

# Telecommunications Carriers' Forum

## Code for the Transfer of Telecommunications Services ("The Customer Transfer Code")

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## **A. PURPOSE**

1. The purpose of this code is to improve the experience of New Zealand Telecommunications Customers and Service Providers by facilitating the Transfer of Telecommunications Services in New Zealand through practices that are consistent with the purposes and provisions of the Telecommunications Act.
2. This Code will take effect 9 months from the date the regulated Code is approved by the Commerce Commission (in the case of the regulated code) or endorsed by the TCF (in the case of the non-regulated code).

## **B. DEFINED TERMS**

In this Code, unless the context otherwise requires:

**"Access Service Deliverer (ASD)"** means the Carrier to whose network an access line is directly connected and over which services are supplied. Note that an ASD may also be a Service Provider.

**"Account Number"** means the unique reference number used by a Service Provider for a given Customer, which should appear on all invoices.

**"Bilateral Agreement"** means an agreement between a Party who is obliged to comply with the terms of this Code and another party (who might or might not also be a party to this Code).

**"Billing Relationship"** means a relationship where the Service Provider has a bona fide right to charge the Customer for any chargeable activity relating to the provision of Telecommunications Services.

**"Business Day"** means a day on which registered banks are open for normal banking business, excluding Saturdays, Sundays and nation-wide public holidays. Regional public holidays are considered to be Business Days.

**"Carrier"** means an entity that operates:

- (a) a public switched telephone network (or a functionally equivalent system) that originates, transits or terminates calls; and/or
- (b) a public data network.

A Person may be both a Carrier and a Service Provider. If a Party has more than one network, it can be classified as more than one Carrier.

**"Clause"** refers to a clause in this Code.

**"Communication"** can be oral, in writing, and via electronic means.

**"Complex Dispute"** has the meaning ascribed in clause 70.2.

**"Complex Transfer"** means a Transfer which involves Exceptional Services or a Transfer which the GSP and LSP agree is to be treated as a Complex Transfer.

**"Customer"** means a person who has a bona fide Billing Relationship with a Service Provider in respect of a Telecommunications Service.

**"Customer Account Name"** means the name that is on the Customer's bill.

**"Customer Authorisation"** means a valid authorisation for a Transfer by the Customer or the Customer's duly appointed agent that meets the requirements of section E of this Code.

**"Effective Date of the Transfer"** means the point in time when a Customer's Telecommunications Services are completely transferred to the GSP and the GSP is entitled to start billing the Customer.

**"Enforcement Agency"** means a person(s) nominated by the Telecommunications Carriers' Forum and approved by the Commerce Commission, or if the Telecommunications Carriers' Forum fails to nominate a person, a person appointed by the Commerce Commission whose role is to monitor and enforce compliance of the obligations set out in this Code.

**"Exceptional Services"** are those services that the ASD considers complex when delivering them to itself, including Centrex and the Transfer of multiple Telecommunications Services.

**"Gaining Access Service Deliverer"** means the Access Service Deliverer to which the Telecommunications Service (from a Customer point of view) is moving to, or has already moved to.

**"Gaining Service Provider (GSP)"** means the Service Provider to which the Telecommunications Service (from a Customer point of view) is moving to, or has already moved to.

**"Internal Transfer"** means a Transfer of the service between two Customers where there is no change of Access Service Deliverer and no change of Service Provider.

**"Invalid Transfer"** occurs when there is a processing error (for example, the incorrect Customer is transferred) or when there is an invalid Customer Authorisation as defined in clause 50.

**"Inter-network Transfer"** means a Transfer where the underlying network changes.

**"Losing Service Provider (LSP)"** means the Service Provider that is losing the Telecommunications Service (from a Customer point of view).

**"Losing Access Service Deliverer"** means the Access Service Deliverer that is losing the Telecommunications Service (from a Customer point of view).

**"Non-Code Access"** means a Service provided by a Carrier that results in one of the other Carrier's Toll Access Codes being automatically prefixed to a call made by a Customer of the first Carrier, where the call is dialled:

- in the format "0 + area code" (the single digit 3, 4, 6, 7 or 9) or "00 + country code"; or

- using one of the non-geographic service codes for mobile telecommunications services allocated under the provisions of the Number Administration Deed.

**"Notification"** means a set of information contained in a message and exchanged between two parties in a form agreed by both parties (e.g. systems transactions, email).

**"Number Administration Deed"** means the deed (dated 20 December 1998) signed by various telecommunication companies for the provision of number administration services and number portability.

**"Party"** means a Person bound by this Code under the Telecommunications Act or a Person signed up to this Code.

**"Person"** means a legal person and includes a company and any other legal entity.

**"Service Provider (SP)"** means any person providing a Telecommunication Service to a Customer and who has the Billing Relationship with the Customer for that service. The same person may be both an ASD and a Service Provider.

**"Simple Transfer"** means a Transfer which the GSP and the LSP agree is to be treated as a Simple Transfer.

**"Technical Dispute"** has the meaning ascribed in clause 70.1.

**"Telecommunications Act"** means the Telecommunications Act 2001 as amended from time to time.

**"Telecommunications Carriers' Forum"** or **"TCF"** means the Telecommunications Carriers' Forum Incorporated Society of New Zealand.

**"Telecommunication"** is the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but excluding any conveyance that constitutes broadcasting.

**"Telecommunication(s) Service"** means any good, service, equipment and/or facility that enables or facilitates Telecommunication.

**"Transfer"** means the transfer of all or part of a Customer's Telecommunications Service(s) from one Service Provider to another Service Provider as authorised by the Customer.

**"Transfer Request"** means a request from a GSP to an ASD to Transfer a Customer's Telecommunications Service(s), which contains the information set out in relevant Bilateral Agreements and in addition, the case of a Simple Transfer, the information set out in clauses 27 and 28.

**"Unique Service Identifier (USI)"** means a unique number to which Telecommunications Services are associated, as allocated by the ASD in its internal systems from time to time. In the case of fixed line telephone services this will be

the telephone number.

“**Validation Request**” means a communication from the GSP to the LSP to validate a Customer Authorisation.

### **C. OBJECTIVES AND SCOPE**

3. This Code governs the Transfer of a Customer’s Telecommunications Services between Service Providers to ensure a seamless experience for all parties involved in the Transfer process. It sets out practices that Access Service Deliverers and Service Providers must comply with whenever a Customer requests a Transfer of Telecommunications Services. All parties will act co-operatively and in good faith to facilitate this Code.

#### **4. Objectives**

The Code’s high-level objective is to provide a seamless transition of a Customer’s Telecommunications Services between Service Providers so that the Customer continues to receive high quality, uninterrupted service. This objective will be achieved by:

- 4.1 Outlining the necessary Customer Authorisation and consent procedures to ensure a Customer’s Telecommunications Service(s) are only transferred when they want them to be;
- 4.2 Encouraging appropriate Service Provider etiquette;
- 4.3 Facilitating a seamless billing changeover;
- 4.4 Increasing the transparency of the Transfer process, so that the Customer is in control of the process at all times;
- 4.5 Ensuring normal support from the Losing Service Provider until the Transfer is completed;
- 4.6 Requiring processes that ensure a prompt and timely Transfer process, as well as the correction of any problems that occur as a result of the Transfer process;
- 4.7 Adopting competitively neutral and non-discriminatory practices that provide consistent treatment for Customers; and,
- 4.8 Requiring compliance with all relevant legislation including the Privacy Act and the Telecommunications Information Privacy Code 2003.

#### **5. Telecommunications Services covered by this Code**

The Code applies to Service Providers and Access Service Deliverers (ASDs) for the Transfer of all Telecommunications Services (except as listed in clause 6) and in the Code approved by the Commerce Commission includes the following determined Telecommunications Services:

- 5.1 designated access services determined under the Commerce Commission’s Decision 497 (Determination on the TelstraClear Application for Determination for Wholesale Designated Access Services);
- 5.2 designated access services determined under the Commerce Commission’s Decision 525 (Determination on the TelstraClear Application for Determination for Residential Wholesale Designated Access Services);
- 5.3 other designated access services or specified services determined by the Commerce Commission in the future.

## **6. Exclusions from Scope**

- 6.1 This Code does not apply to the Transfer of Telecommunications Services from one cellular network to another cellular network.
- 6.2 Section G does not apply to the Transfer of Non-Code Access services. For the avoidance of doubt, all other provisions in this Code do apply to Non-Code Access services.
- 6.3 This Code does not cover the porting of local, mobile or toll-free numbers. Local and mobile numbers are covered by the Local and Mobile Number Portability Terms and Network Terms (LMNP) forming part of the Commerce Commissions Number Portability Determination. To the fullest extent possible this Code aims to be consistent with these LMNP Terms. Toll Free Numbers are covered by the Toll Free Database Access Agreement. Nothing in this Code exempts any Party from obligations contained in the LMNP and Network Terms or the Toll Free Access Database Agreement.
- 6.4 This Code does not apply to Internal Transfer of Telecommunications Services.

## **D. COMPLIANCE**

7. The Code is applicable to all Service Providers and Access Service Deliverers who participate in the Transfer of Telecommunications Services. This Code is not intended to impact on other parties who do not have obligations under this Code.
8. All Service Providers and ASDs must Transfer Customers' Telecommunications Services in accordance with this Code and any relevant legislation or Commerce Commission determinations.
9. If one Party defaults in the performance of any of its obligations under this Code, the defaulting Party will use its best endeavours to remedy the default as soon as possible and to prevent a recurrence of the default. This provision applies as long as the default does not prevent other parties to the Code complying with their obligations.
10. In the event of any inconsistency between this Code, any relevant legislation, any Bilateral Agreement and any Commerce Commission determinations, this inconsistency will be resolved in the following (descending) order of precedence:
  - 10.1 Any legislation;
  - 10.2 Commerce Commission Determinations;
  - 10.3 Any contractual document entered into before the approval of this Code by the Commerce Commission (in the case of the regulated code) or endorsed by the TCF (in the case of the non-regulated code);
  - 10.4 Any provision in a Bilateral Agreement relating to the Transfer Code entered into after the approval of this code that improve on the provisions in this Code;
  - 10.5 The Transfer Code;
  - 10.6 Any provision in Bilateral Agreements relating to the Transfer Code

entered into after the approval of this Code.

11. This Code contains the minimum requirements regarding a Customer Transfer. While parties may enter into Bilateral Agreements concerning matters covered by this Code, such arrangements must not diminish or otherwise affect any requirements contained in this Code; impact on the ability of other parties to interact with Parties of this Code (subject to clause 12); or impact on the ability of other participants to interwork with parties to those arrangements in accordance with the minimum requirements.
12. This Code does not alter, vary or restrict any rights or obligations contained in any contract between Service Providers, or any contract between any other Person and a Service Provider which is binding on a Service Provider when that Service Provider first becomes bound by the Code provided that such contracts were entered into prior to the date the Code was first approved by the Commission (in the case of the regulated code) or endorsed by the TCF (in the case of the non-regulated code). In all other respects, however, the Service Provider must comply with the Code.

#### **E. CUSTOMER AUTHORISATION**

13. The objective of this section is to, through a robust Customer Authorisation (i.e. consent) process, provide a level of protection to customers against the unauthorised Transfer of services.

#### **14. Obtaining Customer Authorisation**

14.1 The Gaining Service Provider bears sole responsibility for ensuring that prior to commencing a Transfer it has a valid and complete Customer Authorisation.

14.2 A Customer Authorisation must contain, at a minimum, the following:

- 14.2.1 The Customer's details, including name or business name, and contact name and the phone number of authorised representative, where applicable;
- 14.2.2 Acknowledgement from the person communicating that they are either the Customer or the authorised representative and so entitled to request a Transfer in respect of the services referred to in the Customer Authorisation;
- 14.2.3 The Customer's agreement to the Transfer to the GSP;
- 14.2.4 The date of the Customer Authorisation;
- 14.2.5 The Customer's acknowledgement that they have been informed by the GSP of, and accept the information set out in clause 15; and,
- 14.2.6 Confirmation from the Customer that the information provided by the Customer to the GSP is true and correct.

#### **15. Informed Customer Authorisation**

15.1 In the process of obtaining the Customer Authorisation, a GSP must inform the Customer:

- 15.1.1 That the Customer is Transferring a Telecommunications Service or Services from their existing Service Provider to the GSP;
- 15.1.2 That the Customer might continue to have outstanding obligations to the LSP and it is the Customer's responsibility to check the terms and conditions of its existing contracts relating to the services being Transferred;
- 15.1.3 Any terms and conditions, and the costs associated with the Transfer, and where the customer may find the full terms and conditions;
- 15.1.4 That by Transferring the Customer's Telecommunications Services:
  - 15.1.4.1 The Telecommunications Service(s) associated with that Unique Service Identifier might be disconnected from the Losing ASD or LSP and might result in finalisation of the Customer's account for that service; and,
  - 15.1.4.2 There may be services that might not be able to be supported by the Gaining ASD or GSP (if applicable).

## **16. Customer Authorisation validity period**

- 16.1 Unless agreed otherwise with a Customer, to be valid, a Transfer Request must be made within thirty (30) days of the date of the Customer Authorisation.
- 16.2 A LSP may request a copy of the Customer Authorisation, provided such request is made within twelve (12) months of the completion of the Transfer. The GSP must provide a copy of the relevant Customer Authorisation to the LSP within five (5) Business Days, if requested by the LSP for the purpose of resolving a Customer complaint.
- 16.3 The GSP must retain all Customer Authorisations for a period that allows them to meet their obligations in 16.2.

## **F. CATEGORY OF TRANSFER**

- 17. The objective of this section is to set out the need to classify the different types of Transfer as the processes differ.
- 18. The GSP must initially nominate a category to be used to Transfer a Customer's Telecommunication Services. These categories are:
  - 18.1 Simple Transfer; or
  - 18.2 Complex Transfer.
- 19. There is no need for an extra formal notification from the GSP to the LSP in the advent of a Simple Transfer, as it will be clear from the Validation Request sent as per clause 23.
- 20. If the LSP disagrees with the category of the Transfer nominated, the GSP and LSP will endeavour to resolve this disagreement in good faith. If the GSP and LSP cannot resolve such disagreement within 10 days, that Transfer shall be

treated as a Complex Transfer.

#### **G. VALIDATION BETWEEN SERVICE PROVIDERS FOR SIMPLE TRANSFERS**

21. The objective of this section is to ensure standard processes between the LSP and the GSP when agreeing the validation request of Service(s) to perform a Simple Transfer.
22. This section G does not apply to the Transfer of Non-Code Access services or to Complex Transfers. The process for Complex Transfers is set out in section I.

#### **23. Validation Request**

23.1 The GSP must provide to the LSP the following information in a Validation Request:

23.1.1 The LSP Unique Service Identifier; and

23.1.2 One of the following: LSP Account Number or full and correct LSP Customer Account name

23.2 If the LSP is also the ASD then the Validation Request can be combined with the Transfer Request provided to the ASD in section H below. For the avoidance of doubt clause 23.1 will not apply.

23.3 Each Service Provider must provide the TCF with contact details for appropriate personnel in relation to validation requests. The TCF shall maintain a contact list of these personnel on the TCF's website.

#### **24. Rejection Advice**

24.1 The LSP has one (1) Business Day from the receipt of the Validation Request above to advise, in a verifiable format, the GSP that the LSP believes, on reasonable grounds, that the Transfer would be an Invalid Transfer. The LSP must, at the same time, provide all the reasons for the rejection as defined in Annex 1.

24.2 Upon receipt of a rejection of a Validation Request in accordance with clause 24.1, the GSP may follow up with the Customer and submit another Validation Request to the LSP as per clause 23.1.

24.3 Where the LSP does not advise the GSP within one (1) Business Day that the Transfer would be Invalid, the GSP may send the Transfer Request to the ASD as per the requirements in section H.

#### **H. ASD PROCESSING OF SIMPLE TRANSFER REQUEST**

25. The objective of this section is to ensure standard processes between the GSP, LSP, and the ASD when processing Transfer Requests for a Simple Transfer and notifying other parties of Transfer Request completion.
26. This section H does not apply to Complex Transfers. The process for Complex Transfers is set out in section I.

27. Where the underlying network remains the same:
- 27.1 The GSP must provide to the ASD the necessary information to process the Transfer Request, as covered in Bilateral Agreements.
  - 27.2 The ASD has two (2) Business Days from the receipt of the Transfer Request to advise, in a verifiable format, the GSP that the ASD believes on reasonable grounds that there is an error with the Transfer Request. The ASD must provide a reason for the rejection as covered in Bilateral Agreements.
  - 27.3 The GSP can re-submit the Transfer Request to the ASD once the GSP believes the reason for the rejection is no longer applicable.
28. In the case of Inter-network Transfer:
- 28.1 The GSP must provide to the Gaining ASD (where the GSP is not the Gaining ASD) the necessary information to set up a new Customer on the ASD's network, as covered in Bilateral Agreements.
  - 28.2 The LSP must inform the Losing ASD (where the LSP is not the Losing ASD) of the Customer's Transfer away from the LSP and therefore from the Losing ASD, as covered in Bilateral Agreements.
  - 28.3 For the avoidance of doubt, where the GSP is the Gaining ASD and/or the LSP is the Losing ASD, then the requirements contained in clauses 28.1 and/or 28.2 are not required.

### **29. Notification to GSP**

Where the underlying network remains the same, the ASD (and in the case of Inter-network Transfer, the Gaining ASD) must advise the GSP, in a verifiable format, within one (1) Business Day of Transfer completion:

- 29.1 That the Transfer was successful;
- 29.2 The Effective Date of the Transfer; and,
- 29.3 If the ASD's wholesale customer is not the LSP, the wholesale customer shall be solely responsible for ensuring that the LSP receives notification that the Transfer was successful.

### **30. Notification to LSP**

30.1 Where the underlying network remains the same, the ASD will advise, in a verifiable format, the ASD's wholesale customer (which may or may not be the LSP) within one (1) Business Day of Transfer completion:

- 30.1.1 That the Transfer was successful;
- 30.1.2 Of the Effective Date of the Transfer; and
- 30.1.3 If the ASD's wholesale customer is not the LSP, the wholesale customer shall be solely responsible for ensuring that the LSP receives notification that the Transfer was successful.

30.2 In the case of Inter-network Transfer, the GSP will advise, in a verifiable format, the LSP within one (1) Business Day of the Transfer once it is confirmed as completed by the Gaining ASD:

- 30.2.1 That the Transfer was successful; and
- 30.2.2 Of the Effective Date of the Transfer.

## **31. Storage of Notifications**

All parties must keep the notifications sent and received in clauses 29 and 30 for twelve (12) months.

## **32. ASD Processing**

The ASD must process at least 90% of all valid Transfer Requests received per month (excluding Inter-network Transfers) within 10 Business Days from the date of receipt by the ASD of the Transfer Request. 90% of valid transfers shall be completed with 100% accuracy in accordance with the information provided to the ASD from the GSP (i.e. no more than 100 errors on 1000 transfers).

### **I. COMPLEX TRANSFERS**

33. The objective of this section is set out the specific arrangements to apply in relation to Complex Transfers. This section I does not apply to Simple Transfers.
34. Where the LSP advises the GSP pursuant to clause 18 that a Transfer is a Complex Transfer, the GSP and LSP must co-operate to the extent required to permit compliance with the Customer's requirements.
35. Complex Transfers require a specific project plan to be developed between the GSP, LSP and ASD when processing Transfer Requests.
36. The processes to apply for Complex Transfers:
  - a) between the LSP and the GSP when agreeing the validation request of Service(s) to perform a Complex Transfer; and
  - b) between the GSP, LSP and ASD when processing Transfer Requests for a Complex Transfer; and
  - c) to notifying other parties of Transfer Request Completion,

will give the Customer at least as much protection as applies within the Code in relation to Simple Transfers and will be set out in Bilateral Agreements.

37. The provisions in the Bilateral Agreements referred to in clauses 35 and 36 must enable the LSP's and GSP's compliance with clause 34 of this Code.

### **J. APPROPRIATE CUSTOMER CONTACT AND ACCESS TO AND USE OF INFORMATION**

38. The objective of this section is to facilitate best practice in terms of Service Provider etiquette and how Customer information is accessed and used.

## **39. Privacy and Use of Information**

- 39.1 Information relating to Customer Transfer will be kept confidential at all times by the parties to the Code except as set out in this clause or as required by law. Information provided as part of the Transfer process can

only be used or disclosed for the purpose of Customer Transfers, in association with the delivery of Telecommunications Services, and for Customer and network fault management and complaint handling. Information provided in the Transfer Process must not be used for any other purpose (including winback and marketing purposes).

39.2 A Service Provider or ASD, which receives any type of information relating to the Transfer of a Customer, may only use or disclose such information in accordance with Privacy Act 1993, the Telecommunications Information Privacy Code 2003, and any Bilateral Agreement in place between the parties.

39.3 If there is any inconsistency between this Code, the Privacy Act 1993, and the Telecommunications Information Privacy Code 2003, the Privacy Act and the Telecommunications Information Privacy Code prevail.

#### **40. Contact with the Customer**

40.1 No Party to this Code will undertake telemarketing, direct mail marketing, face to face marketing or other marketing activities specifically targeted at the relevant Customer where those activities are based on, and are in direct response to, the LSP receiving a Validation Request or the ASD receiving a Transfer Request.

40.2 The ASD may contact the Customer about any processing/technical issues but may not use this opportunity to attempt to win the Customer back or refer the Customer to any other personnel within the ASD that engages in retail sales activity.

40.3 For the avoidance of doubt nothing in clause 40.1 will prevent the LSP from undertaking marketing activities, which are based on or utilise retail billing or Customer information generated within the LSP.

40.4 For the avoidance of doubt, the GSP may contact the Customer at any time.

#### **41. Customer Initiated contact**

41.1 If the Customer contacts the GSP or the LSP, there are no restrictions on the Communication that either Service Provider can have with the Customer. However, if the Customer has a complaint, then the Service Provider must comply with the provisions of the Telecommunications Carriers' Forum Consumer Complaints Code.

41.2 If the Customer contacts the ASD about the Transfer, and the ASD is not the GSP, then the ASD must refer the Customer to the GSP.

#### **42. Conduct of Parties to this Code**

When interacting with any Customer:

42.1 All Parties and their representatives will act in a professional and courteous manner;

42.2 No Party may make any comment or statement about any other Party that would or may be likely to bring the other Party's reputation into disrepute, particularly where that Party does not know the complete facts to the situation (for instance when there has been an Invalid Transfer);

42.3 Parties must ensure that their representatives, if referring to another Party's Telecommunications Service(s):

- 42.3.1 Do not mislead Customers in any form or manner or engage in any conduct that is likely to mislead;
- 42.3.2 Refer only to comparisons that are relevant to the Transfer being made or attempted.

42.4 Parties must ensure that their representatives do not:

- 42.4.1 Harass or coerce a Customer; or
- 42.4.2 Engage in unconscionable conduct.

## **K. CUSTOMER BILLING**

- 43. The objective of this section is to achieve a seamless billing changeover for the Customer. Each Service Provider must provide the TCF with contact details for appropriate personnel in relation to requests relating to billing handover. The TCF shall maintain a contact list of these personnel on the TCF's website.
- 44. When the Transfer does not involve a change in network:
  - 44.1 The GSP should not commence billing the Customer until it receives the notification in accordance with clause 29 (in the case of Simple Transfers) and the notification set out in the Bilateral Agreement (in the case of Complex Transfers) with an Effective Date of Transfer from the ASD; and,
  - 44.2 The LSP should not stop billing the Customer until it receives the notification in accordance with clause 30 (in the case of Simple Transfers) and the notification set out in the Bilateral Agreement (in the case of Complex Transfers) with an Effective Date of Transfer from the ASD, unless the LSP's contract with the Customer deems otherwise.
- 45. In the case of Inter-network Transfer:
  - 45.1 The GSP should not commence billing the Customer until it has provided the notification in accordance with clause 30.2 (in the case of Simple Transfers) and the notification set out in the Bilateral Agreement (in the case of Complex Transfers) to the LSP; and,
  - 45.2 The LSP should not stop billing the Customer until it receives the notification in accordance with clause 30.2 (in the case of Simple Transfers) and the notification set out in the Bilateral Agreement (in the case of Complex Transfers) from the GSP unless the LSP's contract with the Customer deems otherwise.

## **L. FAULT REPORTING/RESOLUTION AT TIME OF TRANSFER**

- 46. The objective of this section is to ensure that the resolution of Customer faults around the time of Transfer is as smooth and efficient as possible:
  - 46.1 Service Providers must ensure that their fault personnel are aware of clause 42.
  - 46.2 Each Service Provider must provide the TCF with contact details for appropriate personnel in relation to faults and faults escalation. The TCF shall maintain a contact list of these personnel on the TCF's website.

#### 47. Fault resolution during Transfer

47.1 During the period that the Customer's service is being transferred to the GSP:

47.1.1 the LSP is responsible for any faults in relation to the Customer's Telecommunications Service until the Effective Date of Transfer. Both the LSP and GSP need to deal with all faults reporting and resolution procedures in their Customer contracts along with service level commitments.

47.1.2 If the Customer contacts the GSP, the GSP can either take the fault or refer the Customer to the LSP for resolution.

47.1.3 If the Customer contacts the LSP and:

40.1.3.1 The underlying network is not changing, the LSP must log the fault and attempt to resolve it; or,

40.1.3.2 The Customer is involved in an Inter-network Transfer and the fault occurs after the Effective Date of Transfer, the LSP must refer the Customer to the GSP for resolution.

#### 48. Fault resolution once Transfer is complete

48.1 Once the Transfer is complete (for the avoidance of doubt this is when a notification has been received by the GSP in accordance with clause 29 in the case of Simple Transfers or the Bilateral Agreement in the case of Complex Transfers:

48.1.1 the GSP will communicate with the Customer and provide relevant information on how to lodge a fault now that they have been transferred to the GSP; and,

48.1.2 The LSP may either:

48.1.2.1 provide the GSP with information on any outstanding faults in relation to the Customer; or

48.1.2.2 continue to resolve the fault adhering to clause 42.

#### M. ADDRESSING AND REVERSING INVALID TRANSFER

49. The objective of this section is to ensure that if a Customer's Telecommunications Service(s) are invalidly transferred between Service Providers that the situation is quickly rectified so that the Customer is not disadvantaged in any way.

50. Invalid Transfer occurs when:

50.1 There is a processing error (for example, the Telecommunications Services of a Customer are mistakenly Transferred); or

50.2 There is an invalid Customer Authorisation.

51. If the GSP is able to provide Customer Authorisation for the Transfer, then it is considered a valid Transfer for reporting and monitoring purposes.

#### 52. Identification of Invalid Transfer

52.1 Invalid Transfer can be identified at any stage of the Transfer process by any relevant Party, including:

52.1.1 Where the Customer highlights service issues that may substantiate an Invalid Transfer (e.g. they receive billing from a Service Provider other than their perceived Service Provider);

52.1.2 Where, upon receipt of a Validation Request, the current Service Provider (the potential LSP) has doubts based on reasonable grounds regarding its validity;

52.1.3 Where the GSP establishes that the Transfer is invalid after submission of the Transfer Request. This may include such scenarios as transferring some or all relevant Telecommunications Services incorrectly.

52.2 All parties must immediately raise the fact they may have detected an Invalid Transfer (regardless of their role, or even if they have no role, in the particular Transfer).

53. If the Customer contacts the GSP to which they have been Invalidly Transferred, or the ASD, the GSP or ASD must refer the Customer to the Service Provider that the Customer wishes to be with.

#### **N. MONITORING AND ENFORCEMENT OF TRANSFER CODE OBLIGATIONS**

54. Without limiting each Party's obligations under clause 16.3 and 31, parties to this Code must keep information they deem necessary to show their compliance with this Code, should it be required.

55. If a Service Provider or ASD does not meet the obligations contained in this Code, the Enforcement Agency may issue that Party with a written:

55.1 Caution Notice of Breach;

55.2 Warning Notice of Breach; or

55.3 Public Censure Notice.

56. The Enforcement Agency must consider the seriousness of the non-compliance of the Party, and the Party's past conduct with respect to compliance with the Code's obligations when making a determination whether to issue a notice under clause 55. The Enforcement Agency must first issue a Caution Notice of Breach and then a Warning Notice of Breach to the Party in relation to the particular breach in question before making a determination to issue a Public Censure Notice relating to the Party.

57. The Enforcement Agency will provide a copy of any Caution Notice of Breach, Warning Notice of Breach or Public Censure Notice issued to all Parties to the Code and, at the same time, to the Commerce Commission. Parties to the Code who receive a copy of a Caution Notice of Breach or Warning Notice of Breach shall keep such notice confidential.

#### **58. Caution Notice of Breach**

58.1 The written Caution Notice of Breach to the Party will include a request that one or more of the following actions be undertaken by that Party:

- 58.1.1 rectification of the breach;
- 58.1.2 specific corrective actions; and
- 58.1.3 an internal review of the Party's state of compliance with the obligation.

58.2 The Caution Notice of Breach will specify a timetable within which the action is required to be completed, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the Party of receipt of the Caution Notice of Breach.

## **59. Warning Notice of Breach**

59.1 The written Warning Notice of Breach to a Party is a more severe version of the Caution Notice of Breach, and may be appropriate for situations where the Party has failed to undertake voluntarily the actions requested by the Caution Notice of Breach, within the timetable specified therein. The Warning Notice of Breach to the Party will include an order that one or more of the following actions be undertaken by the Party:

- 59.1.1 rectification of the breach;
- 59.1.2 specific corrective actions;
- 59.1.3 arrange for an independent audit of its compliance procedures in relation to the Code's obligations. The auditor must be approved by and report to the Enforcement Agency on compliance with the Code's obligations. The Party will be required to implement recommendations of the audit; and
- 59.1.4 that the Party conduct relevant education of its relevant staff to address knowledge inadequacies that may have led to the breach.

59.2 The Warning Notice of Breach will nominate a timetable within which the action is required to be completed, and the steps needed to be taken by the Party to address the action required by the Warning Notice of Breach, with duration dependent upon the nature and complexity of the action. The Enforcement Agency will also seek confirmation from the Party of receipt of the notice.

## **60. Public Censure Notice**

61. In the event of a refusal or failure on the part of the Party to undertake to the Enforcement Agency's satisfaction any actions required by a Warning Notice of Breach within the timetable specified therein, the Party will promptly be formally advised by the Enforcement Agency that a Public Censure Notice is to be prepared for widespread publication. The Party will be sent an advance copy of the intended Public Censure Notice, which will:

- 61.1 identify the Party by name;
- 61.2 give details of the breach;

- 61.3 list all requests/orders previously made of the Party;
  - 61.4 report on whether an independent audit has been ordered and, if so, state the results of the audit;
  - 61.5 state that at the date of publication, the requests of the Caution Notice(s) of Breach and the orders of the Warning Notice(s) of Breach have not been complied with;
  - 61.6 specify a final timetable by which any corrective action must be completed by the Party.
62. The Party will also be advised that publication of the Public Censure Notice will not occur until a specified time period has elapsed from the date the advance copy of the public censure notice is sent, (the period of time is at the discretion of the Enforcement Agency). If the Enforcement Agency is fully satisfied that the Party has fully complied as ordered prior to the date the Public Censure Notice is due to be published, then the Public Censure Notice shall not be published.
63. If the Public Censure Notice is proceeded with, it will be published in the New Zealand Gazette, the TCF's newsletter, and at the Enforcement Agency's discretion, may be published in any relevant industry newsletter or magazine, in the national newspapers or in Consumer bulletins.
64. If the audit report states that the Party has complied with the Code then:
- 64.1 if the audit was undertaken due to a request from another Service Provider and/or ASD, then the Audit Costs will be payable to the Enforcement Agency by that other Service Provider or ASD and, upon receipt of payment of that sum, the Enforcement Agency will reimburse the Party its costs;
  - 64.2 if the audit was undertaken otherwise than due to a request of a Service Provider or ASD, the Service Provider shall bear its own costs and the costs of the Enforcement Agency shall be reimbursed to it by the party that initiated the audit; or
65. If the audit report states that the Party has not complied with the Code has not complied with the Code then the Audit Costs will be payable by that Party.
66. For the purposes of clauses 64 and 65, "Audit Costs" means the aggregate of:
- 66.1 Enforcement Agency reasonable direct costs in respect of the audit (including auditing and legal fees); and
  - 66.2 such costs of the audited Party in respect of time involved in assisting the audit as are submitted by the Party to the Enforcement Agency which the Enforcement Agency determines are fair and reasonable.
- 67. Section 61**
68. For the avoidance of doubt, the procedures set out in Sections (N) and (O) are additional to, and not exclusive of, any other rights a Party may have under the Telecommunications Act, at law or in equity and nothing in Sections (N) and (O) will prevent any Party from exercising its right to enforce compliance with the Code's in accordance with section 61 of the Telecommunications Act.

## **O. DISPUTE RESOLUTION**

69. The objective of this section is to detail the dispute resolution procedures should a dispute arise from anything in this Code.

### **70. Dispute**

For the purposes of these dispute resolution procedures, a "dispute" is any matter relating to this Code about which the Parties disagree or are unable to agree on and which:

- 70.1 Is substantially a dispute of fact of a technical nature (Technical Dispute), including a service level default, but is not a Complex Dispute as defined in subclause 70.2; or
- 70.2 Is a Complex Dispute that;
  - 70.2.1 may, in the opinion of a Party to the dispute and the Code have significant commercial implications for that Party; or
  - 70.2.2 includes a substantial issue of fact of a non-technical nature or a substantial issue of law.

If a dispute is not a Technical Dispute, then it is to be resolved as if it is a Complex Dispute.

### **71. Telecommunications Act 2001**

No Party to the Code is prevented by these dispute resolution procedures from exercising any rights under the Telecommunications Act including but not limited to:

- 71.1 Applications for determinations, price reviews, clarifications, reconsiderations to the Commerce Commission under Part 2 of the Telecommunications Act;
  - 71.2 Appeals against Commerce Commission determinations and proceedings for enforcement of Commerce Commission determinations to the High Court under subpart 5 of Part 2 of the Telecommunications Act; and
  - 71.3 Investigations by the Commission under subpart 6 of Part 2 and Schedule 3 of the Telecommunications Act.
72. If there is a dispute about the extent of a Party's rights under the Act, then that dispute may be resolved in accordance with the procedures in that Act and these procedures will not apply to such a dispute.
73. If a dispute has not been resolved by the end of the Negotiation Period as defined below (and, if applicable, the Mediation Period as defined below), a Party to the dispute may choose to resolve the dispute by pursuing any applicable rights under the Telecommunications Act or, in the alternative, by submitting a Technical Dispute for expert determination under clause 78 or by submitting a Complex Dispute for arbitration under clause 79.
74. Once a Party (the "Initiator"):
- 74.1 Has commenced a process under the Telecommunications Act; or

- 74.2 has submitted a dispute for expert determination or arbitration, then, subject to clause 80 below, the Initiator cannot commence an alternative process, unless the process that has been commenced is held by the decision maker of that process not to apply to the resolution of the dispute in question.
75. If the Initiator submits a dispute for expert determination or arbitration that will not preclude the other parties to the dispute from pursuing any rights they may have under the Telecommunications Act.

## **76. Good faith negotiation**

- 76.1 Any Party to the Code may at any time give notice describing a dispute to any other Party (or parties) to the Code who are involved in the dispute (a Relevant Party). The Party who gives notice of the dispute and the Relevant Parties are together referred to as the "parties to the dispute".
- 76.2 If a Party gives notice of a dispute, then during a negotiation period of 10 Business Days from the date when notice of the dispute is given (**Negotiation Period**), the authorised representatives of the parties to the dispute must attempt in good faith to negotiate a resolution of the dispute.
- 76.3 If the authorised representatives are unable to resolve the dispute within that 10 Business Day period, the parties to the dispute may agree to refer the dispute to their respective Chief Executives (or equivalent officer of his or her nominee), in the case of a Complex Dispute, or operational manager, in the case of a Technical Dispute, who must attempt in good faith to resolve the dispute within a further 10 Business Days. If the parties agree to this further negotiation period, then for the purposes of clause 76.4, and for clauses 71 to 75, and 77 to 79 (inclusive) the "Negotiation Period" includes this further 10 Business Day period.
- 76.4 If by the end of the Negotiation Period the parties to the dispute are unable to agree whether the dispute is a Technical Dispute or a Complex Dispute then, for the purpose of these dispute resolution procedures, the dispute shall be regarded as a Complex Dispute, and subject to clauses 61 to 65 (inclusive) resolved under these dispute resolution procedures as such.

## **77. Mediation**

At any time during the Negotiation Period, the parties to a dispute may agree to refer the dispute to mediation. The mediator will be appointed by agreement between the parties to the dispute, but failing agreement within five (5) Business Days of the parties agreeing to refer the dispute to mediation, will be selected by the Chairperson of LEADR (Leading Edge Alternative Dispute Resolvers) New Zealand Inc (or his or her nominee). Unless otherwise agreed in writing, the then current model mediation agreement issued by LEADR New Zealand Inc must be used and the mediation must be completed within 20 Business Days of the mediator's appointment (Mediation Period). The costs of the mediator will be paid by the parties to the dispute equally.

## **78. Determination of Technical Disputes by an independent expert**

- 78.1 If a Technical Dispute has not been resolved by the end of the Negotiation Period and, if applicable, the Mediation Period, a Party to the dispute may give written notice to the relevant parties requiring the dispute to be determined by an independent expert.
- 78.2 The independent expert will be appointed by agreement between the parties to the dispute, but failing agreement within 5 Business Days from the date the notice was given under this clause, will at the request of the Initiator be nominated by the Chairperson of the Board of the Telecommunications Carriers' Forum and approved by the Commerce Commission.
- 78.3 To be eligible for appointment, the expert must be independent and impartial, and must be experienced in telecommunications and will preferably be experienced in dispute resolution procedures. He or she must not have performed any duties, whether as an employee, consultant or contractor, for any of the Parties to the dispute or any related party during a 12 month period prior to the date the notice of the dispute was given.
- 78.4 The expert will act as an independent expert and not as an arbitrator. The dispute will be resolved as soon as possible in accordance with the guidelines determined by the expert, but in accordance with the principles of natural justice. Where the independent expert has primarily technical qualifications, he or she expert may seek independent legal advice regarding the appropriate procedures for resolution of the dispute.
- 78.5 The parties to the dispute agree to be bound by the decision of the independent expert, in the absence of manifest error. The costs of the independent expert (including the costs of any independent legal advice sought by the expert in accordance with these dispute resolution procedures) will be shared equally by the parties to the dispute. Reference to the independent expert will not be a submission to arbitration for the purposes of the Arbitration Act 1996 and that Act will not apply to or govern resolution of the dispute.

## **79. Arbitration of Complex Disputes**

If a Complex Dispute has not been resolved by the end of the Negotiation Period and, if applicable, the Mediation Period, a Party to the dispute may then give notice referring any part of the dispute to arbitration. The notice will, subject to clauses 71 to 75 (inclusive) be a submission by the parties to the dispute of the dispute to arbitration and each Party to the dispute agrees to confirm this submission if requested by any other Party to the dispute. Unless otherwise agreed in writing:

- 79.1 the arbitration will be subject to the Arbitration Act 1996 and its Schedules;
- 79.2 the arbitrator must have experience and expertise in telecommunications and competition issues;
- 79.3 the parties to the dispute must endeavour to appoint a single arbitrator within 10 Business Days of notice being given;

- 79.4 if the parties to the dispute fail to agree on a single arbitrator within the 10 Business Day period, then the President of the New Zealand Law Society (or his or her nominee) shall appoint the arbitrator at the request of any of the parties to the dispute;
- 79.5 the arbitrator must adopt a procedure which, in the arbitrator's opinion, is expeditious. If feasible in the circumstances the arbitrator will endeavour to complete the arbitration within two (2) months of the arbitrator's appointment (or such lesser period as is appropriate);
- 79.6 the arbitrator may determine the dispute without a hearing unless any Party gives notice requiring one, in which case the arbitrator must treat that as a material consideration in assessing costs;
- 79.7 the arbitrator must not adopt inquisitorial processes;
- 79.8 the arbitration must take place in Wellington or Auckland (at the arbitrator's discretion);
- 79.9 the arbitrator must determine the dispute under New Zealand law;
- 79.10 either Party may appeal to the High Court on any question of law arising from an award; and
- 79.11 the arbitrator may commission assistance or any reports from any expert or other person which, in his or her opinion, would assist him or her in making the award. The cost of this assistance or report is:
  - 79.11.1.1 to be a cost of the arbitration; and
  - 79.11.2 unless the arbitrator orders otherwise, to be shared equally between the parties to the dispute.
- 79.12 The arbitrator must:
  - 79.12.1 provide copies of any assistance or report to the parties to the dispute;
  - 79.12.2 allow each Party to make submissions in response to that assistance or support;
  - 79.12.3 allow each Party to produce evidence on any issue raised in that assistance or report; and
  - 79.12.4 allow each Party to make submissions in response to any evidence produced by any party.

## **80. Court proceedings**

Notwithstanding the above dispute resolution procedures, a Party to the Code may at any time commence court proceedings relating to any dispute if that Party seeks urgent interlocutory or interim relief. Otherwise, and except where a Party to the dispute chooses to pursue any rights it may have under the Telecommunications Act as contemplated by clauses 71 to 75 (inclusive), the dispute resolution procedures in this Code are mandatory and parties to the Code contemplate that they will not resort to court proceedings. If court proceedings other than court proceedings contemplated by clauses 71 to 75 (inclusive) are commenced, a relevant Party shall be entitled to seek a stay of court proceedings in favour of an appropriate dispute resolution procedure under this Code. All the provisions in this section (M) as to dispute resolution shall apply, irrespective of whether any Party to the determination of which they form part has filed the determination in the High Court as provided for in section 61 of the Telecommunications Act.

## **81. Continuance of obligations**

Except where the dispute renders it impossible to do so, the Parties to the dispute will continue performing their respective obligations under the Code while the dispute is being resolved or is subject to expert determination, arbitration or court proceedings or any Party pursuing its rights under the Telecommunications Act. Each Party to the Code must use all reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimum effect on the ability of any Party to perform its obligations under the Code.

## **82. Use or disclosure of information**

No Party to a dispute may use, other than to attempt to resolve the dispute, any information disclosed to them by any other Party to the dispute in the course of negotiation, expert determination, mediation or arbitration under the dispute resolution procedures. Any such information remains the property of the Party supplying it and remains confidential to that Party. Disclosure in the course of negotiation, expert determination, mediation or arbitration under the above procedures shall not constitute a waiver of confidentiality. Neither Party may disclose any such information to anyone other than an adviser or independent witness who has entered into a deed undertaking:

- 82.1 not to disclose any of the information, or any analysis of the information, other than to the Parties to the dispute, an independent expert, a mediator, an arbitrator or court, except as compelled by law; and
- 82.2 to return all material on which such information is recorded on completion of the adviser's or independent witness's services.

## **83. Bilateral Agreements**

The dispute resolution procedures set out in this section O apply to the extent that they are not inconsistent with the dispute resolution procedures in a Bilateral Agreement that incorporates this Code in full or in part for a dispute under the Bilateral Agreement relating to the subject matter of the Customer Transfer Code.

### **P. CUSTOMER COMPLAINTS**

- 84. Any complaints received from Customers regarding their experience while transferring between Service Providers shall be dealt with under the TCF Consumer Complaints Code for those Customers who are within the scope of that Code and the Customers contract with the GSP for all other Customers.

### **Q. EXPIRY, REVOCATION AND AMENDMENT OF THE CODE**

- 85. The expiry, revocation or amendment of this Code is subject to Clauses 11-15 of Schedule 2 of the Act. For the avoidance of doubt, and in accordance with the Telecommunications Carriers' Forum's Operating Procedures Manual, any Forum Member may put a Project Proposal to the Forum Board (at any time) for the amendment or revocation of the Code.

## Annex 1: LSP Rejection Codes

013	Name Mismatch	The Customer name provided is incorrect or does not significantly match the information in the LSP's records.
014	Invalid Account Number	The Customer Account Number provided is incorrect or does not significantly match the information in the LSP's record.
015	Invalid Unique Service Identifier	The Unique Service Identifier provided is incorrect or does not significantly match the information in the LSP's record.
020	Incomplete Information	The request does not contain all of the required information
021	Corrupt or unreadable	The request is wholly or partially corrupted or unreadable.