

Telecommunications Dispute Resolution Scheme

Terms of Reference

“Scheme TOR”

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Telecommunications Dispute Resolution Scheme

Terms of Reference

1. BACKGROUND AND PURPOSE

- 1.1 The Code and this Telecommunications Dispute Resolution Scheme Terms of Reference ("Scheme TOR") establish a self-regulatory regime, collectively referred to as the "Scheme".
- 1.2 The primary purpose of the Scheme is three-fold:
 - (a) To encourage Scheme Members to resolve Customer Complaints effectively themselves;
 - (b) To provide prompt, independent resolution of disputes, having regard to the Code and the service standards it sets out, as well as relevant legal requirements; and
 - (c) To educate the industry about systemic issues arising from disputes and determinations.
- 1.3 By executing the Deed Poll attached at Schedule 1B, the Scheme Members agreed to be bound by the terms of the Scheme.

2. INTERPRETATION

- 2.1 This Scheme TOR should be read in conjunction with the Code (where definitions of the terms used in this Scheme TOR can be found). In this Scheme TOR, unless the context otherwise requires:
 - (a) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (b) Section, clause and other headings are for ease of reference only and will not affect interpretation;
 - (c) Words in singular include the plural and vice versa;
 - (d) A reference to a person includes a reference to an individual, bodies, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate

- legal personality, whether corporate, political or otherwise;
- (e) The Schedules to this Scheme TOR and the provisions and conditions contained in the Schedules will have the same effect as if set out in the body of this Scheme TOR;
 - (f) Any obligation not to do anything will include an obligation not to suffer, permit, or cause that thing to be done.

2.2 In this Scheme TOR:

- (a) "Adjudicator" means an employee or agent of the Scheme Agent whose role is to consider requests for adjudication from the Scheme Agent and provide Determinations on behalf of the Scheme Agent;
- (b) "Board" means the Telecommunications Carriers Forum ("TCF") board;
- (c) "Consumer Representative" has the meaning set out in clause 7.1(a);
- (d) "Deed Poll" means the deed poll set out in Schedule 1B, with such changes thereto as the Council may determine from time to time;
- (e) "Forum Administrator" means the TCF Forum Administrator as defined in Rule 11 of the TCF Rules;
- (f) "Industry Representative" has the meaning set out in clause 7.1(b);
- (g) "TCF Rules" means the Telecommunications Carriers' Forum Rules as updated or amended by the TCF from time to time;
- (h) "Tier One members" has the meaning set out in the TCF Rules;
- (i) The terms "Subsidiary" and "Holding Company" having the meaning set out in the Companies Act 1993.

- 2.3 So that the manner in which a provider of Telecommunication Services structures its business should not affect its voting entitlements, notwithstanding any other clause of this Scheme TOR, if one Scheme Member is a Subsidiary of another Scheme Member, then the Scheme Member which is the Subsidiary of another Scheme Member shall not:
- (a) appoint or vote on the Scheme Member entitled to appoint an Industry Representative; or
 - (b) vote on any matter; or
 - (c) make any nomination of a Scheme Member pursuant to clause 13.4; or
 - (d) join in any request for a meeting of Scheme Members, pursuant to clause 16.4; or
 - (e) join in any request for a meeting of Scheme Members other than Tier One members who have appointed an Industry Representative under clause 7.1(b)(i), pursuant to clause 16.6; or
 - (f) form part of the quorum pursuant to clause 17.5.

The above does not prevent a Scheme Provider from fully participating in the Scheme TOR but seeks to prevent a group of companies which each provide Telecommunication Services being entitled to greater votes than if all those Telecommunication Services were provided by one company.

- 2.4 If the Subsidiary is a Tier One member and the Holding Company is not a Tier One member, then, in respect of all matters which the Subsidiary is prevented from undertaking pursuant to this clause, the Holding Company will be deemed to be a Tier One member.

3. TCF ROLE

- 3.1 The TCF may:

- (a) In respect of the Scheme:
 - i) purchase, take on lease or exchange, hire or otherwise acquire any services and any right, title or interest in tangible and intangible property in order to establish, operate or facilitate the establishment and/or operation of the Scheme;

- ii) enter into any arrangements in respect of the Scheme including, without limitation, providing access to the Scheme or otherwise permitting use of the Scheme;
- iii) charge Scheme Members to access or otherwise use the Scheme, in order to meet costs incurred in operating the Scheme;
- iv) borrow monies (including by receiving payments in advance) to meet costs in respect of the Scheme;
- v) appoint the Scheme Agent; and
- vi) do all other things as are incidental or conducive to the operation or to facilitate the operation of the Scheme.

4. SCHEME MEMBERSHIP

- 4.1 Membership of the Scheme will consist of all providers of Telecommunications Services who have executed the Deed Poll and who have not been removed under clauses 4.2 or 5.4(b) or as referred to in clause 6.1(k), or who have not departed as referred to in clauses 4.4 to 4.7.
- 4.2 If a Scheme Member ceases to provide Telecommunications Services in New Zealand, the Council will direct the Scheme Agent to give the Scheme Member 60 Working Days' notice of removal from the Scheme. Clause 4.5 to 4.8 will apply to any such removal of a Scheme Member.

New Members

- 4.3 Providers of Telecommunications Services may join the Scheme at any time by executing the Deed Poll. Scheme membership, and the benefits of such membership, shall commence and fees shall be payable from the date the relevant party provides an executed Deed Poll to the Scheme Agent.

Departing Members

- 4.4 Subject to clauses 4.5 and 4.7, any Scheme Member who wishes to end its participation in the Scheme may do so at any time on 60 Working Days' notice in writing to the Scheme Agent.
- 4.5 Any Scheme Member whose participation in the Scheme is to cease, or has ceased, will not be entitled to a rebate of any fees paid and will remain liable for its share of any unpaid fees or

other liabilities incurred by the Scheme Member up to the date participation in the Scheme has ceased.

- 4.6 A departing Scheme Member will remain bound by the terms of the Scheme in respect of all Complaints registered before the Scheme Member's date of departure from the Scheme, notwithstanding such departure.
- 4.7 Any Scheme Member who wishes to end its participation in the Scheme or is to be removed under clause 4.2 or 5.4(b) must provide their Customers with 20 Working Days' advance notice of the Scheme Member's departure from the Scheme. Such notice must include confirmation that all Complaints registered before the Scheme Member's date of departure from the Scheme will remain subject to the Disputes resolution process in the Code.
- 4.8 For the avoidance of doubt:
 - (a) Scheme Members do not have to be TCF members.
 - (b) All Scheme Members will bear their own costs and expenses of participation in Scheme activities.
- 4.9 Scheme Members must respond to the Scheme Agent within the timeframes set out in the Code ("**Prescribed Timeframes**"). The Scheme Agent may, in its own discretion, agree to extend the Prescribed Timeframes following a request for a time extension from a Scheme Member in accordance with the Code. If a Scheme Member fails to respond within the Prescribed Timeframes or, if applicable, the extended Prescribed Timeframes, the Scheme Agent will issue that Scheme Member with a written notice advising that, if the Scheme Member does not respond to the Scheme Agent within three (3) Working Days of receipt of such notice, the Dispute will be escalated to the next Level as described in Annexure 1 of the Code.

5. FEE STRUCTURE AND PAYMENT

- 5.1 Each Scheme Member shall pay to the Scheme Agent such fees as determined by the Board from time to time. The Scheme fees and payment arrangements are specified in Schedule 2 as amended in accordance with the TCF Rules.
- 5.2 The manner and mode of payment shall be determined by the Board. The Board may provide for payment to be made in advance.

- 5.3 Unless specified otherwise, the Scheme Agent is responsible for invoicing, and recovering all amounts invoiced to, Scheme Members in accordance with clause 14.3(h).
- 5.4 The Scheme Agent must advise the Council of any unpaid amount, which is not the subject of a valid dispute, contemporaneously with sending a reminder to the Scheme Member to pay the outstanding amount in accordance with the agreement between the Scheme Agent and the TCF in respect of the provision of the Scheme Agent services. If the outstanding amount is not paid within 10 Working Days of sending the second reminder, the Scheme Agent may:
- (a) bring debt collection proceedings or take any other steps to recover such amounts; and/or
 - (b) suspend the Scheme Member from the Scheme.
- 5.5 Any Scheme Member who is suspended from the Scheme under clause 5.4(b) will remain bound by the terms of the Scheme in respect of all Complaints registered before that Scheme Member's date of suspension from the Scheme, notwithstanding such suspension. The Council must issue a public notice of that Scheme Member's suspension from the Scheme.
- 5.6 TCF shall invoice the Scheme Members, and Scheme Members shall pay to TCF, the amount of any sums which TCF becomes liable to pay to the Scheme Agent. TCF shall allocate any such amount amongst Scheme Members in accordance with the allocation of Scheme Overhead Fees applying to the most recent quarter for which Scheme Overhead Fees have been invoiced by the Scheme Agent.

6. FUNCTIONS OF THE COUNCIL

- 6.1 The functions of the Council are to:
- (a) appoint a Chairperson of the Council in accordance with section 9;
 - (b) select a Scheme Agent and any other external expert resources used by the Council and approve any Adjudicator nominated by the Scheme Agent, that may be required from time to time, subject to budget constraints;
 - (c) oversee the operation of the Scheme and ensure it operates efficiently and within the approved budget;

- (d) approve the business plan, recommend the total annual budget for the Scheme for Board approval, and allocate the approved budget;
- (e) monitor the response to promotional activities related to the Scheme;
- (f) approve the annual and quarterly reports on the Scheme¹ and, once approved, provide the Board and Scheme Members with a copy of the reports;
- (g) consider Scheme Members' complaints in relation to any matter regarding the Scheme;
- (h) recommend amendments to the Code and Scheme for Board approval;
- (i) recommend fees and other levies for the Scheme for Board approval;
- (j) provide guidance to the Scheme Agent on policy and procedural questions;
- (k) approve and notify Scheme Members' expulsion from the Scheme for non-compliance with Determinations or Commitments in accordance with the Code;
- (l) meet at least quarterly;
- (m) undertake such matters as the Council believes is necessary or desirable to operate or facilitate the operation of the Scheme, including without limitation, requesting reports on the administration of the Scheme from the Scheme Agent;
- (n) provide the Board and Scheme Members with a quarterly report on the progress of the Scheme;
- (o) instigate a review of the Scheme two years from the date of implementation, with a view to the Scheme being established under an entity independent of the TCF; and
- (p) resolve disputes between the Scheme Members and the Scheme Agent in relation to Scheme Fees.

¹ This is approved by the Council provided the overall budget requirements have first been approved by the Board.

7. COUNCIL COMPOSITION

7.1 The Council will be comprised of:

- (a) user representatives from organisation(s) which actively represent the interests of telecommunications end-users ("Consumer Representatives"), being:
 - (i) one representative appointed by the Ministry of Consumer Affairs; and
 - (ii) three representatives appointed by a senior representative of the Consumers Institute and a senior representative of TUANZ. Such representatives may or may not be members of the Consumers Institute or TUANZ;
- (b) industry representatives of the Scheme Members collectively ("Industry Representatives"), being:
 - (i) two representatives of Tier One members of the TCF who are Scheme Members, determined in accordance with clauses 12.1 and 12.3 to 12.6 below, except in the first year, in which there will be three representatives of Tier One members in accordance with clause 12.2 below; and
 - (ii) two representatives of all other Scheme Members other than those elected under clause 7.1(b)(i) ("Other Industry Representatives"), determined by the Scheme Members in accordance with clauses 11.3, 11.4 and 12.1 (as applicable).

Industry Representatives

7.2 For a Scheme Member to be entitled to appoint, or vote on the appointment of, an Industry Representative on the Council pursuant to clause 7.1(b), such Scheme Member must be a Scheme Member not being the subject of an advice to the Council pursuant clause 5.4. Industry Representatives are not required to be an employee of a Scheme Member. Providers of Telecommunications Services are not eligible to be appointed as Industry Representatives if they have:

- (a) chosen not to execute the Deed Poll;
- (b) been removed under clause 4.2 or 5.4(b) or as referred to in clause 6.1(k); or

- (c) departed as referred to in clauses 4.4 to 4.7.
- 7.3 The Scheme Members who may appoint, or vote on the appointment of, an Industry Representative on the Council under clause 7.1(b) may:
- (a) remove such Industry Representative and appoint another Industry Representative at any time; and
 - (b) appoint an alternate representative who is not already an Industry Representative to act in place of the nominated Industry Representative as an alternate representative at any meeting of the Council, where the nominated Industry Representative is not present. Such alternate representative, while acting in that capacity, shall have the same powers of the Industry Representative in whose place the alternate representative acts.
- 7.4 The appointments referred to in clause 7.1(b)(ii) shall be for a period of 1 year.

Consumer Representatives

- 7.5 All Consumer Representatives appointed pursuant to clause 7.1(a) shall be appointed for a period of 2 years, except that, in the first two years of the Scheme, two of the four Consumer Representatives shall be appointed for a 12 month term. After the expiry of the first 12 months, the parties which appointed the two Consumer Representatives appointed for 12 month terms shall then appoint new Consumer Representatives to replace those Consumer Representatives whose term has expired, or reappoint either or both of those Consumer Representatives for a further term of 12 months.
- 7.6 No Consumer Representative shall be appointed for more than three consecutive terms.

8. COUNCIL REMUNERATION

- 8.1 The Consumer Representatives appointed under clause 7.1(a) will be reimbursed by the Scheme Agent for reasonable travel and accommodation expenses incurred and previously approved by the Board, and shall receive from the Scheme Agent an amount determined by the Board each year for attending at least 4 Council meetings.

9. CHAIRPERSON OF THE COUNCIL

- 9.1 The Chairperson of the Council is to be appointed by the Council annually. The Chairperson must be one of the Consumer Representatives on the Council.
- 9.2 If the Council is unable to agree on the appointment of the Chairperson, the position of Chairperson shall rotate amongst the Consumer Representatives who have not previously held the position of Chairperson, in alphabetical order based on the Consumer Representatives' organisation's name.
- 9.3 Where the Chairperson is not present at a Council meeting, the Council members present at the meeting shall elect one of their number present to chair the relevant meeting.

10. FUNCTIONS OF THE BOARD

- 10.1 The functions of the Board will be to:
 - (a) maintain an oversight role;
 - (b) approve the overall budget for the Scheme;
 - (c) decide on the fees and other levies for the Scheme;
 - (d) approve and authorise payment to Consumer Representatives determined in accordance with clause 8.1;
 - (e) in accordance with clause 12.5 and 12.6, determine Tier One members entitled to appoint Industry Representatives pursuant to clause 7.1(b)(i) and review and determine in accordance with clause 12.6 Tier One members' representation on the Council if there is a change to Tier One membership of the TCF;
 - (f) execute the contract engaging the Scheme Agent, and, if for any reason the Scheme Agent is unable to do so, execute contracts engaging any other external expert resources advised by the Council and authorise payment of the costs so incurred; and
 - (g) alter, add to or rescind the Code and/or the Scheme TOR in accordance with clause 18.3 and with the TCF Rules.

11. VOTING

Board Voting

- 11.1 In carrying out its functions, and should a vote be required, the Board will vote in accordance with Rules 9.1.7 and 9.3 of the TCF Rules.

Council Voting

- 11.2 In carrying out its functions, and should a vote be required, the Council will vote in accordance with the following voting arrangements:
- (a) subject to clauses 12.2 and 13.6, one equal vote per Council representative entitled to vote;
 - (b) the Chairperson will not have a casting vote;
 - (c) a 75% majority vote will be required to pass the resolution.

Scheme Member Voting

- 11.3 If a vote of the Scheme Members is required, voting shall be in accordance with the following voting arrangements:
- (a) one equal vote per Scheme Member entitled to vote;
 - (b) the chairperson of the Scheme Members will not have a casting vote;
 - (c) a 75% majority vote will be required, except for the item identified in clauses 11.3(d) and 11.4; and
 - (d) if more than one Scheme Member is nominated to appoint an Other Industry Representative position referred to in clause 7.1(b)(ii), then that position shall be decided by a simple majority vote of Scheme Members entitled to vote.

- 11.4 Not Used

General Voting

- 11.5 Any party may abstain from casting a vote, and such abstention shall not be regarded as a vote either for or against the matter being voted on.

- 11.6 Voting may be by email or fax response to a circulated resolution by the Chairperson of the Council (for decisions by the Council), or by any Scheme Member (for decisions by the Scheme Members), or by the Forum Administrator on behalf of such parties, to the last known contact details of the Council representative or Scheme Member (as the case may be).
- 11.7 Where no response is received to a circulated resolution given under clause 11.6 within 2 Working Days of the resolution being sent, and provided those members or representatives to whom the resolution has been circulated have been given not less than one further Working Day's notice to respond, the vote will be passed if the votes of all those parties who have responded prior to the expiry of that additional one further Working Day meet the relevant voting threshold.
- 11.8 Proxy votes from any party may be held and cast by the Chairperson, Forum Administrator (when attending the meeting) and any party entitled to vote.
- 11.9 Any party holding a proxy shall declare the existence of the proxy prior to casting a proxy vote.
- 11.10 Any proxy vote shall be cast according to the instructions of the party who provides the proxy.
- 11.11 For the avoidance of doubt, clauses 11.2 to 11.10 (inclusive) shall apply to all voting by the Council and Scheme Members.

12. INDUSTRY REPRESENTATIVES

- 12.1 Scheme Members shall appoint Industry Representatives to the Council as follows:
- (a) The representatives under clause 7.1(b)(i) shall be Tier One members on the Council to be appointed in accordance with clauses 12.2 to 12.6 ("Tier One Representatives"); and
 - (b) The Other Industry Representatives under clause 7.1(b)(ii) shall be appointed by the Scheme Members who have not appointed an Industry Representative to a position on the Council pursuant to clause 7.1(b)(i) and shall be elected by such Scheme Members in accordance with clause 13.2 to 13.5.

Tier One Representatives

- 12.2 In the first year of the Scheme each Tier One member shall be entitled to appoint a representative on the Council under clause 7.1(b)(i). Notwithstanding clause 11.2(a), these representatives shall

have two votes between them. Each Tier One Representative shall be entitled to vote independently of the other, each representative having a "2/3" vote.

- 12.3 After the first year of the Scheme, two Tier One members shall each be entitled to nominate on a rotation basis described at clauses 12.4 to 12.6 below, an Industry Representative under clause 7.1(b)(i) for a term of 12 months.
- 12.4 Subject to clause 12.5, the rotation for years 2 to 6 of the Scheme will be as follows:
- a) Year 2: TelstraClear and Vodafone
 - b) Year 3: Vodafone and Telecom
 - c) Year 4: TelstraClear and Telecom
 - d) Year 5: Telecom and Vodafone
 - e) Year 6: Telecom and TelstraClear
- 12.5 After the sixth year of the Scheme, the Board will determine the Tier One members that are entitled to appoint the two Tier One Representatives (Board voting to be in accordance with Rule 9.1.7(b) of the TCF Rules) in accordance with a 5 year plan. Each Tier One member's right to appoint a Tier One Representative shall reflect as closely as possible each member's share of Tier One TCF membership fees paid in the year ending on 31 December of the year prior to the commencement of such 5 year plan.
- 12.6 If at any time there is a change in the Tier One membership of the TCF, the Board will review clauses 12.4 and 12.5 and determine a revised approach to such representation which is consistent with the approach set out in clause 12.5. A new 5 year plan based on the revised representation determined by the Board will commence on 1 January of the year following such review.

13. NOMINATION & ELECTION OF OTHER INDUSTRY REPRESENTATIVES

- 13.1 All Scheme Members who have not appointed an Industry Representative to a position on the Council pursuant to clause 7.1(b)(i) or clause 7.1(b)(ii) shall be entitled to elect a Scheme Member, to appoint one or both of the two Other Industry Representatives pursuant to clause 7.1(b)(ii).
- 13.2 The Scheme Member who shall appoint one or both of the two Other Industry Representatives pursuant to clause 7.1(b)(ii) shall be elected by the Scheme Members at an Other Industry Representative meeting convened in accordance with clauses 16.6 and 16.7. Only the Scheme Members entitled to appoint an Other Industry Representative are entitled to vote on the Scheme Member entitled to appoint Other Industry Representatives at Other Industry Representative meetings.

Tier One members who have a current entitlement to appoint a Tier One Representative to the Council and those Scheme Members who are not entitled to vote as set out in clause 2.3, shall be entitled to be present but shall not vote at any such meeting.

- 13.3 Elections of a Scheme Member pursuant to clause 13.2 shall take place on an annual basis.
- 13.4 Any Scheme Member may nominate a Scheme Member (including itself) to have the right to appoint one or both of the two Other Industry Representatives pursuant to clause 7.1(b)(ii), provided that the Scheme Member so nominated or its Holding Company does not already have the right to appoint an Industry Representative pursuant to clauses 7.1(b)(i). Any Scheme Member so nominated must give its consent to the nomination, before such nomination can be put to a vote.
- 13.5 For the avoidance of doubt, even if only one Scheme Member is nominated to have the right to appoint one or both of the two Other Industry Representatives pursuant to clause 7.1(b)(ii), a vote of Scheme Members shall be required to confirm this.
- 13.6 If for any reason only one Other Industry Representative is appointed, that Other Industry Representative shall be able to cast two votes.

Roles of the Industry Representatives

- 13.7 At Council meetings the Industry Representatives appointed under clause 12.1(b) and this section 13 shall:
 - (a) represent the views and interests of the Scheme Members the Industry Representative has been appointed to represent;
 - (b) subject to clause 13.7(c) and (d), vote according to the mandates authorised by the Scheme Members the Industry Representative has been appointed to represent;
 - (c) Where the mandate given by the relevant Scheme Members to the Industry Representatives to vote on a matter before the Council is the same for each, and subsequent discussion at the Council meeting results in modifications to the item being voted on, then provided the Industry Representatives vote in the same way and they believe such a vote is consistent with the view of the Scheme Members they are elected to represent, they may vote accordingly;
 - (d) Where the mandate given by the Scheme Members to the Industry Representatives to vote on a matter before the Council is different (i.e. some are voting for, and the others against), and subsequent discussion at the Council meeting results in

modifications to the item being voted on, the Industry Representatives must either:

- (i) abstain from voting until they have a clear mandate by the Scheme Members they represent; or
 - (ii) cast a vote on the matter before the Council, with such vote being subject to confirmation (to the appropriate voting threshold required) of the Scheme Members;
- (e) abstain from voting on issues where no initial mandate exists or cast a vote on the matter before the Council, with such vote being subject to confirmation of the relevant Scheme Members.

13.8 For the avoidance of doubt, section 13 does not apply to the Industry Representatives appointed in accordance with clause 12.1(a).

14. SCHEME AGENT

14.1 The Scheme Agent will be an independent party appointed to facilitate the efficient working of the Scheme. The Scheme Agent shall perform the functions set out in this section 14.

14.2 The Scheme Agent reports to the Council.

14.3 The Scheme Agent will:

- (a) investigate valid Disputes in accordance with the Code;
- (b) engage the Adjudicator(s) as approved by the Council pursuant to clause 6.1(b);
- (c) encourage and promote good practice for the handling of Customer Complaints by Scheme Members;
- (d) undertaking promotion in accordance with the approved business plan for the Scheme;
- (e) maintain a register and contact details of all Scheme Members, and the Council and provide a copy of this information to the Forum Administrator whenever it is updated;
- (f) propose the business plan and budget for the Scheme and maintain the records (including financial records) of the Scheme;

- (g) prepare monthly reports on its performance, and annual and quarterly reports on the Scheme providing the information specified in Schedule 3;
- (h) invoice Scheme Members for the user pays fees, scheme overhead fees and all other costs associated with the Scheme (unless specified otherwise), and undertake debt collection proceedings and any other steps authorised by the Council as provided in clause 5.4;
- (i) provide guidance to Scheme Members on the processes to be followed, as set out in the Code;
- (j) promptly report any complaints from Customers or Scheme Members about the Scheme to the Council;
- (k) provide a website with information on the Scheme.

15. FORUM ADMINISTRATOR

15.1 The TCF will procure that the Forum Administrator undertakes the following:

- (a) organise Council and Scheme Member meetings, agendas and minutes and other relevant documents as required;
- (b) organise annual elections for the Other Industry Representatives referred to in section 13 and advise the Tier One members of any change in representation under clause 12.1; and
- (c) other functions as required by the Council or the Board.

16. MEETINGS

Council Meetings

- 16.1 The Council will meet no less frequently than quarterly. An ordinary Council meeting may be called by a Council representative or the Forum Administrator by giving not less than 5 Working Days' notice, or shorter period if all Council representatives agree.
- 16.2 At Council meetings, 6 Council representatives constitute a quorum. The quorum must exclude the representative of a Scheme Member which is the subject matter of the Council's consideration pursuant to

clause 6.1(k) or any enforcement action taken pursuant to Annexure 2 of the Code.

- 16.3 If any member of the Council misses two Council meetings in any 12 month period without having provided advance notice that the Council member will not be attending the meeting, they shall be deemed to have resigned from the Council and the party which appointed that person may then appoint another person in their place for the balance of their term of appointment.

General Scheme Member Meetings

- 16.4 A meeting of Scheme Members may be called by the Forum Administrator on behalf of the Council at any time or at the written request of no less than 5 Scheme Members. The voting arrangements set out in clause 11.3 shall apply.
- 16.5 Not less than 10 Working Days before any meeting referred to in clause 16.4, a notice of it shall be sent by the Forum Administrator to Council representatives and Scheme Members at their last known address. Such notice shall specify the date, time and place of such meeting, the type of meeting and the business to be discussed at the meeting.

Other Industry Representative Meetings

- 16.6 A meeting of Scheme Members other than Tier One members who have appointed an Industry Representative under clause 7.1(b)(i), may be called by the Forum Administrator or any Other Industry Representative at any time, or by a written request of not less than 4 Scheme Members.
- 16.7 Not less than 5 Working Days (or shorter period if the relevant Scheme Members agree) before any meeting referred to in clause 16.6, a notice of it shall be sent to all Scheme Members at their last known address. Such notice shall specify the date, time and place of such meeting and the type of business to be discussed at the meeting.

17. PROCEDURE AT MEETINGS

General Procedures

- 17.1 Meetings may be held by audio conference, video conference, or in person.
- 17.2 Minutes of meetings will be taken to record meeting attendance, action points, key discussion items, the outcome of any voting and the date of the next meeting.
- (a) The minutes of all Council meetings are to be circulated to all Council representatives and Scheme Members within five 5 Working Days of the meeting.
 - (b) The minutes of all meetings held pursuant to clause 16.4 or 16.6 are to be circulated to all Scheme Members within five 5 Working Days of the meeting.
- 17.3 The Council may, by unanimous agreement, appoint sub-committees to deal with any particular issue which would normally be dealt with by the Council. Such sub-committees may comprise those Council representatives who indicate a desire to be on the applicable sub-committee from time to time and shall report to the Council.

Scheme Member and Other Industry Representative Meeting Procedures

- 17.4 In respect of meetings held pursuant to clause 16.4 or clause 16.6:
- (a) The Scheme Members entitled to vote may appoint a representative of a Scheme Member as a chairperson on an annual basis.
 - (b) The chairperson (and in his or her absence any other duly elected person) shall take the chair.
 - (c) The mode of voting on all questions at all meetings shall be by a show of hands, unless otherwise directed by the chairperson. A representative of a Scheme Member attending is deemed to have that Scheme Member's voting authority.
- 17.5 At all Scheme Member meetings held in accordance with clause 16.4, 4 Scheme Members (at least one 1 of whom is a Tier One member) shall constitute a quorum. At all meetings held in accordance with clause 16.6, 30% of Scheme Members present and entitled to vote shall constitute a quorum.
- 17.6 Where a quorum is not present that meeting shall be postponed for not less than 3 Working Days. If a quorum is not present at the

subsequent meeting those Scheme Members present shall be deemed to comprise a quorum for the purposes of that meeting, provided those Scheme Members not present at the first meeting have been given not less than 3 Working Days' notice of the subsequent meeting.

18. ALTERATION TO THE SCHEME AND SCHEME TOR

- 18.1 The Scheme Agent, Scheme Members and the Council may recommend changes at any time to the Code and the Scheme TOR, to the TCF via the Forum Administrator.
- 18.2 If it is proposed that the Board alter, add to or rescind the Code or Scheme TOR, including upon receipt of a recommendation pursuant to clause 18.1, the Board must first consult with Scheme Members and with the Council prior to passing any resolution pursuant to clause 18.3. The process set out at clauses 9.4 to 9.6, 9.8 and 9.9 of the TCF Handbook shall also apply to any such proposal.
- 18.3 Subject to clause 18.2, the Code and Scheme TOR may be altered, added to or rescinded by the Board in accordance with the TCF Rules. If the Scheme Agent terminates its appointment as a result of any alteration, addition to or rescission of the Code or Scheme TOR which materially affects its duties, obligations or liabilities under its contract of appointment, that alteration, addition or rescission shall not apply to the TCF, Scheme Members or the Scheme Agent during the period of transition to a new Scheme Agent.
- 18.4 As soon as reasonably practicable following the approval of a separation plan for the operational separation of Telecom in accordance with Part 2AA of the Telecommunications Act 2001 the Board will initiate a review of the Code and the Scheme TOR. The purpose of this review will be to identify, address and resolve any issues relating to the implementation or operation of the Code and the Scheme TOR that arise as a result of the operational separation of Telecom. Changes to the Code or the Scheme TOR to resolve the issues identified in the review may only be made by the Board in accordance with clause 18.3.

19. LIABILITY

- 19.1 The TCF shall not be liable to any person in relation to any matter whatsoever in respect of the Scheme, notwithstanding any other provision of this Scheme TOR.
- 19.2 If for any reason clause 19.1 does not apply, the liability of the TCF, whether as a result of any breach of this Scheme TOR or on any other

ground or basis whatsoever (including, but not limited to, liability as a result of negligence) will not in any circumstances exceed \$10.

- 19.3 Except as provided in clause 19.4, no action in law or other claim may be taken by Scheme Members or any other person against any other Scheme Member, any member of the Board or Council, or officer of the same in respect of this Scheme TOR, notwithstanding any irregularity or informality occurring in or about the doing or omitting or suffering of any act, matter or thing.
- 19.4 No member of the Board or Council is liable for any loss or expenses of the TCF or any Scheme Member unless it occurs as a direct result of wilful default by that party.
- 19.5 The provisions of clauses 19.3 to 19.4 are for the benefit of each Scheme Member, any member of the Board or Council, or officer of the same, and will be enforceable by each of them under the Contracts (Privity) Act 1982.

20. CONFIDENTIALITY

- 20.1 Subject to clause 20.2, all the business and records of the Scheme shall be available to Scheme Members at their request.
- 20.2 Information which is the subject of a confidentiality provision or agreement, or which has been noted by the Council as not available for general distribution, shall not be made available.
- 20.3 The provisions of clauses 20.1 and 20.2 are for the benefit of each Scheme Member and will be enforceable against a party by each of them under the Contracts (Privity) Act 1982.

21. NOTICES

- 21.1 All notices to be given under the Scheme TOR shall be in writing and may be delivered by post, fax or email to the designated address of the relevant party as advised to the Scheme Agent from time to time.

22. NO PARTNERSHIP

- 22.1 Nothing in this Scheme TOR, or in any document attached, or forming part of or referred to in the Scheme TOR, creates or evidences a partnership, joint venture or trust relationship between any two or more of the Scheme Members and the TCF.

23. EXCLUSION OF FIDUCIARY DUTIES

- 23.1 Without limiting any express obligation in the Scheme TOR to act in good faith, nothing in the Scheme TOR creates or evidences a fiduciary relationship between any or all of the Scheme Members; accordingly any fiduciary duties which may otherwise be implied are hereby excluded.

24. TCF CEASING TO BE A PARTY

- 24.1 If the TCF resolves to withdraw as a party to the Scheme TOR then the Board shall immediately and in any event prior to such withdrawal make such amendment to this Scheme TOR and to the Code as will permit the continuation of this Scheme without recourse to the TCF Board or the Forum Administrator. Clauses 18.2 and 18.3 shall apply to any such proposed amendments to the Scheme TOR and to the Code.

Schedule 1A

This DEED POLL is made on the 6th day of July 2007

BY TELECOMMUNICATIONS CARRIERS' FORUM
INCORPORATED ("TCF")

IN FAVOUR OF THE MEMBERS AND FUTURE MEMBERS OF THE
SCHEME ("Members")

BACKGROUND

- A. The provisions of the Telecommunications Dispute Resolution Scheme Terms of Reference ("Scheme TOR") and the Customer Complaints Code ("Code") have been promulgated by TCF.
- B. The TCF has agreed to be bound by the provisions of the Scheme TOR and will perform the obligations imposed on it by the Scheme TOR until such time as the TCF ceases to be a party to the Scheme TOR.

COVENANTS

1. Definitions

- 1.1 All terms defined in the Scheme TOR and the Code and used in this deed poll have the same meaning in this deed poll as contained in those documents.

2. Creation of Scheme TOR and the Code

- 2.1 With effect from the execution of this deed poll, the Scheme TOR and the Code shall come into effect and the TCF agrees to be bound by the Scheme TOR and the Code (as amended from time to time) and to perform its obligations set out in the Scheme TOR and the Code.
- 2.2 As part of its obligations under the Scheme TOR and the Code, the TCF agrees to procure the Board, and the Forum Administrator, to act in accordance with the Scheme TOR and the Code and to fulfil their obligations under the Scheme TOR and the Code.

3. Acknowledgement and Amendment

3.1 The TCF acknowledges that this deed poll is made for the benefit of, and is intended to be enforceable by the Members.

3.2 The TCF may make any amendment to this deed poll, the Scheme TOR or the Code (as amended from time to time) in accordance with clauses 18.1 to 18.4 and 24.1 of the Scheme TOR, but no amendment will affect the terms of any process already commenced or any agreement already issued pursuant to the Scheme TOR, the Code, or the rights of any Scheme Member or any third party in respect of any such process.

4. Irrevocable

4.1 This deed poll is irrevocable, except as provided for in the Scheme TOR.

5. Governing Law

5.1 This deed is governed by and shall be construed in accordance with New Zealand law.

CONSENT TO BE BOUND

The TCF hereby acknowledges the terms of this deed poll and agrees to be bound by them.

THE COMMON SEAL OF THE PROPRIETORS OF THE TELECOMMUNICATIONS CARRIERS' FORUM INCORPORATED was hereunto affixed in the presence of:

SIGNED by
Chairperson of the Board _____

SIGNED by
TCF Board Member _____

Deed Poll. Any failure by such a Subsidiary to comply with the Scheme TOR or Code will be deemed a default by the Company as if the failure of the Subsidiary had been a failure of the Company. This clause will not apply if there is another Scheme Member which is the Holding Company of the Company unless both the Company and that Holding Company give a notice to the Scheme Agent that this clause will apply in respect of the Company and not the Holding Company while the Company remains a Scheme Member.

- 3.4 The Company covenants in favour of all Scheme Members to act in good faith towards the Council members, Scheme Members and the Scheme Agent in relation to the operation and administration of the Scheme, but this obligation shall not in any way limit or restrict the Company from making or not making any decision, or taking or not taking any action, on any matter having regard to what it perceives to be its best commercial interests.
- 3.5 If the Company defaults in any of its obligations under the Code, the Company agrees to submit to the enforcement mechanisms contained in the Code to enforce the obligations contained in the Code.
- 3.6 The Company agrees to pay the Scheme Fees to the Scheme Agent in accordance with the Code and the Scheme TOR.
- 3.7 The Company acknowledges that the Scheme Agent is responsible as principal (and not as agent) for invoicing, and recovering all amounts invoiced to, the Company in respect of the Scheme Fees including, without limitation, interest for late payment of undisputed amounts of the Scheme Fees. The Company agrees to pay all such amounts to the Scheme Agent.
- 3.8 The Company agrees that the Scheme Agent may take action against the Company in respect of the Scheme Fees, provided such action is exercised in accordance with the Code, the Scheme TOR and the agreement between the TCF and the Scheme Agent in relation to the provision of services as Scheme Agent in respect of the Scheme.

4 IRREVOCABLE

- 4.1 This deed poll is irrevocable, except as provided for in the Scheme TOR.

5 GOVERNING LAW

- 5.1 This deed is governed by and shall be construed in accordance with New Zealand law.

SIGNED AS A DEED POLL

[_____] **LIMITED** hereby acknowledges the terms of this deed poll and agrees to be bound by them.

Signed by:

_____ Signature of Director

_____ Name of Director

_____ Signature of Director

_____ Name of Director

SCHEDULE 2

SCHEME FEES

[This schedule is confidential to Scheme Members and potential Scheme Members. If you are a Scheme Member or potential Scheme Member and you would like a copy of Schedule 2, please contact either the TCF Forum Administrator on (09) 414 9713 or Dispute Resolution Services Limited on (0508) 98 98 98].

Schedule 3

Reports

Monthly Reports

Monthly reports will be provided to the Council in accordance with the agreement for provision of services in respect of the Scheme between the Scheme Agent and the TCF.

Quarterly Reports

The Quarterly Report will be for the period January to March, April to June, July to September and October to December of the same year.

The report will include a general report on the operations of the Scheme and the quarterly and year to date breakdown of the statistics at a summary level for the industry in relation to:

1. Volume of Disputes and complaints/enquiries received;
2. Types of Disputes;
3. Details of current Disputes including the status and age of the Disputes;
4. Details of complaints which were outside the Scheme jurisdiction and why;
5. Volume of Disputes resolved;
6. Outcomes of resolved Disputes;
7. Demographics of Customers;
8. Underlying cause of Dispute;
9. Systemic issues;
10. Significant trends;
11. Performance against operational efficiency SLAs;
12. Customer satisfaction with resolution;
13. Customer satisfaction with scheme;
14. Such other reports as are required by the Council.

In addition the report will provide:

15. A list of Scheme Members
16. Details of systemic issues and significant trends that have been identified in the quarter;
17. The following financial information:
 - a) monthly and year-to-date financial statements; and
 - b) any proposed amendments to the budgets.

Annual Report

The Annual Report will be for the period 1 January to 31 December of the same year.

The report will contain the statistical information referred to in (1) to (16) above for the relevant year and, where applicable, comparative information for the preceding year.

In addition, the report will include the following information at a summary industry level:

1. Selected case studies for the purpose of demonstrating systemic issues. Names of the Scheme Members will remain confidential;
2. Financial statements for the year;
3. The business plan for the next financial year.

The Annual and Quarterly reports will be published on the website provided by the Scheme Agent.