

***Standard  
For Electronic Transactions  
(the “Standard”)***

Appointed pursuant to subsections 29(3) and 29(5) of the Electronic Transactions Act 1999 (the “ETA”)

1. Preamble

This Standard has been established to protect the reputation of Bermuda as an international business centre. It is the desire of the Minister, and of the representatives of industry contemplated by Section 29(3) of the Act (“Industry”), that those undertaking e-commerce businesses connected with Bermuda should so conduct themselves as to preserve the good name of Bermuda.

In particular, intermediaries and e-commerce service providers should note that they are subject to the Criminal Code Act 1907, the Proceeds of Crime Act 1997, the Human Rights Act 1981 and the Obscene Publications Act 1973, all as amended from time to time (the “Acts”). Accordingly, it is the desire of Industry to conduct themselves, and to the best of their ability see that their customers conduct themselves, with regard to both the spirit and the letter of the Acts.

In consequence of the foregoing, the Minister has promulgated certain Standards contemplated by subsection 29(5) which are embodied in this Standard, and which have been further provided for in consultation with Industry as set out below.

The essence of the responsibility of those intermediaries and e-commerce service providers governed by this Standard is to know their customers, to render service which is consistent with Bermuda’s reputation and the Acts, and to enable themselves to intervene where necessary to protect the reputation of Bermuda.

The Minister's powers of censure under subsection 29(2) will be exercised having regard to the degree of compliance with this Standard as set out in the "Safe Harbour" guidelines below.

2. Definitions

Unless otherwise specifically defined in this Standard, all expressions used in the Standard bear the same meanings as they are given in the ETA.

3. Application of the Standard

(A) This Standard only applies to intermediaries and e-commerce service providers who are carrying on a trade or business or conducting commercial transactions or services in or from within Bermuda, or which are identified with Bermuda for the purposes of the ETA, whose transactions or services either themselves take place electronically or which assist others to do so, or which relate to business carried out electronically.

(B) This Standard comes into effect on the 3 July 2000.

4. The Bermuda E-commerce Standards

(A) Pursuant to subsection 29(5), the Minister has established the following minimum standards for intermediaries and e-commerce service providers:

- (i) **Observe Business Integrity**, accordingly do not conduct as principals any activity prohibited by the Tenth Schedule to the Companies Act 1981; or which contravenes the Obscene Publication Act, the Criminal Code Act 1907, the Proceeds of Crime Act 1988 or the Human Rights Act 1981 ("undesirable activities").
- (ii) **Know Your Customer**, and accordingly do not knowingly aid or abet any undesirable activities.
- (iii) **Know Your Own Business**, and accordingly inform yourself and exercise good judgement so as

not knowingly to render any service in respect of any electronic record or information which contravenes paragraphs (i) and (ii) or which ought reasonably to be considered as likely to contravene or already to have contravened the Acts.

- (iv) ***Protect Personal Data***, and accordingly respect the privacy, accuracy and security of personal information in accordance with the ETA.
- (v) ***Avoid Abusive Usage***, and accordingly do not send bulk unsolicited emails, seek unauthorized access to other peoples' systems or seek to interrupt other people's use of electronic communications, or enable others to do so.

(B) In addition to the matters set out in (A) above the Minister has established the following further standards for e-commerce service providers:

- (i) ***Advertise Truthfully***, and accordingly do not mislead customers as to the nature, quality or purposes of goods or services sold through your business.
- (ii) ***Deal Fairly and Openly with Customers***, and accordingly trade and settle with your customers in an honest transparent manner which has regard to this Standard, the Acts, the Sale of Goods Act 1978, and the reputation of Bermuda as an international business centre.
- (iii) ***Settle Complaints and Disputes Quickly and Fairly***, and accordingly establish convenient methods of receiving and dealing with complaints and for the swift, convenient and fair settlement of disputes.

## 5. Business Procedures to Be Observed

Intermediaries and e-commerce service providers shall make every reasonable effort to introduce and maintain systems, procedures and practices which achieve material realisation of this Standard.

It is recognised that the same business may be conducting activities in two different capacities, either as an intermediary or as an e-commerce service provider. Accordingly, such business should establish such systems, procedures and practices as are appropriate to the particular capacity in which it operates in a particular instance.

Where an intermediary or an e-commerce service provider has actual knowledge of any matter or conduct which falls below the standard required by this Standard, the intermediary or e-commerce service provider must take action forthwith to remedy or terminate the matters or relationship giving rise to the non-compliance with this Standard. If in doubt, the intermediary or e-commerce service provider can apply to the Minister for direction pursuant to the ETA.

#### 6. Consequences of Non-Compliance

The consequences of non-compliance with this Standard are set out in section 29(2) of the ETA, which enables the Minister to give warnings, require compliance or recommend that prosecutions be instituted.

It is implicit in subsection 29(2) that the Minister is the arbiter in the first instance of whether there has been non-compliance with this Standard and accordingly the Minister shall have regard to any relevant circumstance which goes to such determination.

#### 7. The Safe Harbour Guidelines

Although the Minister shall have regard to all the circumstances of a case in making a determination under subsection 29(2) as to whether there has been non-compliance with the Standard and accordingly a breach of this Standard, an intermediary or e-commerce service provider shall, in the absence of any special circumstances, be deemed to have observed the Standard and accordingly to be in compliance with this Standard, if such intermediary or e-commerce service provider's systems,

procedures and practices are substantially in accordance with the following guidelines:-

(A) The Maintenance of Effective Monitoring Systems

Make reasonable efforts to ensure as far as practicable that electronic records handled by the business do not include information that contravenes or is reasonably likely to contravene the Acts.

(B) The Establishment of Effective Contracts

Establish commercial terms and conditions with customers which contain a condition to the effect that the sending of bulk, unsolicited electronic records to persons with which such customer has no relationship (either contractual or personal) or to persons who have not otherwise consented to receive such records, is not permitted through the services of such intermediary or e-commerce service provider.

Include terms and conditions in any agreement with customers which prohibit undesirable activities from being carried out by the customer, pursuant to or in connection with the agreement, and which includes a condition that would lead to the termination of any such agreement where the customer is found to be engaging in undesirable activities.

Incorporate the substance of this Standard into their commercial terms and conditions with customers.

(C) Institute Effective “Know Your Customer” Practices

Establish information sufficient to satisfy such intermediary or e-commerce service provider that, having regard to the nature of the services provided, it knows who its customer is and what it is the customer proposes to do in or from within, or otherwise in connection with, Bermuda so that such intermediary or e-commerce service provider does not knowingly aid or abet any

undesirable activities. Except as provided by the Proceeds of Crime Act 1997, this guideline does not extend to requiring the intermediary or e-commerce service provider to check the customer's electronic records to confirm this information.

(D) Establish Systems to Protect Privacy

This clause 7(D) does not apply to the extent it is inconsistent with any more onerous obligations of confidentiality of personal data or business records as required by the Acts, any other law, equity, code of practice or under Part VI of the Electronic Transactions Act 1999.

If an intermediary or e-commerce service provider does not intend to observe the principles in relation to personal data set out below, that intermediary or e-commerce service provider must notify that fact to its customers or other persons from whom it collects personal data or business records.

- (i) Intermediaries and e-commerce service providers should collect personal data of customers only:
  - (a) if relevant for the provision of goods, services or information as agreed with the customer; or
  - (b) as otherwise disclosed to the customer prior to collection of such information.
- (ii) Intermediaries and e-commerce service providers should use personal data and business records of customers only for:
  - (a) internal marketing, billing or other purposes necessary for the provision of services;
  - (b) purposes made known to the customer prior to the time the personal data or business records are collected; or

(c) other purposes with the prior consent of the customer,

and should endeavour to ensure that the personal data or business records:

(d) are accurate, and if necessary, kept up to date;

(e) if inaccurate, are erased or rectified; and

(f) are erased when no longer reasonably required.

(iii) Intermediaries and e-commerce service providers should endeavour to:

(a) ensure the confidentiality of personal data and business records of customers;

(b) prevent the sale or transfer of the personal data and business records of customers other than as part of the sale of the intermediaries' or e-commerce service providers' business; and

(c) prevent the examination of or tampering with personal data or business records other than for the purposes of maintenance or security of the relevant information processing system or data integrity.

(iv) This guideline does not prohibit disclosure of personal information or business records:

(a) with the express or implied consent of the person to whom such personal data or business records relates;

(b) or as required by law.

Intermediaries and e-commerce service providers may not sell or transfer personal data or business records of customers to

another person for the purpose of sending bulk, unsolicited electronic records.

(E) Establish Practices to Avoid Abusive Usage

Intermediaries and e-commerce service providers should refrain from sending bulk, unsolicited electronic records to persons with whom they do not have a relationship (either contractual or personal) or to persons who have not otherwise consented to receive such records.

Intermediaries should establish reasonable practices to prevent their services being used for the sending of such bulk, unsolicited electronic records and should endeavour to cease providing services to persons who engage in such conduct.

(F) Establish Complaints and Disputes Systems

E-commerce service providers should establish procedures to:

- (i) notify their customers of procedures to raise complaints about the services provided by them; and
- (ii) answer, in a speedy and decisive manner, any complaints raised by customers.

E-commerce service providers should provide a specific contact address to receive complaints.

E-commerce service providers should provide alternative dispute resolution procedures for disputes arising between themselves and customers, meaning mechanisms pursuant to the Arbitration Act 1986 or the Bermuda International Conciliation and Arbitration Act 1993 as appropriate, should be considered.

E-commerce service providers should encourage the resolution of disputes by electronic means.

(G) Establish Business Practices which are Transparent

E-commerce service providers shall disclose the following information on any web site that is generally accessible by the public:

- (i) the trading name and any other name reasonably necessary to identify the e-commerce service provider;
- (ii) the email and mailing address for contact with the e-commerce service provider; and
- (iii) a statement that they are obliged to comply with this Standard.

(H) Establish Systems to Avoid Misleading Statements or Omissions

In addition to any sanction under the criminal or civil law, e-commerce service providers should establish practices and review procedures to ensure that they do not mislead or deceive customers in:

- (i) advertising goods or services through electronic means; or
- (ii) completing transactions through electronic means.

The Minister of Telecommunications and E-Commerce, in exercise of the powers conferred on her by section 29(5) of the Electronic Transaction Act 1999, hereby appoints the Standard for Electronic Transactions published in the Official Gazette as Government Notice No.309 dated May 5, 2000.

Dated this 18<sup>th</sup> day of May 2000.

Renee Webb

Minister of Telecommunications and E-Commerce