

Interim Memorandum of Understanding to establish UKPorting

1. INTRODUCTION

1.1 On 29 November 2007 Ofcom published its Concluding Statement: *Telephone number portability for consumers switching suppliers* ("**NP Statement**").

1.2 The NP Statement modified General Condition of Entitlement 18 ("**GC18**"). A consolidated revised version of GC18 is attached as Annex 1 (for information only). GC 18 imposes certain obligations on Communications Providers (as defined in the Communications Act 2003):

1.2.1 to use all reasonable endeavours to establish a common database ("**CDB**") ready to be populated with data, as soon as reasonably practicable and, in any event, no later than 31 December 2008;

1.2.2 the CDB to be populated with all ported mobile numbers as soon as reasonably practicable and, in any event, no later than 1 September 2009, and with all ported fixed numbers as soon as reasonably practicable and, in any event, no later than 31 December 2012;

1.2.3 all mobile providers to be required to directly route all calls to ported mobile numbers as soon as reasonably practicable and, in any event, no later than 1 September 2009;

1.2.4 all other calls to ported numbers (fixed and mobile) to be directly routed as soon as reasonably practicable and, in any event, no later than 31 December 2012; and

1.2.5 for mobile communications services, porting should be recipient-led and near-instant (less than 2 hours) as soon as reasonably practicable and, in any event, no later than 1 September 2009.

For the avoidance of doubt, if there is any inconsistency between the summary set out above and GC18, or between Annex 1 and GC18, the then current GC18 set by Ofcom shall take precedence.

1.3 The NP Statement did not mandate specific processes or procedures for implementation of the newly imposed obligations, with Ofcom instead leaving these to be agreed by industry. However, at paragraph 4.17 of the NP Statement Ofcom explained that it planned to appoint an independent project management team ("**PM Team**") to facilitate co-operation and agreement and that in its view the PM Team should be funded by industry:

4.17 Ofcom is of the view that, to achieve these deadlines, it is necessary for Ofcom to appoint an independent project management team, funded by communications providers, to ensure co-operation among the relevant parties, and to help reach agreement on a wide range of technical, commercial and governance issues. In addition, Ofcom will continue to work with industry working groups and individual communications providers to ensure that this is achieved.

4.18 Delivery of the outcomes specified in modified General Condition 18 will require the full and active support of all communications providers, including the timely allocation of commercial, technical and operational resources of communications providers and an efficient and effective internal decision-making process to enable Industry Agreements to be reached within the necessary timescales. Communications providers will be expected to appoint a Senior Business Executive to represent their company who is empowered to deliver their obligations under this Statement. Communications providers' appointees will be required to join an Executive Forum chaired by the independent project management team which will be responsible for end to end delivery of the number porting programme deliverables.

2. SCOPE

2.1 This interim memorandum of understanding ("**MoU**") sets out:

2.1.1 the governance arrangements for an independent unincorporated association of Communications Providers ("**UKPorting**") proposed as an interim association to facilitate compliance by its members ("**Members**") with their obligations under GC18 including the establishment of a CDB;

2.1.2 the rights and obligations of the Members with respect to each other and certain aspects of their relationship with the PM Team;

2.1.3 the scope of the terms of appointment by Ofcom of the PM Team ("**Terms**");

2.1.4 the arrangements for the budget and funding of UKPorting and the PM Team;
and

2.1.5 other matters necessary and incidental for the establishment of UKPorting.

2.2 Unless agreed otherwise by the Members, this MoU shall terminate on 30 June 2008. The Members, Ofcom and the PM Team anticipate that this MoU will be superseded on or before 30 June 2008 by new arrangements to take forward the work of UKPorting.

3. ESTABLISHING UKPORTING

3.1 Membership of UKPorting shall be open to any company that is a Communications Provider subject to GC18 by such Communications Provider executing a copy of this

MoU and sending to the PM Team (FAO: UKPorting, c/o Ofcom, 2a Southwark Bridge Road, London, SE1 9HA). Membership shall take effect from the date of receipt of the executed MoU by the PM Team.

- 3.2 UKPorting shall be established, pursuant to the terms of this MoU, once two or more Communications Providers have executed this MoU.
- 3.3 The objective of UKPorting shall be to discuss and agree a plan to ensure that appropriate systems and processes are in place so that its Members are able to comply with GC18. It is outside the scope of UKPorting to enter into any contractual or other commitment with any third party (e.g. the procurement of the CBD or employment of staff).
- 3.4 The Members agree to use their reasonable efforts to participate fully in the meetings and other processes of UKPorting with the aim of achieving industry-wide decisions that will enable compliance across the UK industry with GC18 including establishing the CDB. Without prejudice to any Member's confidentiality obligations, Members will at all times be open and honest in discussions. Each Member understands it has obligations to comply with all relevant laws (including competition law and electronic communications regulation).
- 3.5 Unless agreed otherwise, UKPorting shall cease when this MoU terminates provided however that any accrued rights and liabilities shall continue and may be transferred to any body which supersedes UK Porting in accordance with paragraph 2.2.
- 3.6 Membership of UKPorting shall be terminated on cessation of UKPorting.

4. UKPORTING GOVERNANCE

- 4.1 The Members agree that UKPorting shall establish an executive forum to steer its activities ("**UKPorting Executive**").
- 4.2 Members will be represented directly or indirectly on the UKPorting Executive as follows:
 - 4.2.1 Any Member whose percentage payment of the 2007/8 Ofcom administrative charge (set in accordance with Ofcom's 8 February 2005 *Statement of Charging Principles*) exceeds 0.25% is entitled to direct representation. Members entitled to direct representation shall appoint a senior business executive to represent their company (who they have empowered to deliver their obligations under the NP Statement) who shall be entitled to attend meetings of the UKPorting Executive.
 - 4.2.2 Any Member not entitled to direct representation is entitled to indirect representation through industry trade groups recognised for that purpose by Ofcom. Ofcom currently recognises FCS and ITSPA. Recognition of further

groups will require the consent of Ofcom. Each recognised Industry Trade Group shall appoint a nominated individual representative who shall be entitled to attend UKPorting Executive meetings.

- 4.3 A number of ex-officio representatives from related industry groups will be invited by the PM team (in consultation with Ofcom and the Members) to attend UKPorting Executive meetings. These industry groups are currently NICC, FNP Commercial Group and MNP OSG.
- 4.4 Individuals from Ofcom will attend UKPorting Executive meetings.
- 4.5 Ofcom shall appoint from time to time an individual from the PM Team to be the chair of the UKPorting Executive.
- 4.6 The UKPorting Executive shall establish appropriate processes, procedures, working groups and rules for its operation and for UKPorting to achieve its objective.
- 4.7 The Members will work together to agree an appropriate voting mechanism for the operation of UKPorting on or before 14 March 2008.
- 4.8 The chair (or his designate) shall take minutes of all meetings of the UKPorting Executive (such minutes shall include details of all decisions reached) and shall circulate such minutes as soon as reasonably practicable. Any meeting minutes approved at a meeting of the UKPorting Executive shall be conclusive as to the decisions reached.

5. **RIGHTS AND OBLIGATIONS**

- 5.1 Decisions of the UKPorting Executive documented in duly approved minutes shall bind the Members.
- 5.2 No Member (nor its representative) has any authority to bind, act as agent for, or enter into any liability on behalf of, any Member the PM Team or UKPorting.
- 5.3 No Member shall be liable to each other or to any third party, (whether in contract, tort, under statute or otherwise (including in each case negligence)) for any of the following types of loss or damage arising under or in relation to this MoU:
 - 5.3.1 any loss of profit, business, data, anticipated revenue or any loss or damage to goodwill or reputation (in each case whether direct or indirect);
 - 5.3.2 any indirect losses or damage whatsoever;
 - 5.3.3 any incidental or consequential loss or damage whatsoever; or
 - 5.3.4 any punitive or exemplary damages,

even if the relevant Member was advised in advance of the possibility of such loss or damage.

- 5.4 The PM Team has no authority to bind, act as agent of, or enter into any liability on behalf of, any Member or UKPorting.
- 5.5 Nothing in this MoU shall constitute or be deemed to constitute a partnership between all or any of the Members and/or between any of them and the PM Team.
- 5.6 UKPorting shall not, and each Member whether for or on behalf of UKPorting or otherwise shall not, contract (whether for supply, purchase, employment or otherwise) with any third party in connection with UKPorting or this MoU.
- 5.7 Nothing in this MoU will affect each Member's continuing responsibility and liability for the acts and omissions of its own employees.
- 5.8 Each Member hereby agrees not to take any action or bring any claim against all members of the PM Team (both individually and collectively) in respect of any claim, cost, liability or obligation arising directly or indirectly from the PM Team's performance or discharge of any duty, obligation, or other function by them in connection with UKPorting or this MoU.
- 5.9 The Members will discuss and (if required) develop and agree an appropriate policy to deal with intellectual property rights.

6. **APPOINTMENT OF PM TEAM**

- 6.1 The Members agree that Ofcom shall appoint or dismiss the PM Team on Terms which, in Ofcom's reasonable opinion are suitable and proper for the purpose and which shall include provisions dealing with the PM Team's:
 - 6.1.1 scope of authority;
 - 6.1.2 term of appointment and the circumstance where this may be ended;
 - 6.1.3 obligation to deliver specified services;
 - 6.1.4 obligation to use due care, skill and diligence in providing project management services;
 - 6.1.5 confidentiality obligations (including an obligation to keep information supplied by the Members in the context of UKPorting confidential);
 - 6.1.6 conflicts of interest;
 - 6.1.7 remuneration and expenses policy; and
 - 6.1.8 indemnification.

6.2 The PM Team is not a party to this MoU and the Members have no contractual right to enforce the Terms. If a Member wishes to complain about the PM Team they may do so at any time to Ofcom. Ofcom will then consider what action, if any, they feel it appropriate to take to address the complaint.

7. **BUDGET AND FUNDING**

7.1 The initial budget for UKPorting for 1 January 2008 to 30 June 2008 will be approved by Ofcom and provided to the Members ("**Initial Budget**"). The budget may be reviewed and updated from time to time by the UKPorting Executive. Any review which would result in a budget being set which is greater than 120% of the Initial Budget will need the agreement of the UKPorting Executive.

7.2 Ofcom will administer the bank account for UKPorting.

7.3 Directly represented Members shall pay a contribution to the Initial Budget pro-rata their relative proportion (as between such directly represented Members) of their self-certified relevant turnover submitted to Ofcom for setting administration charges (i.e. the directly represented Members shall jointly contribute 100% of the budget, with the size of their relative contribution being assessed pro-rata their self-certified relevant turnover).

7.4 The contribution referred to in paragraph 7.3 will be calculated based on those Communications Providers who are Members of UKPorting on 1 April 2008.

7.5 The PM Team shall be paid their remuneration and reimbursed their expenses in accordance with the Terms and as approved by Ofcom.

7.6 The PM Team (in consultation with Ofcom) shall provide the Members with a quarterly update on UKPorting's expenditure and performance against the budget.

7.7 Except as expressly provided in this MoU, each Member shall be responsible for the costs and expenses incurred by it in connection with and incidental to the preparation, negotiation and completion of this MoU and their ongoing participation in UKPorting and / or its successor arrangements.

8. **WORKING GROUPS**

8.1 The UKPorting Executive may create one or more working groups to address specific issues or topics relevant to UKPorting.

8.2 Working groups will be open to all Members and Ofcom. Where agreed by the UKPorting Executive, potential suppliers invited by the UKPorting Executive may attend and contribute to working groups. The PM Team will be responsible for appointing an independent chair from the PM Team (unless otherwise agreed by the UKPorting Executive) for each working group.

- 8.3 The working groups shall be accountable to and report to the UKPorting Executive.
- 8.4 The working groups shall be responsible for the creation of documentation ("**Documentation**") for the agreed purposes of UKPorting, based on the information provided by the Members at the relevant working group. Each Member hereby grants to Ofcom and the other Members a non-exclusive, irrevocable, royalty-free licence (with a right to sub-license) to copy, use, modify and/or incorporate into other works all or part of such Documentation created by it (or its employees) in any working group, the UKPorting Executive or UKPorting for the purpose of achieving the objectives of UKPorting. Each member shall do such things and execute such documents as may be required to fulfil this obligation. No Member makes any warranty as to the ownership or utility of any intellectual property licensed by it pursuant to this paragraph.
- 8.5 Upon completion of a working group activity, the results will be submitted by the chair of the relevant working group to the UKPorting Executive. Upon completion of the review of such results, and subject to the UKPorting Executive reaching agreement as to the proposal or outcome in such report, the PM Team will publish them as industry agreed UKPorting output documents on the UKPorting website.

9. **CONFIDENTIALITY**

- 9.1 All communications, information and other materials disclosed by any Member pursuant to this MoU shall be kept confidential by each other Member.

10. **OTHER TERMS**

- 10.1 If all or any part of any provision of this MoU shall be or become illegal, invalid or unenforceable in any respect, then the remainder of that provision and all other provisions of this MoU shall remain valid and enforceable and the remaining liabilities of the Members under this MoU shall not be affected or impaired.
- 10.2 The terms of this MoU are without prejudice to, and should not be considered to set any binding precedent for, the terms of any successor arrangements to be agreed by Members.
- 10.3 This MoU may be executed in any number of counterparts, and by the Members on separate counterparts. Each counterpart shall constitute an original of this MoU, but all the counterparts shall together constitute one and the same instrument.
- 10.4 Subject to paragraph 10.5 and 10.6 below, the PM Team may rely upon and enforce the terms of paragraph 5.8 against the Members.
- 10.5 The third party rights referred to in paragraph 10.4 may only be enforced by the PM Team subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 (the "**1999 Act**") and all other relevant terms of this MoU.

- 10.6 Notwithstanding any other provision of this MoU, the Members may by unanimous agreement in writing rescind or vary any of the provisions in this MoU in any way without the consent of the PM Team, and accordingly section 2(l) of the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 10.7 Except as provided in paragraph 10.4, a person who is not a party to this MoU has no right under the 1999 Act to rely upon or enforce any term of this MoU but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.8 This MOU shall be governed by and construed in accordance with English law and the Members submit to the exclusive jurisdiction of the English courts always provided that UKPorting will escalate unresolved regulatory or competition issues to Ofcom for resolution.

SIGNED by [●], Director, duly authorised)

for and on behalf of [[●] LIMITED/PLC:)

Annex 1 – Revised General Condition 18

18. NUMBER PORTABILITY

18.1 The Communications Provider shall provide Number Portability as soon as it is reasonably practicable on reasonable terms, including charges, to any of its Subscribers who so requests.

18.2 The Communications Provider shall, pursuant to a request from another Communications Provider, provide Portability (other than Paging Portability) as soon as is reasonably practicable in relation to that request on reasonable terms. In the case of Mobile Portability, where the request is for porting a total of less than 25 Telephone Numbers, the total period for providing Portability in respect of those Telephone Numbers shall not exceed two **business days**¹. Any charges for the provision of such Portability shall be made in accordance with the following principles:

(a) subject always to the requirement of reasonableness, charges shall be cost oriented and based on the incremental costs of providing Portability unless:

(i) the Donor Provider and the Recipient Provider have agreed another basis for the charges, or

(ii) the Director has directed that another basis for charges should be used;

(b) the Donor Provider shall make no charge in relation to System Set-Up Costs or Additional Conveyance Costs;

(c) in respect of Mobile Portability, the Donor Provider shall make no charge or annual fee for ongoing costs relating to registration of a ported Telephone Number or a Subscriber;

(d) charges levied by the Donor Provider shall be based on the reasonable costs incurred by it in providing Portability with respect to each Telephone Number.

18.3 Where the Communications Provider provides Portability in accordance with paragraph 18.2:

(a) the Recipient Provider; and

¹ As from 1 September 2009, the words “two business days” in Condition 18.2 shall be deleted and replaced with the words “two hours”.

(b) the Transit Provider, shall, as appropriate, provide Portability (other than Paging Portability) on reasonable terms.

- 18.4 The Communications Provider shall:
- (i) use all reasonable endeavours to establish a Common Database as soon as reasonably practicable and, in any event, by 31 December 2008 and to maintain it thereafter. In establishing a Common Database, Communications Providers shall take full account of the obligations contained in Conditions 18.2 and 18.6 insofar as those obligations relate to Mobile Portability and shall comply with such obligations in relation to the establishment of the Common Database as Ofcom may from time to time direct;
 - (ii) as soon as reasonably practicable and, in any event, by 1 September 2009, Communications providing Mobile Communications Services shall populate the Common Database referred to at (i) above; and
 - (iii) as soon as reasonably practicable and, in any event, by 31 December 2012 all Communications Providers shall populate the Common Database referred to at (i) above.
- 18.5 As from the Relevant Date, all Originating Communications Providers shall ensure, to the greatest extent possible, that all Electronic Communications originated by them are routed to the Terminating Communications Provider in a manner independent of the Donor Provider. Where an Originating Communication Provider purchases transit services to route Electronic Communications, the provider of those transit services is not to be considered as a Donor Provider for the purposes of this paragraph.
- 18.6 As soon as reasonably practicable and, in any event, by 1 September 2009, where a Communications Provider receives a request for Mobile Portability from another Communications Provider in accordance with Condition 18.2, it shall not require the Subscriber to make contact with the Donor Provider before providing Mobile Portability.
- 18.7 The Communications Provider shall, on the written request of the Director, provide the Director with a record of each Telephone Number in relation to which it is providing Portability, specifying the relevant Recipient Provider in each case.
- 18.8 For the purposes of this Condition:

(a) “Additional Conveyance Costs” mean any costs incurred by the Donor Provider associated with resources used in:

(i) effecting the switch-processing required to set up each ported call; and

(ii) providing the switch and transmission capacity for any part of the duration of each ported call, additional to the costs of conveyance of non-ported calls from the Donor Provider’s network to the Recipient Provider’s network;

(b) “Communications Provider” means a person who provides an Electronic Communications Network or an Electronic Communications Service;

(c) “Donor Provider” means a Communications Provider whose Subscriber Numbers are in the process of being, or have been passed or ported to a Recipient Provider;

(d) “Mobile Communications Service” means any Publicly Available Telephone Service consisting in the conveyance of Signals by means of a Public Telephone Network where every Signal that has been conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a Public Telephone Network which is designed or adapted to be capable of being used in motion;

(e) “Mobile Portability” means Portability relating to Telephone Numbers Allocated for use with Mobile Communications Services;

(f) “Number Portability” means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network, independently of the person providing the service at the Network Termination Point of a Subscriber provided that such retention of a Telephone Number is in accordance with the National Telephone Numbering Plan;

(g) “Paging Portability” means Portability relating to Telephone Numbers Allocated for use with Radiopaging Services;

(h) “Point of Connection” means a point at which one Public Telephone Network is connected to another;

(i) “Portability” means any facility which may be provided by a Communications Provider to another enabling any Subscriber who requests Number Portability to continue to be provided with any

Publicly Available Telephone Service by reference to the same Telephone Number irrespective of the identity of the person providing such a service;

(j) "Publicly Available Telephone Service":

(a) in relation to a service to be used with a Telephone Number for receiving calls only under the contract between the person and the provider in question, means a Public Electronic Communications Service for only receiving national and international telephone calls through a number or numbers in a national or international telephone numbering plan;

(b) in relation to a service to be used with a Telephone Number for originating and receiving calls and access to Emergency Organisations under the contract between the person and the provider in question, has the meaning ascribed to it under paragraph 1 of Part 1 of this Schedule;

(k) "Radiopaging Service" means Electronic Communications Services consisting in the conveyance of Signals by means of Wireless Telegraphy where every Signal, apart from simple acknowledgement, is ultimately transmitted from a station for Wireless Telegraphy comprised in the Communications Provider's Electronic Communications Network to a station for Wireless Telegraphy or Wireless Telegraphy Apparatus that is not comprised in that network;

(l) "Recipient Provider" means a Communications Provider to whom Subscriber Number(s) are in the process of being, or have been passed or ported from a Donor Provider;

(m) "Subscriber" means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such services in the United Kingdom;

(n) "Subscriber Number" means the Telephone Number (or Telephone Numbers) which any Communications Provider's Public Telephone Network recognises as relating to a particular Subscriber of that Communications Provider;

(o) "System Set-Up Costs" mean costs of the Donor Provider incurred—

(i) in the course of making network and system modifications, configuration and reconfiguration, including adapting or replacing software;

(ii) in the course of testing functionality within that provider's network and in conjunction with any Recipient Provider's network,

(iii) thereby establishing the technical and administrative capability to provide Portability;

(p) "Transit Provider" means a Communications Provider providing, by agreement, Interconnection between a Donor Provider and Recipient Provider via Points of Connection with both Communications Providers;

(q) "Common Database" means information storage system(s) that can be interrogated electronically by each Communications Provider and containing, in relation to Telephone Numbers which have been the subject of Portability, up to date and complete information required to route any Electronic Communication originating from a Communications Provider in the United Kingdom to such Telephone Number in a manner not dependent on the intervention in real-time of the Donor Provider, and capable of allowing the Provision of Mobile Portability within a period of two hours in such a manner that a Subscriber is not required to make contact with the Donor Provider before Mobile Portability is provided;

(r) "Originating Communications Provider" means a Communications Provider on whose network an Electronic Communication originates;

(s) "Relevant Date" means:

(i) in the case of Electronic Communications originated by a Mobile Communications Service and terminated by a Mobile Communications Service, as soon as reasonably practicable and, in any event, by 1 September 2009; and

(ii) in the case of all other Electronic Communications, as soon as reasonably practicable and, in any event, by 31 December 2012.

(t) “Terminating Communications Provider” means a Communications Provider on whose network an Electronic Communication terminates.