

Proposed variation of the Undertakings given to Ofcom by BT pursuant to the Enterprise Act 2002 – Variation Number 25

Proposed variation consequential to Ofcom’s Strategic Review of Digital Communications.

WHEREAS:

- (a) British Telecommunications plc (‘BT plc’) has given Ofcom certain undertakings (‘the Undertakings’) which took effect on 22 September 2005, pursuant to the Enterprise Act 2002;
- (b) Access Services as referred to in the Undertakings has been established as Openreach since 22 January 2006;
- (c) Since 22 September 2005, on 24 occasions Ofcom and BT plc have agreed to make non-material variations to the Undertakings;
- (d) On 18 July 2016 BT plc submitted to Ofcom representations in relation to materially varying the Undertakings;
- (e) On 26 July 2016, Ofcom published a consultation document in relation to the proposals to vary the Undertakings as set out in BT’s representations and invited representations thereon;
- (f) Ofcom having received responses to the consultation document and, having considered in accordance with section 154(7) Enterprise Act 2002 every such representation duly made to it in respect of the proposals set out in BT’s representations, has decided to agree to vary the Undertakings as hereinafter appears.

NOW THEREFORE:

It is hereby agreed between Ofcom and BT plc pursuant to section 154(6) Enterprise Act 2002 that the Undertakings are varied as follows:

1. Definitions and interpretation

- 1.1. Words or expressions hereinafter appearing have the same meanings as in the Undertakings.
- 1.2. References hereinafter to section numbers are references to section numbers in the Undertakings.

2. Variations to the Undertakings

- 2.1. The sentence immediately prior to Section 1 is amended by inserting “plc” after the word “BT” and before the word “hereby”.
- 2.2. Section 1.2 is amended by deleting the number “13” and inserting in its stead the number “5”.
- 2.3. Section 2.1 “Definitions” is amended by deleting the following definitions:

“Alternative Communications Provider Operational Area”;
“AS”;
“AS CEO”;
“AS Headquarters Management Team”;
“AS Management Board”;
“Associated Services”;
“Backhaul Extension Service”;
“Backhaul Product”;
“BT Wholesale”;
“Carrier Price List”;
“Communications Provider Operational Area”;
“Customer Service Record”;
“Customer Side Record”;
“DataStream”;
“Downstream Divisions”;
“EAB”;
“EAO”;
“Equipment”;
“Equivalence of Inputs”;
“Estimated Space Availability Details”;
“Exchange”;
“Featureline”;
“FTTC Passive Inputs”;
“IBMC”;
“IPStream”;
“IPStream Connect”;
“ITU”;
“KPIs”;
“MDF Site”;
“Measured Products”;
“Metallic Path Facility”;
“Migration Process”;
“NGA Statement”;
“NGN”;
“Partial Private Circuit”;
“Physical Layer Information”;
“Primary Accounting Documents”;
“Proactive Review”;
“Ready to Mass Migrate”;
“Residential Customer”;

“RFS Date”;
“Service Level Information”;
“Shared Metallic Path Facility”;
“Sub Loop Unbundling”;
“Supply Side Record”;
“TILLAP”;
“TILLBP”;
“Upstream Division(s)”;
“User Access Control”;
“Vacation Exchange”;
“Wholesale Calls”;
“Wholesale End to End Ethernet Service”;
“Wholesale Extension Service”;
“Wholesale Extension Service Access Product”; and
“Wholesale Extension Service Backhaul Product”.

2.4. Section 2.1 “Definitions” is amended by adding the following new definitions:

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

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

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

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

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

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

““BTTSO” means BT Technology, Service and Operations” which is the division of BT with that designation which is BT’s internal service division responsible for operating BT’s networks, platforms and IT, systems and successors to that division.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.5. In section 2.1 “Definitions”, the following definitions are amended as follows:

“BT” is amended by deleting the word “including” and by deleting the word “1989” and inserting in its stead the word “2006”;

“BT Active FTTC Product” is amended by deleting the word “AS” and inserting in its stead the word “Openreach”;

“BT Active FTTP Product” is amended by deleting the word “AS” and inserting in its stead the word “Openreach” and by deleting:

“.

- (i) falling within section 5.4 (d), or section 5.5 (c), (d) or (e); or
- (ii) ”

“Code of Practice” is amended by deleting the number “9” and inserting in its stead the number “4”;

“Commercial Information” is amended inserting the word “or” at the end of subsection (e) and by deleting the words “or other products and services to which Equivalence of Inputs applies; or in the case of sections 6.10.3 and 6.13 and 6.14 relating to products and services described in section 6.1.2:” and by deleting (starting at the end of subsection (f)):

“or
(g) network coverage and capabilities,”;

“Commercial Policy” is amended by inserting the word “or” at the end of subsection (f) and by deleting the words “or, in the case of section 8.6, relating to products and services described in section 6.1.2,” and by deleting (starting at the end of subsection (g)):

“or
(h) network coverage and capabilities”;

“Communications Provider” is amended by deleting the word “BT” and inserting in its stead the words “BT’s Downstream Divisions”;

“Level 1 Systems Separation” is amended by deleting the words “Operational Support Systems” and inserting “OSS” in their stead;

“Local Access Node” is amended by inserting the words “by means of an Access Network” after the word “End-Users”;

“Management Information Systems” is amended by deleting the words “Management Information Systems” and inserting in their stead “MIS”;

“MSAN” is amended by deleting the words “in BT’s NGN”;

“Operational Support Systems” is amended by deleting the words “Operational Support Systems” and inserting in their stead “OSS” and by inserting the words “operational support systems being” after the word “means”;

“UK Combined Code on Corporate Governance” is amended by inserting the word “Code” after the word “Governance deleting the words “Combined Code on” and by deleting the words “July 2003” and by inserting the words “September 2014” in their stead.

2.6. Sections 3, 4, 6, 7, 8, 10, 11, and 12 are deleted.

2.7. Sections 5 is deleted and replaced in its entirety by the version of Section 3 set out in Annex A of this Variation.

- 2.8. Section 9 is renumbered Section 4 and following that renumbering:
- 2.8.1. Section 4.1 is amended by deleting the words “Within four months of the date these Undertakings take effect,”;
- 2.8.2. Section 4.1.1 is amended by deleting “AS;” and inserting in its stead;
- “Openreach;
- and
- ”
- and by deleting:
- “ BTWS;
- c) BTS;
- d) rest of BT Wholesale; and
- e) ”.
- 2.8.3. Section 4.2 is amended by deleting the words “AS, BTWS, BT Wholesale and BTS” and inserting in their stead the word “Openreach”, by deleting the words “Combined Code on” and by inserting the word “Code” after the word “Governance”.
- 2.9. Section 13 is renumbered Section 5 and following that renumbering:
- 2.9.1. Section 5.1 is amended by deleting the number “5” and inserting in its stead the number “3”, by deleting the number “5.22” and inserting in its stead the number “3.15” by deleting “6 and 8” and by deleting the word “as” and inserting in its stead the words “to the”.
- 2.9.2. Section 5.2 is amended by deleting the number “5.38” and inserting in its stead the number “3.27”, by deleting the word “AS” on both occasions that it occurs and inserting in its stead the word “Openreach” and by deleting the number “5.44” and inserting in its stead the number “3.32”.
- 2.9.3. Section 5.3 is deleted.
- 2.9.4. Section 5.4 is renumbered Section 5.3, and is amended by deleting the words “Notwithstanding anything in section 8.2, a” and inserting in their stead the word “A”.
- 2.10. Section 14 is renumbered Section 6 and following that renumbering Section 6.2 is amended by deleting the number “14.1” and inserting in its stead the number “6.1”.
- 2.11. Section 15 is renumbered Section 7 and following that renumbering Sections 7.2 and 7.3 are both amended by deleting on each occasion the number “15.1” and inserting in its stead the number “7.1”.

- 2.12. Section 16 is renumbered Section 8.
- 2.13. Section 17 is renumbered Section 9.
- 2.14. Sections 18 and 19 are deleted and replaced in their entirety by the version of Section 10 set out in Annex B of this Variation.
- 2.15. Section 20 is renumbered Section 11 and following that renumbering:
 - 2.15.1. Sections 11.4 and 11.5 are deleted.
 - 2.15.2. Section 11.6 is renumbered 11.4
 - 2.15.3. Section 11.7 is renumbered 11.5.
 - 2.15.4. Section 11.8 is renumbered 11.6.
 - 2.15.5. Section 11.9 is renumbered 11.7 and is amended by deleting the numbers “13.1” and “13.4” and inserting in their stead the numbers “5.1” and “5.3” respectively.
 - 2.15.6. Section 11.10 is renumbered 11.8 and is amended by deleting the numbers “15.1”, “15.1.2” and “15.1.3” on every occasion that they occur and inserting in their stead the numbers “7.1”, “7.1.2” and “7.1.3” respectively, by deleting “pp C5A”, “Email: generalcounsel@bt.com”, “pp C8K” and “Email: directorregulatoryaffairs@bt.com” and by deleting the number “20.10” and inserting in its stead the number “11.8”.
 - 2.15.7. Section 11.11 is renumbered 11.9 and is amended by deleting the words “any thing” in section 11.9.1 and inserting in its stead the word “anything”, by deleting the word “EAB” in section 11.9.9 and inserting in its stead the word “OCC”, by deleting the words “under Section 10.27 of these Undertakings” in section 11.9.9 and inserting in their stead the words “as referred to in the Governance Protocol”, by inserting the words “or its successor body” after the words “BT Crisis Management Team” in section 11.9.11, and, on each occasion that they occur in section 11.9, by deleting each of the numbers in column **A** below and inserting in their stead the corresponding number in the column headed **B** below:

A	B
20.11	11.9
20.11.1	11.9.1
20.11.2	11.9.2
20.11.3	11.9.3
20.11.4	11.9.4
20.11.5	11.9.5
20.11.7	11.9.7

- 2.16. Section 21 is renumbered Section 12.

- 2.17. Annex 1 to the Undertakings is deleted and replaced in its entirety by the version of Annex 1 set out in Annex C to this Variation
- 2.18. Annex 2 to the Undertakings is amended as follows:
- 2.18.1. Part A of Annex 2 is amended by deleting the words “and implementing BT’s NGN” and by inserting in their stead the words “strategic BT network developments”.
- 2.18.2. Part B of Annex 2 is amended by deleting the word “AS” and inserting in its stead the word “Openreach”.
- 2.19. Annexes 3 and 4 to the Undertakings are deleted.
- 2.20. Annex 5 to the Undertakings is renumbered Annex 3 and is amended as follows:
- 2.20.1. The word “Thirteen” is deleted from the title.
- 2.20.2. The words “Or such successor or replacement MIS, or such additional MIS as may be added by agreement between BT and Ofcom” are added at the end of the Annex.
- 2.20.3. The following systems are deleted: CAMERA, eCAESAR, Hyperion Strategic Finance, Netview, RM Datamart and Web MIS.
- 2.20.4. The following system is inserted into the table of systems:

FBI	FBI is used for the generation of BT’s Financial Management reports.
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- 2.21. Annex 6 to the Undertakings is renumbered Annex 4 and is amended as follows:
- 2.21.1. The words “Operational Support Systems” are deleted on each occasion that they occur and inserting on each occasion in their stead the word “OSS”.
- 2.21.2. The following system is deleted: Planning And Recording Modernisation (PRM).
- 2.21.3. The following systems are added into the table of systems:

GeoHUB	GeoHUB is the central repository for Openreach geographic information. It hosts a range of geographic datasets, including a read-only cache of physical inventory data.
FastRepair	Fault management system for Private Circuit, Interconnect & Telephony fault reports. Offers alarm checking, network event information, jeopardy management & Work Manager task build as part of an integrated fault handling

	system. Links to eCo Repair.
CSS	CSS is a set of integrated Customer service systems designed to support Customer Facing activities connected with the PSTN (Public Switched Telephony Network) service. Its main functions include: Customer Handling, Order Handling, Fault Management.
HADES	The system consists of an oracle database providing details in near real-time to jeopardy manage through monitoring tasks.
INDEX	Index is a central database containing information on the progress of an ISDN30 installation in course of provision and the configuration of ISDN30 installations.
WOOSH	Web based diagnostic and test capability on many circuit types using Generic Test Controller (GTC) to interface to element managers, test heads, record & routing systems etc.
MIDAS	Web based tool allowing sales agents to check availability of a specific product/service from a specific exchange & whether a customer can have that product/service.
COSMOSS	COSMOSS system is used to process orders for LLU Infrastructure, from enquiry through to order closure.

3. Effect

- 3.1. These variations of the Undertakings take effect immediately upon signature hereof on behalf of both parties.

Signed for and on behalf of Ofcom

Signature _____

Name _____

Position _____

Date _____

Signed for and on behalf of British Telecommunications plc

Signature: 

Name: Gavin Patterson
Position: Chief Executive Officer
Date: 18 July 2016

3. Openreach

- 3.1 BT shall operate Openreach as a functionally separate division of BT in accordance with these Undertakings.

Definition of Openreach (1) Assets

- 3.2 Openreach shall control and operate the assets in the Physical Layer of BT's Access Network and the Physical Layer of BT's Backhaul Network, including such items needed to support these assets, such as line testing and remote diagnostics, unless otherwise agreed with Ofcom. It shall have full responsibility for building, maintaining and repairing these assets.
- 3.3 Save as permitted by section 3.37, Openreach shall not control or operate the assets contained within the Transmission Layer of BT's Access Network and the Transmission Layer of BT's Backhaul Network, but it shall have influence over the way in which these assets are managed sufficient for it to be able adequately to discharge its responsibilities under section 3.6.
- 3.4 Openreach's obligation to control and operate BT's Access Network and BT's Backhaul Network does not extend to any Access Networks or BT Backhaul Networks created by Communications Providers using Openreach Passive Infrastructure Access Products
- 3.5 Openreach shall control and operate its MIS, its OSS and its EMP and shall have access to the shared OSS listed in Annex 4.

Definition of Openreach (2) Products

- 3.6 Openreach shall provide products including SMP Products which are predominantly provided using the Physical Layer and/or Transmission Layer of BT's Access Network and/or the Physical Layer and/or Transmission Layer of BT's Backhaul Network. BT's Downstream Divisions shall not however be prohibited from offering such SMP Products where they are capable of being provided by any of BT's Downstream Divisions as a result of those BT Downstream Divisions having procured from Openreach Passive Infrastructure Access Products. The provision of products shall include in particular:-
- (a) product management;
 - (b) sales (or equivalent internal supply between Openreach and other parts of BT);
 - (c) in-life service management;
 - (d) specification of the products and their functionality; and
 - (e) setting prices.
- 3.7 Openreach shall sell (or internally supply within BT) its products to any Communications Provider and shall determine Commercial Policy in respect of those products.

- 3.8 Except as otherwise agreed with Ofcom, Openreach shall determine what products to supply using the assets they control, and also determine any appropriate enhancements in the functionality of these assets needed to provide such products.
- 3.9 Openreach shall have full responsibility for any investment decisions relating to these assets, which shall be embodied within the AOP to be created in accordance with the Governance Protocol.
- 3.10 Openreach shall have sufficient influence over other relevant assets of BT necessary to provide its products using mechanisms including the following:
 - 3.10.1 when Openreach makes use of network assets from BT it shall set standards for in-life service management, covering such matters as provisioning times, provisioning effectiveness, fault rates, repair times and repeat fault rates. The standards will be based upon its judgement of the needs of the customer base it serves, and will not simply replicate the standards prevailing for BT's downstream services. The required standards shall be reasonably practicable and set out in SLAs between Openreach and BT; and
 - 3.10.2 new requirements for SMP Products to be provided by Openreach will be addressed by an Openreach owned Statement of Requirements Process. The application by Openreach of the Statement of Requirements Process to any such requirement shall be subject to review by the OCC upon reasoned request by a Communications Provider. Where the OCC identifies as part of its review any deficiencies in the application of the Statement of Requirements Process by Openreach, Openreach shall take due account of any suggestions or comments the OCC may have in respect of any such deficiencies.

Definition of Openreach (3) Employees

- 3.11 BT employees working for Openreach shall include:
 - 3.11.1 all field engineers, (excluding some of the network planning, design and management engineers for BT's Backhaul Network), including their line management up to and including the Openreach CEO, associated with the provision, installation, maintenance and repair of the Physical Layer of BT's Access Network and of the Physical Layer of BT's Backhaul Network;
 - 3.11.2 those employees involved in the design, planning, implementation and in-life service management of products based upon the Physical Layer and/or Transmission Layer of BT's Access Network or the Physical Layer and/or Transmission Layer of BT's Backhaul Network, including their line management up to and including the Openreach CEO; and
 - 3.11.3 those employees who carry out activities which are ancillary to those described in section 3.11.1 and section 3.11.2, those who support and manage them, and those who undertake the sales function of Openreach.
- 3.12 In relation to particular geographical areas, Openreach, BTTSO and BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users may agree from time to time that:
 - (a) BTTSO and BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users

shall on behalf of Openreach undertake activities which under these Undertakings are otherwise to be undertaken by Openreach; and/or

- (b) Openreach shall on behalf of BTTSO and BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users undertake activities which under these Undertakings otherwise fall to be undertaken by BTTSO or BT's Downstream Divisions except BT's divisions which are predominantly concerned with providing products and services to End-Users,

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

Changes in the definitions of Openreach

- 3.13 Where assets controlled and operated by Openreach, as described in section 3.2 above, are not or cease to be used in connection with any SMP Product, such assets may be re-allocated to another part of BT and (notwithstanding anything in section 3.11), relevant field engineers and other relevant BT employees working for Openreach may be re-allocated outside Openreach.
- 3.14 To the extent that a product supplied by Openreach which is an SMP Product ceases to be such, BT may provide matters set out in section 3.6 (a) to (e) other than within Openreach and notwithstanding anything in section 3.11, relevant BT employees working for Openreach may be re-allocated outside Openreach.
- 3.15 Products offered by Openreach in accordance with section 5 will also be offered by BT in Northern Ireland.

Governance of Openreach (1) The Governance Protocol

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

Governance of Openreach (2) Transparency provisions

- 3.17 The charging approach, management accounts and management information associated with Openreach shall be prepared on the following basis or as may be otherwise agreed by BT and Ofcom:
 - (a) charges will be calculated on the same basis for BT and other Communications Providers;
 - (b) information relating to those charges shall be provided in the same way for BT and other Communications Providers;
 - (c) transfer charges in the regulatory accounts for products provided to and from Openreach and other BT divisions will be separately identified and based on the transfer charging principles set out in the Accounting Methodology Documents of the regulatory financial statements; and

(d) Physical Layer access and backhaul assets will be capitalised and depreciated in Openreach's financial statements in line with BT's accounting policies. Openreach's use of the Transmission Layer access and backhaul assets will be accounted for as a charge in Openreach's P&L. Transfer charging arrangements between Openreach on the one hand and the other BT divisions on the other hand shall be consistent with the scheme used for the regulatory financial statements and agreed with Ofcom.

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

3.19 BT shall report Openreach's financial performance in BT Group plc's annual and quarterly reports in the same format as is used for BT's other divisions.

Openreach Operations (1) Separate Headquarters

3.20 The Openreach Headquarter Management Team shall be situated in:

3.20.1 access controlled accommodation which is separately secured from BT's Downstream Divisions; and

3.20.2 accommodation which is separately located from BT's Downstream Divisions unless otherwise agreed by Ofcom.

3.21 For the avoidance of doubt, the Openreach Headquarter Management Team shall be located in separate accommodation from the headquarters of BTTSO.

3.22 None of the employees described in section 3.11 may, whilst working for Openreach, work for BT's Downstream Divisions or BTTSO, save as agreed in writing by Ofcom.

Openreach Operations (2) Employee incentive remuneration arrangements

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

- 3.24 All incentive remuneration of BT employees working for Openreach shall reflect solely the objectives of Openreach. Openreach will operate to a Scorecard which reflects its obligations under these Undertakings to serve its customers equally. The principles of that Scorecard will be cascaded to all BT employees working for Openreach who have currently, or may have in the future, bonus payments. Bonus payments based on Scorecard performance shall relate solely to the performance of Openreach and to any other relevant obligations under these Undertakings. Such bonus payments shall not be denominated in BT Group plc shares, but BT employees working for Openreach remain eligible to participate in BT's ongoing and future general all-employee share plans and benefits arrangements.
- 3.25 BT shall:
- 3.25.1 make available long term incentive plans for relevant BT employees working for Openreach including a deferred bonus plan ("Openreach incentive plans");
- 3.25.2 where a BT employee has been granted an option over shares under the BT Group Global Share Option Plan or an award of shares under the BT Group Incentive Share Plan or the BT Group Retention Share Plan, and subsequently moves to Openreach, use its reasonable endeavours to replace those options or share awards with awards under the Openreach incentive plans.
- 3.25.3 ensure that, where a performance condition applies to the granting or vesting of an award under the Openreach incentive plans, that performance condition shall relate to the performance of Openreach or some other appropriate index related to the objectives of Openreach; and
- 3.25.4 ensure that no such awards in respect of BT Group plc shares shall be made to BT employees at a time they are working for Openreach except that BT Group plc shares may be part of an appropriately weighted basket of shares or some other appropriate index.

Openreach Operations (3) Independence and confidentiality

- 3.26 Openreach will have the capabilities necessary to develop plans for review by the Openreach Board on major operational and investment decisions and to manage and control its day to day activities and operational decisions.
- 3.27 Save as set out in section 3.29, no employee or agent of BT (including its external advisers and sub-contractors), who is not working for Openreach shall:
- 3.27.1 directly or indirectly participate in the formulation or making of, or influence or attempt to influence, the Commercial Policy of Openreach except through such mechanisms and processes that are also available to other Communications Providers; or
- 3.27.2 have access to Commercial Information of Openreach held by any employee or agent of BT working for Openreach unless it is of the nature that would be provided to other Communications Providers in the ordinary course of business.
- 3.28 Openreach Customer Confidential Information shall not be disclosed to:
- BT employees working for the BT's Downstream Divisions; or

- BT employees working for BTTSO whose incentive remuneration reflects the objectives of the BT's Downstream Divisions,

except:

- (a) with the relevant customer's consent; or
- (b) to the minimum extent that disclosure to BT employees working for any part or division of BT outside Openreach is necessary to enable Openreach operationally to deliver products provided by Openreach under section 3 of these Undertakings; or
- (c) where an order is transferred from one part of BT to another pursuant to section 3.34.5, and the information is disclosed solely for the purpose of that transfer.

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

3.29 As referred to in section 3.26:

- 3.29.1 sections 3.27.1 and 3.27.2 shall not apply to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part A of Annex 2;
- 3.29.2 section 3.27.2 shall not apply to the nominated individuals (if any), and individuals occupying the roles and functional areas (and their relevant external advisers, sub-contractors and agents) listed in Part B of Annex 2;
- 3.29.3 any nominated individuals and individuals occupying the roles and functional areas listed in Annex 2 shall be subject to dedicated training on the receipt and sharing of information relating to Openreach and on the restrictions on the exercise of influence required by these Undertakings. The OCC may review both the scope of Annex 2 and the training offered under this section; and
- 3.29.4 BT and Ofcom may agree from time to time to modify the lists in Annex 2. If no agreement is reached the list will remain unchanged.

Openreach operations (4) Supply of Service by BT

- 3.30 For the avoidance of doubt, Openreach may draw upon support services (including billing, finance, regulatory, legal, HR and others) from any part of BT or BT's agents and sub-contractors and may use BT's centres of excellence on the basis that:
 - (a) Openreach will consult with the relevant support service or centre of excellence on decisions relating to the services provided; and
 - (b) Openreach will retain responsibility for any ultimate decision on the use of the support service or centre of excellence,

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

- 3.31 In relation to the supply of services from BTTSO, the relationship between BTTSO and Openreach will be governed on the basis that:
- (a) Openreach will consult with BTTSO on decisions relating to the BTTSO services; and
 - (b) Openreach will retain responsibility for any ultimate decision on the use of the BTTSO services.
 - (c) BTTSO will retain responsibility for delivering the BTTSO Services where Openreach so chooses.

Openreach operations (5) Systems separation

- 3.32 BT shall ensure that:
- (a) Openreach maintains physical system separation of those of its OSS which have physical system separation as at [*to be inserted - date of Variation*] with the proviso that separation of a system by means of virtualised physical infrastructure shall qualify as physical system separation;
 - (b) Level 1 System Separation is applied to the shared OSS listed in Annex 4; and
 - (c) Openreach maintains Level 2 Systems Separation of its MIS other than those MIS listed in Annex 3.
- 3.33 The OCC shall carry out periodic checks on a quarterly basis, unless BT and Ofcom agree in consultation with the OCC to extend the periodic review interval up to a maximum of 6 months, to monitor access to the OSS listed in Annex 4, to ensure that there was a valid reason for access. The OCC will also, at the same time, confirm the total number of users who have accessed the Annex 4 systems at that specific time and report this figure to Ofcom.

Sales

- 3.34 In relation to sales activities:
- 3.34.1 Openreach is expected to be the primary channel to market for its portfolio of products.
- 3.34.2 Openreach can take orders for products which are product managed by another part of BT, and project manage their delivery, only under the following circumstances:
- (a) where products which are managed by parts of BT other than Openreach and Openreach products require detailed operational co-ordination, in order for example to synchronise the supply of different elements of those products, such as combined orders for Wholesale Line Rental and Carrier Pre-selection; or
 - (b) where a Communications Provider's commercial relationship with BT is only with Openreach because it predominantly purchases Openreach products, but

it wishes as a matter of convenience to place a low volume of orders for other BT products via Openreach; or

- (c) by agreement between BT and Ofcom.
- 3.34.3 Openreach shall only accept orders for products from Communications Providers, including BT, unless otherwise agreed with Ofcom.
- 3.34.4 Other parts of BT can take orders for products which are product managed by Openreach and project manage their delivery, only under the following circumstances:
- (a) where products which are product managed by Openreach and other parts of BT require detailed operational co-ordination, in order for example to synchronise the supply of different elements of those products as described in section 3.34.2(a) above; or
 - (b) where a Communications Provider has or wishes to have a commercial relationship with a part of BT other than Openreach; or
 - (c) by agreement between BT and Ofcom.
- 3.34.5 Where a Communications Provider places an order with one part of BT which pursuant to sections 3.34.2, 3.34.3 or 3.34.4 should properly have been placed with another part of BT, the part of BT which receives the order will arrange for its transfer and will advise the Communications Provider accordingly.

Openreach brand

- 3.35 The Openreach brand shall not incorporate the elements “BT” or “British Telecom” and shall be used in proximity to an endorsement containing the words “a BT Group business (and BT corporate device)”. Such endorsement shall be secondary to the Openreach brand.

Openreach Product and Service Roadmap and Commitments

- 3.36 Openreach shall, following discussion with its customers, update and publish every six months:
- (a) a 18 month Openreach roadmap setting out the timing and content of the product and service developments and enhancements to existing products (the “Roadmap”); and
 - (b) a document specifying the change control process (the “Change Control Process”) that applies to the Roadmap.

Next Generation Access

- 3.37 Openreach may control and operate the assets contained within:
- (i) the Transmission Layer of BT’s Access Network where required to test, build, implement and operate a BT Active FTTC Product and/or a BT Active FTTP Product; and
 - (ii) the Transmission Layer of BT’s Backhaul Network where required to test, build, implement and operate a BT Active FTTC Product.

- 3.38 To the extent that BT offers a BT Active FTTC Product and/or a BT Active FTTP Product it shall be provided by Openreach until such time as or to the extent that the active product in question is determined not to fall within a market for Network Access in which BT has been determined from time to time by Ofcom as having SMP.
- 3.39 If Openreach provides a BT Active FTTC Product and/or a BT Active FTTP Product pursuant to Section 3.38, it shall be provided in ways which ensure that:
- (i) it has robust and scalable processes and systems supporting provision, migration, monitoring and fault repair such that Communications Providers using that product are able to provide their End-Users with a reasonable experience (in terms of delivery within reasonable timescales and with minimal disruption);
 - (ii) its availability, in such locations as that product is offered, satisfies reasonable Communications Providers' demand;
 - (iii) it conforms to appropriate industry standards; and
 - (iv) the contracts for its provision include SLAs.

10. Variation, expiry and termination of these Undertakings

- 10.1 The Undertakings shall come to an end on [●] [*date which shall be 10 years after the operative date of these Undertakings to be inserted on the date of signature of the Variation*] unless prior to that date:
- (a) Ofcom has released BT from the Undertakings; or
 - (b) BT and Ofcom have agreed otherwise.
- 10.2 Nothing shall preclude BT and Ofcom amending these Undertakings from time to time by mutual agreement.
- 10.3 BT may amend the Governance Protocol and its contents, following consultation with Ofcom.

Annex 1

GOVERNANCE PROTOCOL

This Governance Protocol comprises:

Part A: terms of reference for the Openreach Board;

Part B: duties of the Openreach Executive;

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

Part D: Openreach customer consultation procedure; and

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

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

PART A : OPENREACH BOARD - TERMS OF REFERENCE

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

1. ROLE

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

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

2. THE DUTIES OF THE OPENREACH BOARD

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

Medium Term Plan and Annual Operating Plan

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

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

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

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

Strategy and Operational Performance

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

2.7 To recommend:

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

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

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

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

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

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

Compliance

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

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

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

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

Treatment of Customers

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

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

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

Reporting

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

Engagement with Ofcom

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

3. MEMBERSHIP OF THE OPENREACH BOARD

3.1 The Openreach Board will consist of the following members:

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

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

3.2 BT Group plc will be entitled to appoint (following consultation with Ofcom) and remove the Openreach Chairman, who will be independent in accordance with the criteria set out in section **Error! Reference source not found.** below, and appoint and remove the BT Nominee.

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

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

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

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

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

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

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

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

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

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

3.10 Appointments of the independent non-executive directors and of the Openreach Chairman to the Openreach Board are for a period of up to three years, extendable for two further three-year periods, provided the director still meets the criteria for membership of the Openreach Board.

4. PROCEEDINGS OF THE OPENREACH BOARD

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

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

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

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

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

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

5. SECRETARY

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

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

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

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

6. INFORMATION TO BT GROUP PLC

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

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

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

7. CONFLICTS

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

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

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

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

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

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

7.5 For the purposes of this section 7:

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

8. OPENREACH COMPLIANCE COMMITTEE

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

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

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

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

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

8.6 The OCC will:

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

8.7 The OCC may:

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

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

8.9 The role of the OOCC will be to:

- (a) support the OCC on matters within the OCC's remit by analysing and reporting on data relevant to Openreach's compliance with the Undertakings and conducting enquiries relevant to these matters as the OCC may from time-to-time require;
- (b) give its views to the OCC on the breaches and complaints referred to and any necessary action by Openreach to remedy or resolve them; and
- (c) produce reports to the OCC on the nature, type and pattern of breaches and complaints referred to above.

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

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

9. OTHER MATTERS

9.1 The Openreach Board must:

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

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

10. AUTHORITY

10.1 The BT plc board authorises the Openreach Board to:

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

PART B : DUTIES OF THE OPENREACH EXECUTIVE

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

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

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

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

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

1.5 The Openreach CEO will have delegated authority from BT and the Openreach Board to authorise the capital expenditure projects as detailed within the AOP. The Openreach CEO shall also have delegated authority, having consulted with the Openreach Board, to make changes to the composition of the capital expenditure projects within the MTP or the AOP capital expenditure budget, in fulfilment of Openreach's best interests and its obligation to serve its customers equally in respect of SMP Products (as defined in the Undertakings), except in the case of items identified in the

AOP or MTP as items of significant strategic importance to BT; in such cases the Openreach CEO will develop a proposal for the Openreach Board to submit to the BT Group plc board for approval.

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

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

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

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

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

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

1.10 The Openreach Executive is responsible for:

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

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

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

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

PART D : CUSTOMER CONSULTATION PROCESS

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

1. THE CONFIDENTIAL PHASE (INVESTMENT AND TECHNOLOGY CHOICE)

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

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

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

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

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

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

2. THE PUBLIC PHASE (COMMERCIAL AND TECHNICAL FEASIBILITY)

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

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

3. THE COMMITTED PHASE (IMPLEMENTATION)

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

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

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

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

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

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

PART E : PROPOSED ADDITIONS TO THE BT PLC ARTICLES

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

Article 17

17.1 DEFINITIONS

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

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

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

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

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

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

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

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

17.2 DELEGATION OF DIRECTORS' POWER TO COMMITTEES

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

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

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

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

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

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

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