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

Volume 5: Draft legal instruments

CONSULTATION:

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Closing date for responses: 1 April 2020

Proposals for SMP services conditions

NOTIFICATION OF PROPOSALS UNDER SECTIONS 48A AND 80A OF THE COMMUNICATIONS ACT 2003

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

Proposals for market identification and market power determinations

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 determinations and setting 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 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 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 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. Ofcom is today publishing a consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2019” (the “Consultation”). In this document, Ofcom is consulting on new proposals to identify markets, make market power determinations and set SMP conditions with respect to BT.

Proposals on market identifications and market power determinations

6. Ofcom is proposing to identify 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.

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 HNR Areas	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

Proposals to set, apply and revoke SMP services conditions

7. Ofcom is proposing to set, 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 to be applied to BT to the extent specified in that Schedule, which SMP conditions shall, unless otherwise stated in that Schedule, take effect from [*the date of the notification published under sections 48(1) and 79(4) of the Act*] or such other date specified in any notification under sections 48(1) and 79(4) of the Act adopting the proposals set out in this notification.
8. The effect of, and Ofcom's reasons for making, the proposals in relation to SMP conditions referred to in this notification are set out in the Consultation which accompanies this notification.
9. Ofcom is (to the extent still extant) proposing to revoke 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 [*the date of the notification published under sections 48(1) and 79(4) of the Act*]. Section 16 of the Interpretation Act 1978 shall apply as if this revocation were a repeal of an enactment by an Act of Parliament.

Ofcom's duties and legal tests

10. In developing proposals for identifying and analysing the markets referred to in paragraph 1 above, and in considering proposals as to whether to make the corresponding determinations set out in this notification, Ofcom has, in accordance with section 79 of the Act, taken due account of all applicable guidelines and recommendations which have been issued or made by the European Commission in pursuance of the provisions of an EU instrument and which relate to market identification and analysis or the determination of what constitutes significant market power. In so doing, pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.
11. Ofcom considers that the proposed 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 proposed 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.
12. In making all of the proposals referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article

3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC.

13. Ofcom has also had regard to the Statement of Strategic Priorities in making the proposals referred to in this notification.

Making representations

14. Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying Consultation by no later than 1 April 2020.
15. Copies of this notification and the accompanying Consultation have been sent to the Secretary of State in accordance with sections 48C(1) and 81(1) of the Act.

Interpretation

16. 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 17 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.
17. 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” in Schedule 4 to this notification;
- (d) **“BT+1 exchanges”** means the BT exchanges identified as “BT plus one” in Schedule 4 to this notification;
- (e) **“Central London Area”** means the areas consisting of the postcode sectors identified as “CLA” in Schedule 3 of this notification;
- (f) **“Consultation”** has the meaning given to it in paragraph 5;
- (g) **“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;
- (h) **“HNR Areas”** means the areas consisting of the postcode sectors identified as “HNR” in Schedule 3 to this notification;
- (i) **“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);
- (j) **“July 2018 Notification”** has the meaning given to it in paragraph 3;
- (k) **“June 2019 Notification”** has the meaning given to it in paragraph 4;
- (l) **“LLA Area 2”** means the areas consisting of the postcode sectors identified as “Area 2” in Schedule 3 to this notification;
- (m) **“LLA Area 3”** means the areas consisting of the postcode sectors identified as “Area 3” in Schedule 3 to this notification;
- (n) **“March 2018 Notification”** has the meaning given to it in paragraph 2;
- (o) **“November 2017 Notification”** has the meaning given to it in paragraph 1;
- (p) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;

- (q) **“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);
- (r) **“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;
- (s) **“Telecoms Physical Infrastructure”** means Physical Infrastructure that was deployed for the purposes of deploying a fixed telecommunications network;
- (t) **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (1978 c30);
- (u) **“WLA Area 2”** means the areas consisting of the postcode sectors identified as “Area 2” in Schedule 2 to this notification;
- (v) **“WLA Area 3”** means the areas consisting of the postcode sectors identified as “Area 3” in Schedule 2 to this notification.

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

Signed



David Clarkson

Competition Policy Director, Ofcom

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

8 January 2020

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 will enter into force on the date of publication of a notification under sections 48(1) and 79(4) of the Act and 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, 1.3-1.5, 1.11, 1.12, 1.14, 2.1, 2.2, 2.8-2.10, 3, 4.1-4.3, 6, 7.1-7.3, 7.9-7.11, 7.13-7.19, 8.1, 8.3-8.5, 8.8-8.11, 9, 10 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, 2.8-2.10, 3, 4.1, 4.2, 4.4, 4.5, 4.7, 5.1, 5.2, 5.6-5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.4, 7.5, 7.9-7.11, 7.13-7.19, 8.1-8.6, 8.8-8.11, 9, 10, 12B.1, 12B.2, 12B.4, 12B.6, 12B.7, 12B.9-12B.14, 12B.16-12B.18, 12C.1, 12C.3, 12C.4, 12C.7,

	12C.8, 12C.10, 12C.12-12C.20, and 12D
The supply of wholesale local access at a fixed location in WLA Area 3 (WLA Area 3)	Condition 1, 2.1, 2.3, 2.8-2.10, 3, 4.1, 4.2, 4.4, 4.7, 5.1, 5.2, 5.6-5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.4, 7.5, 7.9-7.11, 7.13-7.19, 8.1-8.6, 8.8-8.11, 9, 10, 12B.1, 12B.3-12B.5, 12B.7-12B.18, 12C.2, 12C.3, 12C.5-12C.7, 12C.9, 12C.11-12C.20 and 12D
The supply of leased line access in HNR Areas (LLA HNR)	Condition 1.1, 1.3-1.5, 1.11, 1.12, 1.14, 2.1, 2.4, 2.8-2.10, 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, 7.13-7.19, 8.1, 8.3-8.6, 8.8-8.11, 9 and 10
The supply of leased line access in LLA Area 2 (LLA Area 2)	Condition 1.1, 1.3-1.5, 1.11, 1.12, 1.14, 2.1, 2.4, 2.8-2.10, 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, 7.13-7.19, 8.1, 8.3-8.11, 9, 10, 12E, 12F, 12G and 12H
The supply of leased line access in LLA Area 3 (LLA Area 3)	Condition 1.1, 1.3-1.5, 1.11, 1.12, 1.14, 2.1,

	2.4, 2.6-2.10, 3, 4.1, 4.2, 5.1, 5.3-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6-7.19, 8.1, 8.3-8.11, 9, 10, 12E, 12F, 12G, 12H and 12I.1, 12I.2 and 12I.5-12I.11
The supply of interexchange connectivity in BT Only exchanges (IEC)	Condition 1.1, 1.3-1.5, 1.11, 1.12, 1.14, 2.1, 2.4, 2.5, 2.7-2.10, 3, 4.1, 4.2, 5.1, 5.3-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6-7.19, 8.1, 8.3-8.5, 8.8-8.11, 9, 10, 12E, 12F, 12G, 12H and 12I.3-12I.11
Supply of interexchange connectivity in BT+1 exchanges (IEC BT+1)	Condition 1.1, 1.3-1.5, 1.11, 1.12, 1.14, 2.1, 2.4, 2.8-2.10, 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, 7.13-7.19, 8.1, 8.3-8.5, 8.8-8.11, 9, 10, 12E, 12F, 12G and 12H

2. The Conditions referred to in paragraph 1 above are entitled as follows—

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 an independent third party 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 or Dark Fibre Access service, Ethernet Services and WDM Services via that network and/or service or have the potential to do so, which include at a minimum (but 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 of the Dominant Provider to another MDF/ODF site 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 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) **“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;
- x) **“Fifth Relevant Year”** means the period of 12 months beginning on 1 April 2025 and ending on 31 March 2026.
- y) **“Financial Year”** means the period from 1 April in a given year to 31 March in the following year.
- z) **“First Relevant Year”** means the period of 12 months beginning on 1 April 2021 and ending on 31 March 2022;
- aa) **“Fourth Relevant Year”** means the period of 12 months beginning on 1 April 2024 and ending on 31 March 2025.
- bb) **“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;

- 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” in Schedule 4 of this notification;
- hh) **“IEC BT+1”** means the BT exchanges identified as “BT plus one” in Schedule 4 of this notification;
- ii) **“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;
- jj) **“Interconnection Services”** means In-Building Handover;
- kk) **“LLA Area 2”** means the areas consisting of the postcode sectors identified as “LL access Area 2” in Schedule 3 of this notification;
- ll) **“LLA Area 3”** means the areas consisting of the postcode sectors identified as “LL access Area 3” in Schedule 3 of this notification;
- mm) **“LLA HNR area”** means the areas consisting of the postcode sectors identified as “HNR” in Schedule 3 of this notification;
- nn) **“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; or
 - iv. an operational building of the Dominant Provider or Third Party which is reasonably equivalent to one of the above;
- oo) **“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);
- pp) **“MDF Site”** means the site of an operational building of the Dominant Provider that houses a main distribution frame;
- qq) **“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);
- rr) **“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;
- ss) **“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;
- tt) **“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;
- uu) **“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;
- vv) **“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;

- ww) **“Network Termination Point”** means the physical point at which a Relevant Subscriber is provided with access to a public electronic communications network;
- xx) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11);
- yy) **“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;
- zz) **“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);
- aaa) **“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;
- bbb) **“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;
- ccc) **“PIA market”** means the area consisting of all postcode sectors in the UK outside of the Hull Area;
- ddd) **“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;
- eee) **“Prior Year”** means in relation to each Relevant Year, the period of 12 months ending on 31 March immediately preceding that Relevant Year;

- fff) **“Reference Offer”** means the terms and conditions on which the Dominant Provider is willing to enter into an Access Agreement;
- ggg) **“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;
- hhh) **“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;
- iii) **“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.
- jjj) **“Second Relevant Year”** means the period of 12 months beginning on 1 April 2022 and ending on 31 March 2023;
- kkk) **“Service Level Commitment”** means the quality standards that the Dominant Provider must meet when performing its obligations;
- lll) **“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;

- mmm) **“Shared Access”** means the non-voice band frequency of Metallic Path Facilities;
- nnn) **“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);
- ooo) **“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;
- ppp) **“Sub-Loop Unbundling Service”** means access to Metallic Path Facilities or Shared Access at an intermediate point to the main distribution frame;
- qqq) **“Telecoms Physical Infrastructure”** means Physical Infrastructure that was deployed for the purposes of deploying a fixed telecommunications network;
- rrr) **“Third Party”** means a person providing a public electronic communications service or a person providing a public electronic communications network;
- sss) **“Third Party Customer”** means a Third Party purchasing network access pursuant to Condition 1 and Condition 2 (as applicable) from the Dominant Provider;
- ttt) **“Third Relevant Year”** means the period of 12 months beginning on 1 April 2023 and ending on 31 March 2024;
- uuu) **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (1978 c30);
- vvv) **“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;
- www) **“VULA 40/10 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;

xxx) **“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;

yyy) **“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;

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

aaaa) **“WLA Area 2”** means the areas consisting of the postcode sectors identified as “WLA Area 2” in Schedule 2 of this notification;

bbbb) **“WLA Area 3”** means the areas consisting of the postcode sectors identified as “WLA Area 3” in Schedule 2 of this notification;

cccc) **“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

dddd) 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 7 January 2020 found as on the product information pages on the website:

<https://www.openreach.co.uk/org/home/products/products.do>.

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 1.6 to 1.8] 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 1.10, 1.11, 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

(i) such terms and conditions and charges as Ofcom may from time to time direct.

1.5 The provision of network access by the Dominant Provider in accordance with this Condition must also include such associated facilities as are reasonably necessary for the provision of network access and such other entitlements as Ofcom may from time to time direct.

1.6 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.

1.7 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 (“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 (“Second Threshold Notice”).

1.8 Relevant premises for the purposes of Condition 1.7 are:

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

[Ofcom’s proposals in relation to relevant premises will be contained in a separate notification under section 48A of the Act]

1.9 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.

- 1.10** 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)**
- 1.11** 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.
- 1.12** The Dominant Provider must comply with any direction Ofcom may make under this Condition.
- 1.13** **(WLA Area 2, WLA Area 3)** The consent dated [Date] published at Annex [X] of the statement entitled “Measures to support Openreach’s trials in Salisbury and Mildenhall” shall apply as if it has been given under condition 1.1 from the date that this condition enters into force and that consent must be read accordingly.
- 1.14** In this Condition 1:
- (b) “Fibre end user” means an end user who is supplied with an electronic communications service by a Third Party using Fibre-based network access”;
- (c) “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.

(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.

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.

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 eligible for 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.
(LLA Area 3)

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

2.8 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.

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

2.10 In this Condition 2:

- (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.
- 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 Dominant Provider must comply with any direction Ofcom may make from time to time under this Condition requiring amendments to the guidelines.

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.
- 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 on 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 GEA-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 GEA-FTTP, or for other rental services where those services are being provided in
- (WLA Area 2)**

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 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.

(LLA Area 2)

4.7 The consent dated [Date] published at Annex [X] of the statement entitled “Measures to support Openreach’s trials in Salisbury and Mildenhall” shall apply as if it has been given under condition 4.1 from the date that this condition enters into force and that consent must be read accordingly.

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

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 5.3, 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)**
- 5.2 (WLA Area 2, WLA Area 3)** The obligation in Condition 5.1 to provide network access on an Equivalence of Inputs basis shall not apply to—
- (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 2.4 to 2.6 as an input to other forms of network access provided to Third Parties under Conditions 1 and/or 2, 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:
- (LLA Area 2, LLA Area 3, LLA HNR, IEC, IEC BT+1)**
- (a) Accommodation Services other than in relation to the allocation of space and power in operational buildings belonging to the Dominant Provider;
 - (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)**

(a) subject to Condition 5.4(b), the obligation in Condition 5.1 shall apply;

(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)**

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)**

5.8 (WLA Area 2, WLA Area 3) The consent dated [Date] published at Annex [X] of the statement entitled “Measures to support Openreach’s trials in Salisbury and Mildenhall” shall apply as if it has been given under condition 5.1 from the date that this condition enters into force and that consent must be read accordingly.

5.9 In this Condition 5:

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

Condition 6 – Basis of charges

- 6.1** Except insofar as Ofcom may from time to time otherwise consent in writing, 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 6~~ or 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 a forward looking long run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.
- (PI)**
- 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 7.165, the Dominant Provider must ensure that a Reference Offer in relation to the provision of network access pursuant to Condition 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 Subject to Condition 7.165, and to the extent not already required by Condition 7.2, the
(PI) Dominant Provider must ensure that a Reference Offer in relation to the provision of Physical Infrastructure Access pursuant to Conditions 1 and 2 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 7.3B(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 respect of the Service Level Commitments specified in Condition 7.3(l) above;

(n) conditions for the provision of forecasts by a 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 Subject to Condition 7.165, and to the extent not already required by Condition 7.2, the
(WLA Dominant Provider must ensure that a Reference Offer in relation to the provision of
Area Metallic Path Facilities pursuant to Conditions 1 and 2 (as applicable) also includes at least
2, the following:

- WLA** (a) the location of MDF Sites;
- Area**
- 3)** (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; and
- (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 (a)(ix) above.

7.5 Subject to Condition 7.165, and to the extent not already required by Condition 7.2, the
(WLA Dominant Provider must ensure that a Reference Offer made in relation to the provision of
Area Virtual Unbundled Local Access pursuant to Conditions 1 and 2 includes—

2,

WLA (a) Service Level Commitments in respect of at least the following aspects of that service:
Area

Area

3) (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 7.165, and to the extent not already required by Condition 7.2, the
(LLA Dominant Provider must ensure that a Reference Offer in relation to the provision of
Area Ethernet Services includes, where applicable, at least the following details of maintenance
2, LLA and quality, and any other matters Ofcom may direct from time to time:

Area
3, LLA (a) Service Level Commitments in respect of at least the following aspects of that service:

HNR, (i) completion of the provision of the service;

IEC,

IEC

(ii) fault repair times; and

BT+1) (b) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.6 (a) above.

7.7 Subject to Condition 7.165, and to the extent not already required by Condition 7.2, the
(LLA Dominant Provider must ensure that a Reference Offer in relation to the provision of Dark
Area 3 Fibre Access includes, where applicable, at least the following details of maintenance and
and quality, and any other matters Ofcom may direct from time to time:

IEC)

(a) Service Level Commitments in respect of at least the following aspects of that service:

(i) completion of the provision of the service;

(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 Subject to Condition 7.165, 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 includes an explanation of differences (if any) between:

- (LLA Area 3, IEC)** (a) the matters set out in Condition 7.2 which apply to the provision of the Dark Fibre Access; and
- (LLA Area 3, IEC)** (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 publication of the Reference Offer relating to Dark Fibre Access, the Dominant
- (LLA Area 3, IEC)** Provider must publish a Reference Offer which includes all relevant matters set out in Condition 7.2 by no later than one month after the date on which this Condition enters into force.

- 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:
- (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

- 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.
- 8.2** Where it is proposing to publish a Threshold Notice in relation to a Local Serving Exchange in accordance with Condition 1.7, a minimum of 12 months before the proposed date of publication of the Threshold Notice the Dominant Provider must publish and send to Ofcom in writing, a notice containing the expected date for publication of the 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 8.7(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 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 Condition 1 or Conditions 1 and 2 (as the case may be) 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

[Ofcom's proposals in relation to Regulatory Financial Reporting will be contained in a separate notification under section 48A of the Act.]

Condition 12A – Physical Infrastructure Access Charge Control

12A.1 Except in so far as Ofcom may otherwise direct, in the First Relevant Year the
(PI) Dominant Provider shall not charge more than:

- (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 [Simplified Underground PIA Lead-in], the amount of £9.67;
- (e) for Facility on pole for Multi-end-user attachment, the amount of £4.02;
- (f) for Facility on pole for Single-end-user attachment, the amount of £1.63;
- (g) for Pole top equipment, the amount of £1.22;
- (h) for Cable up a pole (per cable), the amount of £0.79;
- (i) for Facility hosting (per manhole entry), the amount of £8.87;
- (j) for Facility hosting (per joint box entry), the amount of £2.14.

12A.2 Except in so far as Ofcom may otherwise direct, in each of the Second Relevant
(PI) Year, Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year for each of the services specified in Condition 12A.1(a) to (j) 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:

- (a) $[1 + \text{CPI} + 1.9\%]$ for Facility in Spine duct per metre – single bore;
- (b) $[1 + \text{CPI} - 2.0\%]$ for Facility in Spine duct per metre – 2 bores;
- (c) $[1 + \text{CPI} - 2.0\%]$ for Facility in Spine duct per metre – 3+ bores;
- (d) $[1 + \text{CPI} + 0.9\%]$ for [Simplified Underground PIA Lead-in];

- (e) $[1 + \text{CPI} - 1.6\%]$ for Facility on pole for Multi-end-user attachment;
- (f) $[1 + \text{CPI} - 1.5\%]$ for Facility on pole for Single-end-user attachment;
- (g) $[1 + \text{CPI} - 1.6\%]$ for Pole top equipment;
- (h) $[1 + \text{CPI} - 1.30\%]$ for Cable up a pole (per cable);
- (i) $[1 + \text{CPI} + 0.4\%]$ for Facility hosting (per manhole entry);
- (j) $[1 + \text{CPI} + 0.8\%]$ for Facility hosting (per joint box entry).

12A.3 (PI) Where the Dominant Provider provides PIA Adjustment Services, the Dominant Provider must not levy a charge for such 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 which case the Dominant Provider may only charge the Third Party, as a maximum, the amount in excess of the PIA Adjustment Limit for providing such PIA Adjustment Services for that PIA Order.

12A.4 (PI) The charges for each separate PIA Adjustment Service for the purposes of Condition 12A.3 shall be reasonably derived from the costs of provision based on a forward looking long run incremental cost approach and allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed, except PIA Adjustment Services that are:

- 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 Defective Pole used for drop wires;

where the charges for such services shall be zero.

12A.5 (PI) 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 kilometers of PIA Spine Duct requested as part of the PIA Order by £4,750.

12A.6 Where:

- (PI)**
- (i) the Dominant Provider makes or proposes to make a material change to any service which is subject to this Condition 12A; or
 - (ii) 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 three 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)

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

12A.8 Ofcom may direct that Conditions 12A.1 to 12A.8 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 the PIA Ancillary Services listed in Part 1 of the Annex to this Condition 12A where the product and/or service is provided for the purposes of making adjustments to physical infrastructure 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.56;
- (e) **“PIA Pole Adjustment Service”** means the PIA Adjustment Services listed in Part 2 of the Annex to this Condition 12A where the product and/or service is 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 that the Dominant Provider accepts is linked to the initial request; and
 - (iii) any subsequent request for access to Lead-in Duct that facilitates the extension of the electronic communications network deployed using the Physical Infrastructure ordered in the initial request or requests accepted by the Dominant Provider as linked requests.
- (g) **“PIA Spine Duct”** means all duct other than Lead-in Duct.

Annex to Condition 12A

Part 1

Meaning of PIA Adjustment Services

For the purposes of Condition 12A, the expression “**PIA Adjustment Services**” shall be construed as including the following products and/or services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these products or services for another:

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
Demolish chamber
New Duct - soft; per metre
New Duct - footway; per metre
New Duct - carriageway; per metre
New Pole
Replacement Carrier Pole (expedite)
Replacement Carrier Pole
Replacement DP Pole (expedite)
Replacement DP Pole
Renew and/or provide a Pole Stay
Provide pole top ring-head
Customer changeover, per pole visit
Customer changeover - hourly rate
Cable recovery (light) - per 100m
Cable recovery (heavy) - per 100m
Cable recovery (large) - per 100m

Blockage clearance (initial) - per blockage
Blockage clearance (subsequent) - per blockage
Pole recovery (removal) per pole
Provision of an Earth Spike for pole
Renew, provide and/or re position Pole steps on Pole - per pole
Install a lightning protection module
Provision of a 'BT 66B' for lightning protection
Lay Copper Earthing Strip in an open trench
Lay Copper Earthing Strip in Soft or Unsurfaced
Lay Copper Earthing Strip in Footway
Lay Copper Earthing Strip in Carriageway
<u>Re-tention</u> , Refix and Renewal of aerial Cable
<u>Re-tention</u> , Refix and Renewal of drop wire
Work undertaken on the British Outer Islands
Ferry travel for Scottish Islands (as per ticket price)
Local Authority fees (as per fees)
Road closures (cable works) (as per fees)
Non- standard civils work

Part 2

Meaning of PIA Pole Adjustment Services

For the purposes of Condition 12A, the expression “**PIA Pole Adjustment Services**” shall be construed as including the following products and/or services subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these products or services for another:

Activity
New Pole
Replacement DP Pole (expedite)
Replacement DP Pole
Renew and/or provide a Pole Stay
Provide pole top ring-head
Pole recovery (removal) per pole
Customer changeover, per pole visit
Customer changeover - hourly rate
Provision of an Earth Spike for pole
Renew, provide and/or re position Pole steps on Pole - per pole
<u>Re-tention</u> , Refix and Renewal of drop wire
Non- standard civils work
Work Point Set-Up (Overhead and Cabling); per day
Block and tail renewal (rationalise copper blocks)
Erect Fibre Drop Cable/Tube

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.9) in:

**WLA
Area**

2,

**WLA
Area 3**

- (a) the aggregate in WLA Area 2 and WLA Area 3 of charges for Tie Cables;
- (b) the aggregate in WLA Area 2 and WLA Area 3 of charges for Hard Cease Services;
- (c) the aggregate in WLA Area 2 and WLA Area 3 of charges for MPF New Provide Services;
- (d) the aggregate in WLA Area 2 and WLA Area 3 of charges for Co-Mingling New Provide and Rental Services;

is not more than the Controlling Percentage (as determined in accordance with Condition 12B.11).

12B.2 The Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12B.10) in:

**(WLA
Area**

2)

- (a) the charge for MPF SML1 Rental, except for the First Relevant Year in relation to which the average charge ceiling specified in Condition 12B.6 applies;

is not more than the Controlling Percentage (as determined in accordance with Condition 12B.11).

12B.3 Subject to Condition 12B.5, 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.10) in:~~

(WLA Area 3) (a) the charge for MPF SML1 Rental, except for the First Relevant Year in relation to which the average charge ceiling specified in Condition 12B.8 applies; is not more than ~~the Controlling Percentage (as determined in accordance with Condition 12B.5).~~

12B.4 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.10) in:

(WLA Area 2 and Area 3) (a) the charge for MPF Single Migration, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12B.7(a) applies;

(b) the charge for MPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12B.7(b) applies;

(c) the charge for MPF Standard Line Test, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12B.7(c) applies,

is not more than the Controlling Percentage (as determined in accordance with Condition 12B.11).

12B.5 For each of the products and/or services specified in Condition 12B.3, where the average charge for the relevant product and/or service in the First Relevant Year is

(WLA Area 3)

lower than the amount set out in Condition 12B.8, as applicable, 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 product and/or service is not more than the amount calculated by employing the following formula:

$$\textit{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + - X) + K_2(100\% + CPI_2)$$

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

$$\textit{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + - X)(100\% + CPI_3 + - X) + K_3(100\% + CPI_2)(100\% + CPI_3)$$

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

Year 4 charge ceiling

$$\equiv \bar{p}_i(100\% + CPI_2 + - X)(100\% + CPI_3 + - X)(100\% + CPI_4 + - X) + K_4(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)$$

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

$$\textit{Year 5 charge ceiling} = \bar{p}_i(100\% + CPI_2 + - X)(100\% + CPI_3 + - X)(100\% + CPI_4 + - X)(100\% + CPI_5 + - X) + K_5(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)(100\% + CPI_5)$$

Where:

Year 2 charge ceiling is the average charge ceiling applicable in the Second Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12B.8, as applicable;

Year 3 charge ceiling is the average charge ceiling applicable in the Third Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12B.8, as applicable;

Year 4 charge ceiling is the average charge ceiling applicable in the Fourth Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12B.8, as applicable;

Year 5 charge ceiling is the average charge ceiling applicable in the Fifth Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12B.8, as applicable;

\bar{p}_i is the amount set out in Condition 12B.8, 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 CPI

K_2 is the level of K in Table A in Annex 2 to this Condition 12B that corresponds to the cumulative ~~H~~Homes passed by Openreach's FTTP network in Area 3 (rounded to the nearest 200,000), excluding any ~~H~~Homes passed that were funded by government subsidies, on ~~31~~ October in Prior Year;

K_3 is the level of K in Table A in Annex 2 to this Condition 12B that corresponds to the cumulative ~~H~~Homes passed by Openreach's FTTP network in Area 3 (rounded to the nearest 200,000), excluding any ~~H~~Homes passed that were funded by government subsidies, on 31 October in Prior Year;

K_4 is the level of K in Table A in Annex 2 to this Condition 12B that corresponds to the cumulative ~~H~~Homes passed by Openreach's FTTP network in Area 3 (rounded to the nearest 200,000), excluding any ~~H~~Homes passed that were funded by government subsidies, on 31 October in Prior Year;

K_5 is the level of K in Table A in Annex 2 to this Condition 12B that corresponds to the cumulative ~~H~~Homes passed by Openreach's FTTP network in Area 3 (rounded to the nearest 200,000), excluding any ~~H~~Homes passed that were funded by government subsidies, on 31 October in Prior Year;

The average charge for the relevant product and/or 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 12B.10 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service / shall be treated as references to charges for the specific product and/or service in the single charge category in question.

12B.6 The Dominant Provider shall:
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- (a) for MPF SML1 Rental, take all reasonable steps to secure that, on average by the end of the First Relevant Year, it does not charge more than the amount of £86.65 where the average charge in that year shall be calculated by employing the formula set out in Condition 12B.10 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service *i* shall be treated as references to charges for MPF SML1 Rental;

12B.7 The Dominant Provider shall not charge more:

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- (1) for MPF Single Migration, than the amount of £25.02 in the First Relevant Year;
- (2) for MPF Bulk Migration, than the amount of £18.30 in the First Relevant Year;
- (3) for MPF Standard Line Test, than the amount of £4.29 in the First Relevant Year;
- (4) for MPF Cease, than the amount of £0 in each Relevant Year; and
- (5) for SMPF Cease, than the amount of £0 in each Relevant Year.

12B.8 The Dominant Provider shall:

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for MPF SML1 Rental, take all reasonable steps to secure that, on average by the end of the First Relevant Year it does not charge more than the amount of £84.95 plus K_1 .

(a)

where:

the average charge in that year shall be calculated by employing the formula set out in Condition 12B.109 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service i shall be treated as references to charges for MPF SML1 Rental;

K_1 is the level of K in Table A in Annex 2 to this Condition 12B that corresponds to the cumulative H homes passed by Openreach's FTTP network in Area 3 (rounded to the nearest 200,000), excluding any H homes passed that were funded by government subsidies, on 31 October 2020.

12B.9 (WLA Area 2 and Area 3) The Percentage Change for the purposes of each of the categories of products and/or services (each of which is known as a "Basket") specified in Conditions 12B.1(a) to 12B.1(d) shall be calculated, for the purposes of complying with 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 for which there are distinct charges during the Relevant Year;

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

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

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 365;
- 3) for the Third Relevant Year, by 366;
- 4) for the Fourth Relevant Year, by 365;
- 5) for the Fifth Relevant Year, by 365.

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

$\bar{p}_{i,t-1}$ is, for the purposes of calculating the Percentage Change 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, ~~and the Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year~~, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made 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 for which there are distinct charges during the Prior Year;

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

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

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 365;
- 3) for the Third Relevant Year, by 365~~6~~;
- 4) for the Fourth Relevant Year, by 365~~5~~;
- 5) for the Fifth Relevant Year, by 365.

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

12B.10 The Percentage Change for the purposes of each of the products and/or services specified (each of which is referred to in this Condition as a “single charge category”) in Condition 12B.2, ~~12B.3~~ and 12B.4 shall be calculated, for the purposes of complying with Condition 12B.2, ~~12B.3~~ and 12B.4, by employing the following formula:

(WLA Area 2, 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 product and/or 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 ~~7A.3-12B.9~~ 12B.9 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service i shall be treated as references to charges for the specific product and/or 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.9 for the Prior Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider, and its references to individual service i shall be treated as references to charges for the specific product and/or service in the single charge category in question.

- 12B.11** (a) Subject to Condition 12B.13 below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in Conditions 12B.1, 12B.2 and 12B.4 shall be calculated by employing the following formula:
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$$CP_t = CPI_t + X$$

Where:

CP_t is the Controlling Percentage for Relevant Year, t ;

CPI_t is CPI for the Relevant Year, t ;

X means zero:

- (b) For each of the categories of products and/or services specified in Conditions 12B.1, 12B.2 and 12B.4, where the Percentage Change at the

end of either the First Relevant Year, or the Second Relevant Year; or 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 12B.11(d);

(c) For each of the categories of products and/or services specified in Conditions 12B.1, 12B.2 and 12B.4, where the Percentage Change at the end of either the First Relevant Year, or the Second Relevant Year; or 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 12B.11(d);

(d) For each of the categories of products and/or services specified in Condition 12B.1, 12B.2 and 12B.4, in the case of Deficiency or Excess, the Controlling Percentage will 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), for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for 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), for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for

the Third Relevant Year (in the case of Deficiency or Excess in the ~~Second~~ Third Relevant Year), or for the Fourth Relevant Year (in the case of Deficiency or Excess in the ~~Third~~ Fourth Relevant Year);

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in Conditions 12B.1 and 12B.2 and 12B.4 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the ~~Second~~ Third Relevant Year), or for the Fourth Relevant Year (in the case of Deficiency or Excess in the ~~Third~~ Fourth Relevant Year) calculated in accordance with the formula for C_t set out in Condition 12B.9 or 12B.10, as applicable;

X is as set out in Condition 12B.11; and

CPI_t is CPI for the Relevant Year, t.

- (e) For each of the categories of products and/or services specified in Conditions 12B.1, 12B.2, and 12B.4 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.12

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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 communications services using that Local Serving Exchange provided that

Area 3) Fibre-based network access is available to a Third Party on reasonable request in respect of any such end users.

12B.13 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 a Charge is charged (for the avoidance of doubt, a Charge is charged including where a Charge of £0 is applied);

(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.12 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of this Condition 12B.13, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new product and/or 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.14 The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12B. The data must include:

(WLA Area 2, WLA Area 3)

(a) pursuant to Conditions 12B.9 and 12B.10, as applicable, the calculated Percentage Change relating to each category of products and services listed in Conditions 12B.1, 12B.2, ~~12B.3~~ and 12B.4

- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12B.5, 12B.9 and 12B.10, including for each specific service and/or product in a 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 services for which Conditions 12B.9 and 12B.10 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 (f).

The information provided to Ofcom under (a) to (f) must be accompanied by a statement from an independent third party providing assurance on the data. This assurance will be in the form of Agreed upon procedures. The statement provided to Ofcom by the independent third party will set out the results of the tests carried out in order to give the Agreed upon procedures assurance.

All relevant revenues in respect of a specific service in a Basket shall be provided to at least the nearest £1,000.

12B.15 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
(WLA Area 3)

with fibre in Area 3 as at 31 October of that Relevant Years, excluding any homes that were funded by government subsidy.

12B.16 Conditions 12B.1 to 12B.15 shall not apply to such extent as Ofcom may direct.

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12B.17 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12B.

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12B.18 In this Condition 12B:

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- a) **“Basket”** shall be construed in accordance with Condition 12B.9;
- b) **“Charge Controlled Service”** means a service or Basket of services listed in Conditions 12B.1, 12B.2, 12B.3 or 12B.3;
- c) **“Co-Mingling New Provide and Rental Services”** means all of the products and/or services listed in Part 54 of the Annex 1 to this Condition 12B;
- d) **“Controlling Percentage”** is to be determined in accordance with Condition 12B.11;
- e) **“Deficiency”** shall be construed in accordance with Condition 12B.11(b);
- f) **“Excess”** shall be construed in accordance with Condition 12B.11(c);

- g) **“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services and/or products listed in Conditions 12B.1, 12B.2 and 12B.4 and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services and/or products listed in Conditions 12B.1, 12B.2 and 12B.4 if it had complied with Conditions 12B.1, 12B.2 or 12B.4 as applicable;
- h) **“Hard Cease Services”** means all of the products and/or services listed in Part 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.9, 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 Part 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’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- k) **“MPF Cease”** shall be construed as having the same meaning as ‘MPF Cease charge’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- l) **“MPF New Provide Services”** means all of the products and/or services listed in Part 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 Part 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 Part 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)”** as provided by the Dominant Provider on its website for definitions and explanations of its products;
- p) **“MPF Standard Line Test”** shall be construed as having the same meaning as ‘MPF Standard line test’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- q) **“MPF Tie Pair Modification”** shall be construed as having the same meaning as the service described in row 6 of the table in Part 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 Part 3 of the Annex 1 to this Condition 12B;
- s) **“Percentage Change”** has the meaning given to it in Condition 12B.9 and 12B.10, as applicable;
- t) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12B.9 and 12B.10 as applicable;
- u) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12B.9 and 12B.10 as applicable;
- v) **“SMPF Cease”** shall be construed as having the same meaning as ‘SMPF Cease charge’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

- w) **“SMPF Remove Jumper Order Bulk Charge”** shall be construed as having the same meaning as the service described in row 4 of the table in Part 2 of the Annex 1 to this Condition 12B;
- x) **“SMPF Remove Jumper Order Singleton Charge”** shall be construed as having the same meaning as the service described in row 3 of the table in Part 2 of the Annex 1 to this Condition 12B;
- y) **“Tie Cables”** means all of the products and/or services listed in Part 1 of the Annex 1 to this Condition 12B; and
- z) **“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 and/or products subject to this Condition 12B, excluding any discounts offered by the Dominant Provider.

Annex 1 to Condition 12B

Products and/or services subject to charge control pursuant to Conditions

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

Part 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 products and/or services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these forty eight products and/or 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	£156.45
8. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Annual Rental	£19.08
9. Internal Tie Cable (2) – Connection	£145.62

10.	Internal Tie Cable (2) – Annual Rental	£13.86
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	£254.17
14.	21CN-32 pair standard Internal Tie Cable-HDF connected – Annual Rental	£35.73
15.	21CN-64 pair standard Internal Tie Cable-HDF connected – Connection	£324.18
16.	21CN-64 pair standard Internal Tie Cable-HDF connected – Annual Rental	£45.57
17.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Connection	£150.19
18.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£32.93
19.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Connection	£193.39
20.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£42.53
21.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Connection	£238.67
22.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£69.26
23.	LLU Internal Tie Cable Cease of 1-10 Cables (per Point of Presence)	£384.64
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

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

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

Part 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 four products and/or services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these four products and/or services for another:

	Item	Initial Charge
1.	MPF MDF Remove Jumper Order Singleton Charge	£18.48
2.	MPF MDF Remove Jumper Order Bulk Charge	£11.06
3.	SMPF MDF Remove Jumper Order Singleton Charge	£18.48
4.	SMPF MDF Remove Jumper Order Bulk Charge	£11.06

Part 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 products and/or services, subject to such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these ~~five~~ seven products and/or services for another:

	Item	Initial Charge
1.	MPF Working Line Takeover (WLTO)	£30.00
2.	MPF Connection Charge Stopped Line Provide	£30.00
3.	MPF Working Line Takeover (WLTO) Re-using existing LIJ	£10.21
4.	MPF Connection Charge Stopped Line Provide Re-using existing LIJ	£10.21
5.	MPF Connection charge – New Provide Standard	£37.25
6.	MPF Tie Pair Modification (3 working day lead time Re-termination)	£29.76
7.	MPF Tie Pair Modification (Multiple Re-termination)	£22.38

Part 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 products and/or services, subject to any such changes as Ofcom may direct following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these thirty three products and/or services 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)	£487.06
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	£3,756.36
12. FCP (Powerbase) AC only base unit 800mm (w) x 600mm (d) to include lighting and cable management	£4,091.85

13.	FCP (Powerbase) AC only base unit 600mm (w) x 800mm (d) to include lighting and cable management	£3,752.09
14.	FCP (Powerbase) AC only base unit 800mm (w) x 800mm (d) to include lighting and cable management	£4,483.05
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))	£643.47
29.	Security rental per sq. metre per annum	£43.92
30.	Service Charge per square metre per annum	£110.94

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))	£329.03 201.48
33.	MDF Licence Fee per Internal Tie Cable per annum	£42.71 28.14

Annex 2 to Condition 12B

For the purposes of Condition 12B.45, K is as set out in Table A below:

Homes passed in Area 3 by Openreach fibre network (excluding those funded by government subsidies)	K
0	0.00
200,000	0.53 - 1.09
400,000	1.06 - 2.18
600,000	1.59 - 3.27
800,000	2.12 - 4.36
1,000,000	2.65 - 5.45
1,200,000	3.18 - 6.54
1,400,000	3.71 - 7.63
1,600,000	4.24 - 8.72
1,800,000	4.77 - 9.81
2,000,000	5.30 - 10.90
2,200,000	5.83 - 11.99
2,400,000	6.36 - 13.08
2,600,000	6.89 - 14.17
2,800,000	7.42 - 15.26
3,000,000	7.95 - 16.35
3,200,000	8.48 - 17.44
3,400,000	9.01 - 18.53
3,600,000	9.54 - 19.62
3,800,000	10.07 - 20.71
4,000,000	10.60 - 21.80
4,200,000	11.13 - 22.89
4,400,000	11.66 - 23.98
4,600,000	12.19 - 25.07
4,800,000	12.72 - 26.16

5,000,000	13.25 - 27.25
5,200,000	13.78 - 28.34
5,400,000	14.31 - 29.43
5,600,000	14.84 - 30.52
5,800,000	15.37 - 31.61
6,000,000	15.90 - 32.70
6,200,000	16.43 - 33.79
6,400,000	16.96 - 34.88
6,600,000	17.49 - 35.97
6,800,000	18.02 - 37.06
7,000,000	18.55 - 38.15

Condition 12C – VULA charge control

12C.1

(WLA Area 2)

Subject to Condition 12C.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 12C.7) in:

- (a) the charge for FTTC 40/10 Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(a) applies;
- (b) the charge for FTTC 40/10 PCP Only Install Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(b) applies;
- (c) the charge for FTTC 40/10 Start of Stopped Line Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(c) applies;
- (d) the charge for VULA Migration, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(d) applies;
- (e) the charge for VULA 40/10 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 charge ceiling specified in Condition 12C.4(e) applies;
- (f) the charge for FTTP 40/10 Voice and Data Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to

which the charge ceiling specified in Condition 12C.4(f) applies;

(g) the charge for FTTP 40/10 Transition Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(g) applies;

(h) for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(j) applies;

(i) for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(k) applies;

(j) for 1 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(l) applies;

(k) for 10 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(m) applies;

(l) 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 charge ceiling specified in Condition 12C.4(n) applies; and

(m) for VULA Cease, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.4(o) applies.

is not more than the Controlling Percentage (as determined in accordance with Condition 12C.8).

12C.2
(WLA
Area 3)

Subject to Condition 12C.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 12C.5 for Condition 12C.2(a) and Condition 12C.7 for Condition 12C.2(b) to (m)) in:

- (a) the Rental Charges Basket;
- (b) the charge for FTTC PCP Only Install Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (a) applies;
- (c) the charge for FTTC Start of Stopped Line Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (b) applies;
- (d) the charge for VULA Migration, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6 (c) applies;
- (e) 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 charge ceiling specified in Condition 12C.6 (d) applies;

- (f) the charge for FTTP 40/10 Voice and Data Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(e) applies;
- (g) the charge for FTTP 40/10 Transition Connection, at locations at which no Copper based network access services are available, for connections to premises that are new to Openreach, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(f) applies;
- (h) for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(i) applies;
- (i) for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(j) applies;
- (j) for 1 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(k) applies;
- (k) for 10 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(l) applies;

- (l) 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 charge ceiling specified in Condition 12C.6(m) applies; and
- (m) for VULA Cease, except for the First Relevant Year in relation to which the charge ceiling specified in Condition 12C.6(n) applies.

is not more than the Controlling Percentage (as determined in accordance with Condition 12C.7).

In this Condition 12C, the Rental Charges Basket shall be construed as including the following services, subject to such changes as Ofcom may direct from time to time:

~~the Rental Charges Basket shall be construed as including the following services, subject to such changes as Ofcom may direct from time to time:~~

- i. the charge for FTTC 40/10 Rental;
- ii. the charge for FTTC 55/10 Rental;
- iii. the charge for FTTC 80/20 Rental.

12C.3
(WLA
Area 2,

For each of the products and/or services and basket specified in Condition 12C.1 and 12C.2, where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(o) or Condition 12C.6(a) to 12C.6(n), as

WLA Area
3)

applicable, 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 product and/or service is not more than the amount calculated by employing the following formula:

$$\text{Year 2 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_2)$$

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

$$\text{Year 3 charge ceiling} = \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)$$

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

$$\begin{aligned} \text{Year 4 charge ceiling} \\ = \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)(100\% \\ + CPI_4 + X_4) \end{aligned}$$

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

$$\begin{aligned} \text{Year 5 charge ceiling} \\ = \bar{p}_i(100\% + CPI_2 + X_2)(100\% + CPI_3 + X_3)(100\% \\ + CPI_4 + X_4)(100\% + CPI_5 + X_5) \end{aligned}$$

Where:

Year 2 charge ceiling is the average charge ceiling applicable in the Second Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(o) or Condition 12C.6(a) to 12C.6(n), as applicable;

Year 3 charge ceiling is the average charge ceiling applicable in the Third Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(o) or Condition 12C.6(a) to 12C.6(n), as applicable;

Year 4 charge ceiling is the average charge ceiling applicable in the Fourth Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(o) or Condition 12C.6(a) to 12C.6(n), as applicable;

Year 5 charge ceiling is the average charge ceiling applicable in the Fifth Relevant Year where the average charge for the relevant product and/or service in the First Relevant Year is lower than the amount set out in Condition 12C.4(a) to 12C.4(o) or Condition 12C.6(a) to 12C.6(n), as applicable;

\bar{p}_i is the amount set out in Condition 12C.4(a) to 12C.4(o) or Condition 12C.6(a) to 12C.6(n), 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.8(a) and 12C.9(a).

The average charge for the relevant product and/or 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.7 for the Relevant Year Weighted Average Charge, excluding any discounts offered by the Dominant Provider.

12C.4 The Dominant Provider shall not charge more than:

(WLA Area

2)

- (a) for FTTC 40/10 Rental, the amount of £61.18 in the First Relevant Year;
- (b) for FTTC 40/10 PCP Only Install Connection, the amount of £47.78 in the First Relevant Year;
- (c) for FTTC 40/10 Start of Stopped Line Connection, the amount of £3.12 in the First Relevant Year;
- (d) for VULA Migration, the amount of £3.12 in the First Relevant Year;
- (e) for VULA 40/10 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 £5.70 in the First Relevant Year;

- (f) for FTTP 40/10 Voice and Data Connection, at locations at which Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £127.76 in the First Relevant Year;
- (g) for FTTP 40/10 Transition Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £100.46 in the First Relevant Year;
- (h) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Voice and Data Connection, the amount of £0 in each Relevant Year;
- (i) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Transition Connection, the amount of £0 in each Relevant Year;
- (j) for 1 Gbit Cablelink Connection, the amount of £531.42 in the First Relevant Year;
- (k) for 10 Gbit Cablelink Connection, the amount of £1,062.84 in the First Relevant Year;
- (l) for 1 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (m) for 10 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (n) 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 £132.60 in the First Relevant Year; and

(o) for VULA Cease, the amount of £0 in each Relevant Year.

12C.5

**(WLA Area
3)**

The Percentage Change for the purposes of the Rental Charges Basket specified in Condition 12C.2 shall be calculated, for the purposes of complying with Condition 12C.2, 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 for which there are distinct charges during the Relevant Year;

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

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

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 365;
- 3) for the Third Relevant Year, by 366;
- 4) for the Fourth Relevant Year, by 365;
- 5) for the Fifth Relevant Year, by 365.

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

$\bar{p}_{i,t-1}$ is, for the purposes of calculating the Percentage Change 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 and the Third Relevant Year, $\bar{p}_{i,t-1}$ is the Prior Year Weighted Average Charge made 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 for which there are distinct charges during the Prior Year;

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

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

1) for the First Relevant Year, by 365;

2) for the Second Relevant Year, by 365;

3) for the Third Relevant Year, by ~~365~~6;

4) for the Fourth Relevant Year, by ~~365~~5;

5) for the Fifth Relevant Year, by 365.

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

12C.6

The Dominant Provider shall not charge more than:

**(WLA Area
3)**

- (a) for FTTC PCP Only Install Connection, the amount of £47.78 in the First Relevant Year;
- (b) for FTTC Start of Stopped Line Connection, the amount of £3.12 in the First Relevant Year;
- (c) for VULA Migration, the amount of £3.12 in the First Relevant Year;
- (d) 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 £5.70 in the First Relevant Year;

- (e) for FTTP 40/10 Voice and Data Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £127.76 in the First Relevant Year;
- (f) for FTTP 40/10 Transition Connection, at locations at which no Copper-based network access services are available, for connections to premises that are new to Openreach the amount of £100.46 in the First Relevant Year;
- (g) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Voice and Data Connection, the amount of £0 in each Relevant Year;
- (h) at locations at which no Copper-based network access services are available, for connections to premises that are not new to Openreach, for FTTP 40/10 Transition Connection, the amount of £0 in each Relevant Year;
- (i) for 1 Gbit Cablelink Connection, the amount of £531.42 in the First Relevant Year;
- (j) for 10 Gbit Cablelink Connection, the amount of £1,062.84 in the First Relevant Year;
- (k) for 1 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;
- (l) for 10 Gbit Cablelink Rental, the amount of £0 in each Relevant Year;

(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 £132.60 in the First Relevant Year; and

(n) for VULA Cease, the amount of £0 in each Relevant Year.

12C.7
(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 and 12C.2 shall be calculated, for the purposes of complying with Condition 12C.1 and 12C.2, by employing the following formula:

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

Where:

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

t is the Relevant Year;

$t-1$ is the Prior Year;

\bar{p}_t is the Relevant Year Weighted Average Charge made 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 for which there are distinct charges during the Relevant Year;

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

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

i. for the First Relevant Year, by 365;

ii. for the Second Relevant Year, by 365;

iii. for the Third Relevant Year, by 366;

iv. for the Fourth Relevant Year, by 365; and

v. for the Fifth Relevant Year by 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 and the Third 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 for which there are distinct charges during the Prior Year;

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

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

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 365;
- 3) for the Third Relevant Year, by ~~365~~;
- 4) for the Fourth Relevant Year, by ~~365~~; and
- 5) for the Fifth Relevant Year by 365.

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

12C.8

**(WLA Area
2)**

- (a) Subject to Conditions 12C.8(b) to 12C.8(e) 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:

- for the services specified in Condition 12C.1 (a) to (m): Zero

- (b) For each of the services specified in Condition 12C.1 , and unless Condition 12C.3 applies, where the Percentage Change at the end of the First Relevant Year, Second Relevant Year, Third Relevant Year or 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 7B.4(d).
- (b) For each of the services specified in Condition 12C.1 , and unless Condition 12C.3 applies, where the Percentage Change at the end of the First Relevant Year, Second Relevant Year, Third Relevant Year or 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 7B.4(d).
- (c) For each of the services specified in Condition 12C.1, and unless Condition 12C.3 applies, where the Percentage Change at the end of either the First Relevant Year, Second Relevant Year, Third Relevant Year and 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.8(d).
- (d) For each of the services specified in Condition 12C.1, and unless Condition 12C.3 applies, in the case of Deficiency or Excess, the Controlling Percentage will 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), for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for 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) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), for 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 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for 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.7;

X is as set out in Condition 12C.8(a); and

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

- (e) For each of the services specified in Condition 12C.1, and unless Condition 12C.3 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.9
(WLA Area
3)

- (a) Subject to Conditions 12C.9(b) to 12C.9(e) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in Condition 12C.2 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:

- for the services specified in 12C.2(a) -5.75% to -15%
- for the services specified in Condition 12C.2 (b) to (o): Zero

- (b) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, where the Percentage Change at the end of the First Relevant Year, Second Relevant Year, Third Relevant Year, or 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.9(d).

- (c) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, where the Percentage Change at the end of either the First Relevant Year, Second Relevant Year, Third Relevant Year, 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.9(d).
- (d) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 applies, in the case of Deficiency or Excess, the Controlling Percentage will 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), for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for 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) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth 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.2 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth 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 7B.3;

X is as set out in Condition 12C.9(a); and

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

- (e) For each of the services specified in Condition 12C.2, and unless Condition 12C.3 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.10

**(WLA Area
2)**

a) At locations at which no Copper-based network access services are available, the Dominant Provider shall secure that during each Relevant Year:

- i. the charge made by it for FTTP 40/10 Voice and Data Rental is sum of FTTC 40/10 Rental and MPF SML1 Rental + [£1.50 - £1.85]; and
- ii. the charge made by it for FTTP 40/10 Transition Rental is the charge for FTTC 40/10 Rental + [£1.50 - £1.85].

12C.11

**(WLA Area
3)**

a) At locations at which no Copper-based network access services are available, the Dominant Provider shall secure that during each Relevant Year:

- i. the charge made by it for FTTP 40/10 Voice and Data Rental is sum of FTTC 40/10 Rental and MPF SML1 Rental + [£1.50 - £1.85];
- ii. the charge made by it for FTTP 40/10 Transition Rental is the charge for FTTC 40/10 Rental + [£1.50 - £1.85].

12C.12

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

(a) Subject to Condition 12C.12(c), the Dominant Provider shall secure that during each Relevant Year:

- i. the charge made by it for VULA Cancel/Amend/Modify – CRD is the same as the charge made by it for VULA Bandwidth Change;

ii. the charge made by it for VULA Cancel/Amend/Modify – Regrading is the same as the charge made by it for VULA Bandwidth Change,

(c) Condition 12C.12(a) only applies where the relevant charge 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.

(d) The Dominant Provider shall secure that during each Relevant Year, the charge made by it for VLAN Move is the same as the charge that applies for VULA 40/10 Bandwidth Change where the VULA 40/10 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.13

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 a Charge is charged (for the avoidance of doubt, a Charge is charged including where a Charge of £0 is applied);

(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.12 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.13, a material change to the Charge Controlled Service includes (but is not limited to) the introduction of a new product and/or 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.14
(WLA Area
2, WLA
Area 3)

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

- i. pursuant to Condition 12C.7, the calculated Percentage Change relating to each service listed in Condition 12C.1 and 12C.2;
- ii. all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12C.5 and Condition 12C.7, including for each specific service;
- iii. 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;
- iv. the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services for which Condition 12C.7 applies and calculations thereof;

- v. other data necessary for monitoring compliance with the charge control; and
- vi. 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 (i) to (vi).

The information provided to Ofcom under (i) to (vi) must be accompanied by a statement from an independent third party providing assurance on the data. This assurance will be in the form of Agreed upon procedures. The statement provided to Ofcom by the independent third party will set out the results of the tests carried out in order to give the Agreed upon procedures assurance.

12C.15

**(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.16

**(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.17

Conditions 12C.1 to 12C.16 shall not apply to such extent as Ofcom may direct.

(WLA Area
2, WLA
Area 3)

12C.18 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.19 The direction dated [Date] published at Annex [X] of the statement entitled “Measures to support Openreach’s trials in Salisbury and Mildenhall,” shall apply as if it has been given under condition 12C.16 from the date that this condition enters into force and that direction must be read accordingly.

(WLA Area
2, WLA Area
3)

12C.20 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)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;

(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)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;

- (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)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, should the Dominant Provider introduce such a charge after 1 April 2018;
- (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)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, should the Dominant Provider introduce such a charge after 1 April 2018;
- (e) **“Charge Controlled Service”** means a service and/or product listed in Condition 12C.1,12C.2 or 12C.4;
- (f) **“Controlling Percentage”** is to be determined in accordance with Condition 12C.~~87~~ or 12C.~~98~~ as applicable;
- (g) **“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services and/or products listed in Condition 12C.1 or 12C.2, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services and/or products listed in Condition 12C.1 or 12C.2 if it had complied with Condition 12C.1 or 12C.2 as applicable;

- (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)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products;
- (i) **“FTTC 40/10 PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection is to allow the 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’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection 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;
- (k) **“FTTC 40/10 Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC products where the connection is to allow the 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’ as provided by the Dominant Provider on its website for definitions and

explanations of its GEA – FTTC products where the connection 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;

- (m) **“FTTP 40/10 Transition Connection”** shall be construed as having the same meaning as the connection charge for ‘Up to 40Mbit/s / 10Mbit/s "Transition product" (including Simultaneous Provide)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;
- (n) **“FTTP 40/10 Transition Rental”** shall be construed as having the same meaning as the annual rental charge for ‘Up to 40Mbit/s / 10Mbit/s "Transition product" (including Simultaneous Provide)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;
- (o) **“FTTP 40/10 Voice and Data Connection”** shall be construed as having the same meaning as the connection charge for ‘Fibre Voice Access Combination with Generic Ethernet Access up to 40Mbit/s/10Mbit/s’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;
- (p) **“FTTP 40/10 Voice and Data Rental”** shall be construed as having the same meaning as the annual rental charge for ‘Fibre Voice Access Combination with Generic Ethernet Access up to 40Mbit/s/10Mbit/s’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTP products;

- (q) **“Percentage Change”** has the meaning given to it in Condition 12C.5 or 12C.7 as applicable;
- (r) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12C.5 or 12C.7 as applicable;
- (s) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12C.5 or 12C.7 as applicable;
- (t) **“Superfast Visit Assure”** shall be construed as having the same meaning as ‘Visit Assure – Visit to customer premises’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;
- (u) **“VLAN Move”** shall be construed as having the same meaning as ‘VLAN moves applied to GEA Cablelink Modify transactions’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products;
- (v) **“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’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, where the change is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;

- (w) **“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’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products, where the change is to allow the Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (x) **“VULA Cease”** shall be construed as having the same meaning as ‘Service cessation (any product variant)’ as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products; and
- (y) **“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, 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:

- (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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified 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 charge ceiling specified in Condition 12D.3(f) applies,

is not more than the Controlling Percentage (as determined in accordance with Condition 12D.5).

12D.2

For each of the products and/or services specified in Condition 12D.1, where the average charge for the relevant product and/or service in the First Relevant Year is lower than the

(WLA Area 2, WLA Area 3) 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:

3) (a) at the end of the Second Relevant Year, the average charge for the relevant product and/or 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 product and/or 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 product and/or 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) at the end of the Fifth Relevant Year, the average charge for the relevant product and/or 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 product and/or service in 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 product and/or service in 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 product and/or service in 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 product and/or service in 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 Third Relevant Year;

CPI_5 is CPI for the Third Relevant Year

X is as set out in Condition 12D.45(a)

The average charge for the relevant product and/or 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 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 than:

(a) for a Standard Chargeable Visit, in the First Relevant Year, the amount of:

- (i) £78.78 when that service is provided within the hours of 8am to 5pm on a Working Day;
- (ii) £114.26 when that service is provided on a Non-Working Day; and
- (iii) £96.53 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, in the First Relevant Year, the amount of:

- (i) £35.48 per hour when that service is provided within the hours of 8am to 5pm on a Working Day;
- (ii) £70.98 per hour when that service is provided on a Non-Working Day; and
- (iii) £53.23 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), in the First Relevant Year, the amount of:

- (i) £43.28 when that service is provided on a Non-Working Day; and
- (ii) £21.64 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), in the First Relevant Year, the amount of:

(i) £43.28 per hour when that service is provided on a Non-Working Day; and

(ii) £21.64 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 £86.56 in the First Relevant Year; and

(f) for Additional Line Shifted, the amount of £43.28 in the First Relevant Year.

12D.4

**(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 12D.1 shall be calculated, for the purposes of complying with Condition 12D.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 made 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 for which there are distinct charges during the Relevant Year;

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

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

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 365;
- 3) for the Third Relevant Year, by 366;
- 4) for the Fourth Relevant Year, by 365; and
- 5) for the Fifth Relevant Year by 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 and the Third Relevant Year, \bar{p}_{t-1} is 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 for which there are distinct charges during the Prior Year;

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

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

- 1) for the First Relevant Year, by 365;
- 2) for the Second Relevant Year, by 365;
- 3) for the Third Relevant Year, by ~~365~~6;
- 4) for the Fourth Relevant Year, by ~~365~~5; and
- 5) for the Fifth Relevant Year by 365.

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

- 12D.5** (a) Subject to Conditions 12D.5(b) to 12D.5(e) 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:
- (WLA Area**
- 2, WLA Area**
- 3)**
- $$CP_t = CPI_t + X$$

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): zero

- (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 either the First Relevant Year, Second Relevant Year, Third Relevant Year or 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 7C.4(d).
- (c) For each of the services specified in Condition 12D.1, and unless Condition 12D.2 applies, where the Percentage Change at the end of either the First Relevant Year or

the Second Relevant Year, Third Relevant Year or 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(d).

- (d) 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 will 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), for the Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for 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) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Fourth Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for the Fifth 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 7C.1 during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), for the Third Relevant Year (in the case of Deficiency or Excess in the Third Relevant Year), or for 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 Condition 12D.5(a).

- (e) 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 charge made by it for MPF Amend is the same as the charge made by it for VULA 40/10 Bandwidth Change where the VULA 40/10 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 charge made by it for MPF Cancellation is the same as the charge made by it for VULA 40/10 Bandwidth Change where the VULA 40/10 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, no more than £43.28;
- ii. in the Second Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 2 Hourly Charge} = £43.28(100\% + CPI_2)$$

Where CPI_2 is CPI for the Second Relevant Year; and

- iii. in the Third Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 3 Hourly Charge} = £43.28(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, no more than the amount calculated by employing the following formula:

$$\underline{\text{Year 4 Hourly Charge} = £43.28(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)}$$

- v. in the Fifth Relevant Year, no more than the amount calculated by employing the following formula:

$$\begin{aligned} \text{Year 5 Hourly Charge} \\ = £43.28(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)(100\% + CPI_5) \end{aligned}$$

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 Second Relevant Year.

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

$$(Engineer\ Time \times Hourly\ Charge) + Visit\ Charge$$

Where:

Engineer Time means in relation to a Special Fault Investigation – Base Module 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 – Base Module or Special Fault Investigation – Frame Direct Module; or
- ii. such other amount of time as Ofcom may from time to time direct.

Hourly Charge means:

- i. in the First Relevant Year, no more than £43.28;
- ii. in the Second Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 2 Hourly Charge} = \text{£}43.28(100\% + \text{CPI}_2 - 0)$$

Where CPI_2 is CPI for the Second Relevant Year; and

- iii. in the Third Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 3 Hourly Charge} = \text{£}43.28(100\% + \text{CPI}_2 - 0)(100\% + \text{CPI}_3 - 0)$$

- iv. in the Fourth Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 4 Hourly Charge} = \text{£}43.28(100\% + \text{CPI}_2 - 0) \\ \underline{(100\% + \text{CPI}_3 - 0)(100\% + \text{CPI}_4 - 0)}$$

- v. in the Fifth Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 5 Hourly Charge} = \text{£}43.28(100\% + \text{CPI}_2 - 0)(100\% + \text{CPI}_3 - 0) \\ \underline{(100\% + \text{CPI}_4 - 0)(100\% + \text{CPI}_5 - 0)}$$

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 means:

- i. in the First Relevant Year, no more than £43.30;

- ii. in the Second Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 2 Visit Charge} = \text{£}43.30(100\% + \text{CPI}_2)$$

Where CPI_2 is CPI for the Second Relevant Year; and

- iii. in the Third Relevant Year, no more than the amount calculated by employing the following formula:

$$\text{Year 3 Visit Charge} = \text{£}43.30(100\% + \text{CPI}_2 - 0)(100\% + \text{CPI}_3 - 0)$$

- iv. in the Fourth Relevant Year, no more than the amount calculated by employing the following formula:

$$\begin{aligned} \text{Year 4 Hourly Visit Charge} \\ = \text{£}43.30(100\% + \text{CPI}_2 - 0)(100\% + \text{CPI}_3 - 0)(100\% + \text{CPI}_4 - 0) \end{aligned}$$

- v. in the Fifth Relevant Year, no more than the amount calculated by employing the following formula:

$$\begin{aligned} \text{Year 5 Visit Hourly Charge} = \text{£}43.30(100\% + \text{CPI}_2 - 0)(100\% + \text{CPI}_3 - 0) \\ (100\% + \text{CPI}_4 - 0)(100\% + \text{CPI}_5 - 0) \end{aligned}$$

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.

- 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 – Base Module or Special Fault Investigation – Frame Direct Module (as the case may be) 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 a Charge 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 product and/or 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 three 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 (i) to (viii).

The information provided to Ofcom under (i) to (viii) must be accompanied by a statement from an independent third party providing assurance on the data. This assurance will be in the form of Agreed upon procedures. The statement provided to Ofcom by the independent third party will 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) 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 using that Local

(WLA Area
2, WLA Area
3)

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 ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of MPF Services or VULA, as applicable;

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

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

- i. a service listed in Condition 12D.1;
- ii. any Special Fault Investigation Service;

- iii. any Special Fault Investigation – Base Module; and
 - iv. any Special Fault Investigation – Frame Direct Module.
- (d) **“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in Condition 12D.1, and (b) 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 ‘Internal and External Shifts’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of MPF Services or VULA, as applicable;
- (f) **“MPF Amend”** shall be construed as having the same meaning as the service described in row 4 of the table in Part 4 of the Annex to this Condition 7A and as having the same meaning as ‘Amend orders. Allowable change to MPF Order’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (g) **“MPF Cancellation”** shall be construed as having the same meaning as ‘Cancellation of MPF orders for Provide, Migration, Working Line Takeover, Modification or Amend’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (h) **“MPF Services”** means network access to Metallic Path Facilities;
- (i) **“MPF Special Fault Investigation 2 (SF12) - Base module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Base module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;

- (j) **“MPF Special Fault Investigation 2 (SF12) - Coop module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Coop module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (k) **“MPF Special Fault Investigation 2 (SF12) - Frame direct module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Frame direct module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (l) **“MPF Special Fault Investigation 2 (SF12) - Frame module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Frame module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (m) **“MPF Special Fault Investigation 2 (SF12) - Internal equip module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Internal equip module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (n) **“MPF Special Fault Investigation 2 (SF12) - Internal Wiring module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Internal Wiring module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (o) **“MPF Special Fault Investigation 2 (SF12) - Network module”** shall be construed as having the same meaning as ‘MPF Special Fault Investigation 2 (SF12) - Network module’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (p) **“Non-working day”** means Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- (q) **“Percentage Change”** has the meaning given to it in Condition 12D.4;

- (r) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12D.4;
- (s) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in Condition 12D.4;
- (t) **“Special Fault Investigation – Base Module”** shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SFI2) - Base module where this is reasonably necessary for the use of MPF Services;
- (u) **“Special Fault Investigation – Frame Direct Module”** shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SFI2) – Frame direct module where this is reasonably necessary for the use of MPF Services;
- (v) **“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 (SFI2) - Coop module;
 - ii. MPF Special Fault Investigation 2 (SFI2) - Frame module;
 - iii. MPF Special Fault Investigation 2 (SFI2) - Internal equip module;
 - iv. MPF Special Fault Investigation 2 (SFI2) - Internal Wiring module;
 - v. MPF Special Fault Investigation 2 (SFI2) - Network module;
- (w) **“Standard Chargeable Visit”** means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of MPF Services or VULA, as applicable;

- (x) **“Supplementary Charges (Per Hour)”** means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of MPF Services or VULA, as applicable;

- (y) **“Supplementary Charges (Per Visit)”** means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its products) where this is reasonably necessary for the use of MPF Services or VULA, as applicable; and

- (z) **“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 and WDM Services Basket and Main Link Sub-basket, Sub-caps

12E.1 In this Condition 12E a reference to a “Basket” means the Ethernet and WDM Basket.

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

Ethernet and WDM Basket and Main Link Sub-basket Controls

12E.2 Subject to the provisions of Condition 12E.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 12E.3) 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.4).

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

12E.3 The Percentage Change in respect of the Basket shall be calculated by employing the following formula:

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

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

Where:

C_t is the Percentage Change in the total charges for all of the services in the IEC, IEC BT+1, 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, 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,

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;

- (b) $\bar{p}_{i,t}$ is the Relevant Year Weighted Average Charge set by the Dominant Provider for the individual service i falling within the Basket during the Relevant Year, subject to the provisions set out in Condition 12E.11, which shall be calculated by employing the following formula:

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

Where:

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

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

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

- (i) for the First Relevant Year, by the total number of days in the First Relevant Year;
- (ii) for the Second Relevant Year, by the total number of days in the Second Relevant Year;
- (iii) for the Third Relevant Year, by the total number of days in the Third Relevant Year;
- (iv) for the Fourth Relevant Year, by the total number of days in the Fourth Relevant Year; and
- (v) for the Fifth Relevant Year, by the total number of days in the Fifth Relevant Year;

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

- (c) $\bar{p}_{i,t-1}$ is for the purposes of calculating the Percentage Change:
- (i) for the Ethernet and WDM Services Basket and Main Link Sub-Basket, for each Relevant Year, the Prior Year Weighted Average Charge made by the Dominant Provider for the individual service i falling within the Ethernet and WDM Services Basket and Main Link Sub-Basket, subject to the provisions set out in Condition 12E.11;

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

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

Where:

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

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

$w_{i,j,t-1}$ is the proportion of the Prior Year in which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the First Relevant Year, by the total number of days in the Prior Year;
- (ii) for the Second Relevant Year, by the total number of days in the First Relevant Year;
- (iii) for the Third Relevant Year, by the total number of days in the Second Relevant Year;

- (iv) for the Fourth Relevant Year, by the total number of days in the Third Relevant Year; and
- (v) for the Fifth Relevant Year, by the total number of days in the Fourth Relevant Year.

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

12E.4 Subject to the provisions set out in Conditions 12E.5 to 12E.7, the Controlling Percentage (IEC, IEC BT+1, 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.5 Where the Percentage Change for a Basket at the end of the Relevant Year is:
(IEC, IEC BT+1, LLA Area 2, LLA Area 3)

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

the Controlling Percentage for that Basket for the following Relevant Year shall be calculated in accordance with Condition 12E.6.

12E.6 Where Condition 12E.5 applies, the Controlling Percentage for the relevant Basket shall be calculated by employing the following formula:
(IEC, IEC BT+1, LLA Area 2, LLA Area 3)

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

Where:

CP_t is the Controlling Percentage in the Second Relevant Year (in the case of Deficiency or Excess in the First Relevant Year), Third Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year) Fourth Relevant Year (in the case of a Deficiency or Excess in the Third Relevant Year), 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.4; 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.3, as applicable.

12E.7 In the case of Excess, the Dominant Provider shall, to the extent reasonably possible, and as soon as reasonably practicable, repay the Relevant Excess Revenue to the relevant Affected Communications Provider.
(IEC, IEC BT+1, LLA Area 2, LLA Area 3)

Main link Sub-caps

12E.8 In respect of Main Link subject to Condition 12E.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 12E.10, in the charge for that service is no greater than the Controlling Percentage calculated in accordance with the following formula:
(IEC, IEC BT+1, LLA Area 2, LLA Area 3)

$$CP_t = CPI_t - 0$$

Where:

CP_t is the Controlling Percentage for Relevant Year;

CPI_t is CPI for the Relevant Year, t;

12E.9 In respect of each Exempt Ancillary Service and subject to Condition 12E.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 12E.10, in the charge for that Exempt Ancillary Service is no greater than the Controlling Percentage 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.10 For the purposes of Condition 12E.8 and Condition 12E.9, 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 Condition 12E.8 (i) to (iii) and Condition 12E.9, 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.11

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

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

Where:

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

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

$w_{j,t}$ is the proportion of the Relevant Year in which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the First Relevant Year, by the total number of days in the First Relevant Year; and
- (ii) for the Second Relevant Year, by the total number of days in the Second Relevant Year;
- (iii) for the Third Relevant Year, by the total number of days in the Third Relevant Year;
- (iv) For the Fourth Relevant Year, by the total number of days in the Fourth Relevant Year; and
- (v) for the Fifth Relevant Year, by the total number of days in the Fifth Relevant Year;

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

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

(i) for the relevant services in each of 12E.8 and 12E.9:

a. for each Relevant Year, 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.11;

Where such Prior Year Weighted Average Charge shall be calculated by

employing the following formula:

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

Where:

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

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

$w_{j,t-1}$ is the proportion of the Prior Year in which a distinct charge is in effect and is calculated by dividing the total number of days during which the charge is in effect:

- (i) for the First Relevant Year, by the total number of days in the Prior Year;
- (ii) for the Second Relevant Year, by the total number of days in the First Relevant Year;
- (iii) for the Third Relevant Year, by the total number of days in the Second Relevant Year;
- (iv) For the Fourth Relevant Year, by the total number of days in the Third Relevant Year; and
- (v) for the Fifth Relevant Year, by the total number of days in the Fourth Relevant Year;

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

General provisions and interpretation

- 12E.11** For the purposes of determining compliance with this Condition 12E, the relevant charges shall be calculated as follows:
- (IEC, IEC BT+1, LLA)**
- (i) including Three Year Term Products;

- Area 2, LLA
Area 3)**
- (ii) including Five Year Term Products; and
 - (iii) excluding Time Limited Discounts and all other forms of discounts;

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

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

Except where Condition 12E.13 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.

**12E.13
(IEC, IEC
BT+1, LLA
Area 2, LLA
Area 3)**

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 and WDM) Services Basket 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.19.

**12E.14
(IEC, IEC
BT+1, LLA
Area 2, LLA
Area 3)**

Except where Condition 12E.15 applies, where:

- (i) 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; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends; or
- (iii) there is a material change in the basis of the Consumer Prices Index;

Condition 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.14, 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.15 (IEC, IEC BT+1, LLA Area 2, LLA Area 3) 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:

- (i) the Substituted Services shall fall within the same Basket set out in Condition 12E.1 as the Replaced Service;
- (ii) 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
- (iii) 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.16 (IEC, IEC BT+1, LLA Area 2, LLA Area 3) The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12E. The data must include:

- (i) pursuant to Condition 12E.3, the calculated Percentage Change relating to each Basket specified in Condition 12E.1;
- (ii) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12E.3 and 12E.10, including for each sub basket and/or individual service in the Basket;
- (iii) all relevant Total Revenues during the Relevant Year in respect of the individual service (as applicable) in the Basket;
- (iv) charges published by the Dominant Provider at time, t , during the Relevant Year and the Prior Year, including published charges for the

Three Year Term Products and the Five Year Term Products but excluding any Time Limited Discounts and any other forms of discounts;

- (v) the relevant published charges at the start of each Relevant Year;
- (vi) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services to which Condition 12E.3 applies and calculations thereof;
- (vii) other data necessary for monitoring compliance with the charge control; and
- (viii) such data as Ofcom may from time to time direct.

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

The information provided to Ofcom under (i) to (viii) must be accompanied by a statement from an independent third party providing assurance on the data. This assurance will be in the form of Agreed upon procedures. The statement provided to Ofcom by the independent third party will set out the results of the tests carried out in order to give the Agreed upon procedures assurance.

12E.17 Ofcom may direct that Conditions 12E.1 to 12E.16 shall not apply to the extent specified in any such direction.
**(IEC, IEC
BT+1, LLA
Area 2, LLA
Area 3)**

12E.18 The Dominant Provider shall comply with any direction Ofcom may make from time to time under this Condition 12E.
**(IEC, IEC
BT+1, LLA
Area 2, LLA
Area 3)**

12E.19 In this Condition 12E:
**(IEC, IEC
BT+1, LLA**

Area 2, LLA
Area 3)

- a) “**Basket**” has the meaning given in **12E.1**;
- b) “**Controlling Percentage**” means a percentage to be calculated in accordance with **Conditions 12E.4** and **12E.8**, as applicable;
- c) “**Ethernet and WDM Services Basket**” means the basket of services set out in Section ~~13~~ 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 **Condition 12E.2**;
- e) “**Exempt Ancillary Service**” means each service which is subject to **Condition 12E.9** and is defined in Section 4 of the Annex to this **Condition 12E**;
- f) “**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:
 - a. $R5_t = \frac{1}{5}C1_t + R1_t$
 - i. Where:
 - ii. $R5_t$ is the rental charge of the Five Year Term Product in period t (paid by both new and existing Third Parties);
 - iii. $C1_t$ is the connection charge of the equivalent product with a 1 year term in period t;
 - iv. $R1_t$ is the rental charge of the equivalent product with a 1 year term in period t;
- g) “**Main Link**” means the Main Link services as found on Openreach’s price list: <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=0d0zetWgShsjqKWjcN2Y5WJA8BGGqsBLxL7lgSM4fRpZ6rNZujnCs>

[99NbIKJZPD9hXYmiiXh6wr%0ACQm97GZMyQ%3D%3D](#) [accessed 7 January 2020]

- h) **“Percentage Change”** has the meaning given to it in **Conditions 12E.3** and **12E.10**, as applicable;
- i) **“Prior Year Weighted Average Charge”** means a charge to be calculated in accordance with the relevant formula in **Condition 12E.3**;
- 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 **Condition 12E.3**;
- l) **“Replaced Service”** means any service subject to **Condition 12E.15** that is withdrawn and wholly or substantially replaced by Substituted Services;
- m) **“Substituted Services”** means two or more services subject to **Condition 12E.15** that are introduced and wholly or substantially replace a Replaced Service;
- 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:
 - a. $R3_t = \frac{1}{3}C1_t + R1_t$
 - i. Where
 - ii. $R3_t$ is the rental charge of the Three Year Term Product in period t (paid by both new and existing Third Parties);
 - iii. $C1_t$ is the connection charge of the equivalent product with a 1 year term in period t;
 - iv. $R1_t$ is the rental charge of the equivalent product with a 1 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; and

- 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 and/or products subject to this **Condition 12E**.

Annex to Condition 12E

Services subject to charge control pursuant to Condition 12E

Section 1

Meaning of “Ethernet and WDM Basket”

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

Bulk Transport Link for 1Gbps¹

Connection and rental charges for:

- Openreach Handover Point (OHP) Hub
- Main Link
- Point of Presence (PoP)

Ethernet Access Direct (EAD)²

Connection and rental charges for:

- EAD circuits
- EAD Modify – upgrade charges
- EAD SyncE 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 Link³

¹ Openreach, *Price List, Bulk Transport Link*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2BtziW%2FvYZGtoQraq%2BNu4alFhZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

² Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

³ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

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

Ethernet Backhaul Direct (EBD)⁴

Connection and rental charges

Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)⁵

Connection and Rental Charges

WES/WEES Main Link charges

WES Resilient Option 1 Main Link ~~up to 1Gbit/s~~

WES Resilient Option 2 Main Link ~~up to 1Gbit/s~~

WEES Resilient Option 2 Main Link ~~up to 1Gbit/s~~

Backhaul Network Services (BNS)⁶

Connection and rental charges

Openreach Network Backhaul Services (ONBS)⁷

Connection and rental charges

Resilient Options 1, 2 and 3 - resilience link per metre charges ~~up to 1Gbit/s~~

⁴ Openreach, *Price List, Ethernet Backhaul Direct*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiltavZ6rNZujnCs99NblKJZPD9hXYmijxH6wrCQm97GZMYQ%3D%3D> [accessed on 7 January 2020].

⁵ Openreach, *Price List, Wholesale Extension Service & Wholesale End to end Extension Service*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=TG6A8jbarofqgfNi%2BYxJT%2BWX9RC8ygO7YK%2FGFXHQKYIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> [accessed on 6 January 2020].

⁶ Openreach, *Price List, Backhaul Network Services (BNS)*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRiskel2ZrKBXGHf8sPBYwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> [accessed on 7 January 2020].

⁷ Openreach, *Price List, Openreach Network Backhaul Services*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRrhrww6STLWGzW%2F0BqqNvflIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> accessed on [accessed on 7 January 2020].

Backhaul Extension Service (BES)⁸

Connection and rental charges

Resilient Option 2 – resilience link per metre up to 1Gbit/s

Optical Spectrum Access (OSA)⁹

Connection and rental charges

Main Link charges

Optical Spectrum Extended Access (OSEA)¹⁰

Connection and rental charges

Main Link charges

Optical Spectrum Access Filter Connect (OSA Filter Connect)¹¹

Connection and rental charges

Main Link charges

Optical Spectrum Extended Access Filter Connect (OSEA Filter Connect)¹²

Connection and rental charges

Main Link charges

⁸ Openreach, *Price List, Backhaul Extension Service (BES)*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsa0DzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> [accessed on 7 January 2020].

⁹ Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yijl4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

¹⁰ 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 7 January 2020].

¹¹ Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yijl4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

¹² 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 7 January 2020].

Section 2

Meaning of “Exempt ancillary services”

For the purposes of Condition 12E, the expression “Exempt Ancillary Services” shall be construed as including the following services:

Bulk Transport Link for 1Gbps¹³

Migration charges for:

- Openreach Handover Point (OHP) Hub
- Main Link
- Point of Presence (PoP)

Additional charges

Cancellation charges

Ethernet Access Direct (EAD)¹⁴

Migration charges¹⁵

Ancillary services:

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

Ethernet Backhaul Direct (EBD)¹⁶

Migration charges¹⁷

Ancillary services:

- Upgrade charges
- Cancellation Charges

¹³ Openreach, *Price List, Bulk Transport Link*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2BtziW%2FvYZGtoQraq%2BNU4alFhZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

¹⁴ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2l67PEgpNm%2BtShF6YESRcCqrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

¹⁵ Only applies to rentals without an associated migration charge.

¹⁶ Openreach, *Price List, Ethernet Backhaul Direct*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=F6GFzqfhDSmh7Oyv8Xw%2Bt6ZkEknUEHFW9O1w%2FCiItaVZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

¹⁷ Only applies to rentals without an associated migration charge.

- Shift charges
- Service Features charges

Wholesale Extension Service (WES) & Wholesale End-to-End Extension Service (WEES)¹⁸

Migration charges

Ancillary services:

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

Backhaul Network Services (BNS)¹⁹

Ancillary services:

- Upgrade charges
- Additional charges
- Cancellation Charges

Openreach Network Backhaul Services (ONBS)²⁰

Cancellation charges

Backhaul Extension Service (BES)²¹

Migration charges

Ancillary services:

- Additional charges
- Upgrade Charges

¹⁸ 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%2FIISgtlFAKw%3D%3D> [accessed on 7 January 2020].

¹⁹ Openreach, *Price List, Backhaul Network Services (BNS)*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=to6u3F12FmH4GL92i3NosYRiskel2ZrKBXGHf8sPBYwIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> [accessed on 7 January 2020].

²⁰ Openreach, *Price List, Openreach Network Backhaul Services*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Rdc2f4wj9k%2Fplcoq3gDRrhrww6STLWGzW%2FOBqqNvfllIMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> [accessed on 7 January 2020].

²¹ Openreach, *Price List, Backhaul Extension Service (BES)*, <https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Gb5DIOWDeWrdvLSdpeomsaODzFBxAUIONmfpe3%2FG3G4IMnGHsqdC0vzO163bJmh34D91D7M0q8u%2FIISgtlFAKw%3D%3D> [accessed on 7 January 2020].

- Circuit Shift charges
- Cancellation charges

Optical Spectrum Access (OSA)²²

Upgrade charges

Cancellation charges

Shift charges

Service reconfiguration charges

Abortive Visit charges

Amend Order Request charges

Optical Assist charges

Optical Spectrum Extended Access (OSEA)²³

Cancellation charges

Shift charges

Service reconfiguration charges

Optical Spectrum Access Filter Connect (OSA Filter Connect)²⁴

Upgrade charges

Cancellation charges

Abortive Visit charges

Optical Spectrum Extended Access Filter Connect (OSEA Filter Connect)²⁵

Upgrade charges

²² Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yijl4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijixH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

²³ Openreach, *Price List, Optical Spectrum Extended Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbIKJZPD9hXYmijixH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

²⁴ Openreach, *Price List, Optical Spectrum Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8yijl4DelvXU8bqZRwL0sgJZ6rNZujnCs99NbIKJZPD9hXYmijixH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

²⁵ Openreach, *Price List, Optical Spectrum Extended Access*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=Wk%2B2hSVL2knF5F0Ve%2F1N8%2BzJs9AuBR97In%2B8uxoSog9Z6rNZujnCs99NbIKJZPD9hXYmijixH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

Cancellation charges

Abortive Visit charges

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 those provided by the Dominant Provider on its website for definitions and explanations of its services. These are currently found as follows²⁶:

- Services within the “**Ethernet and WDM Services Basket**” please refer to <http://www.openreach.co.uk/orpg/home/home.do>

- Specifically:
 - For EAD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/ethernetaccessdirect/ead.do>
 - For EBD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/ethernetbackhauldirect/ebd.do>
 - For BTL, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/productswithdrawnfromnetworksupply/bulktransportlink/btl.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/productswithdrawnfromnetworksupply/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/productswithdrawnfromnetworksupply/backhaulnetworkservices/bns.do>
 - For Cablelink, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/cablelink/cablelink.do>
 - For OSA, please refer to <https://www.openreach.co.uk/orpg/home/products/opticalservices/opticalspectrumaccess/opticalspectrumaccess.do>
 - For OSEA, please refer to <https://www.openreach.co.uk/orpg/home/products/opticalservices/opticalspectrumextendedaccess/opticalspectrumextendedaccess.do>

²⁶ All links accessed on 7 January 2020.

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

Accommodation Services Control

12F.1 Subject to Conditions 12F.4 and 12F.5, the Dominant Provider shall take all
(IEC, IEC reasonable steps to secure that, at the end of each Relevant Year, the Percentage
BT+1, LLA Change (calculated in accordance with Condition 12F.2) in each of the charges for
Area 2, LLA each and every Accommodation Service is not greater than the Controlling
Area 3) Percentage (calculated in accordance with Condition 12F.3).

12F.2 For the purposes of Condition 12F.1, the Percentage Change shall be calculated by
(IEC, IEC employing the formula in Condition 12E.10, except that references to an “individual
BT+1, LLA service falling within the Baskets” shall be treated as references to each individual
Area 2, LLA Accommodation Service subject to Condition 12F.
Area 3)

12F.3 For the purposes of complying with Condition 12F.1, and subject to the provisions
(IEC, IEC set out in Conditions 12F.4 and 12F.5, the Controlling Percentage in relation to any
BT+1, LLA Relevant Year shall be calculated, for the purposes of complying with Condition
Area 2, LLA 12F.1, by employing the formula in Condition 12E.4.
Area 3)

12F.4 Where the Percentage Change for the Accommodation Services Basket at the end of
(IEC, IEC the Relevant Year is:
BT+1, LLA i. less than the Controlling Percentage (“Deficiency”); or
Area 2, LLA ii. greater than the Controlling Percentage (“Excess”);
Area 3)

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

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, LLA
Area 2, LLA
Area 3)**

Controls on Overlapping Accommodation Services

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, LLA
Area 2, LLA
Area 3)**

Controls on Cablelink Services

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) in each of the charges for each and every Cablelink Service is not greater than the Controlling Percentage (calculated in accordance with Condition 12F.8).

**(IEC, IEC
BT+1, 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 each individual Cablelink Service subject to Condition 12F.

**(IEC, IEC
BT+1, 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.4.

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

- i. less than the Controlling Percentage (“Deficiency”); or
- ii. 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 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, LLA
Area 2, LLA
Area 3)**

General provisions and interpretation

12F.12 Where:

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

- (i) 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; or
- (ii) the Dominant Provider makes a change to the date on which its Financial Year ends; or
- (iii) there is a material change in the basis of the Consumer Prices Index;

Condition 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, LLA
Area 2, LLA
Area 3)**

- (i) 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
- (ii) in the Relevant Year that the Substituted Services are introduced, any reference in Condition 12EF, ~~where such Condition 12E is referred to in this 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, 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, LLA

Area 2, LLA

Area 3)

12F.16 In this **Condition 12F**:

- a) **“Accommodation Services”** means the services defined and listed in Section 1 of the Annex to this **Condition 12F**;
- b) **“Cablelink Services”** 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 (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this **Condition 12F**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this **Condition 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 ~~10C~~12F.2** and **12F.4** as applicable;
- 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 and WDM Services Basket (as these are 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 locate²⁷

All charges excluding Access Locate Plus bespoke charges

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 Part 4 of the Annex to Condition 12B, such services being reasonably necessary for the use of the services falling within the Ethernet and WDM Services Basket (as these are 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”

For the purposes of **Condition 12F**, the expression “**Cablelink Services**” shall be construed as including the following

²⁷ Openreach, *Price List, Access Locate and Access Locate Plus*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=q%2B2vpfgQQ99SiimXeC7QjskLe4HVN3IVHU%2BmY7RLKoBZ6rNZujnCs99NbiKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

services, subject to such changes as Ofcom may agree to from time to time, such agreement to be given in writing or by way of direction, as Ofcom considers appropriate, 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).

Cablelink²⁸

Connection and rental charges

Cancellation charges

Additional charges

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>²⁹
- 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>

²⁸ Openreach, *Price List, Cablelink*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=kgnGm8XSPOZEY5UMJxGwO9yDfzzeTWgW5o%2FPQLWlvfwlMnGHsqdC0vzO163bJmh34D91D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> [accessed on 7 January 2020].

²⁹ Accessed 7 January 2020.

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

Direct ECC Services Basket Control

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, 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.3 above, except that references to “the Basket” should be treated as references to the Direct ECC Services Basket. The value of \bar{p}_{it-1} should be calculated in the same manner as for the Ethernet (and WDM Services Basket in Condition 12E.3c(ii)).

(IEC, IEC
BT+1, 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.4.

(IEC, IEC
BT+1, 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, LLA
Area 2, LLA
Area 3)
- i. less than the Controlling Percentage (“Deficiency”); or
 - ii. 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 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 Affected Communications Provider.

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

Sub-caps Control

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 Relevant Year, the Percentage Change in the charge for that service (calculated in accordance with Condition 12G.7) is no greater than the Controlling Percentage (calculated in accordance with Condition 12G.8).

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

12G.7 For the purposes of complying with Condition 12G.6, the Percentage Change shall be calculated by employing the formula in Condition 12E.10, except that references to “an individual service falling within the Basket” shall be treated as references to each individual service falling within the Direct ECC Services Basket.

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

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, LLA
Area 2, LLA
Area 3)

$$\underline{CP_t = CPI_t + X}$$

Where:

CP_t is the Controlling Percentage for Relevant Year t;

CPI_t is CPI for the Relevant Year, t;

X is equal to 5 percentage points.

Control of Contractor ECC Services

12G.9 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.

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

12G.10 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:

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

- (i) Condition 12E.3 for the purpose of complying with Condition 12E.2; and
- (ii) Condition 12E.10 for the purpose of complying with Conditions 12E.8.

12G.11 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 EAD₂ or EAD LA service (~~“Connected 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.

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

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, 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 and EAD LA and Dark Fibre Access connections in the Prior Year;

k is a number from 1 to C for each new EAD or 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 or 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 or 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 δ_k is a binary variable for each new EAD or 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, LLA

Area 2, LLA

Area 3)

(i) not less than 90 calendar days after the day it is notified, where there is an increase in the ECC Balancing Charge; and

(ii) not less than 28 calendar days after the day it is notified, where there is a reduction in the ECC Balancing Charge;

~~(which should be the “effective date” for the purposes of Conditions 9.3 and 9.4).~~

12G.13A The Dominant Provider must not levy a charge for Exempt ECC Services.

(IEC, IEC

BT+1, LLA

Area 2, LLA

Area 3)

General provisions and interpretation

12G.14 Where:

(IEC, IEC (i) 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; or

BT+1, LLA

Area 2, LLA

Area 3)

(ii) the Dominant Provider makes a change to the date on which its Financial Year ends; or

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

Condition 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, LLA
Area 2, LLA
Area 3)**

- (i) the Substituted Services shall fall within the Direct ECC Services Basket;
- (ii) 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
- (iii) in the Relevant Year that the Substituted Services are introduced, any reference in Condition 12G, ~~where such Condition 12E is referred to in this 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 three 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, LLA
Area 2, LLA
Area 3)**

- (i) pursuant to Conditions 12G.2 and 12G.7, the calculated Percentage Change relating to the Direct ECC Services Basket and individual services, as relevant;
- (ii) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Conditions 12G.2 and 12G.8;
- (iii) all charges, excluding discounts, published by the Dominant Provider at time, t , during the Relevant Year and the Prior Year;

- (iv) the relevant published charges at the start of each Relevant Year;
- (v) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the Direct ECC Services to which Condition 12G applies and calculations thereof;
- (vi) other data necessary for monitoring compliance with the charge control; and
- (vii) such data as Ofcom may from time to time direct.

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

The information provided to Ofcom under (i) to (vii) must be accompanied by a statement from an independent third party providing assurance on the data. This assurance will be in the form of Agreed upon procedures. The statement provided to Ofcom by the independent third party will 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, 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, LLA
 Area 2, LLA
 Area 3)**

12G.19 In this Condition 12G:

- 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 Section 1 and 2 of the Annex to this **Condition 12G** reasonably necessary for the use of the services falling within the Ethernet and WDM Services Basket 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;

- 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 and WDM Services Basket or Dark Fibre Access, subject to such changes as Ofcom may agree to from time to time, such agreement to be given in writing or by way of direction, as Ofcom considers appropriate, 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 charges³⁰

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

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 and WDM Services Basket Dark Fibre Access, subject to such changes as Ofcom may agree to from time to time, such agreement to be given in writing or by way of direction, as Ofcom considers appropriate, 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).

³⁰ Openreach, *Price List, Excess Construction Charges*,

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2Fzv%2FjSuBEEITnogh5uNOEwQ2%2FKws5WBAVcllcholMnGHsqdC0vzO163bJmh34D910D7M0q8u%2F%0AllSgtlFAKw%3D%3D> [accessed on 9 May 2019].

Excess construction charges³¹

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

Section 3

Meaning of “EAD” and “EAD LA”

For the purposes of Condition 12G, the expression EAD shall be construed as including the all the services listed below, subject to such changes as Ofcom may agree to from time to time, such agreement to be given in writing or by way of direction, as Ofcom considers appropriate, 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)³²

Connection charges for:

- EAD Circuits

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

³¹ Openreach, *Price List, Excess Construction Charges*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=ZdqG%2Fvx%2FjSuBEEITnogh5uNOEwQ2%2FKws5WBAVcllchoIMnGHsqdC0vzO163bJmh34D910D7M0q8u%2F%0AIIsgtIFAKw%3D%3D> [accessed on 7 January 2020].

³² Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*,

<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcQrDFZ6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

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

For the purposes of Condition 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)³³

Connection charges for:

- EAD Local Access 10 Mbit/s circuits and above

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

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

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/orpg/home/products/serviceproducts/excessconstructioncharges/excessconstructioncharges.do>³⁴

³³ Openreach, *Price List, Ethernet Access Direct (EAD) including EAD Enable*, <https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=5uW5cDedIGJkun%2FLo2I67PEgpNm%2BtShF6YESRcQrDFZ6rNZujnCs99NbiKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> [accessed on 7 January 2020].

³⁴ Accessed on 19 December 2019.

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, LLA
Area 2,
LLA Area
3)**
- (i) Standard Chargeable Visit;
 - (ii) Additional Hour;
 - (iii) Supplementary Charges (Per Visit);
 - (iv) Supplementary Charges (Per Hour);
 - (v) Internal and External Shifts; and
 - (vi) Additional Line Shifted;

(each of which is referred to in this Conditions as a “Single Charge Category” (unless otherwise specified) is no 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.10, 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.11 apply, as relevant.

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.4.

12H.4 Where the Percentage Change at the end of the Relevant Year is:

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

- i. less than the Controlling Percentage for each Single Charge Category (“Deficiency”); or

- LLA Area 3)** ii. greater than the Controlling Percentage for each Single Charge Category (“Excess”);

the Controlling Percentage for the following Relevant Year shall be calculated employing the formula set out in Condition 12E.6 with the exception that the references to “the Basket” in Condition 12E.6 shall be treated as references to each individual Single Charge Category subject to Condition 12GH.

- 12H.5 (IEC, IEC BT+1, 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.

General provisions and interpretation

- 12H.6 (IEC, IEC BT+1, LLA Area 2, LLA Area 3)** Where:
- (i) 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 12GH; or
 - (ii) 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** The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than three months after the end of each Relevant Year, the data

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

necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12H. The data must include:

- (i) pursuant to Condition 12H.2, the calculated Percentage Change relating to each Single Charge Category;
- (ii) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12H.2, including for each Single Charge Category;
- (iii) all charges, excluding discounts, published by the Dominant Provider at time, *t*, during the Relevant Year and the Prior Year;
- (iv) the relevant published charges at the start of each Relevant Year;
- (v) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for each Single Charge category to which Condition 12H.2 applies and calculations thereof;
- (vi) other data necessary for monitoring compliance with the charge control; and
- (vii) such data as Ofcom may from time to time direct.

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

The information provided to Ofcom under (i) to (vii) must be accompanied by a statement from an independent third party providing assurance on the data. This assurance will be in the form of Agreed upon procedures. The statement provided to Ofcom by the independent third party will set out the results of the tests carried out in order to give the Agreed upon procedures assurance.

**12H.8
(IEC, IEC
BT+1, 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

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

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

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

- a) **“Additional Hour”** means the provision of the service ‘Additional Hours (or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the use of the services falling within the the Ethernet and WDM Services Basket, or Dark Fibre Access;
- b) **“Additional Line Shifted”** means the provision of the service ‘Additional Line shifted’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the use of the services falling within the Ethernet and WDM Services Basket, or Dark Fibre Access;
- c) **“Ethernet and WDM Services Basket”** has the meaning given to it in **Condition 12E.19**;
- d) **“Excess Revenue”** means the difference between (a) the revenue which the Dominant Provider earned in the Relevant Year from providing the services specified in the Annex to this **Condition 12H**, and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services specified in the Annex to this **Condition 12HE** if it had complied with **Condition 12H.1**;
- e) **“Internal and External Shifts”** means the provision of the service ‘Internal and External Shifts’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and

explanations of its services) where this is reasonably necessary for the services falling within the Ethernet and WDM Services Basket;

- f) **“Percentage Change”** has the meaning given to it in **Condition 12HG.2**;
- g) **“Relevant Excess Revenue”** means the Excess Revenue earned from charging the Affected Communications Provider;
- h) **“Standard Chargeable Visit”** means the provision of the service ‘Standard Chargeable Visit (Visit plus up to 1 hours work)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the services falling within Ethernet and WDM Services Basket, or Dark Fibre Access ;
- i) **“Supplementary Charges (Per Hour)”** means the provision of the service ‘Supplementary charges (Per Hour or Part thereof)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the services falling within the Ethernet and WDM Services Basket, or Dark Fibre Access; and
- j) **“Supplementary Charges (Per Visit)”** means the provision of the service ‘Supplementary charges (Per Visit)’ (which shall be construed as having the same meaning as provided by the Dominant Provider on its website for definitions and explanations of its services) where this is reasonably necessary for the use of the services falling within the Ethernet and WDM Services Basket, or Dark Fibre Access.

Annex to Condition 12H

Services subject to charge control pursuant to Condition 12H

Section 1

Meaning of “Ethernet TRC Services”

For the purposes of Condition 12H, the expression “Ethernet TRC Services” shall include the following services defined in Condition 12H.10:

- ~~(a) Standard Chargeable Visit;~~
- ~~(b) Additional Hour;~~
- ~~(c) Supplementary Charges (Per Visit);~~
- ~~(d) Supplementary Charges (Per Hour);~~
- ~~(e) Internal and External Shifts; and~~
- ~~(f) Additional Line Shifted~~

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

Interpretation of Annex to Condition 12H

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

- Services within the meaning of “Ethernet TRC Services”, please refer to:

<https://www.openreach.co.uk/org/home/products/pricing/loadProductPriceDetails.do?data=pBzHTRfO4GXC12qz7DCzqUP54d5RrQ9TQD%2BRDuYwQUEIMnGHsqdC0vzO163bJmh34D910D7M0e8u%2FIISgtIFAKw%3D%3D>³⁵

³⁵ 3 January 2020

Condition 12I - Controls on Dark Fibre Access

12I.1 Except in so far as Ofcom may otherwise direct, in the First Relevant Year the Dominant Provider shall not charge more than:

(LLA

- Area** (a) for Connection for a single fibre circuit the amount of ~~£1,153~~£1,419;
- 3)** (b) for Connection for a dual fibre circuit the amount of ~~£2,306~~£2,838;
- (c) for Annual rental for a single fibre circuit the amount of ~~£615~~£701 per annum; and
- (d) for Annual rental for a dual fibre circuit the amount of ~~£1,230~~£1,402 per annum.

12I.2 Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year, the Dominant Provider shall not charge more than:

(LLA

Area

- 3)**
- a) for 12I.1 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} + \del{1.1} - 2.5\%)$
- b) for 12I.1(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} + \del{1.1} - 2.5\%)$
- c) for 12I.1(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} - \del{5.4} - 7.0\%)$
- d) for 12I.1(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} - \del{5.4} - 7.0\%)$

12I.3 Except in so far as Ofcom may otherwise direct, in the First Relevant Year the Dominant Provider shall not charge more than:

(IEC)

- (a) for Connection for a single fibre circuit the amount of ~~£264~~£322, 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 ~~£528~~£644, 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 ~~£18~~£20 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 ~~£36~~£40 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 ~~£0.10-15~~ per metre per annum;
- (f) for Main link rental for a dual fibre circuit the amount of ~~£0.20-30~~ per metre per annum.

12I.4 Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year, the Dominant Provider shall not charge more than:

(IEC)

- a) for 12I.3 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} - 5.47.4\%)$
- b) for 12I.3(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} - 5.47.4\%)$
- c) for 12I.3(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} - 5.45.8\%)$
- d) for 12I.3(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} - 5.45.8\%)$
- e) for 12I.3 (e) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} + 3.9-4.2\%)$
- f) for 12I.3(f) the maximum amount permitted to be charged for that service in the Prior Relevant Year x $(100\% + \text{CPI} + 3.9-4.2\%)$

12I.5 Except in so far as Ofcom may otherwise direct, in the First Relevant Year the Dominant Provider shall not charge more than:

(LLA

Area

3,

IEC)

- (a) for Patch-panel at customer premises the amount of £19 per annum per panel;
- (b) for Patch-panel at exchange the amount of £86 per annum per panel;
- (c) for Initial testing the amount of £119 per test;
- (d) for Cessation the amount of £170; and
- (e) for RWT the amount of £305.

12I.6 Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, Third Relevant Year, Fourth Relevant Year and Fifth Relevant Year, the Dominant Provider shall not charge more than:

- (LLA Area 3, IEC)**
- a) for 12I.5 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI-CPI)
 - b) for 12I.5(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI-CPI)
 - c) for 12I.5(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI-CPI)
 - d) for 12I.5(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI-0%)
 - e) for 12I.5(e) the maximum amount permitted to be charged for that service in the Prior Relevant Year x (100%+CPI-0%)

12I.7 Where:

- (LLA Area 3, IEC)**
- (i) 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 12I; or
 - (ii) the Dominant Provider makes a change to the date on which its Financial Year ends; or
 - (iii) there is a material change in the basis of the Consumer Prices Index;

Condition 12I 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 12I.7, a material change to any service which is subject to this Condition 12I 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 three months after the end of each Relevant Year, the data

(LLA necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition
Area 12I. The data must include:

- 3,
IEC)
- (i) 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;
 - (ii) other data necessary for monitoring compliance with the charge control; and
 - (iii) 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)

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)

12I.11 In this **Condition 12I**:

(LLA
Area
3,
IEC)

“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;

“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;

“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;

“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, ~~including any Excess Construction Charges for Dark Fibre Access;~~

“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, ~~including any Excess Construction Charges for Dark Fibre Access;~~

~~**“Excess Construction Charges for Dark Fibre Access”** means any charge offered or charged by the Dominant Provider for the provision of a new Dark Fibre Access circuit;~~

“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;

“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;

“Patch-panel” means equipment used to interconnect and manage fibre optic cables.

“RWT” means the charge offered or charged by the Dominant Provider for a Third-Party Customer’s RWTFs relating to the provision of Dark Fibre Access consisting of one or two fibres, where such RWTFs are in excess of the 6% threshold of all of this customer’s faults;

“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 accessed at the following link:

https://www.ofcom.org.uk/_data/assets/file/0031/186448/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 accessed at the following link:

https://www.ofcom.org.uk/_data/assets/file/0032/186449/schedule-3-leased-lines-access-postcode-sectors-by-geographic-market.csv

Schedule 4: List of BT exchanges for the purpose of identifying interexchange connectivity markets

The list of postcode sectors for the purposes of identifying the markets listed in Table A (viii) to (ix) in paragraph 1 of this notification can accessed at the following link:

https://www.ofcom.org.uk/_data/assets/excel_doc/0024/186450/schedule-4-iec-exchanges-by-market.xlsx

Proposed Wholesale Local Access Market Directions

Notification of proposals under section 49 and 49A of the Communications Act 2003 and Condition 1 (Network access on reasonable request) proposed to be imposed on BT relating to the terms and conditions on which BT provides network access (Virtual Unbundled Local Access).

Background

1. On 8 January 2010 Ofcom published a consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2019” (the “Consultation”). In this document, Ofcom is consulting 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 proposes to impose on BT SMP services conditions 1 and 2 which would require BT to provide network access on reasonable request and specific forms of network access including virtual unbundled local access (“VULA”).
3. Under condition 1.4 those forms of Virtual Unbundled Local Access subject to condition 12 would be required to be provided on such terms conditions and charges as Ofcom may from time to time direct and under condition 1.3 those forms of Virtual Unbundled Local Access not subject to condition 12 would be required to be provided on such terms, conditions and charges as Ofcom may from time to time direct. Condition 1.13 provides that BT must comply with any direction Ofcom may make from time to time under condition 1.

Proposals in this Notification

4. Ofcom is proposing, in accordance with section 49A(3) of the Act, to make the following directions as set out in Schedule 1 and 2 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 Virtual Unbundled Local Access.
5. The effect of, and reasons for giving, the proposed directions are set out in the Fixed Telecoms Markets Review consultation document dated 8 January 2020, in particular Volume 3 section 5.

Ofcom's duties and legal tests

6. Ofcom considers that the proposed direction referred to in paragraph 3 complies with the requirements of section 49(2) of the Act.
7. In making the proposal referred to in paragraph 3, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

Making representations

8. Representations may be made to Ofcom about the proposals set out in this notification and no later than 1 April 2020.
9. In accordance with section 49C(1)(a) of the Act, a copy of the notification, together with the Schedules, has been sent to the Secretary of State.

Interpretation

10. For the purpose of interpreting this notification:
 - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 11 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.
11. In this notification:
 - a. **"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;
 - b. **"Act"** means the Communications Act 2003 (c.21);

- c. **“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;
- 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.

11. 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

Competition Policy Director, Ofcom

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

8 January 2020

SCHEDULE 1

[Draft] Direction under section 49 of the Communications Act 2003 and condition 1 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 [Date] Ofcom concluded its review of the Wholesale Local Access Market in which it identified markets, made market power determinations and set appropriate SMP conditions (as set out in the notification at Annex [] to the review). 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 service 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. Under condition 1.4 those forms of Virtual Unbundled Local Access subject to condition 1.2 are required to be provided on such terms, conditions and charges as Ofcom may from time to time direct and under condition 1.3 those forms of Virtual Unbundled Local Access not subject to condition 1.2 are required to be provided on such terms, conditions and charges as Ofcom may from time to time direct. SMP condition 1.13 provides that BT must comply with any direction Ofcom may make from time to time under condition 1. This direction is made under conditions 1.3 and 1.4.

Direction

4. Ofcom hereby, pursuant to section 49 of the Act and condition 1, directs the Dominant Provider to act as prescribed in paragraphs 5 to 8 below.
5. Where the Dominant Provider 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 the Dominant Provider 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 will 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.

Ofcom's duties and legal tests

9. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
10. For the reasons set out in the explanatory statement accompanying this direction and section 5 of Volume 3 of the Wholesale Local Access Market review statement, Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC. Ofcom does not consider that this direction will have a significant impact on the market identified in paragraph 1.
11. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.
12. 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. **“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;
- c. **“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.
- d. **“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.

Signed

[signature]

[NAME]

Competition Policy Director

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

[Date]

Proposed Wholesale Local Access Market Directions

Notification of proposals under section 49 and 49A of the Communications Act 2003 and Condition 7D (Physical Infrastructure Access charge control) proposed to be imposed on BT relating to the products subject to the charge control in Condition 7D.1.

Background

1. On 28 March 2018 Ofcom concluded its review of the Wholesale Local Access Market in which it identified markets, made market power determinations and set appropriate SMP conditions (as set out in the notification at Annex 33 to the review). Ofcom determined that BT has significant market power in the market for the supply of wholesale local access at a fixed location in the United Kingdom excluding the Hull Area.
2. Condition 7D sets charge controls for PIA including setting a maximum charge for PIA rental services. Under condition 7D.7, where the Dominant Provider makes a material change to any service which is subject to condition 7D, condition 7D shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of condition 7D.7 a material change to any service which is subject to condition 7D includes the introduction of a new service wholly or substantially in substitution for that existing service which is subject to condition 7D. BT has notified Ofcom of its intention to withdraw specified products from its published price list and introduce a new product.

Proposals in this Notification

3. Ofcom is proposing, in accordance with section 49A(3) of the Act, to make the following directions as set out in Schedule 1 and 2 to this notification relating to modifications to the service subject to condition 7D following a material change.
4. The effect of, and reasons for giving, the proposed directions are set out in the Fixed Telecoms Markets Review consultation document dated 8 January 2012⁰ in particular Volume 4 section 5.

Ofcom's duties and legal tests

5. Ofcom considers that the proposed direction referred to in paragraph 3 complies with the requirements of section 49(2) of the Act.

6. In making the proposal referred to in paragraph 3, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

Making representations

7. Representations may be made to Ofcom about the proposals set out in this notification and no later than 1 April 2020.
8. In accordance with section 49C(1)(a) of the Act, a copy of the notification, together with the Schedules, has been sent to the Secretary of State.

Interpretation

9. For the purpose of interpreting this notification:
 - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 10 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.
10. In this notification:
 - a. **“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;
 - b. **“Act”** means the Communications Act 2003 (c.21);
 - c. **“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;

- 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;
- 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.~~

11. The schedules to this notification shall form part of this notification.

Signed



David Clarkson

Competition Policy Director

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

8 January 2020

SCHEDULE 1

[Draft] Direction under section 49 of the Communications Act 2003 and condition 7D (Physical Infrastructure Access charge control) relating to products subject to the charge control in Condition 7D.1

Background

1. On 28 March 2018 Ofcom concluded its review of the Wholesale Local Access Market in which it identified markets, made market power determinations and set appropriate SMP conditions (as set out in the notification at Annex 33 to the review). Ofcom determined that BT has significant market power in the market for the supply of wholesale local access at a fixed location in the United Kingdom excluding the Hull Area.
2. Condition 7D sets charge controls for PIA including setting a maximum charge for PIA rental services. Under condition 7D.7, where the Dominant Provider makes a material change to any service which is subject to condition 7D, condition 7D shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of condition 7D.7 a material change to any service which is subject to Condition 7D includes the introduction of a new service wholly or substantially in substitution for that existing service which is subject to condition 7D. BT has notified Ofcom of its intention to withdraw specified products from its published price list and introduce a new product. This direction is made under condition 7D.7.

Direction

3. Ofcom has decided to give direction set out in paragraphs 4 to 5 with effect from [Date].
4. The products at 7D.1(d) to (h) are removed from condition 7D.1.
5. The following is added at 7D.1(d): "For Simplified Underground PIA Lead-in, the amount of [£9.25]³⁶" and condition 7D read accordingly.

Ofcom's duties and legal tests

6. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.

³⁶ This represents the charge for 2019/2020 Financial Year.

7. For the reasons set out in the explanatory statement accompanying this direction and section 5 of Volume 3 of the Wholesale Local Access Market review statement, Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC. Ofcom does not consider that this direction will have a significant impact on the market identified in paragraph 1.
8. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.
9. For the purpose of interpreting this direction:
 - a. except as otherwise defined or in so far as the context otherwise requires, words or expressions have the meaning assigned to them in SMP conditions set out at annex 33 to the WLA Statement, 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 Direction shall be construed accordingly; and
 - d. the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.
10. In this direction:
 - a. “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;

Signed

[Signature]

[NAME]

Competition Policy Director

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

[Date]

Proposed Physical Infrastructure Markets Directions

Notification of proposals under section 49 and 49A of the Communications Act 2003 and Condition 6 (Physical Infrastructure Access charge control) proposed to be imposed on BT relating to the products subject to the charge control in Condition 6.1.

Background

1. On 28 June 2019 Ofcom concluded its review of the Physical Infrastructure Markets in which it identified markets, made market power determinations and set appropriate SMP conditions (as set out in the notification at Annex 26 to the review). Ofcom determined that BT has significant market power in each of the following relevant markets:
 - (a) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in PIMR BT only Areas;
 - (b) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in PIMR areas with alternative physical infrastructure that has been deployed to support multi-service networks;
 - (c) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in PIMR High Network Reach areas;
 - (d) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in the PIMR Central London Area.
2. SMP services condition 6 sets charge controls for PIA including setting a maximum charge for PIA rental services. Under condition 6.7, where the Dominant Provider makes a material change to any service which is subject to condition 6, condition 6 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of condition 6.7 a material change to any service which is subject to 6 includes the introduction of a new service wholly or substantially in substitution for that existing service which is subject to condition 6. BT has notified Ofcom of its intention to withdraw specified products from its published price list and introduce a new product.

Proposals in this Notification

3. Ofcom is proposing, in accordance with section 49A(3) of the Act, to make the following direction as set out the Schedule to this notification relating to modifications to the service subject to condition 6 following a material change.
4. The effect of, and reasons for giving, the proposed directions are set out in the Fixed Telecoms Markets Review consultation document dated 8 January 2020, in particular Volume 4 section 5.

Ofcom's duties and legal tests

5. Ofcom considers that the proposed direction referred to in paragraph 3 complies with the requirements of section 49(2) of the Act.
6. In making the proposal referred to in paragraph 3, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act.

Making representations

7. Representations may be made to Ofcom about the proposals set out in this notification and no later than 1 April 2020.
8. In accordance with section 49C(1)(a) of the Act, a copy of the notification, together with the Schedules, has been sent to the Secretary of State.

Interpretation

9. For the purpose of interpreting this notification:
 - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 10 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.
10. In this direction:

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

Signed

A handwritten signature in blue ink that reads "D. Clarkson." The signature is written in a cursive style with a large initial "D" and a period at the end.

David Clarkson

Competition Policy Director

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

8 January 2020

SCHEDULE

[Draft] Direction under section 49 of the Communications Act 2003 and condition 6 (Physical Infrastructure Access charge control) relating to products subject to the charge control in Condition 6.1

Background

1. On 28 June 2019 Ofcom concluded its review of the Physical Infrastructure Markets in which it identified markets, made market power determinations and set appropriate SMP conditions (as set out in the notification at Annex 26 to the review). Ofcom determined that BT has significant market power in each of the following relevant markets:
 - (e) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in PIMR BT only Areas;
 - (f) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in PIMR areas with alternative physical infrastructure that has been deployed to support multi-service networks;
 - (g) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in PIMR High Network Reach areas;
 - (h) the supply of wholesale access to telecoms physical infrastructure for deploying a telecoms network in the PIMR Central London Area.
2. Condition 6 sets charge controls for PIA including setting a maximum charge for PIA rental services. Under condition 6.7, where the Dominant Provider makes a material change to any service which is subject to condition 6, condition 6 shall have effect subject to such reasonable adjustment to take account of the change as Ofcom may direct. For the purposes of condition 6.7 a material change to any service which is subject to condition 6 includes the introduction of a new service wholly or substantially in substitution for that existing service which is subject to condition 6. BT has notified Ofcom of its intention to withdraw specified products from its published price list and introduce a new product. This direction is made under condition 6.7.

Direction

3. Ofcom has decided to give direction set out in paragraphs 4 to 5 with effect from [Date].

4. The products at 6.1(d) to (h) are removed from condition 6.1.
5. The following is added at 6.1(d): “For Simplified Underground PIA Lead-in, the amount of [£9.25]³⁷ and condition 6 read accordingly.

Ofcom’s duties and legal tests

6. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
7. Ofcom has considered every representation about the proposed direction duly made to it and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
8. For the reasons set out in the explanatory statement accompanying this direction and section 7 of Volume 1 of the “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets” statement dated 28 June 2019, Ofcom is satisfied that this direction complies with the requirements of section 49(2) of the Act. In making the proposals set out in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six Community requirements in section 4 of the Act. In accordance with section 4A of the Act, Ofcom has also taken due account of all applicable recommendations issued by the European Commission under Article 19(1) of the Framework Directive. Pursuant to Article 3(3) of Regulation (EC) No 1211/2009, Ofcom has also taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by BEREC. Ofcom does not consider that this direction will have a significant impact on the markets identified in paragraph 1.
9. A copy of this direction has been sent to the Secretary of State in accordance with section 49C(1)(b) of the Act, and the European Commission in accordance with section 49C(2)(a) of the Act.
10. For the purpose of interpreting this direction:

³⁷ This represents the charge for 2019/2020 Financial Year.

- a. except as otherwise defined or in so far as the context otherwise requires, words or expressions have the meaning assigned to them in SMP conditions set out at annex 26 to the “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets” statement dated 28 June 2019 , 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 Direction shall be construed accordingly; and
- d. the Interpretation Act 1978 (c. 30) shall apply as if this Direction were an Act of Parliament.

11. In this Notification:

- a. **“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.

Signed

[signature]

[NAME]

Competition Policy Director

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

[Date]

Notification of Directions to BT under section 49 of the Communications Act 2003 and SMP condition 10

Background

1. On 8 January 2020, OFCOM published the “Promoting Competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026” (the “Consultation”). The Consultation sets 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 conditions and directions to be applied to BT.
2. The Consultation proposes to impose SMP condition 10 on BT in each of the 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 Consultation, Ofcom is consulting 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. This notification sets out Ofcom’s proposals in this respect.

Directions

4. Pursuant to SMP condition 10, Ofcom is proposing to make four directions 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; and
 - (iv) supply of interexchange connectivity in BT+1 exchanges.

in which Ofcom has provisionally found BT as having SMP as set out in the Consultation (“**Direction 1**”); and

- 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 provisionally found BT as having SMP as set out in the Consultation (“**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**”).
5. Proposed Directions 1 to 4 are set out respectively at Annexes 1 to 4 of this notification.

Ofcom’s duties and legal tests

6. The effect of these Directions, and Ofcom’s reasons for proposing them, are set out in the Consultation accompanying this notification and, for the reasons therein, Ofcom considers that the Directions would 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 community requirements in section 4 of the Act and the duty to take account of European Commission recommendations for harmonisation in section 4A of the Act.

Making representations

7. Representations may be made to Ofcom about any of the proposals set out in this notification and the accompanying Consultation by no later than 1 April 2020.
8. Copies of this notification and the accompanying Consultation have been sent to the Secretary of State in accordance with sections 49C(1) of the Act.

Interpretation

9. For the purposes 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 10 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.
10. 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) “**Consultation**” has the meaning given to it in paragraph 1; and
 - (d) “**Ofcom**” means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002.

11. 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 with a large, stylized initial 'D'.

David Clarkson

Competition Policy Director, Ofcom

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

8 January 2020

Annex 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) in LLA Area 2; (ii) LLA Area 3; (iii) interexchange connectivity in BT Only exchanges; (iv) and interexchange connectivity in BT+1 exchanges.

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 [DATE] or that were Accepted Orders before [DATE] but were not Completed Orders on or before [DATE], and that relate to:
 - a. Supply of Leased Line access in LLA Area 2 (“LL Area 2”);
 - b. Supply of Leased Line access in LLA Area 3 (“LL Area 3”);

- c. Interexchange connectivity in BT Only exchanges (“IE”); or
- d. Interexchange connectivity in BT +1 exchanges (“IE BT+1”).

Quality of Service Standard 1 - Mean Time to Provide

- 3. 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

- 4. The Dominant Provider must ensure that no more than 3% of Completed Orders are completed with a Time to Provide that is more than 133 Working Days in each Relevant Year.

Quality of Service Standard 3 - Certainty (including certainty cross-link)

- 5. 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.
- 6. 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

- 7. 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

- 8. For the purposes of interpreting the Directions, 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 in an Accepted Order becoming a Completed Order which the Dominant Provider can reasonably attribute to being caused either by a Third Party Customer or a customer of that Third Party Customer (including an end user);
- v. **'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;
- 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. **'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;

- x. **'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;

- xi. **'KPI'** means a key performance indicator;

- xii. **'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;

- xiii. **'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.

- xiv. **'Quarter'** means in respect of Relevant Years, each of the following periods as applicable:
 - (i) 1 April to 30 June;
 - (ii) 1 July to 30 September;
 - (iii) 1 October to 31 December;

(iv) 1 January to 31 March;

xv. **'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;

xvi. **'Relevant Regions'** mean 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;

xvii. **'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;

- xviii. **'Relevant Year'** means each of the following periods as applicable:
- (i) 1 April 2021 – 31 March 2022;
 - (ii) 1 April 2022 – 31 March 2023;
 - (iii) 1 April 2023 – 31 March 2024;
 - (iv) 1 April 2024 – 31 March 2025;
 - (v) 1 April 2025 – 31 March 2026.
- xix. **'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;
- xx. **'Six Month Period'** means in respect of the Relevant Year:
- (i) 1 April to 30 September;
 - (ii) 1 October to 31 March;
- a. **'Third Party'** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- b. **'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;
- c. **'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;

- d. **‘WDM Services’** means services provided using wavelength division multiplexing equipment located at the customer’s premises and which is capable of supporting multiple leased line services over a single fibre or pair of fibres; and

- e. **‘Wholesale Fixed Telecoms Market Review SMP Conditions’** means the SMP conditions set out [in Volume 5 of the consultation document entitled *“Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”*] and dated [8 January 2020];

- f. **‘Working Day’** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

To the extent not otherwise defined in this notification, words or expressions used shall have the same meaning as they have been ascribed in this notification and in the Wholesale Fixed Telecoms Market Review SMP Conditions. Otherwise, any word or expression shall have the same meaning as it has in the Act.

Annex 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 in Area 2; (ii) LLA in Area 3; (iii) LLA in HNR Areas; (iv) Interexchange connectivity in BT Only exchanges (“IE”); or (v) Interexchange connectivity in BT +1 exchanges (“IE BT+1”).
- B. Ofcom hereby directs that the Dominant Provider comply with this Direction with effect from [1 April 2021].

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 (e), for the geographic areas in which it has been designated as having SMP as a whole and, for each of KPIs (a) to (e), 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, will be calculated using the total number of relevant Orders or Faults in LL Area 2, LL Area 3, IE and IE BT+1 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 in which it has been designated as having SMP as a whole, and in relation to KPIs (a) to (c), (e), (f) 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), (e), (f) and (k), by reference to each Provision Category.
 - 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 (h) and (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, or Six Month Period 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 month, or Six Month Period to which it relates.

Interpretation

11. For the purposes of interpreting the Directions, 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 in an Accepted Order becoming a Completed Order which the Dominant Provider can reasonably attribute to being caused either by a Third Party Customer or a customer of that Third Party Customer (including an end user);
- v. **‘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;
- 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. **'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;
- x. **'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;
- xi. **'KPI'** means a key performance indicator;
- xii. **'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;
- xiii. **'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.
- xiv. **'Quarter'** means in respect of Relevant Years, each of the following periods as applicable:
 - (v) 1 April to 30 June;
 - (vi) 1 July to 30 September;
 - (vii) 1 October to 31 December;
 - (viii) 1 January to 31 March;

xv. **‘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;

xvi. **‘Relevant Regions’** mean 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;

xvii. **‘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;

- xviii. **‘Relevant Year’** means each of the following periods as applicable:
- (i) 1 April 2021 – 31 March 2022;
 - (ii) 1 April 2022 – 31 March 2023;
 - (iii) 1 April 2023 – 31 March 2024;
 - (iv) 1 April 2024 – 31 March 2025;
 - (v) 1 April 2025 – 31 March 2026.
- xix. **‘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;
- xx. **‘Six Month Period’** means in respect of the Relevant Year:
- (i) 1 April to 30 September;
 - (ii) 1 October to 31 March;
- i. **‘Third Party’** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- ii. **‘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;
- iii. **‘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;
- iv. **‘WDM Services’** means services provided using wavelength division multiplexing equipment located at the customer’s premises and which is

capable of supporting multiple leased line services over a single fibre or pair of fibres; and

- v. **'Wholesale Fixed Telecoms Market Review SMP Conditions'** means the SMP conditions set out in [Volume 5 of the consultation document entitled "Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026"] and dated [8 January 2020];
- vi. **'Working Day'** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

To the extent not otherwise defined in this notification, words or expressions used shall have the same meaning as they have been ascribed in this notification and in the Wholesale Fixed Access Telecoms Market Review SMP conditions. Otherwise any word or expression shall have the same meaning as it has in the Act.

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.

KPI (h) - Monitoring the tail (open work stack)

- a. 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.
- b. 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 97th 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.

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.

Annex 3

Direction 3: Quality of service standards

- A. This Direction is made under section 49 of the Act, 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 10 Working Days 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%.

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 94%.

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 85%.

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 97%.

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 85%.

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 97%.

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 eight of the ten 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:
 - 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:
 - (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 accepts that its Order for a GEA–FTTC service at the street cabinet may not be provisioned by the Dominant Provider until an engineering visit by the Dominant Provider to that cabinet can be arranged to deal with an additional Order by that same Third Party for a GEA–FTTC service at the same street cabinet.

- 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;
- viii. **“FTTC”** means Fibre-to-the-Cabinet, an Electronic Communications Network consisting of optical fibre extending from the local access node to the street cabinet;
- ix. **“GEA”** means Generic Ethernet Access, the Dominant Provider’s non-physical wholesale services providing wholesale access to higher speed broadband products;
- x. **“GEA-FTTC”** means BT’s product consisting in the provision of GEA services via its FTTC network, including G.fast, SOGEA, and SOG.fast;
- xi. **“G.fast”** means the name given by Openreach to its GEA-FTTC product which uses G.fast technology;
- xii. **“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);
- xiii. **“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);

- xiv. **“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;
- xv. **“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”**);
- xvi. **“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, MPF definition for the purposes of this direction includes variants such as SOTAP;
- xvii. **“Order”** means a request for MPF, or GEA-FTTC services submitted to the Dominant Provider by a Third Party;
- xviii. **“Quality of Service Standards”** has the meaning given to it in paragraph 1 of this Direction;
- xix. **“Relevant Region”** means the following ten regions, as defined by the Dominant Provider:
- East Anglia;
 - London;
 - North East;
 - North Wales and North Midlands;
 - North West;
 - Scotland;
 - South East;
 - South Wales and South Midlands;

- Wessex; and
- Northern Ireland;

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;

- xx. **“Relevant Year”** means each of the following periods as applicable:
- (i) 1 April 2021 – 31 March 2022;
 - (ii) 1 April 2022 – 31 March 2023
 - (iii) 1 April 2023 – 31 March 2024
 - (iv) 1 April 2024 – 31 March 2025
 - (v) 1 April 2025 – 31 March 2026
- xxi. **“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;
- xxii. **“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;
- xxiii. **“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;
- xxiv. **“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;

- xxv. **“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;
 - xxvi. **“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;
 - xxvii. **“SOTAP”** means 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;
 - xxviii. **“Third Party”** means a person providing a public Electronic Communications Network or a person providing a public Electronic Communications Service;
 - xxix. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions set out in [Volume 5 of the consultation document entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”] and dated [8 January 2020];
 - xxx. **“WLA Area 2”** means the areas consisting of the postcode sectors identified as “Area 2” in [Schedule 2] to the notification at Annex [] to [Wholesale Fixed Telecoms Market Review Statement];
 - xxxi. **“WLA Area 3”** means the areas consisting of the postcode sectors identified as “Area 3” in [Schedule 2] to the notification at Annex [] to [Wholesale Fixed Telecoms Market Review Statement];
 - xxxii. **“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.

Annex 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 [DATE] 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 [DATE] 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 [DATE] 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 [DATE] and thereafter within one month and 30 Working Days of the last Working Day of every third 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:
 - (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 accepts that its Order for a GEA–FTTC service at the street cabinet may not be provisioned by the Dominant Provider until an engineering visit by the Dominant Provider to that cabinet can be arranged to deal with an additional Order by that same Third Party for a GEA–FTTC service at the same street cabinet.
- 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, MPF definition for the purposes of this direction includes 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 ten regions, as defined by the Dominant Provider:
- East Anglia;
 - London;
 - North East;
 - North Wales and North Midlands;
 - North West;
 - Scotland;
 - South East;
 - South Wales and South Midlands;
 - Wessex; and
 - Northern Ireland;

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 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;
- xxviii. **“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;
- xxix. **“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 1 (quality of service standards) made pursuant to Condition 10 of the Wholesale Fixed Telecoms Market Review SMP Conditions;
- xxx. **“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;
- xxxi. **“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;
- xxxii. **“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;

- xxxiii. **“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;
- xxxiv. **“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;
- xxxv. **“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;
- xxxvi. **“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;
- xxxvii. **“SOTAP”** means Single Order Transitional Access Product and isa variant of MPF;
- xxxviii. **“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;
- xxxix. **“Third Party”** means a person providing a public electronic communications network or a person providing a public electronic communications service;
- xl. **“Third Party Customer”** means a Third Party purchasing MPF, SOTAP or GEA services (as applicable) from the Dominant Provider;
- xli. **“Wholesale Fixed Telecoms Market Review SMP Conditions”** means the SMP conditions set out in [Volume 5 of the consultation document entitled

“Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026”] and dated [8 January 2020];

- xlii. **“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 (iii)(c), (xii)(c), (xiv)(c), (xix) to (xxiii), in relation to the provision of network access to MPF;
 - (b) the information required in all KPIs, except KPIs (iii) (a) and (c), (xii)(a) and (c), (xiv)(a) and (c), and (xx) to (xxiii), in relation to the provision of network access to GEA-FTTC;
 - (c) the information required in all KPIs, except KPIs (iii) (a) and (c), (xii)(a) and (c), (xiv)(a) and (c), and (xix) to (xxiii), in relation to the provision of network access to GEA-FHTTP;
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);

- (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. 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);
 - (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) In respect of services subject to Service Maintenance Level Business 2 Plus, 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 Business 2 Plus;
 - (ii) one Working Day beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
 - (iii) two Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
 - (iv) five Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus;
 - (v) ten Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus; and
 - (vi) twenty Working Days beyond the Repair Service Maintenance Level for Service Maintenance Level Business 2 Plus.
- (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) Service Maintenance Level Business 2 Plus;
- (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) Service Maintenance Level Business 2 Plus;
- (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 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.