

ANNEXURE 1 – MOBILE TERMINATION TERMS

Telecom New Zealand Limited (“Telecom”) and the service provider who provides a properly completed and executed Deed of Acceptance in the form set out in Appendix B (“Access Seeker”) agree to provide to each other the Services covered by this undertaking on the terms set out below and in the schedules and appendices listed below.

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SCHEDULE 1 – CONTACT DETAILS

Introduction

This schedule sets out Telecom’s addresses and contact numbers for the delivery of notices.

Telecom’s address for general notices

Delivery address : CEO, Wholesale Services, 35 Airedale Street, Auckland
Postal address : Private Bag 92028, Auckland
Fax number : 09 358 4507

Copy to:

Delivery address : Group General Counsel, Telecom New Zealand Limited,
Telecom House, 8 Hereford Street, Auckland
Postal address : Private Bag 92028, Auckland
Fax number : 09 358 0798

Telecom’s specified officer(s) for signing escalation notices

Specified officer’s title : CEO, Wholesale Services
Specified officer’s title : Group General Counsel

Telecom’s address for escalation notices

Delivery address : Group General Counsel, Telecom New Zealand Limited,
Telecom House, 8 Hereford Street, Auckland
Fax number : 09 358 0798

Corresponding details of the Access Seeker’s address for general notices; specified officer(s) for signing escalation notices; and address for escalation notices will be as set out in the Access Seeker’s Deed of Acceptance.

(The escalation addresses may be used only for delivery of notices of suspension or restriction of Services, or of intention to terminate, or termination of, the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking.)

SCHEDULE 2 – STANDARD TERMS FOR CARRIERS

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SCHEDULE 2 – STANDARD TERMS FOR CARRIERS

1 Definitions and Interpretation

1.1 In this undertaking:

02 Non-Code Access means a service provided by a carrier, which results in one of the other carrier's Toll Access Codes being automatically prefixed to a Call made by a Local Customer (or End User using the Local Customer's telephone or terminal) of the first carrier, where the Call is dialled using one of the non-geographic service codes of, or ported to, the first carrier under the provisions of the NAD and the LMNP Determination.

Access Seeker Call means a Mobile Call to be handed over from the Access Seeker's Network to Telecom's Network.

Bank means any body registered as a registered bank under section 70 of the Reserve Bank of New Zealand Act 1989.

Bill Rate means the average 90 day bank bill mid rate as quoted on Reuters Screen page BKBM or the equivalent page replacing page BKBM (known at the date of this undertaking as the *FRA* rate) at or about 10.45am on the relevant date or, if at that time page BKBM or the equivalent replacement page is not available, the last rate quoted on that page before it became unavailable.

Call means a signal or series of signals generally falling within the audio bandwidth of 300 Hz to 3400 Hz or contained within a standard digital ITU-T 64kbit/s channel which is, or is to be, conveyed from either carrier's Network to the other carrier's Network, whether or not actual communication is effected between the caller and the called party, the acceptance for delivery, delivery, or offer of delivery of which is a Service under this undertaking, but does not include, for the avoidance of doubt:

- a. the transmission of any short text messages comprising an alphanumeric string of text and/or graphics and any multimedia messages comprising text, graphics, animation, pictures, audio, video or any combination of these;
- b. any video telephony call; and
- c. CCITT No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including called or called numbers.

CC&NN document means the Telecom "Call Charging and Network Numbering" document.

Commencement Date means, in relation to a particular Access Seeker, the later of:

- a. the date upon which this undertaking is registered by the Commission under clause 6 of Schedule 3A of the Telecommunications Act 2001; and
- b. the date upon which the Access Seeker executes the Deed of Acceptance.

Commission means the Commerce Commission in the course of performing its functions under the Telecommunications Act 2001.

Confidential Customer Information means all information which a carrier (the “first carrier”) provides to the other carrier (the “other carrier”) on a confidential basis, or which the other carrier holds or obtains, concerning a particular person who is or intends to become a Customer of the first carrier. It includes the fact that the person intends to subscribe for or has subscribed for any of the first carrier’s services and includes information about that Customer which is generated from Calls made or Text Messages sent by that Customer or by End Users using any service provided by the first carrier to that Customer but excludes any information (including information which was formerly Confidential Customer Information):

- a. obtained from the Customer or from any other source independent of either carrier; or
- b. which is publicly available and is obtained from a public source; or
- c. which is both contained in and generated from the other carrier’s own billing records relating to its Customers other than billing records relating to its Services to the first carrier; or
- d. expressly stated in this undertaking not to be Confidential Customer Information.

Confidential Information means all information (including the Materials) which is confidential or proprietary to any member of a carrier’s Group, including information which is confidential or proprietary to another person and is used or disclosed in connection with this undertaking by the member under licence from that person, but excludes:

- a. information which is independently developed by the other carrier outside the scope of this undertaking; or
- b. information obtained from a source independent of either carrier; or
- c. information which was publicly available at the time of receipt; or
- d. information which was known to the other carrier at the time of receipt or becomes publicly available after the execution of this undertaking other than by a breach of an obligation of confidence; or
- e. information required to be released under any applicable law or the regulations of a stock exchange on which a carrier’s (or a member of its Group’s) shares are listed; or
- f. Confidential Customer Information or information which would be Confidential Customer Information if it were not for paragraphs a to d of the definition of *Confidential Customer Information*; or
- g. any press release (or other statement) that is agreed by the carriers regarding this undertaking; or
- h. information expressly stated in this undertaking not to be confidential information.

Customer means a person, other than a carrier, who has a contractual relationship with a carrier or a Group Member for the use of a service provided by that carrier or Group Member.

Deed of Acceptance means a deed, in the form set out in Appendix B of this undertaking, that has been properly completed and executed by the Access Seeker.

Designated Destination, in relation to a Call and disregarding the application by anyone of any call-forwarding or similar functionality that results in the Call being routed to a different point from which the answer line signal for that Call would emanate if that Call were answered, means the point in a carrier's Network to which that carrier has allocated the Mobile Number provided by the other carrier as the called party number.

End User means a person, other than a carrier, who uses a service provided to a Customer by a carrier or Group Member.

Fixed Network means a carrier's Network that is directly connected to each Originating End User's Building by means of a wireline connection or a fixed wireless receiver that is attached to the Originating End User's Building, but excludes any Network that provides cellular, mobile radio, paging or other like services.

Group means, jointly and severally, the holding company (if any) of a carrier and all that holding company's subsidiaries or, if a carrier has no holding company, then that carrier and all its subsidiaries.

Group Member means a company within a carrier's Group conducting a telecommunications business in New Zealand, but does not include the carrier itself.

Group Personnel means all officers, employees, contractors and agents of all members of a carrier's Group.

Hand-off Code has the meaning ascribed to that term in the Network Terms and the Specifications.

Handover Point means an electrical and physical interface point between the carriers' Networks at which Calls and Text Messages are, or are to be, handed over from one carrier to the other.

Intellectual Property means trade marks, service marks, inventions, patents, designs, copyrights, know how and trade secrets, all rights and interests or licences to use any of them and any other right or interest generally recognised as intellectual property.

Interface Specification means:

- a. in relation to Calls, the Telecom "PTC 331" document or any PTC document that Telecom and the Access Seeker agree replaces PTC 331 and any changes made by Telecom to that document which are accepted by the Access Seeker; and
- b. in relation to Text Messages, the Short Message Peer to Peer protocol (SMPP) v3.4 or any other document that Telecom and the Access Seeker agree replaces Short Message Peer to Peer protocol (SMPP) v3.4 and any changes made by Telecom to that document which are accepted by the Access Seeker.

Invoice Error means an erroneous duplication of the items charged in an invoice, or other error in a calculation of the amount of an invoice but does not in any circumstances include any claim that the basis for charging, or any charge, under this undertaking is illegal or otherwise unenforceable.

IPMS Database means the Industry Portability Management System administered in accordance with the LMNP Determination.

ITU-T means The International Telecommunication Union - Telecommunication Standardization Sector and its predecessor, the International Telegraph and Telephone Consultative Committee (CCITT).

LICA or Local Interconnect Calling Area means a geographic area associated with one or more specific number series which is named as a LICA in the Schedule of *LICAs* (and is the correspondingly-named Telecom Local Calling Area described in the CC&NN document as at the Commencement Date), as adjusted or changed under clause 17.

LICA Group means a Major LICA together with the Minor LICA or Minor LICAs identified in the Schedule of *LICAs* as associated with that Major LICA.

LMNP Determination:

- a. means Commission Decision 554 dated 29 August 2005 (as clarified by Decision 579, Decision 600, Decision 605 and Decision 612), as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 554; and
- b. includes the Network Terms, the LMNP Terms and the Operational and Support Manual for LMNP.

LMNP Terms means the “Terms for Local and Mobile Number Portability in New Zealand – “LMNP Terms”” issued by the Commission as part of the LMNP Determination, as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 554.

Local Calling service means a telecommunications service provided by a carrier to its Customers to enable them to make and/or receive calls that originate and terminate in the same Local Calling Area (and, for avoiding doubt, is not a Service provided by one carrier to the other).

Local Calling Area means an area adopted by a carrier for marketing purposes under clause 17.4 in relation to its Local Calling service.

Local Customer means a person with a contractual relationship with a carrier for the use of that carrier’s Local Calling service.

Local Number means a seven digit number in any NXX/9XX number range allocated:

- a. to either carrier in association with an area code (the single digit 3, 4, 6, 7 or 9) for providing geographic telecommunications services; or
- b. to Third Party Resellers which are notified by a carrier (the “first carrier”) to the other carrier from time to time, and which is used on the first carrier’s Network, until such time as the first carrier notifies the other carrier that any such NXX number ranges allocated to the Third Party Reseller should not be Local Numbers;

including such numbers that are allocated to Telecom payphones.

Local Number Portability means the “local telephone number portability service” as described in Subpart 2 of Part 2 of Schedule 1 of the Telecommunications Act 2001.

Local Number Portability Voice Interconnect Specifications means the document (which is to be agreed between the carriers) setting out the specifications for the technical realisation of voice interconnect for Local Number Portability (insofar as it relates to Access Seeker Local Numbers ported to and from the Access Seeker Network and Telecom Local Numbers ported to and from the Telecom Network), as amended from time to time by agreement of the carriers.

Local Originator means the Local Customer (or End User using the Local Customer’s telephone or terminal) who dialled the Mobile Number of the intended recipient of the end-to-end call, and who is the ultimate source of the end-to-end call.

Major LICA means a LICA identified as a Major LICA in the Schedule of *LICAs*.

Materials means all documents, instructional material, charts, design drawings and manuals in whatever form developed by or for a carrier’s Group or its Group Personnel in connection with this undertaking which is provided to any member of the other carrier’s Group or its Group Personnel.

Minor LICA means a LICA identified as a Minor LICA in the Schedule of *LICAs*.

Mobile Call means a Call, other than a Call prefaced by a Toll-Free Number:

- a. for which a Mobile Number in a carrier’s (the first carrier’s) mobile Network is provided as the called party number; and
- b. where the ultimate source of the end-to-end call is either:
 - i. a Local Number allocated to a Local Originator in the other carrier’s Fixed Network or allocated to the Local Originator’s telephone or device in the other carrier’s mobile Network; or
 - ii. a Local Number allocated to a Local Originator in the first carrier’s Fixed Network where the end-to-end call is prefixed by a Toll Access Code or where 02 Non-Code Access has been applied. In this case, the terminating end of this end-to-end call (i.e. the Call delivered from the other carrier’s Network) will be a Mobile Call; or
 - iii. a Mobile Number allocated to the Mobile Originator’s telephone or device in the other carrier’s mobile Network.

Mobile Originator means the mobile Customer (or End User using the mobile Customer’s telephone or terminal) who dialled the Mobile Number of the intended recipient of the end-to-end call, and who is the ultimate source of the end-to-end call.

Mobile Number means a number in any 02X number range allocated:

- a. to either carrier for providing non-geographic telecommunications services, including such numbers that are allocated to Telecom payphones; or
- b. to Third Party Resellers which are notified by a carrier (the “first carrier”) to the other carrier from time to time and which is used on the first carrier’s

Network, until such time as the first carrier notifies the other carrier that any such 02X number ranges allocated to the Third Party Reseller should not be Mobile Numbers.

For the avoidance of doubt:

- c. a Mobile Number does not include any number in any 0240 or 026 number range or any mobile number allocated to a mobile radio Network;
- d. a Mobile Number does not include a number in a “short code” format where the Customer does not use all six, seven or eight digits of the number (plus the 02X prefix); and
- e. a Mobile Number of a carrier will not include any numbers allocated to the other carrier or the other carrier’s Group Members.

Mobile Number Portability means the “cellular telephone number portability service” as described in Subpart 2 of Part 2 of Schedule 1 of the Telecommunications Act 2001.

Mobile Number Portability Voice Interconnect Specifications means the document (which is to be agreed between the carriers) setting out the specifications for the technical realisation of voice interconnect for Mobile Number Portability (insofar as it relates to Access Seeker Mobile Numbers ported to and from the Access Seeker mobile Network and Telecom Mobile Numbers ported to and from the Telecom mobile Network), as amended from time to time by agreement of the carriers.

NAD means the Number Administration Deed authorised by the Commission on 17 May 1999.

Network, in relation to a carrier, means the telecommunications system located in New Zealand from time to time of that carrier’s Group used to make available and provide Services to the other carrier including all transmission media, equipment and related support systems but excluding anything on the other carrier’s side of a Handover Point. A carrier’s Network may comprise several components, each of which may also be referred to in this undertaking as a Network; for example, a carrier’s Fixed Network and its mobile Network.

Network Operator means an entity which is, or by operation of this undertaking or an agreement with Telecom or the Access Seeker for providing services similar in nature to the Services will be, a provider of public switched telecommunications services in New Zealand, including both carriers but excluding all other members of their Groups.

Network Terms means the “Network Terms for Local and Mobile Number Portability in New Zealand – “Network Terms”” issued by the Commission as part of the LMNP Determination, as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 554.

New Zealand has the meaning given that expression in the Interpretation Act 1999.

Operational and Support Manual for LMNP means the “Operations and Support Manual for Local and Mobile Number Portability in New Zealand” dated November 2008 (as amended from time to time) that covers operational issues in relation to Local Number Portability and Mobile Number Portability that are not dealt with by the Network Terms.

Originating End User's Building means the building or other physical premises that is directly connected to the originating carrier's Fixed Network and that contains the Local Originator's telephone or terminal.

Service means a service specified in the Schedule of *Services Covered By This Undertaking*.

SMS Interconnect Specifications means the specifications (which are to be agreed between the carriers, or determined) for technical realisation of SMS interconnect for cellular number portability (insofar as it relates to Access Seeker Mobile Numbers ported to and from the Access Seeker Network and Telecom Mobile Numbers ported to and from the Telecom Network), as amended from time to time by agreement of the carriers.

Specifications means the Local Number Portability Voice Interconnect Specifications, the Mobile Number Portability Voice Interconnect Specifications and the SMS Interconnect Specifications.

Telecom Call means a Mobile Call to be handed over from Telecom's Network to the Access Seeker's Network.

Term means the period beginning on the Commencement Date and ending on the date that the registration of the undertaking expires.

Testing Agreement means any agreement between the carriers, whenever executed, covering any aspect of the process and requirements for testing of or between the carriers' Networks.

Text Message has the meaning set out in clause 1.1 of Appendix A.

Text Message Service has the meaning set out in clause 2.1 of Appendix A.

Third Party Reseller means:

- a. in relation to the Access Seeker Network, a third party (not being a member of the Access Seeker Group) that the Access Seeker has notified Telecom is a person that has numbers which are in the 02X or NXX number ranges allocated to the third party and either:
 - i. assigned to the third party's customers and used by the third party on the Access Seeker Network for the purposes of resale by the third party of the Access Seeker services to those customers; or
 - ii. assigned to the Access Seeker customers and used by the third party on the Access Seeker Network for the purposes of the third party selling the Access Seeker services to those Access Seeker customers as an agent for the Access Seeker; and
- b. in relation to the Telecom Network, a third party (not being a member of the Telecom Group) that Telecom has notified the Access Seeker is a person that has numbers which are in the 02X or NXX number ranges allocated to the third party and either:
 - i. assigned to the third party's customers and used by the third party on the Telecom Network for the purposes of resale by the third party of Telecom services to those customers; or

- ii. assigned to Telecom customers and used by the third party on the Telecom Network for the purposes of the third party selling Telecom services to those Telecom customers as an agent for Telecom.

Toll Access Code, in relation to a carrier, means any one of the codes in the 05XY and 05XYZ blocks allocated under the Number Allocation Rules established in accordance with the NAD.

Toll-Free Number means a number beginning with 0800 or 0508 shown as allocated to either carrier in the industry database established by TNAS Limited.

Working Day means every day except Saturdays, Sundays and days which are statutory holidays in both Auckland and Wellington.

1.2 In this undertaking:

- a. *allocated*, in relation to a number or code, means that such number or code either:
 - i. is allocated to a carrier from time to time under the NAD and, in the case of a Local Number or a Mobile Number, has not (at the relevant time) been ported out of the carrier's Network in accordance with the LMNP Determination; or
 - ii. in the case of a Local Number or a Mobile Number, is (at the relevant time) ported into the carrier's Network in accordance with the LMNP Determination; and/oris allocated to (or, in the case of a Local Number or a Mobile Number that is ported into a carrier's Network in accordance with the LMNP Determination, assigned to) a Customer, or allocated to a LICA, as the context requires;
- b. *appendix* or *Appendix* means an appendix to this undertaking, unless expressly stated otherwise;
- c. *carrier* means either Telecom or the Access Seeker, and *the carriers* means Telecom and the Access Seeker;
- d. *clause* means either a clause or a subclause;
- e. *connect* includes allow to be connected, leave connected, remain connected and the connection of anything through anything else, and connecting, connected and connection have a corresponding meaning;
- f. *holding company* has the meaning set out in section 5 of the Companies Act 1993;
- g. *loss* means any loss, injury, damage, costs or expenses;
- h. *month* means calendar month (for example, the period from 1 to 31 May);
- i. *schedule* or *Schedule* means a schedule to this undertaking, unless expressly stated otherwise;
- j. *service* means any service a carrier agrees to provide to any of its Customers, or which it provides for use by End Users;

- k. *subsidiaries* has the meaning set out in section 5 of the Companies Act 1993;
- l. *the first carrier* means the carrier first mentioned in the subclause in which those words appear;
- m. *this undertaking* includes the schedules and appendices;
- n. *porting* refers to porting pursuant to the LMNP Determination; and
- o. any word or phrase that is not defined in this undertaking but is defined in the Interface Specification has the meaning set out in the Interface Specification.

1.3 In interpreting this undertaking:

- a. clause headings are for convenience only and are not part of this undertaking;
- b. reference in a schedule or appendix to a numbered clause (or subclause) means that numbered clause (or subclause) in that schedule or appendix, unless the reference expressly states otherwise;
- c. the singular includes the plural and vice versa;
- d. words denoting natural persons include any legal entity or association of entities and vice versa;
- e. words denoting one gender include other genders;
- f. monetary amounts are in New Zealand currency;
- g. a carrier's obligation not to do something is also an obligation not to cause that thing to be done by any other member of that carrier's Group or any of its Group Personnel;
- h. a carrier's obligation not to do something is also an obligation not to permit that thing to be done by any other member of that carrier's Group or any of its Group Personnel (but acknowledging that a carrier does not permit something to be done by another member of its Group where that other member acts independently of the carrier, and the carrier is not lawfully able to make that member of its Group refrain from doing that thing);
- i. except where this undertaking expressly provides otherwise, reference to a statute or regulation means that statute or regulation as amended or re-enacted and includes sub-ordinate legislation;
- j. except where this undertaking expressly provides otherwise, reference to a document means that document as amended;
- k. the words *including* and *for example* do not have any limiting effect;
- l. if there is a conflict between the Interface Specification and the terms of this undertaking, the terms of this undertaking prevail;
- m. Appendices A and B will be read as, and form part of, this undertaking.

2 Basis of Undertaking and Conditions of Providing Services

2.1 Telecom is not obliged to begin to provide Services under this undertaking to the Access Seeker until Telecom has received evidence reasonably satisfactory to Telecom that the Access Seeker has made its Network operational and performed its obligations under any Testing Agreement relating to its Network or to the Services.

2.2 Each carrier (in this clause 2.2, the “first carrier”) is not obliged to provide or continue to provide Services under this undertaking to the other carrier (in this clause 2.2, the “other carrier”) unless:

a. the first carrier has received evidence reasonably satisfactory to the first carrier that the other carrier has a long term credit rating for its senior unsecured indebtedness of at least A3 (Moody’s Investor Services, Inc.), A- (Standard and Poor’s Ratings Group) or B+ (AM Best) (in this clause 2.2, an “acceptable credit rating”). For the purposes of defining an acceptable credit rating, a reference to “the other carrier” means, in the case of the Access Seeker, either:

- i. the Access Seeker;
- ii. the Access Seeker’s parent company which is a company registered under Part II of the Companies Act 1993; or
- iii. where the Access Seeker’s parent company is not a “company” registered under Part II of the Companies Act 1993, a parent company approved by Telecom for these purposes (such approval not to be unreasonably withheld or delayed);

or, in the case of Telecom, either Telecom or Telecom Corporation of New Zealand Limited, as applicable; or, if such evidence is not received, then

b. the first carrier has been delivered the other carrier’s choice of an unconditional (a) Bank guarantee or (b) letter of credit or (c) prepayment or other security agreed by the first carrier in writing, in each case as credit enhancement for the other carrier’s obligation to pay for Services (each a “security”). The security must be in a form reasonably acceptable to the first carrier and in the case of a letter of credit, from a Bank, which has an acceptable credit rating. The security must be for an amount to be agreed between the carriers, each acting reasonably, that is equal to the total value of charges that are reasonably equivalent to the Services expected to be provided by the first carrier to the other carrier over the three month period immediately after the Commencement Date (calculated using the equivalent charges under this undertaking). The amount of the security will be adjusted every six months after the Commencement Date. The adjusted security amount will be an amount agreed between the carriers, each acting reasonably, that is equal to the total value of charges under this undertaking for Services over the three month period immediately preceding that adjustment date. If the adjusted security amount is greater, the other carrier must, within 30 days after that adjustment date, provide replacement or additional security that is equal to that new security amount, or, if the adjusted security amount is less, the other carrier may cause the security to be reduced accordingly;

and, in either case,

c. the other carrier at all times maintains either an acceptable credit rating or, failing that, a security that complies with clause 2.2b.

2.3 The following principles apply to the Services:

- a. each carrier must provide its Service to the other carrier in a timely manner;
- b. the Service must be supplied to a standard that is consistent with international best practice;
- c. the carrier providing the Service must provide the Service on terms and conditions (excluding price) that are consistent with those terms and conditions on which the carrier providing the Service provides the Service to itself; and
- d. the carrier providing the Service must, if requested, provide the carrier seeking the Service with information about the Service at the same level of detail, and within the same time frame, that the carrier providing the Service would provide that information had it been requested by one of its own business units.

2.4 The principles in clause 2.3 are limited, by the following factors:

- a. reasonable technical and operational practicability having regard to the Network of the carrier providing the Service;
- b. Network security and safety;
- c. existing legal duties on the carrier providing the Service to provide a defined level of service to users of the Service;
- d. the inability, or likely inability, of the carrier seeking the Service to comply with any reasonable conditions on which the Service is supplied; and
- e. any request for a lesser standard of Service from the carrier seeking the Service.

2.5 Clause 2.3d:

- a. does not extend to any information about identifiable individual Customers of the carrier providing the Service; and
- b. is subject to the requirement that any confidential information provided to the carrier seeking the Service in accordance with clause 2.3d must be kept confidential to the carrier seeking the Service.

3 Providing Services

- 3.1 As long as the conditions in clauses 2.1 and 2.2 remain satisfied, each carrier must make its Services available to the other, provide to the other every Service for which the charge has been agreed and, to the extent reasonably practicable, ensure that the Services it is obliged to provide are continuously available and fault-free.
- 3.2 Each carrier acknowledges that the other carrier does not guarantee its Services will be continuously available or fault-free, is not obliged to provide any Service for which the charge has not been agreed and has rights under this undertaking to suspend, restrict or withdraw its Services.
- 3.3 So long as it meets its obligations under this undertaking, a carrier may use any method of providing its Services.
- 3.4 The Services to be made available or provided under this undertaking are only those specified in the Schedule of *Services Covered By This Undertaking*.

- 3.5 Notwithstanding anything in this undertaking and for the avoidance of doubt, the carriers acknowledge that:
- a. where Telecom provides unbundled local loop services (“LLU Services”), the part of the Telecom network used in the provision of that service (“Unbundled Loop”) will not (for as long as the provision of LLU Services to the purchaser continues) comprise Telecom’s “Network” for the purposes of this undertaking;
 - b. the Unbundled Loop will be treated for the purposes of this undertaking as part of the network of the purchaser of the LLU Services; and
 - c. the purchaser of the LLU Services will not by reason of the purchase of the LLU Services be (in relation to Telecom) a “Third Party Reseller” under this undertaking.

4 Benefit of Terms

- 4.1 Subject to clause 4.7, Telecom is not required to directly:
- a. interconnect its Network with the network of an Access Seeker Group Member; or
 - b. supply Services to an Access Seeker Group Member; or
 - c. acquire Services from an Access Seeker Group Member.
- 4.2 Subject to clause 4.7, the Access Seeker must ensure that each Access Seeker Group Member will only:
- a. interconnect its network with the Telecom Network; and
 - b. acquire Services from Telecom; and
 - c. supply Services to Telecom,
- indirectly through the Access Seeker in accordance with this undertaking.
- 4.3 Any Services provided by or to an Access Seeker Group Member will be provided only on the terms set out in this undertaking including pricing. For avoiding doubt and subject to clause 4.7, the Access Seeker will be solely responsible for the payment of any relevant invoices in respect of any Services provided to an Access Seeker Group Member, and Telecom need not (and will not) endeavour to obtain payment directly from the Access Seeker Group Member.
- 4.4 Subject to clause 4.7, unless specifically agreed between the relevant contracting parties, no separate agreement or undertaking will be created between Telecom and the relevant Access Seeker Group Member provided with Services pursuant to clause 4.3. Telecom and the Access Seeker will have the same rights and obligations with respect to these Services as if the Access Seeker was the recipient of the Services. Any loss, damage, cost, charge, expense or other liability suffered or incurred by an Access Seeker Group Member is taken only to be a loss, damage, cost, charge, expense or other liability of the Access Seeker for this purpose.
- 4.5 Subject to clause 4.7, the Access Seeker must ensure that any claim an Access Seeker Group Member may have against Telecom in connection with this undertaking is brought by the Access Seeker itself. The Access Seeker must procure that any Access

Seeker Group Member to whom Services are provided complies with all provisions of this undertaking as if the Access Seeker Group Member was itself a party to this undertaking. The Access Seeker will be liable for any breach of this undertaking by any Access Seeker Group Member.

- 4.6 The provisions of clause 26 are to apply in aggregate to any and all acts or omissions by or on behalf of Telecom in connection with the provision of any Services to the Access Seeker and any Access Seeker Group Member (unless that Group Member enters into a separate agreement with Telecom pursuant to clause 4.4).
- 4.7 Clauses 4.1 to 4.5 do not apply to the extent that the Access Seeker Group Member executes a separate Deed of Acceptance and thereby also becomes an “Access Seeker” under this undertaking.

5 Third Party Resellers

5.1 The carriers agree that, until the Access Seeker notifies Telecom otherwise, certain terms which are defined in this undertaking shall apply as follows in relation to the provision by the Access Seeker of services to a Third Party Reseller in relation to the Access Seeker Network:

- a. such Third Party Reseller is an Access Seeker Customer; and
- b. a customer of such Third Party Reseller and a customer of a Third Party Reseller’s customer is an Access Seeker End User.

5.2 The carriers agree that, until Telecom notifies the Access Seeker otherwise, certain terms which are defined in this undertaking shall apply as follows in relation to the provision by Telecom of services to a Third Party Reseller in relation to the Telecom Network:

- a. such Third Party Reseller is a Telecom Customer; and
- b. a customer of such Third Party Reseller and a customer of a Third Party Reseller’s customer is a Telecom End User.

6 Term

6.1 This undertaking, in relation to a particular Access Seeker, takes effect on the Commencement Date and continues for the Term.

7 Numbers and Codes

- 7.1 Except as expressly provided in this undertaking, this undertaking does not affect any existing right or interest of either carrier in any numbers or codes and does not confer on either carrier any new right or interest in any numbers or codes.
- 7.2 The carriers acknowledge that numbers and codes are administered in accordance with the NAD, the LMNP Determination and this undertaking.
- 7.3 Each carrier must meet its obligations as a party to the NAD. If the Access Seeker is not a party to the NAD, it must not do anything which has the effect of interfering with allocations made or recognised under the NAD, or impeding compliance with the NAD by any party to the NAD. For the avoidance of doubt, nothing in this clause will limit the application of the LMNP Determination.

- 7.4 In managing numbers and codes for its Network, each carrier must, except to the extent that doing so would conflict with an obligation or right of that carrier expressly imposed or granted under either the NAD or the LMNP Determination, comply with, and not impede the other carrier's compliance with, the CC&NN document and the applicable provisions of the ITU-T numbering recommendations.
- 7.5 Each carrier must provide to the other such information concerning the number series used in relation to its Network (other than any international Network) from time to time that the other carrier would reasonably be expected to require. The carriers acknowledge that the IPMS Database will be used to determine numbers which are ported pursuant to the LMNP Determination.
- 7.6 Except as set out in clause 7.7, neither carrier is required by this clause 7 to activate or deactivate any number or code in its Network, or to route calls to such number or code.
- 7.7 In respect of Mobile Numbers, either carrier (the "requesting carrier") may request that the other carrier (the "other carrier") activate or deactivate any number in its Network, and/or route Calls to that number in accordance with this undertaking, provided that:
- a. the number is allocated to the requesting carrier or a Third Party Reseller using the requesting carrier's Network (and recorded as such pursuant to the NAD); and
 - b. the other carrier (acting reasonably) is satisfied that routing calls to that number to the requesting carrier in accordance with this undertaking does not conflict with any agreement that the other carrier has with any person (including, for avoiding doubt, any agreement with any wholesale customer of the requesting carrier to whom that number was previously allocated). Where there may be such a conflict, the other carrier will use its reasonable endeavours to agree all necessary amendments to its agreement with that person to resolve the conflict; and
 - c. all technical, operational and billing issues are resolved. The carriers will use their reasonable endeavours to resolve any such issues within 14 days of the request from the requesting carrier.

The obligations of the carriers under this clause 7.7 are subject to the terms of the LMNP Determination.

- 7.8 Each carrier will comply with the requirements of, and act in accordance with, (insofar as they are applicable to this undertaking):
- a. the LMNP Determination; and
 - b. (after they have been agreed between the carriers) the Specifications.
- 7.9 Where:
- a. the Access Seeker supplies services on the Access Seeker Network to a Third Party Reseller for resale purposes; or
 - b. Telecom supplies services on the Telecom Network to a Third Party Reseller for resale purposes,

the Access Seeker (or in the case where Telecom supplies, Telecom):

- c. will procure the Third Party Reseller to comply with the requirements of the LMNP Determination and (after they have been agreed between the carriers) the Specifications insofar as they relate to the resold service;
- d. will procure the Third Party Reseller to comply with the requirements of the NAD. If the Third Party Reseller is not a party to the NAD, it must not do anything which has the effect of interfering with allocations made or recognised under the NAD, or impeding compliance with the NAD;
- e. confirms that it has full authority to act at all times on the Third Party Reseller's behalf to implement the LMNP Determination in accordance with the Specifications (after they have been agreed between the carriers) insofar as they relate to the resold service; and
- f. will, on the Third Party Reseller's behalf in relation to numbers in the 02X or NXX range allocated to the Third Party Reseller, implement the LMNP Determination in accordance with the Specifications (after they have been agreed between the carriers) insofar as they relate to the resold service.

7.10 In the event of any inconsistency between:

- a. the requirements of the LMNP Determination and the other requirements of this undertaking, the requirements of the LMNP Determination will prevail;
- b. the requirements of the LMNP Determination and the Specifications, the requirements of the LMNP Determination will prevail; and
- c. the requirements of the Specifications and the other requirements of this undertaking, the other requirements of this undertaking will prevail.

7.11 The carriers will use best endeavours to:

- a. agree the Specifications; and
- b. complete joint testing in relation to the provision of relevant services in accordance with the Specifications;

as soon as possible after the Commencement Date.

7.12 The carriers will act in good faith with a view to complying with the LMNP Determination. Should either carrier (the "first carrier") reasonably form the view that the other carrier is not so complying with the spirit and intent of the LMNP Determination, on account of the Specifications not adequately reflecting that spirit and intent, the first carrier may (on notice to the other carrier) require the other carrier to use best endeavours to negotiate an amendment to the whole or any part of the Specifications, to better reflect the LMNP Determination.

7.13 For the purposes of applying the Network Terms and the Specifications to:

- a. a Mobile Call to a Mobile Number that is ported into the Telecom Network, where such a Call is an Access Seeker Call under this undertaking:
 - i. the Access Seeker is an "Originating Carrier"; and
 - ii. Telecom is a "Host Carrier" and a "Terminating Carrier";

- b. a Mobile Call to a Mobile Number that is ported into the Access Seeker Network, where such a Call is a Telecom Call under this undertaking:
 - i. Telecom is an “Originating Carrier”;
 - ii. the Access Seeker is a “Host Carrier” and a “Terminating Carrier”;
- c. a Text Message to a Mobile Number that is ported into the Telecom Network under this undertaking:
 - i. the Access Seeker is an “Originating Carrier”; and
 - ii. Telecom is a “Host Carrier” and a “Terminating Carrier”;
- d. a Text Message to a Mobile Number that is ported into the Access Seeker Network under this undertaking:
 - i. Telecom is an “Originating Carrier”; and
 - ii. the Access Seeker is a “Host Carrier” and a “Terminating Carrier”.

In particular, this undertaking does not cover terms and conditions that apply where the designated destination of a Call is in a third party Network Operator’s network.

7.14 In the event that there is a failure of the number portability database such that a carrier (the “first carrier”) is unable to provide a Hand-off Code for a Call to a ported number and/or direct a Call to the correct destination network, then the following provisions will apply:

- a. the first carrier may (but is not required to) deliver or offer to deliver the Call to the other carrier (the “other carrier”) where that Call is to a number allocated to the other carrier (or a Third Party Reseller using that carrier’s Network), disregarding the porting of that number;
- b. the other carrier may (but is not required to) perform the all call query and/or provide a Hand-off Code for the Call handed over in accordance with clause 7.14a and may (but is not required to) hand over or offer to hand over that Call to the destination network; and
- c. notwithstanding anything in this undertaking, where a carrier:
 - i. delivers or offers to deliver a Call in accordance with clause 7.14a , a charge will be payable by the first carrier in accordance with clauses 3 and 4 of the Schedule of *Charges* (as relevant) as if the Call was to a number allocated to the other carrier, disregarding the porting of that number (and for the avoidance of doubt, also disregarding the application of the call forwarding to the destination network following the all call query);
 - ii. hands over or offers to hand over in accordance with clause 7.14b no charge will be payable by either carrier in relation to the Call where the Designated Destination of that Call is in the first carrier’s Network.

7.15 In the event that there is a failure of the number portability database such that a carrier (the “first carrier”) is unable to provide a Hand-off Code for a Text Message to a

ported number and/or direct a Text Message to the correct destination network, then the following provisions will apply:

- a. the first carrier may (but is not required to) deliver or offer to deliver the Text Message to the other carrier (the “other carrier”) where that Text Message is to a number allocated to the other carrier (or a Third Party Reseller using the Network of the other carrier), disregarding the porting of that number; and
- b. notwithstanding anything in this undertaking, where a carrier delivers or offers to deliver a Text Message in accordance with clause 7.15a, a charge will be payable by the first carrier in accordance with clauses 3 and 4 of the Schedule of Charges (as relevant) as if the Text Message was to a number allocated to the other carrier, disregarding the porting of that number.

8 Network Standards and Service Quality

- 8.1 A carrier may connect its Network to the other carrier’s Network only at a Handover Point and only in accordance with the Interface Specification, and may connect only following completion of each carrier’s obligations under any applicable Testing Agreement.
- 8.2 Where the Interface Specification permits a carrier to change an aspect of its method of providing or acquiring Services which is governed by the Interface Specification, that carrier must:
 - a. give the other carrier 40 Working Days’ notice of any intended change to that aspect;
 - b. refrain from implementing the change until any testing reasonably required by the other carrier has been completed to the reasonable satisfaction of the other carrier; and
 - c. bear the other carrier’s reasonable costs arising from the change, including the costs of any such testing.

If the other carrier does not give notice of its testing requirements within 20 Working Days after receiving the first carrier’s notice of the intended change, the first carrier may assume that no testing is required.

- 8.3 Each carrier must manage its Network, provide its Services and acquire Services from the other carrier in a manner that complies with the Interface Specification.
- 8.4 Each carrier must use reasonable endeavours to manage its Network in a manner that:
 - a. minimises disruption or damage to the other carrier’s Network and any other Network connected to the other carrier’s Network; and
 - b. does not impede the other carrier’s performance of any of its obligations to any other Network Operator which have been published, or otherwise notified to the first carrier, as at the Commencement Date or which are not materially different from obligations published, or otherwise notified to the first carrier, as at the Commencement Date.
- 8.5 Each carrier acknowledges that the performance of its Network may affect the performance of the other carrier’s Network. The carriers agree that if there is an issue detrimentally affecting Network performance (for example, circuit blocking) then,

without prejudice to the other provisions of this undertaking, the carrier affected by that issue may require the other carrier to meet with it within a reasonable timeframe. At that meeting, the carriers will discuss in good faith, and endeavour to agree the steps that other carrier will take, and the timeframe for taking those steps, to mitigate the effects on the affected carrier's Network. Neither carrier has the right to refer any dispute arising from such discussions to arbitration.

- 8.6 Each carrier must take reasonable precautions to prevent acts of sabotage to the other carrier's Network by the first carrier's Group Personnel and Customers.

9 Notifying Alarms And Outages, And Investigating Faults

- 9.1 Each carrier must comply with any procedures agreed in writing between the carriers and remaining in force for notifying the occurrence and clearance of planned outages, alarms and unplanned outages which affect any Service provided to the other carrier under this undertaking.
- 9.2 Each carrier must use all reasonable endeavours to investigate and find a fault in its own Network before asking the other carrier to investigate the cause of the fault. Each carrier indemnifies the other against all loss suffered by the other carrier (but not liability incurred to other people) arising from any failure by the first carrier to do so, except loss of revenue, profits, business or anticipated savings.
- 9.3 Each carrier must, where necessary, promptly co-operate with the other carrier and assist with any testing required to investigate, find, isolate and clear Network faults and, where a fault is found in its own Network, use reasonable endeavours promptly to isolate and clear that fault.
- 9.4 In isolating and clearing a fault in its Network, each carrier must apply restoration priorities and response times which accord with good network management principles and practices and, to the extent reasonably practicable, ensure that Services provided to the other carrier are not disproportionately or unfairly affected by the fault.
- 9.5 Where a fault enquiry by one carrier's Customer is directed to the other carrier, the fault enquiry service of the other carrier must advise the caller to contact the first carrier at the appropriate number unless the carriers agree otherwise in writing.

10 Arranging Handover Points

- 10.1 Except where the carriers agree otherwise under clause 10.6, each Access Seeker Handover Point must be installed on Telecom's premises and each Telecom Handover Point must be installed on the Access Seeker's premises.
- 10.2 Telecom must make premises available for the installation of an Access Seeker Handover Point in any of the Major LICAs nominated by the Access Seeker from time to time.
- 10.3 The Access Seeker must make premises available for the installation of a Telecom Handover Point in any of the Major LICAs in which the Access Seeker offers Local Calling service to its Customers.
- 10.4 Where the Access Seeker offers Local Calling service in any Minor LICA, it must make premises available for the installation of a Telecom Handover Point in the Major LICA identified in the Schedule of LICAs as associated with that Minor LICA.

- 10.5 The Access Seeker must make premises available for the installation of a Telecom Handover Point in any of the Major LICAs in which the Access Seeker has installed an Access Seeker Handover Point. Telecom will install a Telecom Handover Point at those premises as soon as reasonably practicable following the Access Seeker making those premises available. In relation to those LICA Groups that contain an Access Seeker Handover Point at the Commencement Date, the Access Seeker will make premises available in accordance with this clause within a reasonable timeframe from the Commencement Date.
- 10.6 The carriers may agree to locate Handover Points on premises other than in accordance with this clause, or to make any other mutually acceptable Handover Point arrangements. For the avoidance of doubt Text Messages will be handed over at Text Message Handover Points in accordance with Appendix A.
- 10.7 Where either carrier (in this clause 10.7 and in clause 10.8, the “first carrier”) intends to change its Handover Point arrangements by installing a new Handover Point, changing the location of a Handover Point, changing the number of links between the rest of its Network and a Handover Point, or making any other change to the then existing arrangements relating to a Handover Point:
- a. it must give reasonable notice to the other carrier of the intended change, all things it considers the other carrier may need to do to accommodate the intended change and the date by which it requests those things to have been done;
 - b. it must provide whatever information the other carrier reasonably requests in order for the other carrier to ascertain and do the things it needs to do in order to accommodate the intended change;
 - c. as soon as is reasonably practicable after receiving the requested information, the other carrier must give notice of whether or not it agrees to accommodate the intended change and, if so, setting out the things it considers it will need to do to accommodate the intended change and when it estimates those things will have been done;
 - d. as soon as the other carrier considers it has done everything necessary to the point that the new or changed Handover Point is ready for joint testing, it must give notice requesting joint testing to begin, the carriers must begin joint testing within 2 Working Days after that notice is given and must use reasonable endeavours to complete joint testing within 5 Working Days of the day joint testing begins;
 - e. the new or changed Handover Point is deemed to be available from the date by which the first carrier requested all things to have been done to accommodate the intended change, or the date the other carrier gives notice requesting joint testing to begin, whichever is later providing that if, during joint testing, a fault is found in the Network of the carrier which gave notice requesting joint testing and that fault prevents the Handover Point from operating, then if the first carrier has complied with clause 10.7d, the Handover Point is deemed available only from the date the fault is remedied.

This clause does not limit each carrier’s obligations under clause 14 or Appendix A.

- 10.8 The first carrier is to bear its costs and (except where both carriers are installing a new Handover Point in the same Major LICA) all of the other carrier’s reasonable costs associated with the change in Handover arrangement.

- 10.9 The carriers must, on an ongoing basis, co-operate with each other and use all reasonable endeavours to agree on the Call and Text Message routes and other technical arrangements which need to be put in place to enable each carrier to meet its obligations and exercise its rights under this undertaking.
- 10.10 Each carrier must, in relation to each Call handed over to the other carrier's Network, identify Mobile Calls (as opposed to other types of Calls) either by delivering all Mobile Calls via specified and distinct routes or by such other method of identifying Mobile Calls as is agreed between the carriers.

11 Access To And Maintenance Of Handover Points On the Other Carrier's Premises

- 11.1 Each carrier (in this clause 11 and in clause 12, "the provider") must make available to the other (in this clause 11 and in clause 12, "the user") all such:
- a. premises, access, facilities and services in relation to each of the user's Handover Points on the provider's premises; and
 - b. access from the street front to the premises in which each Handover Point is or is to be accommodated under clause 10.1, 10.2, 10.3, 10.4 or 10.5; and
 - c. consents from other people; and
 - d. facilities and services on the provider's premises; and
 - e. other reasonable assistance,
- as the user reasonably requires to enable each Handover Point, and all associated bearer and/or transport equipment required to be both located in close proximity and connected to it for the user to provide or receive Services under this undertaking, to be safely and securely accommodated and installed, connected to the rest of the user's Network, inspected, worked on and removed as and when reasonably required by the user. The provider must comply with all applicable statutory requirements in meeting its obligations under this clause.
- 11.2 The provider grants the user all licences necessary for the user to carry out the activities contemplated by clause 11.1. The user must pay the provider's reasonable charges for anything the provider makes available under clause 11.1.
- 11.3 Each carrier may at any time give notice of its reasonable requirements as a user under this clause. Such requirements may include a right of immediate access at any time without notice in an emergency. Otherwise, access must be at reasonable hours and after giving reasonable written or oral notice. Each carrier may at any time give notice of its reasonable requirements as a provider under this clause.
- 11.4 In meeting its obligations as a provider, or carrying out the activities contemplated by clause 11.1 as a user, neither carrier may interfere with the other carrier's equipment or provision of Services except with the consent of the other carrier and only to the extent necessary to meet its own obligations under this undertaking.
- 11.5 The provider must not cause or allow any nuisance or impediment to the user to exist or occur in any premises to which the user reasonably requires access under this clause.

- 11.6 In the previous subclauses of this clause, reference to a user means the user, or the user's authorised Group Personnel (who must always carry appropriate identification), as the context requires.
- 11.7 Neither carrier may, as a provider, cause or allow any alteration to its premises that could reasonably be expected to affect the other carrier's equipment without the other carrier's consent, which may be given subject to reasonable conditions and must not be unreasonably withheld.
- 11.8 Each carrier indemnifies the other against all loss suffered and liability incurred by the other carrier arising from any delay or failure by the first carrier to meet an obligation under this clause 11.
- 11.9 Each carrier, as a provider, must pay on demand the cost of the other carrier, as a user, replacing or repairing any equipment on any premises referred to in this clause which is, without the user's authority, damaged, lost, stolen or removed other than as a result of the user's action or inaction (including inaction after receipt of a notice given under clause 23.3), fair wear and tear, or a force majeure event as defined in clause 27.

12 Bailment of Personal Property Comprising Handover Points

- 12.1 This clause 12 applies to all present and after-acquired telecommunications related equipment and software that is owned by each carrier, as a user in accordance with clause 11, and that is located on the premises of other carrier, as a provider in accordance with clause 11, ("Bailed Property"). Bailed Property includes:
- a. each of the user's Handover Points, and all associated bearer and/or transport equipment located in close proximity and connected to it for the user to provide or receive Services under this undertaking; and
 - b. all goods and intangibles described or referred to in this undertaking or in the relevant records maintained by (or other relevant document produced by) the user, on the basis that such record or other document is deemed to be incorporated into, and form part of, this clause 12.
- 12.2 Bailed Property is required to enable the user to provide or receive Services under this undertaking and is bailed to the provider on the following terms:
- a. the provider is a mere custodian and holds the Bailed Property on trust for the user solely to enable the user to provide or receive Services under this undertaking;
 - b. upon request by the user (but subject to any notice requirements under clause 11 and without limiting the user's obligation to provide Services), the provider must promptly return the Bailed Property (or any part of it) to the user;
 - c. the bailment is not a lease and, except as trustee for the user, the provider does not have any rights to use or possess the Bailed Property;
 - d. unless otherwise authorised or directed by the user, the provider shall not:
 - i. create, permit or allow to subsist in the Bailed Property any security interest that ranks equally with, or in priority to, the user's security interest in the Bailed Property; or

- ii. transfer or dispose of, or permit the transfer or disposal of, any of the provider's interest in the Bailed Property; or
 - iii. allow any Bailed Property to become a fixture or an accession to any personal property that is not Bailed Property;
 - e. the provider agrees to indemnify the user, upon demand, for all loss, cost and expense incurred or suffered by the user arising out of or in connection with:
 - i. the registration and maintenance of any financing statements in respect of the user's security interest in the Bailed Property;
 - ii. any breach by the provider of its obligations under this clause 12.
- 12.3 The provider agrees to promptly do all things (including signing any other documents) and provide all information necessary to enable the user to perfect and maintain the perfection of the user's security interest in the Bailed Property (including by registration of financing statements). The provider waives its right to receive a copy of any verification statement in respect of any financing statement registered by the user. The user may obtain and use information about the provider to register and maintain financing statements.
- 12.4 If (but only to the extent that) Part 9 of the PPSA applies to the user's security interest, then, to the fullest extent possible, the user and the provider agree to contract out of:
 - a. all of the sections referred to in section 107(1) of the PPSA; and
 - b. all of provider's rights referred to in section 107(2) of the PPSA.
- 12.5 Nothing in this undertaking shall be construed as:
 - a. an agreement to subordinate the user's security interest in favour of any person; or
 - b. the user's consent to any other security interest attaching to, or subsisting over, any of the Bailed Property; or
 - c. the user's consent to any personal property that is not Bailed Property becoming an accession to any Bailed Property.
- 12.6 The user's rights under this clause 12 are in addition to, and do not limit, any other rights or powers the user may at any time have under this undertaking, by law or otherwise.
- 12.7 Where used in this clause 12:
 - a. "the user" and "the provider" will have the meanings given to them in clause 11;
 - b. "PPSA" means the Personal Property Securities Act 1999; and
 - c. the following words and phrases (and grammatical variations of them) have the meanings given to them in, or by virtue of, the PPSA: "accession", "financing statement", "perfection", "personal property", "security interest", "transfer" and "verification statement".

13 Handing Over Calls

- 13.1 Mobile Calls that are Access Seeker Calls that are handed over must be handed over at an Access Seeker Handover Point established in accordance with clause 10.
- 13.2 Mobile Calls that are Telecom Calls that are handed over must be handed over at a Telecom Handover Point established in accordance with clause 10.
- 13.3 For avoiding doubt, the carriers acknowledge that although this clause 13 imposes requirements relating to the places where Mobile Calls of various types must be handed over if they are handed over, a carrier is not obliged to hand over a Mobile Call to the other carrier.

14 Forecasts Of Future Service Requirements

- 14.1 If either carrier forecasts a likely material change in the volume or type of any of the Services then provided by either carrier, it may give notice to the other carrier setting out details of the forecast.
- 14.2 If either carrier at any time reasonably requests the other to forecast likely material changes in the volume or type of any of the Services then provided by either carrier, the other carrier must use reasonable endeavours to prepare the requested forecast with reasonable care and promptly provide it.
- 14.3 If either carrier at any time reasonably requests additional information relating to a forecast already provided (for example, peak and average traffic volumes, Call holding times, Call attempts, or the engineering assumptions underlying the forecast), the other carrier must use reasonable endeavours to prepare the requested information with reasonable care and promptly provide it.
- 14.4 If either carrier becomes aware, during a period for which a forecast has been provided, of any material change to that forecast, it must promptly give the other carrier notice of the change.
- 14.5 Both carriers acknowledge that their ability to provide Services to each other in accordance with this undertaking on an ongoing basis is assisted by the availability of forecasts of likely material changes in the volume and type of Services provided under this undertaking.
- 14.6 Neither carrier is liable to the other as a result of the content of any forecast.
- 14.7 This clause 14 does not limit each carrier's forecasting obligations under Appendix A.

15 Operational Liaison

- 15.1 The carriers must liaise at the request of either carrier, on technical standards for telecommunications equipment of any service provider which is, becomes, or is likely to become, connected to either carrier's Network.
- 15.2 Each carrier must use reasonable endeavours to inform the other in advance of any event of which it becomes aware which would reasonably be expected to result in high-impact calling from the other carrier's Network. Either carrier may take steps it reasonably considers appropriate to minimise any detrimental effects on its Network of high-impact calling. For avoiding doubt, nothing in this 15.2 limits clause 14 of Appendix A.

- 15.3 The carriers must liaise with a view to eliminating any fraudulent use of either carrier's services by Customers or End Users to the extent that the fraudulent use occurs as a result of the carriers providing Services to each other under this undertaking, and establishing procedures for tracing malicious Calls originating in either carrier's Network.
- 15.4 Each carrier ("the notifying carrier") must provide the other carrier with 60 Working Days notice of software changes and other Network changes which can reasonably be expected to affect the Services or the other carrier's Network, other than where an urgent change is required, in which case the notifying carrier must notify the other carrier of the change as soon as is reasonably practicable.

16 Health and Safety

- 16.1 Each carrier must ensure that, in meeting its obligations and exercising its rights under this undertaking, it does not endanger the health or safety of any person.

17 Local Interconnect Calling Areas

- 17.1 The Major LICAs and the Minor LICAs associated with each Major LICA, as at the Commencement Date, are set out in the Schedule of *LICAs*.
- 17.2 Telecom may, on giving 20 Working Days notice, make minor adjustments to the boundaries of any LICA after first consulting with the Access Seeker with a view to ensuring that any effect of the adjustment on the charges payable by either carrier under this undertaking is as insignificant as is reasonably practicable in the circumstances.
- 17.3 Telecom may give notice of its intention to change, or give notice changing, a Major LICA into a Minor LICA, or a Minor LICA into a Major LICA, or the Major LICA with which any Minor LICA is associated, or to combine LICAs. That change will take effect from a date no earlier than 365 days after that notice, unless the carriers agree otherwise. Regardless of such a notice, the Major LICAs, Minor LICAs and LICA Groups for the purposes of this undertaking will remain as set out in the Schedule of *LICAs* until the end of the Term, unless the carriers agree otherwise.
- 17.4 The carriers acknowledge that either of them may wish to adopt areas for marketing purposes which are different from the LICAs but that if the boundaries of any area adopted for Local Calling service purposes were to cross the boundaries of a Telecom zone as defined in the CC&NN document, this would cause significant operational problems and Customer confusion. Accordingly, Local Calling Area boundaries must not cross the boundaries of a Telecom zone as defined in the CC&NN document.
- 17.5 A carrier must give 20 Working Days' notice of any proposed change to its Local Calling Areas. The carriers must then consult with each other solely for the purpose of endeavouring to avoid or resolve any Customer confusion, technical, engineering, numbering, directory listing or directory assistance service issues that may arise as a result of the proposed change. The other carrier's only obligation relating to such a proposed change is to consult in accordance with this clause.

18 Confidential Information

- 18.1 In this clause, a carrier owning or supplying Confidential Information is "the provider" and a carrier receiving Confidential Information or becoming aware of it through the operation of this undertaking is "the recipient".

18.2 Each carrier, as a recipient, undertakes that, subject to clause 18.3:

- a. all members of its Group have procedures adequate to protect the Confidential Information;
- b. no member of its Group will disclose, without the prior written consent of the provider, any of the Confidential Information to any person other than other members of the carrier's Group or the carrier's Group Personnel directly concerned in the operation of this undertaking or to professional advisers of the carrier's Group;
- c. it will advise the provider from time to time on request of those professional advisers who are or may be recipients of Confidential Information;
- d. no member of its Group, nor any of its Group Personnel, will use any of the Confidential Information other than as necessary for the operation of this undertaking;
- e. it will enter into and comply with, and will cause other members of its Group and its Group Personnel to enter into and comply with, any other agreements the provider reasonably requires regarding any of the Confidential Information which is disclosed by the provider under licence from anyone else;
- f. at the provider's request, it will use reasonable endeavours to cause any person to whom the Confidential Information is disclosed under paragraph b of this clause 18.2 (other than officers and employees of the recipient) to provide to the provider a written undertaking reasonably acceptable to the provider to hold the Confidential Information in confidence.

18.3 The carriers agree that:

- a. information that would be Confidential Customer Information but for the fact that it is aggregated so that it does not identify any particular Customer may be disclosed to any of the recipient carrier's Group Personnel or professional advisers, but must not be disclosed to any other person and must not be used for sales and marketing purposes (as defined in clause 18.5); and
- b. either carrier may refer to and disclose any information that is covered by paragraph a above in any form of submissions to the Commission, provided that the disclosing carrier requests that the information be protected from disclosure to the general public under an applicable Commission confidentiality order.

18.4 Each carrier as a recipient indemnifies the other carrier's Group against all loss suffered and liability incurred by the other carrier's Group as a result of a claim by someone else arising directly or indirectly from any breach by the recipient of clause 18.2.

18.5 Without limiting the rights and obligations of each carrier under the Code for Transfer of Non-Regulated Telecommunications Services (issued by the Telecommunications Carriers' Forum), each carrier must use all reasonable care to ensure that neither it, nor any other member of its Group nor any of its Group Personnel, uses Confidential Customer Information for sales or marketing purposes, which means using the information in a manner designed to discourage or encourage the transfer of the Customer from one carrier to the other or the subscription to a service offered by a carrier (whether or not that service is offered by the other carrier), except that:

- a. this clause is not intended to prevent a member of a carrier's Group using any information about one of the carrier's Customers (who may also be a Customer of the other carrier) which is generated solely within the first carrier's own Network from its own records relating to its own services provided that any such information a carrier generates through transferring one of its Customers to a service provided by the other carrier must not be used for sales and marketing purposes before completion of the transfer process. For example, billing information of one carrier indicating that a person who is a Customer of that carrier is dialling and/or receiving Calls or Text Messages from numbers allocated to the other carrier is not Confidential Customer Information of the other carrier;
- b. the carriers acknowledge that each other's Group Personnel may engage in multiple roles or functions and a carrier does not breach this clause merely because Confidential Customer Information is provided other than for sales and marketing purposes to a person who has multiple roles or functions (one of which is sales or marketing). Each carrier agrees that its Group Personnel directly involved in the process of transferring one of its Customers (or a Third Party Reseller's customer from a Third Party Reseller) to the other carrier may not, at the same time, be involved in marketing or sales to that Customer (or a Third Party Reseller's customer). For avoiding doubt, nothing in this paragraph b prevents either carrier restructuring the operational aspects of its business.

18.6 Acknowledging that:

- a. breach of clause 18.2 may result in irreparable damage for which monetary damages would not be an adequate remedy; and
- b. this undertaking may exclude a recipient's liability for monetary damages for any damage resulting from breach of clause 18.5,

either carrier may apply for injunctive relief against such breach or threatened breach in addition to other available remedies.

19 Privacy

19.1 In this clause 19, the carrier providing information to the other carrier is "the provider" and the carrier receiving information from the provider is "the recipient".

19.2 In relation to the subject matter of this undertaking, each carrier must:

- a. ensure that all members of its Group comply with the Privacy Act 1993 and any telecommunications privacy code of practice in force under Part VI of that Act;
- b. use reasonable endeavours to ensure that any person to whom any calling party number is disclosed in the course of providing a Service is aware of that person's obligation to comply with the Privacy Act 1993 and with any telecommunications privacy code of practice in force under Part VI of that Act which applies to that person;
- c. use reasonable endeavours to ensure that any person whose calling party number is disclosed by that carrier to the other carrier in the course of providing a Service under this undertaking is aware of the effect of not requesting calling line presentation restrict indicators (or similar) to be attached to Calls and/or Text Messages when initiating them.

- 19.3 The carriers must meet from time to time following the promulgation of any telecommunications privacy code of practice under Part VI of the Privacy Act 1993 to agree on procedures to help each carrier comply with the code in performing its obligations under this undertaking.
- 19.4 Before any information about a Customer of one carrier is provided to the other carrier, the recipient must ensure that all necessary customer consents required by law (or which are necessary as a result of contractual obligations entered into in good faith by the provider) have been obtained. If requested, evidence establishing the existence of consent must be made available to the provider.
- 19.5 Where the provider has an obligation to provide calling party numbers and calling line presentation restrict indicators for Mobile Calls and/or Text Messages it hands over to the recipient's Network:
- a. the provider may suspend or restrict the supply of calling party numbers or calling line presentation restrict indicators, or both, where the provider reasonably believes the recipient is not properly applying it;
 - b. the provider may refuse to supply calling party numbers for Calls and/or Text Messages for which that information cannot reasonably be accurately provided;
 - c. the provider may refuse to supply calling line presentation restrict indicators for Calls and/or Text Messages;
 - d. Telecom may refuse to supply calling party numbers or calling line presentation restrict indicators, or both, for Calls from Telecom payphones.

20 Charging Principles

- 20.1 Each carrier must pay the other carrier's charges for making available and providing Services under this undertaking. The charges payable are set out in this undertaking or fixed in accordance with this undertaking.
- 20.2 The charges for any Service accrue from the date that Service is made available or provided.
- 20.3 Each carrier is responsible for setting charges for its own Customers and billing them.
- 20.4 Each carrier must ensure that no member of its Group, and no other Network Operator whose telecommunications network is connected to its Network, bills the other carrier's Customers directly for any part of the first carrier's Services.
- 20.5 Each carrier must pay GST in accordance with the Goods and Services Tax Act 1985 on all charges payable under this undertaking except any charge expressly stated in writing by the other carrier to be GST-inclusive.

21 Paying For Services

Due date for payment

- 21.1 Except as expressly provided in this undertaking, all amounts invoiced by a carrier (in this clause "the invoicing carrier") to the other carrier (in this clause "the paying carrier") under this undertaking must be paid by the 21st day after the date of issue of the relevant invoice. Wherever reasonably practicable, the invoicing carrier must inform the paying carrier before any invoice is issued of the date it will be issued.

Content of invoices

- 21.2 Any invoice the invoicing carrier renders to the paying carrier for Services provided must include reasonable information in accordance with normal commercial practice between interconnected Network Operators to enable the paying carrier to ascertain the month in which invoiced Calls occurred and to check the accuracy of all amounts charged.

Manner of payment

- 21.3 Except as expressly provided in this undertaking, all amounts payable by the paying carrier under this undertaking (including any amount the paying carrier disputes or intends to dispute under clause 21.8) must be paid in cash, or by cheque or electronic funds transfer in cleared funds, at the place or to a bank account nominated by the invoicing carrier, in New Zealand dollars and free of any deduction, set off or withholding. For avoiding doubt, payments must not be made by credit card.

Dealing with Invoice Errors

- 21.4 Except as expressly provided in this undertaking, if the paying carrier:
- a. reasonably believes there is an Invoice Error in an invoice which has resulted in the invoicing carrier overcharging the paying carrier on that invoice; and
 - b. on or before the due date for payment, gives notice setting out full details of the invoice, the Invoice Error and the grounds for the paying carrier's belief that the Invoice Error exists,

the paying carrier may withhold payment of the amount by which it reasonably believes the invoicing carrier may have overcharged it on that invoice by reason of that Invoice Error until the carriers have settled in accordance with clause 21.5, 21.6 or 21.7 whether or not that Invoice Error exists and, if so, the amount of it and the amount properly payable on that invoice after correcting it.

- 21.5 Following the giving of any notice under clause 21.4, the carriers must use reasonable endeavours to settle any claim of Invoice Error. If they do not settle any claim of Invoice Error within 20 Working Days after the due date for payment of the invoice, either carrier may give notice referring the matter directly to an independent telecommunications accounting expert (the "Expert") to be finally resolved and, unless otherwise agreed in writing:
- a. the carriers must endeavour to appoint a single Expert. If, within 5 Working Days of the notice under this clause 21.5 being given, the carriers are unable to agree on a single Expert, the Expert will be appointed by the President of the Institute of Chartered Accountants of New Zealand;
 - b. the Expert must adopt a procedure which, in the Expert's opinion, is the most simple and expeditious procedure possible in the circumstances;
 - c. the provisions of the Arbitration Act 1996 will not apply to any procedure under this clause 21.5;
 - d. the carriers will provide the Expert with any information that the Expert reasonably requires;

- e. the Expert must use reasonable endeavours to make a decision on the claim of an Invoice Error within 30 Working Days of appointment; and
- f. the costs of the Expert will be paid as follows:
 - i. if the Expert decides that there is no Invoice Error or, as a result of an Invoice Error the amount of the invoice is increased after correction, then the paying carrier will pay the costs of the Expert;
 - ii. if the Expert decides that there is an Invoice Error and the amount of the invoice is reduced by 5% or less after correction, then the paying carrier and the invoicing carrier will equally share and pay the costs of the Expert; and
 - iii. if the Expert decides that there is an Invoice Error and the amount of the invoice is reduced by more than 5% after correction, then the invoicing carrier will pay the costs of the Expert.

21.6 If it is agreed by the carriers or found by the Expert that the Invoice Error exists in the invoice then, depending on whether the amount properly payable by the paying carrier on that invoice after correction of that Invoice Error is more than the amount paid (an underpayment) or less than the amount paid (an overpayment), either the paying carrier or the invoicing carrier must forthwith pay to the other the amount of the difference between the amount paid and the amount properly payable by the paying carrier on the invoice after correction of that Invoice Error, plus:

- a. in the case of an underpayment, interest on the amount of the difference at the Bill Rate (as at the day after the due date for payment of the invoice) plus 5% for the period from the due date for payment of the invoice to the date of payment of the amount of the difference, or the date clause 21.12 becomes applicable, whichever is earlier; or
- b. in the case of an overpayment, interest on the amount of the difference at the Bill Rate (as at the date the paying carrier made the overpayment) plus 5% from the date it made the overpayment to the date of payment of the amount of the difference, or the date clause 21.12 becomes applicable, whichever is earlier.

21.7 If it is agreed by the carriers or found by the Expert that there is not an Invoice Error in the invoice, the paying carrier must forthwith pay any amount withheld plus interest on the amount withheld at the Bill Rate (as at the date of the invoice) plus 5% for the period from the day after the due date for payment to the date of payment of the amount withheld, or the date clause 21.12 becomes applicable, whichever is earlier.

Settling other invoicing disputes

21.8 No later than 180 days after the due date for payment of any invoice, the paying carrier may give notice disputing any amount in that invoice, regardless of whether or not it has previously given notice of Invoice Error in relation to that amount, which it reasonably believes not to have been correctly calculated in accordance with this undertaking. The notice must set out details of the invoice, the disputed amount and the grounds for the paying carrier's belief together with any supporting evidence available from its records. The carriers must settle the dispute in accordance with clause 21.9. For avoiding doubt, clauses 21.5 to 21.7 do not apply to any notice given under this clause 21.8, and clauses 21.9 and 21.10 do not apply to any notice given under clause 21.4.

21.9 The carriers must use reasonable endeavours to settle promptly any dispute under clause 21.8. If they do not settle the dispute by agreement within 40 Working Days after notice was given under clause 21.8 either carrier may give notice referring the matter directly for settlement by arbitration under clause 29.4 without the need for prior negotiation. The arbitration must commence no earlier than 10 Working Days after the date the notice is given and the terms of the reference must be confined to that dispute.

21.10 If a dispute under clause 21.8 is settled in favour of the paying carrier, the invoicing carrier must forthwith refund the amount agreed or found to have been overpaid plus interest at the Bill Rate plus 5% (as at the date of the overpayment) on the overpaid amount for the period from the date the overpayment was made to the date of payment of the refund or the date clause 21.12 becomes applicable, whichever is earlier.

Time limit for invoicing

21.11 Nothing in this undertaking or in any invoice or statement prejudices the invoicing carrier's right to invoice the paying carrier for charges for any Service provided under this undertaking up to the date 180 days after the date that Service was provided (after which date no charge may be made for that Service).

Interest on unpaid amounts

21.12 Where an amount due from either carrier under clause 21.6, 21.7 or 21.10 remains unpaid on the sixth Working Day after the date of settlement of the claim or dispute, that carrier must pay interest on that amount at the Bill Rate (as at the date 6 Working Days after the date of settlement of the claim or dispute) plus 10% for the period from that sixth Working Day to the date of payment of that amount, in addition to the amount due under clause 21.6, 21.7 or 21.10.

21.13 Except where interest is payable on an amount under clause 21.6, 21.7 or 21.10 and/or 21.12, where an amount due from the paying carrier under this undertaking remains unpaid after its due date, the paying carrier must pay interest on that amount at the Bill Rate (as at the due date) plus 10% for the period from the due date to the date of payment of that amount.

21.14 Under no circumstances does payment of the amount of the difference under clause 21.6, the amount withheld under clause 21.7, the refund under clause 21.10, or the amount unpaid under clause 21.13 release the paying carrier from liability for any interest payable on that amount under this clause 21.

No prejudice to obligations, rights and remedies

21.15 The paying carrier remains liable to pay any charges incurred for any Service between the time of suspension or restriction of that Service, or termination of the rights and obligations of the paying carrier under this undertaking, by the invoicing carrier and the actual discontinuance of that Service.

21.16 Each carrier must pay the other carrier's charges for any Service that has not been suspended or restricted or terminated by the other carrier even if the first carrier is unable to use that Service as a result of the suspension, restriction or termination of another Service.

21.17 Neither the paying carrier's obligation to pay interest under this clause, nor the performance of that obligation, prejudices the invoicing carrier's rights and remedies in respect of the paying carrier's non-payment of an amount on its due date.

Basis for interest rate formula

21.18 The carriers record that interest payable under this clause constitutes liquidated damages and that the interest rate formulae set out in clauses 21.12 and 21.13 represent a genuine forecast of the approximate loss a carrier may suffer as the result of non-payment after taking into account the complexity of each carrier's business.

22 Suspension Or Restriction Of Services, And Withdrawal Of End User Services

22.1 Either carrier (in this clause, "the suspending carrier") may suspend or restrict (or otherwise withdraw the other carrier's right to use) all or any part of any of its Services, but only to the minimum extent practicable so as to limit disruption to the other carrier's services, if:

- a. any technical or operational circumstances arise or are likely to arise which the suspending carrier considers make such suspension or restriction necessary or desirable to test, maintain, repair or protect its Network; or
- b. the other carrier, in meeting its obligations or exercising its rights under this undertaking, endangers the health or safety of any person; or
- c. the other carrier does not hold a licence, permit or other official authorisation it must hold to provide its services lawfully,

and, except in the case of an emergency or other exceptional event making prior consultation impracticable or the other carrier failing to make itself available promptly for consultation, the suspending carrier has given the other carrier 30 Working Days' notice and, during that notice period consulted with the other carrier before suspending or restricting (or otherwise withdrawing the other carrier's right to use) the Service.

22.2 Where a carrier which is the paying carrier under clause 21 fails to pay any charge, interest or other amount due under this undertaking, the suspending carrier (being the carrier which is the invoicing carrier under clause 21) may, at any time from the day after the date on which this undertaking provides for interest to begin to accrue under clause 21.12 or 21.13 (whichever is applicable) on the due amount (regardless of whether such interest is charged or is recoverable), give 10 Working Days notice of intention to suspend or restrict its Services under this undertaking. The notice must set out details of the amounts due and must be served in accordance with clause 32.2. If all amounts due from the paying carrier are not paid within that 10 Working Day period, the invoicing carrier may suspend or restrict (or otherwise withdraw the paying carrier's right to use) all or any part of any of its Services at any time.

22.3 A carrier (the "first carrier") may suspend or restrict (or otherwise withdraw the other carrier's right to use) all or any part of any of its Services at any time if the other carrier has not complied with the requirements of clause 2.2.

22.4 The suspending carrier may suspend or restrict (or otherwise withdraw the other carrier's right to use) all or any part of any of its Services if;

- a. the other carrier commits a material breach of any of its obligations under this undertaking (other than where clause 22.1 or clause 22.2 applies) and the breach remains unremedied 20 Working Days after the date the suspending carrier gave notice of suspension or restriction under clause 32.2 for reason of that material breach; or

- b. the suspending carrier has given three notices under paragraph a of this clause in any 365 day period.
- 22.5 The suspending carrier may suspend or restrict (or otherwise withdraw the other carrier's right to use) all or any part of a Service, but only to the minimum extent practicable so as to limit disruption to the other carrier's services, if the suspending carrier reasonably believes:
- a. the other carrier, in providing or receiving that Service, is breaching the Privacy Act 1993 or any telecommunications privacy code of practice in force under Part VI of the Privacy Act 1993; or
 - b. any person to whom the other carrier is providing, or from whom the other carrier is receiving, a service in connection with that Service is breaching the Privacy Act 1993 or any telecommunications privacy code of practice in force under the Privacy Act 1993; or
 - c. the Privacy Commissioner has performed a statutory function or exercised a statutory power which has or could have the effect of either making the operation of all or any part of that Service impracticable or detrimental to the suspending carrier's reputation, or rendering the suspending carrier incapable of performing an obligation relating to the provision of that Service,
- and, except in a case of an exceptional event making prior consultation impracticable or the other carrier failing to meet its consultation obligations under clause 22.6, the suspending carrier has met its consultation obligations under clause 22.6.
- 22.6 Before the suspending carrier may suspend or restrict (or otherwise withdraw the other carrier's right to use) all or any part of a Service under clause 22.5:
- a. the suspending carrier must give notice to the other carrier setting out the specific event giving rise to the notice, any provisions of the Privacy Act 1993 or telecommunications privacy code of practice which are relevant and any practicable process or outcome which would remove the necessity for the suspension or restriction;
 - b. the carriers must promptly make themselves available for consultation and must promptly consult with each other with a view to establishing a better understanding of the event and agreeing on a practicable process or outcome which would remove the necessity for suspension or restriction; and
 - c. 10 Working Days must have expired since the suspending carrier made itself available for consultation with the other carrier, without the matter having been resolved to the reasonable satisfaction of the suspending carrier.
- 22.7 Acceptance of part payment, or the continued provision of Services, by the suspending carrier either before or after its powers to suspend and restrict Services have become exercisable under this clause does not constitute a waiver of those rights.
- 22.8 Either carrier may bar Mobile Calls and/or Text Messages originating in its Network by any person who is its Customer if that Customer has asked for Mobile Calls and/or Text Messages to be barred, or the carrier reasonably considers the Customer to be a credit risk, or the carrier has other good commercial or technical reasons for barring Mobile Calls and/or Text Messages of that Customer and those reasons do not discriminate against the Customer because the Customer is also a Customer of the other carrier.

- 22.9 Neither carrier may unreasonably discriminate between the other carrier and other Network Operators in the barring of Mobile Calls and/or Text Messages.
- 22.10 Either carrier may withdraw from providing any type of Service which is the same as a service provided to its Customers, so long as the service is withdrawn from all its Customers, after giving the other carrier such notice as the first carrier is obliged to give its own Customers of the withdrawal of that service.
- 22.11 Each carrier must use reasonable endeavours to ensure that a provision is included in each contract with each Customer of that carrier for the provision of its services which ensures that the other carrier is not impeded in any way in exercising any of its rights under this clause and has no liability to that Customer as a result of doing so.
- 22.12 The suspension, restriction or withdrawal of the right to use Service under this clause 22 as a result of breach by a carrier shall cease as soon as it is reasonably practicable for the suspending party to complete the restoration of the Service after the breach is remedied.

23 Early Termination

- 23.1 Either carrier (in this clause, “the terminating carrier”) may immediately give notice terminating the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking if:
- a. an amount invoiced to the other carrier under this undertaking (other than an amount the payment of which this undertaking expressly permits the other carrier to withhold) remains unpaid 60 days after its due date for payment and the terminating carrier has given at least 10 Working Days’ notice to the other carrier of intention to terminate for any reason the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under the undertaking; or
 - b. an amount which was the subject of a claim of Invoice Error remains unpaid 60 days after the date of settlement of the claim and the terminating carrier has given at least 10 Working Days’ notice to the other carrier of intention to terminate for any reason the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under the undertaking; or
 - c. the other carrier commits a material breach of this undertaking (other than a breach of the kind referred to in paragraphs a or b of this clause) and the breach remains unremedied 20 Working Days after the terminating carrier has given notice to the other carrier specifying the breach and requesting it be remedied; or
 - d. the terminating carrier has given three notices to the other carrier under one or more of paragraphs a, b or c of this clause in any 365 day period; or
 - e. execution is levied against a substantial part of, or a receiver or manager is appointed of any of, the assets of the other carrier or its holding company; or
 - f. the other carrier either goes into liquidation (other than voluntarily for reconstruction or amalgamation purposes with the prior written approval of the terminating carrier, such approval not to be unreasonably withheld), or is dissolved, or enters into a scheme of arrangement with any class of its creditors, or is placed under official management.

- 23.2 Any notice of intention to terminate, or of termination of, the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking, must be served on the other carrier at its specified address for escalation notices.
- 23.3 If the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking are terminated for any reason:
- a. each carrier may disconnect and remove its equipment from the other carrier's premises and the carrier which did not terminate the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under the undertaking must pay the terminating carrier's reasonable charges for disconnecting and removing the terminating carrier's equipment; and
 - b. a carrier may, after giving the other carrier reasonable notice and reasonable opportunity to remove its own equipment, disconnect and remove the other carrier's equipment from the first carrier's premises, and the carrier which did not terminate the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under the undertaking must pay the terminating carrier's reasonable costs of such disconnection and removal of equipment.
- 23.4 The Access Seeker's rights under this undertaking cannot be duplicated by entering into a subsequent Deed of Acceptance. If Telecom becomes entitled to:
- a. suspend or restrict any of the Services; or
 - b. terminate the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking;

any further supply of the Service is limited to the existing rights and obligations of the Access Seeker and Telecom under this undertaking at that time.

24 Survival of Rights and Obligations

- 24.1 Termination of the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under, or expiry of, this undertaking does not operate as a waiver of any breach by either carrier of this undertaking and does not prejudice any right, or extinguish any liability or obligation, which has accrued up to the date of termination or expiry. Clauses 4, 9.2, 11, 12, 18, 19, 21, 23, 24, 25, 26, 27, 29, 30, 32, 33, 34.1, 36 and 37, survive termination or expiry together with any other term requiring payment of any sum outstanding at termination or expiry, and any other term relating to correction of charges, and any other terms which expressly or impliedly are intended to survive termination or expiry.
- 24.2 On termination of the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under, or expiry of, this undertaking, each carrier must, unless the carriers have agreed otherwise in writing, cause to be destroyed, erased or returned to the other carrier the Materials, and all records and material containing Confidential Information in whatever form, which the other carrier has provided.

25 Intellectual Property Rights

- 25.1 Intellectual Property originating from or developed by a carrier remains the property of that carrier. If either carrier has developed or develops Intellectual Property for the

purposes of meeting obligations under this undertaking, that carrier grants to all members of the other carrier's Group a non-exclusive, royalty-free licence while this undertaking continues to use that Intellectual Property for the purposes of meeting its obligations and exercising its rights under this undertaking.

25.2 Each carrier (in this clause, the "first carrier") must obtain from other people (for either itself or the other carrier, or both) all consents or licences for Intellectual Property used in its Network that may be necessary to enable the other carrier (in this clause, the "second carrier") to meet its obligations and exercise its rights under this undertaking.

25.3 If:

- a. the first carrier has not met its obligations under clause 25.2; or
- b. Intellectual Property has been used by any member of the second carrier's Group or any of its Group Personnel in accordance with this undertaking and the terms of any consent or licence obtained by the first carrier under clause 25.2 which have been notified in writing to the second carrier,

then the first carrier indemnifies all members of the second carrier's Group and all the second carrier's Group Personnel from all loss suffered and liability incurred by any of them arising in connection with any alleged infringement by any of them of anyone else's rights in Intellectual Property used in the first carrier's Network.

25.4 If a member of the second carrier's Group becomes aware of any such alleged infringement:

- a. the second carrier must notify the first carrier as soon as is reasonably possible;
- b. with the consent of the second carrier, the first carrier may at its own expense conduct the defence of any claim based on the alleged infringement;
- c. in doing so, the first carrier must comply with the second carrier's reasonable directions about defence or settlement of the claim so far as the claim relates to any member of the second carrier's Group; and
- d. if the second carrier does not consent to the first carrier conducting the defence of any such claim, the second carrier must comply with the first carrier's reasonable directions about defence or settlement of the claim so far as the claim relates to the first carrier.

25.5 Whichever carrier is conducting the defence of any claim, or if both carriers are conducting separate defences of a claim, each carrier must provide, at the other carrier's expense, such reasonable assistance as is requested by the other carrier relating to the other carrier's conduct of its defence.

25.6 The indemnity in clause 25.3 does not apply to the extent that any loss is suffered or liability is incurred by a member of the second carrier's Group directly because:

- a. the first carrier complies with a reasonable direction given by the second carrier under clause 25.4, paragraph c, and the loss would not have been suffered or liability incurred if the first carrier had not complied with that direction; or
- b. the second carrier fails to comply with a reasonable direction given by the first carrier under clause 25.4, paragraph d, and the loss would not have been

suffered or liability incurred if the second carrier had complied with that direction.

25.7 The second carrier indemnifies all members of the first carrier's Group and all the first carrier's Group Personnel from all loss suffered and liability incurred by any of them arising in connection with any alleged breach by any member of the second carrier's Group or any of its Group Personnel of the terms of any consent or licence obtained by the first carrier under clause 25.2 which have been notified in writing to the second carrier.

26 Liability To Each Other

26.1 This clause 26 states all the liabilities each carrier intends to have to the other carrier's Group, limits those liabilities and excludes all other liability either carrier might otherwise have to the other carrier or any other member of the other carrier's Group. In this clause 26, "claimant" means the carrier or other member of the carrier's Group claiming to have suffered loss or incurred liability and "respondent" means the other carrier. With the intent that all members of a carrier's Group will be bound by this clause 26, each carrier agrees to this clause 26 for itself and on behalf of all other members of its Group.

26.2 Subject to this clause 26, the respondent is liable to the claimant:

- a. under clauses 20 and 21 (which relate to the charges, GST and interest payable under this undertaking), without limit;
- b. for the types of liability referred to in clause 30 (which relates to specified equitable remedies, statutory liabilities that neither carrier can exclude, and costs of or awarded in dispute resolution proceedings), without limit;
- c. under clause 11.9 (which relates to equipment on the respondent's premises that is damaged, lost, stolen, or removed without authority) up to a maximum limit of \$1,000,000 to all claimants in the aggregate for any event or series of related events;
- d. under clause 26.3 (which relates to Direct Loss suffered by the claimant arising from a Refusal To Make Services Available by the respondent) up to the maximum limits set out in clause 26.6;
- e. under the indemnities set out in clauses 9.2, 11.8, 12.2, 18.4, 25.3, 25.7 and 26.4, and any other express indemnity in this undertaking, up to the maximum limits set out in clause 26.6.

26.3 Subject to this clause 26, the respondent is liable to the claimant for any Direct Loss suffered arising from a Refusal To Make Services Available by the respondent. In this clause 26:

- a. "Direct Loss" means:
 - i. the revenues directly attributable to a service, during any period of Refusal to Make Services Available that directly affected that service, which the claimant would reasonably be expected to have gained from that service (but not other services or other parts of services) but which it did not in fact gain because of the Refusal to Make Services Available; together with

- ii. any costs and expenses the claimant has reasonably incurred in mitigating the effects of such Refusal To Make Services Available; less
 - iii. the costs and expenses the claimant would reasonably be expected to have incurred (but which it did not in fact incur) in providing the relevant service during that period; and less
 - iv. any revenues which the claimant gained as a result of any mitigation of the effects of Refusal To Make Services Available and which it would not have gained except for the mitigation of the Refusal To Make Services Available;
- b. “Refusal To Make Services Available” means deliberately and in bad faith:
- i. to refuse to make Services available to the claimant in breach of this undertaking; or
 - ii. to engage in conduct (such as delay) which is tantamount to such refusal.

For avoiding doubt, the failure to make Services available due to Network congestion, Network outages or Network faults, or to the suspension or restriction of any Service in accordance with this undertaking, will not constitute a Refusal To Make Services Available.

26.4 Subject to this clause 26, the respondent indemnifies all members of the claimant’s Group and all the claimant’s Group Personnel from all loss suffered and all liability incurred by any of them arising from or in connection with any claim made by any Customer of the respondent, or any End User of the respondent’s services, which relates directly or indirectly to the claimant’s Services.

26.5 If a claim is made by a Customer of the respondent for which the claimant wishes to claim indemnity under clause 26.4:

- a. the claimant must notify the respondent as soon as is reasonably possible;
- b. with the consent of the claimant, the respondent may at its own expense conduct the defence of the Customer’s claim against the claimant;
- c. in doing so, the respondent must comply with the claimant’s reasonable directions about defence or settlement of the claim; and
- d. if the claimant does not consent to the respondent conducting the defence of any such claim, the claimant must comply with the respondent’s reasonable directions about defence or settlement of the claim.

26.6 Subject to this clause 26, the maximum limits of the respondent’s total liability for claims under any one or more of clause 26.3 and the indemnities referred to in clause 26.2 paragraph e are:

- a. \$10,000,000, or an amount equal to 50% of the total revenue in New Zealand during the 12 months prior to the date of the Direct Loss (for claims under clause 26.3) or the date the loss is suffered or liability is incurred (for claims under any of the indemnities referred to in clause 26.2 paragraph e) of the carrier with the lower total revenue in New Zealand during that period, whichever is less, to all members of the claimant’s Group in the aggregate for any event or series of related events; and

- b. \$20,000,000, or an amount equal to 100% of the total revenue in New Zealand during the 12 months prior to the date of the Direct Loss (for claims under clause 26.3) or the date the loss is suffered or liability is incurred (for claims under any of the indemnities referred to in clause 26.2 paragraph e) of the carrier with the lower total revenue in New Zealand during that period, whichever is less, to all members of the claimant's Group in the aggregate in respect of all events during any 12 month period up to the date of the Direct Loss or the date the loss is suffered or liability is incurred.

26.7 In clauses 26.6 and 26.11:

- a. "total revenue" means total revenue (as recorded in the Goods and Services Tax returns filed by the carrier with the Department of Inland Revenue for the applicable 12 months);:
- b. "the date of the Direct Loss", for the purposes of calculating the 12 month period, means the date of commencement of the event constituting a Refusal to Make Services Available and, where there is a series of related events, the date of commencement of the first such event;
- c. "the date the loss is suffered or liability is incurred", for the purposes of calculating the 12 month period, is the date of commencement of the event giving rise to the loss or liability and, where there is a series of related events, the date of commencement of the first such event.

26.8 Except where the liability arises under clause 20 or 21 or is of a type referred to in clause 30, under no circumstances will the respondent be liable to the claimant in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty or otherwise:

- a. for any gratuitous payment the claimant makes to any Customer of either carrier unless the gratuitous payment is part of a settlement of a claim to which both carriers have consented; or
- b. where the aggregate amount of the loss suffered or liability incurred by the claimant's Group in respect of an event or series of related events is less than \$10,000.

26.9 Except where the loss is of a type referred to in clause 30 or is able to be claimed under clause 26.3 or any of the indemnities referred to in clause 26.2 paragraph e, under no circumstances will any member of the respondent's Group, or any of its Group Personnel, be liable to the claimant in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty or otherwise for loss of profits, business or anticipated savings or for any indirect or consequential loss whatever arising from any of them providing, operating, servicing, suspending, restricting or terminating Services, or performing or not performing obligations, or exercising rights, in relation to this undertaking regardless of whether or not any of them has been advised of the likelihood of such losses.

26.10 Except as provided under clause 26.2, under no circumstances will any member of the respondent's Group, or any of its Group Personnel, be liable in contract or in tort (including negligence), in equity, for breach of statutory duty or otherwise to compensate the claimant for any loss or liability arising directly or indirectly from any of the following events where the event occurs in connection with any of them providing, operating, servicing, suspending, restricting or terminating Services, or

performing or not performing obligations, or exercising rights, in relation to this undertaking or any agreement between the carriers:

- a. any act, omission or delay of any member of the respondent's Group, or any of its Group Personnel or Customers;
- b. any failure of the respondent's Services or of anything which is part of or associated with those Services;
- c. any interception, distortion or interruption of any actual or attempted communication using the respondent's Services.

26.11 If for any reason any member of the respondent's Group or any of its Group Personnel is liable to the claimant (except under the clauses referred to in paragraphs a and b of clause 26.2) in contract, in tort (including negligence), in equity, for breach of statutory duty or otherwise, the combined maximum liability of all members of the respondent's Group and all of its Group Personnel to all claimants in the aggregate arising from any of them providing operating, servicing, suspending, restricting or terminating Services, or performing or not performing obligations, or exercising rights, in relation to this undertaking and all agreements between the carriers is:

- a. \$10,000,000, or an amount equal to 50% of the total revenue in New Zealand during the 12 months prior to the date the loss is suffered or liability is incurred of the carrier with the lower total revenue in New Zealand during that period, whichever is less, to all members of the claimant's Group in the aggregate for any event or series of related events; and
- b. \$20,000,000, or an amount equal to 100% of the total revenue in New Zealand during the 12 months prior to the date the loss is suffered or liability is incurred of the carrier with the lower total revenue in New Zealand during that period, whichever is less, to all members of the claimant's Group in the aggregate in respect of all events during any 12 month period up to the date the loss is suffered or liability is incurred.

26.12 Where any person (in this clause 26.12, a "beneficiary") performs or attempts to perform at any time wholly or partly any obligation of a carrier under this undertaking as an agent or contractor of that carrier, the claimant agrees that the beneficiary has the benefit of all rights, exclusions and limitations applying under this undertaking to the first carrier.

26.13 Each carrier acknowledges that it is acquiring Services under this undertaking from the other carrier for the purposes of a business as defined in the Consumer Guarantees Act 1993 and agrees that the provisions of that Act do not apply to Services to be provided under this undertaking, whether or not they are provided.

26.14 Each limitation, exclusion and protection given to any person by any provision of this clause is to be construed as a separate limitation, exclusion or protection applying even if for any reason any other provision is held inapplicable in any circumstances.

26.15 Each carrier must use reasonable endeavours to ensure that a provision is included in each contract with a Customer of that carrier for the provision of its services which excludes (to the maximum extent permitted by law) all liability of all members of the other carrier's Group and of all the other carrier's Group Personnel arising from or in connection with those services. However, neither carrier is obliged to exclude liability under the Consumer Guarantees Act 1993 in its customer contracts where to do so would be an offence.

26.16 This clause 26 is subject to clauses 4.4 to 4.6 where any Services are provided by or to an Access Seeker Group Member.

27 Force Majeure

27.1 A force majeure event is any event or circumstance beyond the reasonable control of the first carrier referred to in clause 27.2 including:

- a. any act of God, nature, terrorism, war or Government, or any civil disturbance;
- b. a labour disruption, the failure of any goods or services provided to the carrier by anyone else, or a delay or failure in the supply of goods or services to the carrier by anyone else, to the extent that the disruption, failure or delay is beyond the carrier's reasonable control;
- c. a significant, material change in the legislative or regulatory environment that has the effect of making the operation of any material part of this undertaking impracticable for the carrier or making it incapable of performing a material part of its obligations under this undertaking.

In the rest of this clause 27, a reference to failure, in any part of speech, includes a delay.

27.2 If a carrier fails, or believes it might fail, to meet an obligation under this undertaking because of a force majeure event, it must:

- a. give notice to the other carrier of the event and the likely effect of the event as soon as is reasonably practicable after it comes aware of the event; and
- b. do all it reasonably can to meet the obligation as soon as is reasonably practicable.

27.3 So long as it meets its obligations under clause 27.2, neither carrier is liable to the other for failing to meet an obligation under this undertaking to the extent that, and for as long as, the failure results directly or indirectly from a force majeure event.

27.4 Clause 27.2, paragraph b, does not require either carrier to change the way it would otherwise deal with any labour disruption if it were not for this clause. Any such labour disruption that the carrier deals with in its usual way will be beyond the carrier's reasonable control for the purposes of clause 27.1.

27.5 If a carrier has failed to meet, or been delayed in meeting, an obligation under this undertaking because of a force majeure event, it must give notice to the other carrier as soon as it is able to meet the obligation again.

27.6 If a carrier fails substantially to meet a material obligation under this undertaking continuously for one month as a result of a force majeure event and anticipates continuing to fail substantially to meet that obligation because of that force majeure event, it must, except where clause 27.7 applies, use reasonable endeavours to negotiate with the other carrier changes to this undertaking to enable it to remain in force despite the ongoing failure to meet that obligation. Neither carrier has the right to refer to arbitration any dispute about whether or not that obligation to use reasonable endeavours to negotiate changes has been met.

27.7 If a carrier fails substantially to meet a material obligation under this undertaking continuously for three months as a result of a force majeure event despite meeting all

its obligations under this clause, either carrier may give one month's notice terminating:

- a. that part of the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under the undertaking affected by the failure to meet the obligation; or
- b. the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking as it relates to any Service or part of a Service affected by the failure to meet the obligation; or
- c. the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking as a whole.

28 No Waiver

28.1 Except where a carrier has signed an express written waiver of a right under this undertaking, no delay or failure to exercise a right under this undertaking prevents the exercise of that or any other right on that or any other occasion. A written waiver applies only to the right and on the occasion specified in it.

29 Dispute Resolution

29.1 For the purposes of the procedures set out in the rest of this clause and unless the carriers expressly agree otherwise in writing (including in this undertaking), a "dispute" is any matter (other than a matter to which clause 21.5 applies) relating to this undertaking (including any question regarding its validity or interpretation, or matters of performance, breach or termination) about which the carriers disagree.

29.2 Either carrier may at any time give notice describing a dispute and invoking the procedures set out in the rest of this clause.

29.3 If notice describing a dispute is given, then:

- a. during a maximum negotiation period of 10 Working Days from the date the notice was given, the carriers must attempt in good faith to negotiate a resolution of the dispute;
- b. at any time during the negotiation period, either carrier may give 3 Working Days notice requiring a meeting, specifying a time for the meeting and designating its representative with authority to resolve the dispute;
- c. the other carrier must give 1 Working Day's notice before the meeting designating its representative with authority to resolve the dispute;
- d. the authorised representatives must meet at the specified time in Auckland and as many times as necessary during the negotiation period to attempt in good faith to resolve the dispute;
- e. at any time during the negotiation period, the carriers may agree to refer the dispute to mediation;
- f. unless otherwise agreed in writing, the then current model mediation agreement issued by LEADR New Zealand Inc must be used and mediation must be completed within 20 Working Days of the carriers agreeing to refer the dispute to mediation; and

- g. unless otherwise agreed in writing, neither carrier may refer a dispute to arbitration before the end of the negotiation period and, if applicable, the mediation period.

29.4 These arbitration procedures apply if a dispute has not been resolved by the end of the negotiation period and, if applicable, the mediation period. Either carrier may then give notice requiring any part of the dispute to be referred to and finally resolved by arbitration and, unless otherwise agreed in writing:

- a. the carriers must endeavour to appoint a single arbitrator. If within 5 Working Days of the notice being given the carriers are unable to agree on that single arbitrator, the arbitrator will be appointed by the President of the New Zealand Law Society;
- b. the arbitrator must adopt a procedure which, in the arbitrator's opinion, is the most simple and expeditious procedure possible in the circumstances;
- c. the arbitrator may determine the dispute without a hearing unless either carrier gives notice requiring one, in which case the arbitrator must treat that as a material consideration in assessing costs;
- d. the arbitrator may only appoint an expert under Article 26 of the First Schedule of the Arbitration Act 1996 (in this clause "the Act") if the carriers agree;
- e. the arbitrator must not adopt inquisitorial processes;
- f. the arbitration must take place in Auckland;
- g. the arbitrator must determine the dispute under New Zealand law;
- h. if the arbitration is an international arbitration as defined in article 1(3) of the First Schedule to the Act, the rules in the Second Schedule to the Act apply except to the extent that those rules are inconsistent with this clause 29.4;
- i. the arbitration must, if reasonably practicable, be completed within 2 months of the arbitrator's appointment and otherwise be conducted in accordance with the Act;
- j. either carrier may appeal to the High Court on any question of law arising from an award.

29.5 Neither carrier may use, other than to attempt to resolve the dispute, any information disclosed by the other in the course of negotiation, mediation or arbitration under the above procedures.

29.6 Neither carrier may disclose any such information to anyone other than an adviser who has entered into a deed undertaking:

- a. not to disclose any of the information, or any analysis of the information, other than to the carriers, a mediator, the arbitrator or a court, except as compelled by law; and
- b. to return all material on which such information is recorded on completion of the adviser's services.

29.7 For avoiding doubt, the carriers agree that neither carrier is prevented by these arbitration procedures from, in respect of any matter whatsoever in connection with this undertaking, exercising any rights under the Telecommunications Act 2001, regardless of whether or not the matter is or has previously been the subject of these arbitration procedures.

30 Other Remedies

30.1 Nothing in this undertaking excludes or limits:

- a. either carrier's right to enforce this undertaking by applying for an injunction in an arbitration, or applying for an interim injunction in any court of competent jurisdiction;
- b. any statutory liability of either carrier, to the extent that it is prohibited by law from excluding or limiting such liability;
- c. either carrier's liability to pay any costs of, or awarded in, any court proceedings, arbitration or mediation;
- d. either carrier's obligations under the LMNP Determination, including any obligation to pay costs that are not covered by clauses 3.1 or 4.1 of the Schedule of *Charges*.

31 Assignment

31.1 In this clause, reference to assignment, in any part of speech, of an interest means the assignment of rights together with the transfer of obligations.

31.2 The Access Seeker may assign all its interest in this undertaking subject to obtaining the prior written consent of Telecom, which consent should not be unreasonably withheld.

31.3 The proposed assignee must properly execute a Deed of Assignment (in a form acceptable to Telecom) of the Deed of Acceptance.

31.4 The Access Seeker is deemed to be assigning all its interest in this undertaking if it is becoming a subsidiary of, or amalgamating (within the meaning of Part XIII of the Companies Act 1993) with, a Network Operator which has an existing agreement with, or has the benefit of an undertaking from, Telecom for providing services similar in nature to the Services.

32 Giving Notices

32.1 Any notice to be given under this undertaking must be in writing except where this undertaking expressly permits it to be given orally.

32.2 To be effective, any of the following kinds of notice must be signed by one of the officers specified in the Schedule of *Contact Details* (or any person acting in that officer's capacity), delivered to the other carrier's address for escalation notices, or given by fax to the fax number for escalation notices, specified in that schedule and marked for the attention of one of the officers of the other carrier specified in that schedule:

- a. a notice of suspension or restriction of any Service by reason of the other carrier's failure to pay charges invoiced to it, or any interest payable under this

undertaking, other than amounts for which the other carrier has given notice of Invoice Error;

- b. a notice of suspension or restriction of any Service by reason of the other carrier not having remedied a material breach of this undertaking;
- c. a notice of intention to terminate the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking by reason of any of the grounds for early termination which require notice of intention to terminate to be given;
- d. a notice of termination of the rights and obligations of Telecom (in respect of the Access Seeker) and of the Access Seeker under this undertaking.

32.3 To be effective, any other notice must be given either by delivery to the address for general notices specified in the Schedule of *Contact Details*, or by fax to the fax number specified in that schedule (or to any replacement or additional address for general notices or fax number notified in writing by the other carrier for that purpose), or by any other electronic means agreed between the carriers in writing.

32.4 A notice given by registered mail is deemed delivered 2 Working Days after it has been posted. A notice given by fax or other agreed electronic means is deemed delivered at the time the transmission is completed at the place of receipt if that is before 5 p.m. on a Working Day or, if not, then on the next Working Day.

33 No Beneficial Interest In Other Carrier's Network Or Services

33.1 Neither a carrier's use of the other carrier's Network or Services, nor anything in this undertaking, gives either carrier any beneficial interest in the other carrier's Network or Services.

34 Exclusions From Scope Of Undertaking

34.1 This undertaking is not intended to confer any benefit on any Customer or End User, or on anyone else, except to the extent that it expressly confers benefits on:

- a. the members of a carrier's Group and its Group Personnel; and
- b. other Network Operators, their subsidiaries and the officers, employees, contractors and agents of other Network Operators and of their subsidiaries.

34.2 Neither carrier has any obligation:

- a. to hand over any Call or Text Message to any other telecommunications network; or
- b. for any Call or Text Message once it is handed over from its own Network to the Network of the other carrier.

34.3 This undertaking does not cover connection to or with, or provision of services to or by, any Network Operator other than the carriers.

35 Relationship

35.1 Nothing in this undertaking is intended to make either carrier a joint venturer, partner, agent or fiduciary of the other except that each carrier may act as the agent of the other to exclude or limit the other carrier's liability to the first carrier's Customers.

36 Governing Law And Jurisdiction

- 36.1 This undertaking is governed by New Zealand law. Both carriers submit to the non-exclusive jurisdiction of the courts of New Zealand for any proceedings arising in connection with this undertaking. Neither carrier may object to New Zealand as the forum for any proceedings.

37 Entire Understanding

- 37.1 This undertaking contains the entire understanding of the carriers about the subject matter expressly referred to in this undertaking to the exclusion of all previous agreements, understandings or commitments between the carriers. Each carrier acknowledges that in entering into this undertaking it has not relied on any representations made by the other about that subject matter, whether oral or written, which are not contained in this undertaking.

SCHEDULE 3 – SERVICES COVERED BY THIS UNDERTAKING

1 Introduction And Definitions

- 1.1 This schedule sets out the Services to be provided by each carrier to the other, or by one carrier to the other, under this undertaking. For avoiding doubt:
- a. a carrier is not obliged to provide any Service in relation to a Call outside New Zealand;
 - b. the obligations to handover calls are limited to calls which originate in the originating carrier's Network;
 - c. the obligations to accept calls are limited to calls which have a Designated Destination in the receiving carrier's Network as it exists from time to time; and
 - d. a carrier is not obliged to provide any Service that relates to calls that are received by the originating carrier from another network operator's network, or forwarded by the terminating carrier to another network operator's network.

2 Services To Be Provided By Each Carrier To The Other

- 2.1 The Services each carrier (in this clause, the "first carrier") must make available and provide to the other are:
- a. accepting any Mobile Call and delivering or offering to deliver that Mobile Call to its Designated Destination subject to, in the case of a Mobile Call to a ported number, the other carrier having provided a Hand-off Code to the first carrier under clause 2.1e;
 - b. providing a connection to the first carrier's switch for each 2Mbit/s interconnect link connected or to be connected to any Handover Point of the other carrier, each such connection to include SS7 associated signalling link termination at the minimum level necessary to support peak traffic volumes;
 - c. making available premises, access, consents from other people, facilities and services under clauses 10 and 11 of the *Standard Terms For Carriers* in relation to each of the other carrier's Handover Points on the first carrier's premises;
 - d. appropriate signalling, in the format required by the Interface Specification, which also complies (where applicable) with clause 7;
 - e. for each Mobile Call to a Mobile Number which is (at the relevant time) ported into the other carrier's Network in accordance with the LMNP Determination, provision to the other carrier of a Hand-off Code;
 - f. providing the Text Message Service in accordance with Appendix A.

3 Services To Be Provided By Telecom To Telco

- 3.1 The Services Telecom must make available and provide to the Access Seeker are:
- a. doing anything Telecom is obliged or agrees to do under this undertaking to establish or modify call routing, billing or other technical or support systems or

arrangements to accommodate the initial provision of any Service to the Access Seeker, other than those expressly described in this schedule;

- b. providing, in accordance with clause 4, an interconnect link with a bandwidth of 2Mbit/s, that link to allow data to be transmitted onto, and be received from the link at 2Mbit/s at each access point, and to allow data to be transmitted between the two access points at 2Mbit/s.

3.2 Telecom must provide, on request, a written quotation of the cost of doing any work of the kind referred to in paragraph a of clause 3.1 which it is obliged or agrees to do under this undertaking.

4 Interconnect Links

4.1 Telecom will provide interconnect links as described in paragraph b of clause 3.1 in accordance with any applicable service description Telecom notifies the Access Seeker of from time to time.

4.2 Telecom will only provide that interconnect link if:

- a. one access point is a Telecom Handover Point and the other access point is an Access Seeker Handover Point;
- b. each of the access points described in the preceding paragraph is located so that it can be connected to Telecom's Network without requiring any extension of the Telecom Network by further cabling, wire or ducting (other than building lead-in cabling) to be installed by Telecom;
- c. that interconnect link is used solely for the purpose of handing over a Call from one carrier to the other and in accordance with the Interface Specification; and
- d. one 64kbit/s circuit on that interconnect link is used as a SS7 signalling link, if Telecom so requires.

5 Acknowledgement Of Exclusion of Certain Services

5.1 Notwithstanding anything in this undertaking, the carriers acknowledge that accepting calls or text messages for delivery to, any Local Number used on a mobile Network is not a Service under this undertaking.

6 No Artificial Manipulation

6.1 Neither carrier will attempt to artificially manipulate traffic in order to make that traffic be (or appear to the other carrier to be) traffic in relation to which:

- a. a different Call definition (whether under this undertaking or any agreement between Telecom and the Access Seeker) applies;
- b. a different charge applies; or
- c. a different Service is required to be provided by either carrier (or either carrier is required to provide a Service when it otherwise would not have been so required, or is not required to provide a Service when it otherwise would have been so required),

or perform any other artificial manipulation of traffic that has the effect, or is likely to have the effect, of making this undertaking apply in a manner in which the other carrier could not have reasonably expected at the Commencement Date.

- 6.2 Neither carrier may modify, mask or substitute any calling party number, called party number or other signalling information in a manner that has, or is likely to have, any of the effects set out in paragraphs a to c of clause 6.1. This clause 6.2 does not limit clause 7.

7 Signalling Standards

- 7.1 Appropriate signalling must, where such features have been requested by the other carrier and are available and can practicably be provided by the first carrier, include:
- a. for any Mobile Call and Text Message directed to the other carrier's Network (including a Call to a Mobile Number which has been ported from the first carrier's Network):
 - i. an accurate or as received calling party number in the signalling format or, where such a calling party number is not available for technical or operational reasons, a substitute or partial calling party number; and
 - ii. a calling line presentation restrict indicator; and
 - iii. a called party number;
 - b. for a Mobile Call received from the other carrier's Network, an answer line signal when the Mobile Call is answered by the called party or by some other means.
- 7.2 Where a carrier delivers a calling party number received from the other carrier, the first carrier will not modify, mask or substitute that calling party number unless reasonably required for technical or operational reasons.

8 VOIP Calls

- 8.1 For the avoidance of doubt, carriers acknowledge that voice over internet protocol calls ("VOIP calls") do not fall within the definition of a "Call" in clause 1.1 of the *Standard Terms For Carriers* because they are not within the audio bandwidth of 300Hz to 3400Hz or contained within a standard ITU-T 64kbit/s channel.

SCHEDULE 4 – CHARGES

1 Introduction And Definitions

1.1 Each carrier must pay the charges specified in this schedule in accordance with the terms set out in this schedule and with clauses 20 and 21 of, and any other applicable terms set out in, the *Standard Terms For Carriers*.

1.2 In this schedule:

Chargeable Access Seeker Text Message has the meaning set out in Appendix A;

Chargeable Mobile Call means a Mobile Call that is handed over:

- a. by the Access Seeker to Telecom and which gives rise to an answer line signal conveyed from Telecom's Network; or
- b. by Telecom to the Access Seeker and which gives rise to an answer line signal conveyed from the Access Seeker's Network; and

Chargeable Telecom Text Message has the meaning set out in Appendix A.

1.3 For the avoidance of doubt, a Text Message handed over from one carrier (in this clause 1.3, the "first carrier") to the other carrier (in this clause 1.3, the "other carrier") shall not be a Chargeable Access Seeker Text Message (or a Chargeable Telecom Text Message, as the context requires):

- a. where that Text Message is handed over to the other carrier during the period of any suspension of the Text Message Service under clause 14.1 of Appendix A or under clause 22 of the *Standard Terms for Carriers* (except where there is a partial suspension); or
- b. if the Text Message Service has been suspended under clause 14.2 of Appendix A or under clause 22 of the *Standard Terms for Carriers* in relation to a subscriber or group of subscribers of the first carrier, where that Text Message is sent from that subscriber or group of subscribers and is handed over to the other carrier during the period of that suspension of the Text Message Service under clause 14.2 of Appendix A or under clause 22 of the *Standard Terms for Carriers* (except where there is a partial suspension); or
- c. if the Text Message Service has been suspended under clause 14.3 of Appendix A or under clause 22 of the *Standard Terms for Carriers* in relation to a particular Mobile Number of the other carrier, where that Text Message is sent to that Mobile Number and is handed over to the other carrier during the period of that suspension of the Text Message Service under clause 14.3 of Appendix A or under clause 22 of the *Standard Terms for Carriers* (except where there is a partial suspension).

2 Call Duration and Whole Cent Rounding

2.1 The duration of a Call is the time between the receipt by the charging carrier of appropriate signals for that Call, calculated using the methods normally used by the charging carrier in charging its own Customers. On request by the other carrier, the

charging carrier must provide a written explanation of the method it uses to calculate the duration of Calls.

- 2.2 Where a per-minute charge is payable for any Mobile Call, that charge is payable for the first minute of the duration of the Call and a per-second charge of 1/60th of the per-minute charge is payable for each second of the duration of the Call after the first minute, except that no per-minute charge is payable for any Call with a duration of less than two seconds. For avoiding doubt, no additional free signalling time applies in addition to this two second period in relation to any Call or type of Call.
- 2.3 A carrier may round its charge to the other carrier for all Calls of a particular type on any invoice either up or down to the nearest whole cent.
- 2.4 Where a carrier rounds its charges under clause 2.3 it must give notice to the other carrier, either on the invoice or separately, of the basis on which the charges have been rounded and of any change in the basis on which the charges have been rounded since its immediately preceding invoice to the other carrier for charges for Calls of that type.

3 Charges Payable To Telecom

- 3.1 The Access Seeker must pay to Telecom the following charges:
- a. for each Chargeable Access Seeker Mobile Call:

Period during which the Call is made	Per minute charge payable
from midnight on the day preceding the Commencement Date to midnight on 31 March 2010	15 cents
from midnight on 31 March 2010 to midnight on 31 December 2010	12 cents
from midnight on 31 December 2010 to midnight on 31 December 2011	10.6 cents
from midnight on 31 December 2011 to midnight on 31 December 2012	10 cents
from midnight on 31 December 2012 to midnight on 31 December 2013	9 cents
from midnight on 31 December 2013 to midnight on 31 December 2014	8 cents
from midnight on 31 December 2014	7 cents

plus, from midnight on 31 December 2010 for each Chargeable Access Seeker Mobile Call, an additional commercially agreed transport charge where the Chargeable Access Seeker Mobile Call is not handed over at the same locality as premises known as a Mobile Switching Centre (or MSC) in Telecom's mobile Network;

- b. where Telecom and the Access Seeker were not providing to each other services similar in nature to the Services under an agreement immediately before the Commencement Date, Telecom's reasonable charges (payable on the Commencement Date), for establishing or modifying call routing, billing and other technical or support systems or arrangements to accommodate the initial provision of Services to the Access Seeker, in addition to any separate charges for particular Services set out elsewhere in this clause;
- c. \$500.00 for the installation of a connection to a Telecom exchange associated with a 2Mbit/s interconnect link ending at any Access Seeker Handover Point, plus \$50.00 for each additional such connection to that exchange installed at the same time;
- d. a connection charge of \$125.00 per month for the provision of each connection to a Telecom exchange associated with a 2Mbit/s interconnect link ending at any Access Seeker Handover Point;
- e. \$Nil for each activation in Telecom's Network of a block of Access Seeker Mobile Numbers requested by the Access Seeker and agreed by Telecom;
- f. Telecom's reasonable charges for making available premises, access, consents from other people, facilities and services under clauses 10 and 11 of the *Standard Terms For Carriers* in relation to each Access Seeker Handover Point on Telecom's premises;
- g. an installation charge of \$2,000 per interconnect link (as described in clause 4 of the Schedule of *Services covered By This Undertaking*) installed, up to a maximum of \$7,000 where the Access Seeker requires four or more such interconnect links to be installed between the same two access points at the same time; and
 - i. if the access points are within five kilometres of each other, \$486 per month, per interconnect link; or
 - ii. if the access points are not within five kilometres of each other, \$486 per month plus an appropriate Zone 1 Megalink transmission charge (as provided in any Wholesale Services Agreement entered into between Telecom and the Access Seeker) per interconnect link;
- h. \$17.50 per line set up charge for the porting of each Telecom Mobile Number to the Access Seeker Network pursuant to the LMNP Determination;
- i. Telecom's reasonable charges (on a time and materials basis) for any additional work requested by the Access Seeker and agreed by Telecom that is not covered by the Schedule of *Services Covered By This Undertaking*;
- j. 3.5 cents for each Chargeable Access Seeker Text Message.

4 Charges Payable To the Access Seeker

4.1 Telecom must pay to the Access Seeker the following charges:

- a. subject to clause 4.2, for each Chargeable Telecom Mobile Call:

Period during which the Call is made	Per minute charge payable
from midnight on the day preceding the Commencement Date to midnight on 31 March 2010	15 cents
from midnight on 31 March 2010 to midnight on 31 December 2010	12 cents
from midnight on 31 December 2010 to midnight on 31 December 2011	10.6 cents
from midnight on 31 December 2011 to midnight on 31 December 2012	10 cents
from midnight on 31 December 2012 to midnight on 31 December 2013	9 cents
from midnight on 31 December 2013 to midnight on 31 December 2014	8 cents
from midnight on 31 December 2014	7 cents

plus, from midnight on 31 December 2010 for each Chargeable Telecom Mobile Call, an additional commercially agreed transport charge where the Chargeable Telecom Mobile Call is not handed over at the same locality as premises known as a Mobile Switching Centre (or MSC) in the Access Seeker's mobile Network;

- b. \$500.00 for the installation of a connection to an Access Seeker exchange associated with a 2Mbit/s interconnect link ending at any Telecom Handover Point, plus \$50.00 for each additional such connection to that exchange installed at the same time;
- c. a connection charge of \$125.00 per month for the provision of each connection to an Access Seeker exchange associated with a 2Mbit/s interconnect link ending at any Telecom Handover Point;
- d. \$Nil for each activation in the Access Seeker's Network of a block of Telecom Mobile Numbers requested by Telecom and agreed by the Access Seeker;
- e. the Access Seeker's reasonable charges for making available premises, access, consents from other people, facilities and services under clauses 10 and 11 of the *Standard Terms For Carriers* in relation to each Telecom Handover Point on the Access Seeker's premises;
- f. \$17.50 per line set-up charge for the porting of each Access Seeker Mobile Number to the Telecom Network pursuant to the LMNP Determination;
- g. 3.5 cents for each Chargeable Telecom Text Message.

4.2 Where a Chargeable Telecom Mobile Call (other than a Call to which paragraph bii of the definition of "Mobile Call" applies) originates at a Telecom Local Number that is allocated to a LICA in a LICA Group where such LICA Group does not contain a Telecom Handover Point, the charge payable by Telecom under clause 4.1a will be reduced by an amount that is equal to 3.5 cents per minute of Call duration.

SCHEDULE 5 – LICAs

1. Introduction

- 1.1 This schedule sets out the LICAs (Local Interconnect Calling Areas) referred to in clause 17 of the *Standard Terms For Carriers*.

1. LICAs

- 2.1 The Major LICAs and the Minor LICAs associated with each Major LICA, are as set out below:

MAJOR LICA	ASSOCIATED MINOR LICAs
Whangarei	Dargaville
	Kaikohe
	Kaitaia
	Kawakawa
	Maungaturoto
Warkworth	
Auckland	Gt Barrier
	Helensville
	Hibiscus Coast
	Pukekohe
Hamilton	Huntly
	Matamata
	Morrinsville
	Otorohanga
	Paeroa
	Tokoroa/Putaruru
	Taumarunui
	Te Kuiti
	Te Awamutu
	Thames
	Waihi
	Whangamata
Rotorua	
Taupo	
Tauranga	
Whakatane	Opotiki
Gisborne	Ruatoria
Napier	Waipukurau

MAJOR LICA	ASSOCIATED MINOR LICAs
	Wairoa
New Plymouth	Hawera
	Stratford
	Opunake
	Mokau
Wanganui	
Palmerston North	Ohakune
	Marton
	Waiouru
	Taihape
	Dannevirke
	Pahiatua
Levin	
Masterton	Featherston
Wellington	Paraparaumu
Nelson	Motueka
	Murchison
	Takaka
Greymouth	Hokitika
	Franz Josef
	Fox Glacier
	Haast
	Westport
Blenheim	
Christchurch	Akaroa
	Amberley
	Ashburton
	Cheviot
	Culverden
	Darfield
	Kaikoura
	Rangiora
	Waitangi
Timaru	Fairlie
	Geraldine
	Waimate
	Mt Cook
Dunedin	Palmerston

MAJOR LICA	ASSOCIATED MINOR LICAs
	Oamaru
	Balclutha
	Lawrence
	Milton
	Twizel
	Kurow
	Ranfurly
	Roxburgh
	Alexandra
Queenstown	Cromwell
	Wanaka
Invercargill	Riverton
	Te Anau
	Winton
	Tokanui
	Edendale
	Gore
	Lumsden
	Otautau

APPENDIX A – TEXT MESSAGE SERVICE

1 Interpretation

1.1 For the purposes of this Appendix A:

Business Subscriber means, in respect of a carrier, a subscriber of that carrier, or of any Relevant Person, that uses that carrier's or that Relevant Person's services principally for the purposes of the subscriber's business, with that carrier determining on reasonable grounds whether a subscriber is a Business Subscriber of that carrier. The carriers themselves shall not be subscribers for these purposes;

Chargeable Access Seeker Text Message means, subject to clause 1.3 of the Schedule of Charges, any Text Message handed over from the Access Seeker to Telecom in accordance with clause 5;

Chargeable Telecom Text Message means, subject to clause 1.3 of the Schedule of Charges, any Text Message handed over from Telecom to the Access Seeker in accordance with clause 5;

Chargeable Text Message means Chargeable Access Seeker Text Message or Chargeable Telecom Text Message, as the context requires;

Consumer Subscriber means, in respect of a carrier, a subscriber of that carrier, or of any Relevant Person, that is not a Business Subscriber, with that carrier determining on reasonable grounds whether a subscriber is a Consumer Subscriber of that carrier. The carriers themselves shall not be subscribers for these purposes;

Multi-Media Message means an asynchronous multimedia message, comprising graphics, animation, pictures, photos, images, audio, video or an alphanumeric sequence of text, or comprising a combination of these;

Originating Carrier means:

- a. the Access Seeker, if the Terminating Carrier is Telecom; and
- b. Telecom, if the Terminating Carrier is the Access Seeker;

Other Message means any text or other message, other than a Text Message or a Call, where that text or other message is made, or is to be made, to a Mobile Number that has been allocated to a mobile phone or handset in the Terminating Carrier's Network;

Promotion means a sales and marketing promotion of goods and/or services;

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

Signalling Link means a 64kbps frame relay link that connects a carrier's Text Message Handover Point with the other carrier's Text Message Handover Point;

Terminating Carrier means:

- a. the Access Seeker, if the Text Message Service is being made available and provided by the Access Seeker to Telecom; and
- b. Telecom, if the Text Message Service is being made available and provided by Telecom to the Access Seeker;

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

- a. where the Access Seeker is the Originating Carrier, 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);
- b. where Telecom is the Originating Carrier, uses the CCITT No. 7 MTP and SCCP with ANSI IS41 MAP protocol and generally conforms to ANSI Technical Specifications IS41, IS637 and IS136 (as amended from time to time) or such other protocol as Telecom may introduce following reasonable consultation with the Access Seeker;
- c. originates in the Originating Carrier's Network and is sent from a Customer of the Originating Carrier (including in the case of a Third Party Reseller of a carrier, any customers of that Third Party Reseller or any customers of a Third Party Reseller's customer) using:
 - i. that Customer's mobile phone or handset (or, in the case of a customer of a Third Party Reseller or a customer of a Third Party Reseller's customer, that End User's mobile phone or handset) that has been allocated a Mobile Number in the Originating Carrier's Network (except where that mobile phone or handset 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 Originating Carrier or on behalf of the Originating Carrier by a contractor or agent of the Originating Carrier (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); and
- d. in each case, is made to a Mobile Number that has been allocated to a mobile phone or handset in the Terminating Carrier's Network,

but does not include, for the avoidance of doubt:

- e. any Call;
- f. any video telephony call; or
- g. any Multi-Media Message;

Text Message Designated Destination means the point in the Terminating Carrier's Network to which the Mobile Number provided in respect of a Text Message handed over to the Terminating Carrier from the Originating Carrier has been allocated by the Terminating Carrier;

Text Message Handover Point or *TMHP* means a Handover Point at which Text Messages are, or are to be, handed over from the Telecom Network to the Access Seeker Network and vice versa; and

Text Message Service means the telecommunication service defined in clause 2.1;

2 Text Message Service

2.1 The Text Message Service comprises both:

- a. the acceptance of all Text Messages handed over from the Originating Carrier's Network to the Terminating Carrier's Network in accordance with clause 5 for which a Mobile Number in the Terminating Carrier's Network is provided; and
- b. delivery or offer of delivery of each such Text Message to the Text Message Designated Destination in respect of that Text Message, without taking any action that it knows (or should reasonably know) is likely to result in any Text Message not having the same content or not being in the same form as the Text Message was received from the Originating Carrier,

where, in the case of all Text Messages handed over to the Terminating Carrier's Network, the Originating Carrier:

- c. has, 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 Mobile Number called and subject to clause 9.5, transmission of an accurate A-number for the originating device with each Text Message handed over; and
- d. has, for each Text Message handed over from the Originating Carrier's Network to the Terminating Carrier's Network that is to a Mobile Number which is (at the relevant time) ported into the Terminating Carrier's Network in accordance with the LMNP Determination, added a Hand-off Code to that Mobile Number as its prefix in accordance with the Network Terms and the SMS Interconnect Specifications.

3 Review

3.1 No earlier than 3 months after the Commencement Date, either carrier may request a review of the provision of the Text Message Service. If either carrier requests a review then the carriers shall meet and discuss any issues that either carrier wishes to raise regarding the Text Message Service. In a review, each carrier (in this clause 3, the *first carrier*) must use reasonable endeavours to provide the other carrier (in this clause 3, the *other carrier*) on request with sufficient information to allow the other carrier to assess:

- a. the number of Text Messages handed over by the other carrier that have been delivered to the mobile phone or handset of the intended recipient of the Text Message (or to the point of handover to a third party network) as a proportion of all Chargeable Text Messages handed over by the other carrier;

- b. the types of web-to-text or similar systems operated by the first carrier or on behalf of the first carrier by contractors or agents of the first carrier, and the first carrier's guidelines for the use of these systems by its Customers; and
- c. any other matter relating to the provision of the Text Message Service agreed to by the carriers.

3.2 For the avoidance of doubt:

- a. this clause 3 does not require the first carrier to disclose to the other carrier any information that is Confidential Customer Information;
- b. any information provided under this clause 3 will be deemed to be Confidential Information, unless that information otherwise falls within any of the categories of information set out in clauses a to d of the definition of Confidential Customer Information in clause 1.1 of the *Standard Terms for Carriers*; and
- c. upon request from the first carrier, following the completion of the review, the other carrier must immediately return all information (and all copies of such information) received from the first carrier during the review.

3.3 Any failure of the carriers to agree on any issue raised in a review under this clause 3 shall not be subject to dispute resolution under clause 29 of the *Standard Terms for Carriers*.

4 Independent audit

4.1 If either carrier (in this clause 4, the *first carrier*) considers that the success rate in the previous audit period (in this clause 4, the *relevant audit period*) is less than 99%, then the first carrier may appoint an independent auditor to determine the success rate in that audit period.

4.2 If the independent auditor determines that:

- a. the success rate in the relevant audit period is less than 99%; and
- b. the other carrier (in this clause 4, the *other carrier*) has not successfully demonstrated that Force Majeure is the reason for the success rate being less than 99%,

then the other carrier will refund to the first carrier within 10 Working Days of the independent auditor's determination an amount (in this clause 4.2, the *adjustment payment*) equivalent to:

- c. the difference between:
 - i. the aggregate payments made by the first carrier to the other carrier under clauses 3.1j or 4.1g of the Schedule of *Charges* (as applicable) for the relevant audit period (the *aggregate payments*); and
 - ii. the aggregate payments multiplied by the success rate determined by the independent auditor;

- d. plus interest on that amount on a daily basis at the Bill Rate (as at the end of the relevant audit period) plus 1 percent per annum for the period from and including the end of the relevant audit period to but excluding the date of payment of the adjustment payment.

Audit procedures

4.3 The following procedures apply to audits under clauses 4.1 and 4.2:

- a. a carrier may initiate only one audit per audit period;
- b. if the first carrier intends to appoint an independent auditor, it must notify the other carrier within 10 Working Days after the end of the previous audit period (in this clause 4.3, the *initial notice*);
- c. on receipt of the initial notice, the other carrier may appoint the same independent auditor to make a determination under clause 4.2 as it applies to the first carrier in the relevant audit period (and the other carrier must follow the procedures set out in clause 4.2);
- d. if the other carrier wishes to appoint the independent auditor under paragraph c, it must notify the first carrier within 5 Working Days after receipt of the initial notice;
- e. the identity of the independent auditor must be acceptable to the carrier being audited (or where the other carrier has given notice under paragraph d, to both carriers), with the consent to the identity of the independent auditor not to be unreasonably withheld;
- f. the carrier initiating the audit will bear the cost of the independent auditor, unless:
 - i. the success rate in the relevant audit period determined by the independent auditor is less than 99%, in which case the carrier being audited will bear the cost of the independent auditor; or
 - ii. the other carrier appoints the independent auditor under paragraph c and the success rate in the relevant audit period for both carriers determined by the independent auditor is 99% or greater, in which case the cost of the independent auditor will be shared equally.

In all other respects, each carrier will bear all costs incurred by it under the audit;

- g. the carrier being audited will provide reasonable assistance to the independent auditor; and
- h. all information obtained by the independent auditor pursuant to clauses 4.1, 4.2 and 4.3 must be kept confidential to the carrier being audited, except that the independent auditor will reveal to both carriers its determinations under clause 4.2.

Relevant definitions

4.4 In this clause 4:

- a. *audit period* means:
 - i. in the case of the first audit period, the period commencing on the Commencement Date and ending on the last day of the fifth month following the Commencement Date; and
 - ii. in the case of each successive audit period, a period ending on the last day of the third month following the end of the previous audit period;
- b. *independent auditor* means an auditor appointed under clause 4.1; and
- c. *success rate* means the number of Text Messages handed over to the other carrier in the relevant audit period that have been delivered to the mobile phone or handset of the intended recipient of the Text Message (or to the point of handover to a third party network) as a proportion of all Chargeable Text Messages handed over to the other carrier in that relevant audit period, expressed as a percentage figure. For these purposes Text Messages to ported numbers that are handed over without a Hand-off Code shall not be counted for the purposes of calculating the number of Text Messages handed over to the other party and the number of all Chargeable Text Messages handed over to the other party.

5 Text Message Handover

- 5.1 A Text Message that is handed over by the Originating Carrier from the Originating Carrier's Network shall be handed over to the Terminating Carrier's Network at a Text Message Handover Point in the Terminating Carrier's premises agreed to by the carriers, having regard, without limitation, to good network design principles and practices.
- 5.2 The Originating Party shall hand over all Text Messages directly over the Signalling Link to the Terminating Party, except where the carriers agree otherwise.

6 Use of the Internet

- 6.1 Subject to clause 6.2, the Originating Carrier shall not use, directly or indirectly, the Internet in:
 - a. transmitting a Text Message; or
 - b. handing over a Text Message to the Terminating Carrier.
- 6.2 Clause 6.1 does not prevent:
 - a. the subscriber of the Originating Carrier using the Internet to record his or her message at the website used by or on behalf of the Originating Carrier for the purposes of a web-to-text or similar system where that message becomes a Text Message; or
 - b. the Internet being used for transmitting that message from that website to the Originating Carrier.

7 Other Messages

- 7.1 Neither carrier will transmit or hand over any Other Messages to the other carrier over the Signalling Link.

8 Text Message content and form

- 8.1 In respect of each Text Message, the Originating Carrier 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 the Terminating Carrier not having the same content or not being in the same form as transmitted by the Customer of the Originating Carrier that sent that Text Message.
- 8.2 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.

9 A-numbers

- 9.1 Subject to clause 19.5 of the *Standard Terms for Carriers*, the Originating Carrier shall transmit an accurate A-number with each Text Message handed over to the Terminating Carrier so that the Terminating Carrier's Customer is able to immediately reply to that Text Message to the Originating Carrier's Customer.
- 9.2 For the avoidance of doubt, the Originating Carrier shall not have complied with clause 9.1 if it transmits a modified A-number to the Terminating Carrier. The carriers agree not to use any type of hidden address feature. An accurate A-number will be provided to the Terminating Carrier's Customer even if a hidden address (or similar) flag is attached to the Text Message by the Originating Carrier.
- 9.3 For the avoidance of doubt, in respect of any Text Message handed over from the Originating Carrier's Network to the Terminating Carrier's Network, there shall be no charge to the Terminating Carrier for the provision by the Originating Carrier of any number information provided by the Originating Carrier, including the A-number or any part of the A-number or any default A-number.
- 9.4 The obligations in clauses 9.1 and 9.2 are subject to any limitations that the Originating Carrier 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 legal requirements.
- 9.5 Where a Text Message is sent using a web-to-text or similar system, the carriers acknowledge that it may not be possible to transmit an A-number in the usual format. In those circumstances, the Originating Carrier shall transmit a number that accurately identifies the subscriber that sent the Text Message and that is unique to that subscriber.

10 Spamming

- 10.1 The carriers acknowledge that the transmission of unsolicited Text Messages from a carrier's Network to a significant number of subscribers on the other carrier's Network where those Text Messages are likely to annoy the recipient subscribers is undesirable.

10.2 Each carrier shall use its reasonable endeavours to discourage the transmission of such unsolicited Text Messages and shall comply with the applicable provisions of the Unsolicited Electronic Messages Act 2007.

11 Web-to-text

Business to employee web-to-text

11.1 A Business Subscriber of a carrier may send a Text Message arising out of the use of a web-to-text or a similar system to subscribers on the other carrier's Network, where those subscribers on the other carrier's 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.

11.2 Each carrier:

- a. shall use its best endeavours to ensure that a provision is included in each contract with its Business Subscribers that restricts those subscribers from sending Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the other carrier's Network in breach of the Unsolicited Electronic Messages Act 2007; and
- b. shall use its reasonable endeavours to enforce that restriction.

Use of web-to-text by Consumer Subscribers

11.3 Each carrier:

- a. shall use its best endeavours to ensure that a provision is included in each contract with its Consumer Subscribers that restricts those subscribers from sending Text Messages from any particular Mobile Number arising out of the use of a web-to-text or a similar system to subscribers on the other carrier's Network in breach of the Unsolicited Electronic Messages Act 2007; and
- b. shall use its reasonable endeavours to enforce that restriction.

11.4 For the avoidance of doubt, nothing in this clause 11 applies to any Text Message that is covered by paragraph c.i of the Text Message definition in clause 1.1.

12 Display limitations

12.1 The carriers acknowledge 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 Commencement Date:

- a. in the case of Customers on the Access Seeker Network, the maximum number of characters is limited to 160; and

- b. in the case of Customers on the Telecom Network, the maximum number of characters is limited to 160.

13 Liability

- 13.1 For the purposes of clause 26.10b of the *Standard Terms for Carriers*, the loss, deletion or modification of any Text Message by the Terminating Carrier or the failure by the Terminating Carrier to process, transmit or store any Text Message shall be a failure of the respondent's Services or failure of anything which is part of, or associated with, the respondent's Service.

14 Suspension and Termination

General suspension

- 14.1 Either carrier (in this clause 14, the *first carrier*) may, without liability, immediately suspend the Text Message Service made available and provided to the other carrier (in this clause 14, the *other carrier*):
 - a. if the first carrier, acting reasonably and in good faith, considers that the other carrier is using or is seeking to use the Text Message 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. the first carrier's Customers' reasonable enjoyment of the mobile phone service; or
 - ii. the first carrier's 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 first carrier's Network, including where the first carrier's services to its Customers are being interfered with, or the first carrier's services are otherwise brought into disrepute, as a consequence of it making available and providing the Text Message Service to the other carrier; or
 - c. if the other carrier has committed a breach of clauses 6 to 9 and, in the case of a breach of any of clauses 8 and 9, the first carrier reasonably considers that the breach relates to more than particular subscribers or groups of subscribers of the other carrier; or
 - d. if the first carrier considers in good faith that the other carrier has committed a breach of clause 11 and the first carrier reasonably considers that the breach relates to more than particular subscribers or groups of subscribers of the other carrier; or
 - e. if Business Subscribers of the other carrier send Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the first carrier's Network that are not officers, employees, contractors or agents of the Business Subscriber (including any customer) and the first carrier reasonably considers that

this action relates to more than particular subscribers or groups of subscribers of the other carrier; or

- f. if subscribers of the other carrier send, or cause to be sent, Text Messages to subscribers of the first carrier's Network in breach of the Unsolicited Electronic Messages Act 2007 and the first carrier reasonably considers that this action relates to more than particular subscribers or groups of subscribers of the other carrier; or
- g. if the other carrier has suspended or terminated the Text Message Service under this clause 14.1, clause 14.10 or any provision of the *Standard Terms for Carriers*.

Suspension in relation to subscribers of the other carrier

14.2 The first carrier may, without liability, immediately suspend the Text Message Service made available and provided to the other carrier in relation to Text Messages that are sent from particular subscribers or groups of subscribers of the other carrier:

- a. if the first carrier acting reasonably and in good faith, considers that the other carrier is using or is seeking to use the Text Message 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. the first carrier's Customers' reasonable enjoyment of the mobile phone service; or
 - ii. the first carrier's 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 first carrier's 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 the first carrier; or
 - v. sends more than 500 Text Messages in any twenty-four hour period that are handed over to the first carrier's Network, provided that the first carrier may change this number of Text Messages for the purposes of this provision in accordance with clauses 14.4 to 14.6; or

- vi. sends, or causes to be sent, Text Messages to a significant number of Customers on the first carrier's Network in breach of the Unsolicited Electronic Messages Act 2007; or
 - vii. sends Other Messages in breach of clause 7.1; or
 - viii. is using a web-to-text or similar system operated by the other carrier or on behalf of the other carrier by a contractor or agent of the other carrier in a manner that does not comply with the other carrier's customer guidelines for the use of that system; or
 - ix. 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 other carrier or on behalf of the other carrier by a contractor or agent of the other carrier; or
 - x. uses the Text Message Service to contact, directly or indirectly, the first carrier's subscribers in breach of the Unsolicited Electronic Messages Act 2007. The first carrier's subscribers include a Third Party Reseller of that carrier and any customers of that Third Party Reseller (and any customers of the Third Party Reseller's customer); or
- c. if the other carrier has, or the other carrier's Customers have, committed a breach of the Unsolicited Electronic Messages Act 2007 or clauses 8 to 10; or
 - d. if the first carrier considers in good faith that the other carrier has committed a breach of clause 11 and the first carrier reasonably considers that the breach relates to the particular subscribers or groups of subscribers of the other carrier; or
 - e. if Business Subscribers of the other carrier send Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the first carrier's Network that are not officers, employees, contractors or agents of the Business Subscriber (including any customer) and the first carrier reasonably considers that this action relates to particular subscribers or groups of subscribers of the other carrier; or
 - f. if any Business Subscriber or Consumer Subscriber of the other carrier sends Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the first carrier's Network in breach of the Unsolicited Electronic Messages Act 2007 and the first carrier reasonably considers that this action relates to particular subscribers or groups of subscribers of the other carrier; or
 - g. based on any other reasonable criteria communicated to the other carrier with 24 hours notice.

Suspension in relation to Mobile Numbers of the first carrier

14.3 The first carrier may, without liability, immediately suspend the Text Message Service made available and provided to the other carrier in relation to Text Messages that are sent to particular Mobile Numbers of the first carrier:

- a. the first carrier, acting reasonably and in good faith, considers that the other carrier is using or is seeking to use the Text Message 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. the first carrier's Customers' reasonable enjoyment of the mobile phone service; or
- ii. the first carrier's 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 500 Text Messages in any twenty-four hour period, provided that the first carrier may change this number of Text Messages for the purposes of this provision in accordance with clause 14.4; or
 - ii. but for action taken for the specific reason of avoiding the application of sub-paragraph i, would have received that many Text Messages;
- c. based on any other reasonable criteria communicated to the other carrier with 24 hours notice.

Changes to daily limit of Text Messages

14.4 The first carrier may change the number of Text Messages for the purposes of clauses 14.2bv and/or 14.3bi to a number not less than "100" where:

- a. the first carrier reasonably believes that the number of Text Messages currently specified in the relevant clause has been exceeded in relation to one or more particular subscribers or groups of subscribers; and
- b. the first carrier has given the other carrier notice of the first carrier's reasonable belief under paragraph a, which notice must identify the relevant subscribers or groups of subscribers; and
- c. after 10 Working Days or more from the date of the first carrier's notice under paragraph b, the number of Text Messages currently specified in the relevant clause is exceeded in relation to one or more of the particular subscribers or groups of subscribers specified in the first carrier's notice under paragraph b; and
- d. after the requirements in paragraphs a to c have been met, the first carrier gives the other carrier a further 30 Working Days' notice of the change to the number of Text Messages, which notice must specify the new number of Text Messages.

14.5 The first carrier may make a change under clause 14.4 on one or more occasions. Where the number of Text Messages currently specified in the relevant clause has been exceeded only in relation to a particular subscriber or group of subscribers, then the change to the number of Text Messages will only apply to the particular subscriber or group of subscribers listed in the first carrier's notice under clause 14.4b. Where the

number of Text Messages currently specified in the relevant clause has been exceeded in relation to more than a particular subscriber or group of subscribers, then the change to the number of Text Messages will apply to all subscribers.

- 14.6 At any time after the first carrier has made a change under clause 14.4, the other carrier may request a good faith discussion regarding reversing that change if the other carrier can demonstrate that the relevant subscribers or groups of subscribers will not exceed the original 500 Text Message limit. The first carrier's change under clause 14.4 will remain in force unless and until the first carrier agrees otherwise in accordance with this clause 14.6.

Withdrawal of service

- 14.7 For the purposes of clause 22.10 of the *Standard Terms for Carriers*:
- a. a carrier's service to its Customers of originating and terminating text messages will be a type of End User service that is part of that carrier's Text Message Service under this Appendix; and
 - b. clause 22.10 of the *Standard Terms for Carriers* will govern the withdrawal of that service.

Reasonable steps

- 14.8 In respect of any suspension of the Text Message Service under clauses 14.1, 14.2 or 14.3, the first carrier will only take steps reasonably required to effect that suspension.

Consultation

- 14.9 No suspension of the Text Message Service under clauses 14.1 or 14.2 shall take place until the first carrier has consulted with the other carrier.

Termination

- 14.10 The first carrier may, without liability:
- a. immediately terminate the Text Message Service made available and provided to the other carrier in the case of the occurrence of any of the events in clause 14.1a, 14.1b, 14.1d and 14.1g;
 - b. immediately terminate the Text Message Service made available and provided to the other carrier in relation to particular subscribers or groups of subscribers of the other carrier in the case of the occurrence of any of the events in clause 14.2; and
 - c. immediately terminate the Text Message Service made available and provided to the other carrier in relation to particular Mobile Numbers of the first carrier in the case of the occurrence of any of the events in clause 14.3.
- 14.11 Clause 23.3 of the *Standard Terms for Carriers* shall also take effect on termination of Text Message Service under clause 14.10.

15 Signalling Links

Provisioning of Signalling Links

- 15.1 Subject to the remainder of this clause 15, each carrier will be responsible for provisioning every alternate Signalling Link that connects each of its TMHPs with each of the TMHPs of the other carrier to enable the delivery of Text Messages between the two carriers' Networks. To illustrate the responsibility of each carrier to provision every alternate Signalling Link, if Telecom provisions the first Signalling Link, the Access Seeker will provision the second Signalling Link, Telecom will provision the third Signalling Link and so on.

Redundancy

- 15.2 The carriers acknowledge that, for each of the relevant TMHPs, an additional Signalling Link will be provisioned for redundancy purposes in case of failure of the Signalling Links that are primarily used for the delivery of Text Messages.

Requirements for new Signalling Links

- 15.3 If either carrier (in this clause 15.3, the *first carrier*) considers that new Signalling Links are required to be provided in accordance with clause 15.1, the first carrier shall notify to the other carrier (in this clause 15.3, the *other carrier*) the number of Signalling Links that it believes are required and the dates by which it believes that those Signalling Links are required.

Changes to TMHPs

- 15.4 The carriers acknowledge that, at the Commencement Date, there are only two TMHPs and these are set out below. If a carrier wishes to decommission or substitute its TMHP or wishes to have an additional TMHP (in this clause 15.4, a *change*), then the agreement of the other carrier will be required. For the avoidance of doubt, any failure to agree under this clause 15.4 may be referred to dispute resolution under clause 29 of *Standard Terms for Carriers*. The terms of any agreement to a change will include who bears the costs associated with the change, the timing of the change and the resources required by each carrier to implement the change.

Access Seeker TMHP	Telecom TMHP
The Access Seeker TMHP is specified in the Deed of Acceptance.	Level 5 Wellington Central Exchange 60-70 Featherston Street Wellington

Responsibility for provisioning

- 15.5 Responsibility for provisioning Signalling Links under this clause 15 includes bearing the costs of installing those Signalling Links and responsibility for maintaining and decommissioning those Signalling Links.

Use of a third party

- 15.6 Where this clause 15 imposes an obligation on either carrier (in this clause 15.6, the *provisioning carrier*) to provision any Signalling Links, the provisioning carrier may provision those Signalling Links itself or it may procure a third party to provision those Signalling Links on its behalf. For the avoidance of doubt, any failure by the third party to provision those Signalling Links in accordance with the requirements set out in clause 15 (other than as a result of any act or omission of the other carrier) shall constitute a breach by the provisioning carrier of its obligations under clause 15.

16 Forecasting

Text Message traffic

- 16.1 The carriers agree to provide to each other forecasts of Text Message traffic at the Commencement Date and every six months thereafter. 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 number of Signalling Links required, including the number of signalling circuits in each Signalling Link requested by the forecasting carrier.

Web-to-text or similar systems

- 16.2 Each carrier (in this clause 16.2, the *first carrier*) agrees to inform the other carrier (in this clause 16.2, the *other carrier*) of the introduction of:
- a. any new types of web-to-text or similar systems that are to be used by a Customer of the first carrier (and in the case of a Third Party Reseller of the first carrier, any customers of that Third Party Reseller and any customers of the Third Party Reseller's customer) and to be operated by the first carrier or on behalf of the first carrier by a contractor or agent of the first carrier that are substantially different to those types of web-to-text or similar systems already operated by the first carrier or on behalf of the first carrier by a contractor or agent of the first carrier or any changes to those existing systems; and
 - b. any new customer guidelines for any web-to-text or similar systems operated by the first carrier or on behalf of the first carrier by a contractor or agent of the first carrier, or any changes to existing customer guidelines for such systems.

Identification of types of Text Messages

- 16.3 From time to time, a carrier (the *first carrier*) may request the other carrier (the *other carrier*) to provide information to the first carrier that would assist the first carrier in identifying particular types of Text Messages that are handed over to the first carrier. The other carrier shall provide this information to the first carrier, unless the other carrier can demonstrate (on reasonable grounds) that it would be impracticable or illegal to provide this information.

17 Miscellaneous matters

Number translation

- 17.1 The Originating Carrier shall not, in relation to any Text Message, translate the number dialled by the calling carrier into any other number to be presented to the Terminating Carrier, 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. the Terminating Carrier notifies the Originating Carrier in writing that it requests the Originating Carrier to undertake this number translation;
 - ii. the Originating Carrier agrees to undertake that number translation; and
 - iii. the carriers have agreed the terms on which that number translation will take place.

APPENDIX B – FORM OF DEED OF ACCEPTANCE

[Date]

DEED POLL by: [Full name of Access Seeker] (XYZ Company)

in favour of:

Telecom New Zealand Limited (Telecom)

BACKGROUND

Telecom has given an undertaking in favour of the Commerce Commission dated [] (the *undertaking*).

BY THIS DEED POLL

- 1 [XYZ Company] requests that Telecom provide the Services covered by the undertaking (as set out in Schedule 3 of Annexure 1) at the prices and in accordance with all of the terms and conditions of the undertaking.
- 2 [XYZ Company] agrees that the undertaking is legally binding on it as an Access Seeker for such Services, and that it will comply with all of the obligations of an Access Seeker set out in the undertaking. Telecom may enforce the terms of the undertaking against [XYZ Company] as an Access Seeker. For the avoidance of doubt, the Access Seeker is not required to make available and provide to Telecom the Services described in clauses 2.1a and 2.1f of Schedule 3 of the undertaking if the Access Seeker does not operate a mobile Network.
- 3 The notice details of [XYZ Company] as an Access Seeker, for the purposes of the undertaking, are as follows:

Address for general notices

Delivery address:

Postal address:

Fax number:

Specified officer(s) for signing escalation notices

Specified officer's title:

Specified officer's title:

Address for escalation notices

Delivery address:

Fax number:

- 4 Where [XYZ Company] is, at the date of this Deed, a party to an agreement with Telecom for the provision of services equivalent or substantially similar to the Services, [XYZ Company] agrees that, when Telecom begins to provide the Services to [XYZ Company] under the terms of the undertaking, Telecom will no

longer be required to provide those services to *[XYZ Company]* under that agreement.

- 5 The Access Seeker's Text Message Handover Point (TMHP) for the purposes of clause 15.4 of the Appendix A of the undertaking is [].
- 6 All capitalised terms used in this Deed will have the same meaning as set out in the undertaking.

Executed as a Deed

Signed by *[XYZ Company]*:

Director

Director