



Telecommunications Carriers' Forum

Code for Transfer of Telecommunications Services ("Customer Transfer Code")

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CONTENTS

| | |
|---|-----------|
| A. PURPOSE | 4 |
| B. DEFINED TERMS | 4 |
| C. OBJECTIVES AND SCOPE | 7 |
| 4. Objectives | 7 |
| 5. Telecommunications Services covered by this Code | 7 |
| 6. Exclusions from Scope | 8 |
| D. COMPLIANCE | 8 |
| 12. Notification of Default in Compliance | 8 |
| E. END CUSTOMER AUTHORISATION | 9 |
| 17. General Conduct | 9 |
| 18. Obtaining End Customer Authorisation | 9 |
| 19. Informed End Customer Authorisation | 10 |
| 20. End Customer Authorisation validity period | 10 |
| F. CATEGORY OF TRANSFER | 11 |
| G. VALIDATION BETWEEN RETAIL SERVICE PROVIDERS FOR SIMPLE TRANSFERS | 11 |
| 27. Validation Requests | 11 |
| 28. Rejection Advice | 12 |
| H. PROCESSING OF SIMPLE TRANSFER REQUESTS | 12 |
| 31. Gaining RSP to initiate Transfer Request within own Supply Chain | 12 |
| 32. Gaining VW or ASW to process Transfer Request where required | 12 |
| 33. Processing of the Transfer Request by the ANP | 13 |
| 34. Notifications to and from Gaining Parties | 13 |
| 35. Notifications to Losing Parties | 13 |
| 36. Storage of Notifications | 13 |
| I. COMPLEX TRANSFERS | 14 |
| J. APPROPRIATE END CUSTOMER CONTACT AND ACCESS TO AND USE OF INFORMATION | 14 |
| 43. Privacy and Use of Information | 14 |
| 44. Contact with the End Customer | 14 |
| 45. End Customer Initiated contact | 15 |
| 46. Conduct of Parties to this Code | 15 |
| K. COMMUNICATION BETWEEN SERVICE PROVIDERS | 15 |
| L. CUSTOMER BILLING | 16 |
| 52. No Change in ANP | 16 |
| 53. When the Transfer involves a change in ANP | 16 |
| M. FAULT REPORTING/RESOLUTION AT TIME OF TRANSFER | 17 |
| 55. Fault resolution during Transfer | 17 |

| | |
|--|-----------|
| 56. Fault resolution once Transfer is complete | 17 |
| N. ADDRESSING AND REVERSING INVALID TRANSFER | 17 |
| 60. Identification of Invalid Transfer | 18 |
| 62. Disputes regarding the allocation of costs incurred due to an Invalid Transfer | 18 |
| O. MONITORING AND ENFORCEMENT OF OBLIGATIONS UNDER THE CODE | 19 |
| 68. Caution notice of breach | 19 |
| 69. Warning notice of breach | 19 |
| 70. Public censure notice | 20 |
| 71. Section 61 of the Telecommunications Act | 21 |
| P. DISPUTE RESOLUTION | 21 |
| 73. Dispute..... | 21 |
| 74. Telecommunications Act 2001 | 21 |
| 79. Good faith negotiation..... | 22 |
| 80. Mediation | 22 |
| 81. Determination of Technical Disputes by an independent expert..... | 22 |
| 82. Arbitration of Complex Disputes | 23 |
| 83. Court proceedings..... | 24 |
| 84. Continuance of obligations | 24 |
| 85. Use or disclosure of information | 24 |
| Q. CUSTOMER COMPLAINTS | 24 |
| R. EXPIRY, REVOCATION AND AMENDMENT OF THE CODE | 24 |
| Annex 1: VW, ASW and ANP Rejection Codes | 26 |
| Annex 2 – Customer Transfer Process Overview..... | 27 |

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 6 (six) 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:

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| Access Network Provider (ANP) | means the Party to whose network an access line is directly connected and over which services are supplied. Note that an ANP may also be an Access Service Wholesaler and/or a Retail Service Provider. |
| Access Service Wholesaler (ASW) | means the Party who purchases access network services from the Access Network 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 two Telecommunication Service providers in respect of Telecommunication Services. |
| Billing Relationship | means a relationship where the Service Provider has a bona fide contractual right to charge the End 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, transmits 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. |
| Code | means this Customer Transfer Code. |
| Communication | can be oral, in writing, and via electronic means. |
| Complex Dispute | has the meaning ascribed in clause 73.2. |
| Complex Transfer | means a Transfer which Service Providers typically consider requires complex work to complete, such as in the case of multiple sites, multiple services and complex communications solutions, or a Transfer which the Gaining RSP and Losing RSP agree is to be treated as a Complex Transfer. |
| Compliance Contact | Means the Service Provider's designated person responsible for managing that Service Provider's compliance with this Code. |
| Customer | means a Service Provider who has a bona fide Billing Relationship with another Service Provider in respect of Telecommunication(s) Services. |
| Customer Account Name | means the name that is on the End Customer's bill. |
| Customer Account Number | means the unique reference number used by a Retail Service Provider for a |

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| | given End Customer, which should appear on all End Customer invoices. |
| Effective Date of the Transfer | means the point in time when an End Customer's Telecommunications Services are completely transferred to the Gaining RSP and the Gaining RSP is entitled to start billing the End Customer. |
| End Customer | means a Person who consumes Telecommunications Services from a Retail Service Provider and has a bona fide Billing Relationship with a Service Provider in respect of a Telecommunications Service(s). |
| End Customer Authorisation | means a valid authorisation for a Transfer by the End Customer or the End Customer's duly appointed agent that meets the requirements of section E of this Code. |
| Enforcement Agency | means a person(s) nominated by the TCF (as listed on the TCF website Contact Us page) and approved by the Commerce Commission, or if the TCF 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. |
| Gaining | means the Party to which the End Customer is moving to or has already moved its Telecommunication Service to, or that the provision of the Telecommunications Service has moved to (for example, 'Gaining ASW' and 'Gaining ANP'). |
| Internal Transfer | means a Transfer of the service between two End Customers where there is no change of Access Network Provider, Access Service Wholesaler, Virtual Wholesaler or Retail Service Provider. |
| Invalid Transfer | occurs when there is a processing error (for example, the incorrect Customer is Transferred) or when the requirements for a valid End Customer Authorisation as defined in clause 20 are not met. |
| Losing | means the Party from which the End Customer is moving or has already moved its Telecommunication Service and/or the Party from which the Telecommunications Service has moved from (for example, 'Losing ASW' and 'Losing ANP'). |
| 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 an End Customer of the first Carrier, where the call is dialled: <ul style="list-style-type: none"> • 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(s) | 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. |
| Retail Service Provider (RSP) | means any person providing a Telecommunication Service to an End Customer that has the Billing Relationship with the End Customer for that service. The same person may be both an ASW and a RSP; or both a VW and a RSP; or both an ANP and a RSP (except in the case of Telecom NZ Limited). |

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| Service Provider (SP) | means a party in the Supply Chain for an End Customers services. This may include any or all of the following: Gaining RSP, Gaining VW, Gaining ASW, Gaining ANP, Losing RSP, Losing VW, Losing ASW, Losing ANP. |
| Simple Transfer | means a Transfer which the Gaining RSP and the Losing RSP agree is to be treated as a Simple Transfer. |
| Supply Chain | means the individual Telecommunications Services and Service Providers that when configured together, provide an end to end Telecommunication Service to an End Customer. |
| Technical Dispute | has the meaning ascribed in clause 73.1. |
| Telecommunications Act (the 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. |
| Telecommunications Service(s) | means any goods, services, equipment, and facilities that enable or facilitate Telecommunication, where 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 |
| Transfer | means the transfer of all or part of an End Customer's Telecommunications Service(s) from one Retail Service Provider to another Retail Service Provider as authorised by the End Customer. |
| Transfer Request | means a request from a Gaining RSP to either a gaining VW, ASW or ANP, or from a Gaining ASW to an ANP to Transfer an End Customer's Telecommunications Service(s), submitted in accordance with the relevant Bilateral Agreements. |
| Unique Service Identifier (USI) | means a unique number to which Telecommunications Services are associated, as allocated by the ANP, ASW and/or RSP 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 Gaining RSP to the Losing RSP to validate an End Customer Authorisation. |
| Virtual Wholesaler (VW) | means a party who purchases services from an ASW (or another Virtual Wholesaler) for the purposes of selling to a RSP (or another VW). |

C. OBJECTIVES AND SCOPE

3. This Code governs the Transfer of an End Customer's Telecommunications Services between Retail Service Providers to ensure a seamless experience for all parties involved in the Transfer process. It sets out practices that Access Network Providers, Access Service Wholesalers, Virtual Wholesalers and Retail Service Providers must comply with whenever an End 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 an End Customer's Telecommunications Services between RSPs, where proper informed consent has been granted by the End Customer, so that the End Customer continues to receive high quality, uninterrupted service. This objective will be achieved by:

- 4.1 Outlining the necessary End Customer Authorisation and consent procedures to ensure an End 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 End Customer is in control of the process at all times;
- 4.5 Ensuring normal support from the Losing Retail 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 End 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 ANPs, ASWs, VWs and RSPs 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); and
- 5.3 Other designated access services or specified services determined by the Commerce Commission from time to time.

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. At the same time as this code was amended, the TCF was reviewing its compliance regime which applies across all TCF codes. If the TCF compliance regime is updated and changes are made, those changes could impact the compliance regime set out in this section of the Customer Transfer Code.
8. The Code is applicable to all RSPs, VWs, ASWs and ANPs 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.
9. All RSPs, VWs, ASWs and ANPs must Transfer End Customers' Telecommunications Services in accordance with this Code and any relevant legislation or Commerce Commission determinations.
10. Each RSP, VW, ASW and ANP must provide the TCF with contact telephone and email details of their Compliance Contact.
11. 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. In the event that a default does prevent other parties from complying with their obligations then the default of compliance outlined in Clause 12 below should be followed.

12. Notification of Default in Compliance

- 12.1 Where a Party has reason to believe that another Party is in default of any of its obligations under this Code then that Party should contact the defaulting Party's Compliance Contact in writing with the following details:
 - 12.1.1 Name and contact details of complainant;
 - 12.1.2 TCF Code which has been allegedly breached (in this case, the Customer Transfer Code);
 - 12.1.3 Which Code clauses were breached;
 - 12.1.4 Date(s) the breach/breaches occurred; and
 - 12.1.5 Any other relevant information (e.g. a request to sight the End Customer Authorisation consent as defined in clause 20.2)
- 12.2 The alleged defaulting Party must acknowledge the notification under clause 12.1 in writing and within three (3) Business Days of receiving the clause 12.1 communication provide a timeframe for when the non-compliance issue will be investigated.
- 12.3 If the issue of breach is not resolved to the satisfaction of either party then the non-compliance issue may be escalated to the Enforcement Agency. Refer to section O.

13. In the event of any inconsistency between this Code, any relevant legislation, any Bilateral Agreement and/or Commerce Commission determinations, such inconsistency will be resolved in the following (descending) order of precedence:
 - 13.1 Any legislation;
 - 13.2 Any enforceable undertakings given to the government under the Telecommunications Act;
 - 13.3 Commerce Commission Determinations;
 - 13.4 Any provision in a Bilateral Agreement relating to this Code that improves on the provisions in this Code for End Customers;
 - 13.5 This Customer Transfer Code;
 - 13.6 Insofar as it relates to customer transfers, 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);
14. This Code contains the minimum requirements regarding an End 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 15); or impact on the ability of other participants to interwork with parties to those arrangements in accordance with the minimum requirements.
15. 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. END CUSTOMER AUTHORISATION

16. The objective of this section is to, through a robust End Customer Authorisation process, provide a level of protection to End Customers against the unauthorised Transfer of services.

17. General Conduct

- 17.1 A RSP must ensure that its representatives:
 - 17.1.1 present the RSP's Telecommunications Service in a clear, truthful and honest manner without exaggeration;
 - 17.1.2 maintain strict confidentiality;
 - 17.1.3 obtain true informed consent for a service transfer; and
 - 17.1.4 are compliant with all aspects of the Code.
- 17.2 A RSP must ensure that its representatives do not:
 - 17.2.1 harass or coerce an End Customer;
 - 17.2.2 engage in unconscionable conduct;
 - 17.2.3 mislead or misrepresent the supplier's affiliation with any other suppliers;
 - 17.2.4 abuse the trust of vulnerable End Customer; or
 - 17.2.5 mislead End Customers in any form or manner.

18. Obtaining End Customer Authorisation

- 18.1 The Gaining RSP bears sole responsibility for ensuring that prior to commencing a Transfer it has a valid and complete End Customer Authorisation.

- 18.2 An End Customer Authorisation must contain, at a minimum, the following:
- 18.2.1 The End Customer's details, including name or business name, and contact name and the phone number of an authorised representative, where applicable;
 - 18.2.2 The Telecommunications Service(s) to be transferred;
 - 18.2.3 Acknowledgement from the person communicating that they are either the End Customer or the authorised representative and so entitled to request a Transfer in respect of the services referred to in the End Customer Authorisation;
 - 18.2.4 The End Customer's agreement to the Transfer to the Gaining RSP;
 - 18.2.5 The date of the End Customer Authorisation;
 - 18.2.6 The End Customer's acknowledgement that they have been informed by the Gaining RSP of, and accept the information set out in clause 19; and,
 - 18.2.7 Confirmation from the End Customer that the information provided by the End Customer to the Gaining RSP is true and correct.

19. Informed End Customer Authorisation

- 19.1 In the process of obtaining the End Customer Authorisation, a Gaining RSP must inform the End Customer:
- 19.1.1 That the End Customer is Transferring a Telecommunications Service(s) from their existing RSP to the Gaining RSP;
 - 19.1.2 That the End Customer might continue to have outstanding obligations to the Losing RSP and it is the End Customer's responsibility to check the terms and conditions of its existing contracts relating to the services being Transferred;
 - 19.1.3 Any terms and conditions, contractual obligations and the costs associated with the Transfer, and where the End Customer may find the full terms and conditions;
 - 19.1.4 That by Transferring the End Customer's Telecommunications Services:
 - a) The Telecommunications Service(s) associated with each USI transferred might be disconnected from the ANP, Losing ASW or Losing RSP and might result in finalisation of the End Customer's account for that service(s); and
 - b) There may be services that might not be able to be supported by the Gaining ANP, ASW or Gaining RSP (if applicable).
- 19.2 In the process of obtaining End Customer Authorisation, a Gaining RSP must not inform the End Customer that:
- 19.2.1 The Gaining RSP will cancel the End Customer's account and billing with the Losing RSP; and/or,
 - 19.2.2 The End Customer does not have to do anything.

20. End Customer Authorisation validity period

- 20.1 Unless agreed otherwise with an End Customer, to be valid, an End Customer Authorisation is effective only for one Transfer Request and the Transfer Request must be made within sixty (60) days of the date of the End Customer Authorisation.
- 20.2 A Losing RSP or End Customer may request a copy of the End Customer Authorisation, provided such request is made within twelve (12) months of the completion of the Transfer. The Gaining RSP must provide a copy of the relevant End Customer Authorisation to the requestor within five (5) Business Days, for the purpose of resolving an End Customer complaint.
- 20.3 The Gaining RSP must retain all End Customer Authorisations for a period that allows them to meet their obligations in 20.2.

F. CATEGORY OF TRANSFER

21. The objective of this section is to set out the need to classify the different types of Transfer as the processes differ.
22. The Gaining RSP must initially nominate a category to be used to Transfer an End Customer's Telecommunication Services. These categories are:
 - 22.1 Simple Transfer; or
 - 22.2 Complex Transfer.
23. There is no need for an extra formal notification from the Gaining RSP to the Losing RSP in the advent of a Simple Transfer, as it will be clear from the Validation Request sent as per clause 27.
24. If the Losing RSP disagrees with the category of the Transfer nominated, the Gaining RSP and Losing RSP will endeavour to resolve this disagreement in good faith. If the Gaining RSP and Losing RSP cannot resolve such disagreement within ten (10) days, that Transfer shall be treated as a Complex Transfer.

G. VALIDATION BETWEEN RETAIL SERVICE PROVIDERS FOR SIMPLE TRANSFERS

25. The objective of this section is to ensure standard processes between the Losing RSP and the Gaining RSP when agreeing the Validation Request of Telecommunications Service(s) to perform a Simple Transfer.
26. 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.

27. Validation Requests

- 27.1 The Gaining RSP must provide to the Losing RSP the following information in a Validation Request:
 - 27.1.1 The Losing RSP Unique Service Identifier;
 - 27.1.2 The Losing RSP End Customer Account Number;
 - 27.1.3 The full and correct Losing RSP End Customer Account Name; and
 - 27.1.4 The Telecommunication Service(s) to be transferred.
- 27.2 If the Losing RSP is also the ANP then the Validation Request can be combined with the Transfer Request provided to the ANP in section H below. For the avoidance of doubt clause 27.1 will not apply.
- 27.3 Upon receipt of a Validation Request, it is recommended that the Losing RSP within one (1) Business Day, check the information contained in the Validation Request and either respond to the Gaining RSP confirming the details are correct; or respond with a Rejection Advice¹ in accordance with clause 28.
- 27.4 Each Service Provider must provide the TCF with contact details for appropriate personnel, which may be a group or central email address, in relation to Validation Requests. The TCF shall maintain a contact list on the TCF's website at <http://www.tcf.org.nz/ctcontacts>.
- 27.5 In addition each Service Provider must also provide a generic, organisation group email address for the receipt of Validation Requests e.g. Customer.transfer@rsp.co.nz.

¹ It is the intention of the TCF to mandate that Losing RSPs check every Validation Request and respond with a 'accept' or 'rejection' advice in the next iteration of the Code. To support this, it is likely that an industry standard format for notifications and responses will also be mandated to enable Service Providers to automate processes where possible, should they wish to do so.

28. Rejection Advice

- 28.1 The Losing RSP has one (1) Business Day from the receipt of the Validation Request above to advise, in a verifiable format, the Gaining RSP that the Losing RSP believes, on reasonable grounds, that the Transfer would be an Invalid Transfer. The Losing RSP must, at the same time, provide all the reasons for the rejection as defined in Annex 1.
- 28.2 Upon receipt of a rejection of a Validation Request in accordance with clause 28.1, the Gaining RSP may follow up with the End Customer and submit another Validation Request to the Losing RSP as per clause 27.1.
- 28.3 Where the Losing RSP does not advise the Gaining RSP within one (1) Business Day that the Transfer would be Invalid, the Gaining RSP may send the Transfer Request to the next person in the Supply Chain (either; the Gaining VW, ASW, or ANP) as per the requirements in section H.

H. PROCESSING OF SIMPLE TRANSFER REQUESTS

- 29. The objective of this section is to ensure standard processes between the various Service Providers in the Supply Chain when processing Transfer Requests for a Simple Transfer and notifying other parties of Transfer Request completion.
- 30. This section H does not apply to Complex Transfers. The process for Complex Transfers is set out in section I.

31. Gaining RSP to initiate Transfer Request within own Supply Chain

- 31.1 The Gaining RSP must provide to the Gaining VW, ASW, or ANP (dependent on how the End Customer's Supply Chain is structured), the necessary information to process the Transfer Request, as covered in Bilateral Agreements.
- 31.2 If the information to initiate the Transfer Request is provided by the Gaining RSP directly to the Gaining ANP, and the Gaining ANP was not previously involved in the Supply Chain, the Gaining RSP must also provide to the Gaining ANP the necessary information to set up a new End Customer on the Gaining ANP's network, as covered in Bilateral Agreements, within one (1) Business Day.
- 31.3 The Party that has been provided the information in clause 31.1 (the Gaining VW, ASW or ANP) has two (2) Business Days from the receipt of the Transfer Request to advise, in a verifiable format, the Gaining RSP that they believe on reasonable grounds that there is an error with the Transfer Request. The rejecting party must provide a reason for the rejection as covered in Bilateral Agreements.
- 31.4 The Gaining RSP can re-submit the Transfer Request once the Gaining RSP believes the reason for the rejection is no longer applicable.

32. Gaining VW or ASW to process Transfer Request where required

- 32.1 If the information to initiate the Transfer in clause 31.1 above did not go directly to the ANP from the Gaining RSP, then the party that the Gaining RSP provided the information to (either the Gaining VW or the Gaining ASW, dependent on the parties present in the End Customer's Supply Chain), must provide to the next party in the Supply Chain (either the Gaining ASW or the Gaining ANP) the necessary information to process the Transfer Request, as covered in Bilateral Agreements.
- 32.2 The Party that has been provided the information in accordance with clause 32.1 (either the Gaining ASW or the Gaining ANP) has two (2) Business Days from the receipt of the Transfer Request to advise, in a verifiable format, that they believe on reasonable grounds that there is an error with the Transfer Request. A reason for the rejection as set out in Bilateral Agreements must be provided.

- 32.3 The Gaining VW or ASW can re-submit the Transfer Request once they believe the reason for the rejection is no longer applicable.

33. Processing of the Transfer Request by the ANP

- 33.1 If the information for the processing of the Transfer Request in accordance with clause 32.1 went to the Gaining ASW, then the Gaining ASW must provide to the ANP the necessary information to process the Transfer Request, as covered in Bilateral Agreements.
- 33.2 If the Gaining ANP was not previously involved in the Supply Chain, the Gaining ASW must also provide to the Gaining ANP the necessary information to set up a new End Customer on the Gaining ANP's network, as covered in Bilateral Agreements.
- 33.3 The ANP has two (2) Business Days from the receipt of the Transfer Request under clause 33.1 and/or 33.2 to advise, in a verifiable format, that they believe on reasonable grounds that there is an error with the Transfer Request. A reason for the rejection as set out in Bilateral Agreements must be provided.
- 33.4 For the avoidance of doubt, where the ASW remains the same, the ANP is not involved in the Transfer.
- 33.5 Where the Gaining ASW is the Gaining ANP and/or the Losing ASW is the Losing ANP, then the requirements contained in clauses 33.1 and/or 33.2 are not required.
- 33.6 If there is a change of ANP that includes porting of a telephone number LMNP regulation applies and is deemed out of scope as per clause 6.3 of this Code.

34. Notifications to and from Gaining Parties

- 34.1 Each Gaining Party in the End Customer's Supply Chain will be responsible for notifying their Customer upon Transfer completion within one (1) Business Day upon receipt of relevant information:
- 34.1.1 That the Transfer was successful; and
- 34.1.2 The Effective Date of the Transfer.
- For example, dependent on the parties involved in the End Customer's Supply Chain, the Gaining ANP will notify the Gaining ASW, the Gaining ASW will notify the Gaining VW, and the Gaining VW will notify the Gaining RSP.
- 34.2 Where the ASW remains the same, the ANP will not be involved in the Transfer and therefore will have no parties to notify; and where the VW stays the same, the ASW will have no parties to notify.

35. Notifications to Losing Parties

- 35.1 Each Losing Party in the End Customer's Supply Chain will be responsible for notifying the Party that they purchase the relevant services from (i.e. the next Party up the Supply Chain) upon Transfer completion within one (1) Business Day:
- 35.1.1 The Unique Service Identifier;
- 35.1.2 That the Transfer was successful; and
- 35.1.3 The Effective Date of the Transfer.
- For example, dependent on the parties involved in the End Customer's Supply Chain, the Losing RSP will notify the Losing VW, the Losing VW will notify the Losing ASW, and the Losing ASW will notify the ANP.
- 35.2 Where the ASW remains the same, the ANP will not be involved in the Transfer; and where the VW stays the same, the ASW will have no parties to notify.

36. Storage of Notifications

All parties must keep the Notifications sent and received in clauses 34 and 35 for twelve (12) months.

I. COMPLEX TRANSFERS

37. The objective of this section is to set out the specific arrangements to apply in relation to Complex Transfers. This section does not apply to Simple Transfers.
38. Where the Gaining RSP advises the Losing RSP pursuant to clause 22 that a Transfer is a Complex Transfer, the Gaining RSP and Losing RSP must co-operate to the extent required to permit compliance with the Customer's requirements.
39. Complex Transfers require a specific project plan to be developed between the Gaining RSP, Losing RSP and other parties in the Supply Chain when processing Transfer Requests.
40. The processes applied:
 - 40.1 between the Losing RSP and the Gaining RSP when agreeing the Validation Request of Service(s) to perform a Complex Transfer;
 - 40.2 between the Gaining RSP, Losing RSP and all other parties involved in the Supply Chain for that End Customer, as required, when processing Transfer Requests for a Complex Transfer; and
 - 40.3 when notifying other parties of the completion of the Complex Transfer Request;
will give the End Customer at least as much protection as applies to Simple Transfers under this Code and will be set out in Bilateral Agreements.
41. The provisions in the Bilateral Agreements referred to in clauses 39 and 40 must enable the Losing RSP's and Gaining RSP's compliance with clause 38 of this Code.

J. APPROPRIATE END CUSTOMER CONTACT AND ACCESS TO AND USE OF INFORMATION

42. The objective of this section is to facilitate best practice in terms of Retail Service Provider etiquette and how Customer information is accessed and used.
43. **Privacy and Use of Information**
 - 43.1 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 End Customer and network fault management and complaint handling. Information provided in the Transfer Process must not be used for any other purpose (including win-back and marketing purposes).
 - 43.2 Any Service Provider that receives any type of information relating to the Transfer of an End 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.
 - 43.3 Notwithstanding clause 13 of this Code, 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.
44. **Contact with the End Customer**
 - 44.1 No Party to this Code will undertake telemarketing, direct mail marketing, face to face marketing or other marketing activities specifically targeted at the relevant End Customer where those activities are based on, and are in direct response to, the Losing RSP receiving a Validation Request or the VW, ASW or ANP receiving a Transfer Request.

- 44.2 The ANP, ASW or VW may contact the End Customer about any processing/technical issues but may not use this opportunity to attempt to win the End Customer back or refer the End Customer to any other personnel within their organisation that engages in retail sales activity.
- 44.3 The Losing RSP may contact the End Customer if the Losing RSP becomes aware that the functions of the End Customer's current Telecommunications Service(s), or those Telecommunications Service(s) that remain with the Losing RSP following the Transfer, will fail if a Transfer proceeds, and only then to inform the End Customer of the functional implications of the Transfer. Contact with the End Customer is not intended to be misused by RSPs where they attempt specifically to prevent or delay a Transfer.
- 44.4 The Losing RSP may also contact the End Customer to confirm any outstanding obligations that that End Customer has to the Losing RSP under the terms and conditions of their existing contracts with the Losing RSP for the provision of the Telecommunications Service(s) being transferred, and only then to inform the End Customer of the commercial implications of the Transfer.
- 44.5 For the avoidance of doubt nothing in clause 44.1 will prevent the Losing RSP from undertaking marketing activities, which are based on or utilise retail billing or End Customer information generated within the Losing RSP.
- 44.6 For the avoidance of doubt, the Gaining RSP may contact the End Customer at any time.

45. End Customer Initiated contact

- 45.1 If the End Customer contacts the Gaining RSP or the Losing RSP, there are no restrictions on the communication that either RSP can have with the End Customer. However, if the End Customer has a complaint, then the RSP must comply with the provisions of the TCF Customer Complaints Code.
- 45.2 If the End Customer contacts the VW, ASW, or ANP about the Transfer, and if none of these parties is the Gaining RSP, then the End Customer must be referred back to the Gaining RSP.

46. Conduct of Parties to this Code

When interacting with any End Customer:

- 46.1 All Parties and their representatives will act in a professional and courteous manner;
- 46.2 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);
- 46.3 Parties must ensure that their representatives, if referring to another Party's Telecommunications Service(s):
 - 46.3.1 Do not mislead End Customers in any form or manner or engage in any conduct that is likely to mislead;
 - 46.3.2 Refer only to comparisons that are relevant to the Transfer being made or attempted.
- 46.4 Parties must ensure that their representatives do not:
 - 46.4.1 Harass or coerce an End Customer; or
 - 46.4.2 Engage in unconscionable conduct.

K. COMMUNICATION BETWEEN SERVICE PROVIDERS

- 47. For a Complex Customer Transfer, or where additional information is required beyond the information already supplied during the End Customer Authorisation process; the Gaining RSP can request assistance from the Losing RSP for any given Transfer.

48. Each RSP will have a published contact point as per the Transfer Notifications section (e.g. customer.transfer@serviceprovider.co.nz). Where email is used, the email should have a standardised subject line commencing with "Assistance Required".
49. The Losing RSP must respond within one (1) Business Day of the Communication being received, either with the requested information or by initiation of collaborative working as appropriate.
50. If the Losing RSP finds they are being asked to provide excessive assistance to a Gaining RSP, and have been unable to resolve the matter directly then they may use the Compliance procedures outlined in Section D.

L. CUSTOMER BILLING

51. The objective of this section is to achieve a seamless billing changeover for the End Customer for the Telecommunications Services that are being transferred. 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 at <http://www.tcf.org.nz/ctcontacts>.

52. No Change in ANP

- 52.1 When the Transfer does not involve a change in network:

- 52.1.1 The Gaining RSP should not commence billing the End Customer for the Transferred Telecommunications Services until it receives the notification in accordance with clause 34 (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 ASW; and,

- 52.1.2 The Losing RSP should not stop billing the End Customer for the Transferred Telecommunications Services until it receives the Notification in accordance with clause 35 (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 Gaining RSP, unless the Losing RSP's contract with the End Customer deems otherwise.

- 52.2 In the case where there is a change in ASW:

- 52.2.1 The Gaining RSP should not commence billing the End Customer for the Transferred Telecommunications Services until it receives the Notification in accordance with clause 34 (in the case of Simple Transfers) and the notification set out in the Bilateral Agreement (in the case of Complex Transfers) to the Losing RSP; and,

- 52.2.2 The Losing RSP should not stop billing the End Customer for the Transferred Telecommunications Services until it receives the Notification in accordance with clause 35 (in the case of Simple Transfers) and the notification set out in the Bilateral Agreement (in the case of Complex Transfers) from the Gaining RSP unless the Losing RSP's contract with the End Customer deems otherwise.

53. When the Transfer involves a change in ANP

- 53.1 The Gaining RSP should not commence billing the End Customer for the Transferred Telecommunications Services until it has received the Notification in accordance with clause 34; and,

- 53.2 The Losing RSP should not stop billing the End Customer for the Transferred Telecommunications Services until it receives the Notification in accordance with clause 35.

M. FAULT REPORTING/RESOLUTION AT TIME OF TRANSFER

54. The objective of this section is to ensure that the resolution of End Customer faults around the time of Transfer is as smooth and efficient as possible:

54.1 Service Providers must ensure that their fault personnel are aware of clause 46.

54.2 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.

55. Fault resolution during Transfer

55.1 During the period that the End Customer's service is being Transferred to the Gaining RSP:

55.1.1 the Losing RSP is responsible for coordinating any fault resolution in relation to the End Customer's Telecommunications Service until the Effective Date of the Transfer.

55.1.2 Both the Losing RSP and Gaining RSP need to deal with all faults reporting and resolution procedures in their End Customer contracts along with service level commitments.

55.1.3 After the Effective Date of the Transfer, then the Gaining RSP must log the fault and attempt to resolve it.

55.1.4 If the End Customer contacts the Losing RSP before the Effective Date of the Transfer and:

a) The ASW underlying network is not changing, the Losing RSP must log the fault and attempt to resolve it; and keep the Gaining RSP informed as to the progress being made on this fault; or,

b) The End Customer is involved in a Transfer where the ASW or ANP is changing and the fault occurs after the Effective Date of the Transfer, the Losing RSP must refer the End Customer to the Gaining RSP for resolution.

56. Fault resolution once Transfer is complete

56.1 Once the Transfer is complete (for the avoidance of doubt this is when a notification has been received by the Gaining RSP in accordance with clause 34 in the case of Simple Transfers or the Bilateral Agreement in the case of Complex Transfers):

56.1.1 the Gaining RSP will communicate with the End Customer and provide relevant information on how to lodge a fault now that they have been transferred to the Gaining RSP; and

56.1.2 the Losing RSP must provide upon request from the Gaining RSP information on any outstanding faults of relevance in relation to the End Customer to the Gaining RSP.

N. ADDRESSING AND REVERSING INVALID TRANSFER

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

58. Invalid Transfer occurs when:

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

58.2 There is an invalid End Customer Authorisation.

59. If the Gaining RSP is able to provide proof of End Customer Authorisation for the Transfer, then it is considered a valid Transfer for reporting and monitoring purposes.

60. Identification of Invalid Transfer

- 60.1 An invalid Transfer can be identified at any stage of the Transfer process where the Transfer is unable to be cancelled by any relevant Party, including scenarios where:
 - 60.1.1 The End Customer highlights service issues that may substantiate an Invalid Transfer (e.g. they receive billing from a RSP other than their perceived RSP);
 - 60.1.2 Upon receipt of a Validation Request, the current RSP (the potential Losing RSP) has doubts based on reasonable grounds regarding its validity;
 - 60.1.3 The Gaining RSP 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.
 - 60.2 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).
 - 60.3 If the Party is notified of the Invalid Transfer by the End Customer, the End Customer should be referred to the RSP the End Customer wishes to be with.
 - 60.4 If the Party that discovers the Invalid Transfer is the Gaining RSP, the Gaining RSP should advise the End Customer to contact the RSP the End Customer wishes to be with.
 - 60.5 Where the End Customer does not wish to manage the Invalid Transfer to another RSP the current RSP shall notify the End Customer's desired RSP (as per the Validation process in Section G) that the End Customer wishes to be with.
 - 60.6 If the Party that discovers the Invalid Transfer is the Losing RSP, the Losing RSP shall request a copy of a valid End Customer Authorisation from the Gaining RSP as per clause 20.2. If the Gaining RSP cannot produce the valid End Customer Authorisation, the Losing RSP must arrange for the transfer to be reversed as per Section N.
 - 60.7 If the Party that discovers the Invalid Transfer is the VW, ASW or ANP, it must notify the Gaining RSP, if known, otherwise it must notify the next party up the Supply Chain until the Gaining RSP is notified. The Gaining RSP must then take action as per Section M.
61. If the End Customer contacts the Gaining RSP to which they have been Invalidly Transferred, or the VW, ASW or ANP, the End Customer must be referred to the RSP that the End Customer wishes to be with.
- 61.1 If the End Customer decides to be with the Gaining RSP, the Gaining RSP should provide the Losing RSP with a copy of a valid End Customer Authorisation in line with Section E.
 - 61.2 If the End Customer decides to be with the Losing RSP, Transfer reversal must be initiated without delay.
 - 61.2.1 To facilitate the Transfer reversal, the Losing RSP should place a service order to retrieve the services back from the Gaining RSP. If the End Customer has not received the first bill from the Gaining RSP containing the required Validation Request information, the Losing RSP must enter the order supplying the unique identifier (number) and the account name as presented on the Losing RSP bill prior to transfer. The Losing RSP must be able to provide valid End Customer Authorisation to the Gaining RSP.
 - 61.2.2 If any of the Parties involved in the Transfer reversal does not comply, steps to enforce compliance should be taken in line with Section D.
 - 61.2.3 Where the End Customer does not wish to manage the Invalid Transfer to a RSP and the current RSP has been notified (as per clause 27.1) inclusion of the necessary Losing RSP details to facilitate the Transfer to the End Customer's desired RSP is required.

62. Disputes regarding the allocation of costs incurred due to an Invalid Transfer

- 62.1 Any dispute regarding the allocation of disconnection or reconnection costs incurred due to an Invalid Transfer should be referred:
 - 62.1.1 To the Telecommunications Dispute Resolution Service if the dispute is raised by the End Customer concerned, in accordance with the Customer Complaints Code.
 - 62.1.2 According to Section P if the dispute is raised by any Party to this Code.

O. MONITORING AND ENFORCEMENT OF OBLIGATIONS UNDER THE CODE

- 63. At the same time as this code was amended, the TCF was reviewing its compliance regime which applies across all TCF codes. If the TCF compliance regime is updated and changes are made, those changes could impact the compliance regime set out in this section of the Customer Transfer Code.
- 64. Without limiting each Party's obligations under clause 20.3 and 36, Parties to this Code must keep information they deem necessary to show their compliance with this Code, should it be required.
- 65. If any Party does not meet the obligations contained in this Code, the Enforcement Agency may issue that Party with a written:
 - 65.1 Caution notice of breach;
 - 65.2 Warning notice of breach; or
 - 65.3 Public censure notice.
- 66. 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 its obligations under the Code when making a determination whether to issue a notice under clause 65. 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.
- 67. 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.
- 68. Caution notice of breach**
 - 68.1 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:
 - 68.1.1 rectification of the breach;
 - 68.1.2 specific corrective actions; and
 - 68.1.3 an internal review of the Party's state of compliance with the obligation.
 - 68.2 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.
- 69. Warning notice of breach**
 - 69.1 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:

- 69.1.1 rectification of the breach;
 - 69.1.2 specific corrective actions;
 - 69.1.3 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 its obligations under the Code. The Party will be required to implement recommendations of the audit; and
 - 69.1.4 that the Party conduct relevant education of its relevant staff to address knowledge inadequacies that may have led to the breach.
- 69.2 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.

70. Public censure notice

- 70.1 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:
- 70.1.1 identify the Party by name;
 - 70.1.2 give details of the breach;
 - 70.1.3 list all requests/orders previously made of the Party;
 - 70.1.4 report on whether an independent audit has been ordered and, if so, state the results of the audit;
 - 70.1.5 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;
 - 70.1.6 specify a final timetable by which any corrective action must be completed by the Party.
- 70.2 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.
- 70.3 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.
- 70.4 If the audit report states that the Party has complied with the Code then:
- 70.4.1 if the audit was undertaken due to a request from another Party to this Code, then the Audit Costs will be payable to the Enforcement Agency by that other Party and, upon receipt of payment of that sum, the Enforcement Agency will reimburse the Party its costs;
 - 70.4.2 if the audit was undertaken otherwise than due to a request of a Party to this Code, 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
- 70.5 If the audit report states that the Party has not complied with the Code then the Audit Costs will be payable by that Party.

- 70.6 For the purposes of clauses 70.4 and 70.5, “Audit Costs” means the aggregate of:
- 70.6.1 Enforcement Agency reasonable direct costs in respect of the audit (including auditing and legal fees); and
 - 70.6.2 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.

71. Section 61 of the Telecommunications Act

For the avoidance of doubt, the procedures set out in Sections O and P 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 O and P will prevent any Party from exercising its right to enforce compliance with the Code in accordance with section 61 of the Telecommunications Act.

P. DISPUTE RESOLUTION

72. The objective of this section is to detail the dispute resolution procedures should a dispute pertaining to the subject matter of this Code arise between parties (“**Dispute**”).

73. Dispute

For the purposes of this Code, a Dispute is either:

- 73.1 A Technical Dispute – where there is a dispute of fact of a predominantly technical nature, including a service level default, but is not a Complex Dispute as defined in sub clause 73.2; or
- 73.2 A Complex Dispute where there is a dispute which;
 - 73.2.1 In the opinion of a Party to the dispute has significant commercial implications for that Party;
 - 73.2.2 Includes a material Dispute of fact of a non-technical nature or a dispute of law;
 - 73.2.3 relates to both technical and non-technical matters; or
 - 73.2.4 relates to any other non-technical matter.

74. Telecommunications Act 2001

The provisions of this Code do not prevent a Party from exercising any rights under the Telecommunications Act including but not limited to:

- 74.1 Applications for determinations, price reviews, clarifications, reconsiderations to the Commerce Commission under Part 2 of the Telecommunications Act;
 - 74.2 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
 - 74.3 Investigations by the Commission under subpart 6 of Part 2 and Schedule 3 of the Telecommunications Act.
75. If there is a dispute about the extent of a Party’s rights under the Telecommunications Act, then that dispute may be resolved in accordance with the procedures in that Act and the dispute resolution procedures set out in this Code will not apply to such a dispute.
76. If a Dispute has not been resolved by the end of the Negotiation Period as described in clause 79 (and, if applicable, the Mediation Period as described in clause 80 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 81 or by submitting a Complex Dispute for arbitration under clause 82.
77. Once a Party (the “Initiator”):

- 77.1 Has commenced a process under the Telecommunications Act; or
- 77.2 has submitted a Dispute for expert determination or arbitration as provided in this Code, then, subject to clause 83 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.
78. If the Initiator submits a Dispute for expert determination or arbitration other Parties to the Dispute are not prevented from pursuing any rights they may have under the Telecommunications Act.

79. Good faith negotiation

- 79.1 Party to this 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 “**Counter-Party**”). The Initiator and the Counter-Party/ies are together referred to as the “**Parties to the Dispute**”.
- 79.2 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.
- 79.3 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 ten (10) Business Days. If the Parties agree to this further negotiation period, then for the purposes of clause 79.4, and for clauses 74 to 78, and 80 to 82 (inclusive) the “**Negotiation Period**” includes this further ten (10) Business Day period.
- 79.4 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 74 to 78 resolved under these dispute resolution procedures as such.

80. 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 twenty (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.

81. Determination of Technical Disputes by an independent expert

- 81.1 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.
- 81.2 The independent expert will be appointed by agreement between the Parties to the Dispute, but failing agreement within five (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.
- 81.3 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.

- 81.4 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 may seek independent legal advice regarding the appropriate procedures for resolution of the Dispute.
- 81.5 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.

82. 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 74 to 78 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:

- 82.1 the arbitration will be subject to the Arbitration Act 1996 and its schedules;
- 82.2 the arbitrator must have experience and expertise in telecommunications and competition issues;
- 82.3 the Parties to the Dispute must endeavour to appoint a single arbitrator within ten (10) Business Days of notice being given;
- 82.4 if the Parties to the Dispute fail to agree on a single arbitrator within the ten (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;
- 82.5 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);
- 82.6 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;
- 82.7 the arbitrator must not adopt inquisitorial processes;
- 82.8 the arbitration must take place in Wellington or Auckland (at the arbitrator's discretion);
- 82.9 the arbitrator must determine the Dispute under New Zealand law;
- 82.10 either Party may appeal to the High Court on any question of law arising from an award; and
- 82.11 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:
- 82.11.1 to be a cost of the arbitration; and
- 82.11.2 unless the arbitrator orders otherwise, to be shared equally between the Parties to the Dispute.
- 82.11.3 The arbitrator must:
- a) provide copies of any assistance or report to the Parties to the Dispute;
 - b) allow each Party to make submissions in response to that assistance or support;
 - c) allow each Party to produce evidence on any issue raised in that assistance or report; and

- d) allow each Party to make submissions in response to any evidence produced by any Party.

83. 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 74 to 78, 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 74 to 78 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 P 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.

84. 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.

85. 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:

- 85.1 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
- 85.2 to return all material on which such information is recorded on completion of the adviser's or independent witness's services.

86. Bilateral Agreements

The dispute resolution procedures set out in this Section P 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 this Code.

Q. CUSTOMER COMPLAINTS

- 87. Any complaints received from End Customers regarding their experience while transferring between Retail Service Providers shall be dealt with under the TCF Customer Complaints Code for those Customers who are within the scope of that Code and the End Customer's contract with the Gaining RSP for all other End Customers.

R. EXPIRY, REVOCATION AND AMENDMENT OF THE CODE

- 88. The expiry, revocation or amendment of this Code is subject to Clauses 11 to 15 of Schedule 2 of the Act.

89. 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: VW, ASW and ANP Rejection Codes

| Reject Code | Description | Explanation |
|-------------|----------------------------------|--|
| 009 | Unable to direct supply | The transfer form requests the direct supply of a service that cannot be direct supplied by Provider/Wholesaler. |
| 010 | Wrong order type | The request has been provided using the wrong form. |
| 011 | Open Service Order | There is an existing open service order in relation to the relevant service/line/circuit. |
| 012 | Disconnection pending | A disconnection of the relevant service / line / circuit is pending |
| 013 | Name Mismatch | The End Customer name specified on the form is incorrect or does not match the information in Service Provider's records. |
| 014 | Invalid Account Number | The account information specified is incorrect or does not match the information in Provider/Wholesaler records. |
| 015 | Invalid line or address | The End Customer line number or address specified on the form is incorrect or does not match the information in Provider/Wholesaler records. |
| 017 | Unavailable segment or Zone | The Service requested for transfer/resale supply is not available in the applicable End Customer segment or zone |
| 018 | Not capable of providing service | There is insufficient network capacity or equipment/plant is temporarily unavailable |
| 020 | Incomplete information | The form does not contain all of the required information such as Supply Chain Information for End Customer. |
| 021 | Corrupt or unreadable | The form is wholly or partially corrupted or unreadable. |
| 023 | Other incorrect information | The form contains other information that is incorrect or that does not match the information in Provider/Wholesaler records |
| 033 | Already Assigned | The residential line requested for reassignment has already been reassigned to requesting service provider/wholesaler |
| 034 | Customer Cancellation | End Customer has advised that they no longer want to proceed with this request |
| 038 | Outside service area | Broadband service requested is outside of the current service area. |
| 039 | Bundled Service | The End Customer has a bundled service that cannot be broken |
| 041 | Wrong Service Type | Requested as a residential End Customer when it is business and vice versa |
| 043 | Number not compatible | Number provided is not the main service ID/phone number for the End Customer's line |
| 045 | Not Provider/Wholesaler Line | Customer has their voice access lines with another service provider |
| 048 | Incompatible Service | Customer has an existing service/feature that is incompatible with the Service/feature requested |
| 049 | No Broadband. | Broadband Transfer request but End Customer does not currently have Broadband. |
| 099 | Not otherwise specified | Rejection does not fit into specific codes above. |

Annex 2 – Customer Transfer Process Overview

TCF Customer Transfer Code - Process Overview Diagram for Simple Transfers

- Dashed lines show steps that may or may not occur, depending on the transfer scenario and parties involved in the supply chain.
- For simplicity, some accept/reject decision points may be excluded from this diagram.

