

## A2. Notification of Ofcom's decision to set a general condition and modify existing Conditions

### Notification setting a general condition and modifying existing general conditions under section 48(1) of the Communications Act 2003

#### Background

- A. On 22 July 2003, the Director General of Telecommunications published a notification setting the General Conditions of Entitlement which took effect on 25 July 2003. Since then, Ofcom has modified the General Conditions of Entitlement on several occasions and set new conditions.
- B. On 2 August and 20 December 2016, Ofcom published notifications under sections 48(1) and 48A(3) of the Act setting out proposals to revoke the General Conditions of Entitlement and to set new general conditions under section 45 of the Act.
- C. On 19 September 2017, Ofcom published a statement setting out its decision to revoke the General Conditions of Entitlement and to make the Revised General Conditions. The General Conditions of Entitlement will cease to apply on 1 October 2018 and the Revised General Conditions will enter into force on that date. The statement included a notification under section 48(1) of the Act giving effect to those decisions.
- D. On 24 March 2017, meanwhile, Ofcom published a notification under section 48A of the Act (the "Section 48A Notification") setting out its proposals for setting a new general condition and modifying other provisions of the (then) proposed Revised General Conditions. Ofcom's reasons for making those proposals, and their effect, were set out in the accompanying consultation document.
- E. Ofcom stated in the Section 48A Notification that it considered its proposals complied with the requirements of sections 45 to 49C of the Act, to the extent they applied, and that its proposals were not of EU significance pursuant to section 150A(2) of the Act.
- F. Ofcom invited representations about any of the proposals set out in the Section 48A Notification by 5 June 2017 and a copy of that notification was sent to the Secretary of State in accordance with section 48C(1) of the Act.
- G. By virtue of sections 48A(6) and (7) of the Act, Ofcom may give effect to the proposals set out in the Section 48A Notification, with or without modifications that appear to it to be appropriate, where it has:

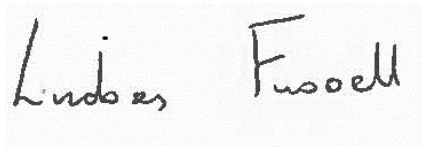
- a. considered every representation about the proposals that is made to it within the period specified in the Section 48A Notification; and
  - b. had regard to every international obligation of the United Kingdom (if any) which has been notified to it for this purpose by the Secretary of State.
- H. Ofcom received responses to the section 48A Notification and, in accordance with section 48A(6) of the Act, has considered every representation made in them in respect of its proposals.
- I. The Secretary of State did not notify to Ofcom any international obligation of the United Kingdom for the purpose of section 48A(6) of the Act.

## Decision

1. In accordance with sections 45, 48(1) and 48A(7) of the Act, Ofcom has now decided to set a new general condition and to modify the Revised General Conditions as set out below.
2. The new general condition will enter into force on 1 June 2018 and take effect until 1 October 2018 as General Condition 24 in the General Conditions of Entitlement, as set out in Schedule 1 to this notification. From 1 October 2018, it will be in force as General Conditions C2.16 to C2.19, as set out in Schedule 2 to this notification.
3. The modifications to the Revised General Conditions set out in Schedules 3 and 4 will enter into force on 1 October 2018.
4. Ofcom's reasons for making these decisions, and their effects, are set out in the explanatory statement accompanying this notification.
5. Ofcom considers that the decisions comply with the requirements of sections 45 to 49C and 51 of the Act, to the extent they apply.
6. In making the decisions, Ofcom has considered and acted in accordance with its general duties under section 3 of the Act and the six Community requirements set out in section 4 of the Act.
7. Ofcom has sent copies of this notification and the accompanying explanatory statement to the Secretary of State in accordance with section 48C(1) of the Act.
8. In this notification:
  - a. **"the Act"** means the Communications Act 2003;
  - b. **"General Conditions of Entitlement"** means the general conditions set under section 45 of the Act by the Director General of Telecommunications on 22 July 2003, as amended from time to time;
  - c. **"Ofcom"** means the Office of Communications; and

- d. **“Revised General Conditions”** means the general conditions set under section 45 by Ofcom on 19 September 2017, which will enter into force on 1 October 2018.
9. Words or expressions shall have the meaning assigned to them in this notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purposes of interpreting this notification:
- a. headings and titles shall be disregarded; and
  - b. the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament.
11. Schedules 1, 2, 3 and 4 to this notification form part of it.

Signed by

A handwritten signature in black ink that reads "Lindsey Fussell". The signature is written in a cursive style and is positioned above a light grey rectangular background.

**Lindsey Fussell**

**Group Director - Consumer**

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

10 November 2017

## SCHEDULE 1

1. The following new general condition shall be inserted into the General Conditions of Entitlement as General Condition 24:

### “Transparency requirements in relation to SME Customers

#### Scope

- 24.1 This Condition applies to any Communications Provider who provides Fixed Voice or Other Fixed-Line Services and/or Broadband Services to SME Customers, each of whom is a ‘Regulated Provider’ for the purposes of this Condition.

#### Transparency

- 24.2 A Regulated Provider must publish the following information in respect of any standard form contract it offers to SME Customers (whether exclusively or amongst others) for Fixed Voice or Other Fixed-Line Services and/or Broadband Services:
  - (a) the Service Level Agreements (if any) that apply:
    - (i) in relation to the Regulated Provider activating the service(s) on the date confirmed to a SME Customer and in the event of the Regulated Provider failing to do so;
    - (ii) in the event of a Loss of Service; and
    - (iii) in relation to the Regulated Provider keeping a pre-agreed appointment to attend the SME Customer’s premises and in the event of the Regulated Provider (or its supplier) failing to do so;
  - (b) the Service Level Guarantee (if any) that applies for each of the events listed in paragraph 24.2(a);
  - (c) if applicable, the fact that no Service Level Agreement and/or Service Level Guarantee applies in relation to an event listed in paragraph 24.2(a); and
  - (d) if applicable, the fact that a Service Level Agreement and/or Service Level Guarantee may be available in relation to an event listed in paragraph 24.2(a), but that the exact terms are subject to individual negotiation between the Regulated Provider and a SME Customer.
- 24.3 The Regulated Provider must publish the information referred to in paragraph 24.2 in plain English, in an easily accessible and reasonably prominent manner on its website (or, where there is no such website, in such manner and form as directed by Ofcom).

## Provision of information

- 24.4 When a SME Customer enters into a contract of a kind offered by the Regulated Provider to SME Customers (whether exclusively or amongst others) for a Fixed Voice or Other Fixed-Line Service and/or Broadband Service (whether on the basis of a standard form or a bespoke contract), the Regulated Provider must provide the SME Customer, free of charge, with the information described in paragraph 24.2(a) to (c) (or the applicable information about each of those matters in relation to a bespoke contract) in respect of that contract.
- 24.5 The Regulated Provider must provide the information referred to in paragraph 24.4 in a Durable Medium that is separate and distinct from the SME Customer's contract.

## Definitions

- 24.6 For the purposes of this condition:

**'Access Network'** has the same meaning as in General Condition 22 (see paragraph 22.30(b));

**'Broadband Service'** means any service which is capable of supporting an always-on connection at a fixed location that provides data at speeds greater than a dial-up connection, including all DSL (including FTTC) services, FTTP services and services provided over a Cable Network, but excluding any Leased Lines Service;

**'Fibre-To-The-Premises'** or **'FTTP'** means an Access Network consisting of optical fibre extending from the local access node to a Network Termination Point;

**'Leased Line Service'** means the provision of dedicated point-to-point transmission capacity;

**'Loss of Service'** means:

- (a) in relation to a Fixed Voice or Other Fixed-Line Service, where:
- (i) the SME Customer is unable to make an outgoing call or to receive an incoming call; or
  - (ii) where the service only allows for one-way transmission;
- (b) in relation to a Broadband Service, where the SME Customer is unable to access the public internet,

in each case as a result of a planned or unplanned change in the operation of the Electronic Communications Network(s) (and/or elements of that network or networks) provided by the customer's Communications Provider or used by it to provide its services, including any failure of equipment;

**'Fixed Voice or Other Fixed-Line Service'** is a service provided at a fixed location that allows for:

- (i) the transfer of speech communications; and/or
- (ii) other forms of communications such as facsimile and data, up to a speed of 64 kbit/s,

including a service provided over a Cable Network, but excluding any Leased Lines Service;

**'Service Level Agreement'** means the service quality levels offered by a Communications Provider under a contract;

**'Service Level Guarantee'** means the compensation payable under a contract if the Communications Provider fails to meet a Service Level Agreement; and

**'SME Customer'** means, in relation to a Communications Provider, a Customer of that provider which is an undertaking for which fewer than two hundred and fifty (250) individuals work (whether as employees or volunteers or otherwise)."

## SCHEDULE 2

The following new provisions shall be inserted into General Condition C2 in Part C ('Consumer Protection Conditions') of the Revised General Conditions.

### C2 Information publication and transparency requirements

1. The following provisions shall be inserted into Condition C2 after Condition 2.15:

#### "Transparency requirements in relation to SME Customers

C2.16 In addition to any information required under **Condition C2.3**, a **Regulated Provider** must publish the following information in respect of any standard form contract it offers to **SME Customers** (whether exclusively or amongst others) for **Fixed Voice or Other Fixed-Line Services** and/or **Broadband Services**:

- (a) the **Service Level Agreements** (if any) that apply:
  - (i) in relation to the **Regulated Provider** activating the service(s) on the date confirmed to a **SME Customer** and in the event of the Regulated Provider failing to do so;
  - (ii) in the event of a **Loss of Service**; and
  - (iii) in relation to the **Regulated Provider** (or its supplier) keeping a pre-agreed appointment to attend the **SME Customer's** premises and in the event of the Regulated Provider (or its supplier) failing to do so;
- (b) the **Service Level Guarantee** (if any) that applies for each of the events listed in **Condition C2.16(a)**;
- (c) if applicable, the fact that no **Service Level Agreement** and/or **Service Level Guarantee** applies in relation to an event listed in **Condition C2.16(a)**; and
- (d) if applicable, the fact that a **Service Level Agreement** and/or **Service Level Guarantee** may be available in relation to an event listed in **Condition C2.16(a)**, but that the exact terms are subject to individual negotiation between the **Regulated Provider** and a **SME Customer**.

C2.17 The **Regulated Provider** must publish the information referred to in **Condition C2.16** in plain English, in an easily accessible and reasonably prominent manner on its website (or, where there is no such website, in such manner and form as directed by **Ofcom**).

C2.18 When a **SME Customer** enters into a contract of a kind offered by the **Regulated Provider** to **SME Customers** (whether exclusively or amongst others) for a **Fixed Voice or Other Fixed-Line Service** and/or **Broadband Service** (whether on the basis of a standard form or a bespoke contract), the **Regulated Provider** must provide the **SME Customer**, free of charge,

with the information described in **Condition** C2.16(a) to (c) (or the applicable information about each of those matters in relation to a bespoke contract) in respect of that contract.

C2.19 The **Regulated Provider** must provide the information referred to in **Condition** C2.18 in a **Durable Medium** that is separate and distinct from the **SME Customer's** contract.”



## SCHEDULE 3

The following modifications shall be made to Condition C2 of the Revised General Conditions.

1. In Condition C2, the following sentence shall be added to the end of the introductory recital:

“The condition also requires information to be made available to small and medium-sized business customers about the levels of service offered to them and the payment of compensation for certain failures in service quality.”

2. Condition C2.1 shall be replaced with the following:

“The provisions of this **Condition** apply as follows:

- (a) **Conditions** C2.2 to C2.15 apply to all providers of **Public Electronic Communications Networks** and/or **Public Electronic Communications Services**; and
- (b) **Conditions** C2.16 to C2.19 apply to any **Communications Provider** who provides **Fixed Voice or Other Fixed-Line Services** and/or **Broadband Services** to **SME Customers**,

and each person to whom a provision applies is a ‘**Regulated Provider**’ for the purposes of that provision.”

3. Condition C2.12 shall be modified by the replacement of “Where” at the start of its opening sentence with:

“Other than information to which **Condition** C2.16 to C2.19 applies, where”

4. Condition C2.13 shall be modified by the replacement of “this **Condition**” where that phrase appears with “**Conditions** C2.2 – C2.12 and C2.14”.

## SCHEDULE 4

1. In the 'Definitions' section of the Revised General Conditions, each of the following new definitions shall be inserted in the appropriate alphabetical place:

“**Broadband Service**’ means any service which is capable of supporting an always-on connection at a fixed location that provides data at speeds greater than a dial-up connection, including all DSL (including FTTC) services, **FTTP** services and services provided over a **Cable Network**, but excluding any **Leased Lines Service**;

‘**Fibre-To-The-Premises**’ or ‘**FTTP**’ means an **Access Network** consisting of optical fibre extending from the local access node to a **Network Termination Point**;

‘**Leased Line Service**’ means the provision of dedicated point-to-point transmission capacity;

‘**Loss of Service**’ means:

- (a) in relation to a **Fixed Voice or Other Fixed-Line Service**, where:
  - (i) the **Customer** is unable to make an outgoing call or to receive an incoming call; or
  - (ii) where the service only allows for one-way transmission;
- (b) in relation to a **Broadband Service**, where the **Customer** is unable to access the public internet,

in each case as a result of a planned or unplanned change in the operation of the **Electronic Communications Network(s)** (and/or elements of that network or networks) provided by the customer’s **Communications Provider** or used by it to provide its services, including any failure of equipment;

‘**DSL Broadband Service**’ means any DSL (including FTTC) service which is capable of supporting an always-on connection at a fixed location that provides data at speeds greater than a dial-up connection, excluding services provided over a **Cable Network**;

‘**Fixed Voice or Other Fixed-Line Service**’ is a service provided at a fixed location that allows for:

- (i) the transfer of speech communications; and/or
- (ii) other forms of communications such as facsimile and data, up to a speed of 64 kbit/s,

including a service provided over a **Cable Network**, but excluding any **Leased Lines Service**;

‘**Service Level Agreement**’ means the service quality levels offered by a **Communications Provider** under a contract;

**'Service Level Guarantee'** means the compensation payable under a contract if the **Communications Provider** fails to meet a **Service Level Agreement**;

**'SME Customer'** means, in relation to a **Communications Provider**, a **Customer** of that provider which is an undertaking for which fewer than two hundred and fifty (250) individuals work (whether as employees or volunteers or otherwise);"

2. In each place in the 'Definitions' section of the Revised General Conditions where it appears, **"Broadband Service"** shall be replaced with **"DSL Broadband Service."**
3. In each place in **Condition C7** where it appears, **"Broadband Service"** shall be replaced with **"DSL Broadband Service."**