

Telecommunications Carriers' Forum

Customer Complaints Code

Version Number and Status:
Version Date:

Endorsed by the TCF
2 September 2011

© 2011 The Telecommunications Carriers' Forum Inc. All rights reserved. Copyright in the material contained in this document belongs to the Telecommunications Carriers' Forum Inc. No part of the material may be reproduced, distributed or published for any purpose and by any means, including electronic, photocopying, recording or otherwise, without the Telecommunications Carriers' Forum Inc's written consent.

Table of Contents

A.	EXPLANATORY STATEMENT.....	4
	Overview of Scheme Structure	4
B.	PURPOSE	5
C.	INTERPRETATION AND DEFINED TERMS	5
	4. Interpretations.....	5
	5. Definitions	6
D.	SERVICE STANDARDS	9
	6. What are the Service Standards?	9
	7. Statement of Principles.....	9
	8. Connection between service standards in the Code and Scheme Members terms and conditions.....	9
	9. What a Customer can expect from Scheme Members terms and conditions ..	9
	10. Changes to Scheme Members terms and conditions, prices and services	10
	11. Services Provided	11
	12. Billing	11
	13. Restriction, Disconnection and Reconnection.....	11
	14. Faults	12
	15. Obligations from point of supply.....	12
	16. Access to premises.....	12
	17. Equipment ownership and maintenance.....	12
	18. Force Majeure Clauses	12
E.	SCOPE AND OBJECTIVES.....	13
	19. Scope.....	13
	20. Exclusions from Scope	14
	21. Objectives	14
F.	CODE ADMINISTRATION AND COMPLIANCE.....	16
	22. Code Monitoring and Compliance.....	16
	23. Code and TDRS Implementation and review	16
G.	COMPLAINT HANDLING PRINCIPLES	17
H.	COMPLAINT HANDLING COMMITMENTS	18
	25. Visibility and Accessibility	18
	26. Responsiveness	18
I.	ADDITIONAL CODE RULES	19
	27. Recording Complaints	19
	28. Internal Review of Complaint Handling Processes.....	19
	29. Changes to Complaint Handling Policies and Processes	19
	30. Complaints involving Multiple Scheme Members.....	20
	31. Disputed Amounts.....	23
	32. Charges to retrieve and analyse archives	23
	33. Telecommunications Disputes Resolution Scheme	23

J.	POSITION STATEMENTS	25
	34. Purpose of Position statements	25
	35. Creating a Position Statement	25
	36. Amending a Position Statement.....	26
	37. Removing a Position Statement.....	26
K.	ANNEXURE 1 - DISPUTE RESOLUTION PROCEDURES.....	27
	38. Enquiry and Registration of Complaint.....	27
	39. Investigation and Resolution.....	29
	40. Information Requirements	31
	41. The TDRS process and legal proceedings	31
	42. Confidentiality	31
L.	ANNEXURE 2 - MONITORING AND ENFORCING THE CODE	36
	43. Council processes	36
	44. Issue of Notices	36
	45. Audit Costs.....	38
	46. Application to a Wholesale Scheme Member	38
M.	ANNEXURE 3 - POSITION STATEMENTS	39

A. EXPLANATORY STATEMENT

The Telecommunication Carriers' Forum ("TCF") has established a self-regulatory regime for Complaints, including:

- The Customer Complaints Code (the "Code"); and
- Annexure 1 of the Code referred to as the Telecommunications Disputes Resolution Scheme ("TDRS")

collectively referred to as the "Scheme".

The Scheme sets out the rights and obligations of Scheme Members and their Customers with regard to the handling of Complaints.

The Scheme comprises both the Code and the TDRS. Therefore, for Scheme Members to comply with the Scheme, they must comply with both the Code and TDRS.

The primary purpose of the Scheme is three-fold:

- To encourage Scheme Members to resolve Complaints effectively themselves;
- To provide prompt, independent resolution of disputes, having regard to the Code and the service standards it sets out, as well as relevant legal requirements; and
- To educate the industry about systemic issues arising from disputes and determinations.

Overview of Scheme Structure

The Scheme reports to a governing council ("Council") with fifty percent consumer representation. The Council's role is to provide independence and ensure industry and public confidence in the Scheme. The Council oversees the operation of all aspects of the TDRS, except the overall level of funding and TDRS review, which for the first two years of operation must be referred to the TCF Board for approval. More information about the structure and operation of the TDRS can be found in the Scheme's Terms of Reference.

The Scheme has been developed in line with the following Australian dispute resolution principles:

- (i) Accessibility;
- (ii) Independence;
- (iii) Fairness;
- (iv) Accountability;
- (v) Efficiency; and
- (vi) Effectiveness.

B. PURPOSE

1. This Code sets out the principles and processes for Customers to make a Complaint and the handling of those Complaints/Disputes by Scheme Members and the Scheme Agent.
2. The purpose of this Code is:
 - 2.1. To improve Scheme Members' internal Complaints resolution processes to assist with early resolution of Complaints.
 - 2.2. To increase Customer confidence in the industry by establishing appropriate standards of practice that apply consistently across the industry.
 - 2.3. To ensure that Customers have access to an effective independent dispute resolution mechanism to address issues where the Customer is not satisfied with the outcome from their Scheme Member's internal Complaints handling or dispute resolution process in relation to a Complaint.
 - 2.4. To facilitate the resolution of Complaints relating to Telecommunications Services in New Zealand through practices that are fair and equitable and are consistent with the purposes and provisions of the Telecommunications Act (2001) and any of its current or future amendments.
3. Customers and Scheme Members must follow the processes set out in the Code for resolution of a Complaint before a Customer can take a Complaint to the Scheme Agent.

C. INTERPRETATION AND DEFINED TERMS

4. Interpretations

- 4.1. In this Code, unless the context otherwise requires:
 - a) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - b) Section, clause and other headings are for ease of reference only and will not affect this Code's interpretation;
 - c) Words in singular include the plural and vice versa;
 - d) A reference to a person means a legal person and includes a reference to an individual, bodies, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality, whether corporate, political or otherwise;
 - e) The annexures to this Code and the provisions and conditions contained in the annexures will have the same effect as if set out in the body of this Code; and
 - f) Any obligation not to do anything will include an obligation not to suffer, permit or cause that thing to be done.

5. Definitions

“Adjudicator” means an employee or agent of the Scheme Agent whose role is to consider requests for adjudication from the Scheme Agent and provide Final Determinations on behalf of the Scheme Agent.

“Audit Costs” means the costs referred to in Annexure 2, Section 3.

“Bilateral Agreement” means an agreement between a Scheme Member who is obliged to comply with the terms of this Code and another party who is not a Customer.

“Billing Relationship” means a relationship where the Scheme Member has a bona fide right to charge the Customer for any chargeable activity relating to the provision of Telecommunication Services to that Customer. A Billing Relationship includes prepay Customers.

“Chain of Supply” means a situation where multiple WSM’s exist in a chain of supplying a particular Telecommunications Service to an RSM.

“Code” means this document, including its annexures.

“Committed Information Rate” is the throughput rate, normally measured in kilobits per second or megabits per second, that a service provider guarantees to provide to the customer as the rate at which the network supports data transfer under normal operations.

“Complaint Handling Commitments” means the obligations on Scheme Members as set out in section H of this Code.

“Complaint” means a genuine expression of dissatisfaction with Telecommunications services, systems, processes and/or staff by a Customer. Please see clause 19 and 20 of this Code for further details.

“Customer” means a person who has a bona fide Billing Relationship with a Scheme Member in respect of a Telecommunication Service. The Customer is the end user (i.e. not a wholesale customer).

‘Corporate Customer’ means a Customer of a Scheme Member that:

- a. Is a business or other organisation having 20 or more full-time-(or equivalent) employees, or
- b. is a business or organisation having fewer than 20 full-time equivalent employees but that the Scheme Agent, at its sole discretion, determines to be analogous to a business or other organisation with 20 or more full-time-equivalent employees, having regard to the size, structure or nature of the business.

“Council” means the permanent council set up to govern the TDRS.

“Deadlock” means either where:

- a Customer is not satisfied with the Scheme Member’s final response to a Complaint and the Customer has received a Referral Number, or
- where more than 6 weeks has passed since the Customer complained to the Scheme Member and no final response has been forthcoming.

“Dispute” means a Complaint that has reached Deadlock and has been referred to the Scheme Agent for investigation and resolution.

“Enquiry” means an enquiry made to the Scheme Agent by an end user of Telecommunications Services, whether made by a Customer or otherwise.

“Final Determination” means a written determination made in respect of a Complaint by the Scheme Agent which is binding on both the Scheme Member, and the Customer, if the Customer

accepts the Final Determination. A Final Determination may also be binding on a Wholesale Scheme Member (as that term is defined in clause 30.1) pursuant to clause 33.7.

“Further Recourse” means any avenue beyond a Scheme Member’s internal Complaints handling process for resolution of a Complaint.

“Government Customer” means any New Zealand Government department or Government purchasing agent which is a Customer of a Scheme Member.

“Jurisdiction” means that the Complaint is within scope as set out in clauses 19 and 20.

“Non-Scheme Member” means a Telecommunications service provider that is not a Scheme Member.

“Non-relevant Enquiries” means Enquires that are either not attributable to any particular Scheme Member or do not relate to a complaint about a Customer’s Telecommunication Services.

“Notice of Investigation and Resolution” means a notice issued in writing by the Scheme Agent advising the Scheme Member and the Customer that a Complaint is now a Dispute and has entered the investigation and resolution phase and may be subject to a Final Determination.

“Position Statements” means the documents included in Annexure 3, and as described in Section I.

“Referral Number” means a number allocated to the Customer by the Scheme Member which identifies the Customer’s Complaint.

“Relevant Enquiry” means an Enquiry that is attributable to a Scheme Member and relates to a complaint about the Customer’s Telecommunications Services.

“Scheme” means this Code and the Telecommunications Dispute Resolution Scheme.

“Scheme Agent” means the independent body contracted by the TCF to provide the Telecommunications Dispute Resolution Scheme service.

“Scheme Deed” means the document which parties sign to become a Scheme Member and thereby bound by the terms of the Scheme TOR and the Code.

“Scheme Member(s)” means a provider of Telecommunication Services to a Customer, and who has the Billing Relationship with the Customer for that Telecommunications Service and who has signed the Scheme Deed. Scheme Members include TCF members and non-TCF members.

“Scheme TOR” means the TDRS Terms of Reference which can be found at the TCF website www.tcf.org.nz.

“Service Standards” means the list of standards which Scheme Members must comply with. The Service Standards are set out in Section D.

“TCF” see Telecommunications Carriers’ Forum.

“TDRS” see Telecommunications Dispute Resolution Scheme.

“Telecommunications” means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but excluding any conveyance that constitutes broadcasting as defined by the Broadcasting Act 1989.

“Telecommunications Carriers’ Forum” means the Telecommunication Carriers’ Forum Incorporated Society registered in New Zealand.

“Telecommunications Dispute Resolution Scheme” means a Further Recourse scheme that has been established by the TCF, the processes of which are set out in Annexure 2.

“Telecommunication Service(s)” means any goods, services, equipment, and facilities that enable or facilitate Telecommunication. For the avoidance of doubt, this excludes Yellow Pages directory service listings.

“Transfer” means the transfer of all or part of a Customer's Telecommunications Service(s) from one Scheme Member to another, as authorised by the Customer.

“Working Day” means a day on which registered New Zealand banks are open for normal banking business, excluding Saturdays, Sundays and nation-wide New Zealand public holidays. Regional public holidays are considered to be Working Days.

D. SERVICE STANDARDS

6. What are the Service Standards?

- 6.1. The Service Standards are commitments by Scheme Members to their Customers for fair and reasonable dealings with Customers.
- 6.2. The Service Standards contained in this Code should be read and interpreted in conjunction with the Statement of Principles in clause 7 which underpin the Service Standards purpose and objectives.

7. Statement of Principles

- 7.1. Customers can expect their Scheme Member to provide service in line with the following principles:
 - a) Scheme Members will treat Customers with respect and in a fair and courteous manner at all times.
 - b) All information given to the Customer will be accurate, up-to-date and in plain English, acknowledging telecommunications technology is fast moving and complex.
 - c) Scheme Members will be clear in their communications to Customers; deliver on promises and will use reasonable endeavours to provide service in a timely manner, acknowledging that there may be delays in providing service in certain circumstances. If delays occur, the Service Provider will keep the Customer informed.
 - d) Scheme Members will comply with the law.
- 7.2. Scheme Members will make relevant terms and conditions for provision of service available to Customers. In taking up the service Customers will be deemed to be in contract with the Scheme Member. The terms and conditions will clearly set out the key rights and obligations of the contracting parties.

8. Connection between service standards in the Code and Scheme Members terms and conditions

- 8.1. This Code explains to Customers what they can expect in their dealings with a Scheme Member. In particular, it sets out expectations in terms of the Service Standards Customers can expect from Scheme Members and how a Customer can expect a Complaint to be managed.
- 8.2. As set out in clause 22, the provisions of the Code will take precedence to the extent that there is any inconsistency between the Scheme Member's terms and conditions and the Code.

9. What a Customer can expect from Scheme Members terms and conditions

- 9.1. A Scheme Members terms and conditions with their Customer must:
 - a) Be accurate, up-to-date and in plain English, acknowledging telecommunications technology is fast moving and complex;
 - b) Clearly set out the key rights and obligations of both the Scheme Member and the Customer; and
 - c) Be easy for Customers to obtain or access.

10. Changes to Scheme Members terms and conditions, prices and services

- 10.1. The Code recognises that Scheme Members may change their terms and conditions, prices and services from time to time.

Changes to terms and conditions

- 10.2. Where changes to terms and conditions may have a material detrimental effect on the Customer, Scheme Members will use reasonable and commercially appropriate endeavours to provide a minimum of 10 Working Days and wherever possible at least one month notice of these changes.
- 10.3. Scheme Members terms and conditions must describe how the Scheme Member will communicate any changes as described in clause 10.2. In any case, any changes to the frequency of billing must be individually communicated to the Customer.
- 10.4. For the avoidance of doubt, individual communication may include, for example, notification via bill insert, email or text message.

Changes to price

- 10.5. Where Scheme Members increase prices for services provided under a specific plan or on a recurring basis, Scheme Members will give affected Customers who are readily identifiable and contactable through reasonable and commercially appropriate endeavours, a minimum of 10 Working Days and wherever possible at least one month notice of these changes.
- 10.6. Scheme Members terms and conditions must describe how the company will communicate any changes as described in clause 10.5. Where there is a material price increase, Scheme Members must individually communicate this to the Customer.
- 10.7. For the avoidance of doubt, individual communication may include, for example, notification via bill insert, email or text message.
- 10.8. Scheme Members will ensure that up-to-date information about how much their products and services cost is easily accessible by the Customer.
- 10.9. For the avoidance of doubt, Scheme Members do not need to notify Customers of price decreases or of promotional offers that have stated end dates.

Changes to services

- 10.10. Scheme Members will ensure that information about their service offerings is easily accessible by the Customer.
- 10.11. Where a Scheme Member intends to alter a service offering such that it materially reduces the service offering currently received by the Customer, where reasonable and commercially appropriate Scheme Members will provide Customers who are readily identifiable as subscribers or regular users of that service with no less than 10 Working Days notice and wherever possible at least one month notice of such changes.
- 10.12. Scheme Members must individually communicate the changes described at clause 10.11. For the avoidance of doubt, individual communication may include, for example, notification via bill insert, email or text message.
- 10.13. Where Scheme Members alter services that are free to Customers, Scheme Members terms and conditions will outline the notification period (if any) and form of notification of such changes.

Instances where a Scheme Member is unable to contact the Customer

- 10.14. Where a Scheme Member cannot readily identify the Customer they are exempt from the obligations in set out in clauses 10.1 - 10.13, for example, calling card Customers.

11. Services Provided

- 11.1. If a service is discontinued, Scheme Members will where practical try to move Customers to a comparable service.
- 11.2. Customers might not be able to receive all services, in all places, at all times at optimum levels. Where the information is reasonably available, the Scheme Member will advise the Customer at the time of purchase that they may not be able to receive a service.

12. Billing

- 12.1. The Scheme Members terms and conditions should set out that the Customer is liable for the charges for all the services provided, no matter who uses them. If an account is overdue Customers may be charged a late payment fee.
- 12.2. Scheme Members will make all reasonable efforts to ensure billing accuracy and in the event that an error occurs, Scheme Members will use reasonable efforts to correct any billing inaccuracies in a timely manner.
- 12.3. If the Scheme Member identifies that it has overcharged the Customer and the Customer has not yet paid the overcharged amount, the Scheme Member must, in a reasonable timeframe, provide a credit to the Customer's account. If the Scheme Member identifies that it has overcharged the Customer and the Customer has paid the overcharged amount the Scheme Member must provide either a credit or a refund to the Customer within a reasonable timeframe. A refund would be provided in circumstances such as; where the Customer no longer receives services from the Scheme Member; or where the credit is substantially greater than the average amount owing on the Customer's bill.
- 12.4. If undercharging is found to have occurred, the Scheme Member will provide a reasonable period for the Customer to repay the amount owed.
- 12.5. If there is a query with a bill the Customer may dispute the bill with the Scheme Member. Customers do not need to pay the disputed part of the bill while their Scheme Member investigates and confirms whether there has been an error.
- 12.6. Scheme Members bills must set out the billing period.
- 12.7. Fixed and variable charges should be set out separately on the bill, unless it is agreed between the Customer and the Scheme Member that the bill presentation should differ.

13. Restriction, Disconnection and Reconnection

- 13.1. Scheme Member terms and conditions must set out the conditions under which Customers can be disconnected.
- 13.2. Where a Scheme Member intends to disconnect a Customer because the Scheme Member considers that the Customer has not paid a bill, disconnection should only be considered if the Scheme Member has used reasonable endeavours to notify the Customer that they have outstanding amounts owing.
- 13.3. Scheme Members will notify Customers at least 5 Working Days before the Scheme Member will disconnect the Customer for non-payment. For the avoidance of doubt such notice is not required where access to services is restricted. Restriction of service may include for example the application of a toll bar, or a bar to internet access.
- 13.4. If a Customer has lodged a Complaint in relation to a bill dispute via the Telecommunications Dispute Resolution Scheme (TDRS) in accordance with clause 38.8 of Annexure 1, the Scheme Member must not disconnect services relating to the dispute or commence credit recovery action until the process is completed. For the avoidance of doubt, services may be restricted.
- 13.5. A Customer should not be disconnected for non-payment of part of an account

that is the subject of a Complaint to the TDRS. However, a Customer may be disconnected for non-payment of that part of an account which is not in dispute.

13.6. Scheme Members may disconnect Customers without notice where they reasonably deem Customer activity to be malicious, illegal, fraudulent; or activity which may pose a material threat to the Scheme Member's network or other users.

13.7. Scheme Members will make information available about when charges for temporary disconnection and or reconnection apply, and explicitly outline the amount of these.

14. Faults

14.1. Scheme Members will do their best to provide reliable, quality services, although they cannot guarantee they will be continuous or fault free.

14.2. Scheme Members will provide readily accessible information as to how to contact customer service and when customer service is available.

14.3. Scheme Members will fix network faults in their network at no charge to the Customer, except in instances where the Customer has caused or contributed to the fault.

15. Obligations from point of supply

15.1. Scheme Members will ensure that all equipment provided to Customers by them or their accredited agents:

a) is approved for use on the Scheme Member's network; and,

b) will operate on the Scheme Member's network (subject to any service or coverage limitations).

15.2. For the avoidance of doubt, the statutory guarantees provided under the Consumer Guarantees Act 1993 apply, unless a Customer uses, or holds themselves out as using, the services for the purposes of a business and the Scheme Member has contracted out of the Act, in accordance with the Act.

16. Access to premises

16.1. Scheme Member terms and conditions must include provisions permitting reasonable access to a Customer's premises for the direct purposes of the Scheme Member or any agent or subcontractor. The terms and conditions should also set out the consequences of not granting access. Agents or subcontractors must carry sufficient identification to confirm them as such.

17. Equipment ownership and maintenance

17.1. Scheme Member terms and conditions must provide information outlining the responsibilities of the Customer and the Scheme Member in relation to any equipment that is owned by the Scheme Member and located in the Customer's home or business to enable the Customer to use services, such as cabling or a decoder. The responsibilities should include who bears the cost of the Customer returning equipment to be repaired.

18. Force Majeure Clauses

18.1. Scheme Members terms and conditions must define the situations covered under Force Majeure clauses and explain how a Scheme Member will respond in such circumstances.

E. SCOPE AND OBJECTIVES

19. Scope

- 19.1. The Code governs Complaints made by Customers to Scheme Members. It sets out Complaint Handling Commitments that Scheme Members agree to comply with in dealing with Complaints.
- 19.2. The Code sets out Service Standards at Section D which must be met by all Scheme Members.
- 19.3. The Code provides for a specialised dispute resolution mechanism to address issues where a Scheme Member's internal Complaints handling or dispute resolution process fails to deliver a solution acceptable to the Customer.
- 19.4. The Code is the primary guide for all Complaints relating to Telecommunications Services, except where the Complaint is about content classification when the TCF Mobile Content Code articulates how to make a complaint and the Department of Internal Affairs is the body of Further Recourse.
- 19.5. The Code is also the primary code for Complaints about Transfers between Scheme Members. Customers should always refer Complaints to the Scheme Member that they have a Billing Relationship with in respects of the service or product under complaint.
- 19.6. This Code does not replace, extend or override any obligations under existing New Zealand law. For example, if there is any inconsistency between this Code, the Privacy Act 1993, and the Telecommunications Information Privacy Code 2003, then the Privacy Act and the Telecommunications Information Privacy Code prevail.
- 19.7. Accessing the Scheme does not limit Customers from subsequently pursuing a case through other legal avenues, including claims laid under the Fair Trading Act, the Consumer Guarantees Act, a claim to the Disputes Tribunal or the Courts or, for matters of privacy, to the Office of the Privacy Commissioner. If a Customer chooses to pursue Further Recourse avenues other than the TDRS (including other legal avenues), then the TDRS processes cannot be accessed by the Customer and any TDRS process that has already been commenced shall cease.
- 19.8. Where customers have already pursued a complaint through the Disputes Tribunal, the Courts, the Commerce Commission, or the Office of the Privacy Commissioner, and that matter has been adjudicated on, regardless of the outcome, the customer cannot access the TDRS processes about substantially the same matter.
- 19.9. If a customer has engaged a lawyer to contact the Scheme Member about a complaint, the customer cannot use the scheme (in relation to that complaint) while the lawyer is dealing with the Scheme Member. A Complaint must be:
 - a) Customer initiated;
 - b) about a specific event or events;
 - c) a grievance that isn't resolved when it is raised or which the Customer has otherwise requested be recorded;□
 - d) made within 12 months of the Customer's initial discovery of the matter being complained about
- 19.10. The Scheme Agent may decide in its discretion not to accept a Complaint if it considers that:
 - a) the Complaint is being pursued in a manner that is frivolous, vexatious or trivial;
 - b) if the Customer has been or is being abusive, threatening or indecent towards the Scheme Agent or the Scheme Member; or,
 - c) if the Scheme Agent otherwise considers that it is not reasonable in the circumstances to proceed with accepting the Complaint.

20. Exclusions from Scope

20.1. Subject to the Service Standards and clause 23.4, a grievance is not a Complaint that can be taken to the TDRS:

- a) if it relates to an entity that was not a Scheme Member at the time that the event that triggered the Complaint occurred, or at the time the Customer made the complaint;
- b) if it is frivolous or vexatious or trivial;
- c) if it is a request for information;
- d) if it relates to equipment and/or applications the Customer owns which the Scheme Member does not support;
- e) if it relates to the charges Scheme Members choose to set;
- f) if it relates to the extent of network coverage;
- g) if it relates to 111 emergency calls, which should be referred to the relevant emergency service;
- h) if it is a grievance by one Scheme Member against another;
- i) if it relates to the content of any Yellow Pages advertising service additional to that provided under a standard residential or business fixed line telecommunications contract. Complaints about advertising content should be referred to the Advertising Standards Authority;
- j) if it relates to privacy issues, which fall under the jurisdiction of the Privacy Commissioner;
- k) if it is a grievance subject to legal action and/or being pursued in alternative forums, including any forum set out in clause 19.8;
- l) if it relates to matters for which the Customer who is complaining does not have sufficient interest in;
- m) if it relates to matters which the Scheme Member is prevented by law from resolving;
- n) to the extent that the grievance relates to domain names and would be in the jurisdiction of the Office of the Domain Name Commissioner.
- o) if the Customer is claiming more than \$15,000.00 in the value and in respect to their grievance or in the aggregate of all grievances based on the same subject matter against the same Scheme Member;
- p) if the Customer has previously made a Complaint to the TDRS about the same Scheme Member based on substantially the same events and facts unless there is relevant new information;
- q) if it relates to a Corporate Customer or a Government Customer.
- r) if the Customer has previously accepted, and been provided with by the Scheme Member, an agreed resolution to the specific event or events.
- s) if the Customer cannot reasonably identify a specific event by timeframe or date.
- t) if the Customer's Complaint is "general dissatisfaction" not specific to a product, service or event.
- u) it relates to Broadband congestion or speed, unless the Broadband service is sold with a Committed Information Rate.
- v) it relates to interactions or conduct of the Scheme Member's authorised Debt Collection or Recovery Agency or that Agency's collection fees and/or costs.
- w) if the Scheme Member has previously, in writing, offered the Customer a resolution to a Complaint and the Customer has not responded to the Scheme Member within 6 weeks of the offer having been made and the Scheme Member warned the Customer within that timeframe that a failure to respond would exclude them from the using the TDRS.
- x) if the Scheme Agent is reasonably satisfied that the Customer has refused to engage with the Scheme Member or otherwise acted in bad faith in relation to attempting to resolve the Complaint.

21. Objectives

21.1. The Code's high level objective is to provide a Complaint resolution process as robust as practicable for Customers and Scheme Members, which will maintain and enhance Customer satisfaction through:

- a) appropriate Scheme Member etiquette and accountability;

- b) improved resolution processes for all Scheme Members and the achievement of early and effective resolution of Complaints;
- c) recognising, promoting and protecting Customers' rights, including the right to actively provide feedback;
- d) providing information to Customers on the Complaint handling process for Telecommunications Services provided by Scheme Members;
- e) providing an independent, efficient, fair and accessible mechanism for handling Complaints;
- f) transparency to the Customer of the Complaint handling procedures, so that the Customer is aware and kept up to date of the Complaint resolution progress;
- g) prompt and timely correction of problems;
- h) monitoring Complaints for the purpose of improving the quality of Telecommunication Services for Customers; and
- i) competitively neutral and non-discriminatory practices that provide consistent treatment for Customers.

F. CODE ADMINISTRATION AND COMPLIANCE

22. Code Monitoring and Compliance

- 22.1. The Code is applicable to all Scheme Members. This Code is not intended to impact on Non-Scheme Members.
- 22.2. All Scheme Members must handle Complaints in accordance with this Code and any relevant law.
- 22.3. This Scheme does not override any relevant legislation, any Bilateral Agreement, or determinations made by any regulatory body with authority. The Code however does take precedence over:
 - a) contracts between the Scheme Members and the Customer, except where Scheme Members choose to adopt provisions that provide Customers with a higher standard of service than those contained in the Code; and,
 - b) Bilateral Agreements entered into after approval of the Code, except where Scheme Members choose to adopt provisions that provide Customers with a higher standard of service than contained in this Code. Scheme Members will use all reasonable endeavours, within 6 months from the date of approval of this Code to make any necessary amendments to Bilateral Agreements entered into before approval of this Code to ensure compliance with the Code.
- 22.4. This Code contains the minimum requirements regarding handling a Complaint. While parties may enter into Bilateral Agreements concerning matters covered by this Code, such arrangements must not diminish or otherwise affect any requirements contained in this Code or impact on the ability of other parties to interact with Parties of this Code.

The Council processes set out in Annexure 2 shall apply.

23. Code and TDRS Implementation and review

- 23.1. This Code shall come into force on the later of:
 - 23.1.1 1 July 2011; or
 - 23.1.2 The date the Scheme Agent gives written notice to the TCF that it is compliant with this Code in accordance with an implementation plan to be agreed between TCF and the Scheme Agent.
- 23.2. By signing the Scheme Deed, signatories become Scheme Members or, for the purposes of clause 30, Wholesale Scheme Members (as appropriate) and agree to comply with the requirements of the Code, the Scheme TOR and, in the case of Scheme Members, with the terms of any Final Determinations made against them which have been accepted by the Customer, including (without limitation) payment of any award in full and within the requisite time period.
- 23.3. This clause sets out the timeframes within which signatories must comply with the Code.
 - a) Scheme Members who sign up to this Code before it comes into force must be compliant with the Code from the date it comes into force.
 - b) Scheme Members who sign up to this Code after it comes into force will have 3 months from the date of signing to make the necessary changes to comply with the requirements of the Code, unless otherwise agreed with the Council (and will not be required to comply with the Code until the end of that 3 month period).
- 23.4. Scheme Members who encounter reasonable impediments to compliance within the timeframe may apply to the TDRS Council for an extension of the implementation period. The Council, having regard to principles of fairness, and any relevant contractual or other legal requirements will assess whether there is due cause for delay.

- 23.5. For the avoidance of doubt, Customers cannot lodge a Complaint with the TDRS unless the Complaint relates to an event which occurred after the date the Scheme Member is required to be compliant with the Code or date on which the Scheme Member notifies the TDRS that the Scheme Member is compliant with the Code (whichever is the earlier) (“**Compliance Date**”). In recognition of this, with the exception of activities the Scheme Member needs to undertake to implement the requirements of the Code, Scheme Member’s must not advertise or promote to Customers that they are a Scheme Member until after the Compliance Date.
- 23.6. The administration of this Code will be undertaken by the TCF. At the time the Code was approved by the TCF it was anticipated that this Code and TDRS will be reviewed by the TCF Board at the recommendation of the TDRS Council 2 years from the date the TDRS is implemented.
- Any person wishing to propose amendments to this Code should forward them to the TCF.

G. COMPLAINT HANDLING PRINCIPLES

24. There should be a commitment to efficient and fair resolution of Complaints by people in the Scheme Member’s organisation at all levels, including the Scheme Member’s Chief Executive Officer(s) or ruling body and this should be demonstrated by an organisational culture which acknowledges the right of Customers to complain and which regards Complaints as an opportunity to improve its Telecommunications Services. In particular, Scheme Members should adhere to the following principles:
- 24.1. Scheme Members’ Complaint handling processes should recognise the need for fairness, both to the Customer and the organisation (or individual) about whom the Complaint is made.
- 24.2. Subject to 25.1 below, Scheme Members should seek to resolve Complaints when they are raised, where possible. Scheme Members should not ignore or refuse to receive a Customer’s Complaint without good cause.
- 24.3. Scheme Members should provide adequate resources for Complaint handling with sufficient delegated levels of authority.
- 24.4. Scheme Members’ Complaint handling processes should have the capacity to determine and implement remedies to achieve resolution. Where a Scheme Member provides a separate process for handling faults it must have the capacity to determine and implement remedies to achieve resolution.
- 24.5. Where a Scheme Member operates both fault and Complaint handling processes, as far as practical, the Customer facing part of those processes should be compatible with each other.
- 24.6. Customers who lodge Complaints should be treated with courtesy. Scheme Member’s should attempt to resolve Complaints with Customers in good faith.

H. COMPLAINT HANDLING COMMITMENTS

25. Visibility and Accessibility

- 25.1. Customers should refer Complaints to the Scheme Member who provides them with the Telecommunication Service which is the subject matter of the Complaint.
- 25.2. The Complaint handling process which the Scheme Member requires the Customer to follow must be documented and made available to the Customer upon request in hard copy, or other format as agreed with the Customer.
- 25.3. Scheme Members' Complaint handling processes must include an internal escalation process.
- 25.4. Scheme Members' Complaint handling policies must:
 - a) be made available to Customers¹ and staff;
 - b) include information to Customers about their right to complain;
 - c) provide sufficient information so that Customers can readily identify the area(s) which handles Complaints;
 - d) be free; and
 - e) be flexible, for example, offer more than one channel through which the Customer may lodge a Complaint.
- 25.5. Scheme Members must provide information on how, when and where Customers can make a Complaint. This information must be in simple and plain English.
- 25.6. Scheme Members will use all reasonable endeavours to ensure that their Complaint handling process is accessible to all Customers and enables appropriate services to meet the needs of Customers with impairments and from non-English speaking backgrounds.

26. Responsiveness

- 26.1. A Scheme Member must acknowledge receipt of written Complaints as soon as practicable but in any event within 5 Working Days of receipt of the Complaint. A Scheme Member can elect to do this either verbally or in writing, unless one or the other method is specified by the Customer. A Complaint made verbally to a Scheme Member will be deemed to have been acknowledged at the time it is taken.
- 26.2. A Scheme Member must advise Customers when they make a Complaint, or make every reasonable effort to do so within 10 Working Days of receipt, of the estimated level of complexity of the investigation and a timeframe for the possible agreement of the Complaint. If the advised timeframe is to be exceeded, the Scheme Member must advise the Customer of the revised timeframe before or at the time the timeframe expires. Subject to Clause 26.3, the timeframe for providing the final response in relation to a Complaint must be not more than 20 Working Days from the date of receipt by the Scheme Member of the Complaint.
- 26.3. In certain cases it will not be possible for a Complaint to be handled within the 20 Working Day timeframe referred to in clause 26.2 due to the complexity, the number of WSM's involved or particular circumstances of the Complaint. A Scheme Member must provide regular updates to the Customer in these circumstances and the Customer must be kept informed as to the progress of their Complaint and likely timeframe for finalisation.
- 26.4. Scheme Members must provide Customers with sufficient information to ensure they can effectively inquire on the progress of the Complaint. Customers must be advised if this information changes.

¹ This can be via the Scheme Member's website
© 2011 The Telecommunications Carriers' Forum Inc
Customer Complaints Code

- 26.5. Scheme Members must have appropriate methods and/or mechanisms in place in order to take action and monitor undertakings made to Customers in the resolution of Complaints.
- 26.6. Scheme Members must advise Customers of the outcome of the investigation of their Complaint. This must be in a written format, if requested by the Customer.
- 26.7. A Scheme Member must exercise caution not to dismiss complaints as frivolous or vexatious without due consideration and, where appropriate, escalation. Where the Scheme Member deems the complaint to be frivolous or vexatious, the Scheme Member must:
 - a) inform the Customer of the reasons for the decision not to investigate on the grounds of jurisdiction;
 - b) where requested by the Customer inform the Customer of the availability of external options for the Customers Complaint to be handled;
 - c) where a Scheme Member has deemed a complaint to be frivolous or vexatious and a Customer disagrees with this assessment, the Customer may ask the Scheme Agent to consider whether or not the complaint is frivolous or vexatious, without waiting 6 weeks from first having raised the complaint.

I. ADDITIONAL CODE RULES

27. Recording Complaints

- 27.1. A Scheme Member's processes must provide for appropriate and systematic record keeping of Complaints.
- 27.2. Under clause 27.1 a Scheme Member must record the nature of the Complaint and, if applicable, any undertakings made by the Scheme Member to the Customer.
- 27.3. A Scheme Member must ensure that Complaints are appropriately analysed to identify recurring and systemic problems and trends in order to address and eliminate the underlying causes of Complaints and improve the quality of Customer Service.
- 27.4. Scheme Members must keep information they deem necessary to show their compliance with this Code.
- 27.5. A Scheme Member must retain material collected and recorded under clause 27.1 throughout the Complaint handling process for a minimum period of one year following the resolution of a Complaint.

28. Internal Review of Complaint Handling Processes

- 28.1. Scheme Members must make improvements to their Complaint handling processes as soon as practicable where areas requiring attention are identified through Complaint analysis.

29. Changes to Complaint Handling Policies and Processes

- 29.1. The Code recognises that Scheme Members may make changes to their Complaint handling processes. Scheme Members must update any internal information regarding their Complaint handling process to reflect variations to the process within 40 Working Days of the change or as soon as reasonably practicable after this time.
- 29.2. Where changes to Complaint handling processes are made that may affect how Customers lodge Complaints, Scheme Members must make the updated information available to Customers prior to the changes being implemented.

30. Complaints involving Multiple Scheme Members

- 30.1. This section refers to **Retail Scheme Members** or **RSMs** and **Wholesale Scheme Members** or **WSMs**. These terms are defined as follows:
- **Retail Scheme Member** or **RSM** refers to a Scheme Member who holds the Billing Relationship with the Customer.
 - **Wholesale Scheme Member** or **WSM** refers to a service provider who supplies wholesale Telecommunications Services to:
 - a) a RSM so that the RSM may supply Telecommunications Services to the Customer; or
 - b) another WSM and all or part of the services are ultimately supplied to an RSM so that the RSM may supply Telecommunications Services to the Customer. (Thus it is recognised that there may be a number of WSMs in the chain of supply of Telecommunications Services to the Customer.)
- 30.2. In the event that a Scheme Member separates or splits its operations into multiple units that provide Telecommunications Services subject to this Code then, for the purposes of this clause 30, and elsewhere in this Code if the context requires, the separate business units so created shall be treated, respectively, as individual Retail Scheme Members or Wholesale Scheme Members (as the case may require). For the avoidance of doubt unless the separated units are incorporated into distinct legal entities the original Scheme Member shall continue to be the Scheme Member under the Code and the separate business units will not become individual Scheme Members under the Code.
- 30.3. If a Customer makes a Complaint to a Scheme Member about a Telecommunications Service where that Customer does not have a Billing Relationship with that Scheme Member, the following principles apply:
- a) The Scheme Member without a Billing Relationship with the Customer shall not enter into a discussion with the Customer in relation to the Complaint except to advise the Customer to contact their own Scheme Member with whom they have a Billing Relationship.
 - b) The focus of the Scheme Member without the Billing Relationship with the Customer should be to assist the Customer by referring them back to the Scheme Member with whom they have a Billing Relationship, who can address their Complaint.
 - c) Scheme Members must own their own Customers and the service issues relating to them. At all times, and via all channels, Customers should be encouraged to deal with the Scheme Member with whom they have a Billing Relationship with in respect of Complaints.
 - d) In the event that a Customer Transfer occurs, Customer contact should be in accordance with the TCF Customer Transfer Code.
 - e) Where there is a Chain of Supply a Request (as defined in clause 30.4 shall be to the WSM with which the RSM (or the WSM as the case may require) has the relationship with for that particular Telecommunication Service.
- 30.4. **Referring Complaint to WSM**
- 30.4.1 If a Customer makes a Complaint to a RSM the RSM may refer any aspects of the Complaint to the WSM and request (for the purposes of this clause 30 only, referred to as the “Request”) the WSM’s assistance in investigating and resolving the Complaint in accordance with this Code through the provision of information and advice relevant to the Complaint (for the purposes of this clause 30 only, referred to as “Assistance”). Where there is a Chain of Supply, the WSM receiving the Request may in

turn refer any aspect of the Complaint to the next WSM in the Chain of Supply for the purpose of obtaining Assistance, and must advise the RSM that this has occurred.

30.4.2 A WSM receiving a Request from a RSM agrees to provide such Assistance (or refer a Request to the next WSM in the Chain of Supply) in accordance with clause 30.6 provided:

- a) the Request is in writing and includes a summary of the Complaint drawn from the information available at that time;
- b) the Request is made within 3 Working Days of the RSM's receipt of the Complaint;
- c) a wholesale Telecommunications Service provided by the WSM to the RSM is directly relevant to the Complaint;
- d) the Assistance requested is reasonable having regard to the nature of the Complaint and the extent of the WSM's responsibility for the Complaint; and
- e) the Request provides sufficient detail, in the WSM's reasonable opinion, to enable the WSM to comply with clause 30.6.

30.4.3 A WSM receiving a Request from another WSM agrees to provide Assistance to the requesting WSM (or refer a Request to the next WSM in the Chain of Supply) in accordance with clause 30.6 provided:

- a) the Request is in writing and includes a summary of the Complaint drawn from the information available at that time;
- b) the Request is made within 3 Working Days of the requesting WSM's receipt of a Request;
- c) a wholesale Telecommunications Service provided by the receiving WSM to the requesting WSM is directly relevant to the Complaint;
- d) the Assistance requested is reasonable having regard to the nature of the Complaint and the extent of the receiving WSM's responsibility for the Complaint; and
- e) the Request provides sufficient detail, in the receiving WSM's reasonable opinion, to enable the receiving WSM to comply with clause 30.66.

30.5. The WSM will advise the RSM (or the requesting WSM, as the case may be) within 2 Working Days of the receipt of the Request if the Request does not meet the requirements of clause 30.4.

30.6. WSM Process When Complaint Referred

30.6.1 Upon receipt of a RSM's Request in accordance with clause 30.4, the WSM agrees to:

- a) advise the RSM of the complexity of the investigation and a timeframe for providing the Assistance to the RSM as soon as reasonably practical, but in any event within 5 Working Days of the date the Request is made pursuant to clause 30.4.2;
- b) provide the Assistance to the RSM as soon as reasonably practical, but in any event within 10 Working Days of the date the Request is made pursuant to clause 30.4.2; and
- c) advise the RSM, as soon as reasonably practicable, if the WSM considers that the complexity and/or nature of the Complaint is such that it will be unable to provide the Assistance to the RSM within 10 Working Days from the date of the Request, and provide a proposed date for the provision of the Assistance.

- 30.6.2 Upon receipt of a WSM's request in accordance with clause 30.4 the receiving WSM agrees to:
- a) advise the requesting WSM of the complexity of the investigation and a timeframe for providing the Assistance to the requesting WSM as soon as reasonably practical, but in any event within 5 Working Days of the date the Request is made to the receiving WSM;
 - b) provide the Assistance to the requesting WSM as soon as reasonably practical, but in any event within 10 Working Days of the date the Request is made to the receiving WSM; and
 - c) advise the requesting WSM as soon as reasonably practicable, if the WSM considers that the complexity and/or nature of the Complaint is such that it will be unable to provide the Assistance to the RSM within 10 Working Days from the date that the Request is made to the receiving WSM, and provide a proposed date for the provision of the Assistance.

For the avoidance of doubt, a WSM is not required to comply with this clause 30.6 unless and until the RSM (or requesting WSM) has complied with clause 30.4.

- 30.7. If the RSM would, if it had to retrieve the information itself, be entitled under clause 32 to charge a Customer for retrieving information that the WSM provides to satisfy a Request, then:
- a) the WSM may levy on the RSM (or the requesting WSM as the case may require) a reasonable charge for providing that information (“**Wholesale Charge**”) provided that, before starting the process of retrieving the information to which the Wholesale Charge will relate, the WSM has notified the RSM (or the requesting WSM) of its intention to levy the charge, and the amount of such charge and given the RSM (or the requesting WSM) a reasonable opportunity to comply with its obligations under clause 32.5; and
 - b) the RSM may pass the Wholesale Charge on to the Customer provided it has complied with clause 32.5 (with all necessary amendments).
- 30.8. If the RSM refunds fees paid by a Customer under clause 32.6 and:
- a) the fee refunded was the on-charging of a Wholesale Charge; and
 - b) a WSM was responsible for the Complaint,
- then the relevant WSM will refund the Wholesale Charge to the RSM or, if applicable, to the WSM above it in the chain of supply until it reaches the RSM.
- 30.9. Both the RSM and WSM(s) will operate on the principle that there will be a reasonable flow of communication between the Scheme Members in making a Request and responding to any Request.
- 30.10. After the WSM has provided Assistance to the RSM pursuant to clause 30.6, and before the RSM provides a response to the Customer, the RSM will in good faith consult with the WSM to finalise its response to its Customer. In particular, the RSM will take into account any proposed resolution suggested by the WSM.
- 30.11. Where the RSM makes a Request to the WSM for information pursuant to clause 30.4, the RSM will advise the WSM (whom in turn will advise any relevant WSMs in the Chain of Supply) of the outcome of the Complaint. For example, advise that the Complaint has been resolved or advise that the Complaint is now in Deadlock.
- 30.12. The RSM and WSM further agree that if the RSM does not follow the process in accordance with clause 30.4 and the Complaint reaches Deadlock, the WSMs will have no liability whatsoever to the RSM or any other person under the Scheme.
- 30.13. For the avoidance of doubt, if any WSM fails to comply with its obligations under

clause 30.6 then the enforcement mechanisms set out in clause 46 of Annexure 2 will apply and the applicable WSM will have no liability to the RSM for such failure under the Scheme.

31. Disputed Amounts

- 31.1. If a Complaint relates to a disputed amount, a Scheme Member must not demand payment of genuinely disputed amounts whilst the Complaint is being investigated.
- 31.2. If a Customer pays for the Telecommunications Service in advance, the Scheme Member is under no obligation to credit or refund a Customer whilst the Complaint is being investigated.

32. Charges to retrieve and analyse archives

- 32.1. As a matter of principle, Scheme Members must not impose Complaint handling charges.
- 32.2. Where Customers request information that is older than three months, Scheme Members may charge to retrieve that information in accordance with clause 32.3.
- 32.3. In other circumstances where the Scheme Member can reasonably demonstrate that to retrieve and analyse archived information will incur significant cost, the Scheme Member may, after consulting with the Customer, levy a reasonable charge, provided that the Scheme Member has complied with clause 32.5.
- 32.4. The following are examples of instances where significant cost may be incurred:
 - a) Where utilisation of line analysis equipment is requested for the same phone number on more than one occasion by the same Customer within a six month period; or
 - b) Where a Customer instigates a Complaint process that requires the retrieval of any Customer data or archival records more than three months old, or the retrieval of Customer data where an account has been terminated.
- 32.5. Where a Scheme Member needs to retrieve and/or analyse archived information in order to investigate a Complaint and where the Scheme Member will incur significant cost, the Scheme Member must not pass on all or part of those costs without reference to, and discussion with, the Customer. In cases where a charge is to be imposed, the Scheme Member must inform the Customer of such charges in writing and provide the Customer with the option to:
 - a) Pursue the Complaint and pay the charge; or
 - b) Discontinue the Complaint; or
 - c) Pursue an avenue of Further Recourse. If the Customer wishes to initiate the TDRS processes the Customer could do so without waiting 6 weeks from first having raised the complaint.
- 32.6. Where the outcome of a Complaint is upheld in favour of the Customer, a Scheme Member must refund any fees paid by the Customer under 32.5(a) within 10 Working Days of the Complaint being resolved or as agreed with the Customer.

33. Telecommunications Disputes Resolution Scheme

- 33.1. By becoming a signatory to the Scheme Deed a Scheme Member agrees (among other things) to be bound by the policies and procedures of the TDRS and any Final Determinations made against them by the Scheme Agent and will refrain from conduct which may give rise to reasonable doubts as to the independence and impartiality of the Scheme Agent.
- 33.2. If a Deadlock is reached, the Scheme Member must issue the Customer with a Referral Number and must advise the Customer that they can take the matter to

the Scheme Agent for a Final Determination.

- 33.3. The Scheme Agent can make a Final Determination against a Scheme Member up to a maximum of \$15,000. For the avoidance of doubt, where in a Final Determination the Scheme Agent apportions liability between a WSM and a RSM under clause 33.7, the aggregate liabilities and costs of the WSM and the RSM under that Final Determination must not exceed \$15,000.
- 33.4. The Scheme Agent can also make Final Determinations directing a Scheme Member to do any of the following:
- a) to make a formal written apology to the Customer;
 - b) not to impose or amend a charge in relation to a Telecommunications Service;
 - c) to supply Telecommunications Services which are the subject of the dispute or undertake any necessary corrective or other work to resolve the dispute;
 - d) to make an appropriate correction, or addition to a record (this may include seeking amendment of a record where those records have been passed to another agency); and/or
 - e) to attach to a Customer record a statement from the Customer of a correction or addition sought by that Customer
- provided that the total cost to the Scheme Member in relation to an individual dispute does not exceed in value \$15,000 and the Scheme Member currently has the technical ability to undertake the remedy; or
- f) dismiss the dispute.
- 33.5. Scheme Members will provide an appropriate contact point within their businesses that will liaise with the Scheme Agent.
- 33.6. When considering a Dispute the Scheme Agent will have regard to:
- a) fairness in all the circumstances;
 - b) any relevant contractual or other legal requirements;
 - c) this Code and its service standards;
 - d) the Position Statements as described in Section J and as included in Annexure 3; and
 - e) any other relevant TCF Code,
- to ensure consistency in decision making.
- 33.7. The Scheme Agent may, in its Final Determination, rule that a Wholesale Scheme Member is (or WSM's are) partially at fault or responsible for one or more of the matters raised in the Complaint. The Scheme Agent may hold in its Final Determination that there is to be an appropriate apportionment of the RSM's liability to the Customer between the relevant Wholesale Scheme Members and the Retail Scheme Member in relation to an award made under a Final Determination and/or any costs incurred by the adjudicator associated with making the Final Determination. For the avoidance of doubt:
- a) in no circumstance will the Scheme Agent determine that any WSM is directly liable to the Customer; and
 - b) the apportionment of liability shall be between Scheme Members irrespective of the number of RSM's or WSM's a Scheme Member has in a Chain of Supply.
- 33.8. To the extent allowed by law, including the Fair Trading Act and Consumer Guarantees Act, the Scheme Agent can not consider claims for compensation that are based on the following:
- a) loss of profits or indirect loss;
 - b) claims for pain and suffering;
 - c) loss of business reputation;

- d) inconvenience and mental distress; and
- e) costs involved in compiling or pursuing a Complaint through the TDRS process.

Scheme Members retain the discretion to make a gesture of goodwill in these instances.

- 33.9. The Scheme Agent does not consider claims for punitive damages.
- 33.10. If the Customer accepts any Final Determination, that Final Determination will be binding on the Scheme Member and the Customer. By accepting the Final Determination the Customer will be required to acknowledge that this is full and final settlement of this matter.
- 33.11. If the Customer does not accept the Final Determination, the Customer retains their right to pursue their complaint in another forum, such as the New Zealand courts.
- 33.12. If the Customer accepts the Final Determination and the Scheme Member fails to comply with the Final Determination, the Scheme Agent will refer the matter to the Council.
- 33.13. More information about the TDRS and the enforcement of Final Determinations can be found in the Scheme TOR.
- 33.14. Further information about the TDRS is published by the TCF at its website, www.tcf.org.nz.

J. POSITION STATEMENTS

34. Purpose of Position statements

- 34.1. Position Statements are designed to provide the Scheme Agent with guidance on how particular recurring types of complaint are commonly approached and resolved. Position Statements do not predetermine the ultimate outcome of any specific Complaint, they are designed to provide faster and more efficient resolution of common types of complaint, whilst still preserving fair and reasonable outcomes for both Customers and Scheme Members.
- 34.2. The Scheme Agent must take the Position Statements into account when evaluating any complaint, in accordance with the process outlined in Annexure 1, clause 1.29.
- 34.3. Position Statements must include:
 - a) a summary of the nature of the recurring complaint;
 - b) an evaluation of the positions commonly taken by Customers and Scheme Members when the recurring complaint occurs;
 - c) a recommended position that the Scheme Agent should take when that further instances of that recurring complaint occur.
- 34.4. For the avoidance of doubt, the Scheme Agent is not bound to implement the position recommended in the Position Statement, and is instead free to evaluate each individual Complaint on the relevant issues and merits. The Scheme Agent must also not use the Position Statements to provide an advance position or advisory opinion prior to an evaluation of the issues and merits relevant to an individual Complaint.

35. Creating a Position Statement

- 35.1. The Scheme Agent may recommend a Position Statement to the Council, based upon trends in recurring complaints, and the ability for a single Position Statement to be prepared on that recurring Complaint; or upon request from the Council.

- 35.2. The Council may accept, reject or request amendments to the Position Statement prepared by the Scheme Agent.
- 35.3. If the Council accepts the Position Statement, then that Position Statement shall be attached to this Code in Annexure 3.

36. Amending a Position Statement

- 36.1. The Scheme Agent may recommend to the Council an amendment to any previously agreed Position Statement, or provide such a recommendation upon request of the Council. Such amendments may be required due to changes in the telecommunications industry, including changes to the Code or industry codes, or as a result of the Scheme Agent's experience in handling a particular matter. Any changes in a Position Statement will not be applied retrospectively to alter any Complaints that were previously resolved with the assistance of the Position Statement.
- 36.2. The Council may accept, reject or request amendments to the Position Statement prepared by the Scheme Agent.
- 36.3. If the Council accepts the amendments to a Position Statement, then that revised Position Statement shall be attached to this Code in Annexure 3 in place of the original Position Statement.

37. Removing a Position Statement

- 37.1. The Scheme Agent may recommend to the Council that a Position Statement be removed from Annexure 3, or provide such a recommendation upon request of the Council. Such amendments may be required due to changes in the telecommunications industry, including changes to the Code or industry codes, or as a result of the Scheme Agent's experience in handling a particular matter. Any changes in a Position Statement will not be applied retrospectively to alter any Complaints that were previously resolved with the assistance of the Position Statement.
- 37.2. The Council may accept or reject the recommendation from the Scheme Agent to remove the Position Statement.
- 37.3. If the Council accepts the recommendation, then that Position Statement shall be removed from Annexure 3.

K. ANNEXURE 1 - DISPUTE RESOLUTION PROCEDURES

38. Enquiry and Registration of Complaint

- 38.1. When a Customer contacts the Scheme Agent, the Scheme Agent must first determine if the Enquiry is Relevant. This will be done at the time of the contact by the Customer.
- 38.2. If the Enquiry is Relevant then the Enquiry is referred back to the appropriate Scheme Member.
- 38.3. If the Enquiry is Non Relevant then the Scheme Member will respond as appropriate
- 38.4. Before a Complaint can be registered, the Customer must first try to resolve the complaint with its Scheme Member.
- 38.5. A Customer cannot register a complaint with the Scheme Agent unless they have reached Deadlock with their Scheme Member or 6 weeks has passed since the Enquiry was passed to the Scheme Member.
- 38.6. The Scheme Agent must assess whether or not Deadlock has been reached. This may involve the Scheme Agent contacting the Retail Scheme Member identified by the Customer's dispute. The Scheme Agent will inquire of the Retail Scheme Member whether a Wholesale Scheme Member is considered to be a party to the dispute and whether the Wholesale Scheme Member has been notified according to the provisions of the Code.
- 38.7. If Deadlock has not been reached, the Scheme Agent will refer the Customer to their Scheme Member and encourage the Customer to resolve their Complaint through the Scheme Member's internal complaints process.
- 38.8. If the Scheme Agent is satisfied that Deadlock has been reached, the Scheme Agent will request that the Customer submit their Complaint in writing within 10 Working Days. The Scheme Agent may extend this period for up to a further 10 Working Days if the Scheme Agent requires the Customer to provide any additional information and it believes such an extension is reasonable. A written Complaint should include:
 - a) details of the events that led to the Complaint, including the steps taken to resolve the Complaint with the Scheme Member;
 - b) what the ideal outcome is for the Customer; and
 - c) a copy of any documentation that supports the Customer's Complaint, including:
 - Account statements;
 - Service or product contracts;
 - Correspondence between the parties in relation to the Dispute;
 - Receipts/evidence of payment;
 - File notes of conversations between the Customer and their Scheme Member;

The Scheme Agent may provide assistance to the Customer to submit their complaint and may request additional details from the Customer if the Scheme Agent considers that those details would provide assistance to better define the Complaint or may be necessary at a later stage (such as to check for Jurisdiction).
- 38.9. The Customer's Complaint does not need to use any formal, legal or technical language. By submitting their Complaint in writing to the Scheme Agent, the Customer authorises the Scheme Agent to exchange details and all other information relevant to the Complaint(s) with the Customer's Scheme Member and the relevant WSM (if any).
- 38.10. If the Customer is reasonably unable to submit a written complaint to the Scheme,

the Scheme Agent will:

- a) make a record of the details of the Customer's Complaint that are provided over the telephone; and
 - b) send the written record of the Complaint details to the Customer.
- 38.11. The Customer should verify that the written record is an accurate representation of the Complaint that the Customer is seeking the Scheme Agent's assistance to resolve. The Customer should sign and return the written record to the Scheme Agent. If the Customer is unable to sign the written record, the Scheme Agent may allow the Customer to indicate their acceptance of the written record by other means (such as via the telephone) provided that the Scheme Agent must be satisfied that the Customer has indicated their acceptance and notes that acceptance as having been given.
- 38.12. If the Customer is unable to read, has a language barrier, or has impairment, the Customer can arrange to have the written record read to them by an independent adult. That adult should certify that this has occurred and that the Customer has acknowledged to them that the written record is an accurate representation of the Complaint that the Customer is seeking the Scheme Agent's assistance to resolve.
- 38.13. If the Customer does not provide the written complaint within 10 Working Days (or such longer period as the Scheme Agent allows under clause 38.8) or return the signed written record prepared by the Scheme Agent, the Scheme Agent will send a follow up request to the Customer. The Scheme Agent will also notify the Scheme Member and the relevant WSM (if any) of the status of the Complaint via email.
- 38.14. If the Customer does not provide a response to the Scheme Agent within 5 Working Days of the follow up request, the Scheme Agent is not required to issue any further follow-up communication to the Customer. The case will remain open for 20 Working Days from the date of the follow up request, to allow ample opportunity for the Customer to respond. Such cases will be classified as "pending". If the Customer does not respond within the 20 Working Days time frame the Scheme Agent will close the pending Complaint and notify all parties of this closure.
- 38.15. If at any time within 12 months of the Customer's initial contact with the Scheme Member the Customer provides their written complaint to the Scheme Agent, the Scheme Agent will reopen the case.
- 38.16. Within 1 Working Day of the day of receipt of the Customer's written Complaint, the Scheme Agent will forward the Complaint to the nominated contact person at the Customer's Scheme Member via e-mail and request information to enable assessment of Jurisdiction.
- 38.17. The Scheme Agent will provide the following information to the Scheme Member:
- a) The Customer's name, account number and phone number for any lines subscribed to;
 - b) A TDRS Reference Number.
- 38.18. If a Wholesale Scheme Member is not involved in the Complaint, the Scheme Agent shall request that the Scheme Member provide to the Scheme Agent full details of the Complaint history within 10 Working Days from the date of the written request from the Scheme Agent. This period may be extended in accordance with clause 38.22.
- 38.19. The request shall include a request for a response from the Scheme Member that specifically addresses:
- a) Each of the issues raised by the Customer;
 - b) Details of any proposed resolution of the Complaint;
 - c) Copies of supporting documentation such as:
 - d) Account statements;
 - e) Service or product contracts;

- f) Correspondence between the parties in relation to the Complaint;
 - g) Receipts/evidence of payment;
 - h) System notes;
 - i) File notes of conversations between the Scheme Member and the Customer.
 - j) Whether the Scheme Member considers the Complaint is within jurisdiction, and if not, why.
- 38.20. If the Complaint also involves a Wholesale Scheme Member, the Scheme Agent will simultaneously forward the Dispute (and Level 2 letter) to the nominated contact person at the Wholesale Scheme Member via e-mail.
- 38.21. A Retail Scheme Member and/or a Wholesale Scheme Member should provide its response within 10 Working Days of receipt of the request for information from the Scheme Agent. It will be incumbent on the Retail Scheme Member to contact the Wholesale Scheme Member about the matter within 5 Working Days with a view to agreeing how both parties will respond to the Scheme Agent.
- 38.22. If the Scheme Agent considers it appropriate, the timeframe in which the Retail Scheme Member and/or a Wholesale Scheme Member is required to provide a response to the Scheme Agent may be extended to 15 Working Days. The Retail Scheme Member and/or a Wholesale Scheme Member must request a time extension within 5 Working Days of receipt of the Customer's Complaint. The Scheme Agent retains the discretion whether to grant the Retail/Wholesale Scheme Member an extension of time in which to respond. The Retail Scheme Member and/or a Wholesale Scheme Member must make every effort to provide a response within 10 Working Days of receipt of the Complaint from the Scheme Agent.
- 38.23. The Scheme Agent, based on the information provided by the Customer and the Scheme Member, will determine within 2 Working Days if the Complaint is within Jurisdiction. For the avoidance of doubt, the Scheme Agent may request additional information from the Customer and/or the Scheme Member as required to assist the Scheme Agent with its decision.
- 38.24. Once the Scheme Agent has verified that the written Complaint is in the Scheme Agent's Jurisdiction the Complaint will be determined to be a Dispute and moved to the Investigation and Resolution phase.
- 38.25. If the Complaint is not within the Jurisdiction of TDRS, the Scheme Agent will advise the parties, by their preferred means, of why the Scheme Agent cannot assist the Customer. Where relevant, the Scheme will refer the Customer to a point of contact with their Scheme Member.

39. Investigation and Resolution

- 39.1. When considering a Dispute the Scheme Agent acting as Adjudicator will have regard to:
- a) fairness in all the circumstances;
 - b) any relevant legal requirements;
 - c) the Code and its service standards, including Position Statements; and
 - d) any other relevant telecommunications code.
- 39.2. The Scheme Agent will, within 5 Working Days of verifying that the Complaint has been determined to be a Dispute under clause 38.24, prepare the Summary of Dispute which will include:
- a) a brief overview of the Dispute;
 - b) a summary of each party's position in relation to the issues in dispute; and
 - c) a notation that the Scheme Agent will contact the parties within 5 Working

Days to discuss the resolution of the Dispute;

- 39.3. The parties have 5 Working Days to provide to the Scheme Agent written statements of position on the Summary of Dispute.
- 39.4. Two Working Days be allowed for each party's statement of position to be communicated to the other party by the Scheme Agent.
- 39.5. Where required by them parties to have a further 5 Working Days to rebut the other party's written statement.
- 39.6. It is the responsibility of the Scheme Agent to determine the most appropriate means to resolve the Dispute. The Scheme Agent may attempt to facilitate a mutually satisfactory, negotiated settlement between the Scheme Member and the Customer. This may involve conducting telephone negotiations between the Customer and the Scheme Member or, if it is considered appropriate by the Scheme Agent, arranging a teleconference with the parties to the Dispute. The Scheme Agent may continue to pursue a negotiated settlement for up to 15 Working Days before issuing a Final Determination.

If the Customer accepts any offer of resolution provided by the Scheme Member during any negotiated settlement, the Scheme Agent will forward to the Customer an Acceptance Letter that includes a request for signature by the Customer to confirm acceptance of the offer
- 39.7. Upon receipt of the signed Acceptance Letter, the Scheme Agent will close the Dispute and notify all parties of this closure.
- 39.8. If a negotiated settlement cannot be reached under clause 39.6, the Scheme Agent shall prepare a Final Determination of the Dispute.
- 39.9. The Scheme Agent will review the Position Statements to see if they provide any guidance for the resolution of the Dispute.
- 39.10. The Scheme Agent's Final Determination shall be provided in writing to the Customer and the Scheme Member either 5 Working Days after receipt of all submission from parties, or, if negotiated settlement was attempted, 5 Working Days after the period during which that negotiated settlement was attempted (whichever is the later) and, where requested by the Scheme Agent, any clarification of those submissions or any other matter of fact or evidence.
- 39.11. If the Customer, within 10 Working Days of the date of the Final Determination, advises the Scheme Agent in writing that the Customer accepts the Final Determination, the Final Determination will become binding on the Scheme Member..
- 39.12. If the Customer, within 10 Working Days of the date of the Final Determination, advises the Scheme Agent that the Customer rejects the Final Determination, the Dispute will be closed and recorded as unresolved. The dispute shall not be able to be brought again by the customer.
- 39.13. If after 10 Working Days of the date of the Final Determination the Customer has not advised the Scheme Agent whether or not the Customer accepts or rejects the Final Determination, the Scheme Agent will send a follow up letter to the Customer and provide an additional 5 Working Days for the Customer to respond.
- 39.14. If the Customer does not provide a response to the Scheme Agent within 5 Working Days of the follow up letter, the Scheme Agent is not required to issue any further follow-up communication to the Customer. The case will remain open for 20 Working Days from the date of the follow up letter, to allow ample opportunity for Customer to respond. Such cases will be classified as "Pending Disputes". If the Customer does not respond within the 20 Working Days time frame the Scheme Agent will close the Pending Dispute and notify all parties of this closure. If at any time in the period a Customer is given to respond the Customer contacts the Scheme Agent and can advise of reasonable grounds for a delay in responding, the Scheme Agent will accept a late response.
- 39.15. If, after the Scheme Agent has provided the Customer with an additional five Working Days to respond, the Customer advises the Scheme Agent in writing that

the Customer accepts the Final Determination, the Final Determination will become binding on the Scheme Member.

- 39.16. The Scheme Agent will carry out a customer satisfaction survey at the completion of the Investigation and Resolution Process.

40. Information Requirements

Information which can be required of Scheme Members

- 40.1. Subject to clause 40.2, parties will be required to provide information to the Scheme Agent as soon as reasonably practicable that is:

- a) directly relevant to the particular Complaint and sufficient to enable the Scheme Agent to make a decision; and
- b) readily available (i.e. does not require unreasonable requirements to compile and/or create information).

- 40.2. Parties will not have to provide information:

- that is privileged;
- where disclosure would cause that party to breach an obligation of confidence to a third party who has refused to consent to disclosure despite the party using reasonable efforts to obtain consent.

41. The TDRS process and legal proceedings

- 41.1. “Without prejudice” communications which contain an attempt or proposal to settle the Dispute, seek a compromise of the Dispute or have a bearing on the settlement negotiations are privileged in that they cannot be used in later legal proceedings.

42. Confidentiality

- 42.1. The Scheme Members acknowledge that this Code is a public document and that none of its provisions are confidential or commercially sensitive.
- 42.2. All statements made and information or documents provided pursuant to the TDRS are on a confidential basis. If any party to a Dispute supplies information to the Scheme Agent and requests it be treated confidentially, the Scheme Agent must not disclose that information to any other party to the Dispute or any other person, subject to the exceptions in clause 42.6 below. Unless one of those exceptions is met, the Scheme Agent is not entitled to use that information to reach a decision adverse to any party to whom confidential information is denied.
- 42.3. Subject to clause 42.2 of this Annexure 2, all documentation should be provided to all parties to a Dispute as a matter of principle. However, it is not necessary for documents and information used by the Scheme Agent to be provided to both parties as long as the Scheme Agent, including an Adjudicator's written reasons, clearly identify the documents or information relied on and the identified documents or information are provided on request.
- 42.4. Where a party to a Dispute supplies information and asks that it be treated confidentially, the Scheme Agent must return it to the disclosing party as soon as practicable after the Dispute is resolved or withdrawn.
- 42.5. If the Scheme Agent sends a Customer's information concerning another forum then the Scheme Agent must obtain the consent of the disclosing party before forwarding any information to the new forum.
- 42.6. Any information provided to the Scheme Agent during the TDRS process can only be used for the purposes of resolving the relevant Complaint/Dispute and must not be disclosed to anyone else unless:
- (a) the party who provided the information consents to such disclosure, or
 - (b) if disclosure is required by law; or
 - (c) if disclosure is required or permitted by the Scheme TOR.
- 42.7. For the purposes of clauses 42.6 (b) and (c) above, the Scheme Agent will be required to use reasonable efforts to give the disclosing party notice of such a requirement immediately.
- 42.8. Subject to the obligations of confidentiality set out in this clause 42, the parties to the Complaint/Dispute can request a copy of the information held by the Scheme Agent in respect of the Complaint/Dispute.
- 42.9. Final Determinations are confidential as between the Scheme Member and the Customer.
- 42.10. Confidentiality Requirements for Scheme Agent
- The operational separation of Telecom impacts the flow of certain types of information between the various business units of Telecom. In light of this, in addition to the obligations set out in this clause 42, in order to restrict the flow of customer confidential information and commercial information between the various Telecom business units:

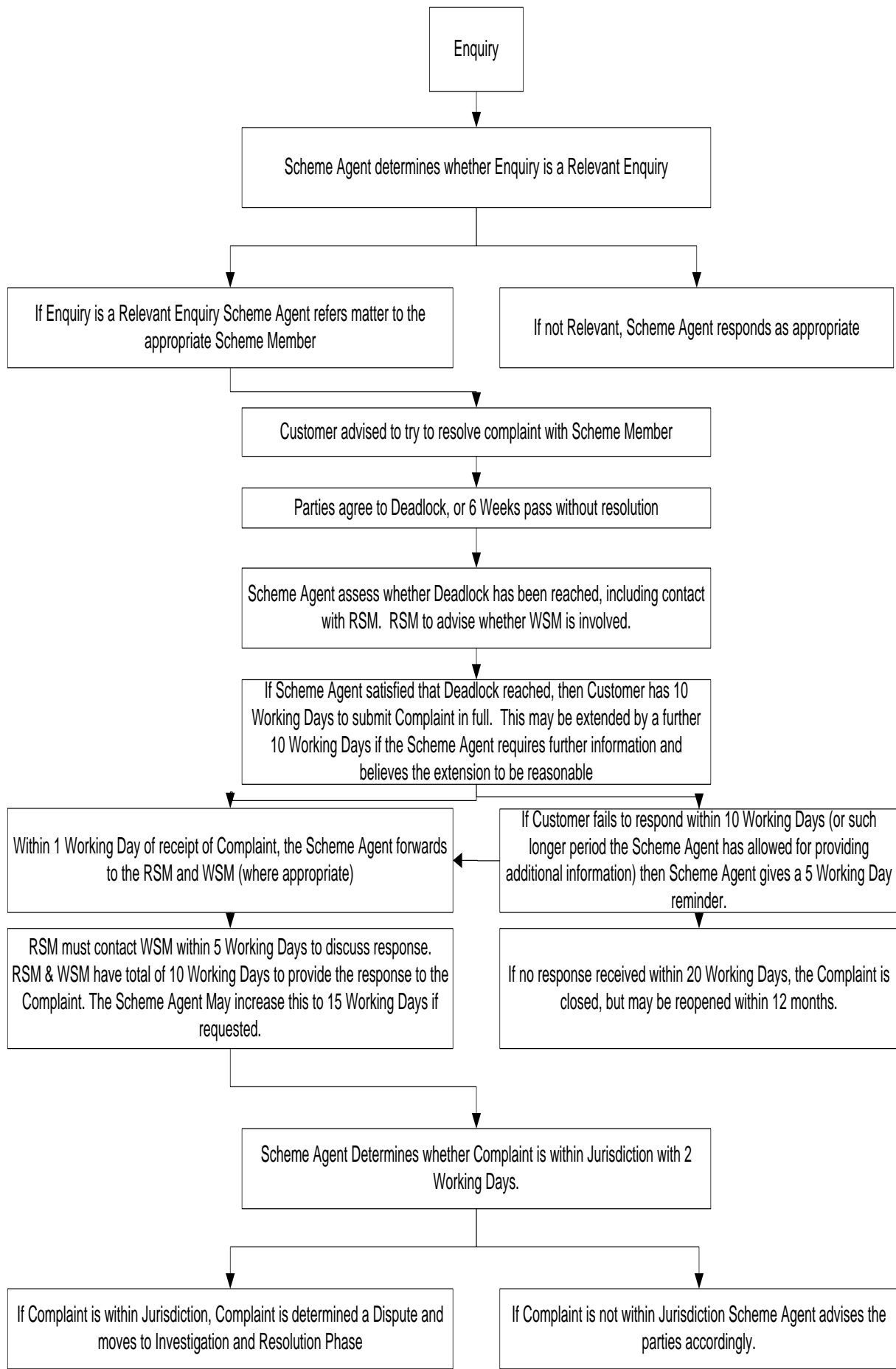
(a) where a Telecom business unit provides information to the Scheme Agent which is confidential in nature (including where such information is Customer Confidential Information or Commercial Information relating to a Relevant Service, as such terms are defined in the Telecom Separation Undertakings) (“**Telecom Confidential Information**”), the relevant unit shall, at the time of provision of such information to the Scheme Agent, request that such information be treated as confidential and, if the information belongs to a different business unit than the one providing it, designate which Telecom business unit the information belongs to and advise the name of the individual to whom it should be returned (“**Relevant Person**”);

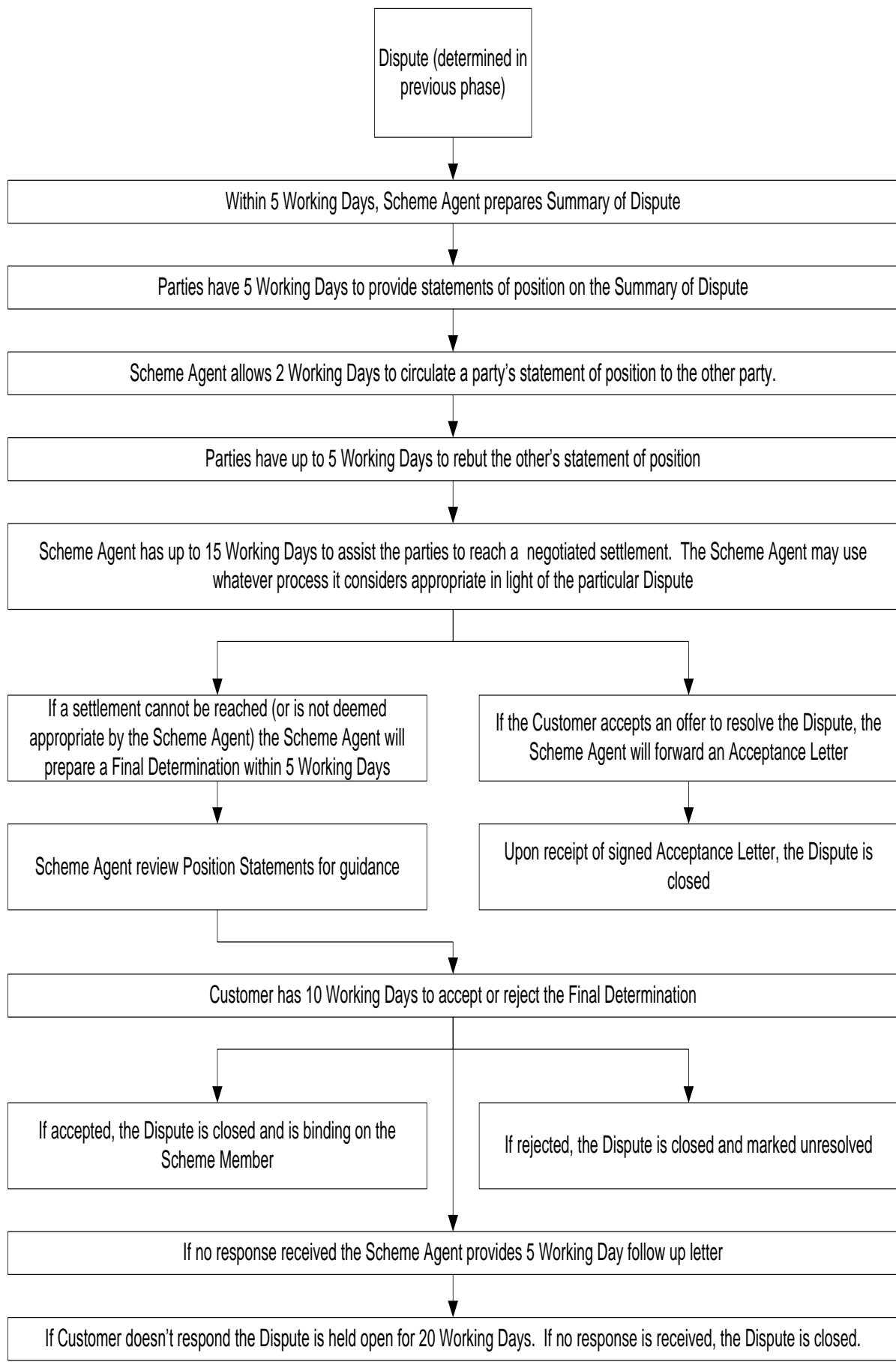
(b) the Scheme Agent shall not disclose any Telecom Confidential Information to any Telecom business unit other than the Telecom business unit which the Scheme Agent received such information from or, where applicable, the Telecom business unit which Telecom has designated the information belongs to, without the prior consent of the Relevant Person;

(c) the Scheme Agent shall return Telecom Confidential Information to the Relevant Person; and

(d) the Scheme Agent shall use its best endeavours to comply with any reasonable written request issued to it by Telecom relating to information to be provided to the Scheme Agent in relation to confidentiality, flow of information or contact with the business units due to the implementation of operational separation, provided that any such request is provided to the Scheme Agent prior to or at the same time as the provision of the information to which it relates.

Please see Dispute Resolution Process diagram, set out below.





L. ANNEXURE 2 - MONITORING AND ENFORCING THE CODE

43. Council processes

- 43.1. The Scheme Agent shall record and retain information relating to the nature and volume of Complaints dealt with under the TDRS.
- 43.2. If the Scheme Agent finds that more than 20% of Disputes brought against any given Scheme Member within a quarter fail to meet the Complaint Handling Commitments, the Scheme Agent shall, if it deems necessary after consulting with the Scheme Member, provide that information to the Council, notwithstanding clause 42.2 of Annexure 1.
- 43.3. The Scheme Agent will also inform the Council if any Scheme Member does not comply with a Final Determination made by the Scheme Agent.
- 43.4. If the Council finds that:
 - a) based on the information referred in clause 43.2 of this Annexure 2, the Scheme Member does not meet the Complaint Handling Commitments contained in this Code, or
 - b) the Scheme Member refuses to comply with a Final Determination made by the Scheme Agent the Council may issue the Scheme Member with a written:
 - i. Caution Notice of Breach;
 - ii. Warning Notice of Breach; or
 - iii. Public Censure Notice; or
 - iv. Expel the Scheme Member from the Scheme.
- 43.5. The Council must consider the seriousness of the non-compliance of the Scheme Member, and the Scheme Member's past conduct with respect to compliance with the Commitments / Final Determinations when deciding whether to issue a notice under clause 43.4 of this Annexure 2. The Council must first issue a Caution Notice of Breach and then a Warning Notice of Breach to the Scheme Member in relation to the particular breach in question before making a decision to issue a Public Censure Notice relating to the Scheme Member or to expel the Scheme Member from the TDRS.
- 43.6. The Council will provide a copy of any Caution Notice of Breach, Warning Notice of Breach or Public Censure Notice issued to all Scheme Members. Scheme Members who receive a copy of a Caution Notice of Breach or Warning Notice of Breach shall keep such notice confidential.
- 43.7. For the avoidance of doubt, the procedures set out in this Annexure 2 are additional to, and not exclusive of, any other rights a Scheme Member may have under the Telecommunications Act 2001 or any other legislation.

44. Issue of Notices

Caution Notice of Breach

- 44.1. The written Caution Notice of Breach to the Scheme Member will include a request that one or more of the following actions be undertaken by that Scheme Member:
 - a) rectification of the breach; and/or
 - b) specific corrective actions; and/or
 - c) an internal review of the Scheme Member's state of compliance with the Commitments.

- 44.2. The Caution Notice of Breach will specify a timetable within which the action set out in clause 44.1 of this Annexure 2 are required to be completed, with duration dependent upon the nature and complexity of the action(s) required. The Council will also seek confirmation from the Scheme Member of receipt of the Caution Notice of Breach.

Warning Notice of Breach

- 44.3. The written Warning Notice of Breach is a more severe version of the Caution Notice of Breach, and may be appropriate for situations where the Scheme Member has failed to undertake voluntarily the actions requested by the Caution Notice of Breach, within the timetable specified therein. The Warning Notice of Breach to the Scheme Member will include an order that one or more of the following actions be undertaken by the Scheme Member:
- a) rectification of the breach; and/or
 - b) specific corrective actions; and/or
 - c) arranging for an independent audit of its procedures in relation to compliance with the Commitments. The auditor must be approved by and report to the Council on the Scheme Member's compliance with the Commitments. The Scheme Member will be required to implement recommendations of the audit; and/or
 - d) provision of education of its relevant staff to address knowledge inadequacies that may have led to the breach.
- 44.4. The Warning Notice of Breach will nominate a timetable within which the action is required to be completed, and the steps needed to be taken by the Scheme Member to address the action required by the Warning Notice of Breach, with duration dependent upon the nature and complexity of the remedial action(s) required. The Council will also seek confirmation from the Scheme Member of receipt of the Warning Notice of Breach.

Public Censure Notice

- 44.5. In the event of a refusal or failure by the Scheme Member to undertake, to the Council's reasonable satisfaction, any actions required by a Warning Notice of Breach, within the timetable specified therein, the Scheme Member will promptly be formally advised by the Council that a Public Censure Notice is to be prepared for widespread publication. The Scheme Member will be sent an advance copy of the intended Public Censure Notice, which will:
- a) identify the Scheme Member by name;
 - b) give details of the Scheme Member's breach;
 - c) list all requests/orders previously made of the Scheme Member;
 - d) report on whether an independent audit has been ordered and, if so, state the results of the audit;
 - e) state that at the date of publication, the requests of the Caution Notice(s) of Breach and the orders of the Warning Notice(s) of Breach have not been complied with by the Scheme Member;
 - f) specify a final timetable by which any corrective action must be completed by the Scheme Member to avoid publication of the Public Censure Notice.

- 44.6. The Scheme Member will also be advised that publication of the Public Censure Notice will not occur until a specified time period has elapsed from the date the advance copy of the public censure notice is sent to the Scheme Member, (the period of time is at the discretion of the Council). If the Council is fully satisfied that the Scheme Member has fully complied with the Public Censure Notice as ordered prior to the date the Public Censure Notice is due to be published, then the Public Censure Notice shall not be published.
- 44.7. If the Public Censure Notice is proceeded with, it will be published in the New Zealand Gazette, the TCF's newsletter, and at the Council's discretion, in any relevant industry newsletter or magazine, in the national newspapers and in Consumer bulletins.

Expulsion from TDRS

- 44.8. If the Scheme Member continues to breach the Commitments or fails to comply with a Final Determination following the Public Censure Notice, the TCF may in its sole discretion expel the Scheme Member from the TDRS.

45. Audit Costs

- 45.1. The costs involved with any investigation by the Council pursuant to this Annexure 1 will be allocated in accordance with the following principles.

If there has been a breach

- 45.2. If the audit report states that the Scheme Member has not complied with the Commitments of the Code then the Council's reasonable direct costs in respect of the investigation will be payable by that Scheme Member.

If there is no breach

- 45.3. If the audit report states that the Scheme Member has complied with the Commitments of the Code then the Scheme Member will bear its own costs. The Council costs will be borne by the TCF.

Audit fees

- 45.4. For the avoidance of doubt, the Scheme Member incurs the costs of engaging an independent auditor irrespective of whether the Complaint Handling Commitments have been breached or not.

46. Application to a Wholesale Scheme Member

- 46.1. If the Council finds that, based on the information referred to in clause 43 of this Annexure 2, the Wholesale Scheme Member has failed to comply with its obligations in clause 30.6 of the Code, which has contributed to the Retail Scheme Member failing to meet the Commitments to the levels set out in clause 43.2 of Annexure 2, then the Council may issue the Wholesale Scheme Member with a written:

- a) Caution Notice of Breach;
- b) Warning Notice of Breach;
- c) Public Censure Notice; or
- d) Expel the Wholesale Scheme Member from the TDRS.

- 46.2 Each "Notice", and the remaining provisions of this Annexure 2 will apply to the Wholesale Scheme Member as if it were the Retail Scheme Member in respect of such a Notice except that:

- a) where "the Commitments" is referred to in Annexure 2, this wording would be read as, and replaced with, "clause 30.6 of the Code"; and
- b) where "the breach" is referred to in Annexure 2, this wording would be read as, and replaced with, "the breach of clause 30.6 of the Code".

M. ANNEXURE 3 - POSITION STATEMENTS

The documents attached to this Code in this Annexure 3 are the Position Statements, as described in Section I.