

[•]

BRITISH TELECOMMUNICATIONS PLC

AND

OPENREACH LIMITED

AGENCY AND SERVICES AGREEMENT

NOTE: To be entered into at the time BT implements the arrangements described in the Commitments (and at a time when BT is ready to trigger the transfer of employees), having immediate effect.

CONTENTS

CLAUSE	PAGE
1. Appointment	4
2. Compliance with the Commitments and Governance Protocol	4
3. Services	4
4. Service levels	6
5. Agency	7
6. Costs and Funding.....	8
7. Openreach Assets and Trading	9
8. Legal, Financial, Fiduciary and Regulatory obligations	10
9. Intellectual Property Rights	10
10. Shared and support services.....	11
11. Monitoring and reporting.....	12
12. Step-in rights	12
13. Conduct of claims	13
14. Compliance	14
15. Audit	14
16. Protective Covenants	15
17. Confidentiality	15
18. Announcements.....	16
19. Data protection.....	16
20. Employees.....	16
21. Liability.....	17
22. Insurance	17
23. Warranties	17
24. Term.....	17
25. Termination.....	17
26. Consequences of termination	18
27. Assignment	18
28. Further assurance	19
29. Entire agreement	19
30. Notices	19
31. Variation	20
32. No third party enforcement rights.....	20

33. Governing law and Jurisdiction	20
34. Counterparts	20
Schedule 1 Definitions and Interpretation	21

AN AGREEMENT made on [•]

BETWEEN

- (1) British Telecommunications plc, a company incorporated under the laws of England and Wales under company number 01800000 whose registered office is at 81 Newgate Street, London, EC1A 7AJ (**BT plc**); and
- (2) Openreach Limited, a company incorporated under the laws of England and Wales under company number 10690039 whose registered office is at 81 Newgate Street, London, EC1A 7AJ (**Openreach Limited**),
(each of BT plc and Openreach Limited being a **party** and together the **parties**).

RECITALS

- (A) The Openreach Division is a functionally separate division within BT which manages and operates certain assets and provides certain products as detailed in the Commitments.
- (B) Openreach Limited is a wholly owned subsidiary of BT plc with a majority-independent board of directors.
- (C) Pursuant to the Notification, BT plc notified Ofcom of its intention:
 - i. to delegate to Openreach Limited responsibility for setting the strategy and overseeing performance of the Openreach Division;
 - ii. to engage Openreach Limited to operate and manage the Openreach LoB on behalf of BT plc;
 - iii. to authorise Openreach Limited to act as agent for the account of BT plc to manage all trading of the Openreach LoB; and
 - iv. that Openreach Limited will be responsible for the employment, termination of employment, management and training of all employees who transfer to or are recruited by Openreach Limited and for the engagement of all contractors engaged by Openreach Limited,

in each case on the basis of the terms set out in the Commitments, this Agreement and the Governance Protocol.

- (D) The parties have agreed that this Agreement, together with the Governance Protocol (including the BT Governance Policies), shall set out the framework between BT plc and Openreach Limited in respect of the Openreach Division in connection with implementation by BT plc of the Commitments.

Words and expressions used in this Agreement shall be interpreted in accordance with Schedule 1 (*Definitions and Interpretation*).

THE PARTIES AGREE as follows:

1. Appointment

- 1.1 BT plc appoints Openreach Limited to provide the Services and undertake the functions set out in this Agreement in connection with managing and operating the Openreach LoB on behalf of BT plc.
- 1.2 Openreach Limited accepts such appointment and agrees to perform the Services and undertake the functions set out in this Agreement in connection with managing and operating the Openreach LoB on behalf of BT plc subject to and in accordance with the terms and conditions of this Agreement.
- 1.3 The parties acknowledge and agree that the business referred to as the Openreach LoB consists of certain products, trading associated with such products and assets as described in the Commitments and that the scope of those products, trading and/or assets may vary from time to time as contemplated by the Commitments. The parties acknowledge and agree that the appointment referred to in this clause 1 shall be deemed automatically amended to reflect the scope of the Openreach LoB as it varies over time (and as it forms part of the Openreach Division). BT plc shall keep Openreach Limited informed of changes to the scope of the Openreach LoB in accordance with clause 3.3.

2. Compliance with the Commitments and Governance Protocol

- 2.1 Notwithstanding any provision contained in this Agreement or in the Governance Protocol, Openreach Limited undertakes to adopt and at all times observe and the parties shall be bound by, and act at all times in accordance with, the Commitments.
- 2.2 If there is any conflict between the terms of this Agreement and the Commitments, the terms and provisions of the Commitments shall prevail, save that the terms of clause 7.1 shall prevail over the Commitments.
- 2.3 Openreach Limited undertakes to adopt and at all times to observe and the parties shall be bound by, and comply with the obligations, restrictions and other provisions set out in, the Governance Protocol. Furthermore, Openreach Limited shall procure that the Openreach Executive acts at all times in accordance with the Governance Protocol.

3. Services

- 3.1 Subject to BT plc performing its obligations set out in this Agreement, Openreach Limited shall, subject to complying with any obligations, restrictions and other provisions set out in the Commitments, this Agreement and the Governance Protocol (including compliance with the AOP and MTP):
 - (a) set the strategy direction of the Openreach Division, including:
 - (i) developing and implementing the AOP and MTP; and

- (ii) overseeing the performance of the Openreach Division;
- (b) perform (or procure the performance of) all services required for the operation and management of the Openreach LoB on behalf of BT plc, including undertaking the following on behalf of BT plc:
 - (i) the development of all Openreach LoB products as defined in the Commitments;
 - (ii) the provision of all Openreach LoB products as defined in the Commitments to Openreach LoB customers;
 - (iii) maintaining, removing, replacing and building all Openreach LoB Assets (such as network equipment), in the normal course of business in accordance with the AOP and MTP, the Governance Protocol and the Commitments and in accordance with good industry practice as it relates to the Openreach LoB;
 - (iv) entering into partnership agreements, having obtained the prior authorisation of BT plc, for the purpose of building network assets; and
 - (v) the ongoing monitoring of the Openreach Division to ensure compliance by each of Openreach Limited and BT plc (in relation to the Openreach Division) with all Applicable Law;
- (c) be responsible for the employment, termination of employment, management and training of all employees of Openreach Limited necessary for the operation and management of the Openreach Division and for the provision of the Services (including the payment of all salaries, benefits and expenses of such employees of Openreach Limited);
- (d) where appropriate and in compliance with BT plc standard processes and policies on direct hire of individual or manpower contractors, as amended from time to time by BT plc, be responsible for engaging all contractors necessary for the operation and management of the Openreach Division and for the provision of the Services;
- (e) act as agent for the account of BT plc to manage all trading of the Openreach LoB, including:
 - (i) the negotiation, management, execution and handling of customer and supplier contracts;
 - (ii) the invoicing of Openreach LoB customers as agent for BT plc;
 - (iii) receiving payments as agent for BT plc and processing such payments in accordance with BT treasury policies and procedures;
 - (iv) acting as paying agent for BT plc where Openreach Limited makes payments to relevant counterparties;
 - (v) the conduct of confidential negotiations with other communications providers as set out in the Governance Protocol; and

- (vi) the handling of customer service and complaints; and
- (f) be responsible for obtaining and maintaining in force on behalf of BT all licences, permissions, authorisations, consents, wayleaves and permits required in connection with the operation of the Openreach Division.

3.2 The services, functions and activities described in clause 3.1 and all ancillary services, functions and activities are together the *Services*.

3.3 The parties acknowledge and agree that the scope of the Openreach LoB may vary from time to time as contemplated by the Commitments. BT plc shall notify Openreach Limited from time to time if, at BT plc's own discretion, it has concluded that:

- (a) certain products shall no longer be provided by the Openreach LoB either entirely, or in certain geographic locations;
- (b) certain products shall become products to be provided by the Openreach LoB;
- (c) certain assets are no longer to be treated as Openreach LoB Assets and are no longer to be managed and operated by Openreach Limited; and/or
- (d) certain assets shall become assets which are to be treated as Openreach LoB Assets and shall be managed and operated by Openreach Limited in accordance with this Agreement,

and shall give Openreach Limited reasonable notice of the effective date of any such change. The scope of Services shall be deemed automatically amended accordingly from (and including) the effective date of any such change.

3.4 For the avoidance of doubt, Openreach Limited shall not be permitted to enter into any customer, supplier or partnership contracts for its own account (except in the case of any contracts entered into in relation to the Services performed pursuant to clauses 3.1(c) and 3.1(d)).

4. Service levels

4.1 In performing the Services, Openreach Limited shall ensure that all Services are carried out:

- (a) at all times in accordance with all generally accepted standards and practices applicable to the Services or services similar to the Services;
- (b) in compliance with the relevant regulatory obligations;
- (c) in compliance with BT-wide trading policies relating to customer and supplier contracts in place from time to time;
- (d) in compliance with the BT Governance Policies and the BT Group Risk Policy, including BT policies in relation to BT business principles ("The Way We Work"), gift and hospitality, procurement and commitment to expenditure, security and vendor management; and

(e) by a sufficient number of appropriately experienced, qualified and trained professional service personnel with all due skill, care and diligence, such that each of Openreach Limited and BT plc (in relation to the Openreach Division) is in compliance with all Applicable Law.

4.2 Openreach Limited shall be responsible for obtaining and maintaining in force all licences, permissions, authorisations, consents and permits required by Applicable Law for Openreach Limited to perform the Services.

4.3 Openreach Limited shall not take any action or omit to take any action which would reasonably be considered to result in a material reduction in the value of the assets owned by BT plc from time to time relating to the Openreach LoB unless such action or omission is expressly provided for in or contemplated under the AOP and/or MTP.

4.4 If BT plc (acting reasonably) suspects that any of the Services are not being performed in accordance with the terms of this Agreement, BT plc shall give notice to Openreach Limited and Openreach Limited shall:

- (a) promptly investigate the relevant Service(s) identified by BT plc;
- (b) within 10 Business Days of receipt of notice from BT plc, prepare and deliver a remedial plan (together with all supporting information) to BT plc detailing Openreach Limited's proposals for remedying the performance of the Service(s) as soon as reasonably practicable;
- (c) at BT plc's request and without limiting BT plc's other rights, implement the remedial plan on its terms, subject to any amendments to the plan reasonably required by BT plc; and
- (d) commit all additional resources as may be required to ensure that the Service(s) are performed in accordance with the terms of this Agreement as soon as reasonably practicable.

4.5 In the case of a failure by Openreach Limited to perform the Services in accordance with the terms of this Agreement which is not capable of remedy, Openreach Limited shall use all reasonable endeavours to prevent the reoccurrence of such failure.

5. **Agency**

5.1 Openreach Limited shall procure that any Services performed pursuant to clauses 3.1(e) and 3.1(f) or otherwise pursuant to this Agreement as agent for the account of BT plc (the *Agency Services*) are conducted in accordance with the Commitments, this Agreement, the Governance Protocol and any agency policies or procedures put in place by BT plc from time to time.

5.2 The purpose of those policies and procedures is to set out administrative and legal steps to be taken in order to ensure that, where Openreach Limited performs any of the Agency Services, the effect is that BT plc is engaged as

principal as intended by this Agreement, and these steps shall include the following:

- (a) where Openreach Limited or its employees execute a Contract as agent for and on behalf of BT plc, Openreach Limited shall include express wording in the contract to that effect; and
- (b) a script for employees of Openreach Limited to use to explain to Third Parties the nature of such arrangements.

5.3 For the avoidance of doubt and without prejudice to clause 6, the parties acknowledge and agree that Openreach Limited shall not be entitled to receive any fee in respect of the provision of any Agency Services and as such shall not be performing as a commercial agent of BT plc.

6. Costs and Funding

6.1 BT plc shall fund (or procure the funding of) all costs and expenses (including Taxation or any form of pension contributions) that are reasonably and properly incurred by Openreach Limited in accordance with BT policies and the AOP and/or MTP pursuant to the Governance Protocol in connection with the proper performance of the Services or other compliance by Openreach Limited with its obligations under this Agreement (the *Openreach Costs*).

6.2 The means by which Openreach Costs are funded in accordance with clause 6.1 shall be at BT plc's sole discretion and shall include, without limitation:

- (a) BT plc directly discharging or procuring the direct discharge of any such Openreach Costs;
- (b) BT plc putting Openreach Limited in funds in order to enable it to pay such Openreach Costs; or
- (c) BT plc being recharged or reimbursing any such Openreach Costs which have been directly discharged by Openreach Limited,

in each case including where appropriate by way of BT plc making a Balancing Payment to Openreach Limited and provided always that any Taxation incurred by Openreach Limited as a result of any undue delay in BT plc complying with its obligations under clause 6.1 shall be treated as Openreach Costs and subject to the same funding obligations.

6.3 Save to the extent that any Openreach Costs which have been directly discharged by Openreach Limited are recharged to or reimbursed by BT plc, Openreach Limited shall not charge BT plc any fee or be entitled to any form of remuneration in connection with performing its obligations under this Agreement, including any Services provided as agent for the account of BT plc.

6.4 All Openreach Costs shall be fully accounted for in the Openreach Division.

6.5 Openreach Limited shall not undertake, or agree to undertake, any of the following actions without authorisation from BT plc:

- (a) open or control any bank account;
- (b) incur any liability in respect of any borrowing, credit, finance or other indebtedness in the nature of borrowing (other than the receipt of trade credit in the ordinary course of business);
- (c) dispose of any interest in any part of the Openreach Division (other than the disposal of any asset in the ordinary course of business in compliance with the AOP or MTP); or
- (d) create or grant any option, right to acquire, mortgage, charge, pledge or other form of security or encumbrance on, over or affecting any asset or undertaking of the Openreach Division.

7. Openreach Assets and Trading

- 7.1 Notwithstanding any provision of this Agreement, the Governance Protocol or the Commitments, BT plc shall retain:
 - (a) ownership of all assets (including any future assets), including physical, intangible, moveable, and immovable items such as network equipment, databases, software and systems and all rights and interests relating to the Openreach LoB including wayleaves, rights of way and contractual rights;
 - (b) all economic risk and reward of all trading (including any future trading) whether or not conducted by Openreach Limited as agent for the account of BT plc; and
 - (c) the legal relationship with all Third Parties in respect of any Contracts whether or not entered into by Openreach Limited as agent for the account of BT plc, that comprise the Openreach LoB from time to time, and Openreach Limited shall take all actions as may be reasonably required by BT plc to give effect to this clause 7.1.
- 7.2 Openreach Limited shall not acquire any assets or liabilities for its own account. For the avoidance of doubt, where Openreach Limited does acquire, dispose of or otherwise deal with any Openreach LoB asset, it does so only as agent for the account of BT plc and shall take all actions as may be required by BT plc to ensure BT plc has ownership of, and receives the disposal proceeds of, any such assets.
- 7.3 BT plc shall (or shall procure that a member of BT shall) provide access to all assets and resources of the Openreach LoB to Openreach Limited to the extent reasonably necessary to enable Openreach Limited to perform the Services, including providing access to:
 - (a) all essential administrative and office related assistance, access and support, including IT systems and equipment necessary for Openreach Limited to exercise the administrative functions of the Openreach Division; and

(b) all other equipment, including vans, engineering equipment, uniforms and other hardware as Openreach Limited determines is reasonably necessary to operate and manage the Openreach Division.

7.4 Nothing in this Agreement restricts the ability of BT plc to dispose of any interest in any of its assets including any Openreach LoB Assets or to grant a charge or other security over such assets.

8. Legal, Financial, Fiduciary and Regulatory obligations

8.1 Openreach Limited shall provide such assistance to BT plc as BT plc may require from time to time to enable BT plc to ensure that BT is compliant with its legal, financial, fiduciary and regulatory obligations (including obligations in relation to contracts and/or trusts) and the parties shall work together on legal, financial, fiduciary and regulatory matters where requested by BT plc. Openreach Limited shall comply with instructions from BT plc in relation to legal, financial, fiduciary and regulatory compliance of BT (including Openreach Limited).

8.2 The parties acknowledge and agree that in respect of the Openreach LoB where Code Powers are exercised in connection with the Openreach LoB, these are BT plc's Code Powers and any involvement Openreach Limited has with the exercise of those Code Powers shall be limited to taking action for and on behalf of BT plc.

9. Intellectual Property Rights

9.1 Subject to clause 9.3, nothing in this Agreement shall transfer, assign, license or otherwise grant to Openreach Limited any right or interest in any Intellectual Property Rights held by BT.

9.2 BT plc shall retain all Intellectual Property Rights in the Openreach Materials, including any modifications made to them by or on behalf of either party under this Agreement. Openreach Limited shall irrevocably assign all Intellectual Property Rights in any modifications in Openreach Materials on creation to BT plc. Openreach Limited shall provide all assistance and execute all documents necessary to perfect BT plc's title to the Openreach Materials under this clause 9.2.

9.3 BT plc shall (or shall procure that a member of BT shall):

(a) grant Openreach Limited a royalty-free, non-transferable, non-exclusive licence to use the Openreach Software for the duration of this Agreement; and

(b) provide Openreach Limited with the Openreach Materials in its possession or control,

in each case, to the extent reasonably necessary to enable Openreach Limited to perform the Services.

9.4 Openreach Limited shall, and shall procure that its Affiliates and sub-contractors shall, not use the Openreach Software otherwise than for the operation and management of the Openreach Division.

9.5 Openreach Limited shall adopt and comply at all times with the BT-wide IP policies.

10. Shared and support services

10.1 BT plc shall (or shall procure that a member of BT shall) at Openreach Limited's reasonable request provide Openreach Limited access to all shared and support services operated and managed by a member of BT (or any agent or sub-contractor thereof) to the extent necessary to enable Openreach Limited to perform the Services, including:

- (a) all billing, finance, analytical, regulatory / policy, legal, Tax, human resources services and procurement;
- (b) all services provided by BTTSO in accordance with the Commitments;
- (c) all services provided at BT's centres of excellence; and
- (d) the shared OSS and MIS listed in Annexes B and C of the Commitments.

10.2 Where applicable, such shared and support services shall be fully accounted for in the Openreach Division.

10.3 Notwithstanding any other provision of this Agreement (and acknowledging that any liability to Taxation reasonably and properly incurred by Openreach Limited in connection with the performance of the Services or other compliance by Openreach Limited with its obligations under this Agreement is to be funded by BT plc in accordance with clause 6.1), BT plc or its duly authorised agents shall have sole conduct of all Tax affairs of Openreach Limited and shall be entitled to manage the same in any way in which BT plc, in its absolute discretion, considers fit, having regard to the optimised Tax position of BT and Openreach Limited. Openreach Limited shall take any such action as is necessary and requested by BT plc to confer on BT plc the requisite authority to act as Openreach Limited's agent vis-à-vis any Tax Authority in respect of any Tax matter, and shall otherwise act with respect to all Tax compliance matters (including without limitation with respect to the preparation of any Tax returns, elections, claims, notices or consents required to be submitted or given by Openreach Limited, making any tax grouping elections or joining a BT VAT group) in accordance with BT plc's instructions.

10.4 BT plc shall be entitled, for the purposes of exercising any rights pursuant to clause 10.3, to access, obtain and retain copies of any such records or information held by Openreach Limited or any Openreach Personnel which are relevant to the Tax position of Openreach Limited.

11. Monitoring and reporting

11.1 Subject to any restrictions on the provision of information set out in the Commitments or the Governance Protocol, Openreach Limited shall:

- (a) provide all reports to BT plc on Openreach Limited's performance of, and progress under, this Agreement, as BT plc may from time to time reasonably require; and
- (b) attend (by representation at an appropriately experienced and senior level) all meetings at such times and at such frequency as BT plc shall from time to time reasonably require to review and discuss Openreach Limited's performance of, and progress under, this Agreement.

11.2 Openreach Limited shall keep complete and accurate records relating to the performance of the Services and achievement or otherwise of the service levels in accordance with clause 4 and relating to all additions to, disposals of, or maintenance of the Openreach LoB Assets.

12. Step-in rights

12.1 From the date of this Agreement, BT plc may take action under this clause if:

- (a) there is a material breach by Openreach Limited in its performance of any of the Services or any other of its obligations under this Agreement or a material failure by Openreach Limited to comply with the provisions of the Commitments or the Governance Protocol;
- (b) a Regulator has in accordance with Applicable Law ordered or advised BT plc to exercise its rights under this clause;
- (c) BT plc considers, in its sole discretion, that action is required in order to prevent (or remedy) a material fine, censure or other regulatory action from a Regulator being imposed on or taken against any member of BT in relation to the Openreach Division;
- (d) BT plc is required to do so by Applicable Law; or
- (e) there has been a material failure by Openreach Limited to ensure that the financial and operational performance of the Openreach Division is in accordance with the AOP and MTP.

12.2 If clause 12.1 applies, then BT plc may take any such action as it deems necessary (acting reasonably) to address the situation to which clause 12.1 applies, including appointing any person or persons (**Step-In Third Parties**) to perform all or part of any of the Services for so long as BT plc deems necessary.

12.3 If BT plc exercises its rights under clause 12.2, then:

- (a) Openreach Limited shall provide, and procure that each relevant Affiliate and sub-contractor provides, all assistance requested by BT plc or a Step-In Third

Party, including access to all systems and facilities used for performing the Services; and

- (b) Openreach Limited shall co-operate with BT plc and the Step-In Third Parties and take all necessary steps to address the situation to which clause 12.1 applies and to recommence the provision of any affected Services as soon as possible.

13. Conduct of claims

- 13.1 If either party becomes aware of any claim or potential claim, or of any other matter or circumstance that might result in a claim, being made by a Third Party being against Openreach Limited or a member of BT in relation to the Openreach Division other than in respect of Taxation (of which BT plc shall have sole conduct in accordance with clause 10.3) (a **Third Party Claim**), Openreach Limited shall:
 - (a) promptly (and in any event within 10 Business Days of becoming aware of it) give notice of the Third Party Claim to BT plc and ensure that BT plc and its representatives are given all reasonable information and facilities to investigate it;
 - (b) not admit liability or make any agreement or compromise in relation to the Third Party Claim without the prior written approval of BT plc; and
 - (c) ensure that it shall:
 - (i) take such action as BT plc may reasonably request to avoid, resist, dispute, appeal, compromise or defend the Third Party Claim;
 - (ii) allow BT plc (if it elects to do so) to take over the conduct of all proceedings and/or negotiations arising in connection with the Third Party Claim; and
 - (iii) provide such information and assistance as BT plc may reasonably require in connection with the preparation for and conduct of any proceedings and/or negotiations relating to the Third Party Claim.
- 13.2 Clause 13.1 shall not apply to customer or supplier claims received by Openreach Limited in the normal course of business of the Openreach Division. Such claims shall be handled by Openreach Limited as agent for BT plc in accordance with clause 3.1(e)(vi) of this Agreement, except:
 - (a) where they need to be reported to BT plc in order to enable BT plc to be compliant with its legal, financial, fiduciary and regulatory obligations;
 - (b) where they need to be reported to BT plc as a result of Openreach Limited's obligation to comply with the BT-wide policies relating to BT statutory accounting and the BT Group Risk Policy;
 - (c) when such claim may lead to litigation, in which case Openreach Limited will comply with the BT Governance Policies relating to legal proceedings and competition/regulatory complaints, disputes and appeals; and

(d) where the claim may lead to a change to the AOP/MTP which will require approval from the Chief Executive Officer of BT Group plc, the Chief Financial Officer of BT Group plc or the BT Group plc Board or may constitute a negative or detrimental variation in the revenue, EBITDA, capex or cash flow of the Openreach Division which will require a Planned Action pursuant to clause 3.8 of the Governance Protocol,

in which case the provisions of clause 13.1 shall apply.

14. Compliance

14.1 Without prejudice to the compliance arrangements set out in the Governance Protocol, Openreach Limited shall notify BT plc of any material regulatory or compliance failing, potential failing or other issue arising in connection with the obligations under this Agreement of which it becomes aware, and the parties shall co-operate in good faith to resolve any such issue.

14.2 Openreach Limited shall adopt and comply at all times with the BT Governance Policies and the BT Group Risk Policy, including BT policies in relation to BT business principles (“The Way We Work”), gift and hospitality, procurement and commitment to expenditure, security and vendor management.

15. Audit

15.1 Unless it reasonably considers that prior notice would be detrimental to the proposed audit, BT plc shall, on reasonable notice, notify Openreach Limited of BT's employees and other representatives, including auditors and Regulators and any other party to whom BT is obliged to provide access rights (collectively, **BT plc Auditors**) who require access rights to the sites from which Openreach Limited provides, manages and administers the Services (**Openreach Sites**).

15.2 Subject to any restrictions on the provision of information set out in the Commitments and the Governance Protocol, Openreach Limited shall allow, and procure that the Openreach Personnel allow, BT plc Auditors:

(a) access to the Openreach Sites, the records and supporting documents referred to in clause 11.2, and the relevant Openreach Personnel and systems (including operational records and manuals) at the Openreach Sites; and

(b) access to facilities at the Openreach Sites at all reasonable times during (and, in an emergency, outside) normal working hours for the following purposes:

(i) to inspect the records and supporting documents referred to in clause 11.2;

(ii) to interview the Openreach Personnel;

(iii) to assess whether Openreach Limited is acting in accordance with the Commitments, and to carry out surveys for the purposes of BT insurance cover;

- (iv) to review the integrity of BT plc's Confidential Information, and make inspections and audits for the purpose of conducting the internal and statutory audits of BT and making reports required by a Regulator;
- (v) to conduct any risk assessment by BT plc in relation to the possible impact of the Services on BT's businesses; and
- (vi) to monitor and assess the provision of the Services and the performance of Openreach Limited's other obligations under this Agreement; and
- (vii) to prepare any financial statements of BT.

15.3 Openreach Limited shall perform or make available, and procure that its Affiliates and the sub-contractors perform or make available, the services, access and facilities described in this clause to a Regulator if a Regulator requests it to do so.

16. Protective Covenants

16.1 Openreach Limited shall not carry on or be engaged or otherwise interested in any business or take any action except:

- (a) in accordance with this Agreement, the Commitments or the Governance Protocol; and
- (b) in respect of reserved matters referred to in the BT Governance Policies, save with the prior approval as set out in such policies.

16.2 Openreach Limited shall only accept orders on behalf of BT plc (for Openreach LoB products) from Communications Providers, save that, as permitted by the Commitments, Openreach Limited may bill and accept orders as agent for the account of BT plc from persons who are not Communications Providers which relate to (i) Network Rearrangement and Build Services of BT's Access Network and (ii) the provision and/or repair of Customer-Owned Wiring.

17. Confidentiality

17.1 Openreach Limited shall:

- (a) use the same degree of care in relation to the Confidential Information of BT plc and its Affiliates as it normally uses to avoid unauthorised disclosure of its own Confidential Information;
- (b) use, and procure that its representatives use, the Confidential Information of BT plc and its Affiliates only in the performance of its obligations or the exercise of its rights under this Agreement;
- (c) only disclose to its representatives Confidential Information of BT plc and its Affiliates that is reasonably required for the performance of its obligations or the exercise of its rights under this Agreement, inform them of the confidential

nature of the Confidential Information, and obtain written confidentiality undertakings from them consistent with this clause; and

- (d) promptly notify BT plc of any suspected or actual unauthorised disclosure of the Confidential Information of BT plc and its Affiliates, and take all reasonable steps to prevent, limit or remedy the disclosure.

17.2 Nothing in this clause 17 shall restrict:

- (a) either party from disclosing Confidential Information of the other party or its Affiliates:
 - (i) if and to the extent required by Applicable Law or for the purposes of legal proceedings;
 - (ii) if and to the extent required by any securities exchange or regulatory or governmental body to which that party is subject; or
 - (iii) as prescribed by the Commitments or the Governance Protocol.
- (b) BT plc from disclosing Confidential Information relating to Openreach Limited or its Affiliates to its consultants and other professional advisors, auditors and bankers, or to any Tax Authority, or to the BTPS Trustee and its advisors insofar as such disclosure is considered by BT plc to be in the interests of BT as a whole.

18. Announcements

18.1 Neither party shall disclose the fact or subject matter of this Agreement, unless it first obtains the other party's prior written consent.

19. Data protection

19.1 From the date of this Agreement, Openreach Limited shall adopt and comply with the data protection policies and procedures of BT (including the BT Binding Corporate Rules) as updated from time to time by BT plc.

20. Employees

20.1 The parties acknowledge and agree that on entry by the parties into this Agreement, the employment contracts of the Openreach Employees will transfer from the relevant member of BT to Openreach Limited by way of a transfer under TUPE assuming that TUPE remains in force at the relevant date and provides for such a transfer.

20.2 Openreach Limited will establish and/or continue arrangements to incentivise the Openreach employees in accordance with the Commitments.

20.3 The parties acknowledge and agree that it is their common understanding and intention that, to the extent that any Openreach employees are involved in research and development activities connected with intellectual property owned or to be owned by BT plc, such employees will qualify as externally provided workers within the meaning of section 1128 of the Corporation Tax

Act 2009, and that the arrangements between the parties provided for in this Agreement shall be implemented with a view to giving effect to that understanding and intention.

21. Liability

21.1 Neither party shall be liable, whether for negligence, breach of contract, misrepresentation or otherwise, for any indirect or consequential loss or damage, or for any loss of profit, goodwill or business opportunity (whether direct or indirect) arising under or in connection with this Agreement.

21.2 The entire liability for loss or damage in respect of:

- (a) Openreach Limited's performance of the Services; and
- (b) BT plc's obligations to provide shared and support services pursuant to clause 10,

in each case in connection with this Agreement, whether for negligence, breach of contract, misrepresentation or otherwise is limited to £20,000,000 in aggregate, respectively.

22. Insurance

22.1 Openreach Limited shall adopt and comply with the insurance policies and procedures of BT.

23. Warranties

23.1 Each party warrants to the other that:

- (a) it is validly incorporated and duly registered under Applicable Law, and has power to conduct its business as conducted at the date of this Agreement; and
- (b) this Agreement shall, when executed, constitute valid and binding obligations of the party to it.

23.2 Each of the warranties in this Agreement shall be construed independently of the others, and shall apply for the duration of this Agreement.

24. Term

24.1 This Agreement commences on the date executed above and continues indefinitely unless terminated in accordance with clause 25.

25. Termination

25.1 Either party may terminate this Agreement:

- (a) at any time with the written consent of both parties; or
- (b) if an Insolvency Event occurs in relation to the other party.

25.2 BT plc may terminate the Agreement:

- (a) by giving at least one months' notice in writing to Openreach Limited; or
- (b) with immediate effect by notifying Openreach Limited if:
 - (i) the Commitments are terminated;
 - (ii) the authority contained within the BT plc Board Resolutions is revoked; or
 - (iii) BT plc believes (acting reasonably) that there is a reasonable risk of:
 - (A) deconsolidation, in any way, of either the Openreach Division and/or Openreach Limited; or
 - (B) a material adverse impact on the business, operations, assets, liabilities, financial condition, results or prospects of BT arising.

26. Consequences of termination

- 26.1 On termination or expiry of this Agreement, the parties shall take all actions necessary to ensure that ownership, control and management of any part of the Openreach Division owned, controlled and/or managed by Openreach Limited is transferred to BT plc (or as directed by BT plc) as soon as practicable.
- 26.2 To give effect to clause 26.1, Openreach Limited shall:
 - (a) promptly cease using, and return, or procure the return of, all Openreach Materials and any other information relating to the Openreach Division;
 - (b) return BT plc's Confidential Information supplied to it, its Affiliate or sub-contractors under this Agreement, in a format and on media reasonably requested by BT plc, or, at BT plc's option, destroy those copies;
 - (c) provided that TUPE remains in force at the relevant date and provides for a transfer of the employment contracts of any employees of Openreach Limited, take any actions required by BT plc to transfer the employment contracts of employees of Openreach Limited from Openreach Limited by way of a transfer under TUPE; and
 - (d) promptly certify in writing to BT plc that it has complied with its obligations under this clause.
- 26.3 Termination of this Agreement shall be without prejudice to any other rights which any party may have under this Agreement and without prejudice to any rights which any party may have that accrued prior to the date on which the termination takes effect.

27. Assignment

- 27.1 Subject to clause 27.2, neither party shall assign, transfer, charge or otherwise deal with any of its rights under this Agreement, nor grant, declare, create or dispose of any right or interest in them, without the prior written consent of the other party.

27.2 BT plc may transfer its rights and obligations under this Agreement:

- (a) to another member of BT; or
- (b) to a person who acquires a business (or part of a business) of BT or a material part of its assets,

without obtaining Openreach Limited's prior written consent, but shall give notice to Openreach Limited before making such transfer.

27.3 If clause 27.2 applies, then Openreach Limited shall, on request, promptly enter into a transfer agreement (in a form to be reasonably determined by BT plc and the transferee), which provides for the transferee to assume the rights and/or obligations of BT plc (past, present or future as specified by BT and the transferee) under this Agreement, and for BT plc to cease to be a party to this Agreement (or relevant parts of it), but makes no other substantial provision.

28. Further assurance

28.1 Each party shall perform, or procure the performance of, all further acts and things, and shall deliver, or procure the execution and delivery of further documents which are required by Applicable Law or are necessary or reasonably desirable to implement the terms of this Agreement.

29. Entire agreement

29.1 This Agreement (together with the Commitments and the Governance Protocol) sets out the entire agreement and understanding between the parties in connection with the Openreach Division.

30. Notices

30.1 Any notice or other communication to be given by a party under this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be delivered by hand, email, registered post or courier using an internationally recognised courier company.

30.2 A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by email. Where delivery occurs after 6pm on a Business Day, or on a day that is not a Business Day, notice shall be deemed to occur at 9am on the following Business Day.

30.3 The addresses and email addresses of the parties for the purpose of this clause are as follows:

BT plc

Address: 81 Newgate Street
London
EC1A 7AJ

Email: dan.fitz@bt.com

For the attention of: Dan Fitz

Openreach Limited

Address: Kelvin House
123 Judd Street
London
WC1H 9NP

Email: nigel.cheek@openreach.co.uk

For the attention of: Nigel Cheek

30.4 A party shall notify the other in writing of a change to its details in clause 30.3 from time to time.

31. Variation

31.1 No amendment, variation or waiver of this Agreement shall be valid unless in writing and duly executed by or on behalf of all of the parties to it.

32. No third party enforcement rights

32.1 A person who is not a party to this Agreement shall have no right under any statutory provision to enforce any of its terms.

33. Governing law and Jurisdiction

33.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, English law.

33.2 The English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with:
(i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and
(ii) any non-contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts.

34. Counterparts

34.1 This Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

Schedule 1

Definitions and Interpretation

1. In this Agreement, unless otherwise stated or the context otherwise requires, the following words and expressions shall have the following meanings:

Access Network has the meaning given in the Commitments;

Agency Services has the meaning given in clause 5.1;

Affiliate means in relation to any party, any subsidiary or parent company of that party and any subsidiary of any such parent company;

AOP means the annual operating plan produced by the Openreach Executive and approved by the BT Group plc Board in accordance with the Governance Protocol;

Applicable Law means all applicable laws, statutes, orders, rules, provisions, regulations, directives and guidelines that have legal effect, whether local, national, international or otherwise, existing from time to time, including but not limited to all Regulators' rules, requirements, standards and guidelines;

Balancing Payment means a payment within the meaning of sections 195 and 196 of the Taxation (International and Other Provisions) Act 2010 insofar as it is made by BT plc or any other member of BT to Openreach Limited;

BT means BT plc and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, as defined by section 1159 of the Companies Act 2006

BT Governance Policies means BT Group plc's and BT plc's governance policies, as amended from time to time (and as further detailed in Part C of the Governance Protocol);

BT Group plc Board means the board of directors of BT Group plc;

BT Group Risk Policy means the BT-wide risk policy, as amended from time to time;

BT Pension Scheme means the pension scheme known as the BT Pension Scheme which was established by a deed dated 2 March 1983, and which is currently governed by rules dated 5 April 2016;

BT plc has the meaning given in the Recitals;

BT plc Auditors has the meaning given in clause 15.1;

BT plc Board means the board of directors of BT plc;

BT plc Board Resolutions means any resolutions of the BT plc Board approving the implementation of the structure and governance of the Openreach Division as set out in the Commitments or from time to time amending that structure and governance;

BT's Downstream Divisions means BT's divisions downstream of the Openreach LoB which provide products to non-BT Communications Providers and to End-Users. For the avoidance of doubt, this excludes BTTSO and BTNIN;

BTNIN means the organisation within BT currently called BT Northern Ireland Networks, which is a virtually separate organisation with its own senior management team which manages BT's Electronic Communications Network in Northern Ireland, the associated network assets, network finances, people, culture and wholesale relationships in Northern Ireland, together with its dedicated support teams in BT Business & Public Sector, and includes any successors. For the avoidance of doubt, it does not include BT employees or agents working in Northern Ireland for other parts of BT;

BTPS Trustee means the trustee of the BT Pension Scheme. At the date of this Agreement, the trustee of the BT Pension Scheme is BT Pension Scheme Trustees Limited;

BTTSO means BT Technology, Service and Operations which is the division of BT with that designation which is BT's internal service division responsible for operating BT's networks, platforms and IT systems (excluding those that are operated by the Openreach Division) and successors to that division;

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open in England for the transaction of normal banking business;

Code Powers means legal powers granted pursuant to a direction of Ofcom under section 107 Communications Act 2003 applying the Electronic Communication Code set out in Schedule 2 to the Telecommunications Act 1984 (or any replacement thereof);

Commitments means the Commitments adopted by BT plc on [•], as may be amended (or revoked) by BT plc from time to time;

Communications Provider means a person providing a Public Electronic Communications Service or a Public Electronic Communications Network, including BT's Downstream Divisions where relevant and for the avoidance of doubt shall include any internet service provider. For the avoidance of doubt this does not include any person in so far as he procures such a service or network for provision to himself or the members of his group of companies for their own private use;

Confidential Information means the terms and the existence of this Agreement, any information which relates to the provision of the Services to, or their use by, BT, the Openreach Materials and all other information, in any form, that has been disclosed by or on behalf of a party or its Affiliates in confidence, or which by its nature ought to be regarded as confidential;

Contracts means all customer and supplier contracts in respect of the Openreach Division;

Crown Guarantee means the guarantee set out in section 68 of the Telecommunications Act 1984 (as amended);

Customer-Owned Wiring means wiring located on an End-User's premises beyond the network termination point, whether the wiring is internal (within a building) or external (outside a building but on a customer site);

End-User has the same meaning as in the Communications Act 2003;

Governance Protocol means the Governance Protocol referred to in the Notification, as may be amended (or revoked) by BT plc from time to time;

Insolvency Event means in relation to a party, any of the following:

- (a) a petition is presented, or a meeting is convened for the purpose of considering a resolution or other steps are taken by any person with a view to the appointment of an administrator (whether out of court or otherwise) against or for the winding up of the party or an administration order or a winding up order is made against or a provisional liquidator appointed with respect to the party;
- (b) an encumbrancer takes possession of, or a trustee or administrative receiver or similar officer is appointed in respect of, all or any part of the business or assets of the party, or distress or any form of execution is levied or enforced upon or sued out against any of those assets and is not discharged within seven days of being levied, enforced or sued out;
- (c) the party is unable to pay its debts as they fall due or the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or it suspends or threatens to suspend making payments with respect to all or any class of its debts;
- (d) any voluntary arrangement is proposed under section 1 of the Insolvency Act 1986 in respect of the party;
- (e) the party proposes or makes any composition or arrangement with, or any assignment for the benefit of, its creditors;
- (f) anything analogous to any of the events described in paragraphs (a) – (e), inclusive, occurs under the laws of any applicable jurisdiction; or
- (g) the party ceases to carry on the whole or any material part of its business and that cessation, in the reasonable opinion of the other party, would be likely to affect adversely the party's ability to observe and perform properly and punctually any of its obligations under this Agreement;

Intellectual Property Rights means patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or

unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

Materials means documents, manuals, software, equipment, servers, infrastructure, databases, programming tools, methodology, reports, designs, drawings, trade secrets and trade marks, machine-readable text and files and all other documentation, materials and information;

MIS means those management information systems which hold commercial information and/or customer confidential information and which are used by BT plc to help plan and direct business and organisational operations, decision making and competitive strategies;

MTP means the medium term plan produced by the Openreach Executive and approved by the BT Group plc Board in accordance with the Governance Protocol;

Network Rearrangement and Build Services means the building (which includes developments and/or extensions), alterations (which includes shifting and/or rearranging), repair and/or maintenance of any BT Access Network components (including, but not limited to, network termination points) but shall not include the supply by Openreach Limited of any product using BT's Access Network;

Notification means the notification submitted by BT plc to Ofcom pursuant to section 89C of the Communications Act 2003 of the intended changes to the structure and governance of the Openreach Division on 10 March 2017;

Ofcom means the Office of Communications in the United Kingdom and any successor body or bodies;

Openreach Board means the board of directors of Openreach Limited;

Openreach CEO means the Chief Executive Officer of the Openreach Division;

Openreach Costs has the meaning given in clause 6.1;

Openreach Division means, together Openreach Limited and the Openreach LoB;

Openreach Employees means the (c.32,000) employees of BT wholly or predominantly engaged in the Openreach Division immediately prior to entry by the parties into this Agreement;

Openreach Executive means the executive leadership team of the Openreach Division, comprising the Openreach CEO and the senior manager direct reports to the Openreach CEO, all of whom are employees of Openreach Limited;

Openreach Limited has the meaning given in the Recitals;

Openreach LoB has the meaning given in the Commitments, and as the scope of such line of business is varied from time to time as contemplated in the Commitments and in this Agreement;

Openreach LoB Assets means those assets described in the Commitments as such assets may change from time to time as contemplated in the Commitments and in this Agreement;

Openreach Materials means Materials and all other information that relate to the Openreach Division;

Openreach Personnel means any individuals used by Openreach Limited in providing the Services from time to time, including sub-contractor personnel;

Openreach Sites has the meaning given in clause 15.1;

Openreach Software means software owned by a member of BT, by BT plc or any member of BT in respect of the Openreach Division;

OSS means operational support systems being those support systems carrying out the functions and processes which help to run a network and business, including (but not limited to) pre-ordering, taking a customer's order, configuring network components, creating a bill and managing faults;

parent company means any company which holds a majority of the voting rights in another company, or which is a shareholder of another company and has the right to appoint or remove a majority of its board of directors, or which is a shareholder of another company and controls a majority of the voting rights in it under an agreement with the other shareholders, in each case whether directly or indirectly through one or more companies;

Pensions Regulator means the Pensions Regulator established under Part 1 of the Pensions Act 2004;

Regulator means any authority that may regulate and/or supervise activities of any member of BT from time to time (eg Ofcom) and, as the case may be, any authority that may regulate and/or supervise the activities of Openreach Limited from time to time;

Regulatory Change means any change to Applicable Law that relates to the provision of the Services or the receipt of the Services by any member of BT;

Services has the meaning given in clause 3.1;

Step-In Third Parties has the meaning given in clause 12.2;

subsidiary means a subsidiary within the meaning of section 1159 of the Companies Act 2006 except that, for the purposes of subsections 1159(1)(b) and (c), a company shall also be treated as a member of another company if any shares in that other company are held by a person:

(a) acting on behalf of the company or any of its subsidiaries; or

(b) by way of security provided by the company or any of its subsidiaries;

Tax or **Taxation** includes, without limitation (a) taxes on gross or net income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any fiscal nature, including any excise, property, wealth, capital, value added, sales, use, occupation, transfer, franchise and payroll taxes and any social security or social fund contributions, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them and regardless of whether such taxes, levies, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount of them is recoverable from any other person;

Tax Authority means any taxing or other authority competent to impose any liability to Tax, or assess or collect any Tax;

Third Party means a legal entity, company or person(s) that is not a party to this Agreement, and is not an Affiliate of a party;

Third Party Claim has the meaning given in clause 13.1;

Third Party Materials means software and other Materials that are used in connection with the Services and that are owned by any Third Party;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and

Undertakings means the undertakings given by BT plc to Ofcom pursuant to the Enterprise Act 2002 and which took effect on 22 September 2005, as varied from time to time thereafter by agreement between BT plc and Ofcom.

2. In this Agreement, unless otherwise stated or the context otherwise requires:

- (a) references to a **person** shall be construed so as to include any individual, firm, body corporate (wherever incorporated), governmental entity or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);
- (b) the headings are inserted for convenience only and shall not affect the construction of this Agreement;
- (c) the singular shall include the plural and vice versa;
- (d) the words **include** and **including** are each to be construed without limitation;
- (e) references to a document are references to that document as modified or replaced from time to time;
- (f) references to a time of day are to local time in the relevant jurisdiction;

- (g) references to any English legal term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official, or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include that which most nearly approximates in that jurisdiction to the English legal term;
- (h) any express reference to an enactment (which includes any legislation in any jurisdiction) includes references to:
 - (i) that enactment as amended, extended or applied by or under any other enactment before or after the date of this Agreement;
 - (ii) any enactment that that enactment re-enacts (with or without modification); and
 - (iii) any subordinate legislation (including regulations) made (before or after the date of this Agreement) under that enactment, as re-enacted, amended, extended or applied as described in (i) above or under any enactment referred to in (ii) above,

except to the extent that any of the matters referred to in paragraphs (i) to (iii) above occur after the date of this Agreement and increase or alter the liability of the parties under this Agreement;

- (iv) the amount of any relief, credit, allowance or other tax benefit which in the reasonable opinion of the recipient is available to the recipient as a result of the matter giving rise to the indemnity payment; and
- (v) the amount of any tax which in the reasonable opinion of the recipient is, or but for an insufficiency of taxable profits would be, payable by the recipient in respect of the receipt of the indemnity payment.

IN WITNESS whereof this Deed has been entered into the day and year first before written.

EXECUTED as a **DEED**)
for and on behalf of)
BRITISH TELECOMMUNICATIONS PLC)

WITNESS

Signature: _____

Name: _____

Address: _____

EXECUTED as a **DEED**)
for and on behalf of)
[OPENREACH LIMITED])

WITNESS

Signature: _____

Name: _____

Address: _____