

## Telecommunications Dispute Resolution Scheme (“Scheme”)

### Terms of Reference (“Scheme TOR”)

1 July 2023

#### **Note to Customers:**

There are three important documents relating to the Scheme:

The **Constitution** is the foundational document of Telecommunications Dispute Resolution Limited (“**TDR Limited**”), which funds and oversees the Scheme. The Constitution sets out the rights, powers and duties of TDR Limited, and its owners and board of directors.

The **TDRL Terms of Reference** sets out how the Scheme is operated. This includes what each Scheme Member’s obligations are in relation to the Scheme, and the process under which Disputes are heard by the Scheme Agent.

The **TCF Customer Care Code** requires Providers to establish and publish a customer care policy which will include the minimum standards of practice a Provider will follow when engaging with Customers and describe the Provider’s Complaints handling process.

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## SCHEME TERMS OF REFERENCE

### PART A (GENERAL)

#### 1. STRUCTURE OF SCHEME

1.1 **Summary:** These Telecommunications Dispute Resolution Scheme Terms of Reference (“**Scheme TOR**”) set out certain provisions relating to membership and operation of the Scheme.

1.2 **Structure of Scheme TOR:** The Scheme TOR is structured in two parts:

- (a) Part A (General) sets out the general terms that apply to the Scheme, including:
  - (i) the purpose of the Scheme;
  - (ii) the rules of membership of the Scheme and the obligations of Scheme Members; and
  - (iii) the obligations of the Scheme Agent in relation to the Scheme; and
- (b) Part B (Disputes) sets out the process under which Disputes are dealt with by the Scheme Agent.

1.3 **Relationship with Customer Care Code:** The Customer Care Code and Scheme TOR are related documents, each addressing different parts of the complaint resolution process:

- (a) **Customer Care Code:** Complainants should refer to the Customer Care Code at first instance if they are dissatisfied with a Telecommunications Service provided to them. The following matters are addressed under the Customer Care Code:
  - (i) Complaints by a Customer to a Provider, in respect of a Telecommunications Service provided to them by their Provider (and which may also involve a Third-party Scheme Member pursuant to clause 16 of the Customer Care Code); and
  - (ii) Complaints to a Third-party Scheme Member made pursuant to clause 17 of the Customer Care Code.

In all such cases, the parties will attempt to resolve the Complaint using the Scheme Member’s dispute resolution processes.

- (b) **Scheme TOR:** If the parties are not able to resolve the Complaint under the Customer Care Code (i.e., there is a Deadlock), the Provider (or the Third-party Scheme Member, where clause 17.2 of the Customer Care Code applies) shall advise the Complainant that the Complaint may be referred to the Scheme Agent pursuant to the Scheme TOR. Where the Complainant refers the Complaint to the Scheme Agent, the Scheme Agent will consider the Complaint, and if necessary, the Complaint will be regarded as a Dispute which shall be adjudicated, pursuant to the Scheme TOR.

#### 1.4 Application of Scheme:

- (a) Subject to clause 1.4(b), a Complaint may only be referred by a Complainant to the Scheme Agent under this Scheme TOR if:
  - (i) the relevant Provider is a Scheme Member; or
  - (ii) the Complaint relates to a Third-party Scheme Member and the Complaint has been addressed pursuant to clause 17 of the Customer Care Code.
- (b) The Scheme Agent may accept a referral of a dispute from an affected person in respect of a provider of a Telecommunications Services if such referral is permitted by an Other Code (each an “**Other Code Dispute**”).
- (c) The Scheme Agent may hear an Other Code Dispute in respect of a provider of Telecommunications Services that is not a Scheme Member. For the purposes of such Other Code Disputes, the relevant provider will be regarded as a Scheme Member (excluding in respect of Annual Scheme Fees). User Pays Fees (and, in respect of Non-Scheme Members, an administration fee) shall apply to Other Code Disputes.
- (d) In the case of an Other Code Dispute:
  - (i) the relevant dispute will be regarded as a Dispute;
  - (ii) the relevant affected person will be regarded as a Complainant; and
  - (iii) the relevant provider of Telecommunications Services will be regarded as a Scheme Member,solely for the purpose of the Other Code Dispute.
- (e) The Scheme Agent will not accept a Complaint under this Scheme TOR that is referred to it by a Complainant if it is in respect of an Excluded Matter.
- (f) If:
  - (i) a Customer brings a Complaint to the Scheme Agent under this Scheme TOR without first raising the Complaint with the Provider; or
  - (ii) a Complainant brings a Complaint to the Scheme Agent under this Scheme TOR without first raising the Complaint with the Third-party Scheme Member where clause 17 of the Customer Care Code applies,the Scheme Agent will refer the Customer back to the Provider or Complainant back to the Third-party Scheme Member as applicable, and the Complaint shall be addressed under the Customer Care Code.
- (g) This Scheme shall not apply to any matters which a Scheme Member or Scheme Agent (as applicable) is prevented by law from resolving.

## 2. DEFINED TERMS AND INTERPRETATION

### 2.1 Defined terms: In this Scheme TOR:

- (a) **"Adjudicator"** means a person appointed by the Scheme Agent to consider a Dispute, who is suitably qualified and sufficiently experienced (in the opinion of the Scheme Agent, acting reasonably) to hear such Dispute.
- (b) **"Annual Scheme Fees"** has the meaning provided in clause 7.2.
- (c) **"Annual Scheme Agent Fees"** has the meaning provided in clause 7.2.
- (d) **"Annual Scheme Operations Fees"** has the meaning provided in clause 7.2.
- (e) **"Associate Member"** means a person who is a General Associate of the TCF.
- (f) **"Bilateral Agreement"** means an agreement between a Scheme Member and a wholesale provider of a Telecommunications Service.
- (g) **"Billing Relationship"** means a contractual relationship between Provider and the Customer, where the Provider has the contractual right to charge the Customer for the relevant Telecommunications Service.
- (h) **"Board"** means the board of Directors of TDR Limited.
- (i) **"Code Compliance Framework"** means the New Zealand Telecommunications Forum Code Compliance Framework endorsed by TCF, as amended from time to time.
- (j) **"Commission Code"** has the meaning provided in section 5 of the Telecommunications Act.
- (k) **"Complainant"** means either:
  - (i) a Customer; or
  - (ii) a Consumer who is not a Customer in relation to a Complaint made pursuant to clause 17.2 of the Customer Care Code.
- (l) **"Complaint"** means an expression of dissatisfaction, by:
  - (i) a Customer relating to a Telecommunications Service provided by the Customer's Provider; or
  - (ii) a Consumer who is not a Customer to a Third-party Scheme Member pursuant to clause 17.2 of the Customer Care Code.
- (m) **"Constitution"** means the constitution of TDR Limited.
- (n) **"Consumer"** means an actual or potential end-user of the relevant Telecommunications Service.

- (o) **“Customer”** means a Personal User or a SME who has a genuine Billing Relationship with a Scheme Member in respect of the relevant Telecommunication Service.
- (p) **“Customer Care Code”** means the New Zealand Telecommunications Forum Customer Care Code endorsed by TCF, as amended from time to time.
- (q) **“Deadlock”** means, in respect of a Complaint, that:
  - (i) the Complainant is not satisfied with the Scheme Member’s final response to the Complaint; or
  - (ii) the Scheme Agent has determined that it is appropriate to deadlock a Complaint where:
    - (A) the Complainant and the Scheme Member have attempted in good faith to resolve the Complaint and the Complaint remains unresolved 15 Working Days after the Scheme Agent has notified the Scheme Member of the Complaint; or
    - (B) it has been more than 30 Working Days since the Complainant made the Complaint to the Scheme Member, and the Complainant has not received a final response from the Scheme Member.
- (r) **“Dispute”** means a Complaint which has reached Deadlock and has been referred by the Complainant to the Scheme Agent for investigation and resolution.
- (s) **“Disputes Procedures Process”** means the Disputes Procedures Process document that gives effect to TDR Limited’s obligations relating to the process of Disputes under this Scheme TOR and describes the interactions between the Scheme Agent and a Scheme Member when dealing with a Dispute. The Disputes Procedures Process is an internal TDR Limited document.
- (t) **“Director”** means a director of TDR Limited.
- (u) **“Eligible Brand”** has the meaning provided in clause 5.6.
- (v) **“Eligible Subsidiary”** has the meaning provided in clause 5.5.
- (w) **“Excluded Matter”** means a matter which is listed in Schedule 4.
- (x) **“Final Determination”** means a final decision in respect of a Dispute by the Scheme Agent made pursuant to Part B (Disputes), which shall, if the Complainant accepts the Final Determination, be binding on the Scheme Member(s) and the Complainant.
- (y) **“Industry Retail Service Quality Code”** has the meaning provided in section 5 of the Telecommunications Act.

- (z) "**Other Code**" means a Commission Code, any Industry Retail Service Quality Code, and the *Copper Withdrawal Code* under clause 3 of Schedule 2A of the Telecommunications Act.
- (aa) "**Other Code Dispute**" has the meaning provided in clause 1.4(b).
- (bb) "**Participation Agreement**" means a participation agreement between a Scheme Member and TDR Limited substantively in the form set out in Schedule 1.
- (cc) "**Personal User**" means a natural person that acquires Telecommunications Services for personal, domestic or household use or consumption, and does not acquire Telecommunications Services for the purpose of resupplying such services in trade or otherwise for commercial use or consumption.
- (dd) "**Prescribed Timeframes**" has the meaning provided in clause 20.1.
- (ee) "**Provider**" means a person providing a Telecommunications Service to a Customer where the Billing Relationship is between the Provider and the Customer.
- (ff) "**Scheme**" means the Telecommunications Dispute Resolution Scheme.
- (gg) "**Scheme Agent**" has the meaning provided in clause 9.1.
- (hh) "**Scheme Member**" means:
  - (i) a Provider who provides services to a Customer; or
  - (ii) a third party who provides a telecommunications input service to a Provider (for example, a local fibre company),
 who, in each case, has signed a Participation Agreement.
- (ii) "**SME**" means:
  - (i) a business with fewer than 20 full-time equivalent employees; or
  - (ii) a business with more than 20 full-time equivalent employees which the Scheme Agent determines (in its sole discretion) to be analogous to a business of the kind in (i) above, having regard to the size, structure and/or nature of the business.
- (jj) "**Subsidiary**" has the meaning set out in section 5 of the Companies Act 1993.
- (kk) "**TCF**" means the New Zealand Telecommunications Forum Incorporated NZBN 9429042987178.
- (ll) "**TDR Guides**" has the meaning provided in clause 11.1.
- (mm) "**TDR Limited**" means Telecommunications Dispute Resolution Limited NZBN 9429051352639.

- (nn) **"TDR Website"** means the website for the Scheme (being tdr.org.nz, or any successor or substitute website which may be established from time to time).
- (oo) **"Telecommunications Act"** means the Telecommunications Act 2001.
- (pp) **"Telecommunications Service"** means any goods, service, equipment and/or facility that enables or facilitates telecommunications.
- (qq) **"Third-party Scheme Member"** means a Scheme Member other than the Complainant's Provider, who provides a Telecommunications Service used by the Complainant or an input service to a Provider (for example, a local fibre company).
- (rr) **"User Pays Fee"** has the meaning provided in clause 7.5.
- (ss) **"Working Day"** means a day on which registered New Zealand banks are open for normal banking business, excluding Saturdays, Sundays and nationwide New Zealand public holidays. Regional public holidays are considered to be Working Days.

2.2 **Interpretation:** 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) clause, part, schedule 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, body, company, corporation, partnership, firm, joint venture, association, trust, organisation, governmental or other regulatory body or authority or other entity in each case whether or not having separate legal personality, whether corporate, political or otherwise;
- (e) wherever the words "includes" or "including" are used in this Scheme TOR, they are deemed to be followed by the words "without limitation";
- (f) the schedules to this Scheme TOR will have the same effect as if set out in the body of this Scheme TOR; and
- (g) any obligation not to do anything will include an obligation not to suffer, permit, or cause that thing to be done.

### 3. PURPOSE, PRINCIPLES AND POWERS IN RELATION TO SCHEME

#### Scheme

3.1 **Primary Purposes:** The primary purposes of the Scheme are to:



- (a) ensure that Customers have access to an effective independent Dispute resolution mechanism to address issues where the Customer is not satisfied with the outcome of, or the parties have been unable to resolve, a Complaint;
- (b) facilitate the resolution of Disputes through practices that are fair and equitable and are consistent with the purposes and provisions of the Telecommunications Act;
- (c) provide prompt, independent resolution of Disputes, having regard to the Customer Care Code (if applicable) and relevant legal requirements; and
- (d) increase consumer confidence in the telecommunications industry by maintaining appropriate standards of practice that apply consistently across the telecommunications industry.

3.2 **Principles:** In order to support the primary purposes of the Scheme set out in clause 3.1, the Scheme will be operated in accordance with the following principles:

- (a) recognition and protection of Customers' legal rights;
- (b) independent, efficient, fair and accessible handling of Disputes;
- (c) transparency of the Disputes handling procedures for Complainants;
- (d) prompt and timely resolution of Disputes; and
- (e) neutral and non-discriminatory Dispute resolution practices that provide consistent treatment for Complainants.

**Scheme Agent**

3.3 **Purpose and powers:** The purposes and powers of the Scheme Agent in relation to the Scheme are set out at Part B (Disputes).

**TDR Limited**

3.4 **Purpose:** The purpose of TDR Limited is to give effect to the Scheme TOR (as set out at clause 2.1 of the Constitution).

3.5 **Powers:** TDR Limited has the powers set out in the Constitution in relation to the Scheme.

**4. SCHEME MEMBERSHIP**

4.1 **TCF Members to be Scheme Members:** Each member of TCF (excluding Associate Members) shall be a Scheme Member, until such time as that member of TCF:

- (a) is removed under clause 4.5 or 12.5 or suspended pursuant to clause 7.3(b);  
or
- (b) leaves the Scheme in accordance with clauses 4.6 to 4.9.

- 4.2 **Participation Agreement:** Each member of TCF must execute a Participation Agreement.
- 4.3 **Scheme Members that are not members of TCF:** An entity that provides Telecommunications Services in New Zealand may join the Scheme at any time by executing a Participation Agreement. Scheme membership, and the benefits of such membership, shall commence, and Annual Scheme Fees shall be payable from, the date that the joining entity delivers an executed Participation Agreement to the Scheme Agent.
- 4.4 **Agreement to be bound:** By executing a Participation Agreement, each Scheme Member agrees to be bound by this Scheme TOR and be a signatory to the Customer Care Code. By being a signatory to the Customer Care Code, the Code Compliance Framework also applies to each Scheme Member in respect of the Customer Care Code.
- 4.5 **Removal of Scheme Member:** If a Scheme Member ceases to provide Telecommunications Services in New Zealand, that Scheme Member will be deemed to be removed from the Scheme on the day that is 60 Working Days after the date on which the Scheme Agent provides notice to the Scheme Member of its removal from the Scheme. Clause 4.7 to 4.9 will apply to any such removal of a Scheme Member.
- 4.6 **Departing Members:** Subject to clauses 4.7, 4.8 and 4.9, any Scheme Member who wishes to end its participation in the Scheme may do so at any time upon providing 60 Working Days' notice in writing to the Scheme Agent.
- 4.7 **Rebates and liability:** A Scheme Member whose participation in the Scheme has ceased will not be entitled to a rebate of any Annual Scheme Fees paid and will remain liable for any unpaid Annual Scheme Fees, User Pays Fees and other liabilities incurred by the Scheme Member up to the date participation in the Scheme has ceased (being the last Working Day of the 60 Working Days' notice period).
- 4.8 **Existing Complaints:** A departing Scheme Member will remain bound by the terms of the Scheme in respect of all Complaints which have been brought to the Scheme Member's attention, pursuant to the Customer Care Code, before the Scheme Member's date of departure from the Scheme, notwithstanding such departure.
- 4.9 **Notice to Customers:** Any Scheme Member who wishes to end its participation in the Scheme or is to be removed under clause 4.5 or 12.5 or suspended pursuant to clause 7.3(b) (a "**Departing Scheme Member**") must provide its Customers with 20 Working Days' advance notice of the Departing Scheme Member's departure from the Scheme. Such notice must include confirmation that all Complaints which have been brought to the Scheme Member's attention, pursuant to the Customer Care Code, before the Departing Scheme Member's date of departure from the Scheme will remain subject to the Disputes resolution process in Part B (Disputes). A Departing Scheme Member:
- (a) who is a Provider may satisfy the requirements of this clause 4.9 by posting a copy of the notice of departure from the Scheme, on its website, provided that the notice is displayed in a manner that is clear and readily accessible to Customers; or

- (b) who is a Third-party Scheme Member shall post a copy of the notice of departure from the Scheme on its website, and provide written notice of its departure from the Scheme to every Provider it provides services to.

4.10 **Public Notice:** Each Departing Scheme Member must provide 20 Working Days' advance written notice of its departure from the Scheme to the following organisations:

- (a) Citizen Advice Bureaux New Zealand Incorporated NZBN 9429042678694 (CAB);
- (b) Consumer NZ Incorporated NZBN 9429000014502 (Consumer NZ);
- (c) National Building Financial Capability Charitable Trust NZBN 9429046168214 (FinCap);
- (d) Technology Users Association of New Zealand Incorporated NZBN 9429042861386 (TUANZ).

## 5. OBLIGATIONS OF SCHEME MEMBERS

5.1 **Comply with Scheme TOR and law:** All Scheme Members must comply with this Scheme TOR, and handle Disputes in accordance with this Scheme TOR (including any policies and procedures, which for the avoidance of doubt shall include the Disputes Procedures Process) and any relevant law.

5.2 **Comply with Final Determination:** Each Scheme Member must comply with the terms of any applicable Final Determination.

5.3 **Promotion of Scheme:** Scheme Members must:

- (a) in respect of Scheme Members who are Providers, raise awareness of the Scheme and their membership of it with their Customers at different touch points including by:
  - (i) referring to the existence of the Scheme on their bills;
  - (ii) including a message on each bill that that if the Provider cannot resolve a Complaint, the Customer can refer the Complaint to TDR Limited;
  - (iii) when a Customer logs an online Complaint with the Provider, providing the Customer with information about the Scheme during the online Complaint process;
  - (iv) ensure that Customer facing staff are equipped to provide information to Customers about the Scheme when appropriate; and
  - (v) promoting the Scheme on websites, and promotional materials and with frontline staff (if applicable);
- (b) in respect of Third-party Scheme Members raise awareness of the Scheme and their membership of it on their website (and any other applicable consumer facing touchpoints listed in clause 5.3(a) which the relevant Third-party Scheme Member identifies as being appropriate);

- (c) include a display of the TDR Limited logo and a link to the TDR Website, on their websites; and
- (d) self-assess their compliance with the obligations in 5.3(a) and (b) above on a six-monthly basis and return a self-assessment form (in a form acceptable to the Scheme Agent, acting reasonably) to the Scheme Agent for review.

5.4 **Bedding in period:** Upon signing a Participation Agreement, a Scheme Member shall have up to three months to sign the self-certification form to confirm compliance with the Customer Care Code. Once the Scheme Agent is notified that the Scheme Member has confirmed such compliance, Disputes may be referred to the Scheme Agent for adjudication.

5.5 **Subsidiaries:**

- (a) In respect of Scheme Members' Subsidiaries which have not signed a Participation Agreement, but which would be entitled to become a Scheme Member should the relevant Subsidiary elect to execute a Participation Agreement (each an "**Eligible Subsidiary**"), the relevant Scheme Member shall:
  - (i) promptly provide notice in writing to the Scheme Agent of the existence of each such Eligible Subsidiary; and
  - (ii) procure that each such Eligible Subsidiary complies with the Scheme TOR and Customer Care Code (and Code Compliance Framework, as it relates to the Customer Care Code), as if it has executed a Participation Agreement.
- (b) A failure by an Eligible Subsidiary to comply with the Scheme TOR or Customer Care Code (and Code Compliance Framework, as it relates to the Customer Care Code) will be deemed a default by the relevant Scheme Member.

5.6 **Eligible Brands:**

- (a) Each Scheme Member shall promptly provide written notice to the Scheme Agent of the existence of any brands through which that Scheme Member provides Telecommunications Services to Customers (each an "**Eligible Brand**").
- (b) Each such Eligible Brand shall be regarded as providing Telecommunications Services through the applicable Scheme Member (with the effect that the Scheme Member is obligated to comply with the Scheme TOR and Customer Care Code (and Code Compliance Framework, as it relates to the Customer Care Code), in respect of its Eligible Brands).

**6. PRECEDENCE**

6.1 This Scheme TOR does not override any relevant legislation, any Bilateral Agreement, or determinations made by any regulatory body with authority in respect of a Dispute. This Scheme TOR however does take precedence over:

- (a) any contract between a Scheme Members and Customer, except in respect of provisions in such contract that provides a Customer with a higher standard of service or legal protection than that contained in the Customer Care Code and/or this Scheme TOR (as applicable); and
  - (b) Bilateral Agreements entered into after approval of the Customer Care Code and/or this Scheme TOR (as applicable), except in respect of provisions in such Bilateral Agreements that provide Customers with a higher standard of service or legal protection than contained in this Customer Care Code and/or this Scheme TOR (as applicable).
- 6.2 The Customer Care Code and this Scheme TOR contain the minimum requirements regarding handling Complaints and a Disputes (as applicable). While parties may enter into Bilateral Agreements concerning matters covered by the Customer Care Code and/or the Scheme TOR, such arrangements must not diminish or otherwise affect any requirements contained in the Customer Care Code and/or the Scheme TOR.

## 7. FEE STRUCTURE AND PAYMENT

### 7.1 Transitional arrangements: All:

- (a) Annual Scheme Fees relating to the Scheme Agent have been paid up to 30 June 2023; and
- (b) fees have been set for the period ending on 30 June 2023.

Clauses 7.2 to 7.7 and Schedule 2 (Fees) shall apply to all fees for the period commencing 1 July 2023.

### 7.2 Annual Scheme Fees: The annual budget for TDR Limited shall be determined in accordance with the Constitution and will be comprised of:

- a) the annual Scheme Agent fees as agreed by the Board and the Scheme Agent from time to time ("**Annual Scheme Agent Fees**"); and
- b) the annual additional operational costs for the running of the Scheme ("**Annual Scheme Operations Fees**"),

(together, the **Annual Scheme Fees**).

The total amount of the Annual Scheme Fees as set out in each annual budget shall be recovered by TDR Limited from the Scheme Members. Each Scheme Member shall pay to TDR Limited the Annual Scheme Fees determined by the Board from time to time, and as further detailed in Schedule 2 (Fees).

### 7.3 Unpaid amounts: If any amount invoiced to a Scheme Member is not paid within 10 Working Days of the due date, TDR Limited may:

- (a) commence debt collection proceedings or take any other steps to recover such amounts; and/or
- (b) suspend the Scheme Member from the Scheme.

- 7.4 **Suspended Scheme Members:** Any Scheme Member who is suspended from the Scheme under clause 7.3(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. TDR Limited must issue a public notice of the Scheme Member's suspension from the Scheme.
- 7.5 **User Pays Fee:** Each Scheme Member shall pay to the Scheme Agent a one-off fee in respect of each Dispute, as detailed in Schedule 2 (Fees) ("**User Pays Fee**"). If a User Pays Fee is not paid within 10 Working Days of the due date, the Scheme Agent may commence debt collection proceedings or take any other steps to recover such amounts.
- 7.6 **No Complaint charges:** Complainants shall not be charged any amounts in respect of the Scheme (including, for the avoidance of doubt, for submitting a Complaint or being a party to a Dispute).
- 7.7 **Other Code Disputes:** In respect of an Other Code Dispute, the Scheme Agent shall be entitled to invoice the relevant Scheme Member or non-Scheme Member, and the relevant Scheme Member or non-Scheme Member shall pay, the fees as detailed in paragraph 4 of Schedule 2 (Fees).

## 8. FUNCTIONS OF TDR LIMITED

- 8.1 The functions of TDR Limited are set out in the Constitution.
- 8.2 The Board shall:
- (a) oversee the operation of the Scheme and ensure it operates efficiently and within the approved budget;
  - (b) approve the business plan for the Scheme;
  - (c) approve the total annual budget for the Scheme and submit the budget to the shareholders for final approval;
  - (d) approve the Scheme Agent's reports on the Scheme
  - (e) consider Scheme Members' complaints in relation to any matter regarding the Scheme;
  - (f) approve (on the Scheme Agent's recommendation) Scheme Members' expulsion from the Scheme for non-compliance with Final Determinations; and
  - (g) undertake such matters as it believes is necessary or desirable to enable TDR Limited to operate or facilitate the operation of the Scheme.

## 9. SCHEME AGENT

- 9.1 The "**Scheme Agent**" is an independent party appointed by TDR Limited to carry out the following functions in respect of the Scheme:

- (a) Investigate and resolve Disputes (other than Excluded Matters) in accordance with Part B (Disputes);
- (b) engage Adjudicators to consider Disputes;
- (c) advise Scheme Members of potential areas of improvement and good practices in respect of Disputes. This may include advising Scheme Members and the Board about systemic issues (including contract terms that do not comply with the Fair Trading Act 1986 as described in clause 25) and lessons arising from Disputes;
- (d) develop TDR Guides in accordance with clause 11;
- (e) promote the Scheme in accordance with the approved business plan for the Scheme including engagement with Scheme Members, consumer organisations, Māori and the wider community to improve awareness and understanding of the scheme;
- (f) maintain a register containing the contact details of all Scheme Members and provide a copy of this information to TDR Limited whenever it is updated;
- (g) propose the annual business plan and budget for the delivery of the dispute resolution service and maintain the records (including financial records) of the Scheme Agent, as they relate to the Scheme;
- (h) prepare reports on the Scheme as specified in Schedule 3 (Reports);
- (i) invoice Scheme Members for User Pays Fees;
- (j) provide guidance to Scheme Members on the processes to be followed, as set out in the Scheme TOR;
- (k) promptly report any complaints from Complainants or Scheme Members about the Scheme to TDR Limited;
- (l) host and maintain a website with information on the Scheme; and
- (m) review Scheme Members' self-assessment of their compliance with the obligations in clause 5.3(d);
- (n) actively encourage a broader membership of the Scheme (which shall include, at a minimum, regularly engaging with smaller service providers to encourage them to join, and to understand and address the potential barriers to them becoming Scheme Members); and
- (o) such other functions as agreed from time to time between the TDR Limited and the Scheme Agent.

## **10. CHANGES TO THE SCHEME TOR AND CODE**

- 10.1 The Scheme Agent or a Scheme Member or the TCF may, at any time, propose to TDR Limited an amendment of the Scheme TOR or the Disputes Procedure Process (“Change”).
- 10.2 Prior to passing any resolution pursuant to clause 10.3 to make a Change, including in response to a proposal pursuant to clause 10.1, the Board must first consult with Scheme Members, and if it considers it appropriate (acting reasonably) other stakeholders, on the proposed Change (which shall include providing a mark-up of such Change for Scheme Members’ consideration).
- 10.3 Subject to clause 10.2, a Change shall be approved by the Board in accordance with the Constitution.
- 10.4 If the Scheme Agent terminates its appointment due to any Change which materially affects its duties, obligations or liabilities under its contract of appointment, that Change shall not apply to the Scheme Agent during the period of transition to a new Scheme Agent.

## **11. TDR GUIDES**

- 11.1 **Purpose of TDR Guides:** The Scheme Agent shall publish guides for Complainants and Scheme Members on the TDR Website from time to time (“TDR Guides”). The purpose of TDR Guides is to
- (a) provide Complainants and Scheme Members with guidance on how particular recurring types of Disputes are commonly approached and resolved; and
  - (b) enable efficient resolution of common Disputes, while preserving fair outcomes for Complainants and Scheme Members.
- 11.2 **Content of TDR Guides:** TDR Guides must include:
- (a) a description of the type of Dispute;
  - (b) a summary of the position(s) commonly adopted by Complainants and Scheme Members when such Dispute arises; and
  - (c) a recommended position (or ‘TDR view’) on the Dispute that will customarily be adopted by the Scheme Agent and Adjudicator (as applicable), when dealing with such Disputes.
- 11.3 **Status of TDR Guides:**
- (a) The Scheme Agent must take into account applicable TDR Guides when evaluating a Dispute. TDR Guides do not, however, predetermine the outcome of any specific Dispute.



- (b) The Scheme Agent is not required to apply a 'TDR view' on a particular matter as set out in a TDR Guide, in respect of a Dispute. Each Dispute shall be evaluated by the Scheme Agent on its own merits.
- (c) The Scheme Agent and Adjudicator must not use a TDR view in a TDR Guide to provide an advance position or advisory opinion before evaluating a Dispute on its own merits. However, the Scheme Agent may provide or refer a Complainant to a TDR Guide prior to evaluating a Dispute.

11.4 The Scheme Agent shall upload each TDR Guide to the TDR Website.

11.5 **Changes to TDR Guides:** The Scheme Agent may amend or revoke an existing TDR Guide, either:

- (a) based upon:
  - (i) changing trends;
  - (ii) changes to the telecommunications industry; or
  - (iii) changes to applicable codes of conduct or telecommunications industry codes,  
  
that are relevant to Disputes that are dealt with under that TDR Guide; or
- (b) upon request of the Board.

11.6 If the Scheme Agent amends a TDR Guide, then that revised TDR Guide shall be uploaded to the TDR Website in place of the original TDR Guide. If the Scheme Agent revokes a TDR Guide, then that TDR Guide shall be removed from the TDR Website.

11.7 An amendment to a TDR Guide will not be applied retrospectively, to alter any Disputes that were previously resolved with the assistance of the TDR Guide.

11.8 The revocation of a TDR Guide will not alter any Disputes that were previously resolved with the assistance of the revoked TDR Guide.

## **12. COMPLIANCE WITH SCHEME TOR**

12.1 The Board has overall responsibility for monitoring and enforcing (as applicable) Scheme Members' compliance with this Scheme TOR. The Board may delegate the exercise of these functions to any third party that it considers appropriate from time to time.

12.2 The Board has appointed the Scheme Agent to monitor Scheme Members' compliance with, and handling of Disputes in accordance with, this Scheme TOR. The Scheme Agent shall:

- (a) monitor Scheme Members' compliance with, and handling of Disputes in accordance with, this Scheme TOR using practices that it considers reasonably appropriate and by reference to its usual monitoring practices;

- (b) record and retain information relating to the nature and volume of Disputes dealt with under the Scheme; and
  - (c) inform the Board if a Scheme Member does not comply with a Final Determination.
- 12.3 If the Scheme Agent determines (in its opinion, acting reasonably) that a Scheme Member has demonstrated repeated non-compliance with this Scheme TOR (a “**Compliance Issue**”), the Scheme Agent shall investigate that Compliance Issue. As part of its investigation, the Scheme Agent shall discuss with the Scheme Member the reasons for the Compliance Issue, and options for remedying the Compliance Issue.
- 12.4 If, after the process in clause 12.3 has been followed, the Scheme Agent is not satisfied that a Compliance Issue has been resolved, the Scheme Agent will refer the Compliance Issue to the Board. Such referral will include a report on the Compliance Issue and a recommendation as to the approach the Board may take, pursuant to clauses 12.5 and 12.6.
- 12.5 The Board may expel a Scheme Member from the Scheme if a Compliance Issue has been referred to the Board pursuant to clause 12.4 in respect of that Scheme Member, and that Board determines expulsion to be appropriate. In making such determination, the Board shall consider:
  - (a) the relevant report provided pursuant to clause 12.4;
  - (b) the seriousness of the Compliance Issue; and
  - (c) the Scheme Member’s prior conduct regarding compliance with the Scheme TOR (including Final Determinations).
- 12.6 If the Board does not resolve to expel the relevant Scheme Member pursuant to clause 12.5, the Board may impose other consequences that it considers reasonably appropriate, including issuing the Scheme Member with a formal warning, or publishing a statement in respect of a Compliance Issue on the TDR Website.
- 12.7 For the avoidance of doubt, the provisions of this clause 12 do not reduce, amend or substitute any compliance obligations or processes which Scheme Members are subject to under the Customer Care Code and Code Compliance Framework.

### **13. LIABILITY**

- 13.1 Neither TDR Limited nor any Director shall be liable to any person in relation to any matter whatsoever in respect of the Scheme, notwithstanding any other provision of this Scheme TOR.
- 13.2 Except for a breach of the confidentiality obligation in clause 14.2, no action in law or other claim may be taken by a Scheme Member or by any other person against a Scheme Member, TDR Limited or any Director or officer of TDR Limited in respect of this Scheme TOR in any circumstances.

13.3 The provisions of clauses 13.1 and 13.2 are for the benefit of each Scheme Member, TDR Limited and each Director and officer of TDR Limited, and will be enforceable by each of them under Subpart 1 Part 2 of the Contract and Commercial Law Act 2017.

#### **14. CONFIDENTIALITY**

14.1 Subject to clause 14.2, the business and records of the Scheme shall only be made available to Scheme Members if required by law or if the Board consents.

14.2 Information which is the subject of a confidentiality obligation, or which has been noted by TDR Limited as not available for general distribution, shall not be made available to Scheme Members or any other party.

14.3 The provisions of clauses 14.1 and 14.2 are for the benefit of each Scheme Member and will be enforceable against a party by each of them under Subpart 1 Part 2 of the Contract and Commercial Law Act 2017.

14.4 The Scheme Members acknowledge that the Scheme TOR, Customer Care Code, Disputes Procedure Process and Code Compliance Framework are public documents and not confidential or commercially sensitive.

#### **15. NOTICES**

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

#### **16. NO PARTNERSHIP**

16.1 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/or TDR Limited.

#### **17. EXCLUSION OF FIDUCIARY DUTIES**

17.1 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 and accordingly any fiduciary duties which may otherwise be implied as between the Scheme Members are hereby excluded.

## **PART B (DISPUTES)**

### **18. DISPUTES PROCEDURES PROCESS**

- 18.1 The Disputes Procedures Process sets out the detailed procedural requirements in relation to Disputes, including (for example) escalation of a Complaint to a Dispute, documentary and information requirements for Disputes, and investigation and resolution of Disputes.
- 18.2 The Scheme Agent and Scheme Members (as applicable) shall follow the Disputes Procedures Process in respect of each relevant Dispute.

### **19. EVALUATION OF DISPUTES**

- 19.1 The Scheme Agent shall evaluate each Dispute on its own merits.
- 19.2 When considering a Dispute, the Scheme Agent shall have regard to:
- (a) fairness in all the circumstances;
  - (b) applicable contractual and general legal rights and obligations;
  - (c) TDR Guides, as contemplated in clause 11;
  - (d) the Customer Care Code, Code Compliance Framework and Other Codes; and
  - (e) previous Final Determinations (with a view to achieving consistency between Final Determinations, where appropriate).

### **20. PRESCRIBED TIMEFRAMES**

- 20.1 The Disputes Procedures Process sets out timeframes for conducting a Dispute (for example, responding to correspondence and providing information to the Scheme Agent) ("**Prescribed Timeframes**"). Scheme Members must adhere to the Prescribed Timeframes. The Scheme Agent may, in its own discretion, agree to extend a Prescribed Timeframe following a request for a time extension from a Scheme Member. If a Scheme Member fails to respond within a Prescribed Timeframe or, if applicable, the extended Prescribed Timeframe, the Scheme Agent will issue that Scheme Member with a written notice advising that, if the Scheme Member does not respond the Dispute will proceed without its input.

### **21. FINAL DETERMINATIONS**

- 21.1 The Scheme Agent may make a Final Determination in respect of a Dispute.
- 21.2 The Scheme Agent may, in a Final Determination:
- (a) make a direction to the Scheme Member requiring it to do one or more of the following:

- (i) make a formal written apology to the Complainant;
- (ii) waive, rescind or amend a charge in relation to a Telecommunications Service;
- (iii) supply a Telecommunications Service which is the subject of the Dispute, to the Complainant;
- (iv) undertake any necessary corrective or other work in relation to a Telecommunications Service that is the subject of the Dispute, in order to resolve the Dispute;
- (v) make an appropriate correction or addition to the Complainant's record (which may include the Scheme Member seeking an amendment of a record which has been passed to another agency);
- (vi) attach to the Complainant's record a statement of a correction or addition sought by the Complainant;
- (vii) subject to clause 22, make an equivalent order to that which the Disputes Tribunal has jurisdiction to make, under the Disputes Tribunal Act 1988 (as amended from time to time) provided that the Final Determination must not include a requirement that the Scheme Member pays damages to the Complainant for non-financial losses; and/or

(b) dismiss the relevant Dispute.

21.3 If a Complainant agrees with a Final Determination to which they are a party, that Final Determination shall be binding on the parties. The Scheme Agent shall procure that the Complainant acknowledges that the giving effect to the Final Determination by the Scheme Member(s) is in full and final settlement of the relevant Dispute.

21.4 If a Complainant does not accept a Final Determination to which it is a party, the Complainant may pursue the matter to which that Final Determination relates in another forum that has legal jurisdiction to hear that matter. It is contemplated as part of this Scheme, and the Scheme Members agree, that if such matter is referred to a New Zealand court or another adjudicator, all documents, statements and information provided to the Scheme Agent in connection with the matter may be shared with that court or adjudicator (subject to law). For clarity, the Final Determination is not binding on a Scheme Member if the Complainant does not accept the Final Determination.

21.5 When a Complaint has reached Deadlock, the Scheme Member must cease debt recovery action and shall not disconnect the Consumer's service(s) which are in dispute while the Dispute is being investigated by the Scheme Agent.

## **22. MULTIPLE SCHEME MEMBERS**

- 22.1 Subject to clause 23.2 and 23.3, where the Complaint involves more than one Scheme Member, the Scheme Agent may hold in its Final Determination that there is to be an appropriate apportionment of liability to the Complainant between the relevant Scheme Members in relation to an award made under a Final Determination and/or any costs incurred by the Adjudicator associated with making the Final Determination.

## **23. LIABILITY OF SCHEME MEMBERS**

- 23.1 The Scheme Agent may, in its Final Determination, hold that one or more Third-party Scheme Members and/or one or more Providers are partially or fully liable for one or more of the matters raised in the Complaint.
- 23.2 Where the Scheme Agent holds in its Final Determination that the Third-party Scheme Member is fully liable to the Complainant, the Third-party Scheme Member shall make payment directly to the Complainant.
- 23.3 Where the Scheme Agent holds in its Final Determination that the Provider is fully liable to the Complainant, the Provider shall make payment directly to the Complainant.
- 23.4 Where the Scheme Agent holds in its Final Determination that there is to be an apportionment of liability between a Provider and a Third-party Scheme Member for amount awarded to a Complainant, the Provider will make payment to the Complainant, and the Provider and Third-party Scheme Member will make arrangements to pay the Provider for its portion of the liability for the amount awarded.

## **24. CONFIDENTIALITY OF DISPUTES**

- 24.1 Subject to the exceptions in clause 24.5, all documents, statements and information provided to the Scheme Agent in connection with a Dispute (“**Relevant Information**”) are provided on a confidential basis.
- 24.2 Subject to the exceptions in clause 24.5, if any party provides Relevant Information to the Scheme Agent and requests it be treated confidentially, the Scheme Agent must not disclose the Relevant Information to any other party to the Dispute or any other person.
- 24.3 Subject to clauses 24.1 and 24.2, Relevant Information provided to the Scheme Agent in connection with a Dispute, should be made available to all parties to that Dispute. However, it may not be necessary for all Relevant Information to be provided to both parties if the Scheme Agent / Adjudicator identifies in writing the Relevant Information relied upon in the relevant Final Determination, and the affected party agrees that the Relevant Information is not required to be provided to it.
- 24.4 Subject to clause 24.3, where a party to a Dispute supplies physical copies of Relevant Information and asks that it be treated confidentially, the Scheme Agent must return such physical copies to the disclosing party as soon as practicable after the Final Determination is provided in respect of the Dispute.

- 24.5 Relevant Information provided to the Scheme Agent in connection with a Dispute may only be used for the purpose of resolving the relevant Dispute (including issuing a Final Determination) and must not be disclosed by the Scheme Agent to other persons except where:
- (a) the party who provided the Relevant Information consents to such disclosure;
  - (b) disclosure is required by law;
  - (c) disclosure is required or permitted by the Scheme TOR; or
  - (d) in the case of disclosure to a New Zealand court or other adjudicator, the Complainant agreed as part of its submission of the Complaint, that documents, statements and information provided to the Scheme Agent in connection with the relevant matter may be provided to the court or adjudicator (as applicable) to ensure efficiency and consistency of decision-making.
- 24.6 If disclosure of Relevant Information is intended to be made pursuant to clause 24.5, the Scheme Agent shall use reasonable endeavours to notify the party who provided the Relevant Information of such disclosure, prior to disclosure being made (or otherwise as soon as is practicable).
- 24.7 Subject to disclosure to a New Zealand court or other adjudicator for the purposes of clause 24.5(d), Final Determinations are confidential as between the Scheme Member and the Complainant.
- 24.8 Subject to clauses 24.1 to 24.7, the Scheme Agent may retain Relevant Information for a maximum period of six years after the Final Determination is provided in respect of the Dispute.
- 24.9 For the avoidance of doubt, communications between the parties to a Dispute which contain an attempt or proposal to settle a Dispute and which are noted as being “without prejudice” are privileged and cannot be used in later legal proceedings.

## **25. UNFAIR CONTRACT TERMS**

- 25.1 If the Scheme Agent evaluates a Dispute and identifies in its opinion (acting reasonably) a systemic issue, or that a Scheme Member’s contract terms may not comply with the Fair Trading Act 1986, it will promptly notify the relevant Scheme Member (including, if relevant, of the relevant contract terms). The Scheme Member and the Scheme Agent will enter into good faith discussions regarding options to improve the systemic issue or amend the relevant contract terms.
- 25.2 The Scheme Member shall have a reasonable period of time (which shall be no less than 40 Working Days from the date on which good faith negotiations with the Scheme Agent commenced) to implement any changes to address the systemic issue or amend the contract terms, that have been agreed pursuant to the good faith discussions with the Scheme Agent. If, after that reasonable period of time, the Scheme Agent is not satisfied that any changes to the contract terms have been implemented, the Scheme Agent may refer the matter to the Commerce Commission.

**SCHEDULE 1**  
**TEMPLATE PARTICIPATION AGREEMENT**

This agreement is made on the      day of                      20

**BY**    [                      ] **LIMITED ("Company")**

**AND TELECOMMUNICATIONS DISPUTE RESOLUTION LIMITED ("TDR Limited")**

**BACKGROUND**

- A.      This agreement is made under the Telecommunications Dispute Resolution Scheme Terms of Reference ("**Scheme TOR**") which came into effect on 1 July 2023, and the New Zealand Telecommunications Forum Customer Care Code ("**Code**").
- B.      By executing this agreement, the Company agrees to be bound by the terms of the Scheme TOR and be a signatory to the Code.

**TDR Limited and the Company agree as follows:**

**1      DEFINITIONS**

- 1.1.    All terms which are capitalised but not otherwise defined in this agreement shall have the definition given to those terms in the Scheme TOR.

**2      CREATION OF SCHEME MEMBERS**

- 2.1    With effect from the date on which this agreement is signed by the Company (the "**Effective Date**"), the Company becomes a Scheme Member.
- 2.2    The Company undertakes to take all actions required to be a signatory to the Code as soon as reasonably practicable following the Effective Date.

**3      COMPANY'S OBLIGATIONS**

- 3.1    The Company agrees that it is legally bound by the terms of the Scheme TOR (as amended from time to time) and that it will duly observe and perform its obligations under the Scheme TOR (including in respect of its Eligible Subsidiaries and Eligible Brands).
- 3.2    The Company agrees that, upon becoming a signatory to the Code, it is legally bound by the provisions of the Code (as amended from time to time) and that it will duly observe and perform its obligations under the Code (including in respect of its Eligible Subsidiaries and Eligible Brands).
- 3.3    The Company agrees that, by being a signatory to the Code, the Code Compliance Framework also applies to the Company in respect of the Code, and that the Company will duly observe and perform its obligations under the Code Compliance Framework.
- 3.4    The Company covenants in favour of all Scheme Members to act in good faith towards TDR Limited, 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 on any of its obligations in the Scheme TOR or Code, the Company agrees to submit to the enforcement mechanisms contained in the Scheme TOR and the Code (as applicable) to enforce the obligations contained in the Scheme TOR and the Code.
- 3.6 The Company agrees to pay the Annual Scheme Fees and the User Pays Fees in accordance with the Scheme TOR
- 3.7 The Company shall comply with and participate in the TDR industry representative nomination policy for the appointment of the board of TDR Limited (as referred to in clause 9.4 of TDR Limited’s constitution).

**4 GOVERNING LAW**

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

**SIGNED BY THE PARTIES**

[                      ] LIMITED by:

\_\_\_\_\_  
Signature of Director / Authorised Person

\_\_\_\_\_  
Signature of Director / Authorised Person

\_\_\_\_\_  
Name of Director / Authorised Person

\_\_\_\_\_  
Name of Director / Authorised Person

**TELECOMMUNICATIONS DISPUTES RESOLUTION LIMITED by:**

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Name of Authorised Person

## SCHEDULE 2 FEES

### 1. Definitions and interpretation

In this Schedule 2:

- (a) **"Bank Bill Rate"** means the average rate as displayed on the Reuters Monitor Screen page BKBM (or any successor page displaying substantially the same information) under the heading "FRA" for bank accepted bills having a term of 3 months, at or about 11.00am on the day on which accrual of interest commences.
- (b) **"Expert"** means a person to be agreed between the relevant Scheme Member and TDR Limited or, if they cannot agree within five Working Days, an independent person appointed by the President of the New Zealand Law Society on application by the Scheme Member or TDR Limited.
- (c) **"year"** means a 12-month period beginning 1 July and ending 30 June (unless stated otherwise).
- (d) Terms capitalised but not otherwise defined have the meaning provided to them in the Scheme TOR.

### 2. User Pays Fee

- (a) The following User Pays Fees are payable by Scheme Members:

Stage of Complaint Process	User Pays Fee (total per stage)
Stage 1: Enquiry and Registration	\$0
Stage 2: Investigation and Resolution	\$500

- (b) The amount of the User Pays Fees may be varied in accordance with clause 10 (including, for example, where the Scheme Agent considers that a Scheme Member has been responsible for a disproportionate number of Disputes being referred to the Scheme Agent relative to connections). The Scheme Agent will notify Scheme Members of any such variation as soon as reasonably practicable.

### 3. Annual Scheme Fees

- (a) The Annual Scheme Fees payable by each Scheme Member from time to time will be determined by the Board and notified to each Scheme Member in writing.
- (b) Subject to the change provision in clause 3(c) below, in determining the Annual Scheme Fees the Board shall apply the previous allocation method as set out in Schedule 2 of the former telecommunications dispute resolution scheme terms of reference dated June 2021 including the tiering structure and that Third-party Scheme Members do not pay an Annual Scheme Fee.
- (c) Should the Board wish to make any changes to the allocation method set out in clause 3(b), the Board shall consult with all Scheme Members. Following

consultation the updated allocation method shall apply once approved by the Board in accordance with the Constitution.

4. **Fees for Other Code Disputes**

- (a) Scheme Members and non-Scheme Members shall pay a User Pays Fee for each Other Code Dispute.
- (b) Non-Scheme Members will also pay an administration fee, to be determined by the Board acting reasonably, for each Other Code Dispute.

5. **General**

- (c) All Annual Scheme Fees, User Pays Fees and administration fees for Other Code Disputes stated above are exclusive of GST.
- (d) The Annual Scheme Fee shall be pro-rated for Scheme Members that join part way through a year ("**New Scheme Members**"), based on the number of days remaining in the relevant year, from the day the New Scheme Member executes a Participation Agreement.
- (e) Where additional Annual Scheme Fees are paid in respect of a given year by New Scheme Members, and such Annual Scheme Fees exceed the cost of running the Scheme in that year, then a credit may be applied against each Scheme Member's Annual Scheme Fees for the subsequent year, to reflect the excess in Annual Scheme Fees paid.

6. **Invoicing**

- (a) TDR Limited will invoice Scheme Members the Annual Scheme Fee on a 6-monthly basis, in advance. Scheme Members will pay all invoices by the 20<sup>th</sup> day of the month following receipt of the invoice from the Scheme Agent ("**Due Date**").
- (b) All additional costs reasonably incurred by TDR Limited or the Scheme Agent in relation to that Scheme Member's non-payment of fees relating to the Scheme and non-payment of Final Determinations, will be invoiced by TDR Limited to that Scheme Member, and will be payable directly to TDR Limited.
- (c) Where a Scheme Member genuinely disputes any amount invoiced to it by TDR Limited:
  - (i) the Scheme Member will give written notice to TDR Limited setting out reasonable particulars of the disputed amount and pay all other amounts to TDR Limited by the Due Date; and
  - (ii) the Scheme Member and TDR Limited will endeavour to resolve the dispute within 10 Working Days of TDR Limited receiving notification of the disputed amount. If the Scheme Member and TDR Limited do not resolve the dispute within that period, the dispute shall be referred to an Expert whose decision in respect of the matter will be final and binding on the parties, such decision to be made within 30 Working Days of referral to the Expert. The Scheme Agent and TDR Limited shall provide, in a timely manner all the information reasonably required by the Expert in order for it to make a decision. The Scheme Member and

TDR Limited shall share the costs of the Expert equally unless the Expert determines otherwise.

- (d) Where a Scheme Member genuinely disputes any amount invoiced to it by the Scheme Agent:
- (i) the Scheme Member will give written notice to the Scheme Agent setting out reasonable particulars of the disputed amount and pay all other amounts to the Scheme Agent by the Due Date; and
  - (ii) the Scheme Member and the Scheme Agent will endeavour to resolve the dispute within 10 Working Days of the Scheme Agent receiving notification of the disputed amount. If the Scheme Member and the Scheme Agent do not resolve the dispute within that period, the dispute shall be referred to the Board whose decision in respect of the matter will be final and binding on the parties, such decision to be made within 30 Working Days of referral to the Board. The Scheme Agent and Scheme Member shall provide, in a timely manner all the information reasonably required by the Board in order of it to make its decision.
- (e) **Late Payments (Interest):** The Scheme Agent and TDR Limited (as applicable) shall charge Scheme Members interest on late payment of any undisputed User Pays Fees, administration fees for Other Code Disputes and Annual Scheme Fees (as applicable) at the Bank Bill Rate plus 4%.
- (f) **Late Payments (Suspension):** If, after 20 Working Days from the Due Date, a Scheme Member still owes the Scheme Agent or TDR Limited any User Pays Fee or Annual Scheme Fees (as applicable) the Scheme Agent will suspend accepting any new Complaints relating to the Scheme Member for management and/or administration until the outstanding fee(s) are paid. For the avoidance of doubt:
- (i) the Scheme Member will not receive a reduction in its Annual Scheme Fees; and
  - (ii) the Scheme Agent will continue to manage and administer Complaints that are already under way at the time of the suspension,
- for the period that the Scheme Agent suspends activity under this clause.

### **SCHEDULE 3 REPORTS**

#### **Six-monthly reports**

The Scheme Agent will provide six-monthly reports to the Board in accordance with the agreement for provision of services in respect of the Scheme between the Scheme Agent and TDR Limited.

#### **Annual report**

The annual report will be for the period 1 July to 30 June of the following year.

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

1. volume of Disputes and complaints/enquiries received and where categorised according to Scheme Member (including any Third-party Scheme Member). Any figures will be quoted per 10,000 connections;
2. types of Disputes;
3. details of complaints which were outside the Scheme jurisdiction and why;
4. volume of Disputes resolved;
5. outcomes of resolved Disputes;
6. systemic issues;
7. significant trends;
8. performance against operational efficiency SLAs;
9. customer satisfaction with scheme; and
10. where applicable, comparative information for the preceding year.

In addition, the annual report will provide:

11. a list of Scheme Members;
12. details of systemic issues and significant trends that have been identified in the year; and
13. selected case studies for the purpose of demonstrating systemic issues. Names of the parties will remain confidential.

The annual report and six-monthly reports will be published by the Scheme Agent on the website provided for the Scheme.

## SCHEDULE 4 EXCLUDED MATTERS

The Excluded Matters are matters:

1. relating to equipment, applications or downloads that a Customer has not purchased from or been supplied by a Scheme Member;
2. relating to the composition or level of charges (price) a Scheme Member sets in respect of Telecommunications Services (provided that a Consumer shall not be prevented from basing a Complaint on the Scheme Member engaging in misleading conduct regarding its pricing);
3. relating to the absence of network coverage (provided that a Consumer shall not be prevented from basing a Complaint on the Scheme Member engaging in misleading conduct regarding its coverage);
4. which fall under the jurisdiction of another governmental agency or authority, or a commission better placed to deal with the matter (e.g., privacy matters, domain names, human rights matters, emergency service provider issues);
5. which are currently subject to legal action and/or currently being pursued in alternative dispute resolution or judicial forums (or similar) (for example, the disputes tribunal or a New Zealand court);
6. where the amount claimed by the Complainant in respect of that matter (or the aggregated amount claimed by the Complainant in respect of multiple matters, where the matters are the same or substantively similar) exceeds the maximum amount which may be sought in proceedings at the Disputes Tribunal;
7. which the Complainant has previously referred to the Scheme Agent, unless there is relevant new information which was not available at the time of the original referral;
8. relating to broadband performance, unless the complaint relates to a material failure of a broadband service to meet performance standards that have been represented to the Customer as the applicable standards for the broadband service, and which is covered by the complaints process set out in the TCF Broadband Marketing Code;
9. in respect of which the Complainant has:
  - (a) accepted or agreed to a resolution of that matter or a substantially similar matter with the relevant Scheme Member; or
  - (b) been offered a resolution by the Scheme Member and has not responded to the offer within 30 working days of the offer having been made in writing, provided that the Scheme Member advised the Complainant within that working days timeframe that a failure to respond to the offer would exclude them from the using the Scheme in respect of the same Complaint;
10. to the extent allowed by law, a claim or claims for compensation based on indirect loss (including loss of profits), punitive damages, pain or suffering, loss of reputation, inconvenience, humiliation, mental distress, and costs involved in compiling or pursuing a Complaint;
11. which are frivolous or vexatious or trivial, or the Scheme Agent is reasonably satisfied that the Complainant has refused to engage with the relevant Scheme Member or otherwise acted in bad faith in relation to attempting to resolve the matter; and

12. which are raised more than three (3) years following the date the Customer reasonably became aware of such matter.