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# Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026

Volume 7: Legal instruments

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**STATEMENT:**

Publication date: 18 March 2021

## SMP services conditions

### **NOTIFICATION UNDER SECTIONS 48 AND 79 OF THE COMMUNICATIONS ACT 2003**

#### **Notification of the identification of markets, the making of market power determinations and setting and revoking SMP services conditions in relation to BT under section 45 of the Communications Act 2003**

#### **Background**

1. On 30 November 2017, Ofcom published a statement entitled “Narrowband Market Review: Statement” (the “2017 Narrowband Statement”). The 2017 Narrowband Statement set out Ofcom’s conclusions on its review of narrowband markets including the wholesale fixed analogue exchange lines, the wholesale ISDN30 exchange line services and wholesale ISDN2 exchange line services markets by identifying markets, making certain market power determinations and setting SMP services conditions (“SMP conditions”) (including charge control conditions). At Annexes 9 and 10 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to BT (“November 2017 Notification”).
2. On 28 March 2018, Ofcom published a statement entitled “Wholesale Local Access Market Review: Statement” (the “2018 WLA Statement”). The 2018 WLA Statement set out Ofcom’s conclusions on its review of wholesale local access markets by identifying markets, making certain market power determinations and setting SMP conditions (including charge control conditions). At Annex 26 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to BT (“March 2018 Notification”).

3. On 31 July 2018, Ofcom published a statement entitled “Wholesale Broadband Access Market Review 2018” (the “2018 WBA Statement”). The 2018 WBA Statement set out Ofcom’s conclusions on its review of wholesale broadband access markets by identifying markets, making certain market power determinations and setting SMP conditions (including charge control conditions). At Annex 1 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to BT (“July 2018 Notification”).
4. On 28 June 2019, Ofcom published a statement entitled “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets” (“2019 Statement”). The 2019 Statement set out Ofcom’s conclusions on its review of physical infrastructure and business connectivity markets by identifying markets, making certain market power determinations and setting SMP conditions (including charge control conditions). At Annex 26 of that document, Ofcom published a notification under section 45 of the Act containing its market identifications, market power determinations and the setting of SMP conditions and directions to be applied to BT (“June 2019 Notification”).
5. On 8 January 2020, Ofcom published a consultation entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026” (“January 2020 Consultation”).<sup>1</sup> In this consultation, Ofcom proposed to identify markets, make market power determinations, and set and revoke SMP conditions and directions in relation to BT under sections 45 and 49 of the Act. It gave notice of proposals for SMP conditions and directions to be imposed on BT but left a placeholder at Condition 11 for Regulatory Accounting Conditions. It also proposed to revoke the SMP conditions and directions currently applicable to BT, including all the existing regulatory accounting conditions.
6. The January 2020 Consultation was followed by further, supplementary consultations set out in paragraphs 7 to 13 below.

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<sup>1</sup> This was updated on 28 February 2020 to correct certain points arising from an error identified in Ofcom’s dark fibre cost model; and to make a few other minor corrections and clarifications.

7. On 29 January 2020 Ofcom published a statement entitled “Promoting competition and investment in fibre networks: Measures to support Openreach’s proposed trials in Salisbury and Mildenhall – migrating customers to fibre and withdrawing copper services” (‘the Salisbury and Mildenhall Statement’). Ofcom gave consents to, and a direction in respect of, the disapplication of certain of BT’s SMP conditions in the Salisbury and Mildenhall areas under section 49 of the Communications Act 2003.
8. On 6 February 2020, Ofcom published a consultation entitled “Promoting competition and investment in fibre networks – BT Regulatory Financial Reporting requirements covering wholesale fixed telecoms markets 2021-2026” (the “February 2020 Consultation”). That document contained a notification of proposals to impose SMP conditions and directions on BT relating to regulatory financial reporting.
9. On 25 June 2020, Ofcom published a consultation entitled “Consultation: Copper retirement – process for determining when copper regulation can be removed”. This consultation proposed revisions to the SMP conditions in relation to BT which were proposed to be set in the January 2020 Consultation under section 45 of the Act.
10. On 29 July 2020, Ofcom published a consultation entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026, Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network”. This consultation proposed revisions to the SMP conditions in relation to BT which were proposed to be set in the January 2020 Consultation under section 45 of the Act.
11. On 15 October 2020, Ofcom published a consultation entitled “Consultation: Copper retirement – conditions under which copper regulation could be completely withdrawn in ultrafast exchanges”. Ofcom proposed revisions to the SMP conditions applying to BT which were proposed to be set in the January 2020 Consultation under section 45 of the Act.

12. On 23 October 2020, Ofcom published a consultation entitled “Wholesale Fixed Telecoms Market Review - Openreach Quality of Service”. This consultation proposed revisions to Directions for BT which were proposed to be set under the January 2020 Consultation under section 49 of the Act and proposed SMP Condition 10.
13. On 6 November 2020, Ofcom published a consultation entitled “Wholesale Fixed Telecoms Market Review 2021-26: Further consultation on certain proposed remedies”. This consultation proposed revisions to the SMP conditions in relation to BT which were proposed in the January 2020 Consultation under section 45 of the Act and directions to BT under section 49 of the Act.
14. Copies of the consultations referred to in paragraphs 5 and 7 to 13 above were sent to the Secretary of State in accordance with sections 48C(1), 49C(1) and 81(1) of the Act.
15. Ofcom received several responses to its proposals set out in the consultations referred to in paragraphs 5 and 7 to 13 above and it has considered every such representation. The Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for the purposes of those proposals.

## **Decision on market identifications and market power determinations**

16. Ofcom has identified the markets listed in Column 1 of **Table A** below for the purpose of making a determination that the person specified in the corresponding row in Column 2 of that Table has significant market power in that identified services market. In identifying these markets, Ofcom is satisfied that the criteria in subsection 79(2B) of the Act are met;

Table A: Market identifications and market power determinations

Column 1: Market Identification	Column 2: Market power determination
(i) The supply of wholesale access to Telecoms Physical Infrastructure for deploying a telecoms network in the United Kingdom excluding the Hull Area	BT
(ii) The supply of wholesale local access at a fixed location in WLA Area 2	BT
(iii) The supply of wholesale local access at a fixed location in WLA Area 3	BT
(iv) The supply of leased lines access in the Central London Area	None
(v) The supply of leased line access in the HNR Area	BT
(vi) The supply of leased line access in LLA Area 2	BT
(vii) The supply of leased line access in LLA Area 3	BT
(viii) The supply of interexchange connectivity in BT Only exchanges	BT
(ix) The supply of interexchange connectivity in BT+1 exchanges	BT
(x) The supply of interexchange connectivity in BT+2 exchanges	None

## Decision to set, apply and revoke SMP services conditions

17. Ofcom is setting, in relation to the markets (i) to (iii) and (v) to (ix) identified in Table A above, the SMP conditions as set out in **Schedule 1** to this notification and which are to be applied to BT to the extent specified in that Schedule. These SMP conditions shall, unless otherwise stated in that Schedule, take effect from 1 April 2021. Section 4 of the Interpretation Act 1978 (c. 30) (“the Interpretation Act”) shall apply as if this setting of the SMP conditions were a commencement of an enactment by an Act of Parliament.
18. The effect of, and Ofcom’s reasons for, the decisions in relation to the SMP conditions referred to in this notification are set out in the Statement which accompanies this notification.

19. Ofcom is also revoking (to the extent still extant) the SMP conditions applied to BT as set out in:

- (a) the November 2017 Notification in so far as it applies to wholesale fixed analogue exchange lines services in the United Kingdom excluding the Hull Area;
- (b) the November 2017 Notification in so far as it applies to wholesale ISDN30 exchange line services in the United Kingdom excluding the Hull Area;
- (c) the November 2017 Notification in so far as it applies to wholesale ISDN2 exchange line services in the United Kingdom excluding the Hull Area;
- (d) the March 2018 Notification;
- (e) the July 2018 Notification; and
- (f) the June 2019 Notification for all markets except the wholesale market for CI Access services in the Hull Area.

with effect from 1 April 2021. Sections 16 and 17(1) of the Interpretation Act shall apply as if this revocation were a repeal of an enactment by an Act of Parliament.

20. Subject to Conditions 1.11, 4.7, 5.8 and 12C.19 in Schedule 1, Part 3 of this notification, directions and consents given pursuant to the SMP conditions revoked under paragraph 19 cease to apply with effect from 1 April 2021.

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

21. In identifying and analysing the markets referred to in Table A above, and in considering whether to make the corresponding determinations set out in this notification, Ofcom has, in accordance with section 79 of the Act and where considered relevant, had regard to EECC materials<sup>2</sup>.

22. Ofcom considers that the SMP conditions above comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition and further that the revocations of the SMP conditions referred to above comply with the requirements of sections 45 to 47, 87 and 88 of the Act as appropriate and relevant to them.

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<sup>2</sup> Section 79(6A) of the Act defines EECC materials as "recommendations or guidelines published by the European Commission, and guidelines published by BEREC, under the Framework Directions or EECC Directive (including those published after IP completion day" i.e. after 31 December 2020.

23. In making all of the decisions 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 requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has taken account of recommendations issued by the European Commission under Article 19(1) of the Framework Directive or Article 38(1) of the EECC Directive<sup>3</sup> where the recommendations appear to Ofcom to be relevant.
24. Ofcom has also had regard to the Statement of Strategic Priorities in making the decisions referred to in this notification.

## Interpretation

25. For the purpose of interpreting this notification —
- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 26 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 shall apply as if this notification were an Act of Parliament.
26. In this notification—
- (a) “**Act**” means the Communications Act 2003 (c. 21);
  - (b) “**BT**” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
  - (c) “**BT Only exchanges**” means the BT exchanges identified as “BT only”, “BT only DF” or “BT only (transitional)” in column D of Schedule 4 to this notification;

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<sup>3</sup> The EECC Directive has replaced among other things the Framework Directive with effect from 21 December 2020.



- (d) **“BT+1 exchanges”** means the BT exchanges identified as “BT plus one” or “BT plus one (transitional)” in column D of Schedule 4 to this notification;
- (e) **“BT+2 exchanges”** means the BT exchanges identified as “BT plus two or more new” in column D of Schedule 4 to this notification;
- (f) **“Central London Area”** means the areas consisting of the postcode sectors identified as “CLA” in Schedule 3 to this notification;
- (g) **“EECC Directive”** means Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast);
- (h) **“Framework Directive”** means Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended;
- (i) **“HNR Area”** means the areas consisting of the postcode sectors identified as “HNR” in Schedule 3 to this notification;
- (j) **“Hull Area”** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);
- (k) **“January 2020 Consultation”** has the meaning given to it in paragraph 5;
- (l) **“July 2018 Notification”** has the meaning given to it in paragraph 3;
- (m) **“June 2019 Notification”** has the meaning given to it in paragraph 4;
- (n) **“LLA Area 2”** means the areas consisting of the postcode sectors identified as “Area 2” in Schedule 3 to this notification;
- (o) **“LLA Area 3”** means the areas consisting of the postcode sectors identified as “Area 3” in Schedule 3 to this notification;
- (p) **“March 2018 Notification”** has the meaning given to it in paragraph 2;

- (q) “**November 2017 Notification**” has the meaning given to it in paragraph 1;
- (r) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- (s) “**Physical Infrastructure**” means any network element which is intended to host other network elements and which is not itself active including any conduit, tunnel, subway, pipe, structure, pole, in, on, by or from which an electronic communications network is or may be installed, supported, carried or suspended. The term does not include cables (including strands of optical fibre);
- (t) “**Salisbury and Mildenhall Statement**” has the meaning given in paragraph 7 of this notification;
- (u) “**Statement of Strategic Priorities**” means the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019;
- (v) “**Telecoms Physical Infrastructure**” means Physical Infrastructure that was deployed for the purposes of deploying a fixed telecommunications network;
- (w) “**United Kingdom**” has the meaning given to it in the Interpretation Act;
- (x) “**WLA Area 2**” means the areas consisting of the postcode sectors identified as “Area 2” in Schedule 2 to this notification;
- (y) “**WLA Area 3**” means the areas consisting of the postcode sectors identified as “Area 3” in Schedule 2 to this notification.

21. The Schedules to this notification shall form part of this notification.

**Signed**

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large, stylized initial 'D'.

**David Clarkson**

**Telecoms Competition Director, Ofcom**

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

**18 March 2021**

## Schedule 1: SMP conditions

### Part 1: Application

1. The SMP conditions in Part 3 of this Schedule 1, except where specified otherwise, apply to the Dominant Provider in each of the following relevant markets listed in Column 1 of Table 1 below to the extent specified in Column 2 of Table 1. Save as otherwise specified in any condition, each condition shall enter into force on 1 April 2021 and unless otherwise stated shall have effect until the publication of a notification under section 48(1) of the Act revoking such conditions.

**Table 1: Relevant markets for the purposes of this Schedule**

Column 1: Relevant Market(s)	Column 2: Applicable SMP conditions as set out in Part 3 of this Schedule 1
The supply of wholesale access to Telecoms Physical Infrastructure for deploying a telecoms network in the United Kingdom excluding the Hull Area (PI)	Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.2, 2.10-2.11, 3, 4.1-4.3, 6, 7.1-7.3, 7.9-7.11, 7.13-7.19, 8.1, 8.3-8.5, 8.8-8.12, 9, 10, 11 and 12A
The supply of wholesale local access at a fixed location in WLA Area 2 (WLA Area 2)	Condition 1, 2.1, 2.3, 2.10-2.11, 3, 4.1, 4.2, 4.4, 4.5, 4.7, 4.8, 5.1, 5.2, 5.6-5.8, 6.1, 6.3, 6.4, 7.1, 7.2, 7.4, 7.5, 7.9-7.11, 7.13-7.18, 8.1-8.6, 8.8-8.12, 9, 10, 11, 12B.1-12B.10, 12B.12-12B.14, 12C, and 12D

<p>The supply of wholesale local access at a fixed location in WLA Area 3 (WLA Area 3)</p>	<p>Condition 1, 2.1, 2.3, 2.10-2.11, 3, 4.1, 4.2, 4.4, 4.5, 4.7, 4.8, 5.1, 5.2, 5.6-5.8, 6.1, 6.3, 6.4, 7.1, 7.2, 7.4, 7.5, 7.9-7.11, 7.13-7.18, 8.1-8.6, 8.8-8.12, 9, 10, 11, 12B, 12C and 12D</p>
<p>The supply of leased line access in the LLA HNR Area (LLA HNR)</p>	<p>Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.4, 2.10-2.11, 3, 4.1, 4.2, 5.1, 5.4-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6, 7.9-7.11, 7.13-7.18, 8.1, 8.3-8.6, 8.8-8.12, 9, 10 and 11</p>
<p>The supply of leased line access in LLA Area 2 (LLA Area 2)</p>	<p>Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.4, 2.10-2.11, 3, 4.1, 4.2, 4.6, 5.1, 5.4-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6, 7.9-7.11, 7.13-7.18, 8.1, 8.3-8.12, 9, 10, 11, 12E, 12F, 12G and 12H</p>
<p>The supply of leased line access in LLA Area 3 (LLA Area 3)</p>	<p>Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.4, 2.6, 2.7, 2.10-2.12, 3, 4.1, 4.2, 5.1, 5.3-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6-7.18, 8.1, 8.3-8.12, 9, 10, 11, 12E, 12F, 12G,</p>

	12H, 12I.1, 12I.2, 12I.5-12I.10, and 12I.12
The supply of interexchange connectivity in BT Only exchanges (IEC)	Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.4, 2.5, 2.7, 2.8 for IEC DF Transition only, 2.10-2.12, 3, 4.1, 4.2, 5.1, 5.3-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6-7.11, 7.13-7.18, 8.1, 8.3-8.5, 8.8-8.12, 9, 10, 11, 12E, 12F, 12G, 12H, 12I.3-12I.10, and 12I.12
The supply of interexchange connectivity in BT+1 exchanges (IEC BT+1)	Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.4, 2.8 for IEC DF Transition only, 2.10-2.11, 3, 4.1, 4.2, 5.1, 5.4-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6, 7.9-7.11, 7.13-7.18, 8.1, 8.3-8.5, 8.8-8.12, 9, 10, 11, 12E, 12F, 12G, 12H, and 12I.3-12I.12 for IEC DF Transition only
The supply of interexchange connectivity in BT+2 exchanges (IEC BT+2)	Until 31 March 2022: Condition 2.9;  Until 31 March 2022, and only insofar as in connection with network access under

	<p>Condition 2.9:  Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.10, 2.11, 3, 4.1, 4.2, 5.1, 5.4-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6, 7.9-7.11, 7.13-7.18, 8.1, 8.3-8.5, 8.8-8.12, 9, 12E, 12F, 12G and 12H;</p> <p>Until 17 May 2022, and only insofar as in connection with network access under Condition 2.9: Condition 10; and</p> <p>Until 1 August 2022, and only insofar as in connection with network access under Condition 2.9: Condition 11</p>
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2. The Conditions referred to in paragraph 1 above are entitled as follows—

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|-------------|--|
| Condition 1 | Network access on reasonable request     |
| Condition 2 | Specific forms of network access         |
| Condition 3 | Requests for new forms of network access |
| Condition 4 | No undue discrimination                  |

Condition 5	Equivalence of Inputs
Condition 6	Basis of charges
Condition 7	Publication of a Reference Offer
Condition 8	Notification of charges and terms and conditions
Condition 9	Notification of technical information
Condition 10	Quality of service
Condition 11	Regulatory Financial Reporting
Condition 12	Charge controls



## Part 2: Interpretation

1. In addition to the definitions set out above in this notification and in each Condition below (where relevant), in this Schedule 1—
  - a) **“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 and, in relevant cases, Condition 2;
  - b) **“Access Change Notice”** means a notice given by the Dominant Provider of an Access Change;
  - c) **“Access 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;
  - d) **“Access Segment”** means network access providing uncontended bandwidth connecting an end user premises to—
    - (a) Local Access Node; or
    - (b) an MDF/ODF site of the Dominant Provider.
  - e) **“Accommodation Services”** means the provision of space (including Co-Location and Co-Mingling) 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;
- f) **"Act"** means the Communications Act 2003 (c. 21);
- g) **"Affected Communications Provider"** means each communications provider to whom the Dominant Provider has provided any of the services specified in these conditions during the Relevant Year;
- h) **"Agreed Upon Procedures"** means an engagement carried out in accordance with international standard (ISRS 4400) under which a person independent from the Dominant Provider performs a set of audit procedures agreed by Ofcom and based on Ofcom's specific requirements and reports the findings of that work to Ofcom.
- i) **"Ancillary Services"** mean an associated facility or services associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of network access provided by the Dominant Provider in accordance with Condition 1 and Condition 2 (as applicable), including Physical Infrastructure Access, Metallic Path Facilities, Virtual Unbundled Local Access, Dark Fibre Access services, Ethernet Services and WDM Services via that network and/or service or have the potential to do so, which include without limitation the following:

- i. power;
- ii. Accommodation Services (including Co-Location and Co-Mingling);
- iii. Site Access;
- iv. Cablelink;

and

- v. in respect of Physical Infrastructure Access, PIA Database Access;
- vi. in respect of Metallic Path Facilities, MPF Internal Tie Cable and MPF External Tie Cable; and
- vii. in respect of Relevant Ethernet Services, WDM Services and Dark Fibre Access, Interconnection Services.

- j) **“Backhaul Segment”** means network access providing uncontended bandwidth connecting one MDF/ODF site or operational building of the Dominant Provider to another MDF/ODF site or operational building of the Dominant Provider;
- k) **“Cablelink”** means a connection from a Third Party’s equipment to other equipment located within the same MDF/ODF Site, or from a Third Party’s equipment located within the same MDF/ODF Site to a fibre cable originating immediately outside an MDF/ODF Site;
- l) **“Charge”** means the charge (being in all cases the amounts offered or charged by the Dominant Provider), excluding any discounts offered by the Dominant Provider, to a communications provider for the Charge Controlled Service”;
- m) **“Co-Location”** 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 the electronic communications network of a Third Party at that location;
- n) **“Co-Mingling”** means the provision of Co-Location having the following characteristics:

- i. the Third Party's electronic communications network is situated in an area of the MDF/ODF Site which:
    - A. is a single undivided space;
    - B. after proper performance by the Dominant Provider of its obligation to provide network access provided by the Dominant Provider in accordance with 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
    - C. if so requested by the Third Party, is not unreasonably distant from the Dominant Provider's electronic communications network within the MDF/ODF site;
  - ii. 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
  - iii. 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;
- o) **"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;
- p) **"Copper-based Network Access"** means the wholesale provision of network access by the Dominant Provider over its electronic communications network where the physical connection between the local access node and the Network Termination Point comprises copper wires either in whole or in part;
- q) **"CPI"** means the amount of the change in the Consumer Prices Index in the period of twelve months ending on 31 October immediately before the beginning of the

Relevant Year, expressed as a percentage (rounded to one decimal place) of that Consumer Prices Index as at the beginning of that first mentioned period;

- r) **“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;
- s) **“Dominant Provider”** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- t) **“Dominant Provider’s Price List”** means a document containing the charges for the Dominant Provider’s products and services;
- u) **“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 Relevant 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;

- v) **"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;
- w) **"Existing Circuits"** means Ethernet Services, WDM Services or Dark Fibre Access services (as applicable in relation to the same service referenced in the relevant Condition) which have been ordered before 18 March 2021 for an IEC BT+2 or IEC DF Transition exchange (as applicable);
- x) **"Fibre-based Network Access"** means the wholesale provision of network access by the Dominant Provider over its electronic communications network where the physical connection between the local access node and the Network Termination Point comprises entirely of optical fibre;
- y) **"Fifth Relevant Year"** means the period of 12 months beginning on 1 April 2025 and ending on 31 March 2026.
- z) **"Financial Year"** means the period from 1 April in a given year to 31 March in the following year.
- aa) **"First Relevant Year"** means the period of 12 months beginning on 1 April 2021 and ending on 31 March 2022;

- bb) **“Fourth Relevant Year”** means the period of 12 months beginning on 1 April 2024 and ending on 31 March 2025.
- cc) **“FTTP”** means Fibre-to-the-Premises, an Electronic Communications Network consisting of optical fibre extending from the local access node to the Network Termination Point;
- dd) **“GEA”** means Generic Ethernet Access, the BT non-physical wholesale services providing wholesale access to higher speed broadband products;
- ee) **“GEA – FTTP”** means BT’s product consisting in the provision of GEA services via its FTTP network;
- ff) **“Homes passed”** means premises:
- i. with an active connection to the Dominant Provider’s network;
  - ii. with an inactive connection to the Dominant Provider’s network; or
  - iii. where the distribution point contiguous with the customer lead in that will serve the end premises is connected to a node forming part of the Dominant Provider’s network, and when services are provisioned to the end-premises the end user would expect to pay only a published pre-agreed connection charge, if one was to be imposed.
- gg) **“IEC BT Only”** means the BT exchanges identified as “BT only”, “BT only DF” or “BT only (transitional)” in column D of Schedule 4 of this notification;
- hh) **“IEC BT+1”** means the BT exchanges identified as “BT plus one” or “BT plus one (transitional)” in column D of Schedule 4 of this notification;
- ii) **“IEC DF Transition”** means the BT exchanges identified as “BT only (transitional)” or “BT plus one (transitional)” in column D of Schedule 4 of this notification;
- jj) **“IEC BT+2”** means the BT exchanges identified as “BT plus two or more new” in column D of Schedule 4 of this notification;
- kk) **“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 MDF/ODF of the Dominant Provider;

- ll) **“Interconnection Services”** means In-Building Handover;
  
- mm) **“Local Access Node”** means either:
  - i. an MDF Site;
  
  - ii. an ODF Site;
  
  - iii. an operational building designated by the Dominant Provider for use as an ODF Site in future;
  
  - iv. an operational building of the Dominant Provider or Third Party which is reasonably equivalent to one of the above; or
  
  - v. 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;
  
- nn) **“Local Serving Exchange”** means the site of an operational building of the Dominant Provider, where interconnection is made available by the Dominant Provider to a Third Party for Network Termination Points served by that site for the provision of network access provided by the Dominant Provider in accordance with Condition 1 and Condition 2 (as applicable);
  
- oo) **“MDF Site”** means the site of an operational building of the Dominant Provider that houses a main distribution frame;
  
- pp) **“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 (for example a Local Serving Exchange);
  
- qq) **“Metallic Path Facilities”** or **“MPF”** means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network;



- rr) **“MPF Connection Charge”** shall be construed as having the same meaning as ‘MPF Connection Charge – New Provide Standard’, as provided by the Dominant Provider on its website for definitions and explanations of its products;
- ss) **“MPF External Tie Cable”** means a link that connects Metallic Path Facilities to the electronic communications network of a Third Party at a location outside the MDF Site;
- tt) **“MPF Internal Tie Cable”** means a link, the whole of which is contained within an MDF Site, that connects Metallic Path Facilities to the electronic communications network of a Third Party;
- uu) **“MPF SML1 Rental”** shall be construed as having the same meaning as “MPF Discounted Rental (SML1 in tariff)” as provided by the Dominant Provider on its website for definitions and explanations of its products;
- vv) **“Network Termination Point”** means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- ww) **“Order”** means a request for network access pursuant to Condition 1 and Condition 2 (as applicable), including a request for an upgrade on bandwidth of an existing service or a request for a change to the product variant of an existing service, submitted to the Dominant Provider by a Third Party;
- xx) **“Physical Infrastructure Access”** means network access comprising predominantly of the provision of space, anchorage, attachment facilities and/or such other facilities as may be reasonably necessary to permit a Third Party to occupy parts of the Dominant Provider’s Physical Infrastructure sufficient to facilitate the establishment, installation, operation and maintenance of the electronic communications network of a Third Party at that location;
- yy) **“PIA Database Access”** means access to an electronic database of up-to-date information (as far as reasonably practicable) held by the Dominant Provider in relation to the Dominant Provider’s Physical Infrastructure, including location and capacity, for the purpose of a Third Party planning the deployment of an

electronic communications network to provide electronic communications services over Physical Infrastructure Access. This database shall include any technical specifications or information related to the Dominant Provider's Physical Infrastructure as OFCOM may from time to time direct;

- zz) **"PIA market"** means the area consisting of all postcode sectors in the UK outside of the Hull Area;
- aaa) **"Point of Connection"** means a point at which the Dominant Provider's electronic communications network and a Third Party's electronic communications network are connected;
- bbb) **"Prior Year"** means in relation to each Relevant Year, the period of 12 months ending on 31 March immediately preceding that Relevant Year;
- ccc) **"Reference Offer"** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;
- ddd) **"Relevant Commercial Information"** means information of a commercially confidential nature relating to products and services to which this Condition 4 applies, and which relates to any or all of the following in relation thereto—
  - (i) product development;
  - (ii) pricing;
  - (iii) marketing strategy and intelligence;
  - (iv) product launch dates;
  - (v) cost;
  - (vi) projected sales volumes; or
  - (vii) 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;
- eee) **"Relevant Subscriber"** means any person who is party to a contract with a provider of public electronic communications services for the supply of such services;

- fff) **“Relevant Year”** means each of the following five periods:
- (1) the First Relevant Year;
  - (2) the Second Relevant Year;
  - (3) the Third Relevant Year;
  - (4) the Fourth Relevant Year; and
  - (5) the Fifth Relevant Year.
- ggg) **“Second Relevant Year”** means the period of 12 months beginning on 1 April 2022 and ending on 31 March 2023;
- hhh) **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- iii) **“Service Level Guarantees”** means a commitment specifying the amount payable by the Dominant Provider to a Third Party for a failure to adhere to a Service Level Commitment;
- jjj) **“Shared Access”** means the non-voice band frequency of Metallic Path Facilities;
- kkk) **“Site Access”** means access (including the right of entry) to the Dominant Provider’s MDF/ODF Sites and/or Local Serving Exchanges in order for a Third Party to install and operate an electronic communications network to provide electronic communications services over network access provided by the Dominant Provider in accordance with Condition 1 and Condition 2 (as applicable);
- lll) **“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;
- mmm) **“Sub-Loop Unbundling Service”** means access to Metallic Path Facilities or Shared Access at an intermediate point to the main distribution frame;

- nnn) **“Third Party”** means a person providing a public electronic communications service or a person providing a public electronic communications network;
- ooo) **“Third Party Customer”** means a Third Party purchasing network access pursuant to Condition 1 and Condition 2 (as applicable) from the Dominant Provider;
- ppp) **“Third Relevant Year”** means the period of 12 months beginning on 1 April 2023 and ending on 31 March 2024;
- qqq) **“Virtual Unbundled Local Access”** or **“VULA”** means network access comprising of a virtual circuit between a Point of Connection at the Local Serving Exchange and a Network Termination Point, which circuit provides such specified capacity as is agreed between the Dominant Provider and the Third Party for the Third Party’s exclusive use;
- rrr) **“VULA Bandwidth Change”** shall be construed as having the same meaning as:
- (i) in the case of GEA – FTTC, ‘Bandwidth Modify Charge’;
  - (ii) in the case of GEA – FTTP, ‘Charge to change the product bandwidth between any of the products’,
- where the bandwidth change is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;
- sss) **“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;
- ttt) **“Wholesale End-to-End Segments”** means network access connecting an end user premises and another end user premises;
- uuu) **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable); and

vvv) references to the expression electronic communications network for the purposes of the expressions MPF Co-Location, MPF Co-Mingling, MPF Site Access, PIA Co-Location, PIA Co-Mingling, PIA Site Access, SLU MPF Ancillary Services, PIA Co-Location, PIA Co-Mingling, PIA Site Access, VULA Co-Location, VULA Co-Mingling and VULA Site Access, as they apply in Condition 2 of Part 3 shall be limited to those matters set out at section 32(1)(b)(i)-(iii) of the Act.

2. For the purpose of interpreting this Schedule, except in so far as the context otherwise requires, the terms or descriptions of products and/or services used in this Schedule shall be construed as having the same meaning as those provided by the Dominant Provider on its website for definitions and explanations of its products in addition to future product updates. These [product definitions](#), including quality assurance information and pricing are as at 15 March 2021 found as on the product information pages on the website.

## Part 3: SMP conditions

### Condition 1 – Network access on reasonable request

- 1.1** Except insofar as Ofcom may from time to time otherwise consent in writing, and subject to Conditions 1.2 and 1.5 the Dominant Provider must provide network access to a Third Party where that Third Party, in writing, reasonably requests it.
- 1.2** Condition 1.1 does not apply to requests for new forms of Copper-based Network Access other than where the new form of Copper-based Network Access requested facilitates the migration of end users provided with Copper-based Network Access to Ultrafast Broadband Services.
- (WLA Area 2, WLA Area 3)**
- 1.3** Except where Condition 1.4 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 10); and
  - (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.
- 1.4** Where any of Conditions 1.8, 6 or 12 apply 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 10); and
  - (b) be on:
    - (i) fair and reasonable terms and conditions (excluding charges); and
    - (ii) such terms and conditions and charges as Ofcom may from time to time direct.

**1.5** Where the Dominant Provider has published a First Threshold Notice in relation to a Local Serving Exchange, the requirement to provide network access under Condition 1.1 does not apply to new requests for Copper-based Network Access in respect of any end user supplied with electronic communications services using that Local Serving Exchange provided that Fibre-based Network Access is available to a Third Party on reasonable request in respect of any such end users.

**(WLA Area  
2, WLA Area  
3)**

**1.6** The Dominant Provider may publish a Threshold Notice in respect of a Local Serving Exchange where:

**(WLA Area  
2, WLA Area  
3)**

- (a) Ultrafast network access is available to 75% of Relevant Premises served by that Local Serving Exchange but excluding any premises that Ofcom may from time to time direct ("**First Threshold Notice**"); or
- (b) a First Threshold Notice has been published in relation to that Local Serving Exchange for a minimum period of 2 years and Ultrafast network access is available to 100% of Relevant Premises served by that Local Serving Exchange but excluding any premises that Ofcom may from time to time direct ("**Second Threshold Notice**").

**1.7** A Threshold Notice must state the Local Serving Exchange to which it applies, and:

**(WLA Area  
2, WLA Area  
3)**

- (a) be published on the Dominant Provider's website; and
- (b) be sent to Ofcom by means of electronic mail to such person in Ofcom as notified from time to time.

**1.8** Where the Dominant Provider publishes a Second Threshold Notice in relation to a Local Serving Exchange, Condition 1.3 does not apply to Copper-based Network Access in respect of any end user supplied with electronic communications services using that Local Serving Exchange, provided that Fibre-based Network Access is available to a Third Party on reasonable request in respect of any such end users.

**(WLA Area  
2, WLA Area  
3)**

**1.9** The provision of network access by the Dominant Provider in accordance with this Condition shall also include such Ancillary Services as are reasonably necessary for

the provision of network access and such other entitlements as Ofcom may from time to time direct.

**1.10** The Dominant Provider must comply with any direction Ofcom may make under this Condition.

**1.11** Condition 1.1 is subject to the consent of 29 January 2020 published at Annex 3 of the Salisbury and Mildenhall Statement and which, for these purposes, shall be read as if it has been given under that Condition.

**(WLA Area  
2, WLA Area  
3)**

**1.12** In this Condition 1:

- (WLA Area  
2, WLA Area  
3)**
- (a) **“First Threshold Notice”** has the meaning given in Condition 1.6(a);
  - (b) **“Relevant Premises”** means all premises in a Local Serving Exchange Area as at the date of the First Threshold Notice given in respect of that Local Serving Exchange;
  - (c) **“Second Threshold Notice”** has the meaning given in Condition 1.6(b);
  - (d) **“Ultrafast Broadband Services”** means a retail broadband service which offers at least 300Mbit/s download speed and which is provided over the Dominant Provider’s electronic communications network; and
  - (e) **“Ultrafast network access”** means the wholesale provision of network access which can be used to provide Ultrafast Broadband Services and which is provided over the Dominant Provider’s electronic communications network.



## Condition 2 – Specific forms of network access

**2.1** Without prejudice to the generality of Condition 1, except insofar as Ofcom may from time to time otherwise consent in writing, the provision of network access under that Condition must include, where the Third Party, in writing, reasonably requests the form of network access specified in this Condition. For the avoidance of doubt, network access under Condition 2 is also considered to be network access under Condition 1.

**2.2** Physical Infrastructure Access.

**(PI)**

**2.3** (a) Metallic Path Facilities;  
**(WLA Area 2,**  
**WLA Area 3)** (b) Virtual Unbundled Local Access, including a service up to 40Mbit/s downstream and up to 10Mbit/s upstream; and  
(c) Sub-Loop Unbundling Services.

**2.4** (a) Ethernet Services including the provision of the following services:  
**(LLA Area 2,**  
**LLA Area 3,**  
**LLA HNR, IEC**  
**and IEC BT+1)** (i) Access Segments;  
(ii) Backhaul Segments;  
(iii) Wholesale End-to-End Segments, up to a maximum straight-line distance of 25km.  
(b) WDM Services including the provision of the following services:  
(i) Access Segments;  
(ii) Backhaul Segments;  
(iii) Wholesale End-to-End Segments.

- 2.5** Dark Fibre Access between:
- (IEC)**
- (a) a BT exchange which is identified as a “BT Only DF” exchange in **Schedule 4** of this notification; and
  - (b) another BT exchange appearing in **Schedule 4** of this notification.

- 2.6** Dark Fibre Access including the provision of Access Segments with effect from 17 August 2021. In the period from 17 August 2021 to 31 May 2022 the Dominant Provider may comply with this condition by providing only the components of Dark Fibre Access that are reasonably necessary for establishing and maintaining such network access, including without limitation provisioning and repair.
- (LLA Area 3)**

- 2.7** Continuous End to End Dark Fibre Access.
- (IEC, LLA Area 3)**

- 2.8** For Existing Circuits until 31 March 2022, Dark Fibre Access between:
- (IEC DF Transition)**
- (a) an IEC DF Transition exchange; and
  - (b) another BT exchange appearing in Schedule 4 of this notification.

- For Existing Circuits until 31 March 2022:
- 2.9**
- (IEC BT+2)**
- (a) Ethernet Services 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 including the provision of the following services:
    - (i) Access Segments;

- (ii) Backhaul Segments;
- (iii) Wholesale End-to-End Segments.

**2.10** 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.

**2.11** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

**2.12** In this Condition 2:

**(IEC, LLA  
Area 3)**

- (a) **“Continuous End to End Dark Fibre Access”** means network access comprising Access Segments and Backhaul Segments where each segment is required under Conditions 2.5 and 2.6;

### **Condition 3 – Requests for new forms of network access**

- 3.1** The Dominant Provider must, for the purposes of transparency, publish guidelines in relation to requests for new forms of network access made to it. Such guidelines must set out:
- (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;
  - (c) the timescales in which such requests will be handled by the Dominant Provider; and
  - (d) any provisions directed by Ofcom under Condition 3.5.
- 3.2** The guidelines must meet the following principles:
- (a) the process for consideration of requests shall be documented end-to-end;
  - (b) the timescales for each stage of the process shall be reasonable;
  - (c) the criteria by which requests will be assessed shall be clearly identified;
  - (d) the reasons for rejecting any request shall be clear and transparent; and
  - (e) any changes to the guidelines shall be agreed between the Dominant Provider and other communications providers in an appropriate manner.
- 3.3** The Dominant Provider must, upon reasonable request from a Third Party considering making a request for a new form of network access, provide that Third Party with such information as may be reasonably required to enable that Third Party to make a request for a new form of network access. Such information must be provided within a reasonable period.
- 3.4** On receipt of a written request for a new form of network access, the Dominant Provider must deal with the request in accordance with the guidelines described in Condition 3.1 above. 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, must be considered as a new request.

- 3.5** The guidelines published pursuant to Condition 3.1 shall include such provisions as Ofcom may from time to time direct.
- 3.6** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

#### **Condition 4 – No undue discrimination**

- 4.1** Except insofar as Ofcom may from time to time otherwise consent in writing, 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. The Dominant Provider may be deemed to have shown undue discrimination under this Condition in any of the circumstances set out in Conditions 4.2, 4.4, 4.5 or 4.6 in the relevant markets to which such conditions apply.
- 4.2** 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.
- 4.3** The Dominant Provider must publish all such information in relation to the provision of Physical Infrastructure Access provided by the Dominant Provider under Conditions 1 and 2 in such manner and form, and including such content, as Ofcom may from time to time direct for the purposes of providing transparency in relation to the Dominant Provider’s compliance with its obligations under this Condition 4.
- (PI)**
- 4.4** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if, in a Relevant Year, it charges different prices in different geographic areas for rental services used to provide network access to VULA, other than VULA that is provided over FTTP, or for other rental services where those services are being provided in conjunction with such a VULA service for the purposes of providing electronic communications services to end users. This Condition 4.4 does not apply to Local Serving Exchanges where the Dominant Provider has published a Second Threshold Notice in relation to that Local Serving Exchange.
- (WLA Area 2, WLA Area 3)**
- 4.5** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if, in a Relevant Year, it charges different prices in different geographic areas for rental services used to provide network access to VULA that is provided over

**(WLA Area 2,** FTTP, or for other rental services where those services are being provided in  
**WLA Area 3)** conjunction with such a VULA service for the purposes of providing electronic communications services to end users.

**4.6** In this Condition, the Dominant Provider may be deemed to have shown undue discrimination if, in a Relevant Year, it charges different prices in different geographic  
**(LLA Area 2)** areas for rental services used to provide network access to Ethernet Services or WDM Services, or for other rental services where those services are being provided in conjunction with such a service for the purposes of providing electronic communications services to end users. This Condition 4.6 does not apply to any such prices that were introduced before the date on which this Condition 4 enters into force.

**4.7** Condition 4.1 is subject to the consent of 29 January 2020 published at Annex 3 of the Salisbury and Mildenhall Statement and which, for these purposes, shall be read as if it  
**(WLA Area 2,** has been given under that Condition.  
**WLA Area 3)**

**4.8** During the period from 1 April 2021 to 1 August 2021, Condition 4.5 shall not apply to the offers entitled “GEA-FTTP Local Marketing Pilot Offer”, “GEA-FTTP Only Offer v 2”,  
**(WLA Area 2,** and “Volume commitment special offer on GEA-FTTC, G.fast and GEA-FTTP”, as defined  
**WLA Area 3)** by the Dominant Provider on its website as at 15 March 2021.

## Condition 5 – Equivalence of Inputs basis

**5.1** Except insofar as Ofcom may from time to time otherwise consent in writing and subject to Conditions 5.2 to 5.5, the Dominant Provider must provide network access in accordance with Conditions 1 and 2 (as applicable) on an Equivalence of Inputs basis.

**(WLA Area 2,  
WLA Area 3,  
LLA HNR, LLA  
Area 2, LLA  
Area 3, IEC, IEC  
BT+1, IEC  
BT+2)**

**5.2** The obligation in Condition 5.1 to provide network access on an Equivalence of Inputs basis shall not apply to—

**(WLA Area 2,  
WLA Area 3)**

- (a) the provision of Sub-Loop Unbundling Services in accordance with Conditions 1 and 2;
- (b) Accommodation Services other than in relation to the allocation of space and power in operational buildings belonging to the Dominant Provider; and
- (c) existing network access which the Dominant Provider was not providing on an Equivalence of Inputs basis as at the date that this Condition enters into force.

**5.3** Where the Dominant Provider provides Dark Fibre Access or Continuous End to End Dark Fibre Access to itself under Conditions 2.5 to 2.7 as an input to other forms of network access provided to Third Party Customers, the obligation under Condition 5.1 to provide network access on an Equivalence of Inputs basis shall not apply.

**(LLA Area 3,  
IEC)**

**5.4** The obligation in Condition 5.1 to provide network access on an Equivalence of Inputs basis shall not apply to any of the following:

**(LLA Area 2,  
LLA Area 3,  
LLA HNR, IEC,**

- (a) Accommodation Services other than in relation to the allocation of space and power in operational buildings belonging to the Dominant Provider;



- IEC BT+1, IEC BT+2)**
- (b) WDM Services with a straight line distance of more than 70km;
  - (c) a Backhaul Segment connecting a Core Node of the Dominant Provider and another Core Node of the Dominant Provider;
  - (d) network access which the Dominant Provider was providing but was not required to provide on an Equivalence of Inputs basis as at the date that this Condition enters into force.

**5.5** 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:

- (LLA Area 2, LLA Area 3, LLA HNR, IEC, IEC BT+1, IEC BT+2)**
- (a) subject to Condition 5.4(b), the obligation in Condition 5.1 shall apply; and
  - (b) the obligation in Condition 5.1 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 4.

**5.6** Without prejudice to the generality of Condition 5.1, 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 (other than its retail divisions, subsidiaries or partners) on an Equivalence of Inputs basis.

**(WLA Area 2, WLA Area 3, LLA HNR, LLA Area 2, LLA Area 3, IEC, IEC BT+1, IEC BT+2)**

**5.7** For the avoidance of doubt, the obligations set out in this Condition 5 apply in addition to the obligations set out in Condition 4.

**(WLA Area 2, WLA Area 3, LLA HNR, LLA Area 2, LLA Area 3, IEC, IEC BT+1, IEC BT+2)**

BT+1, IEC  
BT+2)

5.8 Condition 5.1 is subject to the consent of 29 January 2020 published at Annex 3 of the Salisbury and Mildenhall Statement and which, for these purposes, shall be read as if it has been given under that Condition.

(WLA Area 2,  
WLA Area 3)

5.9 In this Condition 5:

(LLA Area 2,  
LLA Area 3,  
LLA HNR, IEC,  
IEC BT+1, IEC  
BT+2)

(a) “**Core Node**” means a node at an operational building of the Dominant Provider listed in Schedule 4 of this notification; and

(b) “**Continuous End to End Dark Fibre Access**” has the meaning set out in Condition 2.

## Condition 6 – Basis of charges

- 6.1** Except insofar as Ofcom may from time to time otherwise consent in writing or Ofcom otherwise directs, the Dominant Provider must secure, and must be able to demonstrate to the satisfaction of Ofcom, that the Electricity Charge when averaged over each Relevant Year is reasonably derived from the costs of provision based on the wholesale electricity charges paid by the Dominant Provider plus an appropriate mark-up to reflect the Dominant Provider's costs related to its wholesale purchase of electricity and the setting of the Electricity Charge.
- 6.2** Except where Condition 12 applies, or where Ofcom directs otherwise, 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 Physical Infrastructure Access provided under Conditions 1 and 2 when averaged over each Relevant Year is reasonably derived from the costs of provision based on:
- (PI)**
- (a) any external charge incurred by the Dominant Provider related to the provision of that Physical Infrastructure Access service;
  - (b) the Dominant Provider's forward looking long run incremental costs related to the provision of that Physical Infrastructure Access service;
  - (c) an appropriate mark-up for recovery of common costs; and
  - (d) an appropriate return on capital employed.
- 6.3** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.
- 6.4** In this Condition 6:
- (a) **"Electricity Charge"** means the charge from time to time on a usage per kWh basis for electricity purchased by Third Parties to provide power for equipment used in connection with network access provided under Conditions 1 and 2.

## Condition 7 – Publication of a Reference Offer

- 7.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish a Reference Offer in relation to the provision of network access pursuant to Conditions 1 and 2 (as applicable) and act in the manner set out below.
- 7.2** Subject to Condition 7.16, the Dominant Provider must 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, and any other matters Ofcom may direct from time to time —
- (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 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, and 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;
- (h) details of measures to ensure compliance with requirements for network integrity;
  - (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 providing Accommodation Services or location of masts);
  - (n) the standard terms and conditions for the provision of network access;
  - (o) details of interoperability tests; and
  - (p) details of traffic and network management.

**7.3**

**(PI)**

Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider must ensure that a Reference Offer in relation to the provision of Physical Infrastructure Access pursuant to Conditions 1 and 2 (as applicable) also includes at least the following:

- (a) the location of Physical Infrastructure or the method by which Third Parties may obtain information about the location of Physical Infrastructure;
- (b) technical specifications for Physical Infrastructure Access including:
  - (i) technical specifications for permitted cables and associated equipment;
  - (ii) cable installation, attachment and recovery methods;
  - (iii) technical specifications relevant when Third Parties elect to undertake repair works on behalf of the Dominant Provider; and
  - (iv) technical specifications relevant when Third Parties elect to undertake build works on behalf of the Dominant Provider;
- (c) the methodology for calculating availability of spare capacity in Physical Infrastructure;
- (d) procedures for the provision of information to Third Parties about spare capacity, including arrangements for visual surveys of Physical Infrastructure to determine spare capacity;
- (e) conditions for reserving capacity that shall apply equally to the Dominant Provider and Third Parties;
- (f) conditions for the installation and recovery of cables and associated equipment;
- (g) arrangements for relieving congested Physical Infrastructure, including the repair of existing faulty infrastructure and the construction of new Physical Infrastructure;
- (h) conditions for Third Parties to gain access to the Physical Infrastructure including if appropriate training, certification and authorisation requirements for personnel permitted to access and work in/on Physical Infrastructure;
- (i) the arrangements for maintenance of cables and associated equipment installed by Third Parties and of the Physical Infrastructure, including provision for the

temporary occupation of additional infrastructure capacity for the installation of replacement cables;

- (j) conditions for the inspection of the Physical Infrastructure at which access is available or at which access has been refused on grounds of lack of capacity;
- (k) the information that a Third Party is required to provide to the Dominant Provider where that Third Party is requesting the repair of existing faulty infrastructure and/or the construction of new Physical Infrastructure necessary for the Service Level Commitments and Service Level Guarantees required by Conditions 7.3(l) and (m) below;
- (l) Any reasonably necessary Service Level Commitments including in respect of at least the following:
  - (i) the provision by the Dominant Provider to a Third Party of a Response Notice (other than where a Response Notice is not required);
  - (ii) the completion by the Dominant Provider of any works necessary to relieve congested Physical Infrastructure including the repair of existing faulty infrastructure and the construction of new Physical Infrastructure other than a congested Pole;
  - (iii) the provision by the Dominant Provider of a response to a request by a Third Party to undertake works itself to relieve congested Physical Infrastructure (other than where a response is not required);
  - (iv) the provision by the Dominant Provider to a Third Party of a Pole Response Notice; and
  - (v) the completion by the Dominant Provider of any works necessary to relieve a congested Pole.
- (m) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.3(l) above;

- (n) conditions for the provision of forecasts by Third Parties in respect of their future requirements for Physical Infrastructure Access; and
- (o) conditions on which Third Parties may elect to undertake repair or build works on behalf of the Dominant Provider.

**7.4**

**(WLA Area 2,  
WLA Area 3)**

Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider must ensure that a Reference Offer in relation to the provision of Metallic Path Facilities pursuant to Conditions 1 and 2 (as applicable) also includes at least the following:

- (a) the location of MDF Sites;
- (b) the area within which network access to Metallic Path Facilities could be made available from each of the MDF Sites listed under (a) above;
- (c) the availability of MPF Co-Location (including the options for such co-location) at each of the MDF Sites listed under (a) above;
- (d) equipment characteristics, including any restrictions on equipment for the purposes of MPF Co-Location at each of the MDF Sites listed under (a) above;
- (e) conditions for MPF Site Access at each of the MDF Sites listed under (a) above, including conditions for access for staff of those Third Parties to whom the Dominant Provider provides Local Loop Unbundling Services;
- (f) conditions for the inspection of MDF Sites at which MPF Co-Location is available or at which MPF Co-Location has been refused on grounds of lack of capacity;
- (g) safety standards;
- (h) the relevant charges (or charging formulae) for each feature, function and facility involved in the provision of Metallic Path Facilities;
- (i) anything which may reasonably be regarded as being likely to materially affect the availability of the relevant Metallic Path Facilities;



- (j) Service Level Commitments in respect of at least the following aspects of that service:
  - (i) availability of an appointment for the provision of the service;
  - (ii) attending appointments for the provision of the service;
  - (iii) completion of the provision of the service;
  - (iv) completion of the transfer of the service;
  - (v) line working at completion of provisioning process;
  - (vi) disconnections made in error;
  - (vii) fault repair times;
  - (viii) attending fault repair appointments; and
  - (ix) availability of the relevant operational support systems by which requests for service provision, transfers and fault repair are made as applicable; and
- (k) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.4(j)(i) to (j)(ix) above.

**7.5** Subject to Condition 7.16, and to the extent not already required by Condition 7.2,  
**(WLA Area 2,** the Dominant Provider must ensure that a Reference Offer made in relation to the  
**WLA Area 3)** provision of Virtual Unbundled Local Access pursuant to Conditions 1 and 2 (as applicable) includes—

- (a) Service Level Commitments in respect of at least the following aspects of that service:
  - (i) availability of an appointment for the provision of the service;
  - (ii) attending appointments for the provision of the service;
  - (iii) completion of the provision of the service;

- (iv) completion of the transfer of the service;
- (v) line working at completion of provisioning process;
- (vi) disconnections made in error;
- (vii) fault repair times;
- (viii) attending fault repair appointments; and
- (ix) availability of the relevant operational support systems by which requests for service provision, transfers and fault repair are made as applicable; and

- (b) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.5(a)(i) to (a)(ix) above.

**7.6** Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider must ensure that a Reference Offer in relation to the provision of Ethernet Services pursuant to Conditions 1 and 2 (as applicable) includes, where applicable, at least the following details of maintenance and quality, and any other matters Ofcom may direct from time to time:

**(LLA Area 2,  
LLA Area 3,  
LLA HNR,  
IEC, IEC  
BT+1, IEC  
BT+2)**

- (a) Service Level Commitments in respect of at least the following aspects of that service:
  - (i) completion of the provision of the service; and
  - (ii) fault repair times; and
- (b) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.6 (a) above.

**7.7** Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider must ensure that a Reference Offer in relation to the provision of Dark Fibre Access pursuant to Conditions 1 and 2 (as applicable) includes, where

**(LLA Area 3, IEC)** applicable, at least the following details of maintenance and quality, and any other matters Ofcom may direct from time to time:

- (a) Service Level Commitments in respect of at least the following aspects of that service:
  - (i) completion of the provision of the service; and
  - (ii) fault repair times; and
- (b) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.7 (a) above.

**7.8 (LLA Area 3, IEC)** Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Dark Fibre Access pursuant to Conditions 1 and 2 (as applicable) includes an explanation of differences (if any) between:

- (a) the matters set out in Condition 7.2 which apply to the provision of Dark Fibre Access; and
- (b) the matters set out in Condition 7.2 which apply to the provision of the services corresponding to the optical fibre elements of each of the services made available pursuant to Conditions 2.4(a) and 2.4(b) above.

**7.9** 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 that 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 must 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 7.2(a) to (p) and any other matters Ofcom may direct from time to time .

- 7.10** Subject to Condition 7.12 below, the Dominant Provider must, on 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.
- 7.11** The Dominant Provider must update and publish the Reference Offer in relation to any amendments or in relation to any further network access provided as soon as reasonably practicable after the date that this Condition enters into force.
- 7.12** In relation to publication of the Reference Offer relating to Dark Fibre Access, the  
**(LLA Area 3)** Dominant Provider must publish a Reference Offer:
- (a) by 17 August 2021 which includes all relevant matters set out in Condition 7.8 and Condition 7.2 except for the matters specified in Condition 7.2(g)(ii) and (iii); and
  - (b) by 1 June 2022 which includes all relevant matters set out in Conditions 7.2, 7.7 and 7.8.
- 7.13** Publication referred to above shall be effected by the Dominant Provider placing a copy of the Reference Offer on any relevant publicly accessible website operated or controlled by the Dominant Provider.
- 7.14** The Dominant Provider must 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).
- 7.15** Where Service Level Guarantees are required by this Condition 7, any payments required by the Service Level Guarantees must be provided proactively, and without prejudice to the right of either party to claim for additional loss.

- 7.16** The Dominant Provider must make such modifications to the Reference Offer as Ofcom may direct from time to time.
- 7.17** The Dominant Provider must provide network access at the charges, terms and conditions in the relevant Reference Offer and must not depart therefrom either directly or indirectly.
- 7.18** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.
- 7.19** In this Condition 7:
- (PI)**
- (a) **“Response Notice”** means a notice responding to a request by a Third Party for Physical Infrastructure Access, including where relevant to relieve congested Physical Infrastructure, including the repair of existing faulty infrastructure and the construction of new Physical Infrastructure, other than a congested Pole which confirms either:
    - (i) that the request has been accepted by the Dominant Provider and how the Dominant Provider proposes to relieve any congestion; or
    - (ii) that the request has been refused by the Dominant Provider and the reasons for the refusal of the request.
  - (b) **“Pole Response Notice”** means a notice responding to a request by a Third Party for the Dominant Provider to relieve a congested Pole which confirms either:
    - (i) that the request has been accepted by the Dominant Provider and how the Dominant Provider proposes to relieve any congestion; or
    - (ii) that the request has been refused by the Dominant Provider and the reasons for the refusal of the request.
  - (c) **“Pole”** means any pole forming part of the Dominant Provider’s Physical Infrastructure.

## **Condition 8 – Notification of charges and terms and conditions and other matters**

- 8.1** Except in so far as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must publish charges, terms and conditions and act in the manner set out in this Condition or any other manner as Ofcom may from time to time direct.
- 8.2** Where it is proposing to publish a First Threshold Notice or a Second Threshold Notice in relation to a Local Serving Exchange in accordance with Condition 1.6, a minimum of 12 months before the proposed date of publication of the First Threshold Notice or the Second Threshold Notice the Dominant Provider must publish and send to Ofcom in writing, a notice containing the expected date for publication of the First Threshold Notice or the Second Threshold Notice in relation to that Local Serving Exchange.
- (WLA Area 2 and WLA Area 3)**
- 8.3** Where it proposes an Access Change, the Dominant Provider must send to Ofcom, and to every person with whom it has entered into an Access Agreement pursuant to Condition 1 or Conditions 1 and 2 (as applicable), an Access Change Notice.
- 8.4** The obligation in Condition 8.3 shall not apply where the Access Change is directed or determined by Ofcom or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act.

## 8.5

An Access Change Notice must:

- (a) in the case of an Access 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 Change relating solely to a reduction in the price of existing network access (including, for the avoidance of doubt, the introduction of a Special Offer), be sent not less than 28 days before any such amendment comes into effect;
- (c) in the case of an Access Change relating to the end of a Special Offer, or an increase to a price offered as a Special Offer (where the increased price is still a Special Offer), with no other amendments to the terms and conditions of a Special Offer, be sent not less than 28 days before any such amendment comes into effect;
- (d) in the case of an Access Change relating to an amendment to the terms and conditions of a Special Offer (other than relating to price or an extension of the duration of the Special Offer), be sent not less than 28 days before any such amendment comes into effect;
- (e) in the case of an Access Change relating solely to an extension of the duration of a Special Offer at the same price or a lower price with no other amendments to the terms and conditions of the Special Offer, be sent at least one Working Day before such amendment comes into effect;
- (f) in the case of any other Access Change involving existing network access and not relating to the terms of a Special Offer, 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

Change Notice when the price is increased in accordance with the stated terms of the Special Offer.

**8.6** In the case of an Access Change involving new or existing network access where the price or other contractual conditions are conditional on the volume and/or range of services purchased, the Access Change Notice must be sent not less than 90 days before any such amendment comes into effect.

**(WLA Area 2,  
WLA Area 3,  
LLA Area 2,  
LLA Area 3,  
HNR)**

**8.7** In the case of an Access Change relating to the ECC Balancing Charge calculated in accordance with Condition 12G.12, an Access Change must also be sent 60 days after the end of each Financial Year.

**(LLA Area 2,  
LLA Area 3)**

**8.8** The Dominant Provider must ensure that an Access 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;
- (c) the current and proposed new charge and/or current and proposed new terms and conditions (as the case may be); and
- (d) the date on which, or the period for which, the Access Change will take effect (the “**effective date**”).

**8.9** The Dominant Provider must not apply any Access Change identified in an Access Change Notice before the effective date.

**8.10** 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 that provided to any Third Party,

in a manner that differs from that detailed in an Access Change Notice in relation to network access provided to any Third Party, the Dominant Provider must 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 8.8(a) to (d) and, where the Dominant Provider amends the charges, terms and conditions on which it provides itself with network access, it must ensure it sends to Ofcom a notice equivalent to an Access Change Notice.

**8.11** The Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition.

**8.12** In this Condition 8:

- (a) **“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;
- (b) **“Access Change”** means any amendment to the charges, terms and conditions on which the Dominant Provider provides network access pursuant to Conditions 1 and 2 or in relation to any charges for new network access pursuant to Conditions 1 and 2; and
- (c) **“Access Change Notice”** means a notice given by the Dominant Provider of an Access Change.

## Condition 9 – Notification of technical information

**9.1** Except in so far as Ofcom may from time to time otherwise consent in writing, where the Dominant Provider provides network access pursuant to Conditions 1 and 2 (as applicable) and 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 must publish a written notice (the “**Notice**”) of the new or amended terms and conditions within a reasonable time period. Other than where the new or amended terms and conditions are a consequence of new or amended technical specifications determined by NICC Standards Limited (whose registered company number is 6613589), that reasonable notice must be 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 an existing Access Agreement come into effect.

**9.2** The obligation in Condition 9.1 shall not apply where the new or amended charges or terms and conditions are directed or determined by Ofcom or is a consequence of such direction or determination (including pursuant to the setting of an SMP services condition under the power in section 45 of the Act) or are required by a notification or enforcement notification issued by Ofcom under sections 96A or 96C of the Act;

**9.3** The Dominant Provider must 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 Reference Offer of the relevant terms and conditions associated with the provision of that network access; and
- (c) the date on which or the period for which the Dominant Provider may enter into an Access Agreement to provide the new network access will be available or any

amendments to the relevant terms and conditions will take effect (the “**effective date**”).

**9.4** The Dominant Provider must 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.

**9.5** Publication referred to in Condition 9.1 must be effected by the Dominant Provider—

- (a) placing a copy of the Notice on any relevant publicly accessible website operated or controlled by the Dominant Provider;
- (b) sending a copy of the Notice to Ofcom;
- (c) 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
- (d) 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 10 – Quality of service**

- 10.1** 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).
- 10.2** Except insofar as Ofcom may otherwise consent in writing the Dominant Provider must publish all such information as to the quality of service in relation to network access provided by the Dominant Provider pursuant to Conditions 1 and 2 (as applicable), in such manner and form, and including such content, as Ofcom may from time to time direct.

## Condition 11 – Regulatory Financial Reporting

### Interpretation

- 11.1 In this condition the following terms shall have the following meanings
- 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) “**Additional Procedures**” means an engagement under which the Regulatory Auditor or another person independent from the Dominant Provider performs a set of procedures required 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 other attribution layers and on to SMP Wholesale Services, Non-SMP Wholesale Services, and Retail Services;
  - f) “**Basket**” means any group of SMP Wholesale services (described as a basket) on which the Dominant Provider is required by a direction given under this SMP condition to report;
  - g) “**Change Control Notification**” has the meaning given to it Condition 11.28;

- h) **“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;
- i) **“External Wholesale Services”** means Wholesale Services available for use by communications providers other than the Dominant Provider (which for the avoidance of doubt may also be available for use by the Dominant Provider as Internal Wholesale Services);
- j) **“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;
- k) **“ICAEW Guidance”** means guidance issued by the Institute of Chartered Accountants in England & Wales regarding reporting to regulators on regulated accounts;
- l) **“Internal Wholesale Services”** means Wholesale Services available for use by the Dominant Provider only (which for the avoidance of doubt may also be available for use by communications providers other than the Dominant Provider as External Wholesale Services);
- m) **“Market”** means the markets to which these Conditions apply;
- n) **“Material Error”** means a deviation from accuracy or correctness which meets the materiality threshold directed by Ofcom from time to time for the purpose of these Conditions;
- o) **“Material Difference”** means a difference identified in a systems reconciliation report which meets the materiality threshold directed by Ofcom from time to time for the purpose of these Conditions;
- p) **“Network Component”** means an element of the network that is used to provide Wholesale Services, as specified in the Network Component List or in any direction given by Ofcom from time to time for the purposes of these Conditions;

- q) **“Network Component List”** means the document published from time to time by the Dominant Provider in accordance with these Conditions, which contains the information specified in Condition 11.24;
- r) **“Network Diagram”** means a schematic or illustration of the networks operated by BT showing how Network Components representing physical parts of the network logically relate to each other, such as exchanges, duct, poles, cables, cabinets, nodes, equipment, and connections to customer premises;
- s) **“Non-SMP Wholesale Services”** means Wholesale Services that are not comprised in a market in which the Dominant Provider has SMP;
- t) **“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-stated if necessary to ensure that such figures are comparable to the Current Year Figures;
- u) **“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:
  - a. organisation, storage, adaptation, or alteration of the data or information;
  - b. retrieval, consultation, computation or use of the data or information;
  - c. disclosure of the data or information by transmission, dissemination, or otherwise making available; or
  - d. alignment, combination, blocking, erasing or destruction of the data or information;

- v) **“Regulatory Accounting Methodology”** means the rules, policies, methods, allocations, calculations, assumptions and processes used by the Dominant Provider for the purpose of preparing Regulatory Financial Statements;
- w) **“Regulatory Accounting Principles”** means the principles directed by Ofcom and given that name from time to time for the purpose of these Conditions;
- x) **“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;
- y) **“Regulatory Auditor”** means the auditor for the time being appointed by the Dominant Provider in accordance with these Conditions;
- z) **“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 these Conditions;
- aa) **“Retail Services”** means services used by or offered to any end users (including the Dominant Provider);
- bb) **“Shared Ancillary”** means any of: the services included in the definition of Cablelink Services in section 3 of the Annex to Condition 12F; the services included in the definition of Co-Mingling New Provide and Rental Services in Part 4 of Annex 1 to Condition 12B; Accommodation Services in section 1 of the Annex to Condition 12F; Overlapping Accommodation Services in section 2 of the Annex to Condition 12F or Electricity Charge as defined in Condition 6.4(a);
- cc) **“SMP Wholesale Services”** means Wholesale Services that are provided in a market in which the Dominant Provider has SMP;



- dd) **“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;
- ee) **“Statutory Auditor”** means the auditor for the time being appointed by the Dominant Provider in accordance with the requirements of the Companies Act 2006;
- ff) **“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;
- gg) **“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, Wholesale Services provided from, to or within the Market and the use of Network Components in the Market;
- hh) **“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);
- ii) **“Wholesale Catalogue”** means the documentation required to be produced by the Dominant Provider under Condition 11.40;
- jj) **“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), including services provided in a Market in relation to which the Dominant Provider has SMP and services that are not comprised in a Market in relation to which the Dominant Provider has SMP.

## General requirements

- 11.2** 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 11.4 to 11.42 including as Ofcom may from time to time direct under those Conditions 11.4 to 11.42.
- 11.3** The Dominant Provider must comply with such rules made by Ofcom about the use of cost accounting systems as required by Conditions 11.4 to 11.42 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 11.4 to 11.42 in each case including as Ofcom may from time to time direct under Conditions 11.4 to 11.42.
- 11.4** Except in so far as Ofcom may consent otherwise in writing, the Dominant Provider shall act in the manner set out in these Conditions.
- 11.5** Ofcom may from time to time make such directions as they consider appropriate in relation to the Dominant Provider's obligations under these Conditions.
- 11.6** The Dominant Provider shall comply with any direction Ofcom may make from time to time under these Conditions.
- 11.7** Where the Dominant Provider is required to comply with:
- a) these Conditions; and
  - b) 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.
- 11.8** For the purpose of these Conditions, publication shall be effected by:
- a) placing a copy of the relevant information on any relevant publicly available website operated or controlled by the Dominant Provider; and
  - b) sending a copy of the relevant information to any person at that person's written request.
- 11.9** The Accounting Methodology Documents, Regulatory Financial Statements, reconciliation report and any systems reconciliation report shall be prepared such that

it is reasonable to consider that a person with an understanding of regulatory accounting principles has sufficient information, clearly enough presented, to understand them.

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

**11.10** The Dominant Provider shall, for each Financial Year:

- a) prepare Regulatory Financial Statements in accordance with these Conditions, the Regulatory Accounting Principles, the Accounting Methodology Documents (the relevant Accounting Methodology Documents to be identified in the Regulatory Financial Statements by reference to their date) and any relevant directions given by Ofcom from time to time pursuant to these Conditions;
- b) prepare a reconciliation report as set out in Condition 11.30;
- c) secure the expression of an audit opinion upon the Regulatory Financial Statements;
- d) secure the expression of an audit opinion on the reconciliation report as set out in Condition 11.31;
- e) 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;
- f) deliver to Ofcom copies of the Regulatory Financial Statements, the reconciliation report and all corresponding audit opinions, 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;
- g) publish the Regulatory Financial Statements, the reconciliation report and all corresponding audit opinion(s), within four months after the end of the Financial Year to which they relate; and
- h) 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.

- 11.11** 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 these Conditions. 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.
- 11.12** The Dominant Provider shall prepare all Regulatory Financial Statements, explanations or other information required by virtue of these Conditions 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.
- 11.13** Each Regulatory Financial Statement (with the exception of the reconciliation report required under Condition 11.10) shall include Prior Year Comparatives.
- 11.14** The Prior Year Comparatives 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 this would be consistent with Statutory Accounting Standards or where agreed with Ofcom. The reasons for the departure shall be disclosed in the Regulatory Financial Statements.

### **Requirements relating to audit of the Regulatory Financial Statements**

- 11.15** 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 these Conditions 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.
- 11.16** 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:

- a) carries out such on-going duties as are required to secure compliance with these Conditions;
- b) 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 these Conditions as are of concern to Ofcom and notified to the Dominant Provider in writing;
- c) 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.

**11.17** The Dominant Provider shall extend to the Alternative Regulatory Auditor such assistance and co-operation as it would extend 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.

**11.18** 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.

**11.19** 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 these Conditions and any other information in respect of the matters which are the subject of that audit opinion as Ofcom shall require.

## **Requirements relating to Additional Procedures on to the Regulatory Financial Statements**

- 11.20** The Dominant Provider shall commission Additional Procedures when requested to do by Ofcom.

## **Requirements relating to the Accounting Methodology Documents**

- 11.21** The Dominant Provider must prepare, maintain and keep up-to-date the Accounting Methodology Documents in accordance with these Conditions and with the Regulatory Accounting Principles.
- 11.22** The Dominant Provider must include in the Accounting Methodology Documents documentation setting out a description of each of:
- (a) its Attribution Methods;
  - (b) its Transfer Charge System Methodology;
  - (c) its Accounting Policies;
  - (d) the valuation principles used to value assets; and
  - (e) the Regulatory Accounting System.
- 11.23** 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 11.10 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 Network Components**

- 11.24** The Dominant Provider must publish a Network Component List within four months of the end of the Financial Year,
- a) listing each of the Network Components used in the Regulatory Accounting System;
  - b) providing a description of each such Network Component; and

- c) providing one or more diagrams showing to which part of the network, or to which activity, each of the Network Components relates (including Network Diagrams where the Network Components relate to physical parts of the network).

**11.25** As at 1 April 2021 the Network Component List must consist of the initial network components directed by Ofcom.

**11.26** Any changes to the Network Component List proposed by the Dominant Provider must be made following the Change Control Notification in accordance with Condition 11.28.

**11.27** Ofcom may direct the Dominant Provider to modify the Network Component List and to use those, (and only those), Network Components in its Regulatory Accounting System.

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

**11.28** The Dominant Provider must publish and deliver to Ofcom a list of each and every change to the Regulatory Accounting Methodology including any changes to the Network Component List, 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 clear 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 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.

**11.29** Where in Ofcom’s opinion any change referred to in Condition 11.28 does not comply with these Conditions or the Regulatory Accounting Principles, the Dominant Provider shall not make such change, if so directed by Ofcom.

**11.30** The Dominant Provider must prepare a reconciliation report as referred to in Condition 11.10 and as directed by Ofcom from time to time, which sets out changes to the Regulatory Accounting Methodology, the impact of such changes on the Regulatory Financial Statements, Material Errors corrected in the Regulatory Financial Statements and the impact of such Material Errors on the Regulatory Financial Statements.

## Requirements relating to audit of the reconciliation report

- 11.31** The Dominant Provider must obtain an audit opinion on the reconciliation report when requested to do so by Ofcom.

## Requirements relating to the Regulatory Accounting System

- 11.32** The Dominant Provider's Regulatory Accounting System must be able to produce the Regulatory Financial Statements in accordance with these Conditions, the Regulatory Accounting Principles and the Accounting Methodology Documents and all applicable directions.

- 11.33** 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:

- (a) 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;
- (b) 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;
- (c) 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:
  - (i) 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



- (ii) 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;
- d) 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;
- e) undertake Additional Procedures on the systems reconciliation report, which must report:
  - i) whether the figures in the systems reconciliation report referred to in Condition 11.33(c)(i) have been properly extracted from the old or unmodified Regulatory Accounting System and the new or modified Regulatory Accounting System respectively;
  - ii) whether each and every difference in the systems reconciliation report referred to in Condition 11.33(c)(i) has been correctly calculated; and
  - iii) whether the explanation of each and every Material Difference in the systems reconciliation report referred to in Condition 11.33(c)(ii) is an accurate representation of the cause of each such Material Difference.
- f) deliver the report required by (e) to Ofcom when it delivers the systems reconciliation report to Ofcom in accordance with Condition 11.33(d).
- g) where the systems reconciliation report referred to in Condition 11.33(c) 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 requested by Ofcom, the Regulatory Financial Statements on a basis consistent with the old or unmodified Regulatory Accounting System.

## **Requirement for provision of data supporting the Regulatory Financial System**

**11.34** The Dominant Provider must provide to Ofcom all data and models used in the Regulatory Accounting System within four months after the end of the Financial Year to which the Regulatory Financial Statements relate, as directed by Ofcom from time to time. The data and models provided to Ofcom must enable Ofcom to replicate the outputs of the Regulatory Financial System at all attribution levels.

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

**11.35** 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 notified by Ofcom, do one or more of the following as specified by Ofcom in the notification:

- a) Publish each correction, and reasons for each correction, as necessary to resolve the deficiencies identified by Ofcom;
- b) amend the Accounting Methodology Documents in order to remedy the deficiencies identified by Ofcom;
- c) 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 11.35(b);
- d) prepare a reconciliation report as set out in Condition 11.30, whereby any reference to the Regulatory Financial Statements should be understood as a reference to the restated Regulatory Financial Statements;
- e) secure in accordance with any relevant notification of Ofcom under this Condition the expression of an audit opinion on the restated Regulatory Financial Statements;
- f) deliver to Ofcom the restated Regulatory Financial Statements, the reconciliation report and corresponding audit opinion;
- g) publish the restated Regulatory Financial Statements, the reconciliation report and corresponding audit opinion.

## **Requirements relating to the maintenance of sufficient accounting records**

- 11.36** 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.
- 11.37** The Dominant Provider shall maintain the accounting records in accordance with these Conditions, the Regulatory Accounting Principles and the Accounting Methodology Documents.
- 11.38** The Dominant Provider shall maintain accounting records that show and fully justify, for each of the Markets, Network Components used to provide SMP Wholesale Services, and -SMP Wholesale Services,
- a) the attribution of costs, revenues, assets and liabilities; and
  - b) the transactions underlying the costs, revenues, assets and liabilities.
- 11.39** The Dominant Provider shall maintain the accounting records so that they are sufficient:
- a) to provide an adequate explanation of each Regulatory Financial Statement;
  - b) to show that any charges in relation to which the Dominant Provider is subject to Condition 4 are not unduly discriminatory; and
  - c) to show that any charges in relation to which the Dominant Provider is subject to Conditions 6, 12A.4 or 12G.9 comply with the obligations in that condition.

## **Requirements relating to the preparation and maintenance of a Wholesale Catalogue**

- 11.40** The Dominant Provider must prepare, maintain and keep up-to-date a Wholesale Catalogue. Such Wholesale Catalogue should separately identify and describe:
- a) Each SMP Wholesale Service or Basket published in the Regulatory Financial Statements,
    - i) where the SMP Wholesale Service or Basket is not a Shared Ancillary, arranged by the Market in which each service or Basket appears in the Regulatory Financial Statements; and

- ii) where the SMP Wholesale Service or Basket is a Shared Ancillary, in a schedule for Shared Ancillaries.
- b) Whether each SMP Wholesale Service published in the Regulatory Financial Statements is internally and/or externally supplied;
- c) A mapping between each SMP Wholesale Service and/or Basket published in the Regulatory Financial Statements and the Wholesale Services included in the Regulatory Accounting System, including their service codes; and
- d) A mapping between each SMP Wholesale Service and/or Basket published in the Regulatory Financial Statements and the services in all price lists relating to SMP Wholesale Services that are published by the Dominant Provider.

**11.41** 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 11.10 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 equivalence of inputs**

**11.42** In relation to each Market where Condition 5 applies, the Dominant Provider shall ensure it is able to demonstrate that at any point in time: the amount applied and incorporated in the Transfer Charge for the Internal Wholesale Service is equivalent to the amount applied and incorporated in the charge payable for an equivalent External Wholesale Service.

## Condition 12A – Physical Infrastructure Access Charge Control

**12A.1 (PI)** Except in so far as Ofcom may otherwise direct, the Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12A.1(a) to 12A.1(j) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in this Condition 12A.1:

- (a) for Facility in Spine duct per metre – single bore, the amount of £0.30;
- (b) for Facility in Spine duct per metre – 2 bores, the amount of £0.19;
- (c) for Facility in Spine duct per metre – 3+ bores, the amount of £0.14;
- (d) for Ducted Lead-in, the amount of £9.51;
- (e) for Facility on pole for Multi-end-user attachment, the amount of £5.41;
- (f) for Facility on pole for Single-end-user attachment, the amount of £2.12;
- (g) for Pole top equipment, the amount of £1.60;
- (h) for Cable up a pole (per cable), the amount of £1.06;
- (i) for Facility hosting (per manhole entry), the amount of £8.92;
- (j) for Facility hosting (per joint box entry), the amount of £2.13.

For the purposes of complying with this Condition 12A.1, for each of the services set out in Conditions 12A.1 (a) to 12A.1(j) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year 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 during which there are distinct charges in effect in 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 First Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by 365;

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

In performing the calculation required by this Condition 12A.1, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

**12A.2**

**(PI)**

Except in so far as Ofcom may otherwise direct, for each of the services specified in Condition 12A.1, the Dominant Provider shall take all reasonable steps to secure that:

(a) during the course of the Second Relevant Year, the maximum charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_i)$$

(b) during the course of the Third Relevant Year, the maximum charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_i)(100\% + CPI_3 + X_i)$$

(c) during the course of the Fourth Relevant Year, the maximum charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 4 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_i)(100\% + CPI_3 + X_i)(100\% + CPI_4 + X_i)$$

(d) during the course of the Fifth Relevant Year, the maximum charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 5 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_i)(100\% + CPI_3 + X_i)(100\% + CPI_4 + X_i)(100\% + CPI_5 + X_i)$$

Where:

$\bar{p}_i$  is the average charge for service  $i$  in the first Relevant Year as set out in Condition 12A.1(a) to 12A.1(j), as applicable;

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year;

$X_i$  is the relevant percentage for service  $i$  as follows:

- (i) 1.5% for Facility in Spine duct per metre – single bore;
- (ii) 5.1% for Facility in Spine duct per metre – 2 bores;
- (iii) 2.5% for Facility in Spine duct per metre – 3+ bores;
- (iv) 0.4% for Ducted Lead-in;
- (v) 0.3% for Facility on pole for Multi-end-user attachment;
- (vi) 0.2% for Facility on pole for Single-end-user attachment;
- (vii) 0.1% for Pole top equipment;
- (viii) 0.2% for Cable up a pole (per cable);
- (ix) 1.6% for Facility hosting (per manhole entry);
- (x) 1.1% for Facility hosting (per joint box entry).

**12A.3** Where the Dominant Provider provides PIA Adjustment Services, the Dominant Provider must not levy a charge for those PIA Adjustment Services, unless the total amount of charges that would otherwise have been accrued for PIA Adjustment Services in the PIA Order exceeds the PIA Adjustment Limit. In that case, the Dominant Provider may only charge a Third Party, as a maximum, the amount in excess of the PIA Adjustment Limit for providing those PIA Adjustment Services set out in that PIA Order.

**12A.4** This Condition 12A.4 applies to PIA Adjustment Services except:

- (PI)**
- (a) PIA Pole Adjustment Services undertaken to provide capacity on a pole to facilitate the provision of a drop wire; and
  - (b) PIA Pole Adjustment Services undertaken to replace a Defective Pole used to facilitate the provision of a drop wire,

where the charges for such services for the purposes of Condition 12A.3 shall be zero.

The Dominant Provider must secure and must be able to demonstrate to the satisfaction of Ofcom that for the purposes of Condition 12A.3 the charges for each separate PIA Adjustment Service within the scope of this Condition shall be reasonably derived from the costs of provision based on:

- (i) any external charge incurred by the Dominant Provider related to the provision of that PIA Adjustment Service;
- (ii) the Dominant Provider's forward looking long run incremental costs related to the provision of that PIA Adjustment Service;
- (iii) an appropriate mark-up for recovery of common costs; and
- (iv) an appropriate return on capital employed.

**12A.5** Except in so far as Ofcom may otherwise direct, the PIA Adjustment Limit for the purposes of Condition 12A.3 shall be calculated by multiplying the total number of kilometres of PIA Spine Duct requested as part of the PIA Order by £4,750.



**12A.6** Where:

- (PI)**
- (a) the Dominant Provider makes, or proposes to make, a material change to any service which is subject to this Condition 12A;
  - (b) the Dominant Provider makes a change to the date on which its Financial Year ends; or
  - (c) there is a material change in the basis of the Consumer Prices Index;

Condition 12A shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct.

For the purposes of this Condition 12A.6, a material change to any service which is subject to this Condition 12A includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing service which is subject to this Condition 12A; or a change to the billing practice for any service which is subject to this Condition 12A.

**12A.7** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12A. The data must include:

- (PI)**
- (a) the relevant published charges at the start of each Relevant Year; and
  - (b) such data as Ofcom may from time to time direct.

**12A.8** Ofcom may direct that Conditions 12A.1 to 12A.7 shall not apply to the extent specified in any such direction.

**(PI)**

**12A.9** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12A.

**(PI)**

**12A.10** In this Condition 12A:

**(PI)**

- (a) **“Defective Pole”** means a pole that has been identified by the Dominant Provider as unsuitable for additional connections due to the pole being decayed, damaged or otherwise defective;
- (b) **“Lead-in Duct”** means duct that connects, or is intended to connect, a distribution point to a Network Termination Point;
- (c) **“PIA Adjustment Service”** means one of the PIA Adjustment Services listed in Section 1 of the Annex to this Condition 12A which is provided for the purposes of making adjustments to physical infrastructure, such adjustments being reasonably necessary for the provision of Physical Infrastructure Access in accordance with Conditions 1 and 2;
- (d) **“PIA Adjustment Limit”** has the meaning given to it in Condition 12A.5;
- (e) **“PIA Pole Adjustment Service”** means one of the PIA Pole Adjustment Services listed in Section 2 of the Annex to this Condition 12A which is provided for the purposes of making adjustments to physical infrastructure, such adjustments being reasonably necessary for the provision of Physical Infrastructure Access in accordance with Conditions 1 and 2;
- (f) **“PIA Order”** means:
  - (i) a request for Physical Infrastructure Access submitted to the Dominant Provider by a Third Party;
  - (ii) any subsequent request for Physical Infrastructure Access which has been accepted by the Dominant Provider and is linked to the initial request; and
  - (iii) any subsequent request for access to Lead-in Duct which facilitates the extension of the electronic communications network deployed using the Physical Infrastructure ordered under (i) and (ii); and
- (g) **“PIA Spine Duct”** means all duct other than Lead-in Duct.

## Annex to Condition 12A

### Services subject to charge control pursuant to Condition 12A

#### Section 1

#### Meaning of “PIA Adjustment Services”

For the purposes of Condition 12A, the expression “PIA Adjustment Services” shall be construed as including all services specified in Section 1 of this Annex, subject to such changes as Ofcom may direct, 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).

Activity
New Small Footway Box
New Medium Footway Box
New Large Footway Box
New Small Carriageway Box
New Medium Carriageway Box
New Large Carriageway Box
Joint box breakthrough
Manhole breakthrough
Demolish chamber
Joint Chamber/Manhole 'pull through'; per 100m sub-duct
New Duct - soft; per metre
New Duct - footway; per metre
New Duct - carriageway; per metre
Cable recovery (light) - per 100m
Cable recovery (heavy) - per 100m
Cable recovery (large) - per 100m
Clearing a block in a Duct (Soft / Footway) first blockage
Clearing a block in a Duct (Carriageway) first blockage
Clearing a block in a Duct (Soft / Footway) subsequent blockage
Clearing a block in a Duct (Carriageway) subsequent blockage

Removal of locked lids – visit
Removal of locked lids - per hour
Issue of Security Key 1A - per key
Renew/replace frame and cover Carriageway
Renew/replace frame and cover Footway
Fit ladder in a manhole
New Pole
Replacement Carrier Pole
Replacement DP Pole
Pole recovery (removal) per pole
Renew and/or provide a Pole Stay
Renew, provide and/or re position Pole steps on Pole - per pole
Renew, provide and/or re position Bass step on Pole - per pole
Provide pole top ring-head
Block and tail renewal (rationalise copper blocks)
Erect Fibre Drop Cable / Tube
Customer changeover, per pole visit
Customer changeover - hourly rate
Re-tension, Refix and Renewal of aerial Cable
Re-tension, Refix and Renewal of drop wire
Lead assessor accreditation – surveyor
Lead assessor accreditation - overhead build
Lead assessor accreditation - underground build
Licensing of CP site as being suitable to deliver PIA non- civils accreditations (cost per site)
Diversionary Works; per hour
Restoration; per hour
Co-op Survey; per survey
Openreach Assist - per visit
Openreach Assist - per hour
Work Point Set-Up (Overhead and Cabling); per day
Network Adjustment Verification (Complex e.g. including rodding)
Network Adjustment Verification (Simple)

Work outside Working Hours (outside working day and not including Sundays or Bank Holidays) - per hour
Work outside Working Hours (Bank Holidays or Sundays) - per hour
Work undertaken on the British Outer Islands
Openreach Partner Mobilisation
Ferry travel for Scottish Islands
Local Authority fees
Non- standard civils work
Road closures (cable works)

## Section 2

### Meaning of “PIA Pole Adjustment Services”

For the purposes of Condition 12A, the expression “PIA Pole Adjustment Services” shall be construed as including all services specified in Section 2 of this Annex, subject to such changes as Ofcom may direct, 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).

Activity
New Pole
Replacement DP Pole
Pole recovery (removal) per pole
Renew and/or provide a Pole Stay
Renew, provide and/or re position Pole steps on Pole - per pole
Renew, provide and/or re position Bass step on Pole - per pole
Provide pole top ring-head
Block and tail renewal (rationalise copper blocks)
Erect Fibre Drop Cable / Tube
Customer changeover, per pole visit
Customer changeover - hourly rate
Re-tension, Refix and Renewal of aerial Cable
Re-tension, Refix and Renewal of drop wire
Lead assessor accreditation - surveyor
Lead assessor accreditation - overhead build
Lead assessor accreditation - underground build
Licensing of CP site as being suitable to deliver PIA non- civils accreditations (cost per site)
Diversinary Works; per hour
Restoration; per hour
Co-op Survey; per survey
Openreach Assist - per visit
Openreach Assist - per hour
Work Point Set-Up (Overhead and Cabling); per day
Network Adjustment Verification (Complex e.g. including rodding)
Network Adjustment Verification (Simple)

Work outside Working Hours (outside working day and not including Sundays or Bank Holidays) - per hour
Work outside Working Hours (Bank Holidays or Sundays) - per hour
Work undertaken on the British Outer Islands
Openreach Partner Mobilisation
Ferry travel for Scottish Islands
Local Authority fees
Non- standard civils work
Road closures (cable works)

**Condition 12B — LLU charge control**

**12B.1** The Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12B.5) for each of the categories of services set out below in this Condition 12B.1 is not more than the Controlling Percentage (as determined in accordance with Condition 12B.7):

**(WLA Area 2, WLA Area 3)**

- (a) the aggregate amount in respect of Tie Cables which was charged in WLA Area 2 and WLA Area 3;
- (b) the aggregate amount in respect of Hard Cease Services which was charged in WLA Area 2 and WLA Area 3;
- (c) the aggregate amount in respect of MPF New Provide Services which was charged in WLA Area 2 and WLA Area 3; and
- (d) the aggregate amount in respect of Co-Mingling New Provide and Rental Services which was charged in WLA Area 2 and WLA Area 3.

**12B.2** This Condition 12B.2 applies to MPF SML1 Rental except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12B.4(a) applies.

**(WLA Area 2, WLA Area 3)** The Dominant Provider shall not charge more than the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $[1 + CPI_t]$ ,

where  $CPI_t$  is CPI for the Relevant Year,  $t$ .

**12B.3** The Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12B.6) for each of the services set out below in this Condition 12B.3 is not more than the Controlling Percentage (as determined in accordance with Condition 12B.7):

**(WLA Area 2, WLA Area 3)**



- (a) the charge for MPF Single Migration, except for the First Relevant Year in relation to which the obligation specified in Condition 12B.4(b) applies;
- (b) the charge for MPF Bulk Migration, except for the First Relevant Year in relation to which the obligation specified in Condition 12B.4(c) applies;
- (c) the charge for MPF Standard Line Test, except for the First Relevant Year in relation to which the obligation specified in Condition 12B.4(d) applies;
- (d) the charge for MPF Cease, except for the First Relevant Year in relation to which the obligation specified in Condition 12B.4(e) applies.

**12B.4**

**(WLA Area 2, WLA Area 3)**

The Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12B.4 (a) to 12B.4(e) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in this Condition 12B.4:

- (a) for MPF SML1 Rental, not more than the amount of £85.54 in the First Relevant Year;
- (b) for MPF Single Migration, not more than the amount of £24.70 in the First Relevant Year;
- (c) for MPF Bulk Migration, not more than the amount of £18.06 in the First Relevant Year;
- (d) for MPF Standard Line Test, not more than the amount of £4.24 in the First Relevant Year; and
- (e) for MPF Cease, not more than the amount of £0 in each Relevant Year.

For the purposes of complying with this Condition 12B.4, for each of the services set out in Conditions 12B.4 (a) to 12B.4(e) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year 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 during which there are distinct charges in effect in 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 First Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by 365.

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

In performing the calculation required by this Condition 12B.4, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

**12B.5**

**(WLA Area 2, WLA Area 3)**

The Percentage Change for the purposes of each of the categories of services (each of which is known as a “Basket”) specified in Conditions 12B.1(a) to 12B.1(d) (inclusive) shall be calculated, for the purposes of complying with that Condition 12B.1, by employing the following formula:

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

Where:

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

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

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

$R_i$  is the Total Revenue accrued during the Prior Year in respect of the individual service  $i$  that forms part of the Basket;

$t$  is the Relevant Year;

$t-1$  is the Prior Year;

$\bar{p}_{i,t}$  is the Relevant Year Weighted Average Charge made by the Dominant Provider for the individual service  $i$  that forms part of the Basket during the Relevant Year, excluding any discounts offered by the Dominant Provider:

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

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

Where:

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

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

$w_{i,j,t}$  is the proportion of the Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by:

(i) for the First Relevant Year, 365;

(ii) for the Second Relevant Year, 365;

(iii) for the Third Relevant Year, 366;

(iv) for the Fourth Relevant Year, 365;

(v) for the Fifth Relevant Year, 365.

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

$\bar{p}_{i,t-1}$  is, for the purposes of calculating the Percentage Change for the First Relevant Year, the Initial Charge for the individual service  $i$  that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider. For the purposes of calculating the Percentage Change for

the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year,  $\bar{p}_{i,t-1}$  is the Prior Year Weighted Average Charge charged by the Dominant Provider for the individual service  $i$  that forms part of the Basket during the Prior Year, excluding any discounts offered by the Dominant Provider;

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

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

Where:

$m$  is the number of time periods during which there are distinct charges in effect in 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 each charge,  $p_{i,j,t-1}$ , is in effect, calculated by dividing the number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 365;
- (iv) for the Fourth Relevant Year, 366;
- (v) for the Fifth Relevant Year, 365.

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

**12B.6**            The Percentage Change for the purposes of each of the services specified (each of which  
**(WLA Area**    is referred to in this Condition as a “single charge category”) in Condition 12B.3 shall be  
**2,**                calculated, for the purposes of complying with Condition 12B.3, by employing the  
**WLA Area**    following formula:  
**3)**

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

Where:

$C_t$  is the Percentage Change in charges for the specific service in the single charge category in question for the Relevant Year  $t$ ;

$t$  is the Relevant Year;

$t-1$  is the Prior Year;

$\bar{p}_t$  shall be calculated by employing the formula set out in Condition 12B.5 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and the references in the formula to individual service  $i$  shall be treated as references to charges for the specific service in the single charge category in question; and

$\bar{p}_{t-1}$  shall be calculated by employing the formula set out in Condition 12B.5 for the Prior Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and the references in the formula to individual service  $i$  shall be treated as references to charges for the specific service in the single charge category in question.

**12B.7**

**(WLA Area 2, WLA Area 3)**

Subject to Condition 12B.9 below, the Controlling Percentage in relation to any Relevant Year for each of the categories of services specified in Condition 12B.1 and 12B.3 shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

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

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

*X* means zero:

- (a) For each of the categories of services specified in Condition 12B.1 and 12B.3, where the Percentage Change at the end of one or more of the following: (i) the First Relevant Year, (ii) the Second Relevant Year; (iii) the Third Relevant Year; (iv) the Fourth Relevant Year; is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12B.7(c);
  
- (b) For each of the categories of services specified in Condition 12B.1 and 12B.3, where the Percentage Change at the end of one or more of the following: (i) the First Relevant Year; (ii) the Second Relevant Year; (iii) the Third Relevant Year; (iv) the Fourth Relevant Year; is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12B.7(c);
  
- (c) For each of the categories of services specified in Condition 12B.1 and 12B.3, in the case of Deficiency or Excess, the Controlling Percentage shall be calculated by employing the following formula:

$$CP_t = \left[ \frac{(100\% + CPI_t + X)(100\% + CP_{t-1})}{(100\% + C_{t-1})} \right] - 100\%$$

Where:

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

$C_{t-1}$  is the Percentage Change in the charge for the category of services specified in Conditions 12B.1 and 12B.3 for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or the Fourth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) calculated in accordance with the formula for  $C_t$  set out in Condition 12B.5 or 12B.6, as applicable;

$X$  is as set out in this Condition 12B.7; and

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

- (d) For each of the categories of services specified in Conditions 12B.1 and 12B.3 where the Percentage Change in any Relevant Year is more than the Controlling Percentage, 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.

**12B.8**

Where the Dominant Provider publishes a Second Threshold Notice in relation to a Local Serving Exchange, this Condition 12B shall not apply to Copper-based Network Access in respect of any end user supplied with electronic

**(WLA Area 2, WLA Area 3)**

communications services using that Local Serving Exchange provided that Fibre-based Network Access is available to a Third Party on reasonable request in respect of any such end users.

**12B.9**

Where:

**(WLA Area 2, WLA Area 3)**

- (a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any Charge Controlled Service;
- (b) the Dominant Provider makes a change to the date on which its financial year ends; or
- (c) there is a material change in the basis of the Consumer Prices Index;

Conditions 12B.1 to 12B.8 (inclusive) shall have effect subject to such reasonable adjustment to take account of the change Ofcom may direct. For the purposes of this Condition 12B.9, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing Charge Controlled Service; or a change as to the billing practice for the Charge Controlled Service.

**12B.10**

**(WLA Area 2, WLA Area 3)**

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

- (a) pursuant to Conditions 12B.5 and 12B.6, as applicable, the calculated Percentage Change relating to each category of and services set out in Condition 12B.1 and 12B.3, as applicable;



- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12B.5 and 12B.6, including for each specific service in a Basket;
- (c) all relevant Total Revenues during the Relevant Year in respect of the individual service (as applicable) in the Basket and source and calculations thereof;
- (d) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods during which they were in force;
- (e) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services for which Condition 12B.5 and 12B.6 apply and calculations thereof;
- (f) other data necessary for monitoring compliance with the charge control; and
- (g) such data as Ofcom may from time to time direct.

In this Condition 12B.10 all relevant revenues in respect of a specific service in a Basket shall be provided to at least the nearest £1,000.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (f).

The information provided to Ofcom under (a) to (f) must be accompanied by a statement from a person independent from the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent from the Dominant Provider must set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12B.11** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than 30 November of each Relevant Year, the number of Homes passed with fibre in Area 3 as at 31 October of that Relevant Year, excluding any homes that were funded by government subsidy.

**(WLA Area 3)**

**12B.12** Conditions 12B.1 to 12B.11 (inclusive) shall not apply to such extent as Ofcom may direct.

**(WLA Area 2, WLA Area 3)**

**12B.13** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12B.

**(WLA Area 2, WLA Area 3)**

**12B.14** In this Condition 12B:

**(WLA Area 2, WLA Area 3)**

- a) **“Basket”** shall be construed in accordance with Condition 12B.5;
- b) **“Charge Controlled Service”** means a service or Basket of services listed in Conditions 12B.1, 12B.2 and 12B.3 in respect of which the Dominant Provider imposes a charge on a Third Party (for the avoidance of doubt, a charge is imposed, including where a charge of £0 is imposed); ;
- c) **“Co-Mingling New Provide and Rental Services”** means all of the services listed in Section 4 of the Annex 1 to this Condition 12B;
- d) **“Controlling Percentage”** is to be determined in accordance with Condition 12B.7;
- e) **“Deficiency”** shall be construed in accordance with Condition 12B.7(a);

- f) **“Excess”** shall be construed in accordance with Condition 12B.7(b);
- g) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in Conditions 12B.1, and 12B.3; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services listed in Conditions 12B.1 and 12B.3 if it had complied with Conditions 12B.1 or 12B.3 as applicable;
- h) **“Hard Cease Services”** means all of the services listed in Section 2 of the Annex 1 to this Condition 12B;
- i) **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with Condition 12B.5, the charge by the Dominant Provider for the individual service, *i*, in the relevant Basket as set out in the column entitled ‘Initial Charge’ in the relevant Section of the Annex 1 to this Condition 12B;
- j) **“MPF Bulk Migration”** shall be construed as having the same meaning as ‘MPF Mass Migration charge - Normal hours’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- k) **“MPF Cease”** shall be construed as having the same meaning as ‘MPF Cease charge’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- l) **“MPF New Provide Services”** means all of the services listed in Section 3 of the Annex 1 to this Condition 12B;
- m) **“MPF Remove Jumper Order Bulk Charge”** shall be construed as having the same meaning as the service described in row 2 of the table in Section 2 of the Annex 1 to Condition 12B;
- n) **“MPF Remove Jumper Order Singleton Charge”** shall be construed as having the same meaning as the service described in row 1 of the table in Section 2 of the Annex 1 to Condition 12B;

- o) **“MPF Single Migration”** shall be construed as having the same meaning as “MPF Connection charge – Singleton migrations (Transfer from WLR/SMPF or Change of CP migrations)”, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- p) **“MPF Standard Line Test”** shall be construed as having the same meaning as ‘MPF Standard line test’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- q) **“MPF Tie Pair Modification”** shall be construed as having the same meaning as the service described in row 6 of the table in Section 3 of the Annex 1 to this Condition 12B;
- r) **“MPF Tie Pair Modification (Multiple Re-termination)”** shall be construed as having the same meaning as the service described in row 7 of the table in Section 3 of the Annex 1 to this Condition 12B;
- s) **“Percentage Change”** has the meaning given to it in Condition 12B.5 and 12B.6, as applicable;
- t) **“Prior Year Weighted Average Charge”** shall be determined in accordance with the specified formula in Condition 12B.5 and 12B.6, as applicable;
- u) **“Relevant Year Weighted Average Charge”** shall be determined in accordance with the specified formula in Condition 12B.5 and 12B.6, as applicable;
- v) **“Tie Cables”** means all of the services listed in Section 1 of the Annex 1 to this Condition 12B; and
- w) **“Total Revenue”** means the total revenue from communications providers (including, for the avoidance of doubt, from the Dominant Provider to itself), in relation to the services subject to this Condition 12B, excluding any discounts offered by the Dominant Provider.

## Annex 1 to Condition 12B

### Services subject to charge control pursuant to Conditions

#### 12B.1(a), 12B.1(b), 12B.1(c) and 12B.1(d)

#### Section 1

#### Meaning of Tie Cables

For the purposes of Condition 12B, the expression “Tie Cables” shall be construed as including only the following forty eight services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new service or to substitute one or more of these forty eight services for another:

Item	Initial Charge
1. Handover Distribution Frame charge per 100 pair tie cable	£18.55
2. Handover Distribution Frame Extension to provide additional 1500 tie pair capacity for MCU1	£232.22
3. Additional Handover Distribution Frame to provide additional 4800 tie pair capacity for B-BUSS7	£1,752.12
4. Standalone Handover Distribution Frame (HDF) 9	£1,908.83
5. Standalone Handover Distribution Frame (HDF) 18	£1,255.82
6. Internal Tie Cable (2) Jointing Fixed Charge per External Tie Cable	£165.12
7. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Connection	£153.19
8. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Annual Rental	£18.68
9. Internal Tie Cable (2) – Connection	£145.62
10. Internal Tie Cable (2) – Annual Rental	£13.86

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11.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling – Connection	£423.81
12.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling – Annual Rental	£80.19
13.	21CN-32 pair standard Internal Tie Cable-HDF connected – Connection	£250.91
14.	21CN-32 pair standard Internal Tie Cable-HDF connected – Annual Rental	£35.27
15.	21CN-64 pair standard Internal Tie Cable-HDF connected – Connection	£320.03
16.	21CN-64 pair standard Internal Tie Cable-HDF connected – Annual Rental	£44.99
17.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Connection	£148.27
18.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£32.51
19.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Connection	£190.91
20.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£41.99
21.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Connection	£235.61
22.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£68.37
23.	LLU Internal Tie Cable Cease of 1-10 Cables (per Point of Presence)	£348.64
24.	LLU Internal Tie Cable Cease of 11-20 Cables (per Point of Presence)	£572.63
25.	LLU Internal Tie Cable Cease of 21-30 Cables (per Point of Presence)	£636.73
26.	LLU Internal Tie Cable Cease of 31-40 Cables (per Point of Presence)	£728.21
27.	LLU Internal Tie Cable Cease of 41-50 Cables (per Point of Presence)	£794.94
28.	BT Provided External 100 Pair cable @ 100 metres - Connection charge per cable	£920.25
29.	BT Provided External 100 Pair cable @ 100 metres - Connection charge per extra 100 pair	£290.29
30.	BT Provided External 100 Pair cable @ 100 metres – Connection charge per extra 100 metres	£143.66

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31.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per cable	£98.78
32.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£95.99
33.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per extra 100m	£81.41
34.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable	£1,505.22
35.	BT Provided external 500 Pair cable @ 100 metres – Connection charge per cable per extra 100m	£143.66
36.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable per extra 100 pairs	£290.29
37.	BT Provided external 500 Pair cable @ 100 metres - Rental per annum per cable	£158.43
38.	BT Provided external 500 Pair cable @ 100 metres - Rental per annum per extra 100m	£151.88
39.	BT Provided external 500 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£102.43
40.	Hand-over Distribution Frame option per 100 pair Frame capacity	£114.63
41.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Connection charge per cable	£815.61
42.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£279.24
43.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Rental fixed per annum per cable	£23.09
44.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£14.71
45.	Communications Provider Provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Connection charge per cable	£1,159.68

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46.	Communications Provider provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£279.24
47.	Communications Provider Provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Rental fixed per annum per cable	£32.08
48.	Communications Provider provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£14.71

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## Section 2

### Meaning of Hard Cease Services

For the purposes of Condition 12B, the expression “Hard Cease Services” shall be construed as including only the following two services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new service or to substitute one or more of these four services for another:

	Item	Initial Charge
1.	MPF MDF Remove Jumper Order Singleton Charge	£18.22
2.	MPF MDF Remove Jumper Order Bulk Charge	£11.06

### Section 3

#### Meaning of MPF New Provide Services

For the purposes of Condition 12B, the expression “MPF New Provide Services” shall be construed as including only the following seven services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new service or to substitute one or more of these seven services for another:

	Item	Initial Charge
1.	MPF Working Line Takeover (WLTO)	£29.61
2.	MPF Connection Charge Stopped Line Provide	£29.61
3.	MPF Working Line Takeover (WLTO) Re-using existing LIJ	£10.08
4.	MPF Connection Charge Stopped Line Provide Re-using existing LIJ	£10.08
5.	MPF Connection charge – New Provide Standard	£38.10
6.	MPF Tie Pair Modification (3 working day lead time Re-termination)	£29.76
7.	MPF Tie Pair Modification (Multiple Re-termination)	£22.38

## Section 4

### Meaning of Co-Mingling New Provide and Rental Services

For the purposes of Condition 12B, the expression “Co-Mingling New Provide and Rental Services” shall be construed as including only the following thirty three services, subject to any such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new service or to substitute one or more of these thirty three for another:

Item	Initial Charge
1. Distant location full survey	£1,937.48
2. Missed joint survey or testing appointment	£35.84
3. Co-location order rejection - no space available	£452.04
4. Co-location full survey	£9981.58
5. Site visit charge to be allocated to all orders not in conjunction with the installation of a base product	£566.87
6. Co-Mingling order rejection - no space or insufficient space available	£925.67
7. APO Cancellation Charge	£471.83
8. Co-Mingling set up fee (per sq metre)	£469.59
9. Comingling Shared Point of Presence Administration Fee	£454.44
10. Cooling per kw	£3,080.86
11. FCP (Powerbase) AC only base unit 600mm (w) x 600mm (d) to include lighting and cable management	£3621.61

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12.	FCP (Powerbase) AC only base unit 800mm (w) x 600mm (d) to include lighting and cable management	£3945.07
13.	FCP (Powerbase) AC only base unit 600mm (w) x 800mm (d) to include lighting and cable management	£3617.50
14.	FCP (Powerbase) AC only base unit 800mm (w) x 800mm (d) to include lighting and cable management	£4322.24
15.	HDF sub rack (per sub rack 3x 100 pair capacity)	£49.78
16.	HDF cabinet 800mm (w) x 600mm (d) for FCP	£1,873.14
17.	HDF cabinet 800mm (w) x 800mm (d) for FCP	£2,267.03
18.	Rack Space Unit (RSU) for FCP to include lighting and cable management	£765.66
19.	MCB customisation at initial build for FCP	£52.91
20.	Cabinet doors per pair for FCP only (where provided as an upgrade will be subject to a Site Visit charge)	£602.70
21.	BT's Normal Working Hours, planned (hourly charge)	£53.40
22.	BT's Normal Working Hours, unplanned (hourly charge)	£80.00
23.	BASIS (BT Assisted Site Delivery Service) fixed charge	£638.20
24.	Site Access	£463.76
25.	Handover	£386.01
26.	Provision of sub meter	£1082.04
27.	Survey for capacity upgrade	£691.38
28.	AC Final Distribution Rental per 10kW increment per annum (Charges will appear in billed units of decawatts (10W))	£620.39
29.	Security rental per square metre per annum	£42.61

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30.	Service Charge per square metre per annum	£107.63
31.	Security partitioning per site – annual rental charge	£229.64
32.	Rental of existing capacity per kW per annum (Charges will appear in billed units of decawatts (10W))	£319.20
33.	MDF Licence Fee per Internal Tie Cable per annum	£41.43

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## Condition 12C – VULA charge control

### 12C.1

#### (WLA Area 2, WLA Area 3)

Subject to Condition 12C.4 and the exceptions set out in this Condition 12C.1 below, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12C.6) in services set out in Conditions 12C.1(a) to 12C.1(n) (inclusive) is not more than the Controlling Percentage (as determined in accordance with Condition 12C.7):

- (a) the charge for FTTC 40/10 PCP Only Install Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(b) applies;
- (b) the charge for FTTC 40/10 Start of Stopped Line Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(c) applies;
- (c) the charge for VULA Migration, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(d) applies;
- (d) the charge for VULA Bandwidth Change, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(e) applies;
- (e) the charge for FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach does not have an active connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(f) applies;
- (f) the charge for FTTP 40/10 Connection at a location at which Copper-based Network Access services are available and that connection is to a premises

where Openreach has an active connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(g) applies;

- (g) the charge for FTTP 40/10 Connection at a location at which no Copper-based Network Access services are available and that connection is to a premises where Openreach has an active connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(h) applies;
- (h) the charge for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(i) applies;
- (i) the charge for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(j) applies;
- (j) the charge for 1 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(k) applies;
- (k) the charge for 10 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(l) applies;
- (l) the charge for Superfast Visit Assure, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(m) applies;
- (m) the charge for VULA Cease, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(n) applies; and
- (n) the charge for SOGEA 40/10 Rental, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(o) applies.

**12C.2**

**(WLA  
Area 2,  
WLA  
Area 3)**

Except in so far as Ofcom may otherwise direct, the Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12C.2 (a) to 12C.2(o) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in Condition 12C.3:

- (a) for FTTC 40/10 Rental, the amount of £60.40;
- (b) for FTTC 40/10 PCP Only Install Connection, the amount of £47.17;
- (c) for FTTC Start of Stopped Line Connection, the amount of £3.08;
- (d) for VULA Migration, the amount of £3.08;
- (e) for VULA Bandwidth Change, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, the amount of £5.63;
- (f) for FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach does not have an active connection, the amount of £126.13;
- (g) for FTTP 40/10 Connection at a location at which Copper-based Network Access services are available and that connection is to a premises where Openreach has an active connection, the amount of £126.13;
- (h) for FTTP 40/10 Connection at a location at which no Copper-based Network Access services are available and that connection is to a premises where Openreach has an active connection, the amount of £0;
- (i) for 1 Gbit Cablelink Connection, the amount of £524.65;



- (j) for 10 Gbit Cablelink Connection, the amount of £1,049.29;
- (k) for 1 Gbit Cablelink Rental, the amount of £0;
- (l) for 10 Gbit Cablelink Rental, the amount of £0;
- (m) for Superfast Visit Assure, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, the amount of £130.91;
- (n) for VULA Cease, the amount of £0; and
- (o) for SOGEA 40/10 Rental, the amount of £145.94.

**12C.3**

**(WLA  
Area 2,  
WLA  
Area 3)**

For the purposes of complying with Condition 12C.2, for each of the services set out in Conditions 12C.2(a) to 12C.2(o) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year 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 during which there are distinct charges in effect in 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 First Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by 365;

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

In performing the calculation required by this Condition 12C.3, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

**12C.4**

**(WLA**

**Area 2,**

**WLA Area**

**3)**

For each of the services specified in Condition 12C.1 where the average charge for the relevant service in the First Relevant Year is lower than the amount set out in Condition 12C.2(b) to 12C.2(o) (inclusive), the Dominant Provider shall take all reasonable steps to secure that:

- (a) at the end of the Second Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X)$$

- (b) at the end of the Third Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X)(100\% + CPI_3 + X)$$

- (c) at the end of the Fourth Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\begin{aligned} \text{Year 4 charge ceiling} \\ = \bar{p}_i(100\% + CPI_2 + X)(100\% + CPI_3 + X)(100\% + CPI_4 \\ + X) \end{aligned}$$

- (d) at the end of the Fifth Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

*Year 5 charge ceiling*

$$= \bar{p}_i(100\% + CPI_2 + X)(100\% + CPI_3 + X)(100\% + CPI_4 + X)(100\% + CPI_5 + X)$$

Where:

*Year 2 charge ceiling* is the average charge ceiling applicable in the Second Relevant Year where the average charge for the relevant service in the First Relevant Year is lower than the amount set out in Conditions 12C.2(b) to 12C.2(o) as applicable;

*Year 3 charge ceiling* is the average charge ceiling applicable in the Third Relevant Year where the average charge for the relevant service in the First Relevant Year is lower than the amount set out in Conditions 12C.2(b) to 12C.2(o) as applicable;

*Year 4 charge ceiling* is the average charge ceiling applicable in the Fourth Relevant Year where the average charge for the service in the First Relevant Year is lower than the amount set out in Conditions 12C.2(b) to 12C.2(o) as applicable;

*Year 5 charge ceiling* is the average charge ceiling applicable in the Fifth Relevant Year where the average charge for the relevant service in the First Relevant Year is lower than the amount set out in Conditions 12C.2(b) to 12C.2(o) as applicable;

$\bar{p}_i$  is the amount set out in Conditions 12C.2(b) to 12C.2(o) as applicable;

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year

$X$  is as set out in Condition 12C.7.

The average charge for the relevant service in the First Relevant Year, in the Second Relevant Year, in the Third Relevant Year, in the Fourth Relevant Year and in the Fifth Relevant Year shall be calculated by employing the formula set out in Condition 12C.6 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider.

**12C.5**

**(WLA Area  
2, WLA Area  
3)**

Except in so far as Ofcom may otherwise direct, in each of the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, in respect of the service specified in Condition 12C.2(a) the Dominant Provider shall not charge more than the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $[1+CPI_t]$ , where  $CPI_t$  is CPI for the Relevant Year,  $t$ .

**12C.6**

**(WLA Area  
2, WLA  
Area 3)**

The Percentage Change for the purposes of each of the services specified (each of which is referred to in this Condition as a “single charge category”) in Condition 12C.1 shall be calculated, for the purposes of complying with Condition 12C.1, by employing the following formula:

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

Where:

$C_t$  is the Percentage Change in charges for the specific service in the single charge category in question for the Relevant Year  $t$ ;

$t$  is the Relevant Year;

$t-1$  is the Prior Year;

$\bar{p}_t$  is the Relevant Year Weighted Average Charge charged by the Dominant Provider for the specific service in the single charge category in question for the Relevant Year  $t$ , excluding any discounts offered by the Dominant Provider:

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 during which there are distinct charges in effect in 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 each charge,  $p_{j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 366;
- (iv) for the Fourth Relevant Year, 365; and
- (v) for the Fifth Relevant Year 365.

$p_{j,t}$  is the charge for the specified period,  $j$ , during the Relevant Year  $t$  for the specific service in the single charge category in question;

$\bar{p}_{t-1}$  is, for the purposes of calculating the Percentage Change for the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, the Prior Year Weighted Average Charge made by the Dominant Provider for the specific service in the single charge category in question during the Prior Year, excluding any discounts offered by the Dominant Provider;

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 during which there are distinct charges in effect in 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 each charge,  $p_{j,t-1}$ , is in effect, calculated by dividing the number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 365;
- (iv) for the Fourth Relevant Year, 366; and
- (v) for the Fifth Relevant Year, 365.

$p_{j,t-1}$  is the charge for the individual period,  $j$ , during the Prior Year,  $t-1$ , for the specific service in the single charge category in question.

**12C.7**

**(WLA Area  
2, WLA Area  
3)**

Subject to Conditions 12C.7(a) to 12C.7(d) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in Condition 12C.1 shall be calculated by employing the following formula:

$$CP_t = CPI_t + X$$

Where:

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

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

X means Zero for the services specified in Condition 12C.1 (a) to (n): Zero

- (a) For each of the services specified in Condition 12C.1 , and unless Condition 12C.4 applies, where the Percentage Change at the end of the First Relevant Year, the Second Relevant Year, the Third Relevant Year or the Fourth Relevant Year is less than the Controlling Percentage (“**Deficiency**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12C.7(c).
- (b) For each of the services specified in Condition 12C.1, and unless Condition 12C.4 applies, where the Percentage Change at the end of the First Relevant Year, the Second Relevant Year, the Third Relevant Year and the Fourth Relevant Year is more than the Controlling Percentage (“**Excess**”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12C.7(c).
- (c) For each of the services specified in Condition 12C.1, and unless Condition 12C.4 applies, in the case of Deficiency or Excess, the Controlling Percentage shall be calculated by employing the following formula:

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

Where:

$CP_t$  is the Controlling Percentage for the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year) or the Fifth Relevant Year (in the case of Deficiency or Excess in the Fourth 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), the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year) and the Fourth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) .

$C_{t-1}$  is the Percentage Change in the charge for the services specified in Condition 12C.1 for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year) or the Fourth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) calculated in accordance with the formula for  $C_t$  set out in Condition 12C.6;

$X$  is as set out in this Condition 12C.7; and

$CPI$  has the meaning ascribed to it in Part 2 of the Schedule to this notification.

- (d) For each of the services specified in Condition 12C.1, and unless Condition 12C.4 applies, where the Percentage Change in any Relevant Year is more than the Controlling Percentage, 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.

**12C.8**

**(WLA Area 2,  
WLA Area 3)**

At locations at which no Copper-based Network Access services are available, the Dominant Provider shall secure that during each Relevant Year, the maximum amount charged by it for FTTP 40/10 Rental is not higher than the amount equal to the sum of the following: (i) the charge for FTTC 40/10 Rental; (ii) the charge for MPF SML1 Rental; and (iii) an amount of Fibre Premium.



Where an amount of Fibre Premium is:

- (a) in the First Relevant Year, a maximum amount of £20.40;
- (b) in the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, a maximum amount calculated as follows:

an amount of Fibre Premium in the Prior Year multiplied by  $[1 + CPI_t]$

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

**12C.9**

The Dominant Provider shall secure that during each Relevant Year:

**(WLA Area  
2, WLA  
Area 3)**

- (a) the amount charged by the Dominant Provider for VULA Cancel/Amend/Modify - CRD is the same as the amount charged for VULA Bandwidth Change where the VULA Bandwidth Change relates to: (i) Copper-based Network Access services; or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available;
- (b) the amount charged by the Dominant Provider for VULA Cancel/Amend/Modify - Regrading is the same as the amount charged for VULA Bandwidth Change where the VULA Bandwidth Change relates to: (i) Copper-based Network Access services; or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available; and
- (c) the amount charged by the Dominant Provider for VLAN Move is the same as the amount charged for VULA Bandwidth Change, where the VULA Bandwidth Change relates to: (i) Copper-based Network Access services; or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available.

**12C.10**

Where:

**(WLA Area  
2, WLA  
Area 3)**

- (a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any Charge Controlled Service;
- (b) the Dominant Provider makes a change to the date on which its financial year ends; or
- (c) there is a material change in the basis of the Consumer Prices Index,

Conditions 12C.1 to 12C.9 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of this Condition 12C.10, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing Charge Controlled Service; or a change as to the billing practice for the Charge Controlled Service.

**12C.11  
(WLA Area  
2, WLA  
Area 3)**

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

- (a) pursuant to Condition 12C.6, the calculated Percentage Change relating to each service listed in Condition 12C.1;
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12C.6, including for each specific service;
- (c) all relevant Total Revenues during the Relevant Year in respect of the individual service (as applicable) in the Basket and source and calculations thereof;

- (d) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods during which they were in force;
- (e) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services to which Condition 12C.6 applies and calculations thereof;
- (f) other data necessary for monitoring compliance with the charge control; and
- (g) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (f).

The information provided to Ofcom under (a) to (f) must be accompanied by a statement from a person independent from the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent from the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12C.12**  
**(WLA Area**  
**2, WLA**  
**Area 3)**

For the purposes of this Condition 12C, Copper-based Network Access is available at a location if: (i) it can be provided; and (ii) is required to be provided for new connections by the Dominant Provider under Conditions 1 and 2.

**12C.13**  
**(WLA Area**  
**2, WLA**  
**Area 3)**

Where the Dominant Provider publishes a Second Threshold Notice in relation to a Local Serving Exchange, this Condition 12C shall not apply to Copper-based Network Access in respect of any end user supplied with electronic communications services using that Local Serving Exchange provided that Fibre-based Network Access is available to a Third Party on reasonable request in respect of any such end users.

- 12C.14** Conditions 12C.1 to 12C.13 shall not apply to such extent as Ofcom may direct.
- (WLA Area 2, WLA Area 3)**
- 12C.15** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12C.
- (WLA Area 2, WLA Area 3)**
- 12C.16** Condition 12C is subject to the direction of 29 January 2020 published at Annex 3 of the Salisbury and Mildenhall Statement and which, for these purposes, shall be read as if it has been given under that Condition.
- (WLA Area 2, WLA Area 3)**
- 12C.17** In this Condition 12C:
- (WLA Area 2), WLA Area 3)**
- (a) **“1 Gbit Cablelink Connection”** shall be construed as having the same meaning as the connection charge for ‘1 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
  - (b) **“10 Gbit Cablelink Connection”** shall be construed as having the same meaning as the connection charge for ‘10 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;

- (c) **“1 Gbit Cablelink Rental”** shall be construed as having the same meaning as the annual rental charge for ‘1 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (d) **“10 Gbit Cablelink Rental”** shall be construed as having the same meaning as the annual rental charge for ‘10 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (e) **“Charge Controlled Service”** means a service listed in Condition 12C.1 in respect of which the Dominant Provider imposes a charge on a Third Party (for the avoidance of doubt, a charge is imposed, including where a charge of £0 is imposed);
- (f) **“Controlling Percentage”** is to be determined in accordance with Condition 12C.7;
- (g) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in Conditions 12C.1, as applicable; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services listed in Conditions 12C.1, as applicable if it had complied with Condition 12C.1;
- (h) **“FTTC 40/10 Rental”** shall be construed as having the same meaning as ‘Up to 40Mbit/s downstream and up to 10Mbit/s upstream (including Simultaneous Provide)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;

- (i) **“FTTC 40/10 PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website , where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (j) **“FTTC PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website, where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;
- (k) **“FTTC 40/10 Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website, where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (l) **“FTTC Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website, where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;
- (m) **“FTTP 40/10 Connection”** shall be construed as having the same meaning as the connection charge for ‘Up to 40Mbit/s / 10Mbit/s "data product", which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website;
- (n) **“Percentage Change”** has the meaning given to it in 12C.6;

- (o) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in 12C.4;
- (p) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in 12C.4;
- (q) **“SOGEA 40/10 Rental”** shall be construed as having the same meaning as the annual rental charge for 'Single Order Generic Ethernet Access up to 40Mbit/s/10Mbit/s' as provided by the Dominant Provider where Single Order Generic Ethernet Access is the name given by the Dominant Provider to its GEA- 29 FTTC service where only a broadband service is being provided;
- (r) **“Superfast Visit Assure”** shall be construed as having the same meaning as ‘Visit Assure – Visit to customer premises’ which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out as provided by the Dominant Provider on its website;
- (s) **“VLAN Move”** shall be construed as having the same meaning as ‘VLAN moves applied to GEA Cablelink Modify transactions’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (t) **“VULA 40/10 Cancel/Amend/Modify – CRD”** shall be construed as having the same meaning as ‘Cancel/Amend/Modify - CRD Amend, order notes amend, order cancellation, Care Level’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website, where the change is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (u) **“VULA 40/10 Cancel/Amend/Modify – Regrading”** shall be construed as having the same meaning as ‘Cancel/Amend/Modify - Regrading of existing upstream or downstream speed, both at point of sale and in-life’ which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website, where the change is to allow a Third

Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;

- (v) **“VULA Cease”** shall be construed as having the same meaning as ‘Service cessation (any product variant)’ which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website; and
- (w) **“VULA Migration”** means the transfer of control of a Virtual Unbundled Local Access service between Third Parties purchasing Virtual Unbundled Local Access from the Dominant Provider.



## Condition 12D – Charge controls and related provisions relevant to both MPF and VULA

**12D.1** The charge controls in this Condition 12D.1 apply to the services specified below where those services relate to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available.

(WLA Area  
2, WLA Area  
3)

Subject to Condition 12D.2 and the exceptions set out in this Condition 12D.1 below, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12D.4) in the charge for each of services set out in Conditions 12D.1(a) to 12D.1(l) (inclusive) is not more than the Controlling Percentage (as determined in accordance with Condition 12D.5):

- (a) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(a)(i) applies;
- (b) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(a)(ii) applies;
- (c) the charge for a Standard Chargeable Visit when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(a)(iii) applies;
- (d) the charge for an Additional Hour when that service is provided by the Dominant Provider within the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(b)(i) applies;

- (e) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(b)(ii) applies;
- (f) the charge for an Additional Hour when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(b)(iii) applies;
- (g) the charge for Supplementary Charges (Per Visit), when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(c)(i) applies;
- (h) the charge for Supplementary Charges (Per Visit), when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(c)(ii) applies;
- (i) the charge for Supplementary Charges (Per Hour), when that service is provided by the Dominant Provider on a Non-Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(d)(i) applies;
- (j) the charge for Supplementary Charges (Per Hour), when that service is provided by the Dominant Provider on a Saturday or outside the hours of 8am to 5pm on a Working Day, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(d)(ii) applies;
- (k) the charge for Internal and External Shifts, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(e) applies; and
- (l) the charge for Additional Line Shifted, except for the First Relevant Year in relation to which the obligation set out in Condition 12D.3(f) applies.

**12D.2** For each of the services specified in Conditions 12D.1(a) to 12D.1(l) (inclusive), where  
**(WLA Area 2,** the average charge for the relevant service during the course of the First Relevant Year  
**WLA Area 3)** is lower than the amount set out in Condition 12D.3(a) to 12D.3(f) as applicable, the  
 Dominant Provider shall take all reasonable steps to secure that:

- (a) during the course of the Second Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X)$$

- (b) during the course of the Third Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X)(100\% + CPI_3 + X)$$

- (c) during the course of the Fourth Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 4 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X)(100\% + CPI_3 + X)(100\% + CPI_4 + X)$$

- (d) during the course of the Fifth Relevant Year, the average charge for the relevant service is not more than the amount calculated by employing the following formula:

$$\text{Year 5 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X)(100\% + CPI_3 + X)(100\% + CPI_4 + X)(100\% + CPI_5 + X)$$

Where:

*Year 2 charge ceiling* is the average charge ceiling applicable in the Second Relevant Year where the average charge for the relevant service over the course of the First Relevant Year is lower than the amount set out in Condition 12D.3(a) to 12D.3(f), as applicable;

*Year 3 charge ceiling* is the average charge ceiling applicable in the Third Relevant Year where the average charge for the relevant service over the course of the First Relevant Year is lower than the amount set out in Condition 12D.3(a) to 12D.3(f), as applicable;

*Year 4 charge ceiling* is the average charge ceiling applicable in the Fourth Relevant Year where the average charge for the relevant service over the course of the First Relevant Year is lower than the amount set out in Condition 12D.3(a) to 12D.3(f), as applicable;

*Year 5 charge ceiling* is the average charge ceiling applicable in the Fifth Relevant Year where the average charge for the relevant service over the course of the First Relevant Year is lower than the amount set out in Condition 12D.3(a) to 12D.3(f), as applicable;

$\bar{p}_i$  is the amount set out in Condition 12D.3(a) to 12D.3(f), as applicable;

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year;

$X$  is as set out in Condition 12D.5.

The average charge for the relevant service over the course of the First Relevant Year, the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the

Fifth Relevant shall be calculated by employing the formula set out in Condition 12D.4 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider.

**12D.3** The charge controls in this Condition 12D.3 apply to the services specified below where those services relate to: (i) Copper-based Network Access services; or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available.

**(WLA Area 2, WLA Area 3)**

The Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12D.3(a) to 12D.3(f) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in this Condition 12D.3:

(a) for a Standard Chargeable Visit, the amount of:

- (i) £77.77 when that service is provided within the hours of 8am to 5pm on a Working Day;
- (ii) £112.80 when that service is provided on a Non-Working Day; and
- (iii) £95.30 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

(b) for an Additional Hour, the amount of:

- (i) £35.03 per hour when that service is provided within the hours of 8am to 5pm on a Working Day;
- (ii) £70.08 per hour when that service is provided on a Non-Working Day; and
- (iii) £52.55 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;

- (c) for Supplementary Charges (Per Visit), the amount of:
- (i) £42.73 when that service is provided on a Non-Working Day; and
  - (ii) £21.37 when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;
- (d) for Supplementary Charges (Per Hour), the amount of:
- (i) £42.73 per hour when that service is provided on a Non-Working Day; and
  - (ii) £21.37 per hour when that service is provided on a Saturday or outside the hours of 8am to 5pm on a Working Day;
- (e) for Internal and External Shifts, the amount of £85.46; and
- (f) for Additional Line Shifted, the amount of £42.73.

For the purposes of complying with Condition 12D.3, for each of the services set out in Conditions 12D.3(a) to 12D.3(f) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year 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 during which there are distinct charges in effect in 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 First Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by 365.

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

In performing the calculation required by this Condition 12D.3, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

**12D.4** The Percentage Change for the purposes of each of the services specified (each of which is referred to in this Condition as a “single charge category”) in Condition 12D.1 shall be calculated, for the purposes of complying with Condition 12D.1, by employing the following formula:

**(WLA Area 2, WLA Area 3)**

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

Where:

$C_t$  is the Percentage Change in charges for the specific service in the single charge category in question for the Relevant Year  $t$ ;

$t$  is the Relevant Year;

$t-1$  is the Prior Year;

$\bar{p}_t$  is the Relevant Year Weighted Average Charge charged by the Dominant Provider for the specific service in the single charge category in question for the Relevant Year  $t$ , excluding any discounts offered by the Dominant Provider:

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 during which there are distinct charges in effect in

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

- (a) for the First Relevant Year, 365;
- (b) for the Second Relevant Year, 365;
- (c) for the Third Relevant Year, 366;
- (d) for the Fourth Relevant Year, 365; and
- (e) for the Fifth Relevant Year, 365.

$p_{j,t}$  is the charge for the specified period,  $j$ , during the Relevant Year  $t$  for the specific service in the single charge category in question;

$\bar{p}_{t-1}$  is, for the purposes of calculating the Percentage Change for the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, the Prior Year Weighted Average Charge charged by the Dominant Provider for the specific service in the single charge category in question during the Prior Year, excluding any discounts offered by the Dominant Provider;

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 during which there are distinct charges in effect in 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 each charge,  $p_{j,t-1}$ , is in effect, calculated by dividing the number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 365;
- (iv) for the Fourth Relevant Year, 366; and
- (v) for the Fifth Relevant Year, 365.

$p_{j,t-1}$  is the charge for the individual period,  $j$ , during the Prior Year,  $t-1$ , for the specific service in the single charge category in question.

**12D.5** Subject to Conditions 12D.5(a) to 12D.5(d) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in Condition 12D.1 shall be calculated by employing the following formula:

**2,**

$$CP_t = CPI_t + X$$

**WLA Area**

**3)**

Where:

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

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

$X$  means, for each service specified in Condition 12D.1(a) to (l) (inclusive): zero

(a) For each of the services specified in Condition 12D.1 and unless Condition 12D.2 applies, where the Percentage Change at the end of the First Relevant Year, the Second Relevant Year, the Third Relevant Year or the Fourth Relevant Year is less than the Controlling Percentage (“Deficiency”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12D.5(c).

(b) For each of the services specified in Condition 12D.1 and unless Condition 12D.2 applies, where the Percentage Change at the end of the First Relevant Year, the Second Relevant Year, the Third Relevant Year or the Fourth Relevant Year is more

than the Controlling Percentage (“Excess”), then the Controlling Percentage for the following Relevant Year shall be determined in accordance with Condition 12D.5(c).

- (c) For each of the services specified in Condition 12D.1 and unless Condition 12D.2 applies, in the case of Deficiency or Excess, the Controlling Percentage shall be calculated by employing the following formula:

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

Where:

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

$CP_{t-1}$  is the Controlling Percentage for the Basket for the Prior Year, calculated in accordance with the formula for  $CP_t$  set out in Condition 12D.5;

$C_{t-1}$  is the Percentage Change in the charge for the services specified in Condition 12D.1 for the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or the Fourth Relevant Year (in the case of Deficiency or Excess in the Fourth Relevant Year) calculated in accordance with the formula for  $C_t$  set out in Condition 12D.4;

*CPI* has the meaning ascribed to it in Part 2 of the Schedule to this notification;

*X* is as set out in this Condition 12D.5.

- (d) For each of the services specified in Condition 12D.1 and unless Condition 12D.2 applies, where the Percentage Change in any Relevant Year is more than the Controlling Percentage, the Dominant Provider shall, to the extent reasonable possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.

**12D.6** The Dominant Provider shall secure that during each Relevant Year:

**(WLA Area 2,WLA Area 3)** (a) the amount charged by it for MPF Amend is the same as the amount charged by it for VULA Bandwidth Change where the VULA Bandwidth Change relates to: (i) Copper-based Network Access services; or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available; and

- (b) the amount charged by it for MPF Cancellation is the same as the amount charged by it for VULA Bandwidth Change where the VULA Bandwidth Change relates to: (i) Copper-based Network Access services; or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available.

**12D.7** (a) The Dominant Provider shall take all reasonable steps to secure that the charge for each Special Fault Investigation Service in each Relevant Year does not exceed the amount calculated in accordance with the following formula:

**(WLA Area 2,WLA Area 3)**

*Engineer Time x Hourly Charge*

Where:

*Engineer Time* means in relation to a Special Fault Investigation Service:

- i. the amount of time determined by the Dominant Provider as at 1 April 2021 as being required by an engineer in order to complete the corresponding Special Fault Investigation Service; or
- ii. such other amount of time as Ofcom may from time to time direct.

*Hourly Charge* means:

- i. in the First Relevant Year, not more than £42.73;
- ii. in the Second Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 2 Hourly Charge} = £42.73(100\% + CPI_2)$$

- iii. in the Third Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 3 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 4 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)$$

- v. in the Fifth Relevant Year, not more than the amount calculated by employing the following formula:

$$\begin{aligned} \text{Year 5 Hourly Charge} \\ = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)(100\% + CPI_5) \end{aligned}$$

Where:

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year.

- (b) The Dominant Provider shall take all reasonable steps to secure that the charge for each Special Fault Investigation – Assure and Special Fault Investigation – Frame Direct Module in each Relevant Year does not exceed the amount calculated in accordance with the following formula:

*(Engineer Time x Hourly Charge) + Visit Charge*

Where:

*Engineer Time* means in relation to a Special Fault Investigation – Assure or Special Fault Investigation – Frame Direct Module (as applicable):

- i. the amount of time determined by the Dominant Provider as at 1 April 2021 as being required by an engineer in order to complete the corresponding Special Fault Investigation – Assure or Special Fault Investigation – Frame Direct Module; or
- ii. such other amount of time as Ofcom may from time to time direct.

*Hourly Charge* must be charged as follows:

- i. in the First Relevant Year, not more than £42.73;

- ii. in the Second Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 2 Hourly Charge} = £42.73(100\% + CPI_2)$$

- iii. in the Third Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 3 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 4 Hourly Charge} = £42.73(100\% + CPI_2) \\ (100\% + CPI_3)(100\% + CPI_4)$$

- v. in the Fifth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 5 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3) \\ (100\% + CPI_4)(100\% + CPI_5)$$

Where:

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year.

*Visit Charge* must be charged as follows:

- i. in the First Relevant Year, not more than £42.73;
- ii. in the Second Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 2 Visit Charge} = £42.73(100\% + CPI_2)$$

- iii. in the Third Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 3 Visit Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 4 Visit Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)$$

- v. in the Fifth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 5 Visit Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)(100\% + CPI_5)$$

Where:

$CPI_2$  is CPI for the Second Relevant Year;

$CPI_3$  is CPI for the Third Relevant Year;

$CPI_4$  is CPI for the Fourth Relevant Year;

$CPI_5$  is CPI for the Fifth Relevant Year.

- (c) The amount of time determined by the Dominant Provider under Conditions 12D.7(a) and 12D.7(b) as being required by an engineer in order to complete the corresponding Special Fault Investigation Service, Special Fault Investigation – Assure or Special Fault Investigation – Frame Direct Module (as applicable) must be fair and reasonable.

**12D.8** Where:

**(WLA Area**

**2, WLA Area 3)** (a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any Charge Controlled Service for which an amount is charged;

(b) the Dominant Provider makes a change to the date on which its financial year ends; or

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

Conditions 12D.1 to 12D.7 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of this Condition 12D.8, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing Charge Controlled Service; or a change as to the billing practice for the Charge Controlled Service.

**12D.9**

**(WLA Area**

**2, WLA Area**

**3)**

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

(a) pursuant to Condition 12D.4, the calculated Percentage Change relating to each service listed in Condition 12D.1;

(b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12D.4;



- (c) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods during which they were in force;
- (d) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services for which Conditions 12D.4 applies and calculations thereof;
- (e) other data necessary for monitoring compliance with the charge control; and
- (f) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (e).

The information provided to Ofcom under (a) to (e) must be accompanied by a statement from a person independent from the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent from the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12D.10** For the purposes of this Condition 12D, a Copper-based Network Access service is available at a location if: (i) it can be provided; and (ii) it is required to be provided for new connections under Conditions 1 and 2.

**(WLA Area  
2, WLA Area  
3)**

**12D.11** Where the Dominant Provider publishes a Second Threshold Notice in relation to a Local Serving Exchange, this Condition 12D shall not apply to Copper-based Network Access in respect of any end user supplied with electronic communications services

(WLA Area  
2, WLA Area  
3)

using that Local Serving Exchange provided that Fibre-based Network Access is available to a Third Party on reasonable request in respect of any such end users.

12D.12 Conditions 12D.1 to 12D.11 shall not apply to such extent as Ofcom may direct.

(WLA Area  
2, WLA Area  
3)

12D.13 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12D.

(WLA Area  
2, WLA Area  
3)

12D.14 In this Condition 12D:

(WLA Area  
2, WLA Area  
3)

(a) **“Additional Hour”** means the provision of the service which is reasonably necessary for the use of MPF Services or VULA (as applicable) and shall be construed as having the same meaning as ‘Additional Hours (or Part thereof)’, which is the definition and explanation of this service set out by the Dominant Provider on its website;

(b) **“Additional Line Shifted”** means the provision of the service which is reasonably necessary for the use of MPF Services or VULA (as applicable) and shall be construed as having the same meaning as ‘Additional Line shifted’, which is the definition and explanation of this service set out by the Dominant Provider on its website;

(c) **“Charge Controlled Service”** means:

(i) a service listed in Condition 12D.1;

(ii) any Special Fault Investigation Service;

- (iii) any Special Fault Investigation – Assure; and
  - (iv) any Special Fault Investigation – Frame Direct Module.
- (d) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in Condition 12D.1; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services listed in Condition 12D.1 if it had complied with Condition 12D.1;
- (e) **“Internal and External Shifts”** means the provision of the service which is reasonably necessary for the use of MPF Services or VULA (as applicable) and shall be construed as having the same meaning as ‘Internal and External Shifts’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (f) **“MPF Amend”** means the provision of the service which is reasonably necessary for the use of MPF Services and shall be construed as having the same meaning as ‘Amend orders. Allowable change to MPF Order’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (g) **“MPF Cancellation”** means the provision of the service which is reasonably necessary for the use of MPF Services and shall be construed as having the same meaning as ‘Cancellation of MPF orders for Provide, Migration, Working Line Takeover, Modification or Amend’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (h) **“MPF Services”** means network access to Metallic Path Facilities;
- (i) **“MPF Special Fault Investigation Assure”** means the provision of the service which is reasonably necessary for the use of MPF Services and shall be construed as having the same meaning as ‘MPF Special Fault Investigation Assure’, which is

the definition and explanation of this service set out by the Dominant Provider on its website;

- (j) **“MPF Special Fault Investigation 2 (SF12) - Frame direct module”** means the provision of the service which is reasonably necessary for the use of MPF Services and shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Frame direct module’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (k) **“Non-working day”** means Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- (l) **“Percentage Change”** has the meaning given to it in Condition 12D.4;
- (m) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12D.4;
- (n) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12D.4;
- (o) **“Special Fault Investigation – Frame Direct Module”** means the provision of the service which is reasonably necessary for the use of MPF Services and shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) – Frame direct module’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (p) **“Special Fault Investigation Service”** means any of the following services (as applicable) where such service is reasonably necessary for the use of MPF Services:
  - (i) MPF Special Fault Investigation 2 (SF12) - Frame Direct Module; and
  - (ii) MPF Special Fault Investigation Assure;

- (q) **“Standard Chargeable Visit”** means the provision of the service which is reasonably necessary for the use of MPF Services or VULA (as applicable) and shall be construed as having the same meaning as ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (r) **“Supplementary Charges (Per Hour)”** means the provision of the service which is reasonably necessary for the use of MPF Services or VULA (as applicable) and shall be construed as having the same meaning as ‘Supplementary charges (Per Hour or Part thereof)’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- (s) **“Supplementary Charges (Per Visit)”** means the provision of the service which is reasonably necessary for the use of MPF Services or VULA (as applicable) and shall be construed as having the same meaning as ‘Supplementary charges (Per Visit)’, which is the definition and explanation of this service set out by the Dominant Provider on its website; and
- (t) **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

## Condition 12E - Controls on Ethernet Basket, and Main Link Sub-basket and Sub-cap

**12E.1** Subject to the provisions of Condition 12E.15, 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 12E.2) 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 12E.3).

**(IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)**

**12E.2** The Percentage Change in respect of the Basket shall be calculated by employing the following formula:

**(IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)**

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

Where:

$C_t$  is the Percentage Change in the total charges for all of the services in the IEC, IEC BT+1, IEC BT+2 (but only in the First Relevant Year), LLA Area 2 and LLA Area 3 markets falling within the Basket for the Relevant Year,  $t$ ;

$n$  is the number of individual services in the IEC, IEC BT+1, IEC BT+2 (but only in the First Relevant Year), LLA Area 2 and LLA Area 3 markets in the Basket;

$i$  is a number from 1 to  $n$  for each of the  $n$  individual services in the IEC, IEC BT+1, IEC BT+2 (but only in the First Relevant Year), LLA Area 2 and LLA Area 3 markets in the Baskets;

$R_i$  is the Total Revenue accrued during the Prior 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;

In the above formula in this Condition 12E.2 the following applies:

$\bar{p}_{i,t}$  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 12E.15 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 during which there are distinct charges in effect in 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 by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 366;
- (iv) for the Fourth Relevant Year, 365; and
- (v) for the Fifth Relevant Year, 365;

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

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

for the Ethernet Basket and Main Link Sub-Basket, for each Relevant Year, the Prior Year Weighted Average Charge charged by the Dominant Provider for the individual service  $i$  falling within the Ethernet Basket and Main Link Sub-Basket, subject to the provisions set out in Condition 12E.15;

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 during which there are distinct charges in effect in 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 during which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 365;
- (iv) for the Fourth Relevant Year, 366; and
- (v) for the Fifth Relevant Year, 365.

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

**12E.3** Subject to the provisions set out in Conditions 12E.4 to 12E.6, the Controlling Percentage  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

in relation to any Relevant Year shall be calculated by employing the following formula:

$$CP_t = CPI_t - 0$$

Where:

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

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



**12E.4** Where the Percentage Change for a Basket at the end of the Relevant Year is:

(a) less than the Controlling Percentage for that Basket (“Deficiency”); or  
 (b) greater than the Controlling Percentage for that Basket (“Excess”);

(IEC, IEC  
 BT+1, IEC  
 BT+2, LLA  
 Area 2, LLA  
 Area 3)

the Controlling Percentage for that Basket for the following Relevant Year shall be calculated in accordance with Condition 12E.5.

**12E.5** Where Condition 12E.4 applies, the Controlling Percentage for the relevant Basket shall be calculated by employing the following formula:

(IEC, IEC  
 BT+1, IEC  
 BT+2, LLA  
 Area 2, LLA  
 Area 3)

$$CP_t = \left[ \frac{(100\% + CPI_t)(100\% + CP_{t-1})}{(100\% + C_{t-1})} \right] - 100\%$$

Where:

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

$CP_{t-1}$  is the Controlling Percentage for the Basket for the Relevant Year, calculated in accordance with the formula for  $CP_t$  set out in Condition 12E.3; and

$C_{t-1}$  is the Percentage Change for the Basket for the Relevant Year (in the case of Deficiency or Excess in a Relevant Year), calculated in accordance with the formula for  $C_t$  as set out in Condition 12E.2, as applicable.

**12E.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.

(IEC, IEC  
 BT+1, IEC  
 BT+2, LLA  
 Area 2, LLA  
 Area 3)

**12E.7** In respect of Main Link, subject to Condition 12E.15, the Dominant Provider shall take all

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change, calculated in accordance with Condition 12E.9, in the charge for that service is not greater than the Controlling Percentage calculated in accordance with the following formula:

$$CP_t = CPI_t$$

Where:

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

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

**12E.8**  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

In respect of each Miscellaneous Ancillary Service and subject to Condition 12E.15 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 12E.9, in the charge for that Miscellaneous Ancillary Service is not greater than the Controlling Percentage calculated by employing the following formula:

$$CP_t = CPI_t$$

Where:

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

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

**12E.9**  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

For the purposes of Conditions 12E.7 and 12E.8, the Percentage Change shall be calculated by employing the formula set out below. References in the formula below to “an individual service falling within the Basket” shall be treated as references to each of the services listed in Conditions 12E.7 and 12E.8, as applicable.

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

Where:

$C_t$  is the Percentage Change in the charge for an individual service falling within the Basket, as applicable, 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, subject to the provisions set out Condition 12E.15.

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

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

Where:

$m$  is the number of time periods during which there are distinct charges in effect in 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 during which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect by:

- (a) for the First Relevant Year, 365;
- (b) for the Second Relevant Year, 365;
- (c) for the Third Relevant Year, 366;
- (d) for the Fourth Relevant Year, 365; and
- (e) for the Fifth Relevant Year, 365;

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

$\bar{p}_{t-1}$  is the Prior Year Weighted Average Charge set by the Dominant Provider

for the individual service falling within the Baskets, subject to the provisions set out in Condition 12E.15;

Prior Year Weighted Average Charge set by the Dominant Provider for the individual service falling within the Baskets, subject to the provisions set out in Condition 12E.15;

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

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

Where:

$m$  is the number of time periods during which there are distinct charges in effect in 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 during which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 365;
- (iv) for the Fourth Relevant Year, 366; and
- (v) for the Fifth Relevant Year, 365;

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

**12E.10** For each WDM Service, subject to the provisions of Condition 12E.15, the Dominant  
**(IEC, IEC** Provider shall take all reasonable steps to secure that, at the end of each Relevant Year,  
**BT+1, IEC** the Percentage Change, calculated in accordance with Condition 12E.11, in respect of the  
**BT+2, LLA** charge for that WDM Service is not greater than the Controlling Percentage calculated by

**Area 2, LLA  
Area 3)** employing the following formula:

$$CP_t = CPI_t$$

Where:

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

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

**12E.11  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

For the purposes of Condition 12E.10, the Percentage Change shall be calculated by employing the formula set out below. References in the formula below to “an individual service” shall be treated as references to each of the WDM Services.

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

Where:

$C_t$  is the Percentage Change in the charge for an individual service, as applicable, 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, subject to the provisions set out Condition 12E.15;

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

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

Where:

$m$  is the number of time periods during which there are distinct charges in effect in 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 during which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect by:

- (a) for the First Relevant Year, 365;
- (b) for the Second Relevant Year, 365;
- (c) for the Third Relevant Year, 366;
- (d) for the Fourth Relevant Year, 365; and
- (e) for the Fifth Relevant Year, 365;

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

$\bar{p}_{t-1}$  is for the purposes of calculating the Percentage Change, in each Relevant Year, the Prior Year Weighted Average Charge charged by the Dominant Provider for the individual service, subject to the provisions set out in Condition 12E.15;

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

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

Where:

$m$  is the number of time periods during which there are distinct charges in effect in 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 during which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect by:

- (i) for the First Relevant Year, 365;
- (ii) for the Second Relevant Year, 365;
- (iii) for the Third Relevant Year, 365;
- (iv) for the Fourth Relevant Year, 366; and

(v) for the Fifth Relevant Year, 365;

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

**12E.12** Where the Percentage Change for a service at the end of the Relevant Year is:

- (IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)
- (i) less than the Controlling Percentage for that Service (“Deficiency”);
  - or
  - (ii) greater than the Controlling Percentage for that Service (“Excess”);

the Controlling Percentage for that Service for the following Relevant Year shall be calculated in accordance with Condition 12E.13.

**12E.13** Where Condition 12E.12 applies, the Controlling Percentage for the relevant service shall be calculated by employing the following formula:

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

$$CP_t = \left[ \frac{(100\% + CPI_t)(100\% + CP_{t-1})}{(100\% + C_{t-1})} \right] - 100\%$$

Where:

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

$CP_{t-1}$  is the Controlling Percentage for the service for the Relevant Year, calculated in accordance with the formula for  $CP_t$  set out in Condition 12E.10; and

$C_{t-1}$  is the Percentage Change for the service for the Relevant Year (in the case of Deficiency or Excess in a Relevant Year), calculated in accordance with the formula for  $C_t$  as set out in Condition 12E.11.

**12E.14** 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.

**(IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)**

**12E.15** For the purposes of determining compliance with this Condition 12E, the relevant charges shall be calculated as follows:

**(IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)**

- (a) including Three Year Term Products;
- (b) including Five Year Term Products; and
- (c) excluding Time Limited Discounts and all other forms of discounts;

and shall be subject to the provisions set out in Condition 12G.11.

**12E.16** Except where Condition 12E.17 applies, where the Annex to this Condition 12E lists a service as being available with more than one minimum contract period, the charge for the purposes of determining compliance with this Condition 12E shall be deemed to be the charge for the service with the shortest minimum contract period.

**(IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)**

**12E.17** Where the Dominant Provider offers a service listed in the Annex to this Condition 12E 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 12E, to be a separate service falling within the Ethernet Basket and a separate WDM Service (as applicable), provided such service complies with the requirements set out in the definitions of the Three Year Term Product or the Five Year Term Product (as applicable), each set out in Condition 12E.24.

**(IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)**

**12E.18** Except where Condition 12E.19 applies, where:

**(IEC, IEC BT+1, IEC BT+2, LLA)**

- (a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any service which is subject to this Condition 12E;



- Area 2, LLA  
Area 3)**
- (b) the Dominant Provider makes a change to the date on which its Financial Year ends;  
or
  - (c) there is a material change in the basis of the Consumer Prices Index;

Condition 12E 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 12E.18, a material change to any service which is subject to this Condition 12E includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to an existing service which is subject to this Condition 12E; or a change to the billing practice for any service which is subject to this Condition 12E.

**12E.19** 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 12E, the following shall apply to the Substituted Services:

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

- (a) the Substituted Services shall fall within the same Basket set out in Condition 12E.1 as the Replaced Service;
- (b) the Substituted Services shall be subject to the entirety of this Condition 12E subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances; and
- (c) in the Relevant Year that the Substituted Services are introduced, any reference in this Condition 12E to charges and/or volumes in the Prior Year (including any reference to the Prior Year Weighted Average Charge) shall be treated as a reference to charges and/or volumes in the Prior Year as agreed by Ofcom.

**12E.20** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12E. The data must include:

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

- (a) pursuant to Condition 12E.2, the calculated Percentage Change relating to each Basket specified in Condition 12E.1;
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12E.2 and 12E.9, including for each sub basket and/or individual service in the Basket;
- (c) all relevant Total Revenues during the Relevant Year in respect of the individual service (as applicable) in the Basket and source and calculations thereof;
- (d) the relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12E.10 for each WDM Service;
- (e) charges published by the Dominant Provider at time, *t*, during the Relevant Year and the Prior Year, including published charges for the Three Year Term Products and the Five Year Term Products but excluding any Time Limited Discounts and any other forms of discounts;
- (f) the relevant published charges at the start of each Relevant Year;
- (g) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services to which Condition 12E.2 applies and calculations thereof;
- (h) other data necessary for monitoring compliance with the charge control; and
- (i) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (h).

The information provided to Ofcom under (a) to (h) must be accompanied by a statement from a person independent from the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent from the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12E.21** Ofcom may direct that Conditions 12E.1 to 12E.20 shall not apply to the extent specified  
**(IEC, IEC** in any such direction.  
**BT+1, IEC**

BT+2, LLA  
Area 2, LLA  
Area 3)

**12E.22** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12E.  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12E.23** This Condition 12E shall apply to IEC BT + 2 exchanges only in so far as they concern the provision of Existing Circuits under Condition 2.9.  
**IEC BT+2**

**12E.24** In this Condition 12E:

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

- a) **“Basket”** means the Ethernet Basket;
- b) **“Controlling Percentage”** means a percentage to be calculated in accordance with Conditions 12E.3, 12E.7, 12E.8 and 12E.10, as applicable;
- c) **“Ethernet Basket”** means the basket of services set out in Section 1 of the Annex to this Condition 12E;
- d) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition 12E; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition 12E if it had complied with the requirements set out in Conditions 12E.1 and 12E.10;
- e) **“Five Year Term Product”** means any service offered by the Dominant Provider during each of the Relevant Year 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:

- i.  $R5_t$  is the rental charge of the Five Year Term Product in period t (paid by both new and existing Third Parties);
  - ii.  $C1_t$  is the connection charge of the equivalent product with a one year term in period t;
  - iii.  $R1_t$  is the rental charge of the equivalent product with a one year term in period t;
- f) **“Main Link”** means the Main Link services as found on Openreach’s price list: [https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=0d0zetWgShsjqKWjcN2Y5WJA8BGGqsBLxL7IlgSM4fRpZ6rNZujnCs99NbIKJZPD9hXYmijxH6wr%0ACQm97GZMyQ%3D%3D](https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=0d0zetWgShsjqKWjcN2Y5WJA8BGGqsBLxL7IlgSM4fRpZ6rNZujnCs99NbIKJZPD9hXYmijxH6wr%0ACQm97GZMyQ%3D%3D;); <sup>4</sup>
  - g) **“Miscellaneous Ancillary Service”** means each service which is subject to Condition 12E.8 and which is defined in Section 3 of the Annex to this Condition 12E;
  - h) **“Percentage Change”** has the meaning given to it in Conditions 12E.2, 12E.9 and 12E.11, as applicable;
  - i) **“Prior Year Weighted Average Charge”** means a charge to be calculated in accordance with the relevant formula in Conditions 12E.2, 12E.9 and 12E.11, as applicable;
  - j) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;
  - k) **“Relevant Year Weighted Average Charge”** means a charge to be calculated in accordance with the relevant formula in Conditions 12E.2, 12E.9 and 12E.11, as applicable;
  - l) **“Replaced Service”** means any service subject to Condition 12E.19 that is withdrawn and wholly or substantially replaced by Substituted Services;
  - m) **“Substituted Services”** means two or more services subject to Condition 12E.19 that are introduced and wholly or substantially replace a Replaced Service;

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<sup>4</sup> The Dominant Provider’s price list was accessed on 9 March 2021.

- n) **“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:

- i.  $R3_t$  is the rental charge of the Three Year Term Product in period t (paid by both new and existing Third Parties);
  - ii.  $C1_t$  is the connection charge of the equivalent product with a one year term in period t;
  - iii.  $R1_t$  is the rental charge of the equivalent product with a one year term in period t; and
- o) **“Time Limited Discount”** means any temporary reduction in the charge for a service (“Initial Charge”) where such reduction is reversed after a pre-determined 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;
- p) **“Total Revenue”** means the total revenue from communications providers (including, for the avoidance of doubt, the Dominant Provider itself) in relation to the services subject to this Condition 12E; and
- q) **“WDM Services”** means the service defined in Section 2 of the Annex to this Condition 12E.

## Annex to Condition 12E

### Services subject to charge control pursuant to Condition 12E

#### Section 1

#### Meaning of “Ethernet Basket”

For the purposes of Condition 12E, the expression “Ethernet Basket” shall be construed as including all services specified in Section 1 of this Annex, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### Ethernet Access Direct (EAD)<sup>5</sup>

Connection and rental charges for:

- EAD circuits
- EAD Modify – upgrade charges
- EAD RO2 Resilience Main Link Charge
- EAD RO1 Resilience Main Link Charge
- WES/WEES/BES to EAD Transfer migration charges
- EAD Local Access 10 Mbit/s circuits and above
- EAD Resilience Option 1 (Hot Standby)
- EAD SyncE
- EAD Enable
- EAD Enable RO2 Resilience Main Link Charge
- EAD Enable RO1 Resilience Main Link Charge

#### Ethernet Access Direct (EAD) Main Link<sup>6</sup>

EAD Main Link charges

RO2 Resilience Main Link charges

RO1 Resilience Main Link charges

EAD Enable Main Link charges

EAD Enable RO2 Resilience Main Link charges

EAD Enable RO1 Resilience Main Link charges

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<sup>5</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>6</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

## **Ethernet Backhaul Direct (EBD)<sup>7</sup>**

Connection and rental charges

## **Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)<sup>8</sup>**

Connection and Rental Charges

WES/WEES Main Link charges

WES Resilient Option 1 Main Link

WES Resilient Option 2 Main Link

WEES Resilient Option 2 Main Link

## **Backhaul Network Services (BNS)<sup>9</sup>**

Connection and rental charges

## **Openreach Network Backhaul Services (ONBS)<sup>10</sup>**

Connection and rental charges

Resilient Options 1, 2 and 3 - resilience link per metre charges

## **Backhaul Extension Service (BES)<sup>11</sup>**

Connection and rental charges

Resilient Option 2 – resilience link per metre

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<sup>7</sup> Openreach, *Price List, Ethernet Backhaul Direct*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiltaVZ6rNZujnCs99NbIKJZPD9hXYmiiXh6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>8</sup> Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jbarofqqfNi%2BYxJT%2BWX9RC8ygO7YK%2FGFXHQKYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

<sup>9</sup> Openreach, *Price List, Backhaul Network Services (BNS)*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRi skel2ZrKBXGHf8sPBYwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

<sup>10</sup> Openreach, *Price List, Openreach Network Backhaul Services*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRrh rww6STLWGzW%2FOBqqNvflIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> accessed on [accessed on 9 March 2021].

<sup>11</sup> Openreach, *Price List, Backhaul Extension Service (BES)*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa 0DzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

## Section 2

### Meaning of “WDM Services”

For the purposes of Condition 12E, the expression “WDM Services” shall be construed as including all services specified in Section 2 of this Annex, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Optical Spectrum Access (OSA)<sup>12</sup>**

Connection and rental charges

Main Link charges

#### **Optical Spectrum Extended Access (OSEA)<sup>13</sup>**

Connection and rental charges

Main Link charges

#### **Optical Spectrum Access Filter Connect (OSA Filter Connect)<sup>14</sup>**

Connection and rental charges

Main Link charges

#### **Optical Spectrum Extended Access Filter Connect (OSEA Filter Connect)<sup>15</sup>**

Connection and rental charges

Main Link charges

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<sup>12</sup> Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yil4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>13</sup> Openreach, *Price List, Optical Spectrum Extended Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>14</sup> Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yil4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>15</sup> Openreach, *Price List, Optical Spectrum Extended Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].



### Section 3

#### Meaning of “Miscellaneous Ancillary Services”

For the purposes of Condition 12E, the expression “Miscellaneous Ancillary Services” shall be construed as including all services specified in Section 3 of this Annex, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### Ethernet Access Direct (EAD)<sup>16</sup>

Migration charges<sup>17</sup>

Ancillary services:

- Managed migration options
- Cancellation charges
- Termination charges
- EAD Modify Shift Circuit Charges

#### Ethernet Backhaul Direct (EBD)<sup>18</sup>

Migration charges<sup>19</sup>

Ancillary services:

- Upgrade charges
- Cancellation Charges
- Shift charges
- Service Features charges

#### Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)<sup>20</sup>

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<sup>16</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmiiXh6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>17</sup> Only applies to rentals without an associated migration charge.

<sup>18</sup> Openreach, *Price List, Ethernet Backhaul Direct*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiltaVZ6rNZujnCs99NbIKJZPD9hXYmiiXh6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>19</sup> Only applies to rentals without an associated migration charge.

<sup>20</sup> Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jbarofqqfNi%2BYxJT%2BWX9RC8ygO7YK%2FGFXHQKYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

Migration charges

Ancillary services:

- Upgrade charges
- Re-grade charges
- Additional charges
- Cancellation Charges
- Circuit Shift Charges

### **Backhaul Network Services (BNS)<sup>21</sup>**

Ancillary services:

- Upgrade charges
- Additional charges
- Cancellation Charges

### **Openreach Network Backhaul Services (ONBS)<sup>22</sup>**

Cancellation charges

### **Backhaul Extension Service (BES)<sup>23</sup>**

Migration charges

Ancillary services:

- Additional charges
- Upgrade Charges
- Circuit Shift charges
- Cancellation charges

### **Optical Spectrum Access (OSA)<sup>24</sup>**

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<sup>21</sup> Openreach, *Price List, Backhaul Network Services (BNS)*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRi skel2ZrKBXGHf8sPBYwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

<sup>22</sup> Openreach, *Price List, Openreach Network Backhaul Services*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRrh rww6STLWGzW%2FOBqqNvfilIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

<sup>23</sup> Openreach, *Price List, Backhaul Extension Service (BES)*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa ODzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtIFAKw%3D%3D> [accessed on 9 March 2021].

<sup>24</sup> Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F 1N8yil4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMYQ%3D%3D> [accessed on 9 March 2021].

Upgrade charges  
Cancellation charges  
Shift charges  
Service reconfiguration charges  
Abortive Visit charges  
Amend Order Request charges  
Optical Assist charges

**Optical Spectrum Extended Access (OSEA)<sup>25</sup>**

Cancellation charges  
Shift charges  
Service reconfiguration charges

**Optical Spectrum Access Filter Connect (OSA Filter Connect)<sup>26</sup>**

Upgrade charges  
Cancellation charges  
Abortive Visit charges

**Optical Spectrum Extended Access Filter Connect (OSEA Filter Connect)<sup>27</sup>**

Upgrade charges  
Cancellation charges  
Abortive Visit charges

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<sup>25</sup> Openreach, *Price List, Optical Spectrum Extended Access*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbnIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>26</sup> Openreach, *Price List, Optical Spectrum Access*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbnIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>27</sup> Openreach, *Price List, Optical Spectrum Extended Access*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbnIKJZPD9hXYmiiH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

## Interpretation of Annex to Condition 12E

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 the definitions and explanations of the services set out by the Dominant Provider on its website. These are currently found as follows<sup>28</sup>:

- Services within the “**Ethernet Basket**” please refer to <https://www.openreach.co.uk/cpportal/products/ethernet>
- Specifically:
  - For EAD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/ethernetaccessdirect/ead.do>
  - For EBD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/ethernetbackhauldirect/ebd.do>
  - For WES/WEES, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/wholesaleextensionservices/wes.do>
  - For BES, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/productswithdrawnfromnewsupply/backhaulextensionservices/bes.do>
  - For ONBS, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/openreachnetworkbackhaulservices/onbs.do>
  - For BNS, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/productswithdrawnfromnewsupply/backhaulnetworkservices/bns.do>
  - For Cablelink, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/cablelink/cablelink.do>
- Services within the “**WDM Services**” please refer to <https://www.openreach.co.uk/cpportal/products/optical>
- Specifically:
  - For OSA, please refer to <https://www.openreach.co.uk/orpg/home/products/opticalservices/opticalspectrumaccess/opticalspectrumaccess.do>

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<sup>28</sup> All links accessed on 9 March 2021.

- For OSEA, please refer to <https://www.openreach.co.uk/org/home/products/opticalservices/opticalspectrumextendedaccess/opticalspectrumextendedaccess.do>

**Condition 12F – Controls on Accommodation Services, Overlapping Accommodation Services and Cablelink Services**

**12F.1** Subject to Conditions 12F.4 and 12F.5, 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 12F.2) in each of the charges for each and every Accommodation Service is not greater than the Controlling Percentage (calculated in accordance with Condition 12F.3).

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.2** For the purposes of Condition 12F.1, the Percentage Change shall be calculated by employing the formula in Condition 12E.9, except that references to an “individual service falling within the Baskets” shall be treated as references to each individual Accommodation Service subject to Condition 12F.

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.3** For the purposes of complying with Condition 12F.1, and subject to the provisions set out in Conditions 12F.4 and 12F.5, the Controlling Percentage in relation to any Relevant Year shall be calculated, for the purposes of complying with Condition 12F.1, by employing the formula in Condition 12E.3.

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.4** Where the Percentage Change for the Accommodation Services Basket at the end of the Relevant Year is:

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

(a) less than the Controlling Percentage (“Deficiency”); or  
(b) greater than the Controlling Percentage (“Excess”);

the Controlling Percentage for the subsequent Relevant Year shall be calculated by

employing the formula set out in Condition 12E.5 with the exception that the references to “the Basket” in Condition 12E.5 shall be treated as references to the Accommodation Services subject to this Condition 12F.

**12F.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.

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.6** 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 wholesale local access at a fixed location.

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.7** Subject to Conditions 12F.10 and 12F.11, 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 12F.8) for the Cablelink Services Basket is not greater than the Controlling Percentage (calculated in accordance with Condition 12F.9).

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.8** For the purposes of Condition 12F.7, the Percentage Change shall be calculated by employing the formula in Condition 12E.10, except that references to an “individual service falling within the Baskets” shall be treated as references to an individual service falling within the Cablelink Services Basket subject to Condition 12F.

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA)**

Area 2, LLA  
Area 3)

**12F.9** For the purposes of complying with Condition 12F.7, and subject to the provisions set out in Conditions 12F.10 and 12F.11, the Controlling Percentage in relation to any Relevant Year shall be calculated, for the purposes of complying with Condition 12F.7, by employing the formula in Condition 12E.3.

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12F.10** Where the Percentage Change for the Cablelink Services Basket at the end of the Relevant Year is:

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

(a) less than the Controlling Percentage (“Deficiency”); or

(b) greater than the Controlling Percentage (“Excess”);

the Controlling Percentage for the subsequent Relevant Year shall be calculated employing the formula set out in Condition 12E.6 with the exception that the references to “the Basket” in Condition 12E.6 shall be treated as references to the Cablelink Services Basket subject to this Condition 12F.

**12F.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.

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

**12F.12** Where:

(IEC, IEC

BT+1, IEC

BT+2, LLA

(a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any service which is subject to this Condition 12F;



- Area 2, LLA  
Area 3)**
- (b) the Dominant Provider makes a change to the date on which its Financial Year ends; or
  - (c) there is a material change in the basis of the Consumer Prices Index;

Condition 12F 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 12F.12, a material change to any service which is subject to this Condition 12F includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing service which is subject to this Condition 12F; or a change to the billing practice for any service which is subject to this Condition 12F.

**12F.13** 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 Condition 12F.1 or 12F.7, the following shall apply to the Substituted Services:

- (IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**
- (a) the Substituted Services shall be subject to the entirety of this Condition 12F, subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances; and
  - (b) in the Relevant Year that the Substituted Services are introduced, any reference in Condition 12F, to charges and/or volumes in the Prior Year (including any reference to the Prior Year Weighted Average Charge) shall be treated as a reference to charges and/or volumes in the Prior Year as agreed by Ofcom.

**12F.14** Ofcom may direct that Conditions 12F.1 to 12F.13 shall not apply to the extent specified in any such direction.

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.15** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12F.  
**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

**12F.16** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12F.16. The data must include:  
**(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**

- (a) pursuant to Conditions 12F.2 and 12F.8, the calculated Percentage Change relating to each Accommodation Service falling within Condition 12F.1 and each service falling within the Cablelink Services Basket;
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12F.2 and 12F.8, including for each individual Accommodation Service and each service falling within the Cablelink Services Basket;
- (c) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods during which they were in force;
- (d) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the Accommodation Services and each service falling within the Cablelink Services Basket to which Conditions 12F.1 and 12F.7 apply and calculations thereof;

- (e) other data necessary for monitoring compliance with the charge control; and
- (f) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (e).

The information provided to Ofcom under (a) to (e) must be accompanied by a statement from a person independent from the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent from the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12F.17** This Condition 12F shall apply to IEC BT + 2 exchanges only in so far as they concern the provision of Existing Circuits under Condition 2.9.  
**(IEC BT+2)**

**12F.18** In this Condition 12F:

- (IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3)** a) **“Accommodation Services”** means the services defined and listed in Section 1 of the Annex to this Condition 12F;
- b) **“Cablelink Services Basket”** means the services defined and listed in Section 3 of the Annex to this Condition 12F;
- c) **“Controlling Percentage”** has the meaning given to it in Condition 12F.3;
- d) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition 12F; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition 12F if it had complied with Conditions 12F.1;
- e) **“Overlapping Accommodation Services”** means the services defined and listed in Section 2 of the Annex to this Condition 12F;
- f) **“Percentage Change”** has the meaning given to it in Condition 12F.2 and 12F.4 as applicable; and

- g) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider.

## Annex to Condition 12F

### Services subject to charge control pursuant to Condition 12F

#### Section 1

##### Meaning of “Accommodation Services”

For the purposes of Condition 12F, the expression “Accommodation Services” shall be construed as including the following services reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services (as each of these is defined in Condition 12E), or Dark Fibre Access, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

##### **Access locate**<sup>29</sup>

All charges excluding Access Locate Plus bespoke charges

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<sup>29</sup> Openreach, *Price List, Access Locate and Access Locate Plus*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=q%2B2vpfgQQ99SiimXeC7QiskLe4HVN3IVHU%2BmY7RLKoBZ6rNZujnCs99NbiKJZPD9hXYmiiXh6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

## Section 2

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

For the purposes of Condition 12F, the expression “Overlapping Accommodation Services” shall be construed as having the same meaning as “Co-Mingling New Provide and Rental Services” in Section 4 of the Annex to Condition 12B, such services being reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services (as each of these is defined in Condition 12E), or Dark Fibre Access, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

### Section 3

#### Meaning of “Cablelink Services Basket”

For the purposes of Condition 12F, the expression “Cablelink Services Basket” shall be construed as the basket including the following services, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Cablelink**<sup>30</sup>

Connection and rental charges

Cancellation charges

Additional charges

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<sup>30</sup> Openreach, *Price List, Cablelink*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=kgnGm8XSPOZEY5UMJxGwO9yDfzzeTWgW5o%2FPQLWlvfwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> [accessed on 9 March 2021].

### Interpretation of Annex to Condition 12F

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><sup>31</sup>
- 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>
- For Cablelink, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/cablelink/cablelink.do>

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<sup>31</sup> Accessed 9 March 2021.



**Condition 12G – Controls on the Direct ECC Services Basket and Contractor ECC Services**

**12G.1** 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 12G.2) in the total charges for all of the services falling within the Direct ECC Services Basket is not greater than the Controlling Percentage (calculated in accordance with Condition 12G.3).

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12G.2** For the purposes of Condition 12G.1, the Percentage Change shall be calculated by employing the formula in Condition 12E.2 above, except that references to “the Basket” should be treated as references to the Direct ECC Services Basket. The value of  $\bar{p}_{i,t-1}$  should be calculated in the same manner as for the Ethernet Basket in Condition 12E.2(b).

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12G.3** For the purposes of complying with Condition 12G.1, and subject to the provisions set out in Conditions 12G.4 and 12G.5, the Controlling Percentage in relation to any Relevant Year shall be calculated, for the purposes of complying with Condition 12G.1, by employing the formula in Condition 12E.3.

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12G.4** Where the Percentage Change for the Direct ECC Services Basket at the end of the Relevant Year is:

(IEC, IEC  
BT+1, IEC  
BT+2, LLA

- (a) less than the Controlling Percentage (“Deficiency”); or
- (b) greater than the Controlling Percentage (“Excess”);

the Controlling Percentage for the subsequent Relevant Year shall be calculated

**Area 2, LLA** employing the formula set out in Condition 12E.5 with the exception that the references  
**Area 3)** to “the Basket” in Condition 12E.5 shall be treated as references to the Direct ECC Services Basket.

**12G.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  
**(IEC, IEC**  
**BT+1, IEC**  
**BT+2, LLA**  
**Area 2, LLA**  
**Area 3)** Affected Communications Provider.

**12G.6** In respect of each individual service falling within the Direct ECC Services Basket, the Dominant Provider shall take all reasonable steps to secure that, at the end of each  
**(IEC, IEC**  
**BT+1, IEC**  
**BT+2, LLA**  
**Area 2, LLA**  
**Area 3)** Relevant Year, the Percentage Change in the charge for that service (calculated in accordance with Condition 12G.7) is not greater than the Controlling Percentage (calculated in accordance with Condition 12G.8).

**12G.7** For the purposes of complying with Condition 12G.6, the Percentage Change shall be calculated by employing the formula in Condition 12E.9, except that references to “an  
**(IEC, IEC**  
**BT+1, IEC**  
**BT+2, LLA**  
**Area 2, LLA**  
**Area 3)** individual service falling within the Basket” shall be treated as references to each individual service falling within the Direct ECC Services Basket.

**12G.8** For the purposes of complying with Condition 12G.6, the Controlling Percentage shall be calculated by employing the following formula:

**(IEC, IEC**  
**BT+1, IEC**  
**BT+2, LLA**

$$CP_t = CPI_t + X$$

**Area 2, LLA  
Area 3)**

Where:

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

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

$X$  is equal to 5 percentage points.

**12G.9  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

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.

**12G.10  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

Where the Dominant Provider charges the ECC Balancing Charge, the ECC Balancing Charge (calculated in accordance with Condition 12G.12) in respect of each published charge for each of the ECC Services shall be excluded, subject to the requirement set out in Condition 12G.11 being satisfied, from the calculation of the Percentage Change calculated in accordance with:

- (a) Condition 12E.2 for the purpose of complying with Condition 12E.1; and
- (b) Condition 12E.9 for the purpose of complying with Conditions 12E.7.

**12G.11  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)**

The requirement referred to in Condition 12G.10 is that, where the Dominant Provider provides one or more of the ECC Services to a Third Party in relation to a Relevant Access Segment, in connection with the provision of an EAD, EAD LA service or Dark Fibre Access ("Connected Service"), 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 that Connected 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.

**12G.12**

For the purposes of complying with Condition 12G.10, the ECC Balancing Charge for new connections for the ECC Services shall be calculated by employing the following formula (which applies to the Prior Year):

**(IEC, IEC****BT+1, IEC****BT+2, LLA****Area 2, LLA****Area 3)**

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

Where

B is the ECC Balancing Charge;

C is the number of new EAD, EAD LA and Dark Fibre Access connections in the Prior Year;

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

$q_{i,k}$  is the volume of the individual ECC Service i that was sold as part of new EAD, EAD LA or Dark Fibre Access connection k;

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

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

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

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

**12G.13** The ECC Balancing Charge (calculated in accordance with Condition 12G.12 and notified in accordance with Condition 8) shall take effect:

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

(a) not less than 90 calendar days after the day it is notified, where there is an increase in the ECC Balancing Charge; and

(b) not less than 28 calendar days after the day it is notified, where there is a reduction in the ECC Balancing Charge;

**12G.13A** The Dominant Provider must not levy a charge for Exempt ECC Services.

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

**12G.14** Where:

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

(a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any service which is subject to this Condition 12G;

(b) the Dominant Provider makes a change to the date on which its Financial Year ends; or

(c) there is a material change in the basis of the Consumer Prices Index;

Condition 12G 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 12G.14, a material change to any service which is subject to this Condition 12G includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing service which is subject to this Condition 12G; or a change to the billing practice for any service which is subject to this Condition 12G.

**12G.15** 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 Condition 12G.1, the following shall apply to the Substituted Services:

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

- (a) the Substituted Services shall fall within the Direct ECC Services Basket;
- (b) the Substituted Services shall be subject to the entirety of this Condition 12G, subject to such reasonable adjustment to take account of the change as Ofcom may direct to be appropriate in the circumstances; and
- (c) in the Relevant Year that the Substituted Services are introduced, any reference in Condition 12G to charges and/or volumes in the Prior Year (including any reference to the Prior Year Weighted Average Charge) shall be treated as a reference to charges and/or volumes in the Prior Year as agreed by Ofcom.

**12G.16** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12G. The data must include:

(IEC, IEC

BT+1, IEC

BT+2, LLA

Area 2, LLA

Area 3)

- (a) pursuant to Conditions 12G.2 and 12G.7, the calculated Percentage Change relating to the Direct ECC Services Basket and individual services, as applicable;
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12G.2 and 12G.8;
- (c) all relevant Total Revenues during the Relevant Year in respect of the individual service (as applicable) in the Basket and source and calculations thereof;
- (d) all charges, excluding discounts, published by the Dominant Provider at time, *t*, during the Relevant Year and the Prior Year;

- (e) the relevant published charges at the start of each Relevant Year;
- (f) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the Direct ECC Services to which Condition 12G applies and calculations thereof;
- (g) other data necessary for monitoring compliance with the charge control; and
- (h) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (g).

The information provided to Ofcom under (a) to (g) must be accompanied by a statement from a person independent of the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent of the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12G.17** Ofcom may direct that Conditions 12G.1 to 12G.16 shall not apply to the extent specified in any such direction.

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12G.18** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12G.

(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2, LLA  
Area 3)

**12G.19** This Condition 12G shall apply to IEC BT + 2 exchanges only in so far as they concern the provision of Existing Circuits under Condition 2.9.  
**(IEC BT+2)**

**12G.20** In this Condition 12G:

**(IEC, IEC  
BT+1, IEC  
BT+2, LLA**

**Area 2, LLA  
Area 3)**

- a) **“Contractor ECC Services”** means the services defined and listed in Section 2 of the Annex to this Condition 12G;
- b) **“Controlling Percentage”** has the meaning given to it in Condition 12G.3 and 12G.8, as applicable;
- c) **“Direct ECC Services”** means the services listed in Section 1 of the Annex to this Condition 12G;
- d) **“Direct ECC Services Basket”** means a basket of Direct ECC Services;
- e) **“EAD and EAD LA”** mean the services listed in Section 3 of the Annex to this Condition 12G;
- f) **“ECC Balancing Charge”** means the charge calculated in accordance with Condition 12G.12;
- g) **“ECC Services”** means the Direct ECC Services and the Contractor ECC Services as defined in this Condition 12G;
- h) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services in the Direct ECC Services Basket specified in Section 1 of the Annex to this Condition 12G, and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services in the Direct ECC Services Basket specified in Section 1 of the Annex to this Condition 12G if it had complied with Condition 12G;
- i) **“Exempt ECC Services”** means the services specified in Sections 1 and 2 of the Annex to this Condition 12G which are reasonably necessary for the use of the services



falling within the Ethernet Basket, WDM Services or Dark Fibre Access, other than where provided in relation to a Relevant Access Segment;

- j) **“Percentage Change”** has the meaning given to it in Condition 12G.2;
- k) **“Relevant Access Segment”** means network access between an end user premises and a Local Serving Exchange; and
- l) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider.

## Annex to Condition 12G

### Services subject to charge control pursuant to Condition 12G

#### Section 1

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

For the purposes of Condition 12G, the expression “Direct ECC Services” shall be construed as including the following services where they are provided in relation to a Relevant Access Segment, and are reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services or Dark Fibre Access, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

#### Excess construction charges<sup>32</sup>

Survey Fee/Planning charges

Per meter or part thereof charges for:

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

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<sup>32</sup> Openreach, *Price List, Excess Construction Charges*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2Fv%2FjSuBEEITnog h5uNOEwQ2%2FKws5WBAVcilcholMnGHsqdC0vzO163bJmh34D910D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> [accessed on 9 March 2021].

## Section 2 Meaning of “Contractor ECC Services”

For the purposes of Condition 12G, the expression “Contractor ECC Services” shall be construed as including the following services where they are provided in relation to a Relevant Access Segment, and are reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services or Dark Fibre Access, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly):

### **Excess construction charges<sup>33</sup>**

Breaking/Drilling charges

Provision of Pole charges

Provision of a new footway box charges

Provision of a new carriageway box charges

Directly buried cable (including any cable and wayleave costs)

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

New Ductwork charges

Trunking and tray work within end user’s cartilage

Overblow services

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<sup>33</sup> Openreach, *Price List, Excess Construction Charges*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2Fzv%2FjSuBEEITnog h5uNOEwQ2%2FKws5WBAVcilcholMnGHsqdC0vzO163bJmh34D910D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> [accessed on 9 March 2021].

### Section 3

#### Meaning of “EAD” and “EAD LA”

For the purposes of Condition 12G, the expression EAD shall be construed as including all services specified in section 3 of this Annex, subject to such changes as Ofcom may direct from time to time, following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Ethernet Access Direct (EAD)** <sup>34</sup>

Connection charges for:

- EAD Circuits

For the purposes of Condition 12G, the expression EAD LA shall be construed as including the following services, subject to such changes as Ofcom may direct from time to time following any proposal by the Dominant Provider to introduce a new service or withdraw or substitute one or more of these services for another (in which case this list shall be construed accordingly).

#### **Ethernet Access Direct Local Access (EAD LA)** <sup>35</sup>

Connection charges for:

- EAD Local Access 10 Mbit/s circuits and above

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<sup>34</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

<sup>35</sup> Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 9 March 2021].

### Interpretation of Annex to Condition 12G

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/org/home/products/serviceproducts/excessconstructioncharges/excessconstructioncharges.do><sup>36</sup>

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<sup>36</sup> Accessed on 9 March 2021.

## Condition 12H – Control on Time Related Charges

- 12H.1** 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 12H.2) in each of the charges for each of:
- (IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**
- (a) Standard Chargeable Visit;
  - (b) Additional Hour;
  - (c) Supplementary Charges (Per Visit); and
  - (d) Supplementary Charges (Per Hour)

(each of which is referred to in this Conditions as a “Single Charge Category” (unless otherwise specified) is not greater than the Controlling Percentage (as calculated in accordance with Condition 12H.3).

- 12H.2** For the purposes of Condition 12H.1, the Percentage Change shall be calculated by employing the formula in Condition 12E.9, except that references to “an individual service falling within the Basket” shall be treated as references to each individual Single Charge Category subject to Condition 12H. For the avoidance of doubt, the provisions in Condition 12E.15 apply, as relevant.
- (IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**

- 12H.3** For the purposes of Condition 12H.1, and subject to the provisions set out in Conditions 12H.4 and 12H.5, the Controlling Percentage in relation to any Relevant Year for each Single Charge Category shall be calculated by employing the formula in Condition 12E.3.
- (IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**

- 12H.4** Where the Percentage Change at the end of the Relevant Year is:
- (IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,**
- (a) less than the Controlling Percentage for each Single Charge Category (“Deficiency”); or
  - (b) greater than the Controlling Percentage for each Single Charge Category (“Excess”);

**LLA Area  
3)**

the Controlling Percentage for the following Relevant Year shall be calculated employing the formula set out in Condition 12E.5 with the exception that the references to “the Basket” in Condition 12E.5 shall be treated as references to each individual Single Charge Category subject to Condition 12H.

**12H.5  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**

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.

**12H.6  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**

Where:

- (a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any service which is subject to this Condition 12H;
- (b) the Dominant Provider makes a change to the date on which its Financial Year ends; or
- (c) the Dominant Provider makes a change to the date on which its Financial Year ends;

Condition 12H 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 12H.6, a material change to any service which is subject to this Condition 12H includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an existing service which is subject to this Condition 12H; or a change to the billing practice for any service which is subject to this Condition 12H.

**12H.7  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA**

The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this

**Area 2,  
LLA Area  
3)**

Condition 12H. The data must include:

- (a) pursuant to Condition 12H.2, the calculated Percentage Change relating to each Single Charge Category;
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12H.2, including for each Single Charge Category;
- (c) all charges, excluding discounts, published by the Dominant Provider at time, *t*, during the Relevant Year and the Prior Year;
- (d) the relevant published charges at the start of each Relevant Year;
- (e) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for each Single Charge category to which Condition 12H.2 applies and calculations thereof;
- (f) other data necessary for monitoring compliance with the charge control; and
- (g) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (f).

The information provided to Ofcom under (a) to (f) must be accompanied by a statement from a person independent of the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent of the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

**12H.8  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA  
Area 2,  
LLA Area  
3)**

Ofcom may direct that Conditions 12H.1 to 12H.7 shall not apply to the extent specified in any such direction.

**12H.9  
(IEC, IEC  
BT+1, IEC  
BT+2, LLA**

The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12H.



Area 2,  
LLA Area  
3)

**12H.10** (IEC BT+2) This Condition 12H shall apply to IEC BT + 2 exchanges only in so far as they concern the provision of Existing Circuits under Condition 2.9.

**12H.11** (IEC, IEC BT+1, IEC BT+2, LLA Area 2, LLA Area 3) In this Condition 12H:

- a) **“Additional Hour”** means the provision of the service which is reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services or Dark Fibre Access and shall be construed as having the same meaning as ‘Additional Hours (or Part thereof)’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- b) **“Ethernet Basket”** has the meaning given to it in Condition 12E.24;
- c) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this Condition 12H; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this Condition 12H if it had complied with Condition 12H.1;
- d) **“Percentage Change”** has the meaning given to it in Condition 12H.2;
- e) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;
- f) **“Standard Chargeable Visit”** means the provision of the service which is reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services or Dark Fibre Access and shall be construed as having the same meaning as ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’, which is the definition and explanation of this service set out by the Dominant Provider on its website;
- g) **“Supplementary Charges (Per Hour)”** means the provision of the service which is reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services or Dark Fibre Access and shall be construed as having the same

meaning as 'Supplementary charges (Per Hour or Part thereof)', which is the definition and explanation of this service set out by the Dominant Provider on its website; and

- h) **"Supplementary Charges (Per Visit)"** means the provision of the service which is reasonably necessary for the use of the services falling within the Ethernet Basket, WDM Services or Dark Fibre Access and shall be construed as having the same meaning as 'Supplementary charges (Per Visit)', which is the definition and explanation of this service set out by the Dominant Provider on its website.

## Condition 12I – Controls on Dark Fibre Access

- 12I.1** In the First Relevant Year the Dominant Provider shall not charge more than:
- (LLA Area 3)**
- a) for Connection for a Single Fibre Circuit, the amount of £1,364;
  - b) for Connection for a Dual Fibre Circuit, the amount of £2,728;
  - c) for Annual Rental for a Single Fibre Circuit, the amount of £1,030 per annum;
  - d) for Annual Rental for a Dual Fibre Circuit, the amount of £2,060 per annum; and
  - e) for Patch-panel at Customer Premises, the amount of £19 per annum per panel.
- 12I.2 (LLA Area 3)** Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, the Dominant Provider shall not charge more than:
- a) for 12I.1 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $(100\% + \text{CPI} - 5.2\%)$ ;
  - b) for 12I.1(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $(100\% + \text{CPI} - 5.2\%)$ ;
  - c) for 12I.1(e) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $(100\% + \text{CPI} - 4.1\%)$ ;
  - d) for 12I.1(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $(100\% + \text{CPI} - 4.1\%)$ ; and
  - e) for 12I.1(e) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $(100\% + \text{CPI} - 0\%)$ .
- 12I.3** Except in so far as Ofcom may otherwise direct, the Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12I.3(a) to 12I.3(f) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in Condition 12I.3:
- (IEC, IEC DF Transition)**
- a) for Connection for a Single Fibre Circuit, the amount of £245, other than where access is provided under Condition 2.7 where the charge shall be £0;

- b) for Connection for a Dual Fibre Circuit, the amount of £490 other than where access is provided under Condition 2.7 where the charge shall be £0;
- c) for Annual Rental for a Single Fibre Circuit, the amount of £36 per annum other than where access is provided under Condition 2.7 where the charge shall be £0;
- d) for Annual Rental for a Dual Fibre Circuit, the amount of £72 per annum other than where access is provided under Condition 2.7 where the charge shall be £0;
- e) for Main Link Rental for a Single Fibre Circuit, the amount of £0.10 per metre per annum; and
- f) for Main Link Rental for a Dual Fibre Circuit, the amount of £0.20 per metre per annum.

For the purposes of complying with Condition 12I.3, for each of the services set out in Conditions 12I.3(a) to 12I.3(f) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year 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 during which there are distinct charges in effect in 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 First Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by 365;

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

In performing the calculation required by this Condition 12I.3, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

- 121.4** Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, the Dominant Provider shall not charge more than:
- (IEC, IEC DF Transition)**
- a) for 121.3 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by (100%+CPI - 3.1%);
  - b) for 121.3(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by (100%+CPI - 3.1%);
  - c) for 121.3(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by (100%+CPI - 5.5%);
  - d) for 121.3(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by (100%+CPI - 5.5%);
  - e) for 121.3 (e) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by (100%+CPI + 0.6%); and
  - f) for 121.3(f) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by (100%+CPI + 0.6%).

- 121.5** Except in so far as Ofcom may otherwise direct, the Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 121.5(a) to 121.5(d) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in Condition 121.5:
- (LLA Area 3, IEC, IEC DF Transition)**

- a) for Patch-panel at Exchange, the amount of £85 per annum per panel;
- b) for Initial Testing, the amount of £123 per test;
- c) for Cessation, the amount of £172; and
- d) for RWT, the amount of £307.

For the purposes of complying with Condition 121.5, for each of the services set out in Conditions 121.5(a) to 121.5(d) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year 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 during which there are distinct charges in effect in 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 First Relevant Year in which each charge,  $p_{i,j,t}$  is in effect, calculated by dividing the number of days during which the charge is in effect by 365.

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

In performing the calculation required by this Condition 121.5, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

**121.6** Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, for each service referred to in Conditions 121.5(a) to 121.5(d) (inclusive), the Dominant Provider shall not charge more than the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by  $(100\% + CPI_t)$  where  $CPI_t$  is CPI for the Relevant Year.

**(LLA Area 3, IEC, IEC DF Transition)**

**121.7** Where:

**(LLA Area 3, IEC, IEC DF Transition)**

- (a) the Dominant Provider makes, or proposes to make, a material change (other than to a charge) to any service which is subject to this Condition 121;
- (b) the Dominant Provider makes a change to the date on which its Financial Year ends; or
- (c) there is a material change in the basis of the Consumer Prices Index;

Condition 121 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 121.7, a material change to any service which is subject to this Condition 121 includes (but is not limited to) the introduction of a new service wholly or substantially in substitution for, or that is substantially similar to, an

existing service which is subject to this Condition 12I; or a change to the billing practice for any service which is subject to this Condition 12I.

**12I.8** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12I. The data must include:

**(LLA Area  
3, IEC, IEC  
DF**

- Transition)**
- a) all charges published by the Dominant Provider from time to time during the Relevant Year, including the dates and time periods during which such charges were in force;
  - b) other data necessary for monitoring compliance with the charge control; and
  - c) such data as Ofcom may from time to time direct.

**12I.9** Ofcom may direct that Conditions 12I.1 to 12I.8 shall not apply to the extent specified in any such direction.

**(LLA Area  
3, IEC, IEC  
DF**

**Transition)**

**12I.10** The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12I.

**(LLA Area  
3, IEC, IEC  
DF**

**Transition)**

**12I.11** This Condition 12I shall apply to IEC DF Transition exchanges only in so far as they concern the provision of Existing Circuits under Condition 2.8.

**(IEC DF  
Transition)**

**12I.12** In this Condition 12I:

(LLA Area  
3, IEC, IEC  
DF  
Transition)

- (a) **“Annual Rental for a Single Fibre Circuit”** means the annual rental charge per fibre offered or charged by the Dominant Provider once a Dark Fibre Access circuit consisting of one fibre has been provided;
- (b) **“Annual Rental for a Dual Fibre Circuit”** means the annual rental charge per fibre offered or charged by the Dominant Provider once a Dark Fibre Access circuit consisting of two fibres has been provided;
- (c) **“Cessation”** means the one-off charge offered or charged by the Dominant Provider when either Annual Rental for a Single Fibre Circuit or Annual Rental for a Dual Fibre Circuit is ceased;
- (d) **“Connection for a Single Fibre Circuit”** means the one-off charge offered or charged by the Dominant Provider for the provision of a new Dark Fibre Access circuit consisting of one fibre;
- (e) **“Connection for a Dual Fibre Circuit”** means the one-off charge offered or charged by the Dominant Provider for the provision of a new Dark Fibre Access circuit consisting of two fibres;
- (f) **“Main Link Rental for a Single Fibre Circuit”** means the annual rental charge per fibre per metre, or any other part thereof, offered or charged by the Dominant Provider once a Dark Fibre Access circuit consisting of one fibre has been provided;
- (g) **“Main Link Rental for a Dual Fibre Circuit”** means the annual rental charge per fibre per metre, or any other part thereof, offered or charged by the Dominant Provider once a Dark Fibre Access circuit consisting of two fibres has been provided;
- (h) **“Patch-panel”** means equipment used to interconnect and manage fibre optic cables.
- (i) **“Right When Tested”** or **“RWT”** means the charge offered or charged by the Dominant Provider for a Third-Party Customer’s Right When Tested Faults relating to the provision of Dark Fibre Access consisting of one or two fibres, where such Right When Tested Faults are in excess of the 6% threshold of all of that Third Party’s faults; and
- (j) **“Right When Tested Fault”** or **“RWTF”** means a fault which has been closed as not requiring any repair activity by the Dominant Provider in



accordance with the Dominant Provider's relevant product handbook,  
as published from time to time.

## **Schedule 2: List of postcode sectors for the purpose of identifying relevant wholesale local access markets**

The list of postcode sectors for the purposes of identifying the markets listed in Table A (ii) to (iii) in paragraph 1 of this notification can be accessed at the following link:

[https://www.ofcom.org.uk/\\_data/assets/file/0018/216054/wftmr-statement-schedule-2-wla-postcode-sectors-by-geographic-market.csv](https://www.ofcom.org.uk/_data/assets/file/0018/216054/wftmr-statement-schedule-2-wla-postcode-sectors-by-geographic-market.csv)

## **Schedule 3: List of postcode sectors for the purpose of identifying relevant leased lines access markets**

The list of postcode sectors for the purposes of identifying the markets listed in Table A (iv) to (vii) in paragraph 1 of this notification can be accessed at the following link:

[https://www.ofcom.org.uk/\\_data/assets/file/0017/216053/wftmr-statement-schedule-3-leased-lines-postcode-sectors-by-geographic-market.csv](https://www.ofcom.org.uk/_data/assets/file/0017/216053/wftmr-statement-schedule-3-leased-lines-postcode-sectors-by-geographic-market.csv)

## **Schedule 4: List of BT exchanges for the purpose of identifying interexchange connectivity markets**

The list of BT exchanges for the purposes of identifying the markets listed in Table A (viii) to (x) in paragraph 1 of this notification can be accessed at the following link:

[https://www.ofcom.org.uk/\\_data/assets/excel\\_doc/0016/216052/wftmr-statement-schedule-4-iec-exchanges-by-market.xlsx](https://www.ofcom.org.uk/_data/assets/excel_doc/0016/216052/wftmr-statement-schedule-4-iec-exchanges-by-market.xlsx)

## **Notification of the giving of Directions to BT under section 49 of the Communications Act 2003 and SMP Conditions 1 and 2 relating to the terms on which BT provides network access (Virtual Unbundled Local Access, which it currently provides by way of its GEA product)**

### **Background**

1. On 8 January 2020 Ofcom published a consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2020” (the “Consultation”).<sup>37</sup> In this document, Ofcom consulted on new proposals to identify markets, make market power determinations and set SMP conditions with respect to BT.
2. At Volume 5 of the Consultation, Ofcom proposed to impose on BT SMP services conditions (“SMP conditions”) 1 and 2 which would (i) require BT to provide network access on reasonable request and specific forms of network access including Virtual Unbundled Local Access (“VULA”), and (ii) provide that Ofcom may from time to time direct that these services are to be provided on such terms, conditions and charges as Ofcom directs, and that BT must comply with any direction made by Ofcom.
3. Ofcom proposed directions to which proposed SMP Conditions 1 and 2 related. The notification to that direction was published in the Consultation at Volume 5 in accordance with section 49A(3) of the Communications Act 2003 (“the Act”) and Ofcom sent a copy of it to the Secretary of State under section 49C(1)(a) of the Act. Ofcom invited responses to the Consultation by 22 May 2020.
4. Ofcom received several responses in relation to the proposals set out in the Consultation and it carefully considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.
5. On 18 March 2021 Ofcom published a statement entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26”, concluding the review referred to in paragraph 1 above. This statement identified the markets, made the

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<sup>37</sup> This was updated on 28 February 2020 to correct certain points arising from an error identified in Ofcom’s dark fibre cost model; and to make a few other minor corrections and clarifications.

market power determinations and set the SMP conditions set out in Schedule 1 to the 2021 SMP Conditions Notification.

6. The SMP conditions that are set include SMP Conditions 1 and 2 (network access on reasonable request and specific forms of network access).

### **Decision to give directions**

7. Ofcom has decided to make the following directions as set out in Schedule 1 to this notification relating to the terms (specifically the maximum length of the minimum contract period following migrations and certain connections) on which BT provides network access in the form of VULA.
8. The effect of, and reasons for giving, the directions are set out in the statement accompanying this notification.
9. The directions set out in the Schedule to this notification shall come into force on 1 April 2021.

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

10. Ofcom considers that the Direction set out in the Schedule to this notification complies with the requirements of section 49(2) of the Act for the reasons set out in the statement accompanying this notification.
11. In giving the Direction, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act, and had regard to the Statement of Strategic Priorities.
12. A copy of the Direction, set out in the Schedule to this notification, has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act.

### **Interpretation**

13. For the purpose of interpreting this notification (which, for the avoidance of doubt, includes Schedule 1):
  - (a) except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 14 below, and otherwise any word or expression has 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.

14. In this notification:

- (a) **“2021 SMP Conditions Notification”** means the notification under sections 48 and 79 of the Act, which is contained in this Volume 7 of the document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26” published by Ofcom on 18 March 2021;
- (b) **“BT”** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- (c) **“Act”** means the Communications Act 2003 (c.21);
- (d) **“Local Serving Exchange”** means the site of an operational building of BT, where interconnection is made available by BT to a Third Party for Network Termination Points served by that site for the provision of Virtual Unbundled Local Access;
- (e) **“Network Termination Point”** means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- (f) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11);
- (g) **“Point of Connection”** means a point at which BT’s electronic communications network and a Third Party’s electronic communications network are connected;
- (h) **“Relevant Subscriber”** means any person who is party to a contract with a provider of public electronic communications services for the supply of such services;

- (i) **“Third Party”** means a person providing a public electronic communications service or a person providing a public electronic communications network; and
- (j) **“Virtual Unbundled Local Access”** means network access comprising of a virtual circuit between a Point of Connection at the Local Serving Exchange and a Network Termination Point, which circuit provides such specified capacity as is agreed between BT and a Third Party for the Third Party’s exclusive use.

15. The Schedule to this notification shall form part of this notification.

**Signed**

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style.

**David Clarkson**

**Telecoms Competition Director, Ofcom**

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

**18 March 2021**

## Schedule 1

### **Direction under section 49 of the Communications Act 2003 and SMP Conditions 1 and 2 relating to the terms on which BT provides network access (Virtual Unbundled Local Access, which it currently provides by way of its GEA product)**

#### **Background**

1. On 18 March 2021 Ofcom concluded its Wholesale Fixed Telecoms Market Review in which it identified markets, made market power determinations and set appropriate SMP conditions (as set out in the 2021 SMP Conditions Notification). Ofcom determined that BT has significant market power in the market for the supply of wholesale local access at a fixed location in WLA Area 2 and WLA Area 3.
2. SMP Conditions 1 and 2 (network access on reasonable request and specific forms of network access) were set in relation to the markets referred to in paragraph 1 and this Direction concerns matters to which those conditions relate.
3. In particular, under SMP Conditions 1 and 2, BT is required to provide network access by means of Virtual Unbundled Local Access. SMP Condition 12 imposes charge controls on Virtual Unbundled Local Access. Under SMP Condition 1.4 those forms of Virtual Unbundled Local Access subject to SMP Condition 12 are required to be provided on such terms conditions and charges as Ofcom may from time to time direct, and under SMP Condition 1.3 those forms of Virtual Unbundled Local Access not subject to SMP Condition 12 are required to be provided on such terms, conditions and charges as Ofcom may from time to time direct. SMP Condition 1.10 provides that BT must comply with any direction Ofcom may make from time to time under SMP Condition 1. This Direction is made under SMP Conditions 1.3 and 1.4.

#### **Direction**

4. Ofcom hereby, pursuant to section 49 of the Act and SMP Condition 1, directs BT to act as prescribed in paragraphs 5 to 8 below.
5. Where BT enters into a contract or other agreement or arrangement to the same or similar effect with a Third Party for VULA Migration, the maximum fixed term of that contract, or other agreement or arrangement (as the case may be), must be no longer than one month.

6. Where BT enters into a contract or other agreement or arrangement to the same or similar effect with a Third Party for VULA Connection, the maximum fixed term of that contract, or other agreement or arrangement (as the case may be), must be no longer than one month.
7. BT must comply with the requirement set out in paragraph 5 on the day this Direction comes into force and the requirement in paragraph 6 within 28 days of this Direction coming into force.
8. The requirements set out in paragraphs 5 and 6 shall apply in respect of all contracts or other agreements or arrangements to the same or similar effect for VULA Connection or VULA Migration that BT enters into on or after the date on which it is required to comply with that requirement. For the avoidance of doubt, BT is not required under this Direction to amend the terms of any contracts for VULA Connection or VULA Migration entered into before this date.

## Interpretation

9. In addition to the definitions set out above in this notification, in this Schedule—
  - a. **“Communications Provider”** means a Third Party purchasing from BT Virtual Unbundled Local Access;
  - b. **“VULA Connection”** VULA Connection means the following services provided by BT: “Managed Engineer Install with CP device”, “PCP Only Install”, “Start of Stopped Line” and any future service that replicates or replaces these services; and
  - c. **“VULA Migration”** means the transfer of control of a Virtual Unbundled Local Access service between Communications Providers and the subsequent provision by BT of such network access to the Communications Provider taking over such control.



# Notification of Directions to BT under section 49 of the Communications Act 2003 and SMP Condition 10 (Quality of Service Directions)

## Background

1. On 8 January 2020, OFCOM published the “Promoting Competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026” (the “January 2020 Consultation”). The January 2020 Consultation set out Ofcom’s proposals on its review of fixed telecoms markets including the wholesale local access, leased lines access and inter-exchange connectivity markets. At Volume 5 of that document, Ofcom published a notification under section 45 of the Act containing its proposals on market identification, market power determinations and the setting of SMP services conditions (“SMP conditions”) and directions to be applied to BT.
2. The January 2020 Consultation proposed to impose SMP Condition 10 on BT in each of the physical infrastructure, wholesale local access, leased lines access and inter-exchange connectivity markets which requires it to comply with all such quality of service requirements as Ofcom may from time to time direct and publish all such information as to the quality of service as Ofcom may from time to time direct.
3. Alongside the January 2020 Consultation, Ofcom consulted on what quality of service requirements should be imposed pursuant to SMP Condition 10 in each of the wholesale local access, leased lines access and inter-exchange connectivity markets.
4. On 22 October 2020 Ofcom published a further consultation entitled “Wholesale Fixed Telecoms Market Review - Openreach Quality of Service”. This consultation proposed revisions to the directions for BT which were proposed to be set under the January 2020 Consultation under section 49 of the Act and proposed SMP Condition 10.
5. Ofcom published notifications to the proposed directions in each of the consultations referred to in paragraphs 1 and 4 above in accordance with section 49A(3) of the Communications Act 2003 (“the Act”), and sent a copy of each to the Secretary of State under section 49C(1)(a) of the Act. Ofcom invited responses to the January 2020 Consultation by 22 May 2020 and to the further consultation by 3 December 2020. Ofcom received several responses in relation to the proposals set out in the consultations referred to above and it considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.

6. On 18 March 2021 Ofcom published a statement entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26”, concluding the review referred to in paragraph 1 above. This statement identified the markets, made the market power determinations and set the SMP conditions set out in Schedule 1 to the 2021 SMP Conditions Notification.
7. The SMP conditions that are set include SMP Condition 10 in relation to all markets in which Ofcom has found BT to have significant market power and for the period until 17 May 2022, the market for the supply of interexchange connectivity in BT+2 exchanges to ensure a sustainable transition in that market.

## Direction

8. Ofcom has decided, in accordance with section 49 of the Act, to give four directions pursuant to SMP condition 10, requiring BT:
  - a. to comply with quality of service standards in respect of the provision of network access in the following markets:
    - (i) supply of leased line access in LL Area 2;
    - (ii) supply of leased line access in LL Area 3;
    - (iii) supply of interexchange connectivity in BT Only exchanges;
    - (iv) supply of interexchange connectivity in BT+1 exchanges; and
    - (v) supply of interexchange connectivity in BT+2 exchangesof which Ofcom has found BT as having SMP in the markets set out in (i) to (iv) and imposed requirements to ensure a sustainable transition in the market set out in (v), as set out in the notification and accompanying statement (“**Direction 1**”);
  - b. to comply with transparency and publication requirements in respect of the provision of network access in the markets set out at a. above and the market for the supply of leased lines in High Network Reach Areas as applicable (“**Direction 2**”);
  - c. to comply with quality of service standards in respect of the provision of network access in the following markets:
    - (i) supply of wholesale local access at a fixed location in WLA Area 2; and
    - (ii) supply of wholesale local access at a fixed location in WLA Area 3.in which Ofcom has found BT as having SMP as set out in the notification and accompanying statement (“**Direction 3**”); and

- d. to comply with transparency and publication requirements in respect of the provision of network access in the markets set out at c. above as applicable (“**Direction 4**”).
9. Directions 1 to 4 are set out respectively at Schedules 1 to 4 of this notification, and shall take effect from 1 April 2021.

## **Ofcom’s duties and legal tests**

10. The effect of these Directions, and the reasons for giving them, are set out in the statement accompanying this notification and, for the reasons therein, Ofcom considers that the Directions comply with the requirements of section 49(2) of the Act. Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act, the six requirements in section 4 of the Act, and has had regard to the Statement of Strategic Priorities.
11. A copy of the Directions set out in the Schedules to this notification, has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act.

## **Interpretation**

12. For the purposes of interpreting this notification (which, for the avoidance of doubt includes the Schedules): —
- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in paragraph 13 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.
13. In this notification—
- (a) “**2021 SMP Conditions Notification**” means the notification under sections 48 and 79 of the Act, which is contained in this Volume 7 of the document entitled “Promoting

competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26” published by Ofcom on 18 March 2021;

- (b) “**Act**” means the Communications Act 2003 (c. 21);
- (c) “**BT**” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
- (d) “**January 2020 Consultation**” has the meaning given to it in paragraph 1; and
- (e) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002.

14. The Schedules to this notification shall form part of this notification.

**Signed**

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large initial 'D'.

David Clarkson

Telecoms Competition Director, Ofcom

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

18 March 2021

## Schedule 1

### Direction 1: Quality of Service Standards

#### Direction

A. This Direction is made under section 49 of the Act and SMP Condition 10, and requires the Dominant Provider to comply with quality of service standards in relation to the provision of network access to Relevant Ethernet Services and Dark Fibre Access in the markets for (i) LLA Area 2 (Relevant Ethernet Services only); (ii) LLA Area 3; (iii) interexchange connectivity in BT Only exchanges; (iv) interexchange connectivity in BT+1 exchanges (Relevant Ethernet Services only); and (v) interexchange connectivity in BT +2 exchanges in relation to Relevant Ethernet Services in the First Relevant Year only; and where applicable to (iii) and (iv) including the exchanges identified as IEC DF Transition in relation to Dark Fibre Access in the First Relevant Year only.

B. Ofcom hereby directs that the Dominant Provider comply with this Direction with effect from 1 April 2021.

#### Quality of Service Standards

#### Application

1. The Dominant Provider must comply with the following quality of service standards in respect of the provision of Orders for:
  - a. Relevant Ethernet Services; and
  - b. Dark Fibre Access.
2. The obligation referred to in paragraph 1 above shall apply in the Relevant Year to Orders that became Accepted Orders on or after the first day of the Relevant Year or that were Accepted Orders before such date but were not Completed Orders on or before such date, and that relate to:
  - a. Supply of Leased Line access in LLA Area 2 (“LLA Area 2”) for Relevant Ethernet Services only;
  - b. Supply of Leased Line access in LLA Area 3 (“LLA Area 3”) for Relevant Ethernet Services only;

- c. Interexchange connectivity in BT Only exchanges (“IEC”);
  - d. Interexchange connectivity in BT +1 exchanges (“IEC BT+1”) for Relevant Ethernet Services only;
  - e. IEC DF Transition for Dark Fibre Access in the First Relevant Year only; or
  - f. Interexchange connectivity in BT+2 exchanges (“IEC BT+2”) for Relevant Ethernet Services in the First Relevant Year only.
3. In relation to Dark Fibre Access for LLA Area 3, the obligation referred to in paragraph 1 shall come into effect during the Second Relevant Year and shall apply to Orders that became Accepted Orders on or after the 1 June 2022 or that were Accepted Orders before such date but were not Completed Orders on such date, and in each subsequent Relevant Year shall apply to Orders that became Accepted Orders on or after the first day of the Relevant Year or that were Accepted Orders before such date but were not Completed Orders on such date.

### **Quality of Service Standard 1 - Mean Time to Provide**

- 4. The Dominant Provider must ensure that the mean Time to Provide of Completed Orders is no more than 38 Working Days in each Relevant Year.

### **Quality of Service Standard 2 - Upper Percentile Limit**

- 5. The Dominant Provider must ensure that the mean Monthly Upper Percentile Open Orders is no more than 4.5% in each Relevant Year.

### **Quality of Service Standard 3 - Certainty (including certainty cross-link)**

- 6. The Dominant Provider must ensure that Time to Provide is less than or equal to the applicable Initial Contractual Delivery Period for at least 86% of Completed Orders in each Relevant Year.
- 7. The Dominant Provider must ensure that the mean Initial Contractual Delivery Period of Completed Orders is no more than 53 Working Days in each Relevant Year.

### **Quality of Service Standard 4 - Repairs**

- 8. The Dominant Provider must ensure that at least 94% of Faults achieve a Restored Service

within the period specified in the applicable service level agreement set out in the Dominant Provider's Reference Offer in each Relevant Year.

## Interpretation

9. For the purposes of interpreting this Direction 1:

a) the following definitions shall apply:

- (i) **Accepted Order** means an Order that has been validated and accepted by the Dominant Provider;
- (ii) **Completed Order** means an Accepted Order that has been provisioned and for which all related work has been carried out;
- (iii) **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;
- (iv) **Customer Caused Delay** means a delay between the date on which an Order becomes an Accepted Order and the date on which (i) it becomes a Completed Order; (ii) it is treated as a becoming a Completed Order for the purposes of calculating the Time to Provide for Monthly Upper Percentile Open Orders; or (iii) an Initial Contractual Delivery Date is issued (as applicable) 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);
- (v) **Dark Fibre Access** means (i) for LLA Area 3, a service offered by the Dominant Provider to a Third Party providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals including the product known as Cablelink; and (ii) for interexchange connectivity, a service offered by the Dominant Provider to a Third Party providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals including the products known as Dark Fibre X (DFX) and Cablelink, including in relation to (i) and (ii) of this subparagraph:
  - 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;

- (vi) **'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;
- (vii) **'First Relevant Year'** means the period starting on 1 April 2021 and ending on 31 March 2022;
- (viii) **'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;
- (ix) **'Initial Contractual Delivery Period'** means the total number of Working Days from the date on which an Order becomes an Accepted Order to the Initial Contractual Delivery Date, but excluding Working Days attributable to Customer Caused Delay which occurred before the Initial Contractual Delivery Date was issued;
- (x) **'Monthly Upper Percentile Open Orders'** means in relation to all Orders that were Accepted Orders but not Completed Orders by the end of the relevant month, the percentage of orders that had they become Completed Orders on the last day of the relevant month, would have had a Time to Provide of more than 133 Working Days;
- (xi) **'Order'** means a request submitted to the Dominant Provider by a Third Party for a Relevant Ethernet Service or Dark Fibre Access (as applicable), including (i) a request for an upgrade on bandwidth of an existing Relevant Ethernet Service; or (ii) a request for a change to the product variant of an existing Relevant Ethernet Service or Dark Fibre Access;
- (xii) **'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:
  - 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;



- (xiii) **'Relevant Year'** means the period starting on 1 April 2021 and ending on 31 March 2022, and following 31 March 2022, every 12 month period beginning on 1 April and ending on 31 March;
  - (xiv) **'Restored Service'** means the point at which any Relevant Ethernet 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;
  - (xv) **'Second Relevant Year'** means the period starting on 1 April 2022 and ending on 31 March 2023;
  - (xvi) **'Third Party'** means a person providing a public electronic communications network or a person providing a public electronic communications service;
  - (xvii) **'Third Party Customer'** means a Third Party purchasing a Relevant Ethernet Service or Dark Fibre Access (as applicable) from the Dominant Provider;
  - (xviii) **'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;
  - (xix) **'Wholesale Fixed Telecoms Market Review SMP Conditions'** means the SMP conditions in Schedule 1 of the 2021 SMP Conditions Notification; and
  - (xx) **'Working Day'** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).
- b) Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Wholesale Fixed Telecoms Market Review SMP Conditions, and otherwise any word or expression as it has in the Act.
- c) Headings and titles shall be disregarded.
- d) Expressions cognate with those referred to in the Direction shall be construed accordingly.
- e) The Interpretation Act 1978 (c. 30) shall apply as if the Direction were an Act of Parliament.

## Schedule 2

### Direction 2: Transparency and publication of KPIs

#### Direction

- A. This Direction is made under section 49 of the Act and SMP Condition 10, and requires transparency and the publication of KPIs by the Dominant Provider in relation to the provision of network access in the markets for: (i) LLA Area 2; (ii) LLA Area 3; (iii) LLA HNR; (iv) interexchange connectivity in BT Only exchanges (“IEC”); (v) interexchange connectivity in BT +1 exchanges (“IEC BT+1”); and (vi) interexchange connectivity in BT+2 exchanges (“IEC BT+2”) in relation to Relevant Ethernet Services in respect of the First Relevant Year only; and where applicable to (iv) and (v) including the exchanges identified as IEC DF Transition in relation to Dark Fibre Access in respect of the First Relevant Year only.
- B. Ofcom hereby directs that the Dominant Provider comply with this Direction with effect from 1 April 2021. The publication requirements in relation to exchanges identified as (i) IEC DF Transition regarding Dark Fibre Access and (ii) IEC BT+2, in respect of the First Relevant Year shall end on 17 May 2022.

#### Transparency and publication of KPIs

1. Except insofar as Ofcom may from time to time otherwise consent in writing, the Dominant Provider must comply with the following transparency and publication requirements in respect of the provision of Relevant Ethernet Services, Relevant WDM Services, and Dark Fibre Access.

#### Publication of information

2. For each Quarter, the Dominant Provider must publish an average of the three months in that Quarter of the information required in each of KPIs (a) to (c) and (h)(i), for the geographic areas to which the market relates as a whole and, for each of KPIs (a) to (c) and (h)(i), split by reference to each Relevant Region in the Relevant Year.
3. Publication referred to in paragraph 2 above must be effected by the Dominant Provider placing the information on a publicly available website operated or controlled by the Dominant Provider within 15 Working Days after the end of the Quarter to which it relates.

## Provision of information to Ofcom

4. For Orders or Faults which relate to products and services to which Direction 2 applies, excluding products and services provided in High Network Reach Areas, the figures required for the Dominant Provider to calculate each KPI (a) – (s) in this Direction, shall be calculated using the total number of relevant Orders or Faults in LLA Area 2, LLA Area 3, IEC, IEC BT+1 and IEC BT+2 in aggregate for the relevant KPI.
5. For all Orders to which this Direction 2 relates, the Dominant Provider must provide to Ofcom each month the information specified in KPIs (a) to (s) for the geographic areas to which the market relates as a whole, and in relation to KPIs (a) to (c), (f), (h) and (k) splits by reference to:
  - a. each Relevant Region; and
  - b. Orders for (i) EAD (including EAD LA); (ii) EBD; (iii) Cablelink; (iv) WDM; and (v) Dark Fibre Access; and
  - c. Orders (excluding WDM Orders) that related to the High Network Reach Areas identified in Schedule 3 of the SMP conditions;
6. For Orders which relate to products and services to which Direction 1 (Quality of Service Standards) applies in the Relevant Year, the Dominant Provider must also provide to Ofcom each month the information specified in KPIs (a) to (s) as a whole, and splits according to each of the following:
  - a. KPIs (a), (c), (f), (h) and (k), by reference to each Provision Category; and
  - b. KPIs (a) to (s) by reference to (i) Orders for the Dominant Provider; and (ii) Orders for Third Party Customers.
7. In relation to each of the requirements set out in paragraphs 5 and 6 above, for all KPIs except (r), the Dominant Provider must include in information provided to Ofcom:
  - a. the denominator representing the volume of the applicable Relevant Ethernet

Services over which the average or the percentage (as applicable) is calculated; and

- b. the numerator representing the value corresponding to the denominator from which the average or the percentage (as applicable) is calculated.
8. The Dominant Provider shall provide to Ofcom narrative reports including statistical evidence summarising the causes of delay in respect of Orders (as specified in a. and b. below) which relate to products and services to which Direction 1 (Quality of Service Standards) applies in a Relevant Year. The first such narrative report shall be provided in respect of the period 1 April 2021 to 30 September 2021. Thereafter narrative reports shall be provided to Ofcom in respect of each Six Month Period.

Each narrative report shall include details of those Orders that either:

- a. became Closed Orders in the period covered by the report that had a Time to Provide of more than 133 Working Days in the Relevant Years; or
  - b. were Accepted Orders but not Closed Orders at the end of the period covered by the report and that would have had a Time To Provide of more than 133 Working Days in the Relevant Years, had they become Completed Orders on the last day of the period covered by the report being provided.
9. Provision of information to Ofcom referred to under paragraphs 5 to 7 above must be effected by the Dominant Provider by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time (which may include requirements as to who within the Dominant Provider must confirm accuracy of contents), within 15 Working Days after the end of the relevant month to which it relates.
10. Provision of information to Ofcom referred to under paragraph 8 above must be effected by the Dominant Provider by sending an email to a person designated by Ofcom, in the form notified by Ofcom from time to time (which may include requirements as to who within the Dominant Provider must confirm accuracy of contents), within 30 Working Days after the end of the relevant Six Month Period to which it relates.

## Interpretation

11. For the purposes of interpreting this Direction 2:

- a) the following definitions shall apply:
  - i. **“Accepted Order”** means an Order that has been validated and accepted by the Dominant Provider;
  - ii. **“Completed Order”** means an Accepted Order that has been provisioned and for which all related work has been carried out;
  - iii. **“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;
  - iv. **“Customer Caused Delay”** means a delay between the date on which an Order becomes an Accepted Order and the date on which (i) it becomes a Completed Order; (ii) it is treated as a becoming a Completed Order for the purposes of calculating the Time to Provide in KPI(h); or (iii) an Initial Contractual Delivery Date is issued (as applicable) 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);
  - v. **“Dark Fibre Access”** means (i) for LLA Area 3, a service offered by the Dominant Provider to a Third Party providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals including the product known as Cablelink; and (ii) for interexchange connectivity, a service offered by the Dominant Provider to a Third Party providing network access to one or more optical fibres suitable for the transmission of electromagnetic energy to convey signals including the products known as Dark Fibre X (DFX) and Cablelink, including in relation to (i) and (ii) of this subparagraph:
    - 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;
  - vi. **“Delay Code”** means a code applied by the Dominant Provider that categorises the reason for a change in Contractual Delivery Date and notifies a Third Party Customer

of that change, or for a cause of delay to the Accepted Order becoming a Completed Order.

- vii. **“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;
- viii. **“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;
- ix. **“First Relevant Year”** means the period of 12 months beginning on 1 April 2021 and ending on 31 March 2022;
- x. **“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;
- xi. **“Initial Contractual Delivery Period”** means the total number of Working Days from the date on which an Order becomes an Accepted Order to the Initial Contractual Delivery Date, but excluding Working Days attributable to Customer Caused Delay which occurred before the Initial Contractual Delivery Date was issued;
- xii. **“KPI”** means a key performance indicator;
- xiii. **“Order”** means a request submitted to the Dominant Provider by a Third Party for a Relevant Ethernet Service, Relevant WDM Service or Dark Fibre Access (as applicable), including (i) a request for an upgrade on bandwidth of an existing Relevant Ethernet Service or Relevant WDM Service; or (ii) a request for a change to the product variant of an existing Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access;
- xiv. **“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:
  - a. a specified level of provisioning work; and
  - b. a specified lead time.

- xv. **“Quarter”** means in respect of Relevant Years, each of the following periods as applicable:
- a. 1 April to 30 June;
  - b. 1 July to 30 September;
  - c. 1 October to 31 December;
  - d. 1 January to 31 March;
- xvi. **“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:
- 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;
- xvii. **“Relevant Region”** means any of the following six nations and regions, as defined by the Dominant Provider:
- a. Northern Ireland;
  - b. Scotland;
  - c. Wales;
  - d. England – North;
  - e. England – East; and
  - f. England – West;
- or other such regions as Ofcom may agree with the Dominant Provider or direct from time to time;
- xviii. **“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; (ii) Optical Spectrum Extended Access; or (iii) Optical Filter Connect including, in relation to each:
- a. all product or service 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;
- xix. **“Relevant Year”** means the period starting on 1 April 2021 and ending on 31 March 2022, and following 31 March 2022, every 12 month period beginning on 1 April and ending on 31 March;
- xx. **“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;
- xxi. **“Six Month Period”** means in respect of the Relevant Year:
- (i) 1 April to 30 September;
  - (ii) 1 October to 31 March;
- xxii. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- xxiii. **“Third Party Customer”** means a Third Party purchasing a Relevant Ethernet Service, Relevant WDM Service, or Dark Fibre Access (as applicable) from the Dominant Provider;
- xxiv. **“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;
- xxv. **“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;
- xxvi. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions in Schedule 1 of the 2021 SMP Conditions Notification; and
- xxvii. **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).
- b) Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Wholesale Fixed Telecoms Market Review SMP Conditions, and otherwise any word or expression as it has in the Act.
- c) Headings and titles shall be disregarded.



- d) Expressions cognate with those referred to in the Direction shall be construed accordingly.
- e) The Interpretation Act 1978 (c. 30) shall apply as if the Direction were an Act of Parliament.

## **List of KPIs relating to quality of service**

### **KPI (a) - Mean Time to Provide**

In relation to all Orders that became Completed Orders in the relevant month, the mean Time to Provide.

### **KPI (b) - Fault repair performance**

The percentage of Faults during the relevant month that achieved a Restored Service within the period specified in the applicable service level agreement set out in the Dominant Provider's Reference Offer.

### **KPI (c) - Delivery date certainty**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders which were completed with a Time to Provide that is equal to or less than their Initial Contractual Delivery Period.

### **KPI (d) - Time to provide (lower percentile)**

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 29 Working Days or less.

### **KPI (e) - Time to provide (upper percentile)**

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 more than 133 Working Days in each Relevant Year.

### **KPI (f) – Certainty Cross-Link (Mean initial contractual delivery period)**

In relation to all Orders that became Completed Orders in the relevant month, the mean Initial Contractual Delivery Period.

#### **KPI (g) - Monitoring the tail (closed work stack)**

In relation to all Orders that became Completed Orders in the relevant month, the mean Time to Provide of those Completed Orders whose Time to Provide was more than 133 Working Days in each Relevant Year.

#### **KPI (h) - Monitoring the tail (open work stack)**

- (i) In relation to all Orders that were Accepted Orders but not Completed Orders by the end of the relevant month, the percentage of orders that had they become Completed Orders on the last day of the relevant month, would have had a Time to Provide of more than 133 Working Days in each Relevant Year; and
- (ii) for those orders only, the mean Time to Provide had they been completed on the last day of the relevant month.

#### **KPI (i) - 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 the Completed Order corresponding to the 97<sup>th</sup> percentile of Completed Orders (i.e. the Completed Order with a Time to Provide greater than 97% of Completed Orders).

#### **KPI (j) - Order validation**

In relation to all Orders that became Accepted 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 (k) – Mean time to issue initial contractual delivery dates**

In relation to all Orders in respect of which an Initial Contractual Delivery Date was issued in the relevant month, the mean number of Working Days that elapsed between the Order becoming an Accepted Order and the issue of an Initial Contractual Delivery Date but excluding Working Days attributable to Customer Caused Delay which occurred after the Order becoming an Accepted Order but before the Initial Contractual Delivery Date was issued.

#### **KPI (l) - Performance in issuing initial contractual delivery dates**

In relation to all Orders in respect of which an Initial Contractual Delivery Date was issued in the relevant month, the percentage for which it was issued within the timescales set out in the applicable service level agreement set out in the Dominant Provider's Reference Offer.

#### **KPI (m) - 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 (n) - Mean delay due to contractual delivery date changes**

In relation to changes to the Contractual Delivery Date not attributable to Customer Caused Delay for each Completed Order in the relevant month, the average number of Working Days incurred for each Completed Order as a result of such changes.

#### **KPI (o) - 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 (p) - Monitoring traffic management delay code applications**

In relation to all Orders that became Completed Orders in the relevant month:

- (i) the percentage that were subject to Delay Codes relating to traffic management; and
- (ii) for those Orders only, the mean number of Working Days associated with each Delay Code relating to traffic management.

#### **KPI (q) - Monitoring wayleave delay code applications**

In relation to all Orders that became Completed Orders in the relevant month:

- (i) the percentage that were subject to Delay Codes relating to wayleaves; and
- (ii) for those Orders only, the mean number of Working Days associated with each Delay Code relating to wayleaves.

#### **KPI (r) - Size of the installed base**

The total number of each of the following for which the Dominant Provider is charging Third Parties, at the end of the relevant month:

- (i) Relevant Ethernet Services;
- (ii) Relevant WDM Services;
- (iii) Dark Fibre Access.

**KPI (s) Performance against final CDD**

In relation to all Orders that became Completed Orders in the relevant month, the percentage of Completed Orders that were completed on or before the Final Contractual Delivery Date.

## Schedule 3

### Direction 3: Quality of service standards

#### Direction

- A. This Direction is made under section 49 of the Act and SMP Condition 10, and requires the Dominant Provider to comply with quality of service standards in relation to the provision of network access to MPF, SOTAP and GEA-FTTC services in the markets for (a) WLA in Area 2; and (b) WLA in Area 3.
- B. OFCOM hereby directs the Dominant Provider to comply with this Direction with effect from 1 April 2021.

#### Quality of Service Standards

1. The Dominant Provider must comply with the following Quality of Service Standards.

#### Installations

##### *Quality of Service Standard 1*

2. In relation to the provision of MPF and GEA-FTTC services, except GEA-FTTC services provided by the Dominant provider using the Bulk Grouping Process, in aggregate, in each Relevant Year the Dominant Provider shall offer appointments, where required for the provision of those services, that are within the Standard 1 Timeframe of a corresponding Order being placed on the Equivalence Management Platform by a Third Party such that the following formula is satisfied:

- (i) the percentage of appointments offered in accordance with this Quality of Service Standard 1 in WLA Area 2 and Quality of Service Standard 1 in WLA Area 3 is, in total, greater than or equal to 89%.

**“Standard 1 Timeframe”** means:

- a) 12 working days in the First Relevant Year; and
- b) 10 working days in each subsequent Relevant Year.

### *Quality of Service Standard 2*

3. In relation to the provision of MPF and GEA-FTTC services, in aggregate, in each Relevant Year the Dominant Provider shall complete the provision of those services on the Committed Date such that the following formula is satisfied:

- (i) the percentage of the completed provision of services in accordance with this Quality of Service Standard 2 in WLA Area 2 and Quality of Service Standard 2 in WLA Area 3 is, in total, equal to or greater than the Standard 2 Percentage.

**“Standard 2 Percentage”** means:

- a) 91% in the First Relevant Year; and
- b) 94% in each subsequent Relevant Year.

### **Fault repair**

### *Quality of Service Standard 3*

4. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 1 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the second Working Day after such Faults have been placed on the Equivalence Management Platform is such that the following formula is satisfied:

- (i) the percentage of Fault repairs subject to Service Maintenance Level 1 completed in accordance with Quality of Service Standard 3 for WLA Area 2 and Quality of Service Standard 3 for WLA Area 3 is, in total, greater than or equal to the Standard 3 Percentage.

**“Standard 3 Percentage”** means:

- a) 83% in the First Relevant Year; and
- b) 85% in each subsequent Relevant Year.

### *Quality of Service Standard 4*

5. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 1 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the seventh Working Day after such Faults have been placed on the Equivalence Management platform is such that the following formula is satisfied:

- (i) the percentage of Faults repairs subject to Service Maintenance Level 1 completed in accordance with Quality of Service Standard 4 for WLA Area 2 and Quality of Service Standard 4 for WLA Area 3 is, in total, greater than or equal to the Standard 4 Percentage.

**“Standard 4 Percentage”** means:

- a) 96% in the First Relevant Year; and
- b) 97% in each subsequent Relevant Year.

*Quality of Service Standard 5*

- 6. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 2 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the next Level 2 Working Day after such Faults have been placed on the Equivalence Management Platform is such that the following formula is satisfied:

- (i) the percentage of Faults repairs subject to Service Maintenance Level 2 completed in accordance with Quality of Service Standard 5 for WLA Area 2 and Quality of Service Standard 5 for WLA Area 3 is in total greater than or equal to the Standard 5 Percentage.

**“Standard 5 Percentage”** means:

- a) 83% in the First Relevant Year; and
- b) 85% in each subsequent Relevant Year.

*Quality of Service Standard 6*

- 7. The Dominant Provider shall complete the repair of Faults that are subject to Service Maintenance Level 2 such that, in aggregate, in each Relevant Year the percentage of repairs which are completed by the end of the sixth Working Day after such Faults have been placed on the Equivalence Management Platform is such that the following formula is satisfied:

- (i) the percentage of Fault repairs subject to Service Maintenance Level 2 completed in accordance with Quality of Service Standard 6 for WLA Area 2 and Quality of Service Standard 6 for WLA Area 3 is in total greater than or equal to the Standard 6 Percentage.

**“Standard 6 Percentage”** means:

- a) 96% in the First Relevant Year; and
- b) 97% in each subsequent Relevant Year.

**Obligation to comply with the each of the Quality of Service Standards**

*Quality of Service Standards 1, 2, 3 and 5*

- 8. In each Relevant Year:
  - (a) in five of the seven Relevant Regions the Dominant Provider must comply with Quality of Service Standards 1, 2, 3 and 5; and
  - (b) in the remaining two Relevant Regions the Dominant Provider must comply with Quality of Service Standards 1, 2, 3 and 5, except that in calculating the number of instances in which the Dominant Provider did not meet the relevant obligations, instances of failure occurring within an area that was subject to a High Level MBORC Declaration within eight weeks of the Dominant Provider making that High Level MBORC Declaration and the Fault or Order (as applicable) shall be excluded.

*Quality of Service Standards 4 and 6*

- 9. In each Relevant Year, the Dominant Provider must comply with each of Quality of Service Standards 4 and 6 in the UK as a whole.
- 10. Where the Dominant Provider relies upon the exemption in paragraph 8(b) to comply with any of Quality of Service Standards 1, 2, 3 and 5 in up to two Relevant Regions, in calculating compliance with the requirements set out in paragraph 9 for the UK as a whole, the following instances of failure shall be excluded:
  - (a) instances of failure occurring within the up to two Relevant Regions that were excluded for the purposes of assessing compliance with paragraph 8(b).
- 11. The Dominant Provider must record, maintain and supply to OFCOM in writing, no later than three months after the end of each Relevant Year the data necessary for OFCOM to monitor compliance by the Dominant Provider with the requirements set out in this Direction.



## Interpretation

12. For the purposes of interpreting this Direction 3:

(a) The following definitions shall apply:

- i. **“Access Agreement”** means an agreement entered into between the Dominant Provider and a Third Party for the provision of network access;
- ii. **“Bulk Grouping Process”** means the process (known as the ‘Bulk Grouping Provision Capability process’ or similar names) under which a Third Party requests the provision of multiple GEA–FTTC services at a given street cabinet to be provisioned by the Dominant Provider on the same day when a single engineering visit to that cabinet can be arranged by the Dominant Provider;
- iii. **“Committed Date”** means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- iv. **“Completed Order”** means an Order that has been provisioned and for which all other related work has been carried out;
- v. **“Dominant Provider”** means BT;
- vi. **“Equivalence Management Platform”** means the Dominant Provider’s operational support system designed to handle the majority of transactions for equivalence of inputs and network access;
- vii. **“Fault”** means a degradation or problem with MPF, SOTAP or GEA-FTTC services (as applicable) that is identified by the Dominant Provider or a Third Party and which is registered on the Dominant Provider’s operational support system, excluding those faults which were flagged and agreed by the Third Party to be resolved under a separate process as set out in the applicable service level agreement;
- viii. **“First Relevant Year”** means the period starting on 1 April 2021 and ending on 31 March 2022;
- ix. **“FTTC”** means Fibre-to-the-Cabinet, an Electronic Communications Network consisting of optical fibre extending from the local access node to the street cabinet;

- x. **“GEA”** means Generic Ethernet Access, the Dominant Provider’s non-physical wholesale services providing wholesale access to higher speed broadband products;
- xi. **“GEA-FTTC”** means BT’s product consisting in the provision of GEA services via its FTTC network, including G.fast, SOGEA, and SOG.fast;
- xii. **“G.fast”** means the name given by Openreach to its GEA-FTTC product which uses G.fast technology;
- xiii. **“Hull Area”** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);
- xiv. **“Level 2 Working Day”** means any day other than Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- xv. **“MBORC”** means Matters Beyond Our Reasonable Control, a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;
- xvi. **“MBORC Declaration”** means a declaration made by the Dominant Provider that an MBORC has occurred in relation to MPF, GEA-FTTC services as applicable in a Relevant Region, including in response to both major incidents (**“High Level MBORC Declaration”**) and local incidents (**“Local MBORC Declaration”**);
- xvii. **“MPF”** means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network, and includes for the purposes of this direction variants such as SOTAP;
- xviii. **“Order”** means a request for MPF, or GEA-FTTC services submitted to the Dominant Provider by a Third Party;
- xix. **“Quality of Service Standards”** has the meaning given to it in paragraph 1 of this Direction;

- xx. **“Relevant Region”** means any of the following seven regions, as defined by the Dominant Provider:
- East Anglia;
  - London and South East;
  - Northern England;
  - Northern Ireland;
  - Scotland;
  - Wales and Midlands; and
  - Wessex
- or other such regions as OFCOM may agree with the Dominant Provider or direct under Condition 10 of the Wholesale Fixed Market Access Review SMP Conditions, from time to time, but which cumulatively at all times cover the wholesale local access markets in the UK, as applicable, excluding the Hull Area;
- xxi. **“Relevant Year”** means the period starting on 1 April 2021 and ending on 31 March 2022, and following 31 March 2022, every 12 month period beginning on 1 April and ending on 31 March;
- xxii. **“Repair Service Level Commitment”** means the Dominant Provider’s contractual commitment for the provision of MPF, or GEA-FTTC services, as applicable, in relation to the period within which it will achieve Restored Service from the registration of a Fault;
- xxiii. **“Restored Service”** means the point at which the MPF, or GEA-FTTC services, as applicable, in relation to which a Fault was registered becomes available again for use by the Third Party;
- xxiv. **“Service Maintenance Level 1”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA-FTTC services, as applicable, to Third Parties;

- xxv. **“Service Maintenance Level 2”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA-FTTC services, as applicable, to Third Parties;
  - xxvi. **“SOGEA”** means Single Order Generic Ethernet Access and is the name given by Openreach to its GEA-FTTC product where only a broadband service is being provided;
  - xxvii. **“SoG.fast”** means the name given by Openreach to its GEA-FTTC product which uses G.fast technology and where only a broadband service is being provided;
  - xxviii. **“SOTAP”** means the Single Order Transitional Access Product and is the name given by Openreach to a variant of MPF which can provide both broadband and IP voice services;
  - xxix. **“Third Party”** means a person providing a public Electronic Communications Network or a person providing a public Electronic Communications Service;
  - xxx. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions set out in Schedule 1 to the 2021 SMP Conditions Notification;
  - xxxi. **“WLA Area 2”** means the areas consisting of the postcode sectors identified as “Area 2” in Schedule 2 to the 2021 SMP Conditions Notification;
  - xxxii. **“WLA Area 3”** means the areas consisting of the postcode sectors identified as “Area 3” in Schedule 2 to the 2021 SMP Conditions Notification; and
  - xxxiii. **“Working Day”** in the context of Service Maintenance Levels means the days deemed to be working days in contracts for the provision of services and in other contexts means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).
- (b) Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Wholesale Fixed Telecoms Market Review SMP Conditions, and otherwise any word or expression as it has in the Act.
- (c) Headings and titles shall be disregarded.

- (d) Expressions cognate with those referred to in the Direction shall be construed accordingly.
- (e) The Interpretation Act 1978 (c. 30) shall apply as if the Direction were an Act of Parliament.

## Schedule 4

### Direction 4: Transparency and publication of KPIs (MPF and GEA services)

#### Direction

- A. This Direction is made under section 49 of the Act and SMP Condition 10, and requires publication of KPIs by the Dominant Provider in relation to the provision of network access to specified MPF, and GEA services in the markets for (a) WLA in Area 2; and (b) WLA in Area 3.
- B. OFCOM hereby directs the Dominant Provider to comply with this Direction with effect from 1 April 2021.

#### Transparency and publication of KPIs

1. The Dominant Provider must publish to Third Party Customers the information specified in paragraphs 1, 3 and 8 of Schedule 1 to this Direction in relation to the provision of MPF and GEA services, as required in paragraphs 5 or 6 below, as applicable.
2. The Dominant Provider must provide to individual Third Party Customers on request the information specified in paragraph 7 of Schedule 1 to this Direction in relation to the provision of MPF and GEA services to them, as required in paragraphs 5 or 6 below, as applicable.
3. The Dominant Provider must provide to OFCOM, by means of electronic mail to such person in OFCOM as notified from time to time, the information specified in paragraph 5 of Schedule 1 to this Direction in relation to the provision of MPF and GEA services, as required in paragraph 5 or 6 below, as applicable.
4. The Dominant Provider must publish the information specified in paragraph 6 of Schedule 1 to this Direction on a publicly accessible website, which for the avoidance of doubt should not require password access.
5. With the exception of the information specified in KPIs (ix) and (xiii) of Schedule 1 to this Direction, the information required by paragraphs 1 to 3 above must be published and provided as required by the Dominant Provider on or before 24 May 2021 in respect of the previous month and, for each subsequent month, within 15 Working Days of the last Working Day of every month in respect of the previous month.

6. The information specified in KPIs (ix) and (xiii) of Schedule 1 to this Direction must be published and provided, as required, by the Dominant Provider on or before 21 June 2021 in respect of the month preceding the previous month and, for subsequent periods, within 15 Working Days of the last Working Day of every month in respect of the month preceding the previous month.
7. The information required by paragraph 4 above must be published as required by the Dominant Provider on or before 22 July 2021 in respect of the previous three months and, for subsequent periods, within 15 Working Days of the last Working Day of every third month in respect of the previous three months.
8. The Dominant Provider shall prepare and provide a report to OFCOM containing the information specified in Schedule 2 to this Direction relating to Delayed Installations and Repairs (the “Delayed Installations and Repairs Report”). The first Delayed Installations and Repairs Report must be provided to OFCOM by 13 December 2021 and thereafter within one month and 30 Working Days of the last Working Day of every sixth month.
9. The Schedules to this Direction form part of the Direction.
10. Nothing in this Direction shall require the Dominant Provider to publish confidential information relating to its business or that of a Third Party.

## Interpretation

11. For the purposes of interpreting this Direction 4:
  - (a) The following definitions shall apply:
    - i. “**Access Agreement**” means an agreement entered into between the Dominant Provider and a Third Party for the provision of MPF, or GEA services, as applicable;
    - ii. “**Appointed Order**” means an Order that requires an appointment for an engineering visit by the Dominant Provider to the end user’s premises in order to become a Completed Order;
    - iii. “**Bulk Grouping process**” means the process (known as the ‘Bulk Grouping Provision Capability process’ or similar names) under which a Third Party requests the provision of multiple GEA–FTTC services at a given street cabinet to be

provisioned by the Dominant Provider on the same day when a single engineering visit to that cabinet can be arranged by the Dominant Provider;

- iv. **“Committed Order”** means an Order that has been accepted by the Dominant Provider and for which a Committed Date has been confirmed;
- v. **“Completed Order”** means an Order that has been provisioned and for which all other related work has been carried out;
- vi. **“Committed Date”** means the date agreed between the Dominant Provider and a Third Party for an Order to become a Completed Order;
- vii. **“Delayed Installation and Repair”** means an Order that has not become a Completed Order within 120 calendar days of the Committed Date or a Fault that has not achieved a Restored Service status within 30 calendar days of identification to or by the Dominant Provider;
- viii. **“Dominant Provider”** means BT;
- ix. **“Equivalence Management Platform”** means the Dominant Provider's operational support system designed to handle the majority of transactions for equivalence of inputs and network access;
- x. **“Fault”** means a degradation or problem with MPF, or GEA services, as applicable, that is identified by the Dominant Provider or a Third Party and which has been registered on the Dominant Provider's operational support system;
- xi. **“FTTC”** means Fibre-to-the-Cabinet, an Electronic Communications Network consisting of optical fibre extending from the local access node to the street cabinet;
- xii. **“FTTP”** means Fibre-to-the-Premises, an Electronic Communications Network consisting of optical fibre extending from the local access node to the customer's premises;
- xiii. **“GEA”** means Generic Ethernet Access, the Dominant Provider's non-physical wholesale services providing wholesale access to higher speed broadband products;



- xiv. **“GEA-FTTC”** means Virtual Unbundled Local Access provided through the Dominant Provider’s GEA services over its FTTC network, and includes SOGEA, SoG.fast and G.fast services;
- xv. **“GEA-FTTP”** means Virtual Unbundled Local Access provided through the Dominant Provider’s GEA services over its FTTP network;
- xvi. **“Hull Area”** means the area defined as the ‘Licensed Area’ in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;
- xvii. **“Installed Base”** means the average number of relevant MPF, SOTAP or GEA services, as applicable, that are in use during the relevant month;
- xviii. **“KPI”** means key performance indicator;
- xix. **“MBORC”** means Matters Beyond Our Reasonable Control, a force majeure event under the relevant Access Agreement, the occurrence of which releases the Dominant Provider from the liability to make any payment under the corresponding Service Level Guarantee;
- xx. **“MBORC Declaration”** means a declaration made by the Dominant Provider that an MBORC has occurred in relation to MPF, SOTAP or GEA services as applicable in a Relevant Region, including in response to both major incidents (**“High Level MBORC Declaration”**) and local incidents (**“Local MBORC Declaration”**);
- xxi. **“MPF”** means a circuit comprising a pair of twisted metal wires employing electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an electronic communications network, including for the purposes of this direction variants such as SOTAP;
- xxii. **“Order”** means a request for an MPF, SOTAP or GEA service, as applicable, submitted to the Dominant Provider by a Third Party;
- xxiii. **“Pending Order”** means an Order which has been approved by the Dominant Provider and is awaiting a Contractual Delivery Date;

xxiv. **“Rejected Order”** means an Order rejected by the Dominant Provider because it is incomplete or incorrect;

xxv. **“Relevant Region”** means the following seven regions, as defined by the Dominant Provider:

- East Anglia;
- London and South East;
- Northern England;
- Northern Ireland;
- Scotland;
- Wales and Midlands; and
- Wessex

or other such regions as OFCOM may agree with the Dominant Provider or direct from time to time under Condition 10 of the Wholesale Fixed Telecoms Market Review SMP Conditions, but which cumulatively at all times cover the wholesale local access market in the UK, as applicable, excluding the Hull Area;

xxvi. **“Relevant Subscriber”** means any person who is a party to a contract with a provider of public electronic communications services for the supply of such services;

xxvii. **“Repair”** means a Fault that has achieved Restored Service;

xxviii. **“Repair Appointment”** means an arranged appointment in respect of a Repair that requires an engineering visit by the Dominant Provider to the end user’s premises in order to become a Restored Service;

xxix. **“Repair Service Level Commitment”** means the Dominant Provider’s contractual commitment in contracts for the provision of MPF, or GEA services, as applicable, in relation to the period within which it will achieve Restored Service from the registration of a Fault;

xxx. **“Required First Appointment Date”** is the date on which the Dominant Provider is required to offer an installation appointment pursuant to *“Quality of Service Standard 1”* in Direction 3 (quality of service standards) made pursuant to Condition 10 of the Wholesale Fixed Telecoms Market Review SMP Conditions;

- xxxi. **“Restored Service”** means the point at which an MPF, or GEA services, as applicable, in relation to which a Fault was registered, becomes available again for use by the Third Party;
- xxxii. **“Scheduled Outages”** means the defined periods of time notified to Third Parties in accordance with the terms of the Dominant Provider’s contract for an MPF, SOTAP or GEA services, as applicable, whereby the Dominant Provider’s operational support system is not available for use by Third Parties in order for the Dominant Provider to perform certain tasks including, but not limited to, routine maintenance, changing configurations, software upgrades and updating facilities and may include specific maintenance activities;
- xxxiii. **“Service Maintenance Level 1”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services, as applicable, to Third Parties;
- xxxiv. **“Service Maintenance Level 2”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services, as applicable, to Third Parties;
- xxxv. **“Service Maintenance Level Business 2 Plus”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services to Third Parties;
- xxxvi. **“Service Maintenance Level 3”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of MPF, or GEA services, as applicable, to Third Parties;
- xxxvii. **“Service Maintenance Level 4”** means the Repair Service Level Commitment specification of that name as defined by the Dominant Provider in its contracts for the provision of the MPF, or GEA services, as applicable, to Third Parties;
- xxxviii. **“SOTAP”** means the Single Order Transitional Access Product and is a variant of MPF;
- xxxix. **“Street Cabinet Appointment”** means an arranged appointment in respect of an Order that requires an engineering visit by the Dominant Provider to a street

cabinet rather than to the end user's premises in order to become a Completed Order;

- xl. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
  - xli. **“Third Party Customer”** means a Third Party purchasing MPF, SOTAP or GEA services (as applicable) from the Dominant Provider;
  - xlii. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions in Schedule 1 of the 2021 SMP Conditions Notification; and
  - xliii. **“Working Day”** in the context of Service Maintenance Levels means the days deemed to be working days in contracts for the provision of services and in other contexts means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).
- (b) Except as otherwise defined, words or expressions used shall have the same meaning as they have been ascribed in the Wholesale Fixed Telecoms Market Review SMP Conditions, and otherwise any word or expression as it has in the Act.
- (c) Headings and titles shall be disregarded.
- (d) Expressions cognate with those referred to in the Direction shall be construed accordingly.
- (e) The Interpretation Act 1978 (c. 30) shall apply as if the Direction were an Act of Parliament.

## Schedule 1 to Direction 4

### Key Performance Indicators for Metallic Path Facilities, SOTAP and Generic Ethernet Access services

1. The Dominant Provider must publish to Third Party Customers the following:
  - (a) the information required in all KPIs, except KPIs (xix), and where the number of active connections is below the number required in paragraph 4, (xx) to (xxiii), in relation to the provision of network access to MPF;
  - (b) the information required in all KPIs, except KPIs (xii)(a), (xiv)(a), and where the number of active connections is below the number required in paragraph 4, (iii)(a) and (xx) to (xxiii), in relation to the provision of network access to GEA-FTTC; and
  - (c) the information required in all KPIs, except KPIs (iii)(a), (xii)(a), (xiv)(a),(xix), and where the number of active connections is below the number required in paragraph 4, (xx) to (xxiii), in relation to the provision of network access to GEA-FTTP.
2. The Dominant Provider must publish the information required in paragraph 1 in at least the detail outlined below:
  - (a) an industry average (for the avoidance of doubt this includes provision by the Dominant Provider to itself where it does so); and
  - (b) provision of the specified services to itself.
3. Where options exist for Third Parties (excluding the Dominant Provider) to purchase different MPF, or GEA services, the Dominant Provider must publish as the information required in paragraph 1 to Third Party Customers separately for each service.
4. When publishing KPIs in accordance with paragraphs 1 to 3, the Dominant Provider must publish all KPIs for the United Kingdom as a whole. In addition, the Dominant Provider must publish the following KPIs split by reference to each Relevant Region:
  - (a) for MPF KPIs (i) to (iii)(a), (b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region);

- (b) for GEA-FTTC, KPIs (i) to (iii)(b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region); and
  - (c) for GEA-FTTP, KPIs (iii)(b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region).
- 5. The Dominant Provider must provide to Ofcom the information required in all KPIs as described in paragraphs 1 to 4 above and in addition KPIs (iii)(a) for GEA-FTTC only and (xx) to (xxiii), in each case irrespective of the number of active connections. This information shall be provided by electronic mail to the person from time to time designated by Ofcom. The Dominant Provider must also provide to Ofcom data relating to specific Third Parties upon request.
- 6. The Dominant Provider must publish information derived from the following KPIs on a publicly accessible website, which for the avoidance of doubt should not require password access:
  - (a) for MPF the information required in KPIs (i)(a), (ii)(a), (iii)(a)(i) and (b)(i), (iv), (vii), (viii), (xii)(a) and (b), (xvii), (xviii), and (xx) to (xxiii); and
  - (b) for GEA-FTTC, the information required in KPIs (i)(a), (ii)(a), (iii)(b)(i), (iv), (vii), (viii), (xii)(b), and (xvii) to (xxiii);
- 7. The Dominant Provider must provide to each Third Party Customer upon request, on a confidential basis, the information required in paragraph 1 above for that Third Party Customer.
- 8. Where the Dominant Provider does not provide LLU services to itself, it must instead publish or provide to Third Party Customers (as required) the information required in relation to the equivalent implicit wholesale product provided by the Dominant Provider to itself in order for it to provide downstream services to end users.
- 9. The Dominant Provider must include numerators and denominators used to calculate any percentages or averages in the following cases:
  - (a) when publishing to Third Party Customers under paragraph 1 the information referred to in paragraph 2(a) in relation to all KPIs except for GEA-FTTP for which no industry numerators and denominators need be provided;

- (b) when providing information to Third Party Customers pursuant to paragraph 7 in relation to all KPIs; and
- (c) when providing information to Ofcom pursuant to paragraph 5 in relation to all KPIs including, for the avoidance of doubt, on provision of services by the Dominant Provider to itself.

### **KPIs relating to specific quality of service standards**

#### **KPI (i) – Percentage first available date appointment availability**

In relation to Appointed Orders and Street Cabinet Appointments accepted on the Equivalence Management Platform in the relevant month (that is, either those placed by Third Parties and accepted by the Dominant Provider or those placed by the Dominant Provider), except Street Cabinet Appointments for GEA-FTTC services provided by the Dominant Provider using the Bulk Grouping process, the percentage of such Appointed Orders and Street Cabinet Appointments for which the first available date offered by the Dominant Provider for an appointment was:

- (a) on or before the Required First Appointment Date;
- (b) within one Working Day of the Required First Appointment Date;
- (c) within two Working Days of the Required First Appointment Date;
- (d) within five Working Days of the Required First Appointment Date;
- (e) within ten Working Days of the Required First Appointment Date; and
- (f) within twenty Working Days of the Required First Appointment Date;

from the date on which the corresponding Order was placed on the Equivalence Management Platform by a Third Party.

#### **KPI (ii) – Percentage installation completion**

The percentage of all Completed Orders that were completed during the relevant month by;

- (a) the Committed Date;
- (b) one Working Day beyond the Committed Date;

- (c) two Working Days beyond the Committed Date;
- (d) five Working Days beyond the Committed Date;
- (e) ten Working Days beyond the Committed Date; and
- (f) twenty Working Days beyond the Committed Date.

**KPI (iii) – Percentage Repair completion**

- (a) In respect of services subject to Service Maintenance Level 1, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
  - (i) the Repair Service Maintenance Level for Service Maintenance Level 1
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 1.
- (b) In respect of services subject to Service Maintenance Level 2, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
  - (i) the Repair Service Maintenance Level for Service Maintenance Level 2;
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 2;



- (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 2.
- (c) Not used
- (d) In respect of services subject to Service Maintenance Level 3, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
  - (i) the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3;
  - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3; and
  - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 3.
- (e) In respect of services subject to Service Maintenance Level 4, the percentage of Faults whereby the Dominant Provider achieved a Restored Service during the relevant month within:
  - (i) the Repair Service Maintenance Level for Service Maintenance Level 4;

- (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level 4;
- (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4;
- (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4;
- (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4; and
- (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level 4.

#### **KPIs to monitor quality more broadly**

##### **KPI (iv) – Average first available appointment date**

In relation to Appointed Orders and Street Cabinet Appointments accepted on the Equivalence Management Platform in the relevant month (that is, either those placed by Third Parties and accepted by the Dominant Provider or those placed by the Dominant Provider), except Street Cabinet Appointments for GEA-FTTC services provided by the Dominant Provider using the Bulk Grouping process, the average number of days (in Working Days) between the date on which the appointment was made and the first available date offered by the Dominant Provider for the corresponding appointment.

##### **KPI (v) – Percentage of Rejected Orders**

The percentage of Orders submitted during the relevant month that became Rejected Orders.

##### **KPI (vi) – Percentage of Appointed Orders becoming Completed Orders**

The percentage of Appointed Orders and Street Cabinet Appointments that became Completed Orders during the relevant month for Appointed Orders by;

- (a) the Committed Date;
- (b) one Working Day beyond the Committed Date;

- (c) two Working Days beyond the Committed Date;
- (d) five Working Days beyond the Committed Date;
- (e) ten Working Days beyond the Committed Date; and
- (f) twenty Working Days beyond the Committed Date.

**KPI (vii) – Average installation time (Appointed Orders)**

In relation to Appointed Orders and Street Cabinet Appointments that became Completed Orders in the relevant month, except Street Cabinet Appointments for GEA-FTTC services provided by the Dominant Provider using the Bulk Grouping process, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order.

**KPI (viii) – Average installation time (other Orders)**

In relation to Orders that became Completed Orders in the relevant month other than Appointed Orders and Street Cabinet Appointments, the average number of days (in Working Days) from such Orders being placed on the Equivalence Management Platform by a Third Party and such Orders becoming a Completed Order.

**KPI (ix) – Percentage of Orders affected by MBORC Declarations that missed the Committed Date**

The total number of Completed Orders affected by MBORC Declarations which were not completed by the Commitment Date in the relevant month.

**KPI (x) – Percentage of Orders reported as having a Fault within eight calendar days**

The percentage of Completed Orders during the month preceding the relevant month that were reported as having a Fault within eight calendar days of the date of becoming a Completed Order.

**KPI (xi) – Percentage of Orders reported as having a Fault within 28 calendar days**

The percentage of Completed Orders during the month preceding the relevant month that were reported as having a Fault within 28 calendar days of the date of becoming a Completed Order.

**KPI (xii) – Average time to restore service**

The average time (in working hours) during the relevant month for the Dominant Provider to achieve Restored Service after a Fault has been registered in relation to each of:

- (a) Service Maintenance Level 1;
- (b) Service Maintenance Level 2;
- (c) Not used;
- (d) Service Maintenance Level 3; and
- (e) Service Maintenance Level 4.

**KPI (xiii) – Percentage of Repairs affected by MBORC Declarations that missed the Repair Service Level Commitment**

The total number of Faults affected by MBORC Declarations where restored Service was not achieved within the Repair Service Level Commitment.

**KPI (xiv) – Average time to restore service for Repairs that have exceeded the Repair Service Level Commitment by more than 20 Working Days**

The average time (in working days) for the Dominant Provider to achieve Restored Service for Faults that exceeded the Repair Service Level Commitment by 20 Working Days or more in relation to each of:

- (a) Service Maintenance Level 1;
- (b) Service Maintenance Level 2;
- (c) Not used;
- (d) Service Maintenance Level 3; and
- (e) Service Maintenance Level 4.

**KPI (xv) – Percentage of repeat Faults**

The percentage of reported Faults that achieved Restored Service in the month preceding the relevant month where a Fault was reported within 28 calendar days of the Dominant Provider having achieved Restored Service of the previous Fault.

**KPI (xvi) – Percentage of Installed Base reported as having a Fault**

The number of Faults that achieved Restored Service during the relevant month, expressed as a percentage of the Installed Base.

**KPI (xvii) – Percentage of missed Repair Appointments**

The percentage of Repair Appointments missed by Dominant Provider engineers during the relevant month.

**KPI (xviii) – Percentage of missed Appointed Order appointments at end user premises**

The percentage of Appointed Order appointments missed by Dominant Provider engineers during the relevant month.

**KPI (xix) – Percentage of missed Street Cabinet Appointments**

The percentage of Street Cabinet Appointments missed by Dominant Provider engineers during the relevant month.

**KPI (xx) – Number of delayed Orders completed**

The number of Completed Orders that were completed during the relevant month where the date each Order became a Completed Order exceeded the Committed Date by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

**KPI (xxi) – Number of delayed Repairs completed**

The number of Faults that achieved Restored Service during the relevant month where the time taken for each Fault to achieve Restored Service after it has been registered exceeded the Service Level Commitment by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

**KPI (xxii) – Number of delayed Orders not completed**

The number of Orders that are not Completed Orders where the date at the end of the relevant month exceeds the Committed Date for each Order by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

**KPI (xxiii) – Number of delayed Repairs not completed**

The number of Faults where the date at the end of the relevant month exceeds the Service Level Commitment for each Fault by more than:

- (a) 30 calendar days;
- (b) 90 calendar days; and
- (c) 120 calendar days.

## **Schedule 2 to Direction 4**

### **Transparency report on long term delays to installations and Repairs (the “Delayed Installations and Repairs Report”)**

The Delayed Installations and Repairs Report shall contain the content specified in this Schedule 2 (as amended from time to time by OFCOM and provided in a format agreed by OFCOM):

1. Information on all Orders (i.e. installations) in the relevant quarter where the date when the Order that became a Completed Order exceeded the Committed Date by more than 120 calendar days.
2. Information on all Repairs during the relevant quarter where the period from registration of the Fault to the date when the Dominant Provider achieved Restored Service exceeded the Repair Service Level Commitment by more than 30 calendar days.
3. An explanation of the root causes of the Delayed Installations and Repairs identified in the report.
4. A summary of the number of Completed Orders in the form of charts including:
  - (a) comparison of (i) Completed Orders within Committed Date; (ii) Completed Orders exceeding Committed Date by no more than 120 calendar days of Order; and (iii) Completed Orders exceeding Committed Date by more than 120 calendar days;
  - (b) Completed Orders split by root cause;
  - (c) Completed Orders split by time to complete in excess of/ beyond the order original Committed Date;
  - (d) Completed Orders split by Relevant Region;
  - (e) Completed Orders split by Third Party;
  - (f) copper product Completed Orders split by root cause;
  - (g) FTTC Completed Orders split by root cause;

- (h) FTTP Completed Orders split by root cause; and
  - (i) new-site Completed Orders split by root cause.
5. A list of all Completed Orders containing the following information for each Completed Order:
- (a) unique order identifier;
  - (b) Relevant Region;
  - (c) exchange;
  - (d) Third Party;
  - (e) original Committed Date;
  - (f) time to complete in excess of/ beyond the order original Committed Date;
  - (g) primary root cause;
  - (h) product;
  - (i) product line; and
  - (j) whether or not complaint received.
6. A summary of the number of Repairs in the form of charts including:
- (a) comparison of (i) completed Repairs within Repair Service Level Commitment; (ii) completed Repairs exceeding Repair Service Level Commitment by no more than 30 calendar days; and (iii) completed Repairs exceeding Repair Service Level Commitment by more than 30 calendar days;
  - (b) completed Repairs split by root cause;
  - (c) completed Repairs split by time to complete repair in excess of Repair Service Level Commitment;
  - (d) completed Repairs split by Relevant Region; and
  - (e) completed Repairs split by Third Party.



7. A list of Repairs containing the following information for each Repair:
  - (a) unique order identifier;
  - (b) Relevant Region;
  - (c) exchange;
  - (d) Third Party;
  - (e) original Repair Service Level Commitment;
  - (f) time to complete the Repair beyond original Repair Service Level Commitment;
  - (g) primary root cause;
  - (h) product;
  - (i) product line; and
  - (j) whether or not complaint received.

## **Notification of the giving of Directions to BT under section 49 and 49A of the Communications Act 2003 and SMP Condition 11 relating to regulatory financial reporting**

### **Background**

1. On 8 January 2020 Ofcom published a consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2020” (the “January 2020 Consultation”).<sup>38</sup> In this document, Ofcom consulted on new proposals to identify markets, make market power determinations and set SMP Service conditions (“SMP Conditions”) with respect to BT. It also proposed to revoke the suite of SMP conditions then applicable to BT, including all the existing regulatory accounting conditions.
2. On 6 February 2020, Ofcom published a consultation entitled “Promoting competition and investment in fibre networks - BT Regulatory Financial Reporting requirements covering wholesale fixed telecoms markets 2021-2026” (the “February 2020 Consultation”). That document contained a notification of proposals to impose SMP conditions on BT relating to regulatory financial reporting and a notification of proposals to give associated directions to BT relating to regulatory financial reporting.
3. On 29 July 2020, Ofcom published a consultation entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026, Pricing wholesale local access services in Geographic Area 3 with a BT Commitment to deploy a fibre network”. This consultation proposed revisions to the directions in relation to BT which were proposed to be given in the February 2020 Consultation.
4. Ofcom sent a copy of each consultation above to the Secretary of State under section 49C(1)(a) of the Act.

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<sup>38</sup> This was updated on 28 February 2020 to correct certain points arising from an error identified in Ofcom’s dark fibre cost model; and to make a few other minor corrections and clarifications.

5. Ofcom received several responses in relation to the proposals set out in the Consultation and it carefully considered every such representation. The Secretary of State did not notify Ofcom of any international obligation on the United Kingdom for the purposes of section 49A(6)(b) of the Act.
6. On 18 March 2021 Ofcom published a statement titled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26”, concluding the review referred to in paragraph 1 above. This statement identified the markets, made the market power determinations and set the SMP services conditions set out in Schedule 1 to the 2021 SMP Conditions Notification.
7. Ofcom decided to set the SMP conditions as set out in Schedule 1 to the 2021 SMP Conditions Notification, and which are to be applied to BT to the extent specified in that Schedule. The SMP conditions that are set include SMP Condition 11 (Regulatory Financial Reporting), in relation to, amongst others, the markets set out in Schedule 1 to the 2021 SMP Conditions Notification.

### **Decision to give directions**

8. Ofcom has decided to make the following Directions as set out in the Schedule to this notification relating to regulatory financial reporting under section 49 of the Act and the SMP conditions set out below.
9. Pursuant to Condition 11.5, Ofcom may make directions in relation to BT’s obligations under the proposed conditions.
10. Pursuant to Condition 11.1, certain definitions have the meaning Ofcom may direct.
11. Pursuant to Condition 11.2, 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 is required by the regulatory accounting SMP conditions including as Ofcom may from time to time direct.

12. Pursuant to condition 11.3, the Dominant Provider must comply with such rules made by Ofcom about the use of cost accounting systems as required by the regulatory accounting SMP conditions and must comply with such requirements about the description to be made available to the public of the cost accounting system as required by the regulatory accounting SMP conditions in each case including as Ofcom may from time to time direct.
13. Pursuant to condition 11.12, the Dominant Provider shall prepare all Regulatory Financial Statements, explanations or other information required by virtue of the regulatory accounting SMP conditions on a regulatory asset value adjusted current cost basis as directed by Ofcom from time to time.
14. Pursuant to condition 11.25, as at 1 April 2021 the Network Component List must consist of the initial network components directed by Ofcom.
15. Pursuant to condition 11.34, the Dominant Provider must provide to Ofcom all data and models used in the Regulatory Accounting System within four months after the end of the Financial Year to which the Regulatory Financial Statements relate, as directed by Ofcom from time to time.
16. The Directions set out in the Schedule to this notification shall apply in relation to the markets specified in each Direction.
17. The effect of, and reasons for giving, the Directions are set out in the statement accompanying this notification.
18. The Directions set out in the Annex to this notification will come into force on 1 April 2021.

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

19. Ofcom considers that the Directions set out in the Schedule to this notification comply with the requirements of section 49(2) of the Act for the reasons set out in the statement accompanying this notification.
20. In giving the Directions, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act and had regard to the Statement of Strategic Priorities.

21. A copy of the Directions set out in the Schedule to this notification has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act.

## Interpretation

22. For the purpose of interpreting this notification (which, for the avoidance of doubt, includes Schedule 1):

- a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 23 below;
- b. save where otherwise defined in this notification, and except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in SMP Condition 11;
- c. save where otherwise defined in this notification or in SMP Condition 11, and except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in the 2021 SMP Conditions Notification;
- d. otherwise any word or expression has the same meaning as it has in the Act;
- e. headings and titles shall be disregarded;
- f. expressions cognate with those referred to in this notification shall be construed accordingly; and
- g. the Interpretation Act 1978 (c. 30) shall apply as if this notification were an Act of Parliament.

23. In this notification:

- (a) **“Gross Replacement Cost”** or **“GRC”** means the cost of replacing an existing tangible fixed asset with an identical or substantially similar new asset having a similar production or service capacity;
- (b) **“Mean Capital Employed (MCE)”** means total assets less current liabilities, excluding corporate taxes and dividends payable, and provisions other than those for deferred taxation. The mean is computed from the start and end values for the period, except in the case of short-term investments and borrowings, where daily averages are used in their place;

- (c) **“Net Replacement Cost”** or **“NRC”** means the Gross Replacement Cost less accumulated depreciation based on Gross Replacement Cost; and
- (d) **“2021 SMP Conditions Notification”** means the notification under sections 48 and 79 of the Act, which is contained in this Volume 7 of the document entitled **“Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-26”** published by Ofcom on 18 March 2021.

24. The Schedule to this notification shall form part of this notification.

Signed



David Brown

**Director of Regulatory Finance, Ofcom**

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

**18 March 2021**

## Schedule 1

### Direction 1: Direction specifying the Regulatory Accounting Principles

#### Background

1. This Direction is made under:
  - (a) Section 49 of the Act; and
  - (b) SMP condition 11.5.
2. This Direction applies with respect to the following markets unless otherwise specified:
  - (a) PI
  - (a) WLA Area 2
  - (b) WLA Area 3
  - (c) LLA HNR
  - (d) LLA Area 2
  - (e) LLA Area 3
  - (f) IEC;
  - (g) IEC BT+1; and
  - (h) IEC BT+2.

#### Direction

3. Ofcom hereby directs BT that the Regulatory Accounting Principles for the purposes of SMP Condition 11 shall be those principles specified in the Annex to this Direction.
4. The Annex to this Direction forms part of the Direction.

## **Annex to Direction 1 - The Regulatory Accounting Principles**

A. The Regulatory Accounting Principles which apply for the purposes of preparing and maintaining the Regulatory Financial Statements, the Accounting Methodology Documents, the accounting records and the Regulatory Accounting System are set out below.

B. Where it appears to BT that any of the Regulatory Accounting Principles set out above conflict with each other in a particular case, BT must resolve such conflict by giving priority to them in the order in which they are set out, with a previous principle taking precedence over a later principle.

C. The Regulatory Accounting Principles must be applied to all material items of revenue, costs, assets and liabilities in the Regulatory Financial Statements, or material changes in those items. A material item of revenue, costs, assets or liabilities, or a material change in those items, is one which may reasonably be expected by virtue of its magnitude or nature, to affect the views of any user of the Regulatory Financial Statements.

### **1. Consistency with regulatory decisions**

Regulatory Financial Reporting must be consistent with Ofcom's regulatory decisions as directed by Ofcom.

### **2. Completeness**

Regulatory Financial Reporting must encompass all revenues, costs, assets and liabilities of the Markets, together with residual activities (including wholesale and retail).

### **3. Accuracy**

Regulatory Financial Reporting must maintain an adequate degree of accuracy, such that the information included in the Regulatory Financial Statements is free from material errors and double-counting. Materiality must be determined in accordance with paragraph C above.

### **4. Objectivity**

Each element of Regulatory Financial Reporting, so far as is possible, must take account of all the available financial and operational data that is relevant to that element.

Where an element of Regulatory Financial Reporting is based on assumptions, those assumptions must be justified and supported by all available relevant empirical data. The assumptions must not be formulated in a manner which unfairly benefits BT or any other operator or entity or creates undue bias towards any part of BT's or any other operator's business or product.

The Dominant Provider must take account of the way in which services are charged when considering how to attribute costs. In particular, where costs are recovered from upfront revenues, they must not be capitalised and attributed to rental services. Where revenue is allocated to residual, associated costs must not be included in SMP markets.



## **5. Causality**

Regulatory Financial Reporting must ensure that:

- (a) revenues (including revenues resulting from transfer charges);
- (b) costs (including costs resulting from transfer charges);
- (c) assets; and
- (d) liabilities

are attributed in accordance with the activities which cause the revenues to be earned, or costs to be incurred, or assets to be acquired, or liabilities to be incurred respectively. Costs attributed to Markets must be relevant to and required by the services provided in those Markets.

## **6. Compliance with the statutory accounting standards**

Regulatory Financial Reporting must comply with the statutory accounting standards applied in BT's statutory financial statements; with the exception of any departures as Ofcom may direct from time to time.

## **7. Consistency of the Regulatory Financial Statements as a whole and from one period to another**

Regulatory Financial Reporting must be applied consistently in all the Regulatory Financial Statements relating to the same period.

Regulatory Financial Reporting must be applied consistently from one period to another.

All the changes in Regulatory Financial Reporting from one period to another must be justified by reference to the Regulatory Accounting Principles.

If there are material changes in Regulatory Financial Reporting from one period to another, BT must restate the previous period's Regulatory Financial Statements, applying the changes to the Regulatory Financial Statements for that period.

## Direction 2: Direction setting requirements in relation to preparation, delivery, publication, form and content of the Regulatory Financial Statements

### Background

1. This Direction is made under:
  - (a) Section 49 of the Act;
  - (b) SMP Condition 11.2;
  - (c) SMP Condition 11.3;
  - (d) SMP Condition 11.5; and
  - (e) SMP Condition 11.35.
  
2. This Direction applies with respect to the following markets unless otherwise specified:
  - (a) PI
  - (b) WLA Area 2
  - (c) WLA Area 3
  - (d) LLA HNR
  - (e) LLA Area 2
  - (f) LLA Area 3
  - (g) IEC;
  - (h) IEC BT + 1; and
  - (i) IEC BT+2

### Interpretation

3. In this Direction, the following terms have the following meanings:
  - (a) “**Market**” means:
    - i) each of the SMP markets identified in the 2021 SMP Conditions Notification;
    - ii) IEC BT+2 to the extent that SMP Condition 11 imposes obligations relating to it; and
    - iii) Shared Ancillaries.

- (b) "PAC" means a 'previously allocated cost' methodology whereby costs are attributed pro-rata to each cost category which has received an allocation of operating costs, depreciation and return on mean capital employed at the preceding level of the Regulatory Accounting System.

## Direction

- 4. Ofcom hereby directs BT as follows.
- 5. BT shall prepare and deliver to Ofcom two weeks before they are published the following statements, in accordance with the obligations in paragraph 6 and 7 below:
  - (a) Introduction to the Regulatory Financial Statements;
  - (b) Basis of Preparation;
  - (c) Statement of Responsibility;
  - (d) Performance Summary by Market;
  - (e) Attribution of Operating Costs;
  - (f) Attribution of Mean Capital Employed;
  - (g) Reconciliation Statement – Income Statement;
  - (h) Reconciliation Statement – Mean Capital Employed;
  - (i) Attribution Diagrams for Operating Costs and Mean Capital Employed;
  - (j) Market Summaries;
  - (k) Analysis of Service Operating Costs and Mean Capital Employed;
  - (l) Appendix for Physical Infrastructure Market; and
  - (m) Glossary.
- 6. BT shall publish the statements set out in paragraph 5 of this Direction, and in addition the following statements:
  - (a) Statement by Ofcom; and
  - (b) Report of the Regulatory Auditor,within four months after the end of the Financial Year to which they relate.
- 7. Except where BT is entitled to amend the form and content of the Regulatory Financial Statements, BT shall prepare the statements described in paragraphs 5 and 6 in the form provided for and containing the content specified in Annex A to this Direction.
- 8. BT shall publish the Regulatory Financial Statements in Excel spreadsheet format as well as in portable document format ("PDF").

9. BT shall prepare and deliver to Ofcom at the same time it delivers its Regulatory Financial Statements the following additional financial information in respect of each Market in the form and content described in Annex B:
  - i) Data supporting the cost attribution system;
  - ii) CCA fixed asset movement statement;
  - iii) Data supporting CCA valuations;
  - iv) Asset values and depreciation;
  - v) Regulatory Asset Value (RAV) adjustment applied to Access Duct;
  - vi) PAC breakdown
  - vii) Cost component mapping
  - viii) Grant funded assets
10. BT shall prepare and deliver to Ofcom at the same time as it delivers its Regulatory Financial Statements the following additional financial information in respect of the PI Market in the form and content described in Annex B:
  - i) Costs of lead-in duct and single bore spine duct;
  - ii) Attributions of duct costs to PI services;
  - iii) PI utilisation metrics
  - iv) PIA ancillaries related to network adjustments and other PIA ancillaries
  - v) Mapping physical infrastructure records and financial records
11. BT shall prepare and deliver to Ofcom at the same time it delivers its Regulatory Financial Statements the following additional financial information in respect of the WLA - Area 2 and WLA – Area 3 Markets in the form and content as described in Annex B:
  - i) FTTP investment in Area 2 and Area 3
  - ii) FTTP homes passed
  - iii) Time related charges
  - iv) Special fault investigations
12. BT shall prepare and deliver to Ofcom at the same time it delivers its Regulatory Financial Statements the following additional financial information in respect of Leased Lines Access and IEC Markets in the form and content as described in Annex B:
  - i) Time related charges
  - ii) Contractor ECCs

- iii) Optical services
13. BT shall prepare and deliver to Ofcom at the same time it delivers its Regulatory Financial Statements the following additional financial information in respect of Leased Lines Access – Area 3 and IEC – BT only in the form and content as described in Annex B:
    - i) Dark fibre patch panels, initial testing, Right When Tested (RWT) and cessation
  14. BT shall prepare and deliver to Ofcom at the same time it delivers its Regulatory Financial Statements the following additional financial information in respect of Shared Ancillaries in the form and content as described in Annex B:
    - i) Electricity Charges
  15. Where the additional financial information can be extracted from the data provided in paragraph 9(i), BT is not required to provide separate schedules but must explain how to extract the information from the data provided in paragraph 9(i).
  16. The Annexes to this direction form part of the Direction.

## **Annex A to Direction 2**

### **Statement by Ofcom**

1. The statement provided by Ofcom commenting on the figures in, the notes to, or the presentation of any or all of the Regulatory Financial Statements, in relation to each of the Markets.

### **Introduction to the Regulatory Financial Statements**

2. The Introduction to the Regulatory Financial Statements (RFS) shall be included in the RFS as a separate statement.
3. The Introduction must include a summary of the Dominant Provider's financial performance in a way which helps the reader to understand the RFS. The summary must include a brief but complete commentary on its financial performance in relation to each Market separately, prepared on an objective basis.
4. The Introduction should also set out an analysis of the changes and developments affecting each Market, including changes in market conditions, the introduction or announcement of new services, new and discontinued activities and relevant acquisitions and disposals.

### **Basis of Preparation**

5. The Regulatory Financial Statements (RFS) shall contain, as a separate statement, explanations based on generally accepted accounting principles (GAAP), to assist the user in the interpretation of the RFS.
6. The explanations must address issues necessary to ensure the proper preparation of the RFS (in accordance with the requirement to obtain an audit to "properly prepared in accordance with" standard). They should set out to the extent necessary the basis of accounting, accounting policies, changes for restatement, non-compliance with the International Accounting Standards and any other information that will enable users to properly understand the RFS.
7. The explanations should make clear issues of comparability that assist the reader's understanding of the RFS and highlight accounting policies that are key to the understanding of performance, focusing on those which have required the particular exercise of judgement in their application and those accounting policies which have changed in the year.

### **Statement of Responsibility**

8. The statement provided by the board of directors of BT shall set out the basis of preparation of the Regulatory Financial Statements and confirm the approval of the Regulatory Financial Statements by BT's board of directors.

### **Report of the Regulatory Auditor**

9. The statement by the Regulatory Auditor shall set out the duties and responsibilities of BT and of the Regulatory Auditor, the basis of audit opinion in accordance with current auditing standards,

to whom a duty of care is owed and their opinion in respect of each Regulatory Financial Statement.

## Performance Summary by Market

10. The Performance Summary by Market schedule shall be in the form specified below, and contain the information required by the column and row headings.

**Performance Summary by Market 20XX**  
**For the year ended 31 March 20XX**

		Openreach				Rest of BT	BT Group			
		Physical Infrastructure	SMP markets (additional column for each market)	Non-SMP	Eliminations	Total	Total	Eliminations	Roundings	Total
Section										
<b>PI revenues</b>										
External purchases	£m									
Internal purchases	£m									
Inputs to downstream services	£m									
<b>Total PI revenues</b>	£m									
<b>Other revenues</b>										
External revenue	£m									
Internal revenue	£m									
Total other revenues	£m									
<b>Total revenue</b>	£m									
Attribution of PI costs	£m									
Operating costs	£m									
Depreciation	£m									
Specific items	£m									
<b>Total HCA operating costs</b>	£m									
CCA adjustments	£m									
<b>Total CCA operating costs</b>	£m									
<b>CCA Return</b>	£m									
<b>Mean capital employed</b>	£m									
<b>Return on MCE %</b>	%									



**Note on specific items:**

Below the Performance Summary by Market schedule BT must include a schedule showing which specific items reported in the BT Group statutory financial statements have been attributed to SMP markets.

**Notes for completing the Performance Summary by Market schedule**

- PI revenues: these rows should only be completed for the PI market
- Other revenues: these rows should be completed for all columns except that relating to the PI market
- Attribution of PI: this row should be completed for all columns except that relating to the PI market. The total in this row should reconcile to the row called 'inputs to downstream services'
- All other rows: these should be completed for all columns
- The 'specific items' row and the 'Note on specific items' must be included in each year from and including the 2022/23 financial year.

Within Openreach, "SMP markets" must include a separate column for each of:

- Wholesale local access – Area 2
- Wholesale local access – Area 3
- Leased lines access – Area 2
- Leased lines access – Area 3
- Leased lines access – High Network Reach
- IEC – BT only exchanges
- IEC – BT + 1 exchanges
- IEC BT+2 exchanges (insofar as SMP Condition 11 applies)
- Shared Ancillaries

## **Attribution of Operating Costs**

11. The Attribution of Operating Costs schedule shall be in the form specified below, and contain the information required by the column and row headings.

**Attribution of operating costs 20XX**  
**For the year ended 31 March 20XX**

**(i) Operating costs by type**

£m

	Openreach					RoBT	BT Group		
	Physical Infrastructure	SMP markets (additional column for each market)	Non-SMP	Eliminations	Total	Total	Eliminations	Roundings	Total
Section									
EOI input prices (if applicable)									
Attribution of PI costs									
Net labour costs									
Product costs & sales commissions									
Payments to telecommunications operators									
Property & energy costs									
Network operating and IT costs									
TV programme rights charges									
Provision and Installation									
Marketing and sales									
Other operating costs									
Other operating income									
<b>Total operating costs before depreciation</b>									
<b>Depreciation</b>									
Duct									
Poles									
Copper									
Fibre									
Electronics									
Software									
Right of use assets									
Land and buildings									
Other assets									
Less funded assets (BDUK, etc)									
<b>Total depreciation</b>									
Specific items									
<b>Total HCA operating costs</b>									
<b>CCA adjustments</b>									
Holding gains									
Supplementary depreciation									
Other CCA adjustments									
Roundings									
<b>Total CCA operating costs</b>									
<b>Total CCA operating costs includes the following:</b>									
Cumulo charges									
Openreach SLGs									
Leaver costs									

**(ii) Operating costs by division**

£m

Openreach					RoBT	BT Group		
Physical Infrastructure	SMP markets (additional column for each market)	Non-SMP	Eliminations	Total	Total	Eliminations	Roundings	Total

Section

**Openreach**

Service and network delivery

Openreach support functions

**Openreach total**

**Rest of BT**

Group centre

Property and facilities

Technology

Consumer, Global & Enterprise

**Rest of BT total**

**Operating costs before depreciation**

Notes for completing the 'Attribution of Operating Costs' schedule:

- The operating cost categories used in the '(i) Operating costs by type schedule between 'net labour costs' and 'other operating income', inclusive, must align with those presented in the 'operating costs' note to the financial statements presented in the BT Group annual report in the corresponding financial year.
- The 'specific items' row in the '(i) Operating costs by type' schedule is to be included in each year from and including the 2022/23 financial year
- BT can change the row names in the (ii) Operating costs by division schedule to align with the names of its divisions. Any changes to row names to reflect changes to the names of divisions must be explained in a note to this schedule.

Within Openreach, "SMP markets" must include a separate column for each of:

- Wholesale local access – Area 2

- Wholesale local access – Area 3
- Leased lines access – Area 2
- Leased lines access – Area 3
- Leased lines access – High Network Reach
- IEC – BT only exchanges
- IEC – BT + 1 exchanges
- IEC – BT + 2 exchanges (insofar as SMP Condition 11 applies)
- Shared Ancillaries

## Attribution of Mean Capital Employed

12. The Attribution of Mean Capital Employed schedule shall be in the form specified below, and contain the information required by the column and row headings.

### Attribution of Mean Capital Employed XX For the year ended 31 March 20XX

£m	Openreach					RoBT	BT Group		
	Physical Infrastructure	SMP markets (additional column for each market)	Non-SMP	Eliminations	Total	Total	Eliminations	Roundings	Total
Section									
<b>Non-current assets</b>									
- Duct									
- Poles									
- Copper									
- Fibre									
- Electronics									
- Software									
- Land and buildings									
- Right of use assets									
- Other assets									
- Less funded assets (BDUK, etc)									
<b>Total non-current assets</b>									
Current assets									
Current liabilities									
Provisions									
Roundings									
<b>Total MCE</b>									

Notes for completing the 'Attribution of Wholesale Current Cost Mean Capital Employed' schedule:

BT must provide an explanation for any duct and pole assets reported outside of the PI market.

Within Openreach, "SMP markets" must include a separate column for each of:

- Wholesale local access – Area 2
- Wholesale local access – Area 3
- Leased lines access – Area 2
- Leased lines access – Area 3
- Leased lines access – High Network Reach
- IEC – BT only exchanges
- IEC – BT + 1 exchanges
- IEC – BT + 2 exchanges (insofar as SMP Condition 11 applies)
- Shared Ancillaries

**Reconciliation Statement - Income Statement**

13. The Reconciliation Statement - Income Statement schedule shall be in the form specified below, and contain the information required by the column and row headings.

## Reconciliation Statement - Income Statement 20XX

For the year ended 31 March 20XX

	Openreach			BT Group plc		
	Revenue	Operating Cost	Return or operating profit	Revenue	Operating Cost	Return or operating profit
	£m	£m	£m	£m	£m	£m
<b>As in the Annual Report</b>						
<u>Adjustments</u>						
Specific items						
Use of Technology Assets						
Other trading differences						
Net short term interest						
Share of post tax loss of associated and joint ventures						
Installations costs treated as operating expenses						
CCA adjustments						
Roundings						
<b>As in the RFS</b>						

### Note on completion of Reconciliation Statement – Income Statement/Profit and Loss Account

Below the 'Reconciliation Statement – Income Statement' schedule, BT must show a breakdown of the Openreach operating cost adjustment for 'Other trading differences'.

- This breakdown must use the cost categories from the 'Attribution of Operating Costs' schedule – specifically those headings between 'net labour costs' and 'other operating income' inclusive.
- For each operating cost category representing 10% or more of the 'Other trading differences' adjustment, BT must provide an explanation for the different accounting treatment between the RFS and the BT annual report.

The 'specific items' adjustment can be omitted each year from and including the 2022/23 financial year.



BT may add or remove rows under the 'adjustments' heading where it reasonably considers they are required to respond to changes in BT's business. A description of any such changes must be published in the RFS.

BT must include a brief description of each adjustment in the RFS.

### **Reconciliation Statement – Mean Capital Employed**

14. The Reconciliation Statement – Mean Capital Employed schedule shall be in the form specified below, and contain the information required by the column and row headings.



## Attribution Diagrams for Operating Costs and Mean Capital Employed

15. For each operating cost and asset category reported in the Attribution of Operating Costs and Attribution of Mean Capital Employed schedules BT must publish a diagram showing the following:

- The key allocation stages. As a minimum, this must include the following allocation stages:
  - Initial cost of the cost category
  - Activity group and/or plant group
  - Network Component
  - SMP and non-SMP markets (each SMP market must be identified);
- At each allocation stage (including the initial cost of the cost category), either the 5 largest cost pools, or any cost pool representing 20% or more of the total cost associated with the relevant operating cost or asset category of that allocation stage. Other cost pools can be aggregated together into an 'other' cost pool;
- The cost drivers associated with each identified cost pool at each stage;
- The percentage allocation using those cost drivers at each stage; and
- The percentage of cost allocated to each Openreach SMP market, Openreach residual and rest of BT.

### Notes on preparing these diagrams

For the 'Fibre' asset category, where BT categorises this as access, backhaul or core fibre in its Regulatory Accounting System, the attribution diagram must illustrate how each of access, backhaul and core fibre is attributed.

These diagrams may be published as a separate appendix to the RFS on BT's website.

BT must publish a narrative alongside these diagrams explaining how to interpret the diagrams and where to find information on each cost driver in the Accounting Methodology Document. Any assumptions made when preparing these diagrams must be published.

## Market Summaries

16. BT must publish the schedules set out in this section:

- i. PI Summary with Note on network adjustments above and below the financial Limit;
- ii. Wholesale Local Access – Area 2 Summary;
- iii. Wholesale Local Access – Area 3 Summary with Note on FTTP homes passed in Area 3;
- iv. Leased Lines Access – Area 2 Summary;
- v. Leased Lines Access – Area 3 Summary;
- vi. Leased Lines Access – High Network Reach Summary;
- vii. IEC – BT Only Summary;
- viii. IEC – BT + 1 Summary
- ix. IEC – BT + 2 exchanges (insofar as SMP Condition 11 applies); and
- x. Shared Ancillaries

17. Each schedule shall be in the form specified for it below, and contain the information required by the column and row headings. In each schedule, BT can include additional rows i) where required to ensure total revenues or costs reconcile to the Performance Summary by Market schedule or ii) where these row items would be better presented in the Market Summary schedules than in the Reconciliation Statements. For example, in relation to IFRS15 (relating to revenue from contracts with customers) BT can include rows such as:

- IFRS15 Deferred Revenue
- IFRS15 Outpayments required to be treated as a credit to revenue (e.g. in relation to SLGs)

## i) PI Summary

### Detailed service analysis

	Internal Revenue	External Revenue	Total Revenue	Internal Volume	External Volume	Measure	Internal Average Price	External Average Price	Internal opex	External opex	Internal MCE	External MCE	Internal ROCE	External ROCE
	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
<b>Inputs to downstream services</b>														
Lead-in duct														
Spine duct - 1 bore														
Spine duct - 2 bore														
Spine duct - 3+ bore														
Footway box - manholes														
Footway box - joint boxes														
Poles - multi-end-user attachment														
Poles - single-end-user attachment														
Pole top equipment														
Cable up a pole														
Other PI rentals (if applicable)														
<b>Total</b>														
<b>PI Rentals</b>														
Lead-in duct														
Spine duct - 1 bore														
Spine duct - 2 bore														
Spine duct - 3+ bore														
Footway box - manholes														
Footway box - joint boxes														
Poles - multi-end-user attachment														
Poles - single-end-user attachment														
Pole top equipment														
Cable up a pole														
Other PI rentals (if applicable)														
<b>Total</b>														
Ancillary Charges (excl. network adjustments)														
Network adjustments above financial limit														
Other PI Charges (if applicable)														
<b>Total Physical Infrastructure</b>														

**Note on network adjustments above and below the financial Limit**

This note should appear below the PI Summary schedule

	<b>Internal opex</b>	<b>External opex</b>	<b>Internal MCE</b>	<b>External MCE</b>
Gross network adjustments				
Less network adjustments above financial limit				
Network adjustments below the limit				
- of which, included in downstream services				
- of which included in PI rentals				

## ii) Wholesale Local Access – Area 2 Summary

### X.X.X Wholesale Local Access - Area 2 20XX

For the year ended 31 March 20XX

#### Detailed service analysis

Service	Internal	External	Total Revenue	Internal	External	Measure	Internal	External	Internal	External	Internal	External	Internal	External
	Revenue	Revenue		Volume	Volume		Average	Average						
	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
MPF rentals (SML1) (charge controlled)														
MPF other rentals														
FTTC 40/10 rentals (charge controlled)														
FTTC other rentals														
FTTP 40/10 rentals (charge controlled) (if applicable)														
FTTP 40/10 rentals (non-charge controlled)														
FTTP other rentals														
SOGEA 40/10 rental (charge controlled)														
SOGEA other rentals														
Ancillaries (CPI-0%) (list each service where total revenue > £5m)														
Ancillaries (£0 cap) (aggregate in a single line)														
Other ancillaries														
Other WLA services														
Rounding														
<b>Total WLA Area 2</b>														

#### Note on completion of ii) Wholesale Local Access – Area 2 Summary

- ‘Ancillaries (CPI-0%, list where revenue > £5m)’ means that each ancillary subject to a CPI-0% control with total revenue exceeding £5m should be reported on a separate row

### iii) Wholesale Local Access – Area 3 Summary

#### X.X.X Wholesale Local Access - Area 3 20XX

For the year ended 31 March 20XX

##### Detailed service analysis

Service	Internal Revenue	External Revenue	Total Revenue	Internal Volume	External Volume	Measure	Internal Average Price	External Average Price	Internal opex	External opex	Internal MCE	External MCE	Internal ROCE	External ROCE
	£m	£m		£m	£		£	£m	£m	£m	£m	%	%	
MPF Rentals (SML1) charge controlled														
MPF other rentals														
FTTC 40/10 rentals (charge controlled)														
FTTC other rentals														
FTTP 40/10 rentals (charge controlled) (if applicable)														
FTTP 40/10 rentals (non-charge controlled)														
FTTP other rentals														
SOGEA 40/10 rental (charge controlled)														
SOGEA other rentals														
Ancillaries (CPI-0%, list where revenue > £5m)														
Ancillaries (£0 cap)														
Other ancillaries														
Other WLA services														
Rounding														

**Total WLA Area 3**

#### Note on completion of iii) Wholesale Access – Area 3 Summary

- ‘Ancillaries (CPI-0%, list where revenue > £5m)’ means that each ancillary subject to a CPI-0% control with total revenue exceeding £5m should be reported on a separate row



### Note on FTTP homes passed in Area 3

This note should appear below the Wholesale Local Access – Area 3 Summary schedule.

	<b>Additions for</b>	<b>Cumulative total as at</b>	
	<b>Measure</b>	<b>the year</b>	<b>31 March 20XX</b>
Non-subsidised homes passed with FTTP	000s		

#### Note on completion of 'Note on FTTP homes passed in Area 3'

- BT must include as a note below the schedule the definition of 'premises passed by FTTP'. A premise is passed by FTTP if Openreach's GEA FTTP product is available for connection and supply at that premise. Where this definition is different from the way in which BT holds data, BT may provide information as held by it relating to premises passed by FTTP but must explain any differences between the definition and the data provided.
- 'Non-subsidised homes passed with FTTP' means homes passed which have not been wholly or partly funded through Government grants or other subsidies.

**iv) Leased Lines Access – Area 2 Summary**

**X.X.X Leased Lines Access - Area 2 Summary 20XX**

For the year ended 31 March 20XX

**Detailed service analysis**

<b>Service</b>	<b>Internal Revenue</b>	<b>External Revenue</b>	<b>Total Revenue</b>	<b>Internal Volume</b>	<b>External Volume</b>	<b>Measure</b>	<b>Internal Average Price</b>	<b>External Average Price</b>	<b>Internal opex</b>	<b>External opex</b>	<b>Internal MCE</b>	<b>External MCE</b>	<b>Internal ROCE</b>	<b>External ROCE</b>
	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
<b>Ethernet services basket</b>														
Connections														
EAD 1Gbit/s rentals														
Other EAD rentals														
EAD LA 1Gbit/s rentals														
Other EAD LA rentals														
Other rentals														
Main link														
Other services (if applicable)														
<b>Total basket</b>														
<b>Optical services - rentals</b>														
Optical services - connections														
Optical services - main link														
<b>Direct ECC basket</b>														
Time related charges														
Ancillaries (list each ancillary where revenue > £5m)														
Other ancillaries														
Other services (if applicable)														
<b>Total</b>														

BT must explain how it has determined whether to report main link in the LLA Area 2, LLA Area 3, LLA HNR, IEC BT Only, IEC B+1 and IEC BT+ 2 (where applicable) markets.

Note on completion of iv) Leased Lines Access – Area 2 Summary

- 'Ethernet services basket' means the services included in the Ethernet Basket as defined in the Annex to Condition 12E.
- 'Direct ECC basket' means the services included in the Direct ECC Services Basket as defined in the Annex to Condition 12G.
- 'Ancillaries (list each ancillary where revenue > £5m)' means that each ancillary with total revenue exceeding £5m should be reported on a separate row. Ancillaries where total revenue is less than £5m can be aggregated and reported together.

## v) Leased Lines Access – Area 3 Summary

### X.X.X Leased Lines Access - Area 3 Summary 20XX

For the year ended 31 March 20XX

#### Detailed service analysis

Service	Internal	External	Total	Internal	External		Internal	External	Internal	External	Internal	External	Internal	External
	Revenue	Revenue	Revenue	Volume	Volume	Measure	Average	Average	opex	opex	MCE	MCE	ROCE	ROCE
	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
<b>Dark fibre services</b>														
Connections - single fibre														
Connections - dual fibre														
Rentals - single fibre														
Rentals - dual fibre														
Main link														
Patch panels - customer premises														
Patch panels - exchanges														
Initial testing														
Cessation charges														
Right when tested charges														
<b>Ethernet services basket</b>														
Connections														
EAD 1Gbit/s rentals														
Other EAD rentals														
EAD LA 1Gbit/s rentals														
Other EAD LA rentals														
Other rentals														
Main link														
Other services														
<hr/>														
Total basket														
Optical services - rentals														
Optical services - connections														
Optical services - main link														
Direct ECC basket														
Time related charges														
Ancillaries (list each ancillary where revenue > £5m)														
Other ancillaries														
Other services (if applicable)														
<hr/>														
<b>Total</b>														

BT must explain how it has determined whether to report main link in the LLA Area 2, LLA Area 3, LLA HNR, IEC BT Only, IEC B+1 and IEC BT+ 2 (where applicable) markets.

Note on completion of v) Leased Lines Access – Area 3 Summary

- 'Ethernet basket' means the services included in the Ethernet Basket as defined in the Annex to Condition 12E.
- 'Direct ECC basket' means the services included in the Direct ECC Services Basket as defined in the Annex to Condition 12G.
- 'Ancillaries (list each ancillary where revenue > £5m)' means that each ancillary with total revenue exceeding £5m should be reported on a separate row. Ancillaries where total revenue is less than £5m can be aggregated and reported together.

vi) Leased Lines Access – High Network Reach Area Summary

**X.X.X Leased lines access - High Network Reach Summary 20XX**

For the year ended 31 March 20XX

**Detailed service analysis**

<b>Service</b>	<b>Internal Revenue</b>	<b>External Revenue</b>	<b>Total Revenue</b>	<b>Internal Volume</b>	<b>External Volume Measure</b>	<b>Internal Average Price</b>	<b>External Average Price</b>
	<b>£m</b>	<b>£m</b>	<b>£m</b>			<b>£</b>	<b>£</b>
<b>Ethernet services</b>							
Connections							
EAD 1Gbit/s rentals							
Other EAD rentals							
EAD LA 1Gbit/s rentals							
Other EAD LA rentals							
Other rentals							
Main link							
Other services							
Optical services - rentals							
Optical services - connections							
Optical services - main link							
Direct ECCs							
Time related charges							
Ancillaries (list each ancillary where revenue > £5m)							
Other ancillaries							
Other services (if applicable)							
<b>Total</b>							

BT must explain how it has determined whether to report main link in the LLA Area 2, LLA Area 3, LLA HNR, IEC BT Only, IEC B+1 and IEC BT+ 2 (where applicable) markets.

Note on completion of vi) Leased Lines Access – High Network Reach Area Summary

- ‘Ancillaries (list each ancillary where revenue > £5m)’ means that each ancillary with total revenue exceeding £5m should be reported on a separate row. Ancillaries where total revenue is less than £5m can be aggregated and reported together.

## vii) IEC – BT Only Summary

### X.X.X Inter-Exchange Connectivity BT only Summary 20XX

For the year ended 31 March 20XX

#### Detailed service analysis

Service	Internal	External	Total	Internal	External	Measure	Internal	External	Internal	External	Internal	External	Internal	External
	Revenue	Revenue	Revenue	Volume	Volume		Average	Average	opex	opex	MCE	MCE	ROCE	ROCE
	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
<b>Dark fibre services</b>														
Connections - single fibre														
Connections - dual fibre														
Rentals - single fibre														
Rentals - dual fibre														
Main link														
Patch panels - customer premises														
Patch panels - exchanges														
Initial testing														
Cessation charges														
Right when tested charges														
<b>Ethernet services basket</b>														
Connections														
EAD 1Gbit/s rentals														
Other EAD rentals														
EAD LA 1Gbit/s rentals														
Other EAD LA rentals														
Other rentals														
Main link														
Other services														
Total basket														
Optical services - rentals														
Optical services - connections														
Optical services - main link														
Direct ECC basket														
Time related charges														
Ancillaries (list each ancillary where revenue > £5m)														
Other ancillaries														
Other services (if applicable)														
<b>Total</b>														



BT must explain how it has determined whether to report main link in the LLA Area 2, LLA Area 3, LLA HNR, IEC BT Only, IEC B+1 and IEC BT+ 2 (where applicable) markets.

Note on completion of vii) IEC – BT Only Summary

- 'Ethernet basket' means the services included in the Ethernet Basket as defined in the Annex to Condition 12E
- 'Direct ECC basket' means the services included in the Direct ECC Services Basket as defined in the Annex to Condition 12G
- 'Ancillaries (list each ancillary where revenue > £5m)' means that each ancillary with total revenue exceeding £5m should be reported on a separate row. Ancillaries where total revenue is less than £5m can be aggregated and reported together.
- Where services listed in this schedule are not applicable to the IEC – BT only market, BT may omit them from this schedule

## viii) IEC – BT + 1 Summary

### X.X.X Inter-Exchange Connectivity BT + 1 Summary 20XX

For the year ended 31 March 20XX

Detailed service analysis	Internal	External	Total	Internal	External	Measure	Internal	External	Internal	External	Internal	External	Internal	External
	Revenue	Revenue	Revenue	Volume	Volume		Average	Average	opex	opex	MCE	MCE	ROCE	ROCE
Service	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
<b>Dark fibre services</b>														
Connections - single fibre														
Connections - dual fibre														
Rentals - single fibre														
Rentals - dual fibre														
Main link														
Patch panels - customer premises														
Patch panels - exchanges														
Initial testing														
Cessation charges														
Right when tested charges														
<b>Ethernet services basket</b>														
Connections														
EAD 1Gbit/s rentals														
Other EAD rentals														
EAD LA 1Gbit/s rentals														
Other EAD LA rentals														
Other rentals														
Main link														
Other services														
<hr/>														
Total basket														
Optical services - rentals														
Optical services - connections														
Optical services - main link														
Direct ECC basket														
Time related charges														
Ancillaries (list each ancillary where revenue > £5m)														
Other ancillaries														
Other services (if applicable)														
<hr/>														
<b>Total</b>														

**In this schedule, dark fibre services are only required to be published for the 2021/2022 financial year.** BT must explain how it has determined whether to report main link in the LLA Area 2, LLA Area 3, LLA HNR, IEC BT Only, IEC B+1 and IEC BT+2 (where applicable) markets

Note on completion of vii) IEC – BT + 1 Summary

- 'Ethernet basket' means the services included in the Ethernet Basket as defined in the Annex to Condition 12E
- 'Direct ECC basket' means the services included in the Direct ECC Services Basket as defined in the Annex to Condition 12G
- 'Ancillaries (list each ancillary where revenue > £5m)' means that each ancillary with total revenue exceeding £5m should be reported on a separate row. Ancillaries where total revenue is less than £5m can be aggregated and reported together.
- Where services listed in this schedule are not applicable to the IEC – BT only market, BT can omit them from this schedule

**ix) IEC – BT + 2 exchanges (2021/22 financial year only)**

**X.X.X Inter-Exchange Connectivity BT+2 Summary 20XX**

For the year ended 31 March 20XX

**Detailed service analysis**

<b>Service</b>	<b>Internal Revenue</b>	<b>External Revenue</b>	<b>Total Revenue</b>	<b>Internal Volume</b>	<b>External Volume</b>	<b>Measure</b>	<b>Internal Average Price</b>	<b>External Average Price</b>	<b>Internal opex</b>	<b>External opex</b>	<b>Internal MCE</b>	<b>External MCE</b>	<b>Internal ROCE</b>	<b>External ROCE</b>
	£m	£m	£m				£	£	£m	£m	£m	£m	%	%
<b>Ethernet services basket</b>														
Connections														
EAD 1Gbit/s rentals														
Other EAD rentals														
EAD LA 1Gbit/s rentals														
Other EAD LA rentals														
Other rentals														
Main link														
Other services														
<b>Total basket</b>														
<b>Optical services - rentals</b>														
Optical services - connections														
Optical services - main link														
<b>Direct ECC basket</b>														
Time related charges														
Ancillaries (list each ancillary where revenue > £5m)														
Other ancillaries														
Other services (if applicable)														
<b>Total</b>														

**This schedule is only required to the extent that SMP Condition 11 applies to the market (i.e for the 2021/22 financial year)**

BT must explain how it has determined whether to report main link in the LLA Area 2, LLA Area 3, LLA HNR, IEC BT Only, IEC B+1 and IEC BT+ 2 (where applicable) markets.

Note on completion of ix) IEC – BT+2 Summary

- 'Ethernet basket' means the services included in the Ethernet Basket as defined in the Annex to Condition 12E
- 'Direct ECC basket' means the services included in the Direct ECC Services Basket as defined in the Annex to Condition 12G
- 'Ancillaries (list each ancillary where revenue > £5m)' means that each ancillary with total revenue exceeding £5m should be reported on a separate row. Ancillaries where total revenue is less than £5m can be aggregated and reported together.
- Where services listed in this schedule are not applicable to the IEC – BT +2 market, BT may omit them from this schedule

## x) Shared Ancillaries

### X.X.X Shared Ancillaries Summary 20XX

For the year ended 31 March 20XX

#### Detailed service analysis

Service	Internal	External	Total	Internal	External	Internal	External	Internal	External	Internal	External	Internal	External
	Revenue	Revenue	Revenue	Volume	Volume Measure								
	£m	£m	£m			£	£	£m	£m	£m	£m	%	%
Cablelink													
Accommodation													
Electricity charges													
<b>Total Shared Ancillaries</b>													

#### Note on completion of x) Shared Ancillaries

- 'Cablelink' means the services included in the definition of Cablelink Services in section 3 of the Annex to Condition 12F
- 'Accommodation' means the services included in the definition of:
  - Co-Mingling New Provide and Rental Services in section 4 of Annex 1 to Condition 12B
  - Accommodation Services in section 1 of the Annex to Condition 12F
  - Overlapping Accommodation Services in section 2 of the Annex to Condition 12F
- Electricity charge means Electricity Charge as defined in Condition 6.4(a)

## **Analysis of Service Operating Costs and Mean Capital Employed**

18. Immediately after each Market Summary schedule listed below, BT must also publish the following schedules:

- a) Analysis of Service Operating Costs; and
- b) Analysis of Service MCE.

19. Each such schedule must include a column for each service/basket required in the Market Summary schedule concerned.

20. The Market Summary schedules in relation to which this requirement applies are:

- i) PI Summary
- ii) WLA – Area 2 Summary
- iii) WLA – Area 3 Summary
- iv) LLA – Area 2 Summary
- v) LLA – Area 3 Summary
- vii) IEC – BT Only Summary
- viii) IEC – BT + 1 Summary
- xi) IEC – BT + 2 exchanges;
- x) Shared Ancillaries Summary

a) Analysis of Service Operating Costs

21. The Analysis of Service Operating Costs schedule shall be in the form specified below, and contain the information required by the column and row headings.



**Analysis of Service Operating Costs 20XX  
For the year ending March 20XX**

**(i) Operating costs by nature**

£m

Include column for each service/basket published in market summary	Total
EOI input prices	
Attribution of PI costs	
Net labour costs	
Product costs & sales commissions	
Payments to telecommunications operators	
Property & energy costs	
Network operating and IT costs	
TV programme rights charges	
Provision and Installation	
Marketing and sales	
Other operating costs	
Other operating income	
<b>Total operating costs before depreciation</b>	
<b>Depreciation</b>	
Duct	
Poles	
Copper	
Fibre	
Electronics	
Software	
Right of use assets	
Land and buildings	
Other assets	
Less funded assets (BDUK, etc)	
<b>Total depreciation</b>	
Specific items	
<b>Total HCA operating costs</b>	
<b>CCA adjustments</b>	
- Holding gains	
- Supplementary depreciation	
- Other CCA adjustments	
Roundings	
<b>Total CCA operating costs</b>	

**Total CCA operating costs includes the following:**

Cumulo charges  
Openreach SLGs  
Leaver costs

**(ii) Operating costs by division**

£m

	Include column for each service/basket published in market summary	Total
Section		
<b>Openreach</b>		
Service and network delivery		
Openreach support functions		
<b>Openreach total</b>		
<b>Rest of BT</b>		
Group centre		
Property and facilities		
Technology		
Consumer, Global & Enterprise		
<b>Rest of BT total</b>		
<b>Operating costs before depreciation</b>		

Notes for completing the Analysis of Service Operating Costs schedules.

- A column must be included for each service published in the Market Summary, with separate columns for internal and external services.
- Row headings must be consistent with those in the Attribution of Operating Cost schedule.

b) Analysis of Service MCE

22. The Analysis of Service MCE schedule shall be in the form specified below, and contain the information required by the column and row headings

**Analysis of Service MCE 20XX  
For the year ending March 20XX**

	Include column for each service/basket published in market summary	Total
<hr/>		
<b>Non-current assets</b>		
- Duct		
- Poles		
- Copper		
- Fibre		
- Electronics		
- Software		
- Land and buildings		
- Right of use assets		
- Other assets		
- Less funded assets (BDUK, etc)		
<hr/>		
<b>Total non-current assets</b>		
<hr/>		
Current assets		
Current liabilities		
Provisions		
Roundings		
<hr/>		
<b>Total MCE</b>		
<hr/>		

Notes for completing the 'Analysis of Service MCE' schedule

A column must be included for each service published in the Market Summary, with separate columns for internal and external services.

Row headings must be consistent with those in the Attribution of MCE schedule.

## Appendix for Physical Infrastructure Market

23. The Appendix for the Physical Infrastructure Market may be published either after the PI Market Summary schedule or after all the Market Summary schedules. It shall be in the form specified below, and contain the information required by the column and row headings

### Network adjustments restated on an MCE basis

For the year ended 31 March 20XX

	MCE £m		
	Internal	External	Total
Above the financial limit			
Below the financial limit			

## **Glossary**

24. The Glossary shall be included in the RFS as a separate statement.
25. The Glossary must include definitions of financial and non-financial terms used in the RFS as necessary to secure that it is reasonable to consider that a person with an understanding of regulatory accounting principles has sufficient information, clearly enough presented, to understand the RFS.

## Annex B to Direction 2

Reference	Additional Financial Information	Description
<u>A) Additional Financial Information to be provided in respect of each Market</u>		
(i)	Data supporting the cost attribution system	<p>All data, metadata and models used to run the cost attribution system (CostPerform as at the date of this notice) for the current and the prior year.</p> <p>The data and models provided must be sufficient for Ofcom to:</p> <ul style="list-style-type: none"> <li>• generate the Regulatory Financial Statements when using the same software as BT;</li> <li>• extract information on Openreach and each reported SMP market where the information published in the RFS is derived from the cost attribution system;</li> <li>• extract information on all services and cost components for each reported SMP market</li> <li>• calculate unit costs for services and components by reference to total costs and volumes;</li> <li>• understand how the cost of capital has been employed in the RFS to attribute costs;</li> <li>• see all attribution levels in the cost attribution system, including attributions to non-SMP parts of BT.</li> </ul> <p>The information should also be accompanied by any additional spreadsheets or models used to prepare the schedules published in the Regulatory Financial Statements.</p>
(ii)	CCA fixed asset movement statement	<ul style="list-style-type: none"> <li>• For each asset category for BT Group:</li> </ul>

		<p>a) gross replacement costs brought forward, additions (including capex and assets in the course of construction)/disposals/transfers, holdings gains/(loss), gross replacement costs carried forward; and</p> <p>b) gross depreciation brought forward, HCA depreciation charge, supplementary CCA depreciation, disposals/transfers/other movements, holding gains/(loss), gross depreciation carried forward)</p> <ul style="list-style-type: none"> <li>• A reconciliation to the HCA fixed assets movement statement in the BT Group statutory financial statements</li> </ul>
(iii)	Data supporting CCA valuations	Tabular data showing the indices, index weightings and composite indices used by BT to revalue assets onto a current cost basis, stating, in relation to each index, the assets in relation to which it is used.
(iv)	Asset values and depreciation	<p>For each asset category:</p> <ul style="list-style-type: none"> <li>• Asset life</li> <li>• Valuation basis (e.g. HCA or CCA)</li> <li>• Depreciation basis</li> <li>• Description of index used for CCA valuations</li> <li>• Description of samples or surveys used to determine asset value, if used</li> <li>• HCA and CCA depreciation (including information on supplementary depreciation and holding gains/losses for CCA depreciation)</li> <li>• Gross Book Value (GBV) by year of acquisition</li> <li>• Gross Replacement Cost (GRC)</li> <li>• Net Replacement Cost (NRC)</li> </ul>
(v)	Regulatory Asset Value (RAV) adjustment applied to Access Duct	<p>The following information, including all formulae:</p> <ol style="list-style-type: none"> <li>1. A breakdown of the GBV and NBV of duct, including all annual changes (including capital expenditure, disposals and assets in the course of construction);</li> </ol>



		<ol style="list-style-type: none"> <li>2. A breakdown of the CCA valuation of duct, showing the valuation of pre- and post-1997 Access Duct consistent with Schedule A of Direction 3, as well as non-Access Duct;</li> <li>3. The RAV adjustment made to the valuation of duct in the RFS (and a reconciliation to duct values in the RFS); and</li> <li>4. An explanation of how this information has been used to attribute duct costs to PI services.</li> </ol>
(vi)	PAC breakdown	<p>A breakdown of costs attributed using PAC methodologies (e.g. BT Group PAC, Openreach PAC, Technology PAC) by two-digit OUC (Organisation Unit Code along with a description of the activities undertaken by each OUC.</p> <p>(In this direction, OUC has the meaning it is given in BT's accounting systems as at the date of this notification)</p>
(vii)	Cost component mapping	<p>A mapping between the operating cost and MCE of each Network Component and the operating cost and MCE cost categories from the Attribution of Wholesale Current Costs and Attribution of Wholesale Current Cost Mean Capital Employed schedules.</p>

(viii)	Grant funded assets	<p>The following information on all grant funded investments:</p> <ul style="list-style-type: none"> <li>• Total expenditure funded by grant, both in the year and on a cumulative basis, split by asset type and a reconciliation to where this information is reported in the RFS</li> <li>• Total grant funding in the year and on a cumulative basis, split by the asset types to which the funding has been allocated and a reconciliation to where this information is reported in the RFS</li> <li>• Explanation of the grant funding arrangements</li> </ul>
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<b>B) Additional Financial Information to be provided in respect of the PI Market</b>		
(i)	Costs of lead-in duct and single bore spine duct	<ul style="list-style-type: none"> <li>• The unit cost estimates of lead-in and single bore spine duct, used to prepare the information on the costs of these services reported in the PI market summary;</li> <li>• Any assumptions made when estimating these unit costs, and evidence relied on in preparing those assumptions.</li> </ul>
(ii)	Attributions of duct costs to PI services	<p>A schedule showing how duct costs have been attributed to PI services, including:</p> <ul style="list-style-type: none"> <li>• How pre- and post- March 2018 duct has been attributed</li> <li>• Any assumptions made</li> <li>• A reconciliation of duct costs in the PIA Market to duct costs in the RAV schedule</li> </ul>
(iii)	PI utilisation metrics	<p>The following information, as at 30 September each year.</p> <ul style="list-style-type: none"> <li>• Kilometres of lead-in duct</li> <li>• Average occupancy (per 25mm sub-duct equivalent) for spine duct single bore, 2 bores and 3+ bores</li> <li>• Average number of sub-ducts crossing i) a joint box and ii) a manhole</li> <li>• Number of pure and mixed DP poles</li> <li>• Number of pure and mixed feeder poles</li> <li>• Number of cable poles</li> </ul>

		<ul style="list-style-type: none"> <li>• Number of single and multi-premise attachments for i) cable poles ii) pure DP poles iii) mixed DP poles iv) pure feeder poles and v) mixed feeder poles</li> <li>• Average number of cables up a pole for all poles</li> <li>• Number of manifold attachments for all poles</li> </ul> <p>BT must state any assumptions made to derive this information.</p>
(iv)	PIA ancillaries related to network adjustments and other PIA ancillaries	<p>For each PIA ancillary related to network adjustments and any other PIA ancillary provide the following unit costs:</p> <ol style="list-style-type: none"> <li>i. Third-party charges</li> <li>ii. Other third-party direct costs (e.g. stores)</li> <li>iii. Overheads for third-party charges</li> <li>iv. Direct Openreach labour costs</li> <li>v. Overheads on direct Openreach labour costs</li> <li>vi. Working capital employed</li> <li>vii. Fully allocated cost (estimated from items (i) to (vi) above)</li> <li>viii. Price (provide each price prevailing during the year)</li> </ol> <p>This information does not have to be generated from the cost attribution system. Any assumptions, judgements, calculations or estimates made when providing this information must be explained. This must include the following:</p> <ul style="list-style-type: none"> <li>• an explanation of the source data for each item (i) to (vii) above</li> <li>• an explanation of how Overheads on direct Openreach labour costs (item (v) above)</li> </ul>

		<p>have been estimated using information from the Regulatory Accounting System.</p> <ul style="list-style-type: none"> <li>• A comparison of how the percentage uplift for Overheads on direction Openreach labour costs (item (v) above) compares to other ancillary services reported in other SMP markets in the RFS.</li> </ul> <p>An explanation must be given where costs for any service cannot be provided.</p>
(v)	Mapping physical infrastructure records and financial records	<p>The following schedules showing a mapping of duct and pole asset additions to physical infrastructure records and financial records.</p> <p>1. Physical infrastructure records schedule: Provide an estimate of unit costs and total costs associated with duct and pole asset additions during the year, using volumes from physical infrastructure records. Additions must be broken down by the services appearing in the PI market summary. Information from planning systems can be used to derive cost estimates.</p> <p>2. Fixed asset register schedule: Using information from BT's fixed asset register, provide a breakdown of total cost associated with duct and pole asset additions during the year. Additions must be broken down by class of work and other relevant costs (providing a breakdown of any cost category greater than £10m).</p> <p>BT must provide reasons for any difference in total duct costs and total pole costs between the Physical infrastructure records schedule and the Fixed asset register schedule.</p> <p>BT must state any assumptions made to prepare this information.</p>

**C) Additional Financial Information to be provided in respect of WLA Markets**

i)	FTTP investment in Area 2 and Area 3	<p>Provide information on incremental FTTP investment in each of Area 2 and Area 3 on an annual and cumulative basis, including:</p> <ul style="list-style-type: none"> <li>• capital costs (by asset type e.g. lead-in duct, single bore spine duct, poles and fibre) and operating costs</li> <li>• grants and other subsidies used to fund FTTP investment</li> <li>• FTTP revenues</li> <li>• FTTP connections, showing movements in total connections each year</li> </ul> <p>Provide details of any assumptions used to split revenues or investment costs between Area 2 and Area 3.</p>
(ii)	FTTP homes passed	<p>Provide full details and calculations behind the FTTP homes passed figures published in the RFS, including:</p> <ul style="list-style-type: none"> <li>• Total FTTP homes passed in each of WLA Area 2 and WLA Area 3, along with any assumptions used to split FTTP homes passed by WLA Area 2 and WLA Area 3</li> <li>• FTTP homes passed funded by government subsidies and other grants in each of WLA Area 2 and WLA Area 3, including details of the subsidies and grants which have funded FTTP roll out</li> <li>• Non-subsidised homes passed in each of WLA Area 2 and WLA Area 3</li> <li>• A breakdown of homes passed with FTTP by exchange area</li> </ul> <p>The definition of FTTP homes passed must correspond to that published in the RFS.</p>
(iii)	Time related charges	Provide hourly costs for TRCs, split by direct and overhead costs.
(iv)	Special fault investigations	Provide hourly costs for SFIs, split by direct and overhead costs, and total costs for each SFI module

**D) Additional Financial Information to be provided in respect of the Leased Lines Access and Inter-exchange connectivity services markets**

(i)	Time related charges	Provide hourly costs for TRCs, split by direct and overhead costs.
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(ii)	Contractor ECCs	<p>For each contractor ECC provide the following unit costs:</p> <ol style="list-style-type: none"> <li>i. Third-party charges</li> <li>ii. Other third-party direct costs (e.g. stores)</li> <li>iii. Overheads for third-party charges</li> <li>iv. Direct Openreach labour costs</li> <li>v. Overheads on direct Openreach labour costs</li> <li>vi. Working capital employed</li> <li>vii. Fully allocated cost (estimated from items (i) to (vi) above)</li> <li>viii. Price (provide each price prevailing during the year)</li> </ol> <p>This information does not have to be generated from the cost attribution system. Any assumptions, judgements, calculations or estimates made when providing this information must be explained. This must include the following:</p> <ul style="list-style-type: none"> <li>• An explanation of the source data for each item (i) to (vii) above</li> <li>• An explanation of how Overheads on direct Openreach labour costs (item (v) above) have been estimated using information from the Regulatory Accounting System.</li> <li>• A comparison of how the percentage uplift for Overheads on direct Openreach labour costs (item (v) above) compares to other ancillary services reported in other SMP markets in the RFS.</li> </ul> <p>An explanation must be given where costs for any service cannot be provided.</p>
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(iii)	Optical services	<p>Provide a breakdown of the volumes and revenues of rental connection and main link optical services published in the RFS by reference to the following categories: Optical Spectrum Access (OSA), Optical Spectrum Extended Access (OSEA), Optical Spectrum Access Filter Connect (OSA Filter Connect), Optical Spectrum Extended Access Filter Connect (OSEA Filter Connect) and other optical services.</p> <p>Where this is not possible, explain why.</p>
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**E) Additional Financial Information to be provided in respect of the Leased Lines Access – Area 3 and IEC-BT only markets (and IEC BT+1 market for the 2021/22 financial year)**

(i)	Dark fibre patch panels, initial testing, Right When Tested (RWT) and cessation	<p>Provide the following information in relation to the costs of patch panels reported in the Regulatory Financial Statements. This information can be derived from an apportionment approach where necessary.</p> <ul style="list-style-type: none"> <li>• The cost of patch panels equipment at exchanges and customer premises</li> <li>• The cost of labour to install patch panels, split by hourly engineering pay and the average time taken to install patch panels at exchanges and customer premises</li> <li>• Any differences in labour costs between single and dual fibre</li> <li>• Depreciation associated with patch panels</li> <li>• Other costs associated with patch panels</li> </ul> <p>Provide the following information in relation to the costs of initial testing, RWT and cessation reported in the Regulatory Financial Statements. This information can be derived from an apportionment approach where necessary.</p> <ul style="list-style-type: none"> <li>• The cost of labour associated with each of these services, split by hourly</li> </ul>
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		<p>engineering pay and the average time taken to perform the task</p> <ul style="list-style-type: none"> <li>• Any differences in labour costs between single and dual fibre</li> <li>• Other costs associated with each of these services</li> </ul>
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<b>F) Additional Financial Information to be provided in respect of Shared Ancillaries</b>		
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(i)	Electricity Charges	Provide information setting out the calculation of Electricity Charges including the precise level of BT's Mark up on the purchase of electricity costs which is reconciled to the published Regulatory Financial Statements.
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## **Direction 3: Direction specifying the requirements in relation to consistency with regulatory decisions and regulatory asset value adjusted current costs basis**

### **Background**

1. This Direction is made under:
  - (a) Section 49 of the Act;
  - (b) SMP Condition 11.2;
  - (c) SMP Condition 11.3;
  - (d) SMP Condition 11.5; and
  - (e) SMP Condition 11.12.
  
2. This Direction applies with respect to the following markets unless otherwise specified:
  - (a) PI
  - (b) WLA Area 2
  - (c) WLA Area 3
  - (d) LLA HNR
  - (e) LLA Area 2
  - (f) LLA Area 3
  - (g) IEC
  - (h) IEC BT+1; and
  - (i) IEC BT+2

### **Direction**

3. Ofcom hereby directs BT as set out in Annexes A and B.

## Annex A to Direction 3

1. In this Annex A, the following terms shall have the following meanings:
  - (a) “**Access Ducts**” means the underground pipes which hold copper and fibre lines, and which are used in the part of BT’s network which connects directly to customers from the local telephone exchange; and
  - (b) “**Retail Prices Index**” means the measure of inflation which is published monthly by the Office for National Statistics.
  - (c) “**Access Fibre Cable**” means the fibre cable from BT exchange to the end user’s premises. This includes fibre assets from the following Classes of Work;
    - i) LFSC Local Line Of Spine Cable
    - ii) LFDC Local Line Of Distribution Cable
    - iii) CJF Junction Cable Optical Fibre
  - (d) “**Copper**” means the overhead and underground copper cables that connect BT’s exchanges to distribution points and main socket on an end user’s property.
  - (e) “**Poles**” means the poles which carry overhead copper and fibre cables between customer premises, distribution points and the spine network.
2. In preparing the Regulatory Financial Statements, explanations and other required information on a regulatory asset value adjusted current costs basis, BT shall value assets as follows:
  - (a) Access Ducts capitalised prior to 1 August 1997: on the basis of the closing historical cost on 31 March 2005 which is indexed by the Retail Price Index from 31 March 2005.
  - (b) Access Ducts capitalised on or after 1 August 1997 on the basis of the closing historical cost indexed by the Retail Prices Index;
  - (c) All non-Access Ducts: on the basis of the closing historical cost indexed by the Retail Prices Index.
  - (d) Access Fibre Cable: on the basis of the closing historical cost.
  - (e) Copper: on the basis of the closing historical cost index by the Retail Prices Index.
  - (f) Poles: on the basis of the closing historical cost indexed by the Retail Prices Index.

## Annex B to Direction 3

### Part 1: Definitions and interpretation

1. For the purposes of Part 2 of this Annex,
  - (a) “**Fixed Asset Register**” means a list of assets held by BT, including their location, description, gross book values (GBV) and accumulated depreciation;
  - (b) “**Network Adjustment**” means:
    - i) for third parties, PIA Adjustment Services; and
    - ii) for BT, activities the same as or equivalent to PIA Adjustment Services undertaken by BT for itself;
  - (c) “**PIPeR**” (Physical Inventory Planning E-Records) means the database held within Openreach that holds all Openreach external inventories of duct, copper and fibre assets.

### Part 2: Requirements to ensure the Regulatory Financial Statements are consistent with regulatory decisions made by Ofcom

#### Externally funded network build

2. BT must ensure that externally-funded assets, and the funding associated with these assets, are separately identified and accounted for in its Regulatory Accounting System.

#### SLG payments

3. BT must ensure that Service Level Guarantee (SLG) payments are presented as operating costs in the Regulatory Financial Statements.

#### PI requirements

4. The following paragraphs 5 to 17 shall apply with respect to the PI Market.

#### Network Adjustments

5. BT shall separately identify and record Network Adjustment costs both above and below the PIA Adjustment Limit in BT’s Regulatory Financial Reporting System. However, this shall not apply with respect to Network Adjustments BT undertakes for itself where there are objectively justifiable reasons why this is not possible.
6. BT shall ensure that any costs it incurs for Network Adjustments requested by third parties that are below the Financial Limit are appropriately capitalised within the PI Market and attributed to Wholesale Services that use the Physical Infrastructure.
7. BT shall ensure that costs it incurs for Network Adjustments BT undertakes for itself that are below the PIA Adjustment Limit are appropriately capitalised within the PI market and attributed to Wholesale Services that use the Physical Infrastructure. However, this shall not

apply with respect to Network Adjustments BT undertakes for itself where there are objectively justifiable reasons why this is not possible.

8. In the case of costs incurred for Network Adjustments requested by third parties above the PIA Adjustment Limit that BT recovers separately from the third party requesting the Network Adjustment, BT shall ensure that these Network Adjustments costs above the PIA Adjustment Limit are treated as an operating cost in the PI Market and the recovery of these costs from third parties is treated as an operating income in the PI Market.
9. In the case of costs incurred for Network Adjustments that BT undertakes for itself that are above the PIA Adjustment Limit, BT shall ensure that all these Network Adjustments costs above the PIA Adjustment Limit are treated as an operating cost in the PI Market and the recovery of these cost from BT is treated as an operating income in the PI Market. However, this shall not apply with respect to Network Adjustments BT undertakes for itself where there are objectively justifiable reasons why this is not possible.
10. BT must attribute to pole services all costs of Network Adjustments undertaken to provide capacity on poles or to make poles useable for dropwires and ensure that these Network Adjustments can be separately identified.

#### **Fixed Asset Mapping**

11. In relation to duct and pole assets, BT must ensure that annual additions to physical records can be mapped to financial records on its Fixed Asset Register.

#### **Poles**

12. BT must identify and report the volumes and capital cost of poles separately from other asset and infrastructure costs. In 2021/22 BT must commission Additional Procedures in relation to this requirement.
13. As at 1 April 2021 BT must set the accounting asset life of poles to 40 years. Subsequent changes to the asset life of poles must be put through the Change Control Notification process.

#### **Duct**

14. BT must identify and report the volume (by length in metres and number of new connections) and capital cost of lead-in duct.
15. BT must separately identify the net replacement cost and associated depreciation of duct installed before and after 31 March 2018.
16. BT must attribute costs associated with pre-March 2018 duct to PI assets using the following percentages:

- lead-in duct 9.35%
- Spine duct – single bore 36.63%
- Spine duct – 2 bores 9.66%
- Spine duct 3+ bores 15.29%

- Joint boxes 17.40%
- Manholes 11.67%

17. BT must attribute costs associated with post-March 2018 duct to PI services in proportion to the estimated standard cost of each PI service, which estimation must be done by reference to standard unit costs and volumes associated with PI services. The standard unit cost of duct bore variants (single bore, 2 bore, 3+bores) must be consistent with how these are charged: for example the standard unit cost of 2 bore duct should reflect that some of the volume consists of two single bore sections of duct. This analysis must be updated each year to take account of long-term changes in the mix of jobs.

#### **Preparation of costs for geographic markets**

18. The following paragraph 19 shall apply with respect to the following markets:

- (a) WLA – Area 2;
- (b) WLA – Area 3;
- (c) Leased Lines Access – Area 2;
- (d) Leased Lines Access – Area 3;
- (e) Leased Lines Access – High Network Reach;
- (f) IEC – BT only exchanges;
- (g) IEC – BT+1 exchanges; and
- (h) IEC – BT+2 exchanges.

19. BT must prepare unit costs by reference to national unit costs. ‘National unit costs’ means a unit cost per service that does not take account of any differences in circuit lengths. Total costs will represent the national unit cost per service multiplied by the volume of services in the geographic market.

#### **Excess construction charges**

20. The following paragraph 21 shall apply with respect to following markets:

- (a) Leased Lines Access – Area 2;
- (b) Leased Lines Access – Area 3;
- (c) Leased Lines Access – High Network Reach;
- (d) IEC -BT only;
- (e) IEC – BT+1; and
- (f) IEC – BT+2 exchanges.

21. BT must identify all capitalised excess construction charge costs and write these off as an expense in the year they were incurred.

### Dark fibre

22. The following paragraphs 23 to 27 shall apply with respect to the following markets:
  - (a) Leased Lines Access - Area 3; and
  - (b) IEC -BT only markets
  - (c) IEC BT+1 market (2021/22 financial year only)
23. BT must separately identify systems and development costs (recorded in the 'Openreach Systems and Development – Ethernet' component as at the date of this notice) associated with dark fibre services.
24. BT must separately identify SLG payments in relation to provision and assurance for dark fibre services.
25. BT must separately identify the following inputs and assumptions to the patch panel costs reported in the Regulatory Financial Statements. These can be derived from an apportionment approach where necessary:
  - the cost of patch panels equipment at exchanges and customer premises
  - the cost of labour to install patch panels, split by hourly engineering pay and the average time taken to install patch panels at exchanges and customer premises
  - any differences in labour costs between single and dual fibre
  - depreciation associated with patch panels
  - other costs included in reported patch panel costs
26. As at 1 April 2021 the capitalised cost of patch panels must be depreciated over 7 years. Any subsequent changes to the asset life must be put through the Change Control Notification process.
27. BT must separately identify the following inputs to the initial testing, RWT and cessation costs reported in the Regulatory Financial Statements. These can be derived from an apportionment approach where necessary.
  - The cost of labour associated with each of these services, split by hourly engineering pay and the average time taken to perform the task;
  - any differences in labour costs between single and dual fibre
  - Other costs included in reported costs for these services.

## Direction 4: Direction setting requirements in relation to the audit opinion for the Regulatory Financial Statements

### Background

1. This Direction is made under:
  - (a) Section 49 of the Act; and
  - (b) SMP Condition 11.5, having regard to the requirement imposed by SMP Condition 11.10(c).
2. This Direction applies with respect to the following markets:
  - (a) PI
  - (b) WLA Area 2
  - (c) WLA Area 3
  - (d) LLA HNR
  - (e) LLA Area 2
  - (f) LLA Area 3
  - (g) IEC;
  - (h) IEC BT + 1;and
  - (i) IEC BT+2

### Direction

3. Ofcom hereby directs BT as follows.
4. BT shall secure, to the satisfaction of Ofcom, an appropriate audit opinion in respect of the published Regulatory Financial Statements as a whole, in respect of each Regulatory Financial Statement and in respect of groups of Regulatory Financial Statement, to the “properly prepared in accordance with” (“**PPIA**”) standard, as determined following consultation with Ofcom and the Regulatory Auditor.
5. BT shall ensure that the Regulatory Auditor shall state whether in their opinion:
  - (a) each Regulatory Financial Statement has been properly prepared in accordance with the applicable SMP services conditions, the Regulatory Accounting Principles, and the Accounting Methodology Documents, including the Prior Year Comparatives; and
  - (b) anything has come to their attention that would lead them to conclude that the applicable SMP services conditions, the Regulatory Accounting Principles and the Accounting Methodology Documents have not been properly applied in the

preparation of the relevant Regulatory Financial Statement, disclosing where practicable any adjustments he considers to be required in respect of any such matter.

6. Where the Regulatory Auditor is unable to give an opinion on any of the matters in paragraph 5(a) because to do so would conflict with relevant audit standards, the reasons for this must be reported in the Regulatory Financial Statements.



## Direction 5: Direction setting requirements in relation to the reconciliation report and accompanying audit opinion

### Background

1. This Direction is made under:
  - (a) Section 49 of the Act;
  - (b) SMP Condition 11.5, having regard to the requirements imposed by SMP Conditions 11.10(b), 11.10(d), 11.31 and 11.32.
2. This Direction applies with respect to the following markets:
  - (a) PI
  - (b) WLA Area 2
  - (c) WLA Area 3
  - (d) LLA HNR
  - (e) LLA Area 2
  - (f) LLA Area 3
  - (g) IEC;
  - (h) IEC BT + 1; and
  - (i) IEC BT+2

### Interpretation

3. In this Direction the following terms shall have the following meanings:
  - (a) **“Audit and Risk Committee”** means the committee of the board of directors of BT whose principal duties include financial reporting, internal controls, risk management and audit and includes any committee or unit established from time to time by the board of directors of BT to perform such duties;
  - (b) **“Change Control Notification”** means a list of each and every change to the Regulatory Accounting Methodology which BT is required to publish and deliver to Ofcom by 31 March of the Financial Year in which the change to the Regulatory Accounting Methodology is to be made;
  - (c) **“Markets Level”** means the level at which total costs, total revenue and total assets are reported for each separate Market applies;
  - (d) **“Material Change”** means a change in any element of the Regulatory Accounting Methodology which results in a change (be it positive or negative) in any figure in the Regulatory Financial Statements which exceeds the higher of 5% or £1 million.

The percentage change in a figure shall be calculated by taking the value of the affected figure before the change in the Regulatory Accounting Methodology is applied, and subtracting from it, the value of the same figure after the change in the Regulatory Accounting Methodology is applied, and then dividing this result by the former value;

(e) **“Material Error”** means an error which:

- i) results in a correction (be it positive or negative) in any figure in the Regulatory Financial Statements which exceeds the higher of 5% or £1 million. The percentage correction in a figure shall be calculated by taking the value of the affected figure in the Regulatory Financial Reporting before the error is corrected, and subtracting from it, the value of the same figure after the error is corrected, and then dividing this result by the former value; and
- ii) fulfils at least one of the following conditions:
  1. the error has arisen within the Regulatory Attribution System;
  2. the error has been brought to the attention of the Audit and Risk Committee by the Regulatory Auditor;

(f) **“Regulatory Attribution System”** means the set of computerised and manual accounting methods, procedures, Processes and controls established to attribute the costs, revenues, assets and liabilities and summarise, interpret, and present the resultant financial data in an accurate and timely manner for the purposes of the whole of the Regulatory Financial Statements, the Accounting Methodology Documents, the accounting records and the Regulatory Accounting System; and

(g) **“Regulatory Financial Reporting”** means the whole of the Regulatory Financial Statements, the Accounting Methodology Documents, the accounting records and the Regulatory Accounting System.

## Direction

4. Ofcom hereby directs BT as follows.

5. The reconciliation report must set out:

(a) in relation to changes to the Regulatory Accounting Methodology:

- i) each and every change (including each change set out in the Change Control Notification)
- ii) the impact of each Material Change at the Markets Level, by setting out, for each Material Change separately, the difference between the Current Year Figures and the Current Year Figures had such Material Change not been made, expressed as an absolute amount;
- iii) the impact of changes which are not Material Changes at the Markets Level, by setting out, on an aggregated basis, the difference between the

Current Year Figures and the Current Year Figures had such changes not been made, expressed as an absolute amount; and

- (b) in relation to Material Errors identified since the publication of the previous Financial Year's Regulatory Financial Statements:
    - i) for each Material Error, a description of the Material Error, the circumstances of discovery of the Material Error, the reason for the Material Error, and whether such Material Error has been corrected in the restated Prior Year Comparatives;
    - ii) the impact of each Material Errors presented in the Regulatory Financial Statements for the previous Financial Year, by setting out:
      - 1. the Current Year Figures set out in the Regulatory Financial Statements for the previous Financial Year had such Material Errors been corrected in the previous Financial Year (“the Corrected Previous Year Figures”); and
      - 2. the difference as an absolute amount between the Current Year Figures set out in the Regulatory Financial Statements for the previous Financial Year and the Corrected Previous Year Figures.
  - (c) the impact of each Material Error at the Markets Level, by setting out, for each Material Error, the difference as an absolute amount between:
    - i) the Current Year Figures set out in the Regulatory Financial Statements for the previous Financial Year; and
    - ii) the Current Year Figures set out in the Regulatory Financial Statements for the previous Financial Year had such Material Error been corrected in the previous Financial Year.
6. BT must obtain an audit opinion on the reconciliation report which must set out:
- (a) whether all Material Changes were included in the Change Control Notification. Where this is not the case, the audit opinion must report whether Material Changes other than those included in the Change Control Notification were made as a result of an audit requirement made following delivery of the Change Control Notification or otherwise;
  - (b) whether the description of each of the Material Changes provided by BT in the Change Control Notification is accurate;
  - (c) whether BT included each and every Material Change in the reconciliation report and correctly calculated the impact of all changes presented in the Regulatory Financial Statements in accordance with paragraph 5(a)(ii) above;

- (d) whether the description of each of the Material Errors provided by BT in the reconciliation report is accurate; and
  - (e) whether the Corrected Previous Year Figures set out in the reconciliation report in accordance with paragraph 5(b)(ii)(1) above are properly prepared in accordance with the Accounting Methodology Documents for the previous Financial Year had these Accounting Methodology Documents not included these Material Errors.
7. BT must ensure it maintains the data to enable it to compile a report which sets out the impact of all changes on all figures presented in the Regulatory Financial Statements, by setting out, on an aggregated basis, the difference between the Current Year Figures and the Current Year Figures had such a change not been made expressed as an absolute amount and as a percentage.

## Direction 6: Direction specifying network components

### Background

1. This Direction is made under:
  - (a) Section 49 of the Act;
  - (b) SMP Condition 11.25
2. This Direction applies with respect to the following markets:
  - (a) PI
  - (b) WLA Area 2
  - (c) WLA Area 3
  - (d) LLA Area 2
  - (e) LLA Area 3
  - (f) LLA HNR
  - (g) IEC
  - (h) IEC BT + 1; and
  - (i) IEC BT+2

### Direction

3. Ofcom hereby directs BT that as at 1 April 2021 the Network Components included in the Network Component List are those set out in Annex A to this Direction.

## Annex A to Direction 6

### Existing components

1. Low TISBO 3rd Party Equipment Depn
2. TISBO Excess Construction
3. PC rentals 2Mbit/s regional trunk
4. PC rentals 34Mbit/s regional trunk
5. PC rentals 140Mbit/s regional trunk
6. Co-mingling set up
7. Co-mingling rentals
8. WLA Tie cables
9. Local Loop Unbundling systems development
10. Wholesale Access specific
11. Routeing & records
12. MDF Hardware jumpering
13. E side copper capital
14. E side copper current
15. D side copper capital
16. D side copper current
17. Local exchanges general frames equipment
18. Local exchanges general frames maintenance
19. Analogue line test equipment
20. Dropwire capital & analogue NTE
21. Analogue line drop maintenance
22. Analogue line cards
23. OR Service Centre - Provision Ethernet
24. OR Service Centre - Provision Analogue/ISDN2
25. OR Service Centre - Provision WLA
26. OR Service Centre - Assurance Ethernet
27. OR Service Centre - Assurance Analogue/ISDN2
28. OR Service Centre - Assurance WLA
29. Combi Card and MSAN Access – Voice
30. Combi Card – Broadband
31. Core Directors – Broadband
32. Edge Ethernet ports broadband
33. Ethernet Backhaul Direct – active
34. Ethernet Backhaul Direct – passive
35. Ethernet Backhaul Direct extended reach
36. Ethernet Backhaul Direct resilience – active
37. Ethernet Backhaul Direct – resilience – passive
38. Ethernet Switch BB
39. Core/Metro (broadband)
40. Metro-core broadband transmission
41. ADSL connections
42. EVOTAM testing systems

43. MPF line testing systems
44. Broadband line testing systems
45. DSLAM support
46. DSLAM equipment
47. PC rental 2Mbit/s link per km distribution
48. PC rental 34Mbit/s link per km distribution
49. PC rental 140Mbit/s link per km distribution
50. Point of Handover electronics
51. PC rental 64kbit/s link
52. PC rental 2Mbit/s link
53. PC rental 34Mbit/s link
54. PC rental 140Mbit/s link
55. PC rental 64kbit/s link per km transmission
56. 2Mbit/s and above PC link connection cct provision
57. 64kbit/s PC link connection cct provision
58. PC rental 64kbit/s link local end
59. PC rental 34Mbit/s link local end
60. PC rental 140Mbit/s link local end
61. PC rental 2Mbit/s local end copper
62. PC rental 2Mbit/s local end fibre
63. Backhaul Extension Services Fibre
64. Wholesale Extension Services Fibre
65. OR systems & development - Ethernet
66. Ethernet Access Direct Fibre
67. Other Ethernet rentals - CCTV
68. Interconnect local end rental 2Mbit/s
69. Interconnect 2Mbit/s connection
70. Interconnect extension circuits (IEC) 2Mbit/s link
71. Interconnect Extension Circuits (IEC) 2Mbit/s per km
72. Intra Building Circuit (IBC) connection
73. Intra Building Circuit (IBC) rental
74. Ethernet main links
75. Other Ethernet new provides - CCTV
76. Customer support - partial private circuits
77. Customer support - interconnect
78. Customer support - broadband
79. Broadband backhaul circuits (excl Virtual Paths)
80. Openreach sales product management
81. Co-mingling power & vent
82. Revenue Receivables
83. Co-mingling electricity
84. Caller display
85. Metro BRAS and MSE
86. Openreach time related charges
87. PC rental 2Mbit/s link national trunk
88. PC rental 140Mbit/s link national trunk

89. FTTC Development
90. iNode features
91. Network Features
92. Special Fault Investigation
93. EOI Notional Payables
94. Ethernet Monitoring Platform
95. NGA Visit Assure
96. OR Project Services
97. EAD Electronics Capital
98. Optical Ethernet Electronics Capital
99. Ethernet Excess Construction Capex
100. Ethernet Excess Construction
101. Ethernet Electronics Current
102. Broadband MSAN Access
103. MSAN Access SFBB
104. Abortive Visits
105. Pair Gain
106. OR Service Centre – Provision GEA
107. OR Service Centre – Assurance GEA
108. Ofcom Administration Fee Wholesale
109. Ofcom Administration Fee Openreach
110. FTTP Development
111. GEA FTTP Access Fibre Spine
112. GEA FTTP Distribution Fibre Spine
113. GEA FTTC Access Fibre Spine
114. GEA FTTC Distribution Fibre Spine
115. GEA FTTP Electronics
116. GEA FTTC Electronics
117. GEA DSLAM Cabinets
118. GEA FTTP Customer Site Installation
119. GEA FTTC Customer Site Electronics
120. GEA FTTP Repairs
121. GEA FTTC Repairs
122. GEA FTTP Provisions
123. GEA FTTC Provisions
124. Cumulo Rates NGA
125. Cumulo Rates Non NGA – Openreach
126. Cumulo Rates Non NGA – Non Openreach
127. FTTP Funded Fibre Rollout Spend
128. FTTC Funded Fibre Rollout Spend
129. FTTP Fibre Rollout Funding
130. FTTC Fibre Rollout Funding
131. Expedite Provision Costs
132. SLG Ethernet Provision Internal
133. SLG Ethernet Provision External
134. SLG Ethernet Assurance Internal



135. SLG Ethernet Assurance External
136. SLG WLR Provision Internal
137. SLG WLR Provision External
138. SLG WLR Assurance Internal
139. SLG WLR Assurance External
140. SLG WLA Internal
141. SLG WLA External
142. GEA Cable links
143. NGA E Side copper cable
144. Dark Fibre Specific Connections costs
145. Dark Fibre Specific Rental costs
146. PIMR Cost
147. PIMR Costs – Downstream Asset

### **New fibre components**

148. Interexchange fibre
149. Legacy FTTC – OLT
150. Legacy FTTC – Spine fibre
151. Legacy FTTC – Distribution fibre
152. Legacy FTTC – DSLAM
153. Legacy FTTC – Tie Cable
154. Legacy FTTC – Final Drop
155. Legacy Ethernet – Ethernet electronics
156. Legacy Ethernet – Spine fibre
157. Legacy Ethernet – Distribution fibre
158. One Fibre Network – Ethernet electronics
159. One Fibre Network – Headend electronics FTTP
160. One Fibre Network – Spine fibre
161. One Fibre Network – Distribution fibre
162. One Fibre Network – Final drop
163. One Fibre Network – Terminating equipment