

A5. Draft Legal Instruments

Proposals for SMP services conditions

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

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

Background

1. On 31 March 2017, Ofcom published a consultation entitled “Wholesale Local Access Market Review – Volume 1: Consultation on the proposed markets, market power determinations and remedies and Wholesale Local Access Market Review – Volume 2: Consultation on proposed charge control designs and implementation” (together the “**March 2017 WLA Consultation**”).¹ Annex 23 to the March 2017 WLA Consultation set out the notification under sections 48A and 80A of the Act in which Ofcom proposed to:
 - a) identify certain markets;
 - b) make market power determinations; and
 - c) set SMP conditions(the “**March 2017 WLA Notification**”).
2. Among these proposals, Ofcom proposed to identify the market for the supply of copper loop-based, cable-based and fibre-based wholesale local access at a fixed location in the United Kingdom excluding the Hull Area for the purpose of considering market power determinations.
3. Ofcom proposed to determine that BT has significant market power (SMP) in relation to such market.
4. As a result of the proposed market power determination, Ofcom proposed to set a number of SMP conditions on BT and proposed that those SMP conditions shall apply to BT in respect of the above relevant market.
5. On 20 April 2017, Ofcom published a consultation entitled “*Wholesale Local Access Market Review: Consultation on Duct and Pole Access remedies*”² (the “**April 2017 DPA Consultation**”). The April 2017 DPA Consultation set out Ofcom’s proposals in relation to duct and pole access, including proposals to set SMP conditions on BT under section 45 of the Act which are set out in a notification under section 48A of the Act at Annex 8 (the

¹ Volume 1: https://www.ofcom.org.uk/__data/assets/pdf_file/0033/99636/Vol1-Market-review.pdf; Volume 2: https://www.ofcom.org.uk/__data/assets/pdf_file/0034/99637/Vol2-Charge-control.pdf.

² https://www.ofcom.org.uk/__data/assets/pdf_file/0008/101051/duct-pole-access-remedies-consultation.pdf.

“**April 2017 DPA Notification**”). The April 2017 DPA Consultation stated that Ofcom’s proposals in relation to physical infrastructure access pricing and regulatory financial reporting would be set out in a separate notification under section 48A of the Act.

6. On 1 August 2017, Ofcom published a consultation entitled “*WLA Market Review – Consultation on pricing proposals for Duct and Pole Access remedies*” (the “**August 2017 DPA Consultation**”). Annex 6 to the August 2017 DPA Consultation set out the notification under section 48A of the Act (the “**August 2017 DPA Notification**”) in which Ofcom proposed to introduce SMP conditions in addition to the SMP conditions proposed in the March 2017 WLA Notification and the April 2017 DPA Notification. The additional SMP conditions comprised Ofcom’s proposals relating to physical infrastructure access pricing in the market identified in paragraph 2 above.
7. On 9 August 2017, Ofcom published a consultation entitled “*Wholesale Local Access Market review – Recovering the costs of investment in network expansion*” (the “**WLA Network Expansion Consultation**”). Annex 5 to the WLA Network Expansion Consultation set out the notification under section 48A of the Act (the “**WLA Network Expansion Notification**”) in which Ofcom proposed to amend SMP condition 7B (VULA charge control) set out in Schedule 1 to the March 2017 WLA Notification by replacing it with the condition 7B set out in the Schedule to the WLA Network Expansion Notification.

Proposals in this Notification

8. Ofcom is proposing to amend SMP conditions 7A to 7C proposed in Schedule 1 to the March 2017 WLA Notification (as amended by the proposals in the Schedule to the WLA Network Expansion Notification) by replacing them with SMP conditions 7A to 7C set out in the Schedule to this Notification (changes to the previous version of SMP conditions 7A to 7C as amended pursuant to the WLA Network Expansion Notification are shown in underlined italics).

Ofcom’s duties and legal tests

9. The effect of, and Ofcom’s reasons for making, the proposals referred to in this Notification are set out in the consultation document accompanying this Notification.
10. Ofcom considers that the proposed SMP conditions comply with the requirements of sections 45 to 47, 87 and 88 of the Act, as appropriate and relevant to each such SMP condition.
11. 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. Ofcom has also, pursuant to Article 3(3) of Regulation (EC) No 1211/2009, taken the utmost account of any relevant opinion, recommendation, guidelines, advice or regulatory practice adopted by the Body of European Regulators for Electronic Communications (BEREC).

Making representations

12. Representations may be made to Ofcom about any of the proposals set out in this Notification and the accompanying consultation document by no later than 26 October 2017.
13. Copies of this Notification and the accompanying consultation document will be sent to the Secretary of State in accordance with sections 48C(1) of the Act.

Interpretation

14. For the purpose of interpreting this Notification (which for the avoidance of doubt includes the Schedule):
 - a) except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 15 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.
15. In this Notification:
 - a) “**Act**” means the Communications Act 2003 (c. 21), as amended;
 - b) “**April 2017 DPA Consultation**” means the consultation described in paragraph 5 above;
 - c) “**April 2017 DPA Notification**” means the notification described in paragraph 5 above;
 - d) “**August 2017 DPA Consultation**” means the consultation described in paragraph 6 above;
 - e) “**August 2017 DPA Notification**” means the notification described in paragraph 6 above;
 - f) “**WLA Network Expansion Consultation**” means the consultation described in paragraph 7 above;
 - g) “**WLA Network Expansion Notification**” means the notification described in paragraph 7 above;
 - h) “**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;
 - i) “**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;

- j) **“Hull Area”** means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communication (Hull) plc, (now known as KCOM);
- k) **“March 2017 WLA Consultation”** means the consultation described in paragraph 1 above;
- l) **“March 2017 WLA Notification”** means the notification described in paragraph 1 above;
- m) **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002;
- n) **“United Kingdom”** has the meaning given to it in the Interpretation Act 1978 (1978 c30).

16. The Schedule to this Notification shall form part of this Notification.

Signed

A handwritten signature in black ink, appearing to read 'Brian Potterill', enclosed in a thin black rectangular border.

Brian Potterill

Competition Policy Director, Ofcom

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

14 September 2017

Schedule: Proposed amended SMP condition 7 (Charge controls)

Condition 7A – LLU charge control

- 7A.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 7A.3 and 7A.4, as applicable) in:
- (a) the aggregate of charges for Tie Cables;
 - (b) the aggregate of charges for Hard Cease Services;
 - (c) the aggregate of charges for MPF New Provide Services;
 - ~~*the aggregate of charges for Other MPF Ancillary Services;*~~
 - (d) the aggregate of charges for Co-Mingling New Provide and Rental Services;
 - (e) the charge for MPF SML1 Rental, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(a) applies;
 - (f) the charge for MPF Single Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(b) applies;
 - (g) the charge for MPF Bulk Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(c) applies;
 - (h) *the charge for MPF Standard Line Test, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7A.2(d) applies,*

is not more than the Controlling Percentage (as determined in accordance with condition 7A.6).

7A.2 The Dominant Provider shall not charge more than:

(a) for MPF SML1 Rental, the amount of £[~~80.0 to £88.2~~ 81.0 to 87.5] in the First Relevant Year;

(b) for MPF Single Migration, the amount of £[~~22.9 to £25.5~~ £23.2 to £25.9] in the First Relevant Year;

(c) for MPF Bulk Migration, the amount of £[14.3 to £16.0] in the First Relevant Year;

(d) for MPF Standard Line Test, the amount of £[3.93] in the First Relevant Year;

(e) for MPF Cease, the amount of £[0] in each Relevant Year; and

(f) for SMPF Cease, the amount of £[0] in each Relevant Year.

7A.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 7A.1(a) to 7A.1(d) shall be calculated, for the purposes of complying with condition 7A.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 366; and
- 3) for the Third Relevant Year, by 365.

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

$\bar{p}_{i,t-1}$ is, for the purposes of calculating the Percentage Change 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 366;

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

7A.4 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 conditions 7A.1(e) to 7A.1(h) shall be calculated, for the purposes of complying with condition 7A.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 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 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 7A.3 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.

7A.5 In the case of each of the categories of products and/or services that form part of a Basket specified in conditions 7A.1(a) to 7A.1(d) respectively, the Dominant Provider shall also and, in any event, take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change in discrete charges for each and every product and/or service falling within the Basket in question is no more than the Controlling Percentage increased by [7.5] percentage points.

For the purposes of this condition 7A.5:

(a) the Controlling Percentage is the Controlling Percentage (as determined in accordance with condition 7A.6) for the Basket within which the product and/or service falls to which the discrete charges relate; and

(b) the Percentage Change shall be calculated by employing the formula set out in condition 7A.4 and its references to a single charge category shall be treated as references to charges for the specific product and/or service falling with the Basket in question.

7A.6 (a) Subject to conditions 7A.6(c) to 7A.6(e) below, the Controlling Percentage in relation to any Relevant Year for each of the categories of products and/or services specified in conditions 7A.1(a) to 7A.1(h) shall be calculated by employing the following formula:

$$CP_t = CPI_t + X_t$$

Where:

CP_t is the Controlling Percentage for Relevant Year t ;

CPI_t is CPI for the Relevant Year, t ;

X_t means:

- for the category of products and/or services specified in condition 7A.1(a):
 - i. in the First Relevant Year: [~~-4.4 to 0.8~~ -11.1 to -4.6] percentage points;
 - ii. in the Second Relevant Year: [~~-3.4 to -0.8~~ -6.9 to -3.6] percentage points;
 - iii. in the Third Relevant Year: [~~-4.2 to -2.8~~ -4.8 to -1.6] percentage points;

- for the category of products and/or services specified in condition 7A.1(b):
 - i. in the First Relevant Year: [~~-30.8 to -22.3~~ -30.4 to -22.0] percentage points;
 - ii. in the Second Relevant Year: [~~-17.8 to -12.9~~ -17.7 to -12.8] percentage points;
 - iii. in the Third Relevant Year: [~~-6.3 to -2.1~~ -6.2 to -2.0] percentage points;

- for the category of products and/or services specified in condition 7A.1(c):

- i. in the First Relevant Year: [~~-30.7 to -22.5~~ -29.3 to -21.1] percentage points;
 - ii. in the Second Relevant Year: [~~-17.7 to -13.1~~ -17.0 to -12.3] percentage points;
 - iii. in the Third Relevant Year: [~~-7 to -2.8~~ -5.6 to -1.4] percentage points;
- ~~• for the category of products and/or services specified in condition 7A.1(d):~~
 - ~~i. in the First Relevant Year: [-57.9 to -53.1] percentage points;~~
 - ~~ii. in the Second Relevant Year: [-35.7 to -32.2] percentage points;~~
 - ~~iii. in the Third Relevant Year: [-7.7 to -3.5] percentage points;~~
- for the category of products and/or services specified in condition 7A.1(d):
 - i. in the First Relevant Year: [~~27.8 to 65.5~~ -10.5 to 15.5] percentage points;
 - ii. in the Second Relevant Year: [~~11.7 to 27.2~~ -6.6 to 6.1] percentage points;
 - iii. in the Third Relevant Year: [~~-5.3 to -2.9~~ -7.5 to -3.6] percentage points;
- for the category of products and/or services specified in condition 7A.1(e):
 - i. in the Second Relevant Year: [~~-5.6 to -0.7~~ -5.0 to -1.1] percentage points;
 - ii. in the Third Relevant Year: [-3.6 to ~~-0.5~~ -1.1] percentage points;
- for the category of products and/or services specified in condition 7A.1(f):
 - i. in the Second Relevant Year: [~~-15.5 to -10.7~~ -14.8 to -9.9] percentage points;
 - ii. in the Third Relevant Year: [~~-6.9 to -2.7~~ -5.6 to -1.4] percentage points;

and
- for the category of products and/or services specified in condition 7A.1(g):
 - i. in the Second Relevant Year: [~~-19.9 to -15.2~~ -19.7 to -15.0] percentage points;
 - ii. in the Third Relevant Year: [~~-6.3 to -2.1~~ -6.2 to -2.0] percentage points;
- for the category of products and/or services specified in condition 7A.1(h):

- i. in the Second Relevant Year: [0] percentage points;
- ii. in the Third Relevant Year: [0] percentage points;

For the avoidance of doubt, the MPF SML1 Rental, MPF Single Migration, ~~and~~ MPF Bulk Migration and MPF Standard Line Test charges are constrained by condition 7A.2 in the First Relevant Year.

- (b) For each of the categories of products and/or services specified in conditions 7A.1(a) to 7A.1(h), where the Percentage Change at the end of either the First Relevant Year or the Second 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 7A.6(d);
- (c) For each of the categories of products and/or services specified in conditions 7A.1(a) to 7A.1(h), where the Percentage Change at the end of either the First Relevant Year or the Second 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 7A.6(d).
- (d) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(h), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

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

Where:

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

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

C_{t-1} is the Percentage Change in the Charge for the category of products and/or services specified in condition 7A.1(a) to 7A.1(h) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7A.3 or 7A.4, as applicable;

X_t is as set out in condition 7A.6(a); and

CPI_t is CPI for the Relevant Year, t.

- (e) For each of the categories of products and/or services specified in condition 7A.1(a) to 7A.1(h), 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.

7A.7 The Dominant Provider shall secure that during each Relevant Year:

- (a) the charge made by it for MPF Remove Jumper Order Singleton Charge is the same as the charge made by it for SMPF Remove Jumper Order Singleton Charge;
- (b) the charge made by it for MPF Remove Jumper Order Bulk Charge is the same as the charge made by it for SMPF Remove Jumper Order Bulk Charge; and

- (c) the charge made by it for MPF Amend is the same as the charge made by it for MPF Cancellation.

For the avoidance of doubt, nothing in this condition 7A.7 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7A.7(a) to 7A.7(c) provided the requirements set out in this condition 7A.7 and condition 7A.1 are complied with.

7A.8 Where:

- (a) the Dominant Provider makes 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 7A.1 to 7A.7 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 7A.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 that existing Charge Controlled Service or a change as to the billing practice for the Charge Controlled Service.

7A.9 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 7A. The data must include:

- (a) pursuant to conditions 7A.3 and 7A.4, as applicable, the calculated Percentage Change relating to each category of products and services listed in conditions 7A.1(a) through to 7A.1(h);
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in conditions 7A.3 and 7A.4, 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 7A.3 and 7A.4 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.

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

7A.10 Conditions 7A.1 to 7A.9 shall not apply to such extent as OFCOM may direct.

7A.11 The Dominant Provider shall comply with any direction OFCOM may make from time to time under this condition 7A.

7A.12 In this condition 7A:

- (a) **“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services and/or products listed in conditions 7A.1(a) to 7A.1(h) during the Relevant Year;
- (b) **“Basket”** shall be construed in accordance with condition 7A.3;
- (c) **“Charge Controlled Service”** means a service or Basket of services listed in condition 7A.1(a) to 7A.1(h);
- (d) **“Co-Mingling New Provide and Rental Services”** means all of the products and/or services listed from time to time for the purpose of Part 5 of the Annex to this condition 7A;
- (e) **“Controlling Percentage”** is to be determined in accordance with condition 7A.6;
- (f) **“Deficiency”** shall be construed in accordance with condition 7A.6(b);
- (g) **“Excess”** shall be construed in accordance with condition 7A.6(c);
- (h) **“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 7A.1(a) to 7A.1(h) and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services and/or products listed in conditions 7A.1(a) to 7A.1(h) if it had complied with condition 7A.1;
- (i) **“Hard Cease Services”** means all of the products and/or services listed from time to time for the purpose of Part 2 of the Annex to this condition 7A;
- (j) **“Initial Charge”** means, for the purposes of calculating the Percentage Change in accordance with condition 7A.3, 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 to this condition 7A;

- (k) *“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;*
- (l) **“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;
- (m) *“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;*
- (n) **“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;
- (o) **“MPF New Provide Services”** means all of the products and/or services listed from time to time for the purpose of Part 3 of the Annex to this condition 7A;
- (p) **“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 to condition 7A;
- (q) **“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 to condition 7A;
- (r) **“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;

- (s) **“MPF Standard Line Test”** shall be construed as having the same meaning as the service described in row 5 of the table in Part 4 of the Annex to this condition 7A ‘MPF Standard line test’ as provided by the Dominant Provider on its website for definitions and explanations of its products;
- (t) **“MPF Tie Pair Modification”** shall be construed as having the same meaning as the service described in row ~~1~~ 6 of the table in Part ~~4~~ 3 of the Annex to this condition 7A;
- (u) **“MPF Tie Pair Modification (Multiple Re-termination)”** shall be construed as having the same meaning as the service described in row ~~2~~ 7 of the table in Part ~~4~~ 3 of the Annex to this condition 7A;
- ~~(v) **“Other MPF Ancillary Services”** means all of the products and/or services listed from time to time for the purpose of Part 4 of the Annex to this condition 7A;~~
- (w) **“Percentage Change”** has the meaning given to it in condition 7A.3 and 7A.4, as applicable;
- (x) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7A.3;
- (y) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7A.3;
- (z) **“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;
- (aa) **“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 to this condition 7A;

- (bb) **“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 to this condition 7A;
- (cc) **“Tie Cables”** means all of the products and/or services listed from time to time for the purpose of Part 1 of the Annex to this condition 7A; and
- (dd) **“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 7A, excluding any discounts offered by the Dominant Provider.

Annex to Condition 7A

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

7A.1(a), 7A.1(b), 7A.1(c), ~~and 7A.1(d) and 7A.1(e)~~

Part 1

Meaning of Tie Cables

For the purposes of condition 7A, 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 from time to time 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 (in which case this list shall be construed accordingly):

Item	[Initial Charge]
1. Handover Distribution Frame charge per 100 pair tie cable	£17.89
2. Handover Distribution Frame Extension to provide additional 1500 tie pair capacity for MCU1	£223.76
3. Additional Handover Distribution Frame to provide additional 4800 tie pair capacity for B-BUSS7	£1,688.20
4. Standalone Handover Distribution Frame (HDF) 9	£1,839.19
5. Standalone Handover Distribution Frame (HDF) 18	£1,210
6. Internal Tie Cable (2) Jointing Fixed Charge per External Tie Cable	£159.11
7. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Connection	£150.75
8. Internal 100 pair Tie Cable - HDF connected (1) for Co-Location and Co-Mingling – Annual Rental	£18.43
9. Internal Tie Cable (2) – Connection	£140.32

10.	Internal Tie Cable (2) – Annual Rental	£13.46
11.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling – Connection	£408.36
12.	20 CN Enhanced Specification LLU Internal Tie Cable (1) for Co-location and Co-mingling – Annual Rental	£77.31
13.	21CN-32 pair standard Internal Tie Cable-HDF connected – Connection	£244.91
14.	21CN-32 pair standard Internal Tie Cable-HDF connected – Annual Rental	£34.51
15.	21CN-64 pair standard Internal Tie Cable-HDF connected – Connection	£312.36
16.	21CN-64 pair standard Internal Tie Cable-HDF connected – Annual Rental	£43.99
17.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Connection	£144.72
18.	21CN-32 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£31.78
19.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Connection	£186.29
20.	21CN-64 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£41.09
21.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Connection	£229.97
22.	21CN-100 pair enhanced Internal Tie Cable-HDF connected – Annual Rental	£66.76
23.	LLU Internal Tie Cable Cease of 1-10 Cables (per Point of Presence)	£335.93
24.	LLU Internal Tie Cable Cease of 11-20 Cables (per Point of Presence)	£551.74
25.	LLU Internal Tie Cable Cease of 21-30 Cables (per Point of Presence)	£613.50
26.	LLU Internal Tie Cable Cease of 31-40 Cables (per Point of Presence)	£704.63
27.	LLU Internal Tie Cable Cease of 41-50 Cables (per Point of Presence)	£769.21
28.	BT Provided External 100 Pair cable @ 100 metres - Connection charge per cable	£886.67

29.	BT Provided External 100 Pair cable @ 100 metres - Connection charge per extra 100 pair	£279.70
30.	BT Provided External 100 Pair cable @ 100 metres – Connection charge per extra 100 metres	£138.43
31.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per cable	£95.22
32.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£92.57
33.	BT Provided External 100 Pair cable @ 100 metres - Rental per annum per extra 100m	£78.51
34.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable	£1,450.31
35.	BT Provided external 500 Pair cable @ 100 metres – Connection charge per cable per extra 100m	£138.43
36.	BT Provided external 500 Pair cable @ 100 metres - Connection charge per cable per extra 100 pairs	£279.70
37.	BT Provided external -500 Pair cable @ 100 metres - Rental per annum per cable	£152.76
38.	BT Provided external -500 Pair cable @ 100 metres - Rental per annum per extra 100m	£146.35
39.	BT Provided external 500 Pair cable @ 100 metres - Rental per annum per extra 100 pairs	£98.77
40.	Hand-over Distribution Frame option per 100 pair Frame capacity	£110.46
41.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Connection charge per cable	£785.86
42.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£269.05
43.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Rental fixed per annum per cable	£22.31

44.	Communications Provider provided External Tie Cable Pull Through – 100 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£14.26
45.	Communications Provider Provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Connection charge per cable	£1,117.37
46.	Communications Provider provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Connection charge per extra 100 pairs	£269.05
47.	Communications Provider Provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Rental fixed per annum per cable	£30.93
48.	Communications Provider provided External Tie Cable Pull Through – 500 Pair cable @ 100 metres - Rental fixed per annum per extra 100 pairs	£14.26

Part 2

Meaning of Hard Cease Services

For the purposes of condition 7A, 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 from time to time 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 (in which case this list shall be construed accordingly):

	Item	[Initial Charge]
1.	MPF MDF Remove Jumper Order Singleton Charge	£25.08
2.	MPF MDF Remove Jumper Order Bulk Charge	£14.07
3.	SMPF MDF Remove Jumper Order Singleton Charge	£25.08
4.	SMPF MDF Remove Jumper Order Bulk Charge	£14.07

Part 3

Meaning of MPF New Provide Services

For the purposes of condition 7A, the expression “**MPF New Provide Services**” shall be construed as including only the following ~~five~~ seven products and/or services, subject to such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these five products and/or services for another (in which case this list shall be construed accordingly):

	Item	[Initial Charge]
1.	MPF Working Line Takeover (WLTO)	£34.71
2.	MPF Connection Charge Stopped Line Provide	£34.71
3.	MPF Working Line Takeover (WLTO) Re-using existing LIJ	£12.73
4.	MPF Connection Charge Stopped Line Provide Re-using existing LIJ	£12.73
5.	MPF Connection charge – New Provide Standard	£44.42
6.	<u>MPF Tie Pair Modification (3 working day lead time Re-termination)</u>	<u>£34.40</u>
7.	<u>MPF Tie Pair Modification (Multiple Re-termination)</u>	<u>£25.87</u>

Part 4

Meaning of Other MPF Ancillary Services

For the purposes of condition 7A, the expression “Other MPF Ancillary Services” shall be construed as including only the following five products and/or services, subject to such changes as OFCOM may direct from time to time following any proposal by the Dominant Provider to introduce a new product and/or service or to substitute one or more of these five products and/or services for another (in which case this list shall be construed accordingly):

<u>Item</u>	<u>{Initial Charge}</u>
1. <u>MPF Tie Pair Modification (3 working day lead time Re-termination)</u>	<u>£34.40</u>
2. <u>MPF Tie Pair Modification (Multiple Re-termination)</u>	<u>£25.87</u>
3. <u>Cancellation of MPF orders for Provide, Migration, Working Line Takeover, Modification or Amend</u>	<u>£10.28</u>
4. <u>Amend orders. Allowable change to MPF Order</u>	<u>£10.28</u>
5. <u>MPF Standard line test</u>	<u>£3.93</u>

Part 45

Meaning of Co-Mingling New Provide and Rental Services

For the purposes of condition 7A, 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 from time to time 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 (in which case this list shall be construed accordingly):

Item	[Initial Charge]
1. Distant location full survey	£1,208.37
2. Missed joint survey or testing appointment	£22.36
3. Co-location order rejection - no space available	£281.94
4. Co-location full survey	£6,225.30
5. Site visit charge to be allocated to all orders not in conjunction with the installation of a base product	£353.55
6. Co-Mingling order rejection - no space or insufficient space available	£577.33
7. APO Cancellation Charge	£374.44
8. Co-Mingling set up fee (per sq metre)	£298.95
9. Comingling Shared Point of Presence Administration Fee	£283.43
10. Cooling per kw	£1,921.47
11. FCP (Powerbase) AC only base unit 600mm (w) x 600mm (d) to include lighting and cable management	£2,342.77

12.	FCP (Powerbase) AC only base unit 800mm (w) x 600mm (d) to include lighting and cable management	£2,764.12
13.	FCP (Powerbase) AC only base unit 600mm (w) x 800mm (d) to include lighting and cable management	£2,534.61
14.	FCP (Powerbase) AC only base unit 800mm (w) x 800mm (d) to include lighting and cable management	£3,028.38
15.	HDF sub rack (per sub rack 3x 100 pair capacity)	£33.64
16.	HDF cabinet 800mm (w) x 600mm (d) for FCP	£1,168.24
17.	HDF cabinet 800mm (w) x 800mm (d) for FCP	£1,413.91
18.	Rack Space Unit (RSU) for FCP to include lighting and cable management	£477.53
19.	MCB customisation at initial build for FCP	£33.00
20.	Cabinet doors per pair for FCP only (where provided as an upgrade will be subject to a Site Visit charge)	£385.77
21.	BT's Normal Working Hours, planned (hourly charge)	£53.69
22.	BT's Normal Working Hours, unplanned (hourly charge)	£80.55
23.	BASIS (BT Assisted Site Delivery Service) fixed charge	£431.12
24.	Site Access	£313.29
25.	Handover	£260.76
26.	Provision of sub meter	£730.94
27.	Survey for capacity upgrade	£431.20
28.	AC Final Distribution Rental per 10kw increment per annum (Charges will appear in billed units of decawatts (10W)	£432.60
29.	Security rental per sq. metre per annum	£28.32

30.	Service Charge per square metre per annum	£70
31.	Security partitioning per site – annual rental charge	£143.04
32.	Rental of existing capacity per kW per annum (Charges will appear in billed units of decawatts (10W))	£201.48
33.	MDF Licence Fee per Internal Tie Cable per annum	£28.14

Condition 7B – VULA charge control

- 7B.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 7B.3) in:
- (a) the charge for FTTC 40/10 Rental when that service is provided to a particular line in conjunction with an MPF rental service, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7B.2(a) applies;
 - (aa) the charge for FTTC 40/10 Rental when that service is not provided to a particular line in conjunction with an MPF rental service, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7B.2(aa) 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 7B.2(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 7B.2(c) applies;
 - (d) the charge for VULA Migration, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7B.2(d) applies;
 - (e) the charge for VULA 40/10 Bandwidth Change, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7B.2(e) applies;
 - (f) the charge for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7B.2(f) applies;*
 - (g) the charge for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the charge ceiling specified in condition 7B.2(g) applies;*

is not more than the Controlling Percentage (as determined in accordance with condition 7B.4).

7B.2 The Dominant Provider shall not charge more than:

(a) for FTTC 40/10 Rental when that service is provided to a particular line in conjunction with an MPF rental service, the amount of £[55.5 to £79.3] in the First Relevant Year;

(aa) for FTTC 40/10 Rental when that service is not provided to a particular line in conjunction with an MPF rental service, the amount of [£[•] to [•]]³ in the First Relevant Year;

(b) for FTTC 40/10 PCP Only Install Connection, the amount of £[~~42.4 to £44.7~~ 43.4 to £46.4] in the First Relevant Year;

(c) for FTTC 40/10 Start of Stopped Line Connection, the amount of £[6.4 to £6.6] in the First Relevant Year;

(d) for VULA Migration, the amount of £[4.4 to £4.6] in the First Relevant Year;

(e) for VULA 40/10 Bandwidth Change, the amount of £[~~7.9~~ 7.7 to £8.2] in the First Relevant Year;

(f) for 1 Gbit Cablelink Connection, the amount of £[~~2,000-500-790~~] in each the First Relevant Year;

(g) for 10 Gbit Cablelink Connection, the amount of £[~~10,000-1,000-1,800~~] in each the First Relevant Year;

for VLAN Move, the amount of £[15] in each Relevant Year;

(h) for 1 Gbit Cablelink Rental, the amount of £[0] in each Relevant Year;

³ These numbers will reflect the range set out in Condition 7B.2(a) + the additional charge to account for BT's efficient costs of network expansion, should it enter into a clear and public agreement with the Government committing BT to make the investment in universal broadband.

- (i) for 10 Gbit Cablelink Rental, the amount of £[0] in each Relevant Year;
- (j) for FTTP 40/10 Voice and Data Connection, the amount of £[117] in each Relevant Year;
- (k) for FTTP 40/10 Transition Connection, the amount of £[92] in each Relevant Year;
- (l) for Fibre Broadband Boost, the amount of £[159] in each Relevant Year;
- (m) for Superfast Visit Assure, the amount of £[130] in each Relevant Year; and
- (n) for VULA Cease, the amount of £[0] in each Relevant Year.

7B.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 7B.1 shall be calculated, for the purposes of complying with condition 7B.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 366; and
- 3) for the Third Relevant Year, by 365.

$p_{j,t}$ is the charge for the specified period, j , during the Relevant Year t for the specific service 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 366;

$p_{j,t-1}$ 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.

7B.4 (a) Subject to conditions 7B.4(b) to 7B.4(e) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in conditions 7B.1(a) to 7B.1(g) shall be calculated by employing the following formula:

$$CP_t = CPI_t + X_t$$

Where:

CP_t is the Controlling Percentage for Relevant Year t ;

CPI_t is CPI for the Relevant Year, t ;

X_t means:

- for the service specified in condition 7B.1(a):
 - (1) for the Second Relevant Year: [-23.4 to -7.9] percentage points;
 - (2) for the Third Relevant Year: [-9.6 to -7.2] percentage points;
- for the service specified in condition 7B.1(aa):
 - (1) for the Second Relevant Year: [• to •] percentage points;

(2) for the Third Relevant Year: [~~•~~ to ~~•~~] percentage points;⁴

- for the service specified in condition 7B.1(b):
 - (1) for the Second Relevant Year: [~~-9.5 to -6.9~~ -8.2 to -5.1] percentage points;
 - (2) for the Third Relevant Year: [~~0.4 to 2.2~~ -0.1 to 1.9] percentage points;

- for the service specified in condition 7B.1(c):
 - (1) for the Second Relevant Year: [-58.2 to -57.5] percentage points;
 - (2) for the Third Relevant Year: [0.5 to 1.7] percentage points;

- for the service specified in condition 7B.1(d):
 - (1) for the Second Relevant Year: [-39.0 to -38.0] percentage points;
 - (2) for the Third Relevant Year: [0.5 to 1.7] percentage points;

- for the service specified in condition 7B.1(e):
 - (1) for the Second Relevant Year: [~~-18.8~~ -19.8 to -17.1] percentage points;
 - (2) for the Third Relevant Year: [~~-3.3 to -2.3~~ -4.1 to -2.4] percentage points;

- for the service specified in condition 7B.1(f):
 - (1) for the Second Relevant Year: [0] percentage points;
 - (2) for the Third Relevant Year: [0] percentage points;

- for the service specified in condition 7B.1(g):
 - (1) for the Second Relevant Year: [0] percentage points;
 - (2) for the Third Relevant Year: [0] percentage points.

For the avoidance of doubt, the FTTC 40/10 Rental, FTTC 40/10 PCP Only Install Connection, FTTC 40/10 Start of Stopped Line Connection, VULA Migration, VULA 40/10 Bandwidth Change,

⁴ The ranges of X for the Second Relevant Year and the Third Relevant Year will reflect the ranges set out in Condition 7B.4(a) for each year in relation to the service specified in Condition 7B.1(a) + the additional mark-up to account for BT's efficient costs of network expansion, should it enter into a clear and public agreement with the Government committing BT to make the investment in universal broadband.

1 Gbit Cablelink Connection and 10 Gbit Cablelink Connection charges are constrained by condition 7B.2 in the First Relevant Year.

- (b) For each of the services specified in conditions 7B.1(a) to 7B.1(g), where the Percentage Change at the end of either the First Relevant Year or the Second 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.7(d).
- (c) For each of the services specified in conditions 7B.1(a) to 7B.1(g), where the Percentage Change at the end of either the First Relevant Year or the Second 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 7B.7(d).
- (d) For each of the services specified in condition 7B.1(a) to 7B.1(g), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

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

Where:

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

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

C_{t-1} is the Percentage Change in the Charge for the services specified in condition 7B.1(a) to 7B.1(g) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant

Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7B.3;

X_t is as set out in condition 7B.4(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 7B.1(a) to 7B.1(g), 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.

7B.5 The Dominant Provider shall secure that during each Relevant Year:

(a) the charge made by it for FTTP 40/10 Voice and Data Rental is the same as the charge made by it for the sum of FTTC 40/10 Rental (determined in accordance with condition 7B.1(a) or 7B.2(a), as applicable) and MPF SML1 Rental; and

(b) the charge made by it for FTTP 40/10 Transition Rental is the same as:

(i) the charge made by it for FTTC 40/10 Rental when that service is provided to a particular line in conjunction with an MPF rental service (determined in accordance with condition 7B.1(a) or 7B.2(a), as applicable);

(ii) the charge made by it for FTTC 40/10 Rental when that service is not provided to a particular line in conjunction with an MPF rental service (determined in accordance with condition 7B.1(aa) or 7B.2(aa), as applicable);

(c) the charge made by it for VLAN Move is the same as the charge made by it for VULA 40/10 Bandwidth Change;

(d) the charge made by it for VULA 40/10 Cancel/Amend/Modify – CRD is the same as the charge made by it for VULA 40/10 Bandwidth Change;

(e) the charge made by it for VULA 40/10 Cancel/Amend/Modify – Regrading is the same as the charge made by it for VULA 40/10 Bandwidth Change.

For the avoidance of doubt, nothing in this condition 7B.5 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7B.5(a) to 7B.5(e) provided the requirements set out in this condition 7B.5 and condition 7B.1 are complied with.

7B.6 Where:

- (a) the Dominant Provider makes 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 7B.1 to 7B.5 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 7B.6, 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 that existing Charge Controlled Service or a change as to the billing practice for the Charge Controlled Service.

7B.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 7B. The data must include:

- (a) pursuant to condition 7B.3, the calculated Percentage Change relating to each service listed in conditions 7B.1(a) through to 7B.1(g);
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in condition 7B.3, including for each specific service;
- (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 condition 7B.3 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.

7B.8 Conditions 7B.1 to 7B.7 shall not apply to such extent as OFCOM may direct.

7B.9 The Dominant Provider shall comply with any direction OFCOM may make from time to time under this condition 7B.

7B.10 In this condition 7B:

- (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;
- (d) **“10 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;
- (e) **“Affected Communications Provider”** means each communications provider to whom the Dominant Provider has provided any of the services and/or products listed in conditions 7B.1(a) to 7B.1(g) during the Relevant Year;
- (f) **“Charge Controlled Service”** means: a service and/or product listed in condition 7B.1(a) to 7B.1(g);
- (g) **“Controlling Percentage”** is to be determined in accordance with condition 7B.4;
- (h) **“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 7B.1(a) to 7B.1(g), and (b) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services and/or products listed in conditions 7B.1(a) to 7B.1(g) if it had complied with condition 7B.1;
- (i) **“Fibre Broadband Boost”** [shall be construed as having the same meaning as [‘Broadband Boost’] as provided by the Dominant Provider on its website for definitions and explanations of its GEA – FTTC and GEA – FTTP products];

- (j) **“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;
- (k) **“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;
- (l) **“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;
- (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 7B.3;
- (r) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7B.3;
- (s) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7B.3;
- (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 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;
- (w) **“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;

(x) “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;

(y) **“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

(z) **“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 7C – Charge controls and related provisions relevant to both LLU and VULA

7C.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 7C.3) 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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(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 7C.2(f) applies,

is not more than the Controlling Percentage (as determined in accordance with condition 7C.4).

7C.2

The Dominant Provider shall not charge more than:

- (a) for a Standard Chargeable Visit, in the First Relevant Year, the amount of:
 - (i) £[82.6 to £87.5] when that service is provided within the hours of 8am to 5pm on a Working Day;
 - (ii) £[119.8 to £126.9] when that service is provided on a Non-Working Day; and
 - (iii) £[101.2 to £107.2] 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) £[37.2 to £39.4] per hour when that service is provided within the hours of 8am to 5pm on a Working Day;
 - (ii) £[74.4 to £78.9] per hour when that service is provided on a Non-Working Day; and
 - (iii) £[55.8 to £59.1] 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) £[45.4 to £48.1] when that service is provided on a Non-Working Day; and
 - (ii) £[22.7 to £24.0] 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) £[45.4 to £48.1] per hour when that service is provided on a Non-Working Day;
and
 - (ii) £[22.7 to £24.0] 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 £[90.7 to £96.2] in the First Relevant
Year; and
- (f) for Additional Line Shifted, the amount of £[45.4 to 48.1] in the First Relevant Year.

7C.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 conditions 7C.1(a) to 7C.1(l) shall be calculated, for the purposes of complying with condition 7C.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 366; and
- (3) for the Third Relevant Year, by 365.

$p_{j,t}$ is the charge for the specified period, j , during the Relevant Year t for the specific service 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 366;

$p_{j,t-1}$ 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.

- 7C.4** (a) Subject to conditions 7C.4(b) to 7C.4(e) below, the Controlling Percentage in relation to any Relevant Year for each of the services specified in conditions 7C.1(a) to 7C.1(l) shall be calculated by employing the following formula:

$$CP_t = CPI_t + X_t$$

CP_t is the Controlling Percentage for Relevant Year t ;

CPI_t is CPI for the Relevant Year, t ;

X_t means:

- for the service specified in condition 7C.1(a):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;
- for the service specified in condition 7C.1(b):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;
- for the service specified in condition 7C.1(c):

- (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(d):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(e):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(f):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(g):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(h):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(i):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(j):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points;

- for the service specified in condition 7C.1(k):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;
 - (2) for the Third Relevant Year: [-2.1 to -0.3] percentage points; and

- for the service specified in condition 7C.1(l):
 - (1) for the Second Relevant Year: [-9.9 to -6.8] percentage points;

(2) for the Third Relevant Year: [-2.1 to -0.3] percentage points.

For the avoidance of doubt, the charges for each of the services set out in conditions 7C.1(a) to 7C.1(l) are constrained by condition 7C.2 in the First Relevant Year.

- (b) For each of the services specified in conditions 7C.1(a) to 7C.1(l), where the Percentage Change at the end of either the First Relevant Year or the Second 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 conditions 7C.1(a) to 7C.1(l), where the Percentage Change at the end of either the First Relevant Year or the Second 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 7C.4(d).
- (d) For each of the services specified in conditions 7C.1(a) to 7C.1(l), in the case of Deficiency or Excess, the Controlling Percentage will be calculated by employing the following formula:

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

Where:

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

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

C_{t-1} is the Percentage Change in the Charge for the services specified in condition 7C.1(a) to 7C.1(l) during the First Relevant Year (in the case of Deficiency or Excess in the First Relevant Year) or for the Second Relevant Year (in the case of Deficiency or Excess in the Second Relevant Year), calculated in accordance with the formula for C_t set out in condition 7C.3;

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

X_t is as set out in condition 7C.4(a).

- (e) For each of the services specified in conditions 7C.1(a) to 7C.1(l), 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.

7C.5 The Dominant Provider shall secure that during each Relevant Year:

(a) the charge made by it for MPF Amend is the same as the charge made by it for VULA 40/10 Bandwidth Change;

(b) the charge made by it for MPF Cancellation is the same as the charge made by it for VULA 40/10 Bandwidth Change.

~~;(a) the charge made by it for VULA Cancel/Amend/Modify – CRD is the same as the charge made by it for MPF Cancellation.;~~

(b) the charge made by it for VULA Cancel/Amend/Modify – Regrading is the same as the charge made by it for MPF Cancellation;

For the avoidance of doubt, nothing in this condition 7C.5 shall prevent the Dominant Provider from increasing and/or decreasing the charges made for each of the services at conditions 7C.5(a) to 7C.5(b) provided the requirements set out in this condition 7C.5 and condition 7C.1 are complied with.

7C.6

- 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:

$$\text{Engineer Time} \times \text{Hourly Charge}$$

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 2018] 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 £[45.4 to £48.1];
- ii. in the Second Relevant Year, no more than the Controlling Percentage as determined in accordance with condition 7C.4 for the service specified in condition 7C.1(d); and

- iii. in the Third Relevant Year, no more than the Controlling Percentage as determined in accordance with condition 7C.4 for the service specified in condition 7C.1(d).

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:

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

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 2018] 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 £[45.4 to £48.1];
- ii. in the Second Relevant Year, no more than the Controlling Percentage as determined in accordance with condition 7C.4 for the service specified in condition 7C.1(d); and

- iii. in the Third Relevant Year, no more than the Controlling Percentage as determined in accordance with condition 7C.4 for the service specified in condition 7C.1(d).

Visit Charge means:

- i. in the First Relevant Year, no more than £[45.4 to £48.1];
 - ii. in the Second Relevant Year, no more than the Controlling Percentage as determined in accordance with condition 7C.4 for the service specified in condition 7C.1(d); and
 - iii. in the Third Relevant Year, no more than the Controlling Percentage as determined in accordance with condition 7C.4 for the service specified in condition 7C.1(d).
- c) The amount of time determined by the Dominant Provider under conditions 7C.6(a) and 7C.6(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.

7C.7

Where:

- (a) the Dominant Provider makes 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 7C.1 to 7C.6 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 7C.7, 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 that existing Charge Controlled Service or a change as to the billing practice for the Charge Controlled Service.

7C.8 The Dominant Provider must record, maintain and supply to OFCOM in an electronic format, no later than three months after the end of each Relevant Year, the data necessary for OFCOM to monitor compliance of the Dominant Provider with this condition 7C. The data must include:

- (a) pursuant to condition 7C.3, the calculated Percentage Change relating to each service listed in conditions 7C.1(a) through to 7C.1(l);
- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in condition 7C.3;
- (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 7C.3 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.

7C.9 Conditions 7C.1 to 7C.8 shall not apply to such extent as OFCOM may direct.

7C.10 The Dominant Provider shall comply with any direction OFCOM may make from time to time under this condition 7C.

7C.11 In this condition 7C:

(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 Local Loop Unbundling 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 Local Loop Unbundling Services or VULA, as applicable;

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

- i. a service listed in condition 7C.1(a) to 7C.1(l);
- 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 conditions 7C.1(a) to 7C.1(l), and (b) the revenue the Dominant

Provider would have earned in the Relevant Year from providing the services listed in conditions 7C.1(a) to 7C.1(l) if it had complied with condition 7C.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 Local Loop Unbundling Services or VULA, as applicable;
- (f) **“MPF Amend”** shall be construed 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 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;
- (i) **“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;
- (j) **“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;

- (k) **“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;
- (l) **“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;
- (m) **“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;
- (n) **“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;
- (o) **“Non-working day”** means Sundays and public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable);
- (p) **“Percentage Change”** has the meaning given to it in condition 7C.3;
- (q) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7C.3;
- (r) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in condition 7C.3;

- (s) **“Special Fault Investigation – Base Module”** shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SF12) - Base module where this is reasonably necessary for the use of Local Loop Unbundling Services;
- (t) **“Special Fault Investigation – Frame Direct Module”** shall be construed as having the same meaning as MPF Special Fault Investigation 2 (SF12) – Frame direct module where this is reasonably necessary for the use of Local Loop Unbundling Services;
- (u) **“Special Fault Investigation Service”** means any of the following services (as applicable) where such service is reasonably necessary for the use of Local Loop Unbundling Services:
 - (v) MPF Special Fault Investigation 2 (SF12) - Coop module;
 - (w) MPF Special Fault Investigation 2 (SF12) - Frame module;
 - (x) MPF Special Fault Investigation 2 (SF12) - Internal equip module;
 - (y) MPF Special Fault Investigation 2 (SF12) - Internal Wiring module;
 - (z) MPF Special Fault Investigation 2 (SF12) - Network module;
- (aa) **“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 Local Loop Unbundling Services or VULA, as applicable;
- (bb) **“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 Local Loop Unbundling Services or VULA, as applicable;

(cc) **“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 Local Loop Unbundling Services or VULA, as applicable;

(dd) **“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;
and

~~(ee) **“VULA 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;~~

~~**“VULA 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;~~

(ff) **“Working Day”** means any day other than Saturdays, Sundays, public holidays or bank holidays in England and Wales, Scotland or Northern Ireland (as applicable).

