



## **Principles of Consumer Protection**

Reopened Preliminary Report  
Preliminary Decision and Order

Matter: 20190215

Date: February 21, 2020

Responses Due: March 23, 2020

**Extension For Responses Due: April 13, 2020**

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## I. INTRODUCTION

1. The purpose of this Reopened Preliminary Report, along with the Preliminary Decision and Order (the “**Reopened Preliminary Report**”) is for the Regulatory Authority of Bermuda (the “**RA**”) to seek public comment on the updated Preliminary General Determination set forth at Appendix B.

2. This Reopened Preliminary Report is structured as follows:

- a. Section II provides definitions used throughout the Reopened Preliminary Report;
- b. Section III outlines the background and consultation procedure history;
- c. Section IV sets out the legislative context and framework;
- d. Section V summarises and discusses the responses to the initial Consultation Document;
- e. Section VI provides the proposed decision;
- f. Appendix A sets forth the Preliminary Order;
- g. Appendix B sets forth the Preliminary GD; and
- h. Annex 1 provides the Principles of Consumer Protection.

## II. DEFINITIONS

**Administrative Determination** means 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 of a regulated industry sector as defined in the RAA that is either: (i) a residential consumer, including any Vulnerable Persons; or (ii) a Small Business; or (iii) a Medium Sized Business; but shall not include Distributed Generators when acting under Standard Contracts;

**Contract(s)** 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 Term Contracts;

**Complaint** means 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;

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

**COL** means Communications Operating Licence;

**Distributed Generators** has the meaning ascribed to such term 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;

**End User** has the meaning ascribed to such term is defined in Sectoral Legislation, including the EA and the ECA, (as applicable);

**Frontline Employees** means those Employees of a Sectoral Provider who deal directly with Consumers;

**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 Bermuda-owned and owner-operated business enterprise with at least three (3) of the following attributes:

- a. gross annual revenue of between \$1,000,000 (one million dollars) and \$5,000,000 (five million dollars);
- b. net assets of less than \$2,500,000 (two million five hundred thousand dollars);
- c. an annual payroll of between \$500,000 (five hundred thousand dollars) and \$2,500,000 (two million five hundred thousand dollars);
- 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;

**Outages** means short term or long-term interruption in Sectoral Provider's service;

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

**Regulated Industry Sector(s)** has the meaning ascribed to such term in the RAA, currently being (i) the Electronic communications (other than broadcasting) sector; and (ii) the electricity sector;

**Sectoral Provider** has the meaning ascribed to such term in the RAA;

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

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

**Standard Contract** has the meaning ascribed to such term as 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;

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

### III. BACKGROUND AND CONSULTATION PROCEDURE

#### III.A. Background

3. The RA is responsible for regulating the electricity and electronic communications sectors, which includes establishing the principles to which Sectoral Providers must adhere for the protection of Consumers.

4. 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 (“**GDs**”) to govern the commercial and marketing practices of the relevant Sectoral Providers to protect the rights of Consumers and other sectoral participants.

5. The RA initiated the consultation by publishing a Consultation Document on February 15, 2019 that invited responses from members of the public, including electronic communications and electricity sectoral participants and sectoral providers, as well as other interested parties.

6. The purpose of the RA’s Consultation Document was to consult with the public on the proposed rules and standards relating to the commercial and marketing practices to which Sectoral Providers must adhere when retailing goods and services to Consumers.

7. The Consultation Document asked the following questions:

- (i) Do you think that Sectoral Providers should be able to charge a fee for the provision of detailed tariff information on bills?
- (ii) How many days do you think is an appropriate timeframe to respond to Consumer complaints?
- (iii) Do you think that twenty-eight (28) calendar days is a long enough timeframe for Sectoral Providers to reasonably conclude that a complaint is closed?
- (iv) 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?
- (v) Are there any forms of a Contract not mentioned that you believe should be considered by this Consultation Document?
- (vi) Do you agree that a Sectoral Provider whose Contracts for services are longer than two (2) pages should be required to provide Consumers with a Contract summary?
- (vii) Are there any other terms and conditions, not included in the proposed decision, which should be included in a Contract summary?
- (viii) 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?

- (ix) After a service contract expires, should the Contract be automatically renewed on a month to month basis?
  - (x) Should Consumers be able to opt out of unsolicited communications from Sectoral Providers?
  - (xi) 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?
8. Responses to the Consultation Document were solicited from the public electronically through the RA's website at [www.ra.bm](http://www.ra.bm) as well as through the consultation e-mail address at [consultations@rab.bm](mailto:consultations@rab.bm).
9. The response period commenced on February 15, 2019 and concluded on March 15, 2019.
10. The RA received five (5) written responses to the Consultation Document from:
- (a) Bermuda Electric Light Company Ltd. ("**BELCO**");
  - (b) One Communications Limited ("**OneComm**");
  - (c) Telecommunications (Bermuda & West Indies) Limited, Bermuda Telephone Company Limited, and Transact Limited (collectively, "**Digicel**");
  - (d) Mr. Roderic Pearman; and
  - (e) Ms. Eshe Coleman.
11. On September 11, 2019, the RA issued the Preliminary Report. The RA invited responses from members of the public, including electronic communications and electricity sectoral participants and sectoral providers, as well as other interested parties.
12. Public comments on the Preliminary Report were to be submitted before 5:00 PM (Bermuda time) October 11, 2019.
13. The RA received three (3) written responses to the Preliminary Report from Sectoral Participants, namely:
- a) BELCO;
  - b) OneComm; and
  - c) Digicel.
14. Recent market events have alerted the RA to a gap in the consumer protection framework, in which ICOL holders were not required to compensate customers for service outages. As such, the RA was compelled to update the proposed GD to add this necessary protection and allow the public to provide comments on this Reopened Preliminary Report. These changes have been highlighted within the proposed GD for ease of review.



15. The Reopened Preliminary Report also recognises the importance of key developments within the sphere of consumer protection, namely by the introduction of automatic compensation schemes by leading regulators in comparable jurisdictions, such as Ofcom in the United Kingdom. Consumers increasingly consider communications services to be an essential part of home and business life, and when important communications failures happen, the disruption caused can be as significant as that caused by a power cut or loss of water supply. As such, when an outage occurs, the consumer's overarching concern is to get the issue fixed as soon as possible.

16. Ensuring that consumers are compensated when they experience problems could help protect them from the adverse impacts that service quality issues can cause. In particular, the introduction of rules which provide financial compensation when certain service quality issues arise would ensure those consumers directly affected will receive financial recognition and redress for the adverse impact caused.

17. However, making and pursuing a complaint can be lengthy, involving time, effort and cost on the part of the consumer. Indeed, the compensation payable may not be commensurate with the effort of making a claim. Given the above, vulnerable customers are even less likely to make a complaint. As such, automating the payment of compensation (i.e. limiting the required level of consumer involvement to receive payment) should ensure that consumers are compensated efficiently and easily by their retail provider when they become entitled to payment as a result of service quality issues.

18. In addition to providing recognition and redress to consumers in an efficient and uncomplicated manner, it is expected that a system of automatic compensation will equally provide valuable incentive for service providers to improve service quality. Such improvements could involve the avoidance of service quality issues occurring in the first place, and/or expediting any repair required, both of which are essential to consumers. The introduction of an such automatic compensation scheme aims to be communally beneficial, incentivising Service Providers to invest in service quality improvements in order to minimise the prospective cost of paying out compensation and directly benefiting customers with improved service quality, or in the alternative, compensatory redress should deficiencies continue to arise.

### **III.B. Further Consultation Procedure**

19. This invitation to provide responses to the Reopened Preliminary Report is being undertaken in accordance with sections 38 and 39 of the EA and sections 26 through 31 of the ECA. The procedure and accompanying timelines (as set out in section 72 of the RAA), under which this consultation is taking place, are outlined in paragraphs 10-16 below.

20. Written responses should be submitted before 11:59 PM (Bermuda time) on March 23, 2020.

21. The RA invites comments from members of the public, electricity and electronic communications sectoral participants and sectoral providers, and other interested parties.

22. Responses to this Reopened Preliminary Report should be filed electronically in MS Word or Adobe Acrobat format. Parties wishing to file comments should go to the RA's website [www.ra.bm](http://www.ra.bm) and click the button labelled "Click Here to Respond."

23. All comments should be clearly marked "Comments on Principles of Consumer Protection Reopened Preliminary Report" and should otherwise comply with Rules 18 and 30 of the RA's Interim Administrative Rules, which are posted on the RA's website.

24. The RA intends to make responses to this Reopened Preliminary Report available on its website. If a commenting party's response contains any information that is confidential in nature, a clearly marked "Non-Confidential Version", redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version". Redactions should be strictly limited to "confidential information", meaning a trade secret, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the commenting party, or information that is legally subject to confidential treatment. The "Confidential Version" should highlight the information that has been redacted. Any person claiming confidentiality in respect of the information submitted must provide a full justification for the claim. Requests for confidentiality will be treated in the manner provided for in Rule 30 of the RA's Interim Administrative Rules.

25. In accordance with section 73 of the RAA, any interested person may make an ex parte communication during this consultation process, subject to the requirements set forth in paragraph 13. An ex parte communication is defined as any communication to a Commissioner or member of staff of the RA regarding the matter being consulted on in this Reopened Preliminary Report, other than a written submission made pursuant to section 73(2) of the RAA. Within two (2) business days after making an ex parte communication, the person who made the ex parte communication shall submit the following to the RA: (i) a written description of the issues discussed and positions espoused; and (ii) a copy of any written materials provided. This will be posted on the RA's website, along with a notice of the ex parte communication.

26. Interested persons may contact the RA by email, referencing "Comments on Principles of Consumer Protection Consultation Document" at [consultation@ra.bm](mailto:consultation@ra.bm) or by mail at:

Attn: Matter 20190215 - Principles of Consumer Protection  
Regulatory Authority  
1st Floor, Craig Appin House  
8 Wesley Street  
Hamilton, Bermuda

27. In this Reopened Preliminary Report, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them by the EA, the ECA, the RAA and the Interpretation Act 1951.

28. This Reopened Preliminary Report is not a binding legal document and does not contain legal, commercial, financial, technical or other advice. The RA is not bound by this Reopened Preliminary Report, nor does it necessarily set out the RA's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this Reopened Preliminary Report and the due exercise by the RA of its

functions and powers, and the carrying out of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the RA.

#### **IV. LEGISLATIVE CONTEXT**

29. The RA has been established as 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”.

30. 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 and expanded on with this Reopened Preliminary Report.

31. 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.

32. 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 Customer orders a service; and any other Customer-related data, as defined for this purpose by the RA, that is obtained by the TD&R Licensee from users or sub-users.

33. 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 is expanded on with this Reopened Preliminary Report.

34. 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 Customers, subscribers, users and Consumers, having due regard for the vulnerability of certain categories of Consumers.

## **V. SUMMARY AND DISCUSSION OF RESPONSES TO THE INITIAL CONSULTATION DOCUMENT**

### **V.A. Response Method**

35. The Consultation Document invited the public to submit responses commenting on the consumer protection proposals and to respond to the consultation questions. As indicated in paragraph 8 above, responses to the Consultation Document were received from three (3) Sectoral Providers and two (2) individuals.

### **V.B. Summary of Responses**

36. This section provides an overview of the key themes from the responses to the Consultation Document and the related decisions that the RA is proposing, taking into consideration the public responses.

37. All responses have been carefully considered and are summarised below.

#### **V.B.1. RA's compliance with procedural matters**

38. One Comm commented that the RA did not adequately set out or examine the state of Bermuda's law with respect to consumer protection regarding electronic communications services – and, such lack of explanation means that stakeholders cannot properly assess a key part of the factual and legal background that must be discussed in a consultation document pursuant to section 70 of the RAA. Additionally, the RA has not shared its "*extensive analysis of global best practices relating to consumer protection in both the electricity and communications sectors*" – and therefore, the administrative record is deficient, and the RA ought to share its analysis of global best practices.

#### RA Response

39. The RA thanks OneComm for its views. However, section 70 of the RAA does not oblige the RA to share any research papers or to examine the state of the law –The RA concurs that the Consultation Document should set out the relevant and factual legal background. In paragraphs 17 to 19 and paragraph 23 of the Consultation Document, the RA specifically referred to the applicable sectoral legislation governing the electronic communications sector.

#### **V.B.2. Scope of General Determination to extend to both licensed and unlicensed electronic communications services**

40. The scope of the Proposed GD (set out in Annex 1 of the Consultation Document) stated "*The rights and obligations set forth within this Proposed General Determination apply to Sectoral Providers in all regulated sectors in the provision of their products and services to the Consumers of Bermuda*". A Sectoral Provider is a person who provides a good or service in a regulated industry sector, whether or not he holds a licence, permit or other form of authorisation (in accordance with the relevant sectoral legislation).

41. Digicel requested that the RA clarify that the provisions of the GD only apply to regulated services (i.e. only those services for which an ICOL is required) and not for any other types of communications providers (i.e. Sectoral Providers in the electronic communications sector) who may be providing services for which an ICOL is not required.

An ICOL is required if a person is providing electronic communications services, which may include the following services: internet, internet access, landline telephone, mobile phone service, subscription television service. Digicel's ICOL licence allows it to operate multiple electronic communications services in Bermuda. Digicel also provide various services that do not require a licence in Bermuda and does not want the consumer protection provisions in the GD to apply to these "unlicensed" services. Digicel stated that unlicensed service providers may be located outside Bermuda and any imbalance '*will adversely affect [Bermuda] based providers providing direct local employment*'.

### RA Response

42. The RA thanks Digicel for its views. However, section 26 of the ECA expressly empowers the RA to make GDs governing the commercial and marketing practices of (1) holders of integrated communications operating licences (i.e. ICOL) which authorizes licence holders to operate and provide public electronic communications networks and electronic communications services transmitted by means of such networks within the territorial limits of Bermuda or between Bermuda and another country, subject to the availability of spectrum and the grant of any necessary spectrum licences or permits in accordance with Part 7 of the ECA; and (2) any other types of communications providers [i.e. Sectoral Providers in the electronic communications sector] specified by the RA; to protect the rights of customers, subscribers, users and consumers having due regard to the vulnerability of certain categories of consumers. Accordingly, the RA is authorised to extend the scope of the GD to all Sectoral Providers within the electronic communications sector (rather than just to ICOL holders) and to all services provided by ICOL holders.

43. Consumers who contract for both licensed ICOL services and "unlicensed" services rely on the relevant ICOL Holder to provide fair and appropriate consumer protection provisions.

44. Furthermore, for those unlicensed service providers who are located outside of Bermuda will generally be subject to their own regulations and laws as regards consumer protection.

45. Accordingly, the scope of the Preliminary General Determination will cover all Sectoral Providers within the electronic communications sector.

### **V.B.3. Current Regulation Regarding Consumer Protection and Residential Contracts**

46. One Comm commented that the current consumer protection standards regarding contracts offered to consumers for electronic communication services on a residential basis by COL and ICOL holders (set out in the Regulatory Authority (Consumer Rights: Residential Contracts) General Determination 2014 ("**2014 GD**") and Schedule to Regulatory Authority (Consumer Rights: Residential Contracts) General Determination 2014) already cover much of what is in the Proposed GD (in Annex 1 of the Consultation Document) – though OneComm also noted the Proposed GD proposes '*new more interventionist measures to cover ground that is already regulated, without substantiating the need for more invasive requirements*'.

47. OneComm further commented that section 14 of its ICOL already contains various consumer protection provisions with which it must comply. These include: publishing clear, transparent and up to date information about rates, terms and conditions; ensuring that the standard terms and conditions of contracts with residential and small business

subscribers include minimum requirements (including services provided, service quality levels and compensation arrangements where such levels are not met, updated price information, duration of contracts, charges for renewal and termination, and how disputes are resolved); modification of contractual terms by ICOL holders; provision of bills by ICOL holders to residential and small business subscribers; retention of records by ICOL holders; notice to be given by ICOL holders in the event of planned interruptions; provision of quality of electronic communication services information by ICOL holders so that Consumers can make industry comparisons; complaints handling procedures to be put in place by ICOL holders; consequences for non-payment of bills by residential customers and small business subscribers.

48. OneComm asserts that given that the Preliminary GD will take precedence over the 2014 GD (see paragraph 19 of the Consultation Document) *“the RA is making a significant regulatory change that requires further explanation ....[specifically] what specific aspects of the 2014 GD were found to be ineffective or inadequate, and why the current GD proposals are preferred over the existing law.*

### RA Response

49. The 2014 GD was introduced on October 3, 2014 to address concerns/complaints received by the RA from residential consumers of public electronic communications services. The rights and obligations contained in the 2014 GD apply to contracts for public electronic communications services offered to residential customers for a fee and business customers who subscribed for electronic communications services on a residential basis. The 2014 GD covered: how terms and conditions of contracts between ICOLs/COLs and consumers ought to be made available to consumers; how such contracts ought to be concluded; provision of contract summaries by ICOLs/COLs; the minimum standard terms required to be included in all contracts<sup>1</sup>; service levels; automatic contract renewal provisions; and that consumers can remove their contact information from ICOL/COL's marketing contact list.

50. The scope of the Consultation Document is much wider than the regulation of residential customer contracts for public electronic communications services (including business customer which subscribed for these services on a residential basis). For example, it covers other Sectoral Providers within the electronic communications sector rather than just licensed entities (i.e. just ICOLs and COLs), specific provisions regarding the customer complaints policy to be put in place by Sectoral Providers and additional provisions to guard against unsolicited communications with consumers. The RA concluded that such consumer rights were necessary as a result of the consumer feedback and complaints it received and continues to receive. When drafting the Preliminary GD, the RA reviewed section 14 of the ICOLs and the 2014 GD to ensure that the obligations on ICOL holders in both the ICOL and the 2014 GD aligned with the Preliminary GD. However, as stated in paragraph 19 of the Consultation Document, in the event of any irreconcilable difference between the 2014 GD and the Preliminary GD, the latter would take precedence. This provision has now been replicated in the Preliminary GD itself.

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<sup>1</sup> i.e. covering – date of commencement; description of services provided and required quality of services to be provided; complaint resolution procedures; when services can be limited; provision of up-to-date information to consumers; disconnection/suspension of services; termination provisions and any early termination fees payable; use of equipment/warranties; prices, tariffs and charges information; and charges for reconnection.

#### V.B.4. Definition of Consumer

51. In Section II (Definitions) of the Consultation Document, Consumer is defined as a person who **uses** or seeks to use **goods or services provided by a Sectoral Provider on a retail basis** (i.e. residential and business end-users).

52. Digicel requested that this definition be modified to exclude business users, as it states that this is a common feature of consumer protection legislation in other jurisdictions. BELCO is concerned that distributed generators fall within the definition of Consumer (see 4.1 above).

#### RA Response

53. The RA notes Digicel's comment. However, the RA considers that, given the small scale of the Bermuda market, and, as such, the high proportion of small and medium sized businesses in Bermuda, it is important to ensure that these small and medium sized businesses are given appropriate consumer protections when contracting for electricity and electronic communication services. These small and medium size businesses tend to lack the bargaining power of larger businesses. Therefore, they are more similarly situated to consumers, who also may require more regulatory protection. Accordingly, the RA has determined that the provisions of the GD will apply to small and medium sized businesses. See changes made to the Preliminary GD and specifically the definition of Consumer (i.e. an End User that is either a residential customer including any vulnerable persons or a small business or a medium sized business).

54. Distributed generators are residential customers with renewable generation installations below the licence threshold (which is currently set at 500kW pursuant to the Electricity (Licence Threshold) Regulations 2018). Section 49 of the EA 2016 provides for distributed generators to enter into Standard Contracts with BELCO (as TD&R Licensee) under which BELCO TD&R purchases renewable electricity from distributed generators at the feed in tariff rate. The form of Standard Contract also provides that BELCO may unilaterally vary its terms for technical, safety and/or legal reasons. For the avoidance of doubt, the RA has amended the definition of Consumer so that distributed generators will not be Consumers when acting in the role of distributed generators.

55. Therefore, BELCO will not be obliged to comply with the consumer protection provisions set out in the GD with regards to the Standard Contracts. The RA is satisfied that the Standard Contract already provides an appropriate level of protection for distributed generators.

#### V.B.5. Unilateral changes to Terms and Conditions of a Term Contract

56. Paragraph 4.2 of the Proposed GD stated:

*“Sectoral Providers<sup>2</sup> shall not unilaterally make changes to the terms and conditions of a term contract to which a Consumer is a party. If the Sectoral Provider does so, the Consumer may opt out of the Contract<sup>3</sup>, at no financial penalty or remain bound to the terms and conditions of the original Contract that*

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<sup>2</sup> i.e. a person (whether or not an authorisation holder) who provides a good or service in a regulated industry sector.

<sup>3</sup> Means an agreement between a Consumer and a Sectoral Provider setting out the terms and conditions upon which a Sectoral Provider will provide services or products to the Consumer.



*they signed. Such changes shall include, but are not limited to, price increases within the Contract period, or changes to the duration or service conditions of the Contract.”*

57. Digicel commented that the ability of the Consumer to opt out of a contract if the Sectoral Provider makes unilateral changes is overly restrictive and will potentially disadvantage Consumers. This is because Sectoral Providers would be discouraged from offering promotions to existing customers which vary the price or volume of inclusive minutes or data (as this would allow customers to exit contracts before minimum terms have expired even though they suffered no adverse consequences from the change). Additionally, Sectoral Providers may need to make changes to their terms and conditions in order to comply with legislation, to improve operational efficiency, or to close loopholes which are being exploited in ways which are not legitimate. Accordingly, Consumers should only be entitled to opt out of contracts where Sectoral Providers make changes to contracts which results in material adverse consequences for Consumers.

58. BELCO is concerned that “term contract” would include BELCO’s Service Rules (which appears on BELCO’s website and which set out agreed terms of service between BELCO and its customers). BELCO wishes to be able to unilaterally amend its Service Rules, for at least the following reasons:

- i. where this becomes necessary for safety or technical reasons – as it would be impractical for BELCO to reach agreement with all of its 35,000 customers and indeed it would then not be appropriate for customers to opt out of the variation; and
- ii. where it is required to do so, in order to comply with the rates/tariffs approved by the RA from time to time.

### RA Response

59. The RA notes Digicel’s concerns. The RA’s position is that Consumers should be entitled to any benefits and/or promotions offered by a Sectoral Provider. However, the Sectoral Provider must inform Consumers of these in advance and thereafter Consumers shall be entitled to either take up such benefits/promotions or, if they do not like the proposed new terms, exit the term contract. Additionally, Sectoral Providers ought to have discretion to amend term contracts to comply with any applicable laws, regulations, standards, etc., including with respect to health and safety and tariffs. The Preliminary GD reflects this approach.

60. The RA thanks BELCO for its comment and notes that the provision related to term contracts was not intended to apply to BELCO, but only to contracts between Consumers and Sectoral Providers in the electronic communications sector. Accordingly, the RA has inserted a definition of Term Contract within the Preliminary GD to reflect this.

## **V.B.6. Electronic Communications Contracts**

### **14 day Cooling Off Period**

61. Section ii (Contracts) of the Proposed GD stated “Additionally in relation to electronic communications Sectoral Providers must offer a fourteen (14) day “cooling-off” period for all broadband products, to allow the Consumer the right to exit the Contract at

any point during those fourteen (14) days without penalty. This period shall start from the date on which the service starts and should run for fourteen (14) consecutive calendar days. However, the Consumer may be liable in these circumstances for the reasonable cost of any subsidized Customer premises equipment provided (such as a free WiFi router) and the pro-rata cost of the service at the Contract rate.”

62. Digicel says that the RA has not advanced any justification as to why a Consumer should have the absolute right of exit from a service which fully conforms to the service description and contract that it entered into in a fair, appropriate and transparent manner in accordance with the Consumer Protection Act 1999. Digicel say they are “*unaware of any consumer protection provisions which would afford this right to consumers in the wider economy and that the RA has adduced no evidence to justify this intervention*”. OneComm commented that “*the RA has cited no evidence that the 14 day period is necessary to protect consumers relative to our 30 day notice requirement...[and so] we believe no change is warranted in this respect*”<sup>4</sup>. Digicel further commented if a post-delivery right of exit is imposed, it would be imperative for Digicel to recover “*the full costs of the initial service enablement which may not be covered by the connection fee*”. Digicel suggested there “may be a better justification for mandating a cooling off period following the contract date and [prior to the] the delivery date”, that “*this is a more usual implementation of cooling-off period*” and “*in some jurisdictions this post contract cooling off period may be waived by the consumer where they specifically request accelerated delivery of the contracted service*” and “*this approach does not affect the consumer rights for non-performance*”.

### RA Response

63. The RA thanks Digicel for its comment. After further assessment, the RA has decided to amend the provision to provide for a fourteen (14) day cooling off period starting from the contract date. Furthermore, if within thirty (30) days from the Consumer’s entry into the contract, the Sectoral Provider does not provide the service within the time agreed, the Consumer can contact the Sectoral Provider and ask for it at a later date that is more convenient. If the service has still not been carried out by such later date, the Consumer shall be entitled to cancel the contract and be refunded any monies it paid to the Sectoral Provider. If the Sectoral Provider has not provided the service within thirty (30) days from the date the Consumer entered into the contract, the Consumer shall be entitled to cancel the contract after such thirty (30) day period and be refunded any monies it paid to the Sectoral Provider. If, at any time, after the Consumer has entered into the contract, the Sectoral Provider informs the Consumer that it cannot, or will not carry out the service, the Consumer shall be entitled to cancel the contract and be refunded any monies it paid to the Sectoral Provider. Clause III.F. of the Preliminary GD reflects this approach.

### **V.B.7. Limitations on minimum contract terms**

64. Section ii of the GD stated “*As it related to electronic communications services, the RA mandates a maximum permitted Contract length for retail broadband products of 24 months. Specifically, when Contracts are longer than 12 months, an alternative choice with a Contract period of 12 months or less shall also be offered. This will ensure that the*

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<sup>4</sup> One Comm’s service contracts have monthly terms - retail customers commit to a term of one month and can cancel on 30 days’ notice without penalty (in compliance with the 2014 GD).

*Consumers have a choice over Contract length and are not locked into Contracts for excessively long period.”*

65. Digicel asked the RA to clarify what it meant by “*retail broadband products*”. The RA notes Digicel’s comment and thanks it for bringing this to the RA’s attention. After further consideration, the RA has decided to widen the scope of this provision to include all electronic communications services provided by Sectoral Providers and not just retail broadband services. This means that all of the electronic communication services which Sectoral Providers provide to Consumers in Bermuda will now be covered by this provision.

66. Digicel say (i) services supplied for non-personal use ought to be excluded as businesses may have commercial reasons for wishing to enter into longer duration commitments (e.g. to obtain higher levels of discounts or to have certainty regarding their cost base); and (2) that there ought to be a carve-out for individually negotiated contracts between the Consumer and the Sectoral Provider. Digicel also asked for guidance on what happens where broadband services are bundled with other services.

67. In addition, Digicel want the RA to clarify that a Contract that is longer than twelve (12) months does not have to be on the same terms of a Contract of twelve (12) months or less which is offered at the same time.

#### RA Response

68. The RA thanks Digicel for its views. As stated above, all of the electronic communication services which Sectoral Providers provide to Consumers in Bermuda will now be subject to a maximum permitted contract term of twenty-four (24) months – though this would only apply to small and medium sized businesses. Therefore, larger businesses would be able to enter into contracts for a longer term. The RA’s view is that there should not be a carve-out for individually negotiated contracts between Consumers and Sectoral Providers so as to better protect consumers and encourage Sectoral Providers to be cost-competitive to win repeat business from Consumers (as opposed to Sectoral Providers agreeing longer individually negotiated contracts with Consumers which provide for initially competitive tariffs which then escalate over the course of the contract, becoming non-competitive, which Consumers are then “locked into”). The RA also notes the value of allowing Consumers to have the flexibility to switch service providers if the market changes and more attractive offers are available, enhancing competition and likely leading to better outcomes for Consumers.

69. The RA thanks Digicel for its comment and the Preliminary GD now reflects this approach.

#### **V.B.8. Contract Renewals**

70. Section ii of the Preliminary GD states “*Any term in a 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 Contract until such time as the Consumer choses to enter into another Contract. Any contract which purports to automatically renew without express consent shall be deemed null and void.*”

71. Digicel say amendments are required to the above wording to give proper effect to the RA’s intent to protect the rights of both parties to the contract. Accordingly, terms which provide for automatic renewals shall be limited to renewals on a month to month basis

with the same terms and conditions as under the previously expired contract until such time as such month to month renewal arrangement is terminated by the Consumer or the Consumer chooses to enter into another contract. The Preliminary GD reflects this approach.

72. One member of the public also commented that prior to the end of the Contract, Sectoral Providers ought to notify Consumers that the service will continue on a month to month basis on the same terms. Accordingly, the RA agrees, and the Preliminary GD provides for this.

#### **V.B.9. Content of Customer Bills**

73. Section iii of the Proposed GD stated *“Provisions which shall apply to both sectors are that bills shall include: Tariff name, Payment methods, Annual cost details; and a breakdown of the bill calculation”*.

74. BELCO says that its bills already contain large amounts of information and that the inclusion of additional information may ultimately result in a bill that is less easily understandable. BELCO say all of its customers know how to pay for electricity, as this is set out in BELCO’s Service Rules.

75. Consumers obtain electricity supply from BELCO by making an application to BELCO either in person at its Head Office or online via its website. When a Consumer makes an application, he/she is referred to the BELCO Service Rules (which is available on BELCO’s website at all times and which BELCO will provide in hard copy to customers who request this). These Service Rules provide Consumers with a variety of information, including when applications are accepted and payment options. BELCO will accept applications for service where BELCO has been provided with certain requirements, which may include a security deposit, parent company guarantee, etc. BELCO will bill Consumers monthly and bills will either be delivered, mailed or emailed to Consumers as agreed in their application form. BELCO’s bill already includes tariff name, a display/chart of annual consumption which is sufficient to gauge historical consumption and a breakdown of the bill calculation<sup>5</sup>.

#### RA Response

76. The RA notes BELCO’s comments explained at paragraph 9.2 above. However, the RA is of the view that BELCO’s bills ought to contain a brief description of the different payment options which customers have to pay bills. The RA notes that there are potential Consumers that may be new to the island or there may be other circumstances that result

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<sup>5</sup> BELCO’s bills to residential and commercial customers contain: energy consumption as compared against the previous month and the same month in the year before so as to help customers monitor their energy usage; billing charges based on the amount of kWh used (separated into three (3) price tiers based on incremental volumes consumed); the fixed fee facilities charge which relates to the cost of maintenance, equipment and infrastructure BELCO needs to be able to delivery electricity safely and reliably; the discount value that is applied if the customer’s bill is paid on the before a prescribed date; the Regulatory Authority Fee which is remitted to the RA to cover its operating costs; the fuel adjustment rate which reflects the cost of BELCO purchasing fuel in excess of a base rate per barrel and transporting it to BELCO and government duty on imported fuels plus other applicable tax.

in a Consumer not being aware of all of the methods available to them to pay their electricity bill.

77. Digicel raised concerns about the requirement to include annual costs details on bills for both sectors – specifically annual billing information is not included on bills for telecommunications services and there does not appear to be any end user requirement for this globally. Accordingly, retail billing systems of telecoms providers do not typically support this functionality and the bill format does not currently accommodate this element and so if Digicel were required to do this, they would need to incur costs to develop a new system and bill format design. Digicel explained that there is a difference between telecoms services which tend to be billed based on monthly subscription with substantial inclusive usage and water or electricity utility services which tend to be billed with a standing charge with no inclusive usage (and which usage varies seasonally thus requiring comparison of monthly usage separated by a year). Therefore, historical annual details may be more appropriate for the electricity sector than the telecoms sector. The RA thanks Digicel for its comments.

#### RA Response

78. After further consideration, the RA has decided to amend the relevant provision so as to exclude any obligation on Sectoral Providers in the electronic communications sector to provide annual cost details on bills to Consumers and therefore avoid changes where the benefits would be outweighed by the costs.

79. OneComm was concerned that there is a need to reconcile the lack of a dedicated charge with the proposal to have detailed information regarding fees on Consumers' bills. Under section 44 of the RAA, Sectoral Providers pay Regulatory Authority Fees to the RA. Under section 52 of the RAA, licence/permit holders pay Government authorisation fees in connection with the grant of such authorisation. The RA may recommend whether Sectoral Providers should be permitted to recover any government authorisation fee through a dedicated charge (i.e. a charge that a Sectoral Provider may assess on end-users through a separate line item on its invoices, the proceeds of which it must pay to the RA).

#### RA Response

80. The RA notes One Comm's comment. The RA would like to clarify that only those charges which Sectoral Providers charge to Consumers ought to be included in consumer bills and not any taxes, Government or Regulatory fees which are charged directly to the Sectoral Provider.

81. The Proposed GD provided *“The Sectoral Provider shall not charge a fee for providing this information [i.e. adequate billing information] if the information requested spans the last 12 months. If the information requested goes back further than 12 months from the request date than the Sectoral Provider may charge a reasonable fee”*. Digicel say that electronic detail bills should be free of charge when provided as part of the normal

billing cycle (i.e. monthly) but reasonable charges should be permitted for paper copies or copies of historical billing information provided outside of the normal billing cycle (i.e. more than one month out). One member of the public commented that detailed tariff information on bills should be provided free of charge unless it goes back more than twenty-four (24) months.

#### RA Response

82. The RA thanks the respondents for their comments but considers the current wording to be a fair compromise of the interests of both Consumers and Sectoral Providers.

#### **V.B.10. Information on Tariffs**

83. Section IV. of the Proposed GD stated “*Sectoral Providers shall ensure that: the structure and terms and conditions of their tariffs are clear and easily understandable; each tariff is easily distinguishable from other tariffs; and Consumers are aware that they can request detailed information on the breakdown of charges and fees. This information must be provided by the Sectoral Provider to Customers and set out in plain and intelligible language*”.

84. BELCO wants the GD to reflect the fact that the tariffs are complex. BELCO says it ensures that its rates are understood by its customers via its Know Your Rate Campaign which appears on its website and explains the five cost categories that goes into BELCO’s average rate/kWh for electricity supply.

#### RA Response

85. The RA notes BELCO’s response and considers its “Know Your Rate Campaign” to be largely in line with the RA’s proposals to ensure that Consumers are provided with clear and understandable information regarding tariffs/charges. However, the RA is of the view that BELCO ought to provide information on the different types of tariffs that it offers to Consumers and information on how they differ. Accordingly, a brief description of the different tariffs that BELCO offers can be set out in BELCO’s Service Rules (which appears on BELCO’s website).

#### **V.B.11. Complaints Handling**

86. Section V. of the Proposed GD deals with complaints handling. “Complaint” is not defined. BELCO wants the RA 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*”.

#### RA Response

87. The RA thanks BELCO for its comment and the Preliminary GD provides for Consumers to expressly tell Sectoral Providers when they lodge formal complaints. All Sectoral Providers must develop a complaints’ handling policy which must be in plain and intelligible language and easily accessible to Customers (on paper or electronically). The Sectoral Provider’s complaints handling policy must, at a minimum, set out those things prescribed in Section v of the Proposed GD.

88. BELCO say that a distinction must be made between complaints made in connection with the Personal Information Protection Act 2016 (PIPA) and all other complaints, as PIPA provides for a unique complaints procedure – accordingly, Section v of the Proposed GD ought to be revised to reflect that Sectoral Providers must offer multiple complaints policies.

#### RA Response

89. The RA agrees that certain complaints may fall under PIPA (when it comes in force) or some other legislation and, consequently, the prescribed complaints procedure under PIPA and any other legislation will apply in relation to those types of complaints respectively. Therefore, Sectoral Providers' complaints handling policies must reflect separate complaints procedure required under any applicable legislation, including PIPA. Clause VI. of the Preliminary GD reflects this approach.

90. Section IX. of the Proposed GD in relation to Confidentiality of Customer Information stated "*Sectoral Providers are required, at a minimum, to comply with the applicable requirements set out in the Person Information Protection Act 2016 (as amended) in the fulfilment of all of their duties following from this GD.*" Digicel asked whether Sectoral Providers will be obliged to comply with PIPA or whether the intent is to give effect to its provisions on a sectoral basis prior to it coming into widespread effect. If the latter, Digicel say a significant lead in period will be required before this provision can reasonably be expected to take effect. One Comm commented that it was not necessary for the RA to adopt a provision that requires ICOL holders to comply with PIPA as it is an act that persons etc. who store, collect, process and use information must comply with in any event.

#### RA Response

91. The RA wishes to clarify that Sectoral Providers must comply with PIPA when it comes into force. Furthermore, the provisions in PIPA override any contrary provisions in any sectoral legislation. Accordingly, clause X. of the Preliminary GD reflects this approach.

92. Employees of Sectoral Providers who deal directly with customers (i.e. Frontline Employees) must be sufficiently trained so that they are able to identify when a Consumer is making a complaint. BELCO say Sectoral Providers cannot reasonably be expected to know customers are making complaints unless they inform Sectoral Providers of this.

#### RA Response

93. The RA has therefore included a definition of complaint in the Preliminary GD which provides for Consumers to lodge formal complaints so that Sectoral Providers can properly identify when Consumers have made a complaint. Consumers should be asked by Frontline Employees to confirm that they are making a formal complaint.

94. Sectoral Providers must deal with complaints in accordance with their complaints policy and any rules and regulations imposed on them by the RA (as set out in licences and Administrative Determinations). Digicel say different complaints will have different resolution timeframes but thinks that complaints should be acknowledged within five (5) working days. One member of the public said Sectoral Providers ought to acknowledge complaints within twenty-four (24) hours and a timeframe for regular updates ought to be established based on the nature of the complaint.

RA Response

95. The RA agrees that Sectoral Providers should acknowledge complaints within 1 business day and clause VI.D. of the Preliminary GD provides for this.

96. The Proposed GD provided that Sectoral Providers must ensure that complaints are resolved in a timely manner and to the satisfaction of the Consumer. Both BELCO and Digicel said this imposes an unreasonable requirement on Sectoral Providers as it is impossible to satisfy every Consumer.

RA Response

97. The RA agrees with BELCO and Digicel and so the requirement for customer satisfaction has now been removed from the Preliminary GD.

98. The Proposed GD also provided “*Sectoral Providers shall also inform Consumers of the names and contact details of the main sources of independent help, advice, and information that are available to them in relation to their Complaint*”. BELCO commented that it would be more appropriate for Sectoral Providers’ consumer complaint policies to refer to the ability of the Consumer to complain either to the Department of Consumer Affairs or, after efforts to resolve the matter directly with the Service Provider have been exhausted, to the RA in accordance with section 57 of the Regulatory Authority Act 2011.

RA Response

99. The RA thanks BELCO for its comment and this approach has been reflected in clause VI.H.2. of the Preliminary GD.

100. The Proposed GD also dealt with reports from Sectoral Providers to the RA – “*Each Sectoral Provider shall submit a report to the RA quarterly that sets forth statistical data on complaints received and how they were resolved*”. Digicel say there is no practical reason for it to submit a quarterly report to the RA given that the RA has power to request the complaints log.

RA Response



101. The RA notes Digicel's comment. However, the RA notes that it would be more efficient for Sectoral Providers to be required to submit quarterly reports rather than the RA having to repeatedly request such information. Given that Sectoral Providers should be tracking and monitoring this in any event as part of their business planning activities, the RA's view is that Sectoral Providers are best placed to provide such reports. Such quarterly reports would greatly assist the RA's awareness and analysis of any systemic issues arising in the electricity and electronic communications sectors.

102. The Proposed GD provided that the Sectoral Provider must, when informing complainants of the outcome of their investigation of a complaint, tell the complainant that if he/she is not satisfied he/she ought to contact the Sectoral Provider within 28 calendar days – after which time, the complaint will be deemed closed. Digicel said a fourteen (14) day period is more appropriate as the risk of the customer re-opening an issue is an operation overhead as Sector Providers will be holding resolved complaints on their IT and customer support systems for a twenty-eight (28) day period. One member of the public commented that twenty-eight (28) days was an appropriate timeframe, though some complaints may fall outside this period.

#### RA Response

103. The RA thanks Digicel for its comment but agrees with the member of the public that twenty-eight (28) days is a reasonable period (as opposed to fourteen (14) days which is quite short e.g. if Consumers are on holiday etc.) for complainants to assess the outcome of their complaint and decide what next steps they would take.

#### **V.B.12. Marketing, Advertising and Selling Practices**

104. Section I. of the Proposed GD stated "*An application for service shall not be a binding legal agreement until the Consumer has been provided with the complete Contract in writing and has provided written consent to enter into the Contract*". Section vi of the Proposed GD stated "*Before a Consumer enters into a Contract with a Sectoral Provider, the Sectoral Provider shall – provide the full proposed Contract to the Consumer*".

105. BELCO argues that the provision of physical copies of contracts is not environmentally friendly and that the starting point set out in the RA's Interim Administrative Rules dated 31 January 2013 is that all written submissions are to be filed electronically.

#### RA Response

106. The RA had not intended for this provision to apply to the electricity sector (as BELCO accepts applications for service in accordance with the BELCO Service Rules as explained in paragraph 9.3 above) – and the Preliminary GD now reflects this approach.

107. Digicel commented that physical form contracts should only be required to be provided when specifically requested by the Consumer. If service offerings are provided on an "on-line" basis only, there should not be a requirement to provide a physical copy.

One member of the public commented that electronic contracts would be acceptable provided that Consumers can access physical copies at the Sectoral Provider's offices.

#### RA Response

108. The RA thanks both respondents for their views and thinks that it is appropriate for Sectoral Providers to provide the full proposed Term Contract (and not just a link to its general terms and conditions on its website) to Consumers by email and/or hard copy as per such Consumer's request and clause III.I. of the Preliminary GD reflects this approach.

109. The Proposed GD stated "*The Sectoral Provider must inform the Customer if a credit check will be performed and will be required to receive consent from the Customer for the use of their personal information*". BELCO say this ought to be re-drafted as "*The Sectoral Provider must also inform the Customer and obtain the Customer's consent if a credit check will be performed*" – as PIPA, when it comes into force will permit the use of certain personal information without obtaining a customer's prior consent (e.g. if use of such personal information is necessary for performance of contract to which such person is a party, if allowed by law, if necessary to respond to an emergency etc. See further section 6 of PIPA).

#### RA Response

110. The RA thanks BELCO for its comment and the Preliminary GD now reflects BELCO's proposed wording.

111. Section I. of the Proposed GD listed the terms and conditions that Sectoral Providers were required to include in a Contract summary (which must accompany any Contract which is more than two (2) pages in total) – including the price charged for the service provided and contact details for employees responsible for complaints regarding the specific service applied for.

- One Comm commented that there is no evidence to suggest that a one page contract summary will provide significantly better protection for consumers and therefore does not support this provision of the Proposed GD. The RA thanks One Comm for its comment. However, the RA's view and feedback from consumers is that a short simple summary of the terms of their contract is highly beneficial to consumers.
- BELCO says that its tariffs are too complex to include on one sheet of paper and asked the RA to include a more practical requirement in relation to price. The RA'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 additional, more detailed information.
- Both BELCO and Digicel commented that it would be more appropriate to reference the customer experience team or the title of the manager responsible for customer experience.

#### RA Response

112. The RA notes these comments and agrees that the reference to “employees responsible for complaints” ought to be replaced by a reference to client care team who would deal with Consumer complaints.

### **V.B.13. Training**

113. Section vii of the GD provides “*Sectoral Providers must ensure that all of their Staff receive continuous and appropriate training to ensure they understand and can comply with policies and procedures and legal obligations relating to protection of Consumers in relevant sectoral legislation*”.

114. BELCO say “continuous” training is a high threshold to meet.

#### RA Response

115. The RA agrees with BELCO’s comment and the Preliminary GD now provides that it must ensure that its employees are, at all times, appropriately trained.

### **V.B.14. Accessibility**

116. Section xi of the Proposed GD provides “*Sectoral Providers shall ensure that vulnerable Consumers can obtain access to their services*”. Vulnerable person is defined in the Consultation Document as “*someone who, due to personal characteristics which they cannot change, is especially susceptible to detriment, particularly when a Sectoral Provider is not acting with appropriate levels of care. Vulnerability can have a range of causes and can be temporary or permanent in nature. This can include but may not be limited to physical and mental disability*”.

117. BELCO argued that a definition of “vulnerable person” ought to be included in the GD. The RA thanks BELCO for its comment and agrees that such a definition ought to be included in the GD.

118. BELCO commented that the definition of “vulnerable person” in the Proposed GD is too broad, and furthermore, it is unreasonable to expect Sectoral Providers to contemplate all possible ways in which a customer may be vulnerable. BELCO said the GD ought to specify relevant vulnerabilities to enable Sectoral Providers to comply and avoid potentially unmanageable required intervention by the RA.

#### RA Response

119. The RA thanks BELCO for its comment and would like to clarify that Sectoral Providers would not be required to request or guess which Consumers would fall into this category. Vulnerable persons/Consumers would be expected to inform the Sectoral Provider of their circumstances and provide the required information, application and/or medical documentation. Accordingly, the definition of Vulnerable Person in the Preliminary GD reflects this approach.

120. BELCO also stated that the requirement for Sectoral Providers to establish priority services registers ought to precede any discussion about Sectoral Providers’ obligations

relating to customers on such registers. The RA agrees with this view and the Preliminary GD now reflects this change.

121. BELCO further commented that Sectoral Providers should only be required to accept Consumers if such Consumers must have priority services. Both BELCO and Digicel argued that it would be unreasonable to:

- expect Sectoral Providers to guess which of their Consumers require priority services for the protection of their wellbeing. Both Digicel and One Comm also commented that the type of personal data that would need to be processed to set up and operate a priority services register for vulnerable consumers would fall into the category of “Sensitive personal information” as defined in PIPA. Furthermore, Consumers would be alarmed if their internet/TV/phone provider started keeping a record of their physical ailments.
- require BELCO to notify relevant governmental agencies or other final assistance agencies when it intends to terminate Vulnerable Customers’ electricity supply (as, in any event, this would be in violation of PIPA). The RA thanks BELCO for its comment and upon further assessment has removed this requirement;
- require BELCO to postpone termination of a Consumer’s service for a reasonable period of time if doing so would be dangerous to that Customer’s health (as BELCO would not know when latter criteria would be triggered).

#### RA Response

122. The RA thanks BELCO for its comment. See the RA’s comments at paragraph 109 above. Accordingly, the Preliminary GD provides that vulnerable consumers will tell Sectoral Providers that they are “vulnerable” so that Sectoral Providers can set up a priority services register which contains details of all of its vulnerable consumers; The Preliminary GD provides that Sectoral Providers must postpone termination of service for vulnerable Consumers – and would be entitled to payment of a reasonable late fee in respect of such postponement.

123. Digicel had suggested deferring the inclusion of these provisions until a multi-stakeholder engagement can take place to explore how to achieve the benefits of the RA’s proposal while at the same time balancing the privacy rights of the individuals involved.

#### RA Response

124. The RA has considered the position and does not think that it is necessary to defer the inclusion of these provisions if respondents’ concerns can be addressed by making appropriate amendments to the Proposed GD, which the RA has done (as explained above).

125. If a vulnerable Consumer has a medical condition where disconnection of electric service would be dangerous to health and has a medical certificate to this effect, Sectoral Providers would be required to retain or restore that Consumer’s service for a period of

thirty (30) calendar days. BELCO wished to know how Sectoral Providers will ultimately be paid for those services where Vulnerable Consumers have already been unable to pay for services provided to them.

#### RA Response

126. The RA thanks BELCO for its comment. The RA would like to clarify that the Vulnerable Consumer would still be required to pay his/her energy bill. However, he/she is merely being given an additional thirty (30) day grace period within which to pay.

127. OneComm commented that section 26 of the ECA does not empower the RA to establish a priority services register – merely to make decisions that govern ICOL holders’ (and other sectoral participants in the electronic communications sector) commercial and marketing practices to protect consumers, having due regard for the vulnerability of certain consumers.

#### RA Response

128. The RA thanks OneComm for its comments. However, the register is how the service providers can ensure that the correct support is given to its most vulnerable Consumers, to whom the RA is obliged to have due regard, pursuant to section 26 of the EA.

### **V.B.15. Outages**

129. Section XII. of the Proposed GD dealt with outages – *“Sectoral Providers are required to provide advance notice (via either post, gazetting, email or phone calls) of planned outages to all affected Customers”*. BELCO says it does not believe that the RA intends to stipulate that Sectoral Providers should place outage notifications in the Official Gazette and suggests instead that the RA states that BELCO can provide notices by newspaper advertisement.

#### RA Response

130. The RA thanks BELCO for its comment. In the Preliminary GD, the reference to the official gazette has been replaced with a reference to “advertisement in a national newspaper”.

### **V.B.16. Unsolicited Communications**

131. Section VIII. of the Proposed GD provided *“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. Such unsolicited communications shall include those made by means of: automated calling (i.e. robo calling); communications systems or machines that do not involve human interaction and; by facsimile machines and through electronic mail. 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 10 business day period”*.

132. Digicel wants to be able to market directly to its own customers, provided that its customers have an easy and effective method to unsubscribe from such marketing. Digicel says that the Proposed GD provisions would not apply to unregulated third parties such as retail stores, hotels, etc. Furthermore, as an ICOL holder, Digicel would be unfairly disadvantaged in a context where it wished to diversify its commercial activities to include the provision of direct marketing aggregation services, as it would be precluded from directly marketing to its own customers unless they expressly gave their consent for Digicel to do so. Additionally, this would be contrary to section 16 of the RAA which obliges the RA to act without favouritism to any sectoral participant and not to act in an unreasonably discriminatory manner.

#### RA Response

133. The RA notes Digicel's comment. However, the RA does not agree that this is contrary to the RA's obligations under section 16 of the RAA as, in our view, there is a reasonable basis (i.e. to protect Consumers from unsolicited communications from service providers) for such regulation.

#### **V.B.17. Quality of Internet and Internet Protocol Televisions (IPTV)**

134. One member of the public requested that the RA implement regulations to require internet and IPTV companies to provide minimum uptime performance guarantees and automatic reimbursement to customers if they fail to achieve such required quality of service performance standards.

#### RA Response

135. The RA notes the member of the public's comment. The RA is currently dealing with this issue under its Quality of Service and Open Internet consultation projects.

#### **V.B.18. Consolidation of Technology Companies**

136. One member of the public commented that the RA approved the merger and consolidation of several technology companies which, in turn, contributed to job losses in Bermuda – though those companies increased prices and are now operating less efficiently. Furthermore, before the RA approves future corporate mergers, it must set down performance criteria for companies. If the newly merged company fails to deliver in accordance with such criteria, the RA ought to be able to impose penalties and even be given the power to break up such companies in order to guarantee that consolidations in the sector reduce costs and improve efficiency.

#### RA Response

137. The RA notes these views with interest and notes that the RA has conducted a market review and sectoral review which resulted in a suggestion to lift the moratorium. However, these issues are outside the scope of the Consultation Document.

## **VI. PROPOSED DECISION**

138. The RA proposes to adopt the Preliminary Order set forth in Appendix A to this Reopened Preliminary Report and the Preliminary GD set forth in Appendix B.



**Preliminary Order:  
Principles of Consumer Protection**



I The Regulatory Authority, pursuant to sections 12, 13 and 62 of the Regulatory Authority Act 2011 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, which sets out provisions for the protection of consumers;
- (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.

II So Ordered this [number] day of [month] [year]

## APPENDIX B: PRELIMINARY GENERAL DETERMINATION



**BERMUDA**

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

**BR /2019**

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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 February 15, 2019 and the Regulatory Authority's Decision on it.

(2) Taking into account the five (5) received responses to the Consultation Document and for the reasons given in the Decision, the RA determines that 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 customers, subscribers, users and consumers, 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 Regulatory Authority's website ([www.ra.bm](http://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.



**Schedule to the Regulatory Authority  
[Principles of Consumer Protection]  
General Determination**

## **Table of Contents**

- 1 Definitions
- 2 Interpretation
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5. Annex 1 – Principles of Consumer Protection

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 EA and sections 26-31 of the 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 any Vulnerable Persons; or (ii) a Small Business; or (iii) a Medium Sized Business; but shall not include Distributed Generators under Standard Contracts;

**Contract(s)** 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 Term Contracts;

**Complaint** means 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;

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

**Distributed Generators** 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;

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

**Frontline Employees** means those Employees of a Sectoral Provider who deal directly with Consumers;

**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 Bermuda-owned and owner-operated business enterprise with at least three (3) of the following attributes:

- a. gross annual revenue of between \$1,000,000 (one million dollars) and \$5,000,000 (five million dollars);
- b. net assets of less than \$2,500,000 (two million five hundred thousand dollars);
- c. an annual payroll of between \$500,000 (five hundred thousand dollars) and \$2,500,000 (two million five hundred thousand dollars);
- 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;

**Outages** means short term or long-term interruption in Sectoral Provider's service;

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

**Regulated Industry Sector(s)** means a 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 Bermuda-owned and owner-operated business enterprise with either:

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

**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;

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



## 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 and the Electricity Act 2016 (“EA”) and Electronic Communications Act 2011 (“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 (and for the avoidance of doubt, when 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), Regulations and Orders made by the Minister, international agreements that apply to Bermuda, this Preliminary General Determination, other GDs or Administrative Determinations made by the RA;
  - (c) terms defined herein sections 38 and 39 of the EA and 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 February 15, 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 twenty-eight (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-by-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 rab.bm.
- (5) The response period commenced on February 15, 2019 and concluded on March 15, 2019.
- (6) The RA received five (5) responses from the public.

#### **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 Preliminary General Determination 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 Preliminary General Determination apply solely to a single Regulated Industry Sector, the RA encourages Sectoral Providers in all Regulated Industry Sectors to still 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 (and for the avoidance of doubt, when 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), Regulations and Orders made by the Minister, international agreements that apply to Bermuda, this Preliminary General Determination, other GDs or Administrative Determinations made by the RA.

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

- II.A.** Sectoral Providers shall offer Consumers at least two options for means 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 any attachments, annexes or appendices, shall be accompanied by a 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 promotional end date;
  - 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;

- 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 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 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 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 out of 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 (such as a 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 paid to the Sectoral Provider.

**III.H.** The RA mandates a maximum permitted Term Contract length of twenty-four (24) months for all electronic communications services supplied by Sectoral Providers to Consumers or Small Businesses. Additionally, when the duration of Term Contracts are longer than twelve (12) months, an alternative choice with a Term Contract period of twelve (12) months or less shall also be offered (which is not required to be on the same terms as Term Contracts with a contract term of more than twelve (12) months). This will ensure that the Consumers have a choice over contract length and are not locked into Term Contracts for excessively long periods.

**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 Complaints within one (1) business day.
- 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 information by Sectoral Providers on Complaints (e.g. publishing a Consumer Complaints report on the Sectoral Provider's website). This information must also be filed with the RA.
- 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 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.
- 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 not satisfied 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 will 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 those made by means of:

- i. automated calling (i.e. so-called '*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, at a minimum, to 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. When 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.

## **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 shall ensure that Vulnerable Persons are able to obtain access to their services.
- XII.B.** Sectoral Providers shall establish a priority services register for Vulnerable Persons.
- XII.C.** Sectoral Providers shall be required to give Vulnerable Persons on the priority services register reasonable prior notice of termination of their services.
- XII.D.** Sectoral Providers shall also be required to postpone termination of service for Vulnerable Persons on the priority services register, and in such event, shall be entitled to recover a reasonable late payment fee. 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.** Duly, 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 to this effect, Sectoral Providers would 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 three times per household in a twelve (12) month period and must be completed by a medical doctor. 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.

### **XIV Automatic Compensation**

**XIV.A.** Consumers will receive automatic compensation ("**Automatic Compensation**") from Sectoral Providers in instances where the Consumers are affected by certain events, as set forth in this section XIV, including, *inter alia*, delayed repair following loss of service or outage or delays with the start of a new service. For the purposes of this section, 'automatic compensation' means that the Consumer must not be required to make a claim for compensation and the Sectoral Provider must proactively notify the Consumer of their eligibility to such compensation.

However, the Consumer may be asked to select the form they would like the compensation to take (i.e. payment may be in the form of a bill credit or an alternative form of recompense of equivalent or higher worth).

**XIV.B.** Automatic Compensation will cover the following grounds, namely:

- i. a delay in activation of a fixed line or broadband service;
- ii. delayed repair following loss of service for a fixed line or broadband service; and
- iii. a missed service appointment relating to the provisioning or repair of a fixed line or broadband service.

In all the above-listed grounds, Sectoral Providers will be liable to provide Automatic Compensation for each ground separately (e.g. Automatic Compensation will be payable for this service failure in addition to any Automatic Compensation payable as a result of a missed appointment). The amount of Automatic Compensation payable will be set at a minimum amount, to be specified and determined by an Order by the RA.

**XIV.C.** If Automatic Compensation is payable, the Sectoral Provider must seek to proactively pay the amount due to affected Consumers. A Sectoral Provider may choose to offer different forms of Automatic Compensation provided that (i) a bill credit is offered as an option with equal prominence; (ii) the Consumer retains the right to select the form of Automatic Compensation. If Automatic Compensation is payable and the Consumer makes no election between any payment options offered, the Sectoral Provider must make the payment in the form of a bill credit.

At all times, the Sectoral Provider will seek to provide Automatic Compensation as soon as is reasonably practicable, and in any event no later than by the appropriate timeframe prescribed by an Order by the RA.

**XIV.D.** If the Automatic Compensation is being made by way of a bill credit, then the credit shall appear on the Consumer's account within the above time period although it may be reflected on the Consumer's bill at a later date. If the Consumer has elected to receive an alternative form of Automatic Compensation, it may be received at a different time in line with the agreement made with the Sectoral Provider.

**XIV.E.** Automatic Compensation is not payable in respect of any planned network service outage, which is notified in writing by the Sectoral Provider to the Consumer in advance of the

planned outage. Furthermore, Automatic Compensation is also not payable if the Sectoral Provider gives notice of a change or cancellation of the appointment at least twenty-four (24) hours' in advance of the original appointment time or if the Consumer otherwise agrees to a change in the appointment time slot for the same day (such agreement must be recorded by the Sectoral Provider or its agent on its behalf, e.g. by a consumer service agent).

**XIV.F.** A Sectoral Provider will not be required to pay Automatic Compensation to a Consumer if:

- a) the Consumer is at fault for the service failure or prevents the service issue from being resolved (based on evidence known to the Sectoral Provider), for example, not accepting the first available date for a repair or allowing access to their premises and/or relevant equipment;
- b) the Sectoral Provider reasonably believes that the Consumer's report of loss of service is fraudulent, frivolous or vexatious;
- c) it was not reasonably practicable for the Sectoral Provider to avoid an obligation arising to pay compensation due to the effects of an event for which emergency regulations have been made under applicable sectoral legislation;
- d) the Sectoral Provider could reasonably expect that, if it took the action required in order to avoid an obligation arising to pay Automatic Compensation, it would or would be likely to be in breach of any law or regulation;
- e) the Consumer is in breach of the terms under which the affected communications services are supplied; or
- f) the fault is not in respect of the service provided or it is caused by equipment or activity within the Consumer's home.

Subject to the exceptions (a)-(f) listed above, the Sectoral Provider does not avoid payment of Automatic Compensation if the issue was caused by an event outside of the Consumer's or the Service Provider's own control.

**XIV.G.** The RA will set out, *inter alia*, the applicable time limits, amount of Automatic Compensation payable and limits to Automatic Compensation payments via an Order issued in due course.

## **XV AMI Meters/Electricity Sector**

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

**XV.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.

## **XVI Switching/ Electronic Communications Sector**

**XVI.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.