

Schedule 1

Framework for the Voluntary Implementation of the Customer Complaint Settlement Scheme (“CCSS”)

Preamble

This document details a framework for the voluntary implementation of the CCSS by the telecommunications industry. The framework sets out the roles and responsibilities of participating parties, the scope of the CCSS as well as the acceptance criteria for handling of Complaints under the CCSS.

1 Interpretation

1.1 In this framework, unless the context otherwise requires:

- (a) a reference to an ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) paragraphs, clauses and headings are for ease of reference only and will not affect the interpretation of this framework; and
- (c) words in singular include the plural and vice versa.

1.2 Reference to mediation in this framework shall be construed with reference to the provisions in the Mediation Ordinance (Cap. 620). In the event of inconsistency the Mediation Ordinance shall prevail.

2 Definition

2.1 In this framework, unless the context otherwise requires:

“**Bill**” means an invoice or a service statement issued by a CCSS Member through any means demanding payment pursuant to a Contract from a Customer on or before a specified date;

“**Billing Dispute**” means a dispute when a Customer disagrees with the charge(s) shown on a Bill, as elaborated in paragraph 5 below;

“**CAHK**” means the Communications Association of Hong Kong;

“**CCSS**” means the Customer Complaint Settlement Scheme;

“**CCSS Agent**” means the agency set up to manage and operate the CCSS. Under the MoU, the CCSS Agent is set up by CAHK;

“**CCSS Member**” means a telecommunications service provider that participates in the CCSS for handling Complaints;

“**Complaint**” means any form of expressions of disputing charge(s) shown on a Bill from a Customer with respect to matter within the scope of the CCSS as described in paragraph 5 below;

“**Consumer Education**” means the dissemination of information to the public on the operation of the CCSS, findings from handling of Complaints under the CCSS as well as relevant matters of consumer interest;

“**Contract**” means a contract between a CCSS Member and a Customer in relation to the provision of one or more telecommunications services, which may or may not include pay television service provided to the Customer. For the avoidance of doubt, if the CCSS Member provides telecommunications service and pay television service separately, the telecommunications service billing dispute will fall within the scope of the CCSS, while pay television service billing dispute will be excluded from the CCSS. If the CCSS Member offers bundled services, the billing dispute for the pay television service will be excluded from the scope of the CCSS provided that the billing of the telecommunications service and pay television service can be clearly separated. However, the billing dispute for the bundled services will fall within the scope of the CCSS if the billing for telecommunications service and pay television service cannot be separated;

“**Customer**” means a living individual who acquires a telecommunications service from a CCSS Member for personal and/or residential use (and not for

commercial use) where the service terms are based on a contract with the CCSS Member. For the avoidance of doubt, a service will be deemed to be acquired for commercial use if the service is subscribed under the name of a company/business/partnership or if the service is to be provisioned at a non-residential premise;

“**Deadlock**” means a situation either (i) where a CCSS Member notifies a Customer that it could not settle the Complaint with the Customer, or (ii) where more than 6 weeks has passed since a Customer first complained to a CCSS Member via the Designated Channel(s) and the Customer considers that it is not possible to settle the Complaint with the CCSS Member;

“**Designated Channel(s)**” means the channel(s) designated by a CCSS Member to receive and record Complaints raised by Customers;

“**Mediation**” means a structured process comprising one or more telephone calls, emails, meetings and/or other forms of communications in which one or more impartial Mediators, without adjudicating a dispute or any aspect of it, assist the parties in dispute to do any or all of the following:

- (a) identify the issues in dispute;
- (b) explore and generate options;
- (c) communicate with one another; and
- (d) reach a Settlement Agreement regarding the resolution of the whole, or part, of the dispute;

“**Mediation Communication**” means anything said or done, any document prepared, or any information provided for the purpose of or in the course of Mediation but does not include the agreement to mediate, the Settlement Agreement and any documents or information existed prior to the commencement of Mediation¹, unless the parties agree otherwise;

“**Mediator**” means an impartial employee or representative of CCSS Agent

¹ For the avoidance of doubt, any document or information which existed prior to the commencement of Mediation (e.g. when the Complaint is submitted to OFCA by the Customer under the CCSS) shall not fall within the meaning of “Mediation Communication”. However, if any document or information which existed prior to the commencement of Mediation was held by a party only and was provided to the other party for the purpose of or in the course of Mediation, such document or information shall be regarded as “Mediation Communication”.

whose role is to impartially consider requests for Mediation from Customers and/or CCSS Members, conduct the Mediation and prepare the Settlement Agreement as required;

“**MoU**” means the Memorandum of Understanding entered between CAHK and OFCA on 30 April 2015, and all subsequent amendments, concerning:

- (a) the structure and governance of CCSS Agent;
- (b) the roles and responsibilities of OFCA, CAHK, CCSS Agent and CCSS Members with regard to the CCSS; and
- (c) the conditions for the financial contribution and other support, as the case may be, to be provided by OFCA in relation to the operation of the CCSS by CAHK;

“**OFCA**” means the Office of the Communications Authority;

“**Referral Number**” means a number allocated by a CCSS Member which identifies the Customer’s Complaint;

“**Settlement Agreement**” means a contractual agreement between a Customer and a CCSS Member by which both parties agree to a resolution of the whole, or part, of the Billing Dispute after the Mediation. Once the Settlement Agreement is duly signed by the parties, it may be enforced in court as a valid contract governed by ordinary principles of contract law;

“**Small Claims Tribunal**” means the Small Claims Tribunal established by section 3 of the Small Claims Tribunal Ordinance (Cap. 338); and

“**TO**” means the Telecommunications Ordinance (Cap. 106).

3 General

- 3.1 Information about the CCSS is published at the CAHK’s website at <http://www.cahk.hk> and OFCA’s website at <http://www.ofca.gov.hk>.
- 3.2 CAHK and OFCA may, in consultation with CCSS Members, publish information in relation to the participation in the CCSS and update the published information on a regular basis.

3.3 CAHK, in consultation with CCSS Members and OFCA, will review the CCSS periodically.

4 Roles and Responsibilities

OFCA

4.1 OFCA will sponsor the operation of the CCSS through the necessary support and funding in accordance with the MoU.

4.2 OFCA will:

- (a) screen the Complaints for acceptance of handling under the CCSS;
- (b) act as an interface between Customers and CCSS Members in the Complaints prior to Mediation;
- (c) handle the Complaints in accordance with the Operating Procedure for Handling Complaints under the CCSS set out in Schedule 3 of the MoU;
- (d) contact the Customer, the CCSS Member and the Mediator to schedule Mediation; and
- (e) refer the Complaints to CCSS Agent for further handling in accordance with the Operating Procedure for Handling Complaints under the CCSS set out in Schedule 3 of the MoU.

4.3 OFCA in association with CAHK and CCSS Agent will carry out Consumer Education.

CAHK

4.4 CAHK will supervise and support the operation of CCSS Agent and CAHK's roles and responsibilities include the following:

- (a) recruiting and managing the human resources for CCSS Agent;

- (b) providing office space and overhead support for the smooth operation of the CCSS;
- (c) supervising the daily operation of CCSS Agent to ensure that it carries out its functions for the effective operation of the CCSS;
- (d) compiling the relevant statistics of the CCSS and, subject to the terms of the MoU, providing them to OFCA upon request;
- (e) providing all the necessary support for Consumer Education and handling of Complaints under the CCSS; and
- (f) ensuring the proper use of any funding provided by OFCA.

CCSS Agent

4.5 The roles and responsibilities of CCSS Agent include:

- (a) acting as an interface between Customers and CCSS Members in the Complaints referred by OFCA;
- (b) managing CCSS membership;
- (c) recruiting and maintaining a team of Mediators and providing relevant training and support to them for effective handling of the Complaints;
- (d) handling the Complaints in accordance with the Operating Procedure for Handling Complaints under the CCSS set out in Schedule 3 of the MoU;
- (e) maintaining a website for the CCSS with appropriate explanatory materials for the CCSS;
- (f) keeping records of all Complaints handled for a period of not less than seven years;
- (g) collecting service fees from Customers and CCSS Members;

- (h) keeping a proper financial record in respect of the operation of the CCSS;
- (i) collecting feedback from Customers and CCSS Members at the completion of each Mediation;
- (j) providing all necessary support for Consumer Education and handling of Complaints under the CCSS;
- (k) keeping confidentiality of Complaints in accordance with paragraph 7 of the Operating Procedure for Handling Complaints under the CCSS set out in Schedule 3 of the MoU; and
- (l) observing and complying with any supplementary guidelines on the CCSS as issued by OFCA from time to time.

4.6 The Mediators appointed by CCSS Agent should be independent from and impartial to CCSS Members and Customers and equipped with adequate industry knowledge and mediation skills for effective conduct of Mediation. Appointment of Mediators should be subject to the prior approval of OFCA and CCSS Members to ensure their independence and competence.

CCSS Members

4.7 CCSS Members shall:

- (a) handle Complaints in accordance with this framework and the Operating Procedure for Handling Complaints under the CCSS set out in Schedule 3 of the MoU; and
- (b) provide the necessary information and support to OFCA and CCSS Agent for the smooth operation of the CCSS,

failing which CCSS Agent may at its discretion suspend membership of the concerned CCSS Member.

5 Scope of the CCSS

5.1 The scope of the CCSS covers Billing Disputes between Customers and CCSS Members.

5.2 Billing Dispute arises when a Customer disagrees with the amount shown on the Bill. Some examples of Billing Disputes are given below. These examples are for illustration only and are by no means exhaustive.

- (a) *A charge for something that is not subscribed to or consumed.* The Customer claims that the service charged on the Bill is not subscribed to (if the service is charged on a subscription basis) or consumed (if the service is charged on a consumption basis). In other cases, the Customer has consumed the service but claims that the consumption level was not the same as stated in the Bill.
- (b) *A charge that is not properly identified on the Bill.* The Customer claims that the Bill is not clear and understandable. In some cases, the Customer claims that there is a lack of information on a billed item.
- (c) *A charge for an amount that is different from the charge specified under the Contract.* The Customer claims that the amount charged on the Bill is different from the charge stated in or calculated in accordance with the Contract. In some cases, the disputes arise from different interpretation of charging scheme and calculation method.
- (d) *A charge entered on a date different from the service commencement or consumption date.* The Customer claims that the charge on the Bill is entered on a date different from the service commencement/consumption date.
- (e) *A charge for something that is not accepted on delivery.* The Customer claims that he/she has not accepted the product/service alleged to be delivered to him/her but the charge is imposed on the Bill.
- (f) *A Bill with an error in the arithmetic.* The Customer claims that the charge on the Bill has arithmetical error(s).

- (g) *A Bill failing to show a payment, rebate, or other credit to the Customer's account.* The Customer claims that he/she has made the payment or is entitled to a rebate or other credits but they are not properly reflected on the Bill.
- (h) *A Bill in which customers are charged for more than once for the same item.* The Customer claims that he/she is charged for more than once for the same item (excluding monthly charges which are charged repeatedly every month).

5.3 The CCSS will not cover the following cases:

- (a) if it relates to the quality of service, such as low speeds or lack of coverage;
- (b) if the dispute amount is less than HK\$300 in value;
- (c) if it relates to a non-CCSS Member;
- (d) if OFCA considers that it is frivolous or vexatious;
- (e) if it is a request for information;
- (f) if it is a previous case already handled by the CCSS or a previous case rejected for handling under the CCSS in which there is no relevant new information to support the case;
- (g) if it is being or already handled by the judiciary, including the Small Claims Tribunal;
- (h) if the Customer has previously accepted, and been provided with by the CCSS Member, an agreed resolution to the specific event or events;
- (i) if it relates to the level of charge that has been explicitly stated in the Contract (including but not limited to service charges, early termination charges, any charges imposed for lost or damaged equipment or failure to return equipment on termination of the contract);

- (j) if it relates to the method of debt collection that the CCSS Member chooses to adopt;
- (k) if it relates to equipment and/or applications the Customer uses but not supported by the CCSS Member;
- (l) if it relates to non-compliance of the TO, code of practice (“CoP”), guidelines or directions issued under the TO or relevant licence conditions²; and
- (m) if OFCA considers that it is not appropriate to handle the case due to resource limitation or other reasons.

6 Acceptance Criteria for Complaint Handling under the CCSS

6.1 A Complaint will be accepted for handling under the CCSS when the following criteria are met:

- (a) it relates to matters that fall within the scope of the CCSS as stated in paragraph 5 above;
- (b) it has reached a Deadlock as defined in paragraph 2 above;
- (c) it is submitted to OFCA by the Customer for screening of acceptance under the CCSS within (i) 4 weeks from notification by the CCSS Member to the Customer in respect of the Deadlock or (ii) 3 months from the first lodging of the Complaint to the CCSS Member through the Designated Channel(s), whichever is applicable; and
- (d) it is raised by the Customer to the CCSS Member within 18 months from the time when the specific event that triggered the Complaint occurred.

² From time to time, different regulatory tools, including guidelines, directions, HKCA specifications or CoPs, are deployed to govern certain conduct of the licensees. Some regulatory tools are mandatory and all licensees are bound to follow. Licensees who do not comply with the mandatory guidelines, directions and CoPs may be found to be in breach of the TO and/or licence conditions. On the other hand, some regulatory tools like CoPs are voluntary in nature and for self compliance by the service providers. Under the CCSS, if the major issue of the Complaint is on the non-compliance of any regulatory tools, mandatory or voluntary in nature, the dispute will be handled under the respective enforcement of the regulatory tools rather than by the CCSS.