

# Annex 15

## NOTIFICATION OF PROPOSALS UNDER SECTION 48A OF THE COMMUNICATIONS ACT 2003

### Proposals for the setting of SMP services conditions in relation to BT under section 45 of the Communications Act 2003

#### Background

- A1.1 On 15 May 2015, the Office of Communications (“**Ofcom**”) published its consultation document entitled “Business Connectivity Market Review, Review of competition in the provision of leased lines” (“**BCMR Consultation**”).
- A1.2 Annex 6 of the BCMR Consultation sets out the Notification (“**BCMR Notification**”) under sections 48A and 80A of the Communications Act 2003 (“**Act**”), in accordance with sections 48(1) and section 80(1) of the Act, in which Ofcom proposes to:
- a) identify certain markets;
  - b) make market power determinations; and
  - c) set SMP services conditions.
- A1.3 In the BCMR Notification, Ofcom proposes to identify, among others, the following markets for the purpose of making proposed market power determinations:
- a) wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s;
  - b) wholesale market for contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area; and
  - c) wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
- A1.4 In the BCMR Notification, Ofcom makes a proposed market power determination for BT in relation to all markets set out in A1.3 above.
- A1.5 In the BCMR Notification, Ofcom proposes to set certain SMP service conditions on BT in relation to such of those markets it proposes to identify as are specified in Schedule 6 to the BCMR Notification. However, Ofcom did not proceed in the BCMR Notification with specifying all of the proposed SMP price control conditions within the meaning of section 87(9) of the Act.
- A1.6 In paragraph 18 of the BCMR Notification, Ofcom stated that insofar as SMP condition 5, as set out in Schedule 6 and regarding our proposals regarding network access pricing, is concerned, this condition would be contained in a separate notification under sections 48A and 80A of the Act. Ofcom explained in the BCMR Consultation that details of its proposals regarding the setting of certain SMP price control conditions including the services to which they should apply, and the

proposed SMP price control conditions themselves, would be consulted on separately.

- A1.7 Accordingly, in this Notification, Ofcom specifies its proposed SMP price control conditions in that regard. These proposals are made by reference to the proposed market power determinations referred to in the BCMR Notification and, as such, are to be treated as supplementary to the BCMR Notification.

## **Proposals**

### *Proposals to set SMP price control conditions*

- A1.8 Ofcom hereby gives notice of its proposals, in accordance with section 48A of the Act, to set the following SMP price control conditions, pursuant to its powers under section 87(9) of the Act, on BT:

- a) SMP services condition 5A in relation to proposed markets b) and c) above in paragraph A1.3;
- b) SMP condition 5B in relation to proposed market b) above in paragraph A1.3;
- c) SMP condition 5C in relation to proposed markets b) and c) above in paragraph A1.3;
- d) SMP condition 5D in relation to proposed market a) above in paragraph A1.3;
- e) SMP condition 5E in relation to proposed markets a) to c) above in paragraph A1.3;
- f) SMP condition 5F in relation to proposed markets b) and c) above in paragraph A1.3; and
- g) SMP condition 5G in relation to proposed markets b) and c) above in paragraph A1.3.

- A1.9 The proposed SMP price control conditions in paragraph A1.8, and the services to which each of the proposed SMP price control conditions in paragraph A1.8 apply, are set out in the Schedule to this Notification.

- A1.10 The effect of, and Ofcom's reasons for making, the proposed SMP price control conditions are set out in the consultation document accompanying this Notification.

## **Ofcom's duties and legal tests**

- A1.11 For the reasons set out in the consultation document accompanying this Notification, in proposing to set the SMP price control conditions, Ofcom has:

- a) considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act; and
- b) taken due account of all applicable recommendations in accordance with section 4A of the Act.

- A1.12 For the reasons set out in the consultation document accompanying this Notification, Ofcom is satisfied that all applicable legal tests would be met if the

proposed SMP price control conditions were to be imposed on BT, including the tests in sections 88 and 47(2) of the Act.

## Representations

- A1.13 Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying consultation document no later than 7 August 2015.
- A1.14 A copy of this Notification and the accompanying consultation document have been sent to the Secretary of State, in accordance with section 48C(1) of the Act.

## Interpretation

- A1.15 Except for reference made to proposed identified markets in paragraph A1.3 above, and except also as otherwise defined in this Notification, words or expressions used shall have the same meaning as in the Act.

- A1.16 In this Notification:

“**Act**” means the Communications Act 2003 (c. 21);

“**BT**” means British Telecommunications plc, whose registered company number is 1800000 and any British Telecommunications plc subsidiary or holding company, or any subsidiary of that holding company, all as defined in section 1159 of the Companies Act 2006;

“**Central London Area** or **CLA**” means the area consisting of the postal sectors set out in Schedule 1 to the BCMR Notification;

“**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 KCOM Group plc, whose registered company number is 2150618;

“**London Periphery** or **LP**” means the area consisting of the postal sectors set out in Schedule 2 to the BCMR notification;

“**Ofcom**” means the Office of Communications;

“**Rest of UK** or **RoUK**” means the area consisting of the UK excluding the CLA and the London Periphery;

“**United Kingdom**” has the meaning given to it in the Interpretation Act 1978 (1978 c30).

- A1.17 For the purpose of interpreting this Notification:

- a) headings and titles shall be disregarded; and
- b) the Interpretation Act 1978 (c. 30) shall apply as if this Notification were an Act of Parliament.

A1.18 The Schedule to this Notification shall form part of this Notification.

M. Gibbs

Competition Policy Director, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

12 June 2015

## Condition 5A

### *Controls of the Ethernet Services Basket*

#### Initial Charges on 1 April 2016

**5A.1** Subject to the provisions set out in Condition **5A.15**, the Dominant Provider shall take all reasonable steps to secure that on 1 April 2016 for each of:

- (i) the Ethernet Services Basket;
- (ii) the Ethernet Interconnection Sub-basket;
- (iii) the Ethernet 1Gbit/s EAD Sub-basket;
- (iv) the Ethernet Main Link Sub-basket,

(each of which is referred to in Condition **5A** as “**Basket**” unless otherwise specified) the Percentage Starting Charge Change (determined in accordance with Condition **5A.2** below) in the aggregate of charges for all of the services falling within the relevant Basket is not greater than minus 9 percentage points.

**5A.2** The Percentage Starting Charge Change for the purposes of each of the Baskets specified in Conditions **5A.1(i)** to **5A.1(iv)** shall be calculated, for the purposes of complying with Condition **5A.1**, by employing the following formula:

$$SC_t = \frac{\sum_{i=1}^n \left[ R_i \frac{(s\bar{p}_{i,t} - s\bar{p}_{i,t-1})}{s\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

$SC_t$  is the Percentage Starting Charge Change in the aggregate of charges for the services in the Basket on 1 April 2016;

$n$  is the number of individual services in the Basket;

$i$  is a number from 1 to  $n$  for each of the  $n$  individual services in the Basket;

$R_i$  is the Accrued Revenue in respect of the individual service  $i$  falling within the Basket;

$t$  refers to 1 April 2016;

$t-1$  refers to 31 March 2016;

$s\bar{p}_{i,t}$  is the charge made by the Dominant Provider for the individual service  $i$  falling within the Basket on 1 April 2016, subject to the provisions set out in Condition **5A.15**;

$s\bar{p}_{i,t-1}$  is the charge for the individual service  $i$  falling within the Basket on 31 March 2016, subject to the provisions set out in Condition **5A.15**.

**5A.3** In the case of each and every service falling within the Ethernet Services Basket, the Dominant Provider shall take all reasonable steps to secure that, on 1 April 2016, the

Percentage Starting Charge Change in discrete charges for each and every service falling within the Ethernet Services Basket is not greater than:

- i. zero where CPI is less than or equal to 5 percentage points; and
- ii. CPI minus 5 percentage points where CPI is greater than 5 percentage points.

**5A.4** For the purposes of Condition **5A.3** the Percentage Starting Charge Change shall be calculated by employing the formula set out below.

$$SC_t = \frac{(s\bar{p}_t - s\bar{p}_{t-1})}{s\bar{p}_{t-1}}$$

Where:

SC<sub>t</sub>, is the Percentage Starting Charge Change in charges for each individual service in the Ethernet Services Basket on 1 April 2016;

t refers to the 1 April 2016;

t-1 refers to the 31 March 2016;

$\bar{p}_t$  is the charge made by the Dominant Provider for the individual service *i* falling within the Ethernet Services Basket on 1 April 2016, subject to the provisions set out in Condition **5A.15**.; and

$\bar{p}_{t-1}$  is the charge for the individual service *i* falling within the Ethernet Services Basket on 31 March 2016, subject to the provisions set out in Condition **5A.15**.

## Controls from 2 April 2016

### Basket and Sub-basket Controls

**5A.5** Subject to the provisions of Condition **5A.15**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, for each of:

- (i) the Ethernet Services Basket;
- (ii) the Ethernet Interconnection Sub-basket;
- (iii) the Ethernet 1Gbit/s EAD Sub-basket;
- (iv) the Ethernet Main Link Sub-basket,

(each of which is referred to in Condition **5A** as “**Basket**” unless otherwise specified) the Percentage Change (as determined in accordance with Condition **5A.6**) in the aggregate of charges for all of the services falling within each Basket is not greater than the Controlling Percentage (determined in accordance with Condition **5A.7**).

**5A.6** The Percentage Change for the purposes of each of the Baskets specified in Conditions **5A.5(i) to 5A.5(iv)** shall be calculated, for the purposes of complying with Condition **5A.5**, by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[ R_i \frac{(\bar{p}_{i,t} - \bar{p}_{i,t-1})}{\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

$C_t$  is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year  $t$ ;

$n$  is the number of individual services in the Basket;

$i$  is a number from 1 to  $n$  for each of the  $n$  individual services in the Basket;

$R_i$  is the Accrued Revenue in the Relevant Year in respect of the individual service  $i$  falling within the Basket;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_{i,t}$  is the Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service  $i$  falling within the Basket during the Relevant Year, subject to the provisions set out in Condition **5A.15**:

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{i,t} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

$m$  is the number of time periods for which there are distinct charges during the Relevant Year;

$j$  is a number from 1 to  $m$  for each of the  $m$  time periods during which a distinct charge is in effect;

$w_{i,j,t}$  is the proportion of the Relevant Year in which a distinct charge is in effect,

$p_{i,j,t}$  is calculated by the number of days during which the charge is in effect and dividing:

- (i) for the First Relevant Year, by 364;
- (ii) for the Second Relevant Year, by 365; and
- (iii) for the Third Relevant Year, by 365.

$p_{i,j,t}$  is the charge for the specified period,  $j$ , during the Relevant Year  $t$  for the individual service,  $i$ ;

$\bar{p}_{i,t-1}$  is for the purposes of calculating the Percentage Change:

- (i) for the First Relevant Year, the Initial Charge for the individual service  $i$  falling within the Basket during the Prior Year, subject to the provisions set out in Condition **5A.15**;
- (ii) for the Second Relevant Year and the Third Relevant Year, the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service  $i$  falling within the Basket during the Prior Year, subject to the provisions set out in Condition **5A.15**;

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{i,t-1} = \sum_{j=1}^m (w_{i,j,t-1} p_{i,j,t-1})$$

Where:

$m$  is the number of time periods for which there are distinct charges during the Prior Year;

$j$  is a number from 1 to  $m$  for each of the  $m$  time periods during which a distinct charge is in effect;

$w_{i,j,t-1}$  is the proportion of the Prior Year in which a distinct charge is in effect;

$p_{i,j,t-1}$ , is calculated by the number of days during which the charge is in effect and dividing:

- (i) for the Second Relevant Year, by 365;
- (ii) for the Third Relevant Year, by 365.

$p_{i,j,t-1}$  is the charge for the individual period,  $j$ , during the Prior Year,  $t-1$ , for the individual service,  $i$ .

**5A.7** Subject to the provisions set out in Conditions **5A.8** to **5A.10** below, the Controlling Percentage in relation to any Relevant Year for each of the Baskets specified in Conditions **5A.5(i)** to **5A.5(iv)** shall be calculated, for the purposes of complying with Condition **5A.5**, by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$CPI_t$  is CPI for the Relevant Year,  $t$ ;

$X$  is equal to -13.75 percentage points.

**5A.8** Where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is:

- i. less than the Controlling Percentage (“**Deficiency**”) for each of the Baskets specified in Conditions **5A.5(i)** to **5A.5(iv)**; or

- ii. greater than the Controlling Percentage ("**Excess**") for each of the Baskets specified in Conditions **5A.5(i)** to **5A.5(iv)**

the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition **5A.9** below.

- 5A.9** In the case of Deficiency or Excess, the Controlling Percentage for each of the Baskets specified in Conditions **5A.5(i)** to **5A.5(iv)** shall be calculated by employing the following formula:

$$CP_t = [(100\% + CPI + X)(100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

Where:

$CP_t$  is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

$CP_{t-1}$  is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

$C_{t-1}$  is the Percentage Change for each of the Baskets specified in Conditions **5A.5(i)** to **5A.5(iv)** during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for  $C_t$  set out in Condition **5A.6**, as applicable; and

$X$  is as set out in Condition **5A.7** above.

- 5A.10** In the case of Excess, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

#### Sub-Caps Control

- 5A.11** In the case of each of the services falling within the Ethernet Services Basket, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change in discrete charges for each and every service falling within the Ethernet Services Basket is no greater than:

- i. zero where CPI is less than or equal to 5 percentage points; or
- ii. CPI minus 5 percentage points where CPI is greater than 5 percentage points.

- 5A.12** For the purposes of **Condition 5A.11** the Percentage Change shall be calculated by employing the formula set out below.

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

$C_t$  is the Percentage Change in charges for the specific service falling within the Ethernet Services Basket for the Relevant Year  $t$ ;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_t$  is the Relevant Year Weighted Average Charge made by the Dominant Provider for the specific service falling within the Basket during the Relevant Year, subject to the provisions set out in Condition **5A.15**:

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_t = \sum_{j=1}^m (w_{j,t} p_{j,t})$$

Where:

$m$  is the number of time periods for which there are distinct charges during the Relevant Year;

$j$  is a number from 1 to  $m$  for each of the  $m$  time periods during which a distinct charge is in effect;

$w_{j,t}$  is the proportion of the Relevant Year in which a distinct charge is in effect,

$p_{j,t}$  is calculated by the number of days during which the charge is in effect and dividing:

- (i) for the First Relevant Year, by 364;
- (ii) for the Second Relevant Year, by 365; and
- (iii) for the Third Relevant Year, by 365.

$p_{j,t}$  is the charge for the specified period,  $j$ , during the Relevant Year  $t$  for the specific service falling within the Basket;

$\bar{p}_{t-1}$  is for the purposes of calculating the Percentage Change:

- (i) for the First Relevant Year, the Initial Charge for the specific service falling within the Basket during the Prior Year, subject to the provisions set out in Condition **5A.15**;
- (ii) for the Second Relevant Year and the Third Relevant Year, the Prior Year Weighted Average Charge made by the Dominant Provider for the specific service falling within the Basket during the Prior Year, subject to the provisions set out in Condition **5A.15**;

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{t-1} = \sum_{j=1}^m (w_{j,t-1} p_{j,t-1})$$

Where:

$m$  is the number of time periods for which there are distinct charges during the Prior Year;

$j$  is a number from 1 to  $m$  for each of the  $m$  time periods during which a distinct charge is in effect;

$w_{j,t-1}$  is the proportion of the Prior Year in which a distinct charge is in effect;

$p_{j,t-1}$  is calculated by the number of days during which the charge is in effect and dividing:

- (i) for the Second Relevant Year, by 365;
- (ii) for the Third Relevant Year, by 365.

$p_{j,t-1}$  is the charge for the individual period,  $j$ , during the Prior Year,  $t-1$ , for the specific service falling within the Basket.

#### Basis of charges obligation in relation to EAD and EAD LA

**5A.13** The Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that in the Second Relevant Year and the Third Relevant Year each and every charge offered or payable when averaged over the Relevant Year:

- (i) for EAD rental provided under Conditions **1** and **2**, is reasonably derived from the costs of provision calculated by reference to the charge for EAD LA rental for the corresponding Relevant Year adjusted to reflect the difference in the forward looking long run incremental costs of EAD rental;
- (ii) for EAD connection provided under Conditions **1** and **2**, is reasonably derived from the costs of provision calculated by reference to the charge for EAD LA connection for the corresponding Relevant Year adjusted to reflect the difference in the forward looking long run incremental costs of EAD connection.

#### General to the Controls in the First Relevant Year

**5A.14** The Dominant Provider may set charges on 1 April 2016 in order to give effect to the changes required both on 1 April 2016 and for the First Relevant Year. Should the Dominant Provider do so, it shall be deemed in compliance with its obligations under Conditions **5A.1** to **5A.12**, provided it secures, and is able to demonstrate to the satisfaction of Ofcom, that the charges set on 1 April 2016 are equal to those that would have complied with the requirements set out in Conditions **5A.1** to **5A.12** had

they been set through separate changes required both on 1 April 2016 and for the First Relevant Year.

#### General to the Controls from 2 April 2016

**5A.15** For the purposes of determining compliance with this Condition **5A** the relevant charges should be calculated on the basis of:

- (i) including Time Limited Discounts;
- (ii) including Three Year Term Products; and
- (iii) excluding all other forms of discounts.

and shall be subject to the provisions set out in Condition **8F.8**.

For the avoidance of doubt where a Time Limited Discount also involves another form of discount (for example it is geographically limited), such discounts should be excluded from the relevant charges.

**5A.16** For the avoidance of doubt, where the Annex to this Condition **5A** lists a service as being available with more than one minimum contract period, the charge for the purposes of determining compliance with this Condition **5A** shall be deemed to be the charge for the service with the shortest minimum contract period, subject to the provisions set out in Condition **5A.15**.

**5A.17** Where the Dominant Provider offers a service listed in the Annex to this Condition **5A** with a minimum contract period of three years, such service shall be deemed, for the purposes of determining compliance with this Condition **5A**, to be a separate service falling within the Ethernet Services Basket provided such service complies with the requirements set out in the definition of the Three Year Term Product in Condition **5A.22**.

#### ***General provisions and interpretation***

**5A.18** Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **5A**; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends; or
- (iii) there is a material change in the basis of the Consumer Prices Index,

Condition **5A** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5A.18**, a material change to any service which is subject to this Condition **5A** includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for that existing service which is subject to this Condition **5A** or a change to the billing practice for any service which is subject to this Condition **5A**.

**5A.19** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition **5A**. The data must include:

- i. pursuant to Conditions **5A.2** and **5A.6**, the calculated Percentage Starting Charge Change and the calculated Percentage Change relating to each Basket specified in Conditions **5A.1(i)** to **5A.1(iv)** and Conditions **5A.5(i)** to **5A.5(iv)** (as applicable);
- ii. all relevant data the Dominant Provider used in the calculation of the Percentage Starting Charge Change and the Percentage Change as set out in Conditions **5A.2** and **5A.6**, including for each specific service in the Basket;
- iii. all relevant Accrued Revenues during the relevant Financial Year in respect of the specific service (as applicable) in the Basket;
- iv. charges published by the Dominant Provider at time,  $t$ , during the Relevant Year and the Prior Year, including published charges for Time Limited Discounts, the Three Year Term Products but excluding any other forms of discounts;
- v. the relevant published charges at the start of each Relevant Year;
- vi. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services to which Conditions **5A.6** applies and calculations thereof;
- vii. other data necessary for monitoring compliance with the charge control;
- viii. such data as Ofcom may from time to time direct.

**5A.20** Conditions **5A.1** to **5A.19** shall not apply to such extent as Ofcom may direct.

**5A.21** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5A**.

**5A.22** In this Condition **5A**:

“**Accrued Revenue**” means:

- (i) for the purposes of Condition **5A.2** the revenue deemed to be accrued in respect of an individual service calculated:
  - a. in respect of rental, by multiplying the volume of rentals as at 31 December 2015 by the average charge (weighted according to the number of days during the 12 months preceding the 1 April 2016 on which that charge applied) in the 12 months preceding 1 April 2016 subject to the provisions set out in Condition **5A.15**; and
  - b. in respect of each service other than rental, by multiplying volumes supplied in the 12 months up to and including 31 December 2015 by average actual charges in the 12 months preceding 1 April 2016 subject to the provisions set out in Condition **5A.15**.

- (ii) for the purposes of Condition **5A.6** the revenue deemed to be accrued in respect of an individual service calculated:
  - a. in respect of rental, by multiplying the volume of rentals as at 31 December preceding the start of the Relevant Year by the average charge (weighted according to the number of days during the 12 months preceding the start of the Relevant Year on which that charge applied) in the 12 months preceding the start of the Relevant Year subject to the provisions set out in Condition **5A.15**; and
  - b. in respect of each service other than rental, by multiplying volumes supplied in the 12 months up to and including 31 December preceding the start of the Relevant Year by average actual charges in the 12 months preceding the start of the Relevant Year subject to the provisions set out in Condition **5A.15**.

**“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services specified in the Annex to this Condition **5A** during the Relevant Year;

**“Basket”** means the services listed in Conditions **5A.1(i)** to **5A.1(iv)** and **5A.5(i)** to **5A.5(iv)** and set out in the Annex to this Condition **5A**;

**“Controlling Percentage”** means a percentage to be determined in accordance with Condition **5A.7**;

**“CPI”** means the Consumer Price Index;

**“EAD”** means, for the purposes of Condition **5A.13**, each and every service described as “Ethernet Access Direct” and “Ethernet Access Direct Extended Reach” falling within the Ethernet Services Basket;

**“EAD LA”** means, for the purposes of Condition **5A.13**, each and every service described as “Ethernet Access Direct Local Access” falling within in the Ethernet Services Basket;

**“Ethernet 1Gbit/s EAD Sub-basket”** means the services listed in Conditions **5A.1(iii)** and **5A.5(iii)** and set out in Section 2 of the Annex to this Condition **5A**;

**“Ethernet Interconnection Sub-basket”** means the services listed in Conditions **5A.1(ii)** and **5A.5(ii)** and set out in Section 1 of the Annex to this Condition **5A**;

**“Ethernet Main Link Sub-basket”** means the services listed in Conditions **5A.1(iv)** and **5A.5(iv)** and set out in Section 3 of the Annex to this Condition **5A**;

**“Ethernet Services Basket”** means the services listed in Conditions **5A.1(i)** and **5A.5(i)** and set out in Sections 1 to 5 of the Annex to this Condition **5A**;

**“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition **5A**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition **5A** if it had complied with the requirements set out in Conditions **5A.1** and **5A.5**;

**“Financial Year”** has the same meaning as in Condition 11;

**“First Relevant Year”** means a period beginning on 2 April 2016 and ending on 31 March 2017;

**“Initial Charge”** means a charge for each service in the Ethernet Services Basket on 1 April 2016 which results from the Dominant Provider complying with Condition 5A.1;

**“Percentage Change”** has the meaning given to it in Condition 5A.6;

**“Percentage Starting Charge Change”** has the meaning given to it in Condition 5A.2;

**“Prior Year”** means, in relation to each Relevant Year, the 12 months immediately preceding that Relevant Year;

**“Prior Year Weighted Average Charge”** means a charge to be determined in accordance with the relevant formula in Condition 5A.6;

**“Relevant Year”** means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

**“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;

**“Relevant Year Weighted Average Charge”** means a charge to be determined in accordance with the relevant formula in Condition 5A.6;

**“Second Relevant Year”** means a period beginning on 1 April 2017 and ending on 31 March 2018;

**“Third Relevant Year”** means a period beginning on 1 April 2018 and ending on 31 March 2019;

**“Three Year Term Product”** means any service offered by the Dominant Provider during each of the Relevant Years which:

- (i) has a minimum contract period of three years;
- (ii) does not include any connection charge; and
- (iii) includes a rental charge which complies with the following formula:

$$R3_t = \frac{1}{3}C1_t + R1_t$$

Where

$R3_t$  is the rental charge of the Three Year Term Product in period t (paid by both new and existing Third Parties);

$C1_t$  is the connection charge of the 1 year term product in period  $t$ ;

$R1_t$  is the rental charge of the 1 year term product in period  $t$ ; and

**“Time Limited Discount”** means any temporary reduction in the charge for a service (“initial charge”) where the reduction is reversed after a period of time at which point the revised charge is increased to the same level as the initial charge was immediately before the reduction was implemented.

## Annex to Condition 5A

### Services subject to charge control pursuant to Condition 5A

#### Section 1

##### Meaning of “Ethernet Interconnection Sub-basket”

For the purposes of Condition **5A**, the expression “**Ethernet Interconnection Sub-basket**” shall be construed as including the following services with bandwidths up to and including 1Gbit/s, excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

##### **Bulk Transport Link for 1Gbps<sup>1</sup>**

Connection, rental and migration charges for:

- Openreach Handover Point (OHP) Hub
- MainLink
- Point of Presence (PoP)

Additional charges

Cancellation charges

#### Section 2

##### Meaning of “Ethernet 1Gbit/s EAD Sub-basket”

For the purposes of Condition **5A**, the expression “**Ethernet 1Gbit/s EAD Sub-basket**” shall be construed as including the following services with bandwidths of 1Gbit/s excluding EAD LA as defined in Condition **5A.22** and excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of services for another (in which case this list shall be construed accordingly).

##### **Ethernet Access Direct (EAD)<sup>2</sup>**

Connection and rental charges for:

- EAD circuits
  - EAD 1000
  - EAD 1000 (60 month minimum period)
  - EAD 1000 (84 month minimum period)

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<sup>1</sup> Openreach, *Price List, Bulk Transport Link*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2BtzIW%2FvYZGtoQraq%2BNu4alFhZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

<sup>2</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015. For the avoidance of doubt, this excludes EAD LA products and services.

- EAD 1000 Extended Reach
- EAD 1000 Extended Reach (60 month minimum period)
- EAD 1000 Extended Reach (84 month minimum period)
- EAD Modify – upgrade charges
  - EAD Access 10 to 1000 or 1000 (60 month minimum period)
  - EAD Access 10 to 1000 (84 month minimum period)
  - EAD Access 100 to 1000 or 1000 (60 month minimum period)
  - EAD Access 100 to 1000 or 1000 (84 month minimum period)
  - EAD Access 1000 to 1000 or 1000 (60 month minimum period)
  - EAD Access 1000 (12 months or 60 months minimum period) to 1000 (84 month minimum period).
  - EAD 10 Extended Reach to 1000 Extended Reach or 1000 Extended Reach (60 month minimum period).
  - EAD 10 Extended Reach to 1000 Extended Reach (84 month minimum period).
  - EAD 100 Extended Reach to 1000 Extended Reach or 1000 Extended Reach (60 month minimum period).
  - EAD 100 Extended Reach to EAD 1000 Extended Reach (84 month minimum period).
  - EAD 1000 Extended Reach (12 months or 60 months minimum period) to 1000 (84 month minimum period).
- EAD SyncE Modify – upgrade charges
  - EAD10/100 to EAD 1000 SyncE (12 or 60 month minimum period)
  - EAD10/100 to EAD 1000 SyncE (84 month minimum period)
  - EAD10ER/100ER to EAD 1000 ER SyncE (12 or 60 month minimum period)
  - EAD10ER/100ER to EAD 1000 ER SyncE (84 month minimum period)
  - EAD 1000 SyncE (12 or 60 month minimum period) to EAD 1000 SyncE (12 or 60 month minimum period)
  - EAD 1000 SyncE (84 month minimum period) to EAD 1000 SyncE (84 month minimum period)
  - EAD 1000 SyncE (12 or 60 month minimum period) to EAD 1000 SyncE (84 month minimum period)
  - EAD 1000 ER (12 or 60 month minimum period) to EAD 1000 ER SyncE (12 or 60 month minimum period)
  - EAD 1000 ER (84 month minimum period) to EAD 1000 ER SyncE (84 month minimum period)
  - EAD 1000 ER (12 or 60 month minimum period) to EAD 1000 ER SyncE (84 month minimum period)
  - EAD SyncE to EAD 1000 SyncE (60 month minimum period)
  - EAD 1000 SyncE (12 or 60 month minimum period) to EAD 1000 SyncE (84 month minimum period)
  - EAD 1000 ER SyncE (12 month minimum period) to EAD 1000 ER SyncE (60 month minimum period)
  - EAD 1000 ER SyncE (12 or 60 month minimum period) to EAD 1000 ER SyncE (84 month minimum period)

- WES/WEES/BES to EAD Transfer migration charges
  - WES/WEES 10 Unmanaged to EAD 1000 (standard or 60 month minimum period)
  - WES/WEES 10 Unmanaged to EAD 1000 (84 month minimum period)
  - WEES 10 Managed to EAD 1000 (standard or 60 month minimum period)
  - WES/WEES 10 Managed to EAD 1000 (84 month minimum period)
  - WES/WEES 10 LR to EAD 1000 (standard or 60 month minimum period)
  - WES/WEES 10 LR to EAD 1000 (84 month minimum period)
  - WES/WEES 100 to EAD 1000 (standard or 60 month minimum period)
  - WES/WEES 100 to EAD 1000 (84 month minimum period)
  - WES/WEES 100 Resilience Option 1 to EAD 100 Resilient Option 1 (standard or 60 month minimum period)
  - WES/WEES 100 Resilience Option 1 to EAD 100 Resilient Option 1 (84 month minimum period)
  - WES/WEES 155 to EAD 1000 (standard or 60 month minimum period)
  - WES/WEES 155 to EAD 1000 (84 month minimum period)
  - WES/WEES 622 to EAD 1000 (standard or 60 month minimum period)
  - WES/WEES 622 to EAD 1000 (84 month minimum period)
  - BES/BES Daisy Chain 10 to EAD 1000 (standard or 60 month minimum period)
  - BES/BES Daisy Chain 10 to EAD 1000 (84 month minimum period)
  - BES/BES Daisy Chain 100 to EAD 1000 (standard or 60 month minimum period)
  - BES/BES Daisy Chain 100 to EAD 1000 (84 month minimum period)
  - BES/BES Daisy Chain 155 to EAD 1000 (standard or 60 month minimum period)
  - BES/BES Daisy Chain 155 to EAD 1000 (84 month minimum period)
  - BES/BES Daisy Chain 622 to EAD 1000 (standard or 60 month minimum period)
  - BES/BES Daisy Chain 622 to EAD 1000 (84 month minimum period)
- EAD Resilience Option 1 (Hot Standby)
  - EAD 1000 Resilient Option 1
  - EAD 1000 Resilient Option 1 (60 month minimum period)
  - EAD 1000 Resilient Option 1 (84 month minimum period)
  - EAD 1000 Extended Reach Resilient Option 1
  - EAD 1000 Extended Reach Resilient Option 1 (60 month minimum period)
  - EAD 1000 Extended Reach Resilient Option 1 (84 month minimum period)
- EAD SyncE
  - EAD SyncE 1000
  - EAD SyncE 1000 (60 month minimum period)
  - EAD SyncE 1000 (84 month minimum period)
  - EAD SyncE 1000 Extended Reach
  - EAD SyncE 1000 Extended Reach (60 month minimum period)
  - EAD SyncE 1000 Extended Reach (84 month minimum period)
  - EAD SyncE 1000 Resilient Option 1
  - EAD SyncE 1000 Resilient Option 1 (60 month minimum period)

- EAD SyncE 1000 Resilient Option 1 (84 month minimum period)
- EAD SyncE 1000 Extended Reach Resilient Option 1
- EAD SyncE 1000 Extended Reach Resilient Option 1 (60 month minimum period)
- EAD SyncE 1000 Extended Reach Resilient Option 1 (84 month minimum period)
- EAD Enable
  - EAD Enable 1000
  - EAD Enable 1000 Resilient Option 1
  - EAD Enable 1000 Extended Reach
  - EAD Enable 1000 Extended Reach Resilient Option 1
  - EAD Enable 1000 (60 month term)
  - EAD Enable 1000 Resilient Option 1 (60 month term)
  - EAD Enable 1000 Extended Reach (60 month term)
  - EAD Enable 1000 Extended Reach Resilient Option 1 (60 month term)

### Section 3

#### Meaning of “Ethernet Main Link Sub-basket”

For the purposes of Condition **5A**, the expression “**Ethernet Main Link Sub-basket**” shall be construed as including the following services with bandwidths up to and including 1Gbit/s, excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### Ethernet Access Direct (EAD) Main Link<sup>3</sup>

EAD Main Link charges

RO2 Resilience Main Link charges

RO1 Resilience Main Link charges

EAD Enable Main Link charges

EAD Enable RO2 Resilience Main Link charges

EAD Enable RO1 Resilience Main Link charges

#### Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)<sup>4</sup>

WES/WEES Main Link charges

#### Backhaul Network Services (BNS)<sup>5</sup>

<sup>3</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015. For the avoidance of doubt, this excludes EAD LA.

<sup>4</sup> Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jbarofqqfNi%2BYxJT%2BWx9RC8ygO7YK%2FGFXHQKYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> as at 28 May 2015.

<sup>5</sup> Openreach, *Price List, Backhaul Network Services (BNS)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4>

BNS Component Pricing Table Connection and rental charges – Main Link

### **Openreach Network Backhaul Services<sup>6</sup>**

Main Link connection and rental charges

### **Backhaul Extension Service (BES)<sup>7</sup>**

Main Link connection and rental charges

## **Section 4**

### **Meaning of EAD / EAD LA for the purposes of Condition 5A.13**

For the purposes of Condition **5A.13**, the expression **EAD** shall be construed as including the following services with bandwidths up to and including 1Gbit/s, excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

### **Ethernet Access Direct (EAD)<sup>8</sup>**

Connection and rental charges for all of the services listed in Section 2 and connection and rental charges for these additional services:

- EAD circuits
  - EAD 10
  - EAD 100
  - EAD 10 Extended Reach
  - EAD 100 Extended Reach
- EAD Modify – upgrade charges
  - EAD 10 to 100
  - EAD 10 Extended Reach to EAD 100 Extended Reach
- EAD SyncE Modify – upgrade charges
  - EAD 10/100 to EAD 100 SyncE
  - EAD 10ER/100ER to EAD 100ER SyncE
- WES/WEES/BES to EAD Transfer migration charges
  - WES/WEES 10 Unmanaged to EAD 10

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[GL92i3NosYRiske12ZrKBXGHf8sPBYwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D](#) as at 28 May 2015.

<sup>6</sup> Openreach, *Price List, Openreach Network Backhaul Services*,  
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRhrww6STLWGzW%2F0BqqNvfllIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D>  
as at 28 May 2015.

<sup>7</sup> Openreach, *Price List, Backhaul Extension Service (BES)*,  
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa0DzFBxAUIONmpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D>  
as at 28 May 2015.

<sup>8</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,  
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D>  
as at 28 May 2015.

- WES/WEES 10 Managed to EAD 10
- WES/WEES 10 Unmanaged to EAD 100
- WES/WEES 10 Managed to EAD 100
- WES/WEES 10 LR to EAD 100
- WES/WEES 100 to EAD 100
- BES/BES Daisy Chain 10 to EAD 100
- EAD Resilience Option 1 (Hot Standby)
  - EAD 10 Resilient Option 1
  - EAD 100 Resilient Option 1
  - EAD 10 Extended Reach Resilient Option 1
  - EAD 100 Extended Reach Resilient Option 1
- EAD SyncE
  - EAD SyncE 100
  - EAD SyncE 100 Extended Reach
  - EAD SyncE 100 Resilient Option 1
  - EAD SyncE 100 Extended Reach Resilient Option 1
- EAD Enable
  - EAD Enable 10
  - EAD Enable 10 Resilient Option 1
  - EAD Enable 100
  - EAD Enable 100 Resilient Option 1

For the purposes of Condition **5A.13**, the expression **EAD LA** shall be construed as including the following services with bandwidths up to and including 1Gbit/s, excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Ethernet Access Direct Local Access (EAD LA)<sup>9</sup>**

Connection and rental charges for:

- EAD Modify upgrade charges
  - EAD Local Access 10 LA to 100 LA
  - EAD Local Access 10 LA to 1000 LA or 1000 LA (60 month minimum period)
  - EAD Local Access 10 LA to EAD 1000 LA (84 month minimum period)
  - EAD Local Access 100 LA to 1000 LA or 1000 LA (60 month minimum period)
  - EAD Local Access 100 LA to EAD 1000 LA (84 month minimum period)
  - EAD Local Access 1000 LA to 1000 LA (60 month minimum period)
  - EAD Local Access 1000 LA (12 months or 60 months min period) to EAD 1000 LA (84 month minimum period)
- EAD SyncE Modify upgrade charges

<sup>9</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

- EAD 10LA/100LA to 1000 LA SyncE (84 month minimum period)
  - EAD 10LA/100LA to 1000 LA SyncE (12 or 60 month minimum period)
  - EAD 1000LA (12 or 60 month minimum period) to 1000 LA SyncE (12 or 60 month minimum period)
  - EAD 1000LA (84 month minimum period) to 1000 LA SyncE (84 month minimum period)
  - EAD 1000LA (12 or 60 month minimum period) to 1000 LA SyncE (84 month minimum period)
  - EAD 1000 LA SyncE to EAD 1000 LA SyncE (60 month minimum period)
  - EAD 1000 LA SyncE (12 months or 60 months min period) to EAD 1000 LA SyncE (84 month minimum period)
- WES/WEES/BES to EAD Transfer migration charges
  - WES/WEES 10 LA to EAD 100 LA
  - WES/WEES 10 LA to EAD 1000 LA (standard or 60 month minimum period)
  - WES/WEES 10 LA to EAD 1000 LA (84 month minimum period)
  - WES/WEES 10 LR to EAD 100 LA
  - WES/WEES 10 LR to EAD 1000 LA (standard or 60 month minimum period)
  - WES/WEES 10 LR to EAD 1000 LA (84 month minimum period)
  - WES 100 LA to EAD 100 LA
  - WES/WEES 100 LA to EAD 1000 LA (standard or 60 month minimum period)
  - WES/WEES 100 LA to EAD 1000 LA (84 month minimum period)
- EAD Local Access 10 Mbit/s circuits and above
  - All connection and rental charges
- EAD Resilience Option 1 (Hot Standby)
  - EAD 10 Local Access Resilient Option 1
  - EAD 100 Local Access Resilient Option 1
  - EAD 1000 Local Access Resilient Option 1
  - EAD 1000 Local Access Resilient Option 1 (60 month minimum period)
  - EAD 1000 Local Access Resilient Option 1 (84 month minimum period)
- EAD SyncE
  - EAD SyncE 100 Local Access
  - EAD SyncE 1000 Local Access
  - EAD SyncE 1000 Local Access (60 month minimum period)
  - EAD SyncE 1000 Local Access (84 month minimum period)
  - EAD SyncE 100 Local Access Resilient Option 1
  - EAD SyncE 1000 Local Access Resilient Option 1
  - EAD SyncE 1000 Local Access Resilient Option 1 (60 month minimum period)
  - EAD SyncE 1000 Local Access Resilient Option 1 (84 month minimum period)
- EAD Enable
  - EAD Enable 10 Local Access
  - EAD Enable 10 Local Access Resilient Option 1

- EAD Enable 100 Local Access
- EAD Enable 100 Local Access Resilient Option 1
- EAD Enable 1000 Local Access
- EAD Enable 1000 Local Access Resilient Option 1
- EAD Enable 1000 Local Access Resilient Option 1 (60 month term)
- EAD Enable 1000 Local Access (60 month term)

## Section 5

### Meaning of “Ethernet All Services Sub-cap”

For the purposes of Condition **5A**, the expression “**Ethernet All Services Sub-cap**” shall be construed as including the services referred to in Sections 1, 2, 3 and 4 and the following services with bandwidths up to and including 1Gbit/s, excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)**<sup>10</sup>

Connection and Rental Charges

Main Link charges

Upgrade charges

Re-grade charges

Additional charges

Cancellation Charges

Circuit Shift Charges

Resilience options - connection and rental charges

Migration Charges

#### **Backhaul Network Services (BNS)**<sup>11</sup>

Component Pricing Table - Connection and rental charges

Upgrade charges

Additional charges

Cancellation charges

#### **Openreach Network Backhaul Services**<sup>12</sup>

Connection and rental charges

Resilience charges

Cancellation charges

<sup>10</sup> Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jbarofqgfNi%2BYxJT%2BWx9RC8ygO7YK%2FGFXHQKYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> as at 28 May 2015.

<sup>11</sup> Openreach, *Price List, Backhaul Network Services (BNS)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRiskel2ZrKBXGHf8sPBWlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> as at 28 May 2015.

<sup>12</sup> Openreach, *Price List, Openreach Network Backhaul Services*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcog3gDRhrww6STLWGzW%2F0BqqNvfllMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> as at 28 May 2015.

### **Ethernet Backhaul Direct<sup>13</sup>**

Connection and rental charges  
Upgrade charges  
Migration charges  
Resilience charges  
Cancellation charges  
Shift charges  
Service Features charges

### **Backhaul Extension Service (BES)<sup>14</sup>**

Connection and rental charges  
Additional charges  
Main Link charges  
Upgrade Charges  
Migration charges  
Circuit Shift charges  
Resilience charges  
Cancellation charges

### **Ethernet Access Direct (EAD)<sup>15</sup>**

Managed migration options  
Cancellation charges  
Termination charges

## **Interpretation**

Except insofar as the context otherwise requires, the terms or descriptions of services used in this Annex shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its services. These are currently found as follows:

- Services within the “**Ethernet Services Basket**” please refer to <http://www.openreach.co.uk/orpg/home/home.do>
- Specifically:
  - For EAD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/ethernet-access-direct/ead.do>
  - For EBD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/ethernet-backhaul-direct/ebd.do>

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<sup>13</sup> Openreach, *Price List, Ethernet Backhaul Direct*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiItaVZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

<sup>14</sup> Openreach, *Price List, Backhaul Extension Service (BES)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa0DzFBxAUIONmpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 28 May 2015.

<sup>15</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

- For BTL, please refer to  
<http://www.openreach.co.uk/orpg/home/products/ethernetservices/bulktransportlink/bulktransportlink.do>
- For WES/WEES, please refer to  
<http://www.openreach.co.uk/orpg/home/products/ethernetservices/wholesaleextensionsservices/wes.do>
- For BES, please refer to  
<http://www.openreach.co.uk/orpg/home/products/ethernetservices/backhaulextensionsservices/bes.do>
- For Openreach Network Backhaul Service, please refer to  
<http://www.openreach.co.uk/orpg/home/products/ethernetservices/openreachnetworkbackhaulservices/onbs.do>
- For Backhaul Network Service, please refer to  
<http://www.openreach.co.uk/orpg/home/products/ethernetservices/backhaulnetworkservices/bns.do>

## Condition 5B

### ***Controls of safeguard cap for Very High CISBO Services***

**5B.1** The Dominant Provider shall take all reasonable steps to secure that, during each Relevant Year, the Percentage Change in each of the charges for each and every Very High CISBO Service is not greater than 0 percentage points.

For the purpose of this Condition **5B.1**, the Percentage Change shall be calculated by employing the formula set out in Condition **5B.2**.

**5B.2** The Percentage Change, for the purposes of each Very High CISBO Service, shall be calculated, for the purposes of complying with Condition **5B.1**, by employing the following formula:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

$C_t$  is the Percentage Change in charges for the specific Very High CISBO Service for the Relevant Year  $t$ ;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_t$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Very High CISBO Service; and

$\bar{p}_{t-1}$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Prior Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Very High CISBO Service.

### ***General provisions and interpretation***

**5B.3** Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **5B**; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends,

Condition **5B** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5B.3**, a material change to any service which is subject to this Condition **5B** includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for that existing service which is subject

to this Condition **5B** or a change to the billing practice for any service which is subject to this Condition **5B**.

**5B.4** Conditions **5B.1** to **5B.3** shall not apply to such extent as Ofcom may direct.

**5B.5** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5B**.

**5B.6** In this Condition **5B**:

“**Financial Year**” has the same meaning as in Condition **11**;

“**First Relevant Year**” means a period beginning on 1 April 2016 and ending on 31 March 2017;

“**Percentage Change**” has the meaning given to it in Condition **5B.2**;

“**Prior Year**” means, in relation to each Relevant Year, the 12 months immediately preceding that Relevant Year;

“**Relevant Year**” means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

“**Second Relevant Year**” means a period beginning on 1 April 2017 and ending on 31 March 2018;

“**Third Relevant Year**” means a period beginning on 1 April 2018 and ending on 31 March 2019; and

“**Very High CISBO Services**” means the services defined and listed in the Annex to this Condition **5B**.

## Annex to Condition 5B

### Services subject to charge control pursuant to Condition 5B

#### Section 1

##### Meaning of “Very High CISBO Services”

For the purposes of Condition 5B, the expression “**Very High CISBO Services**” shall be construed as including the services within the “**Ethernet Services Basket**” with bandwidth above 1Gbit/s, excluding all of the services specified in the Annex to Condition 5F and in the Annex to Condition 5G, and the services with bandwidths above 1Gbit/s referred to in Section 2 as “**WDM Services**”, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### Section 2

##### Meaning of “WDM Services”

For the purposes of Condition 5B, the expressions “**WDM Services**” shall be construed as including the following services with bandwidths above 1Gbit/s, excluding all of the services specified in the Annex to Condition 5F and in the Annex to Condition 5G, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

##### **Optical Spectrum Access (OSA)**<sup>16</sup>

- Connection and rental charges
- Main Link charges
- Upgrade charges
- Cancellation charges
- Shift charges
- Service reconfiguration charges
- Abortive Visit charges
- Amend Order Request charges
- Optical Assist charges

##### **Optical Spectrum Extended Access**<sup>17</sup>

- Connection and rental charges
- Main Link charges
- Cancellation charges
- Shift charges
- Service reconfiguration charges

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<sup>16</sup> Openreach, *Price List, Optical Spectrum Access*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yiJl4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

<sup>17</sup> Openreach, *Price List, Optical Spectrum Extended Access*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbIKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

### Interpretation

Except insofar as the context otherwise requires, the terms or descriptions of services used in this Annex shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its services. These are currently found as follows:

- **“Very High CISBO Services”** please refer to <http://www.openreach.co.uk/orpg/home/home.do>

## Condition 5C

### ***Basis of charges obligation in relation to the Dark Fibre Services***

**5C.1** The Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that each and every charge offered or payable for a Dark Fibre Service is reasonably derived from the charge for the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service (or such other services as Ofcom may direct from time to time) for the corresponding Relevant Year, adjusted to:

- (i) subtract the long run incremental costs that are avoided by the Dominant Provider when providing that Dark Fibre Service instead of the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service, such costs to be averaged over the Relevant Year; and
- (ii) reflect the long run incremental costs of any objectively justifiable differences (except any differences in circuit length) between that Dark Fibre Service and the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service, such costs to be averaged over the Relevant Year.

**5C.2** Where the Dark Fibre Service is a service providing network access to more than one optical fibres, in addition to complying with the requirements set out in Condition **5C.1**, the Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that the charge (determined in accordance with Condition **5C.1**) does not exceed an amount calculated by:

- (i) multiplying the charge for a corresponding single fibre 1Gbit/s EAD Service or 1Gbit/s EAD LA Service by the number of optical fibres included in that Dark Fibre Service; and
- (ii) adjusting that amount (determined in accordance with Condition **5C.2(i)**) to reflect any incremental cost savings of providing network access to more than one optical fibres at the same time.

**5C.3** For the purposes of complying with Condition **5C.1** the long run incremental costs that are avoided by the Dominant Provider when providing that Dark Fibre Service instead of the appropriate corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service shall be calculated by reference to the Regulatory Financial Statements and the Accounting Methodology Documents for the Prior Year.

### ***General provisions and interpretation***

**5C.4** Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any Dark Fibre Service which is subject to this Condition **5C**; or

- (ii) the Dominant Provider makes a material change (other than to a charge) to any 1Gbit/s EAD Service or 1Gbit/s EAD LA Service which is subject to this Condition **5C**; or
- (iii) the Dominant Provider makes a change to the date on which its Financial Year ends,

Condition **5C** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5C.4**, a material change to any Dark Fibre Service or to any 1Gbit/s EAD Service or 1Gbit/s EAD LA Service (each of which is subject to this Condition **5C**) includes (but is not limited to) the introduction of a new product or service (as applicable) wholly or substantially in substitution for that existing product or service (as applicable) which is subject to this Condition **5C** or a change to the billing practice for any product or service which is subject to this Condition **5C**.

**5C.5** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format (including in any such presentational form or arrangement (including as to the level of disaggregation) as Ofcom may direct from time to time), no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with Conditions **5C.1** to **5C.3** in respect of Dark Fibre Services. This data must include for each and every Dark Fibre Service:

- (i) the published charge for that Dark Fibre Service and the published charge for the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service;
- (ii) unit long run incremental costs that have been avoided by the Dominant Provider when providing that Dark Fibre Service instead of the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service;
- (iii) unit long run incremental costs of any objectively justifiable differences between that Dark Fibre Service and the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service;
- (iv) unit incremental cost savings of providing network access to more than one optical fibres at the same time;
- (v) all relevant data and methodology used by the Dominant Provider for deriving the charge for that Dark Fibre Service;
- (vi) such data as Ofcom may direct from time to time.

**5C.6** Conditions **5C.1** to **5C.5** shall not apply to such extent as Ofcom may direct.

**5C.7** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5C**.

**5C.8** In this Condition **5C**:

“**1Gbit/s EAD Service**” means each and every service with bandwidth of 1Gbit/s described as “Ethernet Access Direct” falling within the Ethernet Services Basket;

**“1Gbit/s EAD LA Service”** means each and every service with bandwidth of 1Gbit/s described as “Ethernet Access Direct Local Access” falling within the Ethernet Services Basket;

**“Accounting Methodology Documents”** has the same meaning as in Condition 11;

**“Financial Year”** has the same meaning as in Condition 11;

**“First Relevant Year”** means a period beginning on 1 April 2016 and ending on 31 March 2017;

**“Prior Year”** means in relation to each of the Relevant Years the period of twelve months ending on 31 December immediately preceding that Relevant Year;

**“Regulatory Financial Statement”** has the same meaning as in Condition 11;

**“Relevant Year”** means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

**“Second Relevant Year”** means a period beginning on 1 April 2017 and ending on 31 March 2018; and

**“Third Relevant Year”** means a period beginning on 1 April 2018 and ending on 31 March 2019.

## Condition 5D

### *Controls of the TI Services Basket*

#### Initial Charges on 1 April 2016

**5D.1** Subject to the provision set out in Condition **5D.14**, the Dominant Provider shall take all reasonable steps to secure that on 1 April 2016 for each of:

- i. the TI Services Basket; and
- ii. the TI Mobile Services Sub-basket,

(each of which is referred to in Condition **5D** as “**Basket**” unless otherwise specified) the Percentage Starting Charge Change (determined in accordance with Condition **5D.2** below) in the aggregate of charges for all of the services falling within the relevant Basket is not greater than minus 7.75 percentage points.

**5D.2** The Percentage Starting Charge Change, for the purposes of each of the Baskets specified in Conditions **5D.1(i)** and **5D.1(ii)**, shall be calculated, for the purposes of complying with Condition **5D.1**, by employing the following formula:

$$SC_t = \frac{\sum_{i=1}^n \left[ R_i \frac{(s\bar{p}_{i,t} - s\bar{p}_{i,t-1})}{s\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

$SC_t$  is the Percentage Starting Charge Change in the aggregate of charges for the services in the Basket on 1 April 2016;

$n$  is the number of individual services in the Basket;

$i$  is a number from 1 to  $n$  for each of the  $n$  individual services in the Basket;

$R_i$  is the Accrued Revenue in respect of the individual service  $i$  falling within the Basket;

$t$  refers to 1 April 2016;

$t-1$  refers to 31 March 2016;

$s\bar{p}_{i,t}$  is the Charge made by the Dominant Provider for the individual service  $i$  falling within the Basket on 1 April 2016, subject to the provision set out in Condition **5D.14**;

$s\bar{p}_{i,t-1}$  is the charge for the individual service  $i$  falling within the Basket on 31 March 2016, subject to the provision set out in Condition **5D.14**.

**5D.3** In the case of each of the services falling within the TI Services Basket, the Dominant Provider shall take all reasonable steps to secure that, on 1 April 2016, the Percentage Starting Charge Change in discrete charges for each and every service falling within the TI Services Basket is not greater than:

- i. zero where CPI is less than or equal to 5 percentage points;
- ii. CPI minus 5 percentage points where CPI is greater than 5 percentage points.

**5D.4** For the purposes of Condition **5D.3** the Percentage Starting Charge Change shall be calculated by employing the formula set out below :

$$SC_t = \frac{(\bar{sp}_t - \bar{sp}_{t-1})}{\bar{sp}_{t-1}}$$

Where:

SC<sub>t</sub>, is the Percentage Starting Charge Change in charges for the specific service in the TI Services Basket on 1 April 2016;

$\bar{p}_t$  is the Charge made by the Dominant Provider for the individual service *i* falling within the TI Services Basket on 1 April 2016, subject to the provision set out in Condition **5D.14**; and

$\bar{p}_{t-1}$  is the Charge for the individual service *i* falling within the TI Services Basket on 31 March 2016, subject to the provision set out in Condition **5D.14**.

## Controls from 2 April 2016

### Basket and Sub-basket Controls

**5D.5** Subject to the provision set out in Condition **5D.14**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, for each of:

- i. the TI Services Basket; and
- ii. the TI Mobile Services Sub-basket'

(each of which is referred to in Condition **5D** as “**Basket**” unless otherwise specified) the Percentage Change (as determined in accordance with Condition **5D.6**) in the aggregate of charges for all of the services falling within each Basket is not greater than the Controlling Percentage (determined in accordance with Condition **5D.7**).

**5D.6** The Percentage Change for the purposes of each of the Baskets specified in Conditions **5D.5(i)** and **5D.5(ii)** shall be calculated, for the purposes of complying with Condition **5D.5**, by employing the following formula:

$$C_t = \frac{\sum_{i=1}^n \left[ R_i \frac{(\bar{p}_{i,t} - \bar{p}_{i,t-1})}{\bar{p}_{i,t-1}} \right]}{\sum_{i=1}^n R_i}$$

Where:

C<sub>t</sub> is the Percentage Change in the aggregate of charges for the services in the Basket for Relevant Year t;

n is the number of individual services in the Basket;

$i$  is a number from 1 to  $n$  for each of the  $n$  individual services in the Basket;

$R_i$  is the Accrued Revenue in the Relevant Year in respect of the individual service  $i$  falling within the Basket;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_{i,t}$  is the Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service  $i$  falling within the Basket during the Relevant Year, subject to the provisions set out in **5D.14**:

Where such Relevant Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{i,t} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

$m$  is the number of time periods for which there are distinct charges during the Relevant Year;

$j$  is a number from 1 to  $m$  for each of the  $m$  time periods during which a distinct charge is in effect;

$w_{i,j,t}$  is the proportion of the Relevant Year in which each charge;

$p_{i,j,t}$  is calculated by the number of days during which the charge is in effect and dividing:

- (i) for the First Relevant Year, by 364;
- (ii) for the Second Relevant Year, by 365; and
- (iii) for the Third Relevant Year, by 365.

$p_{i,j,t}$  is the charge for the specified period,  $j$ , during the Relevant Year  $t$  for the individual service,  $i$ ;

$\bar{p}_{i,t-1}$  is, for the purposes of calculating the Percentage Change:

- (i) for the First Relevant Year, the Initial Charge for the individual service  $i$  falling within the Basket during the Prior Year, subject to the provisions set out in Condition **5D.14**;
- (ii) for the Second Relevant Year and the Third Relevant Year, the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service  $i$  falling within the Basket during the Prior Year, subject to the provisions set out in Condition **5D.14**;

Where such Prior Year Weighted Average Charge shall be calculated by employing the following formula:

$$\bar{p}_{i,t-1} = \sum_{j=1}^m (w_{i,j,t-1} p_{i,j,t-1})$$

Where:

$m$  is the number of time periods for which there are distinct charges during the Prior Year;

$j$  is a number from 1 to  $m$  for each of the  $m$  time periods during which a distinct charge is in effect;

$w_{i,j,t-1}$  is the proportion of the Prior Year in which a distinct charge is in effect;

$p_{i,j,t-1}$ , is calculated by the number of days during which the charge is in effect and dividing:

- (i) for the Second Relevant Year, by 365;
- (ii) for the Third Relevant Year, by 365.

$p_{i,j,t-1}$  is the charge for the individual period,  $j$ , during the Prior Year,  $t-1$ , for the individual service,  $i$ .

**5D.7** Subject to the provisions set out in Conditions **5D.8** to **5D.10** below, the Controlling Percentage in relation to any Relevant Year for the Baskets specified in Conditions **5D.5(i)** and **5D.5(ii)** shall be calculated, for the purposes of complying with Condition **5D.5**, by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$CPI_t$  is CPI for the Relevant Year,  $t$ ;

$X$  is equal to -12.25 percentage points.

**5D.8** Where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is:

- i. less than the Controlling Percentage ("**Deficiency**") for each of the Baskets specified in in Conditions **5D.5(i)** and **5D.5(ii)**; or
- ii. greater than the Controlling Percentage ("**Excess**") for each of the Baskets specified in in Conditions **5D.5(i)** and **5D.5(ii)**

the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition **5D.9** below.

**5D.9** In the case of Deficiency or Excess, the Controlling Percentage for each of the Baskets specified in Conditions **5D.5(i)** and **5D.5(ii)** shall be calculated by employing the following formula:

$$CP_t = [(100\% + CPI + X)(100\% + CP_{t-1}) / (100\% + C_{t-1})] - 100\%$$

Where:

$CP_t$  is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year);

$CP_{t-1}$  is the Controlling Percentage for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year).

$C_{t-1}$  is the Percentage Change for each of the Baskets specified in Conditions **5D.5(i)** and **5D.5(ii)** during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for  $C_t$  set out in Condition **5D.6**, as applicable; and

$X$  is as set out in Condition **5D.7** above.

**5D.10** In the case of Excess, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

#### Sub-Caps Control

**5D.11** In the case of each of the services falling within the TI Services Basket, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change in discrete charges for each and every service falling within the TI Services Basket is not greater than:

- i. zero where CPI is less than or equal to 5 percentage points; or
- ii. CPI minus 5 percentage points where CPI is greater than 5 percentage points.

**5D.12** For the purposes of Condition **5D.11** the Percentage Change shall be calculated by employing the formula set out below:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

$C_t$  is the Percentage Change in charges for the specific service falling within the TI Services Basket for the Relevant Year  $t$ ;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_t$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to individual service  $i$  falling within each specific Basket set out in Condition **5D**; and

$\bar{p}_{t-1}$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within each specific Basket set out in Condition **5D**.

#### General to the Controls in the First Relevant Year

**5D.13** The Dominant Provider may set charges on 1 April 2016 in order to give effect to the changes required both on 1 April 2016 and for the First Relevant Year. Should the Dominant Provider do so, it shall be deemed in compliance with its obligations under Conditions **5D.1** to **5D.12**, provided it secures, and is able to demonstrate to the satisfaction of Ofcom, that the charges set on 1 April 2016 are equal to those that would have complied with the requirements set out in Conditions **5D.1** to **5D.12** had they been set through separate changes required both on 1 April 2016 and for the First Relevant Year.

#### General to the Controls from 2 April 2016

**5D.14** For the purposes of determining compliance with Condition **5D** the relevant charges should be calculated on the basis of:

- i. including Time Limited Discounts;
- ii. including Three Year Term Products; and
- iii. excluding all other forms of discounts.

For the avoidance of doubt where a Time Limited Discount also involves another form of discount (for example it is geographically limited), such discounts should be excluded from the relevant charges.

**5D.15** For the avoidance of doubt, where the Annex to this Condition **5D** lists a service as being available with more than one minimum contract period, the charge for the purposes of determining compliance with this Condition **5D** shall be deemed to be the charge for the service with the shortest minimum contract period, subject to the provisions set out in Condition **5D.14**.

**5D.16** Where the Dominant Provider offers a service listed in the Annex to this Condition **5D** with a minimum contract period of three years, such service shall be deemed, for the purposes of determining compliance with this Condition **5D**, to be a separate service falling within the TI Services Basket provided such service complies with the requirements set out in the definition of the Three Year Term Product in Condition **5D.21**.

### ***General provisions and interpretation***

#### **5D.17** Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **5D**;
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends;
- (iii) there is a material change in the basis of the Consumer Prices Index,

Condition **5D** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5D.17**, a material change to any service which is subject to this Condition **5D** includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for that existing service (as applicable) which is subject to this Condition **5D** or a change to the billing practice for any service which is subject to this Condition **5D**.

#### **5D.18** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition **5D**. The data must include:

- i. pursuant to Conditions **5D.2** and **5D.6**, the calculated Percentage Starting Charge Change and the calculated Percentage Change relating to each Basket specified in Conditions **5D.1(i)** and **5D.1(ii)** and Conditions **5D.5(i)** and **5D.5(ii)** (as applicable);
- ii. all relevant data the Dominant Provider used in the calculation of the Percentage Starting Charge Change and the Percentage Change as set out in Conditions **5D.2** and **5D.6** (as applicable), including for each specific service in the Basket;
- iii. all relevant Accrued Revenues during the relevant Financial Year in respect of the specific service (as applicable) in the Basket;
- iv. charges published by the Dominant Provider at time, *t*, during the Relevant Year and in the Prior Year, including published charges for Time Limited Discounts, the Three Year Term Products but excluding any other forms of discounts;
- v. the relevant published charges at the start of each Relevant Year;
- vi. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services to which Condition **5D.6** applies and calculations thereof;
- vii. other data necessary for monitoring compliance with the charge control;
- viii. such data as Ofcom may from time to time direct.

#### **5D.19** Conditions **5D.1** to **5D.18** shall not apply to such extent as Ofcom may direct.

**5D.20** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5D**.

**5D.21** In this Condition **5D**:

**“Accrued Revenue”** means:

- (i) for the purposes of Condition **5D.2** the revenue deemed to be accrued in respect of an individual service calculated:
  - a. in respect of rental, by multiplying the volume of rentals as at 31 December 2015 by the average charge (weighted according to the number of days during the 12 months preceding the 1 April 2016 on which that charge applied) in the 12 months preceding 1 April 2016 subject to the provisions set out in Condition **5D.14**; and
  - b. in respect of each service other than rental, by multiplying volumes supplied in the 12 months up to and including 31 December 2015 by average actual charges in the 12 months preceding 1 April 2016 subject to the provisions set out in Condition **5D.14**.
- (ii) for the purposes of Condition **5D.6** the revenue deemed to be accrued in respect of an individual service calculated:
  - a. in respect of rental, by multiplying the volume of rentals as at 31 December preceding the start of the Relevant Year by the average charge (weighted according to the number of days during the 12 months preceding the start of the Relevant Year on which that charge applied) in the 12 months preceding the start of the Relevant Year subject to the provisions set out in Condition **5D.14**; and
  - b. in respect of each service other than rental, by multiplying volumes supplied in the 12 months up to and including 31 December preceding the start of the Relevant Year by average actual charges in the 12 months preceding the start of the Relevant Year subject to the provisions set out in Condition **5D.14**.

**“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services specified in the Annex to this Condition **5D** during the Relevant Year;

**“Basket”** means the services listed in Conditions **5D.1(i)** to **5D.1(iv)** and **5D.5(i)** to **5D.5(iv)** and in the Annex to this Condition **5D**;

**“Controlling Percentage”** means a percentage to be determined in accordance with Condition **5D.7**;

**“CPI”** means the Consumer Price Index;

**“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition **5D**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition **5D** if it had complied with the requirements set out in Conditions **5D.1** and **5D.5**;

**“Financial Year”** has the same meaning as in Condition **11**;

**“First Relevant Year”** means a period beginning on 2 April 2016 and ending on 31 March 2017;

**“Initial Charge”** means a charge for each service in the Ethernet Services Basket on 1 April 2016 which results from the Dominant Provider complying with Condition **5D.1**;

**“Percentage Change”** has the meaning given to it in Condition **5D.6**;

**“Percentage Starting Charge Change”** has the meaning given to it in Condition **5D.2**;

**“Prior Year”** means, in relation to each Relevant Year, the 12 months immediately preceding that Relevant Year;

**“Prior Year Weighted Average Charge”** means a charge to be determined in accordance with the relevant formula in Condition **5D.6**;

**“Relevant Year”** means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

**“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;

**“Relevant Year Weighted Average Charge”** means a charge to be determined in accordance with the relevant formula in Condition **5D.6**;

**“Second Relevant Year”** means a period beginning on 1 April 2017 and ending on 31 March 2018;

**“TI Mobile Services Sub-basket”** means the services listed in Conditions **5D.1(ii)** and **5D.5(ii)** and set out in Section 1 of the Annex to Condition **5D**;

**“TI Services Basket”** means the services listed in Conditions **5D.1(i)** and **5D.5(i)** and set out in Sections 1 and 2 of the Annex to Condition **5D**;

**“Third Relevant Year”** means a period beginning on 1 April 2018 and ending on 31 March 2019;

**“Three Year Term Product”** means any service offered by the Dominant Provider during each of the Relevant Years which:

- (i) has a minimum contract period of three years;
- (ii) does not include any connection charge; and
- (iii) includes a rental charge which complies with the following formula:

$$R3_t = \frac{1}{3}C1_t + R1_t$$

Where

$R3_t$  is the rental charge of the Three Year Term Product in period  $t$  (paid by both new and existing Third Parties);

$C1_t$  is the connection charge of the 1 year term product in period  $t$ ;

$R1_t$  is the rental charge of the 1 year term product in period  $t$ ; and

**“Time Limited Discount”** means any temporary reduction in the charge for a service (“initial charge”) where the reduction is reversed after a period of time at which point the revised charge is increased to the same level as the initial charge was immediately before the reduction was implemented.

## Annex to Condition 5D

### Services subject to charge control pursuant to Condition 5D

#### Section 1 Meaning of “TI Mobile Services Sub-basket”

For the purpose of Condition 5D, the expression “**TI Mobile Services Sub-basket**” shall be construed as including the following services at bandwidths up to and including 8Mbit/s, excluding all of the services specified in the Annex to Condition 5F and in the Annex to Condition 5G, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

#### **Radio Base Station Backhaul (2Mbit/s)<sup>18</sup>**

Circuit Connection Charges and Cell Site Infrastructure

- Connection of a New Circuit<sup>19</sup>
  - 2Mbit/s
  - 2Mbit/s Subsequent
- New Circuit on Spare Capacity<sup>20</sup>
  - 2Mbit/s

Radio Base Station Backhaul Assured Resilience<sup>21</sup>

- 2Mbit/s Full Main Link/ End to End Diversity per circuit
- 2Mbit/s Basic Diversity per circuit

Multiple Diversity Monitoring

- Annual monitoring charge per circuit 2Mbit/s

Migration charges<sup>22</sup>

- 128Kbit/s to 2Mbit/s

#### **NetStream 16 Longline<sup>23</sup>**

Hub and site charges

Connection and rental charges

#### **SiteConnect<sup>24</sup>**

Site linkage charges

Bandwidth charges

<sup>18</sup> Applies the charges for PPCs, see BT Wholesale, *Radio Base Station Backhaul*, <https://www.btwholesale.com/pages/static/products-services/radio-base-station-backhaul.htm> as at 27 May 2015.

<sup>19</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.01.

<sup>20</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.03.

<sup>21</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.03, which applies the charges for PPCs, see: <https://www.btwholesale.com/pages/static/products-services/radio-base-station-backhaul.htm> as at 27 May 2015.

<sup>22</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.01, which applies the charges for PPCs, see: BT Wholesale, *Radio Base Station Backhaul*, <https://www.btwholesale.com/pages/static/products-services/radio-base-station-backhaul.htm> as at 27 May 2015.

<sup>23</sup> These charges correspond to the BT, *Price List, NetStream*, Section 57 Subpart 3, [http://www.bt.com/pricing/current/Netstream\\_1\\_and\\_16\\_boo/3475\\_d0e2927.htm#3475-d0e2927](http://www.bt.com/pricing/current/Netstream_1_and_16_boo/3475_d0e2927.htm#3475-d0e2927)

<sup>24</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsections 12.01.01 to 12.01.04 and 12.01.15 to 12.01.17.

## Section 2

### Meaning of “TI All Services Sub-cap”

For the purpose of Condition **5D**, the expression “**TI All Services Sub-cap**” shall be construed as including the services referred to in Section 1 and the following services at bandwidths up to and including 8Mbit/s, excluding all of the services specified in the Annex to Condition **5F** and in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

#### Radio Base Station Backhaul (all bandwidths)

##### Point of Connection<sup>25</sup>

- Connection and rental charges
- Provision of STM1 Radio Access system at CSC
- 2Mbit/s Bearer Access
- Grandfathering Charges

##### Circuit Connection Charges and Cell Site Infrastructure<sup>26</sup>

- Rental and connection charges for:
  - Connection of a New Circuit<sup>27</sup>
  - Cell Site Infrastructure<sup>28</sup>
  - New Circuit on Spare Capacity<sup>29</sup>
  - Subsequent 8Mbit/s package<sup>30</sup>

##### Circuit rental charges<sup>31</sup>

- Connection and rental charges<sup>32</sup>
- Resilience charges<sup>33</sup>
- Monitoring charges<sup>34</sup>

##### Migration charges<sup>35</sup>

##### Reclassification charges<sup>36</sup>

#### Partial Private Circuits

##### Point of Handover charges<sup>37</sup>

- Connection and rental charges<sup>38</sup>

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<sup>25</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.01, which states: Please refer to the Section B8 : Partial Private Circuits Part no 8.01  
[https://www.btwholesale.com/pages/static/Library/Pricing\\_and\\_Contractual\\_Information/carrier\\_price\\_list/cpl\\_sectionb8partialprivatecircuits.htm](https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/carrier_price_list/cpl_sectionb8partialprivatecircuits.htm)

<sup>26</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.02.

<sup>27</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.01.

<sup>28</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.02.

<sup>29</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.03.

<sup>30</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.04.

<sup>31</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.03.

<sup>32</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.01.

<sup>33</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.02.

<sup>34</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.03.

<sup>35</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.01.

<sup>36</sup> These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.02.

<sup>37</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.01.

- Re-Designation and Grandfathering charges<sup>39</sup>
- Miscellaneous Generic Equipment charges<sup>40</sup>

Circuit rental charges<sup>41</sup>

- Circuit rental / migration charges<sup>42</sup>
- Partial Private Circuit 155 MSH - MSH<sup>43</sup>
- Protected Path Variant 1 and 2 Rental<sup>44</sup>
- Resilience and Monitoring charges<sup>45</sup>
- 4X2Mbit/s package - rental charges<sup>46</sup>

Circuit connection charges<sup>47</sup>

- Connection of a new circuit single charge<sup>48</sup>
- Connection of a new 'protected path variant two' circuit single charge<sup>49</sup>
- Third party customer link infrastructure single charges<sup>50</sup>
- Third party customer sited single charge<sup>51</sup>
- Miscellaneous generic equipment connection and rental<sup>52</sup>

Migration and Infrastructure Tariff Conversion charges<sup>53</sup>

- Circuit Migration Charges<sup>54</sup>
- Infrastructure Tariff Conversion charges<sup>55</sup> excluding charges for BT Retail Private Circuits Installed after 31st December 2001<sup>56</sup>

Third Party Customer Sited Equipment Re-use<sup>57</sup>Other charges<sup>58</sup>**In Span Handover/In Span Handover Extension Single Fibre / Dual Fibre Working (SFW/DFW)<sup>59</sup>**Equipment charges<sup>60</sup>

<sup>38</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.01, Subsections 1.1-1.2, 1.4 and 1.6.

<sup>39</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.01, Subsection 1.3.

<sup>40</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.01, Subsection 1.5.

<sup>41</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.03.

<sup>42</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.1.

<sup>43</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.2.

<sup>44</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.3.

<sup>45</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsections 1.4-1.5.

<sup>46</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.6.

<sup>47</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.02. For the avoidance of doubt, this excludes subsections 1.4 (PPC Radio Access at 3<sup>rd</sup> party customer end) and 1.5 (PPC/PSTN/ATM mixing facility).

<sup>48</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.1.

<sup>49</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.2.

<sup>50</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.3.

<sup>51</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.3.

<sup>52</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.6.

<sup>53</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.04.

<sup>54</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.04, Subsection 1.1.

<sup>55</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.04.

<sup>56</sup> These charges are set out in the Carrier Price List, Part B8, Section 8.04, subsection 1.2.2.

<sup>57</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.05.

<sup>58</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06.

<sup>59</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 8-13.

<sup>60</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 8.1.

Conversions charges<sup>61</sup>  
Other charges<sup>62</sup>

**Point of Handover (PoH) - Internal and External Moves<sup>63</sup>**

Move charges<sup>64</sup>  
Survey charges<sup>65</sup>  
Cancellation charges<sup>66</sup>

**SiteConnect<sup>67</sup>**

Re-Parenting charges<sup>68</sup>  
Re-Arrangement Charges<sup>69</sup>  
External Move<sup>70</sup>  
Survey Charges<sup>71</sup>  
Bandwidth changes<sup>72</sup>  
ATM Circuit Conversion<sup>73</sup>  
Standby power<sup>74</sup>  
Cancellation charges<sup>75</sup>  
Under achievement against commitment<sup>76</sup>  
Charging for Diagnostic Test Officers<sup>77</sup>

**Interpretation**

Except insofar as the context otherwise requires, the terms or descriptions services used in this Annex shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its services. These are currently found as follows:

- Services within the “**TI Services Basket**”, being the services in Sections 1 to 2 of this Annex, please refer to <https://www.btwholesale.com/pages/static/homepage/index.htm>
- Reference to the Carrier Price List refers to the list available on BT’s website <https://www.btwholesale.com/pages/static/help-and-support/pricing/carrier-price-lists.htm> as at 27 May 2015.
- Specifically:
  - For Partial Private Circuits including POH, please refer to [https://www.btwholesale.com/pages/static/Products/Data and IP Connectivity/Partial Private Circuits/index.htm](https://www.btwholesale.com/pages/static/Products/Data_and_IP_Connectivity/Partial_Private_Circuits/index.htm)

<sup>61</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 8.2 and 9.

<sup>62</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 10-13.

<sup>63</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 2-4 and 7.

<sup>64</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 2-3.

<sup>65</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 4.

<sup>66</sup> These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 7.

<sup>67</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsections 12.01.4-7, 12.01.9-10, 12.01.12-14 and Subsection 12.01.18.

<sup>68</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.4.

<sup>69</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.5.

<sup>70</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.6.

<sup>71</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.7.

<sup>72</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.9.

<sup>73</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.10.

<sup>74</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.12.

<sup>75</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.13.

<sup>76</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.14.

<sup>77</sup> These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.18.

- For NetStream, please refer to [http://www.bt.co.uk/pricing/current/Netstream\\_1\\_and\\_16\\_boo/3475\\_d0e2730.htm](http://www.bt.co.uk/pricing/current/Netstream_1_and_16_boo/3475_d0e2730.htm)
- For Radio Base Station Backhaul, please refer to
- <https://www.btwholesale.com/pages/static/products-services/radio-base-station-backhaul.htm>

For SiteConnect, please refer to

[https://www.btwholesale.com/pages/static/Library/Pricing\\_and\\_Contractual\\_Information/carrier\\_price\\_list/cpl\\_sectionb12siteconnect.htm](https://www.btwholesale.com/pages/static/Library/Pricing_and_Contractual_Information/carrier_price_list/cpl_sectionb12siteconnect.htm)

## Condition 5E

### ***Controls of Accommodation Services***

**5E.1** Subject to Conditions **5E.4** and **5E.5**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change in each of the charges for each and every Accommodation Service is not greater than CPI reduced by 0 percentage points (referred to as “**Controlling Percentage**” for the purposes of Conditions **5E.4** and **5E.5**). For the purpose of complying with this Condition **5E.1**, the Percentage Change shall be calculated by employing the formula set out in Condition **5E.2**.

**5E.2** The Percentage Change shall be calculated, for the purposes of Conditions **5E.1**, by employing the following formula:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

$C_t$  is the Percentage Change in charges for the specific Accommodation Services or Overlapping Accommodation Services (as appropriate) for the Relevant Year  $t$ ;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_t$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Accommodation Service subject to Condition **5E**; and

$\bar{p}_{t-1}$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Accommodation Service subject to Condition **5E**.

### ***Controls of Overlapping Accommodation Services***

**5E.3** The Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, each of the charges for each and every Overlapping Accommodation Service is not greater than the amount of such a charge that the Dominant Provider charges for the Overlapping Accommodation Service in question at the relevant time for the purpose of providing Co-Mingling New Provide and Rental Services for the supply of copper loop-based, cable-based and fibre-based wholesale local access at a fixed location or wholesale fixed analogue exchange line services.

**5E.4** Where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is:

- (i) less than the Controlling Percentage set out in Condition **5E.1** ("**Deficiency**") for each of the Accommodation Services; or
- (ii) greater than the Controlling Percentage set out in Condition **5E.1** ("**Excess**") for each of the Accommodation Services,

the Controlling Percentage for the following Relevant Year shall be determined by employing the formula set out in Condition **5A.9** with the exception that all references to the "Basket specified in Conditions **5A.5(i)** to **5A.5(iv)**" in Condition **5A.9** should be read as "the Accommodation Services subject to Condition **5E**".

**5E.5** In the case of Excess, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

### ***General provisions and interpretation***

**5E.6** Where:

- (iii) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **5E**; or
- (iv) the Dominant Provider makes a change to the date on which its Financial Year ends; or
- (v) there is a material change in the basis of the Consumer Prices Index,

Condition **5E** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5E.6**, a material change to any service which is subject to this Condition **5E** includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for that existing service which is subject to this Condition **5E** or a change to the billing practice for any service which is subject to this Condition **5E**.

**5E.7** Conditions **5E.1** to **5E.6** shall not apply to such extent as Ofcom may direct.

**5E.8** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5E**.

**5E.9** In this Condition **5E**:

"**Accommodation Services**" means the services defined and listed in Section 1 of the Annex to this Condition **5E**;

"**Affected Communications Provider**" means each communications provider to whom the Dominant Provider has provided any of the services specified in the Annex to this Condition **5E** during the Relevant Year;

"**CPI**" means the Consumer Price Index;

"**Excess Revenue**" means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition **5E**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services

specified in the Annex to this Condition **5E** if it had complied with Conditions **5E.1** and **5E.3**;

**“First Relevant Year”** means a period beginning on 1 April 2016 and ending on 31 March 2017;

**“Overlapping Accommodation Services”** means the services defined and listed in Section 2 of the Annex to this Condition **5E**;

**“Percentage Change”** has the meaning given to it in Condition **5E.2**;

**“Prior Year”** means, in relation to each Relevant Year, the 12 months immediately preceding that Relevant Year;

**“Relevant Year”** means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

**“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;

**“Second Relevant Year”** means a period beginning on 1 April 2017 and ending on 31 March 2018; and

**“Third Relevant Year”** means a period beginning on 1 April 2018 and ending on 31 March 2019.

## Annex to Condition 5E

### Services subject to charge control pursuant to Condition 5E

#### Section 1

##### Meaning of “Accommodation Services”

For the purposes of Condition 5E, the expressions “**Accommodation Services**” shall be construed as including the following services reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services, the Dark Fibre Services and the services falling within the TI Services Basket, excluding all of the services specified in the Annex to Condition 5F and in the Annex to Condition 5G, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

##### **Access locate**<sup>78</sup>

All charges excluding Access Locate Plus bespoke charges

##### **Cablelink**<sup>79</sup>

Connection and rental charges

Cancellation charges

Additional charges

#### Section 2

##### Meaning of “Overlapping Accommodation Services”

For the purposes of Condition 5E, the expressions “**Overlapping Accommodation Services**” shall be construed as having the same meaning as “**Co-Mingling New Provide and Rental Services**” in Part 5 of the Annex to Condition 7A set out at Annex 29 to a statement entitled “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30” published on 26 June 2014, such services being reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services, the Dark Fibre Services, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### Interpretation

Except insofar as the context otherwise requires, the terms or descriptions of services used in this Annex shall be construed as having the same meaning as those provided by the

<sup>78</sup> Openreach, *Price List, Access Locate and Access Locate Plus*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=q%2B2vpfgQQ99Sii mXeC7QjskLe4HVN3IVHU%2BmY7RLKoBZ6rNZujnCs99NbIKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

<sup>79</sup> Openreach, *Price List, Cablelink*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=kqnGm8XSPQZEY5 UMJxGwO9yDfzzeTWgW5o%2FPQLWLvfwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> as at 28 May 2015.

Dominant Provider on its website for definitions and explanations of its services. These are currently found as follows:

- Services within the meaning of “**Accommodation Services**” and “**Overlapping Accommodation Services**”, please refer to <http://www.openreach.co.uk/orpg/home/products/llu/llu.do>
- Specifically:
  - For Access Locate, please refer to <http://www.openreach.co.uk/orpg/home/products/llu/accesslocate/accesslocate.do>
  - For Accommodation, please refer to <http://www.openreach.co.uk/orpg/home/products/llu/comingling/comingling.do>

**Condition 5F****Controls of the ECC Services**

**5F.1** The Dominant Provider shall take all reasonable steps to secure that, during each Relevant Year, the Percentage Change (determined in accordance with Condition **5F.3** below) in each of the charges for each of the Direct ECC Services is not greater than the Controlling Percentage as determined in accordance with Condition **5F.4** below.

**5F.2** The Dominant Provider shall take all reasonable steps to secure that, during each Relevant Year, the Percentage Change (determined in accordance with Condition **5F.3** below) in each of the charges for each of the Contractor ECC Services is not greater than the Controlling Percentage as determined in accordance with Condition **5F.5** below.

**5F.3** The Percentage Change shall be calculated, for the purposes of complying with Conditions **5F.1** and **5F.2** (as applicable), by employing the following formula:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

$C_t$  is the Percentage Change in charges for the individual service (as applicable) in the Direct ECC Services or the Contractor ECC Services (as appropriate) for the Relevant Year  $t$ ;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_t$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Direct ECC Services or the specific Contractor ECC Services (as appropriate) subject to Condition **5F**; and

$\bar{p}_{t-1}$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Direct ECC Services or the specific Contractor ECC Services (as appropriate) subject to Condition **5F**.

**5F.4** Subject to the provisions set out in Conditions **5F.6** and **5F.7** below, the Controlling Percentage in relation to any Relevant Year for each of the Direct ECC Services shall be calculated, for the purposes of complying with Condition **5F.1**, by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

$CP_t$  is the Controlling Percentage for Relevant Year  $t$ ;

$CPI_t$  is CPI for the Relevant Year,  $t$ ;

X is equal to:

- 21 percentage points for Blown Fibre;
- +4.5 percentage points for Blown Fibre Tubing in Duct;
- +8.25 percentage points for Cable (fibre or copper) including any jointing required;
- +7 percentage points for Internal cabling (including Internal Blown Fibre Tubing);
- +5 percentage points for Survey Fee/Planning Charges.

**5F.5** Subject to Conditions **5F.6** and **5F.7**, the Controlling Percentage in relation to any Relevant Year for each of the Contractor ECC Services must, for the purposes of complying with Condition **5F.2**, be equal to GBCI reduced by zero percentage points.

**5F.6** Where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is:

- i. less than the Controlling Percentage ("**Deficiency**") for each of the Direct ECC Services or the Contractor ECC Services (as appropriate); or
- ii. greater than the Controlling Percentage ("**Excess**") for each of the Direct ECC Services or the Contractor ECC Services (as appropriate)

the Controlling Percentage for the following Relevant Year shall be determined employing the formula set out in Condition **5A.9** with the exception that all references to the "Basket specified in Conditions **5A.5(i)** to **5A.5(iv)**" in Condition **5A.9** should be read as "the Direct ECC Services or the Contractor ECC Services (as appropriate) subject to Condition **5F**".

**5F.7** In the case of Excess, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

**5F.8** Where the Dominant Provider charges the ECC Balancing Charge, the ECC Balancing Charge (determined in accordance with Condition **5F.10**) in respect of each published charge for each of the ECC Services shall be excluded, subject to the requirement set out in Condition **5F.9** being satisfied, from the calculation of:

- (i) the Percentage Starting Charge Change determined in accordance with:
  - a. Condition **5A.2** for the purposes of complying with Condition **5A.1**;
  - b. Condition **5A.4** for the purposes of complying with Condition **5A.3**; and
- (ii) the Percentage Change determined in accordance with:
  - a. Condition **5A.6** for the purpose of complying with Condition **5A.5**; and
  - b. Condition **5A.12** for the purpose of complying with Condition **5A.11**.

**5F.9** The requirement referred to in Condition **5F.8** is that, where the Dominant Provider provides one or more of the ECC Services to a Third Party in connection with the provision of a service reasonably necessary for the use of the services falling within

the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services, the Dominant Provider must not charge the Third Party for such ECC Services, unless the total amount of charges for all of the ECC Services for each separate service exceeds £2,800, in which case the Dominant Provider may only charge the Third Party, as a maximum, the amount in excess of £2,800 for providing such ECC Services.

**5F.10** For the purposes of complying with Condition **5F.8** the ECC Balancing Charge for new connections for the ECC Services for each Relevant Year shall be calculated by employing the following formula (which applies to the Prior Year):

$$B = \frac{\sum_{k=1}^C \sum_{i=1}^n p_{i,k} q_{i,k} - TR}{C}$$

Where

B is the ECC Balancing Charge;

C is the number of new EAD and EAD LA connections in the Prior Year;

k is a number from 1 to C for each new EAD or EAD LA connection;

n is the number of the ECC Services provided by the Dominant Provider,

i is a number from 1 to n for each of the n individual ECC Service;

$p_{i,k}$  is the charge of service i that was in effect at the time of new EAD or EAD LA connection k;

$q_{i,k}$  is the volume of the individual ECC Service i that was sold in new EAD or EAD LA connection k;

TR is the revenue generated from new connections for the ECC Services above the exemption threshold of £2,800 in the Prior Year;

$$TR = \sum_{k=1}^C \delta_k \left[ \sum_{i=1}^n p_{i,k} q_{i,k} - 2,800 \right]$$

Where  $\delta_k$  is a binary variable for each new EAD or EAD LA connection k, given by the following formula:

$$\delta_k = \begin{cases} 1 & \text{if } \sum_{i=1}^n p_{i,k} q_{i,k} > 2,800 \\ 0 & \text{if } \sum_{i=1}^n p_{i,k} q_{i,k} \leq 2,800 \end{cases}$$

### **General provisions and interpretation**

**5F.11** Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **5F**; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends; or

- (iii) there is a material change in the basis of the Consumer Prices Index,

Condition **5F** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5F.11**, a material change to any service which is subject to this Condition **5F** includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for that existing service which is subject to this Condition **5F** or a change to the billing practice for any service which is subject to this Condition **5F**.

**5F.12** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition **5F**. The data must include:

- i. pursuant to Conditions **5F.1** and **5F.2**, the calculated Percentage Change relating to the Direct ECC Services and the Contractor ECC Services;
- ii. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition **5F.3**, including for each specific Direct ECC Service and the Contractor ECC Service;
- iii. all charges, excluding discounts, published by the Dominant Provider at time, *t*, during the Relevant Year and the Prior Year;
- iv. the relevant published charges at the start of each Relevant Year;
- v. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the Direct EE Services and the Contractor ECC Services to which Condition **5F.3** applies and calculations thereof;
- vi. other data necessary for monitoring compliance with the charge control;
- vii. such data as Ofcom may from time to time direct.

**5F.13** Conditions **5F.1** to **5F.12** shall not apply to such extent as Ofcom may direct.

**5F.14** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5F**.

**5F.15** In this Condition **5F**:

“**Affected Communications Provider**” means each communications provider to whom the Dominant Provider has provided any of the services specified in the Annex to this Condition **5F** during the Relevant Year;

“**Contractor ECC Services**” means the services defined and listed in Section 2 of the Annex to this Condition **5F**;

“**Controlling Percentage**” has the meaning given to it in Condition **5F.4**;

“**CPI**” means the Consumer Price Index;

**“Direct ECC Services”** means the services defined and listed in Section 1 of the Annex to this Condition **5F**;

**“ECC Balancing Charge”** means the charge determined in accordance with Condition **5F.10**;

**“ECC Services”** means, for the purposes of Conditions **5F.8** to **5F.10**, the Direct ECC Services specified in Section 1 of the Annex to this Condition **5F** and the Contractor ECC Services specified in Section 2 of the Annex to this Condition **5F**;

**“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition **5F**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition **5F** if it had complied with Conditions **5F.1** and **5F.2**;

**“First Relevant Year”** means a period beginning on 1 April 2016 and ending on 31 March 2017;

**“GBCI”** means the amount of the change in the General Building Cost Index (GBCI) in the period of twelve months ending in the September immediately before the beginning of a Relevant Year, expressed as a percentage (rounded to one decimal place) of GBCI as at the beginning of that first mentioned period. The GBCI is published by the Building Cost Information Service (BCIS), a service of the Royal Institute of Chartered Surveyors;

**“Percentage Change”** has the meaning given to it in Condition **5F.3**;

**“Prior Year”** means, in relation to each Relevant Year, the 12 months immediately preceding that Relevant Year;

**“Relevant Year”** means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

**“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;

**“Second Relevant Year”** means a period beginning on 1 April 2017 and ending on 31 March 2018; and

**“Third Relevant Year”** means a period beginning on 1 April 2018 and ending on 31 March 2019.

## Annex to Condition 5F

### Services subject to charge control pursuant to Condition 5F

#### Section 1

##### Meaning of “Direct ECC Services”

For the purposes of Condition 5F, the expression “**Direct ECC Services**” shall be construed as including the following services reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

##### **Excess construction charges**<sup>80</sup>

Survey Fee/Planning charges

Per meter or part thereof charges for:

- Cable (fibre or copper) including any jointing required
- Blown Fibre
- Blown Fibre Tubing in Duct
- Internal cabling (including Internal Blown Fibre Tubing)

#### Section 2

##### Meaning of “Contractor ECC Services”

For the purposes of Condition 5F, the expression “**Contractor ECC Services**” shall be construed as including the following services reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

##### **Excess construction charges**<sup>81</sup>

Breaking/Drilling charges

Provision of Pole charges

Provision of a new footway box charges

Provision of a new carriageway box charges

Directly buried cable (including any cable and wayleave costs)

Mole ploughing cable or fibre in subduct (includes any cable and wayleave costs)

New Ductwork charges

Trunking and tray work within end user's cartilage

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<sup>80</sup> Openreach, *Price List, Excess Construction Charges*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2Fxxv%2FjSuBEEITnogh5uNOEwQ2%2FKws5WBAVcllchoIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> as at 28 May 2015.

<sup>81</sup> Openreach, *Price List, Excess Construction Charges*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2Fxxv%2FjSuBEEITnogh5uNOEwQ2%2FKws5WBAVcllchoIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> as at 28 May 2015.

### Section 3

#### Meaning of “EAD” and “EAD LA” for the purposes of Condition 5F.10

For the purposes of Condition **5F.10**, the expression **EAD** shall be construed as including the following services, excluding all of the services specified in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Ethernet Access Direct (EAD)** <sup>82</sup>

Connection and rental charges for all of the services listed in Section 2 and connection and rental charges for these additional services:

- EAD circuits
  - EAD 10
  - EAD 100
  - EAD 10 Extended Reach
  - EAD 100 Extended Reach
- EAD Resilience Option 1 (Hot Standby)
  - EAD 10 Resilient Option 1
  - EAD 100 Resilient Option 1
  - EAD 10 Extended Reach Resilient Option 1
  - EAD 100 Extended Reach Resilient Option 1
- EAD SyncE
  - EAD SyncE 100
  - EAD SyncE 100 Extended Reach
  - EAD SyncE 100 Resilient Option 1
  - EAD SyncE 100 Extended Reach Resilient Option 1
- EAD Enable
  - EAD Enable 10
  - EAD Enable 10 Resilient Option 1
  - EAD Enable 100
  - EAD Enable 100 Resilient Option 1

For the purposes of Condition **5F.10**, the expression **EAD LA** shall be construed as including the following services excluding all of the services specified in the Annex to Condition **5G**, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Ethernet Access Direct Local Access (EAD LA)** <sup>83</sup>

<sup>82</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

Connection and rental charges for:

- EAD Local Access 10 Mbit/s circuits and above
  - All connection and rental charges
- EAD Resilience Option 1 (Hot Standby)
  - EAD 10 Local Access Resilient Option 1
  - EAD 100 Local Access Resilient Option 1
  - EAD 1000 Local Access Resilient Option 1
  - EAD 1000 Local Access Resilient Option 1 (60 month minimum period)
  - EAD 1000 Local Access Resilient Option 1 (84 month minimum period)
- EAD SyncE
  - EAD SyncE 100 Local Access
  - EAD SyncE 1000 Local Access
  - EAD SyncE 1000 Local Access (60 month minimum period)
  - EAD SyncE 1000 Local Access (84 month minimum period)
  - EAD SyncE 100 Local Access Resilient Option 1
  - EAD SyncE 1000 Local Access Resilient Option 1
  - EAD SyncE 1000 Local Access Resilient Option 1 (60 month minimum period)
  - EAD SyncE 1000 Local Access Resilient Option 1 (84 month minimum period)
- EAD Enable
  - EAD Enable 10 Local Access
  - EAD Enable 10 Local Access Resilient Option 1
  - EAD Enable 100 Local Access
  - EAD Enable 100 Local Access Resilient Option 1
  - EAD Enable 1000 Local Access
  - EAD Enable 1000 Local Access Resilient Option 1
  - EAD Enable 1000 Local Access Resilient Option 1 (60 month term)
  - EAD Enable 1000 Local Access (60 month term)

### Interpretation

Except insofar as the context otherwise requires, the terms or descriptions of services used in this Annex shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its services in addition to future updates. These are currently found as follows:

- Services within the meaning of “**Direct ECC Services and Contractor ECC Services**”, please refer to <http://www.openreach.co.uk/orpg/home/products/serviceproducts/excessconstructioncharges/excessconstructioncharges.do>

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<sup>83</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2i67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiXh6wrCQm97GZMyQ%3D%3D> as at 28 May 2015.

**Condition 5G*****Controls of the Time Related Charges*****Initial Charges on 1 April 2016**

**5G.1** The Dominant Provider shall take all reasonable steps to secure that on 1 April 2016, each of the charges for each of:

- (i) Standard Chargeable Visit;
- (ii) Additional Hour;
- (iii) Supplementary Charges (Per Visit);
- (iv) Supplementary Charges (Per Hour);
- (v) Internal and External Shifts; and
- (vi) Additional Line Shifted

is not greater than the amount of such a charge that the Dominant Provider charges on 1 April 2016 for each of the above categories of services (as applicable) for the supply of copper loop-based, cable-based and fibre-based wholesale local access as set out in Conditions **7A.1(m) to 7A.1(x)** at Annex 29 of the FAMR Statement.

**Controls from 2 April 2016**

**5G.2** The Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition **5G.3**) in each of the charges for each of:

- (i) Standard Chargeable Visit;
- (ii) Additional Hour;
- (iii) Supplementary Charges (Per Visit);
- (iv) Supplementary Charges (Per Hour);
- (v) Internal and External Shifts; and
- (vi) Additional Line Shifted

(each of which is referred to in Conditions **5G.2** to **5G.8** as a “**Single Charge Category**” unless otherwise specified) is no greater than the Controlling Percentage (as determined in accordance with Condition **5G.4**).

**5G.3** The Percentage Change for the purposes of each Single Charge Category specified in Conditions **5G.2(i)** to **5G.2(vi)** shall be calculated, for the purposes of complying with **Condition 5G.2**, by employing the following formula:

$$C_t = \frac{(\bar{p}_t - \bar{p}_{t-1})}{\bar{p}_{t-1}}$$

Where:

$C_t$  is the Percentage Change in charges for the specific service in the Single Charge Category in question for the Relevant Year  $t$ ;

$t$  refers to the Relevant Year;

$t-1$  refers to the Prior Year;

$\bar{p}_t$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Single Charge Category subject to Condition **5G**; and

$\bar{p}_{t-1}$  shall be calculated by employing the formula set out in Condition **5A.12** above for the Relevant Year Weighted Average Charge offered by the Dominant Provider, and its references to individual service  $i$  falling within the Basket shall be treated as references to each specific Single Charge Category subject to Condition **5G**.

- 5G.4** Subject to the provisions set out in Conditions **5G.5** and **5G.6**, the Controlling Percentage in relation to any Relevant Year for each Single Charge Category specified in Conditions **5G.2(i)** to **5G.2(vi)** shall be calculated, for the purposes of complying with Condition **5G.2**, by employing the following formula:

$$Cp_t = X$$

$Cp_t$  is the Controlling Percentage for Relevant Year  $t$ ;  
 $X$  means 0.2 percentage points.

- 5G.5** Where the Percentage Change at the end of either the First Relevant Year or the Second Relevant Year is:

- i. less than the Controlling Percentage ("**Deficiency**") for each Single Charge Category; or
- ii. greater than the Controlling Percentage ("**Excess**") for each Single Charge Category,

the Controlling Percentage for the following Relevant Year shall be determined employing the formula set out in Condition **5A.9** with the exception that all references to the "Basket specified in Conditions **5A.5(i)** to **5A.5(iv)**" in Condition **5A.9** should be read as "Single Charge Category subject to Condition **5G**".

- 5G.6** In the case of Excess, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

### ***General provisions and interpretation***

- 5G.7** Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **5G**; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends,

Condition **5G** shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances.

For the purposes of this Condition **5G.7**, a material change to any service which is subject to this Condition **5G** includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for that existing service which is subject

to this Condition **5G** or a change to the billing practice for any service which is subject to this Condition **5G**.

**5G.8** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition **5G**. The data must include:

- i. pursuant to Condition **5G.2**, the calculated Percentage Change relating to each Single Charge Category;
- ii. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition **5G.3**, including for each Single Charge Category;
- iii. all charges, excluding discounts, published by the Dominant Provider at time, *t*, during the Relevant Year and the Prior Year;
- iv. the relevant published charges at the start of each Relevant Year;
- v. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for each Single Charge category to which Condition **5G.3** applies and calculations thereof;
- vi. other data necessary for monitoring compliance with the charge control;
- vii. such data as Ofcom may from time to time direct.

**5G.9** Conditions **5G.1** to **5G.8** shall not apply to such extent as Ofcom may direct.

**5G.10** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **5G**.

**5G.11** In this Condition **5G**:

“**Additional Hour**” means the provision of the service ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services (as applicable);

“**Additional Line Shifted**” means the provision of the service ‘Additional Line shifted’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services (as applicable);

**“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services specified in the Annex to this Condition **5G** during the Relevant Year;

**“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition **5G**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition **5G** if it had complied with Conditions **5G.1** and **5G.2**;

**“FAMR Statement”** means a statement entitled “Fixed access market reviews: wholesale local access, wholesale fixed analogue exchange lines, ISDN2 and ISDN30” published on 26 June 2014;

**“First Relevant Year”** means a period beginning on 2 April 2016 and ending on 31 March 2017;

**“Internal and External Shifts”** means the provision of the service ‘Internal and External Shifts’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services (as applicable);

**“Percentage Change”** has the meaning given to it in Condition **5G.3**;

**“Prior Year”** means, in relation to each Relevant Year, the 12 months immediately preceding that Relevant Year;

**“Relevant Year”** means each of the following three periods:

- (i) the First Relevant Year;
- (ii) the Second Relevant Year; and
- (iii) the Third Relevant Year;

**“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;

**“Second Relevant Year”** means a period beginning on 1 April 2017 and ending on 31 March 2018; and

**“Standard Chargeable Visit”** means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services (as applicable);

**“Supplementary Charges (Per Hour)”** means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services (as applicable);

**“Supplementary Charges (Per Visit)”** means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the use of the services falling within the Ethernet Services Basket, the Very High CISBO Services and the Dark Fibre Services (as applicable); and

**“Third Relevant Year”** means a period beginning on 1 April 2018 and ending on 31 March 2019.

## Annex to Condition 5G

### Services subject to charge control pursuant to Condition 5G

#### Section 1

#### Meaning of “Ethernet TRC Services”

For the purposes of Condition **5G**, the expression “**Ethernet TRC Services**” shall include the following services defined in Condition **5G.11**:

- (i) Standard Chargeable Visit;
- (ii) Additional Hour;
- (iii) Supplementary Charges (Per Visit);
- (iv) Supplementary Charges (Per Hour);
- (v) Internal and External Shifts; and
- (vi) Additional Line Shifted

subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### Interpretation

Except insofar as the context otherwise requires, the terms or descriptions of services referred to in this Annex shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its services in addition to future updates. These are currently found as follows:

- Services within the meaning of “**Ethernet TRC Services**”, please refer to:  
<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=pBzHTRfO4GXC12qz7DCzqUP54d5RrQ9TQD%2BRDuYwQUEIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D>

## Proposal for direction – Consistency with regulatory decisions

### Notification of proposal under sections 49 and 49A of the Communications Act 2003 and proposed SMP Services Condition 11.4 specifying the requirements in relation to consistency with regulatory decisions

#### Background

1. On 20 May 2014, Ofcom published a policy statement entitled “Regulatory Financial Reporting – Final Statement” (“**2014 RFR Statement**”), which set out Ofcom’s conclusions on the requirements for regulatory financial reporting that Ofcom considered should be applied to BT in markets in which BT has SMP. Ofcom decided among other things to introduce new Regulatory Accounting Principles which principles will include a requirement for “Consistency with regulatory decisions” (“**Principle 4**”).
2. On 15 May 2015, Ofcom published a consultation document entitled “*Business Connectivity Market Review – Review of competition in the provision of leased lines*” (“**BCMR Consultation**”). At Annex 6 of the BCMR Consultation, Ofcom proposed, in relation to the markets set out below, to impose, among other things, SMP services conditions with respect to regulatory accounting on BT (condition 11) which Ofcom concluded in the 2014 RFR Statement should be applied to BT:
  - Wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s;
  - Wholesale market for contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area;
  - Wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
3. Under proposed condition 11.8 set out at Annex 6 of the BCMR Consultation, BT will be required to comply with, among other things, the Regulatory Accounting Principles.
4. Under proposed condition 11.4 set out at Annex 6 of the BCMR Consultation, Ofcom may from time to time make such directions as they consider appropriate in relation to BT’s obligations under the proposed conditions.
5. This Notification relates to the proposals in relation to Principle 4 of the Regulatory Accounting Principles.

#### Proposal to give direction

6. Ofcom is proposing to make the direction set out in the Schedule to this Notification.
7. The effect of and reasons for giving the proposed direction are set out in the accompanying consultation.

### **Ofcom's duties and legal tests**

8. Ofcom considers that the proposed direction referred to in paragraph 6 complies with the requirements of section 49(2) of the Communications Act 2003 ("**Act**").
9. In making the proposal referred to in paragraph 6, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.

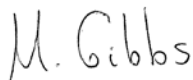
### **Making representations**

10. Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying consultation by no later than 7 August 2015.
11. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedules, has been sent to the Secretary of State.

### **Interpretation**

12. Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the proposed SMP services conditions set out in Annex 6 of the BCMR Consultation and at Annex 15 of a consultation document entitled "*Business Connectivity Market Review: Leased lines charge controls and dark fibre pricing*" published on 12 June 2015. Otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs

Competition Policy Director, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

12 June 2015

## Schedule

### Part 1: Definitions and Interpretation

In this Schedule:

**“20CN”** means that part of BT’s network which does not use the assets deployed by 21CN or NGA;

**“21CN”** means BT’s next generation network upgrade;

**“BCMR Markets”** means the markets set out in paragraph 2 of the Notification;

**“Cumulo costs”** means the non-domestic (business) rates that BT pays on its Cumulo Rateable Assets within the United Kingdom;

**“Cumulo Rateable Assets”** means the assets that make up BT’s Cumulo non domestic rating assessments in the United Kingdom as defined for England in The Central Rating List (England) Regulations 2005 (SI 2005/551), as amended by The Central Rating List (Amendment) (England) Regulations 2006 (SI 2006/495) and The Central Rating List (Amendment) (England) Regulations 2008 (SI 2008/429), and the analogous legislation that define these assets in Wales, Scotland and Northern Ireland;

**“Featurenet”** means the Network Services listed by BT at the following link:  
<https://www2.bt.com/static/i/btretail/panretail/terms/bt022.htm>;

**“Gross Replacement Cost or GRC”** means the cost of replacing an existing tangible fixed asset with an identical or substantially similar new asset having a similar production or service capacity;

**“Net Replacement Cost”** means the Gross Replacement Cost less accumulated depreciation based on Gross Replacement Cost;

**“Next Generation Access or NGA”** means the wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband access services with enhanced characteristics as compared to those provided over already existing copper networks;

**“NGA related Cumulo costs”** means the element of BT’s Cumulo costs within the United Kingdom that is directly attributable to NGA Network Components;

**“NGA Network Components”** means the Network Components which are used solely to supply VULA services;

**“Non-NGA Network Components”** means the Network Components other than the NGA Network Components;

**“Non-NGA related Cumulo costs”** means the Cumulo costs excluding the NGA related Cumulo costs;

**“Number of employees”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the number of employees at that level of the cost exhaustion system divided by the total number of employees within BT;

**“Previously allocated BT fleet costs”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the previously allocated BT fleet costs at that level of the cost exhaustion system divided by the total previously allocated BT fleet costs within BT up to that level of the cost exhaustion system;

**“Previously allocated IT costs”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the previously allocated IT costs at that level of the cost exhaustion system divided by the total of all previously allocated IT costs within BT up to that level of the cost exhaustion system;

**“Previously allocated pay costs or Employee pay costs”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the pay costs of employees at that level of the cost exhaustion system divided by the total pay costs of employees within BT up to that level of the cost exhaustion system;

**“Previously allocated total costs”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the previously allocated total costs at that level of the cost exhaustion system divided by the total of all previously allocated total costs within BT up to that level of the cost exhaustion system;

**“Previously allocated property costs”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the previously allocated property costs at that level of the cost exhaustion system divided by the total previously allocated property costs within BT up to that level of the cost exhaustion system;

**“Relevant revenue”** means the cost attribution methodology specifying that costs at each level of the cost exhaustion system must be allocated in accordance with the relevant revenue at that level of the cost exhaustion system divided by the total of total relevant revenue within BT;

**‘Residual Market’** means the primarily unregulated products, services and components currently referred to as ‘Wholesale Residual Market’ or “Retail Residual Market” in the Regulatory Financial Statements.

## Part 2: Direction

### **Requirements to ensure the Regulatory Financial Statements are consistent with specified regulatory proposals made by Ofcom in the BCMR Consultation**

1. BT shall prepare the Regulatory Financial Statements in accordance with the requirements set out in paragraphs 1.1 – 1.9 below. BT shall give priority to the requirements set out in paragraphs 1.1 – 1.9 in the order in which they are set out below.
  - 1.1. BT shall:
    - 1.1.1. apportion the costs of each of core fibre (plant group PG350N) and backhaul fibre (plant group PG170B) to all relevant cost components in accordance with the bandwidth and the length of fibre;
    - 1.1.2. apportion the costs of access fibre (plant groups PG111C spine fibre, PG959C distribution fibre and PG111M access fibre maintenance) to all relevant cost components in accordance with the number of fibres used by each circuit type in the access network;
    - 1.1.3. apportion backhaul duct (activity group AG148) to 20CN and 21CN fibre plant groups associated with the backhaul network and apportion core duct (activity group AG149) to 20CN and 21CN fibre plant groups associated with the core network;
    - 1.1.4. not allocate to the BCMR Markets Transfer Charges from non-core units which relate to services in the Residual Markets.
  - 1.2. BT shall separate the overhead costs from activity group AG112 into the following organisational unit code (OUC) cost groups and attribute each of these cost groups on the basis set out below:
    - 1.2.1. Employee Liability Insurance: Number of employees.
    - 1.2.2. Employment Practice Liability: Number of employees.
    - 1.2.3. Employee healthcare: Number of employees.
    - 1.2.4. Employee broadband offer: Number of employees.
    - 1.2.5. Employee death in service benefit insurance: Previously allocated pay costs.
    - 1.2.6. Business interruption insurance: Previously allocated property costs.
    - 1.2.7. Motor vehicle insurance: Previously allocated BT fleet costs.
    - 1.2.8. BT TSO Research & Innovation: Number of employees.
    - 1.2.9. BT TSO Architecture and Global IT Platforms: Previously allocated IT costs.
    - 1.2.10. Group Finance: Previously allocated total costs.

- 1.2.11. BT TSO Chief Information Office for Group: Previously allocated total costs.
- 1.2.12. Group Human Resources: Number of employees.
- 1.2.13. Corporate Communications: Previously allocated total costs.
- 1.2.14. Group Legal: Previously allocated total costs.
- 1.2.15. Reporting planning analysis: Previously allocated total costs.
- 1.2.16. Corporate Special Projects: Previously allocated total costs.
- 1.2.17. Learning Academy – HR: Employee pay costs.
- 1.2.18. Strategy, Policy and Portfolio: Relevant revenue.
- 1.2.19. BT TSO Chief Information Office for BT Wholesale: Previously allocated total costs.
- 1.2.20. BT TSO Chief Information Office for Retail: Previously allocated total costs.
- 1.2.21. Other OUC costs: Previously allocated total costs.
- 1.3. BT shall separate the overhead costs from activity group AG103 into the following OUC cost groups and attribute each of these cost groups on the basis set out below:
  - 1.3.1. Redundancy payments: Employee pay costs.
  - 1.3.2. IT Services Subcon. Offshore SGA: Previously allocated IT costs.
  - 1.3.3. BT TSO Human Resources & Communications: Previously allocated total costs.
  - 1.3.4. BT TSO Service, Strategy and Operations: Previously allocated total costs.
  - 1.3.5. BT TSO Finance: Previously allocated total costs.
  - 1.3.6. BT TSO Chief Information Office for Global Services: Previously allocated total costs.
  - 1.3.7. BT TSO General Infrastructure Services: Employee pay costs.
  - 1.3.8. BT Fleet: Previously allocated BT fleet costs.
  - 1.3.9. BT TSO Global Network Services Management and Support: Previously allocated IT costs.
  - 1.3.10. Other OUC costs: Previously allocated total costs.
- 1.4. BT shall not allocate to the BCMR Markets any of the following Network Components:
  - 1.4.1. Ethernet Switch Access HE/MEAS;
  - 1.4.2. Ethernet Switches HE/MEAS;

- 1.4.3. any other Network Components relating to the Ethernet Switch Access HE/MEAS and Ethernet Switches HE/MEAS as directed by Ofcom from time to time.
- 1.5. In the case of Cumulo costs, BT shall follow the requirements set out in paragraphs 1.5.1 – 1.5.2 in the order in which these requirements are set out below:
  - 1.5.1. BT shall attribute the NGA related Cumulo costs to the NGA Network Components;
  - 1.5.2. BT shall attribute the Non-NGA related Cumulo costs to the Non-NGA Network Components on the basis of profit weighted Net Replacement Costs in accordance with the following formula:

$$Cumall_i = NNGACC \times \left( \frac{\sum_{j=1}^m nrc_{ij} land\%_j wacc_i}{\sum_{i=1}^n \sum_{j=1}^m nrc_{ij} land\%_j wacc_i} \right)$$

Where

$Cumall_i$  = the allocation of the Non-NGA related Cumulo costs to component  $i$

$NNGACC$  = Non-NGA related Cumulo costs

$nrc_{ij}$  = the Net Replacement Costs of the Cumulo Rateable Asset  $j$  that has been attributed to component  $i$

$land\%_j$  = the percentage of the Cumulo Rateable Asset  $j$  that is regarded as being a landlord asset within the most recent rating model used by the Valuation Office Agency in England and Wales to value BT's Cumulo assessment

$wacc_i$  = the weighted average cost of capital that is applicable for component  $i$

$m$  = the number of the Cumulo Rateable Asset categories

$n$  = the number of the Non-NGA Network Components

- 1.6. BT shall not allocate to the BCMR Markets the mean capital employed and depreciation costs of the Ethernet Electronics Network Component when it is used in relation to the transmission assets which were deployed prior to 1 April 2011.
- 1.7. BT shall not attribute the costs of Group Restructuring to the Network Services in the BCMR Markets.
- 1.8. BT shall allocate credit notes relating to the service level commitments against the income that they relate to.
- 1.9. BT must separately identify and separately account for the costs and volumes of the Featurenet with bandwidth of 64kbit/s and 2Mbit/s.

## **Proposal for direction setting requirements in relation to preparation and delivery of the Regulatory Financial Statements**

### **Notification of proposal under sections 49 and 49A of the Communications Act 2003 and proposed SMP Services Condition 11.4 setting the requirements in relation to preparation and delivery of the Regulatory Financial Statements**

#### **Background**

1. On 22 July 2004, Ofcom published a statement entitled "*The regulatory financial reporting obligations on BT and Kingston Communications Final statement and notification – Accounting separation and cost accounting: Final Statement and notification*" ("**2004 Statement**"). At Annex 2 of this statement, Ofcom imposed SMP services conditions with respect to regulatory accounting on BT in markets in which BT had been found to have significant market power in previously concluded market reviews.
2. At Annex 4 of the 2004 Statement, Ofcom published various directions for BT given under the SMP services conditions. These included a direction relating to the preparation, audit, delivery and publication of the Regulatory Financial Statements ("**Direction 3**").
3. Direction 3 was subsequently modified by:
  - a. the Direction published at Annex 2 of the regulatory statement "Changes to BT's regulatory financial reporting framework" of 31 August 2005;
  - b. the Direction published at Annex 2 of the regulatory statement "Changes to BT's regulatory financial reporting and audit requirements" of 16 August 2006;
  - c. the Direction published at Annex 4 of the regulatory statement "Changes to BT's regulatory financial reporting and audit requirements" of 30 May 2007;
  - d. the Direction published at Annex 4 of the regulatory statement "Changes to BT's 2007/08 regulatory financial statements" of 26 June 2008;
  - e. the Direction published at Annex 4 of the regulatory statement "Changes to BT and KCOM's regulatory financial reporting – 2008/09 update" of 15 June 2009;
  - f. the Direction published at Annex 3 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2009/10 update" of 4 June 2010;
  - g. the Direction published at Annex 4 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2010/11 update" of 2 June 2011; and
  - h. the Direction published at Annex 3 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2013/14 update" of 3 April 2014.
4. The SMP services conditions set out at Annex 2 of the 2004 Statement and Direction 3 were applied in relation to the markets in which BT was found to have SMP and regulatory reporting requirements were imposed at Annex 7 of a statement entitled "*Business Connectivity Market Review: Review of retail leased lines, wholesale*

*symmetric broadband origination and wholesale trunk segments*" published on 28 March 2013.

5. On 20 December 2013, Ofcom published a consultation document entitled "*Regulatory Financial Reporting – A Review*" ("**2013 RFR Consultation**"). In that consultation, Ofcom made proposals in relation to the regulatory accounting SMP obligations of BT. In particular, Ofcom no longer proposed to apply to BT the regulatory accounting conditions set out in the 2004 Statement. Ofcom proposed no changes to the regulatory accounting SMP obligations of KCOM.
6. On 20 May 2014, following consideration of the responses to the 2013 RFR Consultation and the making of such modifications to its proposals as it considered appropriate, Ofcom published a policy statement entitled "*Regulatory Financial Reporting: Final Statement*" ("**2014 RFR Statement**") which set out (among other things) Ofcom's conclusions on the regulatory financial reporting policy that it considered should be applied to BT.
7. On 15 May 2015, Ofcom published a consultation document entitled "*Business Connectivity Market Review – Review of competition in the provision of leased lines*" ("**BCMR Consultation**"). At Annex 6 of the BCMR Consultation, Ofcom proposed, in relation to the markets listed below, to impose, among other things, SMP services conditions with respect to regulatory accounting on BT (condition 11) which Ofcom concluded in the 2014 RFR Statement should be applied to BT:
  - a. Wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s;
  - b. Wholesale market for contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area; and
  - c. Wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
8. Ofcom proposed in paragraph 8.138 of the BCMR Consultation to issue directions under the proposed SMP services conditions subject to making any necessary changes to reflect Ofcom's proposals and ultimately decisions in relation to the markets set out in paragraph 7 above.
9. Under proposed SMP services condition 11.8 set out at Annex 6 of the BCMR Consultation, BT will be required to prepare, deliver to Ofcom and publish the Regulatory Financial Statements as directed by Ofcom from time to time.
10. Under proposed SMP services condition 11.4 set out at Annex 6 of the BCMR Consultation, Ofcom may from time to time make such directions as they consider appropriate in relation to BT's obligations under proposed SMP services condition 11.
11. This Notification sets out proposals for further requirements in relation to the preparation and delivery of the Regulatory Financial Statements.

## Proposal to give direction

12. Ofcom is proposing to make the direction set out in the Schedule to this Notification.
13. The effect of and reasons for giving the proposed direction are set out in the accompanying consultation.

## Ofcom's duties and legal tests

14. Ofcom considers that the proposed direction referred to in paragraph 12 complies with the requirements of section 49(2) of the Communications Act 2003 ("**Act**").
15. In making the proposals referred to in paragraph 12, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.

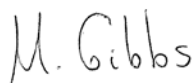
## Making representations

16. Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying consultation document by no later than 7 August 2015.
17. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedules, has been sent to the Secretary of State.

## Interpretation

18. Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the proposed SMP services conditions set out at Annex 6 of the BCMR Consultation and at Annex 15 of a consultation document entitled "*Business Connectivity Market Review: Leased lines charge controls and dark fibre pricing*" published on 12 June 2015. Otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



Marina Gibbs, Competition Policy Director, Ofcom

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

12 June 2015

## **Schedule**

In addition to the requirements set out in Direction 3, BT shall, for the purposes of condition 11.8, prepare and deliver to Ofcom the following additional financial information as described in the Annex to this Schedule in respect of the markets set out in paragraph 7 of this Notification:

- a) Detailed BCMR Services;
- b) Detailed BCMR Service Component FACs; and
- c) BCMR EAD/EAD LA 1Gbit/s Component LRICs and FACs.

## Annex

Reference	Additional Financial Information	Description
1(a)	Detailed BCMR Services	<ol style="list-style-type: none"> <li>1. set out the revenues, volumes and FAC on a CCA basis of any other wholesale leased lines service not publically disclosed where the revenue from this service is above £1m;</li> <li>2. the revenues and costs should, in total, be reconciled to the revenues and costs included within the publicly reported totals for the BCMR markets.</li> </ol>
1(b)	Detailed BCMR Service Component FACs	<ol style="list-style-type: none"> <li>1. set out the calculation of FAC based on component costs and usage factors for all services reported in the Detailed BCMR Services schedule;</li> <li>2. the fully allocated service unit costs should reconcile to those given in the in the Detailed BCMR Services schedule.</li> </ol>
1(c)	BCMR EAD/EAD LA 1Gbit/s Component LRICs and FACs	<ol style="list-style-type: none"> <li>1. set out the LRIC and FAC by component for EAD 1Gbit/s and EAD LA 1Gbit/s.</li> </ol>

## Proposals for direction setting requirements in relation to the form and content of the Regulatory Financial Statements

### Notification of proposal under sections 49 and 49A of the Communications Act 2003 and proposed SMP Services Condition 11.4 and 8A.4 setting the requirements in relation to the form and content of the Regulatory Financial Statements

#### Background

1. On 22 July 2004, Ofcom published a statement entitled "*The regulatory financial reporting obligations on BT and Kingston Communications Final statement and notification – Accounting separation and cost accounting: Final Statement and notification*" ("**2004 Statement**"). At Annex 2 of this statement, Ofcom imposed SMP services conditions with respect to regulatory accounting on BT in markets in which BT had been found to have significant market power in previously concluded market reviews.
2. At Annex 4 of the 2004 Statement, Ofcom published various directions for BT given under the SMP services conditions. These included a direction relating to the form and content of the Regulatory Financial Statements ("**Direction 4**").
3. Direction 4 was subsequently modified by:
  - a. the Direction published at Annex 3 of the regulatory statement "Changes to BT's regulatory financial reporting framework" of 31 August 2005;
  - b. the Direction published at Annex 3 of the regulatory statement "Changes to BT's regulatory financial reporting and audit requirements" of 16 August 2006;
  - c. the Direction published at Annex 5 of the regulatory statement "Changes to BT's regulatory financial reporting and audit requirements" of 30 May 2007;
  - d. the Direction published at Annex 5 of the regulatory statement "Changes to BT's 2007/08 regulatory financial statements" of 26 June 2008;
  - e. the Direction published at Annex 5 of the regulatory statement "Changes to BT and KCOM's regulatory financial reporting – 2008/09 update" of 15 June 2009;
  - f. the Direction published at Annex 4 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2009/10 update" of 4 June 2010;
  - g. the Direction published at Annex 5 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2010/11 update" of 2 June 2011;
  - h. the Direction published at Annex 2 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2011/12 update" of 17 April 2012; and
  - i. the Direction published at Annex 1 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2012/13 update" of 25 April 2013; and
  - j. the Direction published at Annex 4 of the regulatory statement "Changes to BT and KCOM's regulatory and financial reporting 2013/14 update" of 3 April 2014.

4. The SMP services conditions set out at Annex 2 of the 2004 Statement and Direction 4 were applied in relation to the markets in which BT was found to have SMP and regulatory reporting requirements were imposed at Annex 7 of a statement entitled "*Business Connectivity Market Review: Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments*" published on 28 March 2013.
5. On 20 December 2013, Ofcom published a consultation document entitled "*Regulatory Financial Reporting – A Review*" ("**2013 RFR Consultation**"). In that consultation, Ofcom made proposals in relation to the regulatory accounting SMP obligations of BT. In particular, Ofcom no longer proposed to apply to BT the regulatory accounting conditions set out in the 2004 Statement. Ofcom proposed no changes to the regulatory accounting SMP obligations of KCOM.
6. On 20 May 2014, following consideration of the responses to the 2013 RFR Consultation and the making of such modifications to its proposals as it considered appropriate, Ofcom published a policy statement entitled "*Regulatory Financial Reporting: Final Statement*" ("**2014 RFR Statement**") which set out (among other things) Ofcom's conclusions on the regulatory financial reporting policy that it considered should be applied to BT.
7. On 15 May 2015, Ofcom published a consultation document entitled "*Business Connectivity Market Review – Review of competition in the provision of leased lines*" ("**BCMR Consultation**"). At Annex 6 of the BCMR Consultation, Ofcom proposed, in relation to the markets listed below, to impose, among others, SMP services conditions with respect to regulatory accounting on BT (condition 11) which Ofcom concluded in the 2014 RFR Statement should be applied to BT:
  - Wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and including 8Mbit/s;
  - Wholesale market for contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area;
  - Wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
8. Ofcom proposed in paragraph 8.138 of the BCMR Consultation to issue directions under the proposed SMP services conditions subject to making any necessary changes to reflect Ofcom's proposals and ultimately decisions in relation to the markets set out in paragraph 7 above.
9. Under proposed SMP services condition 11.8 set out at Annex 6 of the BCMR Consultation, BT will be required to prepare, deliver to Ofcom and publish the Regulatory Financial Statements as directed by Ofcom from time to time.

10. Under proposed SMP services condition 11.4, Ofcom may from time to time make such directions as they consider appropriate in relation to BT's obligations under the proposed SMP services conditions.
11. This Notification sets out proposals for further requirements in relation to the form and content of the Regulatory Financial Statements.

### **Proposal to give direction**

12. Ofcom is proposing to make the direction set out in the Schedule to this Notification.
13. The effect of and reasons for giving the proposed direction are set out in the accompanying consultation.

### **Ofcom's duties and legal tests**

14. Ofcom considers that the proposed direction referred to in paragraph 12 complies with the requirements of section 49(2) of the Communications Act 2003 ("**Act**").
15. In making the proposals referred to in paragraph 12, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.

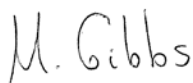
### **Making representations**

16. Representations may be made to Ofcom about the proposals set out in this Notification and the accompanying consultation document by no later than 7 August 2015.
17. In accordance with section 49C(1)(a) of the Act, a copy of the Notification, together with the Schedules, has been sent to the Secretary of State.

### **Interpretation**

18. Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in proposed SMP services condition and at Annex 15 of a consultation document entitled "*Business Connectivity Market Review: Leased lines charge controls and dark fibre pricing*" published on 12 June 2015. Otherwise any word or expression shall have the same meaning as it has in the Act.

Signed



MARIA GIBBS, Competition Policy Director, Ofcom

Leased Lines Charge Control

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

12 June 2015

## Schedule

1. In addition to the form and content requirements set out in Direction 4, BT shall prepare the Regulatory Financial Statements required under SMP services condition 11.8 set out at Annex 6 of the BCMR Consultation and under any direction setting out requirements of statements to be prepared, delivered to Ofcom and published, in accordance with the following form and content requirements:

### *Market Summary*

- 1.1. In relation to the market summary for the wholesale market for contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area and the wholesale market for contemporary interface symmetric broadband origination in the London Periphery, BT shall:

- 1.1.1. disclose the revenue, volume, average price and FAC of the following services:

- a) Wholesale extension services 10Mbit/s;
- b) Wholesale extension services 100Mbit/s;
- c) Wholesale extension services 1000Mbit/s;
- d) Wholesale extension services above 1000Mbit/s;
- e) Backhaul extension services up to and including 1000Mbit/s;
- f) Backhaul extension services above 1000Mbit/s;
- g) EAD Local Access 10Mbit/s;
- h) EAD Local Access 100Mbit/s;
- i) EAD Local Access 1000Mbit/s;
- j) EAD Other 10Mbit/s;
- k) EAD Other 100Mbit/s;
- l) EAD Other 1000Mbit/s;
- m) EBD 1000Mbit/s;
- n) EBD 10000Mbit/s;
- o) Optical services;

- 1.1.2. disclose LRIC for each of EAD and EAD LA; and

- 1.1.3. separately identify and separately account for each of the Direct ECC Services and the Contractor ECC Services.

- 1.2. In relation to the market summary for the wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull

Area, at bandwidths up to and including 8Mbit/s, BT shall disclose the revenue, volume, average price and FAC of the following services:

- a) Partial and Private Circuits 64kbit/s;
- b) Partial and Private Circuits 2Mbit/s;
- c) Radio Backhaul Service 64kbit/s;
- d) Radio Backhaul Service 2Mbit/s; and
- e) Point of Handover.

*Calculation of FAC based on component costs and usage factors*

1.3. In relation to the calculation of FAC based on component costs and usage factors for the wholesale market for contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area and the wholesale market for contemporary interface symmetric broadband origination in the London Periphery, BT shall disclose all Network Components and FAC of the following services:

- a) Wholesale extension services 10Mbit/s;
- b) Wholesale extension services 100Mbit/s;
- c) Wholesale extension services 1000Mbit/s;
- d) Wholesale extension services above 1000Mbit/s;
- e) Backhaul extension services up to and including 1000Mbit/s;
- f) Backhaul extension services above 1000Mbit/s;
- g) EAD Local Access 10Mbit/s;
- h) EAD Local Access 100Mbit/s;
- i) EAD Local Access 1000Mbit/s;
- j) EAD Other 10Mbit/s;
- k) EAD Other 100Mbit/s;
- l) EAD Other 1000Mbit/s;
- m) EBD 1000Mbit/s;
- n) EBD 10000Mbit/s; and
- o) Optical services.

1.4. In relation to the calculation of FAC based on component costs and usage factors for the wholesale market for low bandwidth traditional interface symmetric broadband origination in the UK excluding the Hull Area, at bandwidths up to and

including 8Mbit/s, BT shall disclose all Network Components and FAC of the following services:

- a) Partial and Private Circuits 64kbit/s;
- b) Partial and Private Circuits 2Mbit/s;
- c) Radio Backhaul Service 64kbit/s;
- d) Radio Backhaul Service 2Mbit/s; and
- e) Point of Handover.



