

SCHEDULE 5.2

WHOLESALE ACCESS PRICING

VERSION CONTROL

VERSION NUMBER	DATE	COMMENT
0.1	27 July 2016	Preliminary draft template version made available for general comment
0.2	2 September 2016	Uplifted draft, following feedback, made available for final comment
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SCHEDULE 5.2 – WHOLESALE ACCESS PRICING

1. BACKGROUND

1.1 This Schedule 5.2 sets out the process for benchmarking Project Wholesale Access Prices.

2. PROJECT WHOLESALE ACCESS PRICES

2.1 The "**Project Wholesale Access Prices**" are the prices for the Wholesale Access Products and Services, identified in the Project Model.

2.2 The Project Wholesale Access Prices shall include Wholesale Access Products and Services to be supplied over the Network.

2.3 The Project Wholesale Access Prices shall be expressed in £s sterling exclusive of VAT.

3. WHOLESALE ACCESS PRICE BENCHMARK MECHANISM

3.1 The Supplier shall at least annually conduct a Wholesale Access Prices Benchmarking comparison of the Project Wholesale Access Prices with the Benchmark Data and, if so required by this Schedule, revise those prices. This annual requirement excludes any benchmarking performed pursuant to paragraph 3.7.

3.2 The specific timings of each Wholesale Access Prices Benchmarking shall be agreed by the Supplier with the Authority (such agreement not to be unreasonably withheld or delayed) but shall not be within six (6) months of the previous Wholesale Access Prices Benchmarking comparison (excluding any benchmarking performed pursuant to paragraph 3.7).

3.3 The "**Benchmark Data**" used for each Wholesale Access Prices Benchmarking comparison will be identified by the Supplier for agreement with the Authority (such agreement not to be unreasonably withheld or delayed), with the Parties acknowledging that the Benchmark Data to be used shall be as set out in the Wholesale Product Template(s) corresponding to the Wholesale Access Products and Services concerned (all as comprised within the Supplier Solution) unless such Benchmark Data no longer meets the description provided in paragraph 3.4.

3.4 The Benchmark Data should be such that it would provide a reasonable basis for determining how the Project Wholesale Access Prices compare with the average published (regulated) wholesale prices that prevail in other comparable (including more competitive) areas of the country or the European Community or, in the absence of such published prices, on prices already set or approved by the Regulator for the markets and services concerned.

3.5 The Supplier shall provide a written Wholesale Access Prices Benchmarking report to the Authority for each Wholesale Access Prices Benchmarking conducted. This report shall:

3.5.1 set out a comparison of the Project Wholesale Access Prices against the Benchmark Data;

3.5.2 justify and provide evidence in detail for any deviation of the Project Wholesale Access Prices from the Benchmark Data (including the expected timescale over which the deviations will remain in place, and the circumstances under which such deviations will be re-evaluated); and

3.5.3 set out proposals for changes to the Project Wholesale Access Prices, so that they align to the Benchmark Data taking into account any justifiable basis for deviation (see paragraph 4 for the process for implementation of changes).

3.6 The Wholesale Access Prices Benchmarking report will be provided to the Authority within the timescale agreed pursuant to paragraph 3.2, noting that the report must be provided

within twenty (20) Working Days of conducting the data comparison as part of the benchmarking concerned.

- 3.7 The Authority shall be entitled (for the avoidance of doubt, at no cost to the Authority) to require ad-hoc Wholesale Access Prices Benchmarking exercises at any time during the Term between previously conducted and forthcoming (pursuant to paragraph 3.1 above) Wholesale Access Prices Benchmarkings where there is reasonable evidence that any of the following may be taking place:

3.7.1 higher or lower pricing relative to recent Benchmark Data; and/or

3.7.2 a change in the market having a significant impact on potential applicable Benchmark Data.

4. **CHANGES TO THE WHOLESALE ACCESS PRICES**

- 4.1 Where the Wholesale Access Prices Benchmarking identifies Project Wholesale Access Prices that are higher or lower than the Benchmark Data and there is no applicable reasonable justification for the deviation, the Authority may:

4.1.1 request the Supplier to provide further evidence or justification for the deviation between the Project Wholesale Access Prices and the Benchmark Data;

4.1.2 require that the Supplier reviews and adjusts the actual Project Wholesale Access Prices to align with the Benchmark Data, taking into account any justifiable basis for deviation; and/or

4.1.3 report such deviation to the Programme Authority.

- 4.2 Where pursuant to paragraph 4.1.2 above an adjustment is to be made to the Project Wholesale Access Prices, this shall be implemented using the process provided in Schedule 5.3 (The Project Model), as soon as reasonably practical and in any event to achieve agreement within ten (10) Working Days (unless extended by written agreement of the Parties) of an adjustment being required by the Authority pursuant to paragraph 4.1.2. Neither Party shall unreasonably withhold or delay agreement to such changes.

- 4.3 If the Supplier refuses to adjust pricing on reasonable request by the Authority as a result of a Wholesale Access Prices Benchmarking under this Contract the Authority may also notify the Programme Authority and/or the Regulator and/or the European Commission of those circumstances. The Authority reserves its rights to apply the Dispute Resolution Procedures in accordance with this Contract to escalate and resolve the Supplier's refusal to adjust the Wholesale Access Prices to align with the Benchmark Data.