

## Definitions

24.19 For the purpose of this Condition:

- a) **"Cable Network"** means a hybrid fibre-coax Electronic Communications Network that uses a combination of optical fibres and coaxial cable;
- b) **"Cancel Other"** means the industry term for a functionality that enables the Losing Communications Provider to cancel wholesale orders (during the Transfer Period) placed by the Gaining Communications Provider which can only be used in the circumstances set out in 24.14;
- c) **"Communications Provider"** means the provider of an Electronic Communications Network and/or Electronic Communications Service, both as defined in section 32 of the Act;
- d) **"CPS"** means Carrier Pre-Selection, 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;
- e) **"Domestic and Small Business Customer"** has the meaning set out in section 52 (6) of the Act;
- f) **"Durable Medium"** means any instrument which enables the Customer 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;
- g) **"Failure to Cancel"** means where the Gaining Communications Provider has not cancelled a transfer, after a request from the Customer during the Transfer Period;
- h) **"Fixed-Line Telecommunications Services"** means Narrowband call and/or line rental services provided to Domestic and Small Business Customer;
- i) **"Gaining Communications Provider"** means the Communications Provider to whom the customer is transferring;
- j) **"LLU"** means Local Loop Unbundling, the process by which a dominant provider's local loops are physically disconnected from its network and connected to a competing provider's network.
- k) **"Losing Communications Provider"** means the Communications Provider from whom the customer is transferring;
- l) **"Narrowband"** means services provided over a traditional Public Telephone Network, excluding services provided over a Cable Network;
- m) **"Slamming"** means where a request for CPS, WLR and/or LLU has been made without the Customer's express knowledge and/or consent; that is in the following circumstances:
  - i. where the Customer has never been contacted by the Gaining Communications Provider;
  - ii. where the Customer has been contacted by the Gaining Communications Provider, but has not given the Gaining Communications Provider authorisation to transfer some or all of their telephone calls and/or line rental to the Gaining Communications Provider;
  - iii. where the Customer has agreed to purchase a product or service from the Gaining Communications Provider and the Gaining Communications Provider has submitted a request 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 telephone calls and/or line rental to the Gaining Communications Provider having understood, as a result of a deliberate attempt by the Gaining Communications Provider to mislead, that they are making an agreement with a different Communications Provider;
- n) **"Transfer Period"** means the period of 10 Working Days from before a customer's order can be activated;
- o) **"WLR"** means Wholesale Line Rental, a facility which BT provides other CPs with the ability to offer monthly line rental and associated services (such as fault repair) on the BT line; and
- p) **"Working Days"** means the hours between 09.00 – 17.00 on Monday to Friday with the exception of bank holidays.

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## General Condition 24 Sales and Marketing of Fixed-Line Telephony Services

### Document prepared by Unicom

#### Scope

- 24.1 A Communications Provider who provides a Fixed-Line Telecommunications Service to Domestic and Small Business Customers ('the Customer') must comply with this General Condition with respect to such Customers.
- 24.2 This General Condition is only applicable where the Customer is transferring a Fixed-Line Telecommunications Service between Communication Providers.

#### Mis-selling Prohibitions

- 24.3 When selling or marketing Fixed-Line Telecommunications Services, the Gaining Communications Provider must not:
  - a) Engage in dishonest, misleading or deceptive conduct;
  - b) Engage in aggressive conduct;
  - c) Contact the Customer in an appropriate manner; or
  - d) Engage in slamming.

#### Responsibility

- 24.4 Where the Communications Provider engages representatives, such as any sales agency, to act on its behalf in the sale and marketing of Fixed-Line Telecommunications Services, the Communications Provider shall procure that such representatives comply with the requirements of this General Condition.

#### Publication of relevant obligations

- 24.5 The Communications Provider must:
  - a) Publish a copy of this General Condition, or a link to a copy of this General Condition, published on Ofcom's website, 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 working 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.

#### Information at Point of sale

- 24.6 The Gaining Communication Provider must take all reasonable steps to ensure that before entering into a contract for Fixed-Line Telecommunication Service the Customer who is transferring the line:
  - 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 email contact details;
  - ii. A description of the Fixed-Line Telecommunications Service requested; the key charges, including minimum contract charges, and any early termination charges, if applicable; 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.

#### ***Post-sales information***

- 24.7 Where Customer enters into a contract for a Fixed-Line Telecommunications Service, the Gaining Communications Provider and the Losing Communications Provider must each send the Customer a letter, in accordance with the industry-agreed process, stating that the Customer is transferring their Fixed-Line Telecommunications Service, in paper or another Durable Medium, which clearly sets out, as appropriate:
- i. The date of the letter;
  - ii. The Calling Line Identification of all Electronic Communications Services which are affected;
  - iii. The list of services affected/unaffected;
  - iv. The proposed switchover date;
  - v. Relevant contact details; and
  - vi. The right to terminate the contract, the means by which the right to terminate from the point of sale to the completion of the Transfer Period can be exercised and the date by which the right to terminate must be exercised.
- 24.8 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.

#### ***Customer's termination rights***

- 24.9 When the Customer enters into a contract to transfer a Fixed Line Telecommunications Service the Gaining Communications 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 Communications Provider.
- 24.10 The Gaining Communications Provider must have procedures in place to enable the Customer to exercise their right to terminate their contract pursuant to General Conditions 24.9 without unreasonable effort. These procedures must include the ability to contact the Gaining Communications Provider to terminate the contract by any of the following contact methods:
- i. Telephone;
  - ii. E-mail; and
  - iii. Post

#### ***Records retention***

- 24.11 The Gaining Communications Provider must use reasonable endeavours to create and keep all records regarding the sale of its Fixed-Line Telecommunications Service, 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.

#### ***Training***

- 24.12 The Communications Provider must ensure that all its staff or any representatives of any sales agency engaged by it, involved in direct contact with Customers for the purpose of sales and marketing activity and/or Cancel Other are appropriately trained to comply with this General Condition.

#### ***Monitoring***

- 24.13 The Communications Provider must monitor, including conducting regular audits, its compliance with this General Condition, including compliance on its behalf by any representatives or sales agency engaged by it, and take appropriate steps to prevent the recurrence of any problem(s) identified.

#### ***Cancel Other***

- 24.14 The Losing Communications 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 Communications Provider has failed to cancel the request after being directed by the Customer to do so ("Failure to Cancel");
  - c) For other specified reasons not related to a Customer's request to cancel a transfer, and agreed by the relevant industry forum and approved by Ofcom; and
  - d) In such other circumstances as defined by Ofcom.
- 24.15 Before using Cancel Other in cases of Slamming and/or Failure to Cancel, the Losing Communications Provider shall take reasonable steps to establish that Slamming and/or Failure to Cancel has actually taken place.
- 24.16 After using Cancel Other, the Losing Communications 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.
- 24.17 The Losing Communications 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 GC24.19(m)(i) to (iv), as agreed by the industry, and approved by Ofcom.
- 24.18 Where the Losing Communications Provider communicates with the Customer in order to comply with this General 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 Communications Provider and/or remain in a contract with the Losing Communications Provider.