

TWO DEGREES MOBILE LIMITED
VODAFONE NEW ZEALAND LIMITED

Telecommunications Act 2001
~~Draft~~ Undertaking to the Commerce Commission
under Schedule 3A in respect of the
~~Vodafone~~2degrees Text Message Termination Service

2 October 2009 ~~6 May 2009~~

~~Draft~~ Undertaking to the New Zealand Commerce Commission under Schedule 3A of the Telecommunications Act 2001

Dated ~~6 May 2009~~ 2 October 2009

Parties

1. ~~Vodafone New Zealand Limited of Level 1, 20 Viaduct Harbour Avenue, Auckland~~
(Vodafone) Two Degrees Mobile Limited of 131 Khyber Pass Road, Auckland
(2degrees)

in favour of:

2. **New Zealand Commerce Commission** being a Crown entity established by section 8 of the Commerce Act 1986 (**Commission**).

Background

- A. Vodafone2degrees is a cellular mobile telephone network operator who operates a cellular mobile telephone network.
- B. Vodafone2degrees gives this Undertaking pursuant to Schedule 3A of the Telecommunications Act 2001, as amended by the Telecommunications Amendment Act (No. 2) 2006.

1 Interpretation

Unless the context indicates otherwise, the following terms have the following meaning in this Undertaking:

- 1.1 **Access Seeker** means a provider of public switched mobile telecommunications services in New Zealand that owns or operates a voice switch in New Zealand and that provides a properly completed and executed Deed of Acceptance in favour of Vodafone2degrees.
- 1.2 **Deed of Acceptance** means the deed of acceptance specified in Schedule 5.
- 1.3 **Expiry Date** means the date which is 5 years from the date of registration pursuant to clause 2.1.
- 1.4 **Undertaking** means this Undertaking given by Vodafone2degrees to the Commission under Schedule 3A of the Telecommunications Act 2001.
- 1.5 **Vodafone2degrees Text Message Termination Service** means the service specified in Schedule 1.

2 Commencement and term

- 2.1 This Undertaking takes legal effect immediately after it is registered by the Commission under Clause 6 of Schedule 3A of the Telecommunications Act 2001 and continues until the earlier of:
 - a) the Expiry Date; and
 - b) the date on which either of Vodafone2degrees or the Access Seeker provides written notice to the other party to terminate this Undertaking, in the event that Vodafone2degrees becomes an access provider for the FTM-Call Text Message Termination Service (or a service substantially similar to the FTM-Call Text Message

Termination Service) as a designated access service under the Telecommunications Act 2001.

3 Undertaking terms and conditions

3.1 ~~Vodafone2degrees~~ undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the ~~Vodafone2degrees~~ Text Message Termination Service:

- a) specified in Schedule 1;
- b) at the prices specified in Schedule 2; and
- c) on the terms specified in Schedules 3 and 4, to any Access Seeker.

4 Notices

4.1 Any communication in respect of this Undertaking should be made in writing to:

Attention: ~~Chief Commercial Officer~~~~General Manager Wholesale and New Business Development~~

Address: ~~Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland~~ Two Degrees Mobile Limited, 131 Khyber Pass Road, Auckland

Facsimile: ~~(09) 355 2006~~ (09) 919 7001

Copy to:

Attention: General Counsel

Address: ~~Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland~~ Two Degrees Mobile Limited, 131 Khyber Pass Road, Auckland

Facsimile: ~~(09) 355 2005~~ (09) 919 7001

Signed by ~~Tom Chignell~~ Eric Hertz as
Authorised signatory for ~~Vodafone~~
~~New Zealand Limited~~ Two Degrees Mobile Limited
in the presence of:

Signature of witness
Chignell

Signature of **Eric Hertz**~~Tom~~

Name of witness (block letters):

Place of abode:

Calling or description:

**Schedule 1
Services Description**

Vodafone2degrees Text Message Termination Service

The **Vodafone2degrees Mobile Termination Access Services** comprises the Text Message Termination Service.

The Text Message Termination Service comprises both:

- (a) the acceptance of all Text Messages handed over from the Access Seeker Network to the **Vodafone2degrees** Network in accordance with the Text Message Handover Obligation for which a **Vodafone2degrees** Mobile Number is provided; and
- (b) delivery or offer of delivery of each such Text Message to the Designated Destination in respect of that Text Message, where, in the case of all Text Messages handed over to the **Vodafone2degrees** Network, the Access Seeker has:
 - (i) for each such Text Message, transmitted the control signals in the Signalling Format that relate to the transmission of that Text Message, including details in the Signalling Format of the valid **Vodafone2degrees** Mobile Number called and transmission of an accurate A-number with each Text Message handed over; and
 - (ii) for each Text Message handed over from the Access Seeker Network to the **Vodafone2degrees** Network that is to a number that has been ported to the **Vodafone2degrees** Network in accordance with the LMNP Determination, added a Hand-off Code to that number as its prefix in accordance with the Network Terms and the SMS Interconnect Specifications.

Schedule 2
Pricing
Vodafone2degrees Text Message Termination Service

1. ~~The pricing methodology applicable to for the Vodafone2degrees Text Message Termination Service, which the Access Seeker agrees to pay, is as follows is pure bill and keep, the method of pricing where neither 2degrees nor the Access Seeker charge the other for terminating Text Messages originating on the other party's network.~~

Type of Chargeable Text Message Termination Service		Chargeable Text Message Termination Service rate
(a)	All Chargeable Text Messages during the period from the Services Commencement Date to 31 March 2010 (inclusive).	9.5
(b)	All Chargeable Text Messages during the period from 1 April 2010 to 31 March 2011 (inclusive).	8.9
(c)	All Chargeable Text Messages during the period from 1 April 2011 to 31 March 2012 (inclusive).	8.3
(d)	All Chargeable Text Messages during the period from 1 April 2012 to 31 March 2013 (inclusive).	7.7
(e)	All Chargeable Text Messages during the period from 1 April 2013 to 31 March 2014 (inclusive).	7.3
(f)	All Chargeable Text Messages during the period from 1 April 2014 to the Expiry Date (inclusive).	7.0

Notes:

~~1. The Chargeable Text Message Termination Service rate is an amount in cents per Text Message.~~

~~2. For the avoidance of doubt, Clause 17.3 of Schedule 3 of this Undertaking applies to the prices set out in this Schedule 2.~~

Schedule 3
Terms and Conditions
Vodafone2degrees Text Message Termination Service

[Refer to separate attachment: "Schedule 3, Terms and Conditions"]

Schedule 4
Service Specific Terms and Conditions
Vodafone2degrees Text Message Termination Service

1. Interpretation

Unless the context otherwise requires, words and expressions defined or construed in the main body of this Undertaking or **Schedule 3**, and not otherwise defined or construed in this **Schedule 4**, have the same meanings as defined or construed in the main body of this Undertaking or **Schedule 3** when used in this **Schedule 4**. In addition:

Chargeable Text Message means, subject to **Clause 6.6**, any Text Message handed over from the Access Seeker to [Vodafone2degrees](#) in accordance with the Text Message Handover Obligation;

Designated Destination means the point in the [Vodafone2degrees](#) Network to which the [Vodafone2degrees](#) Mobile Number provided in respect of a Text Message handed over to [Vodafone2degrees](#) from the Access Seeker has been allocated or assigned by [Vodafone2degrees](#);

Multi-Media Message means an asynchronous message, comprising graphics, animation, pictures, photos, images, audio, video or an alphanumeric sequence of text, or comprising any combination of these, which generally conforms to 3GPP Specification TS 22.140 (as amended from time to time), but does not include, for the avoidance of doubt, any Call or Text Message;

Other Message means any text or other message where that text or other message is made, or is to be made, to a [Vodafone2degrees](#) Mobile Number that has been allocated to a mobile phone or handset in the [Vodafone2degrees](#) Network, including (without limitation):

- (a) any message utilising push-to-talk messaging services;
- (b) any message sent by the Access Seeker that uses a WAP-push or similar system to indirectly transmit a multi-media message;
- (c) any message that utilises enhanced message service functionality; and
- (d) any message that utilises instant messaging functionality,

but does not include a Multi-Media Message, a Text Message, a Call, a read receipt or a delivery receipt;

Relevant Person means the Access Seeker, any member of the Access Seeker's Group or any entity in which the Access Seeker or a member of the Access Seeker's Group has an ownership interest;

Signalling Link means an appropriately dimensioned frame relay link that connects the Access Seeker's Text Message Termination Service Delivery Point with [Vodafone's2degrees](#) Text Message Termination Service Delivery Point;

Text Message means a message, representing an alphanumeric sequence of text, which:

- (a) uses the CCITT No. 7 MAP protocol and generally conforms to GSM Technical Specifications GSM 03.40, GSM 04.11 and GSM 09.02 (as amended from time to time); and

- (b) originates:
 - (i) in a network in New Zealand operated by the Access Seeker; or
 - (ii) from a subscriber of the Access Seeker (or from a subscriber of a Third Party Reseller of the Access Seeker) who is roaming in a network operated by a person from whom the Access Seeker receives that message pursuant to an agreement for roaming services; and
- (c) is sent:
 - (i) from a customer of the Access Seeker, including a customer of a Third Party Reseller of the Access Seeker; and
 - (ii) using the Access Seeker's customer's mobile phone service provided to that customer by the Access Seeker; and
 - (iii) using the text message functionality of the customer's mobile phone or handset or a web-to-text or similar system; and
- (d) is made to a Mobile Number that has been allocated to a mobile phone or handset in a network in New Zealand operated by [Vodafone2degrees](#), but does not include:
- (e) a Call (as that term is defined in **Subschedule 3A to Schedule 3**);
- (f) a Multi-Media Message; or
- (g) an Other Message;

Text Message Handover Obligation means the obligation set out in **Clause 4**; and

Text Message Termination Service Delivery Point or **TMSDP** means a service delivery point at which Text Messages are, or are to be, handed over from the Access Seeker Network to the [Vodafone2degrees](#) Network.

2. Provision of Text Message Termination Service

2.1 Provision of Text Message Termination Service

Subject to the terms and conditions of this Undertaking, [Vodafone2degrees](#) will make available and provide the Text Message Termination Service to the Access Seeker.

2.2 Testing

[Vodafone's2degrees'](#) obligations under **Clause 2.1** are conditional upon agreement on the successful completion of:

- (a) appropriate testing in accordance with clause 15.4 of **Subschedule 3A to Schedule 3** and the Operational Procedures; and
- (b) any other testing reasonably required by each party.

2.3 Commencement of testing

The parties will not be required to commence testing under **Clause 2.2** until such time as the Access Seeker advises [Vodafone2degrees](#) in writing that the Access Seeker's cellular mobile network in New Zealand is operational.

3. Price

The price of the Text Message Termination Service to be provided under this Undertaking, and which the Access Seeker agrees to pay [Vodafone2degrees](#), for each Chargeable Text Message is specified in **Schedule 2**.

4. Text Message Handover Obligation

The Text Message Handover Obligation shall be that a Text Message that is handed over by the Access Seeker from the Access Seeker Network to the [Vodafone2degrees](#) Network shall be handed over at the Text Message Termination Service Delivery Point.

5. Service matters

5.1 Handing over of Text Messages

- (a) The Access Seeker shall hand over Text Messages directly over the Signalling Link to [Vodafone2degrees](#), except where the parties agree otherwise.
- (b) The Access Seeker may only hand over Text Messages sent from:
 - (i) a customer's mobile phone or handset that has been allocated a Mobile Number in the Access Seeker Network (not including a mobile phone or handset that is used as a computer server or is in some way an intermediary device connected to a computer server); or
 - (ii) a web-to-text or similar system that is operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker (which, for the avoidance of doubt, may include using a mobile phone or handset as a computer server or in some way as an intermediary device connected to a computer server).

5.2 Use of the Internet

- (a) Subject to paragraph (b), the Access Seeker shall not use, directly or indirectly, the Internet in:
 - (i) transmitting a Text Message; or
 - (ii) handing over a Text Message to [Vodafone2degrees](#).
- (b) Paragraph (a) does not prevent:
 - (i) the subscriber of the Access Seeker using the Internet to record his or her message at the website used by or on behalf of the Access Seeker for the purposes of a web-to-text or similar system where that message becomes a Text Message; or
 - (ii) the Internet being used for transmitting that message from that website to the Access Seeker.

5.3 Other Messages

The Access Seeker shall not transmit or hand over any Other Messages to [Vodafone2degrees](#) over the Signalling Link or by any other means.

5.4 Text Message content and form

- (a) In respect of each Text Message, the Access Seeker will not take any action that it knows (or should reasonably know) is likely to result in any Text Message that is handed over to [Vodafone2degrees](#) not having the same content or not being in the same form as transmitted by the customer of the Access Seeker that sent that Text Message.
- (b) In particular, the Access Seeker will not convert a Multi-Media Message to a Text Message, including by using a WAP-push or similar system.

5.5 A-numbers

- (a) Subject to **Clause 5.5(e)**, and clauses 3 and 7 of **Subschedule 3D to Schedule 3**, the Access Seeker shall transmit an accurate A-number with each Text Message handed over to [Vodafone2degrees](#).
- (b) For the avoidance of doubt, the Access Seeker shall not have complied with paragraph (a) if it transmits a modified A-number to [Vodafone2degrees](#). The Access Seeker shall not use the hidden address feature. An accurate A-number shall be provided to [Vodafone's2degrees](#) customer even if a hidden address flag is attached to the Text Message by the Access Seeker.
- (c) For the avoidance of doubt, in respect of any Text Message handed over from the Access Seeker Network to the [Vodafone2degrees](#) Network, there shall be no charge to [Vodafone2degrees](#) for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number provided in accordance with **Subschedule 3D to Schedule 3**.
- (d) The obligations in paragraphs (a) and (b) are subject to any limitations that the Access Seeker reasonably believes are necessary to ensure compliance with the Privacy Act 1993 or any applicable codes of practice issued under that Act, the Unsolicited Electronic Messages Act 2007, or any other legislative requirements.
- (e) Where a Text Message is sent using a web-to-text or similar system, the parties acknowledge that it may not be possible to transmit an A-number in the usual format. In those circumstances, the Access Seeker shall transmit a number that accurately identifies the subscriber that sent the Text Message and that is unique to that subscriber.

5.6 Spamming

- (a) The Access Seeker acknowledges that the transmission of Text Messages, where that the sending of that Text Message, or causing that Text Message to be sent, would breach the Unsolicited Electronic Messages Act 2007, should be discouraged.
- (b) The Access Seeker shall use its reasonable endeavours to discourage the transmission of such Text Messages and shall comply with the applicable provisions of the Unsolicited Electronic Messages Act 2007.

5.7 Business to employee web-to-text

- (a) A Business Subscriber of the Access Seeker may send Text Messages arising out of the use of a web-to-text or a similar system that is operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker to subscribers on the [Vodafone2degrees](#) Network, where those subscribers on the [Vodafone2degrees](#) Network are officers, employees, contractors, agents or customers (except, in relation to

Text Messages to customers, where such Text Messages are sent, or caused to be sent, in breach of the Unsolicited Electronic Messages Act 2007) of the Business Subscriber.

- (b) The Access Seeker:
- (i) shall use its best endeavours to ensure that a provision is included in each contract with its Business Subscribers that prohibits those subscribers from sending Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the [Vodafone2degrees](#) Network in breach of the Unsolicited Electronic Messages Act 2007; and
 - (ii) shall use its reasonable endeavours to enforce that restriction.
- (c) In this **Clause 5.7** and in **Clauses 5.8** and **6**, “**Business Subscriber**” means, in respect of the Access Seeker, a subscriber of the Access Seeker, or of any Relevant Person, that uses the Access Seeker’s or that Relevant Person’s services principally for the purposes of the subscriber’s business, including such use by a subscriber in relation to their functions as a charity or as a central or local governmental agency, with the Access Seeker determining on reasonable grounds whether a subscriber is a Business Subscriber of the Access Seeker. The parties themselves shall not be subscribers for these purposes.

5.8 Use of web-to-text by Consumer Subscribers

- (a) The Access Seeker:
- (i) shall use its best endeavours to ensure that a provision is included in each contract with its Consumer Subscribers that prohibits those subscribers from sending Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the [Vodafone2degrees](#) Network in breach of the Unsolicited Electronic Messages Act 2007; and
 - (ii) shall use its reasonable endeavours to enforce that restriction.
- (b) In this **Clause 5.8** and in **Clause 6**, “**Consumer Subscriber**” means, in respect of the Access Seeker, a subscriber of the Access Seeker, or of any Relevant Person, that is not a Business Subscriber, with the Access Seeker determining on reasonable grounds whether a subscriber is a Consumer Subscriber of the Access Seeker. The parties themselves shall not be subscribers for these purposes.

5.9 Limitations

The Access Seeker shall not:

- (a) use the Signalling Links or TMSDPs provisioned, or to be used, for the Text Message Termination Service under this Undertaking for the delivery of any messages other than Text Messages;
- (b) transit any Text Message (that would be a Chargeable Text Message if it were handed over in accordance with the Text Message Handover Obligation) through a third party, except where:
 - (i) the Access Seeker delivers the Text Message to a third party that has:

- (A) in the ~~reasonable~~ opinion of ~~Vodafone2degrees~~, reasonably held, appropriately dimensioned capacity from that third party to that ~~Vodafone2degrees~~ for transit traffic; and
- (B) an agreement for direct handover and transit termination of Text Messages with ~~Vodafone2degrees~~; and
- (ii) the Access Seeker delivers the Text Message directly to that third party; and
- (iii) that third party delivers the Text Message directly to ~~Vodafone2degrees~~, but, for the avoidance of doubt, that Text Message shall not be a Chargeable Text Message for the purposes of this Undertaking. However, connections with international roaming partners (who are not providing SMS hubbing services to ~~Vodafone2degrees~~), where that connection is used for both international text messages and international voice roaming services, may not be used for the transit of Text Messages under this paragraph (b).

5.10 Liability

For the purposes of clauses 7.1.4 and 7.1.5 of **Subschedule 3A to Schedule 3**, the loss, deletion or modification of any Text Message by ~~Vodafone2degrees~~ or the failure by ~~Vodafone2degrees~~ to process, transmit or store any Text Message shall be a failure of the MTAS or failure of anything which is part of, or associated with, MTAS.

5.11 Display limitations

The Access Seeker acknowledges that current mobile phones and handsets are limited to the display of a maximum number of characters for Text Messages that are received by that mobile phone or handset. This means that current mobile phones or handsets will not completely display Text Messages that exceed that maximum number. As at the date of this Undertaking, in the case of customers on the ~~Vodafone2degrees~~ Network, the maximum number of characters is limited to 160.

6. Suspension and termination

6.1 General suspension

For the purposes of clause 4.1.2 of **Subschedule 3A to Schedule 3**, ~~Vodafone2degrees~~ may, without liability, suspend the Text Message Termination Service made available and provided to the Access Seeker:

- (a) if ~~Vodafone2degrees~~, acting reasonably and in good faith, considers that the Access Seeker is using or is seeking to use the Text Message Termination Service, or is handing over particular types of Text Messages, in a way that has, or is likely to have, a material detrimental impact on:
 - (i) ~~Vodafone's2degrees~~' customers' reasonable enjoyment of the mobile phone service; or
 - (ii) the ~~Vodafone2degrees~~ Network,
 - including in circumstances that involve a virus or other malicious code and/or the inability of certain customers to fully use the mobile phone service with appropriate standards-based mobile phones or handsets; or
- (b) if reasonably necessary to protect the integrity or operation of the ~~Vodafone2degrees~~ Network, including where ~~Vodafone's2degrees~~' services

to its customers are being interfered with, or ~~Vodafone's2degrees~~' services are otherwise brought into disrepute, as a consequence of it making available and providing the Text Message Termination Service to the Access Seeker; or

- (c) if the Access Seeker has committed a breach of any of **Clauses 5.1, 5.2, 5.3, 5.4, 5.5 ~~to~~ 5.6** and, in the case of a breach of any of **Clauses 5.4 5.5 ~~to~~ 5.6**, ~~Vodafone2degrees~~ reasonably considers that the breach does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (d) if ~~Vodafone2degrees~~ considers in good faith that the Access Seeker has committed a breach of any of **Clauses 5.7, 5.8 ~~to~~ 5.9** and ~~Vodafone2degrees~~ reasonably considers that the breach does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (e) if Business Subscribers of the Access Seeker send Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the ~~Vodafone2degrees~~ Network that are not officers, employees, contractors, agents or customers of the Business Subscriber and ~~Vodafone2degrees~~ reasonably considers that this action does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (f) if subscribers of the Access Seeker send, or cause to be sent, Text Messages to subscribers on the ~~Vodafone2degrees~~ Network in breach of the Unsolicited Electronic Messages Act 2007 and ~~Vodafone2degrees~~ reasonably considers that this action does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (g) ~~[This clause has been left intentionally blank]if the Access Seeker has suspended or terminated the Text Message Termination Service under this Clause 6.1, Clause 6.5 or any provision of Schedule 3,~~

provided that, in the case of paragraphs (b) to (f) of this **Clause 6.1**, ~~Vodafone2degrees~~ has given notice and provided details to the Access Seeker of the particular matter giving rise to the right of suspension under this **Clause 6.1** and the Access Seeker has not remedied the particular matter within seven calendar days of that notice. In the case of paragraph (a) of this Clause 6.1, 2degrees shall give notice and provide details to the Access Seeker of the particular matter giving rise to suspension as soon as reasonably practicable.

6.2 Suspension in relation to subscribers of the Access Seeker

For the purposes of clause 4.1.2 of **Subschedule 3A to Schedule 3**, ~~Vodafone2degrees~~ may, without liability, suspend the Text Message Termination Service made available and provided to the Access Seeker in relation to Text Messages that are sent from particular subscribers or groups of subscribers of the Access Seeker:

- (a) if ~~Vodafone2degrees~~, acting reasonably and in good faith, considers that the Access Seeker is using or is seeking to use the Text Message Termination Service, or is handing over particular types of Text Messages, in a way that has, or is likely to have, a material detrimental impact on:
 - (i) ~~Vodafone's2degrees~~' customers' reasonable enjoyment of the mobile phone service; or
 - (ii) the ~~Vodafone2degrees~~ Network, including in circumstances that involve a virus or other malicious code and/or the inability of certain customers to fully use the mobile phone service with appropriate standards-based mobile phones or handsets; or

- (b) in circumstances where it has reasonable grounds for doing so, including, but not limited to, where the subscriber or group of subscribers:
- (i) is using equipment that is defective or illegal; or
 - (ii) is causing technical or other problems on the Vodafone2degrees Network; or
 - (iii) is suspected of using text messaging services fraudulently or otherwise for unlawful purposes; or
 - (iv) is suspected of using text messaging services in such a way that is defamatory, offensive, abusive, obscene, menacing or harassing to any customers of Vodafone2degrees; or
 - (v) sends more than 5,000 Text Messages in any twenty-four hour period that are handed over to the Vodafone2degrees Network; or
 - (vi) sends, or causes to be sent, Text Messages to a significant number of customers on the Vodafone2degrees Network in breach of the Unsolicited Electronic Messages Act 2007; or
 - (vii) sends any Other Messages in breach of **Clause 5.3**; or
 - (viii) ~~[This clause has been left intentionally blank]is using a web-to-text or similar system operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker in a manner that does not comply with the Access Seeker's customer guidelines for the use of that system; or~~
 - (ix) ~~[This clause has been left intentionally blank]is sending Text Messages other than by using a mobile phone or handset or a web-to-text or similar system that is operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker; or~~
 - (x) ~~[This clause has been left intentionally blank]uses the Text Message Termination Service to contact, directly or indirectly, Vodafone's subscribers for the purposes of marketing or selling the products or services of any Relevant Person, including but not limited to, providing information about the products and services of any Relevant Person. Vodafone's subscribers include the customers of a Third Party Reseller of that party; or~~
- (c) if the Access Seeker has, or any of the Access Seeker's customers have, committed a breach of any provision of the Unsolicited Electronic Messages Act 2007 or any of **Clauses 5.4, 5.5 to or 5.6**; or
- (d) if Vodafone2degrees considers in good faith that the Access Seeker has committed a breach of any of **Clauses 5.7, 5.8 to or 5.9** and Vodafone2degrees reasonably considers that the breach relates to a particular subscriber or group of subscribers of the Access Seeker; or
- (e) if any Business Subscriber of the Access Seeker sends Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the Vodafone2degrees Network that are not officers, employees, contractors, agents or customers of the Business Subscriber and Vodafone2degrees reasonably considers that this action relates to a particular subscriber or group of subscribers of the Access Seeker; or

- (f) if any Business Subscriber or Consumer Subscriber of the Access Seeker sends Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the Vodafone2degrees Network in breach of the Unsolicited Electronic Messages Act 2007 and Vodafone2degrees reasonably considers that this action relates to a particular subscriber or group of subscribers of the Access Seeker,

provided that, in the case of paragraphs (b) to (f) of this **Clause 6.2**, Vodafone2degrees has given notice and provided details to the Access Seeker of the particular matter giving rise to the right of suspension under this **Clause 6.2** and the Access Seeker has not remedied the particular matter within seven calendar days of that notice. In the case of paragraph (a) of this Clause 6.2, 2degrees shall give notice and provide details to the Access Seeker of the particular matter giving rise to suspension as soon as reasonably practicable.

6.3 **Suspension in relation to Mobile Numbers of Vodafone2degrees**

For the purposes of clause 4.1.2 of **Subschedule 3A to Schedule 3**, Vodafone2degrees may, without liability, suspend the Text Message Termination Service made available and provided to the Access Seeker in relation to Text Messages that are sent to particular Mobile Numbers of Vodafone2degrees:

- (a) if Vodafone2degrees, acting reasonably and in good faith, considers that the Access Seeker is using or is seeking to use the Text Message Termination Service, or is handing over particular types of Text Messages, in a way that has, or is likely to have, a material detrimental impact on:
- (i) Vodafone's2degrees' customers' reasonable enjoyment of the mobile phone service; or
 - (ii) the Vodafone2degrees Network,

including in circumstances that involve a virus or other malicious code and/or the inability of certain customers to fully use the mobile phone service with appropriate standards-based mobile phones or handsets; or

- (b) in circumstances where it has reasonable grounds for doing so, including but not limited to:
- (i) where the particular Mobile Number receives more than 5,000 Text Messages in any twenty-four hour period; or
 - (ii) but for action taken for the specific reason of avoiding the application of subparagraph (i), would have received that many Text Messages, provided that, in the case of paragraph (b) of this **Clause 6.3**, Vodafone2degrees has given notice and provided details to the Access Seeker of the particular matter giving rise to the right of suspension under this **Clause 6.3** and the Access Seeker has not remedied the particular matter within seven calendar days of that notice.

2degrees shall give notice and provide details to the Access Seeker of the particular matter giving rise to suspension as soon as reasonably practicable.

6.4 **Reasonable steps**

Notwithstanding clauses 4.2 and 4.3 of **Subschedule 3A to Schedule 3**, any suspension of the Text Message Termination Service under **Clauses 6.1, 6.2 and 6.3**:

- (a) shall be subject to clause 4.2 of **Subschedule 3A to Schedule 3**; and

(b) shall not be subject to clause 4.3 of **Subschedule 3A to Schedule 3**.

6.5- ~~[This clause has been left intentionally blank]~~ **Termination**

~~Notwithstanding clause 6.1 of **Subschedule 3A to Schedule 3**, Vodafone may, without liability:~~

- ~~(a) immediately terminate the Text Message Termination Service made available and provided to the Access Seeker in the case of the occurrence of any of the events in **Clause 6.1(a), (b), (c) and (g)**;~~
- ~~(b) immediately terminate the Text Message Termination Service made available and provided to the Access Seeker in relation to particular subscribers or groups of subscribers of the Access Seeker in the case of the occurrence of any of the events in **Clause 6.2**; and~~
- ~~(c) immediately terminate the Text Message Termination Service made available and provided to the Access Seeker in relation to particular Mobile Numbers of Vodafone in the case of the occurrence of any of the events in **Clause 6.3**. Clause 6.2 of **Subschedule 3A to Schedule 3** shall also take effect on termination of the Text Message Termination Service under this **Clause 6.5**.~~

6.6 **Chargeable Text Messages**

For the avoidance of doubt, a Text Message handed over from the Access Seeker to ~~Vodafone2degrees~~ shall not be a Chargeable Text Message:

- (a) where that Text Message is handed over to ~~Vodafone2degrees~~ during the period of any suspension (or, in the case of a partial suspension, only to the extent of that partial suspension) of the Text Message Termination Service under **Clause 6.1** or under clause 4 of **Subschedule 3A to Schedule 3**; or
- (b) if the Text Message Termination Service has been suspended under **Clause 6.2** or under clause 4 of **Subschedule 3A to Schedule 3** in relation to a subscriber or group of subscribers of the Access Seeker, where that Text Message is sent from that subscriber or group of subscribers and is handed over to ~~Vodafone2degrees~~ during the period of that suspension (or, in the case of a partial suspension, only to the extent of that partial suspension) of the Text Message Termination Service under **Clause 6.2** or under clause 4 of **Subschedule 3A to Schedule 3**; or
- (c) if the Text Message Termination Service has been suspended under **Clause 6.3** or under clause 4 of **Subschedule 3A to Schedule 3** in relation to a particular Mobile Number of ~~Vodafone2degrees~~, where that Text Message is sent to that Mobile Number and is handed over to ~~Vodafone2degrees~~ during the period of that suspension (or, in the case of a partial suspension, only to the extent of that partial suspension) of the Text Message Termination Service under **Clause 6.3** or under clause 4 of **Subschedule 3A to Schedule 3**.

7. Signalling Links and TMSDPs

7.1 **Provisioning of Signalling Links**

Subject to the remainder of this **Clause 7**, the Access Seeker shall be responsible for provisioning the Signalling Links that connects each of its TMSDPs with each of

Vodafone's2degrees' TMSDPs to enable the delivery of Text Messages from the Access Seeker Network to the **Vodafone2degrees** Network.

7.2 Redundancy

For each of the relevant TMSDPs, the Access Seeker may provision an additional Signalling Link for redundancy purposes in case of failure of the Signalling Links that are primarily used for the delivery of Text Messages.

7.3 Requirements for Signalling Link capacity

The Access Seeker may provision any additional Signalling Link capacity that it may require in relation to the Text Message Termination Service.

7.4 Arranging TMSDPs and changes to TMSDPs

- (a) Each party shall be responsible for the provisioning, providing, maintaining, decommissioning and otherwise bearing the full costs of each of their own TMSDPs.
- (b) If a party wishes to decommission or substitute its TMSDP or wishes to have an additional TMSDP (in this **Clause 7.4**, a **change**), then that party shall consult the other party and give reasonable notice to the other party prior to any change. Such notice shall set out full details of the change and the preferred timing of the change.

7.5 Responsibility for provisioning

Responsibility for provisioning Signalling Links under this **Clause 7** includes bearing the costs of installing those Signalling Links and responsibility for maintaining and decommissioning those Signalling Links.

7.6 Use of a third party

The Access Seeker may either provision any Signalling Links itself or it may procure a third party to provision those Signalling Links on its behalf.

8. Forecasting

8.1 Text Message traffic

The Access Seeker agrees to provide **Vodafone2degrees** with forecasts of Text Message traffic in accordance with clause 4 of the Operational Procedures. The content of the traffic forecasts will cover:

- (a) the average number of Text Messages per day and the peak number of Text Messages per busy hour; and
- (b) the capacity required.

8.2 Technology and system changes

The parties agree to consult with each other and co-operate in relation to maintaining the integrity of the Text Message Termination Service, including in relation to the use and introduction by either party of any new technology or systems (such as any new types of web-to-text or similar systems that are to be used by a customer of the Access Seeker and to be operated by the Access Seeker or on behalf of the Access Seeker).

8.3 Identification of types of Text Messages

From time to time, [Vodafone2degrees](#) may, for the purposes of checking compliance with obligations under this Undertaking, request the Access Seeker to provide information to [Vodafone2degrees](#) that would assist [Vodafone2degrees](#) in identifying particular types of Text Messages that are handed over to [Vodafone2degrees](#). The Access Seeker shall provide this information to [Vodafone2degrees](#), unless the Access Seeker can demonstrate (on reasonable grounds) that it would be impracticable or illegal to do so.

9. Miscellaneous matters

9.1 Calling party numbers

For the avoidance of doubt, in respect of any Text Message handed over from the Access Seeker Network to the [Vodafone2degrees](#) Network, there shall be no charge to [Vodafone2degrees](#) for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number or any part of the A-number or any default A-number provided in accordance with **Subschedule 3D to Schedule 3**.

9.2 Number translation

The Access Seeker shall not, in relation to any Text Message, translate the number dialled by the calling party into any other number to be presented to [Vodafone2degrees](#), unless:

- (a) the translation is made in accordance with the requirements of the LMNP Determination and the SMS Interconnect Specifications; or
- (b) the following apply:
 - (i) [Vodafone2degrees](#) notifies the Access Seeker in writing that it requests the Access Seeker to undertake this number translation;
 - (ii) the Access Seeker agrees to undertake that number translation; and
 - (iii) the parties have agreed the terms on which that number translation will take place.

9.3 Mobile Number Portability

For the purposes of applying the Network Terms and the SMS Interconnect Specifications to a Text Message under this **Schedule 4**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier”; or
 - (ii) a “Donor Carrier”; and
- (b) [Vodafone2degrees](#) may be a “Host Carrier” or a “Terminating Carrier”, (as those terms are defined in the Network Terms).

10. Text Message Termination Service Delivery Point

Vodafone2degrees TMSDP

Interconnect Room
60 France St
Newton
AUCKLAND

Schedule 5
Deed of Acceptance
Vodafone2degrees Text Message Termination Service

[Date]

By: [Full name of Access Seeker]

In favour of: ~~Vodafone New Zealand Two Degrees Mobile~~ Limited (**Vodafone2degrees**)

By this Deed:

1. We refer to the Undertaking given by **Vodafone2degrees** in favour of the New Zealand Commerce Commission dated [] 2009 (the **Undertaking**). All capitalised terms used in this Deed will have the same meaning as set out in the Undertaking.
2. We request that **Vodafone2degrees** provide the **Vodafone2degrees** Text Message Termination Service in accordance with all of the terms and conditions of the Undertaking.
3. We agree that the Undertaking is legally binding on us as an Access Seeker for the **Vodafone2degrees** Text Message Termination Service, that we give all warranties of an Access Seeker set out in the Undertaking and that we shall comply with all of the obligations of an Access Seeker set out in the Undertaking. **Vodafone2degrees** may enforce the terms of the Undertaking against us as an Access Seeker.
4. Our IRD number is [] and our GST registration number is [].
5. Our notice details, for the purposes of the Undertaking, are as follows:

[New Zealand address]
Attention: [Name or office]
Telephone: [Number]
Facsimile: [Number]
6. Where we are, at the date of this Deed, a party to an agreement with **Vodafone2degrees** for the provision of services equivalent or substantially similar to the **Vodafone2degrees** Text Message Termination Service, we agree that, when **Vodafone2degrees** begins to provide the **Vodafone2degrees** Text Message Termination Service to us under the terms of the Undertaking:
 - (a) **Vodafone2degrees** will no longer be required to provide those services to us under that agreement;
 - (b) the parts of that agreement that apply to those services shall not apply whilst **Vodafone2degrees** provides the **Vodafone2degrees** Text Message Termination Service to us under the terms of the Undertaking; and
 - (c) that agreement shall be interpreted accordingly.
7. We undertake to make available to **Vodafone2degrees**, at any time when we operate a cellular mobile network in New Zealand and at any time requested by **Vodafone2degrees**, a telecommunications service that is the same as the **Vodafone2degrees** Text Message Termination Service at prices no greater than those specified in Schedule 2 of this Undertaking, and otherwise on reciprocal terms that are the same as the terms on which **Vodafone2degrees** makes available the **Vodafone2degrees** Text Message Service under the Undertaking, mutatis mutandis.
8. For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by the Access Seeker immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the Access Seeker, to 2degrees, or
- (b) transmission by the Access Seeker or its solicitors (or any other person authorised in writing by the Access Seeker of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the Access Seeker, to 2degrees.

No such delivery shall be subject to any condition, and delivery shall be irrevocable evidence of the Access Seeker's intention to be bound by this deed.

Executed and delivered as a Deed
By [*Full name of Access Seeker*]
Director
Director