

# ICT 2019 - 3 - Consultation Proposed Consumer Protection Regulations

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Launch Date: 5 December 2019

Closing Date for comments: 31 January 2020



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## A. Introduction

1. The Utility Regulation and Competition Office (the ‘**Office**’) is the independent regulator for the electricity, information and communications technology (‘**ICT**’), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Different decisions by the Office will affect persons and organisations throughout the country in different ways. It is therefore important that the Office makes regulatory decisions with the appropriate input from persons with sufficient interest or who are likely to be affected by the outcome of such decisions. Consultation is an essential aspect of regulatory accountability and transparency and provides the formal mechanism for these persons to express their views in this manner. The requirement for the Office to consult is mandated in its enabling legislation.
3. Under its enabling and foundational legislation, the Office has several principal functions. One of these principal functions is to protect the short and long term interests of consumers in relation to utility services. The Office may do so by making administrative determinations, decisions, orders and regulations.
4. The purpose of this consultation paper is to seek the views of operators, the general public, and other interested parties, on the final draft administrative determination of the Office in regard to the proposed Consumer Protection Regulations (ICT Sector) (‘**the final draft Determination**’).

## B. Legal Framework

5. The Office is guided by its statutory remit in developing the final draft Determination, notably the provisions which follow.
6. **Section 6(1)(c)** of the *Utility Regulation and Competition Office Law 2016* (‘**URC Law**’) outlines that one of the principal functions of the Office, in the markets and sectors for which it has responsibility, is “*to protect the short- and long-term interests of consumers in relation to utility services...*”. **Section 9(4)** of the *Information and Communications Technology Law (2017 Revision)* (‘**the ICT Law**’) states that the Office “*may regulate the rate, prices, terms and conditions of any ICT service or*

*ICT network that is required to be licensed where the Office is of the opinion that it is in the interests of the public to do so.”*

7. **Section 72** of the ICT Law states in part:

*72. (1) ICT service providers and ICT network providers shall use best endeavours to ensure that their ICT services and ICT networks are –*

- (a) reliable;*  
*[...]*
- (b) provided with due care and skill; and*
- (c) rendered in accordance with the standards reasonably expected of a competent provider of those ICT services and ICT networks.*

*(3) The Office may prescribe quality standards for the provision of ICT services and ICT networks in relation to all ICT service providers and ICT network providers.*

8. **Section 97(3)** of the ICT Law states in part:

- (3) The Office may -*  
*[...]*
- (b) may make regulations relating to –*  
*[...]*
  - (iii) quality standards; and*
  - (iv) such other measures as the Office considers necessary for the carrying out of its duties under this Law.*

9. **Section 6(2)(d)** states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may “*make administrative determinations, decisions, orders and regulations*”.

10. **Section 7(1)** of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “*... to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.*”

11. It is the position of the Office that it retains the right to propose amendments to the Regulations when appropriate but not so frequent so as to render the consumer protection framework arbitrary, but in any event only after consultation.

## C. Background

### C.1 ICT 2017 – 4 - Consultation

12. The Background to the ICT 2017 – 4 – Consultation is outlined on page 1 of the Office’s final draft Determination.

### C.2 Summary of the ICT 2020 – 1 – Final Draft Administrative Determination

13. The Office considered that it was in the best interest of the public to regulate the terms and conditions under which ICT services are provided by prescribing quality standards. This will ensure those ICT services are provided in accordance with the standards reasonably expected of competent providers of ICT services.
14. The final draft Determination are attached to this consultation document, and are summarised in the paragraphs below. The Office strongly encourages respondents to read the final draft Determination prior to submitting comments, or to answering the consultation questions in the next section, as this summary is not intended to be exhaustive.
15. The attached final draft of the proposed regulations are divided into six main sections, excluding the Preliminary section, and consist of forty-three (43) Regulations which address:
  - the requirements on Service Providers in relation to the provision of information;
  - the requirements on how to address complaints;
  - contract terms;
  - billing; and,
  - service provision and fault repair
16. The main objective of the final draft of the proposed regulations is to outline the protocols and rules which Service Providers should adhere to when interacting with and serving consumers in the Cayman Islands in relation to their ICT Services.
17. A Service Provider means “a Licensee who provides an ICT service” with the exception of Types 2, 11, 11a, 12, 13, 100 and 200 services (as defined in the Section 23(2) Regulatory Notice). A Consumer is defined

as “a person who enquires about, requests, receives, acquires, users or subscribers to Service or Product from a Service Provider for the primary purpose of his personal or domestic use”.

18. The information that is also required to be conveyed by the Service Provider to the Consumer, before the Consumer enters into a contract with the Service Provider, is also addressed in Part 1. This information includes, but is not limited to, a complete description of the service and/or product to be provided under the contract; details of any termination fees payable by the Consumer; details of the dispute resolutions procedures and methods; details regarding any other service and/or product that is required in order to effectively utilise the service and/or product which is the subject of the contract; as well as details of any applicable quality standards that will apply to the service and/or product to be provided under the contract.
19. Part 2 of the final draft of the proposed regulations outlines the requirements in regard to the provision of information by a Service Provider to a Consumer. In addition, the requirements regarding accurate, up to date and clear advertising of information provided to consumers as well as the forms in which Consumers should be able to receive the information, e.g. electronic, are also outlined.
20. Part 3 of the final draft of the proposed Regulations, which addresses complaints; including the requirement for Service Providers to implement a complaints handling procedure that makes provision for complaints to be made to the Service providers by various methods and free of cost to the Consumer when using any local telephone network, save as specifically provided for by the regulations. Part 3 also outlines how Service Providers should handle verbal complaints, as well as the requirement to keep a record of complaints and to report certain statistics regarding complaints to the Office at the end of each quarter.
21. The requirements regarding terms and conditions of a contract entered into by a Service Provider with a Consumer, any amendments to those terms and conditions and contracts in relation to roaming plans are outlined in Part 4 of the final draft of the proposed regulations.
22. Part 5 of the final draft of the proposed regulations addresses billing; including, but not limited to, contents of bills, methods by which the Consumer can make enquires about bills, as well as the production and availability of fully itemised bills. Part 5 also outlines the available remedies that the Service Provider may utilise in response to the non-payment of an outstanding and undisputed balance on a Consumer's account.

23. Provision of services and fault repairs are addressed in Part 6, which is the last main part of the final draft of the proposed regulations. Part 6 outlines the Service Provider’s requirements in relation to the provision of services within agreed timeframes, the Consumer’s ability to report faults at all times, and provision of notices of any planned or anticipated disruptions and/or outages to Consumers.

## D. Consultation Questions

24. Based on the above, the Office invites all interested parties to submit their comments, with supporting evidence, on the following questions:
  1. What are your views on the revised Regulations?
  2. Provide your views on any other matters you consider relevant to this Consultation.

## E. Section 7 Statement

25. As noted above, section 7 of the URC Law states that, prior to issuing an administrative determination of public significance, the Office shall “issue the proposed determination in the form of a draft administrative determination.”
26. The Office considers that, for the reasons set out in this document, Annex 1 is the “final draft administrative determination” for the purposes of section 7.

## F. How to Respond to This Consultation

27. This consultation is conducted in accordance with the Consultation Procedure Guidelines determined by the Office and found on the Offices website [here:](http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf)  
<http://www.ofreg.ky/upimages/commonfiles/1507893545OF20171DeterminationandConsultationProcedureGuidelines.pdf>
28. The Office considers that because the final draft of the proposed regulations are published as part of this consultation, this consultation will be conducted as a single-phase consultation. Where, upon review of the responses to the consultation, it becomes clear that a second phase of consultation is required, a further notice will be issued accordingly. As noted above, **section 7(1)** of the URC Law states that prior to issuing an administrative determination of public significance, the Office shall “*issue*

*the proposed determination in the form of a draft administrative determination.*” The Office considers the attached final draft Regulations to be a “*draft administrative determination*” for the purposes of **section 7(1)**.

29. All submissions on this consultation should be made in writing, and must be received by the Office by **5 p.m. on 31 January 2020** at the latest.
30. The Office will post any comments received within the stated deadline on its website by **5 p.m. on 14 February 2020**.
31. Submissions may be filed as follows:

By e-mail to:

[consultations@ofreg.ky](mailto:consultations@ofreg.ky)

Or by post to:

Utility Regulation and Competition Office  
P.O. Box 10189  
Grand Cayman KY1- 1002  
CAYMAN ISLANDS

Or by courier to:

Utility Regulation and Competition Office  
3<sup>rd</sup> Floor, Alissta Towers  
85 North Sound Rd.  
Grand Cayman  
CAYMAN ISLANDS

32. The Office expects to publish its final determination regarding the draft Regulations by the end of the Q1 2020.



# Annex 1

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## Final Draft Administrative Determination

# ICT 2020 – 1 – Determination Consumer Protection Regulations

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**UTILITY REGULATION AND COMPETITION OFFICE  
THE CAYMAN ISLANDS**

Publication Date: [XX] [X] 20[XX]



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## 1. Background

1. The Utility Regulation and Competition Office (**'OfReg'** or the **'Office'**) is the independent regulator established by section 4 of the Utility Regulation and Competition Law (2019 Revision) (the **'URC Law'**) for the electricity, information and communications technology (**'ICT'**), water, wastewater and fuels sectors in the Cayman Islands. The Office also regulates the use of electromagnetic spectrum and manages the .ky Internet domain.
2. Under its enabling legislation, the Office has several principal functions, one of which is to protect the short- and long-term interests of consumers in relation to utility services.
3. On **24 November 2017**, the Office published **ICT 2017 – 4 – Consultation, "Proposed Consumer Protection Regulations."**<sup>1</sup> The proposed Consumer Protection Regulations (**'the Draft Regulations'**) were appended to the consultation document.
4. On **5 December 2017**, the Office published an Extension Notice<sup>2</sup> extending the closing date for submissions from 27 December 2017 to 31 January 2018.
5. On **31 January 2018**, Digicel Cayman Limited (**'Digicel'**) and Logic Communications Limited on behalf of its affiliate WestTel Limited doing business as "Logic" (**'Logic'**) submitted comments on the Draft Regulations.
6. In this document, the Office addresses the issues raised in **ICT 2017 – 4 – Consultation**.

## 2. Legal Framework

7. In making the decision regarding the adoption and implementation of consumer protection regulations for the ICT sector in the Cayman Islands,

<sup>1</sup> <http://www.ofreg.ky/upimages/commonfiles/1515517725ConsultationDocumentICT2017-4.pdf>

<sup>2</sup> <http://www.ofreg.ky/upimages/commonfiles/151250970320171206ConsumerProtectionRegulationsConsultationExtensionNotice.pdf>

the Office is guided by its statutory remit, in particular as set out in the URC Law and the Information and Communications Technology Law (2019 Revision) (the '**ICT Law**').

8. The following provisions are of particular relevance.
9. **Section 6** of the URC Law sets out the principal functions and powers of the Office. These include:

6. (1) *The principal functions of the Office, in the markets and sectors for which it has responsibility, are -*

*[...]*

*(b) to promote appropriate effective and fair competition;*

*(c) to protect the short and long-term interests of consumers in relation to utility services and in so doing -*

*(i) supervise, monitor, and regulate any sectoral provider, in accordance with this Law, the regulations and sectoral legislation and any general policies made by Cabinet in writing;*

*(ii) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services;*

*[...]*

(2) *In performing its functions and exercising its powers under this or any other Law, the Office may -*

*[...]*

*(d) make administrative determinations, decisions, orders and regulations;*

*[...]*

*(t) establish technical standards for the provision of covered services;*

*(u) review and, as appropriate, approve, reject or modify tariffs filed by a sectoral provider governing the provision of covered services;*

(v) *establish and enforce quality of service standards applicable to covered services;*

*[...]*

(hh) *take any other action, not expressly prohibited by Law, that is necessary and proper to perform its duties under this Law and sectoral legislation.*

10. **Section 9 (3)** of the ICT Law states, among other things, that:

*[...] the principal functions of the Office are -*

(a) *to promote competition in the provision of ICT services and ICT networks where it is reasonable or necessary to do so;*

(b) *to investigate and resolve complaints from consumers and service providers concerning the provision of ICT services and ICT networks;*

*[...]*

(e) *to license and regulate ICT services and ICT networks as specified in this Law and the Electronic Transactions Law (2003 Revision); [...]*

11. **Section 9(4)** of ICT Law states that the Office “*may regulate the rate, prices, terms and conditions of any ICT service or ICT network that is required to be licensed where the Office is of the opinion that it is in the interests of the public to do so.*”

12. **Section 72** of the ICT Law states in part:

*72. (1) ICT service providers and ICT network providers shall use best endeavours to ensure that their ICT services and ICT networks are –*

(a) *reliable;*

*[...]*

(b) *provided with due care and skill; and*

(c) *rendered in accordance with the standards reasonably expected of a competent provider of those ICT services and ICT networks.*

[...]

(3) *The Office may prescribe quality standards for the provision of ICT services and ICT networks in relation to all ICT service providers and ICT network providers.*

(4) *The Office shall make rules and establish procedures relating to the refusal, disconnection or interruption of ICT services or ICT networks and the administration and resolution of subscriber complaints, without limitation, including requirements for and the determinations relating to the payments of the costs of proceedings and procedures for the resolution of subscriber complaints and the payment of compensation to subscriber, which shall be binding upon licensees.*

13. **Section 73** of the ICT Law states:

*73. ICT service or ICT network providers may, subject to the rules and procedures established under section 72(4)-*

- (a) refuse to provide an ICT service or an ICT network to a subscriber; or*
- (b) discontinue or interrupt the provision of such an ICT service or ICT network to a subscriber pursuant to an agreement with that subscriber,*

*only on grounds which are reasonable and non-discriminatory, and where any such action is taken, the ICT service or ICT network provider shall, within seven days, provide in writing to the subscriber the reasons therefor.*

14. **Section 97(3)** of the ICT Law states in part:

*(3) The Office may -*

*[...]*

*(b) may make regulations relating to –*

*[...]*

*(iii) quality standards; and*

*(iv) such other measures as the Office considers necessary for the carrying out of its duties under this Law.*

15. **Section 6(2)(d)** states that the Office, in performing its functions and exercising its powers under the URC Law or any other Law, may “*make administrative determinations, decisions, orders and regulations.*”

16. **Section 7(1)** of the URC Law requires the Office, before issuing an administrative determination which in the reasonable opinion of the Office is of public significance, “... *to allow persons with sufficient interest or who are likely to be affected a reasonable opportunity to comment on the draft administrative determination.*”
17. It is the position of the Office that it retains the right to propose amendments to the Regulations when appropriate but not so frequent as to render the consumer protection framework arbitrary or capricious, but in any event only after consultation.

### 3. ICT 2017 – 4 – Consultation

18. In **ICT 2017 – 4 – Consultation**, the Office considers it in the interests of the public to regulate the terms and conditions under which ICT services are provided, by prescribing quality standards. This will ensure those ICT services are provided in accordance with the standards reasonably expected of competent providers of ICT services.
19. The Draft Regulations are summarised in the consultation document and attached thereto in full. The Draft Regulations are divided into five main sections, excluding the Part 1 – *Preliminary* section, and consisted of fifty-three (53) Regulations which address:
  - the requirements on service providers in relation to the provision of information;
  - the requirements on how to address complaints;
  - contract terms;
  - billing; and,
  - service provision and fault repair
20. The main objective of the Draft Regulations is to outline the protocols and rules to which service providers should adhere when interacting with and serving consumers in the Cayman Islands in relation to their ICT services.
21. A “*service provider*” is defined in Part 1 of the Draft Regulations as “a *Licensee who provides an ICT service*” with the exception of Types 2, 11,

- 11a, 12, 13, 100 and 200 services (as defined in the Section 23(2) Notice<sup>3</sup> published by OfReg from time to time). A “consumer” is defined as “a person who enquires about, requests, receives, acquires, users or subscribers to Service or Product from a Service Provider for the primary purpose of his personal or domestic use.”
22. Part 2 of the Draft Regulations outlines the proposed requirements regarding the provision of information by a service provider to a consumer, before the consumer enters into a contract with the service provider. This information includes, but is not limited to, a complete description of the service and/or product to be provided under the contract; details of any termination fees payable by the consumer; details of the dispute resolutions procedures and methods; details regarding any other service and/or product that is required in order to effectively utilise the service and/or product which is the subject of the contract; as well as details of any applicable quality standards that will apply to the service and/or product to be provided under the contract.
  23. In addition, the requirements regarding accurate, up to date and clear advertising of information provided to consumers as well as the forms in which consumers should be able to receive the information (e.g. electronic) is also outlined.
  24. Part 3 of the Draft Regulations addresses complaints; including the requirement for Service Providers to implement a complaints handling procedure that makes provision for complaints to be made to the Service providers by various methods and free of cost to the Consumer when using any local telephone network, save as specifically provided for by the Regulations. Part 3 also outlines how service providers are to handle verbal complaints, as well as to keep a record of complaints and to report certain statistics regarding complaints to the Office at the end of each quarter.
  25. The requirements regarding terms and conditions of a contract entered into by a service provider with a consumer, any amendments to those terms and conditions and contracts in relation to roaming plans are outlined in Part 4 of the Draft Regulations.
  26. Part 5 of the Draft Regulations addresses billing; including, but not limited to, contents of bills, methods by which a consumer can make enquires

<sup>3</sup> <http://www.ofreg.ky/upimages/commonfiles/1511333826Section23Notice20November2017.PDF>

about bills, as well as the production and availability of fully itemised bills. Part 5 also outlines the available remedies that the service provider may utilise in response to the non-payment of an outstanding and undisputed balance on a consumer's account.

27. The last main part of the Draft Regulations is Part 6, which outlines a service provider's obligations in relation to the provision of services within agreed timeframes, the consumer's ability to report faults at all times, and provision of notices of any planned or anticipated disruptions and/or outages to consumers.
28. In the Consultation, the Office poses ten specific questions regarding the Draft Regulations.

## 4. Comments Received and Office Responses

29. The Office received two responses to **ICT 2017 – 4 – Consultation**, from Digicel and Logic.<sup>4</sup> The Office has reviewed all comments received and its responses are set out below each comment.

### 4.1 Logic

30. Instead of answering the Office's individual questions, Logic addresses the Draft Regulations as a whole. Logic submits that, in its view, the "*intention of the Draft Regulations was laudable*" but "*that intention was ultimately not well served by the micromanagement approach being taken in the Draft Regulations.*" In its view, "*consumers are best served by competition ... mistreatment or bad customer service is most efficiently remedied by customer choice ... [and] competitive rivalry drives better customer service.*"
31. Logic notes that it had received 11 complaints via the regulator since 2015, and submits that it aims to provide very high service standards and that it

<sup>4</sup> <http://www.ofreg.ky/upimages/commonfiles/1518039521ICT2017-4-ConsultationontheProposedConsumerProtectionRegulationsResponses.pdf>

leads the industry in terms of “*Net Promoter Scores*”<sup>5</sup> and by extension customer satisfaction.

32. Because of this, Logic considers the Draft Regulations to be unnecessary for its business and, further, submits:

*... there is a significant risk that the Draft Regulations add a layer of bureaucracy and inefficiency to our customer interactions that will not serve to protect consumers better but will instead raise our cost to serve which can only be to the detriment of the consumer.*

33. Logic notes that, even if the Draft Regulations were aimed at remediating customer service problems at other providers in the industry, it still considers them unnecessary, as competition and market outcomes would address the issue.

34. Logic requests that the Draft Regulations not be implemented, submitting in the alternative that, if the Office were to insist on implementing the Draft Regulations, they should only be applied to service providers with “*an objectively measured customer service problem*”:

*Alternatively, if OfReg insists on implementing the Draft Regulations, we ask that a threshold for application be included to ensure that only service providers with an objectively measured customer service problem be subjected to the regulations. We suggest a combination of NPS measures and numbers of complaints per year be utilised to exempt service providers who fall within the acceptable thresholds. By limiting the application of the Draft Regulations to those service providers, the regulation will target the problems and not inject inefficiency into organisations that are already meeting high standards.*

### **Office Response**

35. The purpose of the Draft Regulations is to ensure ICT services are provided to consumers in the Cayman Islands in accordance with the standards

<sup>5</sup> Logic did not define this term in its submission. The Office understands that “Net Promoter Scores” or “NPS” is a methodology for measuring and comparing customer loyalty. See for example <http://www.netpromotersystem.com/>.

reasonably expected of competent providers of ICT services, particularly with respect to the matters listed in paragraph 19 above. Further, the focus of the Draft Regulations is on residential consumers,<sup>6</sup> who are least likely to be able to negotiate the terms and conditions under which ICT services are provided to them. Given that the purpose of the Draft Regulations is to benefit all residential consumers, the Office considers it would be inappropriate to exclude a subset of such consumers from the application of the Draft Regulations, as proposed by Logic, merely because of their choice of service provider.

36. The Office notes that the Draft Regulations are likely to create a minimal burden, if any, on those ICT service providers who already meet or exceed the standards reasonably expected of competent providers of ICT services.

## 4.2 Digicel

37. In its preliminary comments before addressing the consultation questions, Digicel notes that the Draft Regulations would only apply to local, licensed service providers. Digicel states that local providers face competition from unregulated overseas, on-line providers, and urges the Office to take into account the competitive disadvantage arising from the cost of additional regulatory obligations when considering the proportionality of any new proposed obligations.

### Office Response

38. As noted in **ICT 2017 – 4 – Consultation**, the Office considers that it is in the interests of the public to regulate the terms and conditions under which ICT services are provided in the Cayman Islands.
39. The Office notes that it considered both the impact of the Draft Regulations on service providers and the benefits accruing to consumers when considering the proportionality of the Draft Regulations. While the Draft Regulations apply only to ICT service providers licensed by the Office,<sup>7</sup> the Office considers this to be reasonable as only licensed ICT service

<sup>6</sup> See the definition of “consumer” in Regulation 2 and described at paragraph 21 above: the relevant service or product is to be for his or her “personal or domestic use”. This has the effect of excluding business consumers.

<sup>7</sup> See the definition of “service provider” in draft Regulation 2.

providers are authorised to provide services in the Cayman Islands, and only licensed ICT network providers are authorised to provide ICT networks in the Cayman Islands or to use spectrum allocated by the Office.

40. Whether “*unregulated overseas, online platforms*” compete with licensed ICT service providers, as stated by Digicel, is a question of fact. If this became an issue, it would be determined by the Office following a public consultation process. However, the Office considers that licensed ICT service providers would have a competitive advantage over such platforms if local providers provide their ICT services in accordance with the standards reasonably expected of competent providers of ICT services, which is the aim of the Draft Regulations.

#### *A) Question 1*

**What are your views on Part 2 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers have adequate information to make informed decisions when selecting ICT services and ICT service providers? If not, please explain in detail the changes required to achieve this objective.**

41. Digicel states that “... *subject to OfReg addressing the issues set out in our responses to Question 2 below, Part 2 of the Draft Regulations, appears to ensure that consumers have adequate information to make informed decisions when selecting ICT services/providers.*”

#### **Office Response**

42. Digicel’s comments are noted.

#### *B) Question 2*

**What are your views regarding the means by which the Service Providers will be obligated to ensure the provision of information under clause 3 of the proposed draft regulations?**

43. Digicel comments on a number of specific provisions in clause 3.
44. Digicel states that the rationale for the requirement in clause 3(3)(a) to provide a hardcopy version of information, free of charge per clause 3(3)(c), was not provided. Digicel notes a move across a range of sectors away from

- the use of hardcopy documentation on cost and environmental grounds, and submits that any requirement for copies of information in durable format could be met through the provision of on-line or emailed versions.
45. With respect to clause 3(3)(b), Digicel notes that it is *“in full agreement with OfReg that information must also be accessible by persons with disabilities”* but that the cost to implement the measures that are required to provide such accessibility are generally quite high. Digicel submits that, if implemented in the manner proposed by OfReg, i.e. in a format accessible to persons with disabilities, including Braille, upon the request by a single consumer, *“the turnaround time for the fulfilment of the consumer’s request [would] necessarily be quite protracted”* and *“the cost would be astronomical.”*
  46. Digicel proposes, therefore, that OfReg develop mechanisms to assist service providers to defray the cost or to incentivize service providers to make the investment required to make documents available to persons with disabilities, as part of a holistic approach developed and steered by OfReg as to the treatment of persons with disabilities in the provision of ICT services in the Cayman Islands.
  47. With respect to clause 3(4)(c), Digicel states that *“the logistics required to implement these measures in the manner proposed by OfReg are such that the proposal would be impractical to implement.”* Digicel notes that it offers numerous packages and bundles which are often susceptible to change, and that the area in all of its retail outlets is quite modest, rendering it impractical, if not impossible, for all of the rates for all of its products and services to be prominently displayed at all times.
  48. Digicel proposes as an alternative that:
    - a. all the rates and prices of all its products and services be displayed on its website;
    - b. the rates and prices of all its products and services be readily available in all retail outlets to consumers upon request; and
    - c. only the basic out-of-bundle rates and the rates of popular bundles and promotional items be displayed in the stores.

49. With respect clause 5(e), Digicel submits that the requirement to provide a telephone number to call to cancel a contract entered into as a result of a spoken communication is unduly onerous and not justified and that, when the current and evolving on-line access is taken into account, a free-to-use on-line or email channel would be adequate to effect any such cancellation. Digicel also recommends that, to the extent there is a duplication between clause 21 and clause 5(e), the similar provision in clause 21 be deleted.
50. Digicel submits that any specific provisions in clause 6 relating to data retention periods should be aligned with the yet-to-be-implemented Data Privacy Law and with any statute of limitations considerations in respect of contract law.

### **Office Response**

51. The Office notes Digicel's comments with respect to the provision of information in "hard copy" form free of charge and notes the trend towards the provision of information in electronic form. However, the Office considers that not all consumers in the Cayman Islands may have access to electronic sources of information,<sup>8</sup> and that the provision of information in "hard copy" (i.e. paper) form continues to be necessary. The Office considers that this requirement is proportionate as the obligation in draft regulation 3(3)(a) to provide information in hard copy form is only upon request.
52. Similarly, the Office considers it necessary that information be provided in alternate formats accessible to persons with disabilities. In the Office's view, no consumers should be denied access to important information necessary to make informed decisions about ICT services merely because of a disability.
53. The Office notes that Digicel does not provide concrete examples or details of the potential costs of providing information in alternate formats accessible to persons with disabilities, or of the need to develop specific mechanisms to defray the costs or to incentivise investment. The Office considers that

<sup>8</sup> The Office notes, for example, that the Economics and Statistics Office reports that, in 2016, only 73.7% of households in the Cayman Islands had Internet access and only 68.3% had computers. See page 194 of the *2016 Compendium of Statistics* – [https://www.eso.ky/UserFiles/right\\_page\\_docs/files/uploads/the\\_cayman\\_islands\\_compendium\\_of\\_statist-2.pdf](https://www.eso.ky/UserFiles/right_page_docs/files/uploads/the_cayman_islands_compendium_of_statist-2.pdf)

- the requirement in draft regulation 3(3)(b) is proportionate as the obligation to provide information in alternate formats is only upon request.
54. The Office notes Digicel's comments with respect to the display of rate information at retail outlets pursuant to draft regulation 3(4)(c) and Office notes that the retail locations of service providers may be of different sizes. However, the Office considers that service providers are able to satisfy the requirements of draft regulation 3(4)(c) by displaying the information (i.e. *"the rates on which its [the service provider's] services and products are offered"*) on a television, computer, laptop, tablet or other screen, or in other formats such as 'hard copy', which is prominently displayed to, and easily accessible by, consumers visiting the retail location in question.
55. With respect to draft regulation 5(e), the Office considers it reasonable and proportionate to require a service provider to make available a telephone number for consumers to call free of charge, where the consumer wishes to cancel a contract entered into as a result of a '**Spoken Communication**'<sup>9</sup> with the service provider. As noted in footnote 8 above, not all consumers may have access to email or on-line services. The Office considers that all consumers, including those without access to email or on-line services, should have the same ability to cancel a contract entered into as a result of a Spoken Communication. Given that the contract would have been entered into as a result of a verbal communication in such cases, the Office considers it reasonable that consumers have the ability to cancel it through another verbal communication with the service provider.
56. The Office notes Digicel's comments that there is duplication between draft regulation 5(e) and draft regulation 21. The Office notes, however, that the former sets out the information which is required to be provided (i.e. the telephone number to call in order to cancel a contract), while the latter establishes the obligation to make the telephone number available. The two provisions are, therefore, complementary and not duplicative.
57. The Office also notes Digicel's comments regarding draft regulation 6 and aligning data retention periods *"with the yet-to-be-implemented Data Privacy Law and with any statute of limitations considerations in respect of contract law."*

<sup>9</sup> "Spoken Communication" is defined in draft Regulation 2 as *"a verbal communication (including such things as recordings) with a Consumer about the provision of a Service and /or Product."*

58. The Office considers that draft regulation 6 is in fact aligned with the Data Protection Law 2017 (*'DPL'*).<sup>10</sup> Pursuant to **section 6** of the DPL, ICT service providers are subject to the obligations set out in the DPL:

6. (1) *This Law applies to a data controller in respect of any personal data only if -*

- (a) *the data controller is established in the Islands and the personal data are processed in the context of that establishment; or*
- (b) *the data controller is not established in the Islands but the personal data are processed in the Islands otherwise than for the purposes of transit of the data through the Islands.*

(2) *A data controller referred to in subsection (1)(b) shall nominate, for the purposes of this Law, a local representative established in the Islands who shall, for all purposes within the Islands, be the data controller and, without limiting the generality of this provision, bear all obligations under this Law as if the representative were the data controller.*

(3) *For the purposes of subsections (1) and (2), each of the following is to be treated as established in the Islands –*

- (a) *an individual who is ordinarily resident in the Islands;*
- (b) *a body incorporated or registered as a foreign company under the law of the Islands;*
- (c) *a partnership or other unincorporated association formed under the law of the Islands; or*
- (d) *any person who does not fall within paragraph (a), (b) or (c) but maintains in the Islands –*
  - (i) *an office, branch or agency through which the person carries on any activity; or*
  - (ii) *a regular practice.*

<sup>10</sup> <http://www.gov.ky/portal/pls/portal/docs/1/12428349.PDF>

59. As “data controllers,”<sup>11</sup> service providers are required to comply with the data protection principles set out in the DPL by virtue of **section 5(4)** of that Law:

*5. (4) Subject to section 17, a data controller shall comply with the data protection principles that relate to the personal data that the data controller processes, and shall ensure that the data protection principles are complied with in relation to the personal data that are processed on the data controller’s behalf.*

60. Data Protection Principle 5 states that:

*5. Personal data processed for any purpose shall not be kept for longer than is necessary for that purpose.<sup>12</sup>*

61. The Office considers that, in the normal course, there is no need for any ICT service provider to retain personal data in relation to a consumer for more than twelve months after the service provider’s contract with that consumer has come to an end, especially given that consumers must file any complaints within that period of time (see paragraph 95 below).

62. However, the Office recognises that there may be circumstances where it may be reasonable for an ICT service provider to retain personal data for a longer period of time (for example, where there may be on-going litigation relating to a contract between a consumer and a service provider). Accordingly, the Office will amend draft regulation 6 by inserting the words “*Subject to any other Law or legal requirement,*” at the start of the regulation.

### *C) Question 3*

**What are your views on Part 3 of the draft Regulations? Will the proposed regulations, in your view, enable ICT service providers to address and**

<sup>11</sup> Defined in **section 2** of the DPL as “*the person who, alone or jointly with others determines the purposes, conditions and manner in which any personal data are, or are to be, processed and includes a local representative referred to in section 6(2).*”

<sup>12</sup> See Part 1 of **Schedule 1** of the DPL.

**resolve consumer complaints efficiently and expeditiously? If not, please explain in detail the changes required to achieve this objective.**

63. Digicel notes that an effective interaction with customers who are dissatisfied with aspects of its service is an important competitive differentiator, and that a reputation for high levels of customer service is something to be strived for and maintained.
64. Digicel submits, however, that the proposed provisions relating to customer complaints are overly prescriptive and do not take account of the variations of operational and commercial models of service providers, service offering portfolios or profiles of the customer base.
65. Digicel submits that clause 7(1)(a) should be modified to require service providers to allow complaints to be made using at least two of the four mechanisms outlined. In Digicel's view, this would be sufficient to ensure adequate access by consumers to the complaints procedure while allowing service providers sufficient flexibility to choose those contact channels that best suit their operational business model, service portfolio and customer base profile.
66. Digicel further recommends that, if clause 7(1)(a) were amended as suggested, clause 7(1)(b) be amended to reflect that a telephone contact channel may not be one of the chosen options.
67. Digicel submits that a number of aspects of clause 9 are overly prescriptive. In particular, clauses 9(e) and 9(f) appear to Digicel to contemplate the development of an interactive interface where the status of a complaint could be queried. Digicel submits that the cost of developing such a tracking tool in a market the size of the Cayman Islands would be disproportionately large.
68. Digicel also submits that the requirement in clause 9(i) that errors be rectified within 2 days is redundant, operationally challenging, and provided no customer benefit, over and above the requirement in the same clause that the corrections be reflected in the next bill.
69. Digicel notes that, in its experience, some customers will not accept that their complaint was ill-founded or that their expectations for resolution were unreasonable. Digicel submits that some provision should be made in the

Regulations for service providers to close complaints in such circumstances.

70. With respect to clause 11, Digicel considers a number of provisions to be unworkable in practice. In particular, Digicel considers the requirement for written acknowledgement in clause 11(c) not to be relevant if the complaint was already dealt with, and overly bureaucratic and costly where the customer has chosen to interact with the service provider verbally.
71. Digicel notes that the timelines in clauses 11(d) and 11(e) are absolute and do not reflect the possibility that there may be circumstances beyond the service provider's control – for example reliance on third parties – which would render those timelines unachievable. Digicel recommends that they be amended to set these as the limits "*where practical*" and, that where they could not be met, that the service provider use reasonable endeavours to conclude the matter as soon as practical.
72. With respect to clause 11(f), Digicel submits that a requirement to send a written notification in all cases is not required by customers and is not practical. Digicel recommends that this be modified to apply "*where a customer requests it.*"
73. Digicel welcomes the thrust of clause 14 but submits that it is overly prescriptive. Digicel recommends that the notice provided should be reasonable having regard to the nature of the service in question and the circumstances of the customer. Digicel submits that it is not reasonable in all circumstances to write to a customer at their last known address and that SMS or email with a read or delivery receipt may be more than adequate.
74. Digicel notes errors in the cross-references in clauses 14 and 15.
75. With respect to clause 16, Digicel submits that it "*sets out in detail what amounts to a high-level design for a complaints handling system.*" Digicel notes, however, that the consultation document does not outline a regulatory impact assessment, or a cost-benefit analysis associated with the IT and operational process development that service providers would face in meeting its requirements. Digicel submits that, provided service providers are able to meet the functional and timing requirements of clauses 9 and 11, there is no need to specify how they go about meeting these requirements and clause 16 could be deleted.

76. Digicel submits that, given that the official language of the Cayman Islands is English, the implied obligation under clauses 17(2) and (3) to handle complaints in a foreign language is unduly onerous and these clauses should be deleted.

### Office Response

77. The Office considers that an effective customer complaints handling procedure is a crucial part of any service provider's organisation. The Office also considers that access to that system should not be limited and that channels to make complaints should be accessible at the same locations where sales can take place (for example, in-store, on-line). The Office is also aware that not all consumers in the Cayman Islands have access to all of the potential channels – for example, some consumers may have access to telephone service but not to on-line facilities for submitting complaints.
78. The Office considers, therefore, that the effect of Digicel's proposal that draft regulation 7 be modified to require only two of the four specified channels, would have the effect of limiting consumers' access to a service provider's complaints handling procedure. This would not be in the best interests of the public in the Cayman Islands.
79. The Office considers that Digicel's concern that draft regulations 9(e) and 9(f) would require service providers to develop "some form of interactive interface" is misconceived. The Office notes that the Draft Regulations do not require any specific tool or process. They only require some form of effective process for the provision of information to both the complainant and the service provider. The details of that process and the technology used to implement it are not specified and left to the service provider to determine in the context of its specific operations.
80. The Office notes that the requirements in draft regulation 9(i), namely, to correct errors within two business days and to reflect the correction on the next bill, are not redundant. The former requires timely action by the service provider, while the latter requires the results of the action to be documented.
81. While the Office notes Digicel's comments regarding the need for a process to close complaints where customers "*will not accept that their complaint was ill-founded or where their expectations for resolution are unreasonable,*" the Office considers this matter has been adequately addressed by draft regulations 9(n) and 12.

82. With respect to Digicel's comments regarding the complaints handling procedures set out in draft regulation 11, the Office does not consider them "*unworkable in practice*" or "*overly bureaucratic*". The Office considers that Digicel's proposal not to acknowledge in writing **Verbal Complaints**<sup>13</sup> could lead to such complaints not being properly documented and, as a result, not properly resolved. Similarly, the Office considers that Digicel's proposal that the resolution of complaints be documented in writing only where requested by a consumer could lead to confusion or further complaints where the consumer and service provider had different expectations or understandings of the resolution.
83. The Office acknowledges, however, that written acknowledgement of a complaint and written confirmation of closure of the complaint might not be required in circumstances where the consumer makes a Verbal Complaint and where the Verbal Complaint is resolved to the consumer's satisfaction during the first contact the service provider has with the consumer about the complaint, in accordance with draft regulation 11(b).
84. The Office will, therefore, insert the words "*but not to Verbal Complaints which have been resolved to the Consumer's satisfaction during the first contact with the Consumer pursuant to regulation 11(b)*" at the end of Regulation 11(c). The Office will also insert in Regulation 11(f) the following: "*For the avoidance of doubt this provision only applies to Complaints which have been formally acknowledged in writing pursuant to regulation 11(c).*"
85. The Office considers that these two changes are proportionate and will reduce the administrative burden of these regulations on service providers. The Office notes that these two changes do not affect the obligation set out in draft regulation 16 to keep a record of complaints received.
86. With respect to Digicel's concerns that the timelines in draft regulations 11(d) and 11(e) are unreasonable, the Office notes that draft regulation 11(d) only requires communication of the proposed resolution to the consumer within thirty days, not completion of the proposed resolution. Further, draft regulation 11(e) allows for extensions of time to complete the resolution with the consumer's consent.

<sup>13</sup> Defined in draft Regulation 2 as "*a Complaint made in person or over the telephone.*"

87. The Office therefore considers that the Draft Regulations already address circumstances where a resolution might depend upon matters beyond the service provider's control. The Office also considers that Digicel's proposed insertion of "*where practical*" and "*subject to reasonable endeavours*" would be too uncertain and would not give service providers the same incentive to resolve complaints quickly as the current Draft Regulations.
88. The Office notes Digicel's comments with respect to draft regulation 14 that it "*will not be reasonable in all circumstances to write to a customer at their last known address.*" Draft regulation 14 addresses circumstances where the service provider has tried unsuccessfully and repeatedly to contact the consumer regarding their complaint. In these circumstances, the Office considers that the service provider should make greater efforts to ensure the consumer receives the service provider's correspondence. In this regard, the Office notes that text messaging and not all email services support read- or delivery-receipts. The Office does not consider, therefore, that Digicel's proposed changes to be reasonable in the circumstances.
89. The Office notes that the Draft Regulations do not prevent a service provider from also sending an email or text message in these circumstances, if this might help bring the service provider's communication to the attention of the consumer, provided the service provider has also communicated by post.
90. Notwithstanding the foregoing, the Office considers there may be circumstances where a service provider does not have a postal address for a customer. In these circumstances, the Office considers it reasonable to allow a service provider to communicate in writing by email. The Office will therefore replace the word "*address*" in the regulation with "*postal address (or, if a postal address is not available, email address)*". The Office does not consider text messaging to be a reasonable alternative to written communication by post for the purposes of Regulation 14.
91. The Office notes Digicel's comments with respect to draft regulation 16. The Office does not consider that this regulation provides "*a high-level design for a complaints handling system.*" Rather, this regulation requires appropriate record-keeping so that, among other things, a service provider may track repeat complaints, identify systemic issues, and respond to Office queries. The Office therefore considers these provisions to be necessary.
92. The Office considers that Digicel has misconceived draft regulations 17(2) and 17(3). They do not include "*an implied obligation ... to handle*

*complaints in a foreign language.*” Rather, they require the service provider to record a complaint in English, but to keep a copy of the original complaint if it was submitted in another language.

93. The Office notes Digicel’s comments with respect to errors in the cross-references in draft regulations 14 and 15 and will address these in the final Regulations.

#### *D) Question 4*

**What are your views on the proposed time periods in relation to when consumers can file a complaint, as outlined in clause 8?**

94. Digicel submits that the post termination period for lodging complaints is too long and suggests shortening this period to the order of three (3) months.

#### **Office Response**

95. The Office notes that residential consumers may need to raise complaints regarding matters which may only come to their attention after the end of their contract. The Office considers that there should be a reasonable deadline to do so but considers that three months is too short a period of time to allow all residential consumers to address reasonably all such matters. Digicel’s comments are noted and the Office will change the period in Regulation 7(2) to six (6) months after the end of his/her contract with the service provider.

#### *E) Question 5*

**What are your views on Part 4 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and ICT service providers will benefit from clear, simple and fair terms and conditions for the provision of service? If not, please explain in detail the changes required to achieve this objective.**

96. Digicel submits that the proposed minimum set of terms to be included in a contract are not unreasonable. Digicel provides comments, however, in respect of a number of specific provisions.
97. Digicel notes that where there are significant subsidies for terminal equipment, extended minimum contract durations provide an opportunity for

- consumers to access high end devices and services. Digicel submits that, depending on the size of the subsidy in question, the 24-month upper limit in clause 20(1)(b) may be too short to allow these benefits to flow into the market.
98. In respect of the cooling off period in clause 21, Digicel notes that, in order to protect themselves, service providers might defer commencing installation work until the expiry of this period, and Digicel suggests that consumers be given the facility under the Regulations to explicitly waive this period in order to avail of expedited service delivery. Digicel also submits that the contact provisions of this clause are unduly onerous and that the need for a free to call telephone number is not justified and should be removed.
99. In respect of clause 26, Digicel submits that the provisions in respect of roaming are sufficiently material to justify and require a separate consultation, and notes that such an exercise has been commenced in both Trinidad and Tobago and in the Eastern Caribbean States.

### **Office Response**

100. With respect to the issue of contract duration, the Office notes that the limit in draft regulation 20(1)(b) to which Digicel refers applies only to contracts entered into by service providers who have been designated under the URC Law as having Significant Market Power ("**SMP**") in the provision of a relevant service or product, and only to contracts with residential consumers. The Office therefore considers that the provision would impact a limited subset of providers, services/products and consumers in the Cayman Islands.
101. The Office also notes that Digicel does not provide concrete details or examples of the possible impact of a 24-month limit on contract duration on the ability of consumers "*to access high end devices and services.*" The potential impact of draft regulation 20(1)(b) described by Digicel is, therefore, speculative.
102. In these circumstances, the Office considers that the contract duration limit set out in draft regulation 20(1)(b) is unlikely to constrain materially the ability of service providers to market and sell "*high end devices and services*" to residential customers in the Cayman Islands. The Office further

considers that the pro-competitive effect of such a limit would outweigh any such constraint on the SMP service provider.

103. With respect to the issue of the cooling-off period set out in draft regulation 21, the Office does not consider that a five business day cooling-off period would have the “*unintended consequences*” described by Digicel. The draft regulation would not apply where the consumer has consumed the product or service within the five-day period, and therefore would likely not apply to any services or products which are “plug-and-play” or which can be used right out of the box. With respect to services which might require more time to install and deliver, the Office considers that draft regulation 21 could provide service providers the incentive to install and deliver them more quickly.
104. The Office also considers that Digicel’s proposed remedy, allowing consumers to explicitly waive the cooling-off period, is unlikely to be useful in these circumstances. Just as a consumer might be pressured into accepting a contract for a service or product, they could be pressured into waiving the cooling-off period.
105. As the Office noted at paragraph 55 of this Determination, the Office considers it is reasonable and proportionate to provide consumers with a means to contact a service provider by telephone free of charge for these purposes.
106. With respect to the issue of roaming user notifications, the Office does not consider that a separate consultation is required. Draft regulation 26 only requires service providers to give their customers sufficient and timely information in order to prevent bill shock and to enable those customers to make informed decisions about their consumption of roaming services. The Office acknowledges, however, that some time may be required in order to implement this facility in the networks and billing systems of the mobile service providers. Accordingly, the Office will insert the words “*no later than six months after the effective date of these Regulations*” at the start of draft regulation 26.

### *F) Question 6*

**Please provide your thoughts regarding the mandatory terms and conditions, that should be included in every contract, as outlined in clause 23(2).**

107. Noting that this question should refer to clause 18(2) instead, Digicel submits that that the proposed minimum terms to be included in a contract are not unreasonable.

#### **Office Response**

108. Digicel's comments are noted.

### *G) Question 7*

**What are your views on Part 5 of the draft Regulations? Will the proposed regulations, in your view, ensure consumers and ICT service providers will benefit from clear, accurate, timely and easy-to-understand invoices, will reduce the frequency of erroneous bills, or reduce the number of consumer complaints regarding billing issues? If not, please explain in detail the changes required to achieve this objective.**

109. Digicel states that transparency and clarity in customer billing improves the overall customer experience and reduces the scope for dissatisfaction and complaint. With respect to specific proposed provisions in Part 5, Digicel submits the following:

- a. The requirement in clause 28(k) for mandatory telephone access is unduly and unreasonably prescriptive and Digicel submits that requiring any 2 out of the 4 specified contact mechanisms would be more proportionate.
- b. The provisions of clause 36 are unduly prescriptive and unfairly interfere with a service provider's rights under general law, and Digicel submits that curtailing a supplier's right to recoup a legitimate debt to a period much shorter than would be permissible under general law would appear to be a significant overreach of the Office's powers.

- c. The process set out under clause 38 is overly prescriptive and does not allow Service Providers the flexibility to design processes that align with their internal financial standards and processes for debt recovery and credit management. Digicel submits it should be open to service providers to specify their own processes provided these are transparently communicated and are not unreasonable.

### Office Response

110. With respect to the issue of contact mechanisms required to allow customers to raise queries or complaints about their bills, the Office notes that draft regulation 28(k) only specifies two contact mechanisms (a telephone number and an electronic mail address). It does not limit service providers from implementing any other contact mechanisms.
111. The Office does not consider a requirement to provide telephone access to raise queries or complaints about bills to be “*unduly and unreasonably prescriptive*” or to be disproportionate, as claimed by Digicel. As stated in paragraph 77 above, the Office considers that an effective customer complaint handling procedure – including the procedure to address billing issues – is a crucial part of any service provider’s organisation. The Office is also aware that not all consumers in the Cayman Islands have access to all of the potential channels – for example, some consumers may have access to telephone service but not to on-line facilities for submitting complaints.
112. The Office considers, therefore, that the effect of Digicel’s proposal that draft regulation 28(k) should require only two of four specified channels, and should not require telephone access, would have the effect of limiting consumers’ access to a service provider’s billing complaints handling procedure. This would not be in the best interests of the public in the Cayman Islands.
113. The Office notes that telephone access to a consumer complaints handling procedure will be required pursuant to draft regulation 7(1). The Office considers the incremental effort required of an ICT service provider to establish telephone access to a billing query and complaints procedure is not disproportionate.
114. With respect to the three-month limit on including unbilled charges in later bills, set out in draft regulation 36, the Office notes that the right to collect a

- debt arises after a service provider issues an invoice to the consumer. While draft regulation 36 requires invoices to be produced on a timely, complete and accurate basis, it does not affect a service provider's right under general law to collect the debt once the invoice has been issued to the consumer. Further, the Office considers that both consumers and service providers have an interest in timely, complete and accurate invoices. The Office therefore considers that draft regulation 36 is not "*unduly prescriptive*" and does not "*unfairly interfere*" with a service provider's rights under general law, as stated by Digicel.
115. The Office notes, however, that the wording of draft regulation 36 is complex. The Office will simplify the text of the regulation in the final Regulations (see paragraph 132 below).
116. With respect to the procedures to be applied in the event of non-payment by a customer of undisputed charges, set out in draft regulation 38, the Office notes that the draft regulation sets out minimum time frames for measures to be applied by a service provider in effecting payment of invoices by consumers. It does not prevent service providers from applying other processes or measures, provided they comply with the terms of draft regulation 36. The Office therefore considers that the draft regulation is not "*overly prescriptive*" or "*does not allow flexibility*" to service providers, as stated by Digicel.

#### H) Question 8

**What are your views on Part 6 of the draft Regulations? Will the proposed regulations, in your view, ensure ICT service providers resolve network faults in an efficient and timely manner? If not, please explain in detail the changes required to achieve this objective.**

117. Digicel states that the Draft Regulations do not set out proposed penalties for non-compliance and therefore that, apart from the limited exceptions set out in clause 41(a), the absolute nature of the obligation in clause 41 is a significant concern to Digicel.
118. Digicel also considers that the requirement to allow fault reporting 24 hours a day, 7 days a week is unduly onerous and confers little or no benefit on consumers, as any such afterhours fault reporting is unlikely to be dealt with until the next business day in any event.

## Office Response

119. The Office notes that draft regulation 41 states in part: “[a] *Service Provider shall provide Services to a Consumer within the timeframe agreed with the Consumer ...*” (emphasis added). The Office further notes that the intent of Part 6 of the Draft Regulations is to ensure a service provider communicates and honours its commitments to a consumer and, where it is unable to deliver a service within the agreed timeframes, remains in communication with the consumer (see draft regulation 42(2)).
120. Because the intent of Part 6 of the Draft Regulations is to ensure communication between a service provider and a consumer, and because the timeframes for service delivery are “*agreed*” with the consumer – and therefore can be influenced to a great extent by the service provider – the Office considers it reasonable that they take the form of a mandatory obligation through the use of the term “*shall*”.
121. With respect to the provision for 24/7 fault reporting in draft regulation 43, the Office considers that it is necessary for a fault to be recorded and a ticket raised as soon as possible for expeditious fault resolution, even if a fault might not be addressed until the next business day as suggested by Digicel. The Office further considers that 24/7 fault reporting would give service providers the ability to correct faults outside of normal business hours in the appropriate circumstances, which would not be possible if faults could not be reported outside of normal business hours.
122. The Office considers, therefore, that changes to Part 6 are not required when it publishes the final Regulations, except as described below.
123. The Office notes that there is typographical error in draft regulation 42(2), where a reference to regulation 7(1) should have been to regulation 41(1). The Office will correct this in the final Regulations.

### I) Question 9

**Please provide your views on whether these draft Regulations should apply to all consumers, only to consumers who are not businesses, or to individual consumers and small businesses. Please explain in detail your position.**

124. Digicel submits that limiting consumer protection regulations to end-users who do not use the service in connection with a business would be a proportionate and reasonable approach as, in its view, business consumers are well-positioned to negotiate the terms and conditions of service at arms' length with service providers.

#### **Office Response**

125. Digicel's comments are noted. The focus of the Draft Regulations is residential consumers, through the operation of the definition of "consumer" in draft regulation 2.<sup>14</sup>

### J) Question 10

**Please provide your views on any other matters you consider relevant to this Consultation.**

126. Digicel submits that the Draft Regulations will take time to implement and will potentially involve considerable cost, and that the Office should weigh the consumer benefits arising from the Draft Regulations against the consumer detriment should they cause resources and funds to be diverted from network and service enhancements and upgrades. Digicel also submits that an implementation period of at least 18 months is required after these regulations are promulgated.

#### **Office Response**

127. The Office notes that, pursuant to **section 72** of the ICT Law, ICT service providers and ICT network providers are currently required to "*use best endeavours to ensure that their ICT services and ICT networks are ... provided with due care and skill; and ... rendered in accordance with the standards reasonably expected of a competent provider of those ICT services and ICT networks.*"

<sup>14</sup> See paragraphs 21 and 35 above.

128. The Office also notes that Digicel does not provide concrete evidence or details in support of its claim that a number of the provisions in the Draft Regulations would take time to implement and would potentially involve considerable cost.
129. The Office considers that consumers should not be required to wait as long as eighteen months before receiving the quality of service that is required by the ICT Law, and that has been required since 2002 by earlier legislation,<sup>15</sup> if their service provider is not currently meeting the standards reasonably expected of a competent provider of ICT services. The Office further considers that the Draft Regulations are likely to create a minimal burden, if any, on those ICT service providers who already meet or exceed the standards reasonably expected of competent providers of ICT services.
130. The Office does, however, acknowledge that service providers may require some time to investigate and implement the provision of information in alternative formats. Accordingly, the Office will insert the words “*no later than twelve months after the effective date of these Regulations*” at the start of regulations 3(3)(b) and 8(4)(d).

## 5. Determinations

131. Having considered all the submissions made by the respondents, the Office determines that it will adopt the Consumer Protection Regulations as proposed in **ICT 2017 – 4 – Consultation**, pursuant to **sections 72(3) and 72(4)** of the ICT Law and reasons set out above, with the following changes:
- a. The definitions of “Data Controller”, “Data Subject” and “Personal Data” were amended so that the defined terms have the same meaning as stated in the Data Protection Law, 2017;
  - b. regulation 3(1)(c) was amended to state “no more than one link, from the home page, from the home page of the website”, instead of two links.

<sup>15</sup> See **section 50(1)** of the Information and Communications Technology Authority Law, 2002.

- c. the words “*no later than twelve months after the effective date of these Regulations*” are inserted at the start of regulation 3(3)(b) and regulation 8(4)(d) (see paragraph 130 above);
  - d. the words “*Subject to any other Law or legal requirement*” are inserted at the start of regulation 6 (see paragraph 62 above);
  - e. the word “*twelve*” in regulation 7(2) is replaced by the word “*six*” (see paragraph 95 above);
  - f. the words “if he or she is deemed vulnerable or has a disability as defined in the Disabilities (Solomon Webster) Law, 2016” between the words “Consumer” and “making” in sub-regulation 9(j)(ii);
  - g. the words “*but not to Verbal Complaints which have been resolved to the Consumer’s satisfaction during the first contact with the Consumer pursuant to regulation 11(b)*” are inserted at the end of regulation 11(c) (see paragraph 84 above);
  - h. the sentence “*For the avoidance of doubt this provision only applies to Complaints which have been formally acknowledged in writing pursuant to regulation 11(c).*” is inserted in regulation 11(f) (see paragraph 84 above);
  - i. the word “*address*” in regulation 14 is replaced by the words “*postal address (or, if a postal address is not available, email address)*” (see paragraph 90 above); and
  - j. the words “*no later than six months after the effective date of these Regulations*” are inserted at the start of regulation 25<sup>16</sup> (see paragraph 106 above).
132. In addition to the changes identified in paragraph 131 above, the Office is making the following other, minor changes to the Draft Regulations subsequent to the closing of **ICT 2017 – 4 – Consultation**:
- a. in regulation 12(1), the word “*Regulation*” is no longer capitalised and reads “*regulation*”;

<sup>16</sup> This was draft regulation 26. See paragraph 132.i below.

- b. in regulation 12(1)(a), the words “*Customer Complaints Appeals Procedure Policy*” are replaced with “*Consumer Complaints Appeals Procedure Guidelines*,” to reflect the title of the relevant document;<sup>17</sup>
- c. in regulation 14(c), the reference to “*regulation 11(c)*” is replaced by the correct reference to “*regulation 14(b)*”;
- d. in regulation 15, the references to “*regulation 11(c)*” and “*regulation 11(e)*” are replaced by the correct references to “*regulation 14*” and “*regulation 14(b)*”, respectively;
- e. in regulation 16(2), the reference to “*regulation 4(16)*” is replaced by the correct reference to “*regulation 16*”;
- f. in regulation 16(2)(c)(iii), the reference to “*regulation 4(8)*” is replaced by the correct reference to “*regulation 11*”;
- g. in regulation 16(3), the reference to “*regulation 4(14)*” is replaced by the correct reference to “*regulation 16(1)*”;
- h. in regulation 18(2)(k), the reference to “*regulation 5(2)(c)*” is replaced by the correct reference to “*regulation 18(2)(c)*”;
- i. regulations 19(1), 19(2) and 19(3) have been renumbered 18(2)(n), 18(2)(o) and 18(2)(p), respectively, as they are more appropriately placed in regulation 18(2), and all regulations following have been renumbered accordingly;
- j. in regulation 21(1)(b) (formerly draft regulation 22(1)(b)), the reference to “*regulation 5(6)(a)*” is replaced by the correct reference to “*regulation 21(1)(a)*”;
- k. in regulation 21(1)(b)(ii) (formerly draft regulation 22(1)(b)(ii)), the reference to “*regulation 5(5)*” is replaced by the correct reference to “*regulation 20*”;

<sup>17</sup> See **OF 2018 – 2 – Consultation**, “*Proposed Customer Complaints Appeals Procedure Guidelines*” dated 16 April 2018 – <http://www.ofreg.ky/upimages/commonfiles/1523916113OF2018-2-Consultation-CustomerComplaintsAppealsProcedureGuidelines.pdf>

- l. in regulation 21(1)(c) (formerly draft regulation 22(1)(c)), the reference to “*regulation 5(6)(a)*” is replaced by the correct reference to “*regulation 21(1)(a)*”;
  - m. in regulation 21(2) (formerly draft regulation 22(2)), the reference to “*regulation 5(6)*” is replaced by the correct reference to “*regulation 21(1)*”;
  - n. in regulation 23(2) (formerly draft regulation 24(2)), the reference to “*regulation 5(g)*” is replaced by the correct reference to “*regulation 24(1)*”;
  - o. in regulation 27(l) (formerly draft regulation 28(l)), the reference to “*regulation 6(2)(k)*” has been replaced by the correct reference to “*regulation 27(k)*”;
  - p. the text of regulation 35 (formerly draft regulation 36) is replaced by “*A Service Provider shall not include a charge or payment due in a Bill after three (3) months from the end of the Billing Period in which the relevant Product or Service giving rise to the charge or payment due was provided to the Consumer*”;
  - q. in regulation 37 (formerly draft regulation 38), sub-regulations (4), (5), (6), (7) and (8) have been renumbered (2), (3), (4), (5) and (6), respectively;
  - r. in regulation 41(1) (formerly draft regulation 42(1)), paragraphs (b) and (c) are renumbered (a) and (b), respectively;
  - s. in regulation 41(2) (formerly draft regulation 42(1)), the reference to “*regulation 7(1)*” is replaced by the correct reference to “*regulation 41(1)*”; and
  - t. in the table of contents, made amendments to titles of regulations 15, 36 and 37.
133. The Office considers that the aforementioned changes are either typographical or clarificatory in nature and have no material impact on the outcome of **ICT 2017 – 4 – Consultation** or this Determination, and therefore would not change the position of any party if they were to have been included in the **ICT 2017 – 4 – Consultation**. They will therefore be



included in the final Consumer Protection Regulations (***the final Regulations***).

134. A copy of the final Regulations is attached as Annex 1 to this Determination. Pursuant to **sections 72(3) and 97(3)** of the ICT Law, the Office will publish the final Regulations in the Gazette.



# Annex 1

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## Final Consumer Protection Regulations

CAYMAN ISLANDS



Supplement No.[...] published with Gazette No [...] dated [...].

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW,  
(2019 REVISION)**

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY  
(CONSUMER PROTECTION) REGULATIONS, 20XX**

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CAYMAN ISLANDS

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY LAW  
(2019 REVISION)**

**PART 1 - PRELIMINARY**

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY  
(CONSUMER PROTECTION) REGULATIONS, 20[XX]**

The Office, in exercising of its powers conferred by section 97(3)(b)(iii) and (iv) of the Information and Communications Technology Law (2019 Revision) makes the following regulations-

1. These regulations may be cited as the Information and Communications Technology Law (Consumer Protection) Regulations, 20[XX].
2. In these regulations-

The following terms shall have the following meanings. Words or phrases denoting the singular shall include the plural, and vice versa. Words or phrases that denote a gender shall include both genders.

“Bill” means a notice from a Service Provider, presented in hard copy or electronic form, which advises a Consumer of the money due in respect of any Product or Service provided to the Consumer by the Service Provider;

“Billing Medium” means the format in which a Bill is provided to a Consumer by a Service Provider;

“Billing Period” means the period of time covered by each Bill issued by the Service Provider, or as the context requires, the period of time covered by a particular Bill;

“Business Day” means any day other than a Saturday and Sunday, and a public holiday declared in the Cayman Islands;

“Complaint” means an expression of dissatisfaction made by a Consumer to a Service Provider in relation to its Services, Products or the Service Provider’s complaints handling process to which the Consumer expects a response from the Service Provider;

“Consumer” means a person who enquires about, requests, receives, acquires, uses or subscribes to a Service or Product from a Service Provider for the primary purpose of his personal or domestic use;

“Credit Management” means the process by which a Service Provider manages any credit risk to the Service Provider or by which it collects outstanding debts from a Consumer;

“Credit Management Action” means any action taken by a Service Provider to facilitate Credit Management;

“Data Controller” has the same meaning as in the Data Protection Law, 2017;

“Data Subject” has the same meaning as in the Data Protection Law, 2017;

“Disconnect” means any action taken by a Service Provider with the intention of permanently preventing the use by a Consumer of a Product or Service it provides to that Consumer;

“Force Majeure” means an unforeseen and uncontrollable force or event outside the reasonable control of the party affected by that event, including but not limited to one or more of the following: fire, flood, earthquake, natural disaster, war, strike, lockout, riot, explosion, insurrection, terrorism, government action or any exercise of emergency powers by any governmental authority;

“ICT Service” means an ICT service (apart from Type 2, 11, 11a, 12, 13, 100 and 200 ICT Services);

“Interim Billing” means providing a Consumer with a Bill other than at the end of a Billing Period;

“Law” means the Information and Communications Technology Law as revised from time to time;

“Mass Media” means any means whether written, electronic, spoken or visual that is used to communicate information to the general public;

“Migrated” means where a Consumer has transferred his or her Service from one Service Provider to another Service Provider;

“Office” means the Utility Regulation and Competition Office, established by section 4 of the Utility Regulation and Competition Law (as revised), or any other such embodiment of its functions;

“Personal Data” has the same meaning as in the Data Protection Law, 2017;

“Post-paid Services” means services that may be billed all or in part after use, for example in a monthly bill;

“Product” means a physical item that is provided, or caused to be provided, by the Service Provider to a Consumer;

“Quarter” means a period of three (3) calendar months commencing 1 January, 1 April, 1 July, and 1 October;

“Reconnect” means any action taken by a Service Provider with the intention of allowing the use by a Consumer of a Product or Service it had previously provided to that Consumer and had previously taken action to Disconnect;

“Restrict” means any action taken by a Service Provider to limit temporarily a Consumer’s access to a Product or Service provided to that Consumer by the Service Provider;

“SMP” or “Significant Market Power” means where a Service Provider, either individually or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of its competitors, customers and ultimately consumers;

“Sales Representative” means anyone who is directly or indirectly employed or contracted by the Service Provider to sell, offer to sell, or otherwise promote the Service Provider’s Services and Products on its behalf;

“Security Deposit” means a payment collected by a Service Provider from a Consumer to mitigate any actual or perceived credit risk which the Service Provider assumes in providing a Product or Service to that Consumer;

“Service” means an ICT Service offered or provided to a Consumer by a Service Provider;

“Service Provider” means a Licensee who provides an ICT Service;

“Spoken Communication” means verbal communication (including such things as recordings) with a Consumer about the provision of a Service and /or Product;

“Suspend” means any action taken by a Service Provider to cause Suspension;

“Suspension” means the temporary prevention of use by a Service Provider of a Service provided to a Consumer;

“Verbal Complaint” means a Complaint made in person or over the telephone; and

“Website” means any locations connected to the internet that maintains one or more pages on the world-wide web, applications and social media feeds.

**PART 2 – PROVISION OF INFORMATION**

3. (1) Where a Service Provider is required to provide information to a Consumer under this regulation, unless otherwise specified, this is to be effected -

- (a) by Spoken Communications; or
- (b) by making the information available; and,
- (c) by prominently displaying the information on all websites through which the Consumer can enter into a contract with the Service Provider i.e. displaying it on the home page of any such website or on a page that can be accessed by clicking on no more than one link, from the home page of the website.

(2) All information provided by a Service Provider for the purposes of complying with this regulation or otherwise, including for the avoidance of doubt any information provided in the Mass Media or in advertisements, shall be -

- (a) accurate;
- (b) up-to-date;
- (c) in compliance with the Truth in Advertising Rules and,
- (d) presented in a manner that is simple, clear and avoids the use of unnecessary legal or technical terms.

(3) In addition, all information provided by a Service Provider for the purposes of complying with these regulations shall be -

- (a) provided to a Consumer in hard copy or electronic form on his request;
- (b) no later than twelve months after the effective date of these Regulations, made available to a Consumer on his request in a format that is accessible to a person with disabilities, including where relevant in Braille; and,
- (c) unless otherwise provided in these regulations, made available and provided to the Consumer on request and free of charge.

(4) A Service Provider shall provide the following information to Consumers, the details of -

- (a) all material aspects of any Service or Product it offers that reasonably might be expected to impact upon a Consumer's decision to enter into a contract for that Service or Product;
  - (b) all material aspects of any Service or Product it offers that reasonably might be expected to impact on the Consumer's enjoyment of that Service or Product;
  - (c) the rates on which all its Services and Products are offered, such information to be prominently displayed at all retail outlets at which the Service Provider's Services or Products are sold and on any website through which the Service Provider conducts its business; and,
  - (d) the terms and conditions on which all its Services and Products are offered, such information to be available on request at all outlets at which the Service Provider's Services or Products are sold and also be displayed on any website through which the service provider conducts its business.
4. (1) Before entering into a contract with a Consumer, a Service Provider (including where appropriate the Service Provider's Sales Representative) shall provide the following information to the Consumer -
- (a) a complete description of the Service and/or Product to be provided under the contract;
  - (b) details of the length of time it will take for the Service and/or Product to be provided, including in particular the length of time it will take to initiate any connection required for the provision of the Service and/or Product;
  - (c) where the contract is for a fixed period of time, the duration of the contract, including, in particular, details of any term that provides for a minimum and/or maximum duration of the contract;
  - (d) details of any termination fees payable by the Consumer if the contract is terminated before the end of any minimum period of time specified by the contract;
  - (e) details of any term in the contract that requires the Consumer to provide notice of his intention to terminate the contract, in particular any requirements in relation to the manner in which such notice is to be provided and/or the minimum period of notice the Consumer is required to provide;
  - (f) details of the procedures for and methods by which disputes in relation to or arising out of the contract may be resolved;

- (g) where any other Service and/or Product (“additional service or product”) is required in order to effectively utilise the Service and/or Product which is the subject of the contract, details of any such additional service or product;
- (h) details of any applicable quality standards that will apply to the Service and/or Product to be provided under the contract;
- (i) details of any compensation, discount, rebate, refund or other arrangements which may apply if the quality standards applicable to the contract are not met; and,
- (j) where the contract provides for the Service and/or Product to be provided under it to be upgraded or Migrated either at a specified point or on request, details of the terms on which the Service and/or Product can be upgraded or Migrated, including in particular any fees or other charges that will be incurred by such upgrade or migration, and the impact (if any) such upgrade or migration will have on the quality standards that apply to the Service and/or Product provided under the contract.

(2) Where the Service Provider offers more than one Service and/or Product as part of a package or bundle, before entering into a contract with a Consumer to provide any such package or bundle, a Service Provider shall provide the following information to the Consumer -

- (a) a description of each component of the Service and/or Product; and,
- (b) the price the Service Provider would charge for each component were it to be supplied or sold on an individual basis.

5. In any Spoken Communication, a Service Provider shall promptly provide the following information -

- (a) the identity and brand name of the Service Provider;
- (b) the name of the person making the Spoken Communication;
- (c) the primary purpose of the Spoken Communication;
- (d) in relation to any Service and/or Product being sold -
  - (i) a description of the Service and/or Product;
  - (ii) any charges applicable to the Service and/or Product;
  - (iii) any special offer, discount or package available in relation to the Service and/or Product that is the subject of the Spoken Communication;

- (e) a specific telephone number a Consumer may call in the event he/she wishes to cancel any contract entered into as a result of the Spoken Communication.

6. Subject to any other Law or legal requirement, a Service Provider shall only keep a record of all the Personal Data relating to a Consumer's account, contract and his/her interactions with the Service Provider for the duration of the Consumer's contract with the Service Provider and for a period of twelve (12) months following the termination of that Consumer's contract.

### **PART 3 – COMPLAINTS**

7. (1) All Service Providers shall implement a Complaints handling procedure that –

- (a) makes provision for Complaints to be made to it in all of the following ways -
  - (i) in person at any of the Service Provider's retail outlets
  - (ii) by telephone;
  - (iii) in writing, presented in hard copy or electronic form; and
  - (iv) through the Service Provider's website by means of an online form;
- (b) save as specifically provided for by these regulations, is free of cost for the Consumer. In particular, a Service Provider must provide access to a telephone number through which Complaints can be made free of charge to the Consumer when using any local telephone network.

(2) All Complaints may be made by the Consumer: at any time before entering into a contract with the Service Provider; during the duration of his/her contract with the Service Provider; and for up to six (6) months after the end of his/her contract with the Service Provider.

8. (1) A Service Provider shall publicise the availability of this Complaint handling procedure to Consumers by providing information about it -

- (a) prominently on any Website through which the Service Provider does business i.e. by displaying it on the home page of any such

- Website or on a page that can be accessed by clicking on one link on the home page of the Website;
  - (b) all retail outlets where its Services and Products are sold; and
  - (c) in any other way that the Office shall direct from time to time.
- (2) A Service Provider shall ensure that all its Sales Representatives are able to inform Consumers of -
- (a) the Consumer's right to complain;
  - (b) the ways in which a Complaint can be made;
  - (c) the ways in which the Service Provider can be contacted in relation to Complaints and potential Complaints; and
  - (d) where the Consumer can obtain further information about the Complaints handling procedure.
- (3) The information provided under regulation 8(1) shall set out -
- (a) the Consumer's right to complain;
  - (b) the ways in which a Complaint can be made;
  - (c) the ways in which the Service Provider can be contacted in relation to Complaints; and
  - (d) the information and documents the Consumer will need to provide to the Service Provider when making a Complaint.
- (4) The information provided under regulations 8(1) and 8(2) shall be -
- (a) accurate;
  - (b) up to date;
  - (c) presented in a manner that is simple, clear and avoids the use of unnecessary legal or technical terms; and
  - (d) no later than twelve months after the effective date of these Regulations, where requested, provided in a range of media and formats, including formats that will be accessible to people with disabilities, including in Braille.

9. A Service Provider shall ensure that -

- (a) all Consumers who make a Complaint are treated with fairness and courtesy;
- (b) all Complaints are dealt with objectively and efficiently;
- (c) all communication with Consumers for the purposes of this regulation is undertaken in clear and easy to understand language;
- (d) all its Sales Representatives are aware of -
  - (i) the Service Provider's complaint handling procedure;
  - (ii) the Service Provider's obligations under this regulation; and
  - (iii) the potential remedies available to resolve a Complaint;
- (e) Consumers are provided with a means of monitoring the progress of the resolution of any Complaint they have made;
- (f) the Service Provider is able to and does monitor the progress of the resolution of any Complaint it has received;
- (g) the Service Provider is able to and does monitor the progress of any actions it has indicated it will carry out as part of the Complaint handling procedure and/or the resolution of a Complaint;
- (h) Consumers are informed promptly of any delays to timeframes that have been proposed as part of the complaint handling procedure;
- (i) errors in a current Bill are corrected within two (2) Business Days and the changes shall be reflected in the next Bill;
- (j) any remedy offered as part of a resolution is tailored to the Complaint made and, in particular, addresses -
  - (i) the root cause of the Complaint; and
  - (ii) the personal circumstances of the Consumer, if he or she is deemed vulnerable or has a disability as defined in the Disabilities (Solomon Webster) Law, 2016, making the Complaint in so far as these are known to the Service Provider;
- (k) where a Complaint is indicative of a wider problem or issue, the Service Provider addresses the root cause of that problem or issue;
- (l) no Complaint is closed unless –
  - (i) the Consumer and the Service Provider have agreed on a course of action, and the Service Provider has taken

the course of action and resolved the Complaint to the satisfaction of the Consumer; or

- (ii) the Consumer has indicated that he/she no longer wishes to pursue the Complaint and has consented to the Complaint being closed;
- (m) it has a process in place whereby any decision taken by the Service Provider in relation to the handling and/or proposed resolution of a Complaint can be referred to a suitably qualified senior employee (for example, a senior manager) for further consideration; and
- (n) where a Consumer informs the Service Provider that he/she is dissatisfied with any decision taken by the Service Provider in relation to the handling and/or proposed resolution of a Complaint, the Consumer is informed of the process under regulation 11.

10. Further to regulation 9(a), a Service Provider shall –

- (a) ensure that elderly people and people with disabilities are able to make and pursue a Complaint effectively and efficiently, in particular by -
  - (i) allowing such Consumers to make and/or pursue a Complaint through an authorised representative; and
  - (ii) ensuring the process of authorising a representative is quick and straightforward;
- (b) provide reasonable support to a Consumer who has specifically requested assistance in making and/or pursuing a Complaint.

11. A Service Provider shall -

- (a) immediately acknowledge any Verbal Complaint;
- (b) seek to resolve all Complaints through or during the first contact it has with the Consumer about the Complaint;
- (c) within five (5) Business Days of a Complaint being received, formally acknowledge the Complaint in writing, presented in a hard copy or electronic form. For the avoidance of doubt this provision also applies to Verbal Complaints, which shall have been already informally acknowledged pursuant to regulation

- 11(a) but not to Verbal Complaints which have been resolved to the Consumer's satisfaction during the first contact with the Consumer pursuant to regulation 11(b);
  - (d) as soon as practicable after completing its investigation of a Complaint, and in any event within thirty (30) days of receiving a Complaint, inform the Consumer who made the Complaint of the Service Provider's proposed resolution of that Complaint;
  - (e) within twenty (20) days of a Consumer indicating his/her acceptance of a resolution of his/her Complaint, which has been proposed by the Service Provider, complete all actions necessary to implement that resolution unless -
    - (i) otherwise agreed with the Consumer; or
    - (ii) the actions to be completed by the Service Provider are contingent on an action to be completed by the Consumer, in which case the Service Provider must complete all actions to implement that resolution within twenty (20) days of the Consumer having completed his/her action; and
  - (f) within five (5) Business Days of a Complaint being closed, send a written confirmation of the resolution of the Complaint to the Consumer who made it. For the avoidance of doubt this provision only applies to Complaints which have been formally acknowledged in writing pursuant to regulation 11(c).
12. (1) Where a Service Provider has not agreed on a resolution of a Complaint with a Consumer following the process set out at regulation 11 above, the Service Provider shall -
- (a) inform the Consumer that he/she may refer the Complaint to the Office for further consideration, as outlined in the Office's Consumer Complaints Appeals Procedure Guidelines; and
  - (b) on that Consumer's request, provide the Office with the relevant details (including all related correspondence) of the Complaint and inform the Office that the Service Provider has not been able to resolve the Complaint to the satisfaction of the Consumer within the timeframe required by this regulation.
- (2) A Service Provider may conclude after careful consideration by an appropriately senior member of its staff (for example a senior manager) that -
- (a) a Complaint is frivolous or vexatious;

- (b) it can do nothing more to assist the Consumer to resolve the Complaint; and/or
- (c) the behaviour of the Consumer is such that it does not wish to interact with the Consumer any further.

13. Where a Service Provider has concluded that a complaint falls within any or all of the terms of regulation 12(2) -

- (a) it may -
  - (i) refuse to continue to process the Complaint under its complaint handling procedure; or
  - (ii) refuse to accept any further Complaint from the same Consumer on the same or any similar issue other than in the course of an external dispute resolution process; and
- (b) it shall inform the Consumer who made the Complaint, in writing, presented in hard copy or electronic form, -
  - (i) that it does not intend to continue to process his/her Complaint under its complaint handling procedure;
  - (ii) of its reasons for reaching such a conclusion; and
  - (iii) of the options the Consumer has for external dispute resolution, including the Consumer's ability to refer the Complaint to the Office (including the Office's contact details).

14. Where a Service Provider has made two (2) unsuccessful attempts, on separate Business Days, to contact a Consumer to discuss a Complaint or inform the Consumer of the Service Provider's proposed resolution of the Complaint, the Service Provider shall write to the Consumer at his/her last known postal address (or, if a postal address is not available, email address) -

- (a) providing details of the dates, times and methods of its unsuccessful attempts to contact him/her;
- (b) including an invitation to the Consumer to contact the Service Provider within a specific timeframe of not less than ten (10) Business Days; and
- (c) setting out details of how the Service Provider can be contacted within the timeframe specified in regulation 14(b).

15. Where, following the provision of a notice pursuant to regulation 14(a) Consumer has not contacted the Service Provider within the timeframe specified pursuant to regulation 14(b), the Service Provider may treat the Complaint to which that notice relates as closed.

16. (1) In respect of every Complaint it receives, a Service Provider shall keep a record of -

- (a) the identity of the Consumer making the Complaint;
- (b) the nature of the Complaint and the issues raised as part of the complaint;
- (c) the steps taken to address the Complaint and the results of any investigation into the Complaint;
- (d) any resolution the Consumer requested in respect of the Complaint;
- (e) the proposed resolution of the Complaint made by the Service Provider, including any associated commitment to do or refrain from doing any specified action, and the Service Provider's reasons for proposing that resolution;
- (f) the Consumer's response to the Service Provider's proposed resolution, including any reasons the Consumer provided for this response;
- (g) any action taken in consequence of the Complaint including any action taken to implement the proposed or agreed resolution to the Complaint;
- (h) copies of all correspondence sent by or to the Consumer in respect of the Complaint;
- (i) the date the Complaint was received;
- (j) the date on which the following actions were due to be and were actually carried out -
  - (i) acknowledgment of receipt of the Complaint;
  - (ii) the provision of a proposed resolution by the Service Provider;
  - (iii) the resolution (if any) of the Complaint; and
  - (iv) the Complaint being closed.

(2) Information collected and recorded by a Service Provider for the purposes of regulation 16 shall be -

- (a) only kept for an appropriate period of time from the date on which the Complaint was closed;
  - (b) stored and/or indexed in a manner that ensures that the Service Provider is able to identify individual Complaints and their subject matter, for example by providing each Complaint with a unique reference number; and,
  - (c) stored and/or indexed in a manner that ensures the Service Provider is able to manage, monitor, analyse, record and report on -
    - (i) the handling and resolution of each Complaint, including, in particular, the progress made in resolving the Complaint while it is being resolved and the implementation of any actions the Service Provider has offered to perform in respect of the Complaint and/or its resolution;
    - (ii) identifying any patterns or trends arising across more than one Complaint in any given twelve (12) month period, such data being so collected and recorded on an anonymised basis; and
    - (iii) compliance with the timeframes required by regulation 11.
- (3) Insofar as the information collected and recorded for the purposes of regulation 16(1) contains Personal Data relating to a Consumer, a Service Provider shall ensure this is not disclosed except as provided for pursuant to any applicable legislation.
- (a) as required -
    - (i) pursuant to any relevant data protection conditions of the Service Provider's licence with the Office, and the Law; or
    - (ii) to allow the Service Provider and/or the Office to manage and/or resolve a Complaint; and
  - (b) with the express consent of the Consumer.

17. (1) Within fifteen (15) Days of the end of each Quarter a Service Provider shall submit a report to the Office that sets out in respect of the previous Quarter -

- (a) the number of Complaints received;
- (b) the nature of each Complaint received; and
- (c) the current status of each Complaint received during the previous Quarter, i.e. whether the Complaint has been closed and if not

whether a resolution has been proposed by the Service Provider and/or accepted by the Consumer.

(2) A Service Provider shall record complaints, as per sub-regulation (1), in English even where the Consumer's complaint was dealt with in another language.

(3) If an original written complaint was submitted in a foreign language, the Service Provider shall attach a copy of that original complaint to the record.

#### **PART 4 – CONTRACT TERMS**

18. (1) The terms and conditions of a contract entered into by a Service Provider with a Consumer shall be consistent with the provisions of these regulations and shall be -

- (a) clear;
- (b) unambiguous; and,
- (c) presented in a manner that is simple and avoids the use of unnecessary legal or technical terms.

(2) A contract entered into by a Service Provider with a Consumer shall include terms and conditions specifying -

- (a) the start date of the contract;
- (b) the length of the contract;
- (c) if applicable, the minimum duration for which the contract shall last;
- (d) details of each Product and Service to be provided under the contract, including the levels of service that will be achieved in relation to each Product and Service;
- (e) details of how each Product and Service to be provided under the contract shall be delivered, installed and/or activated, including the length of time it will take for each Product and Service to be ready for use by the Consumer;
- (f) if applicable, the circumstances in which the Consumer shall be entitled to compensation and/or a refund of sums he/she has paid to the Service Provider where the levels of service specified in the

- contract are not met, including the method of calculation of any such compensation and/or refund;
- (g) which, if any, of the terms and conditions of the contract the Service Provider may vary and the procedure by which any such variation shall be carried out;
  - (h) the manner in which the Consumer shall be notified of any changes to the contract;
  - (i) if applicable, any requirements concerning the manner in which notices in respect of the contract shall be served by either party on the other;
  - (j) the methods by which the contract may be terminated by either party;
  - (k) where a minimum contract duration is specified under regulation 18(2)(c), the circumstances in which the contract may be terminated before that minimum period has expired and the method by which any such termination shall be effected;
  - (l) where the Service Provider may impose a charge for the termination of the contract prior to the expiry of any specified length and/or minimum duration of the contract -
    - (i) the circumstances in which any such charges shall be payable; and
    - (ii) the amount of any such charge and the method by which it is calculated;
  - (m) the manner in which the contract may be renewed, including, if applicable, the circumstances in which the contract shall be renewed automatically;
  - (n) the circumstances in which the Service Provider may suspend or disconnect the Services provided pursuant to the contract;
  - (o) where the Service Provider may impose a charge for the disconnection or subsequent reconnection of the Services provided pursuant to the contract, details of -
    - (i) the circumstances in which any such charge shall be payable; and
    - (ii) the amount of any such charge and the method by which it is calculated;
  - (p) any penalty that may be imposed on the Consumer under the contract, including the nature of any such penalty and the

circumstances in which it may be imposed; where a Security Deposit is required by the contract, details of -

- (i) the basis on and manner in which it shall be held by the Service Provider;
- (ii) how and under what circumstances it shall be refunded to the Consumer; and
- (iii) any penalties and/or charges that may be applied to it and the circumstances in which these may be applied; and,
- (iv) the availability of the Complaint handling procedure under these Regulations, including the methods by which it may be initiated.

19. (1) A contract entered into by a Service Provider with a Consumer shall -

- (a) where the Consumer so elects, be for no more than twelve (12) months; and
- (b) where the Service Provider is designated by the Office under the Utility Regulation and Competition Law (as revised), as having SMP in the provision of any Product or Service to be provided pursuant to the contract, be for no longer than twenty-four (24) months; and,
- (c) not be automatically renewed by either party.

(2) Where a contract specifies a minimum duration for which it shall last, the Consumer may terminate the contract at any point after the expiry of that specified period by providing the Service Provider with a written notice, presented in hard copy or electronic form, 30 days before the required contract termination date. The Service Provider shall not impose a penalty or any other charge (save in respect of any Product or Service already provided to the Consumer pursuant to the contract) where the Consumer terminates the contract in such circumstances.

20. Where a Consumer has entered into a contract with a Service Provider for the purchase, lease or supply of any Service and/or Product, the Consumer may cancel the contract without a penalty or any other charge for up to five (5) Business Days from the date of the contract, unless the Service and/or Product has been consumed by the Consumer by that time. The Service Provider must provide a specific telephone number which the Consumer may call free of charge for this purpose.

21. (1) Where a Service Provider intends to make a modification, amendment or variation to a term of a contract with a Consumer that is likely to be of material detriment to the Consumer -

(a) the Service Provider shall give the Consumer not less than one (1) month's notice, presented in hard copy or electronic form, of the proposed modification, amendment or variation;

(b) the Service Provider shall, at the same time as it provides notice to the Consumer under regulation 21(1)(a), inform the Consumer -

(i) that, if the proposed modification, amendment or variation is not acceptable to the Consumer, the Consumer is entitled to terminate the contract by serving the Service Provider with notice during the period specified in the Service Provider's notice; and

(ii) that no penalty or charge shall be imposed by the Service Provider in consequence of the Consumer terminating the contract, save as is provided for by regulation 20.

(c) the Consumer may, having received a notice under regulation 21(1)(a), terminate the contract forthwith by providing the Service Provider with notice, presented in hard copy or electronic form, of his intention to do so at any point during the period provided for by the Service Provider's notice. The Service Provider shall not impose any penalty or charge on the Consumer for any such termination other than in respect of any Service already provided to the Consumer under the contract. For the avoidance of doubt, the Service Provider shall not impose any penalty or charge in respect of any Product purchased by the Consumer in connection with the Services provided under the contract where the contract is terminated in these circumstances;

(2) For the avoidance of doubt, a change in the price of any Product or Service provided by a Service Provider pursuant to a contract with a Consumer shall fall within the terms of regulation 21(1) where any such change would be to the material detriment of the Consumer, regardless of whether the proposed change has been approved or directed by the Office.

22. Where a Service Provider enters into a contract with a Consumer for more than one Product and/or Service that are packaged, tied or bundled, one or more of which is provided by or through a third party, the Service

Provider shall be fully responsible for the effective performance of the entire package, tied offer or bundle, including in particular service support, warranties, maintenance, complaints handling, dispute resolution and other administrative requirements.

23. (1) A Service Provider may require a Consumer to provide a Security Deposit in respect of a Product and/or Service to be provided by the Service Provider pursuant to a contract with the Consumer where the outcome of a credit assessment conducted in relation to the Consumer and the Product and/or Service to be provided indicates the provision of a Security Deposit would be reasonable and appropriate in all the circumstances. Any such Security Deposit shall -

- (a) be reasonable in all the circumstances; and
- (b) not exceed the charges the Service Provider reasonably anticipates the Consumer will incur in respect of the Product and/or Service to be provided in any period of three (3) months.

(2) Where a Service Provider requires a Consumer to provide a Security Deposit pursuant to regulation 24(1), the Service Provider shall -

- (a) prior to the collection of any such Security Deposit -
  - (i) provide the Consumer with information about the terms under which the Security Deposit will be held, including in particular the circumstances in which it may accrue interest, be forfeited (in full or in part) or be repaid; and
  - (ii) obtain the Consumer's agreement to the circumstances in which the Security Deposit shall be forfeited (in full or in part). Where agreement cannot be reached, the Service Provider may decline to enter into a contract with the Consumer or decline to supply a particular Product or Service to the Consumer; and

(3) within ten (10) Business Days of receiving the Security Deposit, inform the Consumer in writing of the account to which the Security Deposit shall be applied; and

(4) repay to the Consumer the amount of the Security Deposit (or the balance then remaining) along with any interest accrued in relation to it within ten (10) Business Days of the Consumer -

- (i) satisfactorily completing the terms of the Security Deposit arrangement; or,
- (ii) ceasing to receive from the Service Provider the Product or Service in respect of which the Security Deposit was required.

24. (1) An accepted copy of a signed contract, or where the contract was entered into other than by a physical signature, entered into by a Service Provider with a Consumer for the provision of Services shall be supplied or made available to the Consumer -

- (a) when the contract is entered into;
- (b) in print and/or electronic form, as opted for by the Consumer; and
- (c) on request by the Consumer, at any other point in time, subject to Regulation 3(8).

(2) Where a Consumer requests an additional copy of a contract entered into with a Service Provider pursuant to sub-regulation 24(1)(b) in print form, the Service Provider may require the Consumer to pay a fee before providing any such copy. Any such fee must be reasonable in all the circumstances.

25. No later than twelve months after the effective date of these Regulations, where a Consumer has entered into a contract in relation to a roaming plan, the Service Provider shall include provisions in regard to warning notifications when a Consumer has exhausted his/her roaming plan allotment limit. Under those provisions, the Service Provider shall send a warning notification via SMS messaging to the Consumer when he/she has exhausted his/her roaming plan allotment, and will present the Consumer with the option to purchase additional services or suspend his/her service until his/her return to the jurisdiction.

## **PART 5 – BILLING**

26. (1) Before or at the same time that it issues the first Bill to a Consumer, a Service Provider shall advise the Consumer in general terms of

-

- (a) the amount of time the Consumer has to pay for the provision of the Service Provider's Services and the Consumer's obligation to pay a Bill for these Services by the specified date;
- (b) if applicable, the Service Provider's processes for -
  - (i) Interim Billing;
  - (ii) changes in the Billing Period; and
  - (iii) following up overdue Bills;
- (c) the effect of partial payment of a Bill;
- (d) whether or not the Service Provider charges interest on late payments (such interest to be reasonable);
- (e) the method used by the Service Provider for allocating amounts received in the event of partial payment of a Bill; and,
- (f) the effect of non-payment and/or late payment of a Bill, including that this may lead to the Suspension and/or Disconnection of current and/or future Services.

27. Every Bill issued by or on behalf of a Service Provider shall include, at least -

- (a) the Consumer's name and address;
- (b) the Service Provider's current business name and address;
- (c) a clear and specific form of identification for the Bill, for example a unique reference number;
- (d) the Bill's date of issue;
- (e) details of the period of time to which the Bill relates;
- (f) details of all credits, charges, interest and general payments due to or owed by the Consumer for the period to which the Bill relates, including a clear description of the items or Services to which any such credits, charges, interests or payments relate;
- (g) where requested, and free of charge, itemised details of each credit, charge, interest and payment due to or owed by the Consumer for the period to which the Bill relates;
- (h) details of any discounts applicable and/or applied to the sums contained in the Bill;
- (i) the net amount payable by the Consumer or repayable by the Service Provider;
- (j) the date by which any payment or repayment shall be made;

- (k) methods by which the Consumer can contact the Service Provider free of charge (including at least a telephone number and electronic mail address) to -
  - (i) make enquiries and/or request clarification about the Bill or billing more generally; or
  - (ii) express dissatisfaction and/or make a Complaint about the Bill or billing more generally;
- (l) in respect of each of the methods of contact listed pursuant to regulation 28(k), details of -
  - (i) its hours of operation; and
  - (ii) any charges the Consumer may incur by its use.

28. Every Bill issued by or on behalf of a Service Provider shall -

- (a) be formatted in such a way that a Consumer can easily read and understand it;
- (b) be available in more than one medium, at least one of which, shall be the medium in which the Service Provider issues and provides Bills to its Consumers as a matter of course;
- (c) contain charges and information that is, in so far as is possible, up to-date and accurate. In order to secure compliance with this regulation, a Service Provider shall put in place appropriate systems and safeguards to ensure inaccuracies in Bills are minimised;
- (d) contain charges and information that are verifiable;
- (e) be produced and sent to the Consumer by the Service Provider within thirty (30) days of the last day of the Billing Period to which it relates unless -

- (i) the Service Provider has been made aware of and is in the process of dealing with a dispute over a charge, credit, interest or payment that is to be included in the Bill, in which case the Bill shall be issued as soon as is practicable after the resolution of any such dispute;
- (ii) a problem has occurred with the Service Provider's billing system, in which case the Bill shall be issued as soon as is practicable after the problem has been resolved or within such time period as the Office shall specify; and
- (iii) other circumstances beyond the reasonable control of the Service Provider that delays its production and/or dispatch to the Consumer.

29. (1) A Service Provider shall ensure the Consumer is able to obtain from the Service Provider -

- (a) information relevant to his/her current Bill or any item contained in it;
- (b) sufficient information for him/her to be able to verify the charges and information contained in his/her current Bill;
- (c) his/her Bill or any Billing information in a format he/she is able to store and reproduce;
- (d) upon request, a fully itemised Bill in the format of his/her choice that he or she is able to store and reproduce;
- (e) clear verbal and/or written advance notice in relation to any charges, which shall be reasonable in the circumstances, that may be associated with obtaining a physical copy of a fully itemised Bill;
- (f) confirmation of any payment he/she has made pursuant to a Bill, by at least –
  - (i) including acknowledgement of any such payment on the next Bill issued by the Service Provider; and
  - (ii) providing confirmation of any such payment over the telephone (the Service Provider shall provide a specific telephone number which is free of charge from any local network that can be used for obtaining such confirmation);
- (g) where the Service Provider has agreed with the Consumer that itemised details of all credit, charges, interests and payment due

from or owed to the Consumer in any given Billing Period shall not be provided on each Bill, details of the notice period the Consumer will need to give the Service Provider to receive Bills containing such itemisation;

- (h) details of the methods by which the Consumer can make a payment in respect of a Bill, at least one of which must be free of any processing or administrative charge;
- (i) details of the terms and conditions associated with each available method by which the Consumer can make a payment in respect of a Bill;
- (j) details of the Service Provider's payment and debt collection processes.

(2) Unless otherwise specified by this regulation or requested by a Consumer, a Service Provider may satisfy a requirement under this regulation 30 to make available and/or provide information by providing it in a Bill.

(3) A Service Provider shall ensure that any information it makes available and/or provides pursuant to this regulation is -

- (a) accurate;
- (b) up to date;
- (c) presented in a manner that is simple, clear and avoids the use of unnecessary legal or technical terms; and
- (d) made available and/or provided in a timely manner.

30. Save as expressly provided for by regulation 31, a Service Provider shall not charge a Consumer for issuing a Bill or for providing information relating to a Bill or billing more generally, which the Service Provider is required to make available and/or provide under this regulation. In particular -

- (a) where a Service Provider makes available and/or provides any such information via telephone, it shall provide access to the relevant telephone number free of charge from any local telephone network; or
- (b) where a Service Provider makes available and/or provides any such information in an electronic form, it must offer at least one method of accessing that information that does not involve the Consumer incurring a charge.

31. Where a Consumer requests information that the Service Provider is not required to provide under regulation 27, a Service Provider may impose such charge as would be reasonable in all the circumstances. Before any such charge is incurred and/or imposed, a Service Provider shall -

- (a) inform the Consumer of any applicable charge; and
- (b) obtain the Consumer's consent to any charge being incurred and/or imposed.

32. Where a Consumer refuses to consent to any charge referred to in regulation 31(a) being incurred and/or imposed, a Service Provider may refuse to provide the information requested.

33. Where a Consumer requests a Bill in an alternative and/or additional medium to the medium in which the Service Provider issues and provides Bills to its Consumers as a matter of course and/or has previously been issuing and providing Bills to that Consumer, the Service Provider may impose a charge for the provision of a Bill in the medium requested. Prior to imposing any such charge, a Service Provider shall inform the Consumer of -

- (a) the amount of the charge to be imposed; and
- (b) the method by which the amount of the charge to be imposed has been calculated.

34. Where provided for in these regulations, where a Service Provider intends to change -

- (a) its Billing Medium, it shall provide its Consumers with written notice of the proposed change and any options available to a Consumer in relation to that change, no less than thirty (30) days before it intends to implement the change and, as a minimum, via the same method it provides a Bill for that service; and
- (b) its Billing Period, it shall provide its Consumers with written notice of the proposed change and any options available to a Consumer in relation to that change, no less than two (2) current Billing Periods before it intends to implement the change and, as a minimum, via the same method it provides a Bill for that service.

35. A Service Provider shall not include a charge or payment due in a Bill after three (3) months from the end of the Billing Period in which the relevant Product or Service giving rise to the charge or payment due was provided to the Consumer.

36. Any fee charged by a Service Provider in consequence of late and/or non-payment of a Bill by a Consumer, whether for reconnection or otherwise, shall -

- (a) be reasonable in all the circumstances;
- (b) be proportionate to the cost, if any, incurred by the Service Provider as result of the late and/or non-payment; and
- (c) not represent or cause an inordinate burden to the Consumer.

37. (1) A Service Provider shall provide a Consumer with a reasonable period of time, of no less than the shortest of one half the length of the Service Provider's Billing Period or twenty-one (21) days, in which to pay a Bill without any late payment penalty being applicable.

(2) A Service Provider shall not take any measures to effect payment from a Consumer who has not paid all or part of a Bill in respect of a Service provided by the Service Provider the result of which is disproportionate and/or unduly discriminatory.

(3) Where a Service Provider has not received payment of an outstanding and undisputed balance on a Consumer's account within thirty (30) days of the payment falling due, the Service Provider -

- (a) shall provide the Consumer with a first notification, presented in hard copy or electronic form, that the payment is overdue; and
- (b) may Restrict the Consumer's access to its Services.

(4) Where a Service Provider has not received payment of an outstanding and undisputed balance on a Consumer's account within forty-five (45) days of the payment falling due, the Service Provider -

- (a) shall provide the Consumer with a second notification, presented in hard copy or electronic form, that the payment is overdue; and
- (b) may Suspend the Consumer's Services. Prior to any such Suspension the Service Provider shall, no less than five (5) Business Days before the proposed Suspension is intended to take effect, provide the Consumer with a notice, presented in hard copy or electronic form, that clearly sets out -

- (i) the amount owed;
- (ii) the total amount that has to be paid to avoid Suspension of the Services;
- (iii) the date by which payment has to be received to avoid Suspension of the Services;
- (iv) the methods by which payment can be made;
- (v) the date on which Suspension will take effect in the absence of payment; and
- (vi) details of any on-going and/or additional charges that will apply while the Services are Suspended.

(5) Where a Service Provider has not received payment of an outstanding and undisputed balance on a Consumer's account within sixty (60) days of the payment falling due, and any Security Deposit paid by the Consumer has been exhausted, the Service Provider may Disconnect the Consumer's Services. Prior to any such Disconnection, the Service Provider shall, no less than five (5) Business Days before the proposed Disconnection is intended to take effect, provide the Consumer with a notice, presented in hard copy or electronic form, that clearly sets out -

- (a) the amount owed;
- (b) the total amount that has to be paid to avoid Disconnection of the Services;
- (c) the date by which payment has to be received to avoid Disconnection of the Services;
- (d) the methods by which payment can be made;
- (e) the date on which Disconnection will take effect in the absence of payment;
- (f) that, if the Services are Disconnected, the Consumer's current service plan, Product and/or telephone number may not be available if he subsequently seeks to Reconnect the Services that have been Disconnected;
- (g) that a reconnection fee may be payable if the Services are Disconnected and the Consumer subsequently seeks to Reconnect them;
- (h) that the debt may be passed to a collection agency;
- (i) how much any new deposit would be; and
- (j) that legal action may be taken to recover the unpaid debt.

(6) A Service Provider shall, on the request of a Consumer, conduct a review of a decision to Restrict, Suspend or Disconnect the Services it provides to the Consumer and inform the Consumer -

- (a) that the review will be started within two (2) Business Days of the date of the request;
- (b) that the review will be completed within five (5) Business Days of the start of the review;
- (c) of the outcome of the review; and
- (d) where the Consumer remains dissatisfied following the completion of the review, of his ability to make a Complaint and the way in which any such Complaint can be made.

38. A Service Provider shall not impose a reconnection fee on a Consumer where the Services provided to the Consumer have been Restricted, Suspended or Disconnected as the result of a mistake on the part of the Service Provider. For the avoidance of doubt this includes a mistake regarding whether the Consumer has paid a Bill or part of a Bill within the provided time period.

39. A Service Provider shall ensure its Credit Management processes are fair to Consumers. In particular, a Service Provider shall -

- (a) not take Credit Management Action in respect of a sum that is the subject of an unresolved Complaint (i.e. one that is still being investigated by the Service Provider, the Office or another recognised third party and/or one in respect of which the Consumer has not agreed to a proposed resolution), until the Complaint has been resolved;
- (b) ensure no debt sold and/or assigned to a third party includes a sum that is the subject of an unresolved Complaint (i.e. one that is still being investigated by the Service Provider, the Office or another recognised third party and/or one in respect of which the Consumer has not agreed to a proposed resolution);
- (c) inform a Consumer when it is intending to commence any Credit Management action in respect of a sum which has previously been disputed by the Consumer and/or been the subject of a Complaint, such dispute and/or Complaint having been resolved;
- (d) where part of an amount of a Bill is the subject of an unresolved Complaint, inform the Consumer that Credit Management Action

- may be taken in relation to those amounts that are not the subject of that Complaint;
- (e) resolve a Complaint about a Bill, part of a Bill or Service provided by the Service Provider, made by a Consumer after a debt in respect of that Consumer has been sold and/or assigned to a third party; and
  - (f) may impose a charge on a Consumer for Credit Management Action taken in respect of him/her. Any such charge shall not exceed the costs incurred by the Service Provider in taking the Credit Management Action and shall not be imposed unless and until five (5) Business Days after the Service Provider has informed the Consumer of the amount of any such charge and the method by which it has been calculated.

#### **PART 6 – SERVICE PROVISION AND FAULT REPAIR**

40. A Service Provider shall provide Services to a Consumer within the timeframe agreed with the Consumer unless the provision of such Services is delayed by -

- (a) a lack of infrastructure in the relevant service area, in which case-
  - (i) the Service Provider shall estimate and inform the Consumer of the timeframe in which the Services shall be provided; and
  - (ii) the Consumer may refer the matter to the Office, which may on receipt of the Consumer's request direct the Service Provider to take a particular course of action and/or ensure the Services are provided by a specified date.

41. (1) In respect of Post-paid Services to be provided to new Consumers, credit checks, in which case the delay shall be limited to five (5) Business Days from completion of a credit check or, in the case of a Consumer who has been identified as not creditworthy, from the completion of a credit check and the implementation of appropriate safeguards regarding the provision of the Services to that Consumer. For the avoidance of doubt, the Service Provider shall not be responsible for delays in respect of the provision of Post-paid Services caused by non-receipt of credit history information from the Consumer;

- (a) a Force Majeure; or
  - (b) the failure of the Consumer to perform any act or obligation that he is required to perform prior to the Service Provider providing the Services.
- (2) Where a Service Provider is unable to provide a Service to a Consumer within the timeframe required by regulation 41(1) it shall inform the Consumer of the delay and keep the Consumer informed of the progress being made in arranging for the provision of the Service.

42. (1) A Service Provider shall ensure a Consumer is able to report faults with, and interruptions to, a Service being provided to the Consumer by the Service Provider twenty-four (24) hours a day, seven (7) days a week free of charge from any local telephone network.

(2) A Service Provider shall repair any fault with a Service it provides in accordance with the relevant fault repair standards as may be notified to the Service Provider by the Office from time to time.

43. (1) A Service Provider shall give its Consumers notice of any planned or anticipated disruptions and/or outages to its Services at least seven (7) days in advance of such disruption and/or outage, which notice, presented in hard copy or electronic form, shall include -

- (a) the date and time of the disruption and/or outage;
- (b) the length of time it is anticipated the disruption and/or outage will last;
- (c) the Service and/or particular service areas that will be affected by the disruption and/or outage; and
- (d) any compensation or other remedy that may be available to Consumers as a result of the disruption and/or outage.

(2) Where an unexpected event and/or Force Majeure causes a disruption to and/or the outage of the provision of a Service Provider's Service, a Service Provider shall use its best endeavours to-

- (a) as soon as it becomes aware of any such disruption and/or outage, give notice, in a convenient form, of the disruption and/or outage to the Consumers who are likely to be affected by it; and
- (b) rectify the fault within the shortest possible time in all the circumstances.

Made in Cabinet the [ ... ] day of [ ... ], 20[XX]

[ ]

Clerk of the Cabinet