

BERMUDA

**REGULATORY AUTHORITY (CONSUMER RIGHTS: RESIDENTIAL
CONTRACTS) GENERAL DETERMINATION 2014**

BR 80 / 2014

The Regulatory Authority, in exercise of the power conferred by section 62 of the Regulatory Authority Act 2011 and section 26 of the Electronic Communications Act 2011, makes of the following General Determination:

Citation

1 This General Determination, the terms and conditions of which are contained in the Schedule, may be cited as the Regulatory Authority (Consumer Rights: Residential Contracts) General Determination 2014.

Interpretation

2 In this General Determination, unless the context otherwise requires, terms shall have the meaning given in the Regulatory Authority Act 2011 ("the RAA") and the Electronic Communications Act 2011 ("the ECA").

General purpose

3 This General Determination establishes minimum standards that must be met by contracts offered to consumers for electronic communications services on a residential basis by Integrated Communications Operating Licence (ICOL) holders and Communications Operating Licence (COL) holders licensed under the ECA.

Determination

4 (1) This General Determination is made pursuant to the Consultation entitled "Consumer Rights: Contracts" (Matter C14/1615), and the Authority's Decision on it.

(2) Taking into account the responses received to the Consultation and for the reasons given in the Decision, the Authority determines that the minimum standards contained in the Schedule hereto shall be the established minimum standards that must be met by contracts offered to consumers for electronic communications services on a residential basis by ICOL and COL holders licensed under the ECA.

Terms and conditions of General Determination

5 (1) The Schedule to this General Determination has effect.

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(2) The Schedule is published on the Regulatory Authority's website (www.rab.bm), and is also available for inspection at the offices of the Regulatory Authority (Cumberland House, 1 Victoria Street, Hamilton) during ordinary business hours.

Effective Date of General Determination

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

Signed this 3rd day of October 2014



Carl Musson

Commissioner, Regulatory Authority



**REGULATORY
AUTHORITY
OF BERMUDA**

**Schedule to Regulatory Authority
(Consumer Rights: Residential
Contracts) General Determination
2014**

General Determination

Date: 3 October 2014

Definitions

“Access Service Provider” means a company (or companies) engaged in the business of providing Internet access services to Consumers

“Add-On Service” means an additional Electronic Communications service provided or offered to a Consumer in addition to an existing Electronic Communications Contract that enhances and/or modifies an existing Electronic Communication services in a manner that does not require a material change in the length of the contract or an increase in price.

“Authority” means the Regulatory Authority.

“Contract” means an agreement setting out the terms and conditions upon which a Service Provider offers a specified Electronic Communications service(s) or product(s) and the Consumer’s acceptance of the Service Provider’s offer on a residential basis.

“Consumer” means end-user as defined by Section 2 of the Regulatory Authority Act 2011.

“Electronic Contract” means a Contract where the manifestation of the Consumer’s acceptance of the terms is clear and unequivocal.

“ISP” means Internet Service Provider: a company/ or companies engaged in the business of providing Internet service to Consumers.

“Physical Contract” means a contract signed in writing by the Consumer.

“Post-paid Service” means an Electronic Communications Service provided to Consumers by a prior arrangement with a Service Provider. The Consumer is billed after the fact according to a flat rate or in accordance with usage usually at the appropriate billing cycle.

“Pre-paid Services” means an Electronic Communications Service provided to Consumers by Service Providers on the basis of advance payment and where the Consumer may (a) terminate the contract without prior notice and (b) such termination will not incur penalty fees.

“Service Provider” means an Integrated Communications Operating Licence (ICOL) holder or a Communications Operating Licence (COL) holder as defined by the ECA (Electronic Communications Act 2011) who is or intends to be in the business of providing Electronic Communications Services as defined by the (ECA).

Scope of this Determination

Unless stated otherwise, the rights and obligations contained within this Schedule to the General Determination apply to any Electronic Communications Service offered to the general public on a private residential basis for a fee. The Authority notes that some businesses subscribe to Electronic Communications Services on a

residential basis. For the avoidance of doubt, the rights and obligations contained in this General Determination are also intended to apply to Contracts for services offered to businesses and people who contract for them on a residential basis.

Availability of Contracts for Review

1. All terms and conditions applicable to a Contract between a Service Provider and a Consumer must:
 - a. Be readily available and clearly accessible from the website through which the Service Provider carries on business and/or provides the public with information;
 - b. Be readily available for inspection and review at all retail outlets where the Service Provider's services and products are sold and/or where Consumers are able to deal with their ongoing account matters;
 - c. Be available in a form that will enable Consumers to take them away from the Service Provider's place of business or in a form that allows them to be printed from the Service Provider's website by the Consumer upon request; and
 - d. Be made available to Consumers free of charge.

Form and Formation of a Contract

2. Save in the case of the exceptions stated below, Service Providers, must conclude Contracts with Consumers in one of the following forms:
 - a. A contract signed in writing by the Consumer (Physical Contract); or
 - b. An electronic Contract where the manifestation of a Consumer's acceptance of the terms is clear and unequivocal (Electronic Contract).
3. In the case of a Physical Contract:
 - a. A Contract shall only be valid if it is signed by the Consumer;
 - b. The signature page of a Contract must not be on a page on its own;
 - c. The signature line in a Contract must be preceded by a notice to the Consumer stating that by signing the Contract the Consumer is agreeing to all of the terms and conditions within and incorporated within the Contract;
 - d. The Contract must be written in plain language and be designed to be easily understood by Consumers.

4. In the case of an Electronic Contract:
 - a. The manifestation of the Consumer's acceptance of the terms and conditions must be clear and unequivocal;
 - b. A physical signature is not required in order for an electronic contract to be valid;
 - c. Online applications for services must be followed up with written confirmation sent to the Consumer; a copy of which must be held by the Service Provider;
 - d. Before entering into a Contract on an electronic basis, the Consumer must be informed of, and be given the opportunity to review, the terms and conditions of the Contract.
5. A Service Provider offering Contracts in both electronic and physical forms must give Consumers the option to choose which of the two forms they prefer to conclude their Contract in. In the event no selection is made, the Service Providers are required to issue a Physical Contract.
6. All terms and Conditions must be included in the Contract. These can be included in the Contract itself or as an annex or appendix thereto.

Exceptions

7. Save that they must be written in plain language and be designed to be easily understood by Consumers, the following varieties of Service are exempt from the requirements set out above:
 - a. Pre-Paid Services; and
 - b. Add-on Services.
8. In such cases, there is no requirement for a Physical Contract. However, in the case of Add -on Services, Service Providers must keep a written record of the Consumer's request as well as confirmation of the Consumer's acceptance of the new terms and conditions, if any, relating to the Add -On Service and that the Consumer be offered the opportunity to be sent a copy of those new terms and conditions for their records.

Contract Summary

9. Contracts, which, together with annexes, are longer than three (3) pages, must be accompanied by a contract summary not longer than one (1) page setting out the terms and conditions relating to the issues listed below (Contract Summary):

- a. A Description of the Service provided;
- b. The Price charged for the Service provided;
- c. The length of the Contract, if any;
- d. The length of promotion, if any, with promotional end date;
- e. The commencement date of the Terms and Conditions;
- f. The termination requirements of the Contract and end date;
- g. Any early termination fees payable and how they are calculated;
- h. The frequency of billing and how to pay; and
- i. Any late payment fees, penalties or charges.

Standard Terms and Conditions

- 10.** The following standard terms must be included within the details of any Contract offered by Service Providers to Consumer s:
- a. Commencement Date: A Contract must clearly state the date from which it will come into effect, and become binding on both parties.
 - b. Complaint Resolution Procedures: The Contract must inform Consumers of the procedures for initiating and resolving disputes with respect to the Contract.
 - c. Conditions Limiting Access to and/or use of Services and Applications: If a Service Provider has blocked certain content, services or applications from use on its network, this information must be drawn to the Consumer's attention in clear language at the earliest opportunity.
 - d. Delivery, Installation and/or Activation: Service Providers are required to provide the means by which up -to- date information on these matters can be obtained by Consumers.
 - e. Disconnection or Suspension of Service: The Contract must clearly set out the circumstances under which service may be disconnected or suspended as well as the amount of notice the Consumer is entitled to receive before disconnection or suspension is effected.
 - f. Early Termination: Where there is a possibility that either party can terminate the Contract before the end of the Minimum Contract period, the Service Provider must clearly state the circumstances under which this can occur as well as any consequences of those actions.
 - g. Early Termination Fees: If the Service Provider will require the Consumer

to pay a fee as a result of an early termination, the manner in which that fee will be calculated must be set out.

- h. Equipment & Warranties: Service Providers must inform Consumers of the use of all equipment, including any associated warranties, as well as the responsibility of the Consumer for the relevant equipment.
- i. Penalty Fees: In the event the Service Provider seeks to impose a penalty fee, the basis upon which a fee can be charged and the amount(s) of any such fee should be plainly stated in the terms of the Contract.
- j. Prices, Tariffs and Charges: Contracts must state clearly the minimum service rate for the service(s) provided under the Contract, together with the standard late payment fees and any other standard charges. The location of the listing of variable charges such as roaming rates and overage rates must be drawn to the Consumers giving Consumers the means by which up-to-date information on these matters can be obtained.
- k. Provision of Service: Service Providers must set out a description of the specific service(s) being provided. There should also be a list of additional services. For example, in the mobile sector, a contract for mobile voice and data would include the ability to make and receive voice calls as well as the ability to access the Internet. Additional services would include text messaging, roaming etc.
- l. Pay Television Services: For Service Providers offering pay television services, a Contract must, in addition to setting out what channels will be made available to the Consumer at the time of purchase set out as well the circumstances under which the channels could change. If, for example a channel offering is scheduled to expire, Service Providers must give Consumers reasonable notice of the scheduled expiration.
- m. Reconnection: Any charges or fees for reconnection must be stated in the Contract.
- n. Renewal of Contract: Service Providers must indicate how a Contract for Services can be renewed, including any rights on the part of the Service Provider to modify the conditions of the Contract upon renewal.
- o. Termination and Notice Period: A Contract must clearly set out the grounds upon which either party may terminate. The Contract must also set out the amount of notice, if any, required from either the Service Provider or the Consumer before a Contract can be terminated and the means by which that notice is required to be given.
- p. Variation of Terms and Conditions: Contracts must state the procedure required of either party before a term or condition of the Contract can be

varied or altered in any way.

Quality of Service

11. The following standard terms pertaining to quality of service must be set out in Contracts:
 - a. Installation: All Service Providers must include a provision in their Contracts, which sets out the maximum time that an initial connection and disconnection from their networks should take. This provision should make the Consumer aware of their right to end the Contract without penalty in the event services are not provisioned within the stated time frame.
 - b. Maintenance: Service Providers are required to provide a clear written indication of the kinds of maintenance services they offer to Consumers and the prices of those services.
 - c. Repair: Service Providers must provide the maximum repair time required to restore services following maintenance to the Service Providers' network infrastructures and equipment and/or faults resulting from failures to the Service Providers' network infrastructures or equipment. These repair times can be subject to the ordinary exceptions for events beyond the control of the Service Providers.

Automatic Renewal

12. Any term in a Contract providing for the contract's automatic renewal must be limited to renewal on a month-to-month basis with the same terms and conditions under the previously expired Contract remaining in effect until such time as the Consumer indicates otherwise.

Quality of Service

13. In an effort to deal with the following quality of service issues, internet, broadband and mobile Service Providers will be required to meet and enter into a constructive dialogue with the Authority, Consumer Affairs and any other interested party with a view to developing a solution that properly and reasonably benefits Consumers in the areas of responsiveness, speed, availability and uptime (as well as any other issues arising on Broadband and Mobile Quality of Service) ('the Quality of Service Working Group').
14. The Quality of Service Working Group will meet as directed by the Authority on a date not before the effective date of this General Determination but not later than 30 days after that date.

15. The key parameters in the Quality of Service Working Group will be the following:

a. Responsiveness

- a. What information a Service Provider will provide to Consumers about the role of the ISP and the Access Provider in the Contract and/or generally;
- b. How referrals between the ISP and Access Providers will be tracked in order to ensure that the appropriate party will address the Consumer's concerns in a timely manner;

b. Speed

- a. Information about the difference, if any, between the advertised access speed and the actual speed that can be consistently achieved on the network;
- b. What the acceptable standard of speed achieved below the speed advertised will be;
- c. What the consequences, if any, will be for a Service Provider that provides broadband or mobile internet service consistently below the acceptable standard of speed;
- d. How the speed achieved by the Consumer will be measured and recorded by the Consumer and by the Service Provider.

c. Availability and Uptime

- a. Information provided about the difference, if any, between the advertised network availability and uptime, if any, and the actual availability and uptime that could be achieved on the network;
- b. How the minimum service availability or uptime will be calculated (barring unforeseen circumstances);
- c. What the minimum standard of acceptable availability and uptime required should be;
- d. What consequences, if any, there will be for a Service Provider that provides Service below the accepted standard;

16. The Quality of Service Working Group no later than 120 days following the first meeting will deliver a final document outlining the outcome of the Working Group.

Unsolicited Contact

17. Service Providers must provide Consumers with the option to remove their contact information from a Service Provider's marketing contact list for phone calls, text messages and emails as well as to have their telephone number (fixed or mobile) placed on a do -not- call register whenever they are contacted by any Service Provider for marketing purposes.

Implementation Timeline

18. Service Providers shall, within 6 months of the effective date of this General Determination, ensure that all new Contracts offered to Consumers on a Residential Basis are offered in, and contain terms in, compliance with this General Determination.
19. Service Providers shall ensure that all existing Contracts not made in compliance with this General Determination are amended insofar as is necessary to become compliant with the General Determination within 12 months of the effective date of this General Determination.

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