

Annex 1

Modifications under sections 45(10)(e) and 48(1) of the Communications Act 2003 (the “Act”) of SMP conditions contained in Ofcom’s notification under sections 48 and 79 of the Act of 18 March 2021, and under section 49(1) of the Act and SMP condition 10 of Direction 4 Transparency and publication of KPIs (MPF and GEA services) contained in the notification under section 49 of the Act of 18 March 2021 regarding quality of service

Background

1. On 18 March 2021, Ofcom published a statement entitled “Promoting competition and investment in fibre networks: Wholesale Fixed Telecoms Market Review 2021-2026” (the “WFTMR Statement”). The WFTMR Statement set out Ofcom’s conclusions on its review of wholesale fixed telecoms markets by identifying markets, making certain market power determinations and setting SMP services conditions (including charge control conditions) (“SMP conditions”). At Volume 7 of the WFTMR Statement Ofcom published (among other things) the following notifications:
 - a. In a notification under sections 48 and 79 of the Act made on 18 March 2021 (the “SMP Conditions Notification”), Ofcom identified the markets, made the market power determinations and set the SMP Conditions under section 45 of the Act as set out in Schedule 1 to that notification. These included SMP Conditions 2.12, 5.3, 7.7 and 7.8, 8.7, 12A, 12B, 12C, 12D, 12E, 12F, 12G and 12I;
 - b. In a notification under section 49 of the Act and SMP Condition 10 made on 18 March 2021 (the “QoS Notification”), Ofcom gave directions relating to quality of service, including Direction 4 Transparency and publication of KPIs (MPF and GEA services) (“QoS Direction 4”).
2. Ofcom’s reasons for setting the SMP Conditions referred to above and giving QoS Direction 4 were contained in the WFTMR Statement.
3. Copies of the SMP Conditions Notification and the QoS Notification were sent to the Secretary of State in accordance with sections 48C(1), 49C(1) and 81(1) of the Act.
4. Since publication of the WFTMR Statement, Ofcom has become aware of certain inadvertent errors and inconsistencies between the SMP Conditions and QoS Direction 4 noted above and the

stated policy decided in the WFTMR Statement, and other typographical and cross referencing errors in the SMP Conditions and QoS Direction 4.

Decision to modify certain SMP Conditions and QoS Direction 4

5. As a result, Ofcom considers it necessary to modify:
 - a. the SMP Conditions set in the SMP Conditions Notification referred to in paragraph 1(a) above to make specified corrections; and
 - b. QoS Direction 4 to correct paragraph 4 of Schedule 1 and paragraphs 1 and 2 of Schedule 2.

The modified SMP Conditions and the relevant paragraphs of QoS Direction 4 are set out in the Schedule to this notification. These modified SMP Conditions and paragraphs of QoS Direction 4 replace the corresponding SMP Conditions and paragraphs of QoS Direction 4 set out in the SMP Conditions Notification and the QoS Notification.

6. The modifications referred to in paragraph 5 are made under the following powers:
 - a. the modifications of the SMP Conditions, under powers set out in sections 45(10)(e) and 48(1) of the Act; and
 - b. the modifications of QoS Direction 4, under section 49 of the Act and SMP Condition 10.
7. The modifications shall take effect from 1 April 2021. Section 4 of the Interpretation Act 1978 (c. 30) shall apply as if these modifications of the SMP Conditions and relevant paragraphs of QoS Direction 4 were a commencement of an enactment by an Act of Parliament.

Ofcom's duties and legal tests

8. Ofcom considers that the modifications set out in this notification meet the tests contained in sections 47(2) and 49(2) of the Act (as applicable) in that they are objectively justifiable, not unduly discriminatory, proportionate and transparent.
9. Ofcom considers that these modifications will not have a significant impact on the relevant market (and other markets for any of the services, facilities, apparatus or directories in relation to which Ofcom have functions) and therefore the processes in sections 48A and 49A of the Act do not apply.
10. As required by section 86(4) of the Act, Ofcom is satisfied that there has not been any material change in the markets identified since each SMP Condition which Ofcom is modifying was set.

11. In making all of the decisions referred to in this notification, Ofcom has considered and acted in accordance with its general duties set out in section 3 of the Act and the six requirements in section 4 of the Act.
12. In making the decisions referred to in this notification, Ofcom has also had regard to the Statement of Strategic Priorities for telecommunications, the management of radio spectrum, and postal services designated by the Secretary of State for Digital, Culture, Media and Sport for the purposes of section 2A of the Communications Act 2003 on 29 October 2019.
13. A copy of this notification has been sent to the Secretary of State under sections 48C and 49C of the Act.

Interpretation

14. For the purpose of interpreting this notification:
 - a. except in so far as the context otherwise requires, words or expressions have the meaning assigned to them in paragraph 15 below, and otherwise any word or expression has the same meaning as it has in the Act;
 - b. headings and titles shall be disregarded;
 - c. expressions cognate with those referred to in this notification shall be construed accordingly; and
 - d. the Interpretation Act 1978 shall apply as if this notification were an Act of Parliament.
15. In this notification:
 - a. **“Act”** means the Communications Act 2003 (2003 c. 21);
 - b. **“BT”** means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 1159 of the Companies Act 2006;
 - c. **“Ofcom”** means the Office of Communications as established pursuant to section 1(1) of the Office of Communications Act 2002 (2002 c. 11);
 - d. **“QoS Notification”** means the notification described in paragraph 1(b) above; and
 - e. **“SMP Conditions Notification”** means the notification described in paragraph 1(a) above.

16. The Schedule to this notification shall form part of this notification.

Signed

A handwritten signature in black ink, appearing to read 'B. Potterill', with a long horizontal flourish extending to the right.

Brian Potterill

Director of Mobile Network Strategy

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

31 March 2021

Schedule 1 Modifications to the SMP Conditions in Schedule 1 to the SMP Conditions Notification and to Direction 4 in Schedule 4 to the QoS Notification

Modifications to SMP Conditions

Extract from Table 1: Relevant markets for the purposes of this Schedule

The supply of interexchange connectivity in BT+1 exchanges (IEC BT+1)	Condition 1.1, 1.3, 1.4, 1.9, 1.10, 2.1, 2.4, 2.8 for IEC DF Transition only, 2.10-2.11, 3, 4.1, 4.2, 5.1, 5.3 for IEC DF Transition only, 5.4-5.7, 5.9, 6.1, 6.3, 6.4, 7.1, 7.2, 7.6, 7.7-7.8 for IEC DF Transition only, 7.9-7.11, 7.13-7.18, 8.1, 8.3-8.5, 8.8-8.12, 9, 10, 11, 12E, 12F, 12G, 12H, and 12I.3-12I.12 for IEC DF Transition only
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Condition 2.12

2.12

In this Condition 2:

(IEC, LLA Area 3)

- (a) “**Continuous End to End Dark Fibre Access**” means network access comprising (i) either two Access Segments required under Condition 2.6 or one Access Segment required under Condition 2.6 together with an Access Segment connecting to an end user premises in LLA Area 2; and if applicable, (ii) one or more Backhaul Segments where each segment is required under Condition 2.5;

Condition 5.3

5.3

Where the Dominant Provider provides Dark Fibre Access or Continuous End to End Dark Fibre Access to itself under Conditions 2.5 to 2.8 as an input to

(IEC, IEC DF Transition, LLA Area 3) other forms of network access provided to Third Party Customers, the obligation under Condition 5.1 to provide network access on an Equivalence of Inputs basis shall not apply.

Conditions 7.7 and 7.8

7.7 (LLA Area 3, IEC, IEC DF Transition) Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider must ensure that a Reference Offer in relation to the provision of Dark Fibre Access pursuant to Conditions 1 and 2 (as applicable) includes, where applicable, at least the following details of maintenance and quality, and any other matters Ofcom may direct from time to time:

- (a) Service Level Commitments in respect of at least the following aspects of that service:
 - (i) completion of the provision of the service; and
 - (ii) fault repair times; and
- (b) Service Level Guarantees in respect of the Service Level Commitments specified in Condition 7.7 (a) above.

7.8 (LLA Area 3, IEC, IEC DF Transition) Subject to Condition 7.16, and to the extent not already required by Condition 7.2, the Dominant Provider shall ensure that a Reference Offer in relation to the provision of Dark Fibre Access pursuant to Conditions 1 and 2 (as applicable) includes an explanation of differences (if any) between:

- (a) the matters set out in Condition 7.2 which apply to the provision of Dark Fibre Access; and
- (b) the matters set out in Condition 7.2 which apply to the provision of the services corresponding to the optical fibre elements of each of the services made available pursuant to Conditions 2.4(a) and 2.4(b) above.

Condition 8.7

8.7

**(LLA Area 2, LLA
Area 3)**

In the case of an Access Change relating to the ECC Balancing Charge calculated in accordance with Condition 12G.12, an Access Change must also be sent 90 days after the end of each Financial Year.

Condition 12A – Physical Infrastructure Access Charge Control

12A.2A Except in so far as Ofcom may otherwise direct, in each Relevant Year the Dominant
(PI) Provider shall not charge more than £0 for each of the following services:

- (a) Customer Apparatus Cable Coil Hosting – small (per manhole);
- (b) Customer Apparatus Cable Coil Hosting – medium (per manhole);
- (c) Customer Apparatus Cable Coil Hosting – large (per manhole);
- (d) Customer Apparatus Cable Coil Hosting – small (per joint box);
- (e) Customer Apparatus Cable Coil Hosting – medium (per joint box);
- (f) Customer Apparatus Cable Coil Hosting – large (per joint box);
- (g) Customer Apparatus In-line Splice hosting and distribution joints (per manhole splice); and
- (h) Customer Apparatus In-line Splice hosting and distribution joints (per joint box splice).

12A.10 In this Condition 12A:

- (PI)**
- (a) “**Defective Pole**” means a pole that has been identified by the Dominant Provider as unsuitable for additional connections due to the pole being decayed, damaged or otherwise defective;
 - (b) “**Ducted Lead-in**” shall be construed as having the same meaning as ‘Simplified Underground PIA Lead in’, which is the definition and explanation of this service set out by the Dominant Provider on its website;¹
 - (c) “**Lead-in Duct**” means duct that connects, or is intended to connect, a distribution point to a Network Termination Point;
 - (d) “**PIA Adjustment Service**” means one of the PIA Adjustment Services listed in Section 1 of the Annex to this Condition 12A which is provided for the purposes of making adjustments to physical infrastructure, such adjustments being reasonably necessary for the provision of Physical Infrastructure Access in accordance with Conditions 1 and 2;

¹<https://www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=z75T9D0yfFKL0UorCMMA7OVMbA8c5ofXzFv23yZvBj9Z6rNZujnCs99NbIKJZPD9hXYmijxH6wrCQm97GZMyQ%3D%3D> which was accessed on 25 March 2021.

- (e) **“PIA Adjustment Limit”** has the meaning given to it in Condition 12A.5;
- (f) **“PIA Pole Adjustment Service”** means one of the PIA Pole Adjustment Services listed in Section 2 of the Annex to this Condition 12A which is provided for the purposes of making adjustments to physical infrastructure, such adjustments being reasonably necessary for the provision of Physical Infrastructure Access in accordance with Conditions 1 and 2;
- (g) **“PIA Order”** means:
 - (i) a request for Physical Infrastructure Access submitted to the Dominant Provider by a Third Party;
 - (ii) any subsequent request for Physical Infrastructure Access which has been accepted by the Dominant Provider and is linked to the initial request; and
 - (iii) any subsequent request for access to Lead-in Duct which facilitates the extension of the electronic communications network deployed using the Physical Infrastructure ordered under (i) and (ii); and
- (h) **“PIA Spine Duct”** means all duct other than Lead-in Duct.

Condition 12B — LLU charge control

12B.4 The Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12B.4 (a) to 12B.4(e) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in this Condition 12B.4:

(WLA Area 2, WLA Area 3)

- (a) for MPF SML1 Rental, not more than the amount of £85.98 in the First Relevant Year;
- (b) for MPF Single Migration, not more than the amount of £24.96 in the First Relevant Year;
- (c) for MPF Bulk Migration, not more than the amount of £18.25 in the First Relevant Year;
- (d) for MPF Standard Line Test, not more than the amount of £4.20 in the First Relevant Year; and
- (e) for MPF Cease, not more than the amount of £0 in each Relevant Year.

For the purposes of complying with this Condition 12B.4, for each of the services set out in Conditions 12B.4 (a) to 12B.4(e) (inclusive), the Dominant Provider must calculate the average charge for each such service during the First Relevant Year by employing the following formula:

$$\bar{p}_{i,t} = \sum_{j=1}^m (w_{i,j,t} p_{i,j,t})$$

Where:

m is the number of time periods during which there are distinct charges in effect in the Relevant Year;

j is a number from 1 to m for each of the m time periods during which a distinct charge is in effect;

$w_{i,j,t}$ is the proportion of the First Relevant Year in which each charge, $p_{i,j,t}$ is in effect, calculated by dividing the number of days during which the charge is in effect by 365.

$p_{i,j,t}$ is the charge for the specified period, j, during the Relevant Year t for the individual service, i.

In performing the calculation required by this Condition 12B.4, the Dominant Provider must exclude any discounts offered during the course of the First Relevant Year.

12B.11

**(WLA Area
3)**

The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than 30 November of each Relevant Year, the number of Homes passed with fibre in Area 3 as at 31 March of the Prior Year, excluding any homes that were funded by government subsidy.

Condition 12C – VULA charge control

12C.1

(WLA Area 2, WLA Area 3)

Subject to Condition 12C.4 and the exceptions set out in this Condition 12C.1 below, the Dominant Provider shall take all reasonable steps to secure that, at the end of each Relevant Year, the Percentage Change (determined in accordance with Condition 12C.6) in services set out in Conditions 12C.1(a) to 12C.1(n) (inclusive) is not more than the Controlling Percentage (as determined in accordance with Condition 12C.7):

- (a) the charge for FTTC 40/10 PCP Only Install Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(b) applies;
- (b) the charge for FTTC 40/10 Start of Stopped Line Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(c) applies;
- (c) the charge for VULA Migration, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(d) applies;
- (d) the charge for VULA Bandwidth Change, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(e) applies;
- (e) the charge for FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach does not have an active FTTC connection and no new requests for FTTC 40/10 Rental can be made in relation to the premises, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(f) applies;

- (f) [LEFT DELIBERATELY BLANK];
- (g) the charge for FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach has an active FTTC connection but no new requests for FTTC 40/10 Rental can be made in relation to the premises, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(h) applies;
- (h) the charge for 1 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(i) applies;
- (i) the charge for 10 Gbit Cablelink Connection, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(j) applies;
- (j) the charge for 1 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(k) applies;
- (k) the charge for 10 Gbit Cablelink Rental, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(l) applies;
- (l) the charge for Superfast Visit Assure, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(m) applies;

- (m) the charge for VULA Cease, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(n) applies; and
- (n) the charge for SOGEA 40/10 Rental, except for the First Relevant Year in relation to which the obligation specified in Condition 12C.2(o) applies.

12C.2

**(WLA
Area 2,
WLA
Area 3)**

Except in so far as Ofcom may otherwise direct, the Dominant Provider shall not charge more on average during the course of the First Relevant Year than the amount specified in Conditions 12C.2 (a) to 12C.2(o) (inclusive), where the average charge during the course of the First Relevant Year shall be calculated by employing the formula set out in Condition 12C.3:

- (a) for FTTC 40/10 Rental, the amount of £60.40;
- (b) for FTTC 40/10 PCP Only Install Connection, the amount of £47.17;
- (c) for FTTC 40/10 Start of Stopped Line Connection, the amount of £3.08;
- (d) for VULA Migration, the amount of £3.08;
- (e) for VULA Bandwidth Change, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, the amount of £5.63;
- (f) for FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach does not have an active FTTC connection and no new requests for FTTC 40/10 Rental can be made in relation to the premises, the amount of £99.17;

- (g) [LEFT DELIBERATELY BLANK];
- (h) for FTTP 40/10 Connection at a location at which that connection is to a premises where Openreach has an active FTTC connection but no new requests for FTTC 40/10 Rental can be made in relation to the premises, the amount of £0;
- (i) for 1 Gbit Cablelink Connection, the amount of £524.65;
- (j) for 10 Gbit Cablelink Connection, the amount of £1,049.29;
- (k) for 1 Gbit Cablelink Rental, the amount of £0;
- (l) for 10 Gbit Cablelink Rental, the amount of £0;
- (m) for Superfast Visit Assure, only where it relates to: (i) Copper-based Network Access services, or (ii) GEA-FTTP services at locations at which no Copper-based Network Access services are available, the amount of £130.91;
- (n) for VULA Cease, the amount of £0; and
- (o) for SOGEA 40/10 Rental, the amount of £146.38.

12C.11
(WLA Area
2, WLA
Area 3)

The Dominant Provider must record, maintain and supply to Ofcom in an electronic format, no later than five months after the end of each Relevant Year, the data necessary for Ofcom to monitor compliance of the Dominant Provider with this Condition 12C. The data must include:

- (a) pursuant to Condition 12C.6, the calculated Percentage Change relating to each service listed in Condition 12C.1;

- (b) all relevant data the Dominant Provider used in the calculation of the Percentage Change as set out in Condition 12C.6, including for each specific service;
- (c) all charges, excluding any discounts, published by the Dominant Provider from time to time during the Relevant Year and the Prior Year, including the dates and time periods during which they were in force;
- (d) the Relevant Year Weighted Average Charges and the Prior Year Weighted Average Charges for all of the services to which Condition 12C.6 applies and calculations thereof;
- (e) other data necessary for monitoring compliance with the charge control;
and
- (f) such data as Ofcom may from time to time direct.

The Dominant Provider must publish on its website a non-confidential version of the information provided under (a) to (e).

The information provided to Ofcom under (a) to (e) must be accompanied by a statement from a person independent from the Dominant Provider providing assurance on the data. This assurance shall be in the form of Agreed Upon Procedures. The statement provided to Ofcom by the person independent from the Dominant Provider shall set out the results of the tests carried out in order to give the Agreed Upon Procedures assurance.

12C.17

In this Condition 12C:

(WLA Area 2), WLA Area 3)

- (a) **“1 Gbit Cablelink Connection”** shall be construed as having the same meaning as the connection charge for ‘1 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (b) **“10 Gbit Cablelink Connection”** shall be construed as having the same meaning as the connection charge for ‘10 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (c) **“1 Gbit Cablelink Rental”** shall be construed as having the same meaning as the annual rental charge for ‘1 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (d) **“10 Gbit Cablelink Rental”** shall be construed as having the same meaning as the annual rental charge for ‘10 Gigabit GEA Cablelink (provides access to the Fibre-enabled customer base)’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (e) **“Charge Controlled Service”** means a service listed in Condition 12C.1 in respect of which the Dominant Provider imposes a charge on a Third Party (for the avoidance of doubt, a charge is imposed, including where a charge of £0 is imposed);
- (f) **“Controlling Percentage”** is to be determined in accordance with Condition 12C.7;

- (g) **“Excess Revenue”** means the difference between: (i) the revenue which the Dominant Provider earned in the Relevant Year from providing the services listed in Conditions 12C.1, as applicable; and (ii) the revenue the Dominant Provider would have earned in the Relevant Year from providing the services listed in Conditions 12C.1, as applicable if it had complied with Condition 12C.1;
- (h) **“FTTC”** means Fibre-to-the-Cabinet, an Electronic Communications Network consisting of optical fibre extending from the local access node to the street cabinet;
- (i) **“FTTC 40/10 Rental”** shall be construed as having the same meaning as ‘Up to 40Mbit/s downstream and up to 10Mbit/s upstream (including Simultaneous Provide)’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website;
- (j) **“FTTC 40/10 PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website , where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (k) **“FTTC PCP Only Install Connection”** shall be construed as having the same meaning as ‘PCP Only Install’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website, where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;

- (l) **“FTTC 40/10 Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website, where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (m) **“FTTC Start of Stopped Line Connection”** shall be construed as having the same meaning as ‘Start of Stopped Line’, which is the definition and explanation of its GEA – FTTC services set out by the Dominant Provider on its website, where the connection is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream, 55Mbit/s downstream and up to 10Mbit/s upstream or 80Mbit/s downstream and up to 20Mbit/s upstream;
- (n) **“FTTP 40/10 Connection”** shall be construed as having the same meaning as the connection charge for ‘Up to 40Mbit/s / 10Mbit/s "data product", which is the definition and explanation of its GEA – FTTP services set out by the Dominant Provider on its website;
- (o) **“Percentage Change”** has the meaning given to it in 12C.6;
- (p) **“Prior Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in 12C.4;
- (q) **“Relevant Year Weighted Average Charge”** is to be determined in accordance with the relevant formula in 12C.4;
- (r) **“SOGEA 40/10 Rental”** shall be construed as having the same meaning as the annual rental charge for 'Single Order Generic Ethernet Access up to 40Mbit/s/10Mbit/s' as provided by the Dominant Provider where Single Order Generic Ethernet Access is the name given by the Dominant

Provider to its GEA - FTTC service where only a broadband service is being provided;

- (s) **“Superfast Visit Assure”** shall be construed as having the same meaning as ‘Visit Assure – Visit to customer premises’ which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out as provided by the Dominant Provider on its website;
- (t) **“VLAN Move”** shall be construed as having the same meaning as ‘VLAN moves applied to GEA Cablelink Modify transactions’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website;
- (u) **“VULA 40/10 Cancel/Amend/Modify – CRD”** shall be construed as having the same meaning as ‘Cancel/Amend/Modify - CRD Amend, order notes amend, order cancellation, Care Level’, which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website, where the change is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (v) **“VULA 40/10 Cancel/Amend/Modify – Regrading”** shall be construed as having the same meaning as ‘Cancel/Amend/Modify - Regrading of existing upstream or downstream speed, both at point of sale and in-life’ which is the definition and explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website, where the change is to allow a Third Party to access a bandwidth of up to 40Mbit/s downstream and up to 10Mbit/s upstream;
- (w) **“VULA Cease”** shall be construed as having the same meaning as ‘Service cessation (any product variant)’ which is the definition and

explanation of its GEA – FTTC and GEA – FTTP services set out by the Dominant Provider on its website; and

- (x) “**VULA Migration**” means the transfer of control of a Virtual Unbundled Local Access service between Third Parties purchasing Virtual Unbundled Local Access from the Dominant Provider.

Condition 12D – Charge controls and related provisions relevant to both MPF and VULA

12D.7 (a) The Dominant Provider shall take all reasonable steps to secure that the charge for each Special Fault Investigation Service in each Relevant Year does not exceed the amount calculated in accordance with the following formula:

(WLA Area

2,WLA Area

3)

$$\text{Engineer Time} \times \text{Hourly Charge}$$

Where:

Engineer Time means in relation to a Special Fault Investigation Service:

- i. the amount of time determined by the Dominant Provider as at 1 April 2021 as being required by an engineer in order to complete the corresponding Special Fault Investigation Service; or
- ii. such other amount of time as Ofcom may from time to time direct.

Hourly Charge means:

- i. in the First Relevant Year, not more than £42.73;
- ii. in the Second Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 2 Hourly Charge} = £42.73(100\% + CPI_2)$$

- iii. in the Third Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 3 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 4 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)$$

- v. in the Fifth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 5 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)(100\% + CPI_5)$$

Where:

CPI_2 is CPI for the Second Relevant Year;

CPI_3 is CPI for the Third Relevant Year;

CPI_4 is CPI for the Fourth Relevant Year;

CPI_5 is CPI for the Fifth Relevant Year.

- (b) The Dominant Provider shall take all reasonable steps to secure that the charge for each Special Fault Investigation – Assure and Special Fault Investigation – Frame Direct Module in each Relevant Year does not exceed the amount calculated in accordance with the following formula:

$$(\text{Engineer Time} \times \text{Hourly Charge}) + \text{Visit Charge}$$

Where:

Engineer Time means in relation to a Special Fault Investigation – Assure or Special Fault Investigation – Frame Direct Module (as applicable):

- i. the amount of time determined by the Dominant Provider as at 1 April 2021 as being required by an engineer in order to

complete the corresponding Special Fault Investigation –
Assure or Special Fault Investigation – Frame Direct Module;
or

- ii. such other amount of time as Ofcom may from time to time direct.

Hourly Charge must be charged as follows:

- i. in the First Relevant Year, not more than £42.73;
- ii. in the Second Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 2 Hourly Charge} = £42.73(100\% + CPI_2)$$

- iii. in the Third Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 3 Hourly Charge} = £- 42.73(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 4 Hourly Charge} = £42.73(100\% + CPI_2) \\ (100\% + CPI_3)(100\% + CPI_4)$$

- v. in the Fifth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 5 Hourly Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3) \\ (100\% + CPI_4)(100\% + CPI_5)$$

Where:

CPI_2 is CPI for the Second Relevant Year;

CPI_3 is CPI for the Third Relevant Year;

CPI_4 is CPI for the Fourth Relevant Year;

CPI_5 is CPI for the Fifth Relevant Year.

Visit Charge must be charged as follows:

- i. in the First Relevant Year, not more than £42.73;
- ii. in the Second Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 2 Visit Charge} = £42.73(100\% + CPI_2)$$

- iii. in the Third Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 3 Visit Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)$$

- iv. in the Fourth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 4 Visit Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)$$

- v. in the Fifth Relevant Year, not more than the amount calculated by employing the following formula:

$$\text{Year 5 Visit Charge} = £42.73(100\% + CPI_2)(100\% + CPI_3)(100\% + CPI_4)(100\% + CPI_5)$$

Where:

CPI_2 is CPI for the Second Relevant Year;

CPI_3 is CPI for the Third Relevant Year;

CPI_4 is CPI for the Fourth Relevant Year;

CPI_5 is CPI for the Fifth Relevant Year.

- (c) The amount of time determined by the Dominant Provider under Conditions 12D.7(a) and 12D.7(b) as being required by an engineer in order to complete the corresponding Special Fault Investigation Service, Special Fault Investigation – Assure or Special Fault Investigation – Frame Direct Module (as applicable) must be fair and reasonable.

Condition 12E - Controls on Ethernet Basket, and Main Link Sub-basket and Sub-cap

Interpretation of Annex to Condition 12E

Except insofar as the context otherwise requires, the terms or descriptions of services used in this Annex shall be construed as having the same meaning as the definitions and explanations of the services set out by the Dominant Provider on its website. These are currently found as follows²:

- Services within the “**Ethernet Basket**” please refer to <https://www.openreach.co.uk/cportal/products/ethernet>
- Specifically:
 - For EAD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/ethernetaccessdirect/ead.do>
 - For EBD, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/ethernetbackhauldirect/ebd.do>
 - For WES/WEES, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/wholesaleextensionservices/wes.do>
 - For BES, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/productswithdrawnfromnewsupply/backhaulextensionservices/bes.do>
 - For ONBS, please refer to <http://www.openreach.co.uk/orpg/home/products/ethernetservices/openreachnetworkbackhaulservices/onbs.do>
 - For BNS, please refer to <https://www.openreach.co.uk/orpg/home/products/ethernetservices/productswithdrawnfromnewsupply/backhaulnetworkservices/bns.do>
- Services within the “**WDM Services**” please refer to <https://www.openreach.co.uk/cportal/products/optical>
- Specifically:
 - For OSA, please refer to <https://www.openreach.co.uk/orpg/home/products/opticalservices/opticalspectrumaccess/opticalspectrumaccess.do>

² All links accessed on 9 March 2021.

- For OSEA, please refer to <https://www.openreach.co.uk/org/home/products/opticalservices/opticalspectrumextendedaccess/opticalspectrumextendedaccess.do>

Condition 12F – Controls on Accommodation Services, Overlapping Accommodation Services and Cablelink Services

- 12F.10** Where the Percentage Change for the Cablelink Services Basket at the end of the Relevant Year is:
- (IEC, IEC**
- BT+1, IEC** (a) less than the Controlling Percentage (“Deficiency”); or
- BT+2, LLA** (b) greater than the Controlling Percentage (“Excess”);
- Area 2,**
- LLA Area**
- 3)** the Controlling Percentage for the subsequent Relevant Year shall be calculated employing the formula set out in Condition 12E.5 with the exception that the references to “the Basket” in Condition 12E.5 shall be treated as references to the Cablelink Services Basket subject to this Condition 12F.

Condition 12G – Controls on the Direct ECC Services Basket and Contractor ECC Services

12G.2 For the purposes of Condition 12G.1, the Percentage Change shall be calculated by employing the formula in Condition 12E.2 above, except that references to “the Basket” should be treated as references to the Direct ECC Services Basket. The value of $\bar{p}_{i,t-1}$ should be calculated in the same manner as for the Ethernet Basket in Condition 12E.2.

**(IEC, IEC
BT+1, IEC
BT+2, LLA
Area 2,
LLA Area
3)**

Condition 12I – Controls on Dark Fibre Access

12I.2 (LLA Area 3) Except in so far as Ofcom may otherwise direct, in the Second Relevant Year, the Third Relevant Year, the Fourth Relevant Year and the Fifth Relevant Year, the Dominant Provider shall not charge more than:

- a) for 12I.1 (a) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by $(100\% + \text{CPI} - 5.2\%)$;
- b) for 12I.1(b) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by $(100\% + \text{CPI} - 5.2\%)$;
- c) for 12I.1(c) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by $(100\% + \text{CPI} - 4.1\%)$;
- d) for 12I.1(d) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by $(100\% + \text{CPI} - 4.1\%)$; and
- e) for 12I.1(e) the maximum amount permitted to be charged for that service in the Prior Relevant Year multiplied by $(100\% + \text{CPI} - 0\%)$.

Modifications to Direction 4 in Schedule 4 to the QoS Notification

Paragraph 4 of Schedule 1 to Direction 4

4. When publishing KPIs in accordance with paragraphs 1 to 3, the Dominant Provider must publish all KPIs for the United Kingdom as a whole. In addition, the Dominant Provider must publish the following KPIs split by reference to each Relevant Region:
 - (a) for MPF KPIs (i), (ii), (iii)(a), (b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region);
 - (b) for GEA-FTTC, KPIs (i), (ii), (iii)(a), (b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region); and
 - (c) for GEA-FTTP, KPIs (iii)(b), (d) and (e) and (xx) to (xxiii) (in each case only where there are 100,000 or more such active connections in a Relevant Region).

Paragraphs 1 and 2 of Schedule 2 to Direction 4

1. Information on all Orders (i.e. installations) in the relevant six month period where the date when the Order that became a Completed Order exceeded the Committed Date by more than 120 calendar days.
2. Information on all Repairs during the relevant six month period where the period from registration of the Fault to the date when the Dominant Provider achieved Restored Service exceeded the Repair Service Level Commitment by more than 30 calendar days.