

## 3 — Regulated Persons' Duties to End-consumers

### 3.1 Introduction

All Regulated Persons must comply with minimum regulatory requirements designed to ensure that they provide end-consumers with quality service and accurate and timely bills.

### 3.2 Application

This Part applies to all Regulated Persons.

#### 3.2A Marketing Materials

- (a) A Regulated Person must publish up-to-date information in all its marketing materials about any Subscription Service offered by it, including:
- (i) a description of and the subscription fee for the Subscription Service; and
  - (ii) the terms and conditions upon which the Subscription Service is offered, including:
    - (A) the channels in the Subscription Service and the material content of each of such channels;
    - (B) the specifications of any discount or other promotion offered, including the period during which such discount or other promotion will be offered and the applicable charges after such period; and
    - (C) whether any of the terms and conditions may be unilaterally varied by the Regulated Person.
- (b) A Regulated Person must publish the information referred to in sub-paragraph (a):
- (i) in such form or manner as the Authority may direct; or
  - (ii) in the absence of any such direction, in such form and manner that ensures that the information is current, published in a timely manner, and is accessible and intelligible.
- (c) A Regulated Person must make available [to the public] without charge the information published under sub-paragraph (a).

- (d) A Regulated Person must maintain a record of every marketing material it uses for not less than three years after the Regulated Person ceases to use that material.
- (e) A Regulated Person must maintain a record of all the details of an agreement brought to the attention of a Subscriber in compliance with paragraph 3.2C for not less than three years after the Regulated Person enters into the agreement with the Subscriber.
- (f) In sub-paragraphs (d) and (e), “record”, in relation to any marketing material or details of an agreement, includes marketing collaterals, advertisements, call centre and other scripts, screen shots of web pages, and audio and visual recordings, pertaining to the marketing material or details of the agreement.

### **3.2B Duty Not to Act Unreasonably in Contracting**

- (a) A Regulated Person must not require a Subscriber to agree to amend or terminate any agreement for the provision of non-Subscription Television Services between the Subscriber and the Regulated Person, before the Regulated Person will:
  - (i) enter into a agreement with the Subscriber for the provision of any Subscription Television Service to the Subscriber; or
  - (ii) amend the terms of an agreement with the Subscriber for the provision of any Subscription Television Service to the Subscriber.
- (b) The prohibition in sub-paragraph (a) applies only during the minimum service period referred to in paragraph 3.5 of the agreement for the provision of the non-Subscription Television Services.

### **3.2C Duty to inform Subscriber of certain matters before contracting**

Prior to entering into an agreement with a Subscriber for the provision of any Subscription Television Service, a Regulated Person must bring to the attention of the Subscriber the following details of the agreement:

- (a) the subscription fee payable under the agreement and the payment date;
- (b) the channels, and the material content of each of the channels, provided under the agreement;
- (c) the specifications of any service under the agreement which will:

- (i) continue to be provided after the expiry of the minimum service period referred to in paragraph 3.5 if the Subscriber elects or is deemed to elect after the minimum service period to continue with the service (referred to as a service provided on a “continuous basis”);
  - (ii) be provided at a discounted rate for a period of time (referred to as a service provided on a “promotional basis”) after which the Regulated Person will continue to provide the service to the Subscriber for the applicable subscription fee without any election by the Subscriber;
  - (iii) be provided without charge for a period of time (referred to as a service provided on a “free trial basis”) after which the Subscriber may elect to subscribe to the service;
- (d) the specification of any service which is not part of the agreement but which will be provided by the Regulated Person to the Subscriber without consideration for a period of time (referred to as a service provided on a “complimentary basis”), after which the Subscriber may elect to subscribe to the service;
- (e) the duration of the minimum service period referred to in sub-paragraph (c)(i), where applicable;
- (f) the duration of the period of time referred to in sub-paragraphs (c)(ii) or (iii) where applicable (hereafter referred to as “relevant period of time”);
- (g) the terms and conditions which will apply upon expiry of the minimum service period or relevant period of time, as the case may be, including:
  - (i) in the case of a service referred provided on a continuous basis:
    - (A) the subscription fee for the service; and
    - (B) whether, and the circumstances in which, the Subscriber will be deemed, upon the expiry of the minimum service period, to have elected for the continued provision of the service after the minimum service period; and
  - (ii) in the case of a service provided on a promotional basis or free trial basis, the subscription fee for the service; and
- (h) whether the agreement or any part thereof may be unilaterally varied by the Regulated Person.

### **3.2D Express Agreement Required for Continued Provision of Services Provided on Free Trial Basis or Complimentary Basis**

In the case of any service provided on a free trial basis (referred to in paragraph 3.2C(c)(iii)) or complimentary basis (referred to in paragraph 3.2C(d)), a Regulated Person must not charge a Subscriber for the service upon expiry of the relevant period of time (referred to in paragraph 3.2C(f)) or cessation of the service (referred to in paragraph 3.2C(g)) as the case may be, unless the Subscriber expressly agrees to subscribe to the service thereafter at the applicable subscription fee and on the terms and conditions brought to the attention of the Subscriber under paragraph 3.2C.

### **3.3 Duty to Comply with Minimum Quality of Service Standards**

Every Regulated Person must comply with any applicable quality of service standard specified from time to time by MDA.

### **3.4 Billing Practices**

#### **3.4.1 Duty to Provide Accurate, Timely and Clear Statements of Charges**

A Regulated Person who provides any Subscription Service must provide accurate, timely and clear statements of charges to its Subscribers.

#### **3.4.2 No Charges for Unsolicited Services or Equipment**

A Regulated Person may only charge any Subscriber for the specific Subscription Service or associated equipment that the said Subscriber has ordered.

#### **3.4.3 Procedures to Contest Charges**

All Regulated Persons must adopt reasonable and effective procedures that will allow any Subscriber to withhold and dispute any charge for any Subscription Service or associated equipment that the said Subscriber reasonably believes to be incorrect.

#### **3.4.4 Termination Procedures**

Where feasible, a Regulated Person must provide advance written notice and a reasonable opportunity to resolve the dispute before terminating service to any Subscriber.

### **3.5 Prohibition on Excessive Early Termination Liabilities**

A Regulated Person may enter into an agreement pursuant to which it provides a Subscriber with a reasonable discount or special consideration in return for the said Subscriber's agreement to commit to a minimum service period for a Subscription Service. Subject to paragraph 3.5A, such agreements may contain provisions providing for termination liability in the event that the said Subscriber terminates the agreement prior to the agreed-upon termination date. However, the amount of any such early termination liability must be reasonably related to the extent of the discount or special consideration that such Regulated Person has provided and the duration of the period during which the said Subscriber took the Subscription Service.

### **3.5A Prohibition on Early Termination Charges in Certain Cases**

- (a) A Regulated Person must not require a Subscriber to pay any amount for early termination of any agreement referred to in paragraph 3.5 and entered into on or after [date of *Gazette*], in the following circumstances:
- (i) the Regulated Person exercises or seeks to exercise its right to unilaterally vary the agreement to:
    - (A) increase the subscription fee; or
    - (B) cease the provision of a channel or remove material content of a channel:
      - (I) without replacing the channel or material content, as the case may be, with a suitable substitute; or
      - (II) reducing the subscription fee; and
  - (ii) the Subscriber exercises his right to terminate the agreement within the time period specified in the agreement or, in the absence of the same, within 30 days after the date the variation takes effect.
- (b) For the purposes of sub-paragraph (a)(i)(B)(I), a channel or the material content of a channel is replaced by a suitable substitute if the content carried by the substituted channel or the substituted content is of the same genre as, and has substantially the same quality and standing as, the content carried by the channel or the material content that it replaces.
- (c) Notwithstanding sub-paragraph (a), a Regulated Person must not require a Subscriber to pay any amount, following early termination of any agreement referred to in paragraph 3.5 and entered into on or after [date of *Gazette*] insofar as the amount pertains to equipment which was not necessary for the provision of any

Subscription Television Service but which was provided to the Subscriber in addition to and on account of the Subscription Television Service, unless:

- (i) prior to the Subscriber entering into the agreement, the Regulated Person:
  - (A) brought to the attention of the Subscriber his liability to pay such amount in the event of early termination of the agreement; and
  - (B) offered to enter into an agreement to provide the same Subscription Television Service without the provision of the equipment; and
- (ii) the amount satisfies the requirements of paragraph 3.5 for early termination liability.

### **3.5B Duty to Notify of Certain Events**

(a) Subject to sub-paragraph (d), where a Regulated Person intends to stop providing:

- (i) any channel; or
- (ii) any material content of a channel,

the Regulated Person must give notice in writing of its intention to do so to all its Subscribers to whom the channel or material content of the channel is provided not less than one (1) month prior to the date that the Regulated Person intends to stop providing the channel or material content of the channel, as the case may be.

(b) Where a Regulated Person intends to increase any subscription fee for any service it provides (other than any service provided on an interactive basis), the Regulated Person must give notice in writing of its intention to do so to all its Subscribers to whom the service is provided not less than (1) month prior to the date that the Regulated Person intends to increase the subscription fee.

(c) Before increasing the subscription fee for any service provided on an interactive basis, a Regulated Person must give reasonable notice in writing of its intention to do so to all its Subscribers to whom it provides such service.

(d) Where a Regulated Person intends to cease its operations, or cease providing any broadcasting service in respect of which it has (or is exempt from the requirement to have) a broadcasting licence under the Broadcasting Act (Cap. 28), the Regulated Person must give Consumers notice in writing of its intention to do so to not less than six (6) months prior to the date that the Regulated Person intends to cease its operations or the broadcasting service, as the case may be.

### **3.6 [Deleted]**

### **3.7 Determining Material Content**

- (a) For the purposes of this Part, the factors to be taken into consideration (except where irrelevant) in determining whether the content of a channel is material content include, but are not limited to, the following:
- (i) the number of viewers of the content relative to all other content of the channel;
  - (ii) the level of interest in the content, as reflected in consumer feedback, consumer studies and consumer surveys;
  - (iii) the amount of time allotted to airing the content relative to all other content of the channel;
  - (iv) the degree to which the content has been marketed and advertised, relative to all other content of the channel.
- (b) Where there is any disagreement between a Regulated Person and a Subscriber as to whether something is material content for the purposes of this Part, either party may write to MDA to express its opinion on the same. Any opinion expressed to MDA under this sub-paragraph must specify the considerations on which the opinion is based.

### **3.8 Anti-avoidance**

A Regulated Person must not enter into any agreement or arrangement or a series of agreements or arrangements with the primary purpose of avoiding the application of any paragraph in this Part.