

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 scope of the CCSS, the roles and responsibilities of participating parties as well as the principles 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 services provided to the Customer. For the avoidance of doubt, if the CCSS Member provides telecommunications service and pay television service separately, the telecommunications services billing disputes will fall within the scope of the CCSS, while pay television services billing disputes are excluded from the CCSS. If the CCSS Member offers bundled services, the billing disputes for the pay television services will be excluded from the scope of the CCSS provided that the billing of the telecommunications and pay television services can be clearly separated. However, the billing disputes for the bundled services will fall within the scope of the CCSS if the

billing for telecommunications services and TV services 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 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

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”.

“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 Complaints for handling under the CCSS will be referred to CCSS Agent through OFCA which will screen the Complaints for acceptance of handling under the CCSS.
- 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 CCSS Agent 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 in respect of providing the Mediation;

- (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 10 below; 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 CCSS Agent set out in Schedule 3 of the MoU; and
- (b) provide the necessary information and support to 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 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 by the CCSS

6.1 A Complaint will be accepted for handling by 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

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 have a 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 of guideline, direction, HKCA specification and CoP, no matter the regulatory tools are mandatory or voluntary in nature, the dispute will be handled under the respective enforcement of the regulatory tools rather than by the CCSS.

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 12 months from the time when the specific event that triggered the Complaint occurred.

6.2 OFCA will perform the initial screening of Complaints for acceptance under paragraphs 5 and 6 and make referral to CCSS Agent.

6.3 The CCSS Member is required to specify the Designated Channel(s) to CCSS Agent, and inform the Customer about the Designated Channel(s) as soon as practicable after a Complaint is raised by the Customer through other channels and properly received by the CCSS Member.

6.4 The CCSS Member is required to notify the Customer that the CCSS is an option available if the Customer has filed the Complaint to the CCSS Member via the Designated Channel(s). The CCSS Member should make such notification to the Customer as soon as after the Deadlock occurs. In addition, the CCSS Member is required to provide the Customer with a Referral Number that is able to identify the Customer's Complaint. All records of the Complaint should be kept on paper and/or electronic means.

6.5 For the avoidance of doubt, Customers have the sole discretion to decide whether to submit the Complaints for handling under the CCSS. Customers will take the initiative to contact OFCA for application to submit the Complaints to the CCSS. OFCA will perform initial screening of Complaints for acceptance under the CCSS. Only those Complaints which have satisfied the criteria specified in paragraph 6.1 above would be referred to CCSS Agent for further handling.

7 Complaint Handling Principles

7.1 Customers should first refer Complaints to CCSS Members who provide them with the telecommunications service which is the subject matter of the Complaints.

- 7.2 CCSS Members should seek to resolve the Complaints when they are raised by Customers, whenever possible. CCSS Members should not ignore or refuse to receive a Customer's Complaint without good cause.
- 7.3 Mediation will be provided under the CCSS for resolution of the disputes between the Customer and the CCSS Member in respect of a Complaint. Where a Complaint is accepted for handling under the CCSS, the concerned Customer and the CCSS Member are required to follow the process of the CCSS.
- 7.4 When handling a Complaint, the Mediator should take into consideration the following:
- (a) the factual circumstances of the subject matter;
 - (b) the terms and conditions of the Contracts;
 - (c) the legal and regulatory requirements (subject to paragraph 5.3(1) above);
 - (d) any relevant industry practices;
 - (e) any proposal and counter proposal offered by the Customer and the CCSS Member to settle the whole, or part, of the dispute; and
 - (f) what is otherwise fair and reasonable in the circumstances of the case.
- 7.5 Once the Complaint is accepted by the CCSS for handling, the CCSS Member shall not file the Complaint to the judicial system in regard to outstanding payment³ before completion of the CCSS process. The CCSS Member may only submit the Complaint for handling by the judicial system in the following circumstances:

³ The outstanding payment refers to the billing amount under the filed dispute only. Bill amount that are not disputed or the charges incurred thereafter are subject to normal billing process or credit management control by the service operators including use of the judicial system.

- (a) 8 weeks have lapsed since the notification by the CCSS Member to the Customer in respect of the Deadlock, or 4 months have lapsed since the Customer first lodged the Complaint to the CCSS Member through the Designated Channel(s);
- (b) the Complaint is not accepted for handling under the CCSS;
- (c) the Complaint has been handled by CCSS Agent but the Customer and the CCSS Member cannot reach a Settlement Agreement ; or
- (d) the Settlement Agreement has been accepted and signed by both parties, but is not observed by the Customer.

8 Mediation Process

- 8.1 During the Mediation, the Customer and the CCSS Member will be invited to make representations in respect of the Complaint. The Mediator will facilitate the parties to reach a mutually acceptable settlement as far as possible.
- 8.2 If a mutually acceptable agreement is reached, the Customer and the CCSS Member are required to sign a Settlement Agreement which is binding on both parties⁴. If a mutually acceptable agreement is not reached, or if the Settlement Agreement is not signed by both parties, the Customer and/or the CCSS Member will be free to choose their own course of action, including putting forth the disputes for handling by the judicial system.
- 8.3 No legal representation is permitted during the Mediation.
- 8.4 The Mediation is conducted on a without prejudice basis.
- 8.5 The Mediation should be conducted in a timely and cost effective manner. In normal circumstances, CCSS Agent should target to complete handling the Complaint within 2 months from the time CCSS

⁴ 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.

Agent receives the case from OFCA, unless there are strong justifications that the case is very complicated and there is positive progress for closing the case very soon.

9 Charges

- 9.1 CCSS Agent will charge the Customer and the CCSS Member the non-refundable service fees of HK\$100 and HK\$200 respectively for using the mediation service under the CCSS.
- 9.2 The Customer and the CCSS Member are required to bear their own costs for submission of information and making representations for handling of the Complaint under the CCSS.

10 Confidentiality of Complaints

- 10.1 In all cases, subject to any applicable laws, OFCA, CAHK, CCSS Agent and Mediators shall not disclose to the public details concerning the Mediation Communication in respect of individual Complaints that are referred to the CCSS.
- 10.2 Subject to any applicable laws, CCSS Members and Customers are required to strictly observe the confidentiality obligation as set out in the Customer Consent Form and the CCSS Member Reply Form respectively. CCSS Members and Customers shall not disclose to or discuss with any unrelated person (including but not limited to the general public and the media) other than CCSS Agent, Mediator, OFCA and CAHK any detail concerning the Mediation Communication in respect of the Complaints under CCSS. Such confidentiality obligation shall be and continue to be applicable regardless of whether or not a Settlement Agreement is reached. However, for the avoidance of doubt, nothing herein relating to the confidentiality obligation shall be construed as prohibiting a party from lodging a case with the court or appropriate authority after the Complaint has been handled under the CCSS and the parties have failed to reach a Settlement Agreement.

10.3 For the avoidance of doubt, for the purpose of consumer education and informing the public, OFCA, CAHK and CCSS Agent shall have the right to publish from time to time statistical information, case summaries or reports in relation to the Complaints under the CCSS with personal and commercial confidential information redacted.