



# Principles of Consumer Protection Final Report

**Final Report**

**Final Decision and Order**

**Matter:** 20190215

**Date:** 11 September 2020

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## I INTRODUCTION

- 1 The Regulatory Authority of Bermuda (the “**RA**”) is responsible for regulating the electricity and electronic communications sectors, which includes establishing rules and standards to which Sectoral Providers must adhere for the protection of Consumers.
- 2 In furtherance of this responsibility, the RA is guided by sectoral legislation as set out in the Electricity Act 2016 (the “**EA**”) and the Electronic Communications Act 2011 (the “**ECA**”). Part 7 of the EA and Part 5 of the ECA empower the RA to create general determinations (each a “**GD**”) to govern the commercial and marketing practices of the relevant Sectoral Providers to protect the rights of Consumers and other sectoral participants.
- 3 The purpose of this Final Report, Final Decision and Order (the “**Final Report**”) is for the RA (i) to discuss the responses to the Preliminary Report, Preliminary Decision and Order (the “**Preliminary Report**”); and (ii) to issue the GD setting the rules and standards relating to the commercial and marketing practices to which Sectoral Providers must adhere when retailing goods and services to Consumers.

## II BACKGROUND

- 4 The RA is committed to the provision of a comprehensive consumer protection framework which sets out best practice requirements for regulated sectors when dealing with Consumers. The RA’s overriding objective continues to be the strengthening of the current consumer protection framework and the introduction of new measures which will benefit Consumers in their dealings with both the electricity and electronic communications regulated sectors. These provisions would also apply to any other sectors that the RA may regulate in the future. To this end, the *Principles of Consumer Protection* will provide a number of additional protections for the Consumers in these regulated sectors.
- 5 The RA is acutely aware that there are currently deficiencies in the standards and processes in place to address Consumer issues in these regulated sectors. The RA acknowledges the frustrations which have been expressed by Consumers and intends to use this Final Report and subsequent GD to address many of the systemic issues which the RA has uncovered.
- 6 The approach proposed in this Final Report contains the key elements necessary to develop and strengthen the RA’s Consumer protection framework, including Employee training, requirements for handling of Consumer complaints, and marketing and advertising practices.
- 7 On 15 February 2019 the RA issued the Principles of Consumer Protection Consultation Document (the “**Consultation Document**”) to consult on the proposed Consumer protection provisions.
- 8 The RA received five (5) responses to the Consultation Document.
- 9 On 11 September 2019, the RA issued the Preliminary Report which summarized the responses received to the Consultation Document and presented a draft GD.
- 10 The RA received four (4) responses to the Preliminary Report.

### III LEGISLATIVE CONTEXT

- 11 The Regulatory Authority Act 2011 (“**RAA**”) established a cross-sectoral independent and accountable regulatory body “*to protect the rights of consumers, encourage the deployment of innovative and affordable services, promote sustainable competition, foster investment, promote Bermudian ownership and employment and enhance Bermuda’s position in the global market*”.
- 12 The EA is the relevant sectoral legislation governing the electricity sector. The EA received Royal Assent on 27 February 2016 and came into operation on 28 October 2016, pursuant to the Electricity Act 2016 Commencement Day Notice 2016 (BR 101/2016). The EA repealed the Energy Act 2009. Sections 38 and 39 of the EA set out provisions for the protection of the electricity Consumer which are both encompassed by and expanded on with this Preliminary Report.
- 13 Section 38 of the EA empowers the RA to develop GDs governing the commercial and marketing practices of the TD&R Licensee, and any other sectoral participants, to protect the rights of End-Users and other licensees or authorized persons, having due regard to the purposes of the EA.
- 14 Section 39 of the EA empowers the RA to make GDs governing the processing, disclosure and use by the TD&R Licensee and any other sectoral participants of personal data that they obtain from subscribers or users in the course of business other than for the purpose of supplying electricity. This includes disclosure of an End-User’s name, address, email address and telephone number (including fixed and mobile numbers); use or disclosure of subscription data provided when a Consumer orders a service; and any other Consumer-related data, as defined for this purpose by the RA, that is obtained by the TD&R Licensee from users or sub-users.
- 15 The ECA is the applicable sectoral legislation governing the electronic communications sector. The ECA received royal assent on 18 December 2011 and came into operation on 28 January 2013, pursuant to the Electronic Communications Act 2011 Commencement Day Notice 2013 (BR 3/2013). Sections 26-31 of the ECA set out various obligations and requirements which Sectoral Providers must adhere to for the protection of electronic communications Consumers and which are both encompassed by and expanded on with this Preliminary Report.
- 16 Section 26 of the ECA empowers the RA to make GDs governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the RA to protect the rights of Consumers, subscribers and users, having due regard for the vulnerability of certain categories of Consumers.

#### IV SUMMARY AND DISCUSSION OF RESPONSES TO PRELIMINARY REPORT, DECISION AND ORDER

- 17 This section provides an overview of the key themes from the responses to the Preliminary Report, and the related decisions that the RA has made, taking into consideration the public responses. All responses have been carefully considered, and are summarised below.
- 18 The RA received letters of response to the Preliminary Report from three (3) Sectoral Providers, namely:
- (a) One Communications Ltd.
  - (b) Telecommunication (Bermuda & West Indies) Ltd.
  - (c) Bermuda Electric Light Company Ltd.
- 19 The RA also received a letter of response to its Preliminary Report from one member of the public.
- 20 For ease of reference, the summary of responses shall be set out in lettered sections labelled (A) to (D), one such section for each of the three Sectoral Providers and one for the response from the member of the public.
- 21 The RA will address each response in the order listed in paragraphs 18 and 19 above.

##### (A). ONE COMM

- 22 One Communications Limited (“**One Comm**”) provided its responses and respective comments in relation to the Preliminary Report on 11 October 2019. The RA thanks One Comm for its responses and confirms that all of its comments received in relation to the Preliminary Report have been considered in the GD appended to this Final Report Decision and Order.
- 23 One Comm commented on the provision on Accessibility. One Comm explained that the relationship with the Consumer is a commercial one and that, as regards “*details regarding a person’s vulnerabilities, [they] believe the vast majority of consumers would neither expect nor want One Comm (or other electronic communications providers or the RA) to be involved.*”
- 24 **RA Response:**
- The RA believes that, even where a commercial relationship exists, circumstances may arise which require extra care. The RA reaffirms that it believes that Consumers who fall within the definition of ‘*Vulnerable Person*’ require additional care and protections. Duly, the provision on Accessibility will remain unchanged.
- 25 One Comm expressed its dissatisfaction with the RA’s position in relation to setting out the “*legal and factual background for the public consultation process*”. One Comm states that its position is that Section 70 of the RAA obliges the RA to “*share its research [and] examine the state of existing law in terms of consumer protection.*” One Comm also noted

that the RA is mandated to operate transparently to the full extent practicable under the RAA.

26 **RA Response:**

The RA maintains its position that it has satisfied its requirements under Section 70 of the RAA in the 'legislative context and background' sections of the Consultation Document. Section 70 of the RAA requires the RA, among other things, to provide the relevant legal and factual background to any issues being considered in a consultation, which does not oblige the RA to share any research papers or examine the state of the law. The RA anticipates that Sectoral Providers will take their own legal advice. The RA also asserts that it has operated transparently throughout this Consumer Protection public consultation process, inviting for comment from the public, taking each such comment provided into consideration, and responding accordingly.

27 One Comm commented that the "*current state of the law in Bermuda already sets out numerous consumer protection provisions applicable to the electronic communications sector*". One Comm lists Section 14 of the Integrated Communication Operation Licence (the "**ICOL**"), the Regulatory Authority (Consumer Rights: Residential Contracts) General Determination 2014 and the Bermuda Consumer Protection Act. One Comm also cites the legislative amendments which the RA has suggested in the sectoral review as well as the proposed remedies to be contained in the upcoming [electronic communications] market review final report.

28 **RA Response:**

The RA clarified this point in the Preliminary Report. In drafting the provisions of the Preliminary Report, it took into consideration all of the laws, rules and regulations already in place regarding the protection of Consumers. This included both the ICOLs, the Regulatory Authority (Consumer Rights: Residential Contracts) General Determination 2014 (the "**2014 GD**") and all other relevant Consumer protection laws. The RA reiterates that the provisions proposed in the Preliminary Report are complimentary to the existing Consumer protection framework and the RA has stated that the provisions of Final Report will take precedence over the 2014 GD. The Final Report is intended to provide the Consumers with a 'one stop shop' for determining their rights when interacting with applicable Sectoral Providers. Additionally, due to the number of Consumer complaints which the RA has received in the preceding years, the RA has determined that it is necessary to enhance the current consumer protection framework currently in existence.

29 One Comm has raised a concern that in their view there is a practical inefficiency in having what they believe to be overlapping and duplicative regulation.

30 **RA Response:**

The principle functions of the RA include the promotion of the interests of the residents and Consumers of Bermuda. As such, it is the RA's duty to ensure that all possible avenues for the protection of Consumers are covered by the regulatory framework which it enforces. Consequently, where it is evident that there are deficiencies, the RA will endeavor to remedy these deficiencies with appropriate additions to the consumer protection framework that are already in existence at that time. This is why the RA has

continued to develop provisions which enhance the Consumers' experience when interacting with Sectoral Providers in our regulated industries.

The RA has explained at paragraph 19 of the Consultation Document that, in the event of any irreconcilable difference between the 2014 GD and the Preliminary GD, the latter would take precedence. It is not uncommon that regulation should be developed in stages, and as such, there may be multiple documents which contain applicable regulatory requirements to which Sectoral Providers must adhere. As such, the RA asserts that the Sectoral Providers are required to take all reasonable precautions in order to ensure that they are complying with all applicable regulation where and when appropriate in their interactions with Consumers.

31 One Comm has raised a concern that *"the PDO seeks to apply the same consumer protections across both sectors."* One Comm goes on to explain that they *"do not agree that one-size-fits-all regulation is needed or appropriate for both industries."*

32 **RA Response:**

The RA considers that, where there are instances in which the RA has noted variances between the electronic communications and electricity sectors which would require a different approach to consumer protection, it has effected those different approaches in the proposed provisions of the Preliminary Report by stating the industry to which that provision is to be restricted.

However, there are standards which exist in relation to the handling and treatment of Consumers that are applicable to both industries and, as such, the RA sees no need to develop separate rules and regulations for each sector in those instances. The RA considers that would be unnecessary and inefficient.

**(B). DIGICEL**

33 Telecommunications (Bermuda & West Indies) Ltd. ("**Digicel**") provided its responses and respective comments in relation to the Preliminary Report on 11 October 2019. The RA thanks Digicel for its responses and confirms that all of its comments have been considered in the GD appended to this Final Report.

34 Digicel states that the RA is only empowered to act *"in cases where sector specific action is needed and generally where consumer protection rules are generally not available or adequate."*

35 **RA Response:**

The RA considers that neither Sections 15 nor 16 of the RAA remove the RA's powers to impose the consumer protection provisions proposed in the Preliminary Report. Section 15 of the RAA sets out the scope of the RA and both subsections (1) and (2) empower the RA to impose regulations upon the sectoral participants in fulfilment of the principles of the RA. They state:

*“The Authority shall have the power to supervise, monitor and regulate any regulated industry sector, in accordance with this Act, sectoral legislation and any regulations or policies made by a Minister.”<sup>1</sup>*

*The Authority, when acting within the scope of its authority, may make administrative determinations that are binding on sectoral participants, including general determinations to implement this Act, sectoral legislation and regulations and policies made by a Minister.”<sup>2</sup>*

Therefore, the RA notes that it is expressly empowered to “*regulate any regulated industry sector, in accordance with this Act*” as well as to “*make administrative determinations that are binding on sectoral participants*” pursuant to Section 15 of the RAA. Additionally, Section 16 of the RAA sets out the principles upon which the RA should conduct its regulation, which the RA has complied with at all times.

The RA therefore asserts that the imposition of the provisions proposed in the Preliminary Report fall directly within the powers stated in Section 15 of the RAA, and that the RA’s conduct is properly in line with the principles set out in Section 16 of the RAA. Additionally, there are provisions in both sets of sectoral legislation which expressly empower the RA to set consumer protection provisions for the Sectoral Providers to adhere to (including Part 7 of the EA and Part 5 of the ECA).

36 Digicel has stated that “*section 26 of the Electronic Communications Act 2011 (the “ECA”) does not extend the Authority’s authority to make GDs in relation to any “unlicensed” services an ICOL holder such as Digicel provides*”.

37 **RA Response:**

The RA respectfully disagrees with Digicel’s position on this matter. Specifically, the RA disagrees with Digicel’s interpretation of the relevant provision (i.e. Section 26 of the ECA). Section 26 of the ECA states:

*“The Authority may make general determinations —*

*(a) governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the Authority to protect the rights of customers, subscribers, users and consumers, having due regard for the vulnerability of certain categories of consumers; and*

*(b) issuing or approving codes of practice relating to such practices.”*

*(emphasis added)*

This provision of the ECA specifically empowers the RA to make general determinations to govern “*the commercial and marketing practices of ICOL holders.*” The key question here is whether the target of regulation is an ICOL holder; once this is determined in the affirmative, consumer protections can then be imposed in relation to any commercial or marketing practice of the ICOL holder. No limitation is specified for ‘licensable services’

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<sup>1</sup> Section 15(1) of the RAA.

<sup>2</sup> Section 15(2) of the RAA.



offered by ICOL holders; on the contrary, it gives the RA broad legislative authority to impose these consumer protection general determinations on ICOL holders as a whole. Section 26 of the ECA also goes further, to also allow these consumer protection provisions to be imposed on “*any other types of communications providers specified by the Authority*” where it is appropriate for the RA to do so in line with the legislation.

38 Digicel also stated that “*It is clearly contradictory to the Authority’s position that those unlicensed service providers located outside of Bermuda are not subject to the current consumer protection GD.*” Digicel went on to say that “*if they are providing the electronic communications services to the consumers in Bermuda, according to the Authority’s current definition of “Sectoral Provider”, they should be also subject to this GD.*”

39 **RA Response:**

The RA is authorised to and has a responsibility to regulate all sectoral participants who provide services in Bermuda for which a licence, permit or other authorization is required. . As such, the GD appended to this Final Report shall not apply to unlicensed service providers located outside of Bermuda.

40 Digicel states that: “*It seems that the GD does not reflect the conditions of the local market in Bermuda as shown in the applicability of this GD, such as definitions of “Small Business” and “Medium Sized Businesses”*”. Digicel continues by saying that “*the above definitions might be appropriate in a larger jurisdiction*”. Digicel further states that “*consumers should be either a residential customer, or a small or a medium sized business with a maximum of 20 employees.*”

41 **RA Response:**

The RA would like to clarify that it did not develop these definitions of small or medium sized business on its own but, following best practice, directly referenced these definitions from the Bermuda Economic Development Corporation Act 1980. Consequently, these definitions are considered to be appropriate descriptions of what constitutes a small or medium sized business under the law in Bermuda.

42 Digicel stated that “*The Authority needs to remove the 2014 GD completely for clarity and certainty of regulations, if it is found to be inadequate or inefficient, even if it is aligned with the Preliminary GD in order to ensure that Sectoral Providers, which include both ICOL and non ICOL holders, do not have multiple consumer protection governing principles.*”

43 **RA Response:**

The RA does not believe that it is necessary to remove the 2014 GD completely for clarity and certainty of regulation, given that, as previously noted in paragraph 19 of the Consultation Document, in the event of any irreconcilable difference between the 2014 GD and the GD, the latter takes precedence. In any event, when drafting the GD, the RA reviewed Section 14 of the ICOLs and the 2014 GD to ensure that the obligations on ICOL holders under both the ICOL and the 2014 GD were aligned with the GD.

44 Digicel stated that “*the Preliminary General Determination does not confer any ‘rights’ other than ‘obligations’ to Sectoral Providers in the Regulated Industry Sectors.*”

45

**RA Response:**

The RA notes that the purpose of the GD is wholly consistent with the wider purpose of the RA; namely that it is in the public interest to protect the rights of Consumers. This is further enshrined in the principal functions of the RA, as set out under Section 12 of the RAA, including the function “*to promote the interests of residents and consumers.*” As such, the RA would emphasise that the GD confers such ‘obligations’ on Sectoral Providers in regulated industry sectors for the explicit purposes of assisting and protecting the Consumers, and notes that Sectoral Providers have their rights enshrined in applicable sectoral legislation.

46

Digicel stated that they assume and understand that “*Term Contracts*” refers to “*fixed term contracts*”, not 30-day rolling contracts in the electronic communications sector. Digicel goes on to explain that “*consumers on 30 day rolling contract terms already have ‘right of exit’ without any reasons or penalty, therefore a “reasonable advance notice in writing” to a customers on a month to month rolling contract does not provide any additional protection.*”

47

**RA Response:**

A Term Contract is defined in the GD in Annex 1 of this Final Report as “*an agreement between a Consumer and a Sectoral Provider in the electronic communications sector in Bermuda setting out the terms and conditions upon which a Sectoral Provider will provide service(s) or product(s) to the Consumer, provided that any agreement which the Consumer may terminate at any time without penalty by giving not more than thirty (30) days’ notice shall not be considered to be a Term Contract*”. As clarified in this definition, a contract that the Consumer may terminate at any time without penalty on thirty (30) days’ notice, would not come within the definition of a Term Contract.

48

Digicel states that the provision dealing with ‘*Unilateral changes to Terms and Conditions of a Term Contract*’ is already covered in Section 14.3 of Digicel’s ICOL. Digicel therefore requests that the RA include “*materially detrimental*” in front of “*changes*” in Section III.B and C, so that ICOL holders are encouraged to provide Consumer-friendly unilateral promotional changes.

49

**RA Response:**

The RA believes that the term “*materially detrimental*” is too vague to provide certainty and to adequately account for the particular circumstances of individual Consumers. Duly, the RA notes that Digicel’s obligation not to make unilateral changes to Term Contracts in Section III.B and C is in addition to its existing obligations under Section 14.3 of Digicel’s ICOL, and this provision will remain as proposed.

50

Digicel also suggested that Section III.C should include the circumstances where the unilateral change is required to improve operational efficiency or provide Consumer benefits (i.e. such as to improve Consumer experience, price benefits or to close loopholes which are being exploited in ways which are not legitimate).

51 **RA Response:**

The RA does not agree that additional terminology should be incorporated within the applicable provision and, in this instance, considers that the Sectoral Provider should follow the protocol set out in this Final Report on unilateral changes to term contracts which is part of the GD issued herein. This would include, among other things, informing the Consumer.

52 In relation to the provision on 'cooling off' Digicel has stated that *"It is unclear, however, if the post contract cooling off period may be waived by the consumer in writing."*

53 **RA Response:**

The post contract cooling off period is a requirement. The RA does not believe that it is in the public interest for a Consumer to be able to waive this provision.

54 Digicel stated that *"Section III. H "maximum permitted Term Contract" should include "unless otherwise agreed by the parties in writing" so that businesses customers who wish to commit to longer minimum contract terms for discounts or other reasons are able to enter into contracts for a longer term, if the current GD is to include the Medium Sized Businesses, which we consider to be larger businesses customers in Bermuda."*

55 **RA Response:**

The RA agrees with its proposal. The RA will include Digicel's suggested wording to the proposed provision under Section III.H accordingly.

56 Digicel states that the provision in Section III.J is already covered in Section 12 of the 2014 GD.

57 **RA Response:**

The RA understands that there may be some overlapping provisions between the Final Report and the 2014 GD provisions, and reiterates that the Final Report shall take precedence.

58 Digicel also states that *"We also do not agree that Sectoral Providers must notify Consumers that the service will continue on a month to month basis on the same terms prior to the auto renewal period, as it will be clear to the commencement of the Term Contract, and the most Term Contract will not be longer than 24 months pursuant to this GD."*

59 **RA Response:**

The RA disagrees with Digicel that the notification is unnecessary as the completion of a contract is a significant event for the Consumer. The RA believes that it is in the interest of the Consumer to have the benefit of receiving notification of their service continuing on a month to month basis prior to the automatic renewal term. The RA believes many Consumers may not be aware that their initial contract term may be ending, and shall wish to be notified given the importance and value of such contracts. Duly, this provision will remain without amendment.

60 Digicel stated that it is unclear how to deal with the handset fees paid by Consumers under the proposed Section IV. B.1: *'Sectoral Providers shall not charge a Consumer, unless every amount charged and/or stated on the bill represents, and does not exceed, the true extent of any such service provided to the Consumer in question.* Digicel seeks the RA's guidelines on this.

61 **RA Response:**

The RA's intention is that the Consumers are made aware of the contents of individual Consumer's bills. As such, the handset fee can remain, and the RA considers Digicel's concerns to be unfounded.

62 Digicel states that it agrees with most of the wording in relation to the handling of complaints provisions. However, Digicel has raised a concern in regards to the requirement for acknowledgement of a complaint within one (1) business day, if the acknowledgement must be via post. Digicel states that the letter may not get delivered to the relevant department or staff on the same day, therefore three (3) business days are more adequate than one (1) business day acknowledgement for the complaints in writing.

63 **RA Response:**

The RA understand the concern but considers that an acknowledgement of a complaint should be issued within one (1) business day of receipt, whether received via post or other form of communication. The RA shall amend the provision to reflect this minor change.

64 Digicel has stated that *"The definition of "Complaints" should be further clarified so that they do not include simple billing related queries, just simply because the Customer asserts that they are making complaints when asked by an agent."* Digicel also stated that it *"believes that quarterly reporting of customer complaints is disproportionate as set out in our submission previously."*

65 **RA Response:**

The RA notes that the current definition of complaint would not include *"simple billing related queries"*, and consequently there is no need to amend the definition in this regard.

66 Digicel has raised the concern that they would like clarity in relation to the RA's confirmation on its hold and separate obligation as in the absence of the RA's decision to lift its outdated merger condition, it has to maintain two (2) separate complaints log systems and two (2) separate teams of agents, which is difficult and costly to maintain. Until the certainty of its condition is confirmed or completion of the market review, Digicel is not able to confirm its position on the provision of complaints registers. Also it requires further time to implement, which will be at least six (6) to nine (9) months, after the RA's final decision on this topic.

67 **RA Response:**

The RA notes that the RA has previously communicated to Sectoral Providers that the merger conditions shall be addressed upon the conclusion of the 2020 market review.

68 Digicel agrees with the proposed wording but notes that ‘*Part III -Unfair Business Practices*’ of the Consumer Protection Act 1999 already covers the reasonable marketing and sales practices of this topic.

69 **RA Response:**

The RA agrees that certain provisions of the Consumer Protection Act 1999 already cover the reasonable marketing and sales practices discussed within this topic. However, Sectoral Providers are required to comply with all applicable legislation and regulations, irrespective of a potential overlap.

70 Digicel has stated that although they agree with the general aspect of this topic, they feel that the current provision is extremely broad and has high threshold to meet, the wording “*at all times*” should be deleted, also “*all of their Employees*” and “*Employees*” in the General Determination should be deleted and replaced with the more appropriate definition of “*Frontline Employees*” in order to ensure that the training under this Section VIII mandates the Sectoral Providers to provide adequate training to all Consumer-facing frontline staff only on topics which is relevant and specific to their roles.

71 **RA Response:**

The RA agrees that it would be sensible to amend the provisions in connection to “*Frontline Employees*” to reflect requirements imposed on individuals in such Consumer-facing roles which is relevant and specific to the roles they fulfil. The applicable provisions under the GD in Annex 1 of the Final Report shall be amended accordingly.

72 Digicel has stated in relation to the provision on unsolicited communications that “*the Authority needs to make sure the new regulations fit for the market specific circumstances and needs, not just global best practices*”.

73 **RA Response:**

The RA agrees with the need to ensure that new regulations are fit for the market specific circumstances and needs in Bermuda, but also requires that all Sectoral Providers comply with global best practices. It is the RA’s belief that this direction was followed throughout the Consultation Document, Preliminary Report and currently regarding the Final Report and GD.

74 In relation to the provision on confidentiality of Consumer information Digicel has stated that “*it should be argued that the current provision here is not required, unless there are sector specific requirements. Further the formulation of the proposed obligation that Licensees “...comply with the applicable requirements set out in the Personal Information Protection Act 2016 (as amended) in the fulfilment of all of their duties following from this GD...” is so ambiguous as to deny ICOL holders of any legal certainty and clarity of the extent of their obligations. This legal certainty and clarity is a central fundamental in the valid imposition of any new obligations.*”

75 **RA Response:**

Following the appointment of the Privacy Commissioner for Bermuda in January 2020, the RA believes that the provision regarding the Personal Information Protection Act 2016

("PIPA") within the GD in Annex 1 of this Final Report is no longer necessary, and therefore the RA has removed this provision.

76 Digicel has stated that *"the Government of Bermuda, as a public policy position, appears to have implicitly decided that the time is not yet ripe to bring the provisions of the PIPA into force and that there are no compelling reasons why the prompt and immediate introduction of the provisions of the legislation into the Bermudian economy is necessary. The Authority has not identified any sector specific reasons why this general public policy position should be deviated from, and which would necessitate the early introduction of the obligations into the telecoms sector. Therefore the Authority's proposal in this regard would appear to be incompatible with Section 16 (e) of the RAA, which demands that the Authority "...act only in cases in which action is needed". Digicel goes on to state that "experience from multiple jurisdictions demonstrates that the timescales for implementation of privacy compliance mechanisms by organisations are substantial, often running to periods in excess of 12-18 months. The proposed wording of the GD appears to impose these obligations immediately on the date adoption of the GD, which is unreasonable."*

77 **RA Response:**

As noted in paragraph 75 above, the RA's view is that the provision in the GD is no longer necessary, and shall be removed accordingly.

78 In relation to Accessibility, Digicel stated that *"the sensitive nature of this personal data, Digicel would again urge the Authority to remove these provisions until the PIPA is implemented and the sectors can assess how to achieve the benefits of the Authority's proposal while at the same time balancing the privacy rights of the individuals involved, in order to make sure the regulations are not disproportionate or inconsistent with the principles of the PIPA."*

Digicel went on to say that *"the late payment, if applicable, must be payable in accordance with the contract, not approved by the Authority therefore Sections in B, C and D should be also deleted completely."*

79 **RA Response:**

Following the appointment of the Privacy Commissioner for Bermuda in January 2020, the RA believes that the provision regarding PIPA within the GD in Annex 1 of this Final Report is no longer necessary, and shall be removed accordingly.

80 In relation to outages: Digicel agrees with the proposed wording in general but believes that the definition of "Outages" should be amended to consider materiality of outages. It is also recommended to add a provision that a Sectoral Provider can post planned outage notifications on its social media or website to cover wider Consumers for these notices.

81 **RA Response:**

The RA agrees with Digicel's recommendation to add a provision that a Sectoral Provider can post planned outage notifications on its website or use its social media profile to reach a wider segment of Consumers for such notices. However, the RA notes that not all Consumers check these platforms and consequently such posted notifications using the

Service Provider's website or its official social media accounts are to be used cumulatively, alongside the existing means of providing advance notice, such as via either post, advertisement in a national newspaper, e-mail or phone calls.

With regards to outages, the RA agrees with Digicel's proposal to consider the materiality of outages. Consequently, the RA suggests the provision of a *de minimis* timeframe with regards to either a planned or unplanned outage during which there is no requirement for the Sectoral Provider to provide notice, to be an outage of less than five (5) minutes in duration.

82 Digicel has stated that "*The Authority needs to include a new section – 'Implementation Timeline of at least minimum six (6) months' in order for the Service Provider to be complied with its obligations under the new GD.*"

83 **RA Response:**

The RA disagrees with Digicel's position and shall not allow an 'Implementation Timeline'. Upon issuance of the GD, the requirements of this GD in Annex 1 of this Final Report shall be in full effect immediately.

**(C). BELCO**

84 Bermuda Electric Light Company Ltd. ("**BELCO**") provided its responses and respective comments in relation to the Preliminary Report on 11 October 2019. The RA thanks BELCO for its responses and confirms that all of its comments received in relation to the Preliminary Report shall be considered in the GD appended to this Final Report Decision and Order.

85 BELCO provides comment on the following definitions as they are presently set out in the Preliminary GD:

86 "*Complaint*": BELCO believes that this definition is too broad and should be amended to make it clear that Complaints relate to Sectoral Providers' provision of services under applicable service rules or contractual agreements. Otherwise, complaints made to Sectoral Providers that are unrelated to the Consumer-Sectoral Provider relationship may be caught and it may be inappropriate for the Sectoral Provider's complaints handling policy to apply.

87 "*Consumer*": Although BELCO does not object to the definition in principle, BELCO notes that there are some uses of the definition in the Preliminary GD that are not appropriate. Some obligations that may exist between a Sectoral Provider and its customer may not exist between the Sectoral Provider and a Consumer. It is suggested that the Preliminary GD be reviewed to ensure that references to "*Consumer*" within the final general determination are appropriate in all instances.

88 "*Distributed Generators*": The Preliminary GD provides that this defined term carries the meaning set out in the Electricity Act 2016 (the "EA"). BELCO notes, however, that the defined term provided in the EA is "*distributed generator*" rather than "*distributed generators*" (emphasis added). For the sake of accuracy, and in the interests of ensuring that readers of the final general determination can locate the definition in the EA, BELCO suggests that the definition be revised.

- 89 “*End User*”: The Preliminary GD provides that this defined term carries the meaning set out in the EA. BELCO notes, however, that the defined term provided in the EA is “*end-user*” (emphasis added) rather than “*end user*”. BELCO suggests that the definition be revised for the reasons set out above with respect to the definition for distributed generator.
- 90 “*Frontline Employees*”: The Preliminary GD provides that the term Frontline Employees means “those Employees of a Sectoral Provider who deal directly with Consumers.” BELCO’s concerns about this definition are set out below in relation to the paragraph in which the definition is used, namely Paragraph VI.F of the Annex, and it is suggested that this definition will become superfluous and ought to be omitted from the final general determination.
- 91 “*Medium Sized Business*” and “*Small Business*”: BELCO wonders how any Sectoral Provider will be able to ascertain whether Consumers are caught by these definitions. It would be difficult for a Sectoral Provider to ascertain whether an enterprise is “owner-operated”. Further, a Sectoral Provider will not likely know whether an enterprise carries any of the attributes listed under either of these definitions.
- 92 “*Vulnerable Person*”: BELCO believes this definition is unclear and suggests that the following would be clearer: “*means a Consumer who (i) is disabled; (ii) is chronically sick; (iii) has a long-term medical condition; (iv) has a hearing impairment; (v) has a visual impairment; and/or (vi) has a medical dependence on electric powered equipment that must be operated continuously to avoid the loss of life or immediate hospitalization and, as a result, is more likely to suffer detriment if he/she were not provided with electricity and or electronic communications services and in the cases of (i) to (vi) has been certified as such by a doctor and the necessary medical documentation, including renewal of such documentation, has been provided to the Sectoral Provider.*”

93 **RA Response:**

The RA thanks BELCO for its views on the various definitions as they are presently set out in the Preliminary GD. For the sake of clarity, the RA will address each above definition discussed in BELCO’s comment in turn:

- 94 “*Complaint*”: BELCO’s suggestion put forward in the initial Consultation Document was to define Complaint as “*a formal complaint for which the complaints handling process commences when the Customer signifies, in accordance with the Sectoral Provider’s complaints handling process, that the customer is lodging a formal complaint.*” In comparison, the RA’s current definition of Complaint is “*where the Consumer expressly informs a Sectoral Provider that it is lodging a formal complaint in accordance with such Sectoral Provider’s complaints handling policy*”. As such, the RA disagrees that the definition is too broad: the Consumer should have the opportunity to engage the Sectoral Provider’s complaints-handling policy irrespective of whether such complaint explicitly falls under the Sectoral Provider’s applicable service rules or contractual agreements. Indeed, the Consumer should have the right to file a formal complaint against the Sectoral Provider irrespective of whether a contractual relationship exists between the two parties, given that such complaint can very well concern matters outside an explicit contractual relationship, which are nonetheless essential to be addressed by a formal complaints handling policy, for example complaints about employee conduct.



- 95 “*Consumer*”: BELCO’s comment is noted, and the RA shall review and amend, where applicable, within the GD accordingly.
- 96 “*Distributed Generators*”: BELCO’s comment is noted, and the RA shall revise and amend the definition accordingly in order to correspond and conform to the EA.
- 97 “*End User*”: BELCO’s comment is noted, and the RA shall revise and amend the definition accordingly in order to correspond and conform to the EA.
- 98 “*Frontline Employees*”: BELCO’s comment is noted, and the RA shall address this point within BELCO’s comments under Paragraph VI.F of the Annex.
- 99 “*Medium Sized Business*” and “*Small Business*”: BELCO’s comment is noted. However, the RA’s view is that there is a clear need for providing clarity among the various Consumers who may directly benefit from the provisions of the Final Report. This will inevitably also include Consumers who operate either a Small Business or Medium Sized Business, and therefore necessitates defining criteria to identify the size of such business Consumers. Moreover, the RA would like to clarify that it did not develop these definitions of small or medium sized business on its own, but, following best practice, directly referenced these definitions from the Bermuda Economic Development Corporation Act 1980. Duly, these definitions are considered to be appropriate descriptions of what constitutes a small or medium sized business under the law in Bermuda.
- 100 The RA would consider information containing the attributes referenced by BELCO readily available to Sectoral Providers in Bermuda, the majority of which are sophisticated, publicly traded businesses with sufficient resources to procure information on its Consumers, particularly those from Bermuda’s business community. However, in order to strike a balance between the obligations on the Sectoral Provider and responsibilities of individual business owners, the RA proposes that the obligation rest with the individual Consumers to provide evidence as to whether it falls under the respective definitions, i.e. whether it is a Small Business or Medium Sized Business.
- 101 “*Vulnerable Person*”: BELCO’s comment is noted and the RA broadly agrees with providing for the provision of an official medical certification and documentation, and its periodic renewal.

**Scope of this General Determination:**

- 102 BELCO makes the following comment on Paragraph I.B. of the Annex:

Paragraph I.B. of the Annex provides that “**this Preliminary General Determination**” (emphasis added) will take precedence over other GDs or Administrative Determinations. BELCO understands this to be a typo, such that the final general determination will read “**this General Determination**” will take precedence over other GDs or Administrative Determinations. BELCO also notes that there are other references to “Preliminary General Determination” throughout the Preliminary GD that will require updating when the general determination is finalized.

103

**RA Response:**

The RA thanks BELCO for its comment on Paragraph I.B of the Annex and confirms that the Final Report and GD shall read “*this General Determination*”, as pointed out in the comment above.

**V.B.3: Annex 1 – Principles of Consumer Protection – II. Application for Goods and/or Services**

104

BELCO makes the following comment on Paragraph II.C of Annex 1:

**II.C.** BELCO would be grateful for further clarity on the level of detail required on the one page contract summary with respect to tariffs and what it expects will go into service rules. In Paragraph 101 of the Summary, the RA states “*BELCO says that its tariffs are too complex to include on one sheet of paper and asked the Authority to include a more practical requirement in relation to price. The Authority’s view is that BELCO ought to provide information on the different types of tariffs that it offers to Consumers and information on how they differ. The Contract Summary could then refer to that tariff and refer Consumers to the BELCO Service Rules for further more detailed information.*” It is unclear where the detail on the different types of tariffs is to be included, and BELCO asks that the RA provide clarification.

**II.C.** BELCO is concerned about the extra resources that will be required to customize the one page contract summary for each Consumer, as some of the information will differ per Consumer. It would be grateful for clarity from the RA as to the level of standardization that will be permitted. For instance, can Consumers be referred back to the application form for the commencement date of the contract?

105

**RA Response:**

The RA notes BELCO’s comment and is mindful of the benefits of standardized processes. However, the RA is also concerned about imposing any undue burdens on those Consumers who do not have internet access, access to internet-enabled technology, and/or do not possess an online BELCO account, although it recognises that the number of such Consumers is decreasing. As such, the RA would propose that BELCO have an obligation to provide as much information within a customised one-page contract summary for an individual Consumer if requested by the Consumer, and the RA will correspondingly provide for such obligation within Paragraph II.C of Annex 1.

**V.B.5: Annex 1 – Principles of Consumer Protection – IV. Content of Bills**

106

BELCO has the following comment on Paragraph IV.A. of the Annex:

**IV.A.** In the First Round Response, BELCO raised concerns that its bills were already information-rich such that the inclusion of additional information, such as payment methods, may ultimately result in a bill that is less easily understandable. In response, the RA stated, at Paragraph 66 of the Summary, that “*BELCO’s bills ought to contain a brief description of the different payment options which customers have to pay bills...there are potential Consumers that may be new to the island or there may be other circumstances that result in a Consumer not being aware of all of the methods available to them to pay their electricity bill.*”

BELCO continues to believe that the layout of its bills offers little space in which to introduce new information and requests that the RA allow BELCO to simply include on its bills a statement that payment methods are set out on BELCO's website. If this suggested approach is acceptable to the RA, BELCO further requests that the acceptance be accordingly reflected in the final general determination.

107 **RA Response:**

The RA thanks BELCO for its comment on Paragraph IV.A of the Annex, and concurs that it is prudent of BELCO to include payment method information on its website. However, the RA reiterates its view that BELCO's bills, given its position as the sole licenced supplier of electricity in Bermuda, must be comprehensive in including all appropriate information while remaining as accessible as possible for all Consumers.

108 Many of BELCO's Consumers may fall into the category of Vulnerable Person, or simply are elderly members of Bermuda's community. For such Consumers, it is essential that any potential lack of access to modern technology, such as broadband internet connection, does not serve as a hindrance to their understanding of methods available to pay their bills. As such, the RA would encourage BELCO to keep such Consumers in mind when considering the layout of its physical, printed bills, alongside its detail-rich, Consumer-facing contents provided online. For example, the printed bills should clearly provide for both the online payment option, and the physical address to which Consumers can direct their bill payments.

**V.B.6: Annex 1 – Principles of Consumer Protection – VI. Handling of Complaints**

109 BELCO shares the following comments on Paragraph VI of the Annex in relation to the sub-paragraphs listed opposite the comments:

**VI.E.** BELCO has no objection to providing anonymized details of complaints to the RA but questions what additional benefit would be derived from Sectoral Providers being required to post details of complaints on their websites as set out in the final bullet of paragraph VI.E of the Annex. BELCO also questions how frequently Sectoral Providers will be required to refresh the details of complaints posted on their websites.

**VI.F.** Paragraph VI.F of the Annex provides that *"All Frontline Employees shall deal with Complaints in accordance with the Sectoral Provider's complaints handling policy and any requirements imposed by the Authority, as set forth in sectoral legislation, licences and Administrative Determinations. The complaints handling policy shall also require that any Employee who receives a Complaint makes a record of the Complaint in writing and that such written record is filed in an appropriate database maintained by the Sectoral Provider. Consumers shall be asked by Frontline Employees to confirm that they are making a formal complaint."*

BELCO has the following comments relating to this Paragraph as follows:

- (a) Given the obligations to be imposed upon Sectoral Providers, BELCO suggests that the definition of Frontline Employee may be too broad. Paragraph VI.F of the Annex requires Frontline Employees to deal with Complaints in accordance with the Sectoral Provider's complaints handling policy (the "**Policy**"). The definition for Frontline Employees provides that they are Employees who deal with Consumers.

There are many employees other than those who form part of the Consumer experience function who fall within the definition, and BELCO queries whether the RA intends that all such employees are responsible for handling complaints in accordance with the Policy and any requirements imposed by the RA. It seems that such responsibilities ought to strictly reside with those employees whose roles include the handling of complaints.

- (b) Similarly, BELCO doubts that it is expected that any Employee who receives a Complaint is to make a record of the Complaint in writing and to file such record in an appropriate database. That responsibility should reside with those employees whose roles include the handling of complaints.
- (c) It does not seem reasonable to expect that employees other than those whose roles involve handling complaints would be expected to ask a Consumer whether he or she is making a formal complaint. In BELCO's view, it is reasonable that only employees whose roles involve the handling of complaints will be responsible for knowing the Policy and receiving, recording and processing complaints.
- (d) The Policy is to require an Employee who receives a Complaint to make a record of the Complaint in writing and to file the record in the appropriate database. BELCO wonders whether the final general determination ought to clarify that this written record can be made electronically.
- (e) Subject to the amendment of the definition for "*Complaint*" suggested above, this provision is a good example of an instance in which it may be more appropriate to refer to a "*Customer*" rather than a "*Consumer*" (as mentioned above). It cannot be the intention that someone who has not contracted with BELCO to receive service is entitled to file a complaint that BELCO is obligated to answer.

In all the circumstances, and subject to the RA's further consideration of the appropriateness of the use of the word "*Consumer*" as presently defined, BELCO suggests that the following language, or similar language, would be preferable in Paragraph VI.F of the Annex:

*"All relevant Employees receiving Complaints made in accordance with the Sectoral Provider's complaints handling policy shall follow such policy and any requirements imposed by the RA, as set forth in sectoral legislation, licences and Administrative Determinations. The complaints handling policy shall require that any relevant Employee who receives a Complaint made in accordance with the Sectoral Provider's complaints-handling policy makes a record of the Complaint in writing, including solely by electronic means, and that such record is filed in an appropriate database maintained by the Sectoral Provider. Consumers shall be asked by relevant Employees to confirm that they are making a formal complaint."*

**VI.H.2** BELCO proposes a minor amendment to Paragraph VI.H.2 of the Annex that provides that a Sectoral Provider informing the Consumer of the outcome of an investigation must inform the Consumer that he or she can also contact the Department of Consumer Affairs or refer the matter to the RA under Section 57 of the Regulatory Authority Act 2011. BELCO wonders whether the provision ought to read "*inform the Consumer that, **if dissatisfied with the outcome of the investigation** he or she can also contact*". The concern is that, unless it is made clear the purpose for contacting those

bodies, Consumers who are satisfied with the outcome of investigations may still contact those bodies leading to inefficiency.

**VI.I.:** BELCO assumes that the report referred to in the final bullet of Paragraph VI.E. of the Annex is not the same report referred to in Paragraph VI.I. but would be grateful for clarification. BELCO also questions how frequently Sectoral Providers are expected to submit the latter report to the RA.

110 **RA Response:**

The RA thanks BELCO for its comment on Paragraph VI of the Annex. For the sake of clarity, the RA will address each above sub-paragraph discussed in BELCO's comment in turn:

- (a) **VI.E:** BELCO's comment is noted. The RA appreciates BELCO's offer to provide anonymized details of complaints to the RA and concurs with its views as to whether additional benefit would be derived from Sectoral Providers being required to post details of complaints on their websites. Consequently, the RA will no longer pursue this requirement and paragraph VI.E of Annex 1 of the Final Report shall be amended to reflect this accordingly.
- (b) **VI.F:** BELCO's comment is noted. The RA agrees with BELCO's suggestion to specify that only those employees who are tasked with handling (or should reasonably be expected to deal with) Consumer complaints in accordance with the Sectoral Provider's complaints handling policy shall be required to file complaints. However, the RA notes that while not all employees should be obliged to record the complaint, all employees should have the obligation to forward the complaint along to the relevant employee should they be in receipt of a complaint. The RA shall amend the provision under VI.F accordingly to reflect this. The RA shall also amend the provisions under paragraph VI.F to reflect that the process of recording the Complaint be facilitated in any means efficiently retrievable, including solely by electronic means.
- (c) **VI.H.2:** BELCO's comment is noted. The RA agrees with BELCO's suggestion to amend the provision to read "*if dissatisfied with the outcome of the investigation*" and shall amend the provision under VI.H.2 accordingly to reflect this.
- (d) **VI.I:** BELCO's comment is noted. The RA can clarify that the report referred to in the final bullet of Paragraph VI.E of the Annex is the same report as that referred to in Paragraph VI.I, and wishes to thank BELCO for notifying it of this inconsistency – the two paragraphs VI.E (i.e. the bullet point referred to by BELCO) and VI.I should be thereby read in conjunction. Paragraph VI.E delineates the minimum contents of a complaints handling policy of a Sectoral Provider, which also includes the need to publish a report based on complaints data, whereas Paragraph VI.I establishes the actual obligation of submitting said report to the RA.

## **X. Confidentiality of Consumer Information**

- 111 BELCO shares the following comment on Paragraph X of the Annex in relation to the sub-paragraph listed opposite the comment:

**X.A.:** In Paragraph X.A. of the Annex, the Authority has noted that “[w]hen it comes into force, the provisions of the Personal Information Protection Act 2016 shall take precedence over the provisions of the EA, ECA and RAA.” As it is only the **applicable** provisions of the Personal Information Protection Act 2016 (“**PIPA**”) that will take precedence over the listed sectoral legislation and not the entirety of PIPA, BELCO wonders whether the provision ought to be amended accordingly.

112 **RA Response:**

The RA thanks BELCO for its comment on Paragraph X of the Annex. Following the appointment of the Privacy Commissioner for Bermuda in January 2020, the RA’s view is that the provision regarding PIPA within the GD in Annex 1 of this Final Report is no longer necessary, and shall be removed accordingly.

**V.B.11: Annex 1 – Principles of Consumer Protection – XII. Accessibility**

113 BELCO has a number of comments on the sub-paragraphs of Paragraph XII of the Annex as follows:

**XII.A.:** This provision requires Sectoral Providers to ensure that Vulnerable Persons are able to obtain access to their services. As there will be some circumstances in which Vulnerable Persons cannot obtain services for one reason or another, BELCO suggests that the provision be amended to require that Sectoral Providers are required to take all reasonable steps to ensure that Vulnerable Persons are able to obtain access to their services.

**XII.B.:** Sectoral Providers are to establish priority services registers (the “**Registers**”), but the Annex is silent as to how the Registers are to be populated. Should this provision read, “Sectoral Providers shall establish a priority services register **to include all** Vulnerable Persons”?

**XII.C.:** BELCO notes that the Vulnerable Person may not be the Consumer. As such the obligation to give reasonable prior notice of termination of services must be required to be given to the Consumer or the relevant Consumer who has a Vulnerable Person in his or her household.

**XII.D.:** BELCO would be grateful for clarification on the length of the postponement that the RA requires. BELCO notes that the paragraph as drafted would place BELCO in breach of the final general determination if it terminated service without postponement on the instruction of its Consumer. It is therefore suggested that the provision be amended such that Sectoral Providers will be required to postpone termination of service for Vulnerable Persons whose services are being terminated for default.

**XII.D.:** In the First Round Response, BELCO questioned how Sectoral Providers would ultimately be compensated for services that are required to be continued for affected Consumers who had already been unable to meet their contractual obligations to pay for provided services. BELCO notes that in the Annex, the RA proposes to permit a Sectoral Provider to recover a reasonable late payment fee. A late payment fee will not, however, fully compensate a Sectoral Provider for lost revenues it had not collected because a Consumer was unable to pay before the period of imposed postponement or during the period of postponement. This creates a real concern for BELCO, and BELCO again asks

the RA to address how Sectoral Providers are to be compensated for those lost revenues for services that they have provided but for which, in breach of contract, they have not received payment. The provision seems too prescriptive. BELCO works with all of its vulnerable Consumers who face difficulty in meeting their obligations and will continue to do so. A one-size-fits-all approach may be harmful to Consumers.

**XII.E.2** BELCO notes it is not clearly set out that the medical certifications referred to in this Paragraph are to be provided to the Sectoral Provider and it is not clearly stipulated that the required medical certifications are to provide the necessary information.

**XII.E.2** The ability for Consumers to have their electricity retained or restored for a period of 30 calendar days three times per calendar year seems unreasonable and excessive. BELCO repeats its request for clarity over how it is to recover lost revenues if the relevant Consumer has not remitted payment for services.

114 **RA Response:**

The RA thanks BELCO for its comments on Paragraph XII of the Annex. For the sake of clarity, the RA will address each above sub-paragraph discussed in BELCO's comment in turn:

- (a) **XII.A:** The RA concurs with BELCO's proposal to amend the provision to read "*are required to take all reasonable steps to*" instead of "*shall ensure*", and shall amend the provision under XII.A accordingly to reflect this.
- (b) **XII.B:** The RA concurs with BELCO's proposal to amend the provision to read "*to include all*", and shall amend the provision under XII.B accordingly to reflect this.
- (c) **XII.C:** The RA concurs with BELCO's proposal to expand the provision to incorporate those individuals, who as Consumers have a Vulnerable Person in his or her household, and shall amend the provision under XII.C accordingly to reflect this.
- (d) **XII.D:** The RA concurs with BELCO's observation and proposal that the provision be amended in order to reflect that Sectoral Providers will be required to postpone termination of service for Vulnerable Persons whose services are being terminated for default for thirty (30) days. The RA shall amend the provision under XII.D accordingly. As regards the compensation of Sectoral Providers outside of the reasonable late payment fee, no further compensation other than a reasonable late fee shall be allowed.
- (e) **XII.E.2:** BELCO's comment is noted. The RA concurs that greater clarity ought to be provided, and as such proposes that an addition be made in this Paragraph to reflect that the medical certification, containing the necessary information applicable to the Vulnerable Person's condition, be provided to the Sectoral Provider. Moreover, the RA suggests and shall amend accordingly, that Medical certifications would only be allowed to be used twice, instead of three (3) times, per household in a twelve (12) month period and must be completed by a medical doctor.

**V.B.13:** Annex 1 – Principles of Consumer Protection – XIV. AMI Meters/Electricity Sector – Right to refuse AMI Meters

115 BELCO makes the following comment on Paragraph XIV.A. of the Annex:

**XIV.A:** Paragraph XIV.A of the Annex provides that Consumers should have the right to refuse Advanced Metering Infrastructure (AMI) meters. BELCO notes that, when it infrequently occurs that a Consumer opts out of the AMI programme, what happens instead is that BELCO disables the radio on the AMI meters installed in those Consumers' homes. As such, BELCO requests that the provision be amended to state that "*Consumers should have the right to refuse communicating AMI meters...*" or similar language.

116 **RA Response:**

The RA thanks BELCO for its comment on Paragraph XIV.A of the Annex. The RA concurs with BELCO's suggestion that the provision be amended, as the Consumer has the right to request BELCO disables the radio on the AMI meters installed in the Consumer's home, and have the meter manually read as an alternative, for a reasonable fee not to exceed the additional expenses incurred for providing the services to read the meter.

**(D). MEMBER OF THE PUBLIC**

**Miscellaneous: 5G in Bermuda**

117 One member of the public provided a comment, which noted that technology must be balanced with the best interests of the wider community in relation to the roll-out of 5G technology in Bermuda, and queried the "*many implications and unknowns regarding 5G that far outweigh the benefit for a few.*"

118 **RA Response:**

The RA thanks the member of public for its comments and notes their views with interest. However, any potential issues surrounding the prospective roll-out of 5G technology in Bermuda is outside of the scope of this Final Report.



## **V CONCLUSION, FINAL DECISION AND ORDER**

119 In furtherance of the proposals set forth above, the RA hereby adopts the Order set forth in Appendix A to this Final Report, and makes the GD set forth in Appendix B.

# APPENDIX A: ORDER



# Principles of Consumer Protection Order

**Order**

**Date:** 11<sup>th</sup> September 2020

- 1.1 The Regulatory Authority, in the exercise of the power conferred by Section 62 of the Regulatory Authority Act 2011, as read with Sections 12 and 13 of that Act and Sections 38 and 39 of the Electricity Act 2016 and Sections 26-31 of the Electronic Communications Act 2011, hereby:
- (a) Adopts the General Determination attached hereto, setting forth the Principles of Consumer Protection;
  - (b) Directs the Chief Executive of the Regulatory Authority to forward the General Determination to the Cabinet Secretary; and
  - (c) Authorises the General Determination to be effected on the date of its publication in the Official Gazette.
- 1.2 So Ordered this 11<sup>th</sup> day of September 2020.

# APPENDIX B: GENERAL DETERMINATION



**BERMUDA**  
**Regulatory Authority (Principles of Consumer Protection) General Determination**

**BR /2020**

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The Regulatory Authority, in the exercise of the power conferred by Section 62 of the Regulatory Authority Act 2011, as read with Sections 12 and 13 of that Act and Sections 38 and 39 of the Electricity Act 2016 and Sections 26-31 of the Electronic Communications Act 2011, makes the following General Determination:

**Citation**

- 1 This General Determination may be cited as the Regulatory Authority (Principles of Consumer Protection) General Determination.

**Interpretation**

- 2 In this General Determination, unless the context otherwise requires, terms shall have the meaning given in the Regulatory Authority Act 2011, the Electricity Act 2016 and Electronic Communications Act 2011, and the Schedule to this General Determination.

**General Purpose**

- 3 This General Determination sets provisions for the protection of Consumers.

**Determination**

- 4 (1) This General Determination is made pursuant to the Consultation Document entitled "Principles of Consumer Protection" dated 15 February 2019, the Preliminary Report, Preliminary Decision and Order entitled "Principles of Consumer Protection" dated 11 September 2019, the Reopened Preliminary Report, Preliminary Decision and Order entitled "Principles of Consumer

Protection” dated 21 February 2020, and the Regulatory Authority’s Decisions on it.

- (2) Taking into account the received responses to the Consultation Document and the Preliminary Report, Preliminary Decision and Order, and the Reopened Preliminary Report, Preliminary Decision and Order, the RA determines that, for the reasons given in the Decision, the provisions set forth in the Schedule are consistent with the purposes of the Electricity Act 2016, including governing the commercial and marketing practices of the TD&R Licensee and any other sectoral participants, to protect the rights of End-Users and other licensees or authorised persons and the purposes of the Electronic Communications Act 2011, including governing the commercial and marketing practices of ICOL holders and any other types of communications providers specified by the RA to protect the rights of Consumers, subscribers and users and, having due regard for the vulnerability of certain categories of Consumers.

### **Terms and conditions of General Determination**

- 5 (1) The Schedule to this General Determination has effect.
- (2) The Schedule is also published on the RA’s website (<https://www.ra.bm/>) and is also available for inspection at the offices of the RA (1<sup>st</sup> Floor, Craig Appin House, 8 Wesley Street, Hamilton HM 11) during ordinary business hours.

### **Effective Date of General Determination**

- 6 This General Determination shall become effective on the day it is published in the Gazette.

Signed this                      day of                      2020

Chairman, Regulatory Authority



# **Schedule to the Principles of Consumer Protection General Determination**

**General Determination**

**Date:** 11<sup>th</sup> September 2020

1st Floor, Craig Appin House, 8 Wesley Street, Hamilton HM 11, Bermuda  
T: (441) 405-6000 • E: info@ra.bm

[www.ra.bm](http://www.ra.bm)



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This General Determination is made by the Regulatory Authority of Bermuda pursuant to Section 62 of the Regulatory Authority Act 2011 (“**RAA**”) and in accordance with Sections 38 and Sections 39 of the Electricity Act 2016 (“**EA**”) and Sections 26-31 of the Electronic Communications Act 2011 (“**ECA**”), and for the purpose of setting provisions for the protection of Consumers.

## 1 Definitions

**Administrative Determination** means includes a general determination, order, direction, decision, or other written determination by which the RA establishes the legal rights and obligations of one or more sectoral participants, but does not include an advisory guideline or an adjudicative decision and order;

**Consumer** means an End-User that is either: (i) a residential consumer, including a Vulnerable Person; or (ii) a Small Business; or (iii) a Medium Sized Business; but shall not include a Distributed Generator under Standard Contracts;

**Contract** means an agreement between a Consumer and a Sectoral Provider setting out the terms and conditions upon which a Sectoral Provider will provide good(s) and/or service(s) to a Consumer and which shall include a Term Contract;

**Complaint** means where the Consumer expressly informs a Sectoral Provider that it is lodging a formal complaint;

**Consultation Document** means the ‘Principles of Consumer Protection Consultation Document’ issued by the RA on 15 February 2019;

**Distributed Generator** means as defined in the EA;

**ECA** means the Electronic Communications Act 2011;

**EA** means the Electricity Act 2016;

**Employee** means a person who is employed by a Sectoral Provider on either a part-time basis or full-time basis for a wage or salary, including those Employees who are Frontline Employees;

**End-User** means as that term is defined in the EA and the ECA (as applicable);

**Frontline Employees** means the Employees of a Sectoral Provider whose roles and responsibilities include or should reasonably be expected to include receipt of and/or dealing with Complaints;

**General Determination** means a statutory instrument, made pursuant to Section 62 of the RAA, that is applicable to all sectoral participants, or to such sub-category of sectoral participants as fall within the scope of the statutory instrument;

**ICOL** means Integrated Communications Operating Licence;

**Medium Sized Business** means a Bermudian-owned and owner-operated business enterprise with at least three of the following attributes:

- (a) gross annual revenue of between one million dollars (\$1,000,000) and five million dollars (\$5,000,000);
- (b) net assets of less than two million five hundred thousand dollars (\$2,500,000);
- (c) an annual payroll of between five hundred thousand dollars (\$500,000) and two million five hundred thousand dollars (\$2,500,000);
- (d) between a minimum of eleven (11) and a maximum of fifty (50) employees; and
- (e) which has been in operation for a minimum of ten (10) years;

**Outage** means an interruption in Sectoral Provider's service, whether short term or long-term;

**RAA** means the Regulatory Authority Act 2011;

**Regulated Industry Sectors** means as defined in the RAA, currently being (i) the Electronic communications (other than broadcasting) sector; and (ii) the electricity sector;

**Sectoral Provider** means a person, whether or not an authorization holder, who provides a good or service in a Regulated Industry Sector;

**Small Business** means a Bermudian-owned and owner-operated business enterprise with either:

- (a) gross annual sales of less than one million dollars (\$1,000,000); or
- (b) an annual payroll of less than five hundred thousand dollars (\$500,000);

**Standard Contract** means as defined in the EA;

**Tariff** means the price that a Consumer pays for a service which includes the rate and any other fees and charges that may apply under the applicable Contract;

**Term Contract** means an agreement between a Consumer and a Sectoral Provider in the electronic communications sector in Bermuda setting out the terms and conditions upon which a Sectoral Provider will provide service(s) or product(s) to the Consumer, provided that any contract which the Consumer may terminate at any time without penalty by giving not more than thirty (30) days' notice shall not be considered to be a Term Contract;

**TD&R Licensee** means the Transmission, Distribution and Retail Licensee; and

**Vulnerable Person** means a person who:

- (i) is disabled;
- (ii) is chronically sick;
- (iii) has a long-term medical condition;

- (iv) has a hearing impairment;
- (v) has a visual impairment; and/or
- (vi) has a medical dependence on electric powered equipment that must be operated continuously to avoid the loss of life or immediate hospitalization

and who, in the cases of (i) to (vi), has been certified as such by a doctor and has provided the necessary medical documentation (including, where appropriate, the periodic renewal of such documentation) to the Sectoral Provider and who, as a result, is more likely to suffer detriment if he/she were not provided with electricity and or electronic communications services and who has informed the Sectoral Provider of this.

## 2 INTERPRETATION

- (1) For purposes of interpreting this General Determination:
- (a) unless the context otherwise requires, words or expressions shall have the meaning assigned to them by the RAA, the EA and the ECA;
  - (b) Where there is an irreconcilable conflict between any applicable laws, regulations, determinations or orders, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, this General Determination, other GDs or Administrative Determinations made by the RA;
  - (c) terms defined herein Sections 38 and 39 of the EA and Sections 26-31 of the ECA have been capitalised;
  - (d) headings and titles used herein are for reference only and shall not affect the interpretation or construction of this General Determination;
  - (e) references to any law or statutory instrument include any modification, re-enactment or legislative provisions substituted for the same;
  - (f) a document referred to herein shall be incorporated into and form part of this General Determination and a reference to such document is to the document as modified from time to time;
  - (g) expressions cognate with those used herein shall be construed accordingly;
  - (h) use of the word "*include*" or "*including*" is to be construed as being without limitation; and
  - (i) words importing the singular shall include the plural and vice versa, and words importing the whole shall be treated as including a reference to any part unless explicitly limited.

### 3 LEGISLATIVE AND PROCEDURAL BACKGROUND

- (1) This General Determination has been undertaken in accordance with Section 62 of the RAA and the exercise by the RA of its powers under Sections 38 and 39 of the EA and Sections 26-31 of the ECA.
- (2) The RA initiated the consultation by publishing a Consultation Document on 15 February 2019 that invited responses from members of the public, including electricity and electronic communications sectoral participants and Sectoral Providers, as well as other interested parties. The purpose of the RA's initial Consultation Document was to consult on proposals for provisions which are for the protection of Consumers.
- (3) The Consultation Document asked the following questions:
  1. Do you think that Sectoral Providers should be able to charge a fee for the provision of detailed tariff information on bills?
  2. How many days do you think is an appropriate timeframe to respond to Consumer complaints?
  3. Do you think that 28 calendar days is a long enough timeframe for Sectoral Providers to reasonably conclude that a complaint is closed?
  4. Do you agree that contracts that are available in physical and electronic form make it easier for Consumers to review at their own pace? Why or why not?
  5. Are there any forms of a Contract not mentioned that you believe should be considered by this Consultation Document?
  6. Do you agree that a Sectoral Provider, whose Contracts for services are longer than two pages, should be required to provide Consumers with a Contract summary?
  7. Are there any other terms and conditions, not included in the proposed decision, which should be included in a Contract summary?
  8. Do you agree that Sectoral Providers should not renew a contract without your express consent of the Consumer who is party to the agreement? Why or why not?
  9. After a service contract expires, should the Contract be automatically renewed on a month to month basis?
  10. Should Consumers be able to opt out of unsolicited communications from Sectoral Providers?
  11. Do you agree that electronic communications Sectoral Providers should ensure that they are able to provide sufficient and accurate information on the process of switching providers?
- (4) Responses to the Consultation Document were solicited from the public electronically through the RA's website at <https://www.ra.bm/>.
- (5) The response period commenced on 15 February 2019 and concluded on 15 March 2019.
- (6) The RA received five (5) responses from the public.

- (7) On 11 September 2019, the RA issued the Preliminary Report which summarized the responses received to the Consultation Document and presented a draft GD.
- (8) The RA received four (4) responses to the Preliminary Report.

#### **4 FINAL DETERMINATION**

- (1) Pursuant to Section 62 of the RAA and in accordance with Sections 38 and 39 of the EA and Sections 26-31 of the ECA using the general powers granted to the RA under Section 13 of the RAA and in accordance with the procedures established for this purpose in Section 62 of the RAA, the RA hereby determines that:
- (2) The adoption and implementation of the Principles of Consumer Protection as set forth in Annex 1 of this Schedule below is consistent with the purposes of the EA and ECA including Sections 38 and 39 of the EA and Sections 26-31 of the ECA.



# ANNEX 1 – Principles of Consumer Protection

## **I. Scope of this General Determination**

- I.A.** The rights and obligations set forth within this GD apply to Sectoral Providers in the regulated industry sectors in the provision of their goods and services to the Consumers of Bermuda. Whilst certain provisions in this GD apply solely to a single Regulated Industry Sector, the RA encourages Sectoral Providers in all regulated industry sectors to incorporate any provision, which may not specifically apply to their sector if they believe it can be incorporated for the benefit of their Consumers.
- I.B.** Where there is an irreconcilable conflict between any applicable laws, regulations, determinations or orders, the following order of precedence shall apply: Acts of Parliament, Regulations and Orders made by the Minister, international agreements that apply to Bermuda, this General Determination, other GDs and Administrative Determinations made by the RA.

## **II. Application for Goods and/or Services**

- II.A.** Sectoral Providers shall offer Consumers at least two (2) options by which to apply for goods and/or services.

These options shall include at least two (2) of the following:

- i. In person;
- ii. Over the telephone;
- iii. Through e-mail; or
- iv. Through the Sectoral Provider's official website.

- II.B.** An application for a Term Contract shall not become a legally binding agreement until the Consumer has: (i) been provided with the complete Term Contract in writing, either as a physical copy or electronically via email; and (ii) provided written consent to enter into such Term Contract.

- II.C.** Any Contract that is longer than two (2) pages, including all attachments, annexes or appendices, shall, if requested by the Consumer, be accompanied by a customized one (1) page Contract summary setting out the terms and conditions listed below:

- i. A description of the service being provided;
- ii. The price charged for the service being provided (including any security deposit, additional charges etc.);
- iii. The length of the Contract, if any;
- iv. The length of any promotion, if any, with the promotional end date clearly set out;
- v. The commencement date of the Contract;
- vi. The termination requirements of the Contract and end date;
- vii. Any early termination fees payable and how they are calculated;
- viii. The frequency of billing and how to pay, including the physical address to which Consumers can direct their payment;
- ix. Any late payment fees, penalties or charges that may be payable; and
- x. Contact details for the customer service team responsible for dealing with Consumers' Complaints regarding the specific service being applied for.

### III. Term Contracts in the Electronic Communications Sector

- III.A. Sectoral Providers shall enter into a new Term Contract or vary an existing Term Contract with a Consumer prior to providing services to that Consumer.
- III.B. Subject to any express provision in this clause III to the contrary, Sectoral Providers shall not unilaterally make changes to the terms and conditions of a Term Contract to which a Consumer is a party. Such changes shall include, but are not limited to, price increases within the Term Contract period, or changes to the duration or service conditions of the Term Contract.
- III.C. A Sectoral Provider shall be entitled to make changes to a Term Contract:
  - III.C.1. where such changes are strictly necessary to comply with any applicable law, regulation, standard in relation to health and safety; and
  - III.C.2. where such changes are strictly necessary to comply with any applicable law and/or regulation in relation to Tariffs;

**AND PROVIDED** it gives Consumers reasonable advance notice of such changes, and thereafter, the Consumer shall be entitled to either opt to remain bound to the terms of the original Term Contract it signed or to end the Term Contract without incurring any financial penalty for early termination. For the avoidance of doubt, if a Sectoral Provider wants to offer Consumers any benefit or promotion, it must give Consumers reasonable advance notice in writing of any consequential changes to its Term Contract, and thereafter, the Consumer shall be entitled to either opt to remain bound to the terms of the original Term Contract signed by the Consumer or to end the Term Contract without incurring any financial penalty for early termination, with the exception of changes to the contract required by law.

- III.D. If the Sectoral Provider breaches its obligations in this clause III, the Consumer may opt to terminate the Term Contract, at no financial penalty, or may remain bound to the terms and conditions of the original Term Contract that they signed. This 'right to exit' will protect Consumers against charges that are not clearly articulated at the start of the Term Contract.
- III.E. In support of this, Sectoral Providers must contact Consumers at the point when such a proposed change occurs, to inform Consumers that they have the right to exit from their current Term Contract.
- III.F. Additionally, Sectoral Providers must offer a fourteen (14) day "cooling-off" period for all electronic communications products and services, so as to allow the Consumer the right to exit the Term Contract without penalty from the date on which they entered into the Term Contract until fourteen (14) consecutive calendar days after that date. However, the Consumer may be liable in these circumstances for the reasonable cost of any subsidized Consumer premises equipment provided (e.g. free WiFi router) and the pro-rata cost of the service at the Term Contract rate.
- III.G. Furthermore, if:
  - III.G.1. at any time, after the Consumer has entered into a Term Contract, the Sectoral Provider informs the Consumer that it cannot, or will not, carry out the required service; and/or
  - III.G.2 within thirty (30) calendar days from the date on which the Consumer entered into a Term Contract, the Sectoral Provider has not provided the required service; and/or

**III.G.3.** within thirty (30) calendar days from the date on which the Consumer entered into a Term Contract and the Sectoral Provider has not provided the required service but the Consumer has contacted the Sectoral Provider and requested for the service to be provided at a later date but the Sectoral Provider has still not provided the service by such later date;

the Consumer shall be entitled to immediately cancel the Term Contract and be refunded any monies it has paid to the Sectoral Provider under the Term Contract.

**III.H.** The RA mandates a maximum permitted Term Contract length of twelve (12) months for all electronic communications services supplied by Sectoral Providers to Consumers or Small Businesses, unless otherwise agreed by the parties in writing.

**III.I.** Before a Consumer enters into a Term Contract with a Sectoral Provider the Sectoral Provider shall:

- i. Provide the full proposed Term Contract, including all applicable terms and conditions, to the Consumer (via email and/or hard copy as requested by the Consumer) and ensure that the information is communicated in plain and intelligible language;
- ii. Take all reasonable steps to ensure that the Consumer is aware that the Consumer is entering into a legally binding contract;
- iii. Make the terms and conditions of the Term Contract readily available on its website; and
- iv. Ensure that the Consumer has the authority to enter into the Term Contract and can evidence this authority, if needed.

**III.J.** Any term in a Term Contract providing for its automatic renewal shall be limited to renewal on a month to month basis with the same terms and conditions as under the previously expired Term Contract (apart from term of contract) until such time as the monthly renewal arrangement is terminated or the Consumer chooses to enter into another Term Contract. Sectoral Providers shall provide Consumers with reasonable notice of the automatic renewal date in a Term Contract. Any term in a Term Contract which purports to automatically renew such contract other than in accordance with this clause shall be deemed null and void and these terms substituted in its place.

#### **IV. Content of Bills**

**IV.A.** Provisions which shall apply to all regulated sectors are that bills shall include:

- i. Tariff name;
- ii. Payment methods; and
- iii. A breakdown of the bill calculation.

#### **IV.B. Electronic Communications Sector**

**IV.B.1.** In the provision of any electronic communications services, Sectoral Providers shall not charge a Consumer unless every amount charged and/or stated on the bill represents, and does not exceed, the true extent of any such service provided to the Consumer in question.

**IV.B.2.** Additionally, Sectoral Providers shall ensure that Consumers have access, upon request, to adequate billing information to allow the Consumers to verify, control and monitor the charges incurred so that they can exercise a reasonable degree

of control over their expenditure. The Sectoral Provider shall not charge a fee for providing this information if the information requested spans the last twelve (12) months. If the information requested goes back further than twelve (12) months from the request date than the Sectoral Provider may charge a reasonable fee.

**IV.B.3.** Sectoral Providers shall develop a category of numbers and other contact details for emergency services which shall be free for all of their Consumers to call at all times. This emergency services list could also include text messages to helplines. This list will be subject to approval by the RA.

#### **IV.C.** Electricity Sector

Bills shall include a summary of the Consumer's most recent kWh usage with usage during the previous month and the same month the year before to assist the Consumer to monitor his or her energy usage.

### V. Information on Tariffs

**V.A.** Sectoral Providers shall ensure that:

- i. The structure and terms and conditions of their Tariffs are clear and easily understandable;
- ii. Each Tariff is easily distinguishable from other Tariffs; and
- iii. Consumers are aware that they can request detailed information on the breakdown of charges and fees.

**V.B.** This information must be provided by the Sectoral Provider to Consumers and set out in plain and intelligible language.

### VI Handling of Complaints

**VI.A.** All Sectoral Providers are required to develop a complaints handling policy which must remain in place and be adhered to at all times. The complaints handling policy must be in plain and intelligible language and Consumers must be able to access this easily, on paper or electronically.

**VI.B.** The Sectoral Provider's complaints handling policy shall allow Consumers to lodge Complaints with the Sectoral Provider in at least one (1) of the following forms:

- i. Orally in person;
- ii. By telephone; or
- iii. In writing (including by email).

**VI.C.** Sectoral Providers shall ensure that their complaints handling policy is accessible to all Consumers, including Vulnerable Persons.

**VI.D.** Sectoral Providers shall acknowledge receipt of Complaints within one (1) business day following receipt of the Complaint.

**VI.E.** The complaints handling policy shall at a minimum:

- i. Describe those Complaints which the Sectoral Provider would not deal with (for example, where a Complaint would be regulated by the Personal Information Protection Act 2016 or any other legislation where Consumers would need to follow the complaints procedure under the relevant legislation);

- ii. Describe the steps that the Sectoral Provider will take to investigate and resolve a Complaint. Sectoral Providers shall ensure that Complaints are resolved in a timely manner;
- iii. Indicate the likely timescales of each of those steps;
- iv. Provide for internal reviews of existing Complaints (where a Consumer is dissatisfied with the handling of their Complaint and requests a review);
- v. Explain how such Complaints are handled;
- vi. Set out the different remedies that may be available to Consumers under the complaint handling procedure (apology, explanation, compensation and/or, remedial action);
- vii. Provide clear guidelines on how Complaints are recorded and handled through to resolution; and
- viii. Set out provisions for the publication of a report to the RA, setting forth anonymized statistical data by Sectoral Providers on Complaints received.

**VI.F.** All Frontline Employees shall deal with Complaints in accordance with the Sectoral Provider's complaints handling policy and any requirements imposed by the RA, as set forth in sectoral legislation, licences and Administrative Determinations. The complaints handling policy shall also require that any Employee who receives a Complaint shall forward the Complaint to the relevant Frontline Employee in accordance with the Sectoral Provider's complaints-handling policy, who shall make a record of the Complaint using any means efficiently retrievable, including solely by electronic means and shall ensure that such record is filed in an appropriate database maintained by the Sectoral Provider. Consumers shall be asked by Frontline Employees to confirm whether they are making a formal Complaint.

**VI.G.** Once the Complaint has been resolved or has been otherwise closed, the Sectoral Provider must promptly tell the Consumer of the outcome of its investigation of the Complaint.

**VI.H.** When informing the Consumer of the outcome of the investigations, the Sectoral Provider must:

**VI.H.1.** Inform the Consumer that he or she has twenty eight (28) calendar days to contact the Sectoral Provider if he or she is dissatisfied with the outcome of the investigation. Otherwise, the Sectoral Provider may deem the Complaint to be closed; and

**VI.H.2.** Inform the Consumer that he or she can also contact the Department of Consumer Affairs, or, after efforts to resolve the matter directly with the Sectoral Provider have been exhausted, refer the matter to the RA in accordance with Section 57 of the Regulatory Authority Act 2011.

**VI.I.** Each Sectoral Provider shall submit a report to the RA that sets forth statistical data on Complaints received and how these were resolved on a quarterly basis.

## VII Marketing Advertising and Selling Practices

**VII.A.** The RA requires Sectoral Providers to practice responsible marketing and selling to Consumers.

**VII.B.** Sectoral Providers shall ensure that they:

- i. Communicate in a fair, appropriate and transparent manner regarding their sales, marketing and advertising activities; and

- ii. Provide information about their goods, products and services in a way that is not misleading to Consumers.

All claims made by Sectoral Providers must be capable of being evidenced and reliably substantiated.

**VII.C.** Sectoral Providers shall explain to the Consumer any consequences of non-payment, the Contract term that applies, any provisions regarding renewals and what happens if the Consumer terminates the Contract before the end of the term, including any termination or reinstatement fees. Sectoral Providers shall also inform the Consumer of any security deposit or additional charges which may be required, and, provide details of any and all discounts or benefits that may apply. Sectoral Providers must also inform the Consumer and obtain the Consumer's consent if a credit check shall be performed.

## VIII Training

**VIII.A.** Sectoral Providers must ensure that all of their Employees are, at all times, appropriately trained so as to ensure they understand and can comply with policies and procedures and legal obligations relating to protection of Consumers in relevant sectoral legislation, Administrative Determinations and licence conditions. Sectoral Providers should also ensure that their Employees act in a way that is fair and professional and present information clearly and transparently – i.e. answer the Consumer's questions with accurate and complete responses and clarify any misunderstanding.

## IX Unsolicited Communications

**IX.A.** Sectoral Providers are prohibited from engaging in unsolicited direct marketing by means of electronic communications networks unless the Consumer specifically opts-in or provides explicit consent for this marketing activity.

**IX.B.** Such unsolicited communications shall include, among others, those made by means of:

- i. Automated calling (i.e. "robo-calling");
- ii. Communications systems or machines that do not involve human interaction;
- iii. By facsimile machines; and
- iv. Through electronic mail.

**IX.C.** Where a Consumer opts-in, the Sectoral Provider shall still clearly identify itself and its contact information in the message and shall also provide an opt-out or unsubscribe option which shall be processed within a ten (10) business day period.

## X Confidentiality of Consumer Information

**X.A** Sectoral Providers are required to comply with all relevant, applicable confidentiality obligations in the fulfilment of their duties arising out of or from this GD.

## XI Enforcement and Disputes

**XI.A** Sectoral Providers shall be subject to the procedure set out in the RAA as it relates to the enforcement of disputes, if disputes are referred to the RA for resolution.

## XII Accessibility

**XII.A.** Sectoral Providers are required to take all reasonable steps to that Vulnerable Persons are able to obtain access to their services.

- XII.B.** Sectoral Providers shall establish a priority services register to include all Vulnerable Persons.
- XII.C.** Sectoral Providers shall be required to give Vulnerable Persons, or any relevant Consumer who has a Vulnerable Person in his or her household, reasonable prior notice of termination of their services.
- XII.D.** Sectoral Providers shall also be required to postpone termination of service for Vulnerable Persons for thirty (30) days, and in such event, shall be entitled to recover the cost of the service provided to the Vulnerable Person during the previous thirty (30) days, along with a reasonable late payment fee, but not in instances where the Service Provider is requested to terminate service. The amount of such fee shall be approved by the RA.

Sectoral Providers are encouraged to ensure that their buildings are wheelchair accessible and their services are accessible for Consumers who may have physical challenges (for example cannot walk or have difficulty walking). Sectoral Providers would also be encouraged to ensure that all Contracts are available in audio for the sight impaired.

#### **XII.E. Electricity sector**

- XII.E.1.** The RA is aware that there may be instances where persons may have certain characteristics which require them to rely on electrically powered devices for health reasons.
- XII.E.2.** Consequently, if a member of the household is a Consumer who has a medical condition where the disconnection of electric service would lead to loss of life or immediate hospitalization, and has a medical certificate completed by a medical doctor to this effect, Sectoral Providers will be required to retain or restore that Consumer's service for a period of thirty (30) calendar days. Medical certifications would only be allowed to be used to postpone disconnection on two (2) occasions by a household in a twelve (12) month period. The RA recognizes that the Sectoral Provider's services are not an alternative to emergency medical services. Should loss of services cause immediate threat to a Consumer's wellbeing, the Consumer should consider use of emergency medical services as necessary.

### **XIII Outages**

- XIII.A.** Sectoral Providers are required to provide advance notice (via either post, advertisement in a national newspaper, e-mail or phone calls) of planned outages to all affected Consumers. In the event of unplanned outages, the Sectoral Provider's best estimate on the restoration of services shall be provided to the Consumer when contacted. Should a planned or unplanned outage be less than five (5) minutes in duration, the Sectoral Provider shall not be required to provide notice to affected Consumers.
- XIII.B.** In addition to providing advance notice via the direct communications methods listed above, Sectoral Providers may also provide advance notice using their official social media accounts and website, as applicable.

### **XIV AMI Meters/Electricity Sector**

#### **Right to refuse AMI Meters**

**XIV.A.** Consumers should have the right to refuse Advanced Metering Infrastructure (“**AMI**”) meters, known colloquially as smart meters, for a reasonable fee not to exceed the additional expenses incurred for providing the services to read the meter. This includes the option for the AMI meter provider to deactivate the AMI meter function after it has been installed, and have readings conducted manually instead, subject to a reasonable fee as noted in this paragraph.

**XV**    **Switching/ Electronic Communications Sector**

**XV.A.** Sectoral Providers shall ensure that they are able to provide sufficient and accurate information on the process of switching providers to Consumers, if requested.