

Draft legal instruments

Section 1 Proposed SMP conditions for BT and KCOM

NOTIFICATION OF PROPOSALS FOR EU CONSULTATION UNDER SECTIONS 48B AND 80B OF THE COMMUNICATIONS ACT 2003

Proposals for the identification of markets, the making of market power determinations and the setting of SMP services conditions in relation to BT and KCOM under section 45 of the Communications Act 2003

Background

1. On 28 March 2013, Ofcom published a statement entitled "*Business Connectivity Market Review, Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments*".¹ That document set out Ofcom's conclusions on its third review of the relevant markets relating to leased lines and backhaul circuits used by businesses and communication providers, by identifying markets, making certain market determinations and setting SMP conditions (including charge control conditions). At Annexes 7 and 8 to that document, Ofcom published notifications under sections 48 and 49 of the Act, dated 28 March 2013, containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to BT and KCOM, respectively ("**March 2013 Notification**").
2. 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 financial reporting SMP obligations of BT. In particular, Ofcom no longer proposed to apply to BT the regulatory accounting conditions set out in the regulatory statement "*The regulatory financial reporting obligations on BT and Kingston Communications Final statement and notification – Accounting separation and cost accounting: Final Statement notification*" ("**2004 RFR Statement**"). Ofcom proposed no changes to the regulatory accounting SMP obligations of KCOM.
3. 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*

¹ Ofcom, Business Connectivity Market Review, Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments, Statement, 28 March 2013
<http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/final-statement/>

Reporting: Final Statement' ("**2014 RFR Statement**")² which set out (among other things) Ofcom's conclusions on the regulatory financial reporting policy that it considered should be applied to BT.

4. On 15 May 2015, Ofcom published a consultation document entitled "*Business Connectivity Market Review: Review of competition in the provision of leased lines*" ("**May 2015 BCMR Consultation**").³ Annex 6 of the May 2015 BCMR Consultation contained the notification under sections 48A and 80A of the Act in which Ofcom set out for domestic consultation its proposals to (i) identify certain markets, (ii) make market power determinations, and (iii) set SMP services conditions to be applied to BT and KCOM respectively ("**May 2015 BCMR Notification**"). Ofcom invited responses to the May 2015 BCMR Consultation by 31 July 2015.
5. Ofcom also explained in the May 2015 BCMR Consultation that its proposals for charge controls on BT in the markets set out below, which Ofcom proposed to identify in the May 2015 BCMR Consultation, would be set out in a separate notification:
 - a) wholesale market for low bandwidth traditional interface symmetric broadband origination in the United Kingdom 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 United Kingdom excluding the Hull Area; and
 - c) wholesale market for contemporary interface symmetric broadband origination in the London Periphery.
6. On 12 June 2015, Ofcom published a consultation document entitled "*Business Connectivity Market Review: Leased lines charge controls and dark fibre pricing*" ("**June 2015 LLCC Consultation**").⁴ Annex 15 of the June 2015 LLCC Consultation set out the notification under sections 48A and 80A of the Act in which Ofcom set out for domestic consultation its proposals to set the charge controls in respect of the markets referred to at **paragraphs 5(a) to 5(c)** above. These proposals were made by reference to the proposed market power determinations referred to in the May 2015 BCMR Notification and, as such, were to be treated as supplementary to the May 2015 BCMR Notification. Ofcom invited responses to the June 2015 LLCC Consultation by 7 August 2015.
7. Also on 12 June 2015, Ofcom published a consultation document entitled "*Review of BT's cost attribution methodologies*" ("**June 2015 CAR Consultation**").⁵ Ofcom

² Ofcom, Regulatory Financial Reporting Final Statement, 20 May 2014.

<http://stakeholders.ofcom.org.uk/binaries/consultations/bt-transparency/statement/financial-reporting-statement-may14.pdf>

³ Ofcom, Business Connectivity Market Review, Review of competition in the provision of leased lines, Consultation", 15 May 2015 <http://stakeholders.ofcom.org.uk/consultations/bcmr-2015/>

⁴ Ofcom, Business Connectivity Market Review: Leased lines charge controls and dark fibre pricing, Consultation, 12 June 2015. <http://stakeholders.ofcom.org.uk/consultations/lcc-dark-fibre/>

⁵ Ofcom, Review of BT's cost attribution methodologies, Consultation, 12 June 2015.

<http://stakeholders.ofcom.org.uk/consultations/cost-attribution-review/>

explained that the proposals to set the charge controls included in the June 2015 LLCC Consultation relied on the analysis and reflected the proposals in relation to certain BT's cost attribution methodologies contained in the June 2015 CAR Consultation.⁶ Ofcom invited responses to the June 2015 CAR Consultation by 7 August 2015.

8. On 13 November 2015, and following consideration of certain responses to the June 2015 LLCC Consultation, Ofcom published a further consultation document entitled "*Business Connectivity Market Review: Update on the proposed leased lines charge controls*" ("**November 2015 LLCC Consultation**").⁷ Annex 6 of the November 2015 LLCC Consultation contained the notification under section 48A of the Act in which Ofcom set out for domestic consultation its revised proposals to set the charge controls in respect of the markets referred to at **paragraphs 5(a) to 5(c)** above. Ofcom invited responses to the November 2015 LLCC Consultation by 14 December 2015.
9. Also on 13 November 2015, and following consideration of certain responses to the June 2015 CAR Consultation, Ofcom published a further consultation document entitled "*Review of BT's cost attribution methodologies: Second Consultation*" ("**November 2015 CAR Consultation**").⁸ Ofcom set out in this consultation its updated analysis and its revised proposals in relation to certain BT's cost attribution methodologies. Ofcom explained that the revised proposals to set the charge controls included in the November 2015 LLCC Consultation relied on the updated analysis and reflected the revised proposals contained in the November 2015 CAR Consultation.⁹
10. Copies of each of the May 2015 BCMR Consultation, the June 2015 LLCC Consultation and the November 2015 LLCC Consultation (collectively "**BCMR Consultation Documents**") were sent to the Secretary of State in accordance with sections 48(C)(1) and 81(1) of the Act.
11. Ofcom received many responses to its proposals set out in the BCMR Consultation Documents, the June 2015 CAR Consultation and the November 2015 CAR Consultation, and it has considered every such representation. The Secretary of State has not notified Ofcom of any international obligation on the United Kingdom for the purposes of sections 48A(6)(b) or 80A(9)(b) of the Act.
12. The proposals set out in the BCMR Consultation Documents contained proposals of EU significance for the purposes of the Act. Therefore, after making such

⁶ Ofcom, Review of BT's cost attribution methodologies, Consultation, 12 June 2015, Paragraph 1.6 <http://stakeholders.ofcom.org.uk/consultations/cost-attribution-review/>

⁷ Ofcom, Business Connectivity Market Review: Update on the proposed leased lines charge controls, Consultation, 13 November 2015.

⁸ Ofcom, Review of BT's cost attribution methodologies, Consultation, 13 November 2015. <http://stakeholders.ofcom.org.uk/consultations/BT-cost-attribution-review-second-consultation/>

⁹ Ofcom, Review of BT's cost attribution methodologies, Consultation, 13 November 2015. Paragraph 1.16 <http://stakeholders.ofcom.org.uk/consultations/BT-cost-attribution-review-second-consultation/>

modifications of the proposals that appeared to Ofcom to be appropriate following domestic consultation, Ofcom hereby sends a copy of its proposals, and a draft of the Statement accompanying this notification setting out the reasons for its proposals, to each of the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with sections 48B(2) and 80B(2) of the Act.

Determinations for the United Kingdom outside the Hull Area

Proposals for market identifications and market power determinations

13. Ofcom is proposing to identify the following markets listed in Column 1 of Table A below for the purposes of making a proposed determination that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market.

Table A: Market identifications and market power determinations in the United Kingdom outside the Hull Area

Column 1: Market identification	Column 2: Market power determination
(a) Wholesale market for low bandwidth traditional interface symmetric broadband origination in the United Kingdom excluding the Hull Area, at bandwidths up to and including 8Mbit/s	BT
(b) Wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area	BT
(c) Wholesale market for contemporary interface symmetric broadband origination in the CLA	None
(d) Wholesale market for contemporary interface symmetric broadband origination in the London Periphery	BT

14. For the avoidance of doubt, Ofcom proposes to determine that the market listed at (c) in Table A above is effectively competitive and, therefore, that no person has significant market power in that market.

15. The effect of, and Ofcom's reasons for, identifying the markets and making the market power determinations referred to in **paragraph 13** above are set out in the draft Statement accompanying this notification.

Proposals to set and apply, modify and revoke SMP services conditions

Proposals to set and apply SMP services conditions

16. Ofcom is proposing to set, in relation to each of the services markets in which Ofcom is proposing to make the market power determinations as listed at **(a), (b) and (d)** in **Table A** above, the SMP conditions set out in **Schedule 1** to this notification to be applied to BT to the extent specified in that Schedule, which SMP conditions shall, unless otherwise is stated in that Schedule, take effect from the date of any subsequent notification under sections 48(1) and 79(4) of the Act adopting the proposals set out in this notification.
17. The proposals referred to in **paragraph 16** above include proposals to set the regulatory accounting SMP conditions which Ofcom considered in the 2014 RFR Statement should be applied to BT following Ofcom's review of the regulatory financial reporting policy.

Proposals to revoke SMP services conditions

18. Ofcom is proposing to revoke the SMP conditions applied to BT as set out in the March 2013 Notification on the date of publication of any subsequent notification under section 48(1) of the Act revoking those conditions.
19. The proposals referred to in **paragraph 18** above include proposals to revoke the SMP conditions which were set out in the 2004 RFR Statement insofar as they apply to the markets set out in **paragraph 13** above.
20. The effect of, and Ofcom's reasons for making, the proposals in relation to the SMP conditions referred to in **paragraphs 16 to 19** above are set out in the draft Statement accompanying this notification.

Determinations for the Hull Area

Proposals for market identifications and market power determinations

21. Ofcom is proposing to identify the following markets listed in Column 1 of **Table B** below for the purposes of making a proposed determination that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market.

Table B: Market identifications and market power determinations for the Hull Area

Column 1: Market identification	Column 2: Market power determination (if any)
(a) Wholesale market for low bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 8Mbit/s	KCOM
(b) Wholesale market for contemporary interface symmetric broadband origination in the Hull Area	KCOM
(c) Retail market for low bandwidth traditional interface leased lines in the Hull Area, at bandwidths up to and including 8Mbit/s	KCOM
(d) Retail market for contemporary interface symmetric broadband origination in the Hull Area	KCOM

22. The effect of, and Ofcom’s reasons for making, the proposals for identifying the markets and making the market power determinations referred to in **paragraph 21** above are set out in the draft Statement accompanying this notification.

Proposals to set and apply, modify and revoke SMP services conditions

Proposals to set and apply or modify SMP services conditions

23. Ofcom is proposing to set, in relation to each of the services markets in which Ofcom is making the market power determinations as listed at **(a) to (d)** in **Table B** above, the SMP conditions set out in **Schedule 7** to this notification to be applied to KCOM to the extent specified in that Schedule, which SMP conditions shall, unless otherwise stated in that Schedule, take effect from the date of the notification under sections 48(1) and 79(4) of the Act adopting the proposals set out in this notification.

24. Ofcom is also proposing to set, in relation to each of the services markets in which Ofcom is making the market power determinations as listed at **(a) to (d)** in **Table B** above, the SMP conditions OB1 to OB27 and OB31 to OB33 to be applied to KCOM, but excluding subparagraphs (a) to (c) and (f) of SMP condition OB23, set out in the July 2004 (KCOM) Notification contained in the 2004 RFR Statement, but as read in light of the modifications to that Notification set out in **paragraph 25** below. Those SMP conditions shall, unless otherwise is stated in that Schedule, take effect on the date of any subsequent notification under sections 48(1) and 79(4) of the Act adopting the proposals set out in this notification.

25. Ofcom is proposing to modify the July 2004 (KCOM) Notification as follows—

- a) in paragraph 4(a)(ii), the words “and 9 to 12” shall be replaced with the words “and 9 and 10”;
- b) in Part 1 (entitled “Wholesale Markets”) of Schedule 1:
 - (i) the market 10, being identified as “Wholesale market for medium bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths above 8Mbit/s and up to and including 45Mbit/s” shall be deleted and replaced with a new market 10, to be identified as “Wholesale market for contemporary interface symmetric broadband origination in the Hull Area”;
 - (ii) the market 11, being identified as “Wholesale market for high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths above 45Mbit/s and up to and including 155Mbit/s” shall be deleted;
 - (iii) the market 11a, being identified as “Wholesale market for very high bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths of 622Mbit/s” shall be deleted;
 - (iv) the market 12, being identified as “Wholesale market for low bandwidth alternative interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 1Gbit/s” shall be deleted; and
 - (v) in the Column entitled “Date”, for the dates specified in relation to the markets 9 to 12 there shall be substituted for the proposed markets 9 and 10 the date of Ofcom’s publication of any subsequent notification under section 48(1) of the Act following the end of the EU consultation.
- c) in Part 2 (entitled “Retail Markets”) of Schedule 1:
 - (i) the following two new Columns shall be added –
 - a. “Retail market for low bandwidth traditional interface leased lines in the Hull Area, at bandwidths up to and including 8Mbit/s”; and
 - b. “Retail market for contemporary interface symmetric broadband origination in the Hull Area”;
 - (ii) in the Column entitled “Date” there shall be added for the proposed markets referred to in **paragraphs 25(c)(i)(a) and (b)** above the date of Ofcom’s publication of any subsequent notification under section 48(1) of the Act following the end of the EU consultation.

Proposals to revoke SMP services conditions

26. Ofcom is proposing to revoke the SMP conditions to be applied to KCOM as set out in the March 2013 Notification on the date of publication of any subsequent notification under section 48(1) of the Act revoking those conditions.

27. The effect of, and Ofcom's reasons for making, the proposals in relation to the SMP conditions referred to in **paragraphs 23 to 26** above are set out in the draft Statement accompanying this notification.

Ofcom's duties and legal tests

28. In identifying and analysing the markets referred to in **paragraphs 13 and 21** above, and in considering whether to make the corresponding proposals set out in this notification, Ofcom has, in accordance with section 79 of the Act, taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of an EU instrument and which relate to market identification and analysis or the determination of what constitutes significant market power. In so doing, pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
29. Ofcom considers that the proposed SMP conditions above comply with the requirements of sections 45 to 47, 87, 88 and 91 of the Act, as appropriate and relevant to each such SMP condition, and further that the proposed modifications and revocations of the SMP conditions referred to above comply with the requirements of sections 45 to 47, 87, 88 and 91 of the Act as appropriate and relevant to them.
30. In making all of the proposals referred to in this notification, Ofcom has 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. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive.

Interpretation

31. For the purpose of interpreting this notification and its Schedules—
- a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in **paragraph 32** below, and otherwise any word or expression shall have the same meaning as it has in the Act;
 - b) headings and titles shall be disregarded;
 - c) expressions cognate with those referred to in this notification shall be construed accordingly; and
 - d) the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

32. In this notification and its Schedules—

- a) “2004 RFR Statement” has the meaning given to it by paragraph 2 of this notification;
- b) “2013 RFR Consultation” has the meaning given to it by paragraph 2 of this notification;
- c) “2014 RFR Statement” has the given to it by paragraph 3 of this notification;
- d) “Act” means the Communications Act 2003 (c. 21);
- e) “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;
- f) “CLA” means the area consisting of the postal sectors set out in Schedule 2 to this notification;
- g) “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 and shown in Schedule 8 of this notification;
- h) “London Periphery” means the area consisting of the postal sectors set out in Schedule 3 to this notification;
- i) “March 2013 Notification” has the meaning given to it by paragraph 1 of this notification;
- j) “July 2004 (KCOM) Notification” means the notification under sections 48(1) and 86(1) of the Act as dated 22 July 2004 and published at Annex 3 to the 2004 RFR Statement, as subsequently amended by Ofcom;
- k) “KCOM” means KCOM Group plc, whose registered company number is 2150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
- l) “Ofcom” means the Office of Communications;

- m) "Rest of the UK" means the area consisting of the United Kingdom excluding the CLA and the London Periphery;
- n) "United Kingdom" has the meaning given to it in the Interpretation Act 1978 (1978 c30).

33. The Schedules 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

22 March 2016

Schedule 1: SMP conditions (BT)

Part 1: Application

1. The SMP Conditions in Part 3 of this Schedule 1 shall, except where specified otherwise, apply to the Dominant Provider in each of the relevant markets listed in Column 1 of **Table 1** below to the extent specified in Column 2 of **Table 1**.
2. Nothing in these Conditions shall require the Dominant Provider to provide the following:
 - a. Ethernet First Mile copper services (EFMcU) (as defined in IEEE standard 802.3.1-2013);
 - b. Symmetric Digital Subscriber Line services; or
 - c. Wholesale versions of its legacy retail analogue services.

Table 1: Relevant markets for the purposes of this Schedule

Column 1: Relevant market	Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1
Wholesale market for low bandwidth traditional interface symmetric broadband origination in the United Kingdom excluding the Hull Area, at bandwidths up to and including 8Mbit/s	Condition 1 Condition 3 Conditions 5 to 9 inclusive Conditions 10D and 10E (applicable from 1 May 2016 to 31 March 2019 (inclusive)) Condition 11
Wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area	Conditions 1 to 9 Condition 10A, 10B, 10C, 10E, 10F and 10G (applicable from 1 May 2016 to 31 March 2019 (inclusive)) Condition 11

<p>Wholesale market for contemporary interface symmetric broadband origination in the London Periphery</p>	<p>Conditions 1 to 9</p> <p>Condition 10A, 10C, 10E, 10F and 10G (applicable from 1 May 2016 to 31 March 2019 (inclusive))</p> <p>Condition 11</p>
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The Conditions referred to in Column 2 of **Table 1** are entitled as follows—

Condition 1	Network access on reasonable request
Condition 2	Specific forms of network access
Condition 3	No undue discrimination
Condition 4	Equivalence of Inputs basis
Condition 5	Publication of a Reference Offer
Condition 6	Notification of charges and terms and conditions
Condition 7	Quality of service
Condition 8	Notification of technical information
Condition 9	Requests for new forms of network access
Condition 10	Basis of charges and charge controls
Condition 11	Regulatory Financial Reporting

Part 2: Definitions and interpretation

1. In addition to the definitions set out above in this notification and in each Condition below (where relevant), in this Schedule 1—

“Accepted Order” means an Order that has been validated and accepted by the Dominant Provider;

“Access Charge Change” means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access;

“Access Charge Change Notice” means a notice given by the Dominant Provider of an Access Charge Change;

“Access Agreement” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1;

“Access Segment” means network access connecting an end user premises to—

- (a) a Local Access Node; or
- (b) an operational building of the Dominant Provider; or
- (c) an operational building of a Third Party.

“Accommodation Services” means the provision of space permitting a Third Party to occupy part of an MDF/ODF Site reasonably sufficient to permit the use of network access provided by the Dominant Provider in accordance with Condition 1 and Condition 2 (as applicable), and in particular to permit the connection of the Dominant Provider’s electronic communications network with that of a Third Party at that location and having the following characteristics—

(a) the Third Party’s electronic communications network is situated in an area of the MDF/ODF Site which—

- (i) is a single undivided space;
- (ii) after proper performance by the Dominant Provider of its obligation to provide network access pursuant to Condition 1 and Condition 2 (as applicable), would permit the normal operation of the Third Party’s electronic communications network (or would permit if the Dominant Provider removed any object or substance whether toxic or not, which might reasonably prevent or hinder the occupation of the MDF/ODF Site for such use); and
- (iii) if so requested by the Third Party, is not unreasonably distant from the Dominant Provider’s electronic communications network within the MDF/ODF Site;

(b) no permanent physical partition is erected in the space between the Third Party’s electronic communications network and the Dominant Provider’s electronic communications network; and

(c) the Third Party’s electronic communications network is neither owned nor run by the Dominant Provider or by any person acting on the Dominant Provider’s behalf;

“Commercial Information” means information of a commercially confidential nature relating to products and services to which Condition 4 applies, and which relates to any or all of the following in relation thereto—

- (a) product development;
- (b) pricing;
- (c) marketing strategy and intelligence;
- (d) product launch dates;
- (e) cost;
- (f) projected sales volumes; or

(g) network coverage and capabilities,

save for any such information in relation to which Ofcom consents in writing that it shall be treated as falling outside this definition;

“Competitive Core Node” means a node which is either: (i) at an operational building of the Dominant Provider set out in Column 2 of Schedule 6; or (ii) a Data Centre Core Node;

“Completed Order” means an Accepted Order that has been provisioned and for which all related work has been carried out;

“Core Node” means a node listed in Column 1 of Schedule 4 to this notification consisting of an operational building of the Dominant Provider listed in Column 2 of Schedule 4;

“Customer-Sited Handover” means interconnection between the electronic communications network of the Dominant Provider and the electronic communications network of a Third Party at an operational building of the Third Party;

“Dark Fibre Access” means a service providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals ;

“Data Centre Core Node” means a node listed in Schedule 5 of this notification;

“Dominant Provider” 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;

“Equivalence of Inputs” means that the Dominant Provider provides, in respect of a particular product or service, the same product or service to all Third Parties (including itself) on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes, and includes the provision to all Third Parties (including itself) of the same Commercial Information about such products, services, systems and processes as the Dominant Provider provides to its own divisions, subsidiaries or partners. In particular, it includes the use by the Dominant Provider of such systems and processes in the same way as other Third Parties and with the same degree of reliability and performance as experienced by other Third Parties.

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

- (a) trivial differences; and
- (b) differences relating to:
 - (i) credit vetting procedures,
 - (ii) payment procedures,
 - (iii) matters of national and crime-related security (which for the avoidance of doubt includes for purposes related to the Regulation of Investigatory Powers Act 2000), physical security, security required to protect the operational integrity of the network,
 - (iv) provisions relating to the termination of a contract,
 - (v) contractual provisions relating to requirements for a safe working environment;
- (c) differences relating to the provision of Commercial Information by the Dominant Provider to its own divisions, subsidiaries or partners where this is necessary for purposes other than those relating to the provision of network access to those own divisions, subsidiaries or partners; and
- (d) such other differences as OFCOM may from time to time consent to in writing.

For the avoidance of any doubt, unless seeking Ofcom's consent, the Dominant Provider may not rely on any other reasons in seeking to objectively justify the provision in a different manner;

"Ethernet Services" means services presented with the standard networking protocol defined under that name in IEEE 802.3 and published by the Institute of Electrical and Electronics Engineers;

"In-Building Handover" means interconnection between the electronic communications network of the Dominant Provider and the electronic communications network of a Third Party within an operational building of the Dominant Provider;

"Initial Contractual Delivery Date" means the first date provided by the Dominant Provider to a Third Party Customer on which an Order is planned to become a Completed Order;

"In-Span Handover" means interconnection between the electronic communications network of the Dominant Provider and the electronic communications network of a Third Party in an external structure located reasonably adjacent to an operational building of the Dominant Provider such as, but not limited to, a manhole;

“In-Span Handover Extension” means interconnection between the electronic communications network of the Dominant Provider and the electronic communications network of a Third Party in an external structure located remote from an operational building of the Dominant Provider such as, but not limited to, a manhole;

“Interconnection Services” means each of the following, individually and collectively—

- (a) In-Span Handover (in relation to traditional interface services only);
- (b) Customer-Sited Handover;
- (c) In-Span Handover Extension (in relation to traditional interface services only); and
- (d) In-Building Handover;

“Local Access Node” means an operational building of the Dominant Provider which supports the provision of services to end users and to which the end user is directly connected. For the avoidance of doubt, such nodes include sites housing a main distribution frame or an optical distribution frame;

“MDF/ODF Site” means the site of an operational building of the Dominant Provider that houses a main distribution frame or an optical distribution frame;

“Network Termination Point” means the physical point at which a customer is provided with access to an electronic communications network;

“Order” means a request for the Relevant Ethernet Service, Relevant WDM Service or the Dark Fibre Access (as applicable), including a request for an upgrade on bandwidth of an existing Relevant Ethernet Service or an existing Relevant WDM Service or a request for a change to the product variant of an existing Relevant Ethernet Service or an existing Relevant WDM Service, submitted to the Dominant Provider by a Third Party;

“Reference Offer” means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;

“Relevant Ethernet Services” means those Ethernet Services offered by the Dominant Provider to a Third Party under the product or service names of (i) Ethernet Access Direct, (ii) Ethernet Backhaul Direct or (iii) Cablelink including, in relation to each:

- (a) all product variants except where Ofcom agrees otherwise, and
- (b) the introduction by the Dominant Provider of a new product and/or service

wholly or substantially in substitution for that existing product and/or service;

“Special Offer” means a temporary price reduction for a particular product or service, applicable to all customers on a non-discriminatory basis, which is stated to apply for a limited and predefined period and where the price immediately on expiry of that period is no higher than the price immediately before the start of that period;

“Third Party” means a person providing a public electronic communications service or a person providing a public electronic communications network;

“Third Party Customer” means a Third Party purchasing a Relevant Ethernet Service or a Dark Fibre Access (as applicable) from the Dominant Provider;

"Trunk Aggregation Node" means a node listed in Column 1 of Schedule 6 to this notification consisting of any one or more of the Dominant Provider's operational buildings as listed in Column 2 of Schedule 6;

"Trunk Segment" means a service connecting any two Competitive Core Nodes, excluding any service connecting any two of the Dominant Provider's operational buildings listed in Column 2 of Schedule 6 which are within the same Trunk Aggregation Node as listed in Column 1 of Schedule 6 (for example, a service connecting Cambridge Trunks and Ipswich Town would constitute a Trunk Segment but not one connecting Ipswich Town and Colchester Town);

“WDM Services” means services provided using wavelength division multiplexing equipment located at the customer's premises and which is capable of supporting multiple leased line services over a single fibre or pair of fibres;

“Wholesale End-to-End Segments” means network access connecting an end user premises and another end user premises; and

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

Part 3: SMP conditions

Condition 1 – Network access on reasonable request

- 1.1 The Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2 Except where Condition 1.3 applies, the provision of network access by the Dominant Provider in accordance with this Condition must:
 - (a) take place as soon as reasonably practicable after receiving the request from a Third Party (and, in any event, in accordance with Condition 7);
 - (b) be on:
 - (i) fair and reasonable terms, conditions and charges; and
 - (ii) such terms, conditions and charges as Ofcom may from time to time direct.
- 1.3 Where Condition 10 applies to the provision of network access by the Dominant Provider, the provision of that network access in accordance with this Condition must:
 - (a) take place as soon as reasonably practicable after receiving the request from a Third Party (and, in any event, in accordance with Condition 7);
 - (b) be on:
 - (i) fair and reasonable terms and conditions (excluding charges); and
 - (ii) such terms, conditions and charges as Ofcom may from time to time direct.
- 1.4 The provision of network access by the Dominant Provider in accordance with this Condition shall also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct and, for the avoidance of doubt, associated facilities include Accommodation Services and Interconnection Services.
- 1.5 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

Condition 2 – Specific forms of network access

2.1 Without prejudice to the generality of Condition 1, the provision of network access under Condition 1 shall include the following specific forms of network access—

(a) Ethernet Services (which do not contain a Trunk Segment) including the provision of the following services:

- (i) Access Segments;
- (ii) Backhaul Segments;
- (iii) Wholesale End-to-End Segments, up to a maximum straight-line distance of 25km;

(b) WDM Services (which do not contain a Trunk Segment) including the provision of the following services:

- (i) Backhaul Segments;
- (ii) Wholesale End-to-End Segments;

(c) Dark Fibre Access (which does not contain a Trunk Segment) up to a maximum straight-line distance of 45 km including the provision of the services corresponding to the optical fibre elements of each of the services made available pursuant to Conditions 2.1(a) and 2.1(b) above.

2.2 In providing Dark Fibre Access the Dominant Provider shall ensure that, where a service is provided which corresponds to the optical fibre elements of a service made available pursuant to Conditions 2.1(a) or 2.1(b) above, save in respect of objectively justifiable differences, it shall be provided:

- (a) in accordance with the same systems and processes;
- (b) in the same manner; and
- (c) within the same or shorter period of time;

as applicable to the optical fibre elements of the corresponding service.

2.3 Nothing in this Condition 2 shall require the Dominant Provider:

- (a) to provide network access to itself under Condition 2.1(c);
- (b) where the Dominant Provider provides network access to itself under Condition 2.1(c), to provide to Third Parties services that use that network access as an input.

2.4 Condition 2.1(c) shall enter into force on 1 October 2017.

- 2.5 The provision of network access by the Dominant Provider in accordance with this Condition shall also include such other entitlements as Ofcom may from time to time direct.
- 2.6 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

Condition 3 – No undue discrimination

- 3.1 The Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Conditions 1 and 2 (as applicable).

- 3.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

Condition 4 – Equivalence of Inputs basis

- 4.1 Subject to Condition 4.2, the Dominant Provider must provide network access in accordance with Conditions 1 and 2 (as applicable) on an Equivalence of Inputs basis.
- 4.2 The obligation in Condition 4.1 to provide network access on an Equivalence of Inputs basis shall not apply to:
- (a) Accommodation Services other than in relation to the allocation of space (to be allocated on a first-come-first-serve basis) and power in operational buildings belonging to the Dominant Provider;
 - (b) a Backhaul Segment connecting:
 - (i) the operational building of the Dominant Provider which is a Core Node and another Core Node;
 - (ii) the operational building of the Dominant Provider which is a Core Node and a Competitive Core Node; or
 - (iii) two operational buildings of the Dominant Provider within a Trunk Aggregation Node;
 - (c) WDM Services with a straight line distance of more than 70km;
 - (d) network access which the Dominant Provider was providing but was not required to provide on an Equivalence of Inputs basis as at 30 April 2016; or
 - (e) such provision of network access as Ofcom may from time to time otherwise consent in writing.
- 4.3 Where WDM Services provided by the Dominant Provider to a Third Party differ from WDM Services provided by the Dominant Provider to itself only in respect of the interface used:
- (a) subject to Condition 4.3(b), the obligation in Condition 4.1 shall apply;
 - (b) the obligation in Condition 4.1 shall not apply to the price for the provision of such WDM Services, but the Dominant Provider must ensure that such a price is not unduly discriminatory within the meaning of Condition 3.
- 4.4 Without prejudice to the generality of Condition 4.1, the Dominant Provider must not provide (or seek to provide) network access for its own services (including for those of its retail divisions, subsidiaries or partners), unless at the same time the Dominant Provider provides and/or offers to provide such network access to Third Parties on an Equivalence of Inputs basis.

4.5 For the avoidance of doubt, the obligations set out in this Condition 4 shall apply in addition to the obligations set out in Condition 3.

5 – Publication of a Reference Offer

- 5.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall publish a Reference Offer in relation to the provision of network access pursuant to Conditions 1 and 2 (as applicable) and comply with the requirements set out below.
- 5.2 Subject to Condition 5.9, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of network access pursuant to Conditions 1 and 2 (as applicable) includes, where applicable, at least the following:
- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
 - (b) the locations at which network access will be provided;
 - (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
 - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
 - (e) any ordering and provisioning procedures, including the provision of Initial Contractual Delivery Dates;
 - (f) relevant charges, terms of payment and billing procedures;
 - (g) details of interoperability tests;
 - (h) details of maintenance and quality as follows:
 - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, provision of support services (such as fault handling and repair);
 - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
 - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
 - (iv) a definition and limitation of liability and indemnity;
 - (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;

- (i) details of any relevant intellectual property rights;
 - (j) a dispute resolution procedure to be used between the parties;
 - (k) details of duration and renegotiation of agreements;
 - (l) provisions regarding confidentiality of the agreements;
 - (m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts); and
 - (n) the standard terms and conditions for the provision of network access.
- 5.3 The Dominant Provider shall ensure that a Reference Offer in relation to the provision of network access pursuant to Condition 2.1(c) separately sets out, in addition to the matters set out in Condition 5.2, an explanation of differences (if any) between:
- (a) the matters set out in Condition 5.2 which apply to the provision of the Dark Fibre Access; and
 - (b) the matters set out in Condition 5.2 which apply to the provision of the services corresponding to the optical fibre elements of each of the services made available pursuant to Conditions 2.1(a) and 2.1(b) above.
- 5.4 To the extent that the Dominant Provider provides to itself network access that—
- (a) is the same, similar or equivalent to that provided to any Third Party; or
 - (b) may be used for a purpose that is the same, similar or equivalent to the network access provided to any Third Party,
- in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any Third Party, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Condition 5.2.
- 5.5 Except where Condition 5.6 applies, the Dominant Provider shall:
- (a) within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this Condition enters into force; and
 - (b) as soon as reasonably practicable, update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided after the date that this Condition enters into force.
- 5.6 In relation to specific forms of network access to be provided under Condition 2.1(c), the Dominant Provider shall:

(a) publish a draft Reference Offer in relation to the Dark Fibre Access by no later than 1 September 2016; and

(b) publish a final Reference Offer in relation to the Dark Fibre Access by no later than 1 December 2016.

- 5.7 The publications referred to above shall be effected by the Dominant Provider placing a copy of the Reference Offer on any relevant publicly available website operated or controlled by the Dominant Provider.
- 5.8 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 5.9 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.
- 5.10 The Dominant Provider shall provide network access on the terms and conditions (including charges) in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.
- 5.11 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition 6 – Notification of charges and terms and conditions

- 6.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and comply with the requirements set out in this Condition.
- 6.2 Where it proposes an Access Charge Change, the Dominant Provider shall send to every person with which it has entered into an Access Agreement pursuant to Conditions 1 and 2 (as applicable), an Access Charge Change Notice.
- 6.3 The obligation in Condition 6.2 shall not apply where the Access Charge Change is directed or calculated by Ofcom or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.
- 6.4 An Access Charge Change Notice must:
- (a) in the case of an Access Charge Change involving new network access, be sent not less than 28 days before any such amendment comes into effect;
 - (b) in the case of an Access Charge Change relating solely to a reduction in the price of existing network access (including, for the avoidance of doubt, a Special Offer), be sent not less than 28 days before any such amendment comes into effect; and
 - (c) in the case of any other Access Charge Change involving existing network access, be sent not less than 90 days before any such amendment comes into effect.
- For the avoidance of doubt, where the Dominant Provider provides network access under a Special Offer, the Dominant Provider is not required to give an Access Charge Change Notice when the price is increased in accordance with the stated terms of the Special Offer.
- 6.5 The Dominant Provider shall ensure that an Access Charge Change Notice includes:
- (a) a description of the network access in question;
 - (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access; and
 - (c) the date on which, and the period for which, the Access Charge Change will take effect (the "effective date").
- 6.6 The Dominant Provider shall not apply any Access Charge Change identified in an Access Charge Change Notice before the effective date.
- 6.7 To the extent that the Dominant Provider provides to itself network access that:
- (a) is the same, similar or equivalent to that provided to any other person; or

(b) may be used for a purpose that is the same, similar or equivalent to the network access provided to any other person, in a manner that differs from that detailed in an Access Charge Change Notice in relation to network access provided to any other person,

the Dominant Provider shall ensure that it sends to Ofcom a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Condition 6.5(a) to (c) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with network access, it shall ensure it sends to Ofcom a notice equivalent to an Access Charge Change Notice.

Condition 7 – Quality of service

- 7.1 The Dominant Provider must comply with all such quality of service requirements as Ofcom may from time to time direct in relation to network access provided by the Dominant Provider pursuant to Conditions 1 and 2 (as applicable).

Condition 8 – Notification of technical information

- 8.1 Except in so far as Ofcom may from time to time otherwise consent in writing, in relation to network access pursuant to Conditions 1 and 2, where the Dominant Provider proposes new or amended terms and conditions relating to the following:
- (a) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);
 - (b) the locations at which network access will be provided; or
 - (c) technical standards (including any usage restrictions and other security issues),
- the Dominant Provider shall publish a written notice (the “Notice”) of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of the existing Access Agreement come into effect.
- 8.2 The obligation in Condition 8.1 shall not apply:
- (a) where the new or amended terms and conditions are directed or calculated by Ofcom or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act; or
 - (b) in relation to new or amended technical specifications calculated by NICC Standards Limited, whose registered company number is 6613589.
- 8.3 The Dominant Provider shall ensure that the Notice includes:
- (a) a description of the network access in question;
 - (b) a reference to the location in the Dominant Provider’s current Reference Offer of the terms and conditions associated with the provision of that network access; and
 - (c) the date on which, and the period for which, an Access Agreement to provide the new network access will be available or the amended terms and conditions will take effect (the “effective date”).
- 8.4 The Dominant Provider shall not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.
- 8.5 The publication referred to in Condition 8.1 shall be effected by the Dominant Provider:

(a) placing a copy of the Notice on any relevant publicly available website operated or controlled by the Dominant Provider;

(b) where the Notice identifies an amendment to existing relevant terms and conditions, sending a copy of the Notice to every person with which the Dominant Provider has entered into an Access Agreement pursuant to Conditions 1 and 2 (as applicable); and

(c) sending a copy of the Notice to any person at that person's written request. The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

Condition 9 – Requests for new forms of network access

- 9.1 The Dominant Provider shall, for the purposes of transparency, publish guidelines in relation to requests for new forms of network access made to it. Such guidelines shall detail:
- (a) the form in which such a request should be made;
 - (b) the information that the Dominant Provider requires in order to consider a request for a new form of network access; and
 - (c) the timescales in which such requests will be handled by the Dominant Provider in accordance with this Condition.
- 9.2 Such guidelines shall be published within two months of the date that this Condition enters into force following a consultation with Ofcom and Third Parties. The Dominant Provider shall keep the guidelines under review and consult with relevant Third Parties and Ofcom before making any amendments to the guidelines. The Dominant Provider shall make such amendments to the guidelines as Ofcom may direct from time to time.
- 9.3 The Dominant Provider shall, upon a reasonable request from a Third Party considering making a request for a new form of network access, provide that Third Party with information so as to enable that Third Party to make a request for a new form of network access. Such information shall be provided within a reasonable period.
- 9.4 On receipt of a written request for a new form of network access, the Dominant Provider shall ensure that the requirements of this Condition are met. A modification of a request for a new form of network access which has previously been submitted to the Dominant Provider, and rejected by the Dominant Provider, shall be considered as a new request.
- 9.5 Within five Working Days of receipt of a request under Condition 9.4, the Dominant Provider shall acknowledge that request in writing.
- 9.6 Within fifteen Working Days of receipt of a request under Condition 9.4 the Dominant Provider shall respond in writing to the requesting Third Party in one of the following ways:
- (a) the Dominant Provider shall confirm that the request will be met and shall confirm that the following will be prepared—
 - (i) the timetable for the provision of network access;
 - (ii) an initial offer of terms and conditions for the provision of network access;
 - and

(iii) the timetable for the agreement of technical issues;

(b) the Dominant Provider shall confirm that a feasibility study is reasonably required in order to determine whether the request made is reasonable and the Dominant Provider shall set out its objective reasons for the need for such a study;

(c) the Dominant Provider shall confirm that the request is not sufficiently well formulated and, where it does so, the Dominant Provider shall detail all of the defects in the request which has been made; or

(d) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal.

9.7 Where the Dominant Provider responds to a request under Condition 9.4 in accordance with Condition 9.6(a) it shall, within thirty five Working Days of receipt of a request under Condition 9.4, respond further to the requesting Third Party in writing and:

(a) confirm the timetable for the provision of network access;

(b) provide an initial offer of terms and conditions for the provision of network access; and

(c) confirm the timetable for the agreement of technical issues.

9.8 Where the Dominant Provider responds to a request under Condition 9.4 in accordance with Condition 9.6(a) and determines, due to a genuine error of fact, that it reasonably needs to complete a feasibility study, it may, as soon as practicable and in any event, within thirty five Working Days of receipt of a request under Condition 9.4, inform the requesting Third Party that a feasibility study is reasonably required and set out its objective reasons for such a study.

9.9 Where Condition 9.8 applies the Dominant Provider shall, within forty five Working Days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required, respond further to the requesting Third Party, in writing, in one of the following ways:

(a) the Dominant Provider shall confirm that the request will be met and shall:

(i) confirm the timetable for the provision of network access;

(ii) provide an initial offer of terms and conditions for the provision of network access; and

(iii) confirm the timetable for the agreement of technical issues.

(b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its

reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

9.10 The time limit set out in Condition 9.9 above shall be extended up to seventy Working Days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to Condition 9.8, if—

(a) circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within forty five Working Days of the date that the requesting Third Party was informed of the need for a feasibility study pursuant to Condition 9.8; or

(b) the Third Party and the Dominant Provider agree to extend the time limit up to seventy Working Days.

9.11 The time limit set out in Condition 9.9 above shall be extended beyond seventy Working Days from the date that the Dominant Provider informs the requesting Third Party that a feasibility study is reasonably required pursuant to Condition 9.8, if:

(a) Ofcom agrees; or

(b) the Third Party and the Dominant Provider agree to extend the time limit beyond seventy Working Days.

9.12 Where the Dominant Provider responds to a request under Condition 9.4 in accordance with Condition 9.6(b), the Dominant Provider shall, within sixty Working Days of receipt of a request under Condition 9.4, respond further to the requesting Third Party, in writing, in one of the following ways:

(a) the Dominant Provider shall confirm that the request will be met and shall:

(i) confirm the timetable for the provision of network access;

(ii) provide an initial offer of terms and conditions for the provision of network access; and

(iii) confirm the timetable for the agreement of technical issues;

(b) the Dominant Provider shall confirm that the request is refused on the basis that it is not reasonable and, where it does so, the Dominant Provider shall detail its reasons for refusal. The Dominant Provider shall provide to Ofcom a copy of the feasibility study and shall provide to the requesting Third Party a non-confidential copy of the feasibility study.

9.13 The time limit set out in Condition 9.12 above shall be extended up to eighty five Working Days of receipt of a request under Condition 9.4, if:

(a) circumstances have arisen which, despite the Dominant Provider using its best endeavours, prevent it from completing the feasibility study within sixty Working Days of receipt of a request under Condition 9.4; or

(b) the Third Party and the Dominant Provider agree to extend the time limit up to eighty five Working Days.

9.14 The time limit set out in Condition 9.12 above shall be extended beyond eighty five Working Days of receipt of a request under Condition 9.4, if—

(a) Ofcom agrees; or

(b) the Third Party and the Dominant Provider agree to extend the time limit beyond eighty five Working Days.

9.15 The Dominant Provider shall keep the processes it has put in place to ensure compliance with this Condition (a description of which has been provided to Ofcom) under review to ensure that they remain adequate for that purpose.

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

Condition 10 – Basis of Charges and Charge Controls

This Condition **10** comprises Conditions **10A to 10G**, the contents of which are set out below.

Condition 10A Controls on the Ethernet Services Basket

Initial Charges on 1 May 2016

Basket, Sub-basket and Sub-cap Controls

Controls from 2 May 2016

Basket, Sub-basket and Sub-cap Controls

General provisions applicable to the Controls in the First Relevant Year

General provisions applicable to the Controls from 2 May 2016

Additional general provisions and interpretation

Annex to Condition 10A

Section 1 - Meaning of “Ethernet Interconnection Sub-basket”

Section 2 - Meaning of “Ethernet 1Gbit/s EAD and EAD LA Sub-basket”

Section 3 - Meaning of “Ethernet Main Link Sub-basket”

Section 4 - Meaning of “Ethernet Rental Sub-basket”

Section 5 - Meaning of “Ethernet All Services Sub-cap”

Section 6 - Meaning of “Exempt Ancillary Services”

Interpretation

Condition 10B Controls of safeguard cap for Very High CISBO Services

General provisions and interpretation

Annex to Condition 10B

Section 1 - Meaning of “Ethernet with bandwidths above 1Gbit/s”

Section 2 - Meaning of “WDM Services”

Interpretation

Condition 10C Basis of charges obligation in relation to Dark Fibre Access

General provisions and interpretation

Condition 10D Controls of the TI Services Basket

Initial Charges on 1 May 2016

Basket, Sub-basket and Sub-cap Controls

Controls from 2 May 2016

Basket, Sub-basket and Sub-cap Controls

General provisions applicable to the Controls in the First Relevant Year

General provisions applicable to the Controls from 2 May 2016

Additional general provisions and interpretation

Annex to Condition 10D

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

Section 2 - Meaning of “TI Interconnection Sub-cap”

Section 3 - Meaning of “TI All Services Sub-cap”

Section 4 - Meaning of “Exempt TI Ancillary Services”

Interpretation

Condition 10E Controls of Accommodation Services

Controls of Overlapping Accommodation Services

General provisions and interpretation

Annex to Condition 10E

Section 1 - Meaning of “Accommodation Services”

Section 2 - Meaning of “Overlapping Accommodation Services”

Interpretation

Condition 10F Controls of the ECC Services

General provisions and interpretation

Annex to Condition 10F

Section 1 - Meaning of "Direct ECC Services"

Section 2 - Meaning of "Contractor ECC Services"

Section 3 - Meaning of "EAD" and "EAD LA" for the purposes of Condition 10F.9

Interpretation

Condition 10G Controls of the Time Related Charges

Initial Charges on 1 May 2016

Controls from 2 May 2016

General provisions and interpretation

Annex to Condition 10G

Section 1 - Meaning of "Ethernet TRC Services"

Interpretation

Condition 10A

Controls of the Ethernet Services Basket

10A.1 In this Condition a reference to a “Basket” means any of the following:

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

Initial Charges on 1 May 2016

Basket, Sub-basket and Sub-cap Controls

10A.2 In respect of each Basket and subject to the provisions set out in Condition **10A.17**, on 1 May 2016 the Dominant Provider shall take all reasonable steps to apply to the total charges for all of the services falling within that Basket, a Percentage Starting Charge Change, which is calculated in accordance with Condition **10A.3** and which is not greater than minus 12 percentage points.

10A.3 The Percentage Starting Charge Change in respect of a Basket shall be calculated 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 total charges for all of the services falling within the Basket on 1 May 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 May 2016;

$t-1$ refers to 31 March 2016;

$s\bar{p}_{i,t}$ is the charge set by the Dominant Provider for the individual service i falling within the Basket on 1 May 2016, subject to the provisions set out in Condition **10A.17**;

$s\bar{p}_{i,t-1}$ is the charge for the individual service i falling within the Basket on 31 March 2016, subject to the provisions set out in Condition **10A.17**.

10A.4 On 1 May 2016 the Dominant Provider shall take all reasonable steps to secure that, in respect of each individual service falling within the Ethernet Services Basket, the Percentage Starting Charge Change in the charge for that service, calculated in accordance with Condition **10A.5**, 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.

10A.5 For the purposes of Condition **10A.4** 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_t is the Percentage Starting Charge Change in the charge for an individual service in the Ethernet Services Basket on 1 May 2016;

t refers to 1 May 2016;

$t-1$ refers to 31 March 2016;

$s\bar{p}_t$ is the charge set by the Dominant Provider for the individual service i falling within the Ethernet Services Basket on 1 May 2016, subject to the provisions set out in Condition **10A.17**; and

$s\bar{p}_{t-1}$ 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 **10A.17**.

Controls from 2 May 2016

Basket, Sub-basket and Sub-cap Controls

Ethernet Services Basket, Ethernet Interconnection Sub-basket, Ethernet 1Gbit/s EAD and EAD LA Sub-basket and Ethernet Main Link Sub-basket

10A.6 In respect of each Basket and subject to the provisions of Condition **10A.17**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (as calculated in accordance with Condition **10A.7**) in the total charges for all of the services falling within that Basket is not greater than the Controlling Percentage (calculated in accordance with Condition **10A.8**).

10A.7 The Percentage Change in respect of a Basket shall be calculated by employing the following formula:

(a)

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

Where:

C_t is the Percentage Change in the total charges for all of the services falling within the Basket for the 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;

(b) $\bar{p}_{i,t}$ is the Relevant Year Weighted Average Charge set 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 **10A.17**, which 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 and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the First Relevant Year, by 334;
- (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 ;

- (c) $\bar{p}_{i,t-1}$ 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, subject to the provisions set out in Condition **10A.17**;
 - (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 **10A.17**;

Where the 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 and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the Second Relevant Year, by 335;
- (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 .

10A.8 In respect of each Basket and subject to the provisions set out in Conditions **10A.9** to **10A.11**, the Controlling Percentage in relation to any Relevant Year shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

CP_t is the Controlling Percentage for the Relevant Year, t ,

CPI_t is CPI for the Relevant Year, t ,

X is equal to: (i) minus 13.25 percentage points for the Ethernet Services Basket and the Ethernet Interconnection Sub-basket

(ii) minus 6.75 percentage points for the Ethernet 1Gbit/s EAD and EAD LA Sub-basket, and for the Ethernet Main Link Sub-basket

10A.9 Where the Percentage Change for a Basket at the end of either the First Relevant Year or the Second Relevant Year is:

- i. less than the Controlling Percentage for that Basket (“**Deficiency**”); or
- ii. greater than the Controlling Percentage for that Basket (“**Excess**”);

the Controlling Percentage for that Basket for the following Relevant Year shall be calculated in accordance with Condition **10A.10**.

10A.10 Where Condition **10A.9** applies, the Controlling Percentage for the relevant Basket 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 the Basket 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), calculated in accordance with the formula for C_t set out in Condition **10A.7**, as applicable; and

X is as set out in Condition **10A.8** above.

10A.11 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.

Ethernet Rental Sub-baskets, Exempt Ancillary Services and Sub-caps Control

10A.12 In respect of the services falling within each Ethernet Rental Sub-basket and subject to Condition **10A.18**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change, calculated in accordance with Condition **10A.15**, in the total charges 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.

10A.13 In respect of each individual service falling within the Ethernet Services Basket except any services falling within any Ethernet Rental Sub-baskets and subject to Condition **10A.18**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change, calculated in accordance with Condition **10A.15**, in the charge for that service 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.

10A.14 In respect of each Exempt Ancillary Service and subject to Condition **10A.18**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change, calculated in accordance with Condition **10A.15**, in the charge for that Exempt Ancillary Service 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.

10A.15 For the purposes of **Conditions 10A.12 to 10A.14** 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 the charge for an individual 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 set by the Dominant Provider for the individual service falling within the Basket during the Relevant Year, subject to the provisions set out in Condition **10A.18**:

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 and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the First Relevant Year, by 334;
- (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 **10A.18**;
- (ii) for the Second Relevant Year and the Third Relevant Year, the Prior Year Weighted Average Charge set by the Dominant Provider for the specific service falling within the Basket during the Prior Year, subject to the provisions set out in Condition **10A.18**;

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 and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the Second Relevant Year, by 335;
- (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.

General provisions applicable to the Controls in the First Relevant Year

10A.16 The Dominant Provider may set charges on 1 May 2016 in order to give effect to the changes required both on 1 May 2016 and for the First Relevant Year. Should the Dominant Provider do so, it shall be deemed in compliance with its obligations under Conditions **10A.1 to 10A.15**, provided it secures, and is able to demonstrate to the satisfaction of Ofcom, that the charges set on 1 May 2016 are equal to those that would have complied with the requirements set out in Conditions **10A.1 to 10A.15** had they been set through separate changes required both on 1 May 2016 and for the First Relevant Year.

General provisions applicable to the Controls from 2 May 2016

10A.17 For the purposes of determining compliance with this Condition **10A** except Conditions **10A.12 to 10A.14** the relevant charges shall be calculated on the basis of:

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

and shall be subject to the provisions set out in Condition **10F.7**.

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

10A.18 For the purposes of determining compliance with Conditions **10A.12 to 10A.14** the relevant charges shall be calculated on the basis of:

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

and shall be subject to the provisions set out in Condition **10F.7**.

10A.19 Except where Condition **10A.20** applies, where the Annex to this Condition **10A** lists a service as being available with more than one minimum contract period, the charge for the purposes of determining compliance with this Condition **10A** shall be deemed to be the charge for the service with the shortest minimum contract period.

10A.20 Where the Dominant Provider offers a service listed in the Annex to this Condition **10A** with a minimum contract period of three years or five years, such service shall be deemed, for the purposes of determining compliance with this Condition **10A**, 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 or the requirements set out in the definition of the Five Year Term Product (as applicable), each set out in Condition **10A.26**.

Additional general provisions and interpretation

10A.21 Except where Condition **10A.22** applies, where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **10A**; 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 **10A** 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 **10A.21**, a material change to any service which is subject to this Condition **10A** 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 **10A** or a change to the billing practice for any service which is subject to this Condition **10A**.

10A.22 Subject to Ofcom's agreement (such agreement to be given in writing or by way of direction as Ofcom considers appropriate), where the Dominant Provider introduces, at any time during each Relevant Year, Substituted Services wholly or substantially in substitution for a Replaced Service which is subject to this Condition **10A**, the following shall apply to the Substituted Services:

- (i) the Substituted Services shall fall within the same Basket set out in Condition **10A.1** as the Replaced Service;
- (ii) the Substituted Services shall be subject to the entirety of this Condition **10A**, except Conditions **10A.2 to 10A.5** (inclusive); and
- (iii) in the Relevant Year that the Substituted Services are introduced, any reference in these Conditions to charges and/or volumes in the Prior Year (including any reference to the Prior Year Weighted Average Charge) shall be read as charges and/or volumes in the Prior Year as agreed by Ofcom.

10A.23 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 **10A**. The data must include:

- i. pursuant to Conditions **10A.3** and **10A.7**, the calculated Percentage Starting Charge Change and the calculated Percentage Change relating to each Basket specified in Conditions **10A.1**;
- 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 **10A.3** and **10A.7**, 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 the Time Limited Discounts, the Three Year Term Products and the Five 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 **10A.7** applies and calculations thereof;
- vii. other data necessary for monitoring compliance with the charge control; and
- viii. such data as Ofcom may from time to time direct.

10A.24 Ofcom may direct that Conditions **10A.1 to 10A.23** shall not apply to the extent specified in any such direction.

10A.25 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **10A**.

10A.26 In this Condition **10A**:

“**Accrued Revenue**” means:

- (i) for the purposes of Condition **10A.3** 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 up to and including 31 March 2016 on which that charge applied), in the 12 months up to and including 31 March 2016, subject to the provisions set out in Condition **10A.17**; and
 - b. in respect of each service other than rental and Exempt Ancillary Services, by multiplying volumes supplied in the 12 months up to and including 31 December 2015 by the average charge in the 12 months up to and including 31 March 2016 subject to the provisions set out in Condition **10A.17**.
- (ii) for the purposes of Condition **10A.7** 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 Prior Year on which that charge applied) in the Prior Year subject to the provisions set out in Condition **10A.17**; and
 - b. in respect of each service other than rental and Exempt Ancillary Services, by multiplying volumes supplied in the 12 months up to and including 31 December preceding the start of the Relevant Year by the

average charge in the Prior Year subject to the provisions set out in Condition **10A.17**.

“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 **10A** during the Relevant Year;

“Basket” means the services listed in Conditions **10A.1** and set out in the Annex to this Condition **10A**;

“Controlling Percentage” means a percentage to be calculated in accordance with Condition **10A.8**;

“Consumer Prices Index” means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;

“CPI” means the amount of the change in the Consumer Prices Index in the period of 12 months ending on 30 September immediately preceding the start of the Relevant Year, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the start of that first mentioned period;

“Ethernet 1Gbit/s EAD and EAD LA Sub-basket” means the sub-basket of services listed in Conditions **10A.1(iii)** and set out in Section 2 of the Annex to this Condition **10A**;

“Ethernet Interconnection Sub-basket” means the sub-basket of services listed in Conditions **10A.1(ii)** and set out in Section 1 of the Annex to this Condition **10A**;

“Ethernet Main Link Sub-basket” means the sub-basket of services listed in Conditions **10A.1(iv)** and set out in Section 3 of the Annex to this Condition **10A**;

“Ethernet Rental Sub-basket” means each sub-basket which is subject to Condition **10A.12** and is defined in Section 4 of the Annex to this Condition **10A**;

“Ethernet Services Basket” means the basket of services listed in Conditions **10A.1(i)** and set out in Sections 1 to 5 of the Annex to this Condition **10A**;

“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 **10A**, 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 **10A** if it had complied with the requirements set out in Conditions **10A.2** and **10A.6**;

“Exempt Ancillary Service” means each service which is subject to Condition **10A.14** and is defined in Section 6 of the Annex to this Condition **10A**;

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

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

“Five 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 five years;
- (ii) does not include any connection charge; and
- (iii) includes a rental charge which complies with the following formula:

$$R5_t = \frac{1}{5} C1_t + R1_t$$

Where

$R5_t$ is the rental charge of the Five Year Term Product in period t (paid by both new and existing Third Parties);

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

$R1_t$ is the rental charge of the equivalent product with a 1 year term in period t;

“Initial Charge” means a charge for each service in the Ethernet Services Basket which results from the Dominant Provider complying with Condition **10A.2**;

“Percentage Change” has the meaning given to it in Condition **10A.7**;

“Percentage Starting Charge Change” has the meaning given to it in Condition **10A.3**;

“Prior Year” means, in relation to:

- (i) the First Relevant Year, the 12 months from 1 April 2015 to 31 March 2016 (inclusive);
- (ii) the Second Relevant Year, the First Relevant Year;
- (iii) the Third Relevant Year, the Second Relevant Year;

“Prior Year Weighted Average Charge” means a charge to be calculated in accordance with the relevant formula in Condition **10A.7**;

“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 calculated in accordance with the relevant formula in Condition **10A.7**;

“Replaced Service” means any service subject to Condition **10A.22** that is withdrawn and wholly or substantially replaced by Substituted Services;

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

“Substituted Services” means two or more services subject to Condition **10A.22** that are introduced and wholly or substantially replace a Replaced Service;

“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 equivalent product with a 1 year term in period t;

$R1_t$ is the rental charge of the equivalent product with a 1 year term 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 no more than the same level as the initial charge was immediately before the reduction was implemented.

Annex to Condition 10A

Services subject to charge control pursuant to Condition 10A

Section 1

Meaning of “Ethernet Interconnection Sub-basket”

For the purposes of Condition **10A**, 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 **10F** and in the Annex to Condition **10G**, 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 1Gbps¹⁰

Connection, rental and migration charges for:

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

Additional charges

Cancellation charges

Cablelink¹¹

Connection and rental charges

Cancellation charges

Additional charges

¹⁰ Openreach, *Price List, Bulk Transport Link*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2BtziW%2FvYZGtoQraq%2BNU4alFhZ6rNZujnCs99NblKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

¹¹ Openreach, *Price List, Cablelink*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=kgnGm8XSPQZEY5UMJxGwO9yDfzzeTWgW5o%2FPQLWlvfwlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> as at 12 February 2016.

Section 2

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

For the purposes of Condition **10A**, the expression “**Ethernet 1Gbit/s EAD and EAD LA Sub-basket**” shall be construed as including the following services with bandwidths of 1Gbit/s, excluding all of the services specified in the Annex to Condition **10F** and in the Annex to Condition **10G**, 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)¹²

Connection and rental charges for:

- EAD circuits
 - EAD 1000
 - EAD 1000 (60 month minimum period)
 - EAD 1000 (84 month minimum period)
 - 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 (84 month minimum period)
 - EAD Access 1000 to 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).

¹² 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 12 February 2016.

- 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 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
 - EAD10/100 to EAD 1000 SyncE (12 or 60 month minimum period)
 - EAD10/100 to EAD 1000 SyncE (84 month minimum period)
 - EAD 10LA/100LA to 1000 LA SyncE (84 month minimum period)
 - EAD 10LA/100LA to 1000 LA SyncE (12 or 60 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 (12 or 60 month minimum period) to EAD 1000 SyncE (12 or 60 month minimum period)
 - EAD 1000 (84 month minimum period) to EAD 1000 SyncE (84 month minimum period)
 - EAD 1000 (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 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 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)
 - 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 Unmanaged to EAD 1000 (standard or 60 month minimum period)
 - WES/WEES 10 Unmanaged to EAD 1000 (84 month minimum period)
 - WES/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 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 1000 (standard or 60 month minimum period)
 - WES/WEES 10 LR to EAD 1000 (84 month minimum period)
 - 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/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 1000 Resilient Option 1 (standard or 60 month minimum period)
 - WES/WEES 100 Resilience Option 1 to EAD 1000 Resilient Option 1 (84 month minimum period)
 - 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)
 - 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 Local Access 10 Mbit/s circuits and above
 - EAD Local Access 1000
 - EAD Local Access 1000 (60 month minimum period)
 - EAD Local Access 1000 (84 month minimum period)

- EAD Resilience Option 1 (Hot Standby)
 - 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 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 Local Access
 - EAD SyncE 1000 Local Access (60 month minimum period)
 - EAD SyncE 1000 Local Access (84 month minimum period)
 - 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 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 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 Local Access
 - EAD Enable 1000 Local Access 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 Local Access Resilient Option 1 (60 month term)
 - EAD Enable 1000 Local Access (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 **10A**, 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 **10F** and in the Annex to Condition **10G**, 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 Link¹³

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)¹⁴

WES/WEES Main Link charges

Backhaul Network Services (BNS)¹⁵

¹³ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

¹⁴ Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jb arofqqfNi%2BYxJT%2BWx9RC8ygO7YK%2FGFXHQ0KYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

BNS Component Pricing Table Connection and rental charges – Main Link

Openreach Network Backhaul Services¹⁶

Main Link connection and rental charges

Backhaul Extension Service (BES)¹⁷

Main Link connection and rental charges

Section 4

Meaning of “Ethernet Rental Sub-basket”

For the purposes of Condition 10A:

- (i) there shall be in each Relevant Year, for each and every rental service that has an associated connection service, a separate “**Ethernet Rental Sub-basket**” which shall include solely the charges for that rental service and associated connection service, calculated as follows:

$$ER_{i,t} = R_{i,t} + \frac{1}{3}C_{i,t}$$

Where

$ER_{i,t}$ is the total charge for an individual rental service and the associated connection service falling within the Ethernet Rental Sub-basket in the Relevant Year

¹⁵ Openreach, *Price List, Backhaul Network Services (BNS)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRiske12ZrKBXGHf8sPBYwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

¹⁶ Openreach, *Price List, Openreach Network Backhaul Services*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRhrww6STLWGzW%2F0BqqNvflIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

¹⁷ Openreach, *Price List, Backhaul Extension Service (BES)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa0DzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

$R_{i,t}$ is the charge for the rental service falling within the Ethernet Rental Sub-basket in the Relevant Year

$C_{i,t}$ is the charge for the connection service associated with the rental service and falling within the Ethernet Rental Sub-basket in the Relevant Year

- (ii) The expression “**Ethernet Rental 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 Section 1, Section 3, the Annex to Condition **10F** and the Annex to Condition **10G**, 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)¹⁸

Rental and associated connection for:

- EAD circuits
- EAD Modify – upgrade charges
- EAD SyncE Modify – upgrade charges
- EAD Local Access 10 Mbit/s circuits and above
- EAD Resilience Option 1 (Hot Standby)
- EAD SyncE
- EAD Enable

Ethernet Backhaul Direct¹⁹

Rental and associated connection charges

¹⁸ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dlGJkun%2FLo2l67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

¹⁹ Openreach, *Price List, Ethernet Backhaul Direct*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfh DSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiItaVZ6rNZujnCs99NbIKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

Section 5

Meaning of “Ethernet All Services Sub-cap”

For the purposes of Condition **10A**, the expression “**Ethernet All Services Sub-cap**” shall be construed as:

- (i) including all the services specified in the Annex to Condition **10A** except services specified in Section 4 of the Annex;
- (ii) including the services listed below with bandwidths up to and including 1Gbit/s; and
- (iii) excluding all of the services specified in the Annex to Condition **10F** and in the Annex to Condition **10G**;

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)²⁰

Connection and Rental Charges

Upgrade charges that generated more than £1m revenue in the Prior Year

Re-grade charges that generated more than £1m revenue in the Prior Year

Additional charges that generated more than £1m revenue in the Prior Year

Cancellation Charges that generated more than £1m revenue in the Prior Year

Circuit Shift Charges that generated more than £1m revenue in the Prior Year

Resilience options - connection and rental charges

Migration charges

Backhaul Network Services (BNS)²¹

²⁰ Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jb-arofqqfNi%2BYxJT%2BWX9RC8ygO7YK%2FGFXHQ0KYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

²¹ Openreach, *Price List, Backhaul Network Services (BNS)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRiskel2ZrKBXGHf8sPBYwiMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

Component Pricing Table - Connection and rental charges

Upgrade charges that generated more than £1m revenue in the Prior Year

Additional charges that generated more than £1m revenue in the Prior Year

Cancellation charges that generated more than £1m revenue in the Prior Year

Openreach Network Backhaul Services²²

Connection and rental charges

Resilience charges that generated more than £1m revenue in the Prior Year

Cancellation charges that generated more than £1m revenue in the Prior Year

Ethernet Backhaul Direct²³

Connection and rental charges²⁴

Upgrade charges that generated more than £1m revenue in the Prior Year

Migration charges²⁵

Resilience charges that generated more than £1m revenue in the Prior Year

Cancellation charges that generated more than £1m revenue in the Prior Year

Shift charges that generated more than £1m revenue in the Prior Year

Service Features charges that generated more than £1m revenue in the Prior Year

Backhaul Extension Service (BES)²⁶

²² Openreach, *Price List, Openreach Network Backhaul Services*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRrhrww6STLWGzW%2F0BqqNvflIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> as at 12 February 2016.

²³ Openreach, *Price List, Ethernet Backhaul Direct*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiltaVZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

²⁴ Only applies to rentals without an associated connection charge.

²⁵ Only applies to rentals without an associated migration charge.

²⁶ Openreach, *Price List, Backhaul Extension Service (BES)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOW>

Connection and rental charges

Additional charges that generated more than £1m revenue in the Prior Year

Upgrade Charges that generated more than £1m revenue in the Prior Year

Migration charges

Circuit Shift charges that generated more than £1m revenue in the Prior Year

Resilience charges that generated more than £1m revenue in the Prior Year

Cancellation charges that generated more than £1m revenue in the Prior Year

Ethernet Access Direct (EAD)²⁷

Connection and rental charges²⁸

Migration charges²⁹

Managed migration options that generated more than £1m revenue in the Prior Year

Cancellation charges that generated more than £1m revenue in the Prior Year

Termination charges that generated more than £1m revenue in the Prior Year

EAD Modify Shift Circuit Charges that generated more than £1m revenue in the Prior Year

[DeWrdvLSdpeomsa0DzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D](https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dlGJkun%2FLo2l67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D) as at 17 February 2016.

²⁷ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dlGJkun%2FLo2l67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 17 February 2016.

²⁸ Only applies to rentals without an associated connection charge.

²⁹ Only applies to rentals without an associated migration charge.

Section 6

Meaning of “Exempt Ancillary Services”

For the purposes of Condition **10A.14**, the expression “**Exempt Ancillary Services**” shall be construed as each service listed below that does not generate more than £1m revenue in any Relevant Year, excluding all of the services specified in the Annex to Condition **10F** and in the Annex to Condition **10G**, 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).

For the avoidance of doubt, the services listed in this Section 6 of the Annex do not form part of the Ethernet Services Basket.

Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES) ³⁰

Upgrade charges

Re-grade charges

Additional charges

Cancellation Charges

Circuit Shift Charges

Backhaul Network Services (BNS) ³¹

Upgrade charges

Additional charges

Cancellation charges

³⁰ Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jb-arofqqfNi%2BYxJT%2BWX9RC8ygO7YK%2FGFXHQ0KYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

³¹ Openreach, *Price List, Backhaul Network Services (BNS)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRiskeI2ZrKBXGHf8sPBYwiMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

Openreach Network Backhaul Services³²

Resilience charges

Cancellation charges

Ethernet Backhaul Direct³³

Upgrade charges

Resilience charges

Cancellation charges

Shift charges

Service Features

Backhaul Extension Service (BES)³⁴

Additional charges

Upgrade Charges

Circuit Shift charges

Resilience charges

Cancellation charges

³² Openreach, *Price List, Openreach Network Backhaul Services*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRhrww6STLWGzW%2FOBqqNvfillMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

³³ Openreach, *Price List, Ethernet Backhaul Direct*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiltaVZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

³⁴ Openreach, *Price List, Backhaul Extension Service (BES)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa0DzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 17 February 2016.

Ethernet Access Direct (EAD)³⁵

Managed migration options

Cancellation charges

Termination charges

EAD Modify Shift Circuit Charges

Interpretation of Annex to Condition 10A

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-accessdirect/ead.do>
 - For EBD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/ethernet-backhauldirect/ebd.do>
 - For BTL, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/bulktransportlink/bulktransportlink.do>
 - For WES/WEES, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/wholesale-extension-services/wes.do>
 - For BES, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/backhaul-extension-services/bes.do>
 - For Openreach Network Backhaul Service, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/openreach-network-backhaul-services/onbs.do>
 - For Backhaul Network Service, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernet-services/backhaul-network-services/bns.do>

³⁵ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDeDIIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiixH6wrCQm97GZMyQ%3D%3D> as at 17 February 2016.

Condition 10B

Controls of safeguard cap for Very High CISBO Services

10B.1 The Dominant Provider shall take all reasonable steps to secure that, during each Relevant Year, the Percentage Change in each charge for each and every Very High CISBO Service is not greater than 0 percentage points.

For the purpose of this Condition **10B.1**, the Percentage Change shall be calculated by employing the formula set out in Condition **10B.2**.

10B.2 The Percentage Change shall be calculated 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 the charge for an individual 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 **10A.15** 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 the individual Very High CISBO Service; and

\bar{p}_{t-1} shall be calculated by employing the formula set out in Condition **10A.15** 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 the individual Very High CISBO Service.

10B.3 The Dominant Provider shall take all reasonable steps to secure that the charge for each Cablelink Service provided with a Very High CISBO Service is not greater than the amount that the Dominant Provider charges for that Cablelink Service pursuant to Condition **10A**.

General provisions and interpretation

10B.4 Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **10B**; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends;

Condition **10B** 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 **10B.4**, a material change to any service which is subject to this Condition **10B** 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 **10B** or a change to the billing practice for any service which is subject to this Condition **10B**.

10B.5 Ofcom may direct that Conditions **10B.1 to 10B.4** shall not apply to the extent specified in any such direction.

10B.6 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **10B**.

10B.7 In this Condition **10B**:

“Cablelink Service” means each and every service which is reasonably necessary for the use of the Very High CISBO Services and is described as “Cablelink” in the Ethernet Interconnection Sub-basket;

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

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

“Percentage Change” has the meaning given to it in Condition **10B.2**;

“Prior Year” means, in relation to:

- (i) the First Relevant Year, the 12 months from 1 April 2015 to 31 March 2016 (inclusive);
- (ii) the Second Relevant Year, the First Relevant Year;
- (iii) the Third Relevant Year, the Second 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 Sections 1 and 2 of the Annex to this Condition **10B**.

Annex to Condition 10B

Services subject to charge control pursuant to Condition 10B

Section 1

Meaning of “Ethernet with bandwidths above 1Gbit/s”

For the purposes of Condition 10B, the expression “**Ethernet with bandwidths above 1Gbit/s**” shall be construed as including any services listed below with bandwidths above 1Gbit/s, excluding all of the services specified in the Annex to Condition 10F and in the Annex to Condition 10G, 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)³⁶

Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)³⁷

Backhaul Extension Service (BES)³⁸

Openreach Network Backhaul Services³⁹

Section 2

Meaning of “WDM Services”

For the purposes of Condition 10B, 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 10F and in the Annex to Condition 10G, subject to such

³⁶ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dlGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 17 February 2016.

³⁷ Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jb arofqqfNi%2BYxJT%2BWX9RC8ygO7YK%2FGFXHQ0KYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

³⁸ Openreach, *Price List, Backhaul Extension Service (BES)*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOW DeWrdvLSdpeomsa0DzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

³⁹ Openreach, *Price List, Openreach Network Backhaul Services*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj 9k%2Fplcoq3gDRrhrww6STLWGzW%2F0BqqNvfIIIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> as at 12 February 2016.

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)⁴⁰

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 Access⁴¹

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

Interpretation of Annex to Condition 10B

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>

⁴⁰ 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 12 February 2016.

⁴¹ 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 12 February 2016.

Condition 10C

Basis of charges obligation in relation to Dark Fibre Access

10C.1 The Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that at all times during the Relevant Year each and every charge offered or payable for Dark Fibre Access is reasonably derived from the charge for the corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service or Main Link Service (or such other services as Ofcom may direct from time to time), adjusted to:

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

10C.2 Where Dark Fibre Access is a service providing network access to more than one optical fibre, in addition to complying with the requirements set out in Condition **10C.1(i) to (iii)**, the Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that the charge does not exceed an amount calculated by:

- (i) multiplying the charge for equivalent network access to one optical fibre (calculated in accordance with Condition **10C.1**) by the number of optical fibres; and
- (ii) adjusting that amount (calculated in accordance with Condition **10C.2(i)**) to reflect any incremental cost savings of providing network access to more than one optical fibres at the same time.

This Condition applies to determining the charge for all Dark Fibre Access when more than one optical fibre is provided with the exception of determining the charge for Dark Fibre Access reasonably derived from the charge for the corresponding Main Link Service, in which case only Condition **10C.1** applies irrespective of the number of optical fibres provided.

10C.3 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 associated facilities which are reasonably necessary for the use of Dark Fibre Access is not greater than the amount that the Dominant Provider charges for the corresponding associated facilities reasonably necessary for the use of the 1Gbit/s EAD Service or 1Gbit/s EAD LA Service, adjusted to:

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

Associated facilities include the Accommodation Services, the Interconnection Services, the ECC Services, the Time Related Charges and the Cablelink Services.

10C.4 For the purposes of complying with Conditions **10C.1 to 10C.3**, the long run incremental costs and the average of the Cumulo costs that are avoided by the Dominant Provider when providing that Dark Fibre Access instead of the appropriate corresponding 1Gbit/s EAD Service or 1Gbit/s EAD LA Service or Main Link Service shall be calculated by reference to the Regulatory Financial Statements and the Accounting Methodology Documents for the Prior Relevant Financial Year.

General provisions and interpretation

10C.5 Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any Dark Fibre Access which is subject to this Condition **10C**;
- (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 or Main Link Service which is subject to this Condition **10C**; or
- (iii) the Dominant Provider makes a change to the date on which its Financial Year ends;

Condition **10C** 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 **10C.5**, a material change to any Dark Fibre Access or to any 1Gbit/s EAD Service or 1Gbit/s EAD LA Service or Main Link Service (each of which is subject to this Condition **10C**) 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 **10C** or a change to the billing practice for any product or service which is subject to this Condition **10C**.

10C.6 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 **10C.1 to 10C.3** in respect of Dark Fibre Access. This data must include for each and every Dark Fibre Access:

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

10C.7 Ofcom may direct that Conditions **10C.1 to 10C.6** shall not apply to the extent specified in any such direction.

10C.8 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **10C**.

10C.9 In this Condition **10C**:

“**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;

“Accommodation Services” means each and every service which is subject to Condition **10E** and which is reasonably necessary for the use of Dark Fibre Access;

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

“Cablelink Service” means each and every service which is reasonably necessary for the use of Dark Fibre Access and is described as “Cablelink” in the Ethernet Interconnection Sub-basket;

“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;

“ECC Services” means each and every service which is subject to Condition **10F** and which is reasonably necessary for the use of Dark Fibre Access;

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

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

“Main Link Service” means each and every service described as “Main Link” falling within the Ethernet Services Basket;

“Prior Relevant Financial Year” means, in relation to any Relevant Year, the year in which the latest available Additional Financial Information in relation to the corresponding Regulatory Financial Statements was supplied to Ofcom.

“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;

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

“Time Related Charges” means each and every service which is subject to Condition 10G and which is reasonably necessary for the use of Dark Fibre Access.

Condition 10D

Controls of the TI Services Basket

10D.1 In this Condition a reference to a “Basket” means any of the following:

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

Initial Charges on 1 May 2016

Basket, Sub-basket and Sub-cap Controls

10D.2 In respect of each Basket and subject to the provisions set out in Condition **10D.18**, on 1 May 2016 the Dominant Provider shall take all reasonable steps to apply to the total charges for all of the services falling within that Basket, a Percentage Starting Charge Change, which is calculated in accordance with Condition **10D.3** and which is not greater than minus 9 percentage points.

10D.3 The Percentage Starting Charge Change in respect of a Basket shall be calculated 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 total charges for all of the services falling within the Basket on 1 May 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 May 2016;

$t-1$ refers to 31 March 2016;

$s\bar{p}_{i,t}$ is the Charge set by the Dominant Provider for the individual service i falling within the Basket on 1 May 2016, subject to the provision set out in Condition **10D.18**;

$s\bar{p}_{i,t-1}$ is the charge for the individual service i falling within the Basket on 31 March 2016, subject to the provision set out in Condition **10D.18**.

10D.4 On 1 May 2016 the Dominant Provider shall take all reasonable steps to secure that, in respect of each individual service falling within the TI Services Basket, the Percentage Starting Charge Change in the charge for that service, calculated in accordance with Condition **10D.5**, 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.

10D.5 For the purposes of Condition **10D.4** 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_t, is the Percentage Starting Charge Change in the charge for an individual service in the TI Services Basket on 1 May 2016;

t refers to 1 May 2016;

t-1 refers to 31 March 2016;

$s\bar{p}_t$ is the charge the charge set by the Dominant Provider for the individual service *i* falling within the TI Services Basket on 1 May 2016, subject to the provision set out in Condition **10D.18**; and

$s\bar{p}_{t-1}$ is the charge set by the Dominant Provider for the individual service *i* falling within the TI Services Basket on 31 March 2016, subject to the provision set out in Condition **10D.18**.

Controls from 2 May 2016

Basket, Sub-basket and Sub-cap Controls

TI Services Basket and the TI Mobile Services Sub-basket

10D.6 In respect of each Basket and subject to the provisions of Condition **10D.18**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (as calculated in accordance with Condition **10D.7**) in total charges for all of the services falling within that Basket is not greater than the Controlling Percentage (calculated in accordance with Condition **10D.8**).

10D.7 The Percentage Change in respect of a Basket shall be calculated by employing the following formula:

(a)

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

Where:

C_t is the Percentage Change the total charges for all of the services falling within the Basket for the 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;

(b) $\bar{p}_{i,t}$ is the Relevant Year Weighted Average Charge set by the Dominant Provider for the individual service i falling within the Basket during the Relevant Year, subject to the provisions set out in **10D.18**, which 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 is in effect and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the First Relevant Year, by 334;
- (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 ;

(c) $\bar{p}_{i,t-1}$ 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, subject to the provisions set out in Condition **10D.18**;
- (ii) for the Second Relevant Year and the Third Relevant Year, the Prior Year Weighted Average Charge set 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 **10D.18**;

Where the 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 and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the Second Relevant Year, by 335;
- (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*.

10D.8 In respect of each Basket and subject to the provisions set out in Conditions **10D.9 to 10D.11**, the Controlling Percentage in relation to any Relevant Year shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

CP_t is the Controlling Percentage for the Relevant Year, *t*;

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

X is equal to minus 3.50 percentage points.

10D.9 Where the Percentage Change for a Basket at the end of either the First Relevant Year or the Second Relevant Year is:

- i. less than the Controlling Percentage for that Basket (“**Deficiency**”); or
- ii. greater than the Controlling Percentage for that Basket (“**Excess**”),

the Controlling Percentage for that Basket for the following Relevant Year shall be calculated in accordance with Condition **10D.10**.

10D.10 Where Condition **10D.9** applies, the Controlling Percentage for the relevant Basket 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 **10D.1** 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), calculated in accordance with the formula for C_t set out in Condition **10D.7**, as applicable; and

X is as set out in Condition **10D.8** above.

10D.11 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

10D.12 In respect of each individual service falling within the TI Interconnection Sub-cap and subject to Condition **10D.19**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change, calculated in accordance with Condition **10D.15**, in the charge for that service 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.

10D.13 In respect of each individual service falling within the TI Services Sub-basket except those falling within the TI Interconnection Sub-cap and subject to Condition **10D.19**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change, calculated in accordance with Condition **10D.15**, in the charge for that service is not greater than CPI plus 8 percentage points.

10D.14 In respect of each Exempt TI Ancillary Service and subject to Condition **10D.19**, the Dominant Provider shall take all reasonable steps to secure that, at the end of each

Relevant Year, the Percentage Change, calculated in accordance with Condition **10D.15**, in the charge for each Exempt TI Ancillary Service 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.

10D.15 For the purposes of Conditions **10D.12 to 10D.14** 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 the charge for an individual service falling within the TI Interconnection Sub-cap and the TI Mobile Services Sub-basket (as applicable) 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 **10A.15** 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 the individual service i falling within the TI Interconnection Sub-cap and the TI Mobile Services Sub-basket (as applicable); and

\bar{p}_{t-1} shall be calculated by employing the formula set out in Condition **10A.15** 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 the individual service i falling within the TI Interconnection Sub-cap and the TI Mobile Services Sub-basket (as applicable).

10D.16 The Dominant Provider shall take all reasonable steps to secure that the charge for each Cablelink Service provided with a service falling within the TI Services Basket is not greater than the amount that the Dominant Provider charges for that Cablelink Service pursuant to Condition **10A**.

General provisions applicable to the Controls in the First Relevant Year

10D.17 The Dominant Provider may set charges on 1 May 2016 in order to give effect to the changes required both on 1 May 2016 and for the First Relevant Year. Should the Dominant Provider do so, it shall be deemed in compliance with its obligations under Conditions **10D.1 to 10D.16**, provided it secures, and is able to demonstrate to the satisfaction of Ofcom, that the charges set on 1 May 2016 are equal to those that would have complied with the requirements set out in Conditions **10D.1 to 10D.16** had they been set through separate changes required both on 1 May 2016 and for the First Relevant Year.

General provisions applicable to the Controls from 2 May 2016

10D.18 For the purposes of determining compliance with Condition **10D** except Conditions **10D.12 to 10D.14** the relevant charges should be calculated on the basis of:

- i. including Time Limited Discounts;
- ii. including Three Year Term Products;
- iii. including Five Year Term Products; and
- iv. 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.

10D.19 For the purposes of determining compliance with Conditions **10D.12 to 10D.14** the relevant charges shall be calculated on the basis of:

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

10D.20 Except where Condition **10D.21** applies, where the Annex to this Condition **10D** lists a service as being available with more than one minimum contract period, the charge for the purposes of determining compliance with this Condition **10D** shall be deemed to be the charge for the service with the shortest minimum contract period.

10D.21 Where the Dominant Provider offers a service listed in the Annex to this Condition **10D** with a minimum contract period of three years or five years, such service shall be deemed, for the purposes of determining compliance with this Condition **10D**, 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 or the requirements set out in the definition of the Five Year Term Product (as applicable), each set out in Condition **10D.26**.

Additional general provisions and interpretation

10D.22 Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **10D**;
- (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 **10D** 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 **10D.22**, a material change to any service which is subject to this Condition **10D** 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 **10D** or a change to the billing practice for any service which is subject to this Condition **10D**.

10D.23 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 **10D**. The data must include:

- i. pursuant to Conditions **10D.3** and **10D.7**, the calculated Percentage Starting Charge Change and the calculated Percentage Change relating to each Basket specified in Conditions **10D.1**;
- 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 **10D.3** and **10D.7** (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 the Time Limited Discounts, the Three Year Term Products and the Five 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 **10D.7** applies and calculations thereof;
- vii. other data necessary for monitoring compliance with the charge control; and
- viii. such data as Ofcom may from time to time direct.

10D.24 Ofcom may direct that Conditions **10D.1** to **10D.23** shall not apply to the extent specified in any such direction.

10D.25 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **10D**.

10D.26 In this Condition **10D**:

“**Accrued Revenue**” means:

- (i) for the purposes of Condition **10D.3** 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 up to and including 31 March 2016

on which that charge applied) in the 12 months up to and including 31 March 2016, subject to the provisions set out in Condition **10D.18**; and

- b. in respect of each service other than rental and Exempt Ancillary Services, by multiplying volumes supplied in the 12 months up to and including 31 December 2015 by the average charge in the 12 months up to and including 31 March 2016 subject to the provisions set out in Condition **10D.18**.
- (ii) for the purposes of Condition **10D.7** 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 Prior Year on which that charge applied) in the Prior Year subject to the provisions set out in Condition **10D.18**; 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 the average charge in the Prior Year subject to the provisions set out in Condition **10D.18**.

“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 **10D** during the Relevant Year;

“Basket” means the services listed in Conditions **10D.1** and in the Annex to this Condition **10D**;

“Cablelink Service” means each and every service which is reasonably necessary for the use of the services falling within the TI Services Basket and is described as “Cablelink” in the Ethernet Interconnection Sub-basket;

“Controlling Percentage” means a percentage to be calculated in accordance with Condition **10D.8**;

“Consumer Prices Index” means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;

“CPI” means the amount of the change in the Consumer Prices Index in the period of 12 months ending on 30 September immediately preceding the start of the Relevant Year, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the start of that first mentioned period;

“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 **10D**, 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 **10D** if it had complied with the requirements set out in Conditions **10D.2** and **10D.6**;

“**Exempt TI Ancillary Service**” means each service which is subject to Condition **10D.14** and is defined in Section 4 of the Annex to this Condition **10D**;

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

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

“**Five 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 five years;
- (ii) does not include any connection charge; and
- (iii) includes a rental charge which complies with the following formula:

$$R5_t = \frac{1}{5} C1_t + R1_t$$

Where

$R5_t$ is the rental charge of the Five Year Term Product in period t (paid by both new and existing Third Parties);

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

$R1_t$ is the rental charge of the equivalent product with a 1 year term in period t;

“**Initial Charge**” means a charge for each service in the TI Services Basket which results from the Dominant Provider complying with Condition **10D.2**;

“**Percentage Change**” has the meaning given to it in Condition **10D.7**;

“**Percentage Starting Charge Change**” has the meaning given to it in Condition **10D.3**;

“**Prior Year**” means, in relation to:

- (i) the First Relevant Year, the 12 months from 1 April 2015 to 31 March 2016 (inclusive);
- (ii) the Second Relevant Year, the First Relevant Year;
- (iii) the Third Relevant Year, the Second Relevant Year;

“Prior Year Weighted Average Charge” means a charge to be calculated in accordance with the relevant formula in Condition **10D.7**;

“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 calculated in accordance with the relevant formula in Condition **10D.7**;

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

“TI Mobile Services Sub-basket” means the sub-basket of services listed in Conditions **10D.1(ii)** and set out in Section 1 of the Annex to Condition **10D**;

“TI Services Basket” means the basket of services listed in Conditions **10D.1(i)** and set out in Sections 1 to 3 of the Annex to Condition **10D**;

“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 equivalent product with a 1 year term in period t;

$R1_t$ is the rental charge of the equivalent product with a 1 year term 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 no more than the same level as the initial charge was immediately before the reduction was implemented.

Annex to Condition 10D

Services subject to charge control pursuant to Condition 10D

Section 1

Meaning of “TI Mobile Services Sub-basket”

For the purpose of Condition **10D**, the expression “**TI Mobile Services Sub-basket**” shall be construed as including the services listed below at bandwidths up to and including 8Mbit/s, and excluding: (i) trunk segments; (ii) all of the services specified in the Annex to Condition **10F**, and (iii) all of the services specified in the Annex to Condition **10G**, 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)

Circuit Connection Charges and Cell Site Infrastructure

Connection of a New Circuit⁴²

- 2Mbit/s
- 2Mbit/s Subsequent

New Circuit on Spare Capacity⁴³

- 2Mbit/s

Radio Base Station Backhaul Assured Resilience⁴⁴

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

Multiple Diversity Monitoring⁴⁵

- Annual monitoring charge per circuit 2Mbit/s

Migration charges⁴⁶

- 128Kbit/s to 2Mbit/s

NetStream 16 Longline⁴⁷

Hub and site charges

Connection and rental charges

⁴² These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.01.

⁴³ These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.03.

⁴⁴ These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.02.

⁴⁵ These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.03.

⁴⁶ These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.01.

⁴⁷ 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

SiteConnect⁴⁸

Site linkage charges

Bandwidth charges

Section 2

Meaning of “TI Interconnection Sub-cap”

For the purpose of Condition **10D**, the expression “**TI Interconnection Sub-cap**” shall be construed as including the services listed below at bandwidths up to and including 8Mbit/s, excluding all of the services specified in the Annex to Condition **10F** and in the Annex to Condition **10G**, 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):

Partial Private Circuits (all bandwidths)

Point of Handover charges⁴⁹

- Connection and rental charges⁵⁰
- Re-Designation and Grandfathering charges⁵¹
- Miscellaneous Generic Equipment charges⁵²

Circuit rental charges⁵³

- 3rd party POH rental fixed charges p.a. for:
 - Circuit rental / maintenance charges⁵⁴
 - Partial Private Circuit 155 MSH - MSH⁵⁵
 - Protected Path Variant 1 and 2 Rental⁵⁶

In Span Handover/In Span Handover Extension Single Fibre / Dual Fibre Working (SFW/DFW)⁵⁷

Equipment charges⁵⁸

⁴⁸ 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.

⁴⁹ These charges correspond to the Carrier Price List, Part B8, Section 8.01.

⁵⁰ These charges correspond to the Carrier Price List, Part B8, Section 8.01, Subsections 1.1-1.2, 1.4 and 1.6.

⁵¹ These charges correspond to the Carrier Price List, Part B8, Section 8.01, Subsection 1.3.

⁵² These charges correspond to the Carrier Price List, Part B8, Section 8.01, Subsection 1.5.

⁵³ These charges correspond to the Carrier Price List, Part B8, Section 8.03.

⁵⁴ These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.1.

⁵⁵ These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.2.

⁵⁶ These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.3.

⁵⁷ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 8.

Installation/conversion charges⁵⁹

Radio Base Station Backhaul (all bandwidths)

Point of Connection⁶⁰

Section 3

Meaning of “TI All Services Sub-cap”

For the purpose of Condition **10D**, the expression “**TI All Services Sub-cap**” shall be construed as including the services referred to in Section 1 and the services listed below at bandwidths up to and including 8Mbit/s, excluding (i) trunk segments; (ii) all of the services specified in the Annex to Condition **10F**, and (iii) all of the services specified in the Annex to Condition **10G**, 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)

Circuit Connection Charges and Cell Site Infrastructure⁶¹

- Rental and connection charges for:
 - Connection of a New Circuit⁶²
 - Cell Site Infrastructure⁶³
 - New Circuit on Spare Capacity⁶⁴
 - Subsequent 8Mbit/s package⁶⁵

Circuit rental charges⁶⁶

- Rental charges⁶⁷
- Resilience charges⁶⁸
- Monitoring charges⁶⁹

⁵⁸ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 8.1.

⁵⁹ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 8.2.

⁶⁰ 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 as at 12 February 2016.

⁶¹ These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.02.

⁶² These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.01.

⁶³ These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.02.

⁶⁴ These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.03.

⁶⁵ These charges correspond to the Carrier Price List, Part B11, Section 11.02, Subsection 11.02.04.

⁶⁶ These charges correspond to the Carrier Price List, Part B11, Section 11.03.

⁶⁷ These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.01.

⁶⁸ These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.02.

⁶⁹ These charges correspond to the Carrier Price List, Part B11, Section 11.03, Subsection 11.03.03.

Migration charges⁷⁰

Reclassification charges⁷¹ that generated more than £1m revenue for any Prior Year

Partial Private Circuits (all bandwidths)

Circuit rental charges⁷²

- Protected Path Variant 1 and 2 Rental (other than 3rd party POH rental fixed charges)⁷³
- Resilience and Monitoring charges⁷⁴
- 4X2Mbit/s package - rental charges⁷⁵

Circuit connection charges⁷⁶

- Connection of a new circuit single charge⁷⁷
- Connection of a new 'protected path variant two' circuit single charge⁷⁸
- Third party customer link infrastructure single charges⁷⁹
- Third party customer sited single charge⁸⁰
- Miscellaneous generic equipment connection and rental⁸¹

Migration and Infrastructure Tariff Conversion charges⁸²

- Circuit Migration Charges⁸³
- Infrastructure Tariff Conversion charges⁸⁴ excluding charges for BT Retail Private Circuits Installed after 31st December 2001⁸⁵

Third Party Customer Sited Equipment Re-use⁸⁶ that generated more than £1m revenue for any Prior Year

⁷⁰ These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.01.

⁷¹ These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.02.

⁷² These charges correspond to the Carrier Price List, Part B8, Section 8.03.

⁷³ These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.3.

⁷⁴ These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsections 1.4-1.5.

⁷⁵ These charges correspond to the Carrier Price List, Part B8, Section 8.03, Subsection 1.6.

⁷⁶ 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 3rd party customer end) and 1.5 (PPC/PSTN/ATM mixing facility).

⁷⁷ These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.1.

⁷⁸ These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.2.

⁷⁹ These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.3.

⁸⁰ These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.3.

⁸¹ These charges correspond to the Carrier Price List, Part B8, Section 8.02, Subsection 1.6.

⁸² These charges correspond to the Carrier Price List, Part B8, Section 8.04.

⁸³ These charges correspond to the Carrier Price List, Part B8, Section 8.04, Subsection 1.1.

⁸⁴ These charges correspond to the Carrier Price List, Part B8, Section 8.04.

⁸⁵ These charges are set out in the Carrier Price List, Part B8, Section 8.04, subsection 1.2.2.

Upgrade charges⁸⁷ that generated more than £1m revenue for any Prior Year

Other charges⁸⁸ that generated more than £1m revenue for any Prior Year

Point of Handover (PoH) - Internal and External Moves⁸⁹

Move charges⁹⁰ that generated more than £1m revenue for any Prior Year

Survey charges⁹¹ that generated more than £1m revenue for any Prior Year

Cancellation charges⁹² that generated more than £1m revenue for any Prior Year

SiteConnect⁹³

Re-Parenting charges⁹⁴ that generated more than £1m revenue for any Prior Year

Re-Arrangement Charges⁹⁵ that generated more than £1m revenue for any Prior Year

External Move⁹⁶ that generated more than £1m revenue for any Prior Year

Survey Charges⁹⁷ that generated more than £1m revenue for any Prior Year

Bandwidth changes⁹⁸ that generated more than £1m revenue for any Prior Year

ATM Circuit Conversion⁹⁹ that generated more than £1m revenue for any Prior Year

Standby power¹⁰⁰ that generated more than £1m revenue for any Prior Year

Cancellation charges¹⁰¹ that generated more than £1m revenue for any Prior Year

Under achievement against commitment¹⁰² that generated more than £1m revenue for any Prior Year

⁸⁶ These charges correspond to the Carrier Price List, Part B8, Section 8.05.

⁸⁷ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 1.

⁸⁸ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 9-13.

⁸⁹ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 2-4 and 7.

⁹⁰ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 2-3.

⁹¹ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 4.

⁹² These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 7.

⁹³ 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.

⁹⁴ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.4.

⁹⁵ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.5.

⁹⁶ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.6.

⁹⁷ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.7.

⁹⁸ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.9.

⁹⁹ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.10.

¹⁰⁰ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.12.

¹⁰¹ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.13.

Charging for Diagnostic Test Officers¹⁰³ that generated more than £1m revenue for any Prior Year

Section 4

Meaning of “Exempt TI Ancillary Services”

For the purposes of Condition **10D.14**, the expression “**Exempt TI Ancillary Services**” shall be construed as each service listed below that does not generate more than £1m revenue in any Relevant Year, excluding all of the services specified in the Annex to Condition **10F** and in the Annex to Condition **10G**, 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).

For the avoidance of doubt, the services listed in this Section 4 of the Annex do not form part of the TI Services Basket.

Radio Base Station Backhaul (all bandwidths)

Reclassification charges¹⁰⁴

Partial Private Circuits (all bandwidths)

Third Party Customer Sited Equipment Re-use¹⁰⁵

Upgrade charges¹⁰⁶

Other charges¹⁰⁷

Point of Handover (PoH) - Internal and External Moves¹⁰⁸

Move charges¹⁰⁹

Survey charges¹¹⁰

¹⁰² These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.14.

¹⁰³ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.18.

¹⁰⁴ These charges correspond to the Carrier Price List, Part B11, Section 11.04, Subsection 11.04.02.

¹⁰⁵ These charges correspond to the Carrier Price List, Part B8, Section 8.05.

¹⁰⁶ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 1.

¹⁰⁷ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 9-13.

¹⁰⁸ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 2-4 and 7.

¹⁰⁹ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsections 2-3.

¹¹⁰ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 4.

Cancellation charges¹¹¹

SiteConnect¹¹²

Re-Parenting charges¹¹³

Re-Arrangement Charges¹¹⁴

External Move¹¹⁵

Survey Charges¹¹⁶

Bandwidth changes¹¹⁷

ATM Circuit Conversion¹¹⁸

Standby power¹¹⁹

Cancellation charges¹²⁰

Under achievement against commitment¹²¹

Charging for Diagnostic Test Officers¹²²

Interpretation of Annex to Condition 10D

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:

- (i) 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>

¹¹¹ These charges correspond to the Carrier Price List, Part B8, Section 8.06, Subsection 7.

¹¹² 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.

¹¹³ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.4.

¹¹⁴ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.5.

¹¹⁵ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.6.

¹¹⁶ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.7.

¹¹⁷ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.9.

¹¹⁸ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.10.

¹¹⁹ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.12.

¹²⁰ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.13.

¹²¹ These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.14.

¹²² These charges correspond to the Carrier Price List, Part B12, Section 12.01, Subsection 12.01.18.

- (ii) 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 12 February 2016.
- (iii) Specifically:
 - a. 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
 - b. For NetStream, please refer to http://www.bt.co.uk/pricing/current/Netstream_1_and_16_boo/3475_d0e2730.htm
 - c. For Radio Base Station Backhaul, please refer to
 - d. <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

Condition 10E

Controls of Accommodation Services

10E.1 Subject to Conditions **10E.4** and **10E.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 minus 0 percentage points (referred to as “**Controlling Percentage**” for the purposes of Conditions **10E.4** and **10E.5**). For the purpose of complying with this Condition **10E.1**, the Percentage Change shall be calculated by employing the formula set out in Condition **10E.2**.

10E.2 The Percentage Change shall be calculated 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 the charge for an individual Accommodation 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 **10A.15** 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 individual Accommodation Service subject to Condition **10E**; and

\bar{p}_{t-1} shall be calculated by employing the formula set out in Condition **10A.15** 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 individual Accommodation Service subject to Condition **10E**.

Controls of Overlapping Accommodation Services

10E.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 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.

10E.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 **10E.1** for each of the Accommodation Services (“**Deficiency**”); or
- (ii) greater than the Controlling Percentage set out in Condition **10E.1** for each of the Accommodation Services (“**Excess**”);

the Controlling Percentage for the following Relevant Year shall be calculated by employing the formula set out in Condition **10A.10** with the exception that all references to the Basket in Condition **10A.10** shall be read as “the Accommodation Services subject to Condition **10E**”.

10E.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

10E.6 Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **10E**; 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 **10E** 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 **10E.6**, a material change to any service which is subject to this Condition **10E** 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 **10E** or a change to the billing practice for any service which is subject to this Condition **10E**.

10E.7 Ofcom may direct that Conditions **10E.1 to 10E.6** shall not apply to the extent specified in any such direction.

10E.8 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **10E**.

10E.9 In this Condition **10E**:

“**Accommodation Services**” means the services defined and listed in Section 1 of the Annex to this Condition **10E**;

“**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 **10E** during the Relevant Year;

“Consumer Prices Index” means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;

“CPI” means the amount of the change in the Consumer Prices Index in the period of 12 months ending on 30 September immediately preceding the start of the Relevant Year, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the start of that first mentioned period;

“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 **10E**, 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 **10E** if it had complied with Conditions **10E.1** and **10E.3**;

“First Relevant Year” means a period beginning on 1 May 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 **10E**;

“Percentage Change” has the meaning given to it in Condition **10E.2**;

“Prior Year” means, in relation to:

- (i) the First Relevant Year, the 12 months from 1 April 2015 to 31 March 2016 (inclusive);
- (ii) the Second Relevant Year, the First Relevant Year;
- (iii) the Third Relevant Year, the Second 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 10E

Services subject to charge control pursuant to Condition 10E

Section 1

Meaning of “Accommodation Services”

For the purposes of Condition **10E**, 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, Dark Fibre Access and the services falling within the TI Services Basket, excluding all of the services specified in the Annex to Condition **10F** and in the Annex to Condition **10G**, 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 locate¹²³

All charges excluding Access Locate Plus bespoke charges

Section 2

Meaning of “Overlapping Accommodation Services”

For the purposes of Condition **10E**, 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, Dark Fibre Access and the services falling within the TI Services Basket, 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).

¹²³ Openreach, *Price List, Access Locate and Access Locate Plus*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=q%2B2vpfgQQ99SiimXeC7QjskLe4HVN3IVHU%2BmY7RLKoBZ6rNZujnCs99NblKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

Interpretation of Annex to Condition 10E

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 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 10F

Controls of the ECC Services

10F.1 The Dominant Provider shall take all reasonable steps to secure that, during each Relevant Year, the Percentage Change (calculated in accordance with Condition **10F.2**) in each of the charges for each of the Direct ECC Services is not greater than the Controlling Percentage (calculated in accordance with Condition **10F.3**).

10F.2 The Percentage Change shall be calculated 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 the charge for an individual Direct ECC 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 **10A.15** 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 the individual Direct ECC Service subject to Condition **10F**; and

\bar{p}_{t-1} shall be calculated by employing the formula set out in Condition **10A.15** 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 the individual Direct ECC Service subject to Condition **10F**.

10F.3 Subject to the provisions set out in Conditions **10F.5** and **10F.6**, the Controlling Percentage in relation to any Relevant Year for each Direct ECC Service shall be calculated, for the purposes of complying with Condition **10F.1**, by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

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

CPI_t is CPI for the Relevant Year, t ;

X is equal to:

minus 18.75 percentage points for Blown Fibre;

plus 8.75 percentage points for Blown Fibre Tubing in Duct;

plus 17.25 percentage points for Cable (fibre or copper) including any jointing required;

plus 11.75 percentage points for Internal cabling (including Internal Blown Fibre Tubing);

minus 3.25 percentage points for Survey Fee/Planning Charges.

10F.4 The Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that in each Relevant Year, each and every charge offered or payable for each Contractor ECC Service is reasonably derived from the costs of provision based on the charge paid by the Dominant Provider, plus the Dominant Provider's forward looking long run incremental costs related to the provision of that Contractor ECC Service allowing an appropriate mark-up for recovery of common costs.

10F.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 for each of the Direct ECC Services ("**Deficiency**"); or
- ii. greater than the Controlling Percentage for each of the Direct ECC Services ("**Excess**");

the Controlling Percentage for the following Relevant Year shall be calculated employing the formula set out in Condition **10A.10** with the exception that the references to the Basket in Condition **10A.10** shall be read as "the Direct ECC Services subject to Condition **10F**".

10F.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.

10F.7 Where the Dominant Provider charges the ECC Balancing Charge, the ECC Balancing Charge (calculated in accordance with Condition **10F.9**) in respect of each published charge for each of the ECC Services shall be excluded, subject to the requirement set out in Condition **10F.8** being satisfied, from the calculation of:

- (i) the Percentage Starting Charge Change calculated in accordance with:
 - a. Condition **10A.3** for the purposes of complying with Condition **10A.2**;
 - b. Condition **10A.5** for the purposes of complying with Condition **10A.4**; and
- (ii) the Percentage Change calculated in accordance with:
 - a. Condition **10A.7** for the purpose of complying with Condition **10A.6**; and
 - b. Condition **10A.15** for the purpose of complying with Conditions **10A.12 to 10A.14**.

- 10F.8** The requirement referred to in Condition **10F.7** 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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access, 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 individual 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.
- 10F.9** For the purposes of complying with Condition **10F.7**, 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 the ECC 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 as part of 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 δ_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

10F.10 Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **10F**; 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 **10F** 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 **10F.10**, a material change to any service which is subject to this Condition **10F** 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 **10F** or a change to the billing practice for any service which is subject to this Condition **10F**.

10F.11 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 **10F**. The data must include:

- i. pursuant to Condition **10F.2** the calculated Percentage Change relating to the Direct ECC Services;
- ii. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition **10F.2**, including for each specific Direct 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 ECC Services to which Condition **10F.2** applies and calculations thereof;
- vi. other data necessary for monitoring compliance with the charge control; and
- vii. such data as Ofcom may from time to time direct.

10F.12 Ofcom may direct that Conditions **10F.1 to 10F.11** shall not apply to the extent specified in any such direction.

10F.13 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition **10F**.

10F.14 In this Condition **10F**:

“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 **10F** during the Relevant Year;

“Contractor ECC Services” means the services defined and listed in Section 2 of the Annex to this Condition **10F**;

“Controlling Percentage” has the meaning given to it in Condition **10F.3**;

“Consumer Prices Index” means the index of prices compiled by an agency or a public body on behalf of Her Majesty’s Government or a governmental department (which is the Office for National Statistics at the time of publication of this notification) from time to time in respect of all items;

“CPI” means the amount of the change in the Consumer Prices Index in the period of 12 months ending on 30 September immediately preceding the start of the Relevant Year, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the start of that first mentioned period;

“Direct ECC Services” means the services defined and listed in Section 1 of the Annex to this Condition **10F**;

“ECC Balancing Charge” means the charge calculated in accordance with Condition **10F.9**;

“ECC Services” means, for the purposes of Conditions **10F.7 to 10F.9**, the Direct ECC Services specified in Section 1 of the Annex to this Condition **10F** and the Contractor ECC Services specified in Section 2 of the Annex to this Condition **10F**;

“Excess Revenue” means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the Direct ECC Services specified in Section 1 of the Annex to this Condition **10F**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the Direct ECC Services specified in Section 1 of the Annex to this Condition **10F** if it had complied with Conditions **10F.1**;

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

“Percentage Change” has the meaning given to it in Condition **10F.2**;

“Prior Year” means, in relation to:

- (i) the First Relevant Year, the 12 months from 1 April 2015 to 31 March 2016 (inclusive);
- (ii) the Second Relevant Year, the First Relevant Year;
- (iii) the Third Relevant Year, the Second 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 10F

Services subject to charge control pursuant to Condition 10F

Section 1

Meaning of “Direct ECC Services”

For the purposes of Condition **10F**, 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 Dark Fibre Access and excluding all of the services specified in the Annex to Condition **10G**, 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 charges¹²⁴

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 **10F**, 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 Dark Fibre Access and excluding all of the services specified in the Annex to Condition **10G**, 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):

¹²⁴ Openreach, *Price List, Excess Construction Charges*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2F%2FjSuBEEITnogh5uNOEwQ2%2FKws5WBAVclIcholMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> as at 12 February 2016.

Excess construction charges¹²⁵

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

¹²⁵ Openreach, *Price List, Excess Construction Charges*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2F%2FjSuBEEITnogh5uNOEwQ2%2FKws5WBAVclIcholMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AllSgtlFAKw%3D%3D> as at 12 February 2016.

Section 3

Meaning of “EAD” and “EAD LA” for the purposes of Condition 10F.9

For the purposes of Condition **10F.9**, the expression **EAD** shall be construed as including the following services, excluding all of the services specified in the Annex to Condition **10G**, 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) ¹²⁶

Connection charges for:

- EAD 10
- EAD 100
- EAD 1000
- EAD 1000 (60 month minimum period)
- EAD 1000 (84 month minimum period)
- EAD 10000
- EAD 10000 (60 month minimum period)

- EAD 10 Extended Reach
- EAD 100 Extended Reach
- EAD 1000 Extended Reach
- EAD 1000 Extended Reach (60 month minimum period)
- EAD 1000 Extended Reach (84 month minimum period)

- EAD Enable 10
- EAD Enable 100
- EAD Enable 1000
- EAD Enable 1000 Extended Reach
- EAD Enable 1000 (60 month term)
- EAD Enable 1000 Extended Reach (60 month term)

- EAD SyncE
 - EAD SyncE 100
 - EAD SyncE 1000

¹²⁶ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dlGJkun%2FLo2l67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

- EAD SyncE 1000 (60 month minimum period)
- EAD SyncE 10000 (84 month minimum period)
- EAD SyncE 100 Extended Reach
- EAD SyncE 1000 Extended Reach
- EAD SyncE 1000 Extended Reach (60 month minimum period)
- EAD SyncE 1000 Extended Reach (84 month minimum period)

For the purposes of Condition **10F.9**, the expression **EAD LA** shall be construed as including the following services excluding all of the services specified in the Annex to Condition **10G**, 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)¹²⁷

Connection charges for:

- EAD Local Access 10
- EAD Local Access 100
- EAD Local Access 1000
- EAD Local Access 1000 (60 month minimum period)
- EAD Local Access 1000 (84 month minimum period)
- EAD Local Access 10000
- EAD Local Access 10000 (60 month minimum period)

- EAD Enable 10 Local Access
- EAD Enable 100 Local Access
- EAD Enable 1000 Local Access
- EAD Enable 1000 Local Access (60 month term)

- 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)

¹²⁷ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDe dlGJkun%2FLo2l67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> as at 12 February 2016.

Interpretation of Annex to Condition 10F

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>

Condition 10G

Initial Charges on 1 May 2016

10G.1 The Dominant Provider shall take all reasonable steps to secure that on 1 May 2016, 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 that the Dominant Provider charged on 31 March 2016 for each of the above categories of services (as applicable) for the supply of services falling within the Ethernet Services Basket, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access.

Controls from 2 May 2016

10G.2 The Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (calculated in accordance with Condition **10G.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 **10G.2** to **10G.8** as a “**Single Charge Category**” unless otherwise specified) is no greater than the Controlling Percentage (as calculated in accordance with Condition **10G.4**).

10G.3 The Percentage Change shall be calculated 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 the charge for an individual Single Charge Category 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 **10A.15** 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 individual Single Charge Category subject to Condition **10G**; and

\bar{p}_{t-1} shall be calculated by employing the formula set out in Condition **10A.15** 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 individual Single Charge Category subject to Condition **10G**.

10G.4 Subject to the provisions set out in Conditions **10G.5** and **10G.6**, the Controlling Percentage in relation to any Relevant Year for each Single Charge Category shall be calculated by employing the following formula:

$$Cp_t = X$$

Cp_t is the Controlling Percentage for the Relevant Year, t ,

X means minus 0.15 percentage points.

10G.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 for each Single Charge Category ("**Deficiency**"); or
- ii. greater than the Controlling Percentage for each Single Charge Category ("**Excess**");

the Controlling Percentage for the following Relevant Year shall be calculated employing the formula set out in Condition **10A.10** with the exception that the references to the Basket in Condition **10A.10** shall be read as "Single Charge Category subject to Condition **10G**".

10G.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

10G.7 Where:

- (i) the Dominant Provider makes a material change (other than to a charge) to any service which is subject to this Condition **10G**; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends;

Condition **10G** 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 **10G.7**, a material change to any service which is subject to this Condition **10G** 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 **10G** or a change to the billing practice for any service which is subject to this Condition **10G**.

10G.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 **10G**. The data must include:

- i. pursuant to Condition **10G.3**, 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 **10G.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 **10G.3** applies and calculations thereof;
- vi. other data necessary for monitoring compliance with the charge control; and
- vii. such data as Ofcom may from time to time direct.

10G.9 Ofcom may direct that Conditions **10G.1 to 10G.8** shall not apply to the extent specified in any such direction.

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

10G.11 In this Condition **10G**:

“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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access (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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access (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 **10G** 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 **10G**, 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 **10G** if it had complied with Conditions **10G.1** and **10G.2**;

“First Relevant Year” means a period beginning on 2 May 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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access (as applicable);

“Percentage Change” has the meaning given to it in Condition **10G.3**;

“Prior Year” means, in relation to:

- (i) the First Relevant Year, the 12 months from 1 April 2015 to 31 March 2016 (inclusive);
- (ii) the Second Relevant Year, the First Relevant Year;
- (iii) the Third Relevant Year, the Second 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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access (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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access (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, Ethernet with bandwidths above 1Gbit/s (as defined in Section 1 of the Annex to Condition **10B**) and Dark Fibre Access (as applicable); and

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

Annex to Condition 10G

Services subject to charge control pursuant to Condition 10G

Section 1

Meaning of “Ethernet TRC Services”

For the purposes of Condition **10G**, the expression “**Ethernet TRC Services**” shall include the following services defined in Condition **10G.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 of Annex to Condition 10G

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>

Condition 11 – Regulatory Financial Reporting

- 11.1 The Dominant Provider must maintain a separation for accounting purposes between such different matters relating to network access to the relevant network or the availability of the relevant facilities, as required by Conditions 11.3 to 11.35 including as Ofcom may from time to time direct under those Conditions 11.3 to 11.35.
- 11.2 The Dominant Provider must comply with such rules made by Ofcom about the use of cost accounting systems as required by Conditions 11.3 to 11.35 and must comply with such requirements about the description to be made available to the public of the cost accounting system as required by Conditions 11.3 to 11.35 in each case including as Ofcom may from time to time direct under Conditions 11.3 to 11.35.
- 11.3 Except in so far as Ofcom may consent otherwise in writing, the Dominant Provider shall act in the manner set out in this Condition 11.
- 11.4 Ofcom may from time to time make such directions as they consider appropriate in relation to the Dominant Provider's obligations under this Condition 11.
- 11.5 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 11.
- 11.6 Where the Dominant Provider is required to comply with:
- (i) this Condition 11; and
 - (ii) the Regulatory Accounting Principles,
- and it appears to the Dominant Provider that any of these requirements conflict with each other in a particular case, the Dominant Provider must resolve such conflict by giving priority to them in the order in which they are set out above.
- 11.7 For the purpose of Condition 11, publication shall be effected by:
- (i) placing a copy of the relevant information on any relevant publicly available website operated or controlled by the Dominant Provider; and
 - (ii) sending a copy of the relevant information to any person at that person's written request.

Requirements relating to the preparation, audit, delivery and publication of the Regulatory Financial Statements

- 11.8 The Dominant Provider shall in respect of the Market, Technical Areas, Products, Network Components and Network Services (as applicable), for each Financial Year:

(i) prepare such Regulatory Financial Statements as directed by Ofcom from time to time in accordance with this Condition 11, the Regulatory Accounting Principles and the Accounting Methodology Documents (the relevant Accounting Methodology Documents to be identified in the Regulatory Financial Statements by reference to their date);

(ii) prepare a reconciliation report as set out in Condition 11.23;

(iii) secure the expression of an audit opinion upon the Regulatory Financial Statements as notified by Ofcom from time to time and on the reconciliation report as set out in Condition 11.24;

(iv) secure the approval of the Regulatory Financial Statements by the board of directors of the Dominant Provider and secure the signature of the Regulatory Financial Statements by a director of the Dominant Provider for and on behalf of the board of directors;

(v) deliver to Ofcom copies of the Regulatory Financial Statements, the reconciliation report and any corresponding audit opinion, each and all of which shall be in the form in which they are ultimately to be published, at least two weeks before they are required to be published;

(vi) publish the Regulatory Financial Statements, the reconciliation report and any corresponding audit opinion, within four months after the end of the Financial Year to which they relate;

(vii) ensure that any Regulatory Financial Statement and corresponding audit opinion that it delivers to Ofcom and/or publishes are fit for such purpose (or purposes), if any, as notified by Ofcom in writing; and

(viii) publish with the Regulatory Financial Statements any written statement made by Ofcom and provided to the Dominant Provider commenting on the figures in, the notes to or the presentation of any or all of the Regulatory Financial Statements, the reconciliation report and/or the Accounting Methodology Documents.

11.9 The Dominant Provider shall make such amendments to the form and content of the Regulatory Financial Statements as are necessary to give effect fully to the requirements of this Condition 11. The Dominant Provider shall provide to Ofcom particulars of any such amendment, the reasons for it and its effect, when it delivers the Regulatory Financial Statements to Ofcom.

11.10 The Dominant Provider shall prepare all Regulatory Financial Statements, explanations or other information required by virtue of this Condition 11 on a regulatory asset value adjusted current cost basis as directed by Ofcom from time to time and shall be capable of doing so in relation to any period. Such Regulatory Financial Statements, explanations or other information shall be, in the opinion of Ofcom, meaningfully reconcilable to the Statutory Financial Statements.

- 11.11 Each Regulatory Financial Statement shall include Prior Year Comparatives which shall be prepared on a basis consistent with Current Year Figures. The Dominant Provider may depart from this requirement in preparing the Regulatory Financial Statements for a Financial Year if there are reasons for doing so provided that the particulars of the departure, the reasons for it and its effect are stated in a note in the Regulatory Financial Statements in accordance with the Statutory Accounting Standards.

Requirements relating to audit of the Regulatory Financial Statements

- 11.12 The Regulatory Auditor that the Dominant Provider from time to time appoints shall at all times be satisfactory to Ofcom having regard to such matters as Ofcom consider appropriate. The Dominant Provider shall notify Ofcom in writing of the Regulatory Auditor appointed to secure compliance with this Condition 11 before the Regulatory Auditor carries out any work for that purpose. The Dominant Provider shall notify Ofcom of any proposed change of Regulatory Auditor 28 days before effect is given to that change.
- 11.13 In the event that the Regulatory Auditor is in the opinion of Ofcom unsatisfactory, the Dominant Provider shall appoint and instruct an Alternative Regulatory Auditor that is at all times satisfactory to Ofcom having regard to such matters as Ofcom consider appropriate. The Dominant Provider shall ensure that the Alternative Regulatory Auditor:
- (i) carries out such on-going duties as are required to secure compliance with this Condition 11;
 - (ii) carries out work or further work, in addition to that performed by the Statutory Auditor and/or by the former Regulatory Auditor, in relation to such matters connected to compliance with this Condition 11 as are of concern to Ofcom and notified to the Dominant Provider in writing; and/or
 - (iii) re-performs work previously performed by the Statutory Auditor and/or by the former Regulatory Auditor in relation to such matters connected to compliance with this Condition as are of concern to Ofcom and notified to the Dominant Provider in writing.
- 11.14 The Dominant Provider shall extend to the Alternative Regulatory Auditor such assistance and co-operation as would be extended to the Statutory Auditor and/or to the Regulatory Auditor and, to the extent similar assistance and co-operation may be required from the Statutory Auditor and/or from the former Regulatory Auditor, the Dominant Provider shall use its best endeavours to secure such assistance and co-operation.
- 11.15 The Dominant Provider's letter of engagement appointing the Regulatory Auditor or Alternative Regulatory Auditor shall include such provisions acknowledging the acceptance by the Regulatory Auditor or Alternative Regulatory Auditor of duties and

responsibilities to Ofcom in respect of its audit work, audit report and audit opinion as are consistent with the ICAEW Guidance.

- 11.16 The Dominant Provider shall use its best endeavours to obtain from the Regulatory Auditor or Alternative Regulatory Auditor any further explanation and clarification of any audit opinion required under this Condition 11 and any other information in respect of the matters which are the subject of that audit opinion as Ofcom shall require.
- 11.17 The Dominant Provider shall obtain such assurance statement in the form of the Agreed Upon Procedures in relation to the Dominant Provider's obligations under this Condition 11 as directed by Ofcom.

Requirements relating to the Accounting Methodology Documents

- 11.18 The Dominant Provider must prepare, maintain and keep up-to-date the Accounting Methodology Documents in accordance with this Condition 11 and the Regulatory Accounting Principles.
- 11.19 The Dominant Provider must include in the Accounting Methodology Documents documentation setting out a description of each of the Attribution Methods, the Transfer Charge System Methodology, the Accounting Policies and the Long Run Incremental Cost Methodology.
- 11.20 The Dominant Provider must deliver an up-to-date version of the Accounting Methodology Documents to Ofcom when it delivers the Regulatory Financial Statements to Ofcom in accordance with Condition 11.8 and publish such up-to-date version on or before the day of publication of the Regulatory Financial Statements which have been prepared in accordance with such version.

Requirements relating to changes to the Regulatory Accounting Methodology and the correction of Material Errors

- 11.21 The Dominant Provider must publish and deliver to Ofcom a list of each and every change to the Regulatory Accounting Methodology, by 31 March of the Financial Year in which the change to the Regulatory Accounting Methodology is to be made (the "Change Control Notification"). The Change Control Notification must be accompanied by a description of each of the changes, the reason for making each of the changes (including by reference to their compliance with the Regulatory Accounting Principles), and the impact of each of the changes on the figures at the level of the Markets and Technical Areas (as applicable) by setting out the figures which were presented in the previous Financial Year alongside the figures that would have been presented had such changes been made in the previous Financial Year.
- 11.22 Where in Ofcom's opinion any change referred to in Condition 11.21 does not comply with this Condition 11 or the Regulatory Accounting Principles, the Dominant Provider shall not make such change, if so directed by Ofcom.

- 11.23 The Dominant Provider must prepare a reconciliation report as referred to in Condition 11.8 and as directed by Ofcom from time to time, which sets out changes to the Regulatory Accounting Methodology and the impact of such changes on the Regulatory Financial Statements, and Material Errors corrected in the Regulatory Financial Statements and the impact of such Material Errors on the Regulatory Financial Statements.
- 11.24 The Dominant Provider must obtain an audit opinion on the reconciliation report as directed by Ofcom from time to time.

Requirements relating to the Regulatory Accounting System

- 11.25 The Dominant Provider's Regulatory Accounting System must be able to produce the Regulatory Financial Statements as directed by Ofcom under Condition 11.8 in accordance with this Condition 11, the Regulatory Accounting Principles and the Accounting Methodology Documents.
- 11.26 Where the Dominant Provider replaces the whole or part of its Regulatory Accounting System, or substantially modifies such Regulatory Accounting System, the Dominant Provider must:
- (i) notify Ofcom in a timely manner of the replacement or modification, and, where so requested by Ofcom, inform Ofcom of progress towards completion and such other information as Ofcom may reasonably request;
 - (ii) ensure, to the best of its ability, that the replacement or modification does not cause the figures contained in the Regulatory Financial Statements to be different from the figures that would have been contained in the Regulatory Financial Statements had such Regulatory Financial Statements been prepared using the old or unmodified Regulatory Accounting System;
 - (iii) in relation to the final Financial Year for which the Regulatory Financial Statements are prepared using the old or unmodified Regulatory Accounting System, prepare a systems reconciliation report, which must:
 - a. set out the difference between the Current Year Figures presented in the Regulatory Financial Statements and the Current Year Figures had such Regulatory Financial Statements been prepared on the basis of the new or modified Regulatory Accounting System, expressed as a percentage change; and
 - b. explain each and every Material Difference between the Current Year Figures presented in the Regulatory Financial Statements and the Current Year Figures had such Regulatory Financial Statements been prepared on the basis of the new or modified Regulatory Accounting System;

(iv) publish and deliver the systems reconciliation report to Ofcom by 31 December of the Financial Year for which the figures will be prepared using the new or modified Regulatory Accounting System for the first time;

(v) obtain an assurance statement in the form of Agreed Upon Procedures on the systems reconciliation report, which must report:

a. whether the figures in the systems reconciliation report referred to in Condition 11.26(iii)(a) have been properly extracted from the old or unmodified Regulatory Accounting System and the new or modified Regulatory Accounting System respectively;

b. whether each and every difference in the systems reconciliation report referred to in Condition 11.26(iii)(a) has been correctly calculated; and

c. whether the explanation of each and every Material Difference in the systems reconciliation report referred to in Condition 11.26(iii)(b) is an accurate representation of the cause of each such Material Difference.

(vi) deliver the assurance statement in the form of the Agreed Upon Procedures to Ofcom when it delivers the systems reconciliation report to Ofcom in accordance with Condition 11.26(iv);

(vii) where the systems reconciliation report referred to in Condition 11.26(iii) indicates that the replacement or modification causes the Current Year Figures contained in the Regulatory Financial Statements to be significantly different, either individually or in aggregate, from the Current Year Figures that would have been contained in the Regulatory Financial Statements had such Regulatory Financial Statements been prepared using the new or modified Regulatory Accounting System, prepare, if so directed by Ofcom, the Regulatory Financial Statements on a basis consistent with the old or unmodified Regulatory Accounting System.

Requirements relating to deficiencies in the Regulatory Financial Statements and the Accounting Methodology Documents

11.27 Where Ofcom have reasonable grounds to believe that any or all of the Regulatory Financial Statements and/or Accounting Methodology Documents are deficient, the Dominant Provider shall, where directed by Ofcom:

(i) amend the Accounting Methodology Documents in order to remedy the deficiencies identified by Ofcom;

(ii) restate the Regulatory Financial Statements identified by Ofcom as requiring restatement in accordance with the Accounting Methodology Documents which have, where necessary, been amended pursuant to Condition 11.27(i);

(iii) prepare a reconciliation report as set out in Condition 11.23, whereby any reference to the Regulatory Financial Statements should be understood as a reference to the restated Regulatory Financial Statements;

(iv) secure in accordance with any relevant notification of Ofcom under this Condition the expression of an audit opinion on the restated Regulatory Financial Statements;

(v) deliver to Ofcom the restated Regulatory Financial Statements, the reconciliation report and corresponding audit opinion; and

(vi) publish the restated Regulatory Financial Statements, the reconciliation report and corresponding audit opinion.

Requirements relating to the maintenance of sufficient accounting records

11.28 The Dominant Provider shall maintain accounting records for a period of six years from the date on which each Regulatory Financial Statement is delivered to Ofcom.

11.29 The Dominant Provider shall maintain the accounting records in accordance with this Condition 11, the Regulatory Accounting Principles and the Accounting Methodology Documents.

11.30 The Dominant Provider shall maintain accounting records in a form which, on a historical cost basis and on a current cost basis:

(i) separately identifies each of the Markets, Technical Areas, Products, Network Components and Network Services;

(ii) separately attributes the costs, revenues, assets and liabilities of each of the Markets, Technical Areas, Products, Network Components and Network Services; and

(iii) shows and explains the transactions underlying each of the Markets, Technical Areas, Products, Network Components and Network Services.

11.31 The Dominant Provider shall maintain the accounting records so that they are sufficient:

(i) to provide an adequate explanation of each Regulatory Financial Statement;

(ii) to show that charges are non-discriminatory; and

(iii) to provide a complete justification of the Dominant Provider's charges for Network Access.

Requirement to facilitate on-demand reporting

11.32 The Dominant Provider shall ensure that its Regulatory Accounting System and accounting records are sufficient to enable the Dominant Provider, at all times, to be capable of preparing in relation to any specified calendar month or months a financial statement in accordance with the Accounting Methodology Documents.

Requirements relating to the preparation and maintenance of a Wholesale Catalogue

11.33 The Dominant Provider must prepare, maintain and keep up-to-date a Wholesale Catalogue. Such Wholesale Catalogue should separately identify and describe:

- (i) External Wholesale Services;
- (ii) Internal Wholesale Services;
- (iii) Wholesale Services supplied both externally and internally; and
- (iv) Network Services and the extent to which these activities are used in the course of supplying Wholesale Services.

11.34 The Dominant Provider must deliver an up-to-date version of the Wholesale Catalogue to Ofcom when it delivers the Regulatory Financial Statements to Ofcom in accordance with Condition 11.8 and publish such up-to-date version on or before the day of publication of the Regulatory Financial Statements which have been prepared by reference to such version.

Requirements relating to the demonstration of non-discrimination

11.35 The Dominant Provider shall ensure that it is able to demonstrate that at any point in time:

- (i) where a Network Service or combination of Network Services is used by the Dominant Provider in providing Internal Wholesale Services, the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in respect of the use of the Network Service or combination of Network Services is equivalent to the amount applied and incorporated for the use of the Network Services or combination of Network Services in the charge payable for an equivalent External Wholesale Service;
- (ii) the same amount as applied and incorporated in the Transfer Charge for the Internal Wholesale Service in Condition 11.35(i) in respect of the use of the Network Service or combination of Network Services is applied to the Network Service or combination of Network Services whenever it is or they are used by the Dominant Provider in providing that same Internal Wholesale Service; and
- (iii) the same amount as applied and incorporated in the Transfer Charge for the equivalent External Wholesale Service in Condition 11.35(i) in respect of the use of the Network Service or combination of Network Services is applied to the Network

Service or combination of Network Services whenever it is or they are used by the Dominant Provider in providing that same External Wholesale Service;

(iv) the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service in Condition 11.32(i) in respect of the use of the Network Service or combination of Network Services shall be the cost of those Network Services unless the Network Service concerned is provided from a Market which is different from the Market which comprises the Internal Wholesale Service.

11. 36 In this Condition 11:

a) “Accounting Methodology Documents” means the documentation maintained by the Dominant Provider setting out in detail the rules, policies, methods, allocations, calculations, assumptions, procedures and Processes used by the Dominant Provider for the purpose of preparing Regulatory Financial Statements in accordance with the Regulatory Accounting Principles;

b) “Accounting Policies” means the manner in which the Dominant Provider applies the requirements of the Regulatory Accounting Principles in each of the Regulatory Financial Statements;

c) “Alternative Regulatory Auditor” means any auditor not for the time being appointed as the Dominant Provider’s Regulatory Auditor;

d) “Agreed Upon Procedures” means an engagement carried out in accordance with international standard (ISRS 4400) under which the Regulatory Auditor or another independent third party performs a set of audit procedures agreed by Ofcom and based on Ofcom’s specific requirements in relation to the Regulatory Financial Statements, and reports the findings of that work to Ofcom;

e) “Attribution Methods” means the practices used by the Dominant Provider to attribute revenue (including appropriate Transfer Charges), costs (including appropriate Transfer Charges), assets and liabilities to activities or, insofar as those activities have been aggregated into Wholesale Segments or Retail Segments in a given Market or Technical Area (as applicable), to each Wholesale Segment or Retail Segment;

f) “Current Year Figures” means, in relation to any set of Regulatory Financial Statements, the amounts relating to the Financial Year to which the statements relate;

g) “External Wholesale Services” means services supplied or offered to any Communications Provider other than the Dominant Provider;

h) “Financial Year” means a financial year of the Dominant Provider in respect of which the Statutory Financial Statements are required to be (or to have been) prepared and audited in accordance with the requirements of the Companies Act 2006;

- i) "ICAEW Guidance" means the technical release titled "Reporting to Regulators of Regulated Entities: Audit 05/03" issued by the Audit and Assurance Faculty of the Institute of Chartered Accountants in England & Wales in October 2003;
- j) "Internal Wholesale Services" means services supplied within the Dominant Provider;
- k) "Long Run Incremental Cost Methodology" means the long run incremental cost principles, procedures and Processes which form the framework under which long run incremental costs are calculated by the Dominant Provider;
- l) "Market" means the market to which this Condition 11 applies;
- m) "Material Error" means a deviation from accuracy or correctness which meets the materiality threshold as directed by Ofcom from time to time for the purpose of this Condition 11;
- n) "Material Difference" means a difference identified in a systems reconciliation report which meets the materiality threshold as directed by Ofcom from time to time for the purpose of this Condition 11;
- o) "Network Component" means an element of the network that is used to provide Wholesale Services, and, to the extent the network components are used in the Market or Technical Area (as applicable), specified in a direction given by Ofcom from time to time for the purposes of this Condition 11;
- p) "Network Services" means those groups of Network Components used directly (or which in the absence of horizontal or vertical integration would be used directly) in the course of supplying Wholesale Services;
- q) "Prior Year Comparatives" means, in relation to any set of Regulatory Financial Statements, the amounts relating to the Financial Year immediately preceding the Financial Year to which the Regulatory Financial Statements relate, re-evaluated if necessary to ensure that such figures are comparable to the Current Year Figures;
- r) "Process" means the series of inter-related activities or actions to obtain, record or hold data or information or to carry out any operation or set of operations on the data or information, including:
- i. organisation, storage, adaptation, or alteration of the data or information;
 - ii. retrieval, consultation, computation or use of the data or information;
 - iii. disclosure of the data or information by transmission, dissemination, or otherwise making available; or

- iv. alignment, combination, blocking, erasing or destruction of the data or information;
- s) “Product” means any product or service comprised in a Market or Technical Area to which this Condition 11 applies;
- t) “Regulatory Accounting Methodology” means the rules, policies, methods, allocations, calculations, assumptions and procedures used by the Dominant Provider for the purpose of preparing Regulatory Financial Statements;
- u) “Regulatory Accounting Principles” means the principles as directed by Ofcom from time to time for the purpose of this Condition 11;
- v) “Regulatory Accounting System” means the set of computerised and manual accounting methods, procedures, Processes and controls established to determine and attribute the costs, revenues, assets and liabilities and summarise, interpret, and present the resultant financial data in an accurate and timely manner;
- w) “Regulatory Auditor” means the auditor for the time being appointed by the Dominant Provider in accordance with this Condition 11;
- x) “Regulatory Financial Statement” means any financial statement in respect of a Financial Year prepared or required to be prepared by the Dominant Provider in accordance with this Condition 11;
- y) “Retail Segments” means groups of Retail Products;
- z) “Statutory Accounting Standards” means the accounting standards, including the requirements of the Companies Act 2006, by reference to which the Dominant Provider is required to prepare the Statutory Financial Statements;
- aa) “Statutory Auditor” means the auditor for the time being appointed by the Dominant Provider in accordance with the requirements of the Companies Act 2006;
- bb) “Statutory Financial Statements” means any annual account required to be prepared by the Dominant Provider in accordance with the requirements of the Companies Act 2006;
- cc) “Technical Area” means the technical area to which this Condition 11 applies;
- dd) “Transfer Charge” means the charge or price that is applied, or deemed to be applied, within the Dominant Provider by one division or business unit of the Dominant Provider to another for the use or provision of an activity or group of activities. For the avoidance of doubt, such activities or group of activities include, amongst other things, Products provided from, to or within the Market or Technical Area (as applicable) and the use of Network Components in the Market or Technical Area (as applicable);

ee) “Transfer Charge System Methodology” means the methodology of the system employed by the Dominant Provider which enables an activity to use a service or good from another activity and to account for it as though it had purchased that service or good from an unrelated party (including accounting for it at an appropriate amount);

ff) “Wholesale Catalogue” means the documentation required to be produced by the Dominant Provider under Condition 11.33;

gg) “Wholesale Segments” means groups of Wholesale Services; and

hh) “Wholesale Services” means services related to network access on the Dominant Provider’s network used by or offered to any Communications Provider (including the Dominant Provider).

Schedule 2: List of postal sectors constituting the CLA

E1 0	EC1N 7	EC2M 2	EC3A 4	EC4A 1	EC4Y 0
E1 1	EC1N 8	EC2M 3	EC3A 5	EC4A 2	EC4Y 1
E1 2	EC1R 0	EC2M 4	EC3A 6	EC4A 3	EC4Y 7
E1 3	EC1R 1	EC2M 5	EC3A 7	EC4A 4	EC4Y 8
E1 6	EC1R 3	EC2M 6	EC3A 8	EC4M 5	EC4Y 9
E1 7	EC1R 4	EC2M 7	EC3M 1	EC4M 6	NW1 0
E1 8	EC1R 5	EC2N 1	EC3M 3	EC4M 7	NW1 1
E14 2	EC1V 0	EC2N 2	EC3M 4	EC4M 8	NW1 2
E14 4	EC1V 1	EC2N 3	EC3M 5	EC4M 9	NW1 3
E14 5	EC1V 2	EC2N 4	EC3M 6	EC4N 1	NW1 5
E14 9	EC1V 3	EC2P 2	EC3M 7	EC4N 4	NW1 6
E1W 2	EC1V 4	EC2R 5	EC3M 8	EC4N 5	SE1 0
E1W 3	EC1V 7	EC2R 6	EC3N 1	EC4N 6	SE1 1
EC1A 1	EC1V 8	EC2R 7	EC3N 2	EC4N 7	SE1 9
EC1A 2	EC1V 9	EC2R 8	EC3N 3	EC4N 8	SW1A 1
EC1A 4	EC1Y 0	EC2V 5	EC3P 3	EC4R 0	SW1A 2
EC1A 7	EC1Y 1	EC2V 6	EC3R 5	EC4R 1	SW1E 5
EC1A 9	EC1Y 2	EC2V 7	EC3R 6	EC4R 2	SW1E 6
EC1M 3	EC1Y 4	EC2V 8	EC3R 7	EC4R 3	SW1H 0
EC1M 4	EC1Y 8	EC2Y 5	EC3R 8	EC4R 9	SW1H 9
EC1M 5	EC2A 1	EC2Y 8	EC3V 0	EC4V 2	SW1P 1
EC1M 6	EC2A 2	EC2Y 9	EC3V 1	EC4V 3	SW1P 2
EC1M 7	EC2A 3	EC3A 1	EC3V 3	EC4V 4	SW1P 3
EC1N 2	EC2A 4	EC3A 2	EC3V 4	EC4V 5	SW1P 4
EC1N 6	EC2M 1	EC3A 3	EC3V 9	EC4V 6	SW1V 1

SW1W 0	W1D 5	W1K 2	W1W 5	WC1R 5	WC2R 3
SW1W 9	W1D 6	W1K 3	W1W 6	WC1V 6	
SW1X 0	W1D 7	W1K 4	W1W 7	WC1V 7	
SW1X 7	W1F 0	W1K 5	W1W 8	WC1X 0	
SW1X 8	W1F 7	W1K 6	W2 1	WC1X 8	
SW1X 9	W1F 8	W1K 7	W2 2	WC1X 9	
SW1Y 4	W1F 9	W1S 1	W6 7	WC2A 1	
SW1Y 5	W1G 0	W1S 2	W8 4	WC2A 2	
SW1Y 6	W1G 6	W1S 3	W8 5	WC2A 3	
SW3 1	W1G 7	W1S 4	W8 6	WC2B 4	
SW7 1	W1G 8	W1T 1	W8 7	WC2B 5	
W14 8	W1G 9	W1T 2	WC1A 1	WC2B 6	
W1A 1	W1H 1	W1T 3	WC1A 2	WC2E 7	
W1A 9	W1H 2	W1T 4	WC1B 3	WC2E 8	
W1B 1	W1H 4	W1T 5	WC1B 4	WC2E 9	
W1B 2	W1H 5	W1T 6	WC1B 5	WC2H 0	
W1B 3	W1H 6	W1T 7	WC1E 6	WC2H 7	
W1B 4	W1H 7	W1U 1	WC1E 7	WC2H 8	
W1B 5	W1J 0	W1U 2	WC1H 0	WC2H 9	
W1C 1	W1J 5	W1U 3	WC1H 8	WC2N 4	
W1C 2	W1J 6	W1U 4	WC1H 9	WC2N 5	
W1D 1	W1J 7	W1U 5	WC1N 1	WC2N 6	
W1D 2	W1J 8	W1U 6	WC1N 2	WC2R 0	
W1D 3	W1J 9	W1U 7	WC1N 3	WC2R 1	
W1D 4	W1K 1	W1U 8	WC1R 4	WC2R 2	

Schedule 3: List of postal sectors constituting the London Periphery

E1 5	NW10 5	SL2 5	TW3 4	UB5 6	W2 4
E14 0	NW10 6	SL3 9	TW3 9	UB6 8	W2 6
E14 1	NW10 7	SL6 0	TW4 5	UB6 9	W3 6
E14 3	NW3 3	SL6 1	TW4 6	UB7 0	W4 1
E14 6	NW5 2	SL6 2	TW4 7	UB7 7	W4 2
E14 7	NW6 4	SL6 4	TW5 0	UB7 8	W4 3
E14 8	NW8 0	SL6 8	TW5 9	UB7 9	W4 4
E1W 1	SE1 2	SL9 7	TW6 2	UB8 1	W4 5
E2 6	SE1 3	SW1A 0	TW7 4	UB8 2	W5 2
E2 7	SE1 4	SW1V 2	TW7 5	UB8 3	W5 3
E3 2	SE1 6	SW3 2	TW8 0	UB8 9	W5 5
E3 3	SE1 7	SW3 3	TW8 8	UB9 4	W5 9
E77 1	SE1 8	SW7 2	TW8 9	W10 5	W6 0
E98 1	SE11 5	SW7 4	UB1 1	W10 6	W6 6
EC3M 2	SE11 6	SW7 5	UB1 3	W11 1	W6 8
EC3N 4	SE16 2	SW8 1	UB10 0	W11 2	W6 9
N1 0	SE16 4	SW8 5	UB11 1	W12 0	W7 1
N1 6	SE8 5	SW95 9	UB18 7	W12 6	W7 3
N1 7	SL1 0	TW13 4	UB18 9	W12 7	W8 9
N1 8	SL1 1	TW13 5	UB3 1	W12 8	W9 3
N1 9	SL1 2	TW14 8	UB3 2	W13 0	
N1C 4	SL1 3	TW16 7	UB3 3	W13 8	
NW1 7	SL1 4	TW3 1	UB3 4	W14 0	
NW1 8	SL1 5	TW3 2	UB3 5	W1A 3	
NW1 9	SL1 6	TW3 3	UB4 0	W2 3	

Schedule 4: List of Core Nodes

Column 1: Core Nodes	Column 2: Dominant Provider's operational buildings
Core Node 1	Inverness Macdhui
Core Node 2	Portadown
Core Node 3	Yeovil
Core Node 4	Aberystwyth
Core Node 5	Bridgwater
Core Node 6	Swansea
Core Node 7	Southend On Sea
Core Node 8	Lincoln
Core Node 9	Truro
Core Node 10	Plymouth
Core Node 11	Dundee Tay
Core Node 12	Norwich City
Core Node 13	Pontefract
Core Node 14	Wrexham Grosvenor
Core Node 15	Bangor (Wales)
Core Node 16	Ashford
Core Node 17	Tunbridge Wells
Core Node 18	Bedford Town

Core Node 19	Bournemouth
Core Node 20	Hemel Hempstead
Core Node 21	Shrewsbury

Former Everything Everywhere core nodes

Core Node 22	Acton
Core Node 23	Barnsley
Core Node 24	Beckton
Core Node 25	Bristol
Core Node 26	Cardiff
Core Node 27	Croydon
Core Node 28	Doxford
Core Node 29	Enfield
Core Node 30	Greenwich
Core Node 31	Hamilton
Core Node 32	Luton
Core Node 33	Mansfield
Core Node 34	Preston
Core Node 35	Solihull
Core Node 36	Southampton
Core Node 38	Tannochside

Core Node 39

Warrington

Core Node 40

West Bromwich

Schedule 5: List of Data Centre Core Nodes

City Lifeline - Lifeline House	Savvis LO6
Colt London 3, WGC	Sentrum - Sutton
Computacenter Romford	Sentrum - Watford
Computacenter Salford Quays	Sentrum - Woking
Coreix Limited datacentre	SSE - Fareham
CyrusOne - London	Sungard London Technology Centre
Digital Realty Redhill	Tata Communications Cressex
Equinix LD1 - London City	Tata Communications Stratford
Equinix LD2 - London West	Telecity - Kilburn House
Equinix LD3 - Park Royal	Telecity - Meridian Gate
Equinix LD4 - Slough	Telecity - Williams House
Global Crossing London datacentre	Telecity - 6&7 Harbour Exchange
Global Switch London #1	Telecity - 8&9 Harbour Exchange
Global Switch London #2	Telecity - Bonnington House
Interoute - Hoddesdon	Telecity - Joule House
Interxion LON1	Telecity - Oliver's Yard
Interxion LON2	Telecity - Powergate
Lomart London	Telecity - Sovereign House
Level 3 Braham Street datacentre	Telehouse East
Level 3 London datacentre	Telehouse Metro
MDS Technologies - Crawley	Telehouse North
Navisite - Woking	Telehouse West
Next Generation Data Newport	TeliaSonera HEX/A
Node 4 - Derby	Telstra - Docklands
Node 4 - Leeds	The Bunker - Ash
Pulsant - Reading East	Docklands DC Ltd - Tutis Point

Pulsant -Milton Keynes

Pulsant - Reading Central

Pulsant - Newbridge

QiComm - Tutis Point

CenturyLink LO1 - 630 Ajax Avenue

Equinix LD6 - Slough

Virtus LONDON1

Vital - Park Royal

Wildcard Networks IFL2

Wildcard Networks IFL3

NYSE - Cranes Farm Road, Basildon

Schedule 6: Trunk Aggregation Nodes

Column 1: Trunk Aggregation Nodes	Column 2: Dominant Provider's operational buildings
Aberdeen	Aberdeen Lochnagar
Attercliffe	Attercliffe
Barnsley	Barnsley
Basingstoke	Basingstoke/Bounty
Bayswater	Bayswater
Belfast	BE/City BE/Seymour
Birmingham	Birmingham Central Erdington Birmingham Midland BM Perryfields (Bromsgrove)
Bishops Stortford	Bishops Stortford
Bishopsgate	Bishopsgate
Brighton Hove	Brighton Hove
Bristol	Bedminster Bristol Redcliffe
Cambridge	Cambridge Trunks
Cardiff/Newport	Cardiff Newport (Gwent)
Carlisle	Carlisle
Central (Manchester)	Central
Chelmsford	Chelmsford Town

Chiswick	Chiswick
Clerkenwell	Clerkenwell
Coventry	Coventry Greyfriar Leamington Spa
Crawley	Crawley
Croydon	Croydon
Darlington	Darlington
Derby	Derby
Doncaster	Doncaster
Duston	Duston
Edinburgh	Edinburgh Donaldson
Euston	Euston
Exeter	Exeter Castle
Falkirk	Falkirk
Fulham	Fulham
Gerrard St (Soho)	Gerrard St (Soho)
Glasgow	Glasgow Central Glasgow Douglas
Gloucester	Gloucester
Guildford	Guildford/martyr
Hammersmith	Hammersmith
Hemel Hempstead	Hemel Hempstead
Holborn	Holborn
Ipswich	Colchester Town

	Ipswich Town
Irvine	Irvine Bourtree
Kendal	Kendal
Kensington Gardens	Kensington Gardens
Kings Cross	Kings Cross
Kingsthorpe	Kingsthorpe
Kingston	Kingston
Leeds	Bradford (2) Leeds (3)
Leicester (OHP)	Leicester Montfort
Leicester	Leicester
Lincoln	Lincoln
Liverpool	Liverpool Central
London Central	Covent Garden Faraday Te (Moorgate) BT Tower Westblock South Kensington Southbank
London Docklands	Bermondsey Stepney Green
London East	Hornchurch Upton park Woodford Kidbrooke
London North	Potters Bar
London West	Colindale

	Ealing Southall
Luton	Luton Ate / Tower Block
Maidstone	Maidstone
Manchester	Bolton Dial House (Manchester) Oldham Pendleton
Marylebone	Marylebone
Mayfair	Mayfair
Milton Keynes	Milton Keynes
Monument	Monument
Newbury	Newbury
Newcastle	Newcastle Central South Shields
Northampton	Northampton
Nottingham	Nottingham Longbow
Oxford	Oxford City
Paddington	Paddington
Peterborough	Peterborough Wentw
Pimlico	Pimlico
Poplar	Poplar
Portsmouth/Southampton	Cosham Southampton
Preston	Preston (Lancs)

Reading (OHP)	Bracknell
Reading	Reading
Rose St	Rose St
Salisbury	Salisbury
Sheffield	Chesterfield Sheffield Cutler
Shoreditch	Shoreditch
Slough	High Wycombe Slough
Stoke	Stoke Trinity/Pott
Swindon	Swindon
Theale	Theale
Trafford	Trafford
Warrington	Ashton in Makerfield Northwich
Watford	Watford
Westminster	Westminster
Whitehall	Whitehall
Wolverhampton	Walsall Central Wolverhampton Central
York (OHP)	Malton
York	York

Schedule 7: SMP conditions (KCOM)

Part 1: Application

1. The SMP Conditions in Part 3 of this Schedule 7 shall, except where specified otherwise, apply to the Dominant Provider in each of the relevant markets listed in Column 1 of **Table 1** to the extent specified in Column 2 of **Table 1**.
2. Nothing in these Conditions shall require the Dominant Provider to provide Ethernet First Mile copper services (EFMcU) (as defined in IEEE standard 802.3.1-2013).

Table 1: Relevant markets for the purposes of this Schedule

<i>Column 1: Relevant market</i>	<i>Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 7</i>
Wholesale market for low bandwidth traditional interface symmetric broadband origination in the Hull Area, at bandwidths up to and including 8Mbit/s	Conditions 1 to 6 inclusive
Wholesale market for contemporary interface symmetric broadband origination in the Hull Area	Conditions 1 to 6 inclusive
Retail market for low bandwidth traditional interface leased lines in the Hull Area, at bandwidths up to and including 8Mbit/s	Conditions 7 to 10 inclusive
Retail market for contemporary interface symmetric broadband origination in the Hull Area	Conditions 7 to 10 inclusive

The Conditions referred to in Column 2 of **Table 1** are entitled as follows—

Condition 1	Network access on reasonable request
Condition 2	No undue discrimination (wholesale)
Condition 3	Publication of a Wholesale Reference Offer
Condition 4	Notification of charges and terms and conditions
Condition 5	Notification of technical information
Condition 6	Provision of a Wholesale Pricing Transparency Report
Condition 7	Provision of retail leased lines
Condition 8	No undue discrimination (retail)
Condition 9	Publication of a Retail Reference Offer
Condition 10	Provision of a Retail Pricing Transparency Report

Part 2: Definitions and interpretation

1. In addition to the definitions set out above in this notification and in each Condition below (where relevant), in this Schedule 7—
 - (a) “Access Charge Change” means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access or in relation to any charges for new network access;
 - (b) “Access Charge Change Notice” means a notice given by the Dominant Provider of an Access Charge Change;
 - (c) “Access Agreement” means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access in accordance with Condition 1;
 - (d) “Dominant Provider” means KCOM Group plc, whose registered company number is 2150618, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined in section 1159 of the Companies Act 2006;
 - (e) “First Relevant Year” means a period beginning on the date on which this Schedule enters into force and ending on 31 March 2017;

- (f) "Network Termination Point" means the physical point at which a customer is provided with access to an electronic communications network;
- (g) "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.
- (h) "Retail Pricing Transparency Report" means a report required under Condition 10 to be provided by the Dominant Provider to Ofcom;
- (i) "Retail Reference Offer" means the terms and conditions on which the Dominant Provider is willing to enter an agreement for the provision of a retail leased line;
- (j) "Second Relevant Year" means a period beginning on 1 April 2017 and ending on 31 March 2018;
- (k) "Third Party" means a person providing a public electronic communications service or a person providing a public electronic communications network;
- (l) "Third Relevant Year" means a period beginning on 1 April 2018 and ending on 31 March 2019; and
- (m) "Wholesale Pricing Transparency Report" means a report required under Condition 6 to be provided to Ofcom.
- (n) "Wholesale Reference Offer" means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;

Part 3: SMP conditions

Condition 1 – Network access on reasonable request

- 1.1 The Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2 The provision of network access by the Dominant Provider in accordance with this Condition must:
 - (a) take place as soon as reasonably practicable after receiving the request from a Third Party;
 - (b) be on fair and reasonable terms, conditions and charges; and
 - (c) be on such terms, conditions and charges as Ofcom may from time to time direct.
- 1.3 The provision of network access by the Dominant Provider in accordance with this Condition shall also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct.
- 1.4 The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

Condition 2 – No undue discrimination (wholesale)

- 2.1 The Dominant Provider must not unduly discriminate against particular persons or against a particular description of persons, in relation to the provision of network access in accordance with Condition 1.

- 2.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place one or more Third Parties at a competitive disadvantage in relation to activities carried on by the Dominant Provider.

Condition 3 – Publication of a Reference Offer (wholesale)

- 3.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall publish a Reference Offer.
- 3.2 Subject to Condition 3.8, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of network access includes, where applicable, at least the following:
- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
 - (b) the locations at which network access will be provided;
 - (c) any relevant technical standards for network access (including any usage restrictions and other security issues);
 - (d) the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);
 - (e) any ordering and provisioning procedures;
 - (f) relevant charges, terms of payment and billing procedures;
 - (g) details of interoperability tests;
 - (h) details of maintenance and quality as follows:
 - (i) specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
 - (ii) service level commitments, namely the quality standards that each party must meet when performing its contractual obligations;
 - (iii) the amount of compensation payable by one party to another for failure to perform contractual commitments;
 - (iv) a definition and limitation of liability and indemnity; and
 - (v) procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;

- (i) details of any relevant intellectual property rights;
- (j) a dispute resolution procedure to be used between the parties;
- (k) details of duration and renegotiation of agreements;
- (l) provisions regarding confidentiality of the agreements;
- (m) rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts);
- (n) the standard terms and conditions for the provision of network access.

3.3 To the extent that the Dominant Provider provides to itself network access that—

- (a) is the same, similar or equivalent to that provided to any other person; or
- (b) may be used for a purpose that is the same, similar or equivalent to the network access provided to any other person;

in a manner that differs from that detailed in a Reference Offer in relation to network access provided to any other person, the Dominant Provider shall ensure that it publishes a Reference Offer in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Condition 3.2(a)-(n).

3.4 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Reference Offer in relation to any network access that it is providing as at the date that this Condition enters into force.

3.5 The Dominant Provider shall update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided after the date that this Condition enters into force.

3.6 The publication referred to above shall be effected by the Dominant Provider —

- (a) placing a copy of the Reference Offer on any relevant publicly available website operated or controlled by the Dominant Provider; and
- (b) sending a copy of the Reference Offer to Ofcom.

- 3.7 The Dominant Provider shall send a copy of the current version of the Reference Offer to any person at that person's written request (or such parts as have been requested).
- 3.8 The Dominant Provider shall make such modifications to the Reference Offer as Ofcom may direct from time to time.
- 3.9 The Dominant Provider shall provide network access on the terms and conditions including charges in the relevant Reference Offer and shall not depart therefrom either directly or indirectly.
- 3.10 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition 4 – Notification of charges and terms and conditions

- 4.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall publish charges, terms and conditions and comply with the requirements set out in this Condition.
- 4.2 Where it proposes an Access Charge Change, the Dominant Provider shall send to Ofcom, and to every person with which it has entered into an Access Agreement pursuant to Condition 1, an Access Charge Change Notice.
- 4.3 The obligation in Condition 4.2 shall not apply where the Access Charge Change is directed or calculated by Ofcom or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.
- 4.4 An Access Charge Change Notice must:
- (a) in the case of an Access Charge Change involving existing network access, be sent not less than 90 days before any such amendment comes into effect (except where the Access Charge Change relates solely to a reduction in the price of network access in which case it must be sent not less than 28 days before any such amendment comes into effect);
 - (b) in the case of an Access Charge Change involving new network access, be sent not less than 28 days before any such amendment comes into effect.
- 4.5 The Dominant Provider shall ensure that an Access Charge Change Notice includes:
- (a) a description of the network access in question;
 - (b) a reference to the location in the Dominant Provider's current Reference Offer of the terms and conditions associated with the provision of that network access; and
 - (c) the date on which, and the period for which, the Access Charge Change will take effect (the "effective date").
- 4.6 The Dominant Provider shall not apply any Access Charge Change identified in an Access Charge Change Notice before the effective date.

4.7 To the extent that the Dominant Provider provides to itself network access that:

(a) is the same, similar or equivalent to that provided to any other person; or

(b) may be used for a purpose that is the same, similar or equivalent to the network access provided to any other person, in a manner that differs from that detailed in an Access Charge Change Notice in relation to network access provided to any other person,

the Dominant Provider shall ensure that it sends to Ofcom a notice in relation to the network access that it provides to itself which includes, where relevant, at least those matters detailed in Conditions 4.5 (a) to (c) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with provides network access, it shall ensure it sends to Ofcom a notice equivalent to an Access Charge Change Notice.

Condition 5 – Notification of technical information

- 5.1 Except in so far as Ofcom may from time to time otherwise consent in writing, in relation to network access pursuant to Conditions 1 and 2, where the Dominant Provider proposes new or amended terms and conditions relating to the following:
- (a) technical characteristics (including information on network configuration, where necessary, to make effective use of the network access provided);
 - (b) the locations at which network access will be provided; or
 - (c) technical standards (including any usage restrictions and other security issues),
- the Dominant Provider shall publish a written notice (the “Notice”) of the new or amended terms and conditions within a reasonable time period but not less than 90 days before either the Dominant Provider enters into an Access Agreement to provide the new network access or the amended terms and conditions of the existing Access Agreement come into effect.
- 5.2 The obligation in Condition 5.1 shall not apply:
- (a) where the new or amended terms and conditions are directed or calculated by Ofcom or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act; or
 - (b) in relation to new or amended technical specifications calculated by NICC Standards Limited, whose registered company number is 6613589.
- 5.3 The Dominant Provider shall ensure that the Notice includes—
- (a) a description of the network access in question;
 - (b) a reference to the location in the Dominant Provider’s current Reference Offer of the terms and conditions associated with the provision of that network access; and
 - (c) the date on which, and the period for which, an Access Agreement to provide the new network access will be available or the amended terms and conditions will take effect (the “effective date”).
- 5.4 The Dominant Provider shall not enter into an Access Agreement containing the terms and conditions identified in the Notice or apply any new relevant terms and conditions identified in the Notice before the effective date.

5.5 The publication referred to in Condition 5.1 shall be effected by the Dominant Provider:

(a) placing a copy of the Notice on any relevant publicly available website operated or controlled by the Dominant Provider;

(b) where the Notice identifies an amendment to existing relevant terms and conditions, sending a copy of the Notice to every person with which the Dominant Provider has entered into an Access Agreement pursuant to Conditions 1 and 2 (as applicable); and

(c) sending a copy of the Notice to any person at that person's written request. The provision of such a copy of the Notice by the Dominant Provider may be subject to a reasonable charge.

Condition 6 – Provision of a Wholesale Pricing Transparency Report

- 6.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall prepare and provide to Ofcom for each Relevant Year a Wholesale Pricing Transparency Report in relation to the provision of network access under Condition 1.
- 6.2 Subject to Condition 6.4, the Dominant Provider must, in each Wholesale Pricing Transparency Report, set out the following:
- (a) each service being provided to a Third Party by the Dominant Provider under Condition 1 on the last day of the Relevant Year;
 - (b) in relation to each service referred to in Condition 6.2(a) above:
 - (i) a specification of each of the service type, interface, bandwidth and circuit orientation;
 - (ii) the amount of the connection charge;
 - (iii) the date on which the rental charge was agreed;
 - (iv) any fixed or minimum term which have been agreed by the Dominant Provider and a Third Party in respect of the rental charge; and
 - (v) the amount and the frequency of the rental charge.
- 6.3 Provision referred to in Condition 6.1 shall be effected by sending the Wholesale Pricing Transparency Report in Excel spreadsheet format by email to the designated person in the form notified by Ofcom from time to time within one month after the end of each Relevant Year to which the Wholesale Pricing Transparency Report relates.
- 6.4 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition 7 - Provision of retail leased lines

- 7.1 Subject to Conditions 7.3 and 7.4, the Dominant Provider shall supply a retail leased line where the Dominant Provider was supplying that retail leased line on the date that this Condition enters into force or where a new retail leased line is reasonably requested in writing.
- 7.2 The provision of retail leased lines under Condition 7.1 shall be provided on fair and reasonable terms, conditions and charges, and on such terms, conditions and charges as Ofcom may from time to time direct.
- 7.3 The obligation in Condition 7.1 to supply a retail leased line shall not apply to the supply of new retail leased line services with bandwidths below 2Mbit/s.
- 7.4 Where on the date that this Condition enters into force the Dominant Provider is supplying to end users retail leased lines with bandwidths below 2Mbit/s, the Dominant Provider may withdraw the supply of those services provided that the Dominant Provider has given notice in writing to all of those end users and to Ofcom at the same time. The notice period referred to in this Condition 7.4 must be:
- (a) no shorter than two years in duration; and
 - (b) of the same duration for each end user and Ofcom.
- 7.5 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition 8 – No undue discrimination (retail)

- 8.1 The Dominant Provider shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the supply of a retail leased line.

- 8.2 In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if it unfairly favours to a material extent an activity carried on by it so as to place at a competitive disadvantage persons competing with the Dominant Provider.

Condition 9 – Publication of a Retail Reference Offer

- 9.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall publish a Retail Reference Offer in relation to the supply of retail leased lines.
- 9.2 Subject to Condition 9.7, the Dominant Provider shall ensure that a Retail Reference Offer under Condition 9.1 includes at least the following:
- (a) the technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the Network Termination Point;
 - (b) charges, including the discounts offered to end users, the initial connection charges, the periodic rental charges and other charges;
 - (c) information concerning the ordering procedure;
 - (d) the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the end user is obliged to accept; and
 - (e) any refund procedure.
- 9.3 The Dominant Provider shall, within one month of the date that this Condition enters into force, publish a Retail Reference Offer in relation to retail leased lines that it is supplying as at the date that this Condition enters into force.
- 9.4 The Dominant Provider shall update and publish the Retail Reference Offer, in relation to any amendments, or in relation to any further retail leased lines supplied after the date that this Condition enters into force, on the same day as such amendments take effect or further retail leased lines are offered.
- 9.5 The publication referred to above shall be effected by the Dominant Provider:
- (a) placing a copy of the Retail Reference Offer on any relevant publicly available website operated or controlled by the Dominant Provider; and
 - (b) sending a copy of the Retail Reference Offer to Ofcom.

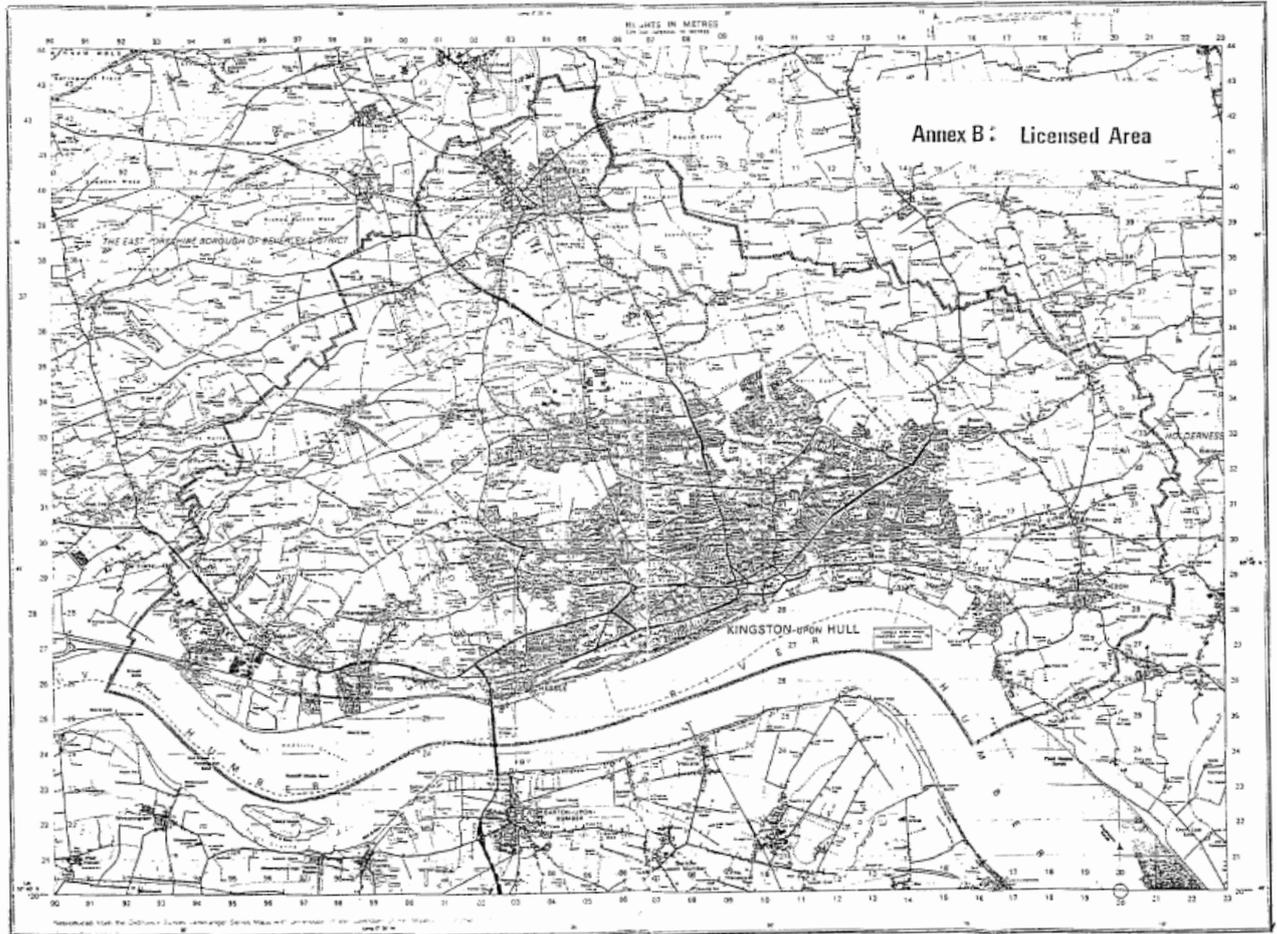
- 9.6 The Dominant Provider shall send a copy of the current version of the Retail Reference Offer to any person at that person's written request (or such parts which have been requested).
- 9.7 The Dominant Provider shall make such modifications to the Retail Reference Offer as Ofcom may direct from time to time.
- 9.8 The Dominant Provider shall supply retail leased lines on the terms and conditions including charges in the relevant Retail Reference Offer and shall not depart therefrom either directly or indirectly, unless Ofcom otherwise directs.
- 9.9 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Condition 10 – Provision of a Retail Pricing Transparency Report

- 10.1 Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider shall prepare and provide to Ofcom for each Relevant Year a Retail Pricing Transparency Report in relation to the supply of retail leased lines under Condition 7.
- 10.2 Subject to Condition 10.4, the Dominant Provider must, in each Retail Pricing Transparency Report, set out the following:
- (a) each retail leased line being supplied by the Dominant Provider to an end user under Condition 7 on the last day of the Relevant Year;
 - (b) in relation to each retail leased line referred to in Condition 10.2(a) above:
 - (i) a specification of each of the service type, interface, bandwidth and circuit orientation;
 - (ii) the amount of the connection charge;
 - (iii) the date on which the rental charge was agreed;
 - (iv) any fixed or minimum term which have been agreed by the Dominant Provider and a Third Party in respect of the rental charge; and
 - (v) the amount and the frequency of the rental charge.
- 10.3 The provision referred to in Condition 10.1 shall be effected by sending the Retail Pricing Transparency Report in Excel spreadsheet format by email to the designated person in the form notified by Ofcom from time to time within one month after the end of each Relevant Year to which the Retail Pricing Transparency Report relates.
- 10.4 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition.

Schedule 8

Map of the Hull Area



Section 2 Proposed directions for BT

NOTIFICATION OF PROPOSALS FOR EU CONSULTATION UNDER SECTIONS 49B OF THE COMMUNICATIONS ACT 2003

Direction under section 49B of the Communications Act 2003 and SMP Services Condition 1, proposed as a result of the analysis of 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

Background

1. On 28 March 2013, Ofcom published a statement entitled "*Business Connectivity Market Review, Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments*".¹²⁸ That document set out Ofcom's conclusions on its third review of the relevant markets relating to leased lines and backhaul circuits used by businesses and communication providers, by identifying markets, making certain market determinations and setting SMP conditions (including charge control conditions). At Annex 8 to that document, Ofcom published a notification under section 49 of the Communications Act 2003 ("**Act**"), dated 28 March 2013, containing a direction in relation to Partial Private Circuits to be applied to BT ("**2013 PPC Direction**").
2. On 15 May 2015, Ofcom published a consultation document entitled "*Business Connectivity Market Review: Review of competition in the provision of leased lines*" ("**May 2015 BCMR Consultation**"). Ofcom consulted on proposals identifying markets, making market power determinations and setting SMP services conditions. Annex 7 of the May 2015 BCMR Consultation set out a notification under section 49A of the Act in which Ofcom set out for domestic consultation its proposals to:
 - a. withdraw the 2013 PPC Direction; and
 - b. give a new direction for BT proposed as a result of the analysis of 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 ("**Draft PPC Direction**").

Ofcom invited responses to the May 2015 BCMR Consultation by 31 July 2015.

3. A copy of May 2015 BCMR Consultation, together with the Draft PPC Direction, was sent to the Secretary of State in accordance with section 49C(1)(b) of the Act.
4. Ofcom received many responses to its proposals set out in the May 2015 BCMR Consultation, including the proposals contained in the Draft PPC Direction, and it

¹²⁸ Ofcom, Business Connectivity Market Review, Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments, Statement, 28 March 2013
<http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/final-statement/>

has considered every such representation. The Secretary of State has not notified Ofcom of any international obligation on the United Kingdom for the purposes of sections 48A(6)(b) or 80A(9)(b) of the Act.

5. The proposals set out in the May 2015 BCMR Consultation, including the proposals contained in the Draft Direction, were of EU significance for the purposes of the Act. Therefore, after making such modifications of the proposals in the Draft PPC Direction that appeared to Ofcom to be appropriate following domestic consultation, Ofcom hereby sends a copy of its proposals, and a draft of the Statement accompanying this notification setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every other member State for EU consultation, in accordance with section 49B(2) of the Act.

Proposal to give direction

6. Ofcom is proposing to withdraw the Existing PPC Direction and make the proposed direction set out in the Schedule to this Notification.
7. The effect of and reasons for withdrawing the Existing PPC Direction and giving the proposed direction are set out in a draft of the Statement accompanying this notification.

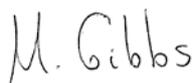
Ofcom's duties and legal tests

8. Ofcom considers that the proposed direction referred to in paragraph 6 complies with the requirements of section 49(2) of the 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.

Interpretation

10. 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 this annex and 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

22 March 2016

Schedule 1

Definitions

For the purpose of interpreting this Direction the following definitions shall apply:

“**Act**” means the Communications Act 2003;

“**Dominant Provider**” 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;

“**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;

“**Point of Connection**” means a point at which the Dominant Provider’s electronic communications network and another person’s electronic communications network are connected;

“**Third Party**” means a person providing a public electronic communications service or a person providing a public electronic communications network.

For the purpose of this Direction the following terms shall have the meaning as set out in the Dominant Provider’s Standard PPC Handover Agreement, as at the date of publication of this Direction, but with the necessary changes in order to ensure compliance with the Direction:

- Advance Capacity Order

- Advance Order Commitment

- BT Retail Private Circuit

- BT Serving Node

- Capacity Order

- Capacity Profile
- Customer Sited Handover (“CSH”)
- Forecast Profile
- In-Span Handover (“ISH”)
- Re-Designation
- Qualifying BT Retail Private Circuit

The following definitions shall also apply for the purpose of this Direction:

Term	Definition
Acceptance of Terms	Date on which a Third Party confirms acceptance of delivery conditions and is committed to the order.
Civil Works	Works that necessitate the digging up of a street for the installation of ducts.
Committed Delivery Date	The date confirmed by the Dominant Provider as the delivery date.
Firm Offer Confirmation (“FOC”)	Confirmation by the Dominant Provider in writing (by fax or e-mail) to a Third Party of the delivery conditions including price and Committed Delivery Date, after acknowledging receipt of an order for a Partial Private Circuit or Network Infrastructure from a Third Party.
FOC Acceptance Interval	The number of working days from the FOC Date until the Acceptance of Terms.

FOC Date	The date on which the Dominant Provider makes a Firm Offer Confirmation.
FOC Receipt Interval	The number of working days from the Order Request Date until the FOC Date.
Installation Date	Date of installation of a Partial Private Circuit or Network Infrastructure.
Network Infrastructure	The categories of products listed in the table contained in paragraph 51 of this Direction.
Order Request Date	Date on which a Third Party dispatches a valid Partial Private Circuit order, or Network Infrastructure order, to the Dominant Provider.
Partial Private Circuit (“PPC”)	A circuit provided pursuant to the PPC Contract and in accordance with the Directions.
PPC Contract	The Dominant Provider's Standard PPC Handover Agreement as at the date of publication of this Direction.
Provisioning Interval	The number of working days from the Order Request Date until the Installation Date.
Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 41 and 51 of this Direction.
Reduced Requisite Period	The period commencing on the Order Request Date and ending on the applicable working day as set out in the tables in paragraphs 44 and 54 of this Direction.

Subsequent Partial Private Circuit

A Partial Private Circuit which can be delivered on dedicated pre-provided Network Infrastructure where spare capacity exists.

Except as otherwise defined and/or as the context otherwise requires, words or expressions shall have the same meaning as in the Act.

The Interpretation Act 1978 shall apply as if this Direction was an Act of Parliament.

Headings and titles shall be disregarded.

- A. Subject to paragraphs B and C, the Dominant Provider shall provide Partial Private Circuits and shall do so in accordance with this Direction.

- B. Where on the date that this Direction enters into force the Dominant Provider is providing to Third Parties Partial Private Circuits at bandwidth below 2Mbit/s, the Dominant Provider may withdraw the provision of new Partial Private Circuits and cease to provide existing Partial Private Circuits provided that:
 - (i) the Dominant Provider has given all of the Third Parties at the same time notice in writing;
 - (ii) the notice period referred to in paragraph B(i) is:
 - a. no shorter than one year in duration; and
 - b. of the same duration for each of the Third Parties.

- C. Up to and including the date on which the notice period referred to in paragraph B expires, the Dominant Provider must comply with the requirements set out in paragraphs 1 to 77 of this Direction.

- D. After the expiry of the notice period referred to in paragraph B, this Direction shall be construed as no longer applying to the provision of Partial Private Circuits at bandwidth below 2Mbit/s.

Migration

1. The 12 month contractual minimum term placed upon a Third Party, for the provision of a Partial Private Circuit which has been migrated pursuant to the PPC Contract, shall be measured from the date that the original BT Retail Private Circuit was brought into service.

2. The Dominant Provider shall not impose any deadline before which a Third Party must inform the Dominant Provider that it requires a BT Retail Private Circuit to be migrated to an equivalent Partial Private Circuit status under the PPC Contract.

3. The Dominant Provider shall allow a BT Retail Private Circuit, which fell within paragraph 1.3 of the Phase 1 PPC Direction published on 14 June 2002, to be considered under the PPC Contract as a Qualifying BT Retail Private Circuit.

4. A circuit deemed to be a Qualifying BT Retail Private Circuit under paragraphs 20 or 21 of the Phase 2 PPC Direction published on 23 December 2002 shall continue to be a Qualifying BT Retail Private Circuit.

5. Where a Third Party was not previously eligible to migrate a BT Retail Private Circuit to a Qualifying BT Retail Private Circuit, but subsequently becomes eligible to do so, the Dominant Provider shall, for 60 working days following the date on which the Third Party's circuits become eligible for migration, allow migration without the Third Party incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits.

6. Where, at the date of publication of this Direction, the Dominant Provider offers a BT Retail Private Circuit product and does not offer an equivalent Partial Private Circuit product, but subsequently offers to provide an equivalent Partial Private Circuit product, it shall allow a Third Party to migrate to the equivalent Partial Private Circuit product without it incurring any penalty (including any default or early termination charge) under its agreement with the Dominant Provider for the provision of BT Retail Private Circuits, for a period of 60 working days following the date on which the equivalent Partial Private Circuit product is first offered by the Dominant Provider.

7. Where the Dominant Provider has taken, or will take, longer than five working days from receiving a request from a Third Party to migrate a Qualifying BT Retail Private Circuit to a Partial Private Circuit, it shall give to the Third Party a refund as set out in paragraphs 8 and 9 of this Direction.

8. Where paragraph 7 of this Direction applies, the Dominant Provider shall refund to the Third Party a sum of money equal to the difference between:

- the charge levied by the Dominant Provider for the BT Retail Private Circuit to which the request for migration relates; and
- the charge levied by the Dominant Provider for the Partial Private Circuit to which the request for migration relates.

9. The refund set out in paragraph 8 of this Direction shall cover the period from the date the Dominant Provider receives the request to migrate until the date the Dominant Provider completes the migration.

10. The Dominant Provider shall, upon a Third Party's written request, provide to the Third Party a map of its network within the United Kingdom which clearly illustrates and labels the geographic location of each Dominant Provider tier 1, tier 1.5, tier 2, and tier 3 nodes.

11 – 20 [Paragraphs not used]

Service level agreements (SLAs)

General

21. The Dominant Provider shall set a Committed Delivery Date for each Partial Private Circuit or Network Infrastructure ordered from it by a Third Party and shall be required to provide reasons to justify a Committed Delivery Date which is set beyond the relevant Requisite Period (RP). Any extension of the Committed Delivery Date beyond the relevant RP shall only be made with the consent of the Third Party concerned, except where such consent is unreasonably withheld.

22. For each Partial Private Circuit or Network Infrastructure ordered from the Dominant Provider by a Third Party, the Dominant Provider shall provide to a Third Party Firm Offer Confirmation in the manner set out in the definition section of this Direction.

23. The time scales and levels of fixed individual compensation payments to be payable under the service level agreement shall be those set out in paragraph 34 of this Direction, unless otherwise agreed between the Dominant Provider and a Third Party, or except to the extent that Ofcom otherwise consents.

24. Unless otherwise agreed between the Dominant Provider and a Third Party, any fixed individual compensation payment, or reimbursement pursuant to paragraph 28 of this Direction, payable by the Dominant Provider to a Third Party pursuant to the Directions shall be offset by the Dominant Provider against the money owed to it by the Third Party, on a quarterly basis. The Dominant Provider shall keep complete and accurate records of the amounts it has offset in accordance with this paragraph. Such records shall be made available by the Dominant Provider following a request by a Third Party.

25. The Dominant Provider shall not be liable to pay fixed individual compensation payments pursuant to the Directions for periods of delay which arise due to circumstances beyond its reasonable control. The Dominant Provider shall notify a Third Party as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this

paragraph be treated as employees of the Dominant Provider. Major construction works shall not be considered circumstances beyond the Dominant Provider's reasonable control.

26. The Dominant Provider shall ensure that any time limits set out in this Direction shall not apply to a Third Party to the extent that periods of delay arise due to circumstances beyond its reasonable control. The Third Party shall notify the Dominant Provider as soon as reasonably practicable when such circumstances arise. All contractors or sub-contractors of whatever level, and their respective employees, servants and agents, shall for the purpose of this paragraph be treated as employees of the relevant Third Party.

27. The Dominant Provider shall, at the reasonable request of a Third Party, postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure if such postponement is technically and organisationally reasonable. In agreeing to such a postponement the Dominant Provider shall only charge for reasonable additional expenses it has directly incurred as a result of the postponement.

28. The Dominant Provider shall only postpone the Committed Delivery Date of a Partial Private Circuit or Network Infrastructure with the written agreement of the Third Party. The Dominant Provider shall inform the Third Party as soon as reasonably possible of any proposed postponement of the Committed Delivery Date. Where such a postponement takes place the Dominant Provider shall reimburse the Third Party for any reasonable additional cost incurred by the Third Party as a direct result of the postponement.

29. The FOC Receipt Interval shall be a maximum of:

- five working days for Partial Private Circuits of less than 2 Mbit/s; and
- eight working days for Partial Private Circuits of 2 Mbit/s and Network Infrastructure;

regardless of how many Partial Private Circuits are, or the amount of Network Infrastructure is, ordered at a particular site.

30. The Dominant Provider shall ensure that the FOC Acceptance Interval is a maximum of one working day for Partial Private Circuits of 2 Mbit/s or below and two working days for Network Infrastructure. Where a Third Party has not informed the Dominant Provider of its Acceptance of Terms or rejection of the order within five working days of the FOC Date, the Dominant Provider may cancel the Third Party's order.

31. The Dominant Provider shall keep complete and accurate records of the ordering, provision and repair of Partial Private Circuits and Network Infrastructure it provides to a Third Party.

32. Where any Partial Private Circuit or Network Infrastructure which is ordered by a Third Party is in excess of 110% (by volume), rounded up to the nearest integer where necessary, of its Advance Order Commitment or Advance Capacity Order, the applicable Requisite Period set out in the tables in paragraphs 41 and 51 of this Direction shall be extended by 50% and rounded up to the nearest working day, where necessary, for the purposes of calculating fixed individual compensation payments.

Unliquidated damages

33. Nothing in the PPC Contract, as amended by the Direction, shall prevent a Third Party from bringing a claim against the Dominant Provider for unliquidated damages over and above the fixed individual compensation payments set out in the Direction.

Service level guarantees (SLGs)

34. The Dominant Provider shall ensure the terms and conditions which govern the supply of Partial Private Circuits set out in the PPC Contract continue to provide the following:

Compensation per event and value of compensation

a) The Dominant Provider shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Committed Delivery Date or the Third Party's Requirement Date (whichever is later).

b) The Dominant Provider shall pay the Third Party compensation for each and every fault which has not been restored:

- for Regular Care customers, in the first two days on a per day basis thereafter; and
- for Enhanced Care customers, in the first five hours on a per hour basis thereafter.

c) The compensation payable in event of the each late provision of the required Partial Private Circuit or Network Infrastructure service shall be set at 100% of one month's line rental (or Network Infrastructure rental) for every day or part day of delay beyond the Committed Delivery Date or Requirement Date (whichever is later), up to a maximum of 60 days.

d) The compensation payable in the event of each late fault repair in relation to a Partial Private Circuit or Network Infrastructure shall be:

- for Regular Care customers, 100% of one month's line rental for every fault which has not been restored in the first two days for every day thereafter until service is restored, up to a maximum of 30 days; and

- for Enhanced Care customers, 15% of one month's line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours.

e) Any limits on compensation payable as a result of a failure to satisfy the service guarantees shall be removed other than those set out in (c) and (d) above.

Additional losses

f) Any compensation payable under the contract shall be without prejudice to any right of either party to claim for additional loss.

Proactive payments

g) The Dominant Provider shall monitor its performance against the service guarantees for fault repair and provision and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made as soon as possible after the event and not later than the billing cycle following the billing cycle after the event unless not practicable. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

35. The terms and conditions amended as set out in paragraph 34 above shall take effect from the 90th day after publication of the Final Statement.

Partial Private Circuits

Quick quote and very high bandwidth quote on line

36. The Dominant Provider shall provide to a Third Party, upon written request, the necessary wholesale network and pricing information to enable the Third Party to obtain the same information for Partial Private Circuits that is available to the Dominant Provider's retail arm, for its "Quick Quote" quote facilities.

Concurrency of Partial Private Circuit and ISH link and CSH link delivery times

37. Where a Third Party has ordered a Partial Private Circuit, and the operation of the circuit requires the provision of an ISH link or CSH link, the Dominant Provider shall ensure that the delivery dates of the Partial Private Circuit and the CSH link or ISH link are the same.

Expedited orders

38. Upon a Third Party's written request, the Dominant Provider shall make reasonable endeavours to set a Committed Delivery Date for Partial Private Circuits within 50% of the relevant Requisite Period set out in the table in paragraph 41 of this Direction, rounded up to the nearest working day where necessary, for at least 15% (by volume) of a Third Party's previous month's order. The Third Party shall inform the Dominant Provider which particular Partial Private Circuits it shall endeavour to be expedited pursuant to this paragraph. This paragraph shall only apply to the delivery of Partial Private Circuits of 2 Mbit/s or less. This paragraph shall not apply to Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

39. Paragraph 48 of this Direction does not apply to orders of Partial Private Circuits made pursuant to paragraph 38 of this Direction.

Time scales for fixed individual compensation

40. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 41 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

41. Where the Committed Delivery Date for Partial Private Circuits is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

Bandwidth of Partial Private Circuit	Requisite Period
64 kbit/s	10 working days
128 kbit/s to 256 kbit/s delivered over copper	10 working days
128 kbit/s to 256 kbit/s delivered over fibre	30 working days
320 kbit/s to 960 kbit/s	30 working days
1 Mbit/s	30 working days

2 Mbit/s

30 working days

Subsequent Partial Private Circuit of 2 Mbit/s

10 working days

Third Party's ability to cancel order

42. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 41 of this Direction, a Third Party shall be allowed to cancel its order for a Partial Private Circuit after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 41 of this Direction. The Requisite Periods in the table in paragraph 41 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of a Partial Private Circuit which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

Requisite Period set out in the table in paragraph 41 of this Direction	Cancellation Threshold
10 working days	10 working days
30 working days	20 working days

43. Where a Third Party cancels a Partial Private Circuit pursuant to paragraph 42 of this Direction, the Dominant Provider shall not charge the Third Party for the circuit and shall not charge for cancelling the circuit. The Dominant Provider shall also be liable to pay the Third Party any fixed individual compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

Reduced Requisite Periods for Partial Private Circuits

44. The Dominant Provider shall ensure that for at least 70% (by volume) of Partial Private Circuits of a particular bandwidth delivered by the Dominant Party to a Third Party within a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

Bandwidth of Partial Private Circuit

Reduced Requisite Period

128 kbit/s to 256 kbit/s delivered over fibre 20 working days

320 kbit/s to 960 kbit/s 20 working days

1 Mbit/s 20 working days

2 Mbit/s 20 working days

45. In calculating the 70% (by volume) of Partial Private Circuits to which paragraph 44 of this Direction applies the following shall not be included:

- Partial Private Circuits of 64 kbit/s;
- Partial Private Circuits of 128 kbit/s to 256 kbit/s delivered over copper;
- Subsequent Private Partial Circuits of 2Mbit/s;
- Partial Private Circuit orders to which paragraph 38 of this Direction applies; and
- Partial Private Circuits which exceed 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment.

46. The Reduced Requisite Periods set out in the table in paragraph 44 of this Direction apply only if, in the previous three month reporting period (such period not to be calculated on a rolling basis), a Third Party has ordered from the Dominant Provider at least ten Partial Private Circuits of the same bandwidth where such Partial Private Circuits are 2 Mbit/s or less.

47. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Order Commitment has been exceeded, the calculation shall be at a national level for each individual Partial Private Circuit bandwidth category and applied in the order in which the Partial Private Circuits were ordered by the Third Party.

Multiple orders

48. Where the Dominant Provider receives an order for more than 10 Partial Private Circuits at one site from a Third Party, the relevant Requisite Period applicable to determine whether the Dominant Provider shall pay fixed individual compensation as set out in paragraphs 40 and 41 of this Direction, shall be the relevant Requisite Period set out in the table in

paragraph 41 of this Direction increased by a maximum of 50%. The Dominant Provider shall inform the Third Party of the revised time scales as soon as reasonably practicable.

Availability of service

49. When total loss of service (i.e. total loss of service for one minute or longer) occurs three or more times, within a 12 month period, to a Partial Private Circuit, the Third Party shall not be liable to the Dominant Provider for the monthly rental in any subsequent month where total loss of failure occurs to the Partial Private Circuit, until such time as 12 months have passed and the Partial Private Circuit has not suffered total loss of service. Occurrences of total loss of service which result in the Dominant Provider being liable to pay fixed individual compensation pursuant to paragraphs 62, 63 and 64 of this Direction, shall not be considered as an occurrence of a total loss of service for the purposes of this paragraph.

Network Infrastructure

Time scales for fixed individual compensation

50. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider later than the relevant Requisite Period (as set out in the table in paragraph 51 of this Direction) without the agreement of a Third Party, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

51. Where the Committed Delivery Date for Network Infrastructure is set by the Dominant Provider either, later than the relevant Requisite Period (as set out in the table below) but with the agreement of a Third Party, or within the Requisite Period, the Dominant Provider shall be liable to pay the Third Party a fixed individual compensation payment in accordance with paragraph 34 of this Direction.

Network Infrastructure	Requisite Period (where the Dominant Provider needs to carry out Civil Works)	Requisite Period (where the Dominant Provider does not need to carry out Civil Works)
ISH links	110 working days	85 working days
CSH links	110 working days	85 working days

ISH links – provision of new multiplexor on an existing Point of Connection

Not applicable

60 working days

ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor

Not applicable

60 working Days

CSH links - provision of new multiplexor on existing Point of Connection

Not applicable

60 working Days

CSH links requiring only provision of new tributary card on existing multiplexor

Not applicable

25 working Days

Third Party's ability to cancel order

52. Where the Provisioning Interval exceeds the relevant Requisite Period set out in the table in paragraph 51 of this Direction, a Third Party shall be allowed to cancel its order for Network Infrastructure after the Cancellation Threshold (as set out in the table below) has expired. The Cancellation Threshold shall commence upon the expiry of the relevant Requisite Period set out in the table in paragraph 51 of this Direction. The Requisite Periods in the table in paragraph 51 shall apply, for the purposes of this paragraph, regardless of whether there is a delay in delivery of Network Infrastructure which is due to circumstances beyond the Dominant Provider's reasonable control but not including delay by a Third Party.

Requisite Period set out in the table in paragraph 51 of this Direction	Cancellation Threshold
21 to 40 working days	20 working days

41 to 60 working days	25 working days
61 to 90 working days	30 working days
Over 90 working days	40 working days

53. Where a Third Party cancels Network Infrastructure pursuant to paragraph 52 of this Direction, the Dominant Provider shall not charge the Third Party for the Network Infrastructure and shall not charge for cancelling the Network Infrastructure. The Dominant Provider shall also be liable to pay the Third Party any fixed compensation payments accumulated pursuant to the PPC Contract as amended by the Directions.

Reduced Requisite periods for Network Infrastructure

54. The Dominant Provider shall ensure that for at least 70% (by volume) of the total VC4-equivalents of Network Infrastructure delivered by it to a Third Party during a three month period (such period not to be calculated on a rolling basis) the Committed Delivery Date is set within the relevant Reduced Requisite Period (as set out in the table below).

Network Infrastructure	Reduced Requisite Period (where the Dominant Provider needs to carry out Civil Works)	Reduced Requisite Period where the Dominant Provider does not need to carry out Civil Works)
ISH links	75 working days	60 working days
CSH links	75 working days	60 working days
ISH links - provision of new multiplexor on an existing Point of Connection	Not applicable	40 working days
ISH links - provision of extra STM-1 interface on existing STM-1 ISH SMA4 multiplexor	Not applicable	40 working days

CSH links - provision of new multiplexor on existing Point of Connection

Not applicable

40 working days

CSH links requiring only provision of new tributary card on existing multiplexor

Not applicable

20 working days

55. In calculating the 70% (by volume) of the total VC4-equivalents of Network Infrastructure to which paragraph 54 of this Direction applies the following shall not be included:

- Network Infrastructure which exceeds 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order.

56. The Reduced Requisite Periods set out in the table in paragraph 54 of this Direction only apply if, in the previous three month reporting period (such period not to be calculated on a rolling basis) a Third Party has ordered from the Dominant Provider at least 2 VC4-equivalents of Network Infrastructure. For the purposes of this paragraph the first reporting period of three months shall be the first such reporting period falling after 30 working days following the date of publication of this Direction.

57. For the purposes of this Direction, in determining whether 110% (by volume), rounded up to the nearest integer where necessary, of a Third Party's Advance Capacity Order has been exceeded, the calculation shall be made using VC4-equivalents at each Point of Connection applied in the order in which the Network Infrastructure was ordered by the Third Party.

Repair of Partial Private Circuits and Network Infrastructure

58. Where the Dominant Provider offers to a Third Party Regular Care and Enhanced Care for Partial Private Circuits and Network Infrastructure it shall do so at a cost orientated price and as set out in the table below:

	Operational hours	Repair/response time	Extras
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Regular Care	Normal working hours	Response within one working day of receipt of a fault report by a Third Party. Repair within two working days of receipt of a fault report by a Third Party.	If a fault is not remedied within two working days of receipt of a fault report by a Third Party, the Dominant Provider shall call the Third Party to report progress being made to remedy the fault.
Enhanced Care	24 hours per day, 7 days per week (including public and bank holidays).	Response within four hours of receipt of a fault report from a Third Party. Repair within five hours of receipt of a fault report by a Third Party.	If a fault is not remedied within five hours of receipt of a fault report by a Third Party, the Dominant Provider shall contact the Third Party to report progress being made to remedy the fault.

59. Receipt by the Dominant Provider from a Third Party of a report of a fault concerning a Partial Private Circuit or Network Infrastructure, shall be acknowledged by the Dominant Provider to the Third Party within one hour.

60. Where the Dominant Provider fails to repair a Partial Private Circuit within the time limits set out in the table in paragraph 58 of this Direction it shall pay to the Third Party a fixed individual compensation payment as set out in paragraphs 61 to 65 inclusive of this Direction in respect of the period commencing on the expiry of the applicable repair time set out in the table in paragraph 58 and expiring at the time the Partial Private Circuit or Network Infrastructure is repaired.

61. Where the Third Party has ordered the Dominant Provider's Regular Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

62. Where the Third Party has ordered the Dominant Provider's Regular Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

63. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Partial Private Circuits, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

64. Where the Third Party has ordered the Dominant Provider's Enhanced Care for Network Infrastructure, the Dominant Provider shall pay the Third Party an amount set in accordance with paragraph 34 of this Direction.

65. The Dominant Provider shall not be liable to pay fixed individual compensation pursuant to paragraphs 62 and 64 of this Direction where it is also liable for fixed individual compensation pursuant to paragraphs 61 and 63 of this Direction where the Partial Private Circuit is being provided using the Network Infrastructure which is being repaired.

66. The Dominant Provider shall attend, and invite Third Parties to regular meetings to review the level of service provided by it in relation to Partial Private Circuits and related Network Infrastructure.

Change of speed or interface

67. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request, the ability to alter the speed or interface of a Partial Private Circuit.

68. The Dominant Provider shall ensure that it provides to a Third Party a Partial Private Circuit variant for the services to which paragraph 67 of this Direction applies, which are equivalent to the services it currently provides on a retail basis for retail leased lines.

STM-1, ISH and CSH handover

69. The Dominant Provider shall offer to provide within a reasonable period of a Third Party's written request for a Synchronous Transfer Mode-1 ("STM-1"), an interface using an ISH link or CSH link; and handover pursuant to paragraph 70 of this Direction. Such link or handover shall be provided by way of network connecting apparatus capable of providing no more than the STM-1 capacity ordered by the Third Party.

70. The Dominant Provider shall within a reasonable period of a Third Party's written request, handover in a footway jointing chamber for Partial Private Circuits at a reasonable point nominated by the Third Party. The footway jointing chamber shall be located in the same Dominant Provider local serving exchange area as the Dominant Provider Serving Node to which the Partial Private Circuits being handed over are connected.

Equipment re-use

71. Paragraph 72 of this Direction shall only apply to the re-use of Plesiochronous Digital Hierarchy (“PDH”) and Synchronous Digital Hierarchy (“SDH”) equipment situated at a third party site (“Equipment”).

72. The Dominant Provider may reject a request by a Third Party for re-use of PDH Equipment **if such re-use would be incompatible with its network. Any such rejection by the Dominant Provider shall be made within 10 working days of a request by the Third Party and fully justified in writing to the requesting Third Party at the same time as the request is rejected.**

Other Circuits

73. Unless Ofcom otherwise agrees, the Dominant Provider shall offer to provide Partial Private Circuit with no single point of failure, within a reasonable period of a Third Party’s request.

74. The Dominant Provider shall offer to provide, within a reasonable period of a Third Party’s written request, a Partial Private Circuit which is dual pathed and diversely routed from a third party customer’s premises to a Third Party’s single Point of Connection.

RBS Backhaul

75. The Dominant Provider shall offer to provide to a Third Party, within a reasonable period of the Third Party’s written request, transparent transmission capacity at all bandwidths up to and including a bandwidth capacity of two megabits per second between a radio base station and a Point of Connection with a Third Party’s electronic communications network connected to the nearest appropriate digital cross connection node.

General

76. The Dominant Provider shall implement this Direction within 10 working days of its publication.

77. This Direction shall take effect on the day it is published.

Directions under section 49B of the Communications Act 2003 and SMP Services Conditions 1 and 7, proposed as a result of the analyses in: (i) the wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area; and (ii) the wholesale market for contemporary interface symmetric broadband origination in the London Periphery

Background

1. On 15 May 2015, Ofcom published a consultation document entitled “*Business Connectivity Market Review: Review of competition in the provision of leased lines*” (“**May 2015 BCMR Consultation**”). Ofcom consulted on proposals identifying markets, making market power determinations and setting SMP services conditions on BT and KCOM respectively.
2. Pursuant to proposed SMP services condition 8, Ofcom proposed to impose three directions directing BT to comply with the following minimum quality of service requirements (“**Quality of Service Directions**”):
 - a. in the provision of the Relevant Ethernet Services:
 - i. compliance with minimum performance standards; and
 - ii. provision and publication of Key Performance Indicators (“**KPIs**”);
 - b. in the provision of the Dark Fibre Access:
 - i. provision of KPIs.
3. Pursuant to proposed SMP services condition 1, Ofcom proposed to direct BT to ensure that the terms and conditions which govern the supply by BT of Ethernet Services, comply with certain requirements relating to the provisions of service level guarantees (“**Service Level Guarantee Direction**”).
4. Ofcom invited responses to the May 2015 BCMR Consultation by 31 July 2015.
5. A copy of May 2015 BCMR Consultation, together with the Quality of Service Directions and the Service Level Guarantee Direction, was sent to the Secretary of State in accordance with section 49C(1)(b) of the Act.
6. Ofcom received many responses to its proposals set out in the May 2015 BCMR Consultation, including the proposals contained in the Quality of Service Directions and in the Service Level Guarantee Direction, and it has considered every such representation. The Secretary of State has not notified Ofcom of any international obligation on the United Kingdom for the purposes of sections 48A(6)(b) or 80A(9)(b) of the Act.
7. The proposals set out in the May 2015 BCMR Consultation, including the proposals contained in the Quality of Service Directions and in the Service Level Guarantee Direction, were of EU significance for the purposes of the Act. Therefore, after making such modifications of the proposals in the Quality of Service Directions and in the Service Level Guarantee Direction that appeared to Ofcom to be appropriate following domestic consultation, Ofcom hereby sends a copy of its proposals, and a draft of the Statement accompanying this notification setting out the reasons for them, to the European Commission, BEREC and the regulatory authorities of every

other member State for EU consultation, in accordance with section 49B(2) of the Act.

Proposal to give directions

8. Ofcom is proposing to make the proposed directions set out in the Schedules to this Notification.
9. The effect of, and reasons for, giving the proposed directions are set out in a draft of the Statement ("**Draft Statement**") accompanying this Notification.

Ofcom's duties and legal tests

10. Ofcom considers that the proposed directions referred to in paragraph 6 comply with the requirements of section 49(2) of the Act.
11. In making the proposed directions 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.

Interpretation

12. For the purposes of interpreting Schedules 1 to 4, words or expressions used shall have the same meaning as they have been ascribed in this Notification and in Section 1 of the relevant annex to the Draft Statement which annex contains the draft legal instruments (including Part 2 of Schedule 1 of that annex). Otherwise any word or expression shall have the same meaning as it has in the Act.

13. For the purposes of interpreting Schedules 1 to 4, the following definitions shall apply:

"Accepted Order" means an Order that has been validated and accepted by the Dominant Provider;

"Completed Order" means an Accepted Order that has been provisioned and for which all related work has been carried out; **"Contractual Delivery Date"** means a date provided by the Dominant Provider to a Third Party Customer on which the Dominant Provider contracts for an Order to become a Completed Order;

"Customer Caused Delay" means a delay in an Accepted Order becoming a Completed Order which the Dominant Provider can reasonably attribute to being caused either by a Third Party Customer or a customer of that Third Party Customer (including an end user);

"Dark Fibre Access" means a service providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals ;

"Discounted Time to Provide" means, in respect of each Completed Order that became an Accepted Order prior to [date of publication], the sum of:

- i. the amount of the Time To Provide that occurred prior to [date of publication], multiplied by 0.2; and

- ii. the amount of the Time To Provide that occurred on or after [date of publication].

“Fault” means a degradation or problem with network access that is identified by the Dominant Provider or a Third Party Customer and which is registered on the Dominant Provider’s operational support system;

“Final Contractual Delivery Date” means the last Contractual Delivery Date after which, in respect of the relevant Order, no other Contractual Delivery Dates were provided;

“Final Contractual Delivery Period” means the total number of Working Days from the date on which an Order becomes an Accepted Order to the Final Contractual Delivery Date, excluding only Working Days attributable to Customer Caused Delay which occurred before the Initial Contractual Delivery Date was issued;

“First Relevant Year” means a period beginning on the date on which this Schedule enters into force and ending on 31 March 2017;

“Initial Contractual Delivery Date” means the first date provided by the Dominant Provider to a Third Party Customer on which the Dominant Provider contracts for an Order to become a Completed Order;

“Initial Contractual Delivery Period” means the total number of Working Days from the date on which an Order becomes an Accepted Order to the provision of the Initial Contractual Delivery Date, excluding only Working Days attributable to Customer Caused Delay which occurred before the Initial Contractual Delivery Date was issued;

“KPI” means a key performance indicator;

“Order” means a request for the Relevant Ethernet Service, Relevant WDM Service or the Dark Fibre Access (as applicable), including a request for an upgrade on bandwidth of an existing Relevant Ethernet Service or of an existing Relevant WDM Service or a request for a change to the product variant of an existing Relevant Ethernet Service or of an existing Relevant WDM Service, submitted to the Dominant Provider by a Third Party;

“Provision Category” means such categories, as may be specified from time to time in the Dominant Provider’s Reference Offer in relation to its ordering and provisioning procedures, which identify an Order by reference to one or more of the following:

- i. a specified level of provisioning work; and
- ii. a specified lead time.

“Relevant Completed Orders” means an Order that became an Accepted Order on or after [date of publication], that has been provisioned, and for which all related work has been carried out;

“Relevant Customers” means:

- i. the nine Third Party Customers who purchased the largest total volumes of the Relevant Ethernet Services during the period beginning on 1 April 2013 and ending on 31 March 2016; and
- ii. a notional customer representing the remainder of the Third Party Customers, whose purchased total volumes of the Relevant Ethernet Services during the

period beginning on 1 April 2013 and ending on 31 March 2016 shall be the total of the purchases of the remaining Third Party Customers in that period;

“Relevant Ethernet Services” means those Ethernet Services offered by the Dominant Provider to a Third Party under the product or service names of (i) Ethernet Access Direct, (ii) Ethernet Backhaul Direct or (iii) Cablelink including, in relation to each:

- i. all product variants except where Ofcom agrees otherwise, and
- ii. the introduction by the Dominant Provider of a new product and/or service wholly or substantially in substitution for that existing product and/or service;

“Relevant Regions” mean the following six regions, as defined by the Dominant Provider:

- i. Northern Ireland;
- ii. Scotland;
- iii. Wales;
- iv. England – North;
- v. England – East; and
- vi. England – West;

or other such regions as Ofcom may agree with the Dominant Provider or direct from time to time, but which cumulatively at all times cover: the wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area; and the wholesale market for contemporary interface symmetric broadband origination in the London Periphery;

“Relevant WDM Services” means those WDM Services offered by the Dominant Provider to a Third Party under the product or service names of (i) Optical Spectrum Access or (ii) Optical Spectrum Extended Access including, in relation to each:

- i. all product or service variants except where Ofcom agrees otherwise; and
- ii. the introduction by the Dominant Provider of a new product and/or service wholly or substantially in substitution for that existing product and/or service;

“Restored Service” means the point at which any Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access, which has been subject to a Fault, is available for use by the Third Party without the relevant degradation or problem with network access;

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

“Subsequent Relevant Year” means a period of twelve (12) months, the first of which begins on 1 April 2018 and ends on 31 March 2019, repeating thereafter for periods of twelve (12) months from 1 April to 31 March inclusive;

“Third Party” means a person providing a public electronic communications network or a person providing a public electronic communications service;

“Third Party Customer” means a Third Party purchasing a Relevant Ethernet Service, Relevant WDM Service, or a Dark Fibre Access (as applicable) from the Dominant Provider;

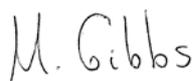
“Time To Provide” means the total number of Working Days from the date on which an Order becomes an Accepted Order to the date when that Accepted Order becomes a Completed Order, excluding only Working Days attributable to Customer Caused Delay;

“United Kingdom” means: the wholesale market for contemporary interface symmetric broadband origination in the Rest of the United Kingdom excluding the Hull Area; and the wholesale market for contemporary interface symmetric broadband origination in the London Periphery;

“WDM Services” means services provided using wavelength division multiplexing equipment located at the customer’s premises and which is capable of supporting multiple leased line services over a single fibre or pair of fibres; and

“Working Day” means any day other than Saturdays, Sundays, public holidays or bank holidays in the United Kingdom.

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

22 March 2016

Schedule 1

1. The Dominant Provider shall comply with the minimum quality of service requirements in this paragraph 1 in respect of the provision of Orders for the Relevant Ethernet Services.
 - 1.1. The Dominant Provider shall deliver Relevant Completed Orders in a Time To Provide that is less than or equal to the applicable Initial Contractual Delivery Period:
 - a. for at least 80% of Relevant Completed Orders in the First Relevant Year;
 - b. for at least 85% of Relevant Completed Orders in the Second Relevant Year; and
 - c. for at least 90% of Relevant Completed Orders in each Subsequent Relevant Year.
 - 1.2. The Dominant Provider shall ensure that the average Time To Provide of Completed Orders in the First Relevant Year is no more than 46 Working Days.
 - 1.3. In complying with paragraph 1.2 above, the Dominant Provider shall calculate the average Time To Provide of Completed Orders in the First Relevant Year by dividing the sum of: (i) the Time To Provide of all Completed Orders that became Accepted Orders on or after [date of publication]; and (ii) the Discounted Time to Provide of all Completed Orders that became Accepted Orders prior to [date of publication], by all Completed Orders in the First Relevant Year.
 - 1.4. The Dominant Provider shall ensure that the average Time To Provide of Completed Orders is no more than:
 - a. 40 Working Days in the Second Relevant Year; and
 - b. 40 Working Days in each Subsequent Relevant Year.
 - 1.5. The Dominant Provider shall ensure that the average Initial Contractual Delivery Period of Relevant Completed Orders is no more than:
 - a. 61 Working Days in the First Relevant Year;
 - b. 55 Working Days in the Second Relevant Year; and
 - c. 55 Working Days in each Subsequent Relevant Year.
 - 1.6. Subject to paragraph 1.10 below, in the First Relevant Year the Dominant Provider shall ensure that for at least 40% of Completed Orders the Time To Provide is 30 Working Days or less.
 - 1.7. The Dominant Provider shall ensure that for at least 40% of Completed Orders, the Time To Provide is:
 - a. 29 Working Days or less in the Second Relevant Year; and
 - b. 29 Working Days or less in each Subsequent Relevant Year.
 - 1.8. Subject to paragraph 1.10 below, in the First Relevant Year the Dominant Provider shall ensure that in no more than 3% of Completed Orders, the Time To Provide is 159 Working Days or more.

1.9. The Dominant Provider shall ensure that in no more than 3% of Completed Orders, the Time To Provide is:

- a. 118 Working Days or more in the Second Relevant Year; and
- b. 118 Working Days or more in each Subsequent Relevant Year.

1.10. In complying with paragraphs 1.6. and 1.8. above, the Time To Provide for each Completed Order in the First Relevant Year shall be:

- a. The Time To Provide for Completed Orders that became Accepted Orders on or after the [date of publication]; or
- b. The Discounted Time To Provide for Completed Orders that became Accepted Orders prior to [date of publication].

2. The Dominant Provider shall comply with the following minimum quality of service requirements in the repair of all Faults in respect of Relevant Ethernet Services:

2.1. The Dominant Provider shall ensure that at least 94% of Faults achieve a Restored Service within 5 hours of being registered on the Dominant Provider's operational support system.

General

3. This Schedule shall take effect on the day it is published.

Schedule 2

1. For the purposes of paragraphs 2 and 3 below, the “quarters” are:
 - a. 1 April to 30 June;
 - b. 1 July to 30 September;
 - c. 1 October to 31 December; and
 - d. 1 January to 31 March.
2. For each quarter, starting with the 1 July to 30 September quarter in the First Relevant Year, the Dominant Provider must publish an average of the three months in that quarter of the information relating to the provision of the Relevant Ethernet Services required in each of KPIs (i) to (iv) and (vii):
 - a. for the United Kingdom as a whole; and
 - b. split by reference to each of the Relevant Regions¹²⁹.
3. Publication referred to in paragraph 2 above shall be effected by the Dominant Provider placing the information on a publicly available website operated or controlled by the Dominant Provider within 15 calendar days after the end of the relevant quarter to which the information referred to in paragraph 2 relates.
4. The Dominant Provider must provide to Ofcom each month:
 - a. the information relating to the Relevant Ethernet Services required in KPIs (i) to (xxviii) below:
 - (i) KPIs (i) to (xxviii) for the United Kingdom as a whole;
 - (ii) KPIs (i) to (v), (vii) to (x), (xxi) and (xxii), and (xxvi) to (xxviii) split by reference to each of the Relevant Regions;
 - (iii) KPIs (i) to (xxiv) and (xxviii) split by reference to each of the Relevant Customers;
 - (iv) KPIs (i) to (iv), (vii) to (ix), (xii), (xvii), (xviii) and (xxi) split by Orders for the Dominant Provider and Orders not for the Dominant Provider; and
 - (v) KPIs (i), (iii), (v) and (vi), (viii) to (xi), (xvii) to (xix), (xxi), (xxvi) and (xxvii) split by reference to each of the Provision Categories.
 - b. in relation to each of the requirements, set out in paragraph 4.a. above, concerning each of KPIs (i) to (v), (vii) to (ix), (xii), (xiv) to (xix), (xxiii), (xxvi) and (xxvii):
 - (i) the denominator representing the volume of the applicable Relevant Ethernet Services over which the average or the percentage (as applicable) is calculated; and

¹²⁹ For example, regarding KPI (i), the information averaged over the three months in the July to September quarter in the First Relevant Year would be the sum of the average Time to Provide for July, for August and for September, divided by three.

- (ii) the numerator representing the value corresponding to the denominator from which the average or the percentage (as applicable) is calculated.
 - c. in relation to each of the requirements, set out in paragraph 4.a. above, concerning each of KPIs (ii), (iii), (viii), (xii) to (xiv), (xx), (xxii), (xxiv), (xxv) and (xxviii), Orders that became Accepted Orders prior to the [date of publication] and that also became Completed Orders in the First Relevant Year should not be included in the KPI information.
 - d. in relation to each of the requirements, set out in paragraph 4.a. above, concerning each of KPIs (i), (iv) to (vii), (ix) to (xi), (xv) to (xix), (xxi), (xxiii), (xxvi) and (xxvii), Orders that became Accepted Orders prior to the [date of publication] and that also became Completed Orders in the First Relevant Year should be included in the KPI information in accordance with 4.d.(i) to (iv) below:
 - (i) for each of KPIs (i), (iv) to (vii), (ix) to (xi), (xv) to (xix), (xxi), (xxiii), (xxvi) and (xxvii), the number of Completed Orders used in the calculation of the information required by the KPI for Completed Orders in the relevant month in the First Relevant Year should be calculated by adding the number of Completed Orders that became Accepted Orders on or after the [date of publication] to the number of Completed Orders that became Accepted Orders before [date of publication];
 - (ii) for each of KPIs (i), (iv) to (vii), (ix) to (xi), (xv), (xxiii), (xxvi) and (xxvii), the Discounted Time To Provide shall apply to the calculation of the information required by the KPI for Completed Orders in the relevant month in the First Relevant Year;
 - (iii) for each of KPIs (xvi) and (xvii), the number of changes to the Contractual Delivery Date for each Completed Order in the relevant month in the First Relevant Year should be calculated by adding the number of changes to the Contractual Delivery Date that took place on or after the [date of publication] to 20 percent of the number of changes to the Contractual Delivery Date that took place before [date of publication];
 - (iv) for each of KPIs (xv), (xviii), (xix), (xxvi) and (xxvii), the delay due to changes to the Contractual Delivery Date for each Completed Order in the relevant month in the First Relevant Year should be calculated by adding the delay due to changes to the Contractual Delivery Date that took place on or after the [date of publication] to 20 percent of the delay due to changes to the Contractual Delivery Date that took place before [date of publication]; and
 - e. the information relating to the Relevant WDM Services for each of the KPIs (i) to (iv), (vii), (viii) and (xii) for the United Kingdom as a whole.
5. Provision of information to Ofcom under paragraph 4. above shall be effected by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time, within 15 calendar days after the end of the relevant month to which the information referred to in paragraph 4. relates.

6. The Dominant Provider must make available where requested by a Third Party Customer, on a confidential basis, within 15 calendar days after the end of the relevant month to which the information relates:
- a. the information applicable only to the requesting Third Party Customer relating to the Relevant Ethernet Services required in KPIs (i) to (iv), (vii) and (viii), (xii), (xiv) to (xix), and (xxiii):
 - (i) for the United Kingdom as a whole;
 - (ii) KPIs (i) to (iv), (vii) and (viii) split by reference to each of the Relevant Regions; and
 - (iii) KPIs (i) and (iii), (viii), (xvii) to (xix) split by reference to each of the Provision Categories.
 - b. in relation to each of the requirements, set out in paragraph 6.a. above, concerning each of KPIs (ii), (iii), (viii), (xii) and (xiv), and (xxii), Orders that became Accepted Orders prior to the [date of publication] and also became Completed Orders in the First Relevant Year should not be included in the KPI information.
 - c. in relation to each of the requirements, set out in paragraph 6.a. above, concerning each of KPIs (i), (iv), (vii), (xv) to (xix) and (xxiii), Orders that became Accepted Orders prior to the [date of publication] and also became Completed Orders in the First Relevant Year should be included in the KPI information in accordance with 6.c.(i) to (iv) below:
 - (i) for each of KPIs (i), (iv), (vii), (xv) to (xix) and (xxiii), the number of Completed Orders used in the calculation of the information required by the KPI for Completed Orders in the relevant month in the First Relevant Year should be calculated by adding the number of Completed Orders that became Accepted Orders on or after the [date of publication] to the number of Completed Orders that became Accepted Orders before [date of publication];
 - (ii) for each of KPIs (i), (iv), (vii), (xv) and (xxiii), the Discounted Time To Provide shall be used in the calculation of the information required by the KPI for Completed Orders in the relevant month in the First Relevant Year;
 - (iii) for each of KPIs (xvi) and (xvii), the number of changes to the Contractual Delivery Date for each Completed Order in the relevant month in the First Relevant Year should be calculated by adding the number of changes to the Contractual Delivery Date that took place on or after the [date of publication] to 20 percent of the number of changes to the Contractual Delivery Date that took place before [date of publication];
 - (iv) for each of KPIs (xv), (xviii) and (xix), the delay due to changes to the Contractual Delivery Date for each Completed Order in the relevant month in the First Relevant Year should be calculated by adding the delay due to changes to the Contractual Delivery Date that took place on or after the [date of publication] to 20 percent of the delay due to

changes to the Contractual Delivery Date that took place before [date of publication]; and

7. For the purposes of complying with paragraphs 4., 5. and 6. above, and subject to Ofcom agreeing otherwise, May 2016 shall be the first relevant month.

General

8. This Schedule shall take effect on the day it is published.

KPIs

9. KPIs (i) to (xxviii) are set out below:

KPI (i) - Mean Time To Provide

In relation to all Orders that became Completed Orders in the relevant month, the average Time To Provide;

KPI (ii) - Fault repair performance

The percentage of Faults during the relevant month that achieved a Restored Service within 5 hours of being registered on the Dominant Provider's operational support system;

KPI (iii) - Delivery date certainty

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders which were completed within their Initial Contractual Delivery Period;

KPI (iv) - Time To Provide lower percentile limit

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders in respect of which the Time To Provide was:

- (i) 30 Working Days or less in the First Relevant Year;
- (ii) 29 Working Days or less in the Second Relevant Year and in each Subsequent Relevant Year;

KPI (v) - Monitoring the Time To Provide lower percentile performance

In relation to all Orders that became Completed Orders in the relevant month, the average Time To Provide of those Completed Orders whose Time To Provide was:

- (i) 30 Working Days or less in the First Relevant Year;
- (ii) 29 Working Days or less in the Second Relevant Year and in each Subsequent Relevant Year;

KPI (vi) - Monitoring the Time To Provide lower percentile composition

In relation to all Orders that became Completed Orders in the relevant month, the volume of those Completed Orders whose Time To Provide was:

- (i) 30 Working Days or less in the First Relevant Year;
- (ii) 29 Working Days or less in the Second Relevant Year and in each Subsequent Relevant Year;

KPI (vii) - Time To Provide upper percentile limit

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders in respect of which the Time To Provide was:

- (i) 159 Working Days or more in the First Relevant Year;
- (ii) 118 Working Days or more in the Second Relevant Year and in each Subsequent Relevant Year;

KPI (viii) - Initial Contractual Delivery Period

In relation to all Orders that became Completed Orders in the relevant month, the average Initial Contractual Delivery Period;

KPI (ix) - Monitoring the tail

In relation to all Orders that became Completed Orders in the relevant month, the average Time To Provide of those Completed Orders whose Time To Provide was:

- (i) 159 Working Days or more in the First Relevant Year;
- (ii) 118 Working Days or more in the Second Relevant Year and in each Subsequent Relevant Year;

KPI (x) - Monitoring the percentile Time To Provide of the tail extremities

In relation to all Orders that became Completed Orders in the relevant month, the Time To Provide of those Completed Orders corresponding to:

- (i) the 95th percentile of Completed Orders;
- (ii) the 96th percentile of Completed Orders;
- (iii) the 97th percentile of Completed Orders;
- (iv) the 98th percentile of Completed Orders;
- (v) the 99th percentile of Completed Orders; and
- (vi) the 99.5th percentile of Completed Orders.

KPI (xi) - Monitoring the composition of the tail extremities

In relation to all Orders that became Completed Orders in the relevant month, the volume of those Completed Orders whose Time To Provide exceeds the Time To Provide corresponding to:

- (i) the 95th percentile of all the Completed Orders;
- (ii) the 96th percentile of all the Completed Orders;

- (iii) the 97th percentile of all the Completed Orders;
- (iv) the 98th percentile of all the Completed Orders;
- (v) the 99th percentile of all the Completed Orders; and
- (vi) the 99.5th percentile of all the Completed Orders.

KPI (xii) - Order validation

In relation to all Orders that became Completed Orders in the relevant month, the percentage that became Accepted Orders within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer;

KPI (xiii) - Monitoring the order validation tails

In relation to all Orders that became Completed Orders in the relevant month, the volume of Completed Orders that became Accepted Orders within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer plus;

- (i) 0 working day;
- (ii) 1 working day;
- (iii) 2 working days;
- (iv) 5 working days;
- (v) 10 working days; and
- (vi) 10 working days or more.

KPI (xiv) - Performance in issuing initial Contractual Delivery Dates

In relation to all Orders that became Completed Orders in the relevant month, the percentage for which the Initial Contractual Delivery Date was issued within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer;

KPI (xv) - Performance against the final Contractual Delivery Date

In relation to all Orders that became Completed Orders in the relevant month, the percentage that were completed within the Final Contractual Delivery Period;

KPI (xvi) - Changes to Contractual Delivery Dates

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders subject to a change to the Contractual Delivery Date not attributable to Customer Caused Delay;

KPI (xvii) - Average number of changes to Contractual Delivery Dates

In relation to all Orders that became Completed Orders in the relevant month and which were subject to one or more changes in the Contractual Delivery Date that were not

attributable to Customer Caused Delay, the average number of such changes to the Contractual Delivery Date for each Completed Order;

KPI (xviii) - Average delay due to Contractual Delivery Date changes

In relation to the average number of changes to the Contractual Delivery Date for each Completed Order, as detailed in **KPI (xvii)**, the average number of Working Days incurred for each Completed Order as a result of such changes;

KPI (xix) - Mean customer caused delay

In relation to all Orders that became Completed Orders in the relevant month and which were subject to one or more changes in the Contractual Delivery Date that were attributable to Customer Caused Delay, the average number of Working Days incurred for each Completed Order as a result of such changes;

KPI (xx) - New orders

The total number of Accepted Orders during the relevant month;

KPI (xxi) - Orders completed

The total number of Completed Orders during the relevant month;

KPI (xxii) - Volume of faults

The total number of Faults during the relevant month;

KPI (xxiii) - Cablelink Mean Time To Provide

In relation to all Orders for Cablelink that became Completed Orders in the relevant month, the average Time To Provide.

KPI (xxiv) - Order volume forecast from CPs

The total number of Orders forecast by the Relevant Customers to become Accepted Orders for Relevant Ethernet Services received by the Dominant Provider in the relevant month.

KPI (xxv) - Order volume forecast by the Dominant Provider

The total number of Orders forecast by the Dominant Provider to become Accepted Orders for the Relevant Ethernet Services in the relevant month.

KPI (xxvi) - Monitoring traffic management notices

In relation to all Orders subject to a traffic management notice that became Completed Orders in the relevant month, the average of the percentage of the Time to Provide of each Order that is allocated to traffic management notice activity.

KPI (xxvii) - Monitoring wayleave applications

In relation to all Orders subject to a wayleave application that became Completed Orders in the relevant month, the average of the percentage of the Time to Provide of each Order that is allocated to wayleave application activity.

KPI (xxviii) - Size of the installed base of Relevant Ethernet Services

The total number of Relevant Ethernet Services for which the Dominant Provider is charging Third Parties, at the end of the relevant month.

Schedule 3

1. The Dominant Provider must provide to Ofcom each month:
 - a. the information relating to the Dark Fibre Access required in KPIs (i) to (xix) below:
 - (i) KPIs (i) to (xix) for the United Kingdom as a whole;
 - (ii) KPI (xvii) split by reference to each of the Provision Categories;
 - b. in relation to each of the requirements concerning each of KPIs (i) to (xv):
 - (i) the denominator representing the volume of the applicable Dark Fibre Access over which the average or the percentage (as applicable) is calculated; and
 - (ii) the numerator representing the value corresponding to the denominator from which the average or the percentage (as applicable) is calculated.
2. Provision of information to Ofcom under paragraph 1. above shall be effected by sending email to a person designated by Ofcom in the form notified by Ofcom from time to time within 15 calendar days after the end of the relevant month to which the information referred to in paragraph 1. relates.
3. The Dominant Provider must make available where requested by a Third Party Customer, on a confidential basis, within 15 calendar days after the end of the relevant month to which the information relates:
 - a. the information relating to the Dark Fibre Access required in KPIs (i) to (xviii) below:
 - (i) KPIs (i) to (iv), (vi) and (vii) and (ix) to (xv) for the United Kingdom as a whole;
 - (ii) KPIs (i), (iii), (vii) and (xiii) to (xv) split by reference to each of the Provision Categories.

General

4. Subject to Ofcom agreeing otherwise, this Schedule shall take effect 18 months from the date of its publication.

KPIs

5. KPIs (i) to (xix) are set out below:

KPI (i) - Mean Time To Provide

In relation to all Orders that became Completed Orders in the relevant month, the average Time To Provide;

KPI (ii) - Fault repair performance

The percentage of Faults during the relevant month that achieved a Restored Service within 5 hours of being registered on the Dominant Provider's operational support system;

KPI (iii) - Delivery date certainty

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders which were completed within their Initial Contractual Delivery Period;

KPI (iv) - Time To Provide lower percentile limit

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders in respect of which the Time To Provide was:

- (iii) 30 Working Days or less in the First Relevant Year;
- (iv) 29 Working Days or less in the Second Relevant Year and in the Subsequent Relevant Year;

KPI (v) - Monitoring the Time To Provide lower percentile performance

In relation to all Orders that became Completed Orders in the relevant month, the average Time To Provide of those Completed Orders whose Time To Provide was:

- (iii) 30 Working Days or less in the First Relevant Year;
- (iv) 29 Working Days or less in the Second Relevant Year and in the Subsequent Relevant Year;

KPI (vi) - Time To Provide upper percentile limit

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders in respect of which the Time To Provide was:

- (iii) 159 Working Days or more in the First Relevant Year;
- (iv) 118 Working Days or more in the Second Relevant Year and in the Subsequent Relevant Year;

KPI (vii) - Initial Contractual Delivery Period

In relation to all Orders that became Completed Orders in the relevant month, the average Initial Contractual Delivery Period;

KPI (viii) - Monitoring the tail

In relation to all Orders that became Completed Orders in the relevant month, the average Time To Provide of those Completed Orders whose Time To Provide was:

- (iii) 159 Working Days or more in the First Relevant Year;
- (iv) 118 Working Days or more in the Second Relevant Year and in the Subsequent Relevant Year;

KPI (ix) - Order validation

In relation to all Orders that became Completed Orders in the relevant month, the percentage that became Accepted Orders within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer;

KPI (x) - Performance in issuing initial Contractual Delivery Dates

In relation to all Orders that became Completed Orders in the relevant month, the percentage for which the Initial Contractual Delivery Date was issued within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer;

KPI (xi) - Performance against the final Contractual Delivery Date

In relation to all Orders that became Completed Orders in the relevant month, the percentage that were completed within the Final Contractual Delivery Period;

KPI (xii) - Changes to Contractual Delivery Dates

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders subject to a change to the Contractual Delivery Date not attributable to Customer Caused Delay;

KPI (xiii) - Average number of changes to Contractual Delivery Dates

In relation to all Orders that became Completed Orders in the relevant month and which were subject to one or more changes in the Contractual Delivery Date that were not attributable to Customer Caused Delay, the average number of such changes to the Contractual Delivery Date for each Completed Order;

KPI (xiv) - Average delay due to Contractual Delivery Date changes

In relation to the average number of changes to the Contractual Delivery Date for each Completed Order, as detailed in **KPI (xvii)**, the average number of Working Days incurred for each Completed Order as a result of such changes;

KPI (xv) - Mean customer caused delay

In relation to all Orders that became Completed Orders in the relevant month and which were subject to one or more changes in the Contractual Delivery Date that were attributable to Customer Caused Delay, the average number of Working Days incurred for each Completed Order as a result of such changes;

KPI (xvi) - New orders

The total number of Accepted Orders during the relevant month;

KPI (xvii) - Orders completed

The total number of Completed Orders during the relevant month;

KPI (xviii) - Volume of faults

The total number of Faults during the relevant month;

KPI (xix) - Size of the installed base of Dark Fibre Access

The total number of Dark Fibre Access for which the Dominant Provider is charging Third Parties, at the end of the relevant month.

Schedule 4

Where the Dominant Provider provides Ethernet Services, it shall do so in accordance with this Schedule.

Service level guarantees (SLGs)

1. The Dominant Provider shall ensure the terms and conditions which govern the supply of Ethernet Services in the wholesale markets for (i) contemporary interface symmetric broadband origination in the Rest of the UK excluding the Hull Area and (ii) contemporary interface symmetric broadband origination in the London Periphery, provide the following¹³⁰:

Compensation per event and value of compensation

- a) The definition of “Contractual Delivery Date” as set out in the Dominant Provider’s terms and conditions has been amended to require BT to provide reasons to justify a Contractual Delivery Date which is set beyond the 57th day and that any extension of the Contractual Delivery Date beyond the 57th shall be made subject to the consent of the Third Party concerned whose consent shall not be unreasonably withheld;
- b) BT shall pay the Third Party compensation for each day or part day of delay in delivery of service beyond the Contractual Delivery Date or the “CP Requirement Date” (as set out in the Dominant Provider’s terms and conditions), whichever is later;
- c) BT shall pay the Third Party compensation for each and every fault which has not been restored in the first five hours on a per hour basis thereafter;
- d) The compensation payable in event of each late provision of the required Backhaul Extension Services, Wholesale Extension Services or Wholesale End-to- End Segments shall be set at 100% of one month’s line rental for every day or part day of delay beyond the Contractual Delivery Date or CP Requirement Date (whichever is later), up to a maximum of 60 days;
- e) The compensation payable in the event of each late fault repair in relation to Backhaul Extension Services, Wholesale Extension Services or Wholesale End-to- End Segments shall be 15% of one month’s line rental for every fault which has not been restored in the first five hours for every hour thereafter until service is restored, up to a maximum of 200 hours;

Limitations on compensation- removal of caps

- f) Any limits on compensation payable as a result of a failure to satisfy the service guarantees shall be removed other than those set out in d) and e); and

Additional losses

¹³⁰ In particular, the following contracts will require modification to reflect the requirements set out in the direction:

(i) the Conditions for Backhaul Extensions Services; and (ii) the Conditions for Wholesale Extension Services.

g) Any compensation payable under the contract shall be without prejudice to any right of either party to claim for additional loss.

Proactive payments

h) BT shall monitor its performance against the service guarantees for fault repair and compensate Third Parties proactively should it fail to satisfy the service guarantees. Compensation payments shall be made on a monthly basis. For the avoidance of doubt, compensation shall be payable without the need for a Third Party to make a claim.

General

2. The Dominant Provider shall implement this Schedule within 10 working days of its publication.
3. This Schedule shall take effect on the day it is published.