

# Guidance Note 2

## Openreach and BT Trading

April 2019

# Summary

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## This Guidance Note sets out key trading principles that underpin the relationship between BT Group and Openreach

The Openreach LoB remains a BT Line of Business.

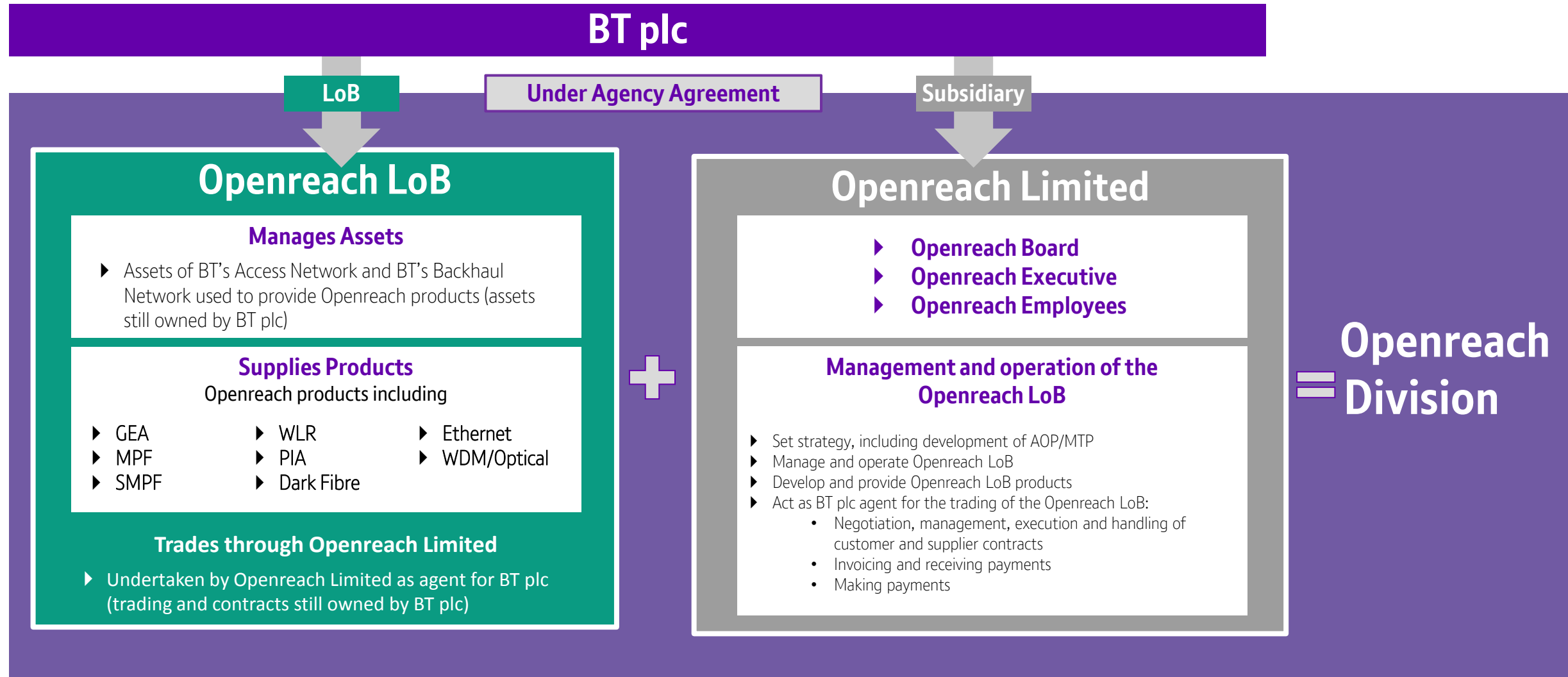
Openreach Limited is a wholly owned subsidiary of British Telecommunications plc (BT plc).

Openreach Limited will:

- > Manage the relationship with the Openreach LoB's customers on behalf of BT (but Openreach customers have the right to be account-managed by another Line of Business if they want to)
- > Manage & operate the Openreach LoB network and other Openreach LoB assets on behalf of BT
- > Manage the relationship with the Openreach LoB's suppliers on behalf of BT
- > Employ and manage the Openreach Limited workforce

BT is the owner of the Openreach LoB's assets, networks and trading. BT owns all contracts. BT is the economic Principal and Openreach Limited is the Agent.

# Overview of relationships between Openreach LoB, Limited and Division



# Key Trading Principles in the Commitments

Commitments sections

6:Strategy

7: Openreach Employees

9A: Openreach assets

9B: Openreach Trading

11: Customer Consultation Process

14: Supply of services by BT

16: Openreach LoB branding

## BT delegates all management, operational and trading matters relating to the Openreach Division to Openreach Limited including

- Setting strategy for the Openreach Division (taking account of the overall BT strategic framework)
- The employment of people working for Openreach Limited
- Managing/operating Openreach LoB assets
- Managing/operating Openreach LoB customer and supplier relationships and trading
- Managing the Openreach Limited customer consultation process.

## The relationship between BT and Openreach Limited

- Openreach Limited can use support services from any part of BT or its agents/sub-contractors
- The Openreach brand shall not use the words “BT” or “British Telecom”
- BT’s regulatory financial statements will separately show the Openreach Division financial results
- BT has step-in rights to deal with certain exceptional incidents (e.g. terrorist attack or at Ofcom’s insistence).

# Key Trading Principles in the ASA (1)

ASA sections

A3:  
Services

A4:  
Service levels

A9.2  
Intellectual property rights

A3.1(e):  
Services

A13.2:  
Conduct of claims

## Openreach Limited will provide these services to BT Group

- Strategic direction of the Openreach Division within the overall BT strategic framework
- Development/provision of Openreach products (as defined in the Commitments)
- Maintaining/removing/replacing/building all Openreach Assets (such as network equipment)
- Operate BT shared assets if they are used for the provision of the Openreach products and services
- Enter into authorised partnership agreements with CPs for the purpose of building network assets
- Managing Openreach Limited employees and contractors (including employment/termination/training/payment of salaries etc.)
- Obtaining and maintaining (on behalf of BT) license/permissions/authorisations/consents/wayleaves and permits required to operate the Openreach Division.

## Openreach acting as agent of BT will manage the trading of the Openreach LoB, including

- Negotiating, managing, signing and handling of customer and supplier contracts
- Invoicing Openreach LoB's customers (via BT billing shared service)
- Receiving/processing/making payments in accordance with BT Treasury policies and procedures
- Acting as paying agent for BT where Openreach Limited makes payments to relevant counterparties
- Conducting confidential CP negotiations
- Handling Openreach LoB's customer service and complaints
- Handling customer claims arising in the normal course of business (see Contracts section).

# Key Trading Principles in the ASA (2)

ASA sections

3.4:  
Services

5:  
Agency

4:  
Service Levels

13:  
Conduct of Claims

Governance Protocol  
sections

A3.8:  
Openreach Board

A2.3  
AOP/MTP

## Contracts

- Openreach employees who agree to contract as an agent for BT, will include wording in the contract to that effect; and use a script to explain the arrangements to third parties
- Openreach Limited is not allowed to enter into customer/supplier/partnership agreements in its own name (except with employees/contractors).

## Claims

In the event of a third party claim against BT (in relation to Openreach), BT has the right to take over the proceedings/negotiations. This right does not apply to customer/supplier claims received by Openreach in the normal course of business. These claims will be handled by Openreach as agent for BT except where:

- they need to be reported to BT comply with its legal, financial, fiduciary and regulatory obligations or as a result of Openreach Limited's obligation to comply with the BT-wide policies on statutory accounting and the BT Group Risk Policy
- the claim may lead to litigation (in which Openreach Limited will comply with the BT Governance Policies on legal proceedings and competition/regulatory complaints and disputes)
- the claim might change the Annual Operating Plan and/or Medium Term Plan which require Group CEO/CFO approvals or BT Group plc board approval, or may constitute a detrimental variation in the revenue, EBITDA, capex or cash flow of the Openreach Division which will require a Planned Action under clause 3.8 of the Governance Protocol.

## SLAs/Compliance – Openreach Limited must ensure Services are provided within generally accepted standards and in compliance with:

- Any relevant regulatory obligations
- BT-wide policies relating to customer and supplier contracts, IP and statutory accounting
- BT Governance Policies and the BT Group Risk Policy, including policies in relation to BT business principles (The BT Way), data protection, gift and hospitality, procurement and commitment to expenditure, security and vendor management
- And Openreach Executives act in accordance with the Governance Protocol.

# Key Trading Principles in the ASA (3)

ASA sections

A6:  
Costs & Funding

A7: Openreach  
Assets & Trading

A8.2:  
Code Powers

A9: Intellectual Property  
Rights

A10.3: Shared & Support  
Services

A15:  
Audit

## Costs and Funding

- BT will fund Openreach Limited's costs and expenses in providing the Services under the ASA, provided that they are incurred in-line with BT policies and the AOP and MTP
- Openreach Limited will not charge BT any management fee or remuneration for the services provided under the ASA

## Openreach Assets and Trading (Current and Future)

- BT retains ownership of all assets, rights and interests (tangible and intangible) such as network equipment, software, systems, databases in respect of the Openreach LoB
- BT retains all economic risk and reward of that business
- BT retains the legal relationship with all third parties in respect of any Openreach LoB contracts
- Openreach Limited is not entitled to acquire or dispose of any assets or liabilities for its own account

## Other BT Rights

- Code Powers (Electronic Communications Code – to construct infrastructure and take rights over private land)
- Intellectual Property Rights (all contracts are legally owned by BT) but BT grants Openreach Limited a royalty-free, non-transferable, non-exclusive licence to use the Openreach software
- The sole conduct of the tax affairs of Openreach Limited
- Audit rights over Openreach Division's activities carried out under the ASA

# Key Trading Principles: The ASA (4)

ASA sections

A11:  
Monitoring & Reporting

## Openreach Reporting

- Provide reports to BT on Openreach Limited performance as required
- Attend meetings to review and discuss Openreach Limited's performance
- Keep records relating to the performance of the Services (and achievement of the SLA)
- Keep records of all additions/disposals and maintenance of the Openreach LoB Assets





openreach

