

Schedule 1: SMP services condition 14 - Virtual Unbundled Local Access margin control

Condition 14 – Virtual Unbundled Local Access margin control

- 14.1** This condition applies to Virtual Unbundled Local Access provided by the Retail Divisions. Unless OFCOM otherwise consents in writing, the Dominant Provider must set the charge for Virtual Unbundled Local Access provided by the Retail Divisions in accordance with conditions 1 and 2 so that a Minimum Margin is maintained.
- 14.2** For the purposes of this condition 14, a Minimum Margin is maintained if, during any Compliance Period:

$$P - (W + DC) \geq UC - UR$$

Where:

P is the total revenue generated by the Retail Divisions where such revenue is associated with the supply of VULA-Based Broadband Packages to New Subscribers relevant to the Compliance Period (excluding revenue referred to in UR) (the “**Base Revenue**”), as Projected Forward;

W is the total wholesale charges levied by Openreach for both Virtual Unbundled Local Access and Wholesale Analogue Line Rental for the purpose of the supply of VULA-Based Broadband Packages to New Subscribers by the Retail Divisions relevant to the Compliance Period (the “**Base Charges**”), as Projected Forward;

DC is the total long-run incremental costs (including the Relevant Bandwidth Costs) incurred by the Dominant Provider where such costs are associated with the supply of VULA-Based Broadband Packages to New Subscribers by the Retail Divisions relevant to the Compliance Period (excluding those costs and charges referred to in W and UC) plus an appropriate mark up for the recovery of common costs including an appropriate return on capital employed (the “**Base Costs**”), as Projected Forward;

UR is the total revenue generated by the Retail Divisions where such revenue is associated with the acquisition of New Subscribers to VULA-Based Broadband Packages relevant to the Compliance Period; and

UC is the total long-run incremental costs incurred by the Retail Divisions where such costs are associated with the acquisition of New Subscribers to VULA-Based Broadband Packages relevant to the Compliance Period plus an appropriate mark up for the recovery of common costs including an appropriate return on capital employed.

For the purposes of this condition 14.2, any costs, charges or revenue referred to as being Projected Forward shall be calculated by:

- (a) dividing the Base Revenue, Base Charges or Base Costs (as applicable) by the number of calendar days in the relevant Compliance Period (resulting in the “**Daily Average**”);
- (b) multiplying the Daily Average by 30.4375 (resulting in the “**Monthly Average**”); and
- (c) then applying the following formula:

$$\sum_{t=0}^N \frac{M_t}{(1+i)^t}$$

Where:

t is a number from 0 to N for each of the N months;

i is the appropriate cost of capital (expressed as a monthly figure), as determined by OFCOM from time to time;

N is 60; and

M_t means the Monthly Average.

14.3 The Dominant Provider must record, maintain and supply to OFCOM in an electronic format (including in any such presentational form or arrangement (including as to the level of disaggregation) as OFCOM may direct from time to time), no later than one month after the end of each Relevant Period, the data necessary for OFCOM to

monitor compliance of the Dominant Provider with condition 14.1 above in respect of Virtual Unbundled Local Access. This data must include:

- (a) Base Revenue;
- (b) Base Charges;
- (c) Base Costs;
- (d) UR;
- (e) UC; and
- (f) such other data as OFCOM may direct from time to time,

in respect of each Compliance Period in the preceding Relevant Period and/or such other period as OFCOM may direct from time to time.

14.4 In this condition 14:

- (a) “**Base Charges**” has the meaning given to it in condition 14.2;
- (b) “**Base Costs**” has the meaning given to it in condition 14.2;
- (c) “**Base Revenue**” has the meaning given to it in condition 14.2;
- (d) “**Compliance Period**” means any period of one month over which OFCOM makes an assessment under this condition 14;
- (e) “**Daily Average**” has the meaning given to it in condition 14.2(a);
- (f) “**enterprise**” shall have the meaning given to it in the Enterprise Act 2002;
- (g) “**Enterprise Act 2002**” means the Enterprise Act 2002 (c.40), as amended;
- (h) “**Minimum Margin**” has the meaning given to it in condition 14.2;
- (i) “**Monthly Average**” has the meaning given to it in condition 14.2(b);
- (j) “**New Subscribers**” means those end-users that do not subscribe to a VULA-Based Broadband Package as at the commencement of the relevant Compliance Period;

- (k) “**Openreach**” means the access services division of the Dominant Provider established under section 5 of the undertakings given by the Dominant Provider to OFCOM in accordance with section 154 of the Enterprise Act 2002, accepted by OFCOM on 22 September 2005;
- (l) “**Plusnet**” means Plusnet Plc, whose registered company number is 03279013;
- (m) “**Projected Forward**” has the meaning given to it in condition 14.2;
- (n) “**Regulatory Financial Statement**” shall have the meaning given to it in condition 13A;
- (o) “**Relevant Bandwidth Costs**” means:
- (i) where the latest available Regulatory Financial Statement relevant to the Compliance Period is the 2013/14 RFS, whichever is the higher of either the Dominant Provider's Unit Bandwidth Costs relevant to the Compliance Period or £9.20 per Mbit/s;
 - (ii) where the latest available Regulatory Financial Statement relevant to the Compliance Period is the 2014/15 RFS, whichever is the higher of either the Dominant Provider's Unit Bandwidth Costs relevant to the Compliance Period or £7.17 per Mbit/s; or
 - (iii) where the latest available Regulatory Financial Statement relevant to the Compliance Period is the 2015/16 RFS, whichever is the higher of either the Dominant Provider's Unit Bandwidth Costs relevant to the Compliance Period or £5.59 per Mbit/s;
- (p) “**Relevant Period**” means:
- (i) the period between 1 April 2015 and 30 April 2015 (inclusive);
 - (ii) the period between 1 April 2015 and 30 September 2015; and
 - (iii) after the period referred to in (ii) above, the following periods of six months beginning either (as applicable) on:
 - a. 1 October and ending on 31 March; or

b. 1 April and ending on 30 September.

- (q) “**Retail Divisions**” means the enterprise of the Dominant Provider known as ‘BT Consumer’ (and which includes Plusnet) as at the date of the entry into force of this condition or such other enterprise or enterprises that may replace or succeed BT Consumer from time to time;
- (r) “**Unit Bandwidth Costs**” means the average cost of providing 1Mbit/s of capacity between the Local Serving Exchange and the internet relevant to the Compliance Period;
- (s) “**VULA-Based Broadband Package**” means any product, service or bundle of products or services (including, but not limited to, telephony (including fixed and mobile telephony) and television services (including content)) offered by the Dominant Provider during the relevant Compliance Period through its Retail Divisions to New Subscribers which include the provision of a broadband connection, where the Dominant Provider uses Virtual Unbundled Local Access in order to provide that broadband connection;
- (t) “**VULA-Based Broadband Packages**” means all products, services or bundles of products or services (including, but not limited to, telephony (including fixed and mobile telephony) and television services (including content)) offered by the Dominant Provider during the relevant Compliance Period through its Retail Divisions to New Subscribers which include the provision of a broadband connection, where the Dominant Provider uses Virtual Unbundled Local Access in order to provide that broadband connection;
- (u) “**2013/14 Financial Year**” means the period 1 April 2013 to 31 March 2014 (inclusive);
- (v) “**2013/14 RFS**” means the Regulatory Financial Statement prepared by the Dominant Provider in relation to the 2013/14 Financial Year;
- (w) “**2014/15 Financial Year**” means the period 1 April 2014 to 31 March 2015 (inclusive);
- (x) “**2014/15 RFS**” means the Regulatory Financial Statement prepared by the Dominant Provider in relation to the 2014/15 Financial Year;

- (y) “**2015/16 Financial Year**” means the period 1 April 2015 to 31 March 2016 (inclusive); and
- (z) “**2015/16 RFS**” means the Regulatory Financial Statement prepared by the Dominant Provider in relation to the 2015/16 Financial Year.