

## **Schedule 6 – Network Adjustments**

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### **1. Introduction**

- 1.1 This Schedule sets out the terms that apply where a Customer places an Order for a Network Adjustment.

### **2. Definitions**

For the purposes of this Schedule the following terms shall have the meanings set out below:

"Self-Provide Order" means an Order for a Network Adjustment and where the Customer wants to do the work itself.

"Self-Provide Terms" means the supplemental terms which apply to a Self-Provide Order as set out in the Annex to this Schedule.

### **3. Network Adjustment Qualification**

- 3.1 The Customer may only submit an Order for a Network Adjustment where:
- (a) it has a valid and accepted Order for the Physical Infrastructure which is the subject of the request for a Network Adjustment; and
  - (b) it provides as part of the Order the information set out or referred to in the Product Description.
- 3.2 An Order for Network Adjustments may be rejected if any information is inaccurate, incomplete or incorrect or if it is a duplicate Order.
- 3.3 Prior to submitting any Order for a Network Adjustment, the Customer must have taken reasonable steps to use the Physical Infrastructure and have explored reasonable alternative options including alternative routes and engineering options using Good Industry Practice. The Customer shall provide such information and assistance as BT may reasonably require to confirm the exact nature and details of the Network Adjustment, the options and alternatives considered and the steps taken to attempt to use the Physical Infrastructure.
- 3.4 BT may refuse to accept an Order for Network Adjustments where:
- (a) the Customer is the subject of a breach notice and has failed to rectify the breach within the time period specified by BT in the breach notice; or

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- (b) BT does not reasonably believe the Network Adjustment meets the Network Adjustment Criteria; or
- (c) the Network Adjustment relates to an Order submitted prior to 1 April 2019.

### **4. Scope of Network Adjustments**

- 4.1 BT sets out in the Product Description a number of engineering scenarios and whether they may qualify as Network Adjustments.
- 4.2 BT will only accept an Order for Network Adjustments where it reasonably believes they meet the Network Adjustment Criteria and where they have or are reasonably expected to achieve permanent benefits to the Physical Infrastructure. Without prejudice to paragraph 6.1 below BT may provide a qualified acceptance using a Response Notice which is subject to conditions and if this occurs the acceptance will only apply and be valid where the Customer accepts the conditions and they are met within any time period specified by BT. The details of the conditional acceptance process (which will not apply to Self-Provide Orders) are set out in the Product Description.
- 4.3 Network Adjustments do not include any work which BT considers to be outside its current Physical Infrastructure footprint or which require new duct, new chambers or new poles unless, in the case of new poles, BT considers it necessary to resolve the issues referred to at paragraph 7.2(a) or (b) below.
- 4.4 Network Adjustments do not include:
  - (a) any work within a building; or
  - (b) any work to remove obstructions in, on or close to the Physical Infrastructure which are temporary in nature including the removal of silt, water, branches or foliage of any kind.

### **5. Orders for Adjustment Services**

- 5.1 If BT provides a Response Notice which accepts an Order for a Network Adjustment then the Customer may:
  - (a) submit an Order to BT for those Network Adjustment Services that BT confirms it will provide to enable the Network Adjustment; or
  - (b) submit a Self-Provide Order provided the Network Adjustment is something that BT allows the Customer to do itself as set out in the Product Description.

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- 5.2 The Customer may not submit an Order for Network Adjustment Services or a Self-Provide Order unless and until BT provides a Response Notice which accepts the Order for the Network Adjustment.
- 5.3 Any Self-Provide Order will be subject to the Self-Provide Terms.
- 5.4 Subject to paragraph 7 below the Customer will be liable for any and all charges arising from a Network Adjustment including any costs for work under a Self-Provide Order. BT will provide an estimate of those charges in the Response Notice but the actual charges may be higher provided that the process for the Customer to accept the increase in charges is set out in the Product Description. If the Customer fails to accept within the time period set out in the Product Description the increase in charges then BT will not complete the Network Adjustment Services and will leave the Site, reinstate and make good the BT Network provided that the Customer will remain liable for the charges incurred up to that point.
- 5.5 If BT provides a Response Notice which accepts an Order for a Network Adjustment then:
- (a) whilst BT may have considered the original Network Adjustment to be valid subsequent requirements for additional work including but not limited to additional duct blockages may result in the Network Adjustment for the additional work being rejected by BT (acting reasonably) on the basis the original work and the additional work now means it is no longer feasible and efficient to conduct the repair and BT will not be liable for any costs or charges in respect of the additional work relating to the Network Adjustment; and
  - (b) the Customer must confirm the Order it wants to place under paragraph 5.1 within five (5) Working Days of the date the Response Notice is sent to the Customer after which time the Response Notice will expire and if this occurs the Customer will need to re-submit a new Order for a Network Adjustment and the Customer will be liable to pay a Network Adjustment Verification Charge.

### **6. Network Adjustment Verification Charges**

- 6.1 If BT attends at a location to verify a Network Adjustment for the purposes of a Response Notice (including a conditional acceptance Response Notice under paragraph 4.2 above) and reasonably believes that:
- (a) works by the Customer fail to meet the Engineering Principles or safety requirements set out in this Agreement; or

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- (b) the Network Adjustment is unnecessary when assessed against the Network Adjustment Criteria

then in the case of (a) the Order will be suspended until BT is satisfied (acting reasonably) that the work has been rectified and in the case of (b) the Order will be rejected and in both cases the Customer will be liable to pay BT the relevant Network Adjustment Verification Charge as set out in the Openreach Price List.

- 6.2 If an Order for a Network Adjustment is rejected by BT and the Customer still wants to proceed with the work then it may, subject to the rules and process set out in the Product Description:

- (a) do the work itself at its cost and expense; or
- (b) place an Order for Services from BT to do the work

and the terms set out at paragraph 7 below will not apply.

- 6.3 The Customer will be liable to pay the Network Adjustment Verification Charge if it cancels or otherwise fails to complete a Self-Provide Order.

### **7. Network Adjustment Services Limits**

- 7.1 Subject to paragraph 7.3 BT will not charge for Network Adjustment Services unless the total amount of charges for the Network Adjustment Services in the Order exceeds the Network Adjustment Limit in which case BT will charge the Customer the amount in excess of the Network Adjustment Limit for providing such Network Adjustment Services for that Order.

- 7.2 BT will not charge the Customer for Network Adjustment Services which it considers are necessary:

- (a) to provide capacity on a Pole to facilitate the provision of a drop wire;
- (b) to replace a Defective Pole used for drop wires

provided that the Customer is and will remain liable for any charges to disconnect and re-connect Customer Apparatus on a Pole and on a Defective Pole.

- 7.3 Subject to paragraph 7.6 the Customer may only benefit from the Network Adjustment Limit where the Order which is the subject of the Network Adjustment:

- (a) is placed after 1 April 2019; and

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- (b) includes Spine Duct which in BT's reasonable opinion directly relates to the Network Adjustment.
- 7.4 The Network Adjustment Limit is based on the Customer's actual use of the Spine Duct. BT reserves the right to retrospectively amend the Network Adjustment Limit at any time and recover charges from the Customer based on the revised Network Adjustment Limit where the actual amount of Spine Duct comprised in the Build Completion Pack is less than the amount included in the original Order. If the Customer has declared Spine Duct in the Build Completion Pack which it has not actually used then notwithstanding any other term to the contrary any Network Adjustments which relate to that Build Completion Pack will be paid for in full by the Customer on demand from BT.
- 7.5 Subject to paragraph 7.13 if the Customer wants to deploy multiple cables up to the relevant Charging Point then the Network Adjustment Limit will be calculated once only and on the basis of the Customer's first use and installation in that item of Physical Infrastructure.
- 7.6 The Network Adjustment Limit (and, where relevant Project Funds) shall only be transferred as part of a novation in accordance with paragraph 4.5 (d) of Schedule 9 and where made pursuant to Clause 29.1(a) and subject to:
  - (a) BT's standard novation agreement;
  - (b) payment of BT's standard charges as set out in the Openreach Price List;
  - (c) BT issuing a Licence in respect of the relevant NOIs and/or project NOIs subject to the terms of the Agreement.
- 7.7 In the case of an Order for a Network Adjustment relating to Lead-in Duct, the Customer may only benefit from the Network Adjustment Limit where that Lead-in Duct is subsequent to an Initial Order and connected (directly or indirectly) to Spine Duct in that Initial Order.
- 7.8 BT reserves the right to recover from the Customer any costs or amounts incurred by it in respect of an order for a Network Adjustment if the Customer fails to use the Physical Infrastructure which was the subject of the Network Adjustment for the Permitted Use and/or provide a Build Completion Pack on or prior to the expiry of the Build Period.
- 7.9 Any miscellaneous charges (as set out in the Openreach Price List) that BT may incur relating to the Network Adjustment will be added to the charges payable by the Customer for the Network

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Adjustment and where there are sufficient amounts remaining deducted from the relevant Network Adjustment Limit.

7.10 For the purposes of this paragraph:

- (a) the "Network Adjustment Limit" is calculated by BT by multiplying the total kilometres of Spine Duct actually used by the Customer in an Order by four thousand seven hundred and fifty (£4,750). In the event that the amount of Spine Duct in an Order is less than one kilometre the Network Adjustment Limit will be subject to a pro rata calculation; and
- (b) "Initial Order" means an Order for Spine Duct which meets both of the requirements of paragraph 7.3 above.

7.11 Any calculation of distances for the purposes of paragraph 7.10(a) will be based on BT's records at the time of the Order and upon receipt of the Build Completion Pack.

7.12 The Customer may combine Network Adjustment Limits from multiple Orders (Project Funds) subject to the terms, process and rules set out in the Product Description.

7.13 If the Customer submits an Order for a Network Adjustment that relates to installation of a subsequent cable up to the relevant Charging Point then irrespective of whether the Customer holds any Path to Collaboration status or otherwise BT reserves the right to conduct a physical survey to verify the Network Adjustment and if the item of Physical Infrastructure has already been the subject of a Self-Provide Order from the Customer, then the time to verify for the purposes of Schedule 7 will be increased from five (5) Working Days to ten (10) Working Days.

### **8. Cancellation**

8.1 If the Customer cancels a Network Adjustment after the point of no cancellation then it will be liable to pay as compensation:

- (a) for overhead the Verification Charges together with any other costs that BT incurs in respect of the Network Adjustment (such costs not to exceed the charges for the Network Adjustment); and
- (b) for underground the charges for the Network Adjustment.

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### Annex

#### Self-Provide Order Terms

#### **1. Introduction**

1.1 The terms set out in this Annex apply where:

- (a) a Customer places an Order for a Network Adjustment;
- (b) that Order is accepted by BT; and
- (c) the Customer is authorised by BT to provide the Network Adjustment Services itself.

1.2 BT will only be liable to pay the Customer for a Self-Provide Order where the Network Adjustment is in BT's reasonable opinion subject to and at or below the relevant Network Adjustment Limit as set out in paragraph 7 of this Schedule.

1.3 The Customer must comply with any reasonable requirements from BT relating to Self-Provide Orders as set out in the Product Description.

1.4 Self-Provide Orders will not be available for some Network Adjustments including the replacement of a Defective Pole and the removal of redundant BT cables. Details of those Network Adjustments which will not qualify for Self-Provide Orders are set out in the Product Description.

#### **2. Self-Provide Orders**

2.1 If BT provides a Response Notice which accepts an Order for a Network Adjustment then it will provide to the Customer information to enable it to submit a Self-Provide Order pursuant to paragraph 5.1(b) of this Schedule including:

- (a) the Not to Exceed Amount;
- (b) the method the Customer must adopt to provide the Network Adjustment; and
- (c) the date by which the Customer must complete the Network Adjustment subject to the Customer's ability to amend the date pursuant to paragraph 2.5 below.

2.2 The Not to Exceed Amount may be varied by written agreement subject to the process set out in the Product Description but any varied amount will never be higher than the relevant Network Adjustment Limit. If BT attends at a Site due to a request by the Customer to vary the Not to

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Exceed Amount but finds that the work is unnecessary then BT reserves the right to apply the relevant Network Adjustment Verification Charges as set out in the Openreach Price List.

- 2.3 BT reserves the right acting reasonably to reject any Self-Provide Order where the Customer has failed to comply with paragraphs 2.6 or 3.1 below in respect of previous Self Provide Orders provided such issues have been brought to the attention of the Customer by BT and the Customer has failed to rectify such issues.
- 2.4 Subject to paragraph 2.5 below if the Customer fails to complete or complete in accordance with paragraph 2.6(d) any work which is the subject of a Self-Provide Order by the date referred to in paragraph 2.1(c) of this Annex then BT reserves the right to complete the work at the Customer's cost and expense up to the relevant Not to Exceed Amount and the Network Adjustment Limit will not apply to this work.
- 2.5 BT will be prepared to amend the date referred to in paragraph 2.1(c) ("Self-Provide Date") where the Customer provides written notice prior to the Self-Provide Date to explain that it is subject to circumstances substantially similar to those set out in Schedule 7, paragraph 3.3 (amend the CCD) and subject to the process set out in the Product Description.
- 2.6 The Customer will ensure that when conducting any work pursuant to a Self-Provide Order it will:
- (a) comply with the terms of the Agreement including but not limited to training and accreditation as set out at Schedule 3;
  - (b) obtain any necessary permissions, consents or wayleaves;
  - (c) makes clear to relevant third parties including in any discussions with or submissions to any local or highways authority, land owner or planning department that it is doing the work or is having the work done on its behalf; and
  - (d) do the works in accordance with Good Industry Practice and the Engineering Principles and any other standards referred to in or from the Product Description.

### **3. Completion of the Self-Provide**

- 3.1 Once the Customer completes the works the subject of the Self-Provide Order it shall provide to BT:
- (a) the Highways reference for the work



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- (b) full details of the work done to provide the Network Adjustment;
- (c) full details of the charges;
- (d) full details of the location;
- (e) Photographic Evidence both before and after the work;
- (f) engineering drawing to the standard set out in the Product Description; and
- (g) such information and assistance as BT may reasonably require to verify the work and the standard to which it has been carried out.

3.2 BT will not be liable to pay for any Self-Provide Order if the Customer fails to provide to BT the information and/or assistance referred to in paragraph 3.1 above within a maximum period of:

- (a) six (6) calendar months from the date it submitted the Order for the Network Adjustment (or where the Customer is unable to supply the information and/or assistance within this period such adjusted period as may be agreed in writing between the parties (both parties acting reasonably and in good faith)); or
  - (b) prior to the expiry of the Build Period
- whichever is sooner.

### **4. Charges for Self – Provide Orders**

4.1 The Customer may only invoice for the work the subject of a Self-Provide Order where it has completed the work in accordance with the Agreement and when it has provided a Build Completion Pack for the entire Order which was the subject of the Network Adjustment as set out in Schedule 5. The Customer must submit the invoice in accordance with the process and to include the information both of which are set out in the Product Description.

4.2 BT reserves the right to withhold reasonable and proportionate amounts due to the Customer in respect of a Self-Provide Order if the work does not meet the terms of this Agreement.

4.3 The maximum BT will pay for any Self-Provide Order is the lower of the Not to Exceed Amount or the amounts remaining in the relevant Network Adjustment Limit.

4.4 BT reserves the right to cancel and will not be liable to pay for any Self-Provide Order if the Order/NOI is cancelled by the Customer and/or by BT pursuant to paragraph **Error! Reference source not found.** of Schedule 5.

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