILITIES**
- 6.1 The Customer will install the Equipment in accordance with the instructions provided on the BT website [www.btopenzone.com](http://www.btopenzone.com).
- 6.2 The Customer grants BT the Rights for the duration of this Contract.
- 6.3 The Customer will display in a prominent place at the Site(s) such reasonable advertising,

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marketing and other material as BT may provide in relation to the Wifi Service including without limitation the Conditions for BT Openzone Service.

6.4 The Customer will:

- (a) not do anything likely to damage or adversely affect BT's brand or reputation, obliterate or deface any words or signs for the Wifi Service, or authorise any other person to do so;
- (b) be responsible at its own cost for installation of the Equipment and the Customer's facilities as detailed in paragraph 4.1; and
- (c) pay all electricity charges in respect of the use of electrical power for the purpose of operating the Equipment.

6.5 BT may, at its discretion, disconnect the Wifi Service at any time on giving notice where the Customer broadband bandwidth connection is below the required level.

6.6 The Customer is responsible for obtaining the consent of its broadband supplier before connecting the Equipment to enable the use of Wifi Service.

6.7 The Customer will indemnify BT against all claims, costs, proceedings and damages arising under this Contract or which may be brought or threatened against BT by any third party resulting from any act or omission of the Customer in relation to this Contract, except to the extent that such claims, proceedings or damages are caused or contributed to by the negligence of BT its employees, agents or sub-contractors.

## 7. CHARGES, PAYMENT AND VOUCHERS

7.1 The Customer must pay the charge for the Equipment in accordance with the Order. The charge for the Equipment must be paid:

- (a) by credit card at the time of ordering for Orders placed on line; or
- (b) upon receipt of BT's invoice for Orders placed by other means.

Unless otherwise stated, the charge for the Equipment includes delivery but is exclusive of VAT which will be added to the bill.

7.2 The Customer will be eligible to receive a discount on the purchase of pre-pay vouchers.

(a) Vouchers are distributed by BT. The Customer may purchase the vouchers by completing a paper voucher request form and faxing this to 0800 731 8114. Paper voucher request forms may be obtained from [www.btopenzone.com](http://www.btopenzone.com), by e-mail at [bt.openzone.papervouchers@bt.com](mailto:bt.openzone.papervouchers@bt.com) or by telephone 0800 326 232

(b) BT will arrange for the Customer to receive 25% discount (excluding VAT) off the recommended retail price on all vouchers purchased in accordance with sub-paragraph (a) above.

(c), BT may change the method of distribution and percentage of discount referred to in paragraphs (a) and (b) above from time to time. Any such change will be published on [www.btopenzone.com](http://www.btopenzone.com).

7.3 The Customer will not, other than as provided for in this paragraph 7, attempt to resell or profit from the Wifi Service in any way.

## 8. ACCESS AND SITE REGULATIONS

8.1 The Customer will provide BT employees and anyone acting on BT's behalf, who produces a valid identity card, with access at all reasonable times to the Site.

8.2 BT employees and anyone acting on BT's behalf will observe any reasonable Site regulations, as previously advised in writing to BT by the Customer.

## 9. MISUSE

9.1 The Customer will take all reasonable steps to ensure that the Wifi Service, the Equipment and the Customer's facilities detailed in paragraph 4.1 are not used in any way that:

- (a) does not comply with the terms of any legislation or that is in any way unlawful; or
- (b) would put BT in breach of the terms of any agreement BT has with any public telecommunications operator, notified in writing by BT to the Customer.

9.2 The Customer will give BT 30 days prior written notice of the introduction of any additional provider of services similar to the Wifi Service at the Site.

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### 10. CONFIDENTIALITY

- 10.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Contract or in relation to the Wifi Service and will not, without the written consent, disclose that information to any person (other than their employees or professional advisers, or in the case of BT the employees of a BT Group Company or their suppliers, who need to know the information).
- 10.2 This paragraph 10 will not apply to:
- (a) any information which has been published other than through a breach of this Contract;
  - (b) information lawfully in the possession of the recipient before the disclosure took place;
  - (c) information obtained from a third party who is free to disclose it; and
  - (d) information which a party is requested to disclose and, if it did not, could be required by to do so by law.
- 10.3 This paragraph 10 will remain in effect for 2 years after the termination of this Contract.

### 11. LIMITATION OF LIABILITY

- 11.1 BT accepts unlimited liability for death or personal injury resulting from its negligence. Paragraphs 11.2 and 11.3 do not apply to such liability.
- 11.2 BT is not liable to the Customer, either in contract, tort (including negligence) or otherwise for any direct or indirect loss of profits, business or anticipated savings, nor for any indirect loss or damage or for any destruction of data.
- 11.3 BT's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Contract is limited to £250,000 for any one incident or series of related incidents and to £500,000 for all incidents in any period of 12 months.
- 11.4 Each provision of this Contract, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts will continue to apply.

### 12. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 12.1 BT will indemnify the Customer against any claims and proceedings arising from infringement of any intellectual property rights arising from BT's provision of the Equipment or the Wifi Service. As a condition of this indemnity the Customer must:
- (a) notify BT promptly in writing of any allegation of infringement;
  - (b) make no admission relating to the infringement;
  - (c) allow BT to conduct all negotiations and proceedings and give BT all reasonable assistance in doing so (BT will pay the Customer's reasonable expenses for such assistance); and
  - (d) allow BT to modify the Equipment so as to avoid the infringement.
- 12.2 The indemnity in paragraph 12.1 does not apply to infringements caused by the use of the Equipment in conjunction with other equipment, software or services not supplied by BT or to infringements caused by designs or specifications made by, or on behalf of, the Customer. The Customer will indemnify BT against all claims, proceedings and expenses arising from such infringements.
- 12.3 The limitations and exclusions of liability contained in paragraph 11 do not apply to this paragraph.

### 13. MATTERS BEYOND THE REASONABLE CONTROL OF EITHER PARTY

- 13.1 If either party is unable to perform any obligation under this Contract because of a matter beyond that party's reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes, or acts of local or central Government or other competent authorities, or events beyond the reasonable control of that party's suppliers, or legal and regulatory constraints on BT offering the Wifi Service that party will have no liability to the other for that failure to perform.
- 13.2 If any of the events detailed in paragraph 13.1 continue for more than 3 months either party may serve notice on the other terminating this Contract.

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## 14. TERMINATION OF THIS CONTRACT BY NOTICE

Either party may terminate this Contract on 28 days notice to the other such notice to expire after the end of the Minimum Period.

## 15. BREACHES OF THIS CONTRACT

15.1 Either party may terminate this Contract:

- (a) immediately on notice if the other party commits a material breach of this Contract, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or
- (b) immediately on notice if the other party commits a material breach of this Contract which cannot be remedied; or
- (c) on reasonable notice if the other party is repeatedly in breach of this Contract and fails to remedy the breach within a reasonable time of a written notice to do so; or
- (d) immediately on notice if the other party is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or if it goes into either voluntary (otherwise than for reconstruction or amalgamation), or compulsory liquidation or a receiver or administrator is appointed over its assets, or if the equivalent of any such events under the laws of any of the relevant jurisdictions occurs to the other party.

15.2 If either party delays in acting upon a breach of this Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Contract, that waiver is limited to that particular breach.

## 16. TRANSFER OF RIGHTS AND OBLIGATIONS

16.1 Neither party may transfer any of their rights or obligations under this Contract, without the written consent of the other, except that BT may transfer its rights or obligations (or both) to a BT Group Company without consent.

## 17. GENERAL

17.1 This Contract contains the whole agreement between BT and the Customer relating to its subject matter and supersedes all previous written or oral agreements relating to it.

17.2 BT and the Customer acknowledge and agree that:

- (a) they have not been induced to enter into this Contract by any representation, warranty or other assurance not expressly incorporated into it; and
- (b) in connection with this Contract their only rights and remedies in relation to any representation, warranty or other assurance will be for breach of this Contract and that all other rights and remedies are excluded, except in the case of fraud.

17.3 Paragraphs 11, 17.1 and 17.2 will not affect the parties rights or remedies in relation to any fraudulent misrepresentation.

17.4 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 18. NOTICES

Notices given under this Contract must be in writing and may be delivered by hand, fax or e-mail (support.openzone@bt.com), or sent by first class post to the registered office or such other address as the parties may notify to the other in writing from time to time.

## 19. SEVERABILITY

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions will continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.

## 20. GOVERNING LAW

This Contract will be governed by the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts.