

**APPENDIX 1 - KEY DIFFERENCES BETWEEN NON-PRICE TERMS OF THE TELECOM UNDERTAKING DATED 2 OCTOBER 2009  
AND THE VODAFONE UNDERTAKING DATED 2 OCTOBER 2009**

Key:

- TU = Telecom Undertaking dated 2 October 2009
- VU = Vodafone Undertaking dated 2 October 2009
- 2Us = 2Degrees Undertakings dated 2 October 2009

Difference	Comments
<b>Rounding</b>	
<p>Unlike the TU, the VU has minute plus second rounding for FTM and MTM Calls. There is per second rounding for all Mobile Calls under the TU from June 2010.</p>	<p>The 2Us appear to have per second rounding, although some provisions of the 2Us suggest that minute plus second rounding is to be applied for FTM and MTM Calls.</p> <p>Note also that the 2Us (unlike the VU and the TU) do not round these Call charges up to the next whole cent.</p>
<b>Term</b>	
<p><i>Commencement</i></p> <p>Under the TU, the commencement of the Term is the later of the date of registration of the TU, and the date upon which the Access Seeker executes the Deed of Acceptance. Under the VU, the commencement is the same, except that it is not made plain that service covered by the VU cannot commence on a date prior to the date of registration of the VU (see definition of "Service Commencement Date" in the VU).</p>	

Difference	Comments
<p><i>Expiry</i></p> <p>Under the TU, expiry of the Term occurs when the registration of the TU expires. Under the VU, expiry of the Term is five years from the date of registration of the VU. Under the VU, the Term may also expire at an earlier date in the event:</p> <ol style="list-style-type: none"> <li>1. Vodafone becomes an Access Provider for an MTAS service (or similar), as a designated access service under the Telecommunications Act 2001; and</li> <li>2. either party serves notice on the other terminating the VU (in respect of that Access Seeker).</li> </ol>	<p>Expiry of registration is governed by Schedule 3A, Telecommunications Act 2001. The TU's expiry provisions comply with the 2001 Act. The VU's expiry provisions do not.</p> <p>The VU as drafted suggests that after Vodafone has become an Access Provider for MTAS (i.e. on MTAS becoming a designated access service), Vodafone only needs to terminate the VU (in respect of an Access Seeker) if Vodafone or that Access Seeker gives notice terminating their respective rights and obligations under the VU (see clause 6.2, Subschedule 3A, VU). Furthermore, Vodafone is saying that the VU can keep going for other Access Seekers. This seems at odds with clauses 7(5) and 3(3) of Subschedule 3A of the Telecommunications Act 2001. These provisions suggest that once the proposed regulatory change (i.e. the alteration of the 2001 Act by Order in Council) is made, the registration of the undertaking expires. After expiry of registration, the undertaking has no legal effect.</p>
<p><b>Prerequisites to provision of Services</b></p>	
<p>Under the VU, prerequisites to the provision of Services include:</p> <ul style="list-style-type: none"> <li>• Agreeing number portability specifications (not a prerequisite under the TU);</li> </ul>	<p>The requirement under the VU to pre-agree the number portability specifications:</p> <ul style="list-style-type: none"> <li>• May delay provision of Services (note the detailed process under clause 2.4, Subschedule 3A, VU in the event of failure to agree); and</li> </ul>

Difference	Comments
<ul style="list-style-type: none"> <li>• The Access Seeker having: <ul style="list-style-type: none"> <li>• an appropriate credit rating; or</li> <li>• providing security; or</li> <li>• Vodafone receiving evidence satisfactory to it that, for each of the previous two financial years of the Access Seeker, the Access Seeker has reported a profit before tax of greater than the interconnection charges that Vodafone reasonably considers would be payable by the Access Seeker under the VU over the following 12 month period (see now cl 2.23.2, Subschedule 3A, VU).</li> </ul> </li> </ul> <p>Unlike the TU, this second prerequisite does not allow the Access Seeker to rely on its parent's credit rating (e.g. in Telecom's case, TCNZ's) for these purposes.</p>	<ul style="list-style-type: none"> <li>• Seems unnecessary, particularly where there are existing agreements in place for the specifications which are operating satisfactorily.</li> </ul> <p>Telecom believes that these provisions should allow an Access Seeker to rely on its parent's credit rating for these purposes. The TU allows the Access Seeker's parent (as well as TCNZ) to satisfy the requirements if they have an "acceptable credit rating" (as defined in clause 2.2a, Schedule 2 of the TU).</p>
Call Types	
<p>The TU covers the mobile termination of an end-to-end call that "starts life" (in the same network in which it terminates) as a call prefixed by a "Toll Access Code", or where "02 Non-Code Access" has been applied. Vodafone does not cover this Call type.</p> <p>The TU also makes plain that toll-free calls (i.e. dialled to a Toll-Free Number) are not included in the definition of a Mobile Call, whereas the VU does not.</p>	<p>Mobile terminations of toll bypass calls should be included for clarity.</p> <p>The exclusion of toll-free calls from the "Mobile Call" definition is required for clarity (i.e. the TU and the VU relate to MTRs, not call originations).</p>

Difference	Comments
<p>The VU "FTM Call" definition only applies to calls originating in a New Zealand network. The TU "Mobile Call" definition allows calls that originate internationally.</p> <p>The definition of "transit traffic" in clause 2.1.2 in Subschedule 3D of the VU seems to cover the circumstance of a call from the Access Seeker to Vodafone via a third party (see also clause 21.6.2, Subschedule 3A).</p>	<p>This type of transit traffic should have no place in the Undertakings, which deal with Calls which are handed over directly from the Vodafone Network to the Access Seeker Network (and vice versa).</p>
Charging Principles and Payment of Charges	
<p>Under the VU, disputes can be raised regarding invoices up to 12 months after the Due Date (cf 180 days under the TU).</p> <p>Under the VU, "backbilling" is allowed 12 months from the date of provision of the Service (cf 180 days under the TU).</p>	<p>Telecom submits that in both cases the 180 day period is sufficient, and reflects good practice and efficiency of billing the services the subject of the TU.</p>
Handover and Links	
<p>Under the VU, Vodafone only has to obtain consents as it "is reasonably able to procure" from other people to let the Access Seeker have access to the Access Seeker Handover Point on Vodafone premises. Under the TU, obtaining the consents is an unqualified requirement.</p> <p>Under the VU, Vodafone and the Access Seeker will (unless agreed otherwise) need to make premises available for the other's Handover Points at Auckland, Wellington and Christchurch. No such requirement now exists post June 2010 under the TU (see cl 10.11, Schedule 2,</p>	<p>The party providing premises must be able to provide suitable premises (with all necessary consents) to enable the other party to house and have access to its Handover Points. Note however that after June 2010, provision of premises at MSCs by one carrier for the other's Handover Point is not required – see cl 10.11, Schedule 2, TU.</p> <p>Under the TU, from June 2010, each party is only required to make available a connection for each 2Mbit/s interconnect link connected to the other's Handover Point.</p>

Difference	Comments
TU).	
<b>Number portability</b>	
Unlike the TU, the VU does not include a clear charging basis where the number portability database fails (see clause 21.12, Subschedule 3A, VU).	Telecom submits that it is preferable to have a clear charging basis set out to cover the situation where number portability database failure occurs.
<b>Dispute Resolution</b>	
<p>Under the VU, the CEDR model mediation procedure applies (compare the LEADR New Zealand Inc procedures under the TU).</p> <p>Arbitration under the VU is pursuant to the Rules of Arbitration of the International Chamber of Commerce (compare the Arbitration Act provisions which apply under the TU).</p>	Telecom's preference is to use the New Zealand based procedures for mediation and for arbitration referred to in the TU, which are familiar to New Zealand based Access Seekers. 2Degrees' preference is also for the LEADR procedures for mediation – see cl 3.5.7, Subschedule 3A, 2Us.
<b>Suspension, Termination, Force Majeure</b>	
<p>Suspension and termination can occur under the VU where a "Fundamental Obligation" is breached, or there are two material breaches (not being of a Fundamental Obligation) in a 12 month period.</p> <p>For the purposes of the VU, a "Fundamental Obligation" is an obligation under a clause:</p>	Telecom is of the view that where a single material breach occurs (other than in relation to payment, credit rating/security, equipment connection and SIM boxes), the Access Provider should also have the right to suspend and to terminate.
<ul style="list-style-type: none"> <li>Requiring payment;</li> </ul>	

Difference	Comments
<ul style="list-style-type: none"> <li>• Relating to credit rating and security;</li> <li>• Relating to the connection of equipment to the other party's network; and</li> <li>• Relating to SIM boxes.</li> </ul> <p>The Fundamental Obligation can either be an obligation under the VU or under any agreement for interconnection services between Vodafone and the Access Seeker.</p> <p>Under the TU, suspension or termination can occur where there is a material breach of any obligation under the TU.</p> <p>Under the VU there are no provisions for call barring or text message barring (compare the TU – clause 22.8, Schedule 2).</p> <p>Following suspension or early termination of a Service, the Access Seeker under the TU cannot duplicate its rights to that Service by entering into a subsequent Deed of Acceptance. Under the VU, there is a restriction on entering a new undertaking for at least six months and until all breaches of Fundamental Obligations and material obligations (which are capable of remedy) have been remedied by the Access Seeker (clause 6.3, Subschedule 3A, VU).</p>	<p>Call barring should be provided for where the Customer is a credit risk, or there are good commercial or technical reasons for barring calls (as provided for under the TU).</p> <p>Telecom's preference is that once suspension or termination of Services has occurred, the Access Seeker cannot replicate those Services by simply entering into a new Deed of Acceptance.</p> <p>2Degrees has deleted from the 2Us the provision corresponding to clause 6.3, Subschedule 3A of the VU.</p>

Difference	Comments
<p><i>Force Majeure</i></p> <p>The time periods after which Telecom (or the Access Seeker) can terminate the TU following the force majeure are shorter under the TU (as compared with the VU).</p>	
Liability	
<p>A key head of liability under the TU is for “Direct Loss” suffered arising from a “Refusal to Make Services Available” (compare liability for “Direct Loss” suffered as a result of wilful misconduct or gross negligence under the VU).</p> <p>The VU does not include a detailed definition of “Direct Loss” ( a detailed definition is included under the TU).</p> <p>The TU includes an indemnity in favour of the other carrier for loss arising from claims by the other carrier’s Customers. There is no corresponding indemnity in the VU.</p> <p>The caps under the TU and the VU are different:</p> <ul style="list-style-type: none"> <li>• under the TU (broadly), the lesser of \$10M or ½ total NZ revenue of the carrier with the lower total revenue (for 1 or a series of events); and the lesser of \$20M or all total NZ revenue of the carrier with the lower total revenue (for all events in a 12 month period);</li> <li>• under the VU (broadly), the higher of \$1M and all charges payable for MTAS provided by Vodafone to the Access Seeker over 12 months before the event (or the 1<sup>st</sup> event) (for one event or related series of events); and the higher of \$1M and all</li> </ul>	<p>The structure of the liability provisions is broadly similar between the TU and the VU, although there are some differences in approach as noted.</p> <p>Telecom prefers the liability caps in the TU. Under the VU, how the caps will be made reciprocal is not clear. Clause 7.4, Subschedule 3A, VU is drafted as applying to the liability of each party, but then calculates the cap by reference to the amount the Access Seeker pays Vodafone. Should each party’s liability cap (i.e. including under the reciprocal terms where the Access Seeker provides service to Vodafone) be calculated by reference to the amount the Access Seeker pays Vodafone?</p>

Difference	Comments
<p>charges payable for MTAS provided by Vodafone to the Access Seeker over 12 months (for any 12 month period, irrespective of the number of events).</p>	
Confidential Information	
<p>Unlike the VU, the TU does not include provisions covering "Specified Confidential Information" (i.e. specific information agreed to be subject to these particular provisions).</p>	<p>Telecom has found that in practice these "Specified Confidential Information" provisions are not required.</p>
Technical	
<p>The VU contain specific provisions requiring that neither carrier nor its Group connect any equipment (including any SIM box) to the other carrier's Network without the other carrier's prior written consent, which consent must specifically reference clause 13.2, Subschedule 3A.</p>	<p>This provision would potentially require the first carrier to obtain the other carrier's specific consent every time a piece of equipment is proposed to be connected to the first carrier's network. This creates a new overlay which is impractical and unwieldy. Telecom agrees with addressing in some way the use of SIM boxes in relation to the interconnect arrangement – but not in a way that introduces broad obligations that have implications well beyond the SIM box issues as they affect the Undertakings.</p>
SMS	
<p>Unlike the TU, the VU covers texts from subscribers of the Access Seeker roaming in a network of another network operator. The VU covers transit in limited circumstances (clause 5.9, Annex 3, Schedule</p>	<p>The provisions for SMS are already fairly closely aligned. Except for the specific comments below, Telecom has amended its TU to align with the approach in the VU.</p> <p>The TU does not include transit of Text Messages.</p>

Difference	Comments
4, VU).	
<p>Under the VU, there is no review to take into account imbalance of text traffic; types of web-to-text or similar systems operated; or other agreed matters. There is provision for such reviews under the TU.</p> <p>There is no price adjustment under the VU where the “success rate” (i.e. the percentage of Text Messages delivered successfully) is less than 99%. There is provision for such adjustment (together with an audit) under the TU.</p>	<p>Telecom wishes to retain such provisions for review, which are appropriate after the first three months of a new relationship with an Access Seeker.</p> <p>Text message charging is on handover (not answer). The “success rate” provisions are appropriate to allow for adjustment where handover is no longer sufficiently correlated with successful delivery. Telecom therefore wishes to retain the right to audit the delivery rate, however, we would be happy to discuss with other parties what the appropriate measure should be.</p>
A-numbers	
<p>Unlike the TU, the VU (at clause 3.1.3, Subschedule 3D) appears to be stating that Vodafone would (under reciprocal terms) be free at whim to allocate either a local or mobile number to a local service customer calling from the Vodafone Network.</p>	<p>As a matter of principle, Telecom prefers an approach where the true A-number is passed forward. Such principle is consistent with ensuring there is no arbitrage resulting from A-number manipulation.</p>