

**CONSOLIDATED VERSION OF GENERAL CONDITIONS  
AS AT 22 SEPTEMBER 2014 (including annotations)<sup>1</sup>**

**SCHEDULE TO THE NOTIFICATION UNDER SECTION 48(1) OF THE  
COMMUNICATIONS ACT 2003**

**PART 1:**

**DEFINITIONS AND INTERPRETATION  
RELATING TO THE CONDITIONS IN THIS SCHEDULE**

**Definitions<sup>2</sup>**

1. In this Schedule, except in so far as the context otherwise requires—

“Act” means the Communications Act 2003;

“Adoption” means doing any of the following by a Communications Provider in relation to an Allocated Telephone Number (whether or not such Allocation is to that Communications Provider)-

- (a) assigning or transferring that number to a particular Customer or piece of Apparatus;
- (b) using that Telephone Number for identifying a service or route used by that Communications Provider or by any of his Customers;
- (c) using that Telephone Number for identifying a communication as one to be transmitted by that Communications Provider;

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<sup>1</sup> This consolidated version of the General Conditions is published by Ofcom for ease of reference. There have been a number of modifications to the General Conditions since 22 July 2003, which Ofcom makes by way of notification under section 48(1). Footnotes provide a reference to the title of the Ofcom publication notifying the relevant modification and where appropriate, an explanation of the modification. It is recommended that you consult the relevant notification(s) for the General Conditions as these contain an explanation of the reasons for the decision to amend and the specific modifications that have been made. While every reasonable effort is made to ensure that the information provided in this document is accurate, no guarantees for the currency or accuracy of information are made. The original notification and the subsequent notifications modifying the General Conditions are signed by an authorised person, and the definitive version is that which has been so signed and which is the original printed version held by Ofcom. For the avoidance of doubt, in the case of any difference between texts, the signed version held by Ofcom shall take precedence over the electronic or printed version. You are advised to seek your own legal advice on the operation of the General Conditions.

<sup>2</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011; removing 16 definitions relying on interpretation by reference to the Act where terms still used in General Conditions; replacing definition of “Director” with a definition of “Ofcom”; replacing definition of “Public Telephone Network” with a definition of “Public Communications Network”; revising definitions of “Publicly Available Telephone Service” and “Telephone Number”; and making consequential changes throughout General Conditions.

- (d) designating that Telephone Number for use in selecting a service or the required elements or characteristics of a service; or
- (e) authorising the use of that Telephone Number by others for any of the following purposes:
  - (i) identifying the destination for, or recipient of, an Electronic Communication;
  - (ii) identifying the origin, or sender, of an Electronic Communication;
  - (iii) identifying the route for an Electronic Communication;
  - (iv) identifying the source from which an Electronic Communication or Electronic Communications Service may be obtained or accessed;
  - (v) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
  - (vi) identifying the Communications Provider by means of whose network or service an Electronic Communication is to be transmitted, or treated as transmitted;

“Allocation”, in relation to a Telephone Number, means allocation by Ofcom;

“Approved Apparatus” means, in relation to any network, Apparatus which meets the appropriate essential requirements of regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000<sup>3</sup>;

“Communications Provider” means, unless the contrary intention appears, a person who provides an Electronic Communications Network or provides an Electronic Communications Service;

“Condition” means a condition in this Schedule;

“Customers”, in relation to a Communications Provider, means the following (including any of them whose use or potential use of the network or service is for the purposes of, or in connection with, a business):

- (a) the persons to whom the network or service is provided in the course of any business carried on as such by the Communications Provider;

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<sup>3</sup> S.I. 2000/730.

- (b) the persons to whom the Communications Provider is seeking to secure that the network or service is so provided;
- (c) the persons who wish to be so provided with the network or service, or who are likely to seek to become persons to whom the network or service is so provided;

“Directory” means a printed document containing Directory Information on Subscribers of Publicly Available Telephone Services in the United Kingdom which is made available to members of the public;

“Directory Information” means, in the case of a Directory, the name and address of the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services and, in the case of a Directory Enquiry Facility, shall be either such a Telephone Number of the Subscriber or information that such a Telephone Number of the Subscriber may not be supplied;

“Directory Enquiry Facility” means Directory Information provided by means of a Public Communications Network;

“Electronic Communication” means a communication for transmission by means of an Electronic Communications Network;

“Emergency Organisation” means in respect of any locality:

- (a) the relevant public police, fire, ambulance and coastguard services for that locality; and
- (b) any other organisation, as directed from time to time by Ofcom as providing a vital service relating to the safety of life in emergencies;

“Network Termination Point” means the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber. A Network Termination Point provided at a fixed position on Served Premises shall be within an item of Network Termination and Testing Apparatus;

“Network Termination and Testing Apparatus” means an item of Apparatus comprised in an Electronic Communications Network installed in a fixed position on Served Premises which enables:

- (a) Approved Apparatus to be readily connected to, and disconnected from, the network;

- (b) the conveyance of Signals between such Approved Apparatus and the network; and
- (c) the due functioning of the network to be tested,

but the only other functions of which, if any, are:

- (i) to supply energy between such Approved Apparatus and the network;
- (ii) to protect the safety or security of the operation of the network; or
- (iii) to enable other operations exclusively related to the running of the network to be performed or the due functioning of any system to which the network is or is to be connected to be tested (separately or together with the network);

“Non-geographic Number” means a Telephone Number from a range of numbers in the National Telephone Numbering Plan designated for assignment to End-Users, the digit structure of which contains no geographic significance for routing calls;

“Ofcom” means the Office of Communications as established under section 1 of the Office of Communications Act 2002;

“Publicly Available Telephone Service” means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan;

“Public Communications Network” means an Electronic Communications Network used wholly or mainly for the provision of Public Electronic Communications Services which support the transfer of information between Network Termination Points;

“Public Pay Telephone” means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

“Relevant Data Protection Legislation”<sup>4</sup> means the Data Protection Act 1998<sup>5</sup> and the Privacy and Electronic Communications (EC Directive) Regulations 2003;<sup>6</sup>

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<sup>4</sup> Notification of modification to the definition of "Relevant Data Protection Legislation" in (1) the general conditions of entitlement and (2) the designation of universal service providers, 11 December 2003.

<sup>5</sup> 1998 c. 29.

“Served Premises” means a single set of premises in single occupation where Apparatus has been installed for the purpose of the provision of Electronic Communications Services by means of an Electronic Communications Network at those premises;

“Subscriber” means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services;

“Telephone Number” means, subject to any order of the Secretary of State pursuant to section 56(7) of the Act, any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the purposes listed in section 56(5) of the Act.

### Interpretation

2. For the purpose of interpreting the Conditions in this Schedule:
  - (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in the Schedule and otherwise any word or expression shall have 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 Schedule shall be construed accordingly; and
  - (d) the Interpretation Act 1978 shall apply as if each of the Conditions in this Schedule were an Act of Parliament.

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<sup>6</sup> SI 2003/2426.

## **PART 2:**

### **GENERAL CONDITIONS**

#### **1. GENERAL ACCESS AND INTERCONNECTION OBLIGATIONS**

##### Obligation to Negotiate Interconnection

- 1.1 The Communications Provider shall, to the extent requested by another Communications Provider in any part of the European Community, negotiate with that Communications Provider with a view to concluding an agreement (or an amendment to an existing agreement) for Interconnection within a reasonable period.

##### Information Obtained During Negotiations for Network Access

- 1.2 Where the Communications Provider acquires information from another Communications Provider before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Communications Provider shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party (in particular other departments, subsidiaries or partners) for whom such information could provide a competitive advantage.
- 1.3 Paragraph 1.2 above does not apply to the passing of information to Ofcom, where Ofcom requires that information in order to carry out its functions.
- 1.4 For the purposes of this Condition, "Communications Provider" means:
- (a) in paragraph 1.1, a person who provides a Public Electronic Communications Network,
  - (b) otherwise, a person who provides an Electronic Communications Network or provides an Electronic Communications Service.

## 2. STANDARDISATION AND SPECIFIED INTERFACES

- 2.1 The Communications Provider shall comply with any relevant compulsory standards and/or specifications as are listed in the Official Journal of the European Communities for the provision of services, technical interfaces and/or network functions pursuant to Article 17 of the Framework Directive. Where no compulsory standards or specifications have been so published, the Communications Provider shall take full account of any relevant voluntary standards and/or specifications so published, and any relevant standards and/or specifications adopted by the European Standards Organisations.
- 2.2 In the absence of such standards and/or specifications referred to in paragraph 2.1 above, the Communications Provider shall take full account of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT)<sup>7</sup>, the International Organisation for Standardisation (ISO) and the International Electrotechnical Committee (IEC).
- 2.3 In the absence of such standards and/or specifications referred to in paragraphs 2.1 and 2.2 above, the Communications Provider shall take full account of any other standard specified by Ofcom in a direction under this Condition for the purposes of service interoperability and Interconnection, provided that Ofcom shall not make such a direction if an appropriate European or other international standard is expected to be promulgated within a reasonable time.
- 2.4 Ofcom may from time to time issue a direction under this Condition requiring a specified Network Interconnection Interface to be compliant with a specified standard. Any such direction shall be to ensure End to End Connectivity and interoperability, and shall only require compliance with a relevant standard in existence as referred to in paragraphs 2.1 to 2.3 above.
- 2.5 Subject to paragraph 2.6 below, the Communications Provider shall ensure that:
- (a) any Network Interconnection Interface provided by it which is specified in any direction under paragraph 2.4 above is compliant with the specified standard in that direction, and
  - (b) the relevant Network Interconnection Interface is available, upon reasonable request, to other providers of Public Electronic Communications Networks.

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<sup>7</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, inserted CEPT reference.

- 2.6 The Communications Provider shall not be required to comply with paragraph 2.5 above where:
- (a) any other provider of a Public Electronic Communications Network seeking Interconnection with the Communication Provider's Network at the relevant Network Interconnection Point does not require it to do so; or
  - (b) to do so would require the Communications Provider to incur any cost, or resolve any technical difficulty, disproportionate to the benefits to be gained from implementing the specified standard, provided that the Communications Provider takes reasonable steps to incorporate the specified standard in its plans for network development.

2.7 For the purposes of this Condition,

- (a) "Communications Provider" means a person who provides an Electronic Communications Network or provides an Electronic Communications Service;
- (b) "End to End Connectivity" means the facility –
  - (i) for different End-Users of the same Electronic Communications Network or Electronic Communications Service to be able to communicate with each other; and
  - (ii) for the End-Users of different such networks or services to be able, each using the network or service of which he is the End User, to communicate with each other;
- (c) "European Standards Organisations" means the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI);
- (d) "Network Interconnection Interface" means the Technical Characteristics of each interface at any Network Interconnection Point;
- (e) "Network Interconnection Point" means the physical location at which Interconnection between different Public Electronic Communications Networks takes place;
- (f) "Technical Characteristics" means the physical, electrical and other relevant characteristics and the network interworking and service management protocols.

### 3. PROPER AND EFFECTIVE FUNCTIONING OF THE NETWORK<sup>8</sup>

- 3.1 The Communications Provider shall take all necessary measures to maintain, to the greatest extent possible:
- (a) the proper and effective functioning of the Public Communications Network provided by it at all times, and
  - (b) in the event of catastrophic network breakdown or in cases of force majeure the fullest possible availability of the Public Communications Network and Publicly Available Telephone Services provided by it, and
  - (c) uninterrupted access to Emergency Organisations as part of any Publicly Available Telephone Services offered.
- 3.2 The Communications Provider shall ensure that any restrictions imposed by it on access to and use of a Public Communications Network provided by it on the grounds of ensuring compliance with paragraph 3.1 above are proportionate, non-discriminatory and based on objective criteria identified in advance.
- 3.3 For the purposes of this Condition, “Communications Provider” means a person who provides Publicly Available Telephone Services and/or provides a Public Communications Network over which a Publicly Available Telephone Service is provided.

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<sup>8</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, replacing previous General Condition 3 with revised wording.

#### 4. EMERGENCY CALL NUMBERS<sup>9</sup>

- 4.1 The Communications Provider shall ensure that any End-User can access Emergency Organisations by using the emergency call numbers “112” and “999” at no charge and, in the case of a Pay Telephone, without having to use coins or cards.
- 4.2 The Communications Provider shall, to the extent technically feasible, make accurate and reliable Caller Location Information available for all calls to the emergency call numbers “112” and “999”, at no charge to the Emergency Organisations handling those calls, at the time the call is answered by those organisations.
- 4.3 Where a Communications Provider provides an Electronic Communications Service:
- (a) at a fixed location, the Caller Location Information must, at least, accurately reflect the fixed location of the End-User’s terminal equipment including the full postal address; and
  - (b) using a Mobile Network, the Caller Location Information must include, at least, the Cell Identification of the cell from which the call is being made, or in exceptional circumstances the Zone Code.
- 4.4 For the purposes of this Condition,
- (a) “Caller Location Information” means any data or information processed in an Electronic Communications Network indicating the geographic position of the terminal equipment of a person initiating a call;
  - (b) “Cell Identification” means the geographic coordinates of the cell which is hosting the call, and where available, an indication of the radius of coverage of the cell;
  - (c) “Click to Call Service” means a service which may be selected on a web-site or other application by an End-User and which connects the End-User only to a number or a limited set of numbers pre-selected by the Communications Provider or an End-User;
  - (d) “Communications Provider” means a person who provides End-Users with an Electronic Communications Service, or provides access to such a service by means of a Pay Telephone, for originating calls to a number or numbers in the National

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<sup>9</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011; inserting new General Condition 4.2 and 4.3; inserting new definition of “Cell Identification”, “Mobile Network” and “Zone Code”; and changing definition of “Communications Provider”.

Telephone Numbering Plan but shall exclude any Click to Call Service;

- (e) “Mobile Network” means either the GSM (Global System for Mobile communications as defined by the European Telecommunications Standards Institute) or UMTS (Universal Mobile Telecommunications System as defined by the European Telecommunications Standards Institute) networks or any other standard for mobile communications that is, or may be, adopted in the UK;
- (f) “Pay Telephone” means a telephone for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes. For the avoidance of any doubt, references to a Pay Telephone include references to a Public Pay Telephone<sup>10</sup>;
- (g) “Zone Code” means a code which identifies the geographic region in which the call was originated.

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<sup>10</sup> Regulation of VoIP Services: Access to the Emergency Services - Statement and publication of a statutory notification under section 48(1) of the Communications Act 2003 modifying General Condition 4 (5 December 2007) – added in (d) and (e) with effect from 8 September 2008.

## 5. EMERGENCY PLANNING

- 5.1 Subject to paragraph 5.3, the Communications Provider shall, on the request of and in consultation with:
- (a) the authorities responsible for Emergency Organisations; and
  - (b) such departments of central and local government as Ofcom may from time to time direct for the purposes of this Condition,
- make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in Disasters.
- 5.2 Subject to paragraph 5.3, the Communications Provider shall, on request by any person as is designated for the purpose in any such arrangements, implement those arrangements in so far as is reasonable and practicable to do so.
- 5.3 Nothing in this Condition precludes the Communications Provider from:
- (a) recovering the costs incurred in making or implementing any such arrangements; or
  - (b) making the implementation of any such arrangements conditional upon being indemnified by the person for whom the arrangements are to be implemented for all costs incurred as a consequence of the implementation.
- 5.4 For the purposes of this Condition:
- (a) “Communications Provider” means a person who provides a Public Communications Network and/or provides Publicly Available Telephone Services; and
  - (b) “Disaster” includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials.

## 6. PUBLIC PAY TELEPHONES

6.1 The Communications Provider shall ensure that any End-User can access:

- (a) operator assistance services; and
- (b) a Directory Enquiry Facility;

from the Public Pay Telephone, except where:

- (i) the Public Pay Telephone in question is not a Public Call Box; and
- (ii) such services or facilities have been rendered inaccessible by the Communications Provider for the purposes of debt management.

6.2 The Communications Provider shall display and take all reasonable steps to keep displayed prominently on or around the Public Pay Telephone a notice specifying:

- (a) the minimum charge payable for connection of a call;
- (b) the means by which the charge may be paid;
- (c) the location of the Public Pay Telephone sufficient to enable it to be located as swiftly as possible by the Emergency Organisations;
- (d) that calls to Emergency Organisations using the numbers “112” and “999” may be made from the Public Pay Telephone free of charge and without having to use coins or cards; and
- (e) whether or not the Public Pay Telephone is available to receive a call, and if so, the Telephone Number of the Public Pay Telephone.

6.3 Where the Communications Provider provides Public Call Boxes, the Communications Provider shall also:

- (a) ensure that:
  - (i) where it provides Public Call Boxes anywhere in the United Kingdom except the Hull Area, at least 75% of those Public Call Boxes are accessible by reasonable means to End-Users in wheelchairs;

- (ii) where it provides Public Call Boxes in the Hull Area, at least 50% of those Public Call Boxes are accessible by reasonable means to End-Users in wheelchairs; and
  - (iii) at least 70% of its Public Call Boxes incorporate additional receiving amplification;
- (b) consult Ofcom from time to time on all future material changes to the design of its Public Call Boxes where the interests of disabled persons are likely to be affected to ensure that the needs and interests of disabled persons are fully taken into account in the development and provision of such telephones;
- (c) consult Ofcom from time to time and in any event as Ofcom may request to ensure adequate provision, in terms of numbers and locations, of its Public Call Boxes incorporating textphone facilities. Where Ofcom is satisfied, following due investigation and discussions with the Communications Provider, that such provision is inadequate, he may direct a Communications Provider to provide Public Call Box textphone facilities as he deems appropriate in terms of numbers and location; and
- (d) only be entitled to cease to provide or to cease to secure the provision of Publicly Available Telephone Services to and from a Public Call Box if it has installed prominently on or around that Public Call Box (and has taken all reasonable steps to keep so displayed for the period mentioned below) a notice specifying:
  - (i) that the Communications Provider is proposing that such services shall cease to be provided at such Public Call Box on the expiration of the period set out in the notice (being not being less than 42 days, commencing with the day on which the notice is first displayed), and
  - (ii) the name and address of the Communications Provider,
 and such period has expired.

6.4 For the purposes of this Condition,

- (a) "Communications Provider" means a person who provides a Public Pay Telephone;
- (b) "Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

- (c) “Public Call Box” means a Public Pay Telephone which is permanently installed on public land and to which the public has access at all times.

## 7. MUST-CARRY OBLIGATIONS

- 7.1 The Communications Provider shall, on a direction of Ofcom made from time to time for the purposes of this Condition, broadcast or otherwise transmit any service specified in that direction which is also set out in section 64(3) of the Act as modified from time to time by the Secretary of State pursuant to section 64 of the Act.
- 7.2 The Communications Provider shall comply with any order made by the Secretary of State from time to time under section 64(11) of the Act with respect to the terms on which such services must be broadcast or otherwise transmitted.
- 7.3 In this Condition,
- (a) “Appropriate Network” shall have the meaning ascribed to it by section 272(7) of the Act; and
  - (b) “Communications Provider” means a person who provides an Appropriate Network.

## 8. OPERATOR ASSISTANCE, DIRECTORIES AND DIRECTORY ENQUIRY FACILITIES

- 8.1 The Communications Provider shall ensure that any End-User can access:
- (a) operator assistance services; and
  - (b) a Directory Enquiry Facility containing Directory Information on all Subscribers in the United Kingdom who have been assigned Telephone Numbers by any Communications Provider, except those Subscribers who have exercised their right to have their Directory Information removed,
- except where such services or facilities have been rendered inaccessible to a particular End-User by the Communications Provider at the End-User's request or for the purposes of debt management.
- 8.2 Where the Communications Provider assigns Telephone Numbers to Subscribers, it shall ensure that each of those Subscribers is, on request, supplied with a Directory containing Directory Information on all Subscribers who have been assigned Telephone Numbers in the Subscriber's local area. Directories containing Directory Information for all other Subscribers outside the local area who have been assigned Telephone Numbers by any Communications Provider must be supplied to the Subscriber on request. Any Directories supplied shall not contain Directory Information for those Subscribers who have exercised their right to have their Directory Information removed.
- 8.3 A Directory may be produced by the Communications Provider, or by another person. Where a Directory is produced by the Communications Provider, the Communications Provider shall ensure that it is updated on a regular basis (at least once a year). Ofcom may from time to time direct that a Directory is available in a particular form.
- 8.4 The Communications Provider may charge End-Users a reasonable fee for making available a Directory Enquiry Facility, local Directory and any additional Directories, and may charge its Subscribers a reasonable fee for inclusion of Directory Information in a Directory or as part of a Directory Enquiry Facility.
- 8.5 This Condition applies subject to the requirements of Relevant Data Protection Legislation.
- 8.6 For the purposes of this Condition, "Communications Provider" means a person who provides Publicly Available Telephone Services (except Public Pay Telephones).

## 9. REQUIREMENT TO OFFER CONTRACTS WITH MINIMUM TERMS<sup>11</sup>

- 9.1 Communications Providers shall, in offering to provide, or providing, connection to a Public Communications Network and/or Public Electronic Communications Services to a Consumer, and other End-Users on request, offer to enter into a contract or vary an existing contract with that Consumer, or other End-User, which complies with the following paragraphs.
- 9.2 Any contract concluded after 25 May 2011 between the Communications Provider and a Consumer, and other End-Users on request, shall specify at least the following minimum requirements in a clear, comprehensive and easily accessible form:
- (a) the identity and address of the Communications Provider;
  - (b) the services provided, including in particular whether or not access to Emergency Services and Caller Location Information is being provided, and any limitations on the provision of access to Emergency Services;
  - (c) information on any other conditions limiting access to and/or use of services and applications (where such conditions are permitted under national law);
  - (d) details of the minimum service quality levels offered, namely the time for initial connection and any other quality of service parameters as directed by Ofcom;
  - (e) information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on service quality;
  - (f) the types of maintenance services and customer support services offered, as well as the means of contacting these services;
  - (g) any restrictions imposed by the provider on the use of terminal equipment supplied;
  - (h) the Subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;
  - (i) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges

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<sup>11</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, replacing previous General Condition 9 with revised wording.

may be obtained, payment methods offered and any difference in costs due to payment method;

- (j) the duration of the contract, and the conditions for renewal and termination of services and of the contract, including:
  - (i) any minimum usage or duration required to benefit from promotional terms;
  - (ii) any charges related to portability of numbers and other identifiers, and
  - (iii) any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;
- (k) any applicable compensation and/or refund arrangements which will apply if contracted quality service levels are not met;
- (l) the means of initiating procedures for the settlement of disputes in respect of the contract; and
- (m) the type of action that might be taken by the Communications Provider in reaction to security or integrity incidents or threats and vulnerabilities.

For the avoidance of doubt, any contract between the Communications Provider and a Consumer concluded before 26 May 2011 shall specify the following minimum requirements prescribed by paragraph 9.2 as it applied prior to 26 May 2011.

9.3 Without prejudice to any initial commitment period, Communications Providers shall ensure that conditions or procedures for contract termination do not act as disincentives for End-Users against changing their Communications Provider. In particular, but without limiting the extent of this paragraph:

- (a) Communications Providers who:
  - (i) are providing Fixed-Line Telecommunications Services and Broadband Services to Consumers must not, at the end of those Consumers' initial commitment period, renew those Consumers' contracts for a further initial commitment period<sup>12</sup> unless that Communications Provider has first obtained those Consumers' Express Consent;<sup>13</sup>

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<sup>12</sup> The term "initial commitment period" is defined in General Condition 9.4. A Consumer or Small Business Customer will not be in an "initial commitment period" where they are able to terminate a contract with a CP without paying a charge.

<sup>13</sup> General Conditions 9.3(a) and 9.3(b) come into force on 31 December 2011 in relation to all Consumers and Small Business Customers who are not, as at that date, in a contract with a Communications Provider where, at the end of an initial commitment period, that contract

- (ii) are providing Fixed-Line Telecommunications Services and Broadband Services to Small Business Customers must not, at the end of those Small Business Customers' initial commitment period, renew those Small Business Customers' contracts for a further initial commitment period unless that Communications Provider has first obtained those Small Business Customers' Express Consent.

(b) For the purposes of Condition 9.3(a):

- (i) "Fixed-Line Telecommunications Services" means Narrowband call and/or line rental services;
- (ii) "Narrowband" means services provided over a Public Telephone Network;
- (iii) "Broadband Services" means services that allow for the transfer of high volumes of data at high speeds;
- (iv) "Express Consent" means the express agreement of the Consumer or Small Business Customer to contract with the Communications Provider in relation to each initial commitment period, where the Communications Provider has obtained such consent separately for each initial commitment period in a manner which has enabled the Consumer or Small Business Customer to make an informed choice;
- (v) "Small Business Customer", in relation to a public communications provider, means a customer of that provider who is neither himself a communications provider, nor a person who is such a customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

9.4 Communications Providers shall not include a term in any contract with a Consumer for the provision of Electronic Communications Services concluded after 25 May 2011 preventing the Consumer from terminating the contract before the end of the agreed contractual period without compensating the Communications Provider for so doing, unless such compensation relates to no more than the initial commitment period (being the period beginning on the day on which the Communications Provider and Consumer have agreed that the contract shall begin and ending on a day falling no more than 24 months thereafter).

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will automatically renew for a further initial commitment period without that Consumer's or Small Business Customer's Express Consent. For all other Consumers and Small Business Customers, GCs 9.3(a) and 9.3(b) come into force on 31 December 2012.

- 9.5 Communications Providers shall ensure that Users are able to subscribe to a contract with a maximum duration of 12 months.
- 9.6 The Communications Provider shall:
- (a) give its Subscribers adequate notice not shorter than one month of any modifications likely to be of material detriment to that Subscriber;
  - (b) allow its Subscribers to withdraw from their contract without penalty upon such notice; and
  - (c) at the same time as giving the notice in condition 9.6 (a) above, shall inform the Subscriber of its ability to terminate the contract without penalty if the proposed modification is not acceptable to the Subscriber.
- 9.7 For the purposes of this Condition:
- (a) “Communications Provider” means a person who provides Public Communications Networks and/or Public Electronic Communications Services;
  - (b) “Consumer” means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;
  - (c) “User” means a legal entity or natural person using or requesting a Public Electronic Communications Service.

## 10. TRANSPARENCY AND PUBLICATION OF INFORMATION

10.1 The Communications Provider shall ensure that clear and up to date information on its applicable prices and tariffs (which for the avoidance of doubt shall not include bespoke or individual prices and tariffs), and on its standard terms and conditions, in respect of access to and use of Publicly Available Telephone Services by End-Users is published, in accordance with paragraphs 10.2 and 10.3.

10.2 The information published shall include at least the following:

- (a) the Communications Provider's name and Major Office address;
- (b) a description of the Publicly Available Telephone Services offered;
- (c) where the Communications Provider renders any subscription charge or periodic rental charge, details of which Publicly Available Telephone Services are included within such charge;
- (d) the Communications Provider's standard tariffs, including details of standard discounts and special and targeted tariff schemes, with regard to:
  - (i) access;
  - (ii) all types of usage charges; and
  - (iii) any maintenance services;
- (e) any compensation and/or refund policy, including specific details of any compensation and/or refund schemes offered;
- (f) any types of maintenance service offered;
- (g) the standard contract conditions offered, including any relevant minimum contractual period; and
- (h) any available dispute resolution mechanisms, including those developed by the Communications Provider.

10.3 Publication of the information shall be effected by:

- (a) sending a copy of such information or any appropriate parts of it to any End-User who may reasonably request such a copy; and
- (b) placing a copy of such information on any relevant website operated or controlled by the Communications Provider, or, where no such website exists, placing a copy of such information in every Major Office of the Communications

Provider such that it is readily available for inspection free of charge by members of the general public during normal office hours.

10.4 For the purposes of this Condition:

- (a) “Communications Provider” means a person who provides End-Users with access to and use of Publicly Available Telephone Services, except Public Pay Telephones;
- (b) “Major Office” means a Communications Provider’s registered office and such other of its offices as Ofcom may from time to time direct.

## 11. METERING AND BILLING<sup>14</sup>

- 11.1 The Communications Provider shall not render any Bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every amount stated in that Bill represents and does not exceed the true extent of any such service actually provided to the End-User in question.
- 11.2 The Communications Provider shall retain such Records as may be necessary, or as Ofcom may from time to time direct are necessary, for the purpose of establishing its compliance with paragraph 11.1 above. Subject to the following, Ofcom may from time to time direct the minimum period for retention of necessary Records by the Communications Provider. This paragraph (and any direction by Ofcom made under it) applies subject to the requirements of Relevant Data Protection Legislation, and shall not require the Communications Provider to retain any Records for the purposes of this Condition for more than 15 months from the date on which they were created.
- 11.3 Paragraphs 11.4 to 11.5 shall only apply to a Communications Provider where:
- (a) it is a provider of Publicly Available Telephone Services; and
  - (b) it has a Relevant Turnover in its most recent complete financial year exceeding £40 million.
- 11.4 Subject to paragraph 11.3, the Communications Provider shall apply to an Approval Body for Approval of its Total Metering and Billing System, in respect of the Publicly Available Telephone Services it provides and any other Electronic Communications Services it provides as shall be agreed between the Communications Provider and the Approval Body. The Communications Provider shall obtain Approval for these services as soon as is practicable. The Communications Provider shall comply with any directions made by the Approval Body in respect of such Approval. For the avoidance of doubt, this obligation applies in respect of any Total Metering and Billing System, whether already in use or newly installed.
- 11.5 Where an Approval Body does not grant or withdraws Approval from all or part of a Communications Provider's Total Metering and Billing System, that Communications Provider shall, as soon as is reasonably practicable either:
- (a) inform Ofcom of the action to be taken by the Communications Provider to remedy the absence of Approval and the anticipated date of such Approval; or

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<sup>14</sup> The Ofcom Metering and Billing Scheme, Statement, 15 July 2008

- (b) inform Ofcom that the Communications Provider intends to cease use of that Total Metering and Billing System (or that part of it) in accordance with a timetable for its withdrawal which the Communications Provider shall provide to Ofcom on request.

11.6 Where the Communications Provider holds an approval under the Oftel Metering and Billing Direction or has made an Oftel Approval Application, such approval or application shall be deemed to be an Approval or application for Approval of the Communications Provider's Total Metering and Billing System until 31 December 2010.

11.7 In this Condition,

- (a) "Approval" means an approval granted by an Approval Body where a Communications Provider's Total Metering and Billing System is compliant with the Ofcom Metering and Billing Direction, or until 31 December 2010, the Oftel Metering and Billing Direction;
- (b) "Approval Body" means the British Approval Board for Telecommunications (BABT), the British Standards Institution (BSI) and Enigma QPM<sup>15</sup>;
- (c) "Bill" means the information issued by a Communications Provider to an End-User of the charges levied and due for payment or the information retained by a Communications Provider for the purpose of recording and enabling debits and credits to be applied to an End-User's account;
- (d) "Communications Provider" means a person who provides Public Electronic Communications Services;
- (e) "Oftel Metering and Billing Direction" means a direction made by the Director General of Telecommunications on 22 July 2003 under this Condition setting out various requirements relating to metering and billing accuracy;
- (f) "Ofcom Metering and Billing Direction" means the direction made by Ofcom on 15 July 2008 under this Condition setting out various requirements relating to metering and billing accuracy;
- (g) "Oftel Approval Application" means an application made to an Approval Body for Approval of a Communication Provider's Total Metering and Billing System prior to the date the Ofcom Metering and Billing Direction is made;

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<sup>15</sup> Metering and Billing, Statement, 30 July 2010, inserted 'Enigma QPM' in the definition of "Approval Body" with effect from 30 July 2010.

- (h) “Records” means data or information showing the extent of any network or service actually provided to an End-User and any data or information used in the creation of a Bill for an End-User;
- (i) “Relevant Turnover” means annual turnover attributable to the provision of Publicly Available Telephone Services after the deduction of sales rebates, value added tax and other taxes directly related to turnover;
- (j) “Total Metering and Billing System” means the totality of all equipment, data, procedures and activities used to determine the charges to be sought for provision and usage of Electronic Communications Services, and/or to present these charges on End-User’s Bills. For purposes of clarity, a Total Metering and Billing System incorporates all processing steps from the original recording of a chargeable event to its readiness for presentation on a Bill to the End-User whether performed by one or more Communications Providers.

## 12. ITEMISED BILLS

- 12.1 The Communications Provider shall provide to each of its Subscribers, on request, and either at no extra charge or for a reasonable fee, a basic level of itemised billing. The Communications Provider shall ensure that each itemised bill shows a sufficient level of detail to allow the Subscriber to:
- (a) verify and control the charges incurred by the Subscriber in using a Public Communications Network and/or related Publicly Available Telephone Services; and
  - (b) adequately monitor the Subscriber's usage and expenditure and thereby exercise a reasonable degree of control over their bills.
- 12.2 In carrying out the obligations under paragraphs 12.1(a) and (b) on or after the Effective Date in relation to any Subscriber who is a Consumer, the Communications Provider shall ensure that the detail provided in an itemised bill includes the Applicable Access Charge.<sup>16</sup>
- 12.3 Ofcom may from time to time direct the minimum level of itemisation to be provided by the Communications Provider under paragraph 12.1.
- 12.4 The Communications Provider shall ensure that calls which are made from a Subscriber's telephone which are free of charge to that Subscriber, including calls to helplines, shall not be identified in the Subscriber's itemised bill.
- 12.5 The Communications Provider shall not be subject to this Condition in respect of any Subscriber where:
- (a) it provides Publicly Available Telephone Services to the Subscriber on a pre-paid basis; and
  - (b) the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.
- 12.6 For the purposes of this Condition:<sup>17</sup>
- (a) "Applicable Access Charge" means the rate charged by the Communications Provider to the Subscriber in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;

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<sup>16</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted a new paragraph 12.2 and renumbered subsequent paragraphs with effect from 26 December 2013.

<sup>17</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted new definitions of "Applicable Access Charge", "Consumer", "Effective Date" and "Unbundled Tariff Number" with effect from 26 December 2013.

- (b) “Communications Provider” means a person who provides Publicly Available Telephone Services;
- (c) “Consumer” has the meaning given to that term in General Condition 17;
- (d) “Effective Date” has the meaning given to that term in General Condition 17;
- (e) “Subscriber” means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services; and
- (f) “Unbundled Tariff Number” has the meaning given to that term in General Condition 17.

### 13. NON-PAYMENT OF BILLS

- 13.1 Where the Communications Provider's Subscriber has not paid the Communications Provider all or part of a bill for Publicly Available Telephone Services provided by the Communications Provider, any measures taken by the Communications Provider to effect payment or disconnection shall:
- (a) be proportionate and not unduly discriminatory;
  - (b) give due warning to the Subscriber beforehand of any consequent service interruption or disconnection; and
  - (c) except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the service concerned, as far as technically feasible.
- 13.2 The Communications Provider shall publish details of measures it may take to effect payment or disconnection in accordance with paragraph 13.1 above by:
- (a) sending a copy of such information or any appropriate parts of it to any Subscriber who may request such a copy; and
  - (b) placing a copy of such information on any relevant website operated or controlled by the Communications Provider.
- 13.3 For the purposes of this Condition:
- (a) "Communications Provider" means a person who provides Publicly Available Telephone Services at a fixed location;
  - (b) "Subscriber" means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.

14. PRICE TRANSPARENCY FOR NON-GEOGRAPHIC CALLS, CODES OF PRACTICE AND DISPUTE RESOLUTION<sup>18</sup>

Basic Code of Practice regarding provision of Public Electronic Communications Services

14.1 The Communications Provider shall produce a basic Code of Practice for its Domestic and Small Business Customers which sets out at least where such customers may avail themselves of the information required to be published under Condition 10.2, as relevant to the provision of Public Electronic Communications Services. The Code of Practice shall be drafted in plain English which is easy to understand, and copies of the Code of Practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

Codes of Practice for Premium Rate Services, NTS Calls,<sup>19</sup> calls to 0870 numbers<sup>20</sup> and calls to Personal Numbers<sup>21</sup>

- 14.2 Subject to paragraph 14.7, an Originating Communications Provider who provides Premium Rate Services, NTS calls, calls to 0870 numbers or calls to Personal Numbers, as appropriate shall:<sup>22</sup>
- (a) establish and thereafter maintain a Code of Practice for the provision of information relating to Premium Rate Services for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 1 to this Condition;
  - (b) establish and thereafter maintain a Code of Practice for NTS Calls, calls to 0870 calls and calls to Personal Numbers for its Domestic and Small Business Customers, which conforms with the Guidelines set out in Annex 2 to this Condition; and
  - (c) comply with the provisions of the Codes of Practice referred to at 14.2 (a) and (b) above.
- 14.3 The codes of practice referred to in Condition 14.2 shall be drafted in plain English which is easy to understand, and copies of the codes of

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<sup>18</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted the words "Price transparency for non-geographic calls" into the title with effect from 26 December 2013.

<sup>19</sup> Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

<sup>20</sup> Changes to 0870, Statement and notification, 23 April 2009, replacing condition 14.2 with effect from 1 August 2009.

<sup>21</sup> Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, references to calls to Personal Numbers inserted with effect from 28 August 2009.

<sup>22</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, modified paragraph 14.2 with effect from 26 December 2013.

practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

#### Codes of Practice for Complaints

- 14.4 The Communications Provider shall have and comply with procedures that conform to the Ofcom Approved Code of Practice for Complaints Handling when handling Complaints made by Domestic and Small Business Customers about its Public Electronic Communications Services<sup>23</sup>.

#### Dispute Resolution<sup>24</sup>

- 14.5 The Communications Provider shall implement and comply with a Dispute Resolution Scheme, including any final decision of the Dispute Resolution Body made in accordance with that Scheme, for the resolution of disputes between the Communications Provider and its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

#### Code on the provision by Service Providers of consumer protection information for the provision of Services<sup>25</sup>

- 14.6 Service Providers shall:

(a) comply with the requirements set out in the Code at Annex 3.

#### Transparency obligations in relation to calls to Unbundled Tariff Numbers<sup>26</sup>

- 14.7 From (and including) the Effective Date, the obligations in paragraphs 14.8 – 14.12 take effect and, to the extent that these obligations overlap with the requirements of paragraph 14.2 and Annex 2 to this Condition as they apply to the publication in price lists, websites, advertising or advertising material, of information and advice to Consumers on usage charges for calls to Unbundled Tariff Numbers, they supersede those requirements.

- 14.8 The Communications Provider shall publish the Access Charges that it sets in a way that:

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<sup>23</sup>A Review of Consumer Complaints Procedures, Statement and notification, 22 July 2010-deleted the former 14.4 and replaced with new 14.4 –entered into force 22 January 2011

<sup>24</sup> Protecting consumers from mis-selling of fixed line telecommunications. Notification 18 December 2009 - deleted the former 14.5 and 14.6 on Codes of practice for sales and marketing.

<sup>25</sup> Regulation of VoIP Services, Notification, 29 March 2007, obligations in Annex 4 in force from 29 May 2007. Simplifying Non-Geographic Numbers Statement, 12 December 2013, modified paragraph 14.6 with effect from 26 December 2013.

<sup>26</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted new paragraphs 14.7 – 14.12 and renumbered subsequent paragraph accordingly, with effect from 26 December 2013.

- (a) ensures the Access Charges are readily accessible to Consumers; and
- (b) gives those charges the same prominence in terms of location and format as is given to charges for geographic calls, calls to mobiles and call packages, including bundles, on the Communications Provider's website, in its published price lists and in advertising and promotional material which refer to call pricing.

14.9 Without prejudice to the generality of paragraph 14.8, the Communications Provider shall give prominence to the following, in particular:

- (a) the Access Charge that is payable for each package of tariffs that the Communications Provider makes available to Consumers;
- (b) whether calls to Unbundled Tariff Numbers are included within bundles of inclusive calls or inclusive call minutes purchased by Consumers from the Communications Provider, specifying in particular:
  - (i) the Unbundled Tariff Numbers to which the terms of the bundle apply;
  - (ii) if relevant, the number of call minutes to Unbundled Tariff Numbers that are so included;
  - (iii) if relevant, whether the inclusion of calls to Unbundled Tariff Numbers is conditional upon the time or day of the call; and
  - (iv) whether any special offers, discount schemes or call bundling arrangements apply to the Service Charges payable in respect of the call minutes or calls to Unbundled Tariff Numbers that are so included.

14.10 The provisions of paragraph 14.11 apply where a Communications Provider advertises, promotes or procures the advertisement or promotion of any Unbundled Tariff Number in connection with the provision by the Communications Provider of a service to Consumers by means of that Unbundled Tariff Number.

14.11 The Communications Provider shall—

- (a) include or procure the inclusion in any advertising and promotion of the Unbundled Tariff Number the Service Charge which applies in respect of a call by a Consumer to that number; and
- (b) ensure that the Service Charge is displayed in a prominent position and in close proximity to the Unbundled Tariff Number

in any such advertising or promotion of the Unbundled Tariff Number.

14.12 The Communications Provider shall put in place procedures to enable enquiry and helpdesk staff to respond to complaints and enquiries about Access Charges and calls to Unbundled Tariff Numbers and to monitor their compliance with the obligations in paragraphs 14.8 – 14.11.

14.13 In this Condition:<sup>27</sup>

- (a) “Access Charge” has the meaning given to that term in General Condition 17;
- (b) “Communications Provider” means a person who provides Public Electronic Communication Services to Domestic and Small Business Customers;
- (c) “Complaint” means
  - a) an expression of dissatisfaction made by a customer to a Communications Provider related to either:
    - i) the Communications Provider’s provision of Public Electronic Communications Services to that customer; or
    - ii) the complaint-handling process itself; and
  - b) where a response or resolution is explicitly or implicitly expected<sup>28</sup>.

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<sup>27</sup> Protecting citizens and consumers from mis-selling of fixed-line telecommunications services, Notification, 13 April 2005 – applies to insertion of definitions (a), (d), (h), (j), (m) – (p), and (s) – (v), Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006 – applies to insertion of definitions (i), (k) and (l), Regulation of VoIP Services, Notification, 29 March 2007 - applies to insertion of definitions (q) and (r), Protecting consumers from mis-selling of telecommunications services, Notification, 22 May 2007 – inserted definitions of “Cable Network” and “Narrowband”, modification of definition “Fixed-line Telecommunications Services” and deleted definitions “Carrier Pre-selection”, “Indirect Access”, “Pre-selected Provider”, “Relevant Period”, “Subscriber”, “Wholesale Calls”, “Wholesale Inputs”, “Wholesale Line Rental”. Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009 – inserted definitions of “Mobile Number”, “Personal Number”, “Personal Numbering Service” and “Personal Numbering Service Provider”. Protecting consumers from mis-selling of fixed line telecommunications, Notification, 18 December 2009 – deleted definitions of “Cable Network”, “Code of Practice for Sales and Marketing”, “Fixed Line Telecommunications Services” and “Narrowband”. Simplifying Non-Geographic Numbers Statement, 12 December 2013 - inserted new definitions of “Access Charge”, “Consumer”, “Effective Date”, “Non-Geographic Number”, “Payphone Service Provider”, “Service Charge”, “Terminating Communications Provider” and “Unbundled Tariff Number”, deleted definitions of “Mobile Number”, “Personal Numbering Service”, “Personal Numbering Service Provider” and modified definitions of “NTS Calls” and “Personal Number”.

<sup>28</sup> A Review of Consumer Complaints Procedures, Statement and notification, 22 July 2010- new definition inserted as 14.7(b) – entered into force 22 January 2011

- (d) "Consumer" has the meaning given to that term in General Condition 17;
- (e) "Dispute Resolution Body" means the body of persons responsible for administering a relevant Dispute Resolution Scheme;
- (f) "Dispute Resolution Scheme" means procedures approved or established from time to time by Ofcom for the purpose of this Condition in accordance with sections 52, 54 or 55 of the Act;
- (g) "Domestic and Small Business Customer" means, in relation to a Communications Provider, a Customer of that Provider who is neither-
  - (i) himself a Communications Provider; nor
  - (ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- (h) "Effective Date" has the meaning given to that term in General Condition 17;
- (i) "Guidelines" mean the guidelines as set out in either Annex 1, 2 or 3 to this Condition;
- (j) "NTS Calls" means:
  - (i) until (and including) the day prior to the Effective Date, calls to numbers identified in the National Telephone Numbering Plan as Special Services operating on the 08 number range and including calls to 0500 freephone numbers, but excluding calls to 0844 04 numbers for Surfetime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers<sup>29</sup>;
  - (ii) from (and including) the Effective Date, calls to numbers identified in the National Telephone Numbering Plan as Non-Geographic Numbers operating on the 08 number range (but excluding calls to 0844 04 numbers for Surfetime internet access services, calls to 0808 99 numbers for flat rate internet access call origination and calls to 0870 numbers) and calls to 0500 numbers;

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<sup>29</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting the last 5 words to end of the definition of NTS calls.

- (k) “Non-Geographic Number” has the meaning given to that term in the National Telephone Numbering Plan;
- (l) “Ofcom Approved Code of Practice for Complaints Handling” means the code of practice set out in Annex 4 to this General Condition 14;<sup>30</sup>
- (m) “Originating Communications Provider” means any Communications Provider that provides call origination services to Domestic and Small Business Customers but excluding Payphone Service Providers;<sup>31</sup>
- (n) “Payphone Service Provider” means a provider of a Public Pay Telephone;
- (o) “Personal Number” has the meaning given to that term in the National Telephone Numbering Plan;
- (p) “Publicly Available Telephone Services” means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;
- (q) “Service” means a Public Electronic Communication Service, but only to the extent it comprises the conveyance of speech, music or sounds;
- (r) “Service Charge” has the meaning given to that term in General Condition 17;
- (s) “Service Provider” means a provider of a Service;
- (t) “Terminating Communications Provider” or “TCP” means the Communications Provider which provides the electronic communications network on which a call terminates; and
- (u) “Unbundled Tariff Number” has the meaning given to that term in General Condition 17.

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<sup>30</sup> A Review of Consumer Complaints Procedures, Statement and notification, 22 July 2010- new definition inserted as 14.7(i) –entered into force 22 January 2011

<sup>31</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting new definition of Originating Communications Provider.

## **Annex 1 to General Condition 14<sup>32</sup>**

### **Guidelines for codes of practice for handling customer enquiries and complaints about Premium Rate Services**

#### **1. Introduction and overview**

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their domestic and small business customers with readily accessible and accurate information relating to Premium Rate Service (“PRS”) calls;
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be working, providing reassurance to customers and consumer representatives as to what constitutes good practice in the provision of information to customers in relation to complaints and enquiries about PRS calls.

#### **2. Status of code**

- 2.1 All Originating Communications Providers who provide PRS are required under General Condition 14.2 to establish a Code of Practice for PRS Calls for their domestic and small business customers (the “Code”), which conforms with these Guidelines, and to comply with the provisions of the Code.
- 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
- 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.

#### **3. Customer information and advice**

- 3.1 The Originating Communications Provider that is responsible for the retail billing of PRS Calls to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for PRS Calls on its website.<sup>33</sup>
- 3.2 Originating Communications Providers shall provide the following information and advice to their customers:
  - (i) information about the role of Originating Communications Providers in relation to:
    - a. general PRS enquiries and requests for number checks via the number-checker facilities provided by PhonepayPlus<sup>34</sup> on the PhonepayPlus website ([www.phonepayplus.org.uk](http://www.phonepayplus.org.uk));

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<sup>32</sup> Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006.

<sup>33</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, inserting new paragraph 3.1.

<sup>34</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009, replacing all references to the Independent Committee for the Supervision of Telephone Information Services or ICSTIS in paragraphs 3.2 and 3.3 with PhonepayPlus.

- b. dealing with formal complaints about abuses of service content, the PhonepayPlus Code of Practice and alleged scams.

3.3 In so doing Originating Communications Providers shall provide:

- (i) information about the role and remit of PhonepayPlus in dealing with complaints and how to go about making a formal complaint to PhonepayPlus via the website, helpline or by in writing;
- (ii) information about the tariffs that apply on their network for calls to any PRS number range;
- (iii) basic information about how PRS services work including whether the call(s) in question were routed to service providers (SPs) hosted on the Originating Communications Provider's own network or on the network of a Terminating Communications Provider (TCP), together with a basic explanation of how revenue sharing with SPs operates;
- (iv) information about how consumers can bar access from their telephone to all or specific PRS number ranges for reasons of cost or content;
- (v) information about the purpose of the Telephone Preference Service ("TPS") and Fax Preference Service ("FPS") and how to go about registering with such services;
- (vi) information about how internet diallers operate and how consumers can identify and take action, such as improving their computer's security, to avoid further instances of these or similar scams;
- (vii) in the case of mobiles, in addition to the above, information about how premium rate SMS/MMS/WAP billed services operate and how consumers can unsubscribe from these;
- (viii) information on the role of the Telecoms Ombudsman schemes in resolving disputes concerning PRS calls;
- (ix) information on other options available to consumers for seeking refunds in cases of abuse or scams involving PRS calls;
- (x) contact details of individual SPs or the TCPs which host them; and where available – typically via PhonepayPlus's website at ([www.phonepayplus.org.uk](http://www.phonepayplus.org.uk));
- (xi) SPs customer service contact details where consumers can obtain further information about services provided on the PRS numbers found on their bills.

#### 4. **Processes and Procedures**

4.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about PRS calls and to monitor their compliance with the Code.

- 4.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 4.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 4.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.
5. **Terms used in these Guidelines**
- 5.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

## Annex 2 to General Condition 14<sup>35</sup>

### **Guidelines for codes of practice for the publication of prices of calls to Number Translation Services, 0870 calls<sup>36</sup> and Personal Numbers<sup>37</sup>**

- 1.1 The key objective of these Guidelines is to ensure that Originating Communications Providers provide their Domestic and Small Business Customers with readily accessible and accurate information relating to the usage charges for NTS Calls, 0870 calls and calls to Personal Numbers on their networks.
- 1.2 These Guidelines seek to ensure that there is a clear framework within which Originating Communications Providers should be operating in relation to the publication and provision of information to domestic and small business customers about usage charges for NTS Calls, 0870 calls and calls to Personal Numbers.
2. **Status of code**
  - 2.1 All Originating Communications Providers who provide NTS Calls, 0870 calls and calls to Personal Numbers are required under General Condition 14.2 to establish a Code of Practice for their domestic and small business customers (the “Code”), which conforms with these Guidelines and to comply with the provisions of the Code.
  - 2.2 Compliance with the Code does not guarantee compliance with any other legal requirements.
  - 2.3 Non-compliance with the Code does not affect the validity of any contract between the company and the consumer, unless otherwise provided by law.
3. **Customer information and advice: published price lists and websites**
  - 3.1 The Originating Communications Provider that is responsible for the retail billing of NTS Calls, 0870 calls and calls to Personal Numbers to the end-user shall publish the usage charges required to be published under General Condition 10.2(d)(ii) for NTS Calls, 0870 calls and calls to Personal Numbers on its website and in published price lists in a way that gives those charges the same prominence in terms of location and format given to charges for geographic calls, calls to mobiles and call packages, including bundles.

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<sup>35</sup> Providing citizens and consumers with improved information about Number Translation Services and Premium Rate Services, Statement and notification, 19 April 2006. Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009 – added reference to “calls to Personal numbers”, paragraph 3.2(iv) on usage charges for calls to Personal Numbers – with effect from 28 August 2009.

<sup>36</sup> Changes to 0870, Statement and notification, 23 April 2009, with effect from 1 August 2009 – added reference to 0870 calls in paragraphs 1.1, 1.2, 2.1, 3.1 and 4.1 – 4.2 and 5.1, and new publication requirements in paragraphs 3.2(iii), 4.3 and 4.4.

<sup>37</sup> Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009, with effect from 28 August 2009 – added reference to “calls to Personal numbers” in paragraphs 1.1, 1.2, 2.1, 3.1 4.1 – 4.3 and 5.1, and new publication requirement in paragraph 3.2(iv) on usage charges for calls to Personal Numbers.

- 3.2 Without prejudice to the generality of paragraph 3.1, Originating Communications Providers shall give prominence to the following, in particular:
- (i) any usage charges that apply for calls to freephone numbers including details of when those charges will apply;
  - (ii) usage charges for NTS Calls which include variations by time of day. For example, “08xx calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”;
  - (iii) except where these are charged at the Originating Communications Provider’s geographic price including discounts and packages, usage charges for 0870 calls which include variations by time of day. For example, “0870 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”;
  - (iv) usage charges for calls to Personal Numbers which include variations by time of day. For example, “070 calls are charged at x pence per minute or per call during weekday evenings inclusive of value added tax”;
  - (v) whether or not any special offers, discount schemes or call bundling arrangements apply to NTS Calls, 0870 calls and calls to Personal Numbers, including details of which of those arrangements apply to which number range;

**4. Customer information and advice: advertising, promotional material and new customers**

- 4.1 Originating Communications providers shall publish in their advertising and promotional material which refer to call pricing, alongside maximum prices applying to NTS Calls, calls to 0870 numbers and calls to Personal Numbers, a clear reference as to where on websites and published price lists the complete set of charges, as specified in paragraph 3.2, can be found.
- 4.2 When a new customer signs up for the provider’s service, Originating Communications Providers shall provide, alongside maximum prices applying to NTS Calls, calls to 0870 numbers and calls to Personal Numbers in the relevant correspondence, a clear reference as to where on websites and published price lists the complete set of NTS Call, 0870 call and Personal Numbers call charges, as specified in paragraph 3.2, can be found.
- 4.3 Wherever an Originating Communications Provider states in their advertising or promotional material a price for a call package or bundle which includes geographic calls the Originating Communications Provider must include in that advertising or promotional material a prominent statement indicating whether or not this price includes 0870 calls and calls to Personal Numbers.
- 4.4 Originating Communications Providers should only describe calls to 0870 numbers as national calls or priced at the national rate in advertising, promotional material and consumers’ retail bills, where their prices for calls to 0870 numbers are the same as their prices for geographic calls.

## 5. **Processes and Procedures**

- 5.1 Procedures should be in place for Originating Communications Providers' enquiry and helpdesk staff to know of the existence and content of the Code in order for them to be able respond to complaints and enquiries about NTS<sup>38</sup> calls, calls to 0870 numbers and calls to Personal Numbers and to monitor their compliance with the Code.
- 5.2 There should be fully documented procedures in place to make customers and advice agencies aware of the existence and content of the Code, for example by referring to the Code in sales and marketing literature and by making the Code available through Originating Communications Providers' websites.
- 5.3 The Code shall be drafted in plain English, which is easy to understand, and copies of the Code are to be provided on request, and free of charge, to customers.
- 5.4 The Code shall include the name and contact details (including e-mail address) of the Originating Communications Provider's representative who is responsible for the Originating Communications Provider's compliance with the Code.

## 6. **Terms used in these Guidelines**

- 6.1 Terms used in these Guidelines shall have the same meaning, if any, as set out in Condition 14.

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<sup>38</sup> Changes to 0870, Statement and modification, 23 April 2009, correction of original text.

## **Annex 3 to General Condition 14**<sup>39</sup>

### **Code on the provision by Service Providers of consumer information to Domestic and Small Business Customers for the provision of Services**

#### **Provision**

1. This code (the 'Code') sets out the minimum requirements for all Service Providers to ensure that their Domestic and Small Business Customers are provided with information about any feature and/or limitation in that Service Provider's Service that differs from a Publicly Available Telephony Service provided over the Public Communications Network, in the ways set out in paragraph 4 below.
2. Different sections of the Code may be applicable to different Service Providers, depending on what Services the Service Provider is providing.
3. These requirements are in addition to the information required to be made available by the Service Provider under the General Conditions of Entitlement and any Codes of Practice set under the General Conditions of Entitlement.

#### **Scope**

4. The Code requires the Service Provider to provide information to its Domestic and Small Business Customers on:
  - a) service reliability;
  - b) Emergency Calls;
  - c) the ability to Port Numbers; and,
  - d) Other information for Domestic and Small Business Customers.

#### **Service Reliability**

5. Each Service Provider shall provide to its Domestic and Small Business Customers clear and readily accessible information regarding whether its Service may cease to function if there is a power cut or power failure, or a failure of the Broadband Connection.
6. The information in paragraph 5 above shall be provided during the Sales Process, within the Terms and Conditions of Use, and in any User Guide issued by the Service Provider.
7. The following text is an indicative example of the information to be provided in paragraph 5 above, that can be adapted to the specific requirements of Service Providers:

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<sup>39</sup> Regulation of VoIP Services, Notification, 29 March 2007. Protecting consumers from mis-selling of fixed line telecommunications. Notification 18 December 2009 – deleted the former annex 3 on "Guidelines for sales and marketing codes of practice for Fixed-Line Telecommunications Services"

“IMPORTANT INFORMATION: If your Broadband Connection fails, your voice service will also fail. Your service may cease to function if there is a power cut or failure. These failures may be caused by reasons outside our control.”

### Emergency Calls

8. Some Services may not offer any access to Emergency Calls or access to Emergency Calls may be offered by the Service Provider over its Service but the reliability of this access may be affected by a power cut or power failure, or by failure of the Customer’s Broadband Connection.
9. This section is intended to ensure that Service Providers provide their Domestic and Small Business Customers with relevant information about their ability to make Emergency Calls.

### No Access to Emergency Calls

10. Where the Service provided by the Service Provider does not provide access to Emergency Calls, the Service Provider shall:
  - a) provide the Domestic and Small Business Customers, clear and readily accessible information at the Point of Signature, in the Terms and Conditions of Use and in any User Guide; that its Service does not provide access to Emergency Calls. The same information must also be provided to prospective Domestic and Small Business Customers as part of the Sales Process;
  - b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that the Service will not provide any access to Emergency Calls, (the following text is an example of the wording that could be used):

“I understand that this service does not allow calls to the emergency services numbers 999 and 112.”

- c) provide evidence to Ofcom of the acknowledgement in paragraph 10 (b) above, within five working days; following a written request from Ofcom;
- d) as part of the Terms and Conditions of Use, supply its Domestic and Small Business Customer with a clear and readily accessible printed statement, or an on-screen statement that the Domestic and Small Business Customer is encouraged to print out, that Emergency Calls cannot be made using the Service;
- e) during the Sales Process, give the Domestic and Small Business Customer the choice whether to receive Labels (at no charge, other than reasonable postage and packaging if applicable) which state that Emergency Calls cannot be made using the Service, and recommend that the Domestic and Small Business Customer use these Labels on or near the relevant Service Access Terminal;
  - where a screen or display is used with the Service, a Label could be an on-screen message or display using a clear and readily accessible

graphic, words or icon that Emergency Calls cannot be made using the Service; or

- in these and other circumstances a Label could be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).
- f) if Emergency Calls are made from the Service Access Terminal, provide a network announcement stating (for example):

"Calls to Emergency Services cannot be made from this handset; please hang up and call from an alternative telephone service such as a traditional landline or mobile phone."

- g) This announcement shall be interspersed with a Number Unavailable Tone for the benefit of hearing-impaired users.

### **Reliability of Access to Emergency Calls**

11. Where the Service Provider provides access to Emergency Calls but the Service may cease to function if there is a power cut or failure or a failure of the Broadband Connection the Service Provider shall:

- a) provide its Domestic and Small Business Customers with clear and readily accessible information, during the Sales Process, in the Terms and Conditions of Use and in any User Guide; that, although access to Emergency Calls is provided, the Service may cease to function if there is a power cut or failure, or a failure of the Broadband Connection;
- b) take reasonable steps to ensure that Domestic and Small Business Customers acknowledge in the form of a signature (or online equivalent), at the Point of Signature, that they understand that Emergency Calls will fail if there is a power cut or failure, or a failure of the Broadband Connection, (the following text is an example of the wording that could be used):

"I understand that this service allows calls to the emergency services numbers 999 and 112. However I understand that calls will fail if there is a power cut or my broadband connection fails."

- c) provide evidence to Ofcom of the acknowledgement in paragraph 11 (b) above, within five working days; following a written request from Ofcom;
- d) during the sales process, give the Domestic and Small Business Customer the choice whether to receive (at no charge other than reasonable postage and packaging if applicable), Labels which state that Emergency Calls may fail:
  - where a screen or display is used with the Service, a Label would normally be an on-screen message or display using a clear and readily accessible graphic, words or icon that Emergency Calls cannot be made using the Service; and

- in other circumstances a Label would normally be (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file).

### **Emergency Location Information**

12. In respect of Emergency Location Information:
- a) where the Service provided by the Service Provider does provide access to Emergency Calls and the Service is to be used principally at a single fixed location, the Service Provider shall require its Domestic and Small Business Customers to register with it the address of the place where the Service is going to be used prior to activation of the Service (the location information), so that up-to-date location information can be used for Emergency Location Information;
  - b) where the Service Provider has reasonable expectation that, or has been informed that, the service is to be accessed from several locations, the Service Provider shall recommend that its Domestic and Small Business Customers register and update the location information with it, whenever accessing the Service from a new location, so that up-to-date information can be used for Emergency Location Information;
  - c) the Service Provider shall advise its Domestic and Small Business Customer at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use of any limitations on the location information that will be provided to the Emergency Services as Emergency Location Information, if the location information they have provided is not up-to-date. This advice shall be clear and readily accessible;
  - d) where the Service Provider does not provide Emergency Location Information, it shall provide clear and easily accessible information to this effect to all Domestic and Small Business Customers at the Point of Signature, in any User Guide, and in any Terms and Conditions of Use. The same information shall also be made available to prospective Domestic and Small Business Customers as part of the Sales Process.

### **Ability to Port Numbers**

13. Where the Service Provider does not offer Number Portability, the Service Provider shall provide clear and readily accessible information to its Domestic and Small Business Customers in any User Guide and the Terms and Conditions of Use to this effect. The same information shall also be provided to prospective Domestic and Small Business Customers as part of the Sales Process.

### **Other information for Customers**

14. In addition to the requirements set out above, the information describing the Service made available by a Service Provider to a prospective Domestic and Small Business Customer shall make it clear and readily accessible as part of the Sales Process if any of the following facilities or features are not available by means of the Service:
- access to a Directory Enquiry Facility;

- access to operator assistance services (as described in General Condition 8.1);
  - Calling Line Identification Facilities;
  - provision of a Directory on request;
  - special measures for end users with disabilities (as described in General Condition 15); and
  - the non-itemisation of calls which are made from a Subscriber's telephone which are free of charge.
15. The Service Provider shall also make clear and readily accessible, any restrictions on the Number Ranges or Country Codes that may be called using the Service. Where such numbers cannot be dialled, it is recommended that dialling such numbers should produce the standard Number Unavailable Tone.

## DEFINITIONS

For the purposes of the Code, the definition of the following terms is:

**'Broadband Connection'** means the Domestic or Small Business Customer's broadband service which provides speeds which are higher than those attainable over a dial up connection which are 56kbit/s over an analogue line; 64kbit/s over an ISDN2 digital channel and 128kbit/s over the two bonded channels of an ISDN2 line;

**'Calling Line Identification Facilities'** means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;

**'Country Codes'** means the international dialling code e.g. 44 for the UK;

**'Emergency Calls'** means calls to 999 or 112 or its equivalent;

**'Emergency Location Information'** means information concerning the location from where a call to the Emergency Organisations can be made, that is provided by Service Providers to Emergency Organisation's Operators as part of the handling of such a call;

**'Internet Protocol'** means the method by which data is sent over the internet or intranet;

**'Label'** means a mechanism for annotating a Service Access Terminal with a brief message. A Label can consist of an electronic notice that is displayed whenever the Service is used or (at the Customer's choice) either a piece of paper to be attached to the Service Access Terminal or software facilities for producing such labels (e.g. a PDF file);

**'Number Portability'** the facility by which a Domestic and Small Business Customer can transfer their Telephone Number when switching between Service Providers;

**'Number Ranges'** means a set of contiguous numbers of a specified or unspecified size;

**'Number Unavailable Tone'** means a continuous tone which differs from dial tone and indicates a dialled number is unavailable or out of service;

**'Point of Signature'** means the point in the process of concluding a contract immediately before the Domestic and Small Business Customer indicates his/her agreement to enter into the contract;

**'Port Numbers'** means the process to transfer Telephone Numbers to a new Service Provider;

**'Sales Process'** means the process of providing information to the prospective Domestic and Small Business Customer about the Service and of establishing the Domestic and Small Business Customer's requirements for the Service before the making of the contract to provide that Service. This includes leaflets and marketing material. It does not include advertisements;

**'Service Access Terminal'** means the equipment used to access the Service;

**'Terms and Conditions of Use'** means the contract agreed by the Domestic and Small Business Customer for the provision of the Service;

**'User Guide'** means the document giving the Domestic and Small Business Customer information about how to use the Service. This does not include any document concerned solely with the operation of a Service Access Terminal.

## Annex 4 to General Condition 14<sup>40</sup>

### The Ofcom Approved Code of Practice for Complaints Handling

This Ofcom Approved Code of Practice for Complaints Handling (the 'Ofcom Code') sets out the minimum standards that Ofcom has set for Communications Providers (CPs) in the handling of Complaints made by Domestic and Small Business Customers (as those terms are defined in General Condition 14.7) about the provision of Public Electronic Communications Services (as defined in the General Conditions of Entitlement).

A list of further definitions can be found on the page following the specific obligations. Explanatory guidance can be found on the Ofcom website.

A CP must have complaints handling procedures that:

- 1) Are **transparent**:
  - a) A CP must have in place a written code for handling complaints ('Customer Complaints Code') made by their Domestic and Small Business Customers. A CP must comply with its Customer Complaints Code in relation to each Complaint it receives.
  - b) The Customer Complaints Code must be concise, easy to understand and only contain relevant information about complaints handling procedures.
  - c) The Customer Complaints Code must be kept up to date and as a minimum include information about:
    - i) the process for making a Complaint;
    - ii) the steps the CP will take to investigate with a view to resolving a Complaint;
    - iii) the timeframes in which the CP will endeavour to resolve the Complaint, including when the CP is likely to notify the Complainant about the progress or resolution of a Complaint;
    - iv) the contact details for making a Complaint to the CP, including providing details about the low-cost points of contact required in clause 2(c) below; and
    - v) the contact details for the CP's Alternative Dispute Resolution scheme, with details on when a Complainant will be able to access the service (with reference to the requirements on a CP in both clause 4(c) and 4(d) below).

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<sup>40</sup> A Review of Consumer Complaints Procedures, Statement and notification, 22 July 2010 – new Annex 4 – entered into force 22 January 2011 with the exception of clause 4 which came into force on 22 July 2011.

- 2) Are **accessible**:
- a) The Customer Complaints Code must be well publicised and readily available, including:
    - i) being easily accessible on a webpage, with either:
      - 1. a weblink to the Customer Complaints Code being clearly visible on a CP's primary webpage for existing customers (i.e. '1 click' access); or
      - 2. a weblink to the Customer Complaints Code being clearly visible on a 'how to complain' or 'contact us' page, which is directly accessible from a primary webpage for existing customers (i.e. '2 click' access).
    - ii) ensuring the relevant terms and conditions for a product and/or service refer to the existence of the Customer Complaints Code and should signpost consumers to how they can access a copy; and
    - iii) being provided free of charge to Complainants upon reasonable request in hard copy or other format as agreed with the Complainant.
  - b) Complaints handling procedures must be sufficiently accessible to enable consumers with disabilities to lodge and progress a Complaint.
  - c) The means by which a CP accepts Complaints should not unduly deter consumers from making a complaint. A CP must have in place at least two of the following three low-cost options for consumers to lodge a Complaint:
    - i) a 'free to call' number or a phone number charged at the equivalent of a geographic call rate;
    - ii) a UK postal address; or
    - iii) an email address or internet web page form.
- 3) Are **effective**:
- a) A CP must ensure the fair and timely resolution of Complaints.
  - b) There must be clearly established timeframes and a clear and reasonable escalation process for dealing with Complaints.
- 4) Facilitate appropriate **access to Alternative Dispute Resolution**:
- a) A CP must ensure front-line staff are fully informed of the right of consumers to use Alternative Dispute Resolution.
  - b) Every paper bill provided to domestic customers must include, in a reasonably prominent manner, relevant text regarding the right of consumers to take unresolved complaints to Alternative Dispute Resolution. Such text will:

- i) provide the name of the Alternative Dispute Resolution scheme;
    - ii) make reference to the fact that the scheme offers dispute resolution, which is independent of the CP;
    - iii) make reference to the fact that the scheme can only be accessed eight weeks after a Complaint was first made to the CP; and
    - iv) make reference to the fact that consumers can utilise the scheme at no cost to themselves.
  - c) A CP must promptly issue a written Deadlock Letter when requested by a Complainant, unless:
    - i) the CP has genuine and reasonable grounds for considering that the Complaint will be resolved in a timely manner and subsequently takes active steps to do so; or
    - ii) it is reasonable to consider the Complaint to be vexatious; or
    - iii) the subject-matter of the Complaint is outside the jurisdiction of the CP's Alternative Dispute Resolution scheme.
  - d) A CP must ensure Complainants receive prompt Written Notification of their right to go to Alternative Dispute Resolution eight weeks after the Complaint is first brought to the attention of the CP, unless:
    - i) it is reasonable to consider the Complaint has been resolved; or
    - ii) it is reasonable to consider the Complaint to be vexatious: or
    - iii) the subject-matter of the Complaint is outside the jurisdiction of the CP's Alternative Dispute Resolution scheme.
- 5) Retain appropriate **records** of contact with Complainants:
- a) A CP must retain written records collected through the complaints handling process for a period of at least six months including, as a minimum, written correspondence and notes on its customer record management systems.

## Definitions for the Ofcom Code

The following definitions should be used for interpreting this Code of Practice:

**‘Alternative Dispute Resolution’** means any dispute procedures approved by Ofcom under section 54 of the Communications Act 2003.

**‘Complaint’** means:

- a) an expression of dissatisfaction made by a customer to a Communications Provider related to either:
  - i) the Communications Provider’s provision of Public Electronic Communications Services to that customer; or
  - ii) the complaint-handling process itself; and
- b) where a response or resolution is explicitly or implicitly expected.

**‘Complainant’** means a Domestic or Small Business Customer who makes a Complaint to a Communications Provider.

**‘Deadlock Letter’** means a letter or email from a Communications Provider to a Complainant agreeing that the Complaint can be referred to the relevant Alternative Dispute Resolution scheme.

**‘Written Notification’** means a written notification sent to a Complainant that:

- a) is in plain English;
- b) is solely about the relevant Complaint;
- c) informs the Complainant of the availability of dispute resolution, which is independent of the CP;
- d) provides the name and appropriate contact details for the relevant Alternative Dispute Resolution scheme; and
- e) informs the Complainant that they can utilise the scheme at no cost to themselves.

## 15. SPECIAL MEASURES FOR END-USERS WITH DISABILITIES

- 15.1 The Communications Provider shall from time to time consult the Consumer Panel to ensure that the requirements and interests of disabled End-Users are fully taken into account in the development and provision of its services.
- 15.2 Subject to paragraph 15.10, the Communications Provider shall ensure that any End-User of its services who is so visually impaired or otherwise disabled as to be unable to use a printed Directory, can access, free of charge, Directory Information and Directory Enquiry Facilities in a form which is appropriate to meet their needs. The Communications Provider shall ensure that such a Directory Enquiry Facility is capable of connecting such an End-User to a requested Telephone Number at the request of that End-User.
- 15.3 The Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make or receive calls in which some or all of the call is made or received in text format, are able to access and use a Relay Service, including the receiving of calls made by End-Users irrespective of whether such End-Users have a disability. Such Subscribers and End-Users, as the case may be, shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service. In making such charges, the Communications Provider shall apply a special tariff scheme designed to compensate Subscribers who, because of their disabilities, need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.<sup>41</sup>
- 15.4 Subject to paragraph 15.10, the Communications Provider shall ensure that any End-Users of its services who need to make calls to which a Relay Service applies:
- (a) have access to Emergency Organisations, operator assistance services and a Directory Enquiry Facility using short code numbers; and
  - (b) are able to receive call progress voice announcements in a suitable form.
- 15.5 By no later than 18 April 2014 a Relay Service provided by the Communications Provider to its Subscribers pursuant to paragraph 15.3 must:

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<sup>41</sup> Access to electronic communication services for disabled consumers, statement, 12 March 2014, modified General Condition 15.3 with effect from 13 March 2014

- (a) provide facilities for the receipt and translation of voice communications into text and the conveyance of that text to the terminal of End-Users of any provider of Publicly Available Telephone Services and vice versa,
- (b) provide facilities for the receipt and transmission of voice communications in parallel with text communications, allowing both channels to work in tandem to deliver near synchronous voice and text;
- (c) provide facilities for access to Emergency Organisations;
- (d) subject to Conditions 3 and 13.1, be available for lawful use by End-Users at all times;
- (e) be capable of being accessed by End-Users of the service from readily available compatible terminal equipment, including textphones, Braille readers, personal computers and mobile telephones;
- (f) not prevent End-Users from communicating with other End-users of other approved Relay Services;
- (g) provide facilities to allow End-Users, who because of their disabilities need to make calls using a Relay Service, to receive incoming calls via the Relay Service, without the calling party needing to dial a prefix;
- (h) insofar as reasonably practicable, allow for communication between End-Users of the service at speeds equivalent to voice communications;
- (i) take measures to ensure the confidentiality of communications between End-Users of the service;
- (j) comply with any directions in respect of the service which Ofcom may make from time to time; and
- (k) be approved by Ofcom for the purposes of this Condition 15.5.<sup>42</sup>

15.6 Subject to paragraph 15.10, the Communications Provider shall provide a priority Fault Repair Service as swiftly as practicable to any Subscriber with disabilities who has a genuine need for an urgent repair. Charges for a priority Fault Repair Service shall not exceed the Communications Provider's standard charge for a Fault Repair Service.

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<sup>42</sup> Review of Relay Services, Decision on the introduction of Next Generation Text Relay, Statement, 17 October 2012, inserting a new condition 15.5 and renumbering the subsequent conditions.

- 15.7 Subject to paragraph 15.10, the Communications Provider shall ensure that such of its Subscribers who are so disabled such that they are dependent on the telephone are able to participate in a scheme to safeguard telephone services to such Subscribers. The scheme shall:
- (a) enable such Subscribers to give prior notification to the Communications Provider of a nominee to whom-
    - (i) that Subscriber's telephone bill shall initially be sent; or
    - (ii) any enquiry to establish why a telephone bill has not been paid shall be made;
  - (b) permit the nominee to pay that Subscriber's bill on their behalf;
  - (c) require the nominee to give prior consent to the Communications Provider to act in such capacity;
  - (d) not require the nominee to accept liability to pay the telephone bills of that Subscriber; and
  - (e) be provided at no cost to such a Subscriber.
- 15.8 Communications Providers shall provide End-Users with hearing or speech impairments with Mobile SMS Access to Emergency Organisations by using the emergency call numbers "112" and "999" at no charge.<sup>43</sup>
- 15.9 Subject to paragraph 15.10, the Communications Provider shall make available, free of charge, and in a format reasonably acceptable to any Subscriber who is blind or whose vision is impaired, upon their request:
- (a) any contract (or any subsequent variation) with that Subscriber for the provision of Publicly Available Telephone Services, including any publicly available terms or conditions referred to in that contract or variation;
  - (b) any bill rendered in respect of those services.

An acceptable format would, for these purposes, consist of print large enough for such Subscriber to read, Braille or electronic format appropriate to the reasonable needs of the Subscriber.

- 15.10 The Communications Provider shall take all reasonable steps to ensure that the services which it provides in order to comply with the obligations contained in paragraphs 15.1 to 15.9 above are widely

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<sup>43</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, inserting new General Condition 15.7 and consequential definitions of "Mobile SMS Access", "Short Message" and "SMS".

publicised, taking into consideration the need to disseminate information in appropriate formats through appropriate channels for disabled End-Users.

15.11 For the purposes of this Condition:

- (a) “Communications Provider” means a person who provides Publicly Available Telephone Services;
- (b) “Fault Repair Service” means a service consisting of such repair, maintenance, adjustment or replacement of any part of the Communications Provider’s Electronic Communications Network, or such repair or adjustment of any connected or connectable network, or such repair or replacement for any Apparatus for which the Communication Provider has undertaken the responsibility for repair and maintenance, as is necessary to restore and maintain a sufficient service;
- (c) “Mobile SMS Access” means the ability to send and receive Short Messages using an SMS defined by the European Telecommunications Standards Institute in the GSM (Global System for Mobile communications) or UMTS (Universal Mobile Telecommunications System) standards, or any other standard for mobile communications that is, or may be, adopted in the UK;
- (d) “Relay Service” means any service which:
  - (i) has been approved by Ofcom to be a text relay service for the purposes of this Condition; and
  - (ii) as of 18 April 2014 complies with the requirements of paragraph 15.5;<sup>44</sup>
- (e) “Short Message” means information that may be conveyed by means of the Short Message Service;
- (f) “SMS” means Short Message Service, which is a text message delivered to a Subscriber’s handset or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the Subscriber’s handset;
- (g) “Subscriber” means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.

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<sup>44</sup> Review of Relay Services, Decision on the introduction of Next Generation Text Relay, Statement, 17 October 2012, amending the definition of “Relay Service”.

## 16. PROVISION OF ADDITIONAL FACILITIES

16.1 The Communications Provider shall, subject to technical feasibility and economic viability, provide:

- (a) tone dialling or dual-tone multi frequency operation, such that the network supports the use of DTMF Tones for end-to-end signalling throughout the network; and
- (b) Calling Line Identification Facilities, in accordance with the requirements of Relevant Data Protection Legislation.

16.2 This Condition shall not apply to the extent that Ofcom directs that it shall not apply to Communications Providers in all or part of the United Kingdom on the basis that there is already sufficient access to these facilities in the relevant areas.

16.3 In this Condition,

- (a) "Calling Line Identification Facilities" means facilities by which the Telephone Number of a calling party is presented to the called party prior to the call being established;
- (b) "Communications Provider" means a person who provides a Public Communications Network;
- (c) "DTMF Tones" means DTMF tones as defined in European Technical Standards Institute (ETSI) European Technical Report 207 (published September 1995).

## 17. ALLOCATION, ADOPTION AND USE OF TELEPHONE NUMBERS

### General Prohibitions on Adoption and Use<sup>45</sup>

- 17.1 A Communications Provider shall not Adopt Telephone Numbers from Part A of the National Telephone Numbering Plan unless:
- (a) the Telephone Numbers have been Allocated to the Communications Provider; or
  - (b) the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers.
- 17.2 The Communications Provider may only use a Telephone Number from Part A of the National Telephone Numbering Plan where that Telephone Number has been Allocated to a person, unless the use in question is for the purposes of indicating that the Telephone Number has not been Allocated.
- 17.3 The Communications Provider may only use (or, where specified, Adopt) a Telephone Number listed in Part C of the National Telephone Numbering Plan where such use or Adoption is in accordance with the designation attributed to that Telephone Number therein.

### Requirements in Connection with the Adoption of Telephone Numbers<sup>46</sup>

- 17.4 In providing an Electronic Communications Network or an Electronic Communications Service, the Communications Provider shall comply with:
- (a) all applicable restrictions and requirements as are set out in the National Telephone Numbering Plan; and
  - (b) any restrictions or requirements set out in a notification issued by Ofcom to that Communications Provider recording the Allocation of specific Telephone Numbers to it.
- 17.5 Where Telephone Numbers have been Allocated to the Communications Provider, that provider shall secure that such

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<sup>45</sup> Telephone Numbering, Modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number application forms within existing numbering policy, Statement, 22 November 2012, inserting the words “Part A of” in conditions 17.1 and 17.2 and, in condition 17.3, deleting the words “Annex 1 to this Condition” and replacing them with “Part C of the National Telephone Numbering Plan”, and deleting the words “in Annex 1” and replacing them with the word “therein”.

<sup>46</sup> Telephone Numbering, Modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number application forms within existing numbering policy, Statement, 22 November 2012, deleting conditions 17.4 and 17.5, replacing them with a new condition 17.4 and renumbering subsequent conditions.

Telephone Numbers are Adopted or otherwise used effectively and efficiently.

- 17.6 The Communications Provider shall not unduly discriminate against another Communications Provider in relation to its Adoption or use of Telephone Numbers for purposes connected with the use by that other Communications Provider, or its Customers, of any Electronic Communications Network or Electronic Communications Service.
- 17.7 The Communications Provider shall take all reasonably practicable steps to secure that its Customers, in using Telephone Numbers, comply (where applicable) with the provisions of this Condition, the provisions of the National Telephone Numbering Plan and the Non-provider Numbering Condition.<sup>47</sup>

#### Requirements in Connection with the transfer of use of Allocated Telephone Numbers<sup>48</sup>

- 17.8 The Communications Provider shall not transfer use of Telephone Numbers from the National Telephone Numbering Plan unless:
- (a) the Telephone Numbers have been Allocated to the Communications Provider; or the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers;
  - (b) the telephone numbers are used in accordance with the National Telephone Numbering Plan; and
  - (c) the Telephone Numbers are Adopted or otherwise used effectively and efficiently.

#### Application for Allocation or Reservation of Telephone Numbers

- 17.9 When applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall:
- (a) use an appropriate application form as directed by Ofcom from time to time as it thinks fit;
  - (b) provide such information as is required by such application form; and

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<sup>47</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, amended paragraph 17.7 with effect from 26 December 2013.

<sup>48</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, inserting new General Condition 17.9 on transfer and use of Allocated Telephone Numbers.

- (c) provide to Ofcom, on request, any other information considered by Ofcom to be relevant to the application, and the supply of which does not place an undue burden on the Communications Provider.

17.10 Ofcom will determine, taking into account the provisions of the National Telephone Numbering Plan, any application for Telephone Numbers by the end of the period of three weeks after the date of the receipt by it of the completed application form. Where Ofcom has required any additional information under paragraph 17.9(c) in relation to any application, Ofcom will determine the application by the end of the period of three weeks after the date of the receipt by it of that additional information.

#### Allocation of Telephone Numbers for a limited period<sup>49</sup>

17.11 Ofcom may Allocate Telephone Numbers to the Communications Provider for a limited period only if the duration is appropriate for the service concerned in view of the objective pursued and taking due account of the need to allow for an appropriate period for investment amortisation.

17.12 Where Telephone Numbers are Allocated to the Communications Provider by Ofcom for a limited period of time, Ofcom may withdraw any such Allocated numbers at the end of the set period.

#### Charging for Specified Geographic Numbers<sup>50</sup>

17.13 The Communications Provider shall pay to Ofcom any applicable Annual Number Charge within 14 days of receipt of an invoice from Ofcom.

17.14 The Annual Number Charge will be billed annually in arrears following the end of each Charging Year.

17.15 The Annual Number Charge for a Communications Provider shall be:

- (a) the charges applicable to that Communications Provider calculated in accordance with paragraph 17.16; less
- (b) any reduction applicable to that Communications Provider calculated in accordance with paragraph 17.17.

17.16 In respect of each Specified Geographic Number the Communications Provider must pay £0.1/365 for every day within the Charging Year for

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<sup>49</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, inserted new General Condition 17.12 and 17.13 on Allocation of Telephone Numbers for a limited period.

<sup>50</sup> Promoting efficient use of geographic telephone numbers, statement dated 18 July 2012. Inserted paragraphs 17.14 to 17.19 on charging for Specified Geographic Numbers.

which that Specified Geographic Number is Allocated to it. Such amounts are payable irrespective of whether or not a Specified Geographic Number has been Adopted or is in use.

17.17 If relevant, the amount of any reduction for a Communications Provider in respect of a Charging Year shall be:

- (a) (the total number of the Communications Provider's Ported Numbers) x £0.1 ÷ (the Average Industry Utilisation Rate); plus
- (b) (the total number of the Communications Provider's WLR Numbers) x £0.1 ÷ (the BT Average Utilisation Rate); plus
- (c) (the total number of the Communications Provider's Public Payphone Numbers) x £0.1 ÷ (the Communications Provider Average Utilisation Rate).

17.18 If any reduction calculated pursuant to paragraph 17.17 exceeds the charges applicable to that Communications Provider calculated in accordance with paragraph 17.16, the Annual Number Charge shall be zero.

#### Withdrawal of a Number Allocation

17.19 It is hereby declared that Ofcom may withdraw an Allocation of Telephone Numbers from a Communications Provider where:

- (a) the Communications Provider has not Adopted those Telephone Numbers within six months, or such other period as Ofcom may from time to time direct, from the date on which the Telephone Numbers were Allocated, or
- (b) in relation to an Allocation of a series of Telephone Numbers, the Communications Provider has not Adopted those Telephone Numbers to any significant extent within six months, or such other period as Ofcom may from time to time direct, from the date on which the series of Telephone Numbers was Allocated.

#### Requirements in connection with the use of telephone numbers<sup>51</sup>

17.20 In preparation for the fulfilment of its obligations under paragraphs 17.22 to 17.32 from (and including) the Effective Date, the Communications Provider must take all steps it considers necessary and as Ofcom may direct prior to the Effective Date.<sup>52</sup>

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<sup>51</sup> Raising confidence in telephone numbers: amending General Condition 17, Notification, 31 May 2007 - inserted new condition 17.12 and renumbered 17.12 to condition 17.13.

<sup>52</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted new paragraph 17.20 with effect from 26 December 2013.

17.21 Before the Effective Date,<sup>53</sup> where Customers of a Communications Provider are making calls to Non-Geographic Numbers starting 03,<sup>54</sup> <sup>55</sup> Harmonised numbers for harmonised services of social value (116XXX numbers)<sup>56</sup> or Non-Geographic Numbers starting 0870<sup>57</sup>, the Communications Provider shall comply with the designations for those numbers in Part A of the National Telephone Numbering Plan.<sup>58</sup>

17.22 When providing an Electronic Communications Service by means of an Unbundled Tariff Number on or after the Effective Date, the Communications Provider must comply with the tariff principles set out in paragraphs 17.24 – 17.30 and any applicable maximum price specified in the National Telephone Numbering Plan.<sup>59</sup>

17.23 Paragraph 17.22 does not apply in respect of—

- (a) calls to an Unbundled Tariff Number from a Public Pay Telephone;
- (b) calls originating outside of the United Kingdom to an Unbundled Tariff Number.

17.24 The retail price for a call to an Unbundled Tariff Number which is charged to a Consumer is the sum of—

- (a) the Access Charge Element; and
- (b) the Service Charge Element, subject to any special offers, discounts or call bundling arrangements which the Communications Provider offers to that Consumer.

17.25 The Access Charge must—

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<sup>53</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted the words “Before the Effective Date” with effect from 26 December 2013.

<sup>54</sup> Review of the 070 personal numbering range, Statement and notification (and correction), 27 February 2009 – deleted “or Personal Numbering Service (070) numbers”.

<sup>55</sup> Telephone Numbering, Modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number application forms within existing numbering policy, Statement, 22 November 2012, deleted the words “UK-wide Numbers (03)” and replaced them with “Non-Geographic Numbers starting 03”.

<sup>56</sup> Statement on Harmonised European numbers for services of social value – Allocation and charging arrangements for 116 numbers in the UK including modification to General Condition 17 – deleted the word “either” and added the words “or Harmonised numbers for harmonised services of social value (116XXX numbers)” into 17.12.

<sup>57</sup> Changes to 0870, Statement and notification of 23 April 2009, with effect from 1 August 2009, amending condition 17.12, replaced the word “or” before “Harmonised” with “,” and inserted “or Non-Geographic Numbers starting 0870” after “(116XXX numbers)”.

<sup>58</sup> Telephone Numbering, Modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number application forms within existing numbering policy, Statement, 22 November 2012, inserted the words “Part A of”.

<sup>59</sup> Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted new paragraphs 17.22 – 17.32 and renumbered subsequent paragraph with effect from 26 December 2013.

- (a) not vary within a Consumer's tariff package by reference to:
  - (i) the Unbundled Tariff Number that is called; or
  - (ii) the time or day of the call;
- (b) be set at a pence per minute rate.

17.26 The Service Charge—

- (a) must not vary according to the Communications Provider that retails or originates the call;
- (b) must not vary by the time or day of the call;
- (c) must be no greater than any applicable maximum price specified in the National Telephone Numbering Plan;
- (d) may be set at a pence per minute, a pence per call rate, or a rate which combines a pence per minute rate and a pence per call rate;
- (e) must not require another Communications Provider to have systems able to accommodate more Price Points than are required under paragraph 17.31, unless that Communications Provider agrees otherwise.

17.27 For the purpose of calculating an Access Charge Element, the Communications Provider:

- (a) may round up the length of the call to 1 minute for a call lasting less than 1 minute; and
- (b) for a call lasting more than 1 minute but less than a whole number of minutes, must treat that call in accordance with the rounding principles it would apply to a geographic call of an equivalent length for the purpose of billing a Consumer.

17.28 For the purpose of calculating the Service Charge Element where the Service Charge comprises or includes a pence per minute rate, the Communications Provider must round up the length of the call to the next nearest whole second for a call lasting less than a whole number of seconds (so that, for example, a call lasting 3 minutes 14.5 seconds would be charged in respect of the Service Charge Element, at the applicable Service Charge multiplied by 3.25).

17.29 Paragraph 17.30 applies if both the following conditions in respect of a call to an Unbundled Tariff Number are satisfied —

- (a) the Consumer has purchased a bundle of inclusive call minutes or inclusive calls from the Communications Provider, which includes call minutes (or calls) to one or more Unbundled Tariff Numbers; and
- (b) the call is to an Unbundled Tariff Number which counts towards remaining minutes (or calls) in the bundle of inclusive minutes (or calls) purchased by the Consumer.

17.30 Where this paragraph applies, the Access Charge Element shall be deemed to be zero.

17.31 For the purpose of calculating and billing the Service Charge Element of the retail price for calls to Unbundled Tariff Numbers on or after the Effective Date, the Communications Provider must ensure that:

- (a) with effect for the period of 12 months beginning on the Effective Date, it has systems able to accommodate up to eighty (80) different Price Points; and
- (b) with effect from the expiry of the period referred to in paragraph 17.31(a), it has systems able to accommodate up to one hundred (100) different Price Points.

17.32 In relation to the obligations under paragraph 17.31, the Price Points accommodated by the systems of the Communications Provider must:

- (a) reflect on a fair and reasonable basis the rates proposed to the Communications Provider by other providers in respect of their Service Charges, taking account of the volume and range of such proposals; and
- (b) be set in increments of no less than £0.01.

17.33 For the purposes of this Condition:<sup>60</sup>

- (a) "Access Charge" means a rate set by a Communications Provider in accordance with paragraph 17.25 in respect of the

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<sup>60</sup> Promoting efficient use of geographic telephone numbers, Statement, 18 July 2012, inserted definitions of "Affiliated Company", "Annual Number Charge", "Average Industry Utilisation Rate", "BT", "BT Average Utilisation Rate", "Charging Year", "Communications Provider Average Utilisation Rate", "Geographic Area Code", "Geographic Number", "Ported Number", "Public Payphone Number", "Specified Geographic Number", "WLR" and "WLR Number". Telephone Numbering, Modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number application forms within existing numbering policy, Statement, 22 November 2012, deleted the definition of "Numbering Plan" and inserted a definition of "Non-Geographic Number". Simplifying Non-Geographic Numbers Statement, 12 December 2013, inserted definitions of "Access Charge", "Access Charge Element", "Assumed Handover Point", "Consumer", "Effective Date", "Non-provider Numbering Condition", "Price Point", "Service Charge", "Service Charge Element", "Transit Network" and "Unbundled Tariff Number" with effect from 26 December 2013.

retail and origination of a call to an Unbundled Tariff Number and its conveyance up to and including the Assumed Handover Point for the purpose of calculating the amount payable by a Consumer for making such a call;

- (b) “Access Charge Element” means, in respect of a call to an Unbundled Tariff Number retailed to a Consumer:
  - (i) the amount produced by multiplying the Access Charge applicable to that Consumer by the length of the call, in accordance with paragraph 17.27; or
  - (ii) where paragraph 17.30 applies, zero.
- (c) “Affiliated Company” means any subsidiary or holding company of the Communications Provider, or any subsidiary of a holding company of the Communications Provider, all as defined in section 1159 of the Companies Act 2006;
- (d) “Annual Number Charge” is a charge invoiced by Ofcom to a Communications Provider in respect of a Charging Year and is calculated in accordance with paragraph 17.15;
- (e) “Assumed Handover Point” means the point of interconnection nearest to the origination of a call to an Unbundled Tariff Number at which the call may be handed over to the Electronic Communications Network of another Communications Provider for conveyance. For these purposes, where the call is routed via a Transit Network, the Assumed Handover Point is deemed to be the nearest point of ingress from the Electronic Communications Network on which the call originates to that Transit Network;
- (f) “Average Industry Utilisation Rate” means the weighted average utilisation rate of Specified Geographic Numbers for the industry as calculated by Ofcom and notified to Communications Providers prior to the first Charging Year;
- (g) “BT” means BT Group plc;
- (h) “BT Average Utilisation Rate” means the average utilisation rate of Specified Geographic Numbers Allocated to BT as calculated by Ofcom and notified to BT prior to the first Charging Year;
- (i) “Charging Year” means the 12 month period beginning on 1 April and ending on 31 March (excluding 29 February in any leap year), and the first Charging Year shall be 1 April 2013 to 31 March 2014;

- (j) “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;
- (k) “Communications Provider Average Utilisation Rate” means the average utilisation rate of Specified Geographic Numbers Allocated to the relevant Communications Provider as calculated by Ofcom and notified to the Communications Provider prior to the first Charging Year;
- (l) “Consumer” means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;
- (m) “Effective Date” means 26 June 2015;
- (n) “Geographic Area Code” has the meaning given to it in the National Telephone Numbering Plan;
- (o) “Geographic Number” has the meaning given to it in the National Telephone Numbering Plan;
- (p) “Non-Geographic Number” has the meaning given to it in the National Telephone Numbering Plan;
- (q) “Non-provider Numbering Condition” means the condition that applies to persons other than communications providers relating to the use of Unbundled Tariff Numbers and made on 12 December 2013 under section 59 of the Act;
- (r) “Ported Number” means a Specified Geographic Number Allocated to the Communications Provider which Ofcom is satisfied (pursuant to information received from the Communications Provider by 1 December of the Charging Year (or such other date as Ofcom notifies prior to the start of the Charging Year)) was on a particular day (as specified by the Communications Provider) between 1 September and 31 October of the Charging Year (or such other time period as Ofcom notifies prior to the start of the Charging Year) subject to an arrangement under which that Communications Provider had ported, in accordance with GC 18, that Specified Geographic Number to a person who was not an Affiliated Company;
- (s) “Price Point” means a rate which may be set as a Service Charge and is used for calculating or billing the Service Charge Element of the retail price for a call to an Unbundled Tariff Number which is charged to a Consumer;
- (t) “Public Payphone Number” means a Specified Geographic Number Allocated to the Communications Provider which Ofcom

is satisfied (pursuant to information received from the Communications Provider by 1 December of the Charging Year (or such other date as Ofcom notifies prior to the start of the Charging Year)) was on a particular day (as specified by the Communications Provider) between 1 September and 31 October of the Charging Year (or such other time period as Ofcom notifies prior to the start of the Charging Year) in use in respect of a Public Pay Telephone service provided under a Universal Service Obligation;

- (u) “Service Charge” means the rate set by a Communications Provider in accordance with paragraph 17.26 in respect of the conveyance of a call to an Unbundled Tariff Number from the Assumed Handover Point to the point of termination and the enabling of a Consumer to use an Unbundled Tariff Number to access any service provided by means of that number;
- (v) “Service Charge Element” means, in respect of a call to an Unbundled Tariff Number retailed to a Consumer—
  - (i) the amount produced by multiplying the Service Charge for that Unbundled Tariff Number by the length of the call in accordance with paragraph 17.28, where the Service Charge is charged at a pence per minute rate;
  - (ii) an amount equal to the Service Charge for that Unbundled Tariff Number, where the Service Charge is charged at a pence per call rate;
  - (iii) an amount equal to sum of the amounts calculated under paragraphs (i) and (ii) of this definition, where the Service Charge is charged at a rate which combines a pence per minute rate and a pence per call rate;
- (w) “Specified Geographic Number” means a Geographic Number (identified by the Geographic Area Code) set out in the Annex;
- (x) “Transit Network” means the Electronic Communications Network of a Communications Provider used to convey a call from the Electronic Communications Network of another Communications Provider to the Electronic Communications Network of a third Communications Provider;
- (y) “Unbundled Tariff Number” means a Non-Geographic Number starting 084, 087, 090, 091, 098 or 118;
- (z) “WLR” means Wholesale Line Rental, a regulated wholesale service sold by BT, which is used by the Communications Provider to provide retail customers with exchange lines and, in

turn, access to other narrowband telephony services (for example, telephone calls, facsimile and dial-up internet access);

- (za) “WLR Number” means a Specified Geographic Number Allocated to the Communications Provider which Ofcom is satisfied (pursuant to information received from the Communications Provider by 1 December of the Charging Year (or such other date as Ofcom notifies prior to the start of the Charging Year)) was on a particular day (as specified by the Communications Provider) between 1 September and 31 October of the Charging Year (or such other time period as Ofcom notifies prior to the start of the Charging Year) subject to an arrangement under which that Communications Provider was providing WLR to a person who was not an Affiliated Company.

## Annex to Condition 17<sup>61</sup>

Geographic Numbers which are Specified Geographic Numbers for the purposes of General Condition 17

<b>1. Specified Geographic Numbers identified by Geographic Area Code:</b>	
<b>Geographic Area Code</b>	<b>Area</b>
01202	Bournemouth
01274	Bradford
01642	Middlesbrough
01273	Brighton
01224	Aberdeen
01793	Swindon
01908	Milton Keynes
01782	Stoke-on-Trent
01865	Oxford
01792	Swansea
01206	Colchester
01582	Luton
01604	Northampton
01603	Norwich
01223	Cambridge
01752	Plymouth
01332	Derby
01384	Dudley
01925	Warrington
01253	Blackpool
01382	Dundee
01482	Hull
01702	Southend-on-Sea
01902	Wolverhampton
01753	Sough
01483	Guildford
01452	Gloucester
01924	Wakefield
01276	Camberley
01772	Preston

In this Annex, any word or expression shall have the same meaning as it has in General Condition 17 or the National Telephone Numbering Plan.

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<sup>61</sup> Telephone Numbering, Modifications to the National Telephone Numbering Plan, General Condition 17 and telephone number application forms within existing numbering policy, Statement, 22 November 2012, deleted Annex 1 in its entirety and amended "Annex 2" to "Annex"

## 18. NUMBER PORTABILITY<sup>62</sup>

18.1 The Communications Provider shall provide Number Portability within the shortest possible time, including subsequent activation, on reasonable terms and conditions, including charges, to any of its Subscribers who so request.

18.2<sup>63</sup> In the case of Mobile Number Portability, where the request is for porting a total of fewer than 25 Mobile Numbers, the Donor Provider shall:

- (a) allow Subscribers to request a PAC over the phone; and
- (b) where a Subscriber contacts the Donor Provider by phone, provide the PAC immediately over the phone where possible or by SMS within two hours of the request or by another reasonable mechanism if requested by the Subscriber and consented to by the Donor Provider.

18.3 The Communications Provider shall ensure:

- (a) in the case of Mobile Number Portability, porting of these numbers and their subsequent activation shall be completed within one business day from the receipt by the Recipient Provider of the Subscriber Request to Port from its new Subscriber.
- (b) In all other cases, porting of these numbers and their subsequent activation shall be completed within one business day once all necessary validation processes have been completed, the network connection is ready for use by the Subscriber, and the Donor Provider has received a request to activate the porting of these numbers from the Recipient Provider.

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<sup>62</sup> On 22 July 2003, Oftel published a document, Changes to the number portability functional specification to meet the new regime published by Oftel on 22 July 2003, [http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun\\_final0703.pdf](http://www.ofcom.org.uk/static/archive/oftel/publications/numbering/2003/fun_final0703.pdf). This statement set out the number portability functional specification Issue No. 5 at Annex B (also known as the "Functional Specification" for the purposes of General Condition 18). Further amendments made as a result of Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, replacing previous General Conditions 18.1 and 18.3 with revised wording, inserting new General Conditions 18.5(e), 18.8, 18.9 and 18.10 and making consequential changes to definitions. A further Notification was published on 9 July 2012, making additional changes to the definitions in line with the Statement.

<sup>63</sup> 'Changes to the Mobile Number Porting Process', Statement, dated 8 July 2010, with effect from 11 April 2011, inserted Conditions 18.2, 18.3 and 18.4, and renumbered the following Conditions. See also the first footnote to Condition 18.5 below.

- 18.4 Subject to paragraph 18.3(a), the Recipient Provider shall request porting from the Donor Provider as soon as it is reasonably practicable after receiving the Subscriber Request to Port from its new Subscriber.
- 18.5 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability as soon as is reasonably practicable in relation to that request on reasonable terms<sup>64</sup>. Any charges for the provision of such Portability shall be made in accordance with the following principles:
- (a) subject always to the requirement of reasonableness, charges shall be cost oriented and based on the incremental costs of providing Portability unless:
    - (i) the Donor Provider and the Recipient Provider have agreed another basis for the charges, or
    - (ii) the Office of Communications<sup>65</sup> has directed that another basis for charges should be used;
  - (b) the Donor Provider shall make no charge in relation to System Set-Up Costs or Additional Conveyance Costs;
  - (c) in respect of Mobile Portability, the Donor Provider shall make no charge or annual fee for ongoing costs relating to registration of a ported Telephone Number or a Subscriber;
  - (d) charges levied by the Donor Provider shall be based on the reasonable costs incurred by it in providing Portability with respect to each Telephone Number;

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<sup>64</sup> Number Portability and technology neutrality, Statement, 30 March 2006, removed wording “and in accordance with the Functional Specification”.

“Arrangements for porting phone numbers when customers switch supplier, a review of General Condition 18”, Statement and Further Consultation, 17 July 2007, inserted into Condition 18.5 after “reasonable terms” the following wording: “In the case of Mobile Portability, where the request is for porting a total of less than 25 Telephone Numbers, the total period for providing Portability in respect of those Telephone Numbers shall not exceed two business days” with effect from 31 March 2008.

“Telephone number portability for consumers switching suppliers”, Statement, 29 November 2007 replaced “two business days” with “two hours” with effect from 1 September 2009. As a result of the Competition Appeal Tribunal’s judgment in Vodafone v Ofcom, of 18 September 2008, the modifications made to General Condition 18 of Part 2 of the General Conditions of Entitlement by Ofcom’s concluding statement entitled “Telephone number portability for consumers switching suppliers” dated 29 November 2007 have been set aside (see <http://www.ofcom.org.uk/consult/condocs/gc18review/updateoct08/>).

Changes to the Mobile Number Porting Process, Statement, dated 8 July 2010, with effect from 11 April 2011, replaced the modifications made on 17 July 2007 with Condition 18.3 above.

<sup>65</sup> Changes to the Mobile Number Porting Process, Statement, dated 8 July 2010, with effect from 11 April 2011, replaced references to “the Director” with “the Office of Communications” in Conditions 18.5 and 18.7.

- (e) any direct charges to Subscribers for providing Number Portability do not act as a disincentive to Subscribers against changing their Communications Provider.
- 18.6 Where the Communications Provider provides Portability in accordance with paragraph 18.5:
- (a) the Recipient Provider; and
  - (b) the Transit Provider,
- shall, as appropriate, provide Portability on reasonable terms<sup>66</sup>.
- 18.7 The Communications Provider shall, on the written request of the Office of Communications, provide the Office of Communications with a record of each Telephone Number in relation to which it is providing Portability, specifying the relevant Recipient Provider in each case.
- 18.8 The Communications Provider shall inform the Subscriber of the date when Number Portability will be provided to that Subscriber.
- 18.9 Where Communications Providers delay the porting of a Telephone Number for more than one business day or where there is an abuse of porting by them or on their behalf, they shall provide reasonable compensation as soon as is reasonably practicable to the Subscriber for such delay and/or abuse.
- 18.10 The Communications Provider shall set out in a clear, comprehensive and easily accessible form for each Subscriber how Subscribers can access the compensation provided for in paragraph 18.9 above, and how any compensation will be paid to the Subscriber.
- 18.11 For the purposes of this Condition:<sup>67</sup>
- (a) “Additional Conveyance Costs” mean any costs incurred by the Donor Provider associated with resources used in:
    - (i) effecting the switch-processing required to set up each ported call; and
    - (ii) providing the switch and transmission capacity for any part of the duration of each ported call,

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<sup>66</sup> Number Portability and technology neutrality, Statement, 30 March 2006, removed wording “and in accordance with the Functional Specification”.

<sup>67</sup> Number Portability and technology neutrality, Statement, 30 March 2006, deleted definitions of “Functional Specification” and “Non-geographic Number”. Changes to the Mobile Number Porting Process, Statement, dated 8 July 2010, inserted the definitions of “Mobile Number”, “Mobile Number Portability”, “PAC”, “SMS” and “Subscriber Request to Port” with effect from 11 April 2011. Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement, 25 May 2011 deleted definition of “PATS”.

additional to the costs of conveyance of non-ported calls from the Donor Provider's network to the Recipient Provider's network;

- (b) "Communications Provider" means a person who provides an Electronic Communications Network or an Electronic Communications Service;
- (c) "Donor Provider" means a Communications Provider whose Subscriber Numbers are in the process of being, or have been passed or ported to a Recipient Provider;
- (d) "Mobile Communications Service" means any Public Electronic Communications Service<sup>68</sup> consisting in the conveyance of Signals by means of a Public Communications Network where every Signal that has been conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a Public Communications Network which is designed or adapted to be capable of being used in motion;
- (e) "Mobile Number" means a Telephone Number, from a range of numbers in the National Telephone Numbering Plan, that is Adopted or otherwise used to identify Apparatus designed or adapted to be capable of being used while in motion;
- (f) "Mobile Number Portability" means Number Portability relating to Mobile Numbers;
- (g) "Mobile Portability" means Portability relating to Telephone Numbers Allocated for use with Mobile Communications Services;
- (h) "Number Portability" means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Communications Network, independently of the person providing the service at the Network Termination Point of a Subscriber<sup>69</sup> provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;
- (i) "PAC" means Porting Authorisation Code, which is a unique code used to signify the Donor Provider's consent to the

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<sup>68</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement, 25 May 2011 removed 'Publicly Available Telephone Services' ("PATs) and replaced with 'Public Electronic Communications Service' (Notification published on 9 July 2012).

<sup>69</sup> Number Portability and technology neutrality, Statement, 30 March 2006, removed wording "in the case of Geographic Numbers, at a specific location" and "in the case of Non-geographic Numbers, at any location".

Subscriber being entitled to request and have their Mobile Number ported to another Communications Provider;

- (j) “Point of Connection” means a point at which one Public Communications Network is connected to another;
- (k) “Portability” means any facility which may be provided by a Communications Provider to another Communications Provider<sup>70</sup> enabling any Subscriber who requests Number Portability to continue to be provided with any Public Electronic Communications Service<sup>71</sup> by reference to the same Telephone Number irrespective of the identity of the person providing such a service;
- (l) “Recipient Provider” means a Communications Provider to whom Subscriber Number(s) are in the process of being, or have been passed or ported from a Donor Provider;
- (m) “SMS” means Short Message Service, which is a text message delivered to a Subscriber’s handset or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the Subscriber’s handset;
- (n) “Subscriber” means any person with a number or numbers from the National Telephone Numbering Plan who is party to a contract with the provider of Public Electronic Communications Services for the supply of such services in the United Kingdom;<sup>72</sup>
- (p) “Subscriber Number” means the Telephone Number (or Telephone Numbers) which any Communications Provider’s Public Communications Network recognises as relating to a particular Subscriber of that Communications Provider;
- (q) “Subscriber Request to Port” means the request by a Subscriber to transfer their Mobile Number which occurs when the Subscriber submits their PAC to the Recipient Provider;
- (r) “System Set-Up Costs” mean costs of the Donor Provider incurred—

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<sup>70</sup> Changes to the Mobile Number Porting Process, Statement, dated 8 July 2010, with effect from 11 April 2011, inserted “Communications Provider” after the words “to another”.

<sup>71</sup> Changes to the General Conditions and Universal Service Conditions’ (Implementing the revised EU Framework), Statement, 25 May 2011 removed ‘Publicly Available Telephone Services’ (“PATs) and replaced with ‘Public Electronic Communications Service’ (Notification published on 9 July 2012).

<sup>72</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement, 25 May 2011, inserted references to ‘numbers in the National Telephone Numbering Plan’ and ‘Public Electronic Communications Services’ (Notification published on 9 July 2012).

- (i) in the course of making network and system modifications, configuration and reconfiguration, including adapting or replacing software;
  - (ii) in the course of testing functionality within that provider's network and in conjunction with any Recipient Provider's network,
  - (iii) thereby establishing the technical and administrative capability to provide Portability;
- (s) "Transit Provider" means a Communications Provider providing, by agreement, Interconnection between a Donor Provider and Recipient Provider via Points of Connection with both Communications Providers.

## 19. PROVISION OF DIRECTORY INFORMATION

19.1 Where the Communications Provider has been Allocated Telephone Numbers in accordance with Condition 17, it shall meet all reasonable requests from any person to make available the Directory Information of:

- (a) its Subscribers who have been assigned those Telephone Numbers; and
- (b) any other End-User assigned a Telephone Number originally Allocated to the Communications Provider,

for the purposes of the provision of Directories and Directory Enquiry Facilities.

19.2 Where the Communications Provider has been authorised (either directly or indirectly) to use Telephone Numbers Allocated to another person, it shall on request supply to:

- (a) the person who was originally Allocated such Telephone Numbers; or
- (b) if different from the above, the person who authorised the use of such Telephone Numbers by it,

the Directory Information of the Communications Provider's Subscribers and of any other End-User assigned a Telephone Number from such Telephone Numbers.

19.3 Where the Communications Provider is requested to supply Directory Information in accordance with paragraphs 19.1 or 19.2, it shall do so on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the Communications Provider and the person requesting the information. The Communications Provider shall comply with any direction made by Ofcom from time to time with respect to the format to be applied to the information.

19.4 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

19.5 For the purposes of this Condition, "Communications Provider" means a person who provides an Electronic Communications Network or an Electronic Communications Service.

## 20. ACCESS TO NUMBERS AND SERVICES<sup>73</sup>

- 20.1 The Communications Provider shall ensure, where technically and economically feasible, that End-Users in any part of the European Community are able to:
- (a) access and use those Non-geographic Numbers which the Communications Provider Adopts;
  - (b) access all Telephone Numbers provided in the European Community, regardless of the technological devices used by the operator, including those in the National Telephone Numbering Plan, those from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN).
- 20.2 The Communications Provider shall limit access for calling End-Users located in specific geographical areas to Telephone Numbers assigned to a Subscriber where that Subscriber has chosen for commercial reasons to limit such access.
- 20.3 The Communications Provider shall, where requested by or on behalf of Ofcom on the basis of fraud or misuse, block access to Telephone Numbers and/or Public Electronic Communications Services and in such cases withhold revenue associated with such Telephone Numbers and/or Public Electronic Communications Services.
- 20.4 The Communications Provider providing Publicly Available Telephone Services allowing international calls, shall handle all calls to and from the ETNS at rates similar to those applied for calls to and from parts of the European Community other than the United Kingdom.
- 20.5 The Communications Provider shall ensure that any End-User can access a hotline for missing children by using the number “116000”.
- 20.6 For the purposes of this Condition, “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service.

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<sup>73</sup> Changes to the General Conditions and Universal Service Conditions (Implementing the revised EU Framework), Statement and Notification, 25 May 2011, replacing previous General Condition 20 with revised wording.

## 21. QUALITY OF SERVICE

- 21.1 The Communications Provider shall, on the direction of Ofcom, publish comparable, adequate and up to date information for End-Users on the quality of its services.
- 21.2 Subject to paragraph 21.3, where Ofcom makes a direction under paragraph 21.1 he may amongst other things direct:
- (a) the quality of service parameters to be measured;
  - (b) the content and form of the information to be published, and how the comparability of the information is to be validated. For the purposes of validation, Ofcom may require independent audit of the specified information;
  - (c) the manner of publication of the information;
  - (d) the timing of publication of the information; and/or
  - (e) that the Communications Provider shall provide Ofcom with a copy of the information to be published well in advance of the publication as agreed by Ofcom.
- 21.3 Ofcom shall only make such a direction where the Communications Provider has been providing the Public Electronic Communication Services in question for at least 18 months prior to the direction being made.
- 21.4 For the purposes of this Condition, "Communications Provider" means a person who provides Public Electronic Communications Services.

## 22. SERVICE MIGRATIONS AND HOME-MOVES<sup>74</sup>

### **Communications Provider Migrations**

#### Scope and Effect

- 22.1 Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network;
  - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.2 From the Harmonization Date, Communications Providers shall comply with paragraphs 22.3 to 22.15, as applicable, in relation to Communications Provider Migrations of Broadband Services provided within Openreach's Access Network .

#### Mis-selling Prohibition

- 22.3 When selling or marketing Communications Services, the Gaining Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
  - (b) engage in aggressive conduct;
  - (c) contact the Customer in an inappropriate manner; or
  - (d) engage in Slamming.

#### Information at point of sale

- 22.4 The Gaining Provider must take all reasonable steps to ensure that before entering into a contract for the provision of Communications Services, the Customer who is requesting a Communications Provider Migration:
- (a) is authorised to do so;
  - (b) intends to enter into the contract; and
  - (c) is provided with the information set out below in a clear, comprehensible, prominent and accurate manner, in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into the contract during a sales call, by telephone:
    - i. the identity of the legal entity the Customer is contracting with and its telephone, website and/or e-mail contact details;

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<sup>74</sup> Consumer Switching: A statement on the GPL NoT+ elements, 20 December 2013.

- ii. a description of the Communications Service requested; the key charges, including minimum contract charges, any early termination charges, if applicable and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge; payment terms; the existence of any termination right, termination procedures and the Customer's right to cancel at no cost from the point of sale to the completion of the Transfer Period; the arrangements for provision of the service, including the order process and, as accurately as possible, the likely date of provision of the service and any minimum period of contract.<sup>75</sup>

#### Customer's termination rights

- 22.5 When the Customer enters into a contract for the provision of Communications Services, the Gaining Provider must allow the Customer to terminate the contract from the point of sale to the completion of the Transfer Period without charge or any other form of compensation being required to be given by the Customer to the Gaining Provider.
- 22.6 The Gaining Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to Condition 22.5 without unreasonable effort. These procedures must include the ability to contact the Gaining Provider to terminate the contract by any of the following contact methods:
- (a) telephone
  - (b) e-mail;
  - (c) post.

#### Records Retention

- 22.7 Without prejudice to paragraph 22.8, the Gaining Provider must use reasonable endeavours to create and keep all records regarding the sale of its Communications Services, for a period of not less than six months. Such records must include the date and approximate time of the contact with the Customer, the means through which the Contract was entered into, the place where the contract was entered into, where relevant, and be such as to allow subsequent identification of the salesperson(s) involved and to assist in dealing with any complaint or query.

#### Record of consent

- 22.8 For each contract entered into with a Customer for the provision of Communications Services within Openreach's Access Network, the Gaining Provider must create and keep individually retrievable records of the following, for a period of not less than twelve months:
- (a) a direct record of consent, as provided by the Customer, to:

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<sup>75</sup> Simplifying Non-Geographic Numbers, Statement, 12 December 2013, amended paragraph 22.6(c)(ii) with effect from 26 December 2013.

- i. migrate from the Communications Services supplied by the Losing Provider to the Communications Services supplied by the Gaining Provider; or, as relevant,
  - ii. begin acquiring Communications Services over the Target Line;
- (b) an explanation from the Communications Provider that they are required to create a record of the Customer's consent;
- (c) the name and address of the Customer;
- (d) the time, date and means by which the consent in sub-section (a) above was given;
- (e) where appropriate, the place where the consent in sub-section (a) above was given and the salesperson(s) involved;
- (f) the Target Address; and
- (g) where appropriate, the Calling Line Identification of the Target Line.

22.9 The Gaining Provider shall keep the records required in paragraph 22.8 irrespective of whether the contract for the provision of the Communications Services is cancelled or terminated.

#### Notification Letters

22.10 When a Customer enters into a contract for the provision of Communications Services, the Gaining Provider must send that Customer a letter. The letter shall set out in clear and intelligible terms:

- (a) the date of the letter;
- (b) that the Customer is transferring their Communications Service;
- (c) all Communications Services that will be transferred;
- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) a reasonable estimate of the Migration Date;
- (f) the right of the Customer to terminate the contract as set out in Condition 22.5, the means by which the right to terminate can be exercised and the date by which the right to terminate must be exercised; and
- (g) relevant contact details.

22.11 The Losing Provider must, in accordance with the industry agreed process, send the End-User a letter. The letter shall set out in clear, intelligible and neutral terms:

- (a) the date of the letter;
- (b) that the End-User is transferring their Communications Service;
- (c) all Communications Services that will be transferred;
- (d) where relevant, the Calling Line Identification of all Communications Services that will be transferred;
- (e) all Communications Services or other types of services provided by the Losing Provider that the Losing Provider reasonably expects to be directly or indirectly affected by the transfer;
- (f) all Communications Services provided by the Losing Provider that the Losing Provider reasonably expects to remain unaffected by the transfer;
- (g) a reasonable estimate of the Migration Date;
- (h) relevant contact details.

22.12 Where a contract is entered into with a Customer for the provision of Communications Services within Openreach's Access Network, the letter sent by the Losing Provider in accordance with paragraph 22.11 shall, in addition to the information listed therein, set out in clear, intelligible and neutral terms:

- (a) an explanation that the transfer will automatically take effect on the Migration Date and that no contact is required with the Losing Provider to cancel their existing service;
- (b) an explanation that after the transfer, the Customer will receive a final bill including any Early Termination Charge that is due;
- (c) an explanation of the applicable Early Termination Charge as set out in the contract;
- (d) the means by which the Early Termination Charge must be paid;
- (e) the amount of the Early Termination Charge due at the estimated Migration Date;
- (f) where applicable, the impact of the transfer on the prices of all continuing Communications Services; and

22.13 The letters under paragraphs 22.10 to 22.12 must be sent in paper or another Durable Medium. The letter must be sent by normal post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

#### Simultaneous transfers

- 22.14 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested a transfer of Broadband and Fixed-line Telecommunications Services to be provided by it over the same line, it shall ensure that, where applicable, an order is submitted to Openreach, where available, for the simultaneous transfer with minimal loss of service of both Communications Services.

Reactive save

- 22.15 Where the Losing Provider communicates with the Customer in order to comply with this Condition, it must not make any marketing statements or representations in the communication which may induce the Customer to terminate their contract with the Gaining Provider and/or remain in a contract with the Losing Provider.

**Communications Provider Migrations without change of location within Openreach's Access Network**

- 22.16 In addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving:
- (a) fixed-line Telecommunications Services provided within Openreach's Access Network; or,
  - (b) fixed-line Telecommunications Services provided within KCOM's Access Network.
- 22.17 From the Harmonisation Date, and in addition to paragraphs 22.1 to 22.15, as applicable, each Communications Provider shall comply with the provisions of Annex 1 to this Condition in each instance where it is a Gaining Provider which elects to co-ordinate a Communications Provider Migration on behalf of a Customer, involving Broadband Services provided within Openreach's Access Network.
- 22.18 Where paragraphs 22.16 and 22.17 apply, each Communications Provider shall ensure that the End-User is not required to make contact with the Losing Provider in order for a Communications Provider Migration to be put into effect.
- 22.19 Where paragraphs 22.16 and 22.17 apply, and without prejudice to the generality of paragraph 22.18, a Losing Provider shall not require, in particular, the granting of consent by it, nor the provision of any information (such as a MAC) by it to the End-User, in order for a Communications Provider Migration to be put into effect.
- 22.20 Paragraphs 22.16 to 22.19 only apply where the Communications Provider Migration does not involve a change of the location where the Communications Services are supplied.

22.21 Prior to the Harmonisation Date, Communications Providers shall comply with the provisions of the MAC Broadband Migrations Process, at the request of an End-User to migrate (or where applicable, connect) a Broadband Service falling within paragraph A3.2 of Annex 3 to this Condition within Openreach's Access Network.

#### **Home-moves within Openreach's Access Network**

22.22 In addition to paragraphs 22.1 to 22.15, each Communications Provider shall comply with the provisions of Annex 2 to this Condition, in each instance where it is a Gaining Provider which elects to carry out a Working Line Takeover within Openreach's Access Network pursuant to a Home-Move Request.

#### **Migrations of Broadband Services within KCOM's Access Network**

22.23 Communications Providers shall, pursuant to a request by an End-User to migrate (or where applicable, connect) a Broadband Service provided over KCOM's Access Network, comply with the provisions of Annex 3 to this Condition.

#### **Other Migrations of Broadband Services**

22.24 Prior to the Harmonisation Date, Communications Providers shall comply with the requirements set out in Condition A3.23 of Annex 3 to this Condition in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.21.

22.25 From the Harmonisation Date, Communications Providers shall in relation to Migrations of Broadband Services not falling within the scope of paragraph 22.17:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;
- (b) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period; and
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service.

#### **General requirements**

##### Responsibility

22.26 Where Communications Providers engage representatives or agents, they shall procure that such representatives or agents comply with the requirements of this Condition.

### Training

- 22.27 Communications Providers must ensure that their staff or any representatives of any agency engaged by them, are appropriately trained to comply with this Condition.

### Monitoring

- 22.28 Communications Providers must monitor, including conducting regular audits, their compliance with this Condition, including compliance on their behalf by any representatives or agency engaged by them, and take appropriate steps to prevent the recurrence of any problem(s) identified.

### Publication of Information

- 22.29 Communications Providers must:
- (a) publish a copy of this Condition, or a link to a copy of this Condition, published on Ofcom's website, in an easily accessible and reasonably prominent manner on their website or, where there is no such website, by making it available in their registered office during normal office hours for inspection free of charge by members of the general public; and
  - (b) provide a copy of this Condition to the Customer free of charge upon reasonable request.

### **Definitions**

- 22.30 For the purposes of this Condition and Annexes 1, 2 and 3 to this Condition:<sup>76</sup>
- (a) "**Access Charge**" means the rate to be charged by the Gaining Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;
  - (b) "**Access Network**" means the Electronic Communications Network which runs from a local access node to a network termination point on an End-User's premises and which supports the provision of copper-based access services and fibre-based access services to End-Users;
  - (c) "**Address**" means a UK postal address;
  - (d) "**BT**" means the BT Group plc;
  - (e) "**Broadband Service**" means all DSL (including FTTC) services which are capable of supporting always-on services that provide the End-User with high data transfer speeds, excluding services provided over a Cable Network;
  - (f) "**Cable Network**" means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;

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<sup>76</sup> Simplifying Non-Geographic Numbers, Statement, 12 December 2013, inserted definitions of "Access Charge", "Consumer", "Effective Date" and "Unbundled Tariff Number".

- (g) **“Calling Line Identification”** means a facility that enables identification of the number from which a call is being made or to which a return call could be made;
- (h) **“Cancel Other”** means the industry term for a functionality that enables the Losing Provider to cancel, during the Transfer Period, wholesale orders placed by the Gaining Provider;
- (i) **“Communications Provider”** means a person who provides Communications Services;
- (j) **“Communications Provider Migration”** means a process by which an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services provided by another Communications Provider;
- (k) **“Communications Service”** means a Broadband Service and/or a Fixed-line Telecommunications Service;
- (l) **“Consumer”** has the meaning given to that term in General Condition 17;
- (m) **“CPS” or “Carrier Pre-Selection”** means a facility which allows a customer of a Publicly Available Telephone Service to select a provider designated in advance to apply on every occasion where no other providers have been pre-selected for the use of a telephone number;
- (n) **“Customer”** means a person who is an End-User of Communications Services provided by a different Communications Provider or a person who is seeking to become an End-User of a Communications Provider;
- (o) **“DSL” or “Digital Subscriber Line”** means a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as ‘twisted copper pairs’) into high speed digital lines;
- (p) **“Durable Medium”** means any instrument, excluding SMS, which enables the Customer or End-User to store information addressed personally to him in a way accessible for future reference, for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
- (q) **“Early Termination Charge”** means the charge payable by the End-User for the termination of the contract before the end of the minimum contract period;
- (r) **“Effective Date”** has the meaning given to that term in General Condition 17;
- (s) **“End-User”** means a person, other than a Communications Provider, who:
  - (i) is party to a contract with the Communications Provider for the provision of Communications Services, and;

(ii) is not acquiring the Communications Services in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);

- (t) **“Failure to Cancel”** means failure by the Gaining Provider to cancel a transfer, after a request from the Customer during the Transfer Period;
- (u) **“Fixed-line Telecommunications Service”** means Narrowband calls and lines services provided to an End-User or Customer that allow for the transfer of speech communications, and other forms of communications such as facsimile and data;
- (v) **“FTTC” or “Fibre-To-The-Cabinet”** means an Access Network consisting of optical fibre extending from the local access node to the street cabinet;
- (w) **“Gaining Provider”** means:
  - i. the Communications Provider to whom the End-User or Customer is transferring; or
  - ii. the Communications Provider to whom the Inbound Customer or End-User makes a Home-Move Request;
- (x) **“Harmonisation Date”** means 20 June 2015.
- (y) **“Home-Move Request”** means a request by an Inbound Customer or End-User to begin acquiring one or several Communications Services over the Target Line;
- (z) **“Inbound Customer or End-User”** means the Customer or End-User who is moving into the Target Address;
- (aa) **“Incumbent Communications Provider”** means the Communications Provider who supplies Communications Services to the Incumbent End-User over the Target Line;
- (bb) **“Incumbent End-User”** means the End-User who is residing in the Target Address;
- (cc) **“KCOM”** means KCOM Group plc;
- (dd) **“Losing Provider”** means the Communications Provider from whom the End-User or Customer is transferring;
- (ee) **“MAC” or “Migration Authorisation Code”** means a unique code used to identify a Broadband Service that is intended to be transferred from one Communications Provider to another Communications Provider;
- (ff) **“MAC Broadband Migrations Process”** means the obligations and processes set out in paragraphs A3.1 to A3.22 of Annex 3 to this Condition;
- (gg) **“Migration”** means one or more of the following processes by which:

- i. the Communications Provider transfers from one Communications Service to another Communications Service;
  - ii. an End-User transfers from one Communications Service to another Communications Service;
  - iii. an End-User or Customer transfers from Communications Services supplied by one Communications Provider to Communications Services supplied by another Communications Provider (**“Communications Provider Migration”**);
  - iv. an End-User or Customer transfers from Communications Services supplied by a Communications Provider at one location to Communications Services supplied by the same Communications Provider at a different location;
- (hh) **“Migration Date”** means the date on which the transfer of the Communications Service or takeover of the Target Line will be effected, at which point the End-User’s Communications Service will commence being provided to the End-User by a different Communications Provider or at a different location;
- (ii) **“MPF” or “Metallic Path Facility”**, means a circuit comprising a pair of twisted metal wires between an End-User’s premises and a main distribution frame that employs electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy to convey signals when connected to an Electronic Communications Network;
- (jj) **“Narrowband”** means the services provided over a traditional Public Communications Network, excluding services provided over a Cable Network;
- (kk) **“Openreach”** means the BT group business offering Communications Providers’ products and services that are linked to BT’s nationwide Electronic Communications Network;
- (ll) **“Slamming”** means where a request for a CPS, WLR, SMPF and/or MPF has been made, or a Transfer Order or a Working Line Takeover Order has been placed on Openreach, without the Customer’s express knowledge and/or consent; that is in the following circumstances:
- i. where the Customer has never contacted, or has never been contacted by, the Gaining Provider;
  - ii. where the Customer has contacted, or has been contacted by, the Gaining Provider, but has not given the Gaining Provider authorisation to transfer some or all of their Communications Services;
  - iii. where the Customer has agreed to purchase a product or service from the Gaining Provider and the Gaining Provider has submitted an order for a different product or service which the Customer has not agreed to purchase; or

- iv. where the Customer has agreed to transfer some or all of their Communications Services to the Gaining Provider having understood as a result of a deliberate attempt by the Gaining Provider to mislead, that they are making an agreement with a different Communications Provider;
- (mm) **“SMPF” or “Shared Metallic Path Facility)** means access to the non-voiceband frequencies of the MPF;
- (nn) **“SMS” or “Short Message Service** means a text message delivered to the handset of an End-User or Customer who acquires Publicly Available Telephone Services, or, if SMS is superseded or withdrawn, an equivalent text communication sent directly to the handset of an End-User or Customer who acquires Publicly Available Telephone Services;
- (oo) **“Target Address”** means the Address where the Target Line is situated;
- (pp) **“Target Line”** means the working WLR, MPF or SMPF line to which a Customer request for a Migration, or a Home-Move Request, refers;
- (qq) **“Transfer Order”** means an order submitted by, or on behalf of, the Gaining Provider to Openreach, or other applicable wholesaler, requesting for the Target Line to be transferred from the Losing Provider to the Gaining Provider;
- (rr) **“Transfer Period”** means a period of 10 Working Days before a Customer’s order can be activated;
- (ss) **“Unbundled Tariff Number”** has the meaning given to that term in General Condition 17;
- (tt) **“WLR” or “Wholesale Line Rental** means a regulated wholesale service sold by BT or KCOM, which is used by the Communications Provider to provide retail customers with exchange lines and in turn, access to other Narrowband telephone services (for example, telephone calls, facsimile and dial-up);
- (uu) **“Working Day”** means the hours between 09.00 – 17.00 on Monday to Friday, with the exception of Bank Holidays;
- (vv) **“Working Line Takeover”** means a process by which a Communications Provider takes over a WLR or MPF line in order to provide Communications Services to the Inbound Customer or End User, where that line is being used by that same or a different Communications Provider to supply Communications Services to the Incumbent End-User; and
- (ww) **“Working Line Takeover Order”** means an order submitted by, or on behalf of, a Gaining Provider to Openreach, requesting for the Working Line Takeover of the Target Line.

## **Annex 1 to Condition 22**

### **Notification of Transfer**

A1.1 Where a Gaining Provider elects to co-ordinate a Communications Provider Migration on behalf of a Customer who has requested to transfer to a Communications Service supplied by it, that Gaining Provider shall, within a reasonable time, ensure a Transfer Order is placed.

### **Cancel Other**

A1.2 The Losing Provider shall only be permitted to use Cancel Other in the following circumstances:

- (a) where Slamming has occurred;
- (b) at the Customer's request, where the Gaining Provider has failed to cancel the Transfer Order after being directed by the Customer to do so ("Failure to Cancel");
- (c) where the telephone line is or will be, ceased during the Transfer Period ("Line Cease");
- (d) for other specified reasons not related to a Customer's request to cancel a transfer, as agreed by the relevant industry forum and approved by Ofcom; and
- (e) in such other circumstances as defined by Ofcom.

A1.3 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.

A1.4 After using Cancel Other, the Losing Provider shall confirm the cancellation of the order by Durable Medium to the Customer, unless this is not possible or appropriate, including where the Customer is deceased.

A1.5 The Losing Provider shall record its reasons for using Cancel Other in each case, selecting the appropriate reason code from a list corresponding to permitted use of Cancel Other and consistent with paragraphs 22.30 (II)(i) to (iv), as agreed by the industry and approved by Ofcom.

## **Annex 2 to Condition 22**

### **Working Line Takeovers**

A2.1 Subject to paragraphs A2.2 and A2.3, where a Gaining Provider elects to carry out a Working Line Takeover pursuant to a Home-Move Request that Gaining Provider shall ensure a Working Line Takeover Order is placed.

### **Asset identification**

A2.2 Before a Working Line Takeover Order is placed, a Gaining Provider shall take reasonable steps, having regard to industry best practice, to identify the Target Line.

A2.3 A Gaining Provider may only place a Working Line Takeover Order if it has identified an exact match for the Target Line.

### **Notification Letter**

A2.4 After being notified of the Working Line Takeover Order, the Incumbent Communications Provider shall send the Incumbent End-User a letter, in accordance with the industry agreed process, in paper or another Durable Medium, which clearly sets out:

- (a) the date of the letter;
- (b) a notification that an Inbound Customer or End-User wants to take over the Target Line;
- (c) all Communications Services directly affected by the Working Line Takeover;
- (d) where relevant, the Calling Line Identification of all Communications Services that are directly affected;
- (e) the expected Migration Date;
- (f) that the Incumbent End-User should notify the Incumbent Communications Provider if that Incumbent End-User is not moving out of the Target Address or expects to move at a later date than the expected Migration Date;
- (g) the relevant contact details.

A2.5 The letter must be sent by post, unless the Customer has explicitly agreed to receive correspondence electronically, such as through verbal consent in a call or through electronic confirmation when ordering online.

## **Annex 3 to Condition 22**

### **MAC Broadband Migrations Process<sup>77</sup>**

A3.1 The Communications Provider shall, at the request of:

- (a) an End-User of the Communications Provider; or
- (b) another Communications Provider who acquires a Broadband Service from the Communications Provider,

issue a MAC for a Broadband Service where the Broadband Service is a service to which the MAC Broadband Migrations Process applies.

A3.2 The MAC Broadband Migrations Process applies to the supply by the Communications Provider of all DSL services, with the exception of those DSL services that are required to be migrated by means of a process that relates to the supply of a Fixed Line Telecommunications Service supplied in conjunction with the DSL service.

A3.3 The Communications Provider shall take reasonable steps to validate the identity of an End-User who has contacted the Communications Provider to request a MAC for a Broadband Service, before issuing a MAC to the End-User.

A3.4 The Communications Provider shall provide its End-Users with two or more of the following contact methods:

- (a) Telephone numbers;
- (b) Email address; and
- (c) Postal address,

for the purposes of an End-User contacting the Communications Provider to obtain a MAC,

### **Issuing MACs to End-Users**

A3.5 The Communications Provider shall communicate the MAC to the End-User in writing by letter and/or by email within five working days of receipt of the End-User's request save for A3.6.

A3.6 Where the Communications Provider has issued the MAC to the End-User over the telephone (including details about the MAC validity period and expiry date and the Broadband Service to which the MAC relates), the Communications Provider is not required to communicate the MAC to the End-User in writing.

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<sup>77</sup> Broadband migrations: enabling consumer choice, Statement and notification, 13 December 2006.

A3.7 The written response (email or letter) to the End-User containing the MAC shall clearly indicate:

- (a) The MAC (or MACs);
- (b) The MAC validity period and expiry date; and
- (c) The Broadband Service(s) to which the MAC(s) applies.

A3.8 At any time prior to the expiry of the MAC validity period, the Communications Provider shall remind the End-User of the MAC if requested by the End-User.

A3.9 Where a MAC has already been requested and provided, the Communications Provider shall not impose any limits on the number of additional times an End-User may request the provision of a new MAC in relation to the Broadband Service, following the expiry of any other MACs.

A3.10 The Communications Provider shall issue a MAC to the End-User free of charge.

#### **Refusal to issue a MAC**

A3.11 The Communications Provider shall only refuse to issue a MAC to their End-User if:

- (a) the Communications Provider has, by taking reasonable steps, been unable to validate the identity of the person requesting the MAC as the End-User;
- (b) the Broadband Service contract has already been terminated;
- (c) a MAC which is still within its MAC validity period has already been requested and issued by the Communications Provider in relation to the Broadband Service;
- (d) the Communications Provider has already submitted a Cease Request for the Broadband Service; and
- (e) the Communications Provider is unable to obtain a MAC from a Broadband Network Communications Provider.

A3.12 Where the Communications Provider is unable to, or refuses to, provide a MAC to the End-User, the Communications Provider shall provide the End-User with a clear explanation of why the MAC has not been provided.

#### **Cease requests and notice to terminate a Broadband Service**

A3.13 The Communications Provider shall not issue a Cease Request for the Broadband Service unless the Communications Provider has established that the End-User does not wish to transfer the Broadband Service to another Communications Provider.

A3.14 The Communications Provider shall, when issuing a MAC, confirm to the End-User that any previous termination by the End-User has been revoked, and shall ensure that any current or pending termination actions are cancelled.

### **MAC validity and migration dates**

A3.15 The Communications Provider shall not terminate the Broadband Service on account of the MAC validity period expiring unless the Communications Provider has received notification that the End-User's Broadband Service has been migrated to another Communications Provider.

A3.16 Where a Customer provides a MAC within its validity period, together with a request to effect a transfer of the Broadband Service to the Communications Provider, the Communications Provider shall proceed with the migration and inform the Customer of the Default Migration Date.

A3.17 The Communications Provider shall, at the request of a Customer up until one Working Day prior to the Default Migration Date:

(a) accept a request to extend the Default Migration Date to a later Migration Date ("Requested Migration Date"), provided the MAC validity period has not expired within five days of the Requested Migration Date; or

(b) cancel the Default Migration Date or Requested Migration Date.

### **Erroneous MAC migrations**

A3.18 The Communications Provider shall provide a recovery process so that in the event of an erroneous migration effected by way of a MAC, the End-User's Broadband Service can be restored to the original Communications Provider with minimum disruption.

### **Information about the MAC Broadband Migration Process**

A3.19 The Communications Provider shall publicise the availability of the MAC Broadband Migrations Process to End-Users, including providing the following information:

(a) an explanation of how the MAC is used to facilitate the transfer of a Broadband Service to another Communications Provider;

(b) details of how an End-User may request a MAC from the Communications Provider, such as telephone, email and postal contact details;

(c) reasons why the Communications Provider may not be able to issue a MAC;

(d) details of the complaints handling process for complaints about a failure by the Communications Provider to issue a MAC;

- (e) alternative migration options for an End-User if the Communications Provider cannot issue a MAC for the Broadband Service;
- (f) the default Migration Date that applies when a MAC is provided to the Communications Provider by a Customer for the purposes of transferring the Broadband Service to the Communications Provider; and
- (g) any options available to the End-User to request a Migration Date later than the Default Migration Date.

A3.20 Publication of the information set out in A3.19 above shall be effected by publishing the information on the Communications Provider's website, and by sending a copy of the information if so requested by an End-User.

### **Complaints about the MAC Broadband Migrations Process**

A3.21 The Communications Provider shall handle complaints from End-Users in relation to a decision to refuse, or a failure by, the Communications Provider to issue a MAC, as part of its existing complaints handling processes.

### **Broadband Network Services**

A3.22 Where the Communications Provider provides Broadband Network Services, the Communications Provider shall also ensure that it:

- (a) effects the transfer of a Broadband Service on the Default Migration Date, unless a later Migration Date has been requested by the Communications Provider for the transfer to be effected;
- (b) notifies the Communications Provider who formerly provided the Broadband Service of the date that the transfer has been effected to another Communications Provider; and
- (c) has a process that enables an erroneous service migration effected using a MAC to be reversed, so that the Broadband Service can be restored to the original Communications Provider who requested the MAC.

### **Broadband Migrations**

A3.23 All Communications Providers pursuant to a request by an End-User, a Customer or another Communications Provider to migrate (or where applicable, connect) a Broadband Service shall, where the provisions of the MAC Broadband Migrations Process do not apply to the Communications Provider in relation to this Broadband Service:

- (a) facilitate the migration (or where applicable, connection) of the Broadband Service in a manner that is fair and reasonable;

- (b) ensure the migration (or where applicable, connection) of the Broadband Service is carried out within a reasonable period;
- (c) ensure that the migration (or where applicable, connection) of the Broadband Service is carried out with minimal loss of the Broadband Service
- (d) assist with, and facilitate requests for, the migration (or where applicable, connection) of a Broadband Service provided by another Communications Provider, in instances where the other Communications Provider has failed to, or refused to, comply with the MAC Broadband Migrations Process, in a manner that is fair and reasonable.

## Definitions

A3.24 For the purposes of this Annex:

- (a) **“Broadband Network Communications Provider”** means a Communications Provider that provides Broadband Network Services;
- (b) **“Broadband Network Services”** means services that:
  - i. generate a MAC in relation to a Broadband Service provided by the Communications Provider to an End-User or to another Communications Provider;
  - ii. effect a transfer of a Broadband Service from one Communications Provider to another Communications Provider using the MAC issued in relation to that Broadband Service; and
  - iii. effect the cease of a Broadband Service from the Communications Provider at the request of the Communications Provider;
- (c) **“Cease Request”** means a direction given by a Communications Provider to a Broadband Network Communications Provider in relation to a Broadband Service, with the intention being to terminate the provision of that Broadband Service;
- (d) **“Default Migration Date”** means five Working Days after the MAC is provided by a Communications Provider to a Broadband Network Communications Provider;
- (e) **MAC validity period”** means the period extending up to 17.00 on the thirtieth calendar day from issue (either verbally or in writing, whatever comes first) by the Communications Provider.

## 23. SALES AND MARKETING OF MOBILE TELEPHONY SERVICES<sup>78</sup>

### Scope

- 23.1 A Mobile Service Provider must comply with this General Condition with respect to a Customer of its Mobile Telephony Services, except that clauses 23.4(b)(iv) and 23.5 – 23.10 do not apply to Prepaid Mobile Telephony Services and SIM Only Contracts.

### Mis-selling prohibition

- 23.2 When selling or marketing Mobile Telephony Services, the Mobile Service Provider must not:
- (a) engage in dishonest, misleading or deceptive conduct;
  - (b) engage in aggressive conduct; or
  - (c) contact the Customer in an inappropriate manner.

### Publication of relevant obligations

- 23.3 The Mobile Service Provider must:
- (a) publish a comprehensive summary of its obligations under this General Condition 23 in an easily accessible and reasonably prominent manner on its website or, where there is no such website, by making it available in its registered office during normal office hours for inspection free of charge by members of the general public; and
  - (b) provide a copy of this General Condition to a Customer free of charge upon reasonable request.

### Obligation with regards to Mobile Service Retailers

- 23.4 Where the Mobile Service Provider contracts with or appoints a Mobile Service Retailer directly in order to sell or market the Mobile Service Provider's Mobile Telephony Services it must ensure, and where a third party acting on behalf of the Mobile Service Provider contracts with or appoints a Mobile Service Retailer in order to sell or market the Mobile Service Provider's Mobile Telephony Services the Mobile Service Provider must use reasonable endeavours to ensure, that:
- (a) the Mobile Service Retailer is aware of this General Condition;
  - (b) provisions are in place which require the Mobile Service Retailer:
    - (i) not to engage in dishonest, misleading or deceptive conduct;
    - (ii) not to engage in aggressive conduct;

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<sup>78</sup> Protecting consumers from mis-selling of mobile telecommunications services, Statement and notification, 16 March 2009.

- (iii) not to contact a Customer in an inappropriate manner; and
  - (iv) to create and keep records about the sale of the Mobile Service Provider's Mobile Telephony Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in General Condition 23.10, for a period of not less than ninety days after the date by which this sales incentive has to be fully redeemed, but not less than six months.
- (c) the Mobile Service Provider monitors the Mobile Service Retailer's compliance with the provisions referred to in General Condition 23.4 (b); and
- (d) non-compliance by the Mobile Service Retailer with the provisions referred to in General Condition 23.4 (b) is appropriately sanctioned by the Mobile Service Provider.

### Mobile Service – Information at Point of Sale

23.5 The Mobile Service Provider must use reasonable endeavours to ensure that before entering into or amending a contract for a Mobile Telephony Service the customer:

- (a) is authorised to do so;
- (b) intends to enter into this contract; and
- (c) is provided with the information set out below in a clear, comprehensible and accurate manner in paper or another Durable Medium which is available or accessible to the Customer or, where the Customer enters into or amends the contract during a sales call, by telephone:
  - (i) the identity of the legal entity the Customer is contracting with; its address and telephone, fax and/or e-mail contact details;
  - (ii) a description of the Mobile Telephony Service; the key charges (including minimum contract charges, any early termination charges, if applicable and, from (and including) the Effective Date and if the Customer is a Consumer, the Access Charge); payment terms; the existence of any termination right, including termination procedures; the likely date the Mobile Telephony Service will be provided, in case the provision of the Mobile Telephony Service is not immediate; and any minimum period of contract.<sup>79</sup>

Where the Customer enters into a contract during a sales call, in addition to the oral provision of this information the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

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<sup>79</sup> Simplifying Non-Geographic Numbers, Statement, 12 December 2013, amended paragraph 23.5(c)(ii) with effect from 26 December 2013.

## Records retention

- 23.6 Where the Mobile Service Provider acts as a Mobile Service Retailer, it must create and keep records about the sale of its Mobile Telephony Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in General Condition 23.10, for a period of not less than ninety days after the date by which this sales incentive has to be fully redeemed, but not less than six months. Such records must include the date of the sale, the means through which the contract was entered into and the place where the contract was entered into, where applicable.

## Training

- 23.7 The Mobile Service Provider must use reasonable endeavours to ensure that processes are in place which assure that a Mobile Service Retailer is appropriately trained to comply with this General Condition.

## Due diligence

- 23.8 Where the Mobile Service Provider contracts with or appoints a Mobile Service Retailer directly in order to sell or market the Mobile Service Provider's Mobile Telephony Services it must ensure that, and where a third party acting on behalf of the Mobile Service Provider contracts with or appoints a Mobile Service Retailer in order to sell or market the Mobile Service Provider's Mobile Telephony Services the Mobile Service Provider must use reasonable endeavours to ensure that, it, or a person acting on its behalf, carries out and retains a record of the following minimum procedures with regards to any Mobile Service Retailer, contracted or appointed to sell or market the Mobile Service Provider's Mobile Telephony Services:
- (a) a credit reference search and check that the Mobile Service Retailer does not have a history of failing to meet its financial undertakings to creditors;
  - (b) a check that any director of a Mobile Service Retailer concerned has not been a director of a third party that has filed for bankruptcy or gone into administration; and
  - (c) appropriate checks to ensure that any due diligence information referred to in this General Condition 23.8 remains up-to-date and relevant.

These procedures must be carried out before contracting with or appointing the Mobile Service Retailer.

## Use of information for the purpose of monitoring compliance

- 23.9 Where a Mobile Service Provider acquires information from a Mobile Service Retailer for the purpose of monitoring compliance with this General Condition, the Mobile Service Provider shall use that information solely for the purpose for which it was supplied and keep the information confidential. For the avoidance of doubt, the Mobile Service Provider shall not pass the information on to any other party (including its subsidiaries or partners) for whom such information could provide a competitive advantage.

## Sales Incentives – Information at Point of Sale

- 23.10 The Mobile Service Provider must use reasonable endeavours to ensure that where a Mobile Service Retailer offers to a Customer a sales incentive, from which the Customer does not benefit immediately and which the Customer is entitled to receive after entering into the contract for the Mobile Telephony Service, the terms and conditions of such an offer are not unduly restrictive and that a Customer is provided with the following information in a clear, comprehensible and accurate manner in paper or another Durable Medium, or, where the sales incentive offer is made during a sales call, by telephone:
- (a) the identity of the legal entity which makes the sales incentive offer and undertakes to meet the obligation(s) tied to this offer; its address; and telephone, fax and/or e-mail contact details;
  - (b) a description of the sales incentive itself; and
  - (c) the terms and conditions of the sales incentive, including a detailed and clear explanation as to the process the Customer has to follow to obtain the sales incentive.

Where the sales incentive offer is made during a sales call, in addition to the oral provision of this information, the Mobile Service Provider must use reasonable endeavours to ensure that this information is sent to the Customer in good time following the call in paper or another Durable Medium.

## Definitions

23.11 For the purpose of this Condition:<sup>80</sup>

- (a) “Access Charge” means the rate to be charged by the Mobile Service Provider to the Customer in respect of the retail and origination of a call to an Unbundled Tariff Number in accordance with General Condition 17;
- (b) “Consumer” has the meaning given to that term in General Condition 17;
- (c) “Customer” means Domestic and Small Business Customer as defined in section 52 (6) of the Act;
- (d) “Durable Medium” means a medium on which a Customer can store and retrieve unaltered information for a period of time adequate for the purposes of the information;
- (e) “Effective Date” has the meaning given to that term in General Condition 17;
- (f) “Mobile Service” means a service consisting in the conveyance of signals, by means of a mobile Public Electronic Communications

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<sup>80</sup> Simplifying Non-Geographic Numbers, Statement, 12 December 2013, inserted definitions of “Access Charge”, “Consumer”, “Effective Date” and “Unbundled Tariff Number” with effect from 26 December 2013.

Network, through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion;

- (g) “Mobile Telephony Service” means a Publicly Available Telephone Service that is a Mobile Service (and includes any SMS service sold as part of the package);
- (h) “Prepaid Mobile Telephony Service” means a Mobile Telephony Service for which the Customer pays charges in advance of the service being provided;
- (i) “Mobile Service Provider” means the provider of a Mobile Telephony Service;
- (j) “Mobile Service Retailer” means any person who sells or markets a Mobile Telephony Service directly to a Domestic or Small Business Customer;
- (k) “SIM Only Contract” means a contract for a Mobile Telephony Service where the Customer only obtains a Subscriber Identity Module (‘SIM’) card from the Mobile Service Provider and the notice period for cancelling this contract does not exceed one calendar month; and
- (l) “Unbundled Tariff Number” has the meaning given to that term in General Condition 17.