



SCHEDULE 5.2
WHOLESALE ACCESS PRICING

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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 Broadband Products and Services, identified in the Project Model.

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

2.3 The "**RSP Wholesale Access Prices**" are the prices actually charged by the Supplier to RSPs for Wholesale Broadband Products and Services.

2.4 The Project Wholesale Access Prices shall be expressed in GBP exclusive of VAT.

3. WHOLESALE ACCESS PRICE BENCHMARK MECHANISM

3.1 The Supplier shall at least annually conduct a comparison (the **Wholesale Access Prices Benchmarking**) of the RSP 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 Price Benchmarking comparison (excluding any benchmarking performed pursuant to paragraph 3.7).

3.3 The data (**Benchmark Data**) used for each Wholesale Access Prices Benchmarking comparison will be identified by the Supplier in accordance with paragraph 3.4 for agreement with the Authority (such agreement not to be unreasonably withheld or delayed).

3.4 The Benchmark Data should be such that it would provide a reasonable basis for determining how the RSP 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 relevant Regulatory Body (as at the Effective Date, Ofcom) 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 Wholesale Access Prices under this Contract against the Benchmark Data;

3.5.2 justify and provide evidence for any deviation of the RSP 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 RSP 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 time timescale agreed pursuant to paragraph 3.2, noting that the Wholesale Access Prices Benchmarking report must be provided within five (5) 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:
 - 4.1.1 identifies RSP Wholesale Access Prices that are higher or lower than the Benchmark Data; and
 - 4.1.2 there is no applicable reasonable justification for the deviation, the Authority may:
 - (a) request the Supplier to provide further evidence or justification for the deviation between the RSP Wholesale Access Prices and the Benchmark Data;
 - (b) require that the Supplier reviews and adjusts the Project Wholesale Access Prices to better align with the Benchmark Data, taking into account any justifiable basis for deviation; and/or
 - (c) report such deviation to the Department for Culture, Media and Sport (or any successor body).
- 4.2 Where pursuant to paragraph 4.1.2(b) above an adjustment is to be made to the Project Wholesale Access Prices, this shall be implemented so that such prices replace the RSP Wholesale Access Prices which were the subject of the Wholesale Access Prices Benchmarking using the process provided in Schedule 5.3 (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 a request by the Authority pursuant to paragraph 4.1. Neither Party shall unreasonably withhold or delay agreement to such changes.
- 4.3 If the Supplier has been unwilling 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:
 - 4.3.1 notify the Secretary of State for Culture, Olympics, Media and Sport acting through the Department for Culture, Media and Sport (or any successor body); and/or

4.3.2 notify the Regulator and/or the European Commission of those circumstances.