



Strengthening Openreach's independence:

BT's Notification to Ofcom under section 89C of the Communications Act 2003 and Application to vary its Undertakings given to Ofcom pursuant to Section 154 of the Enterprise Act 2002

18 July 2016

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Executive Summary

1. This submission sets out the reorganisational steps that BT Group plc ("**BT Group**") is intending to implement to effect enhanced functional separation of its business (the "**Re-organisation**") to address the issues raised in relation to Openreach governance and independence in Ofcom's Strategic Review of Digital Communications ("**DCR**"). The proposed transaction has been notified in advance to Ofcom in accordance with section 89C of the Communications Act 2003 and Article 13B of the Access Directive. This submission also sets out the detail of BT's parallel application for a variation of British Telecommunications plc's ("**BT plc**") undertakings pursuant to section 154 of the Enterprise Act 2002.
2. BT Group intends to implement the Re-organisation in full immediately upon Ofcom agreeing to vary BT's Undertakings as requested and, in any event, to implement so much of it as possible whilst remaining compliant with the Undertakings in their current form, within six months. In the event that BT Group decides to alter the Re-organisation in any material respect, at any time prior to Ofcom agreeing to vary the existing Undertakings, BT will notify Ofcom of such decision promptly and in advance of implementing that decision.
3. The Re-organisation responds to the points raised by Ofcom and third parties during the DCR. It is a comprehensive, coherent solution that is designed to deliver materially enhanced **independence** for Openreach and **transparency** for Communications Providers, whilst preserving the benefits for end-consumers and the rest of the UK from BT Group's vertical integration and protecting BT Group's proprietary rights as the owner of Openreach (as envisaged by the EU Common Regulatory Framework ("**CRF**") and the Better Regulation Directive).
4. BT Group supports the injection of even more investment, competition and innovation in the UK's communications markets, and in particular in infrastructure development, so as to ensure the UK maintains and extends its status as the world's leading digital economy. Implementation of the Re-organisation will play a key part in helping to deliver the long term goals that BT Group shares with Ofcom and the UK Government.
5. In notifying the Re-organisation, BT Group emphasises that nothing in this submission (or in BT's implementation of the Re-organisation) should be treated as acceptance on BT Group's part that there are persistent competition problems in relevant markets, or that Ofcom has presented evidence that supports the use of mandatory intervention powers under sections 89A-B of the Communications Act 2003 ("**CA03**") (or Article 13a of the Access Directive ("**AD**")). BT Group has very real concerns that going down that route would lead to substantial and disproportionate additional costs and other disadvantages.
6. On the contrary, that evidence confirms that the relevant UK telecommunications markets – which are currently subject to targeted and successful Significant Market

Power (“SMP”) regulation – are exceptionally competitive and have delivered excellent outcomes for UK consumers. In addition, the evidence confirms that there is no basis to alter the existing regulatory regime to address any overarching concerns of discrimination.

7. Nonetheless, BT Group has noted the concerns expressed by Ofcom in the DCR Initial Conclusions document in relation to the governance of Openreach, ongoing service issues and the process for consultation of Communications Providers. The Re-organisation, read in combination with the existing SMP regime to which BT plc is subject, will address those concerns while preserving the clear benefits of vertical integration and BT Group’s rights of ownership.
8. The Re-organisation has a number of interlocking elements. In particular:
 - (a) An Openreach Board will be established as a committee of the BT plc board, with delegated authority for the strategy and operational performance of Openreach, in accordance with a Governance Protocol (see below), and with significantly more independent oversight compared to present arrangements.
 - (b) The majority of the seven members of the Openreach Board will be independent. This will include the independent Openreach Chairman and three independent non-executive directors who will each meet the independence criteria set out in the Governance Protocol.
 - (c) BT plc’s Articles of Association will be amended to provide for the delegation of powers to the Openreach Board (as provided in the Governance Protocol) and to set out the obligation of Openreach to treat all its customers equally.
 - (d) The Governance Protocol will clearly define the independence of Openreach within a defined framework. The supervisory controls retained by BT Group, and BT plc, and their ability to intervene to resolve material divergences from plan, are limited to matters set out in their governance policies and which are those needed to ensure ongoing compliance with their corporate and listing responsibilities.
 - (e) Openreach will have a significantly enhanced discretion to devise its strategy and to manage and control its day-to-day activities and operational decisions within the scope of that framework.
 - (f) An enhanced formal process will be introduced concerning how Openreach consults with all Communications Providers on large scale investments, including a confidential phase where Openreach will not disclose information outside of Openreach, except to the BT Group CEO and BT Group CFO in defined circumstances as set out in the Governance Protocol. Under this confidential process, Openreach will be able to consider proposals to fund major network investments under co-investment or risk-sharing agreements with Communications Providers.

9. As a matter of procedure and jurisdiction, BT Group considers that it is appropriate to notify Ofcom of its reorganisation proposals to engage the duty imposed on Ofcom by section 89C CA03. Accordingly, BT plc is formally giving notice pursuant to section 89C of its intention to implement the Re-organisation. At the same time, BT plc is submitting a request for material variation of the undertakings given by BT plc to Ofcom under the Enterprise Act 2002 (“**EA02**”) on 22 September 2005, as varied from time to time (the “**Undertakings**”).
10. The acceptance and variation of EA02 undertakings are recognised procedures available where Ofcom has reasonable grounds to suspect that there are structural features of a market that restrict competition. That is a significantly lower legal and evidential standard than that required for mandatory functional separation under the CRF. It is a statutory regime immediately available to Ofcom, with well understood enforcement mechanisms that is recognised by the Body of European Regulators of Electronic Communications (“**BEREC**”) to be compatible with the CRF¹ and has, of course, been used by Ofcom as an effective regulatory tool for the past ten years.
11. The Re-organisation is incorporated in a suite of documents annexed to this submission:
- The Term Sheet, which summarises the Re-organisation but has no legal force;
 - BT plc’s notification to Ofcom of its intention to effect enhanced functional separation of Openreach in accordance with Section 89C CA03.
 - In support of its application for a variation to the Undertakings, a revised set of the Undertakings, plus a mark-up in a form that shows all proposed changes to the Undertakings in force on 15 July 2016;
 - A draft legal instrument to give effect to the revised Undertakings;
 - BT Group’s proposed Openreach Governance Protocol, forming an Annex to the revised Undertakings, which comprises:
 - Part A: terms of reference for the Openreach Board;
 - Part B: duties of the Openreach executive management team (the “**Openreach Executive**”);
 - Part C: matters reserved for the BT Group board and the BT plc board;
 - Part D: details of an enhanced Openreach customer consultation procedure;
 - Part E: proposed changes to the Articles of Association of BT plc;

¹ ‘BEREC Guidance on functional separation under Articles 13a and 13b of the revised Access Directive and national experiences’, BoR (10) 44 Rev1, February 2011, page 6.

12. BT Group urges Ofcom to give careful and appropriate consideration to its application to vary the Undertakings, as implementation of revised Undertakings in the form proposed will fully address the identified issues in an effective and proportionate manner and provide mechanisms for legal enforceability of the Re-organisation by Ofcom and by other stakeholders. This overall package is designed to deliver an updated and improved governance structure for Openreach to operate with materially enhanced independence from BT Group and with considerably more control over its own strategy. While Openreach is already focused on treating all its customers equally, this proposal will also provide for enhanced consultation with, and additional transparency to, Communications Providers that will further enhance their position.
13. At the same time, BT Group will avoid the unnecessary costs, particularly in terms of disruption to the labour force and uncertainty in respect of its pension scheme, and will retain sufficient control over Openreach to ensure that its economic and management supervision rights are preserved, and the directors of BT Group and BT plc can continue to fulfil their fiduciary duties.
14. The Re-organisation represents a good faith effort by BT Group to resolve matters now for the benefit of the industry and for consumers of communications services. BT Group strongly believes that following implementation of the Re-organisation and variation of the Undertakings, there can be no justification for Ofcom to consider any further form of regulatory intervention. Seeking to require BT to take further steps to increase still further functional separation would be an unwarranted further, lengthy administrative process that would serve only to cause unnecessary delay and create uncertainty at this moment in the development of the UK's digital communications landscape.

2. Background and market context

2.1 The DCR

15. The DCR commenced over a year ago, with the stated purpose of ensuring that relevant digital communications markets in the UK continue to work for consumers and businesses.
16. As BT Group set out in its response to the DCR Discussion Document, it welcomed the review. While the UK communications sector has been highly successful in delivering customer outcomes in the last ten years, there are significant challenges ahead. We think it is right and important that Ofcom takes a strategic view on how to help the industry make the investments necessary to meet ever-rising customer demand and expectations.
17. In BT Group's opinion, the central question in Ofcom's review is how can Ofcom best promote service improvement and investment and innovation in infrastructure so that the industry can meet the challenge of technological advance and rapidly increasing expectations and demands from customers, while furthering competition. As Ofcom is aware, on 22 September 2015, BT Group set out its vision for Britain's digital future, including pledges valued by KPMG as worth £20-30 billion contribution to the UK economy, subject to Government and Ofcom ensuring the right policy and regulatory framework.²
18. In this document BT Group sets out the steps it is intending to take, and which it invites Ofcom to take, as the way forward for Ofcom to achieve the goals of its review:
 - (a) BT Group is committed to continuing to improve service standards for customers: we need Ofcom's active support in making sure the regulatory regime prioritises – and does not impede – this objective.
 - (b) We stand ready to deliver ultrafast, superfast and universal broadband network coverage in the UK: we need Ofcom to support this by recognising the benefits of Openreach remaining within the ownership of BT Group as such major investments in the network are being made.

2.2 A competitive landscape that has encouraged investment

19. As Ofcom has recognised in the DCR, the UK has some of the best outcomes in the EU for consumers and retail competition is thriving. Ofcom acknowledges that the Undertakings agreed by BT plc have led to *"market entry and the emergence of scale competitors to BT in residential telecoms"*.³ UK prices for broadband are low, whilst internet speeds are higher than those in comparator countries. Indeed, Ofcom itself recognises in the DCR that the UK market performs well relative to EU and global peers. Moreover, there are commitments in the short to medium term for

² BT Group News Release, 22 September 2015, "BT CEO DELIVERS VISION FOR BRITAIN'S DIGITAL FUTURE"

³ Paragraphs 4.22-4.25, Discussion Document.

substantial investment in next generation infrastructure from both Openreach and other Communications Providers (including new operators) throughout the UK.

20. As Ofcom will recognise:

- (a) BT Group has invested £10.5 billion in Openreach over the past decade and today superfast broadband is available from Communications Providers to 90% of UK premises, putting it at the top of the EU5;
- (b) This has driven a 20-fold increase in average broadband speeds over that time with UK customers now benefiting from faster average speeds than in other major EU economies.
- (c) BT Group has delivered the most progressive form of functional separation seen anywhere in the world, so that every Communications Provider can access the Openreach network on equal terms, which has resulted in vibrant competition⁴ and among some of the lowest prices for broadband among the EU5.
- (d) All of this has underpinned the rapid take-up of broadband and superfast broadband resulting in the UK being one of the most digitally-driven economies in the world.⁵

21. Against this background, BT Group does not consider that Ofcom has provided evidence either of significant competition problems in relevant access markets or of any adverse effects (e.g. as to product development, alleged cultural and management issues, gaming of cost allocation, the implications of convergence) flowing from any alleged incentive to discriminate on BT Group's part.⁶

22. Nevertheless, BT Group fully recognises that there is more to do to respond to the growing demands and expectations of consumers and business – particularly in relation to service. Openreach has, over the past nine months, laid out clear plans (including in recent correspondence with Ofcom) for improving service and customer experience, further extending fibre coverage past 95% of premises, delivering a minimum service of 10Mbps across the UK, and converting the UK's current speed leadership through superfast to leadership through ultrafast. BT Group will be ready, with the organisational structure it proposes and with regulatory support for them, to implement transformative plans which demonstrate its continued commitment to the UK's digital infrastructure and economy.

⁴ In the DCR Discussion Document, Ofcom reported that their European Broadband Scorecard showed that, *"the UK also leads the EU's five biggest economies on most measures of coverage, take-up, usage and choice for different kinds of broadband, and performs well on price."* (<http://consumers.ofcom.org.uk/news/strategic-digital-review/>)

⁵ See, for example, *The Internet Economy in the G-20*, Boston Consulting Group, Exhibit 4 (available at <http://www.bcg.com/documents/file100409.pdf>), which recognises the UK as a digital economy "native" as among those nations with the largest internet contributions to GDP.

⁶ Pages 92-102, BT Group response to the Discussion Document. The number of discrimination-based disputes against BT from other Communications Providers have not accelerated since 2005.

23. Specifically BT Group and Openreach:

- (a) have already offered to deliver broadband at a minimum speed of 10 Mbps [30].
- (b) have announced their ambition to deliver ultrafast broadband at speeds up to 300-500 Mbps to 10 million premises by 2020 using G.Fast technology. BT Group's and Openreach's longer-term ambition is to extend ultrafast speeds to most of the UK by 2025, although the economics will be materially more challenging than they were for the first phase.
- (c) are committed to ongoing investment to increase superfast broadband capacity over the next five years to ensure it meets rising demand and to enable wider coverage.
- (d) With improvements to Fibre to the Premises ("**FTTP**") processes, BT Group and Openreach are currently working up proposals that would increase the proportion of broadband coverage served via FTTP, with the prospect of two million premises passed by 2020. Trials are underway which may show it is possible to use FTTP increasingly in its future roll out plans.
- (e) As part of its FTTP deployment, BT is developing solutions for greater coverage for businesses located on high streets and business parks: BT Group and Openreach have committed to bring ultrafast services to up to 1 million SMEs by the end of 2020, using FTTP and G.Fast technology.

2.3 Preserving incentives for investment and innovation

24. In order to achieve improvements in service and maintain robust levels of investment, both BT Group and the industry need regulatory certainty and they need such certainty as quickly as possible. This is why BT Group is now notifying its intention to enhance the functional separation model currently applicable to Openreach through the Undertakings by means of the Re-organisation. BT Group considers that the Re-organisation represents a comprehensive, effective and proportionate way forward that addresses the specific concerns presently identified by Ofcom in its Initial Conclusions document. These relate to particular aspects of BT Group's governance arrangements and consultation with other Communications Providers.⁷ At the same time, it ensures that Openreach can continue to operate as a business entity within BT plc, on a basis that preserves the advantages of its vertical integration as set out below.
25. In developing the Re-organisation, BT Group has had regard to the fact that the importance of careful design of any form of functional separation as a regulatory remedy is clearly recognised in the EU scheme:
- It must ensure that it preserves "*the incentives of the concerned undertaking to invest in its network*" and that "*it does not entail any potential negative effects on consumer welfare*".

⁷ Paragraph 6.22, Initial Conclusions.

- It *“should not prevent appropriate coordination mechanisms between the different separate business entities in order to ensure that the economic and management supervision rights of the parent company are protected”*.⁸
26. The economic rationale for this caution is that vertical integration provides substantial scope for pro-competitive efficiencies through the integration of complementary activities and products.⁹ In the context of a network industry that requires significant investment to promote technological progress, the combined impact of these efficiencies is to increase the incentives of the integrated firm to make such investment to the benefit both of consumers and to downstream competitors who are able to compete more effectively by means of the improved upstream products.
27. In considering whether, following implementation by BT Group of the Re-organisation, there is any need for Ofcom to undertake further regulatory action, it is vital in this regard that Ofcom continues to recognise the advantages for investment and downstream price reductions and competition that flow from Openreach remaining part of BT Group:
- (a) Maintaining Openreach as part of BT Group supports continued investment in the access network. It preserves BT Group’s ability to provide Openreach with the guarantee of an anchor tenant to whom it can market new services. This ensures that new network assets are utilised quickly, with the benefit of reducing the risk and pay-back periods that Openreach investments would otherwise face. This is what happened with BT Group’s Fibre to the Cabinet (“**FTTC**”) programme, when BT Consumer actively marketed fibre broadband which has greatly benefited end-customers and the UK.
 - (b) Further, it is a recognised benefit that a vertically-integrated Communications Provider considering network investments can factor in the margins made at the retail level. BT Group’s competitors are able to do so (particularly Virgin Media, for example). BT Group can do this in a fashion that is fully compliant with competition regulation, allowing it to take a view of the returns that shareholders might earn. This is one reason why BT Group was able to accept a payback period of around 20 years at the Openreach level for its multi-billion pound fibre investment, and it is a commercial approach that BT Group shares with telecoms suppliers throughout Europe.
28. Integrated decision-making is therefore a key part of a regime which promotes a “favourable climate for efficient and timely investment”,¹⁰ which stimulates innovation and respects undistorted access competition. Were Ofcom to take any further regulatory action which required BT Group to give up its ownership of

⁸ Recitals 61 and 62 to the Better Regulation Directive 2009/EC.

⁹ See, for example, the Commission Guidelines on the assessment of non-horizontal mergers 2008 OJ C/265, paragraphs 11 – 14.

¹⁰ One of the key regulatory principles underpinning Ofcom’s 2005 Telecoms Strategic Review.

Openreach or to overly curtail its ability to influence its strategic direction or financial decision-making, these benefits would be lost, to the detriment of investment and, ultimately, of end consumers. That would result in precisely the risks identified by the nuanced EU regime eventuating, whereas the Re-organisation is carefully designed to strike the appropriate balance and avoid that happening.

3. The Re-organisation

29. BT Group's Re-organisation is a carefully considered, comprehensive and coherent solution that is designed to balance competing imperatives. It aims, on the one hand, to deliver Ofcom's desire for materially enhanced independence for Openreach and equality and transparency for Communications Providers. On the other, it ensures a balanced and proportionate approach to minimise any adverse collateral effects on competition and investment. It also avoids unnecessary costs, not least in terms of disruption to the labour force and uncertainty in respect of its pension scheme, which are, in BT Group's view, the likely consequences of Ofcom's own proposals.
30. The Re-organisation will play a key part in helping to deliver the shared long term goals to which BT Group aspires along with Ofcom and the UK Government. BT Group sees as its mission to deliver high levels of customer service, value for money and wide-ranging access to broadband. It strongly supports greater investment, competition and innovation in the UK's communications markets and in particular in infrastructure development, to so as to ensure the UK maintains and extends its status as the world's leading digital economy. It can only do that if the dynamic incentives for BT Group to invest and compete on service are set in a coherent and considered fashion.
31. The Re-organisation is incorporated in a suite of documents, annexed to this submission:
 - The Term Sheet, which summarises the Re-organisation but has no legal force;
 - BT plc's notification to Ofcom of its intention to effect enhanced functional separation of Openreach in accordance with Section 89C CA03.
 - In support of BT's application for a variation to the Undertakings, pursuant to section 153 Enterprise Act 2002, a revised set of the Undertakings, plus a mark-up in a form that shows all proposed changes to the Undertakings in force on 15 July 2016;
 - A draft legal instrument to give effect to the revised Undertakings;
 - BT Group's proposed Openreach Governance Protocol, forming an Annex to the revised Undertakings, which comprises:

- Part A: terms of reference for the Openreach Board;
 - Part B: duties of the Openreach Executive;
 - Part C: matters reserved for the BT Group board and the BT plc board;
 - Part D: details of an enhanced Openreach customer consultation procedure;
 - Part E: proposed changes to the Articles of Association of BT plc.
32. BT Group's intends to implement the Re-organisation in full immediately upon Ofcom agreeing to vary BT's Undertakings as requested and, in any event, to implement so much of it as possible whilst remaining compliant with the Undertakings in their current form, within six months. In the event that BT Group decides to alter the Re-organisation in any material respect, at any time prior to Ofcom agreeing to vary the existing Undertakings, BT will notify Ofcom of such decision promptly and in advance of implementing that decision.

3.1 Key terms – enhancing independence, transparency and stakeholder consultation

33. The key elements of the Re-organisation are as follows:
- (a) A **new governance body will be created**, the Openreach Board, set up as a committee of the BT plc board which will have delegated authority to operate Openreach subject to the terms of the Governance Protocol. BT plc's Articles of Association will be amended to allow for the creation of the Openreach Board as a committee of the BT plc board.
 - (b) There will be a general obligation on Openreach, to treat all its customers equally, which will also be embodied in the amended Articles of Association of BT plc.
 - (c) The Openreach Board will consist of an independent chairman appointed by BT Group (after consultation with Ofcom) who will meet the independence criteria set out in the Governance Protocol (the "**Openreach Chairman**"), three independent non-executive directors, a BT Group-appointed nominee (the "**BT Nominee**"), the Openreach CEO and another Openreach executive – in other words it will have a majority of independent members will provide significantly more independent oversight of Openreach's business compared to the present arrangements. All independent non-executive directors would be appointed following consultation with Ofcom and the BT Group Nominating and Governance Committee.
 - (d) The senior management of Openreach will produce annually a medium term plan and budget ("**MTP**"), which will include an annual operating budget plan for the first year ("**AOP**") and outline plans and financial budgets for the subsequent years. The MTP and AOP will be submitted to

the Openreach Board for approval each year. BT Group's rights of consultation and approval over the MTP and AOP will be circumscribed as set out in the Governance Protocol such that Openreach will be able to act independently within a strategic and financial framework.

- (e) Openreach will devise its strategy (consistently with the MTP and AOP), will manage and control its day-to-day activities and be responsible for its own operational decisions subject to the BT Governance Policies (as set out in the Governance Protocol).
 - (f) BT Group will have visibility over Openreach's performance and compliance with its duties. BT Group's ability to intervene to resolve material divergences from the AOP and/or the MTP will be governed by the provisions set out in the Governance Protocol.
 - (g) An enhanced formal process will be adopted to improve how Openreach consults with Communications Providers in the early stages of significant investment decisions related to the future development of its network, including a confidential phase where Openreach will not disclose information outside of Openreach except to the BT Group CEO and BT Group CFO in very limited and strictly defined circumstances as set out in the Governance Protocol.
 - (h) The ability for Openreach to consider, under this consultation process, proposals to fund major network investments under co-investment or risk-sharing agreements with Communications Providers.
 - (i) An Openreach Compliance Committee will be established (comprising the independent directors of the Openreach Board, including the Openreach Chairman) to review compliance by Openreach with the Undertakings including the Governance Protocol, replacing the present Equality of Access Board.
34. BT Group proposes to implement the measures described in the new Governance Protocol for the Openreach Board in accordance with the notification under section 89C CA03. It is also seeking to include the Governance Protocol as an Annex to the Undertakings under the EA02 to ensure the enforceability of the new governance arrangements. A summary of the key changes proposed to the Undertakings is set out in **Annex A** to this submission and a marked-up version of the Undertakings to reflect the proposed changes is provided with this submission.

3.2 Guarantees of Openreach's independence

35. In designing a proportionate way forward, which addresses the specific concerns identified by Ofcom in a manner that will not threaten pro-competitive incentives to invest and innovate, and which respects BT Group's fundamental rights of ownership and to carry on its business, BT Group has given careful consideration to Ofcom's desire to see the obligations on Openreach encompassed in the Articles of Association of a separate limited company, with duties imposed on that company's directors.

36. Accordingly, BT Group will implement a further strengthening of the proposals it has previously made and the Re-organisation therefore includes the following governance measures:
- (a) establishment of the Openreach Board with an independent Chairman and majority of independent members as a committee of BT plc, which is the operating company and wholly-owned subsidiary company of BT Group, and the legal entity that owns most of BT Group's UK fixed line operations (including the Openreach division);
 - (b) embodiment in the Articles of Association of BT plc, of specific obligations in connection with:
 - (i) the creation of the Openreach Board and delegation of responsibility for the independent governance of Openreach to the Openreach Board, with appropriate delegated authority to operate Openreach as a functionally separate division of BT plc, and
 - (ii) the equal treatment of customers by Openreach, which would be binding on both the board of BT plc (in respect of Openreach) and on the Openreach Board;
 - (c) using this arrangement as a framework whereby:
 - (i) the obligations on Openreach are built into the constitution of the company that owns the assets and liabilities of Openreach; and
 - (ii) there is no or minimal overlap between the membership of the Openreach Board and the membership of the BT plc Board or the BT Group plc Board¹¹, so that its objectives are kept distinct from the other interests of BT plc and focused only on Openreach, and that its members' duties are akin to the duties of directors of incorporated companies by virtue of the Governance Protocol being proposed.
37. BT Group's aim in formulating these changes has been to give Openreach a significantly greater degree of control over its own strategy, decision-making and operations whilst continuing to ensure that Openreach can continue to operate as part of the BT Group. That will maximise the efficiencies of Openreach and of the BT Group, enabling the directors of BT Group and BT plc to fulfil their fiduciary duties to shareholders by having proper oversight of Openreach's performance and for Openreach's financial results to be reflected in the BT Group accounts to maximise efficiencies and economies of scope. Most importantly, it will not trigger the significant and disproportionate costs (to BT Group, to important stakeholders such as its employees, and to the sector more broadly) that BT Group considers would arise from legal separation.

¹¹ Of the Openreach Board members, only the BT Nominee Director could potentially also be a member of the BT plc Board or the BT Group plc Board.





4. Why BT Group's Re-organisation is effective and proportionate and why Ofcom should (a) agree to the variation of the Undertakings and (b) not seek to impose any greater functional separation

38. BT Group considers that the Re-organisation comprehensively, effectively and proportionately addresses the concerns that Ofcom has identified in its DCR Initial Conclusions in relation to the governance of Openreach and consultation with, and transparency towards, other stakeholders. Going further than that would hinder, rather than help, competition and consumers. [X<

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39. As the table below illustrates, there is a high degree of alignment between the issues identified by Ofcom and the anticipated outcome of BT Group's implementation of the Re-organisation (and assuming that Ofcom agrees to BT's application to vary the Undertakings):

Issues identified in Ofcom's Initial Conclusions at paragraph 6.66:

Ofcom issue	BT's Re-organisation	Status
More independent governance, with a responsibility to serve all customers equally	An Openreach Board with a majority of independent representation (including three independent non-executive directors and an independent Openreach Chairman) and obligation to serve all customers equally to be incorporated in the Undertakings and Articles of Association of BT plc.	
Increasing Openreach's autonomy over budget and decision-making	Greater autonomy for Openreach over budgets and decision-making, and control over day-to-day activities. Circumstances in which BT Group is involved to be set out in Openreach Governance Protocol and incorporated into the Undertakings.	
Improving Openreach's approach to consultation with customers	Formal three-stage process for consultation on substantial investment decisions. To include confidential stage during which Openreach can only share information with the BT Group CEO and BT Group CFO in very limited and strictly defined circumstances.	
Enhancing Openreach's operational capability	Openreach to have sufficient capabilities to make its own decisions and run its own operations, [§<]. Intra-group Openreach/BT ¹² trading protocol to be included in the Undertakings.	

40. Further, as the table below illustrates, in designing the Re-organisation, BT Group has sought to meet the requirements that Ofcom has specifically sought to achieve in its regulatory approach without the need for separate legal incorporation:

¹² 'BT' here being BT plc and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 2006.

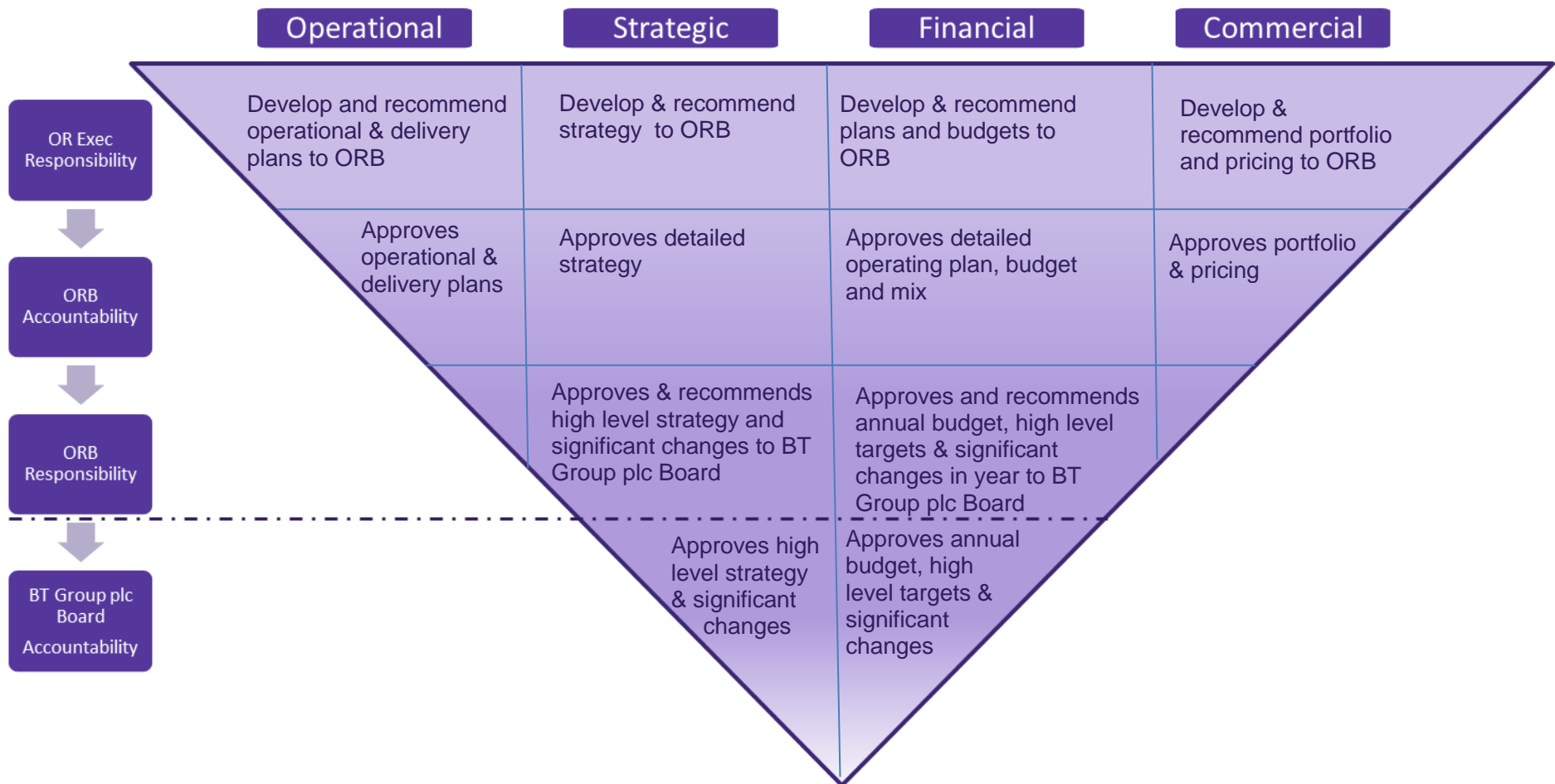
Requirements identified in Ofcom's Initial Conclusions at paragraph 6.69:

Potential feature of an incorporation model	BT's Re-organisation	Status
Separate Openreach Board	No separate legal incorporation, but establishment of a separate Openreach Board with a majority of independent representation (including three independent non-executive directors and an independent Openreach Chairman) enshrined in the Articles of Association of BT plc.	●
Responsibility to serve all customers equally	Obligation for Openreach to serve all customers equally to be incorporated in the Undertakings and the Articles of Association of BT plc (with delegated authority to the Openreach Board directors).	●
Autonomy over investments and decision-making	Greater autonomy for Openreach over budgets and decision-making, and control over day-to-day activities. Circumstances in which BT Group has oversight or involvement to be set out in the Openreach Governance Protocol and incorporated into the Undertakings.	●
Ability to raise funds	Not acceptable - it would be economically inefficient for Openreach to raise funds on its own as Openreach's borrowing costs would be higher than BT Group's. It would undermine BT's duties to its shareholders to have Openreach free to source independent financing. It would also adversely affect BT's own credit rating, and may trigger the need for bondholder consultation and/or approval.	●
Statutory accounts	Openreach's accounts form part of the wider BT consolidated accounts. Openreach's regulatory accounts already provide the transparency that Ofcom requires, defining the balance sheet and profit and loss account of Openreach. BT already has to provide a reconciliation of its CCA regulatory accounts to an HCA statutory accounting basis for Openreach, which could be readily used to provide accounts for the Openreach division on a statutory accounting basis.	●

41. In addition, the vision for how Openreach will be governed with its own strategic and financial decision making powers, and how it will inter-relate with BT Group, is set out in the diagram below. This demonstrates the extent to which Openreach will operate with real authority and autonomous decision-making ability. The circumstances in which it would be required to seek approval from BT Group are

significantly circumscribed whilst allowing the directors of BT Group and BT plc to continue to discharge their respective financial surveillance and fiduciary responsibilities.

Responsibility for strategic and financial decision making will rest with Openreach subject to BT's final approval of its envelope



42. BT Group considers that the enhanced independence which the above measures will establish are more than sufficient to dispel Ofcom's concerns regarding Openreach's alleged incentives to discriminate against other Communications Providers (which BT Group denies in fact exist, or can be acted upon by Openreach under the present functional separation arrangements).
43. The Re-organisation has significant advantages over Ofcom's proposal for the incorporation of a new wholly-owned subsidiary in the BT Group, as it will provide all the benefits that Ofcom is seeking, while it will avoid all the extensive, disproportionate costs that would be involved in transferring employees and relevant assets and liabilities into that new company. For example, it provides for Articles of Association, which embody the obligation to treat customers equally, without the costs of incorporating a new entity.
44. A key advantage of the Re-organisation is that the obligations on Openreach, including to treat all its customers equally, are embodied in Undertakings which are legally enforceable by Ofcom, and third parties who suffer loss as a result of a breach may take action against BT in the courts for damages. In contrast, the Articles of Association of an incorporated Openreach could only be enforced by BT Group as its shareholder and could be changed at any point. Further, incorporation would not in itself do anything to address or resolve issues which Ofcom has raised in the DCR. For example incorporation does not ensure additional transparency, compared to that which BT plc already provides for Openreach through the publication of detailed Openreach financial results, and it does not in itself provide autonomy for a subsidiary, in contrast to the Re-organisation, which will give Openreach substantially more autonomy over its strategy, budget and decision-making.
45. As a legal matter, as BT Group's legal advisors, Freshfields Bruckhaus Deringer LLP ("**Freshfields**") have already explained to Ofcom, there are no regulatory advantages of an incorporated route, compared to a route involving modifications to Openreach's continuation as a separate but unincorporated business within BT Group.
46. In summary, Freshfields and BT Group take this view because, as a legal matter:
- (a) incorporation of itself could not deliver the claimed benefits; a layer of new Ofcom regulation would be required to impose the obligations it proposes and to override key principles of English company law governing the relationship between wholly-owned subsidiaries and their shareholders; and
 - (b) subject to meeting the statutory criteria and required burden of proof under relevant regulatory powers, Ofcom could equally effectively impose a layer of new regulation, in circumstances where BT Group continues to run Openreach as a separate but unincorporated business within BT plc: such Ofcom action would be effective to bring about the public interest benefits that are sought, without putting BT Group through any of the disadvantages that would undoubtedly occur.

47. Furthermore, the imposition of separate legal incorporation, alongside substantive measures to eliminate BT Group's effective economic and supervisory control of Openreach, would amount to quasi-structural separation, which is not permitted under the CRF.
48. In addition, incorporation would need to be weighed against any disadvantages arising from such a route (including in terms of cost, complexity, length of implementation period and potentially flexibility). BT Group has commissioned [REDACTED] PwC (specifically on pensions costs and on BT's ability to consolidate Openreach into its Group accounts) to assess the costs that would be incurred were different models of separation to be adopted. The three figures below set out
- i) [REDACTED]; and
 - ii) PwC's analysis of the possible impact of the draft model of governance provided to BT by Ofcom in June 2016 on
 - The employer covenant that BT provides to the BT Pension Scheme; and
 - How the BT Pension Scheme Trustee and its advisers might reflect the resulting change in the Scheme's investment strategy, actuarial assumptions and the resulting deficit.

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49. BT has also asked J.P.Morgan Cazenove to consider the implications on corporate governance matters, stock market listing requirements and other investment community considerations of establishing Openreach as a separate legal entity within the overall BT Group in accordance with the draft governance model which Ofcom provided to BT on 11 July 2016.
50. The key points arising from J.P.Morgan Cazenove's analysis of this model are set out below:

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51. In summary, there are no advantages in Ofcom persisting with separate legal incorporation, only considerable disadvantages. In contrast, the Re-organisation is appropriate and effective as, for the reasons set out above, by incorporating the Openreach Governance Protocol and other amendments into the Undertakings, it achieves all of Ofcom's objectives in terms of Openreach's independence, objectivity and accountability, improved communication with its Communications Providers and performance guarantees in terms of equality of access and service quality.

5. The statutory basis for implementation of the Re-organisation as a set of legally binding commitments

52. As explained above, BT Group is submitting to Ofcom Notice of its intention to operate Openreach as a functionally separate division of BT plc under section 89C CA03 (implementing Article 13b AD), the purpose of which is to allow for such voluntary arrangements to be brought within the CRF. BT Group recognises, however, that this is merely a mechanism whereby BT Group can voluntarily effect functional separation of the type set out in its Re-organisation.
53. BT Group considers that the most appropriate way to make the Re-organisation legally enforceable, and in particular the governance arrangements set out at paragraph 33 above is to include the Governance Protocol (and the terms of reference for the Openreach Board contained therein), which provide the detail of the new governance arrangements, into a revised set of EA02 undertakings. Furthermore, BT Group is currently constrained in its ability to fully implement all of the steps described in the Re-organisation by the current form of the Undertakings.
54. BT Group therefore applies for the Undertakings to “*be varied or superseded by another undertaking*” in accordance with section 154(6) EA02 for Ofcom to consider “*as soon as reasonably practicable*” in accordance with section 154(7) EA02.
55. EA02 undertakings are recognised by BEREK as a suitable form for functional separation and have, of course, been used by Ofcom for over 10 years.¹³ This therefore presents a workable, proportionate route, which is familiar to Ofcom, to provide an appropriate statutory basis for enforceability of the Undertakings.
56. BT Group sets out below the rationale for, and benefits of, implementing these changes by means of the EA02, in support of its belief that this mechanism will deliver the right framework to address Ofcom’s concerns and deliver the best competitive outcomes.

5.1 Amendment to the Undertakings to enable BT to give full effect to the Re-organisation and to deliver enforceability to the Re-organisation is the optimal solution

57. BT Group considers that amending the Undertakings to enable itself to give full effect to the Re-organisation and to make the measures set out in the Re-organisation legally enforceable by Ofcom and other stakeholders is the most complete and appropriate way to secure Ofcom’s policy objectives and regulatory principles under the CRF.¹⁴ The combination of a revision to the Undertakings together with implementation of the Re-organisation voluntarily pursuant to BT’s notification under section 89C CA03 is fully consistent with Ofcom’s legal duties and

¹³ BEREK Guidance, page 6.

¹⁴ See Article 8(4) AD and Article 8(5) Framework Directive (2002/21/EC), including in particular promoting infrastructure-based competition and efficient investment and innovation, ensuring consistency and regulatory predictability as well as avoiding the imposition of ex-ante regulatory obligations where there is effective and sustainable competition.

with best regulatory practice. It is also more appropriate and apt than the exercise by Ofcom of any other regulatory power:

- (a) In its Guidance, BEREC has recognised the Undertakings as a form of functional separation that is consistent with the CRF.¹⁵ BT Group's voluntary notification of its Re-organisation also falls within the scope of Article 13b AD as implemented into UK law by s. 89C CA03.
- (b) The Re-organisation is clearly a form of voluntary functional separation falling within the scope of Article 13b AD and would not therefore require Ofcom to demonstrate that the exceptional jurisdictional and evidential requirements of Article 13a AD/s.89B CA03 have been met.
- (c) While the Re-organisation provides significantly greater independence to Openreach to address the concerns raised by Ofcom, it is a measured and balanced approach that respects the boundary between functional and structural separation in accordance with the legislative intention of Articles 13a and 13b AD.¹⁶
- (d) The Re-organisation sets the correct incentives for Openreach, and the BT Group as a whole, to continue investments in FTTC, FTTP and G.Fast to stimulate inter-brand competition and service quality downstream. Those investments will be coordinated through appropriate liaison with Communications Providers under the formal and enhanced consultation program.
- (e) Together with ongoing SMP regulation¹⁷ (including the possibility of modification to existing SMP conditions under s89C(4) CA03 2003/Article 13b(2) AD), the Re-organisation, together with a varied set of Undertakings will comprise an effective package of public and private enforcement measures, which can be adjusted to reflect the prevailing levels of effective competition in the market as it develops in the years to come.¹⁸

58. In summary, the Re-organisation achieves Ofcom's regulatory objectives in a proportionate manner that reflects the statutory scheme and respects BT Group's

¹⁵ In both Sweden and Italy, NRAs have used national legislative measures to require former incumbents to apply or maintain forms of functional separation in ways that are not inconsistent with the CRF. Ofcom would not therefore be setting an inappropriate regulatory precedent by continuing to rely on the EA02 undertakings.

¹⁶ See Recitals 61 and 62 of the Better Regulation Directive.

¹⁷ Including for example in relation to opening up infrastructure competition via access to ducts and poles.

¹⁸ For example, Ofcom would be able to enforce service quality aspects of the Undertakings via the imposition of SMP conditions and enforcement mechanisms in the CRF; network access issues via their s.185 CA03 dispute resolution powers; and other wider governance issues via a High Court enforcement order pursuant to s.160 and 167 EA02. There is also the possibility of private enforcement for Communications Providers and end-users through collective actions brought on the basis of ex post competition law or consumer law and/or for breach of condition under s.104 CA03.

fundamental rights to run its business¹⁹ and to make effective use of its property rights.²⁰

59. Moreover, the Re-organisation, reinforced by a variation of the Undertakings, represents a reasonable measure that will achieve Ofcom's objectives in the most practical, resource-efficient and timely manner. In particular:
- (a) The evidential and legal burden of proof under the EA02²¹ is significantly lower than the exceptionally high threshold in Article 13a AD.
 - (b) The implementation process to embody the Re-organisation in the Undertakings is much more straightforward, requiring a public consultation with interested stakeholders pursuant to s.155 EA02 and a review of the effect of the new arrangements on BT's existing regulatory obligations. That process will be much shorter than the complex and protracted consultation provisions at European and domestic level under the Article 13a AD route.
 - (c) The risks of challenge from all interested parties will be considerably reduced, thereby accelerating the time for final implementation.
60. BT Group considers that there is a straightforward, lawful and proportionate route forward to implementing the Re-organisation that it has put forward and embodying it as a legally enforceable set of commitments. If Ofcom nonetheless elects to pursue mandatory enhanced functional separation through the Article 13a AD route, it will need to present a cogent supporting body of evidence – BT Group does not consider that, when set against the counterfactual of BT having implemented, or being in the process of implementing, the Re-organisation, Ofcom will be able to make the case to a level that meets the requirements of Article 13a AD.

6. Conclusion

61. Not only is the Re-organisation the right solution for the UK, it is the one that will be delivered in the shortest timetable, allowing Ofcom to bring the DCR to a swift conclusion with the least delay and the lowest risk of challenge from either side of the industry. BT Group's intention is to implement the Re-organisation immediately upon Ofcom agreeing to vary the Undertakings as proposed by BT in its application for them to be varied, and, in any event, to implement so much of the Re-organisation as it can whilst still remaining compliant with the Undertakings within six months. If Ofcom agrees to the variation application and agree that no further

¹⁹ In addition, BT Group is advised that if it is relegated to the status of a "passive investor" in Openreach, it will not be considered as having "control" over Openreach for the purpose of the consolidation of Openreach's accounts in BT Group's financial statements.

²⁰ See Article 1(3)(a) Framework Directive (2002/21/EC) and Articles 16 and 17 of the EU Charter of Fundamental Rights as well as the CMA50 Guidelines on Government intervention in markets.

²¹ Sections 131 and 155(3)(a) EA02 only require 'reasonable grounds to suspect' the existence of a structural 'feature' that restricts competition. Such grounds could be held by Ofcom to exist on the basis of its apparent ongoing concerns as expressed in its DCR Initial Conclusions document without Ofcom having to reach final conclusions as to the existence of persisting competition problems or market failure, or the failure of SMP regulation more generally.

regulatory action is required thereafter, this will provide the regulatory certainty needed to allow industry to move ahead with the investments needed to ensure that the UK remains at the forefront of the communications industry in Europe, and consumers continue to be well-served, far quicker than any of the alternatives.

62. Implementation of the Re-organisation will be the foundation stone that will enable the UK communications industry to build on the successful outcomes already delivered by SMP regulation in conjunction with the Undertakings since 2005. Doing so, and taking this as the right regulatory model for the UK will provide the right incentives for investment by all Communications Providers across the industry, and will provide sound foundations for competitors to innovate, extend competition and deliver consumer benefits into the next decade and beyond.

ANNEX A

Outline summary of revisions to the Undertakings

As well as the incorporation of new provisions to implement the measures outlined above and to give them legal enforceability, BT Group applies for a number of changes to be made by way of variation of the Undertakings to ensure they are modernised to meet the needs of the UK communications industry into the next 10 years.

These consist of:

- (a) Removal of time-expired and obsolete provisions;²²
- (b) Removal of provisions that duplicate obligations imposed or capable of being imposed via SMP conditions, principally those relating to Equivalence of Inputs, Statements of Requirements processes, accounting separation and regulatory accounting equipment location, and the siting of equipment at BT exchanges;
- (c) Removal of organisational obligations downstream of Openreach which are no longer proportionate, in particular the requirements for functional separation within BT Wholesale;
- (d) Simplification and updating of systems separation obligations, including to reflect the fact that all time-bound obligations have been discharged and to embody a commitment to maintain standards of separation not less than those which already apply;
- (e) Adaptation of provisions relating to the Equality of Access Board (“EAB”) and Equality of Access Office to reflect BT Group’s proposal that the EAB should be disbanded and an Openreach Compliance Committee (comprising the independent directors of the Openreach Board) should be established with a similar role and function in relation to the activities of Openreach;²³
- (f) Facilitating Ofcom’s move to passive infrastructure remedies through changes to the provisions in relation to control and operation of BT Group’s Access Network and BT’s Backhaul Network, and the supply of SMP products over those networks so as to allow BT Group’s Downstream Divisions to offer access and backhaul services that they have created by purchasing from Openreach passive infrastructure access products which Openreach is required to supply as SMP remedies such as duct and pole access, and any dark fibre wholesale access products, which are available to all Communications Providers from Openreach;
- (g) Conversion of implementation provisions to ongoing obligations where this is appropriate, for example in relation to separate accommodation for the

²² For example: those relating to historic milestones for delivery of equivalent products and system separation; section 11 relating to BT’s Next Generation Networks (BT’s IP voice network plan which was never implemented); and obligations relating to the traditional interface leased lines access and backhaul products (for which there was no demand from Communications Providers).

²³ BT Group intends to consult with Ofcom on this proposal over the forthcoming six months in order to reach a joint decision.

Openreach 'Headquarter Management Team' and maintenance of systems user access controls that are still necessary;

- (h) Replacement of outdated terms, for example of 'Access Services' by currently recognised terms such as 'Openreach'.

Term Sheet

Strengthening Openreach's independence

INTRODUCTION		
1.	Overview:	<p>This Term Sheet is designed to deliver a governance structure for BT's Openreach line of business (<i>Openreach</i>) to operate with enhanced independence from the rest of BT Group plc, with more control over its own strategy and budget.</p> <p>At the same time, BT Group plc and British Telecommunications plc (<i>BT plc</i>) will retain sufficient control over Openreach to ensure that their economic and management supervision rights are preserved thereby allowing the directors of BT Group plc and BT plc to continue to be able to fulfil their fiduciary duties.</p>
2.	Matrix to effect the enhanced independence:	<p>It is proposed that the enhanced independence of Openreach be delivered by amending the undertakings given by BT plc to Ofcom under the Enterprise Act 2002 on 22 September 2005, as varied from time to time (the <i>Undertakings</i>).</p> <p>These proposed amendments are encapsulated in the undertakings also attached as <u>Appendix 1</u> to this Term Sheet (the <i>Proposed Varied Undertakings</i>). The Proposed Varied Undertakings are attached in a form that shows all proposed changes to the Undertakings in force on 18 July 2016.</p> <p>The Proposed Varied Undertakings also contain (as an <u>Annex</u> to them) a governance protocol setting out how a new Openreach board (the <i>Openreach Board</i>) will operate and how BT Group plc and BT plc will interact with Openreach from a governance perspective (the <i>Governance Protocol</i>).</p> <p>This Governance Protocol comprises:</p> <ul style="list-style-type: none"> (a) terms of reference for the Openreach Board (which will be constituted as a committee of the BT plc board); (b) duties of the Openreach executive management team (the <i>Openreach Executive</i>); (c) matters reserved for the BT Group plc and the BT plc boards; (d) details of an enhanced customer consultation procedure; and (e) the proposed changes to the BT plc Articles of Association which establish the delegation of the governance of Openreach under the Governance Protocol and the principle of equal treatment of customers.
3.	Implementation:	<p>BT plc is applying to Ofcom (under Section 154(7) of the Enterprise Act 2002) for a variation of the Undertakings and is</p>

		also notifying Ofcom of these changes to its proposed arrangements for governing Openreach under section 89C of the Communications Act 2003 (Article 13b of the Access Directive).
4.	Variation of the Undertakings:	<p>The Proposed Varied Undertakings (in <u>Appendix 1</u>) are intended to:</p> <ul style="list-style-type: none"> (a) eliminate time-expired and obsolete provisions (highlighted in turquoise); (b) convert certain implementation provisions to ongoing obligations and make certain terminology changes (highlighted in light grey) (c) delete provisions that are, or are capable of being, imposed via SMP Conditions (as defined in the Communications Act 2003) under the European Common Regulatory Framework (highlighted in yellow); (d) implement other additions, deletions and changes proposed by BT (highlighted in green); (e) maintain all elements of BT plc's commitments set out in the Undertakings that are of continuing relevance; and (f) add in the new elements set out in this Term Sheet (e.g. in relation to the creation of the Openreach Board and the provisions of the Governance Protocol).
5.	Openreach Resources:	<p>The Proposed Varied Undertakings specify that Openreach will have the capabilities necessary to develop plans for review by the Openreach Board on major operational and investment decisions and to manage and control its day to day activities and operational decisions.</p> <p>The Proposed Varied Undertakings also delineate how Openreach will receive services from other lines of business within BT plc. The main provision of services to Openreach will be from BT Technology, Service and Operations (BTTSO), which supplies networks, systems, research and service operations (the BTTSO Services). The relationship between BTTSO and Openreach will be governed on the basis that:</p> <ul style="list-style-type: none"> (a) Openreach will consult with BTTSO on decisions relating to the BTTSO Services; (b) Openreach will retain responsibility for any ultimate decision on the use of the BTTSO Services, or services sourced from a third party provider, by Openreach; and (c) BTTSO will retain responsibility for delivering the BTTSO Services where Openreach so chooses.

GOVERNANCE PROTOCOL		
6.	Purpose:	The Governance Protocol provides a framework for the governance of Openreach and introduces an Openreach Board as a committee of the BT plc board with delegated authority to operate Openreach subject to the terms of the Governance Protocol.
7.	Articles of Association of BT plc:	<p>BT Group plc will amend the BT plc Articles of Association to entrench certain provisions of the Governance Protocol into the constitution of BT plc. The amendments will comprise the adoption of additional Articles to provide:</p> <ul style="list-style-type: none"> (a) the delegation of powers to the Openreach Board as provided in the Governance Protocol; and (b) the obligation on BT plc, acting through the Openreach Board, to treat all customers equally. <p>The proposed changes are set out in Part E of the Governance Protocol.</p>
8.	Membership of the Openreach Board:	<p>The Openreach Board will have responsibility for the governance of Openreach and consist of seven directors:</p> <ul style="list-style-type: none"> (a) an independent chairman (the <i>Openreach Chairman</i>); (b) three independent non-executive directors; (c) one BT nominee director (the <i>BT Nominee</i>); (d) the Openreach CEO; and (e) one more Openreach executive (e.g. the CFO). <p>BT Group plc will be entitled to appoint (following consultation with Ofcom) and remove the Openreach Chairman, who will be independent in accordance with the criteria set out in paragraph Error! Reference source not found. of Part A of the Governance Protocol, and appoint and remove the BT Nominee.</p> <p>The Openreach CEO will be appointed and removed by, and report to, the BT Group plc Chief Executive, and be accountable to the Openreach Board for the MTP and AOP (each as defined in section 12 below) and promoting the success of Openreach. The Openreach CEO will not be a member of the BT Group Operating Committee but may attend the BT Group Operating Committee meetings where matters pertaining to Openreach are discussed and where such attendance is appropriate.</p> <p>The remaining Openreach executive director will be appointed (and may be removed) by the Openreach Board on the recommendation of the Openreach CEO.</p> <p>Independent non-executive directors will be appointed by the Openreach Board, after consultation with Ofcom and the BT</p>

	<p>Group plc Nominating & Governance Committee. Such directors may be removed by the Openreach Board.</p> <p>The Openreach Board as a whole will have the appropriate balance of skills, experience, independence and knowledge of Openreach to enable it to discharge its respective duties and responsibilities effectively.</p>
<p>9. Matters for the Openreach Board:</p>	<p>The Openreach Board will have delegated authority for the strategy and operational performance of Openreach, subject always to the Governance Protocol and the matters reserved for the BT Group plc and/or BT plc boards.</p> <p>The Openreach Board shall submit a high level summarised version of the MTP and AOP to the BT Group plc board for approval.</p> <p>Openreach intends to deliver a high quality of service, in compliance with regulation and in fulfilment of its customers' needs. The Openreach Board will carry out its duties to this end and will ensure that the achievement of this objective is properly captured by the Openreach Executive within its annual operating plan and budget (see section 12 below).</p> <p>The Openreach Board will be responsible for ensuring that the Openreach Executive effectively executes the agreed plan for the financial performance and operational performance of Openreach including in relation to quality of service, investment and productivity.</p> <p>Subject always to the Governance Protocol, the Openreach Board will be responsible for BT plc's compliance with its regulatory obligations in relation to Openreach under the Proposed Varied Undertakings and under the Communications Act 2003.</p>
<p>10. Openreach consultation with Communications Providers:</p>	<p>The Openreach Board will ensure that the Openreach Executive will consult with Communications Providers.</p> <p>In particular, Openreach will operate a formal process for consulting its customers in the early stages of significant investment decisions related to the future development of its network.</p> <p>This consultation process will consist of:</p> <ul style="list-style-type: none"> (a) a confidential phase; (b) a public phase; and (c) a committed phase. <p>In the confidential phase, Communications Providers can discuss such investment ideas with Openreach without this information being disclosed outside Openreach except (i) with the consent of the Communications Provider proposing the investment or (ii) where Openreach considers a proposal for investment to be of</p>

		<p>significant strategic importance and/or such proposal cannot be financed within the agreed capital expenditure budget of Openreach.</p> <p>Downstream divisions of BT Group plc will use this process to initiate their proposals for major new investments.</p> <p>Communications Providers will be formally consulted in the public and committed phases. The stages of, and obligations under, each phase are set out in Part D of the Governance Protocol.</p> <p>Openreach can initiate major network investments or operational changes where those investments or operational changes are in the best interests of Openreach.</p> <p>More generally, the Openreach Board will consider and address as appropriate, representations from Communications Providers, Ofcom and other stakeholders.</p> <p>The engagement with Ofcom may include an annual joint Openreach and Ofcom board-to-board meeting.</p>
11.	Obligation to treat customers equally:	<p>Openreach shall operate under a general obligation to treat all its customers equally. This obligation includes customer consultation, strategy and investment decisions and relates to the process followed, not the outcome. For the avoidance of doubt, in the provision of products, equivalence of inputs applies only where this has been determined as a remedy in markets where BT plc has been found to have SMP. Further this obligation shall not limit or otherwise prejudice Openreach's ability to compete with competitors and cannot require Openreach to undertake investments to the detriment of Openreach and/or BT Group plc.</p>
12.	Matters that are the responsibility of the Openreach Executive:	<p>The Openreach Executive will produce (annually) a medium term plan and budget (an <i>MTP</i>, as described in the Governance Protocol). The MTP will include a detailed plan and financial budget for the first year (the <i>AOP</i>, as described in the Governance Protocol) and outline plans and financial budgets for the subsequent years.</p> <p>The Openreach Executive will submit the MTP and AOP to the BT Group plc CEO and the BT Group plc CFO for review.</p> <p>The Openreach Executive will submit the MTP and AOP to the Openreach Board for review and approval.</p> <p>The Openreach Executive will engage with Openreach's customers and other stakeholders, including Ofcom, as they deem necessary and appropriate to understand their issues and concerns and shall be responsible for managing Openreach as a functionally separate division within BT plc.</p> <p>The Openreach Executive may develop plans for review by the Openreach Board on major operational and investment decisions, for example:</p>

		<ul style="list-style-type: none"> (a) form, technical design and timing of major access network investments; (b) new products and technologies or enhancements to existing products; and (c) timing and prioritising of product, system and process investment.
13.	Funding of Openreach by BT Group plc and/or BT plc:	Subject to the more detailed provisions set out in the Governance Protocol, Openreach's financial requirements, specifically its cash flow and capex, will be determined in Openreach's MTP and AOP, high level summaries of which will be submitted for approval to the BT Group plc board.
14.	Openreach Compliance Committee:	<p>The Openreach Board shall establish an Openreach Compliance Committee (the <i>OCC</i>) with the role of reviewing compliance by Openreach with the Proposed Varied Undertakings including the Governance Protocol. The OCC shall replace the Equality of Access Board.</p> <p>The OCC will publish an annual report.</p>
15.	Delegation of authority and reserved matters:	<p>BT plc will ensure that Openreach will control and operate Openreach's assets and liabilities in accordance with the direction of the Openreach Board provided that the directions from the Openreach Board are in accordance with the Governance Protocol and the Proposed Varied Undertakings and so long as Openreach is operating within its authorised AOP and MTP. Openreach will, unless otherwise provided in the Governance Protocol, remain subject to BT Group plc's and BT plc's governance policies, as amended from time to time, which include:</p> <ul style="list-style-type: none"> (a) the matters reserved for the BT Group plc and/or BT plc boards; (b) the terms of reference for the BT Group Operating Committee; (c) delegations of authority which provide rules, guidelines and approval matrices for decision-making within the lines of business in BT plc; and (d) the BT policy reserved powers which address key areas with BT-wide significance which are not reserved to the BT Group plc board, the BT Group Operating Committee or the lines of business within BT, for example in relation to compliance with anti-corruption and bribery, data protection, competition and human rights legislation, BT HR policies, treasury matters and BT accounting policies.

OTHER PROVISIONS

- | | | |
|------------|--------------------------|---|
| 16. | Other Provisions: | <p>The Proposed Varied Undertakings shall be binding and enforceable under their terms and under section 167 Enterprise Act 2002. This Term Sheet is a summary of BT Group's application to vary the Undertakings and its notification under s.89C of the Communications Act 2003 and is not intended to be legally binding.</p> <p>This Term Sheet will be interpreted in accordance with English law.</p> |
| 17. | Term: | <p>The Proposed Varied Undertakings shall come to an end on the date falling ten years from the date on which the Proposed Varied Undertakings are agreed and come into effect unless prior to that date:</p> <ul style="list-style-type: none">(a) Ofcom has released BT plc from the Undertakings; or(b) BT plc and Ofcom have agreed otherwise. |

APPENDIX 1

[Amendments to the Undertakings AND blackline of the Undertakings against the Proposed Varied Undertakings.]

ANNEX 1

GOVERNANCE PROTOCOL

This Governance Protocol comprises:

Part A: terms of reference for the Openreach Board;

Part B: duties of the Openreach Executive;

Part C: matters reserved for the BT Group plc board and/or the BT plc board;

Part D: Openreach customer consultation procedure; and

Part E: changes to the BT plc Articles of Association.

Capitalised terms shall, unless otherwise defined in this Governance Protocol, have the same meaning as given to them in the Undertakings.

PART A : OPENREACH BOARD - TERMS OF REFERENCE

Adopted by the BT plc board on [_____] [_____] [_____]

1. ROLE

1.1 The board of BT plc has resolved to establish the Openreach Board as a committee of the BT plc board. These are the terms of reference for the Openreach Board.

1.2 The BT plc board has delegated to the Openreach Board responsibility for the strategy, operational performance and regulatory compliance of Openreach. The Openreach Board will at all times operate in accordance with these terms of reference and pursuant to the other parts of this Governance Protocol (including the matters reserved for the BT Group plc board and/or the BT plc board, under BT Group plc's and BT plc's governance policies, as amended from time to time and as further detailed in Part C of this Governance Protocol (the *BT Governance Policies*)).

2. THE DUTIES OF THE OPENREACH BOARD

2.1 The Openreach Board is to perform the following duties in respect of Openreach.

Medium Term Plan and Annual Operating Plan

2.2 To review and approve the Openreach MTP and AOP (each to be produced annually by the Openreach Executive as set out in Part B of this Governance Protocol).

2.3 To submit a high level summarised version of the MTP and AOP to the BT Group plc board for approval (such summary plan to be prepared by the Openreach Executive in accordance with Part B of this Governance Protocol and reviewed by the BT Group plc CEO and BT Group plc CFO prior to submission).

2.4 To review and approve in year variations to the AOP (in accordance with Part B of this Governance Protocol).

2.5 To delegate the management of Openreach's capital expenditure agreed in the AOP to the Openreach Executive in accordance with Part B of this Governance Protocol.

Strategy and Operational Performance

2.6 To approve Openreach's strategy as set out in the AOP and MTP and to oversee its operational performance as against its AOP and MTP.

2.7 To recommend:

- (i) to the BT Group plc board for approval strategic investment proposals for Openreach outside the parameters of the then current MTP or AOP which are greater than £100 million and/or items of significant strategic importance to BT; and
- (ii) to the BT Group plc CEO and the BT Group plc CFO for approval investments outside the parameters of the then current MTP or AOP that are less than £100 million.

2.8 Subject to the process set out in section 1.7 of Part B, to request additional capital from BT Group plc incremental to the MTP and AOP for the purposes of a specific investment opportunity identified by Openreach as benefitting the customers of Openreach even where such an investment opportunity would otherwise be NPV negative for Openreach.

2.9 To support the Openreach Executive's engagement with Openreach's customers and other stakeholders, including Ofcom, as it deems necessary and appropriate to understand their issues and concerns.

2.10 To aim to ensure that Openreach delivers a high quality of service in compliance with regulation and in fulfilment of Openreach's customers' needs. The Openreach Board will ensure that the AOP and MTP take account of this aim.

2.11 To ensure that the Openreach Executive effectively executes the AOP and the MTP both in relation to financial performance and operational performance (including in relation to quality of service, investment and productivity).

2.12 To ensure Openreach is managed as a functionally separate division within BT plc.

Compliance

2.13 To operate Openreach in accordance with BT's regulatory obligations (so far as they relate to Openreach) including under the Undertakings.

2.14 To operate Openreach in accordance with BT's regulatory obligations (so far as they relate to Openreach) under the Communications Act 2003.

2.15 To establish the OCC, with the role of reviewing compliance by Openreach with the Undertakings including this Governance Protocol, as further detailed in section 9 below. The OCC shall replace the Equality of Access Board.

2.16 To ensure that the OCC will publish an annual report in relation to compliance by Openreach with the Undertakings including this Governance Protocol.

Treatment of Customers

2.17 To ensure that the Openreach Executive consults Communications Providers in particular in the early stages of significant investment decisions related to the future development of its networks and products in accordance with the procedure set out in Part D of this Governance Protocol.

2.18 To consider and address as appropriate representations from Communications Providers, Ofcom and other stakeholders.

2.19 To ensure that Openreach treats all its customers equally. This obligation includes customer consultation, strategy and investment decisions and relates to the process followed, not the outcome. For the avoidance of doubt, equivalence of inputs applies, in relation to the provision of products, only where this has been determined as a remedy in markets where BT plc has been found to have SMP. Further this obligation shall not limit or otherwise prejudice Openreach's ability to compete with competitors and cannot require Openreach to undertake investments to the detriment of BT and/or Openreach.

Reporting

2.20 To review and recommend to the BT Group plc CFO the financial results of Openreach referred to in section 3.16 of the Undertakings.

Engagement with Ofcom

2.21 To engage with Ofcom and, if requested by Ofcom, participate in annual joint Openreach and Ofcom board-to-board meetings.

3. MEMBERSHIP OF THE OPENREACH BOARD

3.1 The Openreach Board will consist of the following members:

- (a) a chairman (the *Openreach Chairman*);
- (b) three independent non-executive directors;
- (c) one BT nominee director (the *BT Nominee*);
- (d) the Openreach CEO; and
- (e) one further Openreach executive,

such members to be appointed in accordance with the provisions set out in this section 3.

3.2 BT Group plc will be entitled to appoint (following consultation with Ofcom) and remove the Openreach Chairman, who will be independent in accordance with the criteria set out in section 3.8 below, and appoint and remove the BT Nominee.

3.3 The BT Group plc CEO will be entitled to appoint and remove the Openreach CEO, who will report to the BT Group plc CEO and who will also be accountable to the Openreach Board for the development and execution of the MTP and AOP and for promoting the success of Openreach. The Openreach CEO will not be a member of the BT Group Operating Committee but may attend those meetings where matters pertaining to Openreach are discussed and where attendance is deemed appropriate by that committee.

3.4 The Openreach executive member will be appointed and removed by the Openreach Board on the recommendation of the Openreach CEO.

3.5 The independent non-executive directors will be appointed by the Openreach Board, after consultation with Ofcom and the BT Group plc Nominating & Governance Committee. These directors may be removed by the Openreach Board.

3.6 Each Openreach Board member will owe the following duties to Openreach:

- (a) to act within the powers granted by these terms of reference and in accordance with the BT Governance Policies, unless otherwise provided in this Governance Protocol;

- (b) to promote the success of Openreach and in doing so have regard (amongst other matters) to:
 - (i) the likely consequences of any decision in the long term;
 - (ii) the interests of employees of BT working for Openreach;
 - (iii) the need to foster Openreach's relationships with suppliers, customers and others;
 - (iv) the impact of Openreach's operations on the community and the environment; and
 - (v) the desirability of Openreach maintaining a reputation for high standards of business conduct;
- (c) to exercise its own independent judgment;
- (d) to exercise reasonable care, skill and diligence;
- (e) to avoid conflicts of interest (subject to section 7 below);
- (f) not to accept benefits from third parties;
- (g) to declare an interest in a proposed transaction or arrangement; and
- (h) to act in the best interests of BT plc and its shareholders.

3.7 All Openreach Board members should be able to allocate sufficient time to discharge effectively their responsibilities and duties in respect of Openreach.

3.8 The independent non-executive directors and the Openreach Chairman referred to in this section 3 shall not be:

- (a) an employee or former employee of BT (within the last five years);
- (b) a director, senior executive or employee of any Communications Provider;
- (c) a partner, director or senior executive of any firm, company or organisation providing consultancy services to BT or any other Communications Provider;
- (d) a person with close family ties to any person falling within the categories set out in (a) to (c) above;
- (e) an Ofcom employee; or
- (f) a material shareholder (directly or indirectly) in BT Group plc or in any other Communications Provider.

3.9 The Openreach Board as a whole will have the appropriate balance of skills, experience, independence and knowledge of Openreach to enable it to discharge its duties and responsibilities effectively.

3.10 Appointments of the independent non-executive directors and of the Openreach Chairman to the Openreach Board are for a period of up to three years, extendable for two

further three-year periods, provided the director still meets the criteria for membership of the Openreach Board.

4. PROCEEDINGS OF THE OPENREACH BOARD

4.1 The Openreach Board will meet as often as it deems necessary at such times and places determined by the Openreach Chairman. The Openreach Board must approve the annual calendar of its meetings. The Openreach Board may hold meetings by telephone or using any other method of electronic communication and may take decisions without a meeting by unanimous written consent, when deemed necessary or desirable by the Openreach Chairman.

4.2 Openreach Board meetings may be convened at any time, by the Openreach Chairman or any other two directors.

4.3 The quorum will be four directors including the Openreach Chairman and the BT Nominee and at least two independent non-executive directors.

4.4 A duly convened meeting of the Openreach Board at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Openreach Board.

4.5 The Openreach Board will aim to reach decisions on a unanimous basis. Where it is unable to do so, decisions will be made on a majority basis. Any Openreach Board member's dissension in relation to a majority decision shall be noted in the minutes. Each director will be entitled to cast one vote.

4.6 Unless otherwise agreed by all members of the Openreach Board, notice of each meeting confirming the venue, time and date (and dial-in details if required) of the meeting must be sent, with an agenda of the items to be discussed and any supporting papers, to each member of the Openreach Board, and to any other person required to attend the meeting.

5. SECRETARY

5.1 The Openreach Board shall be supported by a secretary, appointed by the Openreach Board, who shall ensure records of all Openreach Board decisions are made and kept. For the avoidance of doubt, the secretary is not a member of the Openreach Board.

5.2 The secretary must ensure that the Openreach Board receives information and papers in a timely manner to enable full and proper consideration to be given to the issues.

5.3 The secretary must minute the proceedings and resolutions of all meetings of the Openreach Board, including recording the names of those present and in attendance.

5.4 Draft minutes of Openreach Board meetings must be sent promptly to all members of the Openreach Board. Once approved, minutes must be sent to all members of the Openreach Board, unless the Openreach Board thinks it is inappropriate to do so.

6. INFORMATION TO BT GROUP PLC

6.1 The Openreach Chairman will report to the Chairman of the BT Group plc board following each Openreach Board meeting on the proceedings followed and decisions taken by the Openreach Board.

6.2 The minutes of Openreach Board meetings will be sent to the Company Secretary of BT Group plc, the BT Group plc CEO, the BT Group plc CFO and the Company Secretary of the BT plc board for information. These minutes shall be a fair, true and accurate summary of each Openreach Board meeting.

6.3 For the avoidance of doubt and to the extent necessary and appropriate, the Openreach Board authorises the Openreach Chairman and the BT Nominee to share confidential information pertaining to Openreach, which they have acquired as a result of their position on the Openreach Board, with BT Group plc.

7. CONFLICTS

7.1 Openreach Board members will have a duty to avoid situational conflicts of interest and will be required to declare the existence of any such conflicts of interest to the Openreach Board.

7.2 Save with the prior written approval of all of the directors, in relation to any matter in which a director has any Conflict (an ***Interested Director***), the Interested Director will not be entitled to:

- (a) attend or participate in any discussion of that conflict matter;
- (b) receive any information received by any director on that conflict matter; or
- (c) vote or be counted in the quorum in respect of that conflict matter,

and the quorum and voting requirements for board meetings will be adjusted so as not to require the presence of the Interested Director.

7.3 Any authorisation of a Conflict will, along with details of the nature of the Conflict, be notified to Ofcom within a reasonable period of time.

7.4 The secretary will maintain a record of all Conflicts declared including whether or not the Conflict was authorised.

7.5 For the purposes of this section 7:

- (a) ***Conflict*** means any matter in which a director has a direct or indirect personal interest that conflicts, or possibly may conflict, with the interests of Openreach, including where there is a change in the circumstances set out in section 3.8, but the following shall not, in and of themselves, constitute a Conflict:
 - (i) the fact that a director has been appointed by BT or is employed by BT or holds a directorship in BT; or
 - (ii) the fact that any particular matter involves a transaction or arrangement between Openreach and any member of BT or any other line of business of BT plc (and accordingly, the Openreach Board shall, for the purposes of section 177 of the Companies Act 2006, be deemed to be aware of any such matter).

8. OPENREACH COMPLIANCE COMMITTEE

8.1 The OCC shall consist of the three independent directors of the Openreach Board and the independent Openreach Chairman.

8.2 The Openreach Chairman will be the independent chairman of the OCC (the *OCC Chairman*).

8.3 The OCC shall meet at least four times a year and at any other times at the request of the OCC Chairman.

8.4 The quorum for the OCC shall be three members present, one of whom must be the OCC Chairman or his nominee.

8.5 Each member will be entitled to cast one vote. The OCC will aim to reach decisions on a unanimous basis. Where it is unable to do so, decisions will be made on a majority basis with the OCC Chairman having a casting vote.

8.6 The OCC will:

- (a) review the content of the Code of Practice for employees of BT employed in Openreach;
- (b) review alleged breaches of the Undertakings and determine in each case whether a breach has occurred and whether it is trivial or non-trivial;
- (c) review complaints relating to Openreach's compliance with the Undertakings including those made by: (i) employees of BT to BT's confidential helpline and access routes established for general purposes; (ii) Openreach's customers; and/or (iii) Ofcom; and determine in each case whether a breach has occurred and whether it is trivial or non-trivial;
- (d) report back to complainants regarding the outcome of their complaints including whether the OCC considers a breach of the Undertakings has taken place;
- (e) report regularly to the Openreach Board on Openreach's compliance with the Undertakings including details of breaches and complaints. These reports will be included in the minutes of the relevant Openreach Board meeting; and
- (f) conduct an annual review of Openreach's compliance and Openreach's handling of customer complaints and representations, approve and provide to Ofcom a detailed report (the *Openreach report*) on the OCC's findings, and publish annually a summary of the Openreach report.

8.7 The OCC may:

- (a) of its own initiative, review or request the OOCC to review aspects of Openreach's compliance with the Undertakings; and
- (b) suggest to the Openreach Board remedial action to ensure its compliance with the Undertakings.

8.8 The OOCC will support the OCC, and the resource for the OOCC will be supplied by Openreach.

8.9 The role of the OOCC will be to:

- (a) support the OCC on matters within the OCC's remit by analysing and reporting on data relevant to Openreach's compliance with the Undertakings and conducting enquiries relevant to these matters as the OCC may from time-to-time require;

- (b) give its views to the OCC on the breaches and complaints referred to and any necessary action by Openreach to remedy or resolve them; and
- (c) produce reports to the OCC on the nature, type and pattern of breaches and complaints referred to above.

8.10 BT will ensure that the OOCC has reasonable and timely access to information held by BT that it needs to fulfil its role, regardless of where that information may be held by, or within, BT.

8.11 The OOCC will be able to draw upon the expertise of functions within BT.

9. OTHER MATTERS

9.1 The Openreach Board must:

- (a) have access to sufficient resources in order to carry out its duties;
- (b) be given appropriate and timely training, in the form of an induction programme for new members and on an ongoing basis for all members;
- (c) give due consideration to all applicable laws and regulations; and
- (d) oversee any investigation of activities which are within its terms of reference.

9.2 The Openreach Board will apply those principles of the UK Corporate Governance Code (based overall on the underlying principles of good governance: accountability, transparency, probity and focus on the sustainable success of an entity over the longer term) which it considers appropriate and relevant to the operation of Openreach.

10. AUTHORITY

10.1 The BT plc board authorises the Openreach Board to:

- (a) undertake any activity within its terms of reference;
- (b) seek any information from any employee or contractor of any member of the Group that it requires to perform its duties;
- (c) call any employee or contractor of any member of the Group to be questioned at an Openreach Board meeting, as and when required; and
- (d) delegate any of its powers to one or more of its members, the chairman or the secretary.

PART B : DUTIES OF THE OPENREACH EXECUTIVE

1.1 The Openreach Executive will produce (annually) the MTP. The MTP will include a detailed plan and financial budget for the first year and outline plans and financial budgets for the subsequent years. The MTP will form the basis for the AOP. The AOP shall give a detailed financial and operational plan for the year ahead and the MTP will provide a strategic plan and outline financial budget to anticipate and guide activity in the subsequent years. The AOP and MTP will be informed by ongoing Communications Provider engagement by the Openreach Executive.

1.2 The MTP and AOP will be devised according to the following steps:

- (a) on the basis of indicative targets of revenue, EBITDA, capex and cash flow proposed by BT Group plc board (which themselves were informed by Openreach's then current MTP), the Openreach Executive will develop a draft MTP and AOP, setting out in particular:
 - (i) budget envelopes and targets;
 - (ii) product-level financial underpinnings;
 - (iii) volumes and portfolio evolution;
 - (iv) platform evolution; and
 - (v) an investment plan;
- (b) the Openreach Executive will submit the draft MTP and AOP to the BT Group plc CEO and BT Group plc CFO for review, following which the Openreach Executive shall submit the draft MTP and AOP to the Openreach Board to review and approve;
- (c) the Openreach Executive will also prepare a high level summarised version of the MTP and AOP for the Openreach Board to submit to the BT Group plc CEO and the BT Group plc CFO for review, following which the summarised version will be submitted to the BT Group plc board for approval or amendment. The summarised version will contain:
 - (i) high-level budgets for revenue, EBITDA, capital expenditure and cash flow;
 - (ii) portfolio level financial underpinnings; and
 - (iii) high level details of major strategic programmes.

1.3 Following each year of operation, the AOP shall include a commentary on the previous year's implementation as well as a commentary on the application of the Undertakings.

1.4 The Openreach Executive will report monthly to the Openreach Board to give details of Openreach's performance against the AOP, including against key performance indicators. The Openreach Executive shall provide to the BT Group plc CFO reforecasts of its likely out-turn against the AOP and MTP, in a timetable coordinated with the rest of BT.

1.5 The Openreach CEO will have delegated authority from BT and the Openreach Board to authorise the capital expenditure projects as detailed within the AOP. The Openreach CEO shall also have delegated authority, having consulted with the Openreach Board, to make

changes to the composition of the capital expenditure projects within the MTP or the AOP capital expenditure budget, in fulfilment of Openreach's best interests and its obligation to serve its customers equally in respect of SMP Products (as defined in the Undertakings), except in the case of items identified in the AOP or MTP as items of significant strategic importance to BT; in such cases the Openreach CEO will develop a proposal for the Openreach Board to submit to the BT Group plc board for approval.

1.6 In the case of a negative or detrimental variation in Openreach's total revenue, EBITDA, capex or cash flow relative to the AOP and MTP as described below, the following will occur:

- (a) if the actual variance in any month is up to and including 5 per cent., the Openreach Executive, in consultation with the BT Group plc CEO and/or BT Group plc CFO, will develop a remedial plan for approval by the Openreach Board; or
- (b) if the actual variance is above 5 per cent., and/or the forecast variance for the year is above £50 million for EBITDA, capex or cash flow; or above £100 million for revenue, the Openreach Executive will follow the steps in (a) above, and will additionally recommend the remedial plan to BT Group plc board for authorisation or amendment.

1.7 Where, during the Confidential Phase of the Customer Consultation Process pursuant to section 1 of Part D of this Governance Protocol, proposals for investment are considered by Openreach but (i) are of significant strategic importance to BT or (ii) cannot be financed within the agreed capital expenditure budget of Openreach or (iii) arise in connection with section 2.8 of Part A of this Governance Protocol, the Openreach CEO shall confidentially advise the BT Group plc CEO and BT Group plc CFO of the possibility of a material increment to the Openreach investment requirement. Any such proposed investment which is less than £100 million will require the prior approval of the BT Group plc CEO and BT Group plc CFO. Where the investment is in excess of £100 million or of significant strategic importance, the prior approval of the BT Group plc board will be required.

1.8 The Openreach Executive will engage with Openreach's customers and other stakeholders including Ofcom, as they deem necessary and appropriate to understand their issues and concerns.

1.9 Subject to sections 1.5, 1.6 and 1.7 of this Part B, the Openreach Executive may develop plans for review and approval by the Openreach Board on major operational and investment decisions, for example:

- (a) form, technical decisions and timing of major access network investments;
- (b) new products and technologies, or enhancements to existing products; and
- (c) timing and prioritisation of product, system and process investment.

1.10 The Openreach Executive is responsible for:

- (a) the day-to-day management of Openreach in accordance with the AOP and MTP;
- (b) the execution of the AOP and the MTP both in relation to financial performance and operational performance (including in relation to quality of service, investment and productivity); and
- (c) developing Openreach's strategy, objectives, budget and forecasts.

PART C : MATTERS RESERVED FOR THE BOARDS OF BT GROUP PLC AND BT PLC RESPECTIVELY

1.1 Openreach will, unless otherwise provided in this Governance Protocol, remain subject to the BT Governance Policies. The BT Governance Policies include:

- (a) the matters reserved for the BT Group plc board and the BT plc board;
- (b) the terms of reference for the BT Group Operating Committee;
- (c) delegations of authority which provide rules, guidelines and approval matrices for decision-making within the lines of business and functions in BT; and
- (d) the BT policy reserved powers which address key areas with BT-wide significance which are not reserved to the BT Group plc board, the BT Group Operating Committee or the lines of business within BT, for example in relation to compliance with anti-corruption and bribery, data protection, competition, or human rights legislation, BT HR policies, treasury matters and BT accounting policies.

PART D : CUSTOMER CONSULTATION PROCESS

Both the Openreach Board and the Openreach Executive will ensure the following process is followed in relation to significant investments related to the future development of Openreach's networks and products.

1. THE CONFIDENTIAL PHASE (INVESTMENT AND TECHNOLOGY CHOICE)

1.1 Openreach will be open to receiving well-developed proposals from Communications Providers regarding the development of Openreach networks and products, including on a co-investment or risk-sharing basis. Openreach will take into account and fairly evaluate such proposals when developing Openreach's proposals for investment in its networks and products.

1.2 The initial confidential phase persists when Openreach is considering a significant investment decision related to the future development of Openreach's networks and products, for which the use of BT capital will be considered by BT Group plc.

1.3 The considered investments will not be disclosed outside Openreach, except:

- (a) with the consent of the Communications Provider proposing the investment; or
- (b) where proposals for investment are considered by Openreach to be (i) of significant strategic importance or (ii) cannot be financed within the agreed capital expenditure budget of Openreach or (iii) arise in connection with section 2.8 of Part A of this Governance Protocol, , section 1.7 of Part B of this Governance Protocol shall apply.

1.4 Once Openreach has formed an intention to consider seriously a significant investment in its networks and products, which it considers could form the basis for new forms of network access, it should announce its intention to do so at an early point in deliberations, to be able to consult with Communications Providers.

1.5 During this process, Openreach will not make any changes to the network which would prevent the provision of the network access envisaged in the proposals.

2. THE PUBLIC PHASE (COMMERCIAL AND TECHNICAL FEASIBILITY)

2.1 The public phase begins when Openreach publicly announces an intention to consider seriously a significant investment in its networks and products, which it considers could form the basis for new forms of network access, and continues until a formal decision concerning the proposal is made. During this phase Openreach will consult with Communications Providers to establish their needs and potential demand for the proposed networks and products.

2.2 If such demand exists, and Openreach decides to proceed with the proposals and, where required by Part B of this Governance Protocol, BT Group plc agrees to allocate the requisite capital in accordance with Part B of this Governance Protocol, Openreach will announce an intention to proceed with the proposal, subject to an approved business case.

3. THE COMMITTED PHASE (IMPLEMENTATION)

3.1 The committed phase will run from the time Openreach and BT (where required by Part B of this Governance Protocol) have made their respective decisions (as provided for in Part B of this Governance Protocol) concerning the investment, until the network is deployed or service launched.

3.2 Openreach will identify the commercial and technical feasibility of the new form of network access, through industry fora with its Communications Provider customers.

3.3 If, after consultation, Openreach commits to developing the commercial application of a new form of network access, Openreach will establish an industry group comprising Communications Provider customers to agree key aspects of the transition. Openreach will work with this group to:

- (a) produce a reference interconnection architecture, setting out the manner in which the new and existing forms of network access are expected to interconnect with each other;
- (b) produce an implementation plan including the process for migrating to the new form of network access;
- (c) produce a communications plan setting out how this implementation will be communicated to end-users; and
- (d) oversee the actual implementation, taking any such action as may be necessary in order to ensure that the above plans are achieved.

For the avoidance of doubt, the industry group will not be responsible for managing the deployment by Openreach of the new form of network access, nor can the group's actions have the effect of materially delaying the deployment, except with the agreement of Openreach.

3.4 Openreach will publish guidelines setting out the consultation principles it will follow for consultations about the new network access. The guidelines will include objectives for each consultation and the process and timescale for responses, as well as a statement explaining decisions made. Openreach will also publish its implementation plan of record at appropriate intervals, to include information on interconnection, migration plans, and indicative non-binding road maps over two years for SMP Products likely to be provided using the new network access.

PART E : PROPOSED ADDITIONS TO THE BT PLC ARTICLES

The following article will replace the existing Article 17 in the Articles of Association of BT plc:

Article 17

17.1 DEFINITIONS

17.1.1 In this Article 17, the following definitions will apply:

BT has the meaning given to it in section 2 of the Undertakings.

Communications Providers has the meaning given to it in section 2 of the Undertakings.

Openreach has the meaning given to it in section 2 of the Undertakings.

Openreach Board means the committee of the Board of Directors constituted and regulated in accordance with Article 17.2.

Openreach Governance Protocol means the governance protocol in respect of Openreach annexed to the Undertakings.

SMP has the meaning given to it in section 2 of the Undertakings.

Undertakings means the undertakings given by the Company to Ofcom under the Enterprise Act 2002 on 22 September 2005, as varied from time to time.

17.2 DELEGATION OF DIRECTORS' POWER TO COMMITTEES

17.2.1 The Board can delegate any of their powers, authorities or discretions to committees of one or more directors or other people. If the Board have delegated a power, authority or discretion to a committee, any references in the Articles to using that power, authority or discretion include its use by the committee. A committee must comply with any regulations made by the Board. These regulations can require or allow people who are not directors to be co-opted onto the committee and can give voting rights to co-opted members, who can be counted in the quorum.

17.2.2 Unless the Board specifically decide not to allow this, a committee can sub-delegate powers and discretions to sub-committees or other people.

17.2.3 References in the Articles to committees include sub-committees permitted under this Article.

17.2.4 If a committee includes two or more members, the Articles which regulate Board meetings and their procedure will also apply to committee meetings (if possible), unless these are inconsistent with any regulations for the committee which the Board has made under Article.17.2.1.

17.2.5 A committee or sub-committee can be called a "board" or "council" or any other name the Board decide.

17.2.6 The Board shall at all times delegate such powers, authorities and discretion in respect of the management and operation of the Openreach line of business to a committee to be called the "Openreach Board". The Openreach Board must at all times be constituted in accordance with and comply with regulations made by the Board on the terms set out in the Openreach Governance Protocol, or as the Board shall otherwise determine.

17.2.7 Subject to such other regulations as the Board may make, the Openreach Board will ensure that Openreach complies with its regulatory obligations in relation to equivalence of inputs as a remedy for SMP. In addition, the Openreach Board will ensure that Openreach treats all customers equally. This obligation includes customer consultation, strategy and investment decisions and relates to the process followed, not the outcome. For the avoidance of doubt, in the provision of products, equivalence of inputs applies only where this has been determined as a remedy in markets where the Company has been found to have SMP. Further this obligation shall not limit or otherwise prejudice Openreach's ability to compete with competitors and cannot require Openreach to undertake investments to the detriment of BT and/or Openreach.

BT UNDERTAKINGS: marked-up version for inclusion in variation request
UNDERTAKINGS GIVEN TO OFCOM BY BT PURSUANT TO THE ENTERPRISE
ACT 2002

Version highlighting:

- time-expired and obsolete provisions that should be deleted, highlighted in turquoise;
 - implementation provisions that need to be converted to ongoing obligations and terminology changes, highlighted in light grey;
 - provisions that are, or are capable of being, imposed via SMP conditions under the European Common Regulatory Framework, highlighted in yellow;
 - other additions, deletions and changes sought proposed by BT, highlighted in green;
 - consequential section numbering changes, highlighted in orange.
-

[Note for Ofcom – this is based on the consolidated version of the Undertakings covering all variations up to and including variation number 24 dated 19 June 2014.]

WHEREAS:

- (A) Ofcom considers that it has the power to make a reference to the Competition Commission under Section 131 of the Enterprise Act 2002;
- (B) BT has offered undertakings to Ofcom in accordance with section 154 of the Enterprise Act 2002; and
- (C) Ofcom, instead of making a reference to the Competition Commission has decided to accept BT's undertakings.

NOW THEREFORE:

BT plc hereby gives Ofcom the undertakings below (these “Undertakings”) and shall act in the manner set out in this document.

1. **Scope**

- 1.1 These Undertakings shall be binding on BT in the United Kingdom.
- 1.2 These Undertakings shall apply in respect of the matters to which they relate in the whole of the United Kingdom (except the Hull Area) but shall apply to Northern Ireland only to the extent set out in section 135.

2. **Definitions and Interpretation**

2.1 In these Undertakings:

“Access Network” means the Electronic Communications Network which runs from a Local Access Node to a network termination point on an End-User’s premise and which supports the provision of copper-based access services and fibre-based access services to End-Users.

“Accounting Methodology Documents” means that term as defined in Condition 13A.37 in Part 3, Schedule 1, Annex 29 of the Notification to BT under sections 48(1) and 79(4) of the Communications Act 2003, and dated 26 June 2014.

“AOP” means the annual operating plan as more particularly described in Part B of the Governance Protocol.

~~“Alternative Communications Provider Operational Area” means a Communications Provider Operational Area at an Exchange other than that requested by the Communications Provider so that the Communications Provider has the same ability to provide electronic communications services that make use of Network Access at no greater cost to the Communications Provider than that which it would have paid had it occupied a Communications Provider Operational Area at the Exchange named within its request.~~

~~“AS” means the Access Services division referred to in these Undertakings as AS, to be established by BT in accordance with section 5 of these Undertakings. (replaced by “Openreach”)~~

~~“AS CEO” means the Chief Executive Officer of AS. (replaced by “Openreach CEO”)~~

~~“AS Headquarter Management Team” comprises the AS CEO and those of his direct reports based in the same city as the AS CEO, that city at the date these Undertakings take effect being London. (replaced by “Openreach Headquarter Management Team”)~~

~~“AS Management Board” means the management board of AS, comprising the AS CEO, his direct reports and any other person(s) appointed to that board from time to time. (effectively replaced by “Openreach Executive”)~~

“Associated Services” means those products and services supplied from time to time ancillary to the provision of Metallic Path Facility and Shared Metallic Path Facility. At the date these Undertakings take effect they are listed in section B6, part 6.03 of the BT Carrier Price List and include:

a) ~~co-mingling space (variable exchange space footprints and rack space units);~~

b) ~~power (AC & DC);~~

e) ~~ventilation & cooling;~~

d) ~~internal tie cabling;~~

e) ~~external tie cabling (for distant location); and~~

f) ~~cable link for Metallic Path Facility and Shared Metallic Path Facility (installation of third party backhaul).~~

~~“Backhaul Extension Service” means BT’s product of that name existing at the date these Undertakings take effect and as it may evolve, be developed or replaced (whether under the afore mentioned or a new name) from time to time.~~

~~“Backhaul Product” means a Network Access service which runs from a BT Local Access Node to:~~

a) ~~another BT Local Access Node; or~~

b) ~~a BT Core Node; or~~

c) ~~another Communications Provider’s point of handover (but which is not an interconnection circuit or interconnection service provided over that circuit),~~

~~provided that the straight line distance to any of the above is no more than the greater of:~~

i) ~~15km (or such other distance as may be mutually agreed between BT and Ofcom); or~~

ii) ~~the straight line distance from BT’s Local Access Node to the nearest BT Core Node.~~

~~For the avoidance of doubt this definition does not include backhaul services to nodes outside the UK.~~

“Bitstream Network Access” means a form of Network Access which provides transmission capacity between an End-User premise and a BT node or a point of handover to another Communications Provider, which allows a degree of control to Communications Providers (including BT) over how the service to the End-User is realised.

“BT” means British Telecommunications plc whose registered company number is 1800000, and including any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989 2006.

“BT Active FTTC Product” means an Ethernet based Bitstream Network Access product offered by ASOpenreach as of the date it is available for order and provided over the entirety of FTTC.

“BT Active FTTP Product” means an Ethernet based Bitstream Network Access product offered by ASOpenreach as of the date it is available for order and provided over the entirety of FTTP excluding any product or products:

- ~~(i) falling within section 5.4 (d), or section 5.5 (c), (d) or (e); or~~
- (ii) designed as an input to an uncontended service between two business End-User premises.

“BT Group Operating Committee” means the committee of that name, established by the BT Group plc Board resolution approved on 19 February 2002 and any successor to that committee.

“BT Group plc” means BT Group plc whose registered company number is 4190816.

“BT Group plc CEO” means the Chief Executive Officer of BT Group plc.

“BT Group plc CFO” means the Group Finance Director of BT Group plc.

“BT’s Backhaul Network” means BT’s Electronic Communications Network from BT’s Local Access Nodes to:

- a) another BT Local Access Node; or
- b) a BT Core Node; or
- c) another Communications Provider’s point of handover.

“BTNI” means the organisation within BT currently called BT Northern Ireland, together with its dedicated support teams in BT Regions, and includes any successors. For the avoidance of doubt, it does not include BT employees or agents working in Northern Ireland for other parts of BT.

“BT plc” means British Telecommunications plc whose registered company number is 1800000.

“BT’s Downstream Divisions” means BT’s divisions downstream of Openreach which provide products and services to non-BT Communications Providers and to End-Users. For the avoidance of doubt, this excludes BTTSO and BTNI.

“BTTSO” means BT Technology, Service and Operations” which is the division BT that designation which is BT’s internal service division

responsible for operating BT's networks, platforms and IT, systems and successors to that division.

~~"BT Wholesale" means the division within the BT organisation that currently has that designation and which predominantly manages upstream products and services, apart from those which will be provided by AS, designed for use by other Communications Providers, as inputs to their own products, and includes any successors to that division.~~

"Carrier Pre-selection" means a facility which allows a subscriber to whom a publicly available telephone service is provided by means of a public telephone network to select which pre-selected provider of such services provided wholly or partly by means of that network, is the pre-selected provider the subscriber wishes to use to carry his calls by designating in advance the selection that is to apply on every occasion when there has been no selection of provider by use of a telephone number.

~~"Carrier Price List" means the price list having that name which contains charges for certain products and services provided by BT to Communications Providers and certain products and services provided by Communications Providers to BT, as such price list is amended from time to time, and which is published at www.btwholesale.com at the date these Undertakings take effect.~~

"Code of Practice" means the code or codes of practice drawn up and published in accordance with section 94 of these Undertakings.

~~"Commercial Information" means information of a commercially confidential nature relating to SMP Products or other products and services to which Equivalence of Inputs applies; or in the case of sections 6.10.3 and 6.13 and 6.14 relating to products and services described in section 6.1.2, and which relates to any or all of the following in relation thereto:-~~

- a) product development,
- b) pricing,
- c) marketing strategy and intelligence,
- d) product launch dates,
- e) cost, or
- f) projected sales volumes, or
- ~~g) network coverage and capabilities,~~

excluding any such information as agreed by Ofcom from time to time.

~~"Commercial Policy" means policies and plans in relation to SMP Products or, in the case of section 8.6, relating to products and services described in section 6.1.2, and which relate to any or all of the following in relation thereto:-~~

- a) product development,

- b) pricing,
- c) marketing strategy and intelligence,
- d) product launch dates,
- e) cost,
- f) payment terms, or
- g) product specific forecasting, or
- h) network coverage and capabilities,

excluding any such policies and plans as agreed by Ofcom from time to time. For the avoidance of doubt this excludes commercial policy of general application across BT which it is appropriate to set centrally.

“Communications Provider” means a person providing a Public Electronic Communications Service or a Public Electronic Communications Network, including BT BT’s Downstream Divisions where relevant and for the avoidance of doubt shall include any internet service provider. For the avoidance of doubt this does not include any person in so far as he procures such a service or network for provision to himself or the members of his group of companies for their own private use.

~~“Communications Provider Operational Area” means any part of an Exchange which is:~~

- ~~a) capable of independent use and occupation by a Communications Provider (including the use of the common areas) but which will not adversely affect the use or value of the remaining part of that property; and~~
- ~~b) is not bona fide reasonably required by BT at any time for the purposes of BT’s business.~~

“Confidential Phase” means the phase of the Customer Consultation Process which bears that name and which is so described in the Customer Consultation Process.

“Core Node” means a node in an Electronic Communications Network whose primary function is not to support the provision of access services to End-Users but to switch or route traffic between other nodes in a network.

“Customer Confidential Information” means any information, in whatever form, which, in the case of written or electronic information, is clearly designated by the Communications Provider as commercially confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as such or is by its nature commercially confidential, but excluding any information which:

- a) enters the public domain otherwise than by reason of a breach of confidentiality;

- b) is previously known to BT at the time of its receipt;
- c) is independently generated or discovered at any time by BT; or
- d) is subsequently received from a third party without any restriction on disclosure.

"Customer Consultation Process" means the process by which Openreach will consult with Communications Providers as set out in Part D of the Governance Protocol.

~~"Customer Service Record" means the set of data which is required to provide a customer with a product or service instance.~~

~~"Customer Side Record" means a Customer Service Record relating to BT as a purchaser from AS.~~

~~"DataStream" means an asynchronous transfer mode based Bitstream Network Access service offered under that name by BT at the date these Undertakings take effect.~~

~~"Downstream Divisions" means BT's divisions which are predominantly concerned with providing End-Users with downstream products and services and for the avoidance of doubt excludes BTNI and BT Technology, Service and Operations.~~ *(superseded by "BT's Downstream Divisions" which also encompasses the existing term "Upstream Division(s)")*

"EAB" means the Equality of Access Board to be established by BT in accordance with these Undertakings.

"EAO" means the Equality of Access Office to be established under section 10 of these Undertakings.

"EMP" means the Equivalence Management Platform, a BT system providing Communications Providers with access to BT's ordering, procurement, fault reporting and other OSS.

"End-User" has the same meaning as in the Communications Act 2003.

~~"Equipment" means for the purpose of sections 5.19 and 7 Communications Provider's equipment listed in Annex 4:~~

- ~~a) which is under the sole control of that Communications Provider;~~
- ~~b) which is used by that Communications Provider for the purpose of running and operating its own Electronic Communications Network;~~
- ~~c) which provides Electronic Communications Services that make use of Network Access; and~~

d) — which is connected to the BT network.

“Equivalence of Inputs” or “EOI” means that BT provides, in respect of a particular product or service, the same product or service to all Communications Providers (including BT) on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes, and includes the provision to all Communications Providers (including BT) of the same Commercial Information about such products, services, systems and processes. In particular, it includes the use by BT of such systems and processes in the same way as other Communications Providers and with the same degree of reliability and performance as experienced by other Communications Providers.

In this context “the same” means exactly the same subject only to:

a) — trivial differences;

b) — such other differences as may be agreed by Ofcom in writing;

e) — differences relating to the following:

i) — credit vetting procedures;

ii) — payment procedures;

iii) — matters of national and crime-related security, physical security, security required to protect the operational integrity of the network and such other security requirements as agreed between BT and Ofcom from time to time;

iv) — provisions relating to the termination of a contract; and

v) — contractual provisions relating to requirements for a safe working environment; or

d) — such other differences as are specified elsewhere in these Undertakings, including where Commercial Information is provided in accordance with these Undertakings to any of the nominated individuals, and individuals occupying the roles and functional areas (and their relevant external advisers, subcontractors and agents) listed in Annex 2.

“Estimated Space Availability Details” means details of estimated space availability within the Exchanges annually notified (by being placed on a password protected BT website) in accordance with section 7.1.2 to those Communications Providers who have signed an appropriate confidentiality agreement with BT.

“Ethernet” means the standard networking protocol defined under that name in IEEE 802.3 and published by the Institute of Electronic and Electrical Engineers.

~~“Exchange” means for the purposes of section 7, FTTC and FTTP a BT building containing a Local Access Node.~~

“Exchange Line” means apparatus comprised in BT’s Electronic Communications Network and installed for the purpose of connecting a telephone exchange run by BT to a network termination point comprised in network termination and testing apparatus installed by BT for the purpose of providing Electronic Communications Services at the premises at which the network termination and testing apparatus is located.

~~“Featureline” means the products offered by the Downstream Divisions at 31 March 2007 under the names Featureline, Featureline Compact and Featureline Corporate/Embark and as they may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.~~

“FTTC” means a network structure for access at End-Users’ premises at fixed locations in which optical fibres connect a node in an Exchange to a Local Access Node contained in a street cabinet, and copper wires connect the End-Users’ premises to the Local Access Node contained in the BT street cabinet.

~~“FTTC Passive Inputs” means:~~

- ~~(i) access to the copper wires that connect the End-User premises to a Local Access Node contained in the BT FTTC street cabinet;~~
- ~~(ii) the provision to a Communications Provider of a FTTC street cabinet (which for the avoidance of doubt could include a cabinet facility attached to or otherwise integrated with a BT FTTC street cabinet), cooling, ventilation and power therein where practicable, and copper tie-cables, where required; and~~
- ~~(iii) the various associated components of the Physical Layer of BT’s Access Network connecting the Local Access Node in the BT FTTC street cabinet and the End-Users premises to the extent that these components are only to be used in connection with the provision of services that are run over the entirety of FTTC.~~

“FTTP” means a network structure for access at End-Users’ premises at fixed locations in which optical fibres connect a node in an Exchange to the End-Users’ premises.”

“Governance Protocol” means the Governance Protocol set out in Annex 1 to these Undertakings

“Hull Area” means the area defined as the ‘Licensed Area’ in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc.

~~“BMC” means, in relation to any product or service, Installed Base Migration Complete, and is the date by which the migration of all of the relevant BT installed End-User base to the Equivalence of Inputs product is completed.~~

~~“IPStream” means the IP-based Bitstream Network Access service offered by BT at the date these Undertakings take effect and as it may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.~~

~~“IPstream Connect” means the IP-based Bitstream Network Access service offered by BT as of the date it is available for order and as it may evolve, be developed or replaced (whether under the aforementioned or a new name) from time to time.~~

~~“ITU” means International Telecommunications Union.~~

~~“KPIs” means Key Performance Indicators.~~

“Level 1 Systems Separation” means the application of access rights and controls to restrict access to information and, in the case of ~~Operational Support Systems OSS~~, functionality. Such controls will ensure that users can only have access to which they are entitled or which they are permitted, consistently with the Undertakings.

“Level 2 System Separation” means both (a) separation of the data held by the system and (b) separate instances of the application software, such that users can only have access to which they are entitled or which they are permitted, consistently with the Undertakings.

“Local Access Node” means a node in an Electronic Communications Network which supports the provision of services to End-Users ~~by means of an Access Network~~. For the avoidance of doubt, such nodes include the following, namely a main distribution frame, an optical distribution frame, a digital local exchange, a digital subscriber line access multiplexer, a remote concentrator unit and an MSAN.

~~“MIS” “Management Information Systems”~~ means those management information systems which hold Commercial Information and/or Customer Confidential Information and which are used by BT to help plan and direct business and organisational operations, decision making and competitive strategies.

~~“MDF Site” means a BT site at which one or more Main Distribution Frames is located.~~

“Measured Products” means Wholesale Analogue Line Rental, Wholesale ISDN2 Line Rental, Wholesale ISDN30 Line Rental, Metallic Path Facility, Shared Metallic Path Facility, Wholesale Extension Service, Backhaul Extension Service, Wholesale Extension Service Backhaul Product, Wholesale Extension Service Access Product and Wholesale End-to-End Ethernet Service as at 31 March 2007.

“Metallic Path Facility” means a circuit comprising a pair of twisted metal wires between an End-User’s premise and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey Signals when connected to an Electronic Communications Network.

“Migration Process” means a process by which:

- a) a Communications Provider transfers from using one product or service to another product or service;
- b) an End-User transfers from using one product or service to another product or service;
- c) an End-User transfers from using a product or service supplied by a Communications Provider to the same product or service supplied by another Communications Provider;
- d) any combination of a), b) or c) above;
- e) any combination of a), b) or c) above which involves more than one End-User and/or two or more Communications Providers and the transfer takes place within a single process; or
- f) any combination of a), b) or c) above which involves the synchronised transfer of multiple services or products.

“MSAN” means a Multi-Service Access Node, being a Local Access Node in BT’s NGN which is capable of supporting the provision of multiple services to End-Users whether over fibre or copper.

“MTP” means the medium term plan, covering multiple years, as more particularly described in Part B of the Governance Protocol.

“Network Access” has the same meaning as is given to “network access” in section 151(3) of the Communications Act 2003.

“Network Layer” means the network layer of the International Standards Organisation seven layer model for communications protocols.

“NGA Statement” means Ofcom’s Statement entitled “Delivering super-fast broadband in the UK” published on 3 March 2009.

~~“NGN” means Next Generation Network, a packet-based Electronic Communications Network which is able to provide Electronic Communications Services and to make use of multiple broadband and quality of service-enabled transport technologies, and in which service-related functions are independent of underlying transport-related technologies.~~

“OCC” means the Openreach Compliance Committee which is a committee established by the Openreach Board with the role of reviewing compliance by Openreach with these Undertakings and the Governance Protocol.

“Ofcom” means the Office of Communications as established by the Office of Communications Act 2002, or, where relevant, the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984.

“OOCC” means the Office of the OCC, being the support staff serving the OCC.

“Openreach” means the division of BT plc referred to in these Undertakings as Openreach, the scope of which is defined in Section 3 of these Undertakings.

“Openreach Board” means the committee of the BT plc board with delegated authority to operate Openreach subject to the terms of the Governance Protocol.

“Openreach CEO” means the Chief Executive Officer of Openreach.

“Openreach CFO” means the Chief Financial Officer of Openreach.

“Openreach Executive” means the senior management team of Openreach, comprising the Openreach CEO and his/her direct reports.

“Openreach Headquarter Management Team” comprises the Openreach CEO and those of his direct reports based in the same city as the Openreach CEO, that city at the date these Undertakings take effect being London.

~~“Operational Support SystemsOSS” means operational support systems~~ being those support systems carrying out the functions and processes which help to run a network and business, including (but not limited to) pre-ordering, taking a customer’s order, configuring network components, creating a bill and managing faults.

~~“Partial Private Circuit” means a circuit providing dedicated transmission capacity between an End-User’s premise and another Communications Provider’s point of handover, using an interface, as defined at G703 or G957 or X21, all as published by the ITU.~~

“Passive Infrastructure Access Products” means products which consist of elements of the Physical Layer of BT’s Access Network and/or the Physical Layer of BT’s Backhaul Network and including products such as dark fibre, and duct and/or pole access.

“Physical Layer” means the duct, fibre, copper, and other non-electronic assets in an Electronic Communications Network.

~~“Physical Layer Information” means information about Physical Layer assets either under the control and operation of AS for the purposes of section 5.12 or which is managed by AS on behalf of the rest of BT.~~

~~“Primary Accounting Documents” means that term as defined in Schedule 2 of the Notification to BT under sections 48(1) and 86(1) of the Communications Act 2003, and dated 22 July 2004. (replaced by “Accounting Methodology Documents”)~~

“Proactive Review” means the AS process set out in section 5.49 (c).

“PSTN” means Public Switched Telephone Network.

~~“Ready to Mass Migrate” means that procedures and processes necessary to enable commencement of the migration of large volumes of Customer Service Records from Operational Support Systems shared between AS and the rest of BT to Operational Support Systems, which are physically separate for AS and the rest of BT, have been completed and such migration of large volumes has commenced. This includes, *inter alia*, the conclusion of the re-engineering of end-to-end processes and the completion of pilot migrations of varying volume. For the avoidance of doubt, once BT is Ready to Mass Migrate the volume of migrations going forward might fluctuate.~~

~~“Residential Customer” means any natural person who uses or requests a public electronic communications service for purposes which are outside his or her trade, business or profession.~~

~~“RFS date” means the Ready For Service date from which an Equivalence of Inputs product or service is available for use by other Communications Providers for their new End-Users, and is also available for use by BT (and is in use by BT) to handle all product or service events for New End-Users (being new after the RFS date). The RFS date is also the date of the start of migration of the relevant installed base of End-Users. In this definition “New End-User” means either:~~

- ~~a) an End-User who has not previously been directly supplied by BT for any BT product or service; or~~
- ~~b) an End-User with no current service from BT but who is returning to BT;~~

~~and excludes for the avoidance of doubt:~~

~~i) an existing BT End User who is moving premises, and~~

~~ii) an existing BT End User purchasing a new service.~~

"Scorecard" means a measure for setting targets in connection with the incentive remuneration of certain BT employees.

"SDH" means Synchronous Digital Hierarchy.

~~"Service Level Information" means information required for the operational management of a service or product, or a Transmission Layer input into a service or product.~~

~~"Shared Metallic Path Facility" means access to the non-voiceband frequencies of the Metallic Path Facility.~~

"SLA" means Service Level Agreement.

"SMP" means Significant Market Power, where this is found pursuant to a market review under the relevant provisions of the Communications Act 2003.

"SMP Condition" has the same meaning as in the Communications Act 2003.

"SMP Product" means a product or service falling within a market for Network Access in which BT has been determined from time to time by Ofcom as having SMP (excluding international direct dial products based on interconnection directly or indirectly to BT's international switching centres).

"Statement of Requirements Process" means a procedure whereby a Communications Provider submits a request to BT for new or enhanced Network Access.

~~"Sub-Loop Unbundling" means access to the part of a Metallic Path Facility or the part of a Shared Metallic Path Facility from an End User premises to an intermediate point prior to the main distribution frame.~~

~~"Supply Side Record" means a Customer Service Record relating to BT Wholesale in its role as supplier to AS.~~

~~"TILLAP" means a Traditional Interface Leased Line Access Product, being a leased line providing dedicated transmission capacity between an End User's premise and a BT Local Access Node which uses an interface, as defined at G703 or G957 or X21, all as published by the ITU.~~

~~“TILLBP” means either:~~

- ~~a) A Traditional Interface Leased Lines Backhaul Product, being a Backhaul Product providing dedicated transmission capacity using an interface, as defined at G703 or G957 or X21, all as published by the ITU; or~~
- ~~b) A Network Access service using an interface, as defined at G703 or G957 or X21 all as published by the ITU, up to and including a bandwidth of 2Mb/s, which runs from a Communications Provider’s radio base station to:~~
 - ~~i) a BT Local Access Node; or~~
 - ~~ii) a BT Core Node; or~~
 - ~~iii) that Communications Provider’s point of handover (but which is not an interconnection circuit or interconnection service provided over that circuit);~~

~~provided that the straight line distance to any of the above is no more than the greater of:~~

- ~~a) 15km (or such other distance as may be mutually agreed between BT and Ofcom); or~~
- ~~b) the straight line distance from a Communications Provider’s radio base station to the nearest BT Core Node.~~

~~For the avoidance of doubt this definition does not include backhaul services to nodes outside the UK.~~

“Transmission Layer” means the electronic assets at and below the link layer of the International Standards Organisation seven layer model for communications protocols. For the avoidance of doubt this does not include Network Layer assets such as voice switches or data routers.

~~“UK Combined Code on Corporate Governance” “UK Corporate Governance Code” means the document of that name dated July 2003 September 2014 and published by the Financial Reporting Council.~~

“United Kingdom” has the meaning given to it in the Interpretation Act 1978.

~~“Upstream Division(s)” means a BT division or divisions other than AS, predominantly concerned with providing upstream products and services designed for use by Communications Providers, as inputs to their own products. At the date of these Undertakings this includes BT Wholesale. For the avoidance of doubt “Upstream Division(s)” excludes BTNI and BT Technology, Service and Operations.~~ *(superseded by “BT’s Downstream*

Divisions” which also encompasses the existing term “Downstream Division(s)”

~~“User Access Control” means the application of user profiles and/or data tagging or authorisation control mechanisms combined with behavioural mechanisms such that users outside AS can only have access to systems or applications or data which is consistent with the Undertakings and which does not lead to undue discrimination against other Communications Providers.~~

~~“Vacation Exchange” means any Exchange identified on the list delivered to Ofcom under section 7.7.~~

“Wholesale Analogue Line Rental” means an Electronic Communications Service provided for the use and ordinary maintenance of an analogue Exchange Line.

~~“Wholesale Calls” means BT’s Network Access product consisting of the provision of an end-to-end calls service on a BT maintained line that the Communications Provider in turn offers to its End Users.~~

~~“Wholesale End-to-End Ethernet Service” means a Network Access service providing uncontended Ethernet bandwidth between an End-User premise and another End-User premise up to a maximum straight-line distance of 25km between each premise unless technical feasibility dictates otherwise.~~

~~“Wholesale Extension Service” means BT’s product of that name existing at the date these Undertakings take effect and as it may evolve, be developed or replaced (whether under the afore mentioned or a new name) from time to time.~~

~~“Wholesale Extension Service Access Product” means a Network Access service that provides uncontended Ethernet bandwidth between an End-User’s premise and a BT Local Access Node.~~

~~“Wholesale Extension Service Backhaul Product” means a Backhaul Product that provides uncontended Ethernet bandwidth.~~

“Wholesale ISDN2 Line Rental” means an Electronic Communications Service provided for the use and ordinary maintenance of an ISDN2 Exchange Line.

“Wholesale ISDN30 Line Rental” means an Electronic Communications Service provided for the use and ordinary maintenance of an ISDN30 Exchange Line.

“Wholesale Line Rental” means any or all of Wholesale Analogue Line Rental, Wholesale ISDN2 Line Rental and Wholesale ISDN30 Line Rental.

- 2.2 Words or expressions shall have the meaning assigned to them in these Undertakings and otherwise any word or expression shall have the same meaning as it has in the Communications Act 2003.
- 2.3 The Interpretation Act 1978 shall apply as if these Undertakings were an Act of Parliament.
- 2.4 Headings and titles shall be disregarded.
- 2.5 The Annexes shall form part of these Undertakings.
- 2.6 References to sections and Annexes shall mean sections of, and Annexes to, these Undertakings, unless otherwise stated.
- 2.7 In these Undertakings, "product" means product and/or service as appropriate, unless the context otherwise requires.

3. Provision of equivalent products and services

3.1 Equivalence of Inputs for certain products and services

3.1.1 BT shall apply Equivalence of Inputs to the following products in accordance with the timetable set out in Annex 1 to these Undertakings, and continue to apply it following the relevant IBMC dates:

- a) Wholesale Analogue Line Rental;
- b) Wholesale ISDN2 Line Rental;
- c) Wholesale ISDN30 Line Rental;
- d) Wholesale Extension Service;
- e) Shared Metallic Path Facility;
- f) Metallic Path Facility;
- g) IPStream where it is provided by BT in a Network Access market or markets in which BT is determined by Ofcom to have SMP;
- h) IPstream Connect where it is provided by BT in a Network Access market or markets in which BT is determined by Ofcom to have SMP; and
- i) Backhaul Extension Service.

~~The obligation to continue to apply Equivalence of Inputs in relation to IPStream shall cease to apply after IBMC for IPstream Connect.~~

~~3.1.2 When BT provides in the future the following products it will do so on an Equivalence of Inputs basis:~~

- ~~a) Wholesale Extension Service Access Product;~~
- ~~b) Wholesale Extension Service Backhaul Product;~~
- ~~c) Wholesale End-to-End Ethernet Service;~~
- ~~d) The IP based Bitstream Network Access product IPstream Connect that is the successor to IPStream where it is provided by BT in a Network Access market or markets in which BT is determined by Ofcom to have SMP; and~~
- ~~e) A successor product to Wholesale Line Rental if:
 - ~~i) such a product is provided using BT's NGN, based on MSAN access; and~~
 - ~~ii) BT is determined by Ofcom to have SMP in a Network Access market or markets which includes that product.~~~~

~~3.1.3 Nothing in this section 3.1 shall require BT when providing Wholesale Line Rental either to itself or to other Communications Providers to use Metallic Path Facility as an input to that product.~~

~~3.1.4 Should BT plan to provide a successor product to Wholesale Line Rental using BT's NGN and based on MSAN access, BT shall agree with Ofcom what, if any, input to this product it would be appropriate to provide on an Equivalence of Inputs basis, taking into account the commercial aspirations of those Communications Providers using Metallic Path Facility and Shared Metallic Path Facility and other Communications Providers and the long term interests of consumers. If agreement is reached, BT shall use such input for the successor Wholesale Line Rental product on an Equivalence of Inputs basis.~~

3.2 BT will as a gesture of good faith:

3.2.1 if notwithstanding the date specified in paragraph 1 of Annex 1 it does not achieve an RFS date for Equivalence of Inputs for Wholesale Analogue Line Rental of 31 December 2006 (other than as a result of matters beyond its reasonable control),

provide an allowance to Communications Providers, including the relevant parts of BT, of a monthly amount of 25 pence for each Wholesale Analogue Line Rental line that they respectively rent for each complete month from 1 January 2007 until the date that RFS for Equivalence of Inputs for Wholesale Analogue Line Rental is achieved or 30 June 2007, whichever is the earlier. Such monthly allowance will not be made for any such line which the Communications Provider has ceased to rent in the month in question.

3.2.2 if it does not achieve an RFS date of 30 June 2006 for Metallic Path Facility and Shared Metallic Path Facility (other than as a result of matters beyond its reasonable control), provide an allowance to Communications Providers, including the relevant parts of BT, of a monthly amount of 25 pence for each Metallic Path Facility and Shared Metallic Path Facility line that they respectively rent for each complete month from 1 July 2006 until the date that RFS for Metallic Path Facility and Shared Metallic Path Facility as appropriate is achieved. Such monthly allowance will not be made for any such line which the Communications Provider has ceased to rent in the month in question.

Provided that BT shall not be obliged to pay any allowances under sections 3.2.1 and 3.2.2 if the failure to achieve an RFS date is the result of matters beyond its reasonable control, provided that if such failure is due in whole or in part to the acts or omissions of any Communications Provider, any dispute over the provision of any such allowances may be referred to Ofcom. BT agrees to be bound by Ofcom's decision as to what extent, if at all, any such allowance shall be made.

3.3 If BT and Ofcom agree an Equivalence of Inputs timetable in respect of any other product that does not use BT's NGN in addition to those in section 3.1 such new agreed timetable will apply.

3.4 Commencing on 1 January 2006 BT shall make available to other Communications Providers a stand alone address matching service (on the basis that the data made available under that service can only be used by Communications Providers for address matching purposes directly related to the order and/or repair of the products concerned) with the objective of reducing address matching failures, until such service is no longer reasonably required by virtue of the availability of an alternative Equivalence of Inputs service.

3.5 Commencing on 1 July 2006 BT will provide improved access to the engineering appointment books used by BT to enable Communications Providers to provide their End User customers with a service better and faster than that which they are able to provide as at the date of these Undertakings, until such service is no longer reasonably required by virtue of the availability of an Equivalence of Inputs service.

3.6

3.6.1 Commencing on 1 January 2007 and until such time as the relevant RFS date is reached, BT employees and agents will use the Wholesale Line Rental service provider gateway to raise Wholesale Analogue Line Rental service transfer requests when BT takes over a customer of another Communications Provider, and where that customer is not already a BT customer for any other retail product.

3.6.2 In circumstances where a Communications Provider ceases to trade and BT takes a bulk transfer of customers of that Communications Provider, section 3.6.1 shall not apply to the extent that there is a requirement to use the Wholesale Line Rental service provider gateway to raise service transfer requests.

Migration Processes

3.7 To the extent that the Migration Processes are either internal to BT or are otherwise within BT's control, BT shall apply Equivalence of Inputs to BT's Migration Processes for products for which BT must apply Equivalence of Inputs. Where the migration involves EOI and non EOI products, the EOI Migration Process will only apply to the part of the process involving the EOI product. BT shall apply the EOI Migration Process at the same time as the relevant RFS date set out for each product in Annex 1 or as otherwise agreed with Ofcom. Where a process involves more than one EOI product, the RFS date for each product shall apply separately to the relevant EOI Migration Process.

3.8 BT shall comply with performance targets for the Migration Processes covered by section 3.7 as required in writing by Ofcom and following any consultation to be undertaken by Ofcom, provided that such targets are reasonable and practicable.

4. Transparency

4.1 BT shall, for Partial Private Circuits, Carrier Pre-selection and DataStream:

4.1.1 within three months of these Undertakings taking effect, provide sufficient transparency to other Communications Providers to enable them to identify and understand any differences between the matters BT is required to list in its reference offer pursuant to the relevant SMP Condition in connection with the products referred to above in this section 4.1 which it provides to other Communications Providers, and the comparable products that it supplies to itself; and

4.1.2 use its reasonable endeavours at all times to resolve any outstanding issues with any other Communications Provider concerning its provision of the products referred to in section 4.1 (including the systems and processes used to supply such products) to that Communications Provider.

4.2 When AS provides in the future a TILLAP or a TILLBP, the costs attributable to those products shall form part of the cost stack for BT's relevant Partial Private Circuits, and shall allow other Communications Providers to replicate commercially, from the point of view of their use of the TILLAP and/or TILLBP, relevant Partial Private Circuits, as set out in section 5.6.

5. 3. Access Services Openreach**The establishment of Access Services**

5.1 3.1 BT shall establish AS within four months of these Undertakings taking effect, and shall thereafter operate AS in accordance with these Undertakings. BT shall operate Openreach as a functionally separate division of BT in accordance with these Undertakings.

5.2 BT shall, within five months of these Undertakings taking effect, satisfy Ofcom that it has established AS in accordance with section 5.1.

Definition of Openreach (1) Assets

5.12 3.2 Except as otherwise agreed with Ofcom ASOpenreach shall control and operate the assets contained in the Physical Layer of BT's Access Network and the Physical Layer of BT's Backhaul Network including such items needed to support these assets, such as line testing and remote diagnostics, unless otherwise agreed with Ofcom. It shall determine which products these assets must support, and also determine any appropriate enhancements in the functionality of these assets, having full responsibility for any investment decisions relating to these assets and made within the annual operating plan to be created in accordance with section 5.28. It

shall have full responsibility for building, maintaining and repairing these assets.

~~5.13~~ 3.3 Save as permitted by section ~~5.52~~ 3.37, AS Openreach shall not control or operate the assets contained within the Transmission Layer of BT's Access Network and the Transmission Layer of BT's Backhaul Network, but it shall have influence over the way in which these assets are managed sufficient for it to be able adequately to discharge its responsibilities under section ~~5.3~~ 3.6. This influence shall be provided using mechanisms including the following:

~~5.13.1~~ AS requirements for new SMP Products which determine platform requirements shall be set out in AS product roadmaps and volume forecasts which shall be agreed with relevant platform managers. This includes new AS SMP Products delivered over BT's NGN, as well as new SMP Products delivered over the current network. Where backhaul platforms support products supplied by AS and other products supplied elsewhere in BT, AS will have the principal role in determining delivery requirements where it is the predominant user of the platform or where AS provides the only SMP Product using that platform;

~~5.13.2~~ any investment decisions required in consequence of the product roadmaps and volume forecasts referred to in section ~~5.13.1~~ shall be considered solely on their own merits, and shall not take into consideration the potential impact on other products offered by BT's businesses downstream of AS other than in as much as they affect aggregate demand forecasts;
(superseded by new section 3.9)

~~5.13.3~~ when AS makes use of Transmission Layer assets from BT it shall set standards for in-life service management, covering such matters as provisioning times, provisioning effectiveness, fault rates, repair times and repeat fault rates. The standards will be based upon its judgement of the needs of the customer base it serves, and will not simply replicate the standards prevailing for BT's downstream services. The required standards shall be reasonably practicable and set out in SLAs between AS and BT; and (sub-section moved to new sub-section 3.10.1)

~~5.13.4~~ new requirements for SMP Products to be provided by AS will be addressed by an AS owned Statement of Requirements Process. (this sub-section forms the basis of new sub-section 3.10.2)

3.4 Openreach's obligation to control and operate BT's Access Network and BT's Backhaul Network does not extend to any Access Networks or Backhaul Networks created by Communications Providers using Openreach Passive Infrastructure Access Products.

3.5 Openreach shall control and operate its MIS, its OSS and its EMP and shall have access to the shared OSS listed in Annex 4.

Definition of Openreach (2) Products

5.3 3.6 ASOpenreach shall provide these products including SMP Products which are predominantly provided using the Physical Layer and/or Transmission Layer of BT's Access Network and/or the Physical Layer and/or Transmission Layer of BT's Backhaul Network, as set out in sections 5.4, 5.5, 5.7 and 5.8. BT's Downstream Divisions shall not however be prohibited from offering such SMP Products where they are capable of being provided by any of BT's Downstream Divisions as a result of those BT Downstream Divisions having procured from Openreach Passive Infrastructure Access Products. The provision of products shall include in particular:-

- a) product management;
- b) sales (or equivalent internal supply between ASOpenreach and other parts of BT);
- c) in-life service management;
- d) specification of the products and their functionality; and
- e) setting prices.

3.7 ASOpenreach shall sell (or internally supply within BT) its products to any Communications Provider and shall determine Commercial Policy in respect of those products. *(previously unnumbered subsection of section 5.3)*

3.8 Except as otherwise agreed with Ofcom, Openreach shall determine what products to supply using the assets they control, and also determine any appropriate enhancements in the functionality of these assets needed to provide such products.

3.9 Openreach shall have full responsibility for any investment decisions relating to these assets, which shall be embodied within the AOP to be created in accordance with the Governance Protocol. *(replaces existing sub-section 5.13.2)*

3.10 Openreach shall have sufficient influence over other relevant assets of BT necessary to provide its products using mechanisms including the following:

5.13.3 3.10.1 When AS-Openreach makes use of Transmission-Layer network assets from BT it shall set standards for in-life service management, covering such matters as provisioning times, provisioning effectiveness, fault rates, repair times and repeat fault rates. The standards will be based upon its judgement of the needs of the customer base it serves, and will not simply replicate the standards prevailing for BT's downstream services. The required standards shall be reasonably practicable and set

out in SLAs between ASOpenreach and BT; (*edited version of existing sub-section 5.13.3*) and

~~5.13.4~~ 3.10.2 new requirements for SMP Products to be provided by ASOpenreach will be addressed by an ASOpenreach owned Statement of Requirements Process. The application by Openreach of the Statement of Requirements Process to any such requirement shall be subject to review by the OCC upon reasoned request by a Communications Provider. Where the OCC identifies as part of its review any deficiencies in the application of the Statement of Requirements Process by Openreach, Openreach shall take due account of any suggestions or comments the OCC may have in respect of any such deficiencies. (*edited and expanded version of existing sub-section 5.13.4*)

~~5.4~~ Section 5.3 applies to the following existing SMP Products and enhancements to those SMP Products and their immediate successors:

- ~~a) Wholesale Analogue Line Rental;~~
- ~~b) Wholesale ISDN2 Line Rental;~~
- ~~c) Wholesale ISDN30 Line Rental;~~
- ~~d) Wholesale Extension Service and relevant handover products;~~
- ~~e) Shared Metallic Path Facility and Associated Services;~~
- ~~f) Metallic Path Facility and Associated Services.~~
- ~~g) Backhaul Extension Service and relevant handover products.~~

~~5.5~~ AS shall also offer to provide to any Communications Provider within a reasonable time of a request the following and where relevant their handover products:

- ~~a) TILLAP;~~
- ~~b) TILLBP;~~
- ~~c) Wholesale Extension Service Access Product;~~
- ~~d) Wholesale Extension Service Backhaul Product;~~
- ~~e) Wholesale End-to-End Ethernet Service; and~~
- ~~f) Sub-Loop Unbundling and any relevant associated services.~~

~~5.6~~ When AS provides a TILLAP or a TILLBP, those products shall be made available to other Communications Providers in a manner that provides

them with the opportunity to replicate commercially, from the point of view of their use of the TILLAP and/or TILLBP, relevant Partial Private Circuits.

5.7 If a new Network Access product is provided using BT's NGN:

- a) which is based on MSAN access; and
- b) BT is determined by Ofcom to have SMP in a market containing the new Network Access product; and
- c) MSANs do not contain Network Layer functionality;

then, if so required by Ofcom, the new Network Access and any relevant handover product will be provided by AS.

5.8 For products not covered by section 5.7, if so required by Ofcom, AS shall provide on the same basis as set out in section 5.3 any new form of Network Access which BT is obliged to supply as a result of a market review carried out under the relevant provisions of the Communications Act 2003, if such new form of Network Access would be predominantly provided using the Physical Layer and/or Transmission Layer of BT's Access Network and/or the Physical Layer and/or Transmission Layer of BT's Backhaul Network.

5.9 As part of the establishment of AS, the people and non-network capabilities used to provide fixed line number portability will be included in AS.

5.10 AS will develop its Backhaul Products in accordance with sections 5.16 to 5.18.

5.11 Where Network Access products are requested from AS by Communications Providers (including BT) which are not products which BT is obliged to provide as a result of a finding of SMP, AS will use a Statement of Requirements Process, and will be subject to EAB oversight in its operation of that process. In these cases, however, AS is free to treat those requests as would any other commercial organisation and to accept or reject them on the basis of, among other things:

- a) fit with the assets, skills and resources and terms of reference of AS;
- b) commercial attractiveness to AS; and
- c) opportunity cost to AS.

For the avoidance of doubt, section 5.11 does not apply in relation to internal products AS supplies to the rest of BT relating to the core network as described in section 5.46.1 f) or as otherwise agreed between BT and Ofcom.

5.12 *(edited version now new section 3.2)*

5.13 *(edited version now new section 3.3)*

Definition of Openreach 3) Employees

~~5.14~~ 3.11 BT employees working for ASOpenreach shall include:

~~5.14.1~~ 3.11.1 all field engineers, (excluding some of the network planning, design and management engineers for BT's Backhaul Network), including their line management up to and including the ASOpenreach CEO, associated with the provision, installation, maintenance and repair of the Physical Layer of BT's Access Network and of the Physical Layer of BT's Backhaul Network;

~~5.14.2~~ 3.11.2 those employees involved in the design, planning, implementation and in-life service management of products based upon the Physical Layer and/or Transmission Layer of BT's Access Network or the Physical Layer and/or Transmission Layer of BT's Backhaul Network, including their line management up to and including the ASOpenreach CEO; and

~~5.14.3~~ 3.11.3 those employees who carry out activities which are ancillary to those described in section ~~5.14.1~~ 3.11.1 and section ~~5.14.2~~ 3.11.2, those who support and manage them, and those who undertake the sales function of ASOpenreach.

~~5.15~~ 3.12 In relation to particular geographical areas, ASOpenreach ~~and the rest of BT except the Downstream Divisions, BTTSO and BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users~~ may agree from time to time that:

- a) ~~the rest of BT except the Downstream Divisions BTTSO and BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users~~ shall on behalf of ASOpenreach undertake activities which under these Undertakings are otherwise to be undertaken by ASOpenreach; and/or
- b) ASOpenreach shall on behalf of ~~the rest of BT except the Downstream Divisions BTTSO and BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users~~ undertake activities which under these Undertakings otherwise fall to be undertaken by ~~the rest of BT except the Downstream Divisions BTTSO and BT's Downstream Divisions except BT's divisions which~~

are predominantly concerned with providing products and services to End-Users,

provided that, unless Ofcom agree otherwise, not more than 250 field engineers shall at any one time be engaged in the undertaking of activities under this section.

Backhaul principles

5.16 When AS makes available Backhaul Products it shall do so in the following manner:

5.16.1 AS shall ensure that the provision of Backhaul Products which are SMP Products is not conditional on the provision of another form of Network Access or another product unless agreed by Ofcom;

5.16.2 AS shall ensure that Communications Providers can purchase Backhaul Products which are SMP Products in such a way that they can join together multiple network nodes, for example in daisy-chain or hub and spoke topologies, but not where the use of those topologies has the intent or effect of replicating a core network;

5.16.3 AS shall develop solutions that provide the ability to pick-up aggregated traffic from one or more smaller sites to a common handover point, including a managed transmission service. This section 5.16.3 shall apply to transmission services using either or both SDH and Ethernet technology in markets in which BT is determined by Ofcom to have SMP and any future technologies which enhance or replace these in Network Access markets;

5.16.4 AS shall provide Backhaul Products which are SMP Products which carry aggregated traffic referred to in section 5.16.3 to a point of handover within other Communications Providers' own networks. Such Backhaul Products shall include products based on SDH technology and products based on Ethernet technology, and any future technologies which enhance or replace these; and

5.16.5 AS shall ensure that Backhaul Products which are SMP Products provided to other Communications Providers shall give those Communications Providers the option to purchase the same degree of resilience as that offered to other parts of BT, and that the levels of resilience offered will be backed by appropriate SLAs;

5.17 Where charges for Backhaul Products are required by an SMP Condition to be cost orientated (however that requirement is expressed) BT shall set charges:

~~5.17.1 using a distance related pricing gradient that accurately reflects the underlying costs of providing the product, so that Communications Providers purchasing these products benefit appropriately from extending their own network reach; and~~

~~5.17.2 using a bandwidth related pricing gradient that accurately reflects the underlying costs of providing the product.~~

~~5.18 Where charges for a Backhaul Product which is an SMP Product are not required to be cost orientated, AS shall ensure that bandwidth related and distance related costs variations are among the factors taken into account in setting charges.~~

~~5.19 BT shall provide space in accordance with the obligations set out in section 7 of these Undertakings to permit the location by other Communications Providers of Equipment which can be used to aggregate traffic from multiple services which originates or terminates on BT's Access Network, as well as traffic which originates or terminates on other Communications Providers' own Access Networks.~~

General Changes in the definitions of Openreach

~~5.20~~ 3.13 Where assets controlled and operated by ASOpenreach, as described in section ~~5.12~~ 3.2 above, are not or cease to be used in connection with any SMP Product, such assets may be re-allocated to another part of BT and (notwithstanding anything in section ~~5.14~~ 3.11), relevant field engineers and other relevant BT employees working for ASOpenreach may be re-allocated outside ASOpenreach.

~~5.21~~ 3.14 To the extent that a product supplied by ASOpenreach which is an SMP Product ceases to be such, BT may provide matters set out in section ~~5.3~~ 3.6 (a) to (e) other than within ASOpenreach and notwithstanding anything in section ~~5.14~~ 3.11 , relevant BT employees working for ASOpenreach may be re-allocated outside ASOpenreach.

~~5.22~~ 3.15 Products offered by ASOpenreach in accordance with section ~~5~~ 3 will also be offered by BT in Northern Ireland.

The composition and duties of Access Services

~~5.23 AS shall be a separate division within BT.~~

~~5.24 In anticipation of section 5.1, BT shall appoint the AS CEO within one month of the date that these Undertakings take effect.~~

~~5.25 The AS CEO shall report solely and directly to the BT Group plc CEO.~~

~~5.26 The AS CEO shall not be a member of the BT Group Operating Committee but may attend where matters pertaining to AS are discussed~~

and where such attendance is appropriate. The EAO shall be notified of such attendances.

5.27 The AS Management Board shall manage AS in a way designed to secure compliance with those sections of these Undertakings applicable to AS and shall operate to terms of reference agreed by the BT Group plc CEO following consultation with Ofcom. The terms of reference will be notified to Ofcom.

Governance of Access Services

5.28 With effect from the BT financial year 2006/2007, AS shall establish an annual operating plan which shall be submitted to the BT Group plc Board for approval. Once approved, execution of that plan shall be the responsibility of the AS CEO and the AS Management Board. The plan will establish the budget, including capital and operating expenditure, for AS. The plan shall include plans and targets for implementing and applying those sections of these Undertakings applicable to AS for the relevant year. Following each year of operation of AS such plan shall include a commentary on the previous year's implementation and application of these Undertakings as they apply to AS. The annual operating plan and commentary shall be shared with the EAB.

5.29 The AS CEO shall have delegated authority from the BT Group plc Board to authorise capital expenditure of up to £75 million within the annual operating plan referred to in section 5.28. This limit may be varied from time to time at the discretion of the BT Group plc Board. Ofcom and the EAB shall be notified of such variation within five working days.

Governance of Openreach (1) The Governance Protocol

3.16 BT plc will establish an Openreach Board by no later than *[date which shall be 3 months after the operative date of these Undertakings to be inserted on the date of signature of the Variation]*. The Openreach Board will be delegated responsibilities for the strategy, operational performance and regulatory compliance of Openreach pursuant to the Governance Protocol attached as Annex 1 of these Undertakings.

Governance of Openreach (2) Transparency provisions

5.30 3.17 With effect from the start of BT's financial year 2006/2007, The charging approach, management accounts and management information associated with ASOpenreach shall be prepared on the following basis or as may be otherwise agreed by BT and Ofcom:

- a) charges will be calculated on the same basis for BT and other Communications Providers;
- b) information relating to those charges shall be provided in the same way for BT and other Communications Providers;

- c) transfer charges in the regulatory accounts for products provided to and from ASOpenreach and other BT divisions will be separately identified and based on the transfer charging principles set out in the ~~Primary Accounting Documents Accounting Methodology Documents~~ of the regulatory financial statements; and
- d) Physical Layer access and backhaul assets will be capitalised and depreciated in AS'sOpenreach's financial statements in line with BT's accounting policies. AS'sOpenreach's use of the Transmission Layer access and backhaul assets will be accounted for as a charge in AS'sOpenreach's P&L. ~~BT will implement a~~ Transfer charging arrangements between ASOpenreach on the one hand and the other BT divisions on the other hand shall be consistent with the scheme used for the regulatory financial statements and agreed with Ofcom.

5.31 3.18 ~~With effect from the start of BT's financial year 2006/2007,~~ The regulatory financial statements of BT will also separately present the financial results of ASOpenreach. The form, content and basis of preparation of the financial results of ASOpenreach will follow those used in the preparation of the regulatory financial statements of BT except where differences are agreed with Ofcom and properly disclosed in the financial statements and related documentation. Information about the financial results of ASOpenreach will include the following: headline revenue, cost of sales (or gross margin), SG&A, EBITDA, depreciation, operating profit and capital expenditure, revenues broken down into the broad product groups that the ASOpenreach provides and further split between internal and external sales, separately identified payments to other parts of BT for products that form inputs to ASOpenreach products (e.g. electronics); and a commentary that explains any changes in the basis within which the above figures are presented. BT's regulatory financial statements will reconcile AS'sOpenreach's revenue and operating profit (and other such items as may be agreed between BT and Ofcom) with information about ASOpenreach shown in BT Group plc's annual report and accounts. The independent audit of BT's financial statements will include ASOpenreach.

5.32 3.19 BT shall ~~begin to~~ report AS'sOpenreach's financial performance in BT Group plc's annual and quarterly reports in the same format as is used for BT's ~~existing other~~ divisions ~~from the start of BT's financial year 2006/2007.~~

Openreach Operations (1) Separate Headquarters

5.33 3.20 The ASOpenreach Headquarter Management Team ~~shall move to be~~ situated in:

5.33.1 3.20.1 access controlled accommodation which is separately secured from ~~BT businesses downstream of AS~~ BT's ~~Downstream Divisions~~ and ~~shall have completed this move~~

~~within six months of the date that these Undertakings take effect; and~~

~~5.33.2 3.20.2~~ accommodation which is separately located from ~~BT businesses downstream of AS~~ BT's Downstream Divisions unless otherwise agreed by Ofcom ~~and shall have completed this move within eighteen months of the date that these Undertakings take effect.~~

~~5.33A 3.21~~ For the avoidance of doubt, the ASOpenreach Headquarter Management Team shall be located in separate accommodation from the headquarters of ~~BT Technology, Service and Operations~~ BTTSO.

~~5.34~~ Once the AS Headquarter Management Team is established the AS CEO will review with the EAB the adequacy of any planned moves to access controlled accommodation, and make appropriate changes.

~~5.35 3.22~~ None of the employees described in section ~~5.44 3.11~~ may, whilst working for ASOpenreach, work for ~~the Upstream Division(s) or any of the Downstream Divisions or BT Technology, Service and Operations~~ BT's Downstream Divisions or BTTSO, save as agreed in writing by Ofcom.

Openreach Operations (2) Employee incentive remuneration arrangements

~~3.23~~ The remuneration incentive arrangements of the Openreach CEO and the other members of the Openreach Executive shall be based on Scorecards that include incentives for high quality of service delivery linked to Minimum Service Levels determined in Ofcom's market reviews, these being weighted not less than 25% of the total Scorecard outcome.

~~5.36 3.24~~ All incentive remuneration of BT employees working for ASOpenreach shall reflect solely the objectives of ASOpenreach. ASOpenreach will operate to a Scorecard which reflects its ~~responsibilities to deliver Equivalence of Inputs and fair access to its products~~ obligations under these Undertakings to serve its customers equally. The principles of that Scorecard will be cascaded to all BT employees working for ASOpenreach who have currently, or may have in the future, bonus payments. Bonus payments based on Scorecard performance shall relate solely to the performance of ASOpenreach and to any other relevant obligations under these Undertakings. Such bonus payments shall not be denominated in BT Group plc shares, but BT employees working for ASOpenreach remain eligible to participate in BT's ongoing and future general all-employee share plans and benefits arrangements.

~~5.37 3.25~~ BT shall ~~as soon as reasonably practicable~~:

~~5.37.4 3.25.1~~ ~~introduce new~~ make available long term incentive plans for relevant BT employees working for ASOpenreach including a deferred bonus plan ~~(‘new plans’ ‘Openreach incentive plans’)~~

which BT anticipates will be in place for implementation during the summer of 2006;

~~5.37.2~~ 3.25.2 where a BT employee has been granted an option over shares under the BT Group Global Share Option Plan or an award of shares under the BT Group Incentive Share Plan or the BT Group Retention Share Plan, and subsequently moves to ASOpenreach, use its reasonable endeavours to replace those options or share awards with awards under the new plans Openreach incentive plans.

~~5.37.3~~ 3.25.3 ensure that, where a performance condition applies to the granting or vesting of an award under the new plans Openreach incentive plans, that performance condition shall relate to the performance of ASOpenreach or some other appropriate index related to the objectives of ASOpenreach; and

~~5.37.4~~ 3.25.4 ensure that no such awards in respect of BT Group plc shares shall be made to BT employees at a time they are working for ASOpenreach except that BT Group plc shares may be part of an appropriately weighted basket of shares or some other appropriate index.

Openreach Operations (3) Independence and confidentiality

3.26 Openreach will have the capabilities necessary to develop plans for review by the Openreach Board on major operational and investment decisions and to manage and control its day-to-day activities and operational decisions.

~~5.38~~ 3.27 Save as set out in section ~~5.41~~ 3.29, no employee or agent of BT (including its external advisers and sub-contractors), who is not working for ASOpenreach shall:

~~5.38.1~~ 3.27.1 directly or indirectly participate in the formulation or making of, or influence or attempt to influence, the Commercial Policy of ASOpenreach except through such mechanisms and processes that are also available to other Communications Providers; or

~~5.38.2~~ 3.27.2 have access to Commercial Information of ASOpenreach held by any employee or agent of BT working for ASOpenreach unless it is of the nature that would be provided to other Communications Providers in the ordinary course of business.

~~5.39~~ 3.28 ASOpenreach Customer Confidential Information shall not be disclosed to:

- BT employees working for the Upstream or Downstream Divisions BT's Downstream Divisions; or

~~BT Operate or its successor bodies, roles and functional areas as notified by BT to Ofcom from time to time; or~~

- ~~BT employees working for BT Technology, Service and Operations (but excluding those BT employees working for BT Operate or its successor bodies, roles and functional areas as notified by BT to Ofcom from time to time)~~ BTTSO whose incentive remuneration reflects the objectives of the Upstream or Downstream Divisions or, subject to section 11.20, who work in the 21CN Core Convergence team or a successor team BT's Downstream Divisions,

except:

- a) with the relevant customer's consent; or
- b) to the minimum extent that disclosure to ~~BT employees working for any part or division of BT outside Openreach:~~

~~- the Upstream Division(s); or~~

~~BT Operate or its successor bodies, roles and functional areas as notified by BT to Ofcom from time to time; or~~

~~BT Technology, Service and Operations (but excluding those BT employees working for BT Operate or its successor bodies, roles and functional areas as notified by BT to Ofcom from time to time) whose incentive remuneration reflects the objectives of the Upstream Divisions or, subject to section 11.20, who work in the 21CN Core Convergence team or a successor team,~~

is necessary to operationally enable ASOpenreach to deliver products provided by ASOpenreach under section 5.3 of these Undertakings; or

- c) where an order is transferred from one part of BT to another pursuant to section 5.47.5 3.34.5, and the information is disclosed solely for the purpose of that transfer.

Disclosure of such information may be made to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2 save where that Customer Confidential Information is provided to Openreach in the course of the Confidential Phase of the Customer Consultation Process and disclosure is prohibited during that phase by the Customer Consultation Process.

~~5.40 No employee or agent of BT (including its external advisers and sub-contractors), who is working for AS, shall directly or indirectly influence or attempt to influence, the Commercial Policy of the Downstream Divisions~~

or Upstream Division(s) of BT except:

- a) through such mechanisms and processes that are also available to other Communications Providers;
- b) as required for the delivery of these Undertakings, for example for the development of AS services utilising network assets managed by Downstream and Upstream Divisions of BT, or for the planning and implementation of BT's NGN;
- c) if they are nominated individuals or individuals occupying the roles and functional areas (or their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2;
- d) as otherwise provided for in these Undertakings; or
- e) if otherwise agreed with Ofcom.

5.41 3.29 As referred to in section 5.38 3.27:

5.41.1 3.29.1 sections 5.38.1 3.27.1 and 5.38.2 3.27.2 shall not apply to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2;

5.41.2 3.29.2 section 5.38.2 3.27.2 shall not apply to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part B of Annex 2;

5.41.3 3.29.3 any nominated individuals and individuals occupying the roles and functional areas listed in Annex 2 shall be subject to dedicated training on the receipt and sharing of information relating to ASOpenreach and on the restrictions on the exercise of influence required by these Undertakings. The EAB OCC may review both the scope of Annex 2 and the training offered under this section; and

5.41.4 3.29.4 BT and Ofcom may agree from time to time to modify the lists in Annex 2. If no agreement is reached the list will remain unchanged.

Openreach Operations (4) Supply of Service by BT

5.42 3.30 For the avoidance of doubt, ASOpenreach may draw upon support services (including billing, finance, regulatory, legal, HR and others) from any part of BT or BT's agents and sub-contractors and may use BT's centres of excellence (including billing), on the basis that

- a) Openreach will consult with the relevant support service or centre of excellence on decisions relating to the services provided; and
- (b) Openreach will retain responsibility for any ultimate decision on the use of the support service or centre of excellence,

provided that doing so will not require the disclosure of Commercial Information of ASOpenreach, except where such support services or centres of excellence are included in either Part A or Part B of Annex 2.

3.31 In relation to the supply of services from BTTSO, the relationship between BTTSO and Openreach will be governed on the basis that:

- (a) Openreach will consult with BTTSO on decisions relating to the BTTSO services; and
- (b) Openreach will retain responsibility for any ultimate decision on the use of the BTTSO services; and
- (c) BTTSO will retain responsibility for delivering the BTTSO services where Openreach so chooses.

~~5.43 AS shall ensure that the way in which new product requests are received and evaluated and Commercial Information of AS is made available is substantially the same for all Communications Providers (including BT) in like circumstances in relation to products where Equivalence of Inputs applies and is on a not unduly discriminatory basis in the case of other SMP Products.~~

Openreach Operations (5) System separation

3.32 BT shall ensure that:

- (a) Openreach maintains physical system separation of those of its OSS which have physical system separation as at [*to be inserted – date of Variation*] with the proviso that separation of a system by means of virtualised physical infrastructure shall qualify as physical systems separation;
- (b) Level 1 System Separate is applied to the shared OSS listed in Annex 4; and
- (c) Openreach maintains Level 2 Systems Separation of its MIS other than those MIS listed in Annex 3.

3.33 The OCC shall carry out periodic checks on a quarterly basis, unless BT and Ofcom agree in consultation with the OCC to extend the periodic review interval up to a maximum of 6 months, to monitor access to the OSS listed in Annex 4, to ensure that there was a valid reason for access. The OCC will also, at the same time, confirm the total number of users

who have accessed the Annex 4 systems at that specific time and report this figure to Ofcom.

5.44 BT shall:

5.44.1 ensure that all its Operational Support Systems designed for AS are designed on the principle of separation from the rest of BT systems except for those Operational Support Systems listed in Annex 6, in accordance with section 5.44.6;

5.44.2 ensure that:

(a) its Operational Support Systems, other than those Operational Support Systems listed in Annex 6, will be run physically separate for AS and the rest of BT when reasonably practicable and proportionate, unless otherwise agreed between BT and Ofcom;

(b) by 30 June 2010:

i) at least 90% of BT's relevant installed End-User base shall be migrated so that the products that this base purchases, that consume the Measured Products, do so on an EO basis from AS; and

ii) at least 80% of BT's Customer Side Records relating to the Measured Products held on Operational Support Systems shared between AS and the rest of BT are migrated to at least Level 2 System Separation;

(c) by 31 December 2012:

iii) at least 95% of BT's relevant installed End-User base shall be migrated so that the products that this base purchases, that consume the Measured Products, do so on an EO basis from AS; and

ii) at least 90% of BT's Customer Side Records relating to the Measured Products held on Operational Support Systems shared between AS and the rest of BT are migrated to at least Level 2 System Separation;

(d) by 31 December 2011 or within six months of the date of the completion of the migration of the BT business stack, whichever is the earlier, Ofcom is advised of the further increased percentage migrations of both the relevant installed End-User base and BT's Customer Side Records to be achieved by 30 June 2014 to demonstrate continued significant progress towards the migration of business customers to separate Operational Support Systems;

(e) that the implementation and ongoing application of the obligations in relation to Customer Side Records in section 5.44.2 is:-

- i) subject to regular audits by BT's internal audit group;
- ii) subject to an audit commissioned by the EAB on an ongoing basis at least every 24 months from 30 June 2010;

(f) for the purpose of this section the Measured Products shall additionally include the AS EOI products CCTV Access, Optical Spectrum Access, Optical Spectrum Extended Access, Broadcast Access and Bulk MPF existing as at 1 April 2009 (and as they may evolve, be developed or replaced (whether under the aforementioned or new names) from time to time);

5.44.3 until such time as an Operational Support System is physically separated, and unless otherwise agreed between BT and Ofcom:-

- (a) implement User Access Controls for Operational Support Systems capability to the extent it supports the Equivalence of Inputs products of Wholesale Analogue Line Rental, Shared Metallic Path Facility and Metallic Path Facility by 30 June 2007, the Equivalence of Inputs product of Wholesale ISDN2 Line Rental by 30 September 2007 and the Equivalence of Inputs product of Wholesale ISDN30 Line Rental [by] 29 February 2008;
- (b) ensure that it is Ready to Mass Migrate Customer Side Records where those records relate to the consumption by Residential Customers of PSTN voice telephony products by 31 March 2008;
- (c) ensure that 50% of all Customer Side Records relating to the Measured Products held on Operational Support Systems shared between AS and the rest of BT are migrated to physically separate Operational Support Systems by 30 November 2008;
- (d) in calculating the percentage in section 5.44.3 (c) include those Customer Side Records already separated since 30 June 2006;

5.44.4 review on a regular basis with Ofcom achievement on a roadmap for the separation referred to in sections 5.44.1, and 5.44.2;

5.44.5 ensure that the implementation and ongoing application of the User Access Control requirement referred to in section 5.44.3 (a) and section 5.44.6 is:-

- (a) subject to regular audits by BT's internal audit group;

(b) subject to an audit commissioned by the EAB (in the exercise of its function under section 10.9) in relation to User Access Controls for Operational Support Systems capability to the extent it supports the Equivalence of Inputs products of Wholesale Analogue Line Rental, Shared Metallic Path Facility and Metallic Path Facility; such audit to commence as soon as reasonably practicable after 30 June 2007 and to be completed including having the outcome agreed by the EAB by 31 December 2007 unless otherwise agreed with Ofcom and the outcome of such audit to be shared with Ofcom in writing no later than 15 working days after its completion;

(c) subject to an independent, external audit focussing on risk assessment, solution design, implementation assessment and ongoing controls to be completed by 30 June 2008; and

(d) subject to an additional independent external audit in the period between the completion of the audit referred to in 5.44.5 (c) and 30 June 2010 focussing on the ongoing application of User Access Controls and thereafter on an ongoing basis every 24 months from 30 June 2010; and

5.44.6 unless and insofar as an alternative solution is agreed with Ofcom, on or before 30 June 2010:

(a) implement User Access Controls to those Operational Support Systems listed in Annex 6 that contain Physical Layer Information or Service Level Information such that access to that information is limited to BT employees:-

i) working for AS; or

ii) working for BT Technology, Service and Operations to ensure the efficient design, planning, building, configuring, management, maintenance and removal of the Access Network, BT's Backhaul Network and BT's other electronic communications networks, efficient network incident management and resolution, or for the provision of Transmission Layer assets utilised by AS in the provision of its products; or

iii) who are nominated individuals (if any), or individuals occupying the roles and functional areas (and their relevant external advisers, subcontractors and agents) listed in Part A and Part B of Annex 2.

For the avoidance of doubt AS shall be responsible for and control the Physical Layer Information contained in those Operational Support Systems listed in Annex 6.

(b) ensure that where there is an operational need for BT people other than those referred to in sub-section (a) to access Service

Level Information contained in an Operational Support System listed in Annex 6 that the information shall only be accessed via a physically separate Operational Support System and BT shall implement User Access Controls to such Operational Support Systems;

(c) the EAB shall carry out periodic checks on a quarterly basis, unless BT and Ofcom agree in consultation with the EAB to extend the periodic review interval up to a maximum of 6 months, to monitor access to the Operational Support Systems listed in Annex 6, in accordance with sub-paragraphs (a) and (b) above, to ensure that there was a valid reason for access. The EAB will also, at the same time, confirm the total number of users who have accessed the Annex 6 systems at that specific time and report this figure to Ofcom.

5.45.1 Within 13 months of these Undertakings taking effect, BT shall implement Level 2 System Separation of its Management Information Systems between AS and the rest of BT, apart from those listed in Annex 5.

5.45.2 Within 13 months of these Undertakings taking effect BT shall implement Level 1 System Separation of those Management Information Systems listed in Annex 5 between AS and the rest of BT such that they do not lead to undue discrimination against other Communications Providers.

5.45.3 By 30 June 2010 BT shall implement Level 2 System Separation of those Management Information Systems listed in Annex 5 between AS and the rest of BT other than in relation to those Management Information Systems which:-

a) are no longer shared, or

b) are closed or have been replaced, or

c) have been otherwise agreed between BT and Ofcom.

5.45.4 The implementation and ongoing application of any Level 1 System Separation referred to in section 5.45.2 shall be audited by independent, external auditors.

5.45.5 BT, following timely consultation with Ofcom and after consideration of Ofcom's comments, will provide Ofcom with a roadmap by 30 June 2007 which will set out how BT plans to implement Level 2 System Separation between AS and the rest of BT for those Management Information Systems listed in Annex 5 (other than those Management Information Systems which will be no longer shared, or will be closed or replaced or have been subject of an agreement between BT and Ofcom

under section 5.45.3 (c)) by 30 June 2010. The roadmap will be a plan and all dates contained in it will not be legally binding. For the avoidance of doubt the existence of the roadmap will in no way affect the IBMC dates set out in Annex 1 of the Undertakings.

5.46 The products and services supplied by Access Services

5.46.1 AS will not supply any product to any other part of BT unless it also offers that product to other Communications Providers on an Equivalence of Inputs basis. This requirement does not apply to:

- a) TILLAP and TILLBP;
- b) such Associated Services as may be agreed with Ofcom;
- c) any product where Ofcom agrees Equivalence of Inputs is not required for reasons of practicability or otherwise;
- d) products listed in Annex 1 before Equivalence of Inputs is required to be provided in accordance with section 3.1;
- e) any new product to the extent of any agreement by Ofcom that Equivalence of Inputs shall only apply from any particular date;
- f) products relating to core network, duct, fibre and transmission between Core Nodes;
- g) any other product or class of products that Ofcom and BT agree does not need to be supplied externally;
- h) maintenance and provision carried out by AS field engineers, on behalf of a Communications Provider, on network termination equipment and internal wiring which is located on End-User premises; and
- i) 'handover products' referred to in sections 5.4, 5.5 and 5.7.

5.46.2 In addition to the products listed in paragraphs a) to i) of section 5.46.1, the requirement set out in that section does not apply to products which:

- a) exist at the date the Undertakings come into force; and
- b) will be supplied by AS; and
- c) are not listed in Annex 1.

~~BT will by 31 December 2008 review such products with Ofcom and agree either that:~~

- ~~a) section 5.46.1 c) shall apply; or~~
- ~~b) the product will be withdrawn from sale or supply by AS; or~~
- ~~c) Equivalence of Inputs will be required.~~

~~If the product will be withdrawn from sale or supply by AS, BT and Ofcom shall agree an appropriate and reasonable withdrawal date.~~

~~If EOI is required, BT and Ofcom shall agree appropriate and reasonable RFS and IBMC dates.~~

~~Forty-two months after these Undertakings come into force, the exemption from section 5.46.1 above shall lapse in relation to products to which this section 5.46.2 applies, unless BT and Ofcom agree otherwise.~~

~~5.46.3 For the avoidance of doubt, section 5.46.1 shall not alter the obligations concerning Equivalence of Inputs:-~~

- ~~a) in respect of any product referred to in Annex 1; and~~
- ~~b) in respect of any product falling within section 11.~~

Sales

~~5.47~~ 3.34 In relation to sales activities:

~~5.47.1.~~ 3.34.1 ASOpenreach is expected to be the primary channel to market for its portfolio of products.

~~5.47.2~~ 3.34.2 ASOpenreach can take orders for products which are product managed by ~~BT Wholesale or~~ another part of BT, and project manage their delivery, only under the following circumstances:

- a) where products which are managed by parts of BT other than ASOpenreach and ASOpenreach products require detailed operational co-ordination, in order for example to synchronise the supply of different elements of those products, such as combined orders for Wholesale Line Rental and Carrier Pre-selection; or
- b) where a Communications Provider's commercial relationship with BT is only with ASOpenreach because it predominantly purchases ASOpenreach products, but it wishes as a matter

of convenience to place a low volume of orders for other BT products via ASOpenreach; or

c) by agreement between BT and Ofcom.

~~5.47.3~~ 3.34.3 ASOpenreach shall only accept orders for products from Communications Providers, including BT, unless otherwise agreed with Ofcom.

~~5.47.4~~ 3.34.4 Other parts of BT can take orders for products which are product managed by ASOpenreach and project manage their delivery, only under the following circumstances:

- a) where products which are product managed by ASOpenreach and other parts of BT require detailed operational co-ordination, in order for example to synchronise the supply of different elements of those products as described in section ~~5.47.2-a)~~ 3.34.2(a) above; or
- b) where a Communications Provider has or wishes to have a commercial relationship with a part of BT other than ASOpenreach; or
- c) by agreement between BT and Ofcom.

~~5.47.5~~ 3.34.5 Where a Communications Provider places an order with one part of BT which pursuant to sections ~~5.47.2, 5.47.3 or 5.47.4~~ 3.34.2, 3.34.3 or 3.34.4 should properly have been placed with another part of BT, the part of BT which receives the order will arrange for its transfer and will advise the Communications Provider accordingly.

~~5.47.6~~ Where sections 5.47.2 and 5.47.4 permit an order to be submitted either to AS or other parts of BT, then BT shall ensure that Communications Providers are able to submit such orders to either AS or to those other parts of BT, according to their choice, and that they will experience no disadvantage in terms of price, service or quality as a result of this choice, provided such products are SMP Products or are required to be provided by BT on an Equivalence of Inputs basis.

~~5.47.7~~ In relation to sections 5.47.2 and 5.47.4 where they relate to the provision of products required to be provided by BT on an Equivalence of Inputs basis, the part of BT that product manages the relevant Equivalence of Inputs product will be responsible for resolving any service issues.

Access Services Openreach brand

5.48 3.35 BT shall develop a separate brand name for AS which does The Openreach brand shall not incorporate the elements "BT" or "British Telecom" and which will shall be used in proximity to an endorsement containing the words "a BT Group business (and BT corporate device)". Such endorsement shall be secondary to the ASOpenreach brand. There will be a progressive programme for branding or rebranding the following items only:

- a) Stationery, relevant website and web addresses and relevant buildings during the first sixteen months from the date these Undertakings take effect; and
- b) Clothing and vehicles as these are replaced, to be completed within five years of the date of establishment of AS.

Other items will be re-branded as and when AS decides it is appropriate to do so.

Exchange space and power

5.49 In relation to space and power:

- a) AS will develop and launch a space only allocation product on an Equivalence of Inputs basis which will enable Communications Providers to pre-book and have Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space allocated to them in an MDF site for an appropriate charge. The maximum duration of the space-only allocation product is 18 months, after which time the space will be released if the Communications Provider has not placed a firm build order for space for either its Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product equipment.
- b) AS will develop and publish guidelines detailing the approach it will adopt for the space and power allocation process for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products. The approach for allocating space and power will be on an Equivalence of Inputs basis, subject to this being on a "first come first served" basis. The guidelines will include a description of the space and power allocation process for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products, and the roles of AS and BT Technology, Service and Operations (acting on behalf of AS).
- c) The guidelines will also set out the process for reviewing Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products space availability on a proactive basis where space is in short supply with a view to verifying the space records and identifying options to free up space (the "Proactive Review"). Space allocated to be used

for BT's NGN within the next 18 months will be included in considering MDF sites where space is in short supply.

- d) BT Technology, Service and Operations will carry out the Proactive Review based on planning instructions provided by AS, which will decide which options to implement to free up space. The Proactive Review will focus on a list of MDF sites agreed between Ofcom and BT, from time to time, as the most probable locations for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Products space demand. This list of MDF sites will be published in accordance with the space and power allocation guidelines.
- e) Communications Providers whose Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul space requirements have not been met under the space allocation process may raise concerns with the EAB about the outcome of the Proactive Review, including where the Proactive Review occurs pursuant to section 5.49 (g).
- f) The EAB will periodically monitor the Proactive Review process and in particular review those MDF sites where space is constrained. The EAB's initial review will also include 20 randomly selected MDF sites where space records indicate that there is sufficient space. Subsequent periodic reviews will be based on a random sample of MDF sites. The EAB also has the right, if necessary, to audit the operation of the Proactive Review process.
- g) Where AS identifies a conflict for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space between BT's NGN and other Communications Providers' requirements for space, and the BT NGN date as published in the NGN plan of record is more than 18 months away, the BT NGN space allocation will be released provided the space is needed to meet a Communications Provider's earlier Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space requirement firm build order.
- h) Other divisions of BT will not be required to use the Equivalence of Inputs space-only allocation product for space allocated in connection with the initial deployment of NGN as documented in the NGN plan of record. All other allocations for Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space by BT will be required to use the Equivalence of Inputs space-only allocation product.

5.50 AS will consult with industry with regard to changing the scope of the existing co-mingling product within the definition of Associated Services and/or launching a new space product to allow for a more flexible use of space specifically to enable Communications Providers to house in that space either their Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product equipment connected to the BT network and used in connection with AS' regulated Metallic Path Facility, Shared

~~Metallic Path Facility and/or Backhaul Product services. Following industry consultation, AS will make such changes to the existing Metallic Path Facility and Shared Metallic Path Facility co-mingling product within the definition of Associated Services and/or launch a new Metallic Path Facility, Shared Metallic Path Facility and/or Backhaul Product space product, unless there is no reasonable demand from one or more other Communications Providers for such a space product or unless otherwise agreed with Ofcom.~~

ASOpenreach Product and Service Roadmap and Commitments

5.51 3.36 ASOpenreach shall, following discussion with its customers, update and publish every six months:

~~5.51.1 publish on or before 30 September 2009:~~

- a) a 18 month ASOpenreach roadmap ~~which will establish setting out~~ the timing and content of the product and service developments and enhancements to existing products (the "Roadmap"); and
- b) a document specifying the change control process (the "Change Control Process") that applies to the Roadmap;

~~5.51.2 update and republish both the Roadmap and Change Control Process, following discussion with its customers, at least every six months thereafter;~~

~~5.51.3 ensure that the Roadmap:~~

- a) ~~includes the list of the commitments agreed by BT and AS with its customers through the OTA-facilitated AS product and service development and enhancement identification process from December 2008 until August 2009 (the "Commitments"); and,~~
- b) ~~describes when the Commitments will be delivered;~~

~~5.51.4 ensure that the Change Control Process provides for any change to the Commitments, including the delivery date, or the list of Commitments, to be subject to agreement with AS's customers following OTA-facilitation and review, reflecting the need for any revised Commitments to continue to deliver customer needs in a comparable manner to the Commitments.~~

Next Generation Access

5.52 3.37 ASOpenreach may control and operate the assets contained within:

- (i) the Transmission Layer of BT's Access Network where required to test, build, implement and operate a BT Active FTTC Product and/or a BT Active FTTP Product; and
- (ii) the Transmission Layer of BT's Backhaul Network where required to test, build, implement and operate a BT Active FTTC Product.

5.53 3.38 To the extent that BT offers a BT Active FTTC Product and/or a BT Active FTTP Product it shall be provided by ASOpenreach until such time as or to the extent that the active product in question is determined not to fall within a market for Network Access in which BT has been determined from time to time by Ofcom as having SMP.

5.54 3.39 If ASOpenreach provides a BT Active FTTC Product and/or a BT Active FTTP Product pursuant to Section **5.53 3.38**, it shall be provided in ways which ensure that:

- (i) it has robust and scalable processes and systems supporting provision, migration, monitoring and fault repair such that Communications Providers using that product are able to provide their End-Users with a reasonable experience (in terms of delivery within reasonable timescales and with minimal disruption);
- (ii) its availability, in such locations as that product is offered, satisfies reasonable Communications Providers' demand;

(iii) it conforms to appropriate industry standards; and

(iv) the contracts for its provision include SLAs. ; and

~~(v) there is timely delivery against the product roadmap developed in accordance with section 5.55.~~

~~5.55 If AS provides a BT Active FTTC Product and/or a BT Active FTTP product pursuant to Section 5.53:~~

~~(i) AS shall ensure that it is developed in accordance with a product roadmap developed through effective and appropriate ongoing consultation with AS's customers. The consultation process must consider, on an on-going basis, the specification of that product, the Ofcom Ethernet Active Line Access, Updated Technical Requirements published on 3 March 2009 as amended from time to time and monitor the development, operation and deployment of that product.~~

~~(ii) AS will set out in published guidelines the consultation principles it will follow for consultations related to FTTC and FTTP. These principles will include the setting out of the objectives of each consultation and~~

the questions it will ask, the decisions they will inform, the timescale and process for responses, and how responses will be considered to ensure transparency. They will provide for a reasonable consultation period of not less than two weeks, other than in exceptional circumstances. They will also provide for publication of a statement explaining the decisions made, together with objective reasons, with clear linkages to the questions raised in the consultation.

5.56 AS shall conduct a consultation with industry in order to assess the demand for and Communications Providers' views on the design of FTTC Passive Inputs and Backhaul Products provided over the optical fibre part of FTTC. AS shall complete this consultation within three months of such time as End-Users in 1million premises are taking services based on a BT Active FTTC Product or at the latest during the course of 2011. The consultation process will address the needs of Communications Providers wishing to invest at the time of BT's upgrade programme as well as the reasonably foreseeable needs of those considering investing at some future time.

5.57 AS shall:

- (i) ensure that it meets reasonable demand (including willingness to pay according to Ofcom's approach to cost recovery as set out in paragraphs 8.40-8.46 of the NGA Statement) for FTTC Passive Inputs from Communications Providers wishing to locate their FTTC equipment in a Communications Provider's FTTC street cabinet facility (i) attached to or otherwise integrated with the BT FTTC Cabinet; or, if it is not technically or commercially viable for BT to do so, (ii) in the vicinity of the BT FTTC street cabinet, whether at the same time as AS installs its BT FTTC street cabinet or at some future time, where practicable and recognising that all reasonable security measures need to be adhered to.
- (ii) in designing the capabilities around its FTTC street cabinet deployment (the "Street Cabinet Solution"), adopt design principles relating to the provision of power and optical fibre availability that will enable other Communications Providers to locate their own equipment at or in the vicinity of BT's FTTC street cabinets in the most cost-efficient manner possible, all where practicable.
- (iii) taking into consideration the findings of the consultation with Communications Providers (as set out in section 5.56), review and modify its design principles for the Street Cabinet Solution, where practicable, to facilitate meeting reasonable future demand for FTTC Passive Inputs cost effectively.
- (iv) in designing its systems for a BT Active FTTC Product, where practicable, adopt design principles that make it possible in future to enable the delivery of FTTC Passive Inputs on the basis provided in section 5.58.

5.58 This section will apply to the provision of FTTC Passive Inputs by AS until such time or to the extent that: they are determined by Ofcom to fall within a market for Network Access in which BT has not been determined from time to time to have SMP; or they are not included in SMP Conditions imposed upon BT following such a market review concluded after 01 June 2009 in which BT has been determined from time to time by Ofcom as having SMP.

(i) In providing any FTTC Passive Inputs, AS shall use the same components, processes and systems it uses itself for the purposes of its BT Active FTTC Product where reasonably practicable and on the most cost-efficient basis.

(ii) Where AS cannot provide FTTC Passive Inputs in accordance with sub-para (i), it shall provide FTTC Passive Inputs as far as possible to the same specifications with the same functionality and performance as the inputs it uses itself for the BT Active Product.

The EAB shall monitor the provision of the FTTC Passive Inputs pursuant to this section in accordance with appropriate metrics to be agreed by BT and Ofcom.

5.59 BT will by 31 December 2011 review with Ofcom whether sections 5.52-5.58 need to be varied, superseded or released in light of the FTTC and FTTP deployment and relevant FTTC and FTTP market and technological developments and may agree either that:

(i) no changes to these sections of the Undertakings are required; or

(ii) additional commitments, variations to, or release of, existing obligations in these sections, are required.

For the avoidance of doubt, if BT and Ofcom are not able to reach agreement sub-paragraph (i) above shall apply.

5.60 If Ofcom materially changes its approach to cost recovery in relation to the assessment of the costs that BT could recover in meeting the commitments in relation to FTTC Passive Inputs (as that approach to cost recovery is set out in paragraphs 8.40-8.46 of the NGA Statement), then Section[s] 5.56 to 5.58 will cease to apply.

5.61 Sections 5.52 to 5.60 of the Undertakings will cease to apply for any future deployments in the event that the number of End-User premises capable of receiving a service based on either a BT Active FTTC Product or a BT Active FTTP Product does not exceed 500,000 by 31 December 2010 unless otherwise agreed by BT and Ofcom.

6. Management and structure of BT Wholesale

6.1 Within four months of the date that these Undertakings take effect, BT shall separate from each other and create the following two product management organisations within BT Wholesale each of which will be separately responsible for:

6.1.1 the product management of BT Wholesale's SMP Products other than those to be managed by BTS in accordance with these Undertakings (referred to herein as BTWS); and

6.1.2 the product management of other products of significance to other Communications Providers (referred to herein as BTS) namely:

a) Wholesale Calls;

b) any leased lines product variants of the types of leased line listed in paragraph 1 of Annex 3 created to meet the needs of Communications Providers in accordance with paragraph 3 of Annex 3; and

c) any products added or removed in accordance with sections 6.4.2 or 6.4.3,

where 'product management' describes the activities referred to in section 6.5 a) to c).

For the avoidance of doubt the product management of BT Wholesale products which are neither SMP Products nor products within section 6.1.2 can be within BTS, BTWS or elsewhere within BT Wholesale as BT may decide from time to time.

6.2 A member of the BT Wholesale Executive Board will have responsibility for the performance of BTWS and BTS.

6.3 For the avoidance of doubt both BTWS and BTS may at any time product manage products which are not otherwise required to be product managed within either BTWS or BTS as provided for in section 6.1.

6.4 Products may be added to or removed from the scope of activity of BTWS or BTS on the following basis:

6.4.1 any new SMP Product or any Network Access falling within section 11.8.2 unless otherwise agreed by Ofcom which is not required to be provided by AS in accordance with section 5 shall be product managed within BTWS;

6.4.2 BT and Ofcom may agree to add existing or new products to the list of products required to be managed by BTS. Such products will generally only be added:

a) if they are new products that are successors to the existing BTS portfolio; or

b) where:

i) a BT downstream managed product receives 55% or more of product revenue from other Communications Providers, and there is not an upstream managed product that provides equivalent functionality; and

ii) there is reasonable demand from Communications Providers for an equivalent product managed and supplied from BT's Upstream Division(s).

For the avoidance of doubt if BT and Ofcom are not able to agree the list will not be changed.

6.4.3 BT and Ofcom may agree to remove any product from the list of products required to be managed by BTS. For the avoidance of doubt if BT and Ofcom are not able to agree the list will not be changed.

6.4.4 BT shall product manage leased lines products for other Communications Providers in BTS in accordance with Annex 3.

6.5 BT employees working for BTWS and BTS shall have responsibility and control in relation to their respective products as follows:

a) product management, including product specific terms and conditions and pricing;

b) product specification; and

c) product related procurement processes.

Incentive arrangements

6.6 The Scorecard for the member of the BT Wholesale Executive Board referred to in section 6.2 shall not include measures related to overall BT Group plc performance.

6.7 All incentive remuneration of BT employees working for BTWS shall reflect solely the objectives of BTWS. BTWS will operate to a Scorecard which reflects its responsibilities to deliver fair access to its SMP Products. The principles of that Scorecard will be cascaded to all BT employees working in BTWS who have currently, or may in the future have, bonus payments. Bonus payments based on Scorecard performance shall relate solely to the performance of BTWS and to any other relevant obligations under these Undertakings. Such bonus payments shall not be denominated in

BT Group plc shares but BT employees working for BTWS remain eligible to participate in BT's ongoing and future general all-employee share plans and benefits arrangements.

6.8 BT shall as soon as reasonably practicable:

6.8.1 introduce new long term incentive plans for relevant BT employees working for BTWS including a deferred bonus plan ('new plans') which BT anticipates will be in place for implementation during the summer of 2006;

6.8.2 where a BT employee has been granted an option over shares under the BT Group Global Share Option Plan or an award of shares under the BT Group Incentive Share Plan or the BT Group Retention Share Plan, and subsequently moves to BTWS, use its reasonable endeavours to replace those options or share awards with awards under the new plans.

6.8.3 ensure that, where a performance condition applies to the granting or vesting of an award under the new plans, that performance condition shall relate to the performance of BTWS or some other appropriate index related to the objectives of BTWS; and

6.8.4 ensure that no such awards in respect of BT Group plc shares shall be made to BT employees at a time they are working for BTWS except that BT Group plc shares may be part of an appropriately weighted basket of shares or some other appropriate index.

6.9 BT employees working for BTWS may not work at the same time for any of the Downstream Divisions, save as agreed in writing by Ofcom.

Other provisions

6.10

6.10.1 BT Wholesale Customer Confidential Information shall not be disclosed to AS or to the Downstream Divisions, or to BT employees working for BT Technology, Service and Operations whose incentive remuneration reflects the objectives of the Downstream Divisions, except:

i) with the relevant customer's consent; or

ii) to the minimum extent that disclosure to BT employees working for AS is necessary to operationally enable BT Wholesale to deliver BT Wholesale products to customers; or

iii) where an order is transferred from one part of BT to another pursuant to section 5.47.5, and the information is disclosed solely for the purpose of that transfer.

Disclosure of such information may be made to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

6.10.2 BT employees working for BTWS shall not directly or indirectly disclose its Customer Confidential Information to BTS except:

i) with the relevant customer's consent; or

ii) where an order is transferred from one part of BT to another pursuant to section 5.47.5, and the information is disclosed solely for the purpose of that transfer.

Disclosure of such information may be made to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

6.10.3 BTWS and BTS Commercial Information shall not be disclosed to BT employees working for the Downstream Divisions unless:

i) it is of the nature that would be provided to other Communications Providers in the ordinary course of business; or

ii) the BT employees working for the Downstream Divisions are nominated individuals or individuals occupying the roles and functional areas (or their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2.

6.10.4 Except in the case of those nominated individuals or individuals occupying the roles and functional areas (or their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2, BT employees or agents (including its external advisers and sub-contractors) working for BTS, shall not unduly influence or attempt unduly to influence, the Commercial Policy of BTWS otherwise than through mechanisms and processes identical or similar to those available to other Communications Providers.

6.11 Where:

6.11.1 BTWS decides, or is required, to add new functionality or capabilities to its products and such changes require changes to the assets delivering SMP Products within BTWS; or

~~6.11.2 BTWS receives from Communications Providers (including BT) and evaluates requests for new SMP Products,~~

~~BTWS shall secure in either or both cases that this is done in a manner which ensures that other Communications Providers do not suffer material competitive disadvantage in relation to BT.~~

~~6.12 In circumstances where demands for product enhancement from AS, BTWS or BTS create a situation which requires prioritisation by BT of its capital expenditure, BT will not unduly discriminate in its prioritisation. BT will seek the view of the EAB on the best means of avoiding such undue discrimination.~~

~~6.13 As soon as is reasonably practicable after the date that these Undertakings take effect, and for the purposes of assisting compliance with sections 6.10.2 and 6.10.3, BT shall secure:~~

~~a) the Management Information Systems which hold BTWS and BTS Commercial Information such that such systems are not available to BT employees working for the Downstream Divisions; and~~

~~b) the Management Information Systems which hold BTWS Customer Confidential Information such that such systems shall not disclose such information to BT employees working for BTS.~~

~~6.14 For the avoidance of doubt, nothing in this section 6 precludes BTWS or BTS or any other part of BT Wholesale from being provided with support services from across BT or from using BT's centres of excellence, provided that doing so will not require the disclosure of BTWS or BTS Commercial Information except in the case of those nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A and Part B of Annex 2, and except in the case of BT employees working for BTNI.~~

~~6.15 Where a product supplied by BTWS no longer falls within a market which Ofcom has notified as having SMP then to that extent, this section 6 of these Undertakings shall cease to apply in respect of that product, unless that product is then added to BTS in accordance with section 6.4.2.~~

~~7. Equipment location~~

~~7.1 Sections 7.1 to 7.8 apply to the location of Equipment in Exchanges.~~

~~7.1.1 The Undertakings in these sections 7.1 to 7.8 are given on the basis that BT will be deemed to be acting reasonably if its actions are substantially consistent with its corporate property strategy and its objectives for NGN deployment.~~

7.1.2 The Estimated Space Availability Details will be provided by BT by the November 1 preceding the next BT financial year for which the BT corporate property strategy applies.

7.1.3 BT may invite Communications Providers to submit by 1 January preceding the next BT financial year for which the BT corporate property strategy applies, written observations (including demand forecasts for space) to BT concerning the Estimated Space Availability Details. BT may require these written observations to be submitted in a standard format provided by BT.

7.1.4 BT will consider reasonable observations provided under section 7.1.3 as part of the BT corporate property strategy, when planning future use of Exchanges, provided that the effect of the observations would not materially affect BT's right to carry out its bona fide business requirements or its right to reduce its bona fide costs of managing and maintaining the Exchanges.

7.2 Within six months of these Undertakings taking effect and on an on-going basis thereafter and subject to sections 7.3 to 7.8 below, BT shall provide other Communications Providers with the facility to occupy on reasonable commercial terms a Communications Provider Operational Area within any Exchange for the purpose of locating their Equipment, provided that:

7.2.1 the request of the Communications Provider:

- a) is made in proper written form and identifies the relevant Exchange in which the Communications Provider wishes to locate its equipment;
- b) identifies the Equipment to be located in the Communications Provider Operational Area;
- c) is made on reasonable notice prior to the date of proposed occupation having regard to any work that they reasonably think BT must carry out to provide the Communications Provider Operational Area and having regard to any information that BT may have given the Communications Provider about any work required to provide the Communications Provider Operational Area; and

7.2.2 there is:-

- a) sufficient space available at the relevant Exchange at the date of that request (including any future plans that BT has for use of the Exchange in connection with its business); and

- b) sufficient electrical power available at the relevant Exchange at the date of that request (including any future plans that BT has for use of the Exchange in connection with its business).

In any event BT may provide an Alternative Communications Provider Operational Area to the Communications Provider if it is reasonable to do so.

7.3 On receipt of the Communications Provider's request under section 7.2, BT shall adopt a process similar to that used for co-location for the purposes of Metallic Path Facility and Shared Metallic Path Facility save that it will carry out a site survey to identify whether or not there is sufficient space at the Exchange including having regard to any future plans that BT has for use of the Exchange in connection with its business.

7.4

7.4.1 BT will seek to enter into an agreement with other Communications Providers on reasonable commercial terms that safeguard the operational integrity of the relevant Exchange including but not limited to obligations to comply with BT's standards on security, health and safety, access to buildings and non interference with either BT's equipment or equipment of other Communications Providers.

7.4.2 The agreement may, at BT's discretion, provide for a Communications Provider to acknowledge that its rights to occupy the Communications Provider Operational Area do not amount to a tenancy and that there is no intention to create a lease.

7.4.3 If the Communications Provider does not contract to locate its Equipment at the BT site within one month of BT offering reasonable commercial terms under sections 7.4 and 7.8 the Communications Provider's request under section 7.2 will be deemed withdrawn unless there exists a bona fide dispute between BT and the Communications Provider in relation to the terms of offer made by BT in which case the period may, at the written request of either party to the dispute, be extended for further successive periods of one month (up to a maximum aggregate period of six months from the date of the offer by BT) during which time such parties shall endeavour to resolve the dispute.

7.4.4 If no resolution is reached within two months from the date of the offer by BT the dispute may be escalated to a BT Wholesale Executive Board member at the written request of either of the parties to the dispute and if unresolved on the expiry of such six month period the Communication Provider's request under section 7.2 will be deemed withdrawn.

7.5 BT may at its discretion charge a Communications Provider a sum equivalent to the amount that BT would charge per square metre to another part of BT plus all reasonable costs in creating and in providing the Communications Provider Operational Area.

7.6 BT may require that any Equipment must meet appropriate standards including, but not limited to, ETSI and ISO 14001 standards.

7.7 Within six months of these Undertakings taking effect, BT will provide (by placing the list on a password protected BT website) to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT a list of Exchanges that it intends to vacate in accordance with its property strategy. BT will inform any Communications Provider requesting to occupy a Vacation Exchange before the Communications Provider deploys its Equipment at the site that it is a Vacation Exchange and the proposed date of vacation. Subject to BT complying with its obligations under this section 7.7, the Communications Provider will vacate that site on or before the proposed vacation date and will not be entitled to any compensation from BT, except where existing SMP Conditions, directions or contractual terms apply. BT will have the right to amend that list from time to time as appropriate, and must do so at least every six months, during the period of these Undertakings, if there have been any changes, and such amended list shall be provided in the same manner as the original list to Ofcom and to those Communications Providers who have signed an appropriate confidentiality agreement with BT.

7.8

7.8.1 It will be part of the reasonable commercial terms offered by BT under section 7.4 that if any Communications Provider remains in occupation of an Exchange after the expiry or earlier termination of the agreement granting rights to occupy for the purposes of locating its Equipment, then the Communications Provider will fully indemnify BT against all payments, compensation, damages, actions, costs and claims howsoever arising under the terms of the BT and Telereal property transaction completed on 13 December 2001.

7.8.2 The reasonable commercial terms referred to in section 7.8.1 shall also include a process to enable the Communications Provider to obtain the best information available to BT at the time BT contemplates vacating an Exchange in respect of such payments, compensation, damages, actions, costs and claims.

For the avoidance of doubt, this section 7 does not apply to co-location as defined for the purposes of Metallic Path Facility and Shared Metallic Path Facility.

8. Separation of Upstream and Downstream Divisions

8.1 BT shall maintain an organisational separation between the Upstream Division(s) and the Downstream Divisions. BT will maintain a strong organisational separation of people, Commercial Information and Management Information Systems, between the sales functions of the Upstream Division(s) and the sales functions of the Downstream Divisions so that:

8.1.1 the sales functions of the Downstream Divisions are not in a position to influence the Commercial Policy of the Upstream Division(s) otherwise than through mechanisms and processes identical or similar to those available to other Communications Providers;

8.1.2 Customer Confidential Information of the Upstream Division(s) is not disclosed by its sales function to sales functions of the Downstream Divisions other than:

a) with the customer's consent; or

b) where an order is transferred from one part of BT to another pursuant to section 5.47.5.

8.1.3 Commercial Information of the Upstream Division(s) is not disclosed by its sales function to the sales functions of the Downstream Divisions unless it is of the nature that would be provided to other Communications Providers in the ordinary course of business.

8.2 Communications Providers wishing to purchase products which are product managed by either the Upstream Division(s) or Downstream Divisions, shall be account managed by either the Upstream Division(s) or Downstream Divisions according to their choice and they will experience no disadvantage, in terms of price, service, or quality, or product range by being managed by the Upstream Division(s).

8.3 BT shall ensure that other Communications Providers, wishing to purchase products from BT, are not obliged to deal with the Downstream Divisions in relation to such purchases, where such products are inputs to products that they shall offer to End-Users in competition with the Downstream Divisions. In such circumstances BT shall ensure that other Communications Providers shall be able, in dealing with the Upstream Division(s) in relation to the purchase of products, to purchase them on exactly the same terms and conditions (including price) as offered by the Downstream Divisions, save where differences are trivial or where there are material differences between the products that the Downstream Divisions supply and the products that the Upstream Division(s) supplies.

8.4 For the avoidance of doubt, nothing in this section 8 shall of itself require BT to supply products which are not within a market in which BT has been

determined by Ofcom as having SMP.

8.5 BT shall implement Level 1 Systems Separation between AS on the one hand and the Upstream and Downstream Divisions on the other of any system which is not a Management Information System or Operational Support System but which holds Commercial Information and Customer Confidential Information by 30 June 2010. For the avoidance of doubt the obligation in this section does not extend to any system which is operated exclusively by a function located outside AS and the Upstream and Downstream Divisions, or by a function listed in Annex 2 and accessed only by people in Annex 2. BT will use its reasonable endeavours to achieve such Level 1 Systems Separation earlier.

8.6 Except in the case of those nominated individuals (if any), and individuals occupying the roles and functional areas set out in Part A of Annex 2, BT employees working for the Downstream Divisions may not directly or indirectly unduly influence or attempt to unduly influence the Commercial Policy of BTWS or BTS, except through mechanisms and processes identical or similar to those available to other Communication Providers. This section shall not prevent the provision of information to, or provision of expert advice to, BTWS or BTS where these are so required.

8.7 Where the Downstream Divisions require changes or enhancements in SMP Products or BTS products described in section 6.1.2, these requirements will be addressed by a Statement of Requirements Process, as used by other Communications Providers. BTWS and BTS will ensure this operates without undue discrimination.

9. 4. Code of Practice

~~9.1 4.1~~ Within four months of the date these Undertakings take effect, BT shall ~~draw up~~ maintain and publish on relevant BT websites a Code of Practice, to be made available to all BT employees, which sets out how BT employees must act to ensure compliance with these Undertakings.

~~9.2.1~~ 4.1.1 Unless otherwise agreed with Ofcom, the Code of Practice shall include specific guidance for BT employees in the following areas:

a) ~~ASOpenreach~~;

~~b) BTWS;~~

~~c) BTS;~~

~~d) rest of BT Wholesale;~~ and

~~eb)~~ those BT nominated individuals (if any), and individuals occupying the roles and functional areas listed in Annex 2 distinguishing between Parts A and B.

~~9.2.2~~ 4.1.2 In the case of BTNI, the Code of Practice shall include specific guidance which shall cover those behaviours which will be required of BT employees working for BTNI to achieve consistency with the intent of these Undertakings.

~~9.3~~ 4.2 The Code of Practice shall make plain the rules set out in these Undertakings for access to, and dissemination of, Customer Confidential Information and Commercial Information, and the restrictions on influencing Commercial Policy of ~~ASOpenreach~~, ~~BTWS~~, ~~BT Wholesale~~ and ~~BTS~~ and, following appropriate union consultation in accordance with current agreements, make clear the disciplinary consequences of non-compliance. The Code of Practice shall also draw attention to BT's confidential telephone number and other access routes, established for general purposes and in accordance with the ~~UK Combined Code on Corporate Governance~~ UK Corporate Governance Code, for reporting any concerns about BT's compliance with these Undertakings.

~~9.4~~ A programme of briefing and training shall be introduced on the launch of the Code of Practice, ensuring that all relevant employees of BT are, as soon as reasonably practicable, aware of their responsibilities in ensuring that BT complies with these Undertakings.

~~9.5~~ 4.3 BT's mandatory compliance and regulatory training for all its employees shall cover compliance with these Undertakings and the Code of Practice.

10. The establishment of an Equality of Access Board

10.1 BT shall, within six months of these Undertakings taking effect, establish an EAB, consisting of five people, namely three independent members, one BT Group plc non-executive Director and one BT senior manager. The independent members shall be appointed once BT, having consulted Ofcom, is satisfied there is no material conflict of interest, having taken into account whether such person is:

10.1.1 an employee or former employee of BT;

10.1.2 a director or senior executive of any other Communications Provider;

10.1.3 a partner or senior executive of any firm, company or other organisation providing consultancy services to BT or any other Communications Provider;

10.1.4 an employee of Ofcom; or

10.1.5 a material shareholder in BT Group plc or in any other Communications Provider.

10.2 The BT Group plc Chairman shall appoint the BT Group plc non-executive Director. The BT Group plc Chairman shall also appoint the BT senior manager to the EAB who shall not be someone who is within the AS, the Upstream Division(s) or the Downstream Divisions.

10.3 The EAB shall be chaired by the BT Group plc non-executive Director.

10.4 Subject to receiving confirmation from BT that there is no material conflict of interest as referred to in section 10.1, the Chairman of the EAB shall appoint the three independent members following agreement with the BT Group plc Chairman (on behalf of the BT Group plc Board) and consultation with Ofcom.

10.5 BT shall consult Ofcom on any terms of reference for each EAB member and on the terms of appointment of each independent member.

10.6 The Chairman of the EAB, following agreement with the BT Group plc Chairman and consultation with Ofcom, may remove the independent members of the EAB.

10.7 The BT Group plc Chairman, in consultation with Ofcom, may remove the Chairman of the EAB or the BT senior manager.

10.8 In the first twelve months of operation the EAB shall have at least six meetings. Thereafter the EAB shall meet as frequently as the EAB determines from time to time.

10.9 The role of the EAB is a general one of monitoring, reporting and advising BT on BT's compliance with these Undertakings and the Code of Practice, with a specific focus on the provision of products on an Equivalence of Inputs basis, the operation of AS and the process set out in section 11.14A. It is not one of executive policy making for BT or any part thereof.

10.10 The minutes of each meeting of the EAB shall be sent to Ofcom within a reasonable time of each such meeting. Such minutes shall be a fair, true and accurate summary of each EAB meeting.

10.11 The EAB:

10.11.1 shall review the content of the Code of Practice;

10.11.2 shall review BT's performance against KPIs which relate to these Undertakings;

10.11.3 shall review reports of the EAO on complaints and complaint handling concerning BT's compliance with these Undertakings, including the conclusions of investigations into those complaints;

10.11.4 shall review complaints regarding these Undertakings made by BT employees to BT's confidential helpline and access routes established for general purposes in accordance with the UK Combined Code on Corporate Governance;

10.11.5 shall have the right to review any reports produced by the EAO;

10.11.6 may, of its own initiative, review any aspect of BT's compliance with these Undertakings; and

10.11.7 may, of its own initiative, review, or request the EAO to investigate, any other issue concerning these Undertakings.

10.11.8 shall review reports of the EAO on its periodic monitoring of the Proactive Review process relating to space as set out in sections 5.49(e) and (f), including the conclusions of any investigations into Communications Providers' concerns relating to the space allocation process;

10.12 The EAB shall be responsible for monitoring and reviewing the product roadmaps and volume forecasts as referred to in section 5.13.1, as well as the associated investment decisions as referred to in section 5.13.2, as they relate to AS and SMP Products.

10.13 The EAB will be informed of the SLAs set by AS including those referred to in section 5.13.3 and may call for reports on performance against them. The EAB shall have oversight of compliance with these SLAs and may use the escalation route mechanisms set out in section 10.20 to comment

on the subject matter of SLAs, the levels at which SLAs are set or on performance delivered against them.

10.14 The EAB will review AS's supply of products to other parts of BT in accordance with these Undertakings.

10.15 In respect of any of the activities described in sections 10.11 to 10.14 the EAB:

10.15.1 may suggest to BT remedial action to ensure compliance with these Undertakings. BT shall take due account of any suggestions or comments the EAB may have;

10.15.2 shall be informed of any action that BT has taken in relation to section 10.15.1 above. BT shall explain its conclusions and approach to the EAB;

10.15.3 may comment on any action BT has taken, comment on whether such action was appropriate in ensuring compliance and suggest further remedial action if necessary; and

10.15.4 shall record its view in the minutes of the appropriate EAB meeting. The EAB's annual report shall show summary details of such minutes, subject to commercial confidentiality.

10.16 BT shall inform the EAB of any breaches of these Undertakings that it identifies and the EAB secretary shall record such breaches in the minutes of the next meeting of the EAB.

10.17 The EAB shall inform Ofcom, within ten working days, when it comes to its attention that there has been a non-trivial breach of these Undertakings.

10.18 The EAB shall report regularly to the BT Group plc Board on BT's compliance with these Undertakings, with a particular focus on those sections of these Undertakings which concern the provision of products on an Equivalence of Inputs basis, the operation of AS and the adequacy of existing reporting controls, including the scope of proposed and actual KPIs.

10.19 BT shall report performance on KPIs relevant to these Undertakings. The EAB may review, from time to time, the matters which the KPIs shall cover and propose changes. BT shall provide information on such KPIs to the EAB in a timely manner unless it has a reasonable reason for not doing so. The EAB shall pay particular attention to proposed KPIs for migrations and for behavioural measures and may for these activities propose target performance levels. BT shall publish its performance against the KPIs on a quarterly basis. The first such publication shall be within three months of the establishment of the EAB.

10.20 In the event that one or more of the members of the EAB has a serious concern, the EAB shall have an escalation route via the EAB Chairman, ultimately to the BT Group plc Board. The EAB's annual report shall show summary details of any such escalations to the BT Group plc Board, subject to commercial confidentiality.

10.21 BT shall apply to the operation of the EAB those principles of the UK Combined Code on Corporate Governance which it considers appropriate and relevant.

10.22 The EAB shall be supported by the EAO, the resource for which shall be supplied by BT. The role of the EAO shall be to:

10.22.1 support the EAB on matters within the EAB's remit by analysing and reporting on the data provided on performance, commissioning reviews, and conducting such other inquiries as the EAB may from time to time require;

10.22.2 consider any complaint brought to it by a Communications Provider that these Undertakings have been breached, report its decision to the EAB and once the EAB has noted or responded to the EAO, the EAO shall report back to the complainant on the action, if any, taken by the EAB as a result of the complaint;

10.22.3 publish guidelines for dealing with such complaints. It shall inform Ofcom of any such complaints within a reasonable time of their receipt;

10.22.4 produce reports to the EAB on the nature, type and pattern of complaints from Communications Providers relating to these Undertakings; and

10.22.5 track and follow-up any complaints of breaches of these Undertakings made by BT employees to BT's confidential helpline. It shall report any relevant findings to the EAB.

10.23 BT shall ensure that the EAO has reasonable access to information held by BT that it needs to fulfil its role, regardless of where such information may be held by, or within, BT.

10.24 The EAO shall be able to draw upon the expertise of functions within BT including from BT's Internal Audit and Compliance team and the office of BT's Company Secretary.

10.25 BT shall ensure that the EAO is resourced commensurate with the demands placed upon it and is able to operate with the level of independence required.

10.26 The EAB shall have no remit in respect of:

10.26.1 actions and activities conducted in respect of the Regulation of Investigatory Powers Act 2000 and any other legislation relating to national security or relations with a foreign government;

10.26.2 conduct of claims or litigation; and

10.26.3 for the avoidance of doubt, matters outside these Undertakings.

10.27 The EAB shall conduct an annual review of compliance with these Undertakings in their entirety in relation to BT's financial year, commencing with the relevant months of the BT financial year 2005/2006. Upon completion of such a review the EAB shall send a report to Ofcom, which shall include a detailed, accurate and complete account of:

10.27.1 performance against KPIs;

10.27.2 instances where a material breach of these Undertakings has been identified, and any steps taken as a consequence of such material breach and including a summary of non-material breaches for which purposes the EAB shall treat as 'material', any breaches notified to Ofcom as 'non-trivial' pursuant to section 10.17;

10.27.3 Exceptional Incidents which have been formally notified to Ofcom under section 20.11;

10.27.4 areas where it has a concern with regard to possible future breaches of these Undertakings, and the EAB considers that such concerns have not been adequately addressed by BT;

10.27.5 steps BT has taken or is taking to ensure compliance with these Undertakings;

10.27.6 the adequacy of the governance measures in place to ensure compliance with these Undertakings;

10.27.7 how the report was compiled;

10.27.8 a summary of any documents (excluding any internal audit reports, legal advice or legally privileged documents) prepared for the EAO for the purposes of preparing the report that substantiate significant conclusions of the report. Such documents shall be supplied to Ofcom if so requested; and

10.27.9 whether the EAB had adequate resources at its disposal to discharge its duties pursuant to these Undertakings.

10.28 Once the review referred to in section 10.27 of compliance with these Undertakings has been approved by the EAB, the EAB shall offer a briefing on the report's findings to Ofcom.

~~10.29 Once the briefing on the report has been made to Ofcom, EAB shall publish no later than 30 June each year a summary report (the 'EAB annual report') on its activities as a distinct part of BT's annual regulatory compliance report. It shall be made available on the BT website.~~

~~10.30 The EAB annual report shall be audited by independent external auditors as part of their audit of BT's annual regulatory compliance report. The audit may include an opinion on the processes for non-financial metrics such as KPIs.~~

~~10.31 BT shall use reasonable endeavours to include in its letter of engagement appointing the external auditors referred to in section 10.30, provisions acknowledging the acceptance by the external auditors of duties and responsibilities to Ofcom in respect of its audit work, audit report and audit opinion, subject to a liability limit to be agreed with Ofcom.~~

~~10.32 The EAO shall report to the EAB on matters within the terms of reference of the EAB. Otherwise the EAO shall report as appropriate to the BT senior manager on the EAB and/or the BT Group plc Company Secretary.~~

~~10.33 The most senior person of the EAO and the EAB Secretary shall be appointed with the agreement of the EAB, save where the first such appointments occur before the establishment of the EAB and hence are made by BT.~~

~~10.34 The EAB will aim to reach decisions on a unanimous basis. Where it is unable to do so decisions will be made on a majority basis with the Chairman of the EAB having a casting vote and any dissent in relation to such a decision by an EAB member shall be noted in the minutes.~~

~~10.35 The EAB shall be quorate with three members present, one of which must be the Chairman of the EAB or his nominee. The BT senior manager shall also be entitled to nominate an alternate for him if he is unable to attend a meeting of the EAB, such alternate shall not be someone who is within AS, the Upstream Division(s) or the Downstream Divisions.~~

~~10.36 BT shall review with Ofcom the operation of the EAB within twelve months of its establishment and thereafter as agreed in writing by Ofcom.~~

~~10.37 The EAB shall determine how best to engage with representatives of industry in order to understand their issues and concerns.~~

11. Next Generation Networks

No foreclosure of network access

11.1 BT shall supply other Communications Providers with Network Access using its NGN in Network Access markets in which, from time to time, BT is determined by Ofcom to have SMP. Such provision of Network Access shall not be conditional on the provision of another form of Network Access or another product, unless agreed by Ofcom.

11.2 The supply of Network Access covered by section 11.1 shall be on terms and conditions which allow other Communications Providers to compete effectively with downstream end-to-end services which BT provides over its NGN.

11.3 Whilst constructing its NGN BT shall not make any network design decisions on network architecture the effect of which would be to prevent the provision of Network Access as described in section 11.1 to other Communications Providers, without first formally consulting with other Communications Providers. If such consultations suggest that demand may exist for a specific form of Network Access, BT shall enter into commercial negotiations with those Communications Providers interested in such Network Access and shall continue such negotiations for a period of up to three months, during which period BT will not implement any such design decisions to its NGN which would prejudice the outcome of these negotiations.

11.4 Section 11.3 shall not apply where:

11.4.1 the subject of the proposed design decision has previously been the subject of a consultation in accordance with section 11.3; or

11.4.2 BT consulted with other Communications Providers and Ofcom but such consultations did not suggest demand existed for such Network Access; or

11.4.3 BT consulted with other Communications Providers and Ofcom, such consultations did suggest such demand existed for the particular form of Network Access, BT entered into commercial negotiations with other Communications Providers, but BT did not supply the particular form of Network Access and was not required to do so by Ofcom as a result of regulatory action initiated by Ofcom within two months of Ofcom receiving notice from BT that the relevant commercial negotiations with other Communications Providers had ceased; or

11.4.4 any request for Network Access made before or during the consultation referred to in section 11.3 is evidently frivolous or disingenuous.

Charges for SMP Products to be based on efficient design

11.5 Where charges for Network Access are required by an SMP Condition to be on a cost-orientated basis (however that requirement is expressed),

and BT provides such Network Access using its NGN, BT shall set its charges for such Network Access on the basis of the costs it would have incurred in designing and building its NGN in the most efficient manner that could reasonably have been employed in order to provide such Network Access. This section shall not apply where:

11.5.1 section 11.3 applied and BT complied with that section 11.3; or

11.5.2 BT consulted with other Communications Providers and Ofcom but such consultations did not suggest demand existed for the particular form of Network Access; or

11.5.3 BT consulted with other Communications Providers and Ofcom, such consultations did suggest such demand existed for the particular form of Network Access, BT entered into commercial negotiations with other Communications Providers, but BT did not supply the particular form of Network Access and was not required to do so by Ofcom as a result of regulatory action initiated by Ofcom within two months of Ofcom receiving notice from BT that the relevant commercial negotiations with the other Communications Providers had ceased; or

11.5.4 Ofcom sets a charge or charge control for the relevant form of Network Access pursuant to the Communications Act 2003.

Provision of Network Access on an Equivalence of Inputs basis

11.6 BT shall build its NGN and associated systems in such a manner as to ensure that other Communications Providers can purchase from BT Network Access on an Equivalence of Inputs basis.

11.7 Where BT provides Network Access using its NGN, it shall do so on an Equivalence of Inputs basis.

11.8 Sections 11.6 and 11.7 shall apply only to Network Access in markets in which:

11.8.1 from time to time Ofcom has determined that BT has SMP; or

11.8.2 BT may reasonably expect it to be determined that BT has SMP because:

- a) the market is the immediate successor to a market or markets in which BT has previously been determined by Ofcom to have SMP; and
- b) the SMP, which Ofcom has previously determined BT to have, is of an enduring nature.

~~11.9 Sections 11.6 and 11.7 shall not apply where it would not be reasonably practicable to provide Network Access on an Equivalence of Inputs basis for example where:-~~

- ~~a) both Ofcom and BT agree that it is not reasonably practicable to provide Network Access on an Equivalence of Inputs basis; or~~
- ~~b) in relation to a specific Communications Provider, that Communications Provider is not in a position to use the relevant Equivalence of Inputs product; or~~
- ~~c) it is not practicable for BT to use that product internally, such as interconnection circuits; or~~
- ~~d) it is a form of Network Access that is one that Ofcom and BT have agreed does not need to be supplied externally.~~

~~Provision of Network Access~~

~~11.10 Where BT launches a new downstream product which makes use of its Network Access provided by means of BT's NGN, it shall ensure that such Network Access is made available to other Communications Providers sufficiently in advance of the launch of such new product so that such other Communications Providers are able to launch competing downstream products to Communications Providers or End Users at the same time as BT. For the avoidance of doubt, except where BT is required by virtue of these Undertakings to provide products on an Equivalence of Inputs basis, the AS or the Upstream Division(s) can deliver Network Access using BT's NGN to the Downstream Divisions as they see fit, provided that those Downstream Divisions experience the same charging regime and functionality as experienced by other Communications Providers.~~

~~11.11 Section 11.10 shall apply where the downstream product is based on Network Access in markets in which:~~

~~11.11.1 from time to time Ofcom has determined that BT has SMP; or~~

~~11.11.2 BT may reasonably expect it to be determined that BT has SMP because:~~

- ~~a) the market is the immediate successor to a market or markets in which BT has previously been determined by Ofcom to have SMP; and~~
- ~~b) the SMP, which Ofcom has previously determined BT to have, is of an enduring nature.~~

~~Industry group~~

11.12 Insofar as a multilateral industry group is established to agree key aspects of the transition from existing PSTN to NGN networks, and this industry group is endorsed by Ofcom, BT agrees to participate in that group. Subject to agreement by other industry participants, BT agrees that the group should if so wish and if it exists have authority to do the following:

11.12.1 Produce a reference interconnection architecture, setting out the manner in which NGN networks are expected to interconnect with each other;

11.12.2 Produce a transition plan setting out the detailed process for managing the transition from PSTN to NGN networks, including the process for migrating PSTN interconnection to NGN interconnection;

11.12.3 Produce a communications plan setting out how this transition will be communicated to End-Users; and

11.12.4 Oversee the actual transition, taking any such action as may be necessary in order to ensure that the above plans are achieved.

11.13 For the avoidance of doubt, the group referred to in section 11.12 will not be responsible for, nor have authority over, managing the deployment by BT of its NGN, nor can its actions have the effect of materially delaying such deployment, except with the agreement of BT.

11.14 In the absence of such a new industry group as referred to in section 11.12, issues related to SMP Products impacted by BT's NGN, will continue to be managed through the Consult21 process and technical standards issues will continue to be managed through the Network Interoperability Consultative Committee.

11.14A (a) BT will set out in published guidelines the consultation principles it will follow for consultations related to BT's NGN.

(b) These principles will include the setting out of the objectives of each consultation and the questions it will ask, the decisions they will inform, the timescale and process for responses, and how responses will be considered to ensure transparency. They will provide for a reasonable consultation period of not less than two weeks, other than in exceptional circumstances. They will also provide for publication of a statement explaining the decisions made, with clear linkages to the questions raised in the consultation.

(c) BT will publish its NGN plan of record every three months, with the first plan of record to be published no later than the 15th calendar day of October 2008. This will include information on points of interconnection, migration plans (on an exchange by exchange basis) moving from the current network to its NGN, and

indicative non-binding roadmaps over two years for SMP products linked to BT's NGN.

- (d) BT will announce projected launch dates at least three months before launch of SMP products over its NGN, unless other regulatory obligations impose a different lead-time or as otherwise agreed with Ofcom.

Operational dispute adjudicator

11.15 Insofar as an operational dispute adjudicator scheme as a form of alternative dispute resolution (which does not conflict with sections 185-191 of the Communications Act 2003) for fast-track binding adjudication of operational disputes in relation to BT's NGN is established by Ofcom, following consultation with BT and other Communications Providers as to its terms of reference, BT agrees to participate.

11.16 Such operational dispute adjudicator scheme shall not deal with:

11.16.1 disputes which materially affect the initiating operator's business case associated with specific products, markets, or providers, including:

a) pricing; and

b) contractual terms; or

11.16.2 matters which materially affect the policy framework established by Ofcom; or

11.16.3 disputes whose outcome is likely to result in significant operational disruption or financial expenditure.

11.17 Such operational dispute adjudicator scheme will enable any Communications Provider, including BT, within two months of an operational issue arising in the context of BT's NGN implementation plan, including transition, relating to that Communications Provider, to refer operational disputes to this adjudicator for a time-limited binding decision. The nature of the time-limited decision shall be such that only the directly affected parties may file a dispute and all disputes must be resolved within four weeks. Following the resolution of a dispute, if further disputes are submitted addressing the same or similar points, BT can elect to bypass the operational dispute adjudicator scheme and refer directly to Ofcom.

Compensation arrangements

11.18 The principles BT will use in making compensation to a Communications Provider taking Network Access from BT as part of BT's implementation of NGN for network costs necessarily borne by such Communications

Provider taking Network Access as a result of notified planned changes to access and interconnection arrangements, will take into account:

- a) the extent to which these changes are unilaterally decided by BT without industry agreement;
- b) the distribution of benefits that accrue from these changes;
- c) the asset life of any legacy interconnect equipment employed at the time of the change;
- d) the extent to which new investment of assets which cannot be re-employed is reasonably and justifiably made by a Communications Provider after it has been made aware of forthcoming changes; and
- e) the additional cost necessarily and directly incurred as a result of having to bring forward investment in new interconnect equipment.

"Broadband dialtone"

11.19 BT shall ensure that no Communications Provider, to which it supplies Metallic Path Facility or Shared Metallic Path Facility, suffers a material competitive disadvantage to its products based on such Metallic Path Facility or Shared Metallic Path Facility solely as a result of BT's software-controlled migration between products made possible by its NGN.

NGN implementation

11.20 This section 11 contains all BT's specific obligations by virtue of these Undertakings in relation to the development and implementation of its NGN. Subject to the provisions of this section 11, nothing in these Undertakings shall impede the flow of information reasonably required to enable BT to design, build, and implement its NGN or the decision making process relating thereto. Nothing in these Undertakings shall impede the flow of information reasonably required to allow BT to comply with its obligations under section 11.14A.

12. Contract management mechanism

12.1 BT will work with Ofcom and other Communications Providers to set up, within six months from the date these Undertakings take effect, an effective mechanism to deal with issues surrounding terms and conditions relating to SMP Products, it being noted that the mechanism will not apply to certain types of contractual provision.

13. 5. Northern Ireland

~~13.1~~ 5.1 Sections 5 (other than section 5.22), 6 and 8 Section 3 (other than section 3.15 of these Undertakings (subject ~~asto the~~ below) shall not apply in respect of BTNI.

~~13.2~~ 5.2 For the avoidance of doubt:-

- a) in section ~~5.38~~ 3.27 a BT employee or agent working for BTNI is not to be treated as an employee or agent of BT who is not working for ASOpenreach;
- b) nothing in section ~~5.44~~ 3.32 requires any separation in respect of BTNI or its systems or prevents BT employees or agents working for BTNI accessing ASOpenreach systems.

~~13.3~~ For the purposes of section 5.45, "the rest of BT" does not include BTNI.

~~13.4~~ 5.3 Notwithstanding anything in section 8.2, a A Communications Provider based in Northern Ireland who meets the criteria referred to therein shall, if it so chooses, be entitled to be account managed by BTNI.

~~14. 6.~~ Information requests and Co-operation

~~14.1~~ 6.1 Where, following consultation with BT on the draft of such a request, Ofcom make a proportionate request in writing for information reasonably necessary for Ofcom to monitor compliance with these Undertakings, BT shall provide such information to Ofcom within a reasonable period, being not less than fifteen working days, and which is reasonable having regard to the seriousness and urgency of the matter, of the request being received.

~~14.2~~ 6.2 Where a request for information is received by BT under section ~~14.1~~ 6.1 the reckless or deliberate provision to Ofcom of false or misleading information shall be deemed to be a breach of these Undertakings.

~~15. 7.~~ Directions

~~15.1~~ 7.1 Where Ofcom:

~~15.1.1~~ 7.1.1 has given BT a notification that it has reasonable grounds for believing that BT has breached any of these Undertakings, which specifies the Undertaking or Undertakings concerned and setting out its reasons and enclosed a draft of a direction which may specify or describe steps to be taken by BT for the purpose of securing compliance with the Undertaking or Undertakings concerned; and

~~15.1.2~~ 7.1.2 has allowed BT a reasonable period, being a period of at least one month, to make representations to Ofcom following receipt of such notification; and

~~15.1.3~~ 7.1.3 having considered any representations BT has made, is satisfied that BT is in breach of one or more of these Undertakings and has given BT a direction with reasons which may specify or describe steps to be taken by BT for the purpose of securing compliance with the Undertaking or Undertakings referred to in that section and which includes an address at which BT may give notice under a) or b) below,

BT may within two weeks of receipt of the direction, or such longer period as may be agreed with Ofcom in any particular case, give notice to Ofcom that it either:-

- a) accepts the direction; or
- b) following a decision to that effect of the BT Group plc Board, declines to accept the direction, in which case, for the avoidance of doubt the direction shall be of no effect.

In the event that BT fails to give a notice to Ofcom within the period specified above, it shall be deemed to have accepted the direction.

~~15.2~~ 7.2 Where under section ~~15.4~~ 7.1 BT accepts a direction it shall comply with the same. For the avoidance of doubt, if BT fails to comply with a direction it has accepted, it shall be in breach of these Undertakings.

~~15.3~~ 7.3 For the avoidance of doubt, no prior finding, or direction under section ~~15.4~~ 7.1 above, is required by Ofcom for BT to be in breach of these Undertakings.

~~16. 8.~~ **Breach of these Undertakings**

~~16.1~~ 8.1 For the avoidance of doubt, where these Undertakings require BT to obtain Ofcom's agreement or consent, or to consult Ofcom before or when acting in a particular manner, but BT fails to do so, BT shall be in breach of these Undertakings.

~~16.2~~ 8.2 Where any matter under these Undertakings involves BT obtaining Ofcom's consent or agreement or consultation with Ofcom, BT's obligations in respect of that matter, or any constraint on BT's ability to act in the case concerned, shall be conditional on that consent or agreement or any response to that consultation not being unreasonably withheld or delayed.

~~17. 9.~~ **Compliance with other legal requirements**

~~17.1~~ 9.1 Compliance with these Undertakings does not affect the duty on BT and its respective directors and officers to comply with any of its obligations under:

- a) the Competition Act 1998;

- b) the Communications Act 2003;
- c) the Companies Act 1985, as amended;
- d) the Companies (Audit, Investigations and Community Enterprise) Act 2004; and
- e) any other law or enactment in any jurisdiction.

18. Variation of these Undertakings

18.1 BT and Ofcom may, from time to time, vary and amend these Undertakings by mutual agreement.

19. Expiry and termination

19.1 These Undertakings will automatically terminate in the event that a market investigation reference is made to the Competition Commission under the Enterprise Act 2002 in respect of markets to which these Undertakings relate and the Competition Commission determines remedies to address any findings by it in respect of the reference, unless the reference relates wholly or mainly to features of the market other than those addressed by these Undertakings.

19.2 Subject to sections 6.4.3 and 6.15 any commitments made under these Undertakings in respect of any SMP Products apply only for such time and to the extent that such SMP Products are required to be supplied as a result of a finding of SMP.

19.3 The entirety of these Undertakings shall no longer apply if, at any point in time, BT is not the subject of any determination by Ofcom that it has SMP in any market connected with Network Access. These Undertakings will cease to apply to the extent that, in the case of any geographical area, BT is not the subject of any determination by Ofcom that it has SMP in any market connected with Network Access in relation to that area. In either case, BT will give Ofcom notice that the Undertakings have ceased to have effect, or the extent to which this is the case, as the case may be.

19.4 BT shall be entitled at any time to make representations to Ofcom with a view to Ofcom undertaking a review of these Undertakings to determine whether and if so to what extent they should cease to apply.

10. Variation, expiry and termination of these Undertakings

10.1 The Undertakings shall come to an end on[●] [date which shall be 10 years after the operative date of these Undertakings to be inserted on the date of signature of the Variation] unless prior to that date:

- (a) Ofcom has released BT from the Undertakings; or

(b) BT and Ofcom have agreed otherwise.

10.2 Nothing shall preclude BT and Ofcom amending these Undertakings from time to time by mutual agreement.

10.3 BT may amend the Governance Protocol and its contents, following consultation with Ofcom.

~~20.~~ 11. **General**

~~20.1~~ 11.1 For the avoidance of doubt nothing in these Undertakings shall automatically amend BT's contracts with other Communications Providers.

~~20.2~~ 11.2 Nothing in these Undertakings shall prevent BT from complying with any applicable laws and regulations and in particular nothing shall inhibit the provision of information to any employee of BT who requires that information for the purpose of matters relating to the Regulation of Investigatory Powers Act 2000 or any other matters relating to national security, or otherwise prevent BT from doing anything necessary in connection with national security.

~~20.3~~ 11.3 These Undertakings apply in so far as BT is not prevented from complying owing to a matter outside its reasonable control.

~~20.4~~ During an initial transitional period for implementation, these Undertakings shall have effect subject to any changes agreed between BT and Ofcom.

~~20.5~~ For the avoidance of doubt, the following sections shall not come into force until four months from the date on which these Undertakings take effect: 5.38, 5.39, 5.40, 5.41, 5.47, 6.10, 8.1 and 8.6.

~~20.6~~ 11.4 Nothing in these Undertakings shall require BT to publish or otherwise disclose confidential information, other than to Ofcom.

~~20.7~~ 11.5 For the avoidance of doubt nothing in these Undertakings affects the participation of BT employees in the various BT pension schemes.

~~20.8~~ 11.6 Where any matter under these Undertakings involves either BT or Ofcom's consent, agreement or need to consult the other, such consent, agreement or consultation shall be in writing.

~~20.9~~ 11.7 For the avoidance of doubt, the nominated individuals (if any) and individuals occupying the roles and functional areas set out in Annex 2 shall not abuse their positions to circumvent the intent of these Undertakings and BT employees or agents working for BTNI shall not abuse the provisions set out in sections ~~13.1 to 13.4~~ 5.1 to 5.3 to circumvent the intent of these Undertakings.

~~20.10~~ 11.8 Notices

- a) All notices given by BT to Ofcom under section 15.1.3 7.1.3 of these Undertakings must be in writing and may be delivered by hand, fax, e-mail or first class registered post to the address shown in the direction given by Ofcom as described at section 15.1.3 7.1.3:
- b) The reasonable period allowed for BT to make representations set out in section 15.1.2 7.1.2 and/or the two week period (or such longer period as may be agreed with Ofcom in any particular case) set out in section 15.1 7.1, shall only begin if the notification received by BT as referred to in section 15.1.2 7.1.2 or the direction received by BT under section 15.1.3 7.1.3 is in writing and has been delivered by hand, fax, e-mail or sent by first class recorded delivery post as follows:
- to: the Office of the Group General Counsel
British Telecommunications plc
pp C5A
BT Centre
81 Newgate Street
London
EC1A 7AJ
- Tel: +44 20 7356 6279
Fax: +44 20 7600 6891
Email: generalcounsel@bt.com
- copy to: the Office of the Group Director of Regulatory Affairs
British Telecommunications plc
pp C8K
BT Centre
81 Newgate Street
London
EC1A 7AJ
- Tel: +44 20 7356 3256
Fax: +44 20 7600 2709
Email: directorregulatoryaffairs@bt.com
- c) Any notice referred to in this section 20.10 11.8 shall be duly served:
- i) if delivered by hand, at the time of delivery;
 - ii) if sent by first class recorded delivery post, three working days after the date of posting;
 - iii) if sent by fax, at the time of transmission; and
 - iv) if sent by email, at the time of transmission.

In the case of service by way of fax or email, a print out of the fax or email must also be sent by post as soon as reasonably practicable thereafter.

20.11 11.9 Exceptional Incidents

20.11.1 11.9.1 Nothing in these Undertakings shall prevent BT from taking any reasonable and proportionate steps strictly necessary for dealing with an Exceptional Incident to the extent required in terms of duration and geography to resolve that Exceptional Incident, including taking any action, or otherwise doing or not doing anything, which, but for this section **20.11.4 11.9.1**, may be considered to be a breach of any of these Undertakings.

20.11.2 11.9.2 By the third working day after an Exceptional Incident has been declared by the BT Group Senior Representative concerned, BT will notify Ofcom in writing of the Exceptional Incident. The notification shall include an explanation of the basis on which the BT Group Senior Representative declared the incident to be an Exceptional Incident.

20.11.3 11.9.3 Following notification of an Exceptional Incident Ofcom shall notify BT when BT shall be reasonably required to provide Exceptional Incident Report or Reports to Ofcom during the period of the Exceptional Incident. For the avoidance of doubt these reports may be oral or written.

20.11.4 11.9.4 Where an Exceptional Incident lasts for more than 30 calendar days, BT will notify Ofcom in writing of the continuation of that Exceptional Incident and will renotify Ofcom in writing at a minimum every 30 days throughout the duration of the Exceptional Incident. Such notification will be accompanied by a written Exceptional Incident Report.

20.11.5 11.9.5 If Ofcom reasonably decides, following notification under section **20.11.2 11.9.2**, that an Exceptional Incident should not have been classified as an Exceptional Incident or during the period of an Exceptional Incident that the incident should no longer be classified as an Exceptional Incident Ofcom may give BT 5 working days written notice that section **20.11.1 11.9.1** shall cease to apply to that incident as from the conclusion of the notice period and for the avoidance of doubt any obligation under section **20.11.3 11.9.3** to report to Ofcom shall cease.

20.11.6 11.9.6 When an Exceptional Incident is closed BT will notify Ofcom in writing of the closure.

20.11.7 11.9.7 Following closure of an Exceptional Incident, or if pursuant to section **20.11.5 11.9.5** an incident ceases to be

classified as an Exceptional Incident, BT will, within 10 working days thereof, deliver to Ofcom a written Exceptional Incident Report.

~~20.11.8~~ 11.9.8 Following receipt by Ofcom of a written Exceptional Incident Report under section ~~20.11.7~~ 11.9.7 BT shall provide to Ofcom on a confidential basis any additional information about the Exceptional Incident which Ofcom may reasonably require of it.

~~20.11.9~~ 11.9.9 The EAB OCC will include in its annual report to Ofcom under Section 10.27 of these Undertakings as referred to in the Governance Protocol a review of the operation, if any, of this section ~~20.11~~ 11.9 during the year concerned.

~~20.11.10~~ 11.9.10 Ofcom may at any time review the operation of this section ~~20.11~~ 11.9 and if Ofcom considers that this section ~~20.11~~ 11.9 should no longer apply Ofcom may give BT six months' notice that this section ~~20.11~~ 11.9 will cease to apply. Any Exceptional Incidents which are ongoing at the expiry of the six months' notice shall automatically be closed, unless otherwise agreed with Ofcom.

~~20.11.11~~ 11.9.11 In this section:

'Exceptional Incident' means an incident, whether or not related to BT's electronic communications network, where:

- a) in accordance with BT's normal incident management process, a BT Group Senior Representative is appointed to oversee the management of the incident; and
- b) the BT Group Senior Representative reasonably declares the incident to be an Exceptional Incident falling within section ~~20.11~~ 11.9 of these Undertakings. For the avoidance of doubt the BT Group Senior Representative will be regarded as acting reasonably in declaring an Exceptional Incident if the incident involves for example:
 - i) increased risk of loss of life or significant risk for the health and safety of BT people or others;
 - ii) major terrorist or criminal activity or extremely severe weather conditions or other significant unforeseeable events adversely affecting the network and resulting in significant and widespread damage to considerable parts of BT's network;
 - iii) the activation of BT's emergency response teams to deal with dangerous chemical, biological, radiological or nuclear substances; or

- iv) serious and widespread illness of pandemic or epidemic proportions affecting a significant proportion of BT's workforce at the same time or imposing movement restrictions on BT's workforce.

and where the scale or nature of the incident is such that it is likely that exceptional measures will be required in response.

'Exceptional Incident Report' means a report concerning the incident that contains the following information:

- a) a description of any action(s) that BT has taken, or any thing which it has done or not done, which, but for this **section 20.11.11.9**, may be considered to be a breach of any of these Undertakings;
- b) an explanation of why BT considered it reasonable and proportionate to act in such ways; and
- c) the period or periods during which BT acted in such ways, the locality of such actions and the approximate number of people involved.

For the purposes of sections **20.11.4 11.9.4** and **20.11.7 11.9.7**, the written Exceptional Incident Report that contains confidential information, commercial or trade secrets, personal information, or defence or national security information shall be accompanied by a non-confidential version suitable for publication by Ofcom.

'BT Group Senior Representative' means the BT on-call manager, who acts as the senior representative of the BT Crisis Management Team **or its successor body** appointed to advise on the assessment of incidents and oversee and arbitrate in respect of the triggering and delivery of BT's response to those incidents.

21. 12. Effective date of these Undertakings

21.1 12.1 These Undertakings take effect on 22 September 2005.

Signed for and on behalf of British Telecommunications plc:

Signature: - - - - -

Name: - - - - -

Position: - - - - -

Date: - - - - -

Accepted for and on behalf of Ofcom:

Signature: - - - - -

Name: - - - - -

Position: - - - - -

Date: - - - - -

Annex 1**Equivalence of Inputs Timetable**

1. For Wholesale Analogue Line Rental, the RFS date will be 30 June 2007. The following intermediate staged milestones post the RFS date will apply in respect of Wholesale Analogue Line Rental:
 - a) at least 30% of BT's relevant installed End-User base as at 30 June 2008 will have been migrated to the Equivalence of Inputs product by that date; and
 - b) at least 70% of BT's relevant installed End-User base as at 30 June 2009 will have been migrated to the Equivalence of Inputs product by that date.
2. For Wholesale ISDN2 Line Rental, the RFS date will be 30 September 2007.
3. For Wholesale ISDN30 Line Rental, the RFS date will be 29 February 2008.
4. For Wholesale Extension Service, the RFS date will be 30 September 2006, and the IBMC date in relation to BT's relevant retail Ethernet-based local area network extension service will be 31 March 2007.
5. The RFS date for Shared Metallic Path Facility will be 30 June 2006. The IBMC date in relation to asymmetric IPStream will be 31 December 2006.
6. The RFS date for Metallic Path Facility will be 30 June 2006. The IBMC date in relation to symmetric IPStream will be 31 December 2006.
- 7.(i) For IPStream the RFS date will be 31 December 2005 and the IBMC date in relation to BT's relevant retail broadband service will be 31 December 2006.
- 7.(ii) BT will make IPstream Connect available for order on 31 October 2008. On 31 October 2008 BT will start the migration of the relevant BT and Communications Providers installed End-user base. For IPstream Connect the IBMC date in relation to IPStream will be 31 March 2009. The migration of the Communications Providers installed End-User base will be completed on 31 March 2009.
8. For Backhaul Extension Service BT will have Equivalence of Inputs capable systems in place by 30 September 2006.
9. BT shall by 30 September 2006 launch a Wholesale Extension Service Backhaul Product which shall be offered on an Equivalence of Inputs basis.
10. With effect from the relevant RFS date, for those Communications Providers who wish to migrate their existing End-Users to the EOI product, BT will discuss with any such Communications Provider how their End-Users' migrations could be accomplished with minimum disruption to the Communications Providers' End-Users, their service and systems,

dependent in particular on the volume of customers each Communications Provider needs to migrate. BT and the Communications Provider will endeavour to work jointly in achieving a smooth transition. In any event, subject to the provisions of section 20.3, the migration will be completed by the relevant IBMC date. For the avoidance of doubt this paragraph refers to customer migrations rather than product migrations dealt with in sections 3.7 and 3.8 of the Undertakings.

11. For Shared Metallic Path Facility and Metallic Path Facility the RFS dates shown above are the dates from which an Equivalence of Inputs product is available for use by Communications Providers and by BT (and is in use by BT) for new customers of products based upon that Shared Metallic Path Facility or Metallic Path Facility. The BT products to which the Shared Metallic Path Facility is an input are asymmetric IPStream until IBMC for IPstream Connect and asymmetric IPstream Connect as of the date IPstream Connect is available for order. The BT products to which the Metallic Path Facility is an input are symmetric IPStream until IBMC for IPstream Connect and symmetric IPstream Connect as of the date IPstream Connect is available for order. The definition of End User included in the RFS date definition set out in section 2 of these Undertakings shall be read accordingly.

Annex 1

STRICTLY CONFIDENTIAL

OFFERED UNDER PART 4 OF THE ENTERPRISE ACT 2002

The Governance Protocol

Annex 2

PART A

Any member of the board of directors of BT Group plc or British Telecommunications plc, and the Company Secretary of either Company

Any member of a committee of the Board of BT Group plc, including the BT Group Operating Committee

Group General Counsel

Legal and Regulatory

Group Strategy

Group Risk and Insurance

Head of Ethics/Business Practices

Group Technology for the purposes of planning and implementing BT's NGN strategic BT network developments

Group Portfolio

Group Commercial Policy Forum

Any part of BT acting under the Regulation of Investigatory Powers Act 2000 or other legislation relating to national security or relations with a foreign Government, or any body empowered to advise on or define pan-BT security related policies

Procurement

The following areas in Group Finance:

Group Financial Control

Group Treasury

Group Tax

Group Reporting, Planning and Analysis, and Controller BT Group

Group Corporate Finance

Commercial and Regulatory Finance

Industrial Action Contingency Group and other crisis management teams

And in all cases their:

- a) equivalents working for BTNI;
- b) relevant external advisers, sub-contractors and agents; and
- c) their successor bodies, roles and functional areas from time to time.

PART B

Any member of the EAB and the EAO, including the EAB secretary

External Auditors

External Quality Assurance

Finance

Internal Audit

Compliance

ASOpenreach Audit Committee members

Human Resources

Group Information

BT Property

Group Technology (including development)

BT Company Secretary's Office and Board Secretariat

Press, communications, media, public affairs, government relations and investor relations; BT Regions, BT Regional Directors and members of BT Regional Board

BT Group Risk Panel

Billing Centre of Excellence

Business Improvement Centre of Excellence, for the development of equivalent processes in discharge of these Undertakings, and as a source of expertise and advice in modelling and process development

Security

The Program offices involved in implementing these Undertakings

And in all cases their:

- a) equivalents working for BTNI;
- b) relevant external advisers, sub-contractors and agents; and
- c) their successor bodies, roles and functional areas from time to time.

Annex 3

Leased lines

1. The leased lines products to which paragraphs 2 to 8 below will apply are the following products offered by BT at the date these Undertakings take effect:
 - 1.1 Netstream private circuits;
 - 1.2 Analogue private circuits;
 - 1.3 Kilostream private circuits;
 - 1.4 Megastream digital private circuits, up to and including 45Mb/s; and
 - 1.5 Variants of the above which are used to provide enhanced resilience.
2. BTS will appoint a senior product manager who will be responsible for ensuring that BTS complies with paragraphs 3 to 8 below of this Annex 3.
3. It will be the responsibility of BTS to develop, manage and offer variants of the leased lines products set out in paragraph 1 above which are intended to meet the reasonable requirements of its customers who are Communications Providers.
4. BT will proactively consult and engage with its customers who are Communications Providers in order to seek out their requirements in relation to leased line products. BT shall ensure that within four months of the coming into force of these Undertakings BT has identified if and how those Communications Providers' customers consider that the current leased lines products offered by BT do not adequately meet their reasonable needs, and the modifications or enhancements they would consider appropriate.
5. Communications Providers will remain free to purchase the variants of BT's leased lines products which are offered by the Downstream Divisions should they so wish.
6. Communications Providers will be eligible to migrate leased lines described in paragraph 1 of this Annex 3 which they have purchased, prior to BTS offering new leased lines variants, through the Downstream Divisions to any new variant of that type of leased line offered by BTS without charge or penalty. For the avoidance of doubt, if, after a Communications Provider has migrated a leased line purchased from the Downstream Divisions into a leased line variant offered by BTS, and prior to the termination of the contract period, it then migrates that BTS supplied leased line product to another leased line product, BT will be entitled to charge a reasonable fee both for the migration to the other leased line product and for the prior migration to the leased line product offered by BTS.

7. It is not BT's intention that any leased lines product variants to be offered by BTS should be any form of intermediate product between Partial Private Circuits and retail leased lines.

8. BTS will undertake a review of the progress it has made towards development of leased lines product variants that meet the reasonable needs of Communications Providers approximately six months after the creation of BTS and shall share the findings of its review both with Ofcom and with those Communications Providers who were consulted in accordance with paragraph 4 of this Annex 3.

Annex 4

Equipment

- a) Access network termination equipment
- b) Broadband servers
- c) Video servers
- d) Aggregation equipment for backhaul
- e) Private circuit termination
- f) Any additional equipment reasonably identified by any other Communications Provider and agreed in writing between BT and Ofcom.

Provided that none of the equipment shall be used in the provision of Wireless Telegraphy as defined in the Wireless Telegraphy Act 1949 (as amended or re-enacted). This restriction shall be reviewed from time to time with Ofcom.

Annex 5 3**List of the Thirteen MIS systems**

Amethyst Wholesale	Amethyst is a data warehousing application developed on an Oracle database. It gives users the capability to drill down and search for detailed information. Amethyst contains network product, financial and investment data.
Aspire	Accounting Separation, Product Integration & Reporting Environment (ASPIRE) is BT's regulatory accounting system based on ORACLE. It is the source system for BT's annual published regulatory financial statements. It ensures that costs are appropriately allocated across BT's activities, and provides detailed product level cost information
CAMERA	Campaign Management Evaluation and Reporting Application (CAMERA) is a BT wide system for creating, managing and reporting on BT Marketing Campaign spend. The system manages the financial and procurement activities associated with marketing campaigns and provides a reporting function for campaign managers.
CDS	CDS is a data warehouse which receives inputs from various systems including CAMSS, COSMOSS and CSS. Against these inputs, CDS provide various quality of service and management information reports against BT line of business provision, repair, customer contact and call centre activities.
CID	The Central Information Database is a data warehouse which collates financial and non-financial information from all Lines of Business. Information is accessible by Line of Business and is also summarised for Group-level accounting and reporting purposes .
eCAESAR	E-Caesar stands for "electronic COSMOSS Activity Extract and Summary Analysis Reports". It extracts real time order data for Private Circuits from COSMOSS and makes it available on a web page.
Hyperion Strategic Finance FBI	Hyperion Strategic Finance is a tool that is used by BT within its annual strategic planning process. It forecasts the financial data for any predefined account based upon the driver of that account. FBI is used for the generation of BT's Financial Management reports
Netview	Netview stores Quality of Service data for orders that have been provided to customers. The system calculates and reports measures for Productivity, Quality, Finance and Volumes.

NIMS MIS	NIMS MIS is a data warehousing system which measures and reports on the performance of field force activities. The system also reports on costs for engineering jobs.
POWERHOUSE	The Powerhouse is a BT Group Level data warehouse which collates Product Volumes information from all Lines of Business. Information is summarised for Group-level accounting and reporting purposes.
REFINE	Regulatory Finance Information Environment (REFINE) is BT's bespoke regulatory accounting system, succeeding ASPIRE. It is the source system for BT's annual published regulatory financial statements. It ensures that costs are appropriately allocated across BT's activities, and provides detailed product level cost information.
Retail Amethyst	Provides reports to support the debt management processes by integrating "Aged Debt" reports/feeds from the separate billing systems into unified reports for the Lines of Business.
RM Datamart	The RM Datamart is a Resource Management system providing web-based reports. Its prime function is to match and supply appropriately skilled resources based on demand.
Web MIS	Web MIS provides reports that are used by teams across BT Lines of Business to identify and act against the causes of customer dissatisfaction and business process performance issues.

Or such successor or replacement MIS, or such additional MIS as may be added by agreement between BT and Ofcom.

Annex 6 4**List of Shared ~~Operational Support Systems~~ OSS**

OSS Name:	OSS Description
Exchange Records in BT (BerT)	BerT is used to record the physical inventory of Transmission and 21CN related equipment in BT exchange buildings.
Core Cable Management System (CCMS)	CCMS holds fibre Core Cable records for the whole of the UK, it provides data into systems like NETRISK to support separacy checks.
Fibre Repair Analysis Centre (FRAC)	FRAC is a fault report database that tracks information pertaining to fibre optic faults.
Integrated Network System (INS)	INS supports planning, assignment and maintenance of the Analogue and PDH network. Used for the planning and routing of Wideband provisions and BT's PSTN Core Network. This includes the SDH Physical Bearer Network, WDM Bearer Network, and 21CN Networks. Provides facilities to design, repair and route circuits, record transmission equipment and fibre information and check separacy/diversity requirements.
The National Cable Database (NCD)	NCD holds all data relating to the design, planning and provision of network cables.
The Network Decision Support Database (NDS)	NDS provides scheduled and ad-hoc operational management information reports and data extracts relating to the network and switches. It is widely used for provision, problem management, network management, and resource management purposes.
NETRISK	NETRISK records inter-exchange fibre cable routes down to duct level (i.e. box to box records), and reports the results of physical separacy checks as risk ids between specific routings or cable ids passing through a given duct structure.
Physical Inventory Planning E-Records (PIPeR)	PIPeR will in time hold all BT's internal and external physical inventory in support of the planning process.
Planning And Recording Modernisation (PRM)	PRM is used by BT's planners to plan network changes. It contains scanned raster images of BTs external network overlaid on a geographic map base of UK.
Mobile Infrastructure	MIPT is a planning tool used for 3rd Generation Mobile

Planning Tool (MIPT)	networks. It overlays information about BTs network onto UK maps to support shared infrastructure planning decisions.
Common Infrastructure System (CIS)	CIS is a web based tool which provides reports based solely on CCMS information. These may include e.g. the core cables in a particular manhole or duct.
GeoHUB	GeoHUB is the central repository for Openreach geographic information. It hosts a range of geographic datasets, including a read-only cache of physical inventory data.
FastRepair	Fault management system for Private Circuit, Interconnect & Telephony fault reports. Offers alarm checking, network event information, jeopardy management & Work Manager task build as part of an integrated fault handling system. Links to eCo Repair.
CSS	CSS is a set of integrated Customer service systems designed to support Customer Facing activities connected with the PSTN (Public Switched Telephony Network) service. Its main functions include: Customer Handling, Order Handling, Fault Management.
HADES	The system consists of an oracle database providing details in near real-time to jeopardy manage through monitoring tasks.
INDEX	Index is a central database containing information on the progress of an ISDN30 installation in course of provision and the configuration of ISDN30 installations.
WOOSH	Web based diagnostic and test capability on many circuit types using Generic Test Controller (GTC) to interface to element managers, test heads, record & routing systems etc.
MIDAS	Web based tool allowing sales agents to check availability of a specific product/service from a specific exchange & whether a customer can have that product/service.
COSMOSS	COSMOSS system is used to process orders for LLU Infrastructure, from enquiry through to order closure.

Or such successor or replacement ~~Operational Support System OSS~~, or such additional ~~Operational Support Systems OSS~~ as may be added by agreement between BT and Ofcom.

Notification to Ofcom pursuant to Section 89C Communications Act 2003

WHEREAS:

- (a) British Telecommunications plc ('BT plc') gave Ofcom certain undertakings ('the Undertakings') which took effect on 22 September 2005, pursuant to the Enterprise Act 2002;
- (b) Implementation of the Undertakings resulted in a form of functional separation of BT plc's networks division and the creation of a functionally separate local access network division, which division was established on 22 January 2006 and is known as Openreach;
- (c) Ofcom has made a determination that BT plc has significant market power in an identified services market;
- (d) BT plc is the provider of a public electronic communications network;
- (e) Having regard to matters raised in the course of Ofcom's Strategic Review of Digital Communications BT plc has decided to effect what is, for the purposes of Section 89C Communications Act 2003, an enhancement of the transfer of a substantial part of its local access network assets to an independently operating business entity by implementing greater functional separation of its local access network business Openreach; and
- (f) The purpose of making such an enhancement of the transfer is that Openreach will use the assets it controls to provide products or services to other parts of BT plc and to other persons:
 - (i) on the same timescales, terms and conditions, including those relating to price and service levels; and
 - (ii) by means of the same systems and processes.

NOW THEREFORE:

1. BT plc hereby notifies Ofcom of its intention to effect greater functional separation of its network access division Openreach in accordance with Section 89C Communications Act 2003 as set out below.
2. The form of greater separation of its assets and of the provision of products and services (the Section 89C transfer) that BT plc intends will apply is as follows:
 - a. An Openreach Board will be established as a committee of the BT plc board, with delegated authority for the strategy and operational performance of Openreach, in accordance with a Governance Protocol, with significantly more independent oversight compared to present arrangements.
 - b. BT plc's Articles of Association will be amended to provide for the delegation of powers to the Openreach Board (as provided in the Governance Protocol) and to set out the obligation of the Openreach Board to treat all its customers equally.

- c. The Governance Protocol will clearly define the independence of Openreach within a defined framework. The supervisory controls retained by BT plc and BT Group, and their ability to intervene to resolve material divergences from plan, are limited to matters set out in their governance policies and which are those needed to ensure ongoing compliance with their corporate and listing responsibilities.
 - d. Openreach will have a significantly enhanced discretion to devise its strategy and to manage and control its day-to-day activities and operational decisions within the scope of that framework.
 - e. An enhanced formal process will be introduced concerning how Openreach consults with all Communications Providers on large scale investments, including a confidential phase where Openreach will not disclose information outside of Openreach, except to the BT Group CEO and BT Group CFO in defined circumstances as set out in the Governance Protocol. Under this confidential process, Openreach will be able to consider proposals to fund major network investments under co-investment or risk-sharing agreements with Communications Providers.
3. The precise commitments that BT plc intends to implement and operate to are as set out in the draft version of the Undertakings supplied to Ofcom with its application of even date herewith for a variation of the Undertakings pursuant to Section 154 Enterprise Act 2002.
4. BT plc's ability to implement and operate its intentions in full as set out in paragraphs 2 and 3 above is constrained by the continuation of the existing Undertakings for the time being. BT plc's intention is that the enhanced functional separation resulting from the Section 89C transfer shall take full effect immediately upon Ofcom agreeing to vary BT plc's Undertakings in the terms applied for (or subject only to minor variations thereto as agreed by BT plc and Ofcom).
5. Having regard to the dependency set out in paragraph 4 above, it is BT plc's intention that it shall implement all the provisions set out in the draft Undertakings that can be implemented while the existing Undertakings continue within six months of the date of this notification.
6. This notification takes effect immediately upon service by BT plc upon Ofcom at its registered address at Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

Signed for and on behalf of British Telecommunications plc

Signature:



Name: Gavin Patterson

Position: Chief Executive Officer

Date : 18 July 2016