

Code of Practice for Communications Service Contracts

2 February 2010

Preamble

This Code of Practice

is intended to heighten customer satisfaction levels in Hong Kong, by improving the provisions used in communications customer contracts.

1. Definition

1.1 In this Code of Practice

“**communications service**” or “**service**” includes the supply of telecommunications and ancillary services and customer equipment, as well as the supply of content services delivered through telecommunications (such as pay TV services and mobile TV services, the latter as and when implemented);

“**contract**” means a contract between a service provider and a customer in relation to the provision of one or more communications services to the customer, including services provided after free-trial period (subject to the requirement in paragraph 4.4);

“**customer**” means a party (not being a service provider) who acquires or intends to acquire a communications service for personal or domestic use or for commercial use where the service terms are based on standard form of contract of the service provider;

“**date**” means a particular day, expressed as a numbered day in a named calendar month in a numbered calendar year;

“**day(s)**” means calendar day(s);

“**OFTA**” means Office of the Telecommunications Authority;

“**service provider**” means a communications service provider;

“**term contract**” means a contract further to which communications services are provided to the customer over a specific period of time, and which provides for a specific date on which the contract terminates;

“**written contract**” means a contract, the terms and conditions of which are in writing, in the form of one or more documents, and which requires the customer’s signature to effect the customer’s -

- (a) application for communications services on the terms and conditions in the documents; or
- (b) acceptance of communications services on the terms and conditions in the documents.

2. General

2.1 Service providers pledging compliance with this Code of Practice shall publish on their respective website:

- (a) their pledges to this Code of Practice; and
- (b) report about their compliance status on annual or bi-annual basis as they may decide.

2.2 Service providers pledging compliance with this Code of Practice may also state on their contract that they have pledged compliance with this Code of Practice.

2.3 If a service provider chooses to pledge compliance, it may pledge compliance in respect of (i) all existing contracts or specified existing contracts and/or (ii) all new contracts or specified new contracts entered into on or after a certain date subsequent to its date of pledge. A clear statement on the contracts to be covered by the pledge should be made in the published pledges.

2.4 This Code of Practice is available at OFTA’s website:
<http://www.ofta.gov.hk/>

2.5 OFTA may publish information in relation to the pledges to this Code of Practice and review the published information on a regular basis.

2.6 Major amendments to this Code of Practice are subject to prior consultation with the industry, in particular the participating service providers, and relevant public bodies.

2.7 This Code of Practice supersedes the “Code of Practice for the Service Contracts for the Provision of Public Mobile Radiocommunications Services” and the “Code of Practice for the Service Contracts for the

Provision of Public Telecommunications Service” both issued by OFTA on 12 November 2004.

3. Style, format and structure of written contracts

3.1 A written contract for the provision of communication services to customers

- (a) must be written in plain language and appear in legible print;
- (b) must be bilingual in Chinese and English, or in either Chinese or English as the customer elects, with the English and Chinese versions of the contract carrying equal legal effect; and
- (c) must use a print font size of at least 9 point for the body text, footnotes and remarks, and must have adequate contrast with the background.

3.2 The principal contract document (for main service with or without other service) must contain the following features and display them prominently :

- (a) a seven day cooling-off period, during which customers may change their mind and cancel the services, unless at the outset, the customer elects in writing to waive the cooling-off period altogether;
- (b) specified arrangements for advising the service provider of the customer’s cancellation of the contract during the cooling-off period;
- (c) the name of the company which the customer is contracting with in respect of the provision of all the communications services covered by the contract;
- (d) the specific service elements to be provided under the particular contract including any ancillary services, value-added services, or customer equipment, whether a charge for the individual element is made or not;
- (e) a clearly nominated commencement date for the term and an expiry date for the term, if the contract is a term contract, and an obligation on the service provider to notify the customer about the impending expiry of the term;
- (f) clearly identified charges for the services being provided, including:
 - (i) any deposit amount, the circumstances when the deposit is

- refundable or may be applied by the service provider, and any rights of the customer to the deposit in the event of liquidation of the service provider;
- (ii) any prepayment amount, the circumstances when the prepayment is refundable or is to be set off from the charges, and any rights of the customer to the prepayment, or to the customer equipment to which the prepayment is associated in the event of liquidation of the service provider;
 - (iii) any waivable charges, and the circumstances when the waivable charges apply;
 - (iv) all service establishment and installation charges;
 - (v) all fixed charges;
 - (vi) all service usage based charges;
 - (vii) all variable or contingent charges;
 - (viii) all administrative charges; and
 - (ix) all termination charges;
- (g) specified arrangements for termination of contract by customers and the charges, if any, which may apply to early termination;
 - (h) specified arrangements for extension of term, and renewal or replacement of contract;
 - (i) any specific terms and conditions of contracts which can be changed unilaterally by the service provider, and the specific arrangements for any such change to be implemented;
 - (j) the arrangements which the service provider must make available for customers, without undue cost or inconvenience to them, to return any customer equipment upon the expiry, termination or cancellation of the contract; and
 - (k) for service provided in respect of particular premises, arrangements for customers to require the service to be relocated to other premises, and the charges which apply in that event, and an option for the customers to terminate the contract if the service provider is unable to relocate the service to the other premises.
- 3.3 Where a written contract has been signed by a customer, a counterpart of the signed contract must be given to the customer immediately thereafter.

4. Contracts other than in writing

- 4.1 Where a contract is entered into other than by means of a physical document (such as by telephone or by an internet on-line application), the

service provider must within a reasonable time thereafter, give the customer a written counterpart in English or Chinese, as the customer elects, which contains the contract features described in paragraph 3.2. Without prejudice to the generality of the foregoing, the written counterpart must be provided:

(a) by the time the installation work at the premises of the customer is being performed or earlier; or

(b) by the time the network terminating unit, customer premise equipment or user device supplied in connection with the subscription of service is being collected by or delivered to the customer or earlier.

4.2 The contract must provide for the written counterpart to be dispatched by post, or by the optional means offered by the service provider in the contract, which the customer elects.

4.3 Paragraphs 4.1 and 4.2 do not apply:

(a) where the customer is not required to be registered as a customer for enjoyment of the service (such as where the customer purchases a pre-paid SIM card for mobile services or a pre-paid calling card for IDD services); or

(b) where the service concerned is a service which is subsequently subscribed in addition to the main service under the same existing contract, provided that the service provider shall make available reasonable means for the customer to check (on any day) the contract terms of such service as described in paragraph 3.2 including any specific terms applicable to the customer. Notwithstanding that reasonable means has been provided, the service provider shall dispatch a written counterpart to the customer as described in paragraph 4.1 and 4.2 if so requested by the customer.

4.4 A customer shall have free choice whether to accept and use free-trial service. Where the free-trial service may become chargeable after free-trial period expires, the service provider shall explain clearly to the customer any arrangements for opting out when the free-trial service is offered and it must not put the customer to inconvenience or involve their incurring anything in respect of the opt-out request. This Code applies to services provided after the free-trial period.

5. Cooling-off period for contracts

5.1 Contracts must provide for a cooling-off period during which the customer may cancel the contract without incurring any payment liability or any

other obligation whatsoever.

- 5.2 The cooling-off period must be not less than seven days from the date the customer enters into the contract.
- 5.3 The arrangements for customers to cancel the contract must be specified in the contract and must not put them to inconvenience or involve their incurring anything other than incidental costs reasonably and properly incurred in the communication of the cancellation.
- 5.4 A term contract may provide for the cooling-off period to be waived by customers at the time they sign a contract, provided that the waiver requires customers to specifically indicate that they have understood the benefit to them of the cooling-off period, and that they are nevertheless electing to waive the period without inducement on behalf of the service provider.
- 5.5 The cooling-off period does not apply
- (a) where the customer is not required to be registered as a customer for enjoyment of the service (such as where the customer purchases a pre-paid SIM card for mobile services or a pre-paid calling card for IDD services);
 - (b) where the service is subsequently subscribed in addition to the main service under the same existing contract; or
 - (c) where the contract is extended, renewed or replaced with agreement of the customer upon the same term of the original written contract or counterpart.
- 5.6 Subject to paragraph 5.7, the cooling-off period shall cease to apply upon any of the following events, or the expiry of the cooling-off period as required under paragraph 5.2 above, whichever is earlier:
- (a) once the performance of service has begun;
 - (b) once the installation work at the premises of the customer has commenced;
 - (c) once the network terminating unit, customer premise equipment or user device supplied in connection with the subscription of service has been collected by or delivered to the customer; or
 - (d) 3 days before the scheduled completion date of the number porting as agreed by the customer.

5.7 For the purpose of paragraph 5.6, the service provider shall notify the customer prior to conclusion of contract that he will lose the cancellation right once the event mentioned in 5.6(a)-(d) occurs, as the case may be, and shall keep evidence of the notification including audio recording of the telephone conversation.

6. Expiry of Term Contract

6.1 Term contracts must comply with the following requirements:

- (a) the contract must clearly nominate the commencement date of the term and the expiry date of the term, and it must clearly differentiate those dates from other dates for the provision or cessation of service, or in respect of which the customer may have a payment obligation, or dates relating to the customer's electing to extend the term, renew the contract or enter into a replacement contract;
- (b) the contract must oblige the service provider to notify the customer of the impending expiry of the term of the contract, no more than 60 days and no less than 30 days before the date the contract expires;
- (c) the contract must specify whether service will continue to be provided to the customer after the expiry date:
 - (i) pending renewal, extension, or replacement of the contract; or
 - (ii) pending the customer notifying termination; and
- (d) if service is to continue after expiry of the term, the contract must specify the charges which will be payable by the customer, as well as any changes which may apply to the service provision or to the customer's previous rights, obligations, or benefits.

6.2 Paragraph 6.1(b) does not apply where the service provider has made available reasonable means for the customer to check (on any day) the expiry date of contract.

7. Termination by Customer

7.1 Contracts must provide customers with a right of termination, which includes the following features:

- (a) the customer must not be obliged to give the service provider more

than 30 days prior notice of termination;

- (b) the arrangements for termination must not put customers to inconvenience or involve their incurring anything other than incidental costs reasonably and properly incurred in effecting the notice; and
- (c) the fact that a specific charge may apply in the event of early termination, and the actual amount payable by customer, or the method for calculating the charge to apply in that event, must be clearly specified. In any event, the amount payable shall not be more than the amount the customer would need to pay to the service provider for the remainder of the term as if the contract had not been terminated.

7.2 For the purpose of 7.1(b), the service provider shall make available reasonable means for the customer to obtain (on any day) information in relation to, and exercise the right of, termination.

7.3 Where the customer exercises the right of termination in respect of any severable service element pursuant to the terms of contract, such termination shall not affect the force and effect of the contract in respect of the surviving service elements.

8. Extension of term or renewal or replacement of contract

8.1 The provisions of a contract providing for extension of the term or renewal or replacement of the contract, must provide that the arrangements for customers indicating their agreement include their receiving a written counterpart, in English or Chinese as the customer elects, of the extended, renewed or replacement contract's features described in paragraph 3.2.

8.2 The contract must provide for the written counterpart to be dispatched by post, or by the optional means offered by the service provider in the contract, which the customer elects, within a reasonable time after the contract is extended, renewed or replaced.

8.3 Paragraphs 8.1 and 8.2 do not apply where the contract is extended, renewed or replaced with agreement of the customer upon the same term of the original written contract or counterpart, provided that the service provider shall keep evidence of the customer's agreement on such extension, renewal or replacement including audio recording of the telephone conversation and shall make available reasonable means for the customer to check (on any day) the contract terms as described in paragraph 3.2 including any specific terms applicable to the customer.

8.4 Automatic extension of the term or renewal of contract shall be subject to paragraph 7.1 and shall not be effective unless the customer has specifically indicated on the original written contract, or specifically confirmed if the contract is entered into otherwise than in writing, his acceptance of the automatic extension or renewal, provided that the service provider must keep evidence of the customer's agreement on such automatic extension or renewal including audio recording of the telephone conversation.

9. Unilateral variation of terms and conditions

9.1 If a contract includes provisions empowering the service provider to unilaterally vary any of its terms or conditions, those provisions must include the following features:

- (a) the specific terms and conditions which can be changed unilaterally by the service provider;
- (b) the service provider must undertake to give at least 30 days prior notice to the customer, by reasonable means having regard to the nature of the change and its likely impact on customers; and
- (c) notwithstanding paragraph 7.1(c), where the variation is likely to result in an increase in the amount payable by customers or a material change to the quality of service to be provided, the provisions must permit the customer to terminate the contract, by notice in the same manner as for normal termination, no more than 15 days prior to the variation coming into effect, without the customer incurring any charges of any kind in respect of that termination.

10. Return of Customer Equipment to Service Provider

10.1 Where customer equipment provided to the customer by the service provider is required to be returned upon the expiry, termination or cancellation of the contract, the contract must specify the manner in which the customer equipment is to be returned by the customer or collected on behalf of the service provider, which must not put customers to inconvenience or involve their incurring anything other than incidental costs reasonably and properly incurred in effecting the return.

11. Customer Moving Premises

11.1 Where a contract provides for services to be provided in respect of particular premises, its provisions must comply with the following requirements:

- (a) customers must be able to request that the services be relocated to other premises they nominate, from time to time, for any number of times;
- (b) customers do not have to give more than 30 days notice prior to a relocation, and in effecting such a notice, customers must not be put to inconvenience or involve their incurring anything other than incidental cost reasonably and properly incurred;
- (c) the service provider must make reasonable endeavours to comply with every relocation request and must only impose a charge for effecting the relocation of service which reflects its reasonable costs in doing so; and
- (d) notwithstanding paragraph 7.1(c), if for any reason a service provider is unable to relocate the services, the customer must be able to terminate the contract in the same manner as upon expiry of term, without incurring any charges of any kind in respect of the termination.

12. Others

12.1 In this Code, where the terms or words “reasonable means” or “inconvenience” appear, they should include the following requirements on the service provider:

- (a) the service provider shall provide reasonable means so that the customer may make enquiry about the contract terms, expiry date, termination or relocation information by online enquiry, telephone enquiry, or shop enquiry at his own choice, or by any other means that may be provided by the service provider;
- (b) where the customer makes the enquiry by telephone, the service provider shall endeavour to answer the call within the time pledged in accordance with its published customer charter or customary practice related to its subscription enquiry;
- (c) the service provider shall provide information about contract terms, expiry date, termination or relocation as soon as practicable and through the means (so far as practicable) that was used by the customer to make the enquiry in the first place, or any other means as agreed by the customer and the service provider;

- (d) where the contract term requires the submission of written notice for termination or relocation in prescribed form, the service provider shall have readily available termination or relocation form and provide the form to the customer as soon as practicable upon request by fax, post, email, online download or collection at shop at the choice of the customer who may return the form by any such means at his choice;
- (e) in respect of opt-out arrangement during free-trial period or cancellation during cooling-off period, the need of submission of written opt-out or cancellation notice shall be dispensed with if so requested by the customer and the opt-out or cancellation arrangement shall be effected by other effective means (including arrangement by telephone or online means or at shop at the choice of the customer, or any other means as agreed by the customer and the service provider) subject to proper verification of identity of the customer;
- (f) in respect of unilateral variation of contract terms or conditions, the service provider shall give prior notification to the customer through the means (as far as practicable) which is a service covered by the contract to which the variation is applicable; and
- (g) where the contract term requires the return of customer equipment, the service provider shall allow the customer to return the equipment to any of its designated office, shop or centre or arrange its staff to collect the equipment at the choice of the customer.

12.2 In computing time for the purpose of this Code of Practice, a period of days from the happening of any event shall be deemed to be inclusive of the day on which the event happens. For example, where a contract is signed at noon on Day 1, the customer may (subject to other provisions) exercise his cancellation right during a seven-day cooling-off period at any time on or before end of Day 7. Similarly, where a number porting is scheduled to complete at noon on Day 7, the cooling-off period (subject to other provisions) shall cease to apply at the start of Day 5.

12.3 This Code of Practice is concerned only with the minimum requirements service provider must meet in their form of service contract, and it does not preclude service providers including other provisions which are not inconsistent with this Code of Practice.

Office of the Telecommunications Authority
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