

VODAFONE NEW ZEALAND LIMITED



vodafone

**Telecommunications Act 2001
Undertaking to the Commerce Commission under
Schedule 3A in respect of the Vodafone Mobile
Termination Access Services**

16 December 2009

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

Dated 16 December 2009

Parties

1. **Vodafone New Zealand Limited** of Level 1, 20 Viaduct Harbour Avenue, Auckland (**Vodafone**)

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

Background

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

1 Interpretation

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

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

2 Commencement and term

- 2.1 This Undertaking takes legal effect immediately after it is registered by the Commission under clause 6 of Schedule 3A of the Telecommunications Act 2001 and continues until the earlier of:
 - a) the Expiry Date; and
 - b) the date on which Vodafone provides written notice to the Commission, with a copy to all Access Seekers, to terminate this Undertaking, in the event that Vodafone is designated as an eligible access provider for any or all of the services specified in Schedule 1 (or services substantially similar

to those services) which become designated access services under the Telecommunications Act 2001.

3 Undertaking terms and conditions

3.1 Vodafone undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the Vodafone Mobile Termination Access Services:

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

Signed by
as authorised signatory for Vodafone
New Zealand Limited:



Signature of **Tom Chignell**

In the presence of:



Signature of witness

Name of witness (block letters): **JENNY HUNT**

Place of abode: Auckland

Calling or description: Executive Assistant

Schedule 1
Service Description
Vodafone Mobile Termination Access Services

The **Vodafone Mobile Termination Access Services** comprises:

- (a) the FTM Call Termination Service, as defined in Annex 1 to this Schedule 1;
- (b) the MTM Call Termination Service, as defined in Annex 2 to this Schedule 1; and
- (c) the Text Message Termination Service, as defined in Annex 3 to this Schedule 1.

Annex 1 to Schedule 1
Service Description
FTM Call Termination Service

FTM Call Termination Service

The FTM Call Termination Service comprises:

- (a) acceptance of all FTM Calls handed over from the Access Seeker Network to the Vodafone Network in accordance with the FTM Call Handover Obligation for which a Vodafone Mobile Number is provided, and delivery or offer of delivery of each such FTM Call to the Designated Destination in respect of that FTM Call; and
- (b) transmission of an Answer Line Signal to the Access Seeker Network in respect of FTM Calls handed over from the Access Seeker Network to the Vodafone Network in terms of this Undertaking and answered by the called party or by some other means,

where the Access Seeker has:

- (c) for each FTM Call handed over from the Access Seeker Network to the Vodafone Network, transmitted the line, information or control signals in the Signalling Format that relate to the establishment of that FTM Call, including details in the Signalling Format of the valid Vodafone Mobile Number called; and
- (d) for each FTM Call handed over from the Access Seeker Network to the Vodafone Network that is to a number that has been ported to the Vodafone Network in accordance with the LMNP Determination, added a Hand-off Code to that number as its prefix in accordance with the Network Terms and the LMNP Voice Interconnect Specifications.

Annex 2 to Schedule 1
Service Description
MTM Call Termination Service

MTM Call Termination Service

The MTM Call Termination Service comprises:

- (a) acceptance of all MTM Calls handed over from the Access Seeker Network to the Vodafone Network in accordance with the MTM Call Handover Obligation for which a Vodafone Mobile Number is provided, and delivery or offer of delivery of each such MTM Call to the Designated Destination in respect of that MTM Call; and
- (b) transmission of an Answer Line Signal to the Access Seeker Network in respect of MTM Calls handed over from the Access Seeker Network to the Vodafone Network in accordance with terms of this Undertaking and answered by the called party or by some other means,

where the Access Seeker has:

- (c) for each MTM Call handed over from the Access Seeker Network to the Vodafone Network, transmitted the line, information or control signals in the Signalling Format that relate to the establishment of that MTM Call, including details in the Signalling Format of the valid Vodafone Mobile Number called; and
- (d) for each MTM Call handed over from the Access Seeker Network to the Vodafone Network that is to a number that has been ported to the Vodafone Network in accordance with the LMNP Determination, added a Hand-off Code to that number as its prefix in accordance with the Network Terms and the LMNP Voice Interconnect Specifications.

Annex 3 to Schedule 1
Service Description
Text Message Termination Service

Text Message Termination Service

The Text Message Termination Service comprises both:

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

**Schedule 2
Pricing
Vodafone Mobile Termination Access Services**

1. The price for the Vodafone FTM Call Termination Service, which the Access Seeker agrees to pay, is as follows:

Type of Chargeable FTM Call		Chargeable FTM Call rate
(a)	All Chargeable FTM Calls during the period from the Services Commencement Date to 31 March 2010 (inclusive).	18.45
(b)	All Chargeable FTM Calls during the period from 1 April 2010 to 30 September 2010 (inclusive).	17.71
(c)	All Chargeable FTM Calls during the period from 1 October 2010 to 31 December 2010 (inclusive).	12.00
(d)	All Chargeable FTM Calls during the period from 1 January 2011 to 31 December 2011 (inclusive).	10.00
(e)	All Chargeable FTM Calls during the period from 1 January 2012 to 31 December 2012 (inclusive).	9.00
(f)	All Chargeable FTM Calls during the period from 1 January 2013 to 31 December 2013 (inclusive).	8.00
(g)	All Chargeable FTM Calls during the period from 1 January 2014 to the Expiry Date (inclusive).	6.00

Notes:

1. The Chargeable FTM Call rate is an amount in cents per minute.
2. The Chargeable FTM Call rate applies on a second plus second basis, with, in the case of such Chargeable FTM Calls with a Duration that includes a part of a second, the Duration of those Chargeable FTM Calls being rounded up to the next second.
3. Where a Chargeable FTM Call starts on one date, and ends on a different date, the Chargeable FTM Call rate applicable on the start date shall apply to the entire Call.
4. Vodafone may round its total charges to the Access Seeker for all Chargeable FTM Calls on any invoice either up or down to the nearest whole cent.

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

2. The price for the Vodafone MTM Call Termination Service, which the Access Seeker agrees to pay, is as follows:

Type of Chargeable MTM Call		Chargeable MTM Call rate
(a)	All Chargeable MTM Calls during the period from the Services Commencement Date to 31 March 2010 (inclusive).	18.45
(b)	All Chargeable FTM Calls during the period from 1 April 2010 to 30 September 2010 (inclusive).	17.71
(c)	All Chargeable MTM Calls during the period from 1 October 2010 to 31 December 2010 (inclusive).	12.00
(d)	All Chargeable MTM Calls during the period from 1 January 2011 to 31 December 2011 (inclusive).	10.00
(e)	All Chargeable MTM Calls during the period from 1 January 2012 to 31 December 2012 (inclusive).	9.00
(f)	All Chargeable MTM Calls during the period from 1 January 2013 to 31 December 2013 (inclusive).	8.00
(g)	All Chargeable MTM Calls during the period from 1 January 2014 to the Expiry Date (inclusive).	6.00

Notes:

- The Chargeable MTM Call rate is an amount in cents per minute.
- The Chargeable MTM Call rate applies on a second plus second basis, with, in the case of such Chargeable MTM Calls with a Duration that includes a part of a second, the Duration of those Chargeable MTM Calls being rounded up to the next second.
- Where a Chargeable MTM Call starts on one date, and ends on a different date, the Chargeable MTM Call rate applicable on the start date shall apply to the entire Call.
- Vodafone may round its total charges to the Access Seeker for all Chargeable MTM Calls on any invoice either up or down to the nearest whole cent.

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

3. The price for the Vodafone Text Message Termination Service, which the Access Seeker agrees to pay, is as follows:

Type of Chargeable Text Message Termination Service		Chargeable Text Message Termination Service rate
(a)	All Chargeable Text Messages during the period from the Services Commencement Date to 30 September 2010 (inclusive).	9.5
(b)	All Chargeable Text Messages during the period from 1 October 2010 to the Expiry Date (inclusive).	Hybrid bill and keep
	(i) where there is no imbalance or the imbalance is less than 7%	Nil
	(ii) where the imbalance is no less than 7% and no more than 12%	For Chargeable Text Messages representing the first 7% – Nil For Chargeable Text Messages representing between 7% and 12% – 2.0
	(iii) where the imbalance is more than 12%	For Chargeable Text Messages representing the first 7% – Nil For Chargeable Text Messages representing between 7% and 12% – 2.0 For Chargeable Text Messages representing more than 12% – 4.0

Notes:

1. The Chargeable Text Message Termination Service rate is an amount in cents per Text Message.
2. For the avoidance of doubt, **Clause 17.3 of Subschedule 3A to Schedule 3** of this Undertaking applies to the prices set out in this **Schedule 2**.

3.1 For the purposes of clause 3(b), “hybrid bill and keep” means that the charge for Chargeable Text Messages where there is an imbalance in any month is on the basis set out in:

- (a) clauses 3(b)(i), 3(b)(ii) or 3(b)(iii); and
- (b) clause 3.3.

- 3.2 For the purposes of this clause 3:
- (a) there is an “imbalance” in any month if the number of Chargeable Text Messages handed over by the Access Seeker exceeds the number of equivalent text messages handed over by Vodafone under any agreement between Vodafone and the Access Seeker (**Equivalent Text Messages**) in that month; and
 - (b) the extent of an imbalance in any month will be calculated based on the amount by which the number of Chargeable Text Messages handed over by the Access Seeker exceeds the number of Equivalent Text Messages handed over by Vodafone in that month. For example, if the Access Seeker handed over 55 Chargeable Text Messages and Vodafone handed over 45 Equivalent Text Messages in that month, then the calculation would be (55 minus 45) divided by 45 which equals 22.2%. In this situation, clause 3(b)(iii) would apply. On the other hand, if the Access Seeker handed over 51 Chargeable Text Messages and Vodafone handed over 49 Equivalent Text Messages, then the calculation would be (51 minus 49) divided by 49 which equals 4.1%. In this situation, clause 3(b)(i) would apply.
- 3.3 The parties agree that invoices (if any) under the hybrid bill and keep arrangements will be prepared and issued on a monthly basis. Each invoice will contain separate calculations of whether there is an imbalance in the traffic for that month and details of the amount of the charge payable by the Access Seeker to Vodafone in accordance with clause 3.3(a). To the extent that in any month there is an imbalance, the charges for the excess number of Chargeable Text Messages will be at the rates set out in clause 3(b)(i), 3(b)(ii) or 3(b)(iii). For the purposes of these calculations, the number of Chargeable Text Messages representing a percentage of the excess will be rounded to the nearest whole number. For example, if the Access Seeker handed over 55 Chargeable Text Messages and Vodafone handed over 45 Equivalent Text Messages, the size of the imbalance would be 22.2% and clause 3(b)(iii) would apply. The charge to the Access Seeker for the first 7% of the 22.2% imbalance of Chargeable Text Messages (3 texts) would be nil. Chargeable Text Messages representing between the 7% and 12% of the 22.2% imbalance (2 texts) would be charged to the Access Seeker at 2.0 cents per Chargeable Text Message. Chargeable Text Messages representing the last 10.2% of the 22.2% imbalance (5 texts) would be charged to the Access Seeker at 4.0 cents per Chargeable Text Message.
- 3.4 The parties will endeavour to resolve any disagreement regarding the number of Chargeable Text Messages and Equivalent Text Messages and the charges payable, and otherwise Clause 18 of Subschedule 3A will apply.

Schedule 3
Terms and Conditions
Vodafone Mobile Termination Access Services

SUBSCHEDULE 3A

PART A

INTERPRETATION

1 INTERPRETATION

Defined terms

Unless the context otherwise requires, capitalised terms used in Schedules 1 to 5 that are not otherwise defined in the main body or other Schedules of this Undertaking have the meaning below:

- 1.1 *Access Seeker* has the meaning set out in the main body of this Undertaking.
- 1.2 *Access Seeker Customer* means a person who has a contractual relationship with the Access Seeker for the use by that person of an Access Seeker End User Service (which may include a Third Party Reseller of the Access Seeker for use by customers of that reseller), but does not include the Access Seeker Group, Vodafone or the Vodafone Group.
- 1.3 *Access Seeker End User* means a person who becomes an end user of a retail telecommunications service provided over the Access Seeker Network by the Access Seeker (which may include such retail telecommunications services provided by a Third Party Reseller of the Access Seeker), but does not include the Access Seeker Group, Vodafone or the Vodafone Group.
- 1.4 *Access Seeker End User Service* means the telecommunication service provided by the Access Seeker to Access Seeker Customers.
- 1.5 *Access Seeker Group* means, jointly and severally, the Access Seeker and each and all of its related companies now or from time to time (within the meaning of section 2(3) of the Companies Act 1993 but read as if the expression "company" includes any body corporate whether incorporated in New Zealand or elsewhere) and includes any member of the Access Seeker Group.
- 1.6 *Access Seeker Local Number* means:
 - 1.6.1 any eight digit geographic service number, where the first 4 digits of the national toll code are of the form area code (3, 4, 6, 7 or 9) followed directly by NXX:
 - (a) that may be allocated to the Access Seeker from time to time in accordance with the NAD; or
 - (b) that has been allocated to a Third Party Reseller that is used on the Access Seeker Network, until such time as the Access Seeker notifies Vodafone that any such geographic service numbers allocated to the Third Party Reseller should not be Access Seeker Local Numbers,that is not identified by reference to the Ported Number Register as a number ported out of the Access Seeker Network; and
 - 1.6.2 any Local Number (as that term is defined in the Network Terms) that is identified by reference to the Ported Number Register as a number ported to the Access Seeker Network in accordance with the LMNP Determination.
- 1.7 *Access Seeker Mobile Number* means:
 - 1.7.1 any number in any number ranges for 02X non-geographic service numbers:
 - (a) that may be allocated to the Access Seeker from time to time; or
 - (b) that has been allocated to a Third Party Reseller that is used on the Access Seeker Network, until such time as the Access Seeker notifies Vodafone that any such 02X numbers allocated to the Third Party Reseller should not be Access Seeker Mobile Numbers,that is not identified by reference to the Ported Number Register as a number ported out of the Access Seeker Network; and

- 1.7.2 any Mobile Number (as that term is defined in the Network Terms) that is identified by reference to the Ported Number Register as a number ported to the Access Seeker Network in accordance with the LMNP Determination,
- but excluding any mobile number allocated or ported to the Access Seeker that is used on the Vodafone Network in accordance with an agreement (other than an agreement for the provision of national roaming services) between the parties, and provided that any mobile number of a subscriber of a cellular mobile network outside New Zealand who is roaming on a cellular mobile network in New Zealand operated by the Access Seeker shall be deemed to be an Access Seeker Mobile Number for the purposes of this Undertaking.
- 1.8 *Access Seeker Network* means the telecommunication system comprising all links, radio, microwave and other transmission media and equipment, switches, software and related items utilised by the Access Seeker and any New Zealand member of the Access Seeker Group to access the MTAS made available and provided by Vodafone under this Undertaking, but does not include the Vodafone Network. For the avoidance of doubt, the *Access Seeker Network* does not include any circuits or equipment of the Access Seeker or the Access Seeker Group utilised by Vodafone on the Vodafone side of any Handover Point or TMSDP.
- 1.9 *Answer Line Signal* means the message signal in the Signalling Format which indicates that a Call has been answered.
- 1.10 *Approved Recipient* has the meaning set out in **Clause 20.5**.
- 1.11 *A-number* has the meaning set out in **Subschedule 3D**.
- 1.12 *Bill Rate* means the average 3 month bank bill mid rate as quoted on Reuters Screen page BKBM (known as at the date of this Undertaking as the *FRA* rate) at or about 10.45 am as at the relevant date **PROVIDED THAT** if on or about that time for any reason the Reuters Screen page BKBM is not then available, the last rate quoted on that page before it became unavailable.
- 1.13 *Call* means:
- 1.13.1 an FTM Call; and/or
- 1.13.2 an MTM Call,
- but excludes:
- 1.13.3 a Text Message.
- 1.14 *CCITT/ITU* means the International Telecommunications Union/Telecommunication Standardisation Section (ITU/TS) and its predecessor, the International Telegraph and Telephone Consultative Committee.
- 1.15 *CCITT/ITU Recommendations* means the relevant recommendations of CCITT/ITU.
- 1.16 *Commission* means the Commerce Commission in the course of performing its functions under the Telecommunications Act 2001 and the Commerce Act 1986.
- 1.17 *Confidential Customer Information* means:
- 1.17.1 in the case of Vodafone, all information which Vodafone provides to the Access Seeker on a confidential basis or which, subject to **Clauses 1.17.3 to 1.17.8** (inclusive), the Access Seeker otherwise holds or obtains, concerning any particular Vodafone Customer or any particular person who intends to become a Vodafone Customer, including (without limitation) information of the fact that an Access Seeker Customer intends to subscribe for or has subscribed for a Vodafone End User Service;
- 1.17.2 in the case of the Access Seeker, all information which the Access Seeker provides to Vodafone on a confidential basis or which, subject to **Clauses 1.17.3 to 1.17.8** (inclusive), Vodafone otherwise holds or obtains, concerning any particular Access Seeker Customer or any particular person who intends to become an Access Seeker Customer, including (without limitation) information of the fact that a Vodafone Customer intends to subscribe for or has subscribed for an Access Seeker End User Service;

but does not include any such information:

- 1.17.3 which, in the case of Access Seeker Confidential Customer Information, is obtained from sources independent of the Access Seeker Group, including (for the avoidance of doubt and without limitation) information obtained from the relevant Access Seeker Customer;
 - 1.17.4 which, in the case of Vodafone Confidential Customer Information, is obtained from sources independent of the Vodafone Group, including (for the avoidance of doubt and without limitation) information obtained from the relevant Vodafone Customer;
 - 1.17.5 which in the case of Access Seeker Confidential Customer Information was known to Vodafone at the time of receipt or which is or becomes publicly available otherwise than as a result of a breach of an obligation of confidence;
 - 1.17.6 to the Access Seeker at the time of receipt or which is or becomes publicly available otherwise than as a result of a breach of an obligation of confidence;
 - 1.17.7 which is Confidential Customer Information by virtue of **Clauses 1.17.1 or 1.17.2** but to which **Clause 1.17.3, 1.17.4, 1.17.5 or 1.17.6** subsequently applies;
 - 1.17.8 which is both contained in and generated from, in the case of Vodafone, Vodafone's own billing records related to Vodafone Customers other than billing records relating to MTAS.
- 1.18 *Confidential Information* means all information (including the contents of any Materials and Specified Confidential Information) which is confidential or proprietary:
- 1.18.1 in the case of Vodafone, to Vodafone or any member of the Vodafone Group, including:
 - (a) information which is confidential or proprietary to a third party and used or disclosed pursuant to or in connection with this Undertaking by Vodafone under licence from such third party; and
 - (b) information which is confidential or proprietary to Vodafone or any member of the Vodafone Group which has been obtained by the Access Seeker from any other member of the Access Seeker Group or from any person on behalf of any other member of the Access Seeker Group;
 - 1.18.2 in the case of the Access Seeker, to the Access Seeker or any member of the Access Seeker Group, including:
 - (a) information which is confidential or proprietary to a third party and used or disclosed pursuant to or in connection with this Undertaking by the Access Seeker under licence from such third party; and
 - (b) information which is confidential or proprietary to the Access Seeker or any member of the Access Seeker Group which has been obtained by Vodafone from any other member of the Vodafone Group or from any person on behalf of any other member of the Vodafone Group;
 - 1.18.3 to both parties, including the terms and conditions of any interconnection agreement between Vodafone and the Access Seeker arising out of or in connection with this Undertaking,

but does not include any such information:

- 1.18.4 which is independently developed by the receiving party outside the scope of this Undertaking (other than where that information is developed while providing services to, or otherwise for the benefit of, any other member of the Access Seeker Group, where the Access Seeker is the receiving party, or the Vodafone Group, where Vodafone is the receiving party, where that Group member is in breach of any obligation of confidentiality that it owes to the supplying party in relation to that information);
- 1.18.5 which is other confidential or proprietary information obtained from sources independent of either party (other than, for the avoidance of doubt, information

- obtained from any other member of the Access Seeker Group, in the case of the Access Seeker, or the Vodafone Group, in the case of Vodafone, or from any person on behalf of any other member of that Group);
- 1.18.6 which was publicly available at the time of receipt or the date of this Undertaking;
- 1.18.7 which was known to a party at the time of receipt or becomes publicly available after the execution of this Undertaking otherwise than as a result of a breach of an obligation of confidence;
- 1.18.8 required to be released under any applicable law, the regulations of a stock exchange on which a party's (or their parent company's) shares are listed, or order of any court, governmental agency or body having legal power to compel disclosure;
- 1.18.9 which is Confidential Customer Information or information which would be Confidential Customer Information, but for the operation of **Clauses 1.17.3 to 1.17.8** (inclusive); or
- 1.18.10 which is a press release (or other statement) that is agreed by the parties regarding the entry into this Undertaking.
- 1.19 *Customer* means a Vodafone Customer or an Access Seeker Customer, as the context requires.
- 1.20 *Deed of Acceptance* means a deed, in the form set out in **Schedule 5**, that has been executed by the Access Seeker.
- 1.21 *Direct Loss* has the meaning set out in **Clause 7.2**.
- 1.22 *Due Date* means:
- 1.22.1 where an invoice is received by the Access Seeker no more than 7 calendar days following the last day of the period covered by the invoice, the 20th day of the month following the last day of the period covered by the invoice (for example, where the last day of the period covered by the invoice is 31 July, and the invoice is received by the Access Seeker on 7 August, the Due Date shall be 20 August); or
- 1.22.2 where an invoice is received by the Access Seeker after 7 calendar days following the last day of the period covered by the invoice, the 20th day of the month following the month in which the invoice is received by the Access Seeker (for example, where the last day of the period covered by the invoice is 31 July, and the invoice is received by the Access Seeker on 8 August, the Due Date shall be 20 September),
- in respect of:
- 1.22.3 MTAS provided by Vodafone; or
- 1.22.4 amounts otherwise due to Vodafone under this Undertaking;
- PROVIDED THAT**, if the 20th day of the relevant month is not a Working Day, the Due Date shall be the immediately succeeding Working Day.
- 1.23 *End User* means a Vodafone End User or an Access Seeker End User, as the context requires.
- 1.24 *End User Service* means Vodafone End User Service or Access Seeker End User Service, as the context requires.
- 1.25 *Force Majeure* has the meaning set out in **Clause 5.2**.
- 1.26 *FTM Call* means an FTM Call as defined in **Annex 1 to Schedule 4**.
- 1.27 *Fundamental Obligation* means any obligation under:
- 1.27.1 any clause in this Undertaking that requires payment to be made by the Access Seeker to Vodafone;
- 1.27.2 **Clause 2.22** (relating to credit rating and security);

- 1.27.3 **Clause 13.2** (relating to the connection of equipment to the other party's Network); and
- 1.27.4 **Clause 13.3** (relating to SIM boxes);
- 1.28 *Group* means, except as specifically provided in any clause, the Vodafone Group or the Access Seeker Group, as the context requires.
- 1.29 *Hand-off Code* has the meaning ascribed to that term in the Network Terms.
- 1.30 *Handover Point* means an electrical and physical interface point between the Vodafone Network and the Access Seeker Network at which Calls are, or are to be, handed over from the Access Seeker Network to the Vodafone Network.
- 1.31 *Intellectual Property* includes trade marks, service marks, inventions, patents, designs, copyrights, know how, trade secrets and all rights and interests or licences to use any of them.
- 1.32 *Interconnect Link* means a 2 Mbit 31 channel link (of which one of the channels may be used as a signalling link, that uses the Signalling Format, for calls) which connects to a Handover Point.
- 1.33 *kilobits* or *kbits* means 1,024 bits.
- 1.34 *Liaison Committee* means the operational liaison committee established pursuant to **Clause 8.2**.
- 1.35 *LICA Group* means a Major LICA together with the Minor LICAs identified in **Subschedule 3E** as associated with the Major LICA.
- 1.36 *LMNP Determination* means:
- 1.36.1 Commerce Commission Decision 554 dated 31 August 2005, 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
- 1.36.2 includes the Network Terms, the LMNP Terms and the Operational and Support Manual for LMNP.
- 1.37 *LMNP Terms* means the "Terms for Local and Mobile Number Portability in New Zealand – "LMNP Terms"" issued by the Commerce 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.
- 1.38 *LMNP Voice Interconnect Specifications* means the specifications (agreed by the parties under **Clause 2.3** or determined under **Clause 2.4**) for technical realisation of voice interconnect for number portability services (insofar as it relates to Vodafone Mobile Numbers ported to and from the Access Seeker Network and Access Seeker Local Numbers and Access Seeker Mobile Numbers ported to and from the Vodafone Network), as amended from time to time by agreement of the parties.
- 1.39 *Local Interconnect Calling Area* (or *LICA*) means each of the areas set out in **Subschedule 3E**.
- 1.40 *Local Number* means any Access Seeker Local Number.
- 1.41 *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.
- 1.42 *Major LICA* means a LICA identified as a Major LICA in **Subschedule 3E**.
- 1.43 *Manifest Error* means:
- 1.43.1 any erroneous duplication of the items charged in;
- 1.43.2 any error in a calculation shown on;

- 1.43.3 any error in the total of the amounts shown on;
 - 1.43.4 any erroneous calculation of discounts shown on;
 - 1.43.5 any erroneous calculation of the GST shown on;
 - 1.43.6 any erroneous inclusion of services not to be provided under this Undertaking in;
or
 - 1.43.7 any erroneous application of an incorrect price to a Call or Text Message, where the parties are in agreement on the price which should apply to that Call or Text Message in;
- an invoice rendered by Vodafone, which is apparent on the face of the invoice.
- 1.44 *Materials* means, in relation to either party, each document, instructional material, chart, design drawing and manual which is both:
 - 1.44.1 developed by it or a member of its Group or its or their officers, employees, contractors or agents in connection with this Undertaking; and
 - 1.44.2 provided to the other party by it or a member of its Group for the purposes of this Undertaking.
 - 1.45 *Minor LICA* means a LICA identified as a Minor LICA in **Subschedule 3E**.
 - 1.46 *Mobile Number* means:
 - 1.46.1 any Access Seeker Mobile Number; or
 - 1.46.2 any Vodafone Mobile Number.
 - 1.47 *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.
 - 1.48 *MTAS* means:
 - 1.48.1 the FTM Call Termination Service (as defined in Annex 1 to Schedule 1); and/or
 - 1.48.2 the MTM Call Termination Service (as defined in Annex 2 to Schedule 1); and/or
 - 1.48.3 the Text Message Termination Service (as defined in Annex 3 to Schedule 1),
as the context requires.
 - 1.49 *MTM Call* means an MTM Call as defined in **Annex 2 to Schedule 4**.
 - 1.50 *NAD* means the Number Administration Deed authorised by the Commerce Commission on 17 May 1999, or any agreement (or other arrangement) that the parties agree replaces the Number Administration Deed.
 - 1.51 *Network* means the Vodafone Network or the Access Seeker Network, as the context requires.
 - 1.52 *Network Operator* means a network operator (not being the Access Seeker, Vodafone, or a member of either the Access Seeker Group or the Vodafone Group) which has entered into an interconnection agreement with Vodafone or the Access Seeker for the provision by Vodafone or the Access Seeker of services which are the same or similar to MTAS.
 - 1.53 *Network Terms* means the “Network Terms for Local and Mobile Number Portability in New Zealand – “Network Terms”” issued by the Commerce 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.
 - 1.54 *Operational and Support Manual for LMNP* means the multilateral agreement of that description agreed or to be agreed between the parties and various Network Operators (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.
 - 1.55 *Operational Procedures* means the operational procedures set out in **Subschedule 3B**, as amended from time to time.

- 1.56 *Outage* means the failure by Vodafone to provide, in whole or in part, an MTAS to the Access Seeker in accordance with this Undertaking due to:
- 1.56.1 any health and safety matter which, in Vodafone's reasonable opinion, requires Vodafone not to supply the MTAS; or
 - 1.56.2 any suspension or restriction of the provision of an MTAS by the Access Seeker which, in Vodafone's reasonable opinion, makes the provision, in whole or in part, of the MTAS by Vodafone impossible or impracticable; or
 - 1.56.3 any suspension, restriction, fault or other disruption to the network of a Network Operator which, in Vodafone's reasonable opinion, makes the provision, in whole or in part, of the MTAS by Vodafone impossible or impracticable; or
 - 1.56.4 any technical or operational matter, or any other circumstance which, in Vodafone's reasonable opinion, requires Vodafone not to supply the MTAS to manage or protect its Network, including (without limitation):
 - (a) a change to either party's Network;
 - (b) the testing, repair or maintenance of the Vodafone Network;
 - (c) the testing, repair or maintenance of the Access Seeker Network which gives rise to interference in, or disruption to, the Vodafone Network;
 - (d) any instability, congestion or other operational problems in the Vodafone Network in circumstances where attempts by Vodafone to eliminate the effects by using call management procedures, such as call gapping or selective make-busy, have failed;
 - (e) any emergency situation, such as:
 - (i) immediate danger to the safety of any person;
 - (ii) immediate interference with, disruption to, and/or threat to:
 - (A) either party's Network;
 - (B) the network of a Network Operator;
 - (C) the provision of MTAS and/or End User Service; and/or
 - (D) the provision of network interconnection services and/or end user service by a Network Operator;

including the protection and/or integrity of a network, network interconnection services and/or end user service;

 - (f) any event giving rise to danger, interference, disruption and/or a threat of the kind described in **Clause 1.56.4(e)**.
- 1.57 *party* means Vodafone or the Access Seeker, as the context requires, and *parties* means both Vodafone and the Access Seeker.
- 1.58 *Ported Number Register* has the meaning ascribed to that term in the LMNP Terms.
- 1.59 *Release Signal* means the message in the Signalling Format carried from Vodafone to the Access Seeker or from the Access Seeker to Vodafone that indicates that a Call has ended and that a connection is no longer established in respect of that Call.
- 1.60 *Request Date* means the date of the Deed of Acceptance that has been executed by the Access Seeker.
- 1.61 *Schedules* means the schedules (including the respective Annexes or Subschedules to those schedules) to this Undertaking.
- 1.62 *Services Commencement Date* means the date of commencement of the provision of the MTAS by Vodafone to the Access Seeker under this Undertaking, other than (where the context allows) on a testing or limited trial basis in accordance with this Undertaking, which shall be on a date no earlier than the date that the Access Seeker provides a properly completed and executed Deed of Acceptance in favour of Vodafone.

- 1.63 *Signalling Format* means CCITT No. 7 signalling (or such other signalling as may be agreed by the parties from time to time) in the format described as being available for interconnection in the Technical Specifications.
- 1.64 *SMS Interconnect Specifications* means the specifications (agreed by the parties under **Clause 2.3** or determined under **Clause 2.4**) for technical realisation of SMS interconnect for the cellular number portability service (insofar as it relates to Vodafone Mobile Numbers ported to and from the Access Seeker Network and Access Seeker Mobile Numbers ported to and from the Vodafone Network), as amended from time to time by agreement of the parties.
- 1.65 *Specified Confidential Information* means the Confidential Information described in **Clause 20.4**.
- 1.66 *Subschedules* means the subschedules to this **Schedule 3**.
- 1.67 *Technical Specifications* means the *Technical Specifications* set out in **Subschedule 3C** or such other document as may be agreed between the parties, as amended from time to time.
- 1.68 *Term* means the period from the time that this Undertaking is registered by the Commission under Clause 6 of Schedule 3A of the Telecommunications Act 2001 until, and including, the date that is 5 years from the date of registration.
- 1.69 *Text Message* means a Text Message as defined in **Annex 3 to Schedule 4**.
- 1.70 *Text Message Signalling Link* means a Signalling Link as defined in **Annex 3 to Schedule 4**.
- 1.71 *Third Party Reseller* means:
- 1.71.1 in relation to the Vodafone Network, a third party that Vodafone has notified the Access Seeker is a person that meets the following requirements: that person has numbers which are 021 numbers or 02X mobile service numbers allocated to (and not ported away from) the third party (or in the case where the number is ported to the third party, assigned to the third party) and either:
- (a) assigned to the third party's customers and used by the third party on the Vodafone Network for the purposes of resale by the third party of Vodafone services to those customers; or
 - (b) assigned to Vodafone customers and used by the third party on the Vodafone Network for the purposes of the third party selling Vodafone services to those Vodafone customers as an agent of Vodafone; and
- 1.71.2 in relation to the Access Seeker Network:
- (a) a third party that the Access Seeker has notified Vodafone is a person that meets the following requirements: that person has numbers which are eight digit geographic service numbers, where the first 4 digits of the national toll code are in the form area code (3, 4, 6, 7 or 9) followed directly by NXX, allocated to (and not ported away from) the third party (or, in the case where the number is ported to the third party, assigned 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 Access Seeker services to those customers; or
 - (ii) assigned to Access Seeker customers and used by the third party on the Access Seeker Network for the purposes of the third party selling Access Seeker services to those Access Seeker customers as an agent of the Access Seeker; and
 - (b) a third party that the Access Seeker has notified Vodafone is a person that meets the following requirements: that person has numbers which are 02X mobile service numbers allocated to (and not ported away from) the third party (or, in the case where the number is ported to the third party, assigned 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 Access Seeker services to those customers; or
 - (ii) assigned to Access Seeker customers and used by the third party on the Access Seeker Network for the purposes of the third party selling Access Seeker services to those Access Seeker customers as an agent of the Access Seeker.
- 1.72 *TMSDP* means a Text Message Termination Service Delivery Point as defined under **Annex 3 to Schedule 4**.
- 1.73 *Undertaking* means this undertaking (including the Schedules, Subschedules and Annexes) given by Vodafone to the Commission under Schedule 3A of the Telecommunications Act 2001.
- 1.74 *Vodafone Customer* means a person who has a contractual relationship with Vodafone for the use by that person of a Vodafone End User Service (which may include a Third Party Reseller of Vodafone for use by customers of that reseller), but does not include the Vodafone Group, the Access Seeker or the Access Seeker Group.
- 1.75 *Vodafone End User* means a person who becomes an end user of a retail telecommunications service provided over the Vodafone Network by Vodafone (which may include such retail telecommunications services provided by a Third Party Reseller of Vodafone), but does not include the Vodafone Group, the Access Seeker or the Access Seeker Group.
- 1.76 *Vodafone End User Service* means the telecommunication service provided by Vodafone to Vodafone Customers.
- 1.77 *Vodafone Group* means, jointly and severally, Vodafone and each and all of its related companies now or from time to time (within the meaning of section 2(3) of the Companies Act 1993 but read as if the expression "company" includes any body corporate whether incorporated in New Zealand or elsewhere) and includes any member of the Vodafone Group.
- 1.78 *Vodafone Mobile Number* means:
 - 1.78.1 any number in the 021 number ranges or any other number ranges for 02X non-geographic service numbers:
 - (a) that may be allocated to Vodafone from time to time; or
 - (b) that has been allocated to a Third Party Reseller that is used on the Vodafone Network, until such time as Vodafone notifies the Access Seeker that any such 02X numbers allocated to the Third Party Reseller should not be Vodafone Mobile Numbers,

that is not identified by reference to the Ported Number Register as a number ported out of the Vodafone Network;
 - 1.78.2 any Mobile Number (as that term is defined in the Network Terms) that is identified by reference to the Ported Number Register as a number ported to the Vodafone Network in accordance with the LMNP Determination; and
 - 1.78.3 any mobile number allocated or ported to the Access Seeker that is used on the Vodafone Network in accordance with an agreement (other than an agreement for the provision of national roaming services) between the parties,

provided that any mobile number of a subscriber of a cellular mobile network outside New Zealand who is roaming on a cellular mobile network in New Zealand operated by Vodafone shall be deemed to be a Vodafone Mobile Number for the purposes of this Undertaking.
- 1.79 *Vodafone Network* means the cellular mobile telecommunication system comprising all links, radio, microwave and other transmission media and equipment, switches, software and related items utilised by Vodafone and any New Zealand member of the Vodafone Group to make available and provide MTAS to the Access Seeker, but does not include the Access Seeker Network. For the avoidance of doubt, the *Vodafone Network* does not include an Access Seeker Handover Point, an Access Seeker TMSDP or any circuits or

equipment of Vodafone or the Vodafone Group utilised by the Access Seeker on the Access Seeker side of any Handover Point or TMSDP.

- 1.80 *Working Day* means a day other than a Saturday, a Sunday or a statutory holiday in Auckland.

General Construction

Unless the context otherwise requires, in this Undertaking:

- 1.81 the singular includes the plural and vice versa;
- 1.82 the headings to the clauses, Subschedules and parts of this Undertaking, are included for convenience only and do not constitute a part of this Undertaking;
- 1.83 words denoting natural persons only shall include corporations (whether or not having separate legal personality) and vice versa and words denoting one gender shall include every other gender;
- 1.84 a party to this Undertaking or another agreement includes its successors and its permitted assignees and transferees;
- 1.85 unless a specific Subschedule is specified, all references in the Subschedules to clause numbers shall be read as references to clauses of **Subschedule 3A**;
- 1.86 any reference to any statute or regulation shall be deemed to be a reference to that statute or regulation as it may from time to time be amended, re-enacted or substituted; and
- 1.87 references to monetary amounts are to New Zealand currency.

PART B
SCOPE OF AGREEMENT

2 SCOPE OF AGREEMENT

- 2.1 Subject to the terms and conditions set out in this Undertaking, the parties agree to connect their Networks at trunkside (inter-switch or inter-exchange) level at the Handover Points or TMSDPs for the purposes of Vodafone making available and providing MTAS to the Access Seeker.
- 2.2 This Undertaking sets out the framework for the conduct of the relationship between the parties as network operators whose Networks are connected. Accordingly, this Undertaking is intended to apply only to:
- 2.2.1 the interconnection of the Vodafone Network and the Access Seeker Network;
 - 2.2.2 the making available and provision of MTAS;
 - 2.2.3 the conduct of each party in matters relating to the making available and provision of the MTAS; and
 - 2.2.4 the resolution of certain disagreements or disputes in relation to any matter arising under or in relation to this Undertaking.

MTAS

- 2.3 Before Vodafone is required to make available and provide the MTAS to the Access Seeker under this Undertaking:
- 2.3.1 the parties must agree:
 - (a) the expected Services Commencement Date, which will be a reasonable period of time following the Request Date, but not prior to the date that each of the other matters referred to in this **Clause 2.3** have been satisfied;
 - (b) a separate agreement relating to the per-line set-up charges which the recipient network operator shall pay the donor network operator for porting of each Mobile Number;
 - (c) the LMNP Interconnect Specifications (where the Access Seeker seeks access to the FTM Call Termination Service and/or the MTM Call Termination Service); and
 - (d) the SMS Interconnect Specifications (where the Access Seeker seeks access to the Text Message Termination Service); and
 - 2.3.2 any security required by Vodafone under **Clause 2.22** has been provided to Vodafone's satisfaction.
- 2.4 Where the parties have not been able to agree any matters referred to in **Clause 2.3.1** by 30 days following the Request Date, either party may give written notice referring any matters that have not been agreed to an independent expert in telecommunications technical matters (the Technical Expert) for him or her to determine and, unless otherwise agreed in writing:
- 2.4.1 the parties must endeavour to appoint a single Technical Expert. If, within 5 Working Days of the notice under this **Clause 2.4** being given, the parties are unable to agree on a single Technical Expert, the Technical Expert shall be appointed by the Telecommunications Commissioner;
 - 2.4.2 the Technical Expert must adopt a procedure which, in the Technical Expert's opinion, is the most simple, fair and expeditious procedure possible in the circumstances for determining the disputed issues;
 - 2.4.3 the procedures in **Clause 3** do not apply to any matter to be determined by the Technical Expert under this **Clause 2.4**;
 - 2.4.4 the provisions of the Arbitration Act 1996 will not apply to any procedure under this **Clause 2.4**;
 - 2.4.5 the parties will provide the Technical Expert with any information that the Technical Expert reasonably requires;

- 2.4.6 either party may identify information provided to the Technical Expert as being Confidential Information in which case the Technical Expert shall be a Receiving Party for the purposes of **Clause 20**. The Technical Expert will not include Confidential Information in his or her determination without the written consent of the Supplying Party, and will not make it available to any person other than as provided for in **Clause 20**;
 - 2.4.7 the Technical Expert must use reasonable endeavours to determine the Services Commencement Date and/or agreement for per-line set-up charges and/or LMNP Interconnect Specifications and/or SMS Interconnect Specifications (as the case may be) within 30 Working Days of appointment;
 - 2.4.8 the determination of the Technical Expert will be final and binding on the parties. A copy of the determination will be provided to the parties, including details of the reasons for the determination; and
 - 2.4.9 unless otherwise provided for in this Undertaking, the legal and other expenses of the parties, the fees and expenses of the Technical Expert and any other expenses relating to the matter referred to the Technical Expert under this Undertaking shall be as fixed by the Technical Expert. The Technical Expert shall decide, in his or her determination under this **Clause 2.4**, which of the parties shall bear such fees and expenses, or in what proportions they should be borne by the parties.
- 2.5 Unless expressly provided otherwise in this Undertaking:
- 2.5.1 Vodafone may use any method of making available and providing such service;
 - 2.5.2 each of the Access Seeker Network and the Vodafone Network may include and utilise any type of equipment, apparatus, materials, software, circuits and network architecture; and
 - 2.5.3 each party may connect its Network to any other network.

Precedence

- 2.6 For the purposes of determining any issue of construction arising in respect of this Undertaking, unless this Undertaking expressly provides otherwise:
- 2.6.1 this Undertaking is to be read and construed as a single document; and
 - 2.6.2 the order of precedence in the event of any inconsistency shall be:
 - (a) the main body of this Undertaking;
 - (b) Schedule 5;
 - (c) Schedule 2;
 - (d) this Subschedule 3A;
 - (e) Schedule 1;
 - (f) Schedule 4;
 - (g) Subschedule 3D;
 - (h) Subschedule 3B;
 - (i) Subschedule 3C; and
 - (j) Subschedule 3E.

Contracts (Privity) Act 1982

- 2.7 Each party acknowledges and declares that, subject to **Clause 2.8**:
- 2.7.1 none of its obligations in this Undertaking constitutes a promise conferring benefits on a third party which are intended to create, in respect of the benefit, an obligation enforceable at the suit of a third party; and
 - 2.7.2 accordingly, the provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to its promises in this Undertaking.

- 2.8 **Clause 2.7** does not apply:
- 2.8.1 to each member of each party's Group (including, in the case of Vodafone, the Vodafone Group) and its and their officers, employees, contractors or agents; and
 - 2.8.2 to any other person (including a Network Operator (whose network is connected to and with its Network), its subsidiaries now or from time to time and their respective officers, employees, contractors or agents);

where the benefit of a promise is expressly conferred on it or them under this Undertaking.

Responsibility to convey certain Calls and Text Messages only

- 2.9 Neither party is responsible for the conveyance of any Call or Text Message in the Network of the other party.
- 2.10 Neither party is responsible for the conveyance of any Call or Text Message where a charge for the conveyance of the Call or Text Message by that party is not specified in, or has not been agreed or determined pursuant to, this Undertaking.
- 2.11 For the avoidance of doubt, this Undertaking does not require either party to transit calls or text messages to a third party network.

No deletion or change to presentation information

- 2.12 The Access Seeker shall not delete or change, or permit or procure any other person to delete or change, any presentation information in respect of any call or text message (which shall, for the purposes of this Undertaking, include the A-Number and any CLIP, CLIR and CLIR Flag, as those terms are defined in **Subschedule 3D**) provided to (or otherwise received by) Vodafone with the objective or effect that:
 - 2.12.1 the definition of any call or text message or applicable charges that would not otherwise apply but for the deletion or change, does apply (based on the presentation information provided to (or otherwise received by) Vodafone); and/or
 - 2.12.2 the definition of any call or text message or applicable charges that would otherwise apply but for the deletion or change, does not apply (based on the presentation information provided to (or otherwise received by) Vodafone); and/or
 - 2.12.3 it is no longer possible for the other party to accurately determine whether a call or text message is or is not any particular type of Call or Text Message.

This **Clause 2.12** shall not apply to actions taken by the Access Seeker under **Clause 3.1** of **Subschedule 3D**.

No restriction on use or resale

- 2.13 Except as expressly provided otherwise, nothing in this Undertaking prevents:
 - 2.13.1 the Access Seeker from making available or providing services to any person; or
 - 2.13.2 Vodafone from making available or providing services to any person.

Availability of MTAS

- 2.14 Vodafone shall, from the Services Commencement Date, make available and provide its MTAS to the Access Seeker.
- 2.15 To the extent reasonably practicable, Vodafone shall ensure that the MTAS shall be continuously available and fault-free. The Access Seeker acknowledges that Vodafone does not guarantee that the MTAS will be continuously available or fault-free.

Responsibility for own Network

- 2.16 In relation to the connection of the Access Seeker Network to and with the Vodafone Network, and the making available and provision by Vodafone to the Access Seeker of MTAS:
 - 2.16.1 Vodafone is responsible for providing, installing, testing, making operational, maintaining and repairing the Vodafone Network; and

2.16.2 the Access Seeker is responsible for providing, installing, testing, making operational, maintaining and repairing the Access Seeker Network;

subject always to the terms and conditions of this Undertaking relating to such making available and provision, installation, testing, operational matters, maintenance and repair.

Other Members of the Access Seeker Group or Third Party Resellers

- 2.17 Wherever a party is expressly required under this Undertaking to “procure” that any other member of that party’s Group (or its successors, assigns or transferees) or a Third Party Reseller is to do or perform any act, matter or thing under this Undertaking (a Relevant Obligation), the failure by that Group member or Third Party Reseller to perform that Relevant Obligation at the time and in the manner required by this Undertaking shall, for the purposes of any proceedings (whether founded in contract, in tort, in equity, for breach of statutory duty or otherwise), be deemed to have been done or omitted to have been done by the party and this Undertaking shall be read as though the Relevant Obligation were an obligation of the party.
- 2.18 If the Access Seeker is required to use the services or the property of another member of the Access Seeker Group to perform an obligation under this Undertaking, that shall not relieve the Access Seeker of the responsibility to perform the obligation.
- 2.19 If Vodafone is required to use the services or the property of another member of the Vodafone Group to perform an obligation under this Undertaking, that shall not relieve Vodafone of the responsibility to perform the obligation.

Third Party Resellers

- 2.20 The parties agree that, until Vodafone notifies the Access Seeker otherwise, certain terms which are defined in this Undertaking shall apply as follows in relation to the provision by Vodafone of services to a Third Party Reseller in relation to the Vodafone Network:
- 2.20.1 such Third Party Reseller is a Vodafone Customer;
- 2.20.2 a customer of, or (where the Third Party Reseller is an agent of Vodafone) contracted by, such Third Party Reseller is a Vodafone End User; and
- 2.20.3 a Third Party Reseller number that conforms with the description in **Clause 1.71.1** is a Vodafone Mobile Number.
- 2.21 The parties agree that, until the Access Seeker notifies Vodafone 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:
- 2.21.1 such Third Party Reseller is an Access Seeker Customer;
- 2.21.2 a customer of, or (where the Third Party Reseller is an agent of the Access Seeker) contracted by, such Third Party Reseller is an Access Seeker End User;
- 2.21.3 a Third Party Reseller number that conforms with the description in **Clause 1.71.2(a)** is an Access Seeker Local Number; and
- 2.21.4 a Third Party Reseller number that conforms with the description in **Clause 1.71.2(b)** is an Access Seeker Mobile Number.

Security

- 2.22 Vodafone is not obliged to provide or continue to provide MTAS to the Access Seeker unless, if Vodafone notifies the Access Seeker that it requires the Access Seeker to comply with the remainder of this **Clause 2.22**:
- 2.22.1 Vodafone has received evidence reasonably satisfactory to Vodafone that the Access Seeker 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 2.22**, an *Acceptable Credit Rating*); or
- 2.22.2 Vodafone has received evidence reasonably satisfactory to Vodafone that, for each of the previous two financial years of the Access Seeker, the Access Seeker has reported a profit before taxation of greater than the interconnection charges that Vodafone

reasonably considers would be payable by the Access Seeker under this Undertaking over the following 12 month period; or

2.22.3 Vodafone has been delivered the Access Seeker's choice of an unconditional:

- (a) Bank guarantee from a body registered as a registered bank under section 70 of the Reserve Bank of New Zealand Act 1989 (in this **Clause 2.22**, a *Bank*);
- (b) letter of credit from a Bank;
- (c) guarantee from a member of the Access Seeker Group where Vodafone has received evidence reasonably satisfactory to Vodafone that that member of the Access Seeker Group has an Acceptable Credit Rating; or
- (d) prepayment or other security agreed by Vodafone in writing,

in each case as credit enhancement for the Access Seeker's obligation to pay for MTAS (each a *security*). The security shall be in a form reasonably acceptable to Vodafone. The security shall initially be for an amount that is the greater of:

- (e) \$100,000;
- (f) the aggregate amount that would be chargeable by Vodafone over a three month period under this Undertaking, based on the forecasts provided by the Access Seeker (if any have been provided); and
- (g) the aggregate amount of charges for services provided by Vodafone to the Access Seeker under this Undertaking over the three month period immediately prior to the Services Commencement Date.

The amount of the security may be adjusted every three months after the Services Commencement Date. The adjusted security amount shall be an amount that is the greater of:

- (h) \$100,000;
- (i) the aggregate amount that would be chargeable by Vodafone over a three month period under this Undertaking, based on the forecasts provided by the Access Seeker (if any have been provided); and
- (j) the aggregate amount of charges for services provided by Vodafone to the Access Seeker under this Undertaking over the three month period immediately preceding that adjustment date.

If the adjusted security amount is greater, the Access Seeker shall, 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 Access Seeker may cause the security to be reduced accordingly;

and, in each case,

2.22.4 the Access Seeker at all times maintains either an Acceptable Credit Rating or the levels of profitability that complies with **Clause 2.22.2** or, failing that, a security that complies with **Clause 2.22.3**.

Termination on voice mail platforms

2.23 Where a Call that is handed over by the originating party is delivered to a voice mail platform in the terminating party's network, it shall be regarded for the purposes of the relevant Annex to Schedule 4 as having been delivered to the Designated Destination (as defined in that Annex to Schedule 4) in respect of that Call.

Standard Access Principles

2.24 The standard access principles under clause 5 of schedule 1 to the Telecommunications Act 2001 apply to the MTAS and all of Vodafone's obligations under this Undertaking subject to the limits on the application of those principles under the Telecommunications Act 2001.

PART C
DISPUTE RESOLUTION

3 DISPUTE RESOLUTION

- 3.1 If a dispute (as defined in **Clause 3.2**) arises out of, or in connection with, this Undertaking, the parties shall resolve the dispute in accordance with the procedures set out in this **Clause 3**.
- 3.2 For the purposes of the procedures set out in the rest of this **Clause 3** and unless the parties expressly agree otherwise in writing (including in this Undertaking), a “dispute” is any matter (other than a matter to which **Clause 18.10** applies) arising under or in connection with this Undertaking about which the parties disagree or are unable to agree. For the avoidance of doubt, this **Clause 3** shall apply, without limiting the generality of the foregoing, where a dispute involves issues under the Commerce Act 1986 or the Fair Trading Act 1986. It is agreed that these provisions under this **Clause 3**, or particular parts of these provisions (such as those relating to arbitration), shall not apply where this Undertaking expressly provides that they shall not apply.
- 3.3 Prior to reaching agreement on a dispute, or obtaining an arbitration award under **Clause 3.6**, the parties agree that neither party is prevented by these dispute resolution procedures from exercising any rights under the Telecommunications Act 2001. If there is a dispute about the extent of a party’s rights under the Telecommunications Act 2001, then that dispute may be resolved in accordance with the procedures in that Act, regardless of whether or not the matter is or has previously been the subject of these dispute resolution procedures.
- 3.4 Either party may at any time give notice describing a dispute and invoking the procedures set out in the rest of this **Clause 3**.
- 3.5 If notice under **Clause 3.4** is given, then:
- 3.5.1 during a maximum negotiation period of 20 Working Days from the date the notice was given, the parties shall attempt in good faith to negotiate a resolution of the dispute;
 - 3.5.2 at any time during the negotiation period, either party may give 3 Working Days’ notice requiring a meeting, specifying a time and place in Auckland for the meeting and designating its representative with authority to resolve the dispute;
 - 3.5.3 the other party shall give 1 Working Day’s notice before the meeting designating its representative with authority to resolve the dispute;
 - 3.5.4 the authorised representatives shall meet at the specified time and place and as many times as necessary during the negotiation period to attempt in good faith to resolve the dispute;
 - 3.5.5 at any time during the negotiation period, the parties may agree to refer the dispute to mediation;
 - 3.5.6 a party’s refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal;
 - 3.5.7 unless otherwise agreed in writing, the model mediation agreement issued by LEADR New Zealand Inc, in effect at the time of the referral to mediation, shall be used and mediation shall be completed within 20 Working Days of the parties agreeing to refer the dispute to mediation. Unless otherwise agreed between the parties, the mediator will be nominated by LEADR;
 - 3.5.8 all documents disclosed in the course of any mediation proceedings shall be used for purposes of the mediation only, and shall be returned to the party providing the documents at the termination or conclusion of the proceedings; and
 - 3.5.9 unless otherwise agreed in writing, either party may refer a dispute to arbitration at any time.
- 3.6 If a dispute has not been resolved by the end of the negotiation period, either party may then refer the dispute, or any part of the dispute, to arbitration:
- 3.6.1 the parties agree that all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules;

- 3.6.2 the seat of the arbitration shall be Auckland;
 - 3.6.3 If the tribunal is to consist of three (3) arbitrators, the wishes of each of the parties shall be considered in the selection of the presiding arbitrator;
 - 3.6.4 the parties shall take all reasonable steps to ensure the confidentiality of any arbitration, ancillary proceedings, or an application for interim relief under **Clause 27**;
 - 3.6.5 the arbitral tribunal should provide the full protection of the attorney-client privilege to counsel, including, without limitation, in-house counsel;
 - 3.6.6 all documents disclosed in the course of the proceedings shall be used for purposes of the arbitration only, and shall be returned to the party providing the documents at the conclusion of the proceedings; and
 - 3.6.7 a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal.
- 3.7 Neither party may use any information disclosed by the other in the course of negotiation, mediation or arbitration under the above procedures for any purpose other than the limited purpose for which it was disclosed. Any such information remains the property of the party supplying it and remains confidential to that party. Disclosure in the course of negotiation, mediation or arbitration under the above procedures is not a waiver of confidentiality.
- 3.8 Neither party may disclose any such information to anyone other than an adviser or an expert witness who has entered into a deed undertaking:
- 3.8.1 not to disclose any of the information, or any analysis of the information, other than for the purposes of resolving the dispute or the negotiation, mediation or arbitration;
 - 3.8.2 not to disclose any of the information, or any analysis of the information, other than to the other party, a mediator, the arbitrator or a court, except as compelled by law; and
 - 3.8.3 to return all material on which such information is recorded on completion of the adviser's or expert witness's services.

PART D

SUSPENSION, FORCE MAJEURE, TERMINATION AND LIABILITY

4 SUSPENSION OR RESTRICTION OF MTAS

- 4.1 Vodafone may immediately suspend (in whole or in part) or restrict the provision of the MTAS by serving notice on the Access Seeker if:
- 4.1.1 under **Clauses 6.1.1, 6.1.2, 6.1.3 or 6.1.7**, Vodafone may terminate the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking (without prejudice to any such right of termination); or
 - 4.1.2 a relevant Annex to Schedule 4 or a relevant Operational Procedure or Technical Specification provides for suspension or restriction of that MTAS, in which case Vodafone may only suspend in accordance with and to the extent permitted by the relevant Annex, procedure or specification.

Such notice shall be served under **Clause 23.2** and shall be identified as a notice of suspension or restriction (as may be the case).

- 4.2 In suspending or restricting the provision of the MTAS under **Clause 4.1.1**:

- 4.2.1 Vodafone shall only take steps reasonably required to effect that suspension or restriction; and
- 4.2.2 the right to restrict the provision of the MTAS includes the right to:
 - (a) lower the capacity for the delivery of; and
 - (b) block,any Calls and Text Messages.

- 4.3 If Vodafone suspends or restricts the MTAS under **Clause 4.1.2** or **Clause 4.4**, the suspension or restriction of the MTAS shall be to the minimum extent practicable to limit any disruption to the Access Seeker and/or the Access Seeker's End User Services caused by that suspension or restriction.

Outages

- 4.4 For the avoidance of doubt, in the event of an Outage, Vodafone may suspend or restrict an MTAS in whole or in part, and the suspension or restriction shall be governed by the relevant provisions of this Undertaking, the Operational Procedures and the Technical Specifications concerning Outages.

5 FORCE MAJEURE

- 5.1 Notwithstanding any other provisions of this Undertaking, but subject to the other provisions of this **Clause 5**, if Vodafone fails to observe or perform any of its obligations under this Undertaking, and such failure shall have been occasioned by reason of Force Majeure, such failure shall be deemed not to be a breach of such obligation.
- 5.2 For these purposes, Force Majeure means any:
- 5.2.1 act of God;
 - 5.2.2 confiscation or expropriation;
 - 5.2.3 embargo;
 - 5.2.4 public mains electrical supply failure;
 - 5.2.5 fire, flood or storm;
 - 5.2.6 explosion or nuclear accident;
 - 5.2.7 sabotage, revolution, riot, terrorism, act of war (whether declared or not) or warlike operations;
 - 5.2.8 requirement or restriction of governmental authorities (not including any determination of the Commission under the Telecommunications Act 2001);

- 5.2.9 earthquake, land slide or volcanic eruption;
- 5.2.10 epidemic or quarantine restriction;
- 5.2.11 other event similar to those described in **Clauses 5.2.2 to 5.2.7** (inclusive), **5.2.9** and **5.2.10**;
- 5.2.12 industrial action such as strike, lockout, work stoppage or other labour hindrance; or
- 5.2.13 failure of a third party (other than a member of the Vodafone Group) to provide goods or services,

beyond the reasonable control of Vodafone.

- 5.3 Vodafone shall not be entitled to the benefit of the provisions of **Clause 5.1** under any or all of the following circumstances:

- 5.3.1 to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, the contributory negligence of Vodafone;
- 5.3.2 to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, a failure or omission of Vodafone;
- 5.3.3 to the extent that Vodafone has failed (to the extent practicable) to mitigate or remedy the event relied upon, and to resume the observance or performance of the particular obligation, with reasonable dispatch;
- 5.3.4 if the failure was caused by lack of funds of Vodafone or its Group;
- 5.3.5 unless, as soon as practically possible after the happening of the event relied upon or as soon as possible after determining that the event was in the nature of Force Majeure and would affect the ability of Vodafone to observe or perform the particular obligation, Vodafone shall have served on the Access Seeker notice to the effect that it is unable by reason of Force Majeure (the nature of which shall be specified in the notice) to observe or perform the particular obligation (the nature of which shall also be specified in the notice); or
- 5.3.6 if, and to the extent that, the particular obligation may be observed or performed notwithstanding the Force Majeure.

- 5.4 Vodafone shall:

- 5.4.1 immediately use all reasonable endeavours to remedy the Force Majeure;
- 5.4.2 serve notice to the Access Seeker of the event and the likely effect of the event as soon as reasonably practicable after it becomes aware of the event; and
- 5.4.3 serve notice on the Access Seeker, as soon as possible after the Force Majeure shall have been remedied, to the effect that the same has been remedied and that Vodafone has resumed, or is then in a position to resume, the observance or performance of the particular obligation.

- 5.5 Notwithstanding anything to the contrary in this **Clause 5** expressed or implied:

- 5.5.1 the settlement of industrial actions such as strikes, lockouts, work stoppages and other labour hindrances shall be entirely within the discretion of Vodafone;
- 5.5.2 Vodafone may make settlement at such time and on such terms and conditions as it may deem to be advisable; and
- 5.5.3 no delay in making such settlement shall deprive Vodafone of the benefit of **Clause 5.1**.

- 5.6 Vodafone shall have the right to terminate the provision of one or more MTAS to the Access Seeker to the extent only that it is affected by reason of Force Majeure, upon 40 Working Days' prior notice served on the Access Seeker if Vodafone under **Clause 5.1** has been unable to substantially observe or perform a material obligation under this Undertaking by reason of Force Majeure (as claimed by Vodafone) and such inability has continued for a continuous period of 130 Working Days PROVIDED THAT:

- 5.6.1 Vodafone shall not be entitled to give such termination notice unless and until it has negotiated or used reasonable endeavours to negotiate in good faith with the Access

Seeker to remedy the Force Majeure relied upon or to amend the terms relating to the provision of the MTAS to enable this Undertaking to remain in full force and effect, notwithstanding such inability to observe or perform; and

- 5.6.2 unless otherwise agreed in writing, if the provision of one or more MTAS is terminated, or is partially terminated such that it is impracticable for the Undertaking to continue, the provision of all MTAS under this Undertaking shall terminate on the expiry of the 40 Working Days' notice.

6 EARLY TERMINATION

- 6.1 The rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking, and under any other undertaking for interconnection services between Vodafone and the Access Seeker, may be terminated immediately by a party (the *terminating party*) serving notice on the other party (the *other party*) if:
- 6.1.1 the other party has committed a breach of a Fundamental Obligation under this Undertaking or any other undertaking for interconnection services between Vodafone and the Access Seeker, where:
- (a) the terminating party has given a notice to the other party specifying the breach and requiring remedy of that breach; and
 - (b) the other party has not remedied that breach within 20 Working Days of the date of receipt of the relevant notice;
- 6.1.2 the other party has committed (in the aggregate) three substantially similar breaches of the same Fundamental Obligation under (together) this Undertaking and any other undertakings for interconnection services between Vodafone and the Access Seeker (where each breach may be of the same undertaking or of different undertakings) in any 12 month period, where:
- (a) in the case of the first two breaches, the terminating party has given a notice to the other party specifying the breach and requiring remedy of that breach; and
 - (b) in the case of the first two breaches, the other party has remedied each such breach within 20 Working Days of the date of receipt of the relevant notice;
- 6.1.3 the other party has committed (in the aggregate) two material breaches (other than a breach of a Fundamental Obligation) under (together) this Undertaking and any other undertakings for interconnection services between Vodafone and the Access Seeker (where each breach may be of the same undertaking or of different undertakings and where each breach may be of the same obligation or of different obligations and where a series of breaches, regardless of whether some or all of these breaches were of a non-material nature, taken together may be reasonably considered material in nature) in any 12 month period where, in the case of each breach (or series of breaches, as the case may be):
- (a) the terminating party has given a notice to the other party specifying the breach and requiring remedy of that breach;
 - (b) the other party has not remedied that breach within 40 Working Days of the date of receipt of the relevant notice; and
 - (c) the terminating party is not in dispute (excluding any vexatious dispute) with the other party in relation to that breach;
- 6.1.4 distress, attachment or execution is levied or enforced on or against a substantial part of the assets of the other party and is not discharged or stayed within 60 Working Days;
- 6.1.5 the other party:
- (a) is put into (and remains in) liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the terminating party, such approval not to be unreasonably withheld);
 - (a) is wound up or dissolved in circumstances where it is not reconstituted;
 - (b) enters into (and remains in) a scheme of arrangement with its creditors or any class of creditors;

- (c) is placed (and remains) under official management or made (and remains) subject to statutory management under the Corporations (Investigation and Management) Act 1989; or
 - (d) suffers the appointment of a receiver or manager of a substantial part of its assets and the receiver or manager remains in office for 60 Working Days;
- 6.1.6 the other party is Vodafone, and Vodafone is required by law and has failed within the time specified by law to obtain and maintain a licence, permit or other form of official authorisation which is required by Vodafone in order for it to provide lawfully the MTAS and/or End User Services, or Vodafone fails to maintain such licence, permit or other official authorisation, and in either case the failure continues unremedied; or
- 6.1.7 the terminating party has the right to terminate any other undertaking for interconnection services between Vodafone and the Access Seeker.

Such notice shall be served under **Clause 23.2** and shall be identified as a notice of termination.

- 6.2 Where Vodafone is designated as an eligible access provider for an MTAS provided under this Undertaking (or a service substantially similar to that MTAS) which becomes a designated access service under the Telecommunications Act 2001, either party may, by serving notice on the other party, immediately terminate the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking.

Such notice shall be served under **Clause 23.2** and shall be identified as a notice of termination.

- 6.3 The Access Seeker's rights under this Undertaking cannot be duplicated by entering into a subsequent Deed of Acceptance. If Vodafone becomes entitled to:

- 6.3.1 suspend or restrict any of the MTAS; or
- 6.3.2 terminate the rights and obligations of Vodafone (in respect of the Access Seeker) and of the Access Seeker under this Undertaking,

any further supply of the MTAS is limited to the existing rights and obligations of the Access Seeker and Vodafone under this Undertaking at that time.

Disconnection and Removals

- 6.4 On termination or expiry of the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking, either party may:

- 6.4.1 carry out disconnection works and removal of its equipment from the other party's premises; and
- 6.4.2 after giving the other party reasonable notice and reasonable opportunity to remove its equipment, disconnect and remove the other party's equipment from its premises.

In the event of termination under **Clause 6.1**, the party that did not terminate the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking shall pay to the terminating party:

- 6.4.3 the terminating party's charges for and in respect of such disconnection and removal of equipment under **Clause 6.4.1**; and
- 6.4.4 the terminating party's reasonable costs of such disconnection and removal of equipment under **Clause 6.4.2**.

No Waiver

- 6.5 Subject to **Clause 6.6**, termination or expiry of the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking shall not operate as a waiver of any breach by a party of any of the provisions of this Undertaking, and shall be without prejudice to any:

- 6.5.1 rights, liabilities or obligations of either party which have accrued up to the date of such termination or expiry; and
- 6.5.2 of **Clauses 2.2, 2.8, 3, 6, 7, 18, 19, 20, 22, 23, 26, 27, 28** or **29** of this **Subschedule 3A**, or **Clause 5** of **Subschedule 3B**, which shall continue in full force and effect.

- 6.6 Notwithstanding the termination or expiry of the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking, any sums payable by either party to the other pursuant to this Undertaking at termination shall be paid in the same manner as if the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking had not terminated or expired.

Return of Specified Confidential Information

- 6.7 On termination or expiry of the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking, subject to compliance with the Privacy Act 1993, each party shall return to the other all Specified Confidential Information which the other has provided to that party.

Intellectual Property Licences

- 6.8 On termination or expiry of the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking, all Intellectual Property licences granted pursuant to **Clause 19.1** by Vodafone (in respect of the Access Seeker) and the Access Seeker shall be cancelled.

7 LIABILITY

- 7.1 Except as provided in **Clauses 7.2, 7.6** and **27.1**, under no circumstances shall either party (the *first party*) or its Group, or any of their respective officers, employees, contractors or agents, be liable in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise to compensate the other party (the *second party*) for any loss, injury, liability, damage, costs or expense arising directly or indirectly from any of the following, in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its Group, or any of their respective officers, employees, contractors or agents, under or in relation to this Undertaking:
- 7.1.1 any act, omission or delay of the first party or its Group, or any of their respective officers, employees, contractors or agents;
 - 7.1.2 any act, omission or delay in respect of the making available, continued availability, provision, use or termination of the MTAS;
 - 7.1.3 the failure by the first party or its Group, or any of their respective officers, employees, contractors or agents to connect the first party's Network to the second party's Network or to make available, continue to make available or provide the MTAS;
 - 7.1.4 any failure of the MTAS;
 - 7.1.5 any failure of anything which is part of, or associated with, the MTAS;
 - 7.1.6 any interception, distortion or interruption of any communication or attempted communication (including but not limited to any Call or Text Message) using the MTAS; or
 - 7.1.7 any act or omission of any Customer of the first party or its Group and any other third party for whom the first party or its Group is not responsible.
- 7.2 Notwithstanding **Clause 7.1**, but subject to all other provisions of this **Clause 7**, the first party does not by this Undertaking exclude liability:
- 7.2.1 for Direct Loss suffered by the second party as a result of the wilful misconduct of the first party or its Group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first party;
 - 7.2.2 for Direct Loss suffered by the second party as a result of the gross negligence of the first party or its Group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first party, (for which purpose, gross negligence is any conscious or voluntary act or omission, which results in serious injury or damage by a person who was aware of a clear and present threat or danger that such injury or damage would occur);
 - 7.2.3 for physical damage to the second party's property occurring in the course of the provision, operation, servicing or termination of the MTAS that is attributable, directly or

indirectly and in whole or in part, to the negligence of the first party or its Group, or any of their respective officers, employees, contractors or agents in each case in the course of their engagement by the first party;

7.2.4 to indemnify the second party under **Clauses 7.12, 7.14, 11.8 and 20.17**, or any other express indemnity, from time to time, under this Undertaking; or

7.2.5 under **Clause 5.5.3 of Subschedule 3B**;

but only to the extent that the liability arises in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its Group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first party, under or in relation to this Undertaking.

For the purposes of **Clauses 7.2.1 and 7.2.2** *Direct Loss* means loss that flows directly, naturally and, in the ordinary course of events, from the relevant act or omission:

For the avoidance of doubt, **Clause 7.2** is capable of application in the event of an Outage, or suspension or restriction of an MTAS under **Clause 4.1**.

7.3 In any event, under no circumstances (except to the extent necessary to give effect to **Clauses 7.2.1 and 7.2.2**) shall the first party or its Group, or any of their respective officers, employees, contractors or agents be liable to the second party 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 in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its Group, or any of their respective officers, employees, contractors or agents, under or in relation to this Undertaking, notwithstanding that the first party or its Group, or any of their respective officers, employees, contractors or agents have been advised of the likelihood of such losses.

7.4 If for any reason the first party, its Group and/or any of their respective officers, employees, contractors and/or agents is or are liable to the second party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise, the combined maximum liability of the first party, its Group and their respective officers, employees, contractors and agents to the second party arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its Group, and/or any of their respective officers, employees, contractors or agents under or in relation to this Undertaking shall be:

7.4.1 in respect of any one event or related series of events, the higher of:

- (a) \$1,000,000; and
- (b) the total amount of charges paid or payable for MTAS provided by Vodafone to the Access Seeker over the 12 month period immediately prior to the event (or the first event) that gave rise to that liability; and

7.4.2 in any 12 month period, irrespective of the number of events, the higher of:

- (a) \$1,000,000; and
- (b) the total amount of charges paid or payable for MTAS provided by Vodafone to the Access Seeker over that 12 month period.

7.5 Each limitation or exclusion of this **Clause 7** and each protection given to the first party or its Group, or any of their respective officers, employees, contractors or agents by any provision of this **Clause 7** is to be construed as a separate limitation, exclusion or protection applying and surviving even if for any reason any of the other provisions is held inapplicable in any circumstances.

7.6 Nothing in this **Clause 7** shall exclude or limit the liability of the first party to pay when due the charges or interest payable to the second party under this Undertaking.

7.7 Where any person observes or performs from time to time in whole or in part, as agent or contractor of the first party, any of the obligations of the first party under this Undertaking (any such other person in this **Clause 7.7** called the Other Person), the following provisions shall apply:

7.7.1 the observance or performance of any of the first party's obligations by the Other Person shall be consideration for the agreement of the second party that the Other Person shall

have the benefit of the rights, exemptions, exclusions, limitations, defences and immunities of whatsoever nature contained in this Undertaking which are applicable to the first party under this Undertaking;

7.7.2 the first party is or shall be deemed to be contracting for the benefit of the rights, exemptions, exclusions, limitations, defences and immunities referred to in **Clause 7.7.1** for the Other Person as agent for the Other Person; and

7.7.3 the Other Person shall be entitled to the benefit of those rights, exemptions, exclusions, limitations, defences and immunities, and the second party acknowledges that this promise is intended to create an obligation enforceable at the suit of the Other Person, whether by way of defence or otherwise.

7.8 In no event shall the first party or its Group, or any of their respective officers, employees, contractors or agents be liable to the second party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise in respect of any event or related series of events where the combined amount of the loss incurred by the second party arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its Group, and/or any of their respective officers, employees, contractors or agents under or in relation to this Undertaking in respect of that event or related series of events is less than \$10,000.

7.9 The second party shall use its reasonable endeavours to ensure that a provision shall (to the extent that it is not now included) be included in:

7.9.1 each contract with a Customer of the second party for the provision of its End User Service which excludes and limits (to the maximum extent permitted by law) any liability of:

(a) the first party, its Group, and their respective officers, employees, contractors and agents; and

(b) any Network Operator (whose network is connected to and with the first party's Network), its subsidiaries now and from time to time and their respective officers, employees, contractors and agents;

arising directly or indirectly from or in connection with the second party's End User Service;

7.9.2 each contract with any Network Operator (where the Network Operator's network is connected to and with the second party's Network) which excludes and limits (to the maximum extent permitted by law) any liability of the first party, its Group, and their respective officers, employees, contractors and agents arising directly or indirectly from service provided by the second party to the Network Operator; and

7.9.3 each customer contract of any Network Operator (where the Network Operator's network is connected to and with the second party's Network) which excludes and limits (to the maximum extent permitted by law) any liability of the first party, its Group, and their respective officers, employees, contractors and agents arising directly or indirectly from service provided by the Network Operator to its customer.

7.10 The second party agrees that under no circumstances shall any Network Operator (whose network is connected to and with the first party's Network), or its subsidiaries now or from time to time, or any of their respective officers, employees, contractors or agents, be liable to compensate the second party for any loss, injury, liability, damage, costs or expense arising directly or indirectly from the provision by the first party of an MTAS that includes a component provided to the first party by that Network Operator.

7.11 The second party is acquiring services under this Undertaking from the first party for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to services agreed to be provided under this Undertaking whether they are provided or not.

Intellectual Property Indemnities

7.12 Each party (in **Clauses 7.12 to 7.15** (inclusive), the first party) indemnifies and saves harmless the other party (in **Clauses 7.12 to 7.15** (inclusive), the second party), its Group, and their respective officers, employees, contractors or agents from loss, damage, liability, costs or expense which may

be suffered or incurred by the second party, its Group, and/or any of their respective officers, employees, contractors or agents, arising directly or indirectly from any actual or alleged infringement by the second party, its Group, and/or any of their respective officers, employees, contractors or agents of Intellectual Property rights of a third party, where, pursuant to this Undertaking:

- 7.12.1 such Intellectual Property has been furnished or licensed by the first party; or
- 7.12.2 a licence in respect of such Intellectual Property has been procured by the first party.

Where the first party has notified the second party in advance of providing the material or subsequently agrees with the second party the terms and conditions:

- 7.12.3 on which such Intellectual Property is furnished or licensed by the first party; or
- 7.12.4 of the licence in respect of such Intellectual Property which is procured by the first party;

the first party shall only be required to indemnify the second party, its Group and their respective officers, employees, contractors or agents under this **Clause 7.12** if the second party, its Group and their respective officers, employees, contractors or agents, have used the relevant Intellectual Property in compliance with the terms and conditions so notified or agreed.

- 7.13 The first party shall render all reasonable assistance to and shall co-operate with the second party for the purpose of defending or otherwise in connection with any actions, proceedings, claims or demands in respect of any such actual or alleged infringement which are brought against the second party, its Group and/or any of their respective officers, employees, contractors, agents or customers. The first party may participate at its own expense in the defence of any such action, proceeding, claim or demand. If it so elects within a reasonable time after receipt of the notice referred to below, the first party may assume the defence of that action, proceeding, claim or demand with counsel chosen by it and reasonably acceptable to the second party; if so:

- 7.13.1 the first party is not liable for any fees and expenses of counsel for the second party incurred later in connection with that action, proceeding, claim or demand; and
- 7.13.2 the second party shall render all reasonable assistance to and shall co-operate with the first party for that purpose.

The first party is not liable with respect to any action, proceeding, claim or demand settled without its written consent. The second party shall notify the first party as soon as practicably possible after the date on which any such actions, proceedings, claims or demands become known to the second party.

- 7.14 The second party indemnifies and saves harmless the first party, its Group, and their respective officers, employees, contractors or agents from loss, damage, liability, costs or expense which may be suffered or incurred by the first party, its Group, and/or any of their respective officers, employees, contractors or agents, arising directly or indirectly from any actual or alleged infringement by the second party, its Group and/or any of their respective officers, employees, contractors or agents of Intellectual Property rights of a third party, where, pursuant to this Undertaking:

- 7.14.1 such Intellectual Property is furnished or licensed by the first party; or
 - 7.14.2 a licence in respect of such Intellectual Property is procured by the first party;
- and the second party, its Group and/or any of their respective officers, employees, contractors or agents are not in compliance with the terms and conditions:
- 7.14.3 on which such Intellectual Property is furnished or licensed by the first party; or
 - 7.14.4 of the licence in respect of such Intellectual Property which is procured by the first party;

which, in each case, have been notified in advance of providing the material to the second party by the first party or subsequently agreed by the parties.

- 7.15 The second party shall render all reasonable assistance to and shall co-operate with the first party for the purposes of defending or otherwise in connection with any actions, proceedings, claims or demands in respect of any such actual or alleged infringement which are brought against the first party, its Group and/or their respective officers, employees, contractors, agents or customers.

PART E

RELATIONSHIP AND NETWORK MANAGEMENT

8 LIAISON COMMITTEE

Role of Liaison Committee

- 8.1 The parties acknowledge that, during the Term, they shall be required to liaise on and resolve technical network operational issues which arise from time to time regarding:
- 8.1.1 the provision of services under this Undertaking; and
 - 8.1.2 the operation and connection of their respective Networks;
(the *Operational Issues*).
- 8.2 In recognition of this, the parties shall establish a Liaison Committee:
- 8.2.1 to liaise on, and to provide a forum for discussion of, Operational Issues; and
 - 8.2.2 to discuss and make recommendations on changes to the Operational Procedures under **Clause 9.3** and to the Technical Specifications under **Clause 15.7**.

Constitution of Liaison Committee

- 8.3 The Liaison Committee shall consist of one or more (but not more than three) suitably qualified personnel appointed by each party from time to time (on a permanent or temporary basis), and advised to the other party by name or position as being that party's representatives on the Liaison Committee.
- 8.4 The Liaison Committee may regulate its own meetings and procedures, **PROVIDED THAT:**
- 8.4.1 meetings of the Liaison Committee (either in person, or by audio or audio and visual communication) shall be held:
 - (a) at least as regularly as the Liaison Committee shall determine; and
 - (b) at the written request of a member of the Liaison Committee, such request to set out the issues which the member wishes to be discussed by the Liaison Committee;
 - 8.4.2 meetings of the Liaison Committee shall be hosted alternately by each party;
 - 8.4.3 at least five Working Days' notice of a meeting is given by the party hosting the meeting to each member of the Liaison Committee, together with written advice of the matters to be discussed at the meeting. However, this notice requirement may be waived with the unanimous consent of the members of the Liaison Committee; and
 - 8.4.4 each meeting of the Liaison Committee shall be chaired by a representative nominated by Vodafone or the Access Seeker (on an alternating basis).

9 OPERATIONAL PROCEDURES

Operational Procedures

- 9.1 The parties shall establish and maintain a document entitled Operational Procedures (set out in **Subschedule 3B** and forming part of this Undertaking), recording details of agreed operational procedures, which may include, without limitation, procedures covering:
- 9.1.1 liaison between the parties' respective operations centres referred to in **Clause 1.1** of **Subschedule 3B**;
 - 9.1.2 handling of Outages including notification of planned and unplanned Outages which affect an MTAS;
 - 9.1.3 to the extent that such testing is not covered by this Undertaking, appropriate testing by each party to localise and isolate faults in its own Network, or for such other purposes as may be agreed between the parties;
 - 9.1.4 details of forecasting required under **Clause 14**;

- 9.1.5 detailed arrangements for access by each party to the other party's premises under **Clause 11**;
 - 9.1.6 notification of software and hardware changes proposed for either party's Network which may impact on that party's provision of the MTAS;
 - 9.1.7 management of abnormal and/or disruptive traffic, with a view to minimising any detrimental effects of such calling or sending of text messages on each party's Network; and
 - 9.1.8 facilitation of tracing of malicious calls or text messages which originate in one party's Network and terminate in the other party's Network.
- 9.2 The Operational Procedures as at the date of this Undertaking are set out in **Subschedule 3B**. That document, as amended from time to time in accordance with this Undertaking, shall form part of this Undertaking.

Changes to Operational Procedures

- 9.3 Each party shall review the Operational Procedures on a regular basis, and shall refer any concerns it may have regarding, or any requests for amendment to, the Operational Procedures to the Liaison Committee.
- 9.4 Any matters referred to the Liaison Committee under **Clause 9.3** shall be discussed by the Liaison Committee which may determine that an amendment to the Operational Procedures is appropriate and make recommendations, in accordance with the following provisions:
 - 9.4.1 if all the members of the Liaison Committee reach unanimous agreement that an amendment is appropriate, and on the details of that amendment, then the Liaison Committee shall produce a written recommendation to that effect, and send a copy of that recommendation to each of the parties. Each party shall consider the recommendation and respond in writing to the Liaison Committee, advising whether it agrees or disagrees with the recommendation. If both parties agree with the recommendation, then the recommendation shall be implemented by amending the Operational Procedures, or taking such other action as the parties may agree; or
 - 9.4.2 if all the members of the Liaison Committee reach unanimous agreement that an amendment is appropriate, but cannot agree on the details of that amendment, or do not reach unanimous agreement that an amendment is appropriate, or if the parties do not reach agreement with respect to any recommendation of the Liaison Committee or any other matter related to an amendment, the parties may agree to participate in mediation in accordance with **Clause 3**. However, there shall be no recourse to arbitration.

10 ARRANGING HANDOVER POINTS

Location of Handover Points

- 10.1 The Interconnect Links that carry Access Seeker traffic under this Undertaking shall connect the Access Seeker's premises to an Access Seeker Handover Point in Vodafone's premises.
- 10.2 The Access Seeker shall be responsible for the provisioning, providing, maintaining, decommissioning and otherwise bearing the full costs of each of its Handover Points.
- 10.3 Where the Access Seeker seeks access to the FTM Call Termination Service or the MTM Call Termination Service, Vodafone shall make premises available for the installation of an Access Seeker Handover Point in each of the Auckland, Wellington and Christchurch Local Interconnect Calling Areas. The Access Seeker shall install an Access Seeker Handover Point at those premises as soon as is reasonably practicable following Vodafone making those premises available. It shall be a condition (that may only be waived by Vodafone) of Vodafone supplying the FTM Call Termination Service or the MTM Call Termination Service that the Access Seeker has installed an Access Seeker Handover Point at each of those premises under this **Clause 10.3** to Vodafone's reasonable satisfaction.
- 10.4 The parties may agree to locate Handover Points on premises other than in accordance with this **Clause 10**, or to make any other mutually acceptable Handover Point arrangements.
- 10.5 The parties shall, on an ongoing basis, co-operate with each other and use all reasonable endeavours to agree on the Call routes and other technical arrangements which need to be put in place to enable each party to meet its obligations and exercise its rights under this Undertaking.

Changes to Handover Points

- 10.6 Where the Access Seeker intends to change its Handover Point arrangements by installing a new Handover Point, changing the location of one of its Handover Points, substituting one of its Handover Points with another Handover Point, decommissioning one of its Handover Points (in the case of decommissioning a Handover Point, **Clauses 10.6.4** and **10.6.5** shall not apply) or making any other change to the then existing arrangements relating to one of its Handover Points:
 - 10.6.1 it shall give reasonable notice to Vodafone of the intended change and the date by which it intends to make those changes;
 - 10.6.2 it shall provide whatever information Vodafone reasonably requests in order for Vodafone to ascertain and do the things it needs to do in order to accommodate the intended change;
 - 10.6.3 as soon as is reasonably practicable after receiving the requested information, Vodafone shall give notice of whether or not it agrees to accommodate the intended change (such agreement not to be unreasonably withheld) 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;
 - 10.6.4 as soon as Vodafone considers it has done everything necessary to the point that the new or changed Handover Point is ready for joint testing, Vodafone shall give notice requesting joint testing to begin. The parties shall begin joint testing within 2 Working Days after that notice is given and shall use reasonable endeavours to complete joint testing within 5 Working Days of the day joint testing begins; and
 - 10.6.5 the new or changed Handover Point is deemed to be available from the date by which the Access Seeker requested all things to have been done to accommodate the intended change, or the date on which joint testing is completed, whichever is later.
- 10.7 Each party is to bear its own costs in relation to any change in Handover Point arrangements.

This **Clause 10.6** does not limit each party's forecasting obligations under **Clause 14**.

11 ACCESS TO HANDOVER POINTS AND TMSDPS

11.1 Vodafone shall make available to the Access Seeker all such:

- 11.1.1 premises, access, facilities and services in relation to each of the Access Seeker's Handover Points and TMSDPs on Vodafone's premises;
- 11.1.2 access from the street front to the premises in which each Handover Point and TMSDP of the Access Seeker is located to enable the Access Seeker to construct and place wires, cables, casings or other equipment;
- 11.1.3 consents from other people that Vodafone is reasonably able to procure (except where the Access Seeker is better able to reasonably procure that consent);
- 11.1.4 facilities and services on Vodafone's premises; and
- 11.1.5 such other reasonable assistance,

as the Access Seeker reasonably requires to accommodate the Access Seeker's Handover Point or TMSDP and enable all equipment required to be both located in close proximity and connected to the Access Seeker's Handover Point or TMSDP for the Access Seeker to provide or receive MTAS under this Undertaking, to be safely and securely accommodated and installed to reasonable standards, connected to the rest of the Access Seeker's Network, inspected, tested, repaired, modified, maintained, worked on and removed as and when reasonably required by the Access Seeker. Vodafone shall comply with all applicable statutory requirements in meeting its obligations under this **Clause 11**.

- 11.2 Vodafone grants the Access Seeker all licences necessary for the Access Seeker to carry out the activities contemplated by **Clause 11.1**. The Access Seeker shall pay Vodafone's reasonable charges for anything Vodafone makes available under **Clause 11.1**.
- 11.3 The Access Seeker may at any time give notice of its reasonable requirements under this Clause 11.
- 11.4 In meeting its obligations or carrying out the activities contemplated by **Clause 11.1**, neither party may maintain, repair or interfere with the other party's equipment or interfere with the provision of MTAS except with the consent of the other party or any authorised contractor or agent of the other party and only to the extent necessary to meet its own obligations under this Undertaking.
- 11.5 Vodafone shall not cause or allow any nuisance or unreasonable impediment to the Access Seeker to exist or occur in any premises to which the Access Seeker reasonably requires access under this **Clause 11**.
- 11.6 In the previous subclauses of this **Clause 11**, reference to the Access Seeker means the Access Seeker, or the Access Seeker's authorised personnel, contractors or agents (who shall always carry appropriate identification), as the context requires.
- 11.7 The Access Seeker shall comply with the reasonable health and safety and security procedures issued by Vodafone.
- 11.8 Each party indemnifies the other against all loss suffered and liability incurred by the other party arising from any delay or failure by the first party to meet an obligation under this **Clause 11**.

12 INTERCONNECT LINKS

Uni-directional Interconnect Links

- 12.1 Except as set out in **Clause 12.2**, the Access Seeker shall be responsible for provisioning Interconnect Links to the Access Seeker Handover Point for all Calls that are to be handed over at that Access Seeker Handover Point.

Bi-directional Interconnect Links

- 12.2 The parties may agree to provision bi-directional Interconnect Links between Access Seeker Handover Points and Vodafone Handover Points. In the case of any such agreement, that agreement shall cover the costs to be borne by each party in relation to the provisioning of that bi-directional Interconnect Link and the costs of any ongoing port connection charge.

Responsibility for provisioning

- 12.3 Responsibility for provisioning Interconnect Links under this **Clause 12** includes bearing the costs of installing those Interconnect Links and responsibility for maintaining and decommissioning those Interconnect Links.

Decommissioning

- 12.4 Each party may decommission Interconnect Links for which it is responsible for provisioning after having provided the other party with 20 Working Days' prior notice.

Use of a third party

- 12.5 Where this **Clause 12** imposes an obligation on the Access Seeker to provision any Interconnect Links, the Access Seeker may provision those Interconnect Links itself or it may procure a third party to provision those Interconnect Links on its behalf.

Port charges

- 12.6 A connection charge of \$125 per month per E1 shall be payable (monthly in advance) by the Access Seeker to Vodafone for each of the uni-directional Interconnect Links referred to in **Clause 12.1**.

13 PROTECTION OF NETWORKS

Restriction of certain actions in relation to Networks

- 13.1 Except as contemplated under the terms of this Undertaking, each party is to use its reasonable endeavours to ensure that it does not, in connection with the performance or observance of its obligations under this Undertaking, do or permit to be done or omit or permit the omission of any matter or thing in relation to its Network which shall:
- 13.1.1 cause damage to the other party's Network or any other network connected with it;
 - 13.1.2 except as permitted under this Undertaking, result in:
 - (a) interference with; or
 - (b) modification of the operation of;the other party's Network or any other network connected with it (except that any radiofrequency interference shall be dealt with in accordance with the provisions of the Radiocommunications Act 1989); or
 - 13.1.3 interfere with the reasonable enjoyment or use:
 - (a) of any of the other party's End User Services by any person; or
 - (b) by any person of any other network which is connected to the other party's Network.
- 13.2 Neither party may, and each party shall ensure that no member of its Group shall, connect any equipment (including any SIM box) to the other party's Network without the other party's prior written consent (which consent shall expressly refer to this **Clause 13.2**).
- 13.3 Neither party may, and each party shall ensure that no member of its Group shall:
- 13.3.1 use or operate any SIM box connected to the other party's Network; or
 - 13.3.2 use a transit route to transit calls to any:
 - (a) New Zealand number via a SIM box connected to any network in New Zealand; or
 - (b) any number via a SIM box connected to the other party's Network,in each case, without the other party's prior written consent (which consent shall expressly refer to this **Clause 13.3**).
- 13.4 References in this **Clause 14** to:

- 13.4.1 a connection means a connection by any means including by wireless technology (and connect and connected shall have a corresponding meaning); and
- 13.4.2 connection of a SIM box to a network means circumstances in which a party knows that a SIM box is connected to such a network.

Sabotage

- 13.5 The parties shall co-operate with each other and adopt reasonable precautions in accordance with their respective usual procedures to prevent acts of sabotage to:
- 13.5.1 the Vodafone Network; and
- 13.5.2 the Access Seeker Network;
- by their respective officers, employees, contractors, agents, customers and by third parties.

Fraudulent use

- 13.6 The parties shall co-operate to eliminate fraudulent use of either party's End User Services by End Users and Customers insofar as such fraudulent use has arisen as a result of the connection of the parties' respective Networks, and the provision of MTAS by Vodafone to the Access Seeker under this Undertaking.

Safety

- 13.7 Without limiting anything in **Clauses 13.8, 13.9, 15.3, 15.5 and 15.6**, each party shall take all necessary and prudent steps and comply with all statutory obligations (including, without limitation, the Health and Safety in Employment Act 1992) to ensure that the performance and observance of its obligations under and the implementation of this Undertaking will not endanger the health or safety of any persons including, without limitation, the other party's officers, employees, contractors, agents and End Users and in particular, without limitation, each party shall be responsible for the safe operation of its own Network.

Standards and Quality

- 13.8 Each party shall:
- 13.8.1 use its reasonable endeavours to and shall co-operate with the other in managing its own Network in a manner that minimises disruptions to the other party's Network; and
- 13.8.2 use its reasonable endeavours to ensure that the quality of Calls and Text Messages delivered to or accepted from the other party's Network is maintained.
- 13.9 Vodafone shall provide the MTAS to the Access Seeker of a quality comparable to the same or similar network service provided by Vodafone to its Customers and to any other member of the Vodafone Group.
- 13.10 Where a Call may eventually be transmitted to or from an international network, the parties shall use reasonable endeavours to ensure that they comply with the principles and requirements of any applicable technical standards that may have an impact on call quality and any applicable agreements between the relevant party and overseas networks, as notified by each party to the other from time to time.

Outage Preplanning and Joint Network Design

- 13.11 The parties acknowledge that it is in each party's interest to minimise the disruption caused by Outages and to make the Vodafone Network as available as possible to the Access Seeker for Call and Text Message acceptance and delivery.
- 13.12 Where the parties agree that joint pre-planning would be useful in reducing the effect of a network node or transmission Outage on the Vodafone Network, the parties shall meet and discuss and use reasonable endeavours to develop and agree on a pre-plan that could be invoked if the identified Outages were to occur.
- 13.13 Where the parties agree that co-operation through joint network design would be useful in reducing the effect of a network node or transmission Outage on the Vodafone Network, the parties shall

meet and discuss and endeavour to develop and agree on a network design that could be implemented between the parties.

Continuance Planning

- 13.14 The parties acknowledge that in the event of a natural disaster which results in large scale destruction of one or both parties' Networks it is in both parties' interest to co-operate to restore a level of service to emergency service providers and other rescue services in the destruction area.
- 13.15 At the request of a party (the first party), the other party shall meet with the first party and discuss and use reasonable endeavours to develop and agree on a disaster continuance plan, covering joint co-operation for the restoration of a level of service to emergency service providers and other rescue services in the destruction area.

Services in the Event of an Emergency

- 13.16 In the event that Vodafone is unable to provide a substantial part of MTAS and such inability has been caused by an act of God, natural disaster, act of terrorism or other event which has given rise to the declaration of a state of civil defence emergency, then the Access Seeker shall use reasonable endeavours to assist Vodafone in providing temporary services to enable Vodafone to provide services to its Customers, any such assistance to be on terms and conditions and charges to be agreed between the parties. Nothing in this **Clause 13.16** shall oblige the Access Seeker to assist Vodafone where the assistance would diminish the Access Seeker's normal level of service to its Customers.

Routing of traffic

- 13.17 Each party shall co-operate with the other in relation to the routing of Calls and Text Messages handed over in accordance with this Undertaking.

14 FORECASTS OF FUTURE NETWORK REQUIREMENTS

- 14.1 The Access Seeker shall supply to Vodafone the forecasts required by the Operational Procedures.
- 14.2 Forecasts supplied by the Access Seeker to Vodafone under **Clause 14.1** shall be prepared and supplied in accordance with the Operational Procedures.
- 14.3 The Access Seeker acknowledges the importance of forecasts in providing MTAS, and to that end, shall take all reasonable care to provide forecasts which are as accurate as possible. The parties acknowledge:
- 14.3.1 that the sole purpose of the forecasts described in **Clause 14.1** is for the Access Seeker to make Vodafone aware of the likely demands for MTAS and enable Vodafone to plan for the provision of such service accordingly; and
 - 14.3.2 that any forecast under this **Clause 14** is indicative only and is not binding on the Access Seeker. The Access Seeker does not represent or warrant that any forecast is or will be true, accurate or correct.

Notwithstanding this, the Access Seeker shall promptly notify Vodafone if it becomes aware at any time of any reason (including any planned network build or acquisition) that is likely to result in any forecast becoming materially inaccurate, and that notice will include a statement of the impact that the Access Seeker expects on those forecasts.

15 TECHNICAL SPECIFICATIONS

Technical Specifications

- 15.1 The parties shall establish and maintain a document entitled Technical Specifications, recording details of the technical requirements which the parties have agreed. The Technical Specifications contain specifications agreed by the parties that are appropriate to the operation of their respective Networks and the provision of MTAS.
- 15.2 The Technical Specifications as at the date of this Undertaking are set out in **Subschedule 3C**. That document, as amended from time to time in accordance with this Undertaking, shall form part of this Undertaking.

Compliance with Technical Specifications

- 15.3 The parties shall use their reasonable endeavours to comply with the relevant Technical Specifications referred to in each Annex to Schedule 4. In particular, each party shall use reasonable endeavours to ensure it does not connect anything to the other party's Network at a Handover Point or TMSDP, nor deliver or accept Calls or Text Messages at the Handover Point or TMSDP, except in accordance with the relevant Technical Specifications. The parties shall co-operate in a bona fide manner towards achieving compliance with the applicable Technical Specifications in the connection of their respective Networks, and the delivery and acceptance of Calls and Text Messages.
- 15.4 Each party shall undertake testing, in accordance with a testing schedule agreed between the parties, to determine compliance with the Technical Specifications. Unless otherwise agreed in writing, such testing should be undertaken:
- 15.4.1 where a Technical Specification is implemented for the first time; and
- 15.4.2 where an agreed change is made to a Technical Specification;
- and may occur at any other time agreed between the parties.
- 15.5 Where the parties have agreed that no compliance testing is required prior to the implementation or the change referred to in **Clauses 15.4.1** or **15.4.2**, each party whose Network is affected by such an event shall (to the extent its Network is so affected) certify to the other party (prior to implementation or change) that the first party's Network complies with the Technical Specifications to the extent required under this Undertaking in the form they will take following the implementation or change. For the avoidance of doubt, no such prior certification is required where the parties have agreed to undertake and have successfully completed compliance testing.
- 15.6 Each party shall use reasonable endeavours to ensure that, during the Term, its Network continues to comply with the Technical Specifications.

Managing the Technical Specifications

- 15.7 Each party shall refer any issues it may have regarding, or any requests for amendment to, the Technical Specifications, to the Liaison Committee.
- 15.8 Any matters referred to the Liaison Committee under **Clause 15.7** shall be discussed by the Liaison Committee which may determine that an amendment to the Technical Specifications is appropriate and make recommendations. The provisions of **Clauses 9.4.1** and **9.4.2** shall apply as if the references to "Operational Procedures" were references to "Technical Specifications" and otherwise shall be read mutatis mutandis.

16 SETUP AND NETWORK CHANGES

Setup

- 16.1 Where Vodafone and the Access Seeker were not providing to each other services similar in nature to MTAS under an agreement immediately before the Services Commencement Date, the Access Seeker shall pay Vodafone's reasonable charges (payable on the Services Commencement Date) for establishing or modifying call routing, billing and other technical or support systems or arrangements to accommodate the initial provision of MTAS to the Access Seeker, in addition to any separate charges for particular MTAS services set out elsewhere in this Undertaking.
- 16.2 Each time that a uni-directional Interconnect Link referred to in Clause 12.1 is installed after the Services Commencement Date, the Access Seeker shall pay an installation charge to Vodafone of \$500 for the first E1, plus \$50 for each additional E1 that is installed at the same Handover Point at the same time.
- 16.3 Where the Access Seeker has installed its own equipment at Vodafone's premises in the Auckland, Wellington or Christchurch Local Interconnect Calling Areas under Clause 10.3 for the purpose of installing an Access Seeker Handover Point, a collocation charge of \$500 per month shall be payable (monthly in advance) by the Access Seeker to Vodafone for each cabinet or part cabinet in each such premises, which will cover the use of the cabinet space, power and cable runway space.

Network changes

16.4 In the event that one party (the notifying party):

16.4.1 is required to make a change to its Network:

- (a) by reason of a fault condition or other trouble in its Network; or
- (b) in order to comply with **Clauses 13.8, 13.9, 13.10** and **15.3**; or

16.4.2 wishes to make a change to its Network where:

- (a) the change will cause minimal inconvenience or cost to the other party (the *other party*); or
- (b) the notifying party reasonably believes the change is in both parties' mutual interest;

and the change to the notifying party's Network would make it necessary:

16.4.3 for a change to be made to the requirements of the Technical Specifications; and

16.4.4 for changes to be made to the Network of the other party;

the notifying party shall serve notice on the other party requesting the change. Such notice shall set out:

16.4.5 full details of the required or desired changes to the notifying party's Network;

16.4.6 the preferred timing of such changes;

16.4.7 where **Clause 16.4.1** applies, the urgency of the condition and the risks to the effective continued operation of its Network in delaying the changes.

16.5 On receipt of such notice by the other party, the parties shall refer any issues with respect to the implementation of the changes which the notifying party has requested (including any changes to the Technical Specifications and the need for testing) to the Liaison Committee, which shall discuss the issues and where it determines appropriate, make recommendations. Any such implementation shall be on terms and conditions agreed by the parties.

PART F
CHARGING AND PAYMENTS

17 CHARGING PRINCIPLES

17.1 Except as otherwise specifically provided in this Undertaking, each party shall arrange for all charging of and setting charges for its own Customers.

Discounts

17.2 Where this Undertaking specifies a charge to apply to a service, no reduction, rebate, saving, bonus or discount of any kind, including, without limitation, any call promotion offers or plans shall apply, unless expressly provided otherwise in this Undertaking.

GST

17.3 All references in this Undertaking to rates, or other charges, are deemed to mean rates and other charges exclusive of GST (unless specifically stated otherwise). To the extent that rates and other charges are payable under this Undertaking by the parties, the GST on such rates and charges shall be invoiced to and payable by the parties in the same way as the charges themselves under **Clause 18**, and in accordance with the Goods and Services Tax Act 1985.

17.4 Vodafone is to provide a tax invoice to the Access Seeker in accordance with the Goods and Services Tax Act 1985, on a calendar monthly basis, for recurring and non-recurring charges.

17.5 Each of these tax invoices is to cover charges for the period to at least the twentieth day of the month in which the tax invoice is rendered in order that the Due Date of that tax invoice falls in the following month.

18 PAYMENT OF CHARGES

Billing

18.1 The quality of billing of services under this Undertaking by Vodafone shall be to a standard which is comparable to the quality of the billing provided by Vodafone to its major customers and Network Operators in respect of comparable services. Without limiting the foregoing, all charges and costs payable by the Access Seeker, when invoiced to the Access Seeker, shall include reasonable information in accordance with normal commercial practice to enable the Access Seeker to check the accuracy of the amount charged.

18.2 Unless the parties otherwise agree in writing, and subject to **Clause 18.16**, the period to be covered by an invoice under this Undertaking, for the provision of MTAS, shall be a calendar month. An invoice may include any fixed charges that are payable in advance that arise in relation to that calendar month.

18.3 Each party is to co-operate with the other on billing and invoice verification matters, including:

18.3.1 the information to be provided to each other with respect to an invoice;

18.3.2 the methods by which that information is provided;

18.3.3 the need to meet from time to time to resolve billing disputes; and

18.3.4 the need to discuss other matters relating to billing and the verification of charges.

In recognition of this, either party may require the parties to establish a Billing Committee to liaise on, and to provide a forum for discussion of, billing and invoice verification matters.

18.4 The Billing Committee shall consist of one or more (but not more than three) suitably qualified personnel appointed by each party from time to time (on a permanent or temporary basis), and advised to the other party by name or position as being that party's representatives on the Billing Committee.

18.5 The Billing Committee may regulate its own meetings and procedures, PROVIDED THAT:

18.5.1 meetings of the Billing Committee (either in person, or by audio or audio and visual communication) shall be held:

(a) at least as regularly as the Billing Committee shall determine; and

- (b) at the written request of a member of the Billing Committee, such request to set out the issues which the member wishes to be discussed by the Billing Committee;
- 18.5.2 meetings of the Billing Committee shall be hosted alternately by each party;
- 18.5.3 at least five Working Days' notice of a meeting is given by the party hosting the meeting to each member of the Billing Committee, together with written advice of the matters to be discussed at the meeting. However, this notice requirement may be waived with the unanimous consent of the members of the Billing Committee; and
- 18.5.4 each meeting of the Billing Committee shall be chaired by a representative nominated by Vodafone or the Access Seeker (on an alternating basis).

Due Date

- 18.6 Subject to **Clause 18.9**, all amounts invoiced by Vodafone to the Access Seeker under this Undertaking shall be due and payable on or before the Due Date of the relevant invoice but shall accrue from the date on which the relevant service was provided.

Payment

- 18.7 Subject to **Clauses 18.9** and **18.17**, all charges and other amounts payable by the Access Seeker under this Undertaking (including any amount which the Access Seeker disputes or intends to dispute pursuant to **Clause 18.13**):
 - 18.7.1 shall be paid by the Access Seeker to Vodafone, at the place or to a bank account nominated from time to time by Vodafone, and (except to the extent required by law) free of any deductions, set off or withholding on account of any amount; and
 - 18.7.2 shall:
 - (a) where the amount invoiced is in New Zealand dollars, be paid in New Zealand dollars; and
 - (b) where the amount invoiced is in any other currency that the parties may agree, be paid in that other currency.

For the avoidance of doubt, no payments may be made under this Undertaking by credit card or debit card.

- 18.8 Acknowledging that the interests of the parties and their respective Customers require that:
 - 18.8.1 as far as reasonably practicable, services under this Undertaking be continuously available, and when in use, continuous and fault-free; and
 - 18.8.2 subject to **Clauses 18.9** and **18.17**, payments for such services be made without deduction, set off or withholding on account of any amount;

the parties agree that, in the event of any dispute about the validity or enforceability of this Undertaking or of its or their implementation (in either case in whole or in part), each party shall continue to perform its obligations in accordance with the terms of this Undertaking until a court of competent jurisdiction (or the arbitrator of an arbitration under **Clause 3**) determines that this Undertaking or its or their implementation (in either case in whole or in part), is invalid or unenforceable.

Manifest Error in Invoice

- 18.9 If the Access Seeker:
 - 18.9.1 believes on reasonable grounds that there is a Manifest Error in an invoice provided by Vodafone which has resulted in Vodafone overcharging the Access Seeker in that invoice; and
 - 18.9.2 has on or before the Due Date, served on Vodafone a notice of Manifest Error, (setting out in the notice details of the relevant invoice and the reasonable grounds in support of the Access Seeker's view that the Manifest Error exists),

then the Access Seeker shall be entitled to withhold payment to Vodafone of the amount by which, in the reasonable opinion of the Access Seeker, Vodafone has overcharged the Access Seeker in the invoice as a result of the Manifest Error. The remainder of the amounts charged in the invoice shall be paid by the Access Seeker on or before the Due Date in the normal manner. The amount withheld may be withheld until such time as the parties have settled between them in accordance with the disputes procedure set out in **Clause 18.10**, whether or not there is a Manifest Error in the invoice and, if there is, the amount of it and the amount properly payable on that invoice after correcting it.

- 18.10 Following the giving of any notice under **Clause 18.9.2**, the parties shall use reasonable endeavours to settle any claim of Manifest Error. The parties shall resolve any claim of Manifest Error in accordance with this **Clause 18.10**. If they do not settle any claim of Manifest Error within 20 Working Days after the due date for payment of the invoice, either party 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:
- 18.10.1 the parties shall endeavour to appoint a single Expert. If, within 5 Working Days of the notice under this **Clause 18.10** being given, the parties are unable to agree on a single Expert, the Expert shall be appointed by the President of the Institute of Chartered Accountants of New Zealand;
 - 18.10.2 the Expert shall adopt a procedure which, in the Expert's opinion, is the most simple and expeditious procedure possible in the circumstances;
 - 18.10.3 any decision reached by the Expert is final and binding, and cannot be challenged by any court, in the absence of fraud;
 - 18.10.4 the provisions of the Arbitration Act 1996 shall not apply to any procedure under this **Clause 18.10**;
 - 18.10.5 the parties shall provide the Expert with any information that the Expert reasonably requires;
 - 18.10.6 the Expert shall use reasonable endeavours to make a decision on the claim of a Manifest Error within 30 Working Days of appointment; and
 - 18.10.7 the costs of the Expert shall be paid as follows:
 - (a) if the Expert decides that there is no Manifest Error or, as a result of a Manifest Error the amount of the invoice is increased after correction, then the Access Seeker shall pay the costs of the Expert;
 - (b) if the Expert decides that there is a Manifest Error and the amount of the invoice is reduced by 5% or less after correction, then the parties shall equally share and pay the costs of the Expert; and
 - (c) if the Expert decides that there is a Manifest Error and the amount of the invoice is reduced by more than 5% after correction, then Vodafone shall pay the costs of the Expert.
- 18.11 If it is agreed by the parties or found by the Expert that there was a Manifest Error in the invoice, then if:
- 18.11.1 the amount by which the Access Seeker was overcharged in the invoice as a result of the Manifest Error is less than the amount withheld by the Access Seeker, the Access Seeker shall forthwith pay to Vodafone the amount of the difference, and shall pay to Vodafone interest on a daily basis at the Bill Rate (as at the Due Date of the invoice) plus 1 percent per annum on the amount of the difference for the period from and including the Due Date to but excluding the date of payment of the amount of the difference, such interest to be paid contemporaneously with the amount of the difference;
 - 18.11.2 the amount by which the Access Seeker was overcharged in the invoice as a result of the Manifest Error is equal to the amount withheld by the Access Seeker, the Access Seeker shall retain the amount withheld;
 - 18.11.3 the amount by which the Access Seeker was overcharged in the invoice as a result of the Manifest Error is greater than the amount withheld by the Access Seeker, then

Vodafone shall forthwith refund to the Access Seeker the amount of the difference and shall pay to the Access Seeker interest on a daily basis at the Bill Rate (as at the date on which the overpayment was made by the Access Seeker) plus 1 percent per annum on that refunded amount for the period from and including the date on which the overpayment was made by the Access Seeker to but excluding the date of payment of the refunded amount, such interest to be paid contemporaneously with the payment of the refunded amount.

- 18.12 If it is agreed by the parties or found by the Expert that there was not a Manifest Error in the relevant invoice, then the Access Seeker shall forthwith pay in full the amount withheld and shall pay to Vodafone interest at the Bill Rate (as at the Due Date) plus 1 percent per annum for the period from and including the date of the invoice to but excluding the date of payment of the amount withheld, such interest to be paid contemporaneously with the amount withheld. Nothing in this **Clause 18.12** shall prevent the Access Seeker from claiming an amount in accordance with **Clause 18.13**, if the Access Seeker has reasonable cause to believe that the invoice contains a billing error which is not a Manifest Error.

Settling Other Invoicing Disputes

- 18.13 If the Access Seeker has a claim in respect of the accuracy or correctness of an invoice issued by Vodafone (other than any claim in respect of which the parties agree, or the Expert finds, that there was a Manifest Error in the invoice), the Access Seeker shall, no later than 6 months after the Due Date of the invoice which it disputes, serve notice on Vodafone setting out details of the relevant invoice, the disputed amount and the grounds for the dispute together with supporting evidence. All disputes under this **Clause 18.13** shall be bona fide disputes for which the Access Seeker has reasonable cause to believe that there has been a billing error. For the avoidance of doubt, **Clauses 18.10 to 18.12** (inclusive) do not apply to any notice given under this **Clause 18.13**, and **Clauses 18.14 and 18.15** do not apply to any notice given under **Clause 18.9.2**.
- 18.14 The parties shall use their reasonable endeavours to settle promptly any claim of which Vodafone is notified under **Clause 18.13**. Failing resolution within 40 Working Days of the date of the service of the notice under **Clause 18.13**, either party may serve notice on the other that it wishes the dispute to be arbitrated and the dispute shall be referred directly to arbitration in accordance with **Clause 3**, on the expiry of 10 Working Days from the date of service of such notice (without the need for prior negotiation). The terms of reference of such an arbitration shall be agreed between the parties but shall relate only to that claim or dispute on the accuracy or completeness of the invoice.
- 18.15 If a claim under **Clause 18.13** is resolved in favour of the Access Seeker, then Vodafone shall forthwith refund to the Access Seeker:
- 18.15.1 the disputed amount, or so much of it as the resolution of the dispute dictates should be refunded; and
 - 18.15.2 interest on a daily basis at the Bill Rate (as at the date on which the overpayment was made by the Access Seeker) plus 1% per annum on the refunded amount referred to in **Clause 18.15.1** for the period from and including the date on which the overpayment was made by the Access Seeker to but excluding the date of payment of the refunded amount, such interest to be paid contemporaneously with the payment of the refunded amount.

Charges Omitted from Invoices

- 18.16 Nothing in this Undertaking or in the terms of any invoice or statement shall prejudice Vodafone's right to charge the Access Seeker for any services under this Undertaking, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted. This right shall be limited to a period of 6 months from the date of the provision of the relevant service, after which no charge may be made for that service. This **Clause 18.16** shall survive termination of rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking.
- 18.17 Vodafone may at the direction of the Access Seeker apply any amounts payable under **Clauses 18.11.3 and 18.15** as a credit towards other charges payable by the Access Seeker under this Undertaking.

Late Payment

18.18 Where:

18.18.1 an amount due from the Access Seeker to Vodafone under this Undertaking remains unpaid after the Due Date of the relevant invoice and that amount is not one to which **Clauses 18.11.1** or **18.12** applies; or

18.18.2 an amount due from the Access Seeker to Vodafone under **Clauses 18.11.1** or **18.12** remains unpaid on the sixth Working Day after the date of resolution of the dispute;

then the Access Seeker shall be liable to pay to Vodafone interest on a daily basis on that amount at the Bill Rate (as at the Due Date or the date 6 Working Days after the date of resolution of the dispute, as the case may be) plus 5 percent per annum, such interest to be charged:

18.18.3 in the case of interest payable in respect of amounts unpaid after the Due Date of the relevant invoice, from and including the Due Date of the relevant invoice to but excluding the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due;

18.18.4 in the case of interest payable in respect of amounts unpaid on the sixth Working Day after the date of resolution of the dispute, from and including the sixth Working Day after the date of resolution of the dispute to but excluding the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due.

18.19 Where an amount due from Vodafone to the Access Seeker under **Clauses 18.11.3** or **18.15** remains unpaid on the sixth Working Day after the date of resolution of the dispute, then Vodafone shall be liable to pay to the Access Seeker interest on that amount at the Bill Rate (as at the date 6 Working Days after the date of resolution of the dispute) plus 5 percent per annum, such interest to be charged on a daily basis from and including the date 6 Working Days after the date of the resolution of the dispute until, but excluding the date the amount due is paid, such interest to be paid contemporaneously with the payment of the amount due.

18.20 The Access Seeker shall continue to be liable to pay for any charges incurred between the time of termination of any service of Vodafone and the actual discontinuance of the service of Vodafone.

18.21 Nothing in **Clause 7** shall exclude or limit the Access Seeker's or Vodafone's liability to pay interest to the other under this **Clause 18** should such a liability arise.

18.22 The parties record that the interest payable under this **Clause 18** constitutes liquidated damages and that the interest rate formulae set out in this **Clause 18** represent a genuine forecast of the approximate loss a party may suffer as the result of non-payment after taking into account the complexity of each party's business.

PART G

INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

19 INTELLECTUAL PROPERTY RIGHTS

- 19.1 Unless the parties otherwise agree in writing:
- 19.1.1 all Intellectual Property which originates from, or is owned or developed by, a Group shall remain in the ownership of that Group; and
 - 19.1.2 where Intellectual Property is owned or has been developed by a Group for the purposes of observing or performing obligations under this Undertaking, then the other Group shall have a non-exclusive royalty-free licence to use such Intellectual Property for the purposes of the observance or performance of obligations under this Undertaking, until such time as the rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking is terminated.
- 19.2 Nothing in this Undertaking shall confer or be deemed to confer on a Group any rights or interests in or licences to use or to permit or cause use to be made of the Intellectual Property of the other Group, except as expressly provided in this **Clause 19**.
- 19.3 It shall be the responsibility of each party to ensure that it (at its own cost) obtains any necessary consents or licences in relation to Intellectual Property used in its Network that may be required to enable the other party to observe or perform its obligations under this Undertaking.

20 CONFIDENTIAL INFORMATION AND PRIVACY

- 20.1 For the purposes of this **Clause 20**, the party:
- 20.1.1 owning or supplying Confidential Information shall be called the Supplying Party; and
 - 20.1.2 receiving Confidential Information shall be called the Receiving Party;
- and either expression shall include all members of the relevant party's Group.

Confidential Information

- 20.2 Subject to **Clause 20.3**, the Receiving Party shall, in respect of Confidential Information received from the Supplying Party or of which the Receiving Party otherwise becomes aware through its implementation or operation of this Undertaking:
- 20.2.1 adopt (if necessary) and maintain procedures adequate to protect the Confidential Information;
 - 20.2.2 hold the Confidential Information in confidence with the same degree of care with which it holds its own confidential and proprietary information, unless the Supplying Party approves in writing the release of the Confidential Information by the Receiving Party;
 - 20.2.3 ensure that neither it nor any of its officers, employees, contractors or agents who receive the Confidential Information discloses or causes or permits to be disclosed, without the prior written consent of the Supplying Party, the Confidential Information or any part of it to any person other than to:
 - (a) the Receiving Party's professional advisers; or
 - (b) those of the Receiving Party's officers, employees, contractors or agents directly concerned in the implementation or operation of this Undertaking (but not to any such contractors or agents that are also Network Operators, unless that contractor or agent has entered into an agreement with the Supplying Party (in a form reasonably satisfactory to the Supplying Party) that imposes an obligation of confidentiality on that contractor or agent with respect to the Confidential Information),
- and shall advise the Supplying Party from time to time on request of the professional advisers, contractors and agents who are or may be recipients of Confidential Information.

- 20.2.4 not make use of, or cause or permit use to be made of, the Confidential Information or any part of it in any manner whatsoever other than as necessary for the implementation or operation of this Undertaking;
- 20.2.5 enter into such other agreements as the Supplying Party may reasonably require regarding any part of the Confidential Information which is disclosed by the Supplying Party under licence from a third party; and
- 20.2.6 at the Supplying Party's request, use reasonable endeavours to cause any person to whom the Confidential Information is disclosed in accordance with **Clause 20.2.3** (other than officers and employees of the Receiving Party) to provide a written undertaking to the Supplying Party, in terms reasonably acceptable to the Supplying Party, to receive and preserve in confidence the Confidential Information.

For the avoidance of doubt, the parties agree that if an officer, employee, contractor or agent of the Receiving Party discloses or uses Confidential Information other than as permitted by **Clauses 20.2.3 and 20.2.4**, then the Receiving Party shall be responsible for that use or disclosure as if the use or disclosure had been made by the Receiving Party itself.

- 20.3 Either party (disclosing party) may refer to and disclose any information that is covered by **Clause 20.15** to the Commission, provided that:
 - 20.3.1 the disclosing party requests that the information be protected from disclosure to the general public under an applicable Commission confidentiality order (if any); and
 - 20.3.2 the disclosing party requests, if and when the information becomes subject to the Official Information Act 1982, that the information be protected from requests for public disclosure under any applicable ground for availability of publicly held information; and
 - 20.3.3 the disclosing party gives the other party at least one Working Day's prior notice of disclosure (but the other party's consent to the disclosure is not required).

Specified Confidential Information

- 20.4 The Supplying Party may notify the Receiving Party, from time to time, that it wishes to disclose Confidential Information relating to such matters as may from time to time be agreed (Specified Confidential Information) only to a predetermined officer or employee of the Receiving Party.
- 20.5 The parties shall meet to discuss and negotiate in good faith to identify and determine the officer or employee of the Receiving Party (the Approved Recipient) to whom the Supplying Party should disclose the Specified Confidential Information.
- 20.6 The Supplying Party shall not unreasonably withhold its agreement to the appointment of an officer or employee proposed by the Receiving Party to become the Approved Recipient. The parties recognise that:
 - 20.6.1 the Approved Recipient will need to possess the appropriate skills, expertise and knowledge to use, evaluate, understand, respond to and/or act in respect of (as the case may be) the Specified Confidential Information; and
 - 20.6.2 officers and employees of the Receiving Party (and in particular, officers and senior employees) often engage in multiple roles or functions, which traverse divisional lines within the Receiving Party.

In determining who are Approved Recipients, each party is to take into account:

 - 20.6.3 the necessity for persons with the appropriate skills, expertise, knowledge and level of responsibility to have access to Specified Confidential Information in the light of the decision to be made;
 - 20.6.4 the use to which the Specified Confidential Information is properly put, having regard to the nature of the Specified Confidential Information.
- 20.7 The Receiving Party shall use all reasonable endeavours to procure the Approved Recipient to sign an undertaking in favour of the Supplying Party (the Undertaking) concerning the Specified Confidential Information, including the matters described in **Clauses 20.7.1 to 20.7.6** (inclusive) and to be prepared by the Supplying Party. If the Approved Recipient refuses to sign the Undertaking, he or she shall no longer constitute an Approved Recipient and the parties shall appoint another Approved Recipient, under **Clause 20.5**. The Undertaking shall include:

- 20.7.1 a brief description of the nature of the Specified Confidential Information and the purpose of its disclosure, with sufficient detail to identify clearly such nature and purpose;
 - 20.7.2 a statement that information which is disclosed orally in the future within the parameters described pursuant to **Clause 20.7.1** shall constitute Specified Confidential Information;
 - 20.7.3 covenants from the Approved Recipient to protect and hold in confidence all Specified Confidential Information, not to use Specified Confidential Information for improper purposes, and only to release Specified Confidential Information with the prior written consent of the Supplying Party;
 - 20.7.4 an obligation to revert to the Supplying Party if giving effect to the purpose of disclosure requires wider disclosure, at any time;
 - 20.7.5 the address for service of the Approved Recipient; and
 - 20.7.6 a review and release mechanism to apply once Specified Confidential Information no longer necessitates special safeguards, or ceases to be Confidential Information.
- 20.8 Following delivery by the Receiving Party to the Supplying Party of the Undertaking, the Supplying Party shall deliver the Specified Confidential Information to the Approved Recipient:
- 20.8.1 by personal delivery at the address specified by the Approved Recipient in the Undertaking, clearly designated in writing (by the Supplying Party) as Specified Confidential Information; and/or
 - 20.8.2 orally, if it is designated (by the Supplying Party) orally (and has previously been designated (by the Supplying Party) in writing by reference to the subject matter and features of the information) as Specified Confidential Information.
- 20.9 On request in writing from the Supplying Party received by the Receiving Party, if, and as soon as, it is practicable to do so, the Receiving Party shall return to the Supplying Party (and/or procure the return to the Supplying Party of) all Specified Confidential Information which the Supplying Party has provided to the Receiving Party.
- 20.10 The provisions of **Clauses 20.4 to 20.9** (inclusive) prevail over the provisions of **Clause 20.2**, to the extent of any inconsistency. For the avoidance of doubt, any breach by the Approved Recipient of his or her obligations described in Clause 20.7 shall be deemed to be a breach by the Receiving Party.
- 20.11 If the Receiving Party is:
- 20.11.1 requested by any court or governmental, regulatory or like body to disclose any Confidential Information; or
 - 20.11.2 required to disclose any information, pursuant to any law or order of any court, governmental agency or body having legal power to compel disclosure, which would otherwise constitute Confidential Information;
- the Receiving Party shall:
- 20.11.3 immediately on receipt of a request or requisition, notify the Supplying Party accordingly; and
 - 20.11.4 if the request is not legally binding (if required to do so by the Supplying Party) at the cost of the Supplying Party, render all reasonable assistance to, and co-operate with, the Supplying Party in opposing that request or requirement; and
 - 20.11.5 if the request or requisition is legally binding (if required to do so by the Supplying Party) at the cost of the Supplying Party, render all reasonable assistance to, and co-operate with, the Supplying Party in opposing that request or requirement, but may disclose the Confidential Information to the extent it is bound to do so in that request or requisition.

Confidential Customer Information

20.12 Subject to **Clause 20.13**:

20.12.1 each party agrees to use all reasonable care to ensure that, to the extent that it obtains any Confidential Customer Information of the other such information shall not be used by it for sales or marketing purposes; and

20.12.2 for the purposes of **Clause 20.12.1**, **20.13** and **20.15** the use of Confidential Customer Information for sales or marketing purposes means the use by a party (the first party) of such information in a manner designed to prevent or encourage a person that is at that time a Customer of the other party:

- (a) to transfer from the other party (or the transfer of a Third Party Reseller's customer from a Third Party Reseller) to the first party; or
- (b) to subscribe to a service offered by the first party (whether or not that service is offered by the other party).

20.13 The parties acknowledge that in certain circumstances members of their respective staffs engage in multiple roles or functions, which traverse divisional lines within their respective entities. A party shall not be deemed to have failed to take all reasonable care not to use Confidential Customer Information for sales and marketing purposes merely because Confidential Customer Information may in some circumstances be available to a person who has multiple roles or functions (one of which is sales or marketing) for purposes other than sales or marketing. Nevertheless, nothing in this **Clause 20.13** derogates from, or releases a party from its absolute obligation to use all reasonable care under, **Clause 20.12**.

20.14 The parties acknowledge that **Clause 20.12** is not intended to prevent a member of a Party's Group from using any information about one of that party's Customers (who may also be a Customer of the other party) which is generated solely within the first party's own Network from its own records relating to its own services.

20.15 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 Receiving Party's officers, employees or professional advisers (or to the Commission in accordance with **Clause 20.3**), but shall not be:

20.15.1 disclosed to any other person; and

20.15.2 used for sales and marketing purposes (as defined in **Clause 20.12.2**).

Injunctive relief

20.16 Each party acknowledges that its breach of any of the provisions of **Clause 20** may cause the other party (and any third party which has given the other party a licence to use or disclose any Confidential Information for the purposes of this Undertaking) irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, a party may seek and obtain injunctive relief (from any court of competent jurisdiction until such time as an arbitral tribunal is constituted and, thereafter, from the tribunal) against the breach or threatened breach of **Clause 20** in addition to any other remedies that may be available.

Indemnity

20.17 The Receiving Party hereby agrees to indemnify and hold the Supplying Party harmless from all loss, damage, liability, costs or expense which may be suffered or incurred by the Supplying Party as a result of a claim by a third party directly or indirectly arising out of a breach by the Receiving Party of any of the provisions of **Clause 20** other than **Clauses 20.12**, **20.13** and **20.15.2**.

Informing officers and employees

20.18 In relation to Confidential Information, Confidential Customer Information and Specified Confidential Information, each party is to establish (if necessary), maintain and strictly enforce procedures for informing all of its officers and employees of that party's obligations under this **Clause 20** (including, for the avoidance of doubt, informing officers and employees engaged in multiple roles or functions of obligations under **Clause 20.12.1**). Each party confirms that it has

established procedures in this regard. For the avoidance of doubt, a party may discharge its obligation under this **Clause 20.18** by implementing its usual procedures in this regard.

Customer Privacy

20.19 Each party acknowledges that, in order to preserve the privacy of persons who are its Customers, the provision of any information by it to the other party relating to its Customers is subject to:

- (a) the Privacy Act 1993;
- (b) the Telecommunications Information Privacy Code 2003;
- (c) any other applicable codes of practice issued under the Privacy Act 1993.

PART H
NUMBERING

21 NUMBERING

- 21.1 Except as expressly provided in this Undertaking, this Undertaking shall not in itself confer on either party any right, interest or title in any numbers or codes additional to the existing rights, interest and title (if any) of that party and shall not affect any such existing rights, interest or title.
- 21.2 In the management of numbering arrangements for their respective networks, the parties shall comply with and give effect to the NAD (while the party is a party to the NAD) and the LMNP Determination (while the party is a party to that Determination), and, except to the extent that doing so would conflict with an obligation or right of that party expressly imposed or granted under either the NAD or the LMNP Determination, the CCITT/ITU numbering plan and any applicable modification to that plan.
- 21.3 Each party shall advise the other of the LICA to which each Local Number block is allocated. Each block of Local Numbers allocated to a party under the NAD can only be allocated to one LICA at the 1000 number block level (for example 09 912 4XXX) or multiples thereof. The parties acknowledge that the IPMS database shall be used to determine numbers which are ported pursuant to the LMNP Determination.

Activation and Deactivation of Numbers

- 21.4 Except as set out in **Clause 21.5**, neither party is required to activate or deactivate any number or code in its Network, or to route calls or text messages to such number or code.
- 21.5 Vodafone may request the Access Seeker to:
- 21.5.1 activate or deactivate any Vodafone Mobile Numbers or codes in the Access Seeker's Network, where these Vodafone Mobile Numbers or codes are to be used for an MTAS in accordance with the terms of this Undertaking; and/or
 - 21.5.2 route calls and/or text messages to those Vodafone Mobile Numbers or codes in accordance with this Undertaking,
- and the Access Seeker shall promptly comply with that request, provided that:
- 21.5.3 the number or code is allocated or (for ported numbers) assigned to Vodafone (and recorded as such pursuant to the NAD or Ported Number Register (in each case, where applicable));
 - 21.5.4 such activation and/or deactivation and/or routing does not conflict with any express right in this Undertaking of the Access Seeker to block calls and/or text messages;
 - 21.5.5 the Access Seeker (acting reasonably) is satisfied that activating and/or deactivating and/or routing Calls and/or Text Messages to that number or code to the requesting party is in accordance with this Undertaking and does not conflict with any agreement that the Access Seeker has with any person (including, for the avoidance of doubt, any agreement with any wholesale customer of Vodafone to whom that number or code was previously allocated). Where there may be such conflict, the Access Seeker shall use its reasonable endeavours to agree all necessary amendments to its agreement with that person to resolve the conflict; and
 - 21.5.6 all technical, operational and billing issues raised by either party (acting reasonably) are resolved. The parties shall use their reasonable endeavours to resolve any such issues within 20 Working Days of the request from Vodafone.

The obligations of the parties under this **Clause 21.5** are subject to the terms of the LMNP Determination.

- 21.6 In the case of calls to Vodafone Mobile Numbers, except where the Access Seeker is required to hand over the Call directly to Vodafone under the terms of this Undertaking, the Access Seeker shall either:
- 21.6.1 hand that call directly to Vodafone; or

21.6.2 where the Access Seeker has transit arrangements in place for that type of call, transit that call via a Network Operator for hand over to Vodafone.

Number Portability

21.7 Each party shall:

21.7.1 comply with the requirements of, and act in accordance with (insofar as they are applicable to this Undertaking and any other agreement between the parties) the LMNP Determination; and

21.7.2 use their reasonable endeavours to comply with the requirements of, and act in accordance with (insofar as they are applicable to this Undertaking and any other agreement between the parties):

- (a) the LMNP Voice Interconnect Specifications; and
- (b) the SMS Interconnect Specifications.

21.8 In the event of inconsistency between the requirements described in **Clause 21.7** and the other requirements of this Undertaking, the other requirements of this Undertaking shall prevail.

21.9 To the extent that each party provides a service that relates to, and is an access provider of, the local telephone number portability service and/or the cellular telephone number portability service, the parties shall use best endeavours to complete joint testing in relation to the provision of relevant services in accordance with the LMNP Voice Interconnect Specifications and the SMS Interconnect Specifications (in each case, where applicable) under **Clause 3.4 of Subschedule 3B**.

21.10 Where:

21.10.1 Vodafone supplies services on the Vodafone Network to a Third Party Reseller for resale purposes; or

21.10.2 the Access Seeker supplies services on the Access Seeker Network to a Third Party Reseller for resale purposes;

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

21.10.3 shall procure the Third Party Reseller to comply with the requirements of the LMNP Determination and shall use reasonable endeavours to procure the Third Party Reseller comply with the requirements of the LMNP Voice Interconnect Specifications and the SMS Interconnect Specifications (in each case, where applicable) in so far as they relate to the resold service;

21.10.4 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 LMNP Voice Interconnect Specifications and the SMS Interconnect Specifications (in each case, where applicable) in so far as they relate to the resold service; and

21.10.5 shall, on the Third Party Reseller's behalf in relation to numbers in the 02X range allocated to the Third Party Reseller, implement the LMNP Determination in accordance with the LMNP Voice Interconnect Specifications and/or the SMS Interconnect Specifications (in each case, where applicable) in so far as they relate to the resold service.

21.11 The Access Seeker shall, for each Call and Text Message handed over from the Access Seeker Network to the Vodafone Network that is to a number that has been ported to the Vodafone Network in accordance with the LMNP Determination, add a Hand-off Code to that number as its prefix in accordance with the Network Terms, (in the case of Calls) the LMNP Voice Interconnect Specifications and (in the case of Text Messages) the SMS Interconnect Specifications.

21.12 For the avoidance of doubt, in the event that the number portability database of the Access Seeker fails, such that the Access Seeker is unable to perform all call query (or otherwise determine the destination network) for, and/or add a Hand-off Code to, a ported number, the following shall apply to the extent and for the duration of such failure:

21.12.1 the Access Seeker shall send to the Vodafone Network all Calls and Text Messages to numbers prefixed with numbers allocated to:

- (a) Vodafone; or
- (b) a Third Party Reseller using the Vodafone Network; and

21.12.2 where Vodafone receives a Call or Text Message sent by the Access Seeker under **Clause 21.12.1** to a ported out number (that is, a number referred to in **Clause 21.12.1** that has been ported to the Access Seeker or a third party), it shall be under no obligation to add a Hand-off Code and/or reroute the Call or Text Message and may (at its sole discretion) drop the Call or Text Message.

21.13 Should either party (the first party) reasonably form the view that the other party is not complying with the spirit and intent of the LMNP Determination, on account of the LMNP Voice Interconnect Specifications and the SMS Interconnect Specifications (in each case, where applicable) not adequately reflecting that spirit or intent, the first party may (on notice to the other party) require the other party to use best endeavours to negotiate an amendment to the whole or any part of the LMNP Voice Interconnect Specifications and/or the SMS Interconnect Specifications (in each case, where applicable) to better reflect the LMNP Determination. However, in the event of a failure to agree, there shall be no recourse to dispute resolution under **Clause 3**.

PART I
MISCELLANEOUS

22 ASSIGNMENT

22.1 The Access Seeker may assign or transfer its rights or obligations under this Undertaking, subject to the prior written consent of Vodafone, which consent shall not be unreasonably withheld.

23 NOTICE

23.1 Subject to:

23.1.1 **Clause 23.2;**

23.1.2 the provisions of this Undertaking which expressly refer to the giving of oral notice; and

23.1.3 **Clause 1.5 of Subschedule 3B**, which sets out specific provisions for the serving or giving of notices under the Operational Procedures;

any notice required to be served upon a party or given to a party shall be in writing and shall be deemed to have been served or given:

23.1.4 as soon as the same is personally delivered to the address given by the Access Seeker to Vodafone or, in the case of Vodafone, as set out below (or such other address as a party may notify to the other by notice);

23.1.5 2 Working Days following the posting of the same by prepaid registered mail to such address;

23.1.6 immediately if transmission by facsimile is effected to the facsimile number given by the Access Seeker to Vodafone or, in the case of Vodafone, as set out below (or such other facsimile number as a party may notify to the other by notice); or

23.1.7 immediately if transmission is effected by such other electronic medium as the parties may from time to time agree to such place, number or code as a party may notify to the other by notice;

PROVIDED THAT if transmission by facsimile or other electronic means is effected after 5.00 pm on a Working Day or any time on a day other than a Working Day, then such notice shall be deemed to be given the next Working Day following the facsimile or electronic transmission.

Vodafone

20 Viaduct Harbour Avenue
AUCKLAND

Attention: General Counsel

Telephone: (09) 355 2000

Facsimile: (09) 355 2005

with a copy to:

20 Viaduct Harbour Avenue
AUCKLAND

Attention: GM Wholesale and New Business Development

Telephone: (09) 355 2000

Facsimile: (09) 355 2006

A notice served or given in accordance with **Clauses 23.1.4 to 23.1.7** (inclusive) (including the proviso to **Clause 23**) shall be deemed to be sufficiently served or given for the purposes of the Operational Procedures, notwithstanding that it does not comply with the specific provisions of **Clause 1.5 of Subschedule 3B**.

23.2 Notwithstanding anything in **Clause 23.1**, any notice required to be served or given under Clauses 4 or 6 shall:

23.2.1 in the case of notices given by Vodafone, be in writing and signed by the Chief Executive Officer (or in his or her absence, the General Counsel or the GM Wholesale and New Business Development) and shall be served or given by either personal delivery to the

Chief Executive Officer (or in his or her absence, the General Counsel at the address given by the Access Seeker to Vodafone (or such other address as the Access Seeker may notify to Vodafone by notice), or by transmission by facsimile to the facsimile number given by the Access Seeker to Vodafone (or such other facsimile number as the Access Seeker may notify to Vodafone by notice) marked to the attention of the Chief Executive Officer (copy to General Counsel), and in either case such notice shall be deemed to be served or given immediately;

- 23.2.2 in the case of notices given by the Access Seeker, be in writing and signed by the Chief Executive Officer (or in his or her absence, the General Counsel) and shall be served or given by either personal delivery to the Chief Executive Officer (or, in his or her absence, the General Counsel) at the address set out below (or such other address as Vodafone may notify to the Access Seeker by notice), or by transmission by facsimile to the facsimile number set out below (or such other facsimile number as Vodafone may notify to the Access Seeker by notice) marked to the attention of the Chief Executive Officer (copy to General Counsel and GM Wholesale and New Business Development), and in either case such notice shall be deemed to be served or given immediately.

Vodafone

20 Viaduct Harbour Avenue

AUCKLAND

Attention: Chief Executive Officer

Telephone: (09) 355 2000

Facsimile: (09) 355 2005

24 OWNERSHIP

Subject to those provisions of this Undertaking which allow the Access Seeker to access the MTAS, this Undertaking does not pass any right, title or interest in or to the MTAS or the Vodafone Network to the Access Seeker or the Access Seeker Group.

25 NO PARTNERSHIP

25.1 Nothing in this Undertaking or in the relationship between the parties is to be construed as:

25.1.1 creating a partnership between the parties; or

25.1.2 giving to either party the right, or subjecting it to the liability, of a partner.

25.2 The parties declare that it is not the intention of either party to:

25.2.1 enter into a joint venture with the other; or

25.2.2 constitute a party or its Group an agent or fiduciary of the other party or its Group under this Undertaking.

26 REMEDIES AND WAIVERS

26.1 Except as otherwise provided in this Undertaking, no failure to exercise, and no delay in exercising, a right of a party under this Undertaking operates as a waiver of that right.

26.2 A single or partial exercise of a right does not preclude another or a further exercise of that right or an exercise of another right.

26.3 No waiver by a party of its rights under this Undertaking is effective unless it is in writing signed by that party.

27 SAVINGS

27.1 Nothing in this Undertaking (including **Clause 7**) shall:

27.1.1 limit the right of a party:

(a) to enforce this Undertaking by seeking an order for specific performance; or

(b) to apply for an injunction or an interim injunction (in any court of competent jurisdiction until such time as an arbitral tribunal is constituted and, thereafter, in the tribunal),

whilst the parties are participating in an arbitration under **Clause 3**;

- 27.1.2 exclude or limit any liability of a party arising under a statute from which it is prohibited by law to exclude or limit liability, to the extent of such prohibition;
- 27.1.3 exclude or limit any liability of a party under, or limit or affect the application of, the Commerce Act 1986 or the Fair Trading Act 1986; or
- 27.1.4 exclude or limit any liability of a party to pay costs (if any) in any court proceedings, arbitration or mediation.

27.2 Without limiting anything in **Clause 3**, where a party has more than one cause of action in arbitration arising out of the same:

- 27.2.1 event;
- 27.2.2 transaction;
- 27.2.3 event and transaction;
- 27.2.4 series of events;
- 27.2.5 series of transactions; or
- 27.2.6 series of events and series of transactions;

the party with the causes of action shall, to the fullest extent practicable, combine all such causes of action so that they may be heard and resolved at the same time.

28 SEVERABILITY

28.1 If a court of competent jurisdiction or the arbitrator of an arbitration under **Clause 3** shall determine that any provision of this Undertaking is invalid under any applicable statute or rule of law, it shall be deemed to be omitted only to the extent that the same shall be in violation of such statute or rule of law and shall be enforced to the maximum extent possible.

29 GOVERNING LAW

29.1 This Undertaking is made in New Zealand and shall be governed in all respects by and construed in accordance with the laws of New Zealand.

30 ENTIRE AGREEMENT

30.1 This Undertaking contains the entire final understanding and agreement of the parties with respect to the subject matter expressly referred to in this Undertaking; and, with respect to such subject matter, this Undertaking shall prevail over all previous agreements, understandings or commitments between the parties, and representations and warranties made by either party, whether oral or written.

SUBSCHEDULE 3B

OPERATIONAL PROCEDURES

OPERATIONAL PROCEDURE 1: OPERATIONAL LIAISON

Operations Centres

1.1 The Operational Procedures and obligations described in this **Subschedule 3B** are to be administered and carried out by:

1.1.1 Vodafone at the Vodafone Network Management Centre; and

1.1.2 the Access Seeker at the Network Operations Centre,
(the *Operations Centres*).

Operational help desk

1.2 Each party is to:

1.2.1 provide the other party with an operational help desk function at all times;

1.2.2 notify the other party of the current location and contact telephone number of that operational help desk; and

1.2.3 through its operational help desk, provide to the other party:

(a) a reception point for logging fault reports and enquiries;

(b) fault progress tracking and reporting;

(c) Outage notice tracking; and

(d) direct contact, as required, between the parties' specialist operations groups.

Availability

1.3 Each party is to use reasonable endeavours to ensure that its Operations Centre is staffed at all times with appropriate persons capable of fulfilling that party's obligations under **Clauses 1 and 2** of this Operational Procedure.

Escalation procedures

1.4.1 If any matter requiring resolution or agreement under an Operational Procedure is not resolved or agreed to promptly in accordance with that Operational Procedure, then it is to be referred on the basis of a peer to peer communication, to:

(a) in the case of Vodafone, the Team Leader, Vodafone Network Management Centre, or, if he or she is unavailable, the Manager, Network Management or, if he or she is unavailable, the General Manager, Network Operations; and

(b) in the case of the Access Seeker, such person that the Access Seeker may nominate.

1.4.2 Each party is to notify the other party of the current names and contact telephone numbers of its staff members holding these positions.

Notices

1.5.1 Any notice required to be served or given under this Operational Procedure may be served or given at the other party's Operations Centre.

1.5.2 Notices required under this Operational Procedure may be given orally. A party giving oral notice is to confirm the terms of that notice by email as soon as practicable.

1.5.3 Each party is to acknowledge in writing the receipt of each written notice or confirming facsimile.

- 1.5.4 Each party is to provide the other party with a reference number for each notice which is given or received.

OPERATIONAL PROCEDURE 2: OUTAGES

Application of this procedure

- 2.1 This Operational Procedure shall apply except where an Outage occurs as a result of Force Majeure. This Operational Procedure does not apply where a party exercises its right to suspend or restrict the supply of an MTAS under **Clause 4.1.1 of Subschedule 3A**.

Obligation to notify

- 2.2 Vodafone is:

2.2.1 to give as much notice as practicable, preferably at least 5 Working Days, to the Access Seeker of any event or circumstance which:

- (a) has occurred, or could reasonably occur, in the Vodafone Network; and
- (b) will, or could reasonably be anticipated to, directly or indirectly result in an Outage; or

2.2.2 if it is not practicable to give prior notice of the Outage, to use its reasonable endeavours to notify the Access Seeker within 15 minutes of becoming aware of the Outage.

Content of the notice

2.3.1 Each notice of a potential Outage under **Clause 2.2.1** of this Operational Procedure is to state in reasonable detail:

- (a) each event or circumstance which will, or could reasonably be anticipated to, result in the Outage;
- (b) the proposed or anticipated extent, date, time and duration of the Outage;
- (c) each MTAS which would, or could reasonably, be affected by the Outage;
- (d) the restoration plan for each affected MTAS (if relevant), including any necessary testing;
- (e) any proposed contingency measures or pre-plans for the Outage (if relevant); and
- (f) the contact names and telephone numbers of Vodafone's operational staff dealing with the Outage.

2.3.2 Each notice of the occurrence of an Outage under **Clause 2.2.2** of this Operational Procedure is to state in reasonable detail:

- (a) each event or circumstance which caused or contributed to the Outage;
- (b) the likely duration of the Outage;
- (c) the extent to which each affected MTAS has failed;
- (d) the restoration plan for each affected MTAS (if relevant), including any necessary testing;
- (e) any proposed contingency measures or pre-plans which shall apply to the Outage (if relevant); and
- (f) the contact names and telephone numbers of Vodafone's operational staff responsible for handling the Outage.

Undertaking on the terms of an Outage

2.4.1 If Vodafone gives notice of an Outage under **Clause 2.2.1** of this Operational Procedure, then the parties are to discuss the terms of that notice to the extent, and as soon as, practicable, with a view to the parties agreeing on:

- (a) the extent, date, time and duration of the Outage;
- (b) the restoration plan for each affected MTAS (if relevant), including any necessary testing; and

- (c) any proposed contingency measures or pre-plans for the Outage (if relevant).
- 2.4.2 If Vodafone gives prior notice of an Outage, and Vodafone can control:
- (a) whether the Outage occurs; or
 - (b) when the Outage occurs,
- without the Outage having an effect on any Network Operator, Vodafone is to the extent practicable to prevent or delay the occurrence of the Outage until the parties have agreed on the terms of the notice under **Clause 2.4.1** of this Operational Procedure. The Access Seeker is not unreasonably to withhold its agreement to those terms.
- 2.4.3 If Vodafone gives notice of an Outage under **Clause 2.2.2** of this Operational Procedure, then the parties are to discuss the terms of that notice as soon as practicable, with a view to the parties agreeing on, if relevant:
- (a) the restoration plan for each affected MTAS, including any necessary testing; and
 - (b) the proposed contingency measures or pre-plans for the Outage.
- 2.4.4 If any of the terms agreed on by the parties under this **Clause 2.4** of this Operational Procedure differ from the terms of the Outage notice, Vodafone is to give the Access Seeker, as soon as practicable, a revised Outage notice which reflects the parties' agreement.

Liaison

- 2.5.1 Vodafone is to liaise with the Access Seeker as often as necessary and practicable to enable the Access Seeker to familiarise itself fully with the matters contained in an Outage notice.
- 2.5.2 Vodafone is to provide any additional information reasonably requested by the Access Seeker in relation to an Outage.

Vodafone's obligations

- 2.6 If an Outage occurs, Vodafone is:
- 2.6.1 to comply with the terms of the notice that have been agreed to by the parties under **Clause 2.4** of this Operational Procedure; or
 - 2.6.2 if the terms of the notice have not been agreed by the parties under **Clause 2.4** of this Operational Procedure, to treat the restoration of each affected MTAS as urgent.

Changes to Outage notice:

- 2.7.1 If at any stage during the MTAS restoration process Vodafone considers, on reasonable grounds, that:
- (a) the duration of the Outage will exceed, or has exceeded, the period specified in the notice; or
 - (b) any other term of the notice is no longer appropriate or applicable,
- then, to the extent practicable:
- (c) Vodafone is immediately to notify the Access Seeker; and
 - (d) Vodafone is as soon as practicable to give the Access Seeker a revised notice for the Outage.
- 2.7.2 As soon as practicable after Vodafone has notified the Access Seeker under this **Clause 2.7**, the parties are to review jointly the need to revise, or implement, any contingency measures.

Minimisation of Outages

- 2.8 The parties recognise the desirability of working together and with Network Operators to minimise the occurrence of any Outage.

Restoration

- 2.9.1 In the case of an Outage under **Clause 2.2.2** of this Operational Procedure, Vodafone is to notify the Access Seeker, as soon as practicable, of the restoration of each affected MTAS, stating:
- (a) the time and date of the restoration of that MTAS;
 - (b) whether that MTAS is being provided by way of contingency measures or permanent repair;
 - (c) the reason for the failure of that MTAS (if not previously notified); and
 - (d) if the MTAS is restored by way of contingency measures, whether or not further MTAS failures arising from the permanent-repair process are anticipated.
- 2.9.2 If restoration of an MTAS takes place progressively over a period of hours or days, then Vodafone is to give the Access Seeker notice of each significant intermediate restoration increment.

Monthly reconciliation

- 2.10 Promptly after the end of each month, each party is to notify the other party of each Outage that occurred in that month.

Additional discretionary notices

- 2.11 Each party may also give the other party notice of any event or circumstance (including events or circumstances that are not within the Network of the notifying party) which:
- 2.11.1 has occurred or could reasonably occur; and
 - 2.11.2 will, or could reasonably be anticipated to, create a material risk of damage to the other party's Network.

OPERATIONAL PROCEDURE 3: OPERATIONAL TESTING

Continuity of service

- 3.1 Each party is to execute operational testing in accordance with its standard procedures:
- 3.1.1 to identify any fault or other event or circumstance in that party's Network which has caused or could cause an Outage; and
 - 3.1.2 to confirm, as far as reasonably practicable, that each MTAS is continuously available and fault free.

Defined testing procedures

- 3.2 If an Annex to **Schedule 4** contains a procedure for the testing and commissioning of an MTAS, or other specific testing procedure, the parties are to carry out that procedure.

Flood-call testing

- 3.3 The Access Seeker shall not undertake flood-call testing without obtaining the prior written consent of Vodafone. Vodafone is not to withhold consent unreasonably.

Joint testing

- 3.4.1 If:
- (a) joint testing is required under this Undertaking (including, for the avoidance of doubt, a requirement for compliance testing under **Clause 15.4 of Subschedule 3A**); or
 - (b) a party considers, on reasonable grounds, that joint testing is required;
- that party shall give notice to the other party stating, in reasonable detail the reason for, and purpose of, the testing, and its proposals for:
- (c) the date, time and expected duration of the testing;
 - (d) the locations where the testing is to be carried out;
 - (e) which party is responsible for what part of the testing;
 - (f) the Network elements to be tested;
 - (g) any Network configuration changes required to facilitate the testing; and
 - (h) which party is responsible for collating the results of the testing.
- 3.4.2 The parties are then to discuss the notice as soon as practicable (preferably within 2 Working Days), in order to agree:
- (a) whether, in the case where joint testing is not required under this Undertaking, joint testing is necessary; and
 - (b) if so, or if joint testing is required under this Undertaking, the details of the joint testing (including any agreed charges).
- 3.4.3 The parties shall execute joint testing in accordance with any agreed arrangements.

Co-operation and assistance

- 3.5.1 Each party shall, on request by the other party, use its reasonable endeavours:
- (a) to liaise with;
 - (b) to co-operate with; and
 - (c) to assist,
- the other party, when the other party is undertaking testing.
- 3.5.2 Each party, when undertaking testing, is to use its reasonable endeavours to minimise any adverse effect on the other party.

Quality control

- 3.6 Each party is to use its reasonable endeavours to ensure that those elements of testing under its control shall comply with quality control procedures that are appropriate for testing in the telecommunications industry.

OPERATIONAL PROCEDURE 4: FORECASTING

Provision of traffic forecasts

- 4.1.1 The Access Seeker shall provide Vodafone with forecasts in respect of the following:
- (a) where the Access Seeker seeks access to the FTM Call Termination Service or the MTM Call Termination Service, Calls;
 - (b) where the Access Seeker seeks access to the Text Message Termination Service, Text Messages; and
 - (c) any other matter agreed between the parties.

Content of traffic forecasts

- 4.2 The exact content of traffic forecasts will depend on the requirements of the relevant MTAS and any specific requirements set out in the relevant Annex to **Schedule 4**, but in general shall cover (in relation to traffic under this Undertaking):
- 4.2.1 where the Access Seeker seeks access to the FTM Call Termination Service or the MTM Call Termination Service, forecasts for each Handover Point, covering the Access Seeker's existing Call routes, and any changes to Call routing envisaged by the Access Seeker during the forecast period, including:
- (a) peak calling times, busy-hour traffic volume and number of call attempts on routes; and
 - (b) number of traffic circuits required for the total traffic volume forecast in each direction, based on the switching architecture and design grade of the service appropriate to that route; and
- 4.2.2 where the Access Seeker seeks access to the FTM Call Termination Service or the MTM Call Termination Service, forecasts for each Handover Point, covering CCITT No. 7 signalling, including:
- (a) call related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
 - (b) non-call related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
 - (c) the number of sets of signalling links required, including the number of signalling circuits in each set of signalling links requested by the Access Seeker.
- 4.2.3 where the Access Seeker seeks access to the Text Message Termination Service, forecasts for each TMSDP, covering CCITT No. 7 signalling, including:
- (a) text message related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
 - (b) non- text message related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
 - (c) the number of sets of signalling links required, including the number of signalling circuits in each set of signalling links requested by the Access Seeker.

Interconnect Link forecasts

- 4.3.1 Within one month of receipt of the call traffic forecasts described in **Clause 4.1** of this Operational Procedure (the *traffic forecasts*) the parties shall meet to discuss, with a view to forecasting, future requirements for Interconnect Links (including routing arrangements) appropriate to carry the traffic contemplated by the traffic forecasts.
- 4.3.2 In making the forecasts the parties shall have regard to the need to ensure that Vodafone is able to meet its obligations under each of the Annexes to **Schedule 4**.
- 4.3.3 The forecasts may include, without limitation, forecasts of:
- (a) increases in the number of Interconnect Links;

- (b) the decommissioning of Interconnect Links;
- (c) the redistribution of call traffic over different routes.

Forecast period

- 4.4.1 Forecasts described in **Clauses 4.1** and **4.3** of this Operational Procedure shall be supplied quarterly during the Term, or as reasonably requested by either party, and shall cover:
 - (a) the quarter commencing on, in the case of the first quarterly forecasts, the Services Commencement Date or, for any subsequent quarterly forecasts, the date three months after the date of the last forecast or, for any other forecasts reasonably requested by Vodafone, the date of the forecasts; and
 - (b) (as far as possible) each of the succeeding twelve months.
- 4.4.2 Each quarterly forecast shall specifically give the forecast for the December covered by the forecast, or the forecast for the month in the quarter with the highest volume, if that month is not December (or if the quarter does not include a December).
- 4.4.3 The quarterly forecasts of the next 12 months shall be provided prior to the commencement of each quarter (or, in the case of the quarter commencing on the Services Commencement Date, as soon as is reasonably practicable after the Services Commencement Date). Any other forecasts reasonably requested by Vodafone shall be promptly provided.

Response

- 4.5 Vodafone shall, within 25 Working Days of receipt of a forecast, indicate to the Access Seeker any variations to the forecast which it reasonably considers to be appropriate, based on its own traffic studies and experience.

Forecast updates

- 4.6.1 The Access Seeker shall promptly notify Vodafone of any material changes to forecasts supplied that occur at any time during a forecast period.
- 4.6.2 In particular should the Access Seeker become aware of any event or circumstance which is likely to cause interconnect traffic on any designated route to rise:
 - (a) on a short-term or long-term basis; or
 - (b) during periods outside the designated "busy hour";beyond the level previously forecast for busy-hour traffic in the most recent forecast to Vodafone, then the Access Seeker is promptly to notify Vodafone of the circumstances and likely extent of the increase.

OPERATIONAL PROCEDURE 5: ACCESS AND SAFETY

Request for access

- 5.1.1 Subject to **Clause 5.1.2** of this Operational Procedure, where either party (in **Clauses 5.1.1, 5.1.2** and **5.1.3** of this Operational Procedure, the *first party*) is entitled to access to the other party's premises under this Undertaking:
- (a) the first party is to give the other party at least 24 hours' notice of access, stating:
 - (i) the name of the relevant authorised officer, employee, contractor or agent who is to have access; and
 - (ii) the anticipated date and time of access; and
 - (b) the other party is to provide access at all reasonable hours in accordance with the notice.
- 5.1.2 If the first party, on reasonable grounds, requires urgent access to the other party's premises to fulfil its obligations under this Undertaking:
- (a) the first party is to give as much notice as practicable to the other party, stating:
 - (i) the name of the relevant authorised officer, employee, contractor or agent who is to have access; and
 - (ii) the anticipated date and time of access; and
 - (b) the other party is to use its reasonable endeavours to ensure access is provided at all times, as required.
- 5.1.3 The appointment by the first party of its authorised officer, employee, contractor or agent under **Clause 5.1.1(a)** or **Clause 5.1.2(a)** of this Operational Procedure shall be evidenced by a means of identification which shall be agreed between the parties.

Consents

- 5.2 Each party is, at its own expense, to obtain each consent required from any third party in respect of access to, and use of, its premises, services and facilities by the other party in accordance with this Undertaking.

Restricted access

- 5.3 Each party may restrict or impose conditions on access to its premises, services and facilities if it considers, on reasonable grounds, that such restriction or condition is necessary:
- 5.3.1 to safeguard the integrity and operation of its Network;
 - 5.3.2 to protect against any security risk to its business; or
 - 5.3.3 to comply with any law.

Compliance with security procedures

- 5.4.1 Each party is to comply with the other party's reasonable security clearance procedures when accessing the other party's premises, equipment, services and facilities.
- 5.4.2 Each party is to ensure that each of its officers, employees, contractors or agents accessing the other party's premises also complies with those reasonable security clearance procedures.

Removal without authority

- 5.5.1 Each party (in **Clauses 5.5.1** and **5.5.2** of this Operational Procedure, the *first party*) is responsible for any equipment of the other party's Group on the first party's premises that is:
- (a) lost (other than as a result of fault on the part of the other party);
 - (b) removed without the authority of the other party; or

- (c) destroyed or wholly or partially damaged (other than as a result of fault on the part of the other party, fair wear and tear or Force Majeure).
- 5.5.2 The first party is responsible for any equipment of the other party or any third party on the other party's premises that is:
- (a) removed by any of the first party's, or any member of its Group's, officers, employees, contractors or agents without the authority of the other party; or
 - (b) destroyed or wholly or partially damaged by any of those persons.
- 5.5.3 Where a party is responsible for equipment under this **Clause 5.5**, the party shall:
- (a) in the event of loss, removal without authority or destruction of or irreparable damage to that equipment pay to the other party within 15 Working Days of written demand the book value of the equipment (whether or not the equipment is equipment of a third party); or
 - (b) in the event of reparable damage to that equipment reimburse the other party (whether or not that equipment is equipment of a third party), within 15 Working Days of written demand, for the cost of repair of that equipment on those premises,
- provided that where the equipment which has been lost, removed, destroyed or damaged is the property of a third party, and the other party suffers no direct loss, the responsible party shall not be required to make any payment under this **Clause 5.5.3**.

Alterations to premises

- 5.6.1 Each party (in **Clauses 5.6.1** and **5.6.2** of this Operational Procedure, the *first* party) is not, without the consent in writing of the other party, to make or permit to be made any alterations to the whole or any part of its premises, equipment, services or facilities which may adversely affect the other party's equipment on those premises.
- 5.6.2 The other party is not to withhold consent unreasonably. However, consent may be conditional on the first party:
- (a) taking reasonable measures satisfactory to the other party to protect the equipment of the other party's Group during the course of those alterations; or
 - (b) paying any of the reasonable charges which the other party incurs in moving any of the equipment of the other party's Group as a result of those alterations.

Personal Property Securities Act 1999

- 5.7.1 Where used in this **Clause 5.7** the following words and phrases have the meaning given to them in the PPSA: "financing statement", "goods", "intangibles" and "security interest".
- 5.7.2 Each party acknowledges that, at any time:
- (a) certain telecommunications related equipment and software of the Access Seeker Group (including all goods and intangibles described or referred to in this Undertaking or in the relevant records maintained by (or other relevant documents produced by) the Access Seeker, on the basis that such record or other document is deemed to be incorporated into, and form part of, this Undertaking) may be held on Vodafone's premises; and
 - (b) certain telecommunications related equipment and software of the Vodafone Group (including all goods and intangibles described or referred to in this Undertaking or in the relevant records maintained by (or other relevant documents produced by) Vodafone, on the basis that such record or other document is deemed to be incorporated into, and form part of, this Undertaking) may be held on the Access Seeker's premises,
- in each case on the terms of this Undertaking.
- 5.7.3 Each party further acknowledges that:

- (a) whilst any such property of the Vodafone Group is located on the Access Seeker's premises it shall at all times remain the property of the Vodafone Group; and
 - (b) whilst any such property of the Access Seeker Group is located on Vodafone's premises it shall at all times remain the property of the Access Seeker Group.
- 5.7.4 Each party agrees that for the purposes of the Personal Property Securities Act 1999 (the **PPSA**), the situation described in **Clause 5.7.2** of this Operational Procedure creates:
 - (a) a security interest in favour of the Access Seeker in all property described in **Clause 5.7.2(a)** of this Operational Procedure; and
 - (b) a security interest in favour of Vodafone in all property described in **Clause 5.7.2(b)** of this Operational Procedure.
- 5.7.5 Each party consents to the other party registering a financing statement, at its own cost, to record the security interest of that party described in **Clause 5.7.4** of this Operational Procedure. Each party agrees to do all things reasonably necessary (including providing all relevant information) in order to allow the other party to register and maintain such a financing statement.
- 5.7.6 Each party agrees that it shall not:
 - (a) create, permit or allow to subsist in the property of the other party described in **Clause 5.7.2** of this Operational Procedure any security interest that ranks equally with, or in priority to, the other party's security interest in that property; or
 - (b) transfer or dispose of, or permit the transfer or disposal of, any of the other party's security interest in that property.
- 5.7.7 For the avoidance of doubt, this **Clause 5.7** does not create:
 - (a) a security interest given by Vodafone in favour of the Access Seeker in any of the Vodafone Group's own property; or
 - (b) a security interest given by the Access Seeker in favour of Vodafone in any of the Access Seeker Group's own property.

OPERATIONAL PROCEDURE 6: NUMBERING CHANGE NOTIFICATION

Numbering notification

- 6.1 Each party shall provide the other party with details of numbering changes in the first party's Network which may have an impact on the other party's Network, or the performance of the other party's obligations under this Undertaking, including but not limited to:
- 6.1.1 full details of any number ranges which are to be activated or deactivated in the first party's Network and which relate to one or more MTAS;
 - 6.1.2 changes in the length or structure of numbers used in the first party's Network.

Notification under this **Clause 6.1** shall be given to the other party as early as practicable, and shall set out the date on which such changes will occur.

SUBSCHEDULE 3C

TECHNICAL SPECIFICATIONS

Technical Specification

- 1.1 This Technical Specification covers general requirements, 2 Mbit SDP interface requirements, and CCITT No. 7 signalling requirements for basic call control (ISUP).
- 1.2 This Technical Specification consists of Specification PTC 331: Telephone Network Interconnection using CCITT No. 7 Signalling (issued by Telecom New Zealand Limited) (*PTC 331*) in the form that PTC 331 was in at the date of this Undertaking.
- 1.3 The parties agree that it may be appropriate for the Telecommunications Carriers Forum (the *Forum*) to consider common interface specification documents for interconnection for all Network Operators' networks, and either party may refer this issue to the Forum. If such common interface specification documents are prepared, the parties shall meet to discuss whether, and to what extent, to amend this **Subschedule 3C** to make it consistent with those documents.

Subschedule 3D

A-numbers

1 INTERPRETATION

Unless the context otherwise requires, words and expressions defined or construed in **Subschedule 3A** and not otherwise defined or construed in this **Subschedule 3D**, have the same meanings as defined or construed in **Subschedule 3A** when used in this **Subschedule 3D**. Except as specifically provided in this **Subschedule 3D**, all references in this Subschedule to clause numbers shall be read as references to clauses of this **Subschedule 3D**. In addition:

- 1.1 *Activate* means, in relation to an A-number to be used for the purpose of CLIP, the use of that A-number by offering that A-number to the Customer who has subscribed for CLIP, and *Activating* and *Activation* shall have a corresponding meaning;
- 1.2 *Apply* means, in relation to an A-number to be used for the purpose of CLIP, to recognise and act in accordance with the information provided regarding that A-number, including, without limitation, honouring CLIR Flags, and *Applying* and *Application* shall have a corresponding meaning;
- 1.3 *A-number* means, in respect of any Direct Traffic or Transit Traffic, the A-number of the calling party end user subscriber that originated that traffic in the Signalling Format:
 - 1.3.1 described in **Clause 2.2** of this **Subschedule 3D**; and
 - 1.3.2 provided in the form of the national significant number as defined by CCITT/ITU Recommendations, including (where the traffic originates outside of New Zealand) the country code for non-New Zealand numbers;
- 1.4 *Calling Line Identification Presentation* or *CLIP* is the generic name for the service provided by carriers to their customers and end users that provides for the delivery of A-numbers for presentation to the called party;
- 1.5 *Calling Line Identification Restriction* or *CLIR* is the generic name for the service provided by carriers to their customers and end users that provides for the blocking of the A-number of the calling party going forward to the called party;
- 1.6 *CLIR Flag* means an indicator provided together with an A-number for the purposes of CLIP which indicates that the A-number is not to be forwarded to the called party;
- 1.7 *Code* means the Telecommunications Information Privacy Code 2003 (as amended from time to time) and any other applicable code of practice that may be issued under Part VI of the Privacy Act;
- 1.8 *Direct Traffic* is defined in **Clause 2.1.1** of this **Subschedule 3D**;
- 1.9 *Numbering Information* means, in respect of any Direct Traffic or Transit Traffic, the A-number in relation to that traffic:
 - 1.9.1 including CLIR Flags and any other numbering information relating to that traffic; but
 - 1.9.2 not including billing name and address;
- 1.10 *Privacy Act* means the Privacy Act 1993;
- 1.11 *Roaming Customer* means an international or national roaming customer that is roaming on the Access Seeker Network;
- 1.12 *Transit Carrier* means a carrier that hands over, or any other person that delivers, any Transit Traffic to Vodafone; and
- 1.13 *Transit Traffic* is defined in **Clause 2.1.2** of this **Subschedule 3D**.

2 PROVISION OF A-NUMBERS

Provision of A-numbers

- 2.1 Subject to the terms and conditions of this **Subschedule 3D**, the Access Seeker shall:

- 2.1.1 for all Calls and Text Messages that are handed over by the Access Seeker to Vodafone under this Undertaking (**Direct Traffic**), provide to Vodafone the unaltered Numbering Information as part of the signalling for that traffic; and
- 2.1.2 for all calls and text messages:
- (a) that are not handed over by the Access Seeker to Vodafone under this Undertaking; but
 - (b) which are handed over by the Access Seeker to a third party for eventual handing over to Vodafone (either directly by that third party, or by a subsequent third party)
- (**Transit Traffic**), provide to the third party the unaltered Numbering Information as part of the signalling for that traffic.

Meaning of A-numbers

- 2.2 In this **Subschedule 3D**, the A-numbers are (subject to **Clause 2.3** of this **Subschedule 3D**):
- 2.2.1 for any Direct Traffic or Transit Traffic, in each case originating in the Access Seeker Network, Access Seeker Local Numbers and Access Seeker Mobile Numbers;
 - 2.2.2 for any Direct Traffic or Transit Traffic, in each case originating in or transiting another carrier's network (including any such network located outside New Zealand), the A-number in the format received by the Access Seeker from that other carrier's network; and
 - 2.2.3 for any Direct Traffic or Transit Traffic, in each case originating in the Access Seeker Network from a Roaming Customer, an individual number of the Roaming Customer that is allocated by the home network to that customer.
- 2.3 The parties acknowledge that:
- 2.3.1 in circumstances where a call is subsequently call-forwarded (or subject to any like functionality or service), the A-number for each of those calls shall be the A-number that applied to the original call; and
 - 2.3.2 in circumstances where a call is subsequently routed via a calling card or other platform, the A-number for each of those calls shall, to the extent reasonably practicable, be the A-number that applied to the original call.

Purposes of use

- 2.4 Vodafone may use Numbering Information that it receives for any lawful purposes.

No charge

- 2.5 There shall be no charge for the making available and provision of Numbering Information pursuant to this **Subschedule 3D** or any other numbering related information provided under this **Subschedule 3D**.

Customer use of A-numbers

- 2.6 Each party will use its best endeavours to:
- 2.6.1 include a provision in each contract with its Customers which prevents the Customer from spoofing, or otherwise changing, their A-number for any traffic that originates from that Customer; and
 - 2.6.2 enforce that provision whenever it has been notified by the other party of any breach of that provision by its Customer,

in each case, except in circumstances where **Clauses 3.1.2, 3.2.2 or 3.2.3** of this **Subschedule 3D** apply (and only to the extent contemplated by that clause).

Incorrect A-numbers

- 2.7 Where the Access Seeker provides to Vodafone an A-number that it receives from a third party with respect to any Direct Traffic or Transit Traffic and Vodafone notifies to the Access Seeker that the A-number is manifestly incorrect, the Access Seeker shall:
- 2.7.1 notify that third party and request that the third party rectify the problem of incorrect A-numbers, so as to prevent the problem occurring again; and
 - 2.7.2 notify Vodafone of progress towards rectification of the problem with that third party.

3 SPECIAL CIRCUMSTANCES

- 3.1 For Direct Traffic and Transit Traffic that:
- 3.1.1 the Access Seeker receives from an international network:
 - (a) where the Access Seeker has not been provided with the A-number in relation to that traffic; or
 - (b) an A-number that is manifestly incorrect,the Access Seeker shall use reasonable endeavours to provide the digits "0000" (or such other digits agreed by the parties) to enable Vodafone and Vodafone End-Users to identify that the traffic has come from an international network; and
 - 3.1.2 originates from an end-user, where that end-user has been allocated more than one A-number at the same location (which location must be the same location from which the end-user originates the call, and which includes a pilot number which is a valid and dialable A-number), the Access Seeker may provide the pilot number as the A-number in respect of that traffic; and
 - 3.1.3 originates from a local service customer on the Access Seeker Network where that local service customer has been allocated both a dialable Access Seeker Mobile Number and a dialable Access Seeker Local Number for use on the same handset, the Access Seeker may replace that originating Access Seeker Mobile Number with that Access Seeker Local Number and provide the Access Seeker Local Number as the A-number in respect of that traffic.

4 APPLICATION OF A-NUMBERS

Application of A-numbers

- 4.1 Except as otherwise provided, Vodafone (with respect to Direct Traffic or Transit Traffic received by the Vodafone Network):
- 4.1.1 shall (where A-numbers (and CLIR Flags) are to be used for the purpose of CLIP within its Network) Apply and Activate, for the purposes of CLIP, the A-numbers (and CLIR Flags) received by the Vodafone Network; and
 - 4.1.2 shall not alter those A-numbers (or CLIR Flags) in any way.

On-provision of A-numbers

- 4.2 Where Vodafone on-provides the A-number back to the Access Seeker, or to a third party carrier, for termination in the Access Seeker's, or that third party carrier's, network (as the case may be), Vodafone:
- 4.2.1 shall not be required to Activate the A-number (or CLIR Flags) for the purposes of CLIP;
 - 4.2.2 shall Apply the A-numbers (and CLIR Flags) by providing them to the Access Seeker or third party carrier (as the case may be); and
 - 4.2.3 shall not alter the A-numbers (or CLIR Flags) in the process.

Suspension or restriction of Activation and Application of A-numbers for the purposes of CLIP

- 4.3 Subject to **Clause 8** of this **Subschedule 3D**, Vodafone may suspend or restrict the Activation and Application of A-numbers for the purposes of CLIP:

- 4.3.1 where Vodafone has good reason to believe that the Access Seeker is in breach of any of the provisions set out in this **Subschedule 3D**; or
- 4.3.2 where Vodafone reasonably believes that the Privacy Commissioner has performed any statutory function or exercised a statutory power affecting directly or indirectly calling line identification services and the performance of that function or the exercise of that power has or could have the effect of making or continuing to make:
- (a) the operation of this **Subschedule 3D** or any part of it impractical or detrimental to Vodafone's reputation; or
 - (b) Vodafone incapable of performing Vodafone's obligations or a part of its obligations under this **Subschedule 3D**.

However this **Clause 4.3** will not remove any obligation on the Access Seeker to provide Numbering Information under this **Subschedule 3D**.

5 CLIR ON A-NUMBERS PROVIDED FOR CLIP

- 5.1 Vodafone is to Apply CLIR Flags for A-numbers provided for the purposes of CLIP, for Direct Traffic or Transit Traffic delivered to the Vodafone Network.

6 PRIVACY

Compliance with the Privacy Act and the Code

- 6.1 Each party acknowledges that the disclosure, collection and use of Numbering Information raises significant privacy issues. Each party agrees:
- 6.1.1 to ensure that it complies with the provisions of the Privacy Act and the Code;
 - 6.1.2 to take reasonable steps to ensure that its Customers who are provided with CLIP are aware of their responsibility to comply with their obligations under the Privacy Act and, in particular to inform its Customers who are provided with CLIP that if those Customers use A-numbers for purposes other than to:
 - (a) potentially identify the calling party; or
 - (b) call (or send a text message) back to the telephone number displayed or stored, then they shall ensure that they comply with the provisions of the Privacy Act and the Code; and
 - 6.1.3 to take reasonable steps to ensure that its Customers are aware that, where they are the calling party, by not using CLIR, they are giving authorisation for collection and use of A-numbers by customers for the purposes referred to in **Clause 6.1.2 (a) and (b)** of this **Subschedule 3D**.

Authorisations required under the Privacy Act and the Code

- 6.2 The Access Seeker shall ensure that it has obtained all authorisations required from any persons in accordance with the Privacy Act and the Code as a direct or indirect result of:
- 6.2.1 the disclosure of the Numbering Information to Vodafone; or
 - 6.2.2 the collection of the Numbering Information by:
 - (a) Vodafone;
 - (b) any Vodafone Customer or Vodafone End User; or
 - (c) any Network Operator to whom Vodafone on-provides the Numbering Information; and
 - 6.2.3 the use of the Numbering Information for any other lawful purpose.

Indemnity

- 6.3 Each party (in this **Clause 6.3**, the *indemnifying party*) indemnifies and saves harmless the other party against all loss, injury, liability, damages, costs or expense which may be suffered or incurred by the other party arising from or in connection with any actions, proceedings, claims or demands

brought by End Users of either party's Network which relate directly or indirectly to a breach by the indemnifying party of its obligations under **Clause 6.1** of this **Subschedule 3D**.

Further indemnity

6.4 If:

6.4.1 either party (in this **Clause 6.4**, the *indemnifying party*) collects from the other party (in this **Clause 6.4**, the *indemnified party*) Numbering Information for use for a purpose not expressly contemplated under this **Subschedule 3D**, or for a purpose which includes such a purpose (in this **Clause 6.4** and in **Clause 10** of this **Subschedule 3D**, the *relevant use*); and

6.4.2 the parties have not agreed, pursuant to **Clause 9** of this **Subschedule 3D** or otherwise, on necessary steps to be taken to ensure that the disclosure or collection of the A-numbers and the relevant use of the A-numbers by the indemnifying party is lawful,

the indemnifying party indemnifies and saves harmless the indemnified party against all loss, injury, liability, damages, costs and expense which may be suffered or incurred by the indemnified party arising from or in connection with any actions, proceedings, claims or demands brought by any person which relate directly or indirectly to a breach by the indemnifying party of its obligations under **Clause 6.2** of this **Subschedule 3D**.

7 SUSPENSION OR RESTRICTION OF PROVISION OF NUMBERING INFORMATION

7.1 Subject to **Clause 8** of this **Subschedule 3D**, the Access Seeker may suspend or restrict the provision of Numbering Information to Vodafone in the following circumstances:

7.1.1 where Vodafone is in breach of any of the provisions set out in this **Subschedule 3D**, including the use of A-numbers other than for any lawful purpose;

7.1.2 where the Privacy Commissioner has performed any statutory function or exercised a statutory power affecting, directly or indirectly, calling line identification services and the performance of that function or the exercise of that power has or could have the effect of making or continuing to make:

(a) the operation of this **Subschedule 3D** or any part of it impractical or detrimental to the Access Seeker's reputation; or

(b) either party incapable of performing that party's obligations or a part of its obligations under this **Subschedule 3D**.

8 PROCEDURE FOR SUSPENSION

Ability to suspend or restrict

8.1 Where a party (in this **Clause 8**, the *first party*) has a right of suspension or restriction as a result of the operation of **Clauses 4.3** or **7.1** of this **Subschedule 3D**, the first party may suspend or restrict (in the case where the first party is the Access Seeker) the provision of Numbering Information to Vodafone, or (in the case where the first party is Vodafone) the Application and Activation of A-numbers for the purposes of CLIP. However, before such suspension or restriction takes place the procedures set out in **Clauses 8.2** to **8.10** (inclusive) of this **Subschedule 3D** shall be complied with.

Notice to the other party

8.2 The first party shall give notice to the other party (in this **Clause 8**, the *other party*) setting out full details of the matters giving rise to the proposed suspension or restriction. Such notice shall include sufficient information to identify:

8.2.1 the specific event giving rise to the notice;

8.2.2 the provisions of the Privacy Act or Code which are relevant; and

8.2.3 where practicable, a remedy, solution or outcome which would remove the necessity for the suspension or restriction.

Consultation

- 8.3 Following the giving of the notice under **Clause 8.2** of this **Subschedule 3D**, the parties shall consult.
- 8.4 The purpose of the consultation shall be for each party:
- 8.4.1 to establish a better understanding of the matters which have given rise to the first party's notice; and
- 8.4.2 if possible, to remedy or resolve those matters.
- 8.5 In the event that the other party does not enter into the consultation process, the first party's obligation under **Clause 8.3** of this **Subschedule 3D** shall be limited to making itself available for consultation.

Resolution of matters that gave rise to suspension or restriction

- 8.6 If, through the consultation process set out in **Clause 8.3** of this **Subschedule 3D**, the matters that have given rise to the first party's notice are remedied or resolved, no suspension or restriction shall take place.
- 8.7 If those matters have not been remedied or resolved, the parties may agree to refer the matters to dispute resolution in an attempt to resolve those matters. In that event, suspension or restriction may be waived by agreement during the agreed dispute resolution process.

Period for suspension or restriction

- 8.8 If the parties fail to resolve or remedy the matters giving rise to the first party's notice to the reasonable satisfaction of the first party within 20 Working Days of the first party making itself available for consultation with the other party under **Clause 8.3** of this **Subschedule 3D**, then, in the absence of agreement to the contrary by the parties, the first party:
- 8.8.1 may give at least 5 Working Days notice to the other party:
- (a) confirming that it will suspend or restrict in accordance with this **Clause 8**; and
- (b) setting out reasonable details of the intended suspension or restriction; and
- 8.8.2 may suspend or restrict as set out in that notice on the expiry of that notice period.
- 8.9 Where the first party has suspended or restricted under this **Clause 8**, and the relevant event that caused the need for the relevant suspension or restriction has been resolved (in the first party's reasonable opinion), the first party will resume provision of Numbering Information as soon as reasonably practicable.

Co-operation by the other party

- 8.10 Following delivery of a notice under **Clause 8.8** of this **Subschedule 3D**, the other party shall co-operate as reasonably required by the first party to give effect to the suspension or restriction.

9 ADDITIONAL USES OF NUMBERING INFORMATION

Request for meeting

- 9.1 If either party (in this **Clause 9**, the *first party*) wishes to collect Numbering Information provided by the other party (in this **Clause 9**, the *other party*) for a relevant use, then it may, by notice to the other party, request a meeting with the other party.

Meeting between the parties

- 9.2 On receipt of such request by the other party, the parties shall meet to discuss and negotiate in good faith with a view to agreeing on the necessary steps to be taken (if any) to ensure the proposed disclosure of the Numbering Information to, and collection of the Numbering Information by, the first party and other persons, and the relevant use of the Numbering Information, is lawful.

Failure to meet shall not preclude use

- 9.3 For the avoidance of doubt, failure by the first party to give notice under this **Clause 9** shall not preclude the first party's collection of Numbering Information for the relevant use.

10 TECHNICAL SPECIFICATIONS

- 10.1 For the purposes of **Clause 15.3** of **Subschedule 3A**, the Technical Specification shall apply to the provision of Numbering Information under this **Subschedule 3D**.

Subschedule 3E

LICA Group structure

A LICA Group is a Major LICA together with the Associated Minor LICAs identified in this **Subschedule 3E** as associated with the Major LICA.

Major LICAs	Associated Minor LICAs
Auckland	Gt Barrier
	Helensville
	Hibiscus Coast
	Pukekohe
	Whangarei
	Dargaville
	Kaikohe
	Kaitaia
	Kawakawa
	Maungaturoto
	Warkworth
	Hamilton
	Huntly
	Matamata
	Morrinsville
	Otorohanga
	Paeroa
	Tokoroa/Putaruru
	Taumarunui
	Te Kuiti
	Te Awamutu
	Thames
	Waihi
	Whangamata
	Rotorua
	Tauranga
	Taupo
	Whakatane
	Opotiki
Wellington	Paraparaumu
	Wanganui
	Gisborne
	Ruatoria
	Napier
	Waipukurau
	Wairoa
	New Plymouth
	Hawera
	Stratford
	Opunake
	Mokau
	Palmerston North
	Ohakune
	Marton
	Waiouru
	Taihape
	Dannevirke

Major LICAs	Associated Minor LICAs
	Pahiatua
	Levin
	Masterton
	Featherston
Christchurch	Akaroa
	Amberley
	Ashburton
	Cheviot
	Culverden
	Darfield
	Kaikoura
	Rangiora
	Waitangi
	Nelson
	Motueka
	Murchison
	Takaka
	Greymouth
	Hokitika
	Franz Josef
	Fox Glacier
	Haast
	Westport
	Blenheim
	Timaru
	Fairlie
	Geraldine
	Waimate
	Mt Cook
	Queenstown
	Cromwell
	Wanaka
	Dunedin
	Palmerston
	Oamaru
	Balclutha
	Lawrence
	Milton
	Twizel
	Kurow
	Alexandra
	Ranfurly
	Roxburgh
	Invercargill
	Riverton
	Te Anau
	Winton
	Tokanui
	Edendale
	Gore
	Lumsden
	Otautau

Based on the LICA Group structure, above, the following table shows (for illustrative purposes) which geographic service number ranges are associated with each LICA Group.

LICA Group	Geographic service number ranges
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LICA Group	Geographic service number ranges
Auckland	09, 07
Wellington	06, 04
Christchurch	03

Schedule 4
Service-Specific Terms and Conditions
Vodafone Mobile Termination Access Services

The service-specific terms and conditions for the Vodafone Mobile Termination Access Services comprise:

- (a) for the FTM Call Termination Service, the terms set out in Annex 1 to this Schedule 4;
- (b) for the MTM Call Termination Service, the terms set out in Annex 2 to this Schedule 4;
and
- (c) for the Text Message Termination Service, the terms set out in Annex 3 to this Schedule 4.

Annex 1 to Schedule 4
Service Specific Terms and Conditions
Vodafone FTM Call Termination Service

1. Interpretation

Unless the context otherwise requires, words and expressions defined or construed in the main body of this Undertaking or **Schedule 3**, and not otherwise defined or construed in this **Annex 1 to Schedule 4**, have the same meanings as defined or construed in the main body of this Undertaking or **Schedule 3** when used in this **Annex 1 to Schedule 4**. In addition:

Chargeable FTM Call means any FTM Call handed over from the Access Seeker Network to the Vodafone Network in accordance with the FTM Call Handover Obligation and giving rise to the transmission of an Answer Line Signal;

Designated Destination means the point in the Vodafone Network to which a Vodafone Mobile Number provided in respect of an FTM Call has been allocated or assigned by Vodafone, disregarding any call forwarding or like functionality or service that may have been invoked by an End User, the Access Seeker, Vodafone or a Network Operator which results in that FTM Call being routed to another point in the Vodafone Network or to any other network (including the Access Seeker Network) from which the Answer Line Signal in respect of that FTM Call emanates;

Duration means the period determined in accordance with methodologies:

- (a) employed by Vodafone in determining the actual duration of calls for the purposes of calculating the charges paid by other persons; and
- (b) which have been established having regard to:
 - (i) when an Answer Line Signal for an FTM Call is detected by Vodafone in respect of that FTM Call; and
 - (ii) when a Release Signal for that FTM Call is detected by Vodafone in respect of that FTM Call;

FTM Call means:

- (a) a series of signals associated with full duplex, real time, audio communication contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface); where the bandwidth to be provided is 64 kbits per second for PCM encoded speech, circuit-switched data or fax; whether or not there is actual communication between the originator and the intended recipient of the signals; disregarding CCITT No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers;
- (b) that originates either:
 - (i) in a network in New Zealand:

- a. from an Access Seeker End User; and
 - b. from a "Local Number" (as that term is defined in the LMNP Terms) (and that Local Number is the A-number for the FTM Call); or
- (ii) in a network outside New Zealand (and an international number is the A-number for the FTM Call);
- (c) where the number dialled by the calling party is a Vodafone Mobile Number or where a Vodafone Mobile Number is provided by the Access Seeker as a result of number translation by the Access Seeker in accordance with **Clause 5.2** (but excluding, for the avoidance of doubt, calls where a Vodafone Mobile Number is provided by the Access Seeker as a result of number translation in any other circumstances); and
- (d) the Designated Destination is in Vodafone's cellular mobile network (including Vodafone's 2G GSM cellular mobile network and Vodafone's 3G W-CDMA mobile network and any future Vodafone cellular mobile network),

but excluding any other type of call (including an MTM Call or video telephony call or any call where the designated destination is in a third party's network), text message or multi-media message.

FTM Call Handover Obligation means the obligation set out in **Clause 4**.

2. Provision of Vodafone Network Interconnection Service

2.1 Provision of Vodafone Network Interconnection Service

Subject to the terms and conditions of this Undertaking, Vodafone will make available and provide the FTM Call Termination Service to the Access Seeker.

2.2 Testing

Vodafone's obligation under **Clause 2.1** is conditional upon agreement on the successful completion of:

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

3. Price

3.1 Price of FTM Call Termination Service

The price of the FTM Call Termination Service to be provided under this Undertaking, and which the Access Seeker agrees to pay Vodafone, for each Chargeable FTM Call is specified in **Schedule 2**.

4. FTM Call Handover Obligation

An FTM Call that is handed over by the Access Seeker from the Access Seeker Network to the Vodafone Network shall be handed over at the most expedient Access Seeker Handover Point relative to the point of origination of the FTM Call. For the purposes of this **Clause 4**, "the most expedient Access Seeker Handover Point relative to the point of origination of the FTM Call" shall be the Access Seeker Handover Point that is associated with the point of origination (based on the LICA Group structure set out in **Subschedule 3E to Schedule 3**) (which, in the case of FTM Calls that originate outside New Zealand, shall be deemed to be the Access Seeker Handover Point in Auckland).

5. Identification of FTM Calls

5.1 Calling party numbers

For the avoidance of doubt, in respect of any FTM Call handed over from the Access Seeker Network to the Vodafone Network, there shall be no charge to Vodafone for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number or any part of the A-number or any default A-number provided in accordance with **Subschedule 3D to Schedule 3**.

5.2 Number translation

The Access Seeker shall not, in relation to any FTM Call, translate the number dialled by the calling party into any other number to be presented to Vodafone, unless:

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

5.3 Notification of Third Party Reseller numbers

Vodafone shall use its best endeavours to notify the Access Seeker from time to time of any Vodafone Mobile Numbers that have been allocated to a Third Party Reseller and that are used on the Vodafone Network. However, for the avoidance of doubt, if Vodafone has not notified the Access Seeker under this **Clause 5.3** for any reason, any FTM Call for which any of those Vodafone Mobile Numbers are provided as the called party number will still be an FTM Call under this Undertaking.

For the avoidance of doubt, nothing in this **Clause 5.3** limits clauses 21.4 or 21.5 of **Subschedule 3A** to **Schedule 3**.

6. Mobile Number Portability

For the purposes of applying the Network Terms and the LMNP Voice Interconnect Specifications to an FTM Call to a Vodafone Mobile Number referred to in **Clause 1.78.2** of **Subschedule 3A** to **Schedule 3**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier” or a “Bypass Carrier”; or
 - (ii) a “Donor Carrier” or a “Contracted Service Deliverer” for a Network Operator; and
 - (b) Vodafone may be a “Host Carrier” or a “Terminating Carrier”,
- (as those terms are defined in the Network Terms).

Annex 2 to Schedule 4
Service Specific Terms and Conditions
Vodafone MTM Call Termination Service

1. Interpretation

Unless the context otherwise requires, words and expressions defined or construed in the main body of this Undertaking or **Schedule 3**, and not otherwise defined or construed in this **Annex 2 to Schedule 4**, have the same meanings as defined or construed in the main body of this Undertaking or **Schedule 3** when used in this **Annex 2 to Schedule 4**. In addition:

Chargeable MTM Call means any MTM Call handed over from the Access Seeker Network to the Vodafone Network in accordance with the MTM Call Handover Obligation and giving rise to the transmission of an Answer Line Signal;

Designated Destination means the point in the Vodafone Network to which a Vodafone Mobile Number provided in respect of an MTM Call has been allocated or assigned by Vodafone, disregarding any call forwarding or like functionality or service that may have been invoked by an End User, the Access Seeker, Vodafone or a Network Operator which results in that MTM Call being routed to another point in the Vodafone Network or to any other network (including the Access Seeker Network) from which the Answer Line Signal in respect of that MTM Call emanates;

Duration means the period determined in accordance with methodologies:

- (a) employed by Vodafone in determining the actual duration of calls for the purposes of calculating the charges paid by other persons; and
- (b) which have been established having regard to:
 - (i) when an Answer Line Signal for an MTM Call is detected by Vodafone in respect of that MTM Call; and
 - (ii) when a Release Signal for that MTM Call is detected by Vodafone in respect of that MTM Call;

MTM Call means:

- (a) a series of signals associated with full duplex, real time, audio communication contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface); where the bandwidth to be provided is 64 kbits per second for PCM encoded speech, circuit-switched data or fax; whether or not there is actual communication between the originator and the intended recipient of the signals; disregarding CCITT No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers;
- (b) that originates:
 - (i) from an Access Seeker End User;

- (ii) from an Access Seeker Mobile Number (and the Access Seeker Mobile Number is the A-number for the MTM Call); and
- (iii) either in a cellular mobile network in New Zealand operated by the Access Seeker or in a cellular mobile network outside New Zealand on which the Access Seeker End User is roaming;
- (c) where the number dialled by the calling party is a Vodafone Mobile Number or where a Vodafone Mobile Number is provided by the Access Seeker as a result of number translation by the Access Seeker in accordance with **Clause 5.2** (but excluding, for the avoidance of doubt, calls where a Vodafone Mobile Number is provided by the Access Seeker as a result of number translation in any other circumstances); and
- (d) the Designated Destination is in Vodafone's cellular mobile network (including Vodafone's 2G GSM cellular mobile network and Vodafone's 3G W-CDMA mobile network and any future Vodafone cellular mobile network),

but excluding any other type of call (including an FTM Call or video telephony call or any call where the designated destination is in a third party's network), text message or multi-media message.

MTM Call Handover Obligation means the obligation set out in **Clause 4**.

2. **Provision of Vodafone Network Interconnection Service**

2.1 **Provision of Vodafone Network Interconnection Service**

Subject to the terms and conditions of this Undertaking, Vodafone will make available and provide the MTM Call Termination Service to the Access Seeker.

2.2 **Testing**

Vodafone's obligation under **Clause 2.1** is conditional upon agreement on the successful completion of:

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

2.3 **Commencement of testing**

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

3. **Price**

The price of the MTM Call Termination Service to be provided under this Undertaking, and which the Access Seeker agrees to pay Vodafone, for each Chargeable MTM Call is specified in **Schedule 2**.

4. **MTM Call Handover Obligation**

An MTM Call that is handed over by the Access Seeker from the Access Seeker Network to the Vodafone Network shall be handed over at the Access Seeker Handover Point closest to the point of origination (which, in the case of MTM Calls that originate outside New Zealand, shall be deemed to be the Access Seeker Handover Point in Auckland).

5. **Identification of MTM Calls**

5.1 **Calling party numbers**

For the avoidance of doubt, in respect of any MTM Call handed over from the Access Seeker Network to the Vodafone Network, there shall be no charge to Vodafone for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number or any part of the A-number or any default A-number provided in accordance with **Subschedule 3D to Schedule 3**.

5.2 **Number translation**

The Access Seeker shall not, in relation to any MTM Call, translate the number dialled by the calling party into any other number to be presented to Vodafone, unless:

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

5.3 **Notification of Third Party Reseller numbers**

Vodafone shall use its best endeavours to notify the Access Seeker from time to time of any Vodafone Mobile Numbers that have been allocated to a Third Party

Reseller and that are used on the Vodafone Network. However, for the avoidance of doubt, if Vodafone has not notified the Access Seeker under this **Clause 5.3** for any reason, any MTM Call for which any of those Vodafone Mobile Numbers are provided as the called party number will still be an MTM Call under this Undertaking.

For the avoidance of doubt, nothing in this **Clause 5.3** limits clauses 21.4 or 21.5 of **Subschedule 3A to Schedule 3**.

6. **Mobile Number Portability**

For the purposes of applying the Network Terms and the LMNP Voice Interconnect Specifications to an MTM Call to a Vodafone Mobile Number referred to in **Clause 1.78.2 of Subschedule 3A to Schedule 3**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier” or a “Bypass Carrier”; or
 - (ii) a “Donor Carrier” or a “Contracted Service Deliverer” for a Network Operator; and
- (b) Vodafone may be a “Host Carrier” or a “Terminating Carrier”,

(as those terms are defined in the Network Terms).

Annex 3 to Schedule 4
Service Specific Terms and Conditions
Vodafone Text Message Termination Service

1. **Interpretation**

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

Chargeable Text Message means, subject to **Clause 6.5**, any Text Message handed over from the Access Seeker to Vodafone in accordance with the Text Message Handover Obligation;

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

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

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

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

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

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

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

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

- (a) uses the CCITT No. 7 MAP protocol and generally conforms to GSM Technical Specifications GSM 03.40, GSM 04.11 and GSM 09.02 (as amended from time to time); and
- (b) originates:
 - (i) in a network in New Zealand operated by the Access Seeker; or
 - (ii) from a subscriber of the Access Seeker (or from a subscriber of a Third Party Reseller of the Access Seeker) who is roaming in a network operated by a person from whom the Access Seeker receives that message pursuant to an agreement for roaming services; and
- (c) is sent:
 - (i) from a customer of the Access Seeker, including a customer of a Third Party Reseller of the Access Seeker; and
 - (ii) using the Access Seeker's customer's mobile phone service provided to that customer by the Access Seeker; and
 - (iii) using the text message functionality of the customer's mobile phone or handset or a web-to-text or similar system; and
- (d) is made to a Mobile Number that has been allocated to a mobile phone or handset in a network in New Zealand operated by Vodafone,

but does not include:

- (e) a Call (as that term is defined in **Subschedule 3A to Schedule 3**);
- (f) a Multi-Media Message; or
- (g) an Other Message;

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

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

2. **Provision of Text Message Termination Service**

2.1 **Provision of Text Message Termination Service**

Subject to the terms and conditions of this Undertaking, Vodafone will make available and provide the Text Message Termination Service to the Access Seeker.

2.2 **Testing**

Vodafone's obligations under **Clause 2.1** are conditional upon agreement on the successful completion of:

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

2.3 **Commencement of testing**

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

3. **Price**

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

4. **Text Message Handover Obligation**

The Text Message Handover Obligation shall be that a Text Message that is handed over by the Access Seeker from the Access Seeker Network to the Vodafone Network shall be handed over at the Text Message Termination Service Delivery Point.

5. **Service matters**

5.1 **Handing over of Text Messages**

- (a) The Access Seeker shall hand over Text Messages directly over the Signalling Link to Vodafone, except where the parties agree otherwise.
- (b) The Access Seeker may only hand over Text Messages sent from:
 - (i) a customer's mobile phone or handset that has been allocated a Mobile Number in the Access Seeker Network (not including a mobile phone or handset that is used as a computer server or is in some way an intermediary device connected to a computer server); or

- (ii) a web-to-text or similar system that is operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker (which, for the avoidance of doubt, may include using a mobile phone or handset as a computer server or in some way as an intermediary device connected to a computer server).

5.2 Use of the Internet

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

5.3 Other Messages

The Access Seeker shall not transmit or hand over any Other Messages to Vodafone over the Signalling Link or by any other means.

5.4 Text Message content and form

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

5.5 A-numbers

- (a) Subject to **Clause 5.5(e)**, and **Clauses 3 and 7 of Subschedule 3D to Schedule 3**, the Access Seeker shall transmit an accurate A-number with each Text Message handed over to Vodafone.
- (b) For the avoidance of doubt, the Access Seeker shall not have complied with paragraph (a) if it transmits a modified A-number to Vodafone. The Access Seeker shall not use the hidden address feature. An accurate A-number shall

be provided to Vodafone's customer even if a hidden address flag is attached to the Text Message by the Access Seeker.

- (c) For the avoidance of doubt, in respect of any Text Message handed over from the Access Seeker Network to the Vodafone Network, there shall be no charge to Vodafone for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number provided in accordance with **Subschedule 3D to Schedule 3**.
- (d) The obligations in paragraphs (a) and (b) are subject to any limitations that the Access Seeker reasonably believes are necessary to ensure compliance with the Privacy Act 1993 or any applicable codes of practice issued under that Act, the Unsolicited Electronic Messages Act 2007, or any other legislative requirements.
- (e) Where a Text Message is sent using a web-to-text or similar system, the parties acknowledge that it may not be possible to transmit an A-number in the usual format. In those circumstances, the Access Seeker shall transmit a number that accurately identifies the subscriber that sent the Text Message and that is unique to that subscriber.

5.6 **Spamming**

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

5.7 **Business to employee web-to-text**

- (a) A Business Subscriber of the Access Seeker may send Text Messages arising out of the use of a web-to-text or a similar system that is operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker to subscribers on the Vodafone Network, where those subscribers on the Vodafone Network are officers, employees, contractors, agents or customers (except, in relation to Text Messages to customers, where such Text Messages are sent, or caused to be sent, in breach of the Unsolicited Electronic Messages Act 2007) of the Business Subscriber.
- (b) The Access Seeker:
 - (i) shall use its best endeavours to ensure that a provision is included in each contract with its Business Subscribers that prohibits those subscribers from sending Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the Vodafone Network in breach of the Unsolicited Electronic Messages Act 2007; and
 - (ii) shall use its reasonable endeavours to enforce that restriction.

- (c) In this **Clause 5.7** and in **Clauses 5.8** and **6**, “**Business Subscriber**” means, in respect of the Access Seeker, a subscriber of the Access Seeker, or of any Relevant Person, that uses the Access Seeker’s or that Relevant Person’s services principally for the purposes of the subscriber’s business, including such use by a subscriber in relation to their functions as a charity or as a central or local governmental agency, with the Access Seeker determining on reasonable grounds whether a subscriber is a Business Subscriber of the Access Seeker. The parties themselves shall not be subscribers for these purposes.

5.8 Use of web-to-text by Consumer Subscribers

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

5.9 Limitations

The Access Seeker shall not:

- (a) use the Signalling Links or TMSDPs provisioned, or to be used, for the Text Message Termination Service under this Undertaking for the delivery of any messages other than Text Messages;
- (b) transit any Text Message (that would be a Chargeable Text Message if it were handed over in accordance with the Text Message Handover Obligation) through a third party, except where:
 - (i) the Access Seeker delivers the Text Message to a third party that has:
 - (A) in the reasonable opinion of Vodafone, appropriately dimensioned capacity from that third party to that Vodafone for transit traffic; and
 - (B) an agreement for direct handover and transit termination of Text Messages with Vodafone; and
 - (ii) the Access Seeker delivers the Text Message directly to that third party; and

(iii) that third party delivers the Text Message directly to Vodafone,

but, for the avoidance of doubt, that Text Message shall not be a Chargeable Text Message for the purposes of this Undertaking. However, connections with international roaming partners (who are not providing SMS hubbing services to Vodafone), where that connection is used for both international text messages and international voice roaming services, may not be used for the transit of Text Messages under this paragraph (b).

5.10 **Liability**

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

5.11 **Display limitations**

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

6. **Suspension and termination**

6.1 **General suspension**

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

(a) if Vodafone, acting reasonably and in good faith, considers that the Access Seeker is using or is seeking to use the Text Message Termination Service, or is handing over particular types of Text Messages, in a way that has, or is likely to have, a material detrimental impact on:

(i) Vodafone's customers' reasonable enjoyment of the mobile phone service; or

(ii) the Vodafone 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 Vodafone Network, including where Vodafone's services to its customers are being interfered with, or Vodafone's services are otherwise brought into disrepute, as a consequence of it making available and providing the Text Message Termination Service to the Access Seeker; or

- (c) if the Access Seeker has committed a breach of any of **Clauses 5.1 to 5.6** and, in the case of a breach of any of **Clauses 5.4 to 5.6**, Vodafone reasonably considers that the breach does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (d) if Vodafone considers in good faith that the Access Seeker has committed a breach of any of **Clauses 5.7 to 5.9** and Vodafone reasonably considers that the breach does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (e) if Business Subscribers of the Access Seeker send Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the Vodafone Network that are not officers, employees, contractors, agents or customers of the Business Subscriber and Vodafone reasonably considers that this action does not relate to a particular subscriber or group of subscribers of the Access Seeker; or
- (f) if the Access Seeker or subscribers of the Access Seeker send, or cause to be sent, Text Messages to subscribers on the Vodafone Network in breach of the Unsolicited Electronic Messages Act 2007 and Vodafone reasonably considers that this action does not relate to a particular subscriber or group of subscribers of the Access Seeker,

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

6.2 **Suspension in relation to subscribers of the Access Seeker**

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

- (a) if Vodafone, acting reasonably and in good faith, considers that the Access Seeker is using or is seeking to use the Text Message Termination Service, or is handing over particular types of Text Messages, in a way that has, or is likely to have, a material detrimental impact on:
 - (i) Vodafone's customers' reasonable enjoyment of the mobile phone service; or
 - (ii) the Vodafone 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 of the Access Seeker:
- (i) is using equipment that is defective or illegal; or
 - (ii) is causing technical or other problems on the Vodafone 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 Vodafone; or
 - (v) sends more than 5,000 Text Messages in any twenty-four hour period that are handed over to the Vodafone Network; or
 - (vi) sends, or causes to be sent, Text Messages to a significant number of customers on the Vodafone Network in breach of the Unsolicited Electronic Messages Act 2007; or
 - (vii) sends any Other Messages in breach of **Clause 5.3**; or
 - (viii) is sending Text Messages via a TMSDP other than by using a mobile phone or handset or a web-to-text or similar system that is operated by the Access Seeker or on behalf of the Access Seeker by a contractor or agent of the Access Seeker; or
- (c) if the Access Seeker has, or any of the Access Seeker's customers have, committed a breach of any provision of the Unsolicited Electronic Messages Act 2007 or any of **Clauses 5.4 to 5.6**; or
- (d) if Vodafone considers in good faith that the Access Seeker has committed a breach of any of **Clauses 5.7 to 5.9** and Vodafone reasonably considers that the breach relates to a particular subscriber or group of subscribers of the Access Seeker; or
- (e) if any Business Subscriber of the Access Seeker sends Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the Vodafone Network that are not officers, employees, contractors, agents or customers of the Business Subscriber and Vodafone reasonably considers that this action relates to a particular subscriber or group of subscribers of the Access Seeker; or
- (f) if any Business Subscriber or Consumer Subscriber of the Access Seeker sends Text Messages arising out of the use of a web-to-text or a similar system to subscribers on the Vodafone Network in breach of the Unsolicited Electronic Messages Act 2007 and Vodafone reasonably considers that this action relates to a particular subscriber or group of subscribers of the Access Seeker,

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

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

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

- (a) if Vodafone, acting reasonably and in good faith, considers that the Access Seeker is using or is seeking to use the Text Message Termination Service, or is handing over particular types of Text Messages, in a way that has, or is likely to have, a material detrimental impact on:
 - (i) Vodafone's customers' reasonable enjoyment of the mobile phone service, which may include:
 - (A) where the particular Mobile Number receives more than 5,000 Text Messages in any twenty-four hour period; or
 - (B) but for action taken for the specific reason of avoiding the application of subparagraph (i)(A), would have received that many Text Messages; or
 - (ii) the Vodafone 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, provided that Vodafone has given notice and provided details to the Access Seeker of the particular matter giving rise to the right of suspension under paragraph (b) of this **Clause 6.3** and the Access Seeker has not remedied the particular matter within seven calendar days of that notice.

Vodafone may suspend immediately under paragraph (a), but in the case of paragraphs (a) and (b) shall give notice and provide details to the Access Seeker of the particular matter giving rise to suspension as soon as reasonably practicable.

6.4 **Reasonable steps**

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

- (a) shall be subject to **Clause 4.2 of Subschedule 3A to Schedule 3**; and
- (b) shall not be subject to **Clause 4.3 of Subschedule 3A to Schedule 3**.

6.5 Chargeable Text Messages

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

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

7. Signalling Links and TMSDPs

7.1 Provisioning of Signalling Links

Subject to the remainder of this **Clause 7**, the Access Seeker shall be responsible for provisioning the Signalling Links that connects each of its TMSDPs with each of Vodafone's TMSDPs to enable the delivery of Text Messages from the Access Seeker Network to the Vodafone Network.

7.2 Redundancy

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

7.3 Requirements for Signalling Link capacity

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

7.4 **Arranging TMSDPs and changes to TMSDPs**

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

7.5 **Responsibility for provisioning**

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

7.6 **Use of a third party**

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

8. **Forecasting**

8.1 **Text Message traffic**

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

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

8.2 **Technology and system changes**

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

8.3 **Identification of types of Text Messages**

From time to time, Vodafone may, for the purposes of checking compliance with obligations under this Undertaking, request the Access Seeker to provide information to Vodafone that would assist Vodafone in identifying particular types of Text Messages that are handed over to Vodafone. The Access Seeker shall

provide this information to Vodafone, unless the Access Seeker can demonstrate (on reasonable grounds) that it would be impracticable or illegal to do so.

9. **Miscellaneous matters**

9.1 **Calling party numbers**

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

9.2 **Number translation**

The Access Seeker shall not, in relation to any Text Message, translate the number dialled by the calling party into any other number to be presented to Vodafone, unless:

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

9.3 **Mobile Number Portability**

For the purposes of applying the Network Terms and the SMS Interconnect Specifications to a Text Message under this **Annex 3 to Schedule 4**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier”; or
 - (ii) a “Donor Carrier”; and
- (b) Vodafone may be a “Host Carrier” or a “Terminating Carrier”,

(as those terms are defined in the Network Terms).

10. **Text Message Termination Service Delivery Point**

Vodafone TMSDP
Interconnect Room 60 France St Newton AUCKLAND

Schedule 5
Deed of Acceptance
Vodafone Mobile Termination Access Services

[Date]

By: [Full name of Access Seeker]

In favour of: Vodafone New Zealand Limited (**Vodafone**)

By this Deed:

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

[New Zealand address]

Attention: [Name or office]

Telephone: [Number]

Facsimile: [Number]

6. Where we are, at the date of this Deed, a party to an agreement with Vodafone for the provision of services equivalent or substantially similar to the Vodafone Mobile Termination Access Services, we agree that, when Vodafone begins to provide the Vodafone Mobile Termination Access Services to us under the terms of the Undertaking:
 - (a) Vodafone will no longer be required to provide those services to us under that agreement;
 - (b) the parts of that agreement that apply to those services shall not apply whilst Vodafone provides the Vodafone Mobile Termination Access Services to us under the terms of the Undertaking; and
 - (c) that agreement shall be interpreted accordingly.
7. We undertake to make available to Vodafone, at any time when we operate a cellular mobile network in New Zealand and at any time requested by Vodafone, a telecommunications service that is the same as the Vodafone Mobile Termination Access Services at prices no greater than those specified in Schedule 2 of this Undertaking, and otherwise on reciprocal terms that are the same as the terms on which Vodafone makes available the Vodafone Mobile Termination Access Services under the Undertaking, mutatis mutandis.

Executed as a Deed

By [Full name of Access Seeker]

Director

Director