

# **VODAFONE NEW ZEALAND LIMITED**



**Telecommunications Act 2001**

**Undertaking to the Commerce Commission under  
Schedule 3A in respect of national roaming services**

**2 November 2007**

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

**Dated** 2 November 2007

### Parties

1. **Vodafone New Zealand Limited** of Level 1, 20 Viaduct Harbour Avenue, Auckland (**Vodafone**)  
  
in favour of:
2. **New Zealand Commerce Commission** being a Crown entity established by section 8 of the Commerce Act 1986 (**Commission**).

### Background

- A. Vodafone is an Access Provider under the Telecommunications Act 2001 of national roaming services.
- B. Vodafone gives this Undertaking pursuant to Schedule 3A of the Telecommunications Act 2001, as amended by the Telecommunications Amendment Act (No. 2) 2006.

### 1 Interpretation

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

#### 1.1 Access Seeker:

- a) means a telecommunications service provider:
  - i. meeting the criteria of an access seeker under the Telecommunications Act 2001 in respect of the national roaming service; and
  - ii. that provides a properly completed and executed Deed of Acceptance, in the form set out in Schedule 5, in favour of Vodafone;
- b) but excludes an Excluded Operator, as defined in Schedule 3.

1.2 **Undertaking** means this Undertaking given by Vodafone to the Commission under Schedule 3A of the Telecommunications Act 2001.

1.3 **Vodafone Roaming Service** means the service specified in Schedule 1.

## **2 Commencement and term**

- 2.1 This Undertaking takes legal effect immediately after it is registered by the Commission under Clause 6 of Schedule 3A of the Telecommunications Act 2001 and continues until 5 years from the date of registration.

## **3 Undertaking terms and conditions**

- 3.1 Vodafone undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the Vodafone Roaming Service:
- a) specified in Schedule 1;
  - b) at the prices specified in Schedule 2; and
  - c) on the terms specified in Schedule 3,
- to any Access Seeker.

## **4 Notices**

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

Attention: General Manager Corporate Affairs  
Address: Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland  
Facsimile: (09) 355 2005

Copy to:

Attention: General Counsel  
Address: Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland  
Facsimile: (09) 355 2005

Signed by **Tom Chignell** as  
Authorised signatory for Vodafone  
New Zealand Limited in the presence of:

\_\_\_\_\_  
Signature of witness

Signature of **Tom Chignell**

Name of witness (block letters):

Place of abode:

Calling or description:

**Schedule 1**  
**Services Description**  
**Vodafone Roaming Service**

The **Vodafone Roaming Service** is defined as the following Cellular Mobile Services:

- a) the origination of Roaming Traffic by Access Seeker End Users roaming on the Vodafone Network and hand-over of that Roaming Traffic under the terms of this Undertaking in accordance with the Handover Principle;
- b) the:
  - i. acceptance of Roaming Traffic handed over by the Access Seeker or (in the case of Roaming Text Messages) any other person (where Vodafone is providing interconnection services to that other person, under a current interconnection agreement with that other person); and
  - ii. termination or offer of termination of that Roaming Traffic to Access Seeker End Users roaming on the Vodafone Network; and
- c) the termination or offer of termination of Roaming Text Messages originating from Vodafone End Users, or from an ESME (External Short Message Entity) that are handed over to Vodafone, for termination to Access Seeker End Users roaming on the Vodafone Network,

and associated and incidental services and functionality. The features, and associated and incidental services and functionality, of these Cellular Mobile Services are specified in the Technical Specifications. The Access Seeker will be responsible for the Handsets and SIMs that enable access to these Cellular Mobile Services while roaming on the Vodafone Network.

The Vodafone Roaming Service excludes:

- d) Value Added Services and access to Value Added Services service nodes;
- e) out-bound international roaming services and facilities;
- f) wireless LAN services (also known as WiFi and WiMax) or any similar services provided by Vodafone;
- g) cellular mobile services and functionality used in non-mobile applications;
- h) number allocation; and
- i) synchronous services, other than Calls.

For these purposes, **Value Added Services** means services or functionality that provide benefits to a customer or end user that are not part of the standard telecommunications services or functionality associated with a basic retail Cellular Mobile Service, including (without limitation):

- j) Vodafone Live! and other Vodafone content or third party content;
- k) any information services provided to Vodafone End Users;
- l) any services or functionality that are not integral to the sending or receiving of Roaming Traffic (including, without limitation, location-based services);
- m) Vodafone's voice mail and voice messaging;
- n) services provided by Vodafone's Intelligent Network or pre-pay platforms;
- o) mobile commerce services; and
- p) customer self-service applications.

**Schedule 2  
Pricing  
Vodafone Roaming Service**

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

	Year One	Year Two	Year Three	Year Four	Year Five
<b>Chargeable Roaming Calls</b>	14.8 cents per minute	16.2 cents per minute	17.6 cents per minute	18.3 cents per minute	19.5 cents per minute
<b>Chargeable Text Messages</b>	4.9 cents per Text Message	5.3 cents per Text Message	5.8 cents per Text Message	6.0 cents per Text Message	6.4 cents per Text Message
<b>Chargeable Data Sessions (in respect of 2G)</b>	31.9 cents per 1 MB	34.9 cents per 1 MB	37.9 cents per 1 MB	39.4 cents per 1 MB	42.1 cents per 1 MB
<b>Chargeable Data Sessions (in respect of 3G)</b>	8.6 cents per 1 MB	9.4 cents per 1 MB	10.2 cents per 1 MB	10.6 cents per 1 MB	11.3 cents per 1 MB
<b>Chargeable Data Sessions (in respect of HSDPA)</b>	5.5 cents per 1 MB	6.0 cents per 1 MB	6.5 cents per 1 MB	6.8 cents per 1 MB	7.3 cents per 1 MB
<b>Chargeable Video Telephony Calls</b>	35.2 cents per minute	38.5 cents per minute	41.7 cents per minute	43.5 cents per minute	46.5 cents per minute

2. References in **Clause 1** above to **Years** are to the period of 12 months following:

- a. the Services Commencement Date (in the case of Year One); or

- b. the relevant anniversary of the Services Commencement Date (in the case of Years Two to Five), as applicable.

However, this Schedule 2 does not require Vodafone to provide the Vodafone Roaming Services beyond the term of this Undertaking.

3. References in **Clause 1** above to:

- a. **in respect of 2G**, means use of Vodafone's 2G GSM and GPRS Cellular Mobile Network by the Access Seeker End Customers, in the event that Access Seeker End Customers do not use Vodafone's 3G W-CDMA and HSDPA Cellular Mobile Networks;
- b. **in respect of 3G**, means use of Vodafone's 2G GSM and GPRS and 3G W-CDMA (excluding HSDPA) Cellular Mobile Networks by the Access Seeker End Customers; and
- c. **in respect of HSDPA**, means use of Vodafone's 2G GSM and GPRS, 3G W-CDMA and HSDPA Cellular Mobile Networks (from the time that HSDPA radio access network technology is deemed to be a part of the Vodafone Network for the purposes of this Undertaking) by the Access Seeker End Customers.

- 4. In all other respects, Clauses 5 to 8 of Schedule 3 of this Undertaking shall apply in relation to Chargeable Roaming Traffic.
- 5. For the avoidance of doubt, Clause 17.22 of Schedule 3 of this Undertaking applies to the prices set out in this Schedule 2.

**Schedule 3  
Terms and Conditions  
Vodafone Roaming Service**

**1 DEFINITIONS**

1.1 Unless the context indicates otherwise, capitalised terms used in this Schedules 1 to 4 that are not otherwise defined in the main body or other Schedules of this Undertaking have the meaning given below:

**Access Seeker Customer** means an Access Seeker End User and/or an Access Seeker Reseller, as the context requires.

**Access Seeker End User** means any end-user of the Access Seeker Mobile Services who is entitled to receive Access Seeker Mobile Services; but excludes:

- a) any Access Seeker Reseller (except when they are themselves an end-user of the Access Seeker Mobile Services); and
- b) any in-bound international roaming customers.

**Access Seeker Group** means the group of companies of which the Access Seeker is a part.

**Access Seeker Mobile Network** means, subject to **Clause 3.16**, any operational 3G W-CDMA and/or 2G GSM and GPRS Cellular Mobile Network in New Zealand that:

- a) the Access Seeker wholly owns and has a right of access to; or
- b) the Access Seeker does not own or wholly own, but which the Access Seeker has acquired rights of access to in accordance with this Undertaking,

and is used to provide the Access Seeker Mobile Services.

**Access Seeker Mobile Services** means commercial end-to-end Cellular Mobile Services of the Access Seeker that both:

- a) are provided to Access Seeker Customers using the Access Seeker Mobile Network or parts of the Access Seeker Mobile Network; and
- b) use the Vodafone Roaming Service provided over the Vodafone Network.

**Access Seeker Number** means, subject to **Clause 16** and the Technical Specifications:

- a) any number allocated by the Access Seeker to its customers, which number is allocated to the Access Seeker in accordance

with the NAD, that is not (at the relevant time) ported out of the Access Seeker Mobile Network; and

- b) any number that is (at the relevant time) ported to the Access Seeker Mobile Network in accordance with the LMNP Determination. To avoid doubt, where the number has been ported two or more times (and has not been ported out of the Access Seeker Mobile Network), such port to the Access Seeker Mobile Network will be the last of the ports.

**Access Seeker Reseller** means a telecommunications service provider who:

- a) enters into an agreement with the Access Seeker to resell Access Seeker Mobile Services; and
- b) has a direct contractual relationship with Access Seeker End Users for the resale of those Access Seeker Mobile Services (and is not, for the avoidance of doubt, acting as an agent for the Access Seeker),

excluding any telecommunications service provider that is, or is controlled by, an Excluded Operator.

**Activation** means, in respect of a Service Number, the steps required to be undertaken so that the Service Number is capable of using or accessing the Vodafone Roaming Service and **Activate** has a corresponding meaning.

**Answer Line Signal** means the message signal in the Signalling Format which indicates that a Roaming Call or a Video Telephony Call has been answered.

**Bill Rate** means the average 3 month bank bill mid rate as quoted on Reuters Screen page BKBM (known as at the date of this Undertaking as the FRA rate) at or about 10.45 am as at the relevant date, provided that if, on or about that time, for any reason, the Reuters Screen page BKBM is not then available, the last rate quoted on that page before it became unavailable.

**Billing Period** means each period commencing on the twenty-first day of a month and concluding on the twentieth day of the following month.

**Call:**

- a) means a signal or series of signals contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface), whether or not there is actual communication between the originator and the intended recipient of the signal or signals, where the bandwidth to be provided is 64 kbits per

second for PCM encoded speech, circuit-switched data or fax;  
but

- b) does not include:
  - i. CCITT/ITU No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers; and
  - ii. for the avoidance of doubt, any Data Session, Text Message or Video Telephony Call.

**Cellular Mobile Network** means a wireless telecommunications system where:

- a) each geographic area (known as a cell) is covered by a base station and where each telephone in the cell communicates with the base station; and
- b) if the phone moves to another adjacent cell, the call is automatically transferred to the base station in the new cell,

and a **Cellular Mobile Service** means a telecommunications service provided over a Cellular Mobile Network.

**Chargeable Data Session** means any Roaming Data Session where Data has been transmitted from or to the Access Seeker End User roaming on the Vodafone Network, following the establishment of the Roaming Data Session.

**Chargeable Video Telephony Call** means:

- a) in the case of a Roaming Video Telephony Call originating from an Access Seeker End User roaming on the Vodafone Network, any Roaming Video Telephony Call handed over by Vodafone in accordance with the Handover Principle; and
- b) in the case of a Roaming Video Telephony Call handed over by the Access Seeker to Vodafone in accordance with the Handover Principle, any Roaming Video Telephony Call delivered by Vodafone to the Handset of the Access Seeker End User roaming on the Vodafone Network,

but does not include a call attempt where there is no transmission of an Answer Line Signal to or by Vodafone or a Roaming Video Telephony Call attempt that is call forwarded and not involving air time on the Vodafone Network.

**Chargeable Roaming Call** means:

- a) in the case of a Roaming Call originating from an Access Seeker End User roaming on the Vodafone Network, any Roaming Call handed over by Vodafone in accordance with the Handover Principle; and
- b) in the case of a Roaming Call handed over by the Access Seeker to Vodafone in accordance with the Handover Principle, any Roaming Call delivered by Vodafone to the Handset of the Access Seeker End User roaming on the Vodafone Network,

but does not include a call attempt where there is no transmission of an Answer Line Signal to or by Vodafone or a Call attempt that is call forwarded and not involving air time on the Vodafone Network.

**Chargeable Roaming Traffic** means Chargeable Data Sessions, Chargeable Roaming Calls, Chargeable Text Messages and Chargeable Video Telephony Calls.

**Chargeable Text Message** means:

- a) in the case of a Roaming Text Message originating from an Access Seeker End User roaming on the Vodafone Network, any Roaming Text Message handed over by Vodafone in accordance with the Handover Principle; and
- b) in the case of a Roaming Text Message:
  - i. handed over by the Access Seeker or any other person to Vodafone in accordance with the Handover Principle; or
  - ii. originating in the Vodafone Network to an Access Seeker End User roaming on the Vodafone Network,

any Roaming Text Message delivered by Vodafone to the Handset of the Access Seeker End User roaming on the Vodafone Network.

**Confidential Information** means all information which is confidential or proprietary:

- a) in the case of Vodafone, to Vodafone or any member of the Vodafone Group, including (without limitation):
  - i. information which is confidential or proprietary to a third party and used or disclosed pursuant to, or in connection with, this Undertaking by Vodafone under licence from such third party; and
  - ii. information which is confidential or proprietary to Vodafone or any member of the Vodafone Group which has been obtained by the Access Seeker from any other member of the Access Seeker Group or from any person on behalf of any other member of the Access Seeker Group;

- b) in the case of the Access Seeker, to the Access Seeker or any member of the Access Seeker Group, including (without limitation):
  - i. information which is confidential or proprietary to a third party and used or disclosed pursuant to, or in connection with, this Undertaking by the Access Seeker under licence from such third party; and
  - ii. information which is confidential or proprietary to the Access Seeker or any member of the Access Seeker Group which has been obtained by Vodafone from any other member of the Vodafone Group or from any person on behalf of any other member of the Vodafone Group;

but does not include any such information:

- c) which is independently developed by the receiving party outside the scope of this Undertaking;
- d) which is other confidential or proprietary information obtained from sources independent of either party (other than, for the avoidance of doubt, information obtained from any other member of the Access Seeker Group, in the case of the Access Seeker Confidential Information, or the Vodafone Group, in the case of Vodafone Confidential Information, or from any person on behalf of any other member of that Group);
- e) which was publicly available at the time of receipt or the date of this Undertaking, otherwise than as a result of a breach of an obligation of confidence; or
- f) which was known to a party at the time of receipt or becomes publicly available after the date of this Undertaking, otherwise than as a result of a breach of an obligation of confidence.

**Data Session** means a packet data session (including multi media messages) on the Vodafone Network, initiated by an Access Seeker End User roaming on the Vodafone Network after establishment of a PDP context between an MS and the SGSN and GGSN, but does not include, for the avoidance of doubt, any Call, Text Message or Video Telephony Call, and **Data** shall have a corresponding meaning.

**Deactivation** means the steps required to be undertaken so that a Service Number is not capable of using or accessing the Vodafone Roaming Service and **Deactivated** and **Deactivate** have corresponding meanings.

**Deed of Acceptance** means a deed, in the form set out in Schedule 5, that has been executed by the Access Seeker.

**Due Date** means:

- a) the 20th day of the month following the month in which an invoice or notice is received; or
- b) where any provision of this Undertaking provides that payment of any amount is to be made on or by a particular date, that particular date,

provided that, if that particular date is not a Working Day, the Due Date will be the immediately succeeding Working Day.

**Duration** means, in the case of Calls and Roaming Video Telephony Calls and subject to **Clauses 5.4** and **8.4**, the period determined in accordance with methodologies:

- a) employed by Vodafone in determining the actual duration of Calls and Roaming Video Telephony Calls for the purposes of calculating the charges paid by Vodafone Customers; and
- b) which have been established having regard to:
  - i. when an Answer Line Signal for a Roaming Call or a Roaming Video Telephony Call is detected by Vodafone in respect of that Roaming Call or Roaming Video Telephony Call (as the case may be); and
  - ii. when a Release Signal for that Roaming Call or a Roaming Video Telephony Call is detected by Vodafone in respect of that Roaming Call or Roaming Video Telephony Call (as the case may be).

**Excluded Operator** means, at the time when the question of whether a relevant person is an Excluded Operator under this Undertaking, any member of a group of companies, where:

- a) any member of that group has; or
- b) members within that group, taken as a whole, have, a market share of 20% or more in the nationwide retail market for the provision of mobile telecommunications services (based on customer numbers) at any time in the five years prior to the relevant time referred to above, **provided that**, once a telecommunications service provider becomes an Access Seeker under this Undertaking (which means they were not an Excluded Operator at the time they became an Access Seeker), if they subsequently acquire sufficient market share to be regarded as an Excluded Operator and remain an Access Seeker under this Undertaking:
- c) that person's rights and obligations as an Access Seeker are unaffected; and

d) that person will not be treated as an Excluded Operator under this Undertaking.

**Exclusion Zone** means an area of the Vodafone Network in which Access Seeker End Users are not able to roam on the Vodafone Network, as referred to in **Clause 10**.

**Force Majeure Event** means any act of God, confiscation or expropriation, embargo, public mains electrical supply failure, fire, flood or storm, explosion or nuclear accident, sabotage, revolution, riot, terrorism, act of war (whether declared or not) or warlike operations, earthquake, land slide or volcanic eruption, epidemic or quarantine restriction or strike, lockout, work stoppage or other labour hindrance, or any other event beyond the reasonable control of Vodafone.

**Group** means the Vodafone Group or the Access Seeker Group, as the context requires.

**GST** means goods and services tax, as defined in the Goods and Services Tax Act 1985.

**Handset** means a mobile handset or other device that enables Access Seeker End Users to use or access Access Seeker Mobile Services.

**Handover Point** means the electrical and physical interface points between the Vodafone Network and the Access Seeker Mobile Network at which Roaming Traffic is, or is to be, handed over from the Vodafone Network to the Access Seeker Mobile Network, and vice versa.

**Handover Principle** is defined in **Clause 26.1**.

**Implementation Plan** means the implementation plan that will detail the tasks to be performed and deliverables to be provided by Vodafone and the Access Seeker leading up to the commencement of the Vodafone Roaming Service (including the acceptance testing procedures), as determined or agreed between Vodafone and the Access Seeker, and as amended from time to time.

**LMNP Determination** means the Commission's "Determination on the multi-party application for determination of 'local telephone number portability service' and 'cellular telephone number portability service' designated multinet network services", Decision 554, dated 31 August 2005 (as clarified by Decision 579, Decision 600 and Decision 605), as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 554, and includes the Network Terms, the LMNP Terms and the Operational and Support Manual for LMNP.

**Location Area** or **LA** means the individual geographic areas as referred to in **Clause 10.1** which the Vodafone Network may be divided into from time to time based on coverage area of a number of cellsites.

**Macro Site** means a cellsite that provides wide area coverage delivering mobile voice and/or data services to both outdoor and indoor environments, where the service in areas of coverage of that cellsite will be lost if the cellsite is switched off.

**NAD** means the Number Administration Deed authorised by the Commission on 17 May 1999, or any agreement (or other arrangement) that Vodafone and the Access Seeker agree replaces the Number Administration Deed.

**Network Operator** means a network operator (not being the Access Seeker, Vodafone, or a member of either the Access Seeker Group or the Vodafone Group) which has entered into an interconnection agreement with Vodafone or the Access Seeker for the provision by Vodafone or the Access Seeker of services which are the same or similar to network interconnection services provided by each of the Access Seeker and Vodafone to the other.

**Operational Procedures** means the operational and implementation procedures, and certain other terms and conditions, referred to in **Clause 29**, as determined or agreed between Vodafone and the Access Seeker, and as amended from time to time.

**Outage** means the failure by Vodafone to provide, in whole or in part, the Vodafone Roaming Service to the Access Seeker in accordance with this Undertaking due to any technical or operational matter, or any other circumstance which, in Vodafone's reasonable opinion, makes it necessary to interrupt supply of the Vodafone Roaming Service.

**Reasonable and Actual Costs** means:

- a) demonstrable costs incurred by Vodafone or the Access Seeker (as the case may be), without mark-up or profit included for the benefit of that party or its Group; and
- b) any time expended by Vodafone or the Access Seeker's (as the case may be) employee directly on the relevant matter at the rate applied by Vodafone, with regard to that type of employee, to capitalise internal labour costs for project purposes, as notified by Vodafone from time to time.

**Release Signal** means the message in the Signalling Format carried from Vodafone to the Access Seeker or from the Access Seeker to Vodafone that indicates that a Roaming Call or a Video Telephony Call has ended and that a connection is no longer established in respect of that Roaming Call or Video Telephony Call (as the case may be).

**Request Date** means the date of the Deed of Acceptance that has been executed by the Access Seeker.

**Roaming Call** means a Call that is originated by or terminated to an Access Seeker End User while roaming on the Vodafone Network under the terms of this Undertaking.

**Roaming Data Session** means a Data Session that is established by an Access Seeker End User while roaming on the Vodafone Network under the terms of this Undertaking.

**Roaming Text Message** means a Text Message that is originated from, or delivered to, an Access Seeker End User while roaming on the Vodafone Network under the terms of this Undertaking.

**Roaming Video Telephony Call** means a Video Telephony Call that is originated by or terminated to an Access Seeker End User while roaming on the Vodafone Network under the terms of this Undertaking.

**Roaming Traffic** means any Roaming Call, Roaming Data Session, Roaming Text Message or Roaming Video Telephony Call.

**Service Number** means an Access Seeker Number that is allocated by the Access Seeker to an Access Seeker Customer to enable use of the Access Seeker Mobile Service.

**Services Commencement Date** means the date of commencement of the provision of the Vodafone Roaming Service to the Access Seeker under this Undertaking, other than (where the context allows) on a testing or limited trial basis in accordance with this Undertaking.

**Signalling Format** means CCITT/ITU No. 7 signalling (or such other signalling as may be agreed by the parties from time to time).

**SIM** means "Subscriber Identity Module", a removable card or module which is used in the GSM or 3G authentication procedures and contains the international subscriber identity (IMSI) number and other subscriber data, any associated information and intellectual property which, when used with a Handset, enables access to the Access Seeker Mobile Services.

**Software** means any computer software stored on, or associated with, a Handset.

**Technical Specifications** means the technical specifications for the Vodafone Roaming Service set out in Schedule 4, as amended from time to time.

**Text Message** means a message, representing an alphanumeric sequence of text, which uses the Short Message Service as

described in 3GPP TS 3.40 and TS 23.040 (as amended from time to time), but does not include, for the avoidance of doubt, any Call, Data Session or Video Telephony Call.

**Toll-Free JVA** means the Joint Venture Agreement dated 7 May 1999, as amended from time to time, relating to toll-free numbers.

**Video Telephony Call:**

- a) means a series of signals associated with full duplex, real time, audio visual communication contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface) where the bandwidth to be provided is 64 kbits per second for PCM encoded speech, circuit-switched data or fax, whether or not there is actual communication between the originator and the intended recipient of the signals; but
- b) does not include:
  - i. CCITT/ITU No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers; and
  - ii. for the avoidance of doubt, any Call, Data Session or Text Message.

**Vodafone Customer** means a Vodafone End User and/or a Vodafone Reseller, as the case may be.

**Vodafone End User** means any end-user of the Vodafone End User Service who is entitled to receive the Vodafone End User Service, but does not include the Vodafone Group, the Access Seeker or the Access Seeker Group.

**Vodafone End User Service** means any telecommunication service provided by Vodafone directly, or through a Vodafone Reseller, which may or may not be used by a Vodafone End User.

**Vodafone Group** means Vodafone Group Plc, Vodafone and each and all of their subsidiaries now or from time to time (within the meaning of sections 5 and 6 of the Companies Act 1993, with references to “company” in sections 5, 6, 7 and 8 including companies that are not incorporated under the Companies Act 1993).

**Vodafone Network** means:

- a) Vodafone’s 2G GSM and GPRS Cellular Mobile Network;
- b) Vodafone’s 3G W-CDMA (excluding HSDPA) Cellular Mobile Network; and
- c) subject to **Clause 3.3**:

- i. Vodafone's HSDPA Cellular Mobile Network; and
- ii. any other radio access network technologies (within the 3G W-CDMA family of technologies),

and (if applicable) Vodafone's core network, in New Zealand.

**Vodafone Reseller** means a telecommunications service provider who enters into an agreement with Vodafone to resell the Vodafone End User Service.

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

- 1.2 For the purposes of determining any issue of construction arising in respect of this Undertaking:
- a) if there is a conflict between the terms and conditions of this Undertaking and the Implementation Plan or the Operational Procedures, the terms and conditions of this Undertaking shall prevail;
  - b) if there is a conflict between the terms of the Technical Specifications and the Implementation Plan or the Operational Procedures, the Technical Specifications shall prevail; and
  - c) if there is a conflict between the terms of the Implementation Plan and the Operational Procedures, the Implementation Plan shall prevail.

## 2 CONDITIONS

- 2.1 Before Vodafone is required to make available and provide the Vodafone Roaming Service to the Access Seeker under this Undertaking:
- a) Vodafone and the Access Seeker must agree:
    - i. the Implementation Plan, which will include the expected Services Commencement Date, which will be a reasonable period of time following the Request Date; and
    - ii. the Operational Procedures;
  - b) there must be satisfactory completion of all testing that may be reasonably required by either party;
  - c) the Access Seeker Mobile Network:
    - i. either:
      - a. has a number of operational Macro Sites equivalent to 10% or more of the number of Vodafone Macro Sites at the relevant time (being, at the date of this

Undertaking, approximately 1,000 Vodafone Macro Sites); or

b. covers in aggregate an area in which no less than 10% of the New Zealand population normally lives or works; and

ii. in each case, is operational and is ready for commencement of the Access Seeker Mobile Services; and

d) any security required by Vodafone under **Clause 23** has been provided to Vodafone's satisfaction.

2.2 Where Vodafone and the Access Seeker have not been able to agree the Implementation Plan (including, for the avoidance of doubt, the Services Commencement Date) or the Operational Procedures by 30 days following the Request Date, either Vodafone or the Access Seeker may give written notice referring any matters which they consider should be part of the Implementation Plan or the Operational Procedures (as the case may be), but which have not been agreed, to an independent expert in telecommunications technical matters relating to mobile networks (the **Technical Expert**) for him or her to determine and, unless otherwise agreed in writing:

a) Vodafone and the Access Seeker must endeavour to appoint a single Technical Expert. If, within 5 Working Days of the notice under this **Clause 2.2** being given, Vodafone and the Access Seeker are unable to agree on a single Technical Expert, the Technical Expert shall be appointed by the Telecommunications Commissioner;

b) the Technical Expert must adopt a procedure which, in the Technical Expert's opinion, is the most simple, fair and expeditious procedure possible in the circumstances for determining the disputed issues;

c) the procedures in **Clause 24** do not apply to any matter to be determined by the Technical Expert under this **Clause 2.2**;

d) the provisions of the Arbitration Act 1996 will not apply to any procedure under this **Clause 2.2**;

e) Vodafone and the Access Seeker will provide the Technical Expert with any information that the Technical Expert reasonably requires;

f) either of Vodafone or the Access Seeker may identify information provided to the Technical Expert as being Confidential Information in which case the Technical Expert shall be a Receiving Party for the purposes of **Clause 19**. The Technical Expert will not include Confidential Information in his or her determination without the written consent of the

Supplying Party, and will not make it available to any person other than as provided for in **Clause 19**;

- g) the Technical Expert must use reasonable endeavours to determine the Implementation Plan and/or Operational Procedures (as the case may be) within 30 Working Days of appointment;
- h) the determination of the Technical Expert will be final and binding on Vodafone and the Access Seeker. A copy of the determination will be provided to Vodafone and the Access Seeker, including details of the reasons for the determination; and
- i) unless otherwise provided in this Undertaking, the legal and other expenses of Vodafone and the Access Seeker, the fees and expenses of the Technical Expert and any other expenses relating to the matter referred to the Technical Expert under this Undertaking shall be as fixed by the Technical Expert. The Technical Expert shall decide, in his or her determination under this **Clause 2.2**, which of the parties shall bear such fees and expenses, or in what proportions they should be borne by the parties.

### **3 VODAFONE ROAMING SERVICES**

- 3.1 Vodafone shall, from the Services Commencement Date or the date of satisfaction of the conditions under **Clause 2** (whichever is the later), make available and provide the Vodafone Roaming Service to the Access Seeker.
- 3.2 To the extent reasonably practicable, Vodafone shall ensure the Vodafone Roaming Service will be continuously available and fault-free. The Access Seeker acknowledges that Vodafone does not guarantee that the Vodafone Roaming Service will be continuously available or fault-free.
- 3.3 The Vodafone Roaming Service shall be provided over the Vodafone Network. However, Vodafone shall provide the Vodafone Roaming Service over the following radio access network technologies, by the dates set out below and within the coverage area of those radio access network technologies from time to time:
  - a) HSDPA, by September 2009; and
  - b) any other radio access network technologies (within the 3G W-CDMA family of technologies), by the date (prior to the expiry of the Term) that is 3 years after the date on which that radio access network technology is first used by Vodafone to provide commercial end-to-end Cellular Mobile Services to Vodafone End Users, other than on a trial basis.

Those radio access network technologies will be deemed to be a part of the Vodafone Network for the purposes of this Undertaking, once Vodafone is required to provide the Vodafone Roaming Service over those

radio access network technologies under this **Clause 3.3**. Prior to the time that Vodafone is required to provide the Vodafone Roaming Service over those radio access network technologies under this **Clause 3.3**, these radio access network technologies that are being used by Vodafone to provide commercial end-to-end Cellular Mobile Services to Vodafone End Users, other than on a trial basis, will be known in this Undertaking as the **Vodafone Future RAN**. Vodafone will have no other obligation to provide the Vodafone Roaming Service over any other part of any other network deployed by Vodafone, except to the extent agreed in writing between Vodafone and the Access Seeker.

3.4 Notwithstanding **Clause 3.3**, Vodafone may, at any time during the Term, subject to giving the Access Seeker such period of prior notice as Vodafone gives to its own retail and/or marketing divisions:

- a) decommission the Vodafone Network, or any part of the Vodafone Network, in any area (which it may do, for example, because one or more of its radiospectrum management rights, or cellsite leases, have expired, or because its 2G GSM and GPRS network is being decommissioned in that area), provided that:
  - i. if Vodafone replaces any part of the Vodafone Network in whole or in part in that area with part of the Vodafone Future RAN that is being used by Vodafone to provide commercial end-to-end Cellular Mobile Services to Vodafone End Users, then the Vodafone Roaming Service will be provided over that part of the Vodafone Future RAN in that part of that area where there is no Vodafone Network; or
  - ii. if any other part of the Vodafone Network is available in that area (for example, its 3G W-CDMA network in an area where its 2G GSM and GPRS network is being decommissioned), then the Vodafone Roaming Service will be provided over that other part of the Vodafone Network; or
- b) reduce the capacity of the Vodafone Network, or any part of the Vodafone Network, in an area, provided that, if Vodafone has part of the Vodafone Future RAN in that area that is being used by Vodafone to provide commercial end-to-end Cellular Mobile Services to Vodafone End Users, then the Vodafone Roaming Service will be provided over:
  - iii. that part of the Vodafone Future RAN in respect of Access Seeker End Users that have Handsets that are able to use the Vodafone Future RAN; and also
  - iv. the balance of the Vodafone Network in that area (subject to any Exclusion Zones) for the remaining Access Seeker End Users.

3.5 Vodafone may, at its absolute and sole discretion and at any time, choose to provide the Vodafone Roaming Service, in respect of Access Seeker

End Users that have Handsets that are able to use the Vodafone Future RAN, over any part of the Vodafone Future RAN (subject to any Exclusion Zones), but will not be required to, except to the extent expressly stated in **Clauses 3.3** and **3.4**. In these circumstances, Vodafone is still required to provide Vodafone Roaming Service over the Vodafone Network (subject to any Exclusion Zones) for the remaining Access Seeker End Users.

- 3.6 If the quality of the Vodafone Roaming Service is higher on the Vodafone Future RAN than the quality of service on the Vodafone Network (for example, the data speeds are higher), then, notwithstanding **Clause 4**, Vodafone's obligation to provide the Vodafone Roaming Service on the Vodafone Future RAN under **Clauses 3.3** and **3.4**, or Vodafone's provision of the Vodafone Roaming Service on the Vodafone Future RAN under **Clause 3.5**, shall only be to the equivalent quality of service that is available generally to Vodafone End Users on the Vodafone Network at the date on which Vodafone begins to provide the Vodafone Roaming Service over the Vodafone Future RAN.
- 3.7 Vodafone will not be required to provide, or to continue to provide, the Vodafone Roaming Service where Vodafone requires the consent of a third party to provide the Vodafone Roaming Service to the Access Seeker and the consent has not been obtained or any consent has been withdrawn or terminated.
- 3.8 Vodafone may, at any time and without liability to the Access Seeker, suspend, restrict or withdraw any part of the Vodafone Roaming Service, including in any particular part of the Vodafone Network, where it suspends, restricts or withdraws the equivalent service to Vodafone Customers (where applicable) in the particular part of the Vodafone Network.
- 3.9 Where Vodafone makes any changes to the Vodafone Network (including upon the inclusion of any Vodafone Future RAN), it may require changes to the Technical Specifications to reflect the changes in the Vodafone Network, provided that the changes are consistent with the 2G GSM or other relevant international standards. As at the date of this Undertaking, the Technical Specifications in **Schedule 4** only apply to Vodafone's 2G GSM and GPRS, and 3G W-CDMA (excluding HSDPA), Cellular Mobile Network.
- 3.10 Vodafone is responsible for the conveyance of Roaming Traffic relating to emergency services calls to the Telecom network, or any other network operator or service provider responsible for the termination of emergency services calls, under Vodafone's agreement to do so with Telecom or that other network operator or service provider. If Vodafone is charged by Telecom or that other network operator or service provider for emergency services calls by the Access Seeker End Users, then the Access Seeker shall, promptly on receipt of a valid tax invoice from Vodafone, reimburse Vodafone for those charges. For the avoidance of doubt, the Access Seeker will be responsible for any usage charges under **Clauses 5 to 8** (inclusive) in relation to that Roaming Traffic.

- 3.11 Vodafone is not responsible for the conveyance of any Roaming Traffic in the Access Seeker Mobile Network or in any other network or once Vodafone has handed over Roaming Traffic to the Access Seeker.
- 3.12 The Access Seeker acknowledges and agrees that this Undertaking is not intended to limit or restrict in any way:
- a) how or when Vodafone rolls out or deploys any new telecommunications network or system (including, without limitation, any Vodafone Future RAN or changes to existing networks), whether or not this new telecommunications network or system provides services that compete with the Access Seeker Mobile Services or any other services of the Access Seeker (or any member of the Access Seeker Group or an Access Seeker Reseller); or
  - b) how or when Vodafone markets or prices any of its services, or develops new services, whether or not these services compete with the Access Seeker Mobile Services or any services of the Access Seeker (or any member of the Access Seeker Group or an Access Seeker Reseller),

including, without limitation, by virtue of the fact that Vodafone may become aware, through the operation of this Undertaking, of details regarding the Access Seeker Mobile Services or any services of the Access Seeker (or a member of the Access Seeker Group or an Access Seeker Reseller) and when those services are intended to be launched.

- 3.13 **Clause 3.12** does not, however, relieve Vodafone of its obligations under this Agreement, including without limitation **Clauses 4** and **19**. It will not be assumed that Vodafone has breached any obligations of confidentiality under **Clause 19** solely by virtue of Vodafone undertaking any marketing activity or providing any new services around the time of the intended launch date. Vodafone and the Access Seeker acknowledge that there are likely to be public statements by the Access Seeker of the approximate date on which it will launch the Access Seeker Mobile Services and, if made, Vodafone cannot be prevented or limited in responding to the publicised impending launch in its marketing activities or service provision provided that in so doing, it does not contravene its obligations under **Clause 19**.
- 3.14 No member of the Vodafone Group will be liable to pay compensation or any other monetary amount to the Access Seeker, and will not be in breach of this Undertaking, for not meeting, or any delay in meeting, any responsibility or obligation under this Undertaking because of a Force Majeure Event.
- 3.15 To avoid doubt, nothing in this Undertaking will restrict or prevent Vodafone from offering services equivalent or similar to the Vodafone Roaming Service, or from offering any other services, to any third parties at any time before, during or after the Term and whether or not those third parties are a competitor of the Access Seeker or an Access Seeker Reseller.

- 3.16 If the Access Seeker wishes to include, as a part of the Access Seeker Mobile Network, a Cellular Mobile Network:
- a) that uses radio access technologies that have been adopted as standards through a formal recommendation of the "Third Generation Partnership Project - 3GPP" for interworking with 3G W-CDMA or 2G GSM and GPRS Cellular Mobile Networks; and
  - b) that is not a 3G W-CDMA or 2G GSM and GPRS Cellular Mobile Network,

the Access Seeker may notify Vodafone. The Access Seeker and Vodafone will then meet and endeavour to negotiate terms and conditions that would entitle the Access Seeker to use that Cellular Mobile Network as a part of the Access Seeker Mobile Network. There will be no recourse to dispute resolution under **Clause 24** if the parties do not agree on those terms and conditions.

- 3.17 If the Access Seeker wishes to change the Technical Specifications, the Access Seeker may notify Vodafone. The Access Seeker and Vodafone will then meet and endeavour to negotiate any such changes to the Technical Specifications, insofar as they apply to the Access Seeker. There will be no recourse to dispute resolution under **Clause 24** if the parties do not agree on those changes.

#### **4 EQUIVALENT QUALITY OF SERVICE**

- 4.1 Subject to the remainder of this **Clause 4**, Vodafone will not discriminate against, and will provide services of an equivalent quality to, the Access Seeker End Users that are roaming on the Vodafone Network or (where the context requires) the particular part of the Vodafone Network, as compared to Vodafone End Users using the Vodafone Network or (where the context requires) the particular part of the Vodafone Network, with respect to coverage area, availability and quality of service.
- 4.2 However, Vodafone shall not be required to provide any better quality of service to Access Seeker End Users that are roaming on the Vodafone Network or (where the context requires) the particular part of the Vodafone Network, as compared to Vodafone End Users using the Vodafone Network or (where the context requires) the particular part of the Vodafone Network.
- 4.3 Vodafone's obligations to provide services of an equivalent coverage area, availability and quality of service quality under **Clause 4.1** are qualified to the extent that:
- a) equivalency cannot be achieved in the Vodafone End User Service and the Access Seeker Mobile Service (as it relates to the Vodafone Roaming Service on the Vodafone Network):

- i. to the extent that features, functionality and services provided to Vodafone End User are not included in the Vodafone Roaming Service; and
  - ii. to the extent that such non-equivalency is attributable to the intervention of the Access Seeker Mobile Network (which includes for these purposes the Handover Points and inter network roaming links);
- b) Vodafone is exercising its rights under this Undertaking that relate to coverage area, availability and quality of service (other than where those rights are stated to be subject to this **Clause 4**);
  - c) the Access Seeker fails to provide the Handover Points or the inter-network roaming links under **Clause 26** or otherwise fails to comply with an obligation under this Undertaking, the Implementation Plan or the Operational Procedures giving rise to such non-equivalency;
  - d) any difference in the provision of the Vodafone Roaming Service that is attributable to the differences between the Vodafone Roaming Service and the Vodafone End User Service; or
  - e) the limits on the standard access principles set out in clause 6 of Schedule 1 of the Telecommunications Act apply, as if references to:
    - i. the service are to the Vodafone Roaming Service;
    - ii. the access provider are to Vodafone; and
    - iii. an access seeker are to Access Seeker (and, in paragraph (d) of clause 6 of Schedule 1, any Access Seeker Reseller).

## 5 CHARGEABLE ROAMING CALLS

5.1 The prices for Chargeable Roaming Calls:

- a) are set out in Schedule 2; and
- b) apply on a per leg basis (so that, for example, a Chargeable Roaming Call from an Access Seeker End User on the Vodafone Network to another Access Seeker End User on the Vodafone Network will result in two Chargeable Roaming Calls: one for the origination leg and one for the termination leg).

5.2 In the case of Chargeable Roaming Calls, the rate will apply on a minute plus second basis with, in the case of Chargeable Roaming Calls with a Duration of less than one minute, the Duration of those Chargeable

Roaming Calls being rounded in the same manner as Vodafone rounds for its own Vodafone End Users.

- 5.3 Chargeable Roaming Calls will have a Duration of greater than 2 seconds. Chargeable Roaming Calls will be charged for the full length of the Call (including the first 2 seconds or such longer period).
- 5.4 For the purposes of this **Clause 5**, and if permitted under the Technical Specifications, where an Access Seeker End User is roaming on the Vodafone Network for part of the duration of a Call and is on the Access Seeker Mobile Network for part of the duration of the same Call (i.e., the Call continues while the Access Seeker End User moves from one network to the other), it will be treated as a Chargeable Roaming Call for the duration of the time that the Access Seeker End User is roaming on the Vodafone Network, including in circumstances where the Call is on both networks at the same time, during that Call (the **Roaming Period**) and, for the purposes of the charge under **Clause 5.1**, this Roaming Period will be treated as the Duration of the Chargeable Roaming Call.
- 5.5 Whenever a Roaming Call is answered:
  - a) in the Access Seeker Mobile Network, the Access Seeker will transmit an Answer Line Signal to Vodafone in respect of that Roaming Call as soon as the Roaming Call is answered by the called party; and
  - b) in any network other than the Access Seeker Mobile Network or the Vodafone Network, the Access Seeker will transmit to Vodafone any Answer Line Signal it receives in respect of that Roaming Call as soon as it receives that Answer Line Signal.

## **6 CHARGEABLE TEXT MESSAGES**

- 6.1 The prices for Chargeable Text Messages:
  - a) are set out in Schedule 2; and
  - b) apply on a per leg basis (so that, for example, a Chargeable Text Message from an Access Seeker End User on the Vodafone Network to another Access Seeker End User on the Vodafone Network will result in two Chargeable Text Messages: one for the origination leg and one for the termination leg).
- 6.2 The Access Seeker will ensure that the number of times and frequency which its SMSC attempts to deliver a Roaming Text Message to the Vodafone Network, where the Handset of the Access Seeker End User roaming on the Vodafone Network is not accepting delivery, does not exceed the number of times and frequency that the Vodafone Network performs the same function in relation to Text Messages to Vodafone End Users.

## 7 CHARGEABLE DATA SESSIONS

- 7.1 The prices for Chargeable Data Sessions are set out in Schedule 2.
- 7.2 The terms relating to the rounding of each such use of the Vodafone Network for a Roaming Data Session will be matched with the retail terms upon which Vodafone generally provides 2G and 3G GPRS mobile data origination services to Vodafone End Users (and, if Vodafone charges Vodafone End Users based on usage of termination services to Vodafone End Users, those termination services), as amended from time to time. For each Billing Period, Vodafone will charge the Access Seeker on a per MB basis and will round up to the nearest 1 MB the Access Seeker's total Chargeable Data Session usage in that Billing Period.
- 7.3 The size of a Chargeable Data Session is defined as the total length, in octets, of that Roaming Data Session, on both the uplink and the downlink segments of that Roaming Data Session.
- 7.4 For the purposes of this **Clause 7**, and if permitted under the Technical Specifications, where part of an Access Seeker End User's Data Session is carried out while on the Vodafone Network (although it may not have begun or finished on the Vodafone Network), that Data sent or received while the Access Seeker End User is on the Vodafone Network, including in circumstances where the Data Session is on both networks at the same time, will be treated as a Chargeable Data Session and, for the purposes of the charge under **Clause 7.1**, this Data sent or received will be the basis for charging the Chargeable Data Session.

## 8 CHARGEABLE VIDEO TELEPHONY CALLS

- 8.1 The prices for Chargeable Video Telephony Calls:
- a) are set out in Schedule 2; and
  - b) apply on a per leg basis (so that, for example, a Chargeable Video Telephony Call from an Access Seeker End User on the Vodafone Network to another Access Seeker End User on the Vodafone Network will result in two Chargeable Video Telephony Calls: one for the origination leg and one for the termination leg).
- 8.2 In the case of Chargeable Video Telephony Calls, the rate will apply on a minute plus second basis with, in the case of Chargeable Video Telephony Calls with a Duration of less than one minute, the Duration of those Chargeable Video Telephony Calls being rounded in the same manner as Vodafone rounds for its own Vodafone End Users.

- 8.3 Chargeable Video Telephony Calls will have a Duration of 2 seconds or more. Chargeable Video Telephony Calls will be charged for the full length of the Call (including the first 2 seconds or such longer period).
- 8.4 For the purposes of this **Clause 8**, and if permitted under the Technical Specifications, where an Access Seeker End User is roaming on the Vodafone Network for part of the duration of a Video Telephony Call and is on the Access Seeker Mobile Network for part of the duration of the same Video Telephony Call (i.e., the Video Telephony Call continues while the Access Seeker End User moves from one network to the other), it will be treated as a Chargeable Video Telephony Call for the duration of the time that the Access Seeker End User is roaming on the Vodafone Network, including in circumstances where the Video Telephony Call is on both networks at the same time, during that Video Telephony Call (the **Roaming Period**) and, for the purposes of the charge under **Clause 8.1**, this Roaming Period will be treated as the Duration of the Chargeable Video Telephony Call.
- 8.5 Whenever a Video Telephony Call is answered:
- a) in the Access Seeker Mobile Network, the Access Seeker will transmit an Answer Line Signal to Vodafone in respect of that Video Telephony Call as soon as the Video Telephony Call is answered by the called party; and
  - b) in any network other than the Access Seeker Mobile Network or the Vodafone Network, the Access Seeker will transmit to Vodafone any Answer Line Signal it receives in respect of that Video Telephony Call as soon as it receives that Answer Line Signal.

## 9 PRICE REVIEW

- 9.1 At least two months prior to the end of each calendar year, Vodafone will notify the Access Seeker that it is ready to review, and negotiate any changes to, the rates for each category of Chargeable Roaming Traffic, referred to in Clause 1 of Schedule 2, that apply at that time. Vodafone and the Access Seeker must meet within one week of that notice to conduct that review and negotiation.
- 9.2 In this review, Vodafone and the Access Seeker will take into account any relevant changes in the market pricing for mobile telecommunications services in New Zealand since the Services Commencement Date, or the time of the last review (if there has been an earlier review).
- 9.3 However, if, on or before the end of the relevant calendar year, Vodafone and the Access Seeker have not agreed on any changes to the rates for each category of Chargeable Roaming Traffic, then the rates that applied immediately prior to the end of that calendar year, shall continue to apply. There will be no recourse to dispute resolution under **Clause 24** if the parties have not reached agreement by the end of that calendar year.

## 10 EXCLUSION ZONES

- 10.1 Subject to the Technical Specifications, Access Seeker End Users are not able to roam on the Vodafone Network in an Exclusion Zone, including any initial Exclusion Zones referred to in **Clause 10.2**. A **Location Area** is the geographic area comprising the coverage area of a number of cellsites. Because of this, the boundaries of a Location Area are uneven and approximate and they expand and contract from time to time as a result of usage of the Vodafone Network and environmental conditions in the Location Area.
- 10.2 The Access Seeker must nominate the initial Exclusion Zones 30 Working Days prior to the Services Commencement Date. The initial Exclusion Zones may not be changed prior to the Services Commencement Date and must cover in aggregate an area in which no less than 10% of the New Zealand population normally lives or works.
- 10.3 The Location Areas that are applicable to Vodafone's 2G GSM and GPRS Cellular Mobile Network (**2G Location Areas**) may be different to the Location Areas that are applicable to Vodafone's 3G W-CDMA Cellular Mobile Network (**3G Location Areas**). In that circumstance, the Access Seeker, in nominating the initial Exclusion Zones under **Clause 10.2**, shall nominate both the applicable 2G Location Area and the applicable 3G Location Area, where the area in which the 2G Location Areas and the 3G Location Areas overlap meets the requirements in **Clause 10.2**.

### 10.4 Where:

- a) an Exclusion Zone comprises two or more contiguous Location Areas, Vodafone may change the coverage area and composition of individual Location Areas within that Exclusion Zone (for example, by amalgamating two Location Areas into one) at any time without notice to the Access Seeker if the boundary of the Exclusion Zone does not change as a result; and
- b) an Exclusion Zone comprises a single Location Area, Vodafone may change the composition of that Location Area (for example, by splitting the Location Area into two) at any time without notice to the Access Seeker if the boundary of the Exclusion Zone does not change as a result.

Vodafone will notify the Access Seeker a reasonable period of time prior to changing the coverage area and/or composition of a Location Area under this **Clause 10.4**.

- 10.5 Vodafone may at any time, for technical or operational reasons (which will be determined in Vodafone's absolute and sole discretion), change any Location Area outside the Exclusion Zones. In particular, Vodafone may subdivide any Location Area into two or more smaller Location Areas, or consolidate any Location Areas, where those Location Areas are outside any Exclusion Zones. Vodafone will notify the Access Seeker promptly

following any such change in Location Areas. This **Clause 10.5** does not apply to a Location Area that is to become an Exclusion Zone, as notified by the Access Seeker to Vodafone under **Clause 10.7**.

- 10.6 The Access Seeker will be able to build or acquire a part of the Access Seeker Mobile Network in the coverage area of a Location Area, with Access Seeker End Users still being able to roam on the Vodafone Network in that Location Area, before it becomes an Exclusion Zone.
- 10.7 The Access Seeker may make a 2G Location Area or a 3G Location Area an Exclusion Zone on giving Vodafone no less than 30 Working Days prior written notice. Provision of Vodafone Roaming Service, in respect of that part of the Vodafone Network, will cease in that Location Area upon expiry of that notice, provided that all testing reasonably required by Vodafone has been completed by that date.
- 10.8 It may be necessary for Vodafone to urgently reassign cellsites on a temporary basis to a different BSC for valid technical or operational reasons. This may mean that the boundaries of a Location Area that is an Exclusion Zone (and therefore the Exclusion Zone) may change as:
  - a) cellsites from outside the Location Area are reassigned to the BSC that serves that Location Area; or
  - b) cellsites from within the Location Area are reassigned to BSCs that serve areas outside the Location Area.

Where, pursuant to this **Clause 10.8**, a cellsite is reassigned to a BSC that is within an Exclusion Zone, Vodafone will as soon as practicable after that cellsite has been reassigned, reset the BSC that it has been reassigned to so that Access Seeker End Users roaming in the area served by that reassigned cellsite are able to continue to receive Vodafone Roaming Service. Vodafone will, when it considers in good faith that the relevant circumstances have passed, revert to the previous boundaries of that Location Area. Any such reassignment shall be without prejudice to Vodafone's continuing obligations under **Clause 4**.

## 11 ACCESS SEEKER'S RESPONSIBILITIES

11.1 The Access Seeker will:

- a) comply with all reasonable instructions issued by Vodafone from time to time that are directly related to, and necessary for, the provision of the Vodafone Roaming Service;
- b) comply with the Technical Specifications;
- c) ensure all information it gives Vodafone is correct and complete;
- d) ensure that its use of the Vodafone Roaming Service complies with any acceptable use policy, as notified by Vodafone to the Access Seeker from time to time;

- e) not interfere with the reasonable use of any service by Vodafone End Users or any other service provider of Vodafone, and ensure that no Access Seeker End User or Access Seeker Reseller does so;
- f) be responsible to Vodafone for anyone else who uses any Vodafone Roaming Service or any part of any Vodafone Roaming Service provided to the Access Seeker (including the Access Seeker End Users and the Access Seeker Resellers), or does anything unauthorised relating to a Vodafone Roaming Service or any part of any Vodafone Roaming Service; and
- g) obtain, or assist Vodafone in obtaining, any third party authorisation, licence or consent necessary or prudent for Vodafone to provide the Vodafone Roaming Service to the Access Seeker (such as resource management or building consents), other than authorisations, licences or consents required generally by Vodafone to operate the Vodafone Network.

11.2 The Access Seeker will ensure that:

- a) the Access Seeker Mobile Network, and the Access Seeker Mobile Services, are interoperable with the Vodafone Network and the Vodafone Roaming Service (nevertheless, where an interoperability issue arises, Vodafone and the Access Seeker will work together in good faith to resolve that issue); and
- b) the Access Seeker Mobile Services are able to be provided to the Access Seeker End Users.

11.3 The Access Seeker indemnifies (and protects from any claim or proceeding) the Vodafone Group and any service providers to Vodafone against all losses, expenses, damages and costs (including costs on a full reimbursement basis) incurred by or ordered against any of them arising out of or in any way in connection with:

- a) any act or omission (of any nature whatever, whether or not that act or omission is negligent or a breach of any agreement) by the Access Seeker, any Access Seeker Customer in connection with the Vodafone Roaming Service or the Access Seeker Mobile Services; and
- b) any claim by any party whatever arising out of, or in connection with, any such act or omission.

The Access Seeker's liability under this **Clause 11.3** is not limited by **Clause 22**.

11.4 Vodafone is not responsible for, and does not warrant, the availability, capability or suitability of any Handset, Software or SIM, notwithstanding that Vodafone may have tested or approved that Handset, Software or SIM.

- 11.5 Vodafone will not be responsible for any GST treatment adopted by the Access Seeker or any Access Seeker Reseller in relation to either its purchase of the Vodafone Roaming Service under this Undertaking (in the case of the Access Seeker) or its own provision of the Access Seeker Mobile Services.
- 11.6 The Access Seeker indemnifies (and protects from any claim or proceeding) the Vodafone Group and any service providers to Vodafone against all losses, expenses, damages and costs (including costs on a full reimbursement basis) incurred by or ordered against any of them arising out of or connected in any way with any fraudulent use of the Access Seeker Mobile Services by any person. The Access Seeker's liability under this **Clause 11.6** is not limited by **Clause 22**.

## 12 MARKETING

- 12.1 Wherever technically and economically practicable, Vodafone will provide the Vodafone Roaming Service to the Access Seeker without the attachment of the Vodafone brand or other brands (i.e., on a white-label basis).
- 12.2 The Access Seeker will not, and will ensure that the Access Seeker Resellers will not, at any time during the Term:
- a) use any brand in the sale, marketing and advertising of the Access Seeker Mobile Services that Vodafone in good faith considers is likely to bring the Vodafone brand into disrepute;
  - b) represent that Vodafone participates (other than as a roaming supplier) in the provision of the Access Seeker Mobile Services to Access Seeker Customers; or
  - c) represent that the Access Seeker or an Access Seeker Reseller is approved by, or an agent or dealer of, or affiliated with, Vodafone.
- 12.3 The Access Seeker is not permitted to use the Vodafone Roaming Service to provide the Access Seeker Mobile Services, or to allow Access Seeker Resellers to provide the Access Seeker Mobile Services, to Access Seeker End Users if those Access Seeker Mobile Services are provided using a brand that is a brand owned or licensed by an Excluded Operator.
- 12.4 The Access Seeker will only use, and will ensure that any Access Seeker Reseller will only use, Vodafone's name, logo, brand or trademark in relation to the Access Seeker Mobile Services:
- a) where it is not possible for Vodafone to remove the Vodafone brand or other brands from the Vodafone Roaming Service in accordance with **Clause 12.1** and it is not technically and economically practicable for the Access Seeker to remove those brands for use in any part of the Access Seeker Mobile Services; or

- b) with Vodafone's prior written approval (which approval may be withheld at Vodafone's absolute and sole discretion).

Where Access Seeker is using, or any Access Seeker Reseller is using, Vodafone's name, logo, brand or trademark in relation to the Access Seeker Mobile Services in accordance with this **Clause 12.4**, it shall only do so in accordance with the requirements set out in the Operational Procedures.

### 13 EXCLUDED OPERATORS

#### 13.1 Where, during the Term:

- a) any member of the Access Seeker Group acquires services that are equivalent or similar to the Vodafone Roaming Service from any other person; or
- b) an Excluded Operator owns (or has an ownership interest in) or operates any part of the Access Seeker Mobile Network,

Vodafone may terminate provision of the Vodafone Roaming Service to the Access Seeker by giving not less than six months notice in writing to the Access Seeker.

For the purposes of this **Clause 13.1**, services may be equivalent or similar to the Vodafone Roaming Service even if:

- c) they include additional features, services and functionality to the Vodafone Roaming Service. This may include, for example, services that are specifically excluded from the definition of Vodafone Roaming Service in Schedule 1;
- d) they are provided over a different type of network to the Vodafone Network; or
- e) the network from which customers may roam is different in size to the Access Seeker Mobile Network.

#### 13.2 Notwithstanding any other provision of this Undertaking, the Access Seeker will ensure that no Excluded Operator will use the Vodafone Roaming Service and will not in any way enable any customers or end users of the Excluded Operator to roam on the Vodafone Network. This **Clause 13.2** shall not limit customers or end users of an Excluded Operator who are also Access Seeker End Users being able to roam on the Vodafone Network, provided that:

- a) they are not Access Seeker End Users, and are not roaming on the Vodafone Network, as a result of any agreement between any member of the Access Seeker Group and the Excluded Operator; and
- b) they are roaming on the Vodafone Network in their capacity as Access Seeker End Users given access to the Vodafone Network by the Access Seeker in such capacity.

13.3 The Access Seeker may not, and shall ensure that members of the Access Seeker Group and Access Seeker Resellers do not, appoint an Excluded Operator as an agent to enter into agreements on the Access Seeker's, or members of the Access Seeker Group or the Access Seeker Reseller's, behalf for the provision of Access Seeker Mobile Services.

#### **14 PROVISION OF SERVICES TO ACCESS SEEKER END USERS**

14.1 The Access Seeker may provide the Access Seeker Mobile Services to Access Seeker End Users.

14.2 The Access Seeker will provide and manage all services provided to Access Seeker Customers, including (without limitation):

- a) customer management activities;
- b) Activation and Deactivation of Access Seeker End Users;
- c) billing and collection;
- d) provision of Handsets and Handset repairs, including warranty repairs;
- e) provision of SIMs and SIM repairs, including warranty repairs; and
- f) help desk services.

14.3 Access Seeker End Users will be, and only they will be, the ultimate recipient of:

- a) the Vodafone Roaming Service; and
- b) the Access Seeker Mobile Services.

14.4 Vodafone is not responsible for providing any services directly to the Access Seeker End Users, including in circumstances where an Access Seeker End User contacts Vodafone customer services for assistance. In this case, that Access Seeker End User will be directed to contact the Access Seeker customer services, and the Access Seeker customer services will then provide the necessary assistance to the Access Seeker End User. The Access Seeker will not direct or encourage the Access Seeker End Users to contact Vodafone customer services for assistance.

14.5 The Access Seeker will ensure that a provision is included in each contract with the Access Seeker End Users which:

- a) provides that Vodafone does not provide, grant or confer any benefit, right or privilege on any Access Seeker End User; and
- b) excludes (to the maximum extent permitted by law) all liability of Vodafone and the Vodafone Group and their personnel arising

from or in connection with the Vodafone Roaming Service and the Access Seeker Mobile Services.

- 14.6 The Access Seeker will not be limited in the services that it may provide over the Access Seeker Mobile Network that do not include the Vodafone Roaming Service.

## **15 WHOLESALE**

- 15.1 The Access Seeker may resell, re-supply or wholesale the Access Seeker Mobile Services to, and only to, an Access Seeker Reseller.

- 15.2 However, the Access Seeker shall not resell, re-supply or wholesale the Vodafone Roaming Service as a discrete service to any third party (and shall not allow any Access Seeker Group member, Access Seeker Customer or any other person to do so).

- 15.3 The Access Seeker will be solely responsible for any arrangement it enters into for the resale of the Access Seeker Mobile Services, and Vodafone will not be responsible in any way for any such arrangement. Vodafone will not be required to make any changes to the Vodafone Network or the Vodafone Roaming Service in order to accommodate an Access Seeker Reseller.

- 15.4 The Access Seeker will ensure that a provision is included in each contract with the Access Seeker Resellers which:

- a) provides that Vodafone does not provide, grant or confer any benefit, right or privilege on any Access Seeker Reseller; and
- b) excludes (to the maximum extent permitted by law) all liability of Vodafone and the Vodafone Group and their personnel arising from or in connection with the Vodafone Roaming Service and the Access Seeker Mobile Services.

- 15.5 Vodafone will not be required to provide any support to any Access Seeker Reseller, or have any other dealings with any Access Seeker Reseller. Vodafone is not responsible for providing any services directly to any Access Seeker Reseller, including in circumstances where an Access Seeker Reseller contacts Vodafone for assistance. In this case, that Access Seeker Reseller will be directed to contact the Access Seeker, and the Access Seeker will then provide the necessary assistance to the Access Seeker Reseller. The Access Seeker will not direct or encourage any Access Seeker Resellers to contact Vodafone for assistance.

- 15.6 The Access Seeker will not enter into an agreement, arrangement or understanding with a telecommunications service provider whose business is located outside of New Zealand that would allow any customers or end users of that telecommunications service provider to directly or indirectly use the Vodafone Roaming Services.

## 16 NUMBERING

16.1 In the management of numbering arrangements for the Access Seeker Mobile Services, the Access Seeker shall comply with and give effect to:

- a) the NAD (while the Access Seeker is a party to the NAD);
- b) the Toll-Free JVA (while the Access Seeker is a party to the Toll-Free JVA);
- c) the LMNP Determination; and
- d) except to the extent that doing so would conflict with an obligation or right of the Access Seeker expressly imposed or granted under either the NAD or Toll-Free JVA, the CCITT/ITU numbering plan and any applicable modification to that plan.

16.2 The Access Seeker must provide to Vodafone such information concerning the number series used in relation to the Access Seeker Mobile Services from time to time that Vodafone would reasonably be expected to require.

16.3 The Access Seeker acknowledges and agrees that Vodafone is under no obligation to manage the numbering requirements or any part of the numbering requirements of the Access Seeker.

16.4 Subject to **Clause 16.5**, but notwithstanding any other provision in this Undertaking:

- a) the MSISDN ranges that are to be supported for roaming purposes will be the mobile number code blocks (02X Non-Geographic Service numbers) that are assigned to the Access Seeker under part 3 of the Telecommunications Numbering Plan Number Allocation Rules. It will also include any ported in 02X Non-Geographic Service numbers used by the Access Seeker End Users; and
- b) for the avoidance of doubt, any MSISDN ranges that are Geographic Service numbers assigned to the Access Seeker under part 7 of the Telecommunications Numbering Plan Number Allocation Rules, or Geographic Service Numbers that are ported in to the Access Seeker (**Geographic Service Numbers**), will not be supported for roaming purposes and cannot be used to register on the Vodafone Network.

16.5 The restrictions in **Clause 16.4** on the support for Geographic Service Numbers for roaming purposes and use of Geographic Service Numbers on the Vodafone Network will not apply, in relation to an Access Seeker, if the Number Administrator confirms to Vodafone in writing that the use of Geographic Service Numbers by the Access Seeker End Users when roaming on the Vodafone Network is fully in accordance with the Telecommunications Numbering Plan Number Allocation Rules.

## 17 PAYMENTS

17.1 All amounts invoiced by Vodafone to the Access Seeker under this Undertaking will be due and payable by the Access Seeker on or before the Due Date for the relevant invoice.

17.2 Except as expressly provided in this Undertaking, if the Access Seeker:

- a) reasonably and in good faith believes there is an erroneous duplication of the items charged in an invoice or other manifest error in a calculation of the amount of an invoice, which is obvious on the face of the invoice and which has resulted in Vodafone overcharging the Access Seeker on that invoice (an **Invoice Error**); and
- b) before three Working Days before the due date for payment, gives written notice setting out in full details of the invoice, the Invoice Error, the grounds for the Access Seeker's belief that the Invoice Error exists and the amount by which the Access Seeker believes that Vodafone has overcharged it on that invoice by reason of the Invoice Error,

the Access Seeker may withhold payment of the amount by which it reasonably believes Vodafone may have overcharged it on that invoice by reason of that Invoice Error until Vodafone and the Access Seeker have settled in accordance with **Clause 17.4** whether or not that Invoice Error exists and, if so, the amount of it and the amount properly payable on that invoice after correcting it. If payment is withheld under this **Clause 17.2**, the Access Seeker must supply a full extract showing each withheld item to Vodafone within 10 days of the Due Date for payment.

17.3 If the Access Seeker fails to follow the notice requirements set out in **Clause 17.2(b)**, then Vodafone may treat any resulting withholding or deduction by the Access Seeker as a breach of this Undertaking.

17.4 Following the giving of any notice under **Clause 17.2(b)**, Vodafone and the Access Seeker must use reasonable endeavours to settle any claim of Invoice Error. If they do not settle any claim of Invoice Error within 20 Working Days after the Due Date for payment of the invoice, either party may give written notice referring the matter directly to an independent telecommunications accounting expert (the **Accounting Expert**) to be finally resolved and, unless otherwise agreed in writing:

- a) Vodafone and the Access Seeker must endeavour to appoint a single Accounting Expert. If, within 15 Working Days of the notice under this **Clause 17.4** being given, Vodafone and the Access Seeker are unable to agree on a single Accounting Expert, the Accounting Expert shall be appointed by the President of the Institute of Chartered Accountants of New Zealand;
- b) the Accounting Expert must adopt a procedure which, in the Accounting Expert's opinion, is the most simple, fair and

expeditious procedure possible in the circumstances for determining the disputed issues;

- c) the provisions of the Arbitration Act 1996 will not apply to any procedure under this **Clause 17.4**;
- d) Vodafone and the Access Seeker will provide the Accounting Expert with any information that the Accounting Expert reasonably requires;
- e) either of Vodafone or the Access Seeker may identify information provided to the Accounting Expert as being Confidential Information in which case the Accounting Expert shall be a Receiving Party for the purposes of **Clause 19**. The Accounting Expert will not include Confidential Information in his or her determination without the written consent of the Supplying Party, and will not make it available to any person other than as provided for in **Clause 19**;
- f) the Accounting Expert must use reasonable endeavours to make a decision on the claim of an Invoice Error within 30 Working Days of appointment; and
- g) the costs of the Accounting Expert shall be paid as follows:
  - i. if the Accounting Expert decides that there is no Invoice Error or, as a result of an Invoice Error the amount of the invoice is increased after correction, then the Access Seeker will pay the costs of the Accounting Expert;
  - ii. if the Accounting Expert decides that there is an Invoice Error and the amount of the invoice is reduced by 5% or less after correction, then the Access Seeker and Vodafone will equally share and pay the costs of the Accounting Expert; and
  - iii. if the Accounting Expert decides that there is an Invoice Error and the amount of the invoice is reduced by more than 5% after correction, then Vodafone will pay the costs of the Accounting Expert.

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

- a) in the case of an underpayment, interest on the amount of the difference at the Bill Rate (as at the day after the Due Date for payment of the invoice) plus 1% for the period from the due

date for payment of the invoice to the date of payment of the amount of the difference, such interest to be paid contemporaneously with the amount of the difference; or

- b) in the case of an overpayment, interest on the amount of the difference at the Bill Rate (as at the date the Access Seeker made the overpayment) plus 1% from the date it made the overpayment to the date of payment of the amount of the difference, such interest to be paid contemporaneously with the amount of the difference.

17.6 If it is agreed by Vodafone and the Access Seeker or found by the Accounting Expert that there is not an Invoice Error in the invoice, the Access Seeker must forthwith pay any amount withheld plus interest on the amount withheld at the Bill Rate (as at the date of the invoice) plus 1% for the period from the day after the Due Date for payment to the date of payment of the amount withheld, such interest to be paid contemporaneously with the amount withheld.

17.7 If either Vodafone or the Access Seeker disputes the findings of the Accounting Expert and gives written notice of the dispute to the other within 10 Working Days of the decision of the Accounting Expert then the parties must settle the dispute in accordance with **Clause 17.9**.

17.8 No later than 60 days after the date of the issue of any invoice, the Access Seeker may give notice disputing any amount in that invoice, regardless of whether or not it has previously given notice of Invoice Error in relation to that invoice. The notice must set out details of the invoice, the disputed amount and the grounds for the Access Seeker's belief together with any supporting evidence available from its records. The parties must settle the dispute in accordance with **Clause 17.9**. To avoid doubt, **Clauses 17.2 to 17.6** do not apply to any notice given under this **Clause 17.8**, and **Clauses 17.9 and 17.10** do not apply to any notice given under **Clause 17.2(b)**.

17.9 Vodafone and the Access Seeker must use reasonable endeavours to settle promptly any dispute under **Clauses 17.7 and 17.8**. If they do not settle the dispute by agreement within 40 Working Days after notice was given under **Clause 17.8**, then either of Vodafone and the Access Seeker may give written notice referring the matter directly for settlement by arbitration under **Clause 24.5** without the need for prior negotiation. The arbitration must commence no earlier than 10 Working Days after the date the notice is given. The terms of the reference must be confined to that claim or dispute.

17.10 If a dispute under **Clause 17.9** is settled in favour of the Access Seeker, Vodafone must forthwith refund the amount agreed or found to have been overpaid plus interest at the Bill Rate plus 1% (as at the date of the overpayment) on the overpaid amount for the period from the date the overpayment was made to the date of payment of the refund, such interest to be paid contemporaneously with the amount refunded.

17.11 Where an amount due from the Access Seeker to Vodafone under this Undertaking remains unpaid after the Due Date of the relevant invoice,

then the Access Seeker will be liable to pay to Vodafone interest on a daily basis on that amount at the Bill Rate (as at the Due Date) plus 5% per annum, such interest to be charged from and including the Due Date of the relevant invoice to, but excluding, the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due.

- 17.12 The Access Seeker will continue to be liable to pay for any charges incurred between the time of termination of the Vodafone Roaming Service and the actual discontinuance of the Vodafone Roaming Service.
- 17.13 Nothing in **Clause 22** will limit or exclude the Access Seeker's liability to pay interest to Vodafone under this **Clause 17**, should such a liability arise.
- 17.14 The parties record that the interest payable under this **Clause 17** constitutes liquidated damages and that the interest rate formulae set out in this **Clause 17** represent a genuine forecast of the approximate loss a party may suffer as the result of non-payment, early payment or any payment in excess of the amount that should have been payable after taking into account the complexity of each party's business.
- 17.15 The Access Seeker will pay all charges under this Undertaking without set-off, counterclaim, required withholding or deduction unless prohibited by any applicable law. If the Access Seeker is obliged by any applicable law to deduct withholding tax from the charges, the Access Seeker will make all necessary filings in order to ensure the provisions of the applicable law apply to the charge. The Access Seeker will request from Vodafone in a timely manner all necessary information required to make the relevant filings.
- 17.16 If withholding tax is payable by the Access Seeker in respect of the charges, the Access Seeker will, simultaneously with paying the charges under this Undertaking, pay to Vodafone such additional amount as will result in the receipt by Vodafone of the full amount which would otherwise have been receivable had no withholding or deduction been payable and will supply to Vodafone evidence satisfactory to Vodafone that the Access Seeker has accounted to the relevant authority for the sum withheld or deducted.
- 17.17 Any sums recovered by Vodafone (including any granting of credit against or remission for any taxes, fees, charges or levies payable by it which are referable to the deduction or withholding) in respect of amounts withheld or deducted by the Access Seeker but paid to Vodafone in accordance with **Clause 17.16**, will be reimbursed by Vodafone to the Access Seeker within 30 days following receipt of such amounts by Vodafone, or agreement of Vodafone's tax return if a credit is claimed against the company's tax liability.
- 17.18 The Access Seeker warrants and represents to Vodafone on a continuing basis, from the Request Date, that:

- a) it is tax resident in New Zealand and will be deemed to remain tax resident in New Zealand unless it notifies Vodafone of a change of tax residency on 30 days prior written notice. If the Access Seeker changes tax residency:
  - i. the Access Seeker will immediately provide any documentation required by Vodafone evidencing its new tax residency; and
  - ii. the Access Seeker will indemnify and hold Vodafone harmless against any resulting costs, including but not limited to withholding tax, interest and penalties thereon; and
- b) it is GST registered in New Zealand and the provision of Access Seeker Mobile Services (by the Access Seeker and any Access Seeker Resellers) is a supply (as defined in the Goods and Services Tax Act 1985) that is subject to GST.

17.19 Nothing in this Undertaking or in the terms of any invoice or statement shall prejudice Vodafone's right to charge the Access Seeker for any services or other amount due under this Undertaking, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted.

17.20 The usage charges set out in this Undertaking apply during the course of any testing or trials by the Access Seeker of the Access Seeker Mobile Services.

17.21 The Access Seeker will not acquire any right, title or interest in any part of the Vodafone Network as a result of payment of any amount under this Undertaking.

17.22 All charges and other prices in this Undertaking are exclusive of GST, if any. In this Undertaking, GST means goods and services tax, as defined in the Goods and Services Tax Act 1985.

## **18 INTELLECTUAL PROPERTY RIGHTS**

18.1 Unless Vodafone and the Access Seeker otherwise agree in writing:

- a) all Intellectual Property which originates from, or is owned or developed by, the Vodafone Group will remain in the ownership of the Vodafone Group;
- b) all Intellectual Property which originates from, or is owned or developed by, any other person and which is incorporated into the SIMs, Handsets, Software or other technology used in the provision of the Vodafone Roaming Service will remain in the ownership of that other person; and
- c) where Intellectual Property is owned or has been developed by the Vodafone Group for the purposes of the Access Seeker observing or performing obligations under this Undertaking,

then the Access Seeker will have a non-exclusive royalty-free licence to use such Intellectual Property for the purposes of the observance or performance of its obligations under this Undertaking, until such time as the provision of the Vodafone Roaming Service to the Access Seeker under this Undertaking is terminated.

- 18.2 Nothing in this Undertaking will confer, or be deemed to confer, on the Access Seeker, any member of the Access Seeker Group, any Access Seeker End User or any Access Seeker Reseller any rights or interests in, or licences to use or to permit or cause use to be made of, the Intellectual Property of the Vodafone Group or of any other person, except as expressly provided in this **Clause 18**.
- 18.3 All Intellectual Property rights in any improvements or changes to any Vodafone Roaming Service devised or made by anyone during the time Vodafone is providing the Vodafone Roaming Service to the Access Seeker belong to Vodafone.
- 18.4 The Access Seeker will not be entitled to sub-licence any Intellectual Property of the Vodafone Group where it has received a licence to use that Intellectual Property under **Clause 18.1**.

## **19 CONFIDENTIAL INFORMATION**

19.1 For the purposes of this **Clause 19**, the party:

- a) owning or supplying Confidential Information will be called the Supplying Party; and
- b) receiving Confidential Information will be called the Receiving Party;

and either expression will include all members of the relevant party's Group.

- 19.2 The Receiving Party will, in respect of Confidential Information received from the Supplying Party, or of which the Receiving Party otherwise becomes aware through its implementation or operation of this Undertaking:
- a) adopt (if necessary) and maintain procedures adequate to protect the Confidential Information;
  - b) hold the Confidential Information in confidence with the same degree of care with which it holds its own confidential and proprietary information of a similar nature, unless the Supplying Party approves in writing the release of the Confidential Information by the Receiving Party;
  - c) ensure that neither it nor any of its officers, employees, contractors or agents who receive the Confidential Information discloses or causes or permits to be disclosed, without the prior written consent of the Supplying Party, the Confidential Information or any part of it to any person other than to:

- i. the Receiving Party's professional advisers; or
- ii. those of the Receiving Party's officers, employees, contractors or agents directly concerned in the implementation or operation of this Undertaking (but not, where the Access Seeker is the Receiving Party, to any such contractors or agents that are also Excluded Operators),

and will advise the Supplying Party from time to time on request of the professional advisers, contractors and agents who are or may be recipients of Confidential Information;

- d) not make use of, or cause or permit use to be made of, the Confidential Information or any part of it in any manner whatsoever, other than as necessary for the implementation or operation of this Undertaking; and
- e) enter into such other agreements as the Supplying Party may reasonably require regarding any part of the Confidential Information which is disclosed by the Supplying Party under licence from a third party.

To avoid doubt, Vodafone and the Access Seeker agree that, if an officer, employee, contractor or agent of the Receiving Party discloses or uses Confidential Information other than as permitted by **Clauses 19.2(c) and 19.2(d)**, then the Receiving Party will be responsible for that use or disclosure as if the use or disclosure had been made by the Receiving Party itself.

19.3 Nothing in this Undertaking prevents Vodafone from disclosing standard industry offers, templates or generic information on the terms and conditions on which Vodafone provides Vodafone Roaming Service.

## 20 SUSPENSION

20.1 Vodafone may suspend or restrict the provision of the Vodafone Roaming Service to the Access Seeker in whole or in part where:

- a) Vodafone is entitled to terminate the rights and obligations under this Undertaking pursuant to **Clause 21**;
- b) Vodafone is required or instructed to do so by a governmental agency or governmental authority;
- c) in the event of an Outage;
- d) Vodafone carries out system and network management and/or maintenance or upgrades of the Vodafone Network; or
- e) Vodafone reasonably requires the suspension or restriction of the Vodafone Roaming Service for any other reason, including in respect of particular Access Seeker End Users, Access

Seeker Resellers or particular SIMs, Handsets or Software or type of SIMs, Handsets or Software.

- 20.2 In suspending or restricting the provision of the Vodafone Roaming Service under **Clauses 20.1(b) to 20.1(e)** (inclusive), Vodafone will only take steps reasonably required to affect that suspension or restriction.
- 20.3 Vodafone may, at any time, require the Access Seeker to deactivate any service numbers of an Access Seeker End User in the following circumstances:
- a) if Vodafone can show that there has been fraud or illegal activity by the Access Seeker End User in its use of the Vodafone Roaming Service;
  - b) if any Handset, SIM or other equipment of the Access Seeker End User is causing interference with the Vodafone Network;
  - c) if Vodafone believes or suspects the Access Seeker End User is jeopardising the operation and quality of the Vodafone Network or the services Vodafone supplies to Vodafone Customers; or
  - d) if Vodafone is required or instructed to do so by a governmental agency or governmental authority.
- 20.4 Upon receipt of a request from Vodafone issued in accordance with **Clause 20.3**, the Access Seeker must promptly deactivate those service numbers to which the notice applies for the period reasonably required by Vodafone.
- 20.5 If Access Seeker fails to deactivate the relevant service number in the manner required under **Clause 20.4**, then Vodafone may, provided that it first advises the Access Seeker of this, prevent the relevant Access Seeker End User from using the Vodafone Roaming Service for the period reasonably required by Vodafone.

## 21 TERMINATION

- 21.1 The rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking may be terminated immediately by a party (the **terminating party**) serving notice on the other party (the **other party**) if:
- a) the other party has committed a material breach of this Undertaking, and in the case of such material breach:
    - i. the terminating party has given a notice to the other party specifying the material breach and requiring remedy of that breach;
    - ii. the other party has not remedied that breach within 20 Working Days of the date of receipt of the relevant notice; and

- iii. the other party is not in dispute (excluding any vexatious dispute) with the terminating party in relation to that breach;
- b) distress, attachment or execution is levied or enforced on or against a substantial part of the assets of the other party for a debt of greater than \$50,000 and is not discharged or stayed within 20 Working Days;
- c) the other party:
  - i. is put into (and remains in) liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the terminating party, such approval not to be unreasonably withheld);
  - ii. is wound up or dissolved in circumstances where it is not reconstituted;
  - iii. enters into (and remains in) a compromise with its creditors or any class thereof in an amount greater than \$50,000;
  - iv. is placed (and remains) under official management or made (and remains) subject to statutory management under the Corporations (Investigation and Management) Act 1989;
  - v. suffers the appointment of a receiver or manager of a substantial part of its assets and the receiver or manager remains in office for 20 Working Days; or
  - vi. the other party is otherwise prevented or substantially prevented or restricted by any law from (in the case of Vodafone) providing lawfully the Vodafone Roaming Service or (in the case of the Access Seeker) the Access Seeker Mobile Services (as the case may be), including as a result of termination or revocation of any licence, permit or other official authorisation; or
- d) the other party fails to pay any amount which is due and payable under this Undertaking and which remains unpaid 10 Working Days after the relevant Due Date, provided that the terminating party has given no less than 5 Working Days' notice to the other party of its intention to terminate this Undertaking pursuant to this Clause and that other party has failed to rectify this non-payment during that notice period.

21.2 The rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking may be terminated immediately by Vodafone at any time if:

- a) there is a change of control of the Access Seeker where control passes to an Excluded Operator; or
- b) there is a change of control of an Excluded Operator where control passes to any member of the Access Seeker Group.

- 21.3 The rights and obligations of Vodafone (in respect of the Access Seeker) and the Access Seeker under this Undertaking may be terminated immediately by Vodafone at any time if all of the Location Areas are Exclusion Zones.
- 21.4 If the rights and obligations of Vodafone and the Access Seeker under this Undertaking are terminated by Vodafone under **Clauses 13.1, 21.1 or 21.2**, then neither:
- a) the Access Seeker nor any member of the Access Seeker Group; nor
  - b) any person that acquires all, or substantially all, of the assets of the Access Seeker,
- may seek to become an Access Seeker under this Undertaking:
- c) for at least 6 months; and
  - d) where termination has occurred under **Clause 21.1(a)**, until such time as all breaches of this Undertaking by the Access Seeker that are capable of remedy have been remedied by, or on behalf of, the Access Seeker.
- 21.5 Subject to **Clause 21.6**, on termination of the rights and obligations of Vodafone and the Access Seeker under this Undertaking, or expiry of this Undertaking, either party may carry out disconnection works and removal of its equipment from the other party's premises. Either party (the **first party**) may, after giving the other party reasonable notice and reasonable opportunity to remove its equipment, disconnect and remove the other party's equipment from its premises and the other party must pay the first party's Reasonable and Actual Costs of such disconnection and removal of equipment.
- 21.6 Where the rights and obligations of Vodafone and the Access Seeker under this Undertaking are terminated under **Clause 21.1**, the party that did not terminate this Undertaking shall pay to the terminating party the terminating party's charges for and in respect of the disconnection and removal of equipment. Where the rights and obligations of Vodafone and the Access Seeker under this Undertaking are terminated or expires under **Clause 13.1** each party will bear its own costs for and in respect of the disconnection and removal of equipment. Where this Undertaking is terminated under **Clauses 21.2 or 21.3**, the Access Seeker shall pay Vodafone's Reasonable and Actual Costs for and in respect of the disconnection and removal of equipment.
- 21.7 Termination of the rights and obligations of Vodafone and the Access Seeker under this Undertaking shall not operate as a waiver of any breach by a party of any of the provisions of this Undertaking, and shall be without prejudice to any:
- a) rights, liabilities or obligations of either party which have accrued up to the date of such termination; and

- b) of **Clauses 17, 18, 19, 21.5, 21.6, 21.7, 21.8, 22, 24, 32, 33, 34, 35, 36** and **37**, which shall continue in full force and effect.

21.8 On termination of the rights and obligations of Vodafone and the Access Seeker under this Undertaking:

- a) subject to compliance with the Privacy Act 1993, each party shall return to the other all Confidential Information which the other has provided to that party; and
- b) all Intellectual Property licences granted pursuant to **Clause 18.1** in respect of this Undertaking shall be cancelled.

## **22 COMPENSATION AND LIABILITY**

### **Liability by Vodafone to the Access Seeker**

22.1 The Vodafone Group shall have no liability to the Access Seeker, except as provided by **Clause 22.2**.

22.2 Vodafone shall only be liable to the Access Seeker for:

- a) net direct costs reasonably incurred by the Access Seeker arising from a default by Vodafone that affects the Vodafone Roaming Service and that directly causes the Access Seeker to incur costs or expense; and
- b) net direct costs reasonably incurred in repairing physical damage to the Access Seeker's property where such physical damage is caused by Vodafone failing to take reasonable care in providing the Vodafone Roaming Service,

except that Vodafone shall not be liable to the extent that any claim arises from any act or omission of Access Seeker.

22.3 For the purposes of **Clause 22.2**, net direct costs will not include any loss of revenue, business or profits by the Access Seeker or any liability incurred by the Access Seeker to any Access Seeker Customer or third party.

22.4 Vodafone shall only be liable to pay compensation under this Undertaking, if the Access Seeker notifies Vodafone in writing of the Access Seeker's claim for compensation under **Clause 22.2** within 120 days after the Vodafone Roaming Service is first affected, or the property of the Access Seeker is damaged.

22.5 No member of the Vodafone Group shall be liable to the Access Seeker for any breach of this Undertaking, where that breach is directly or indirectly attributable to the Access Seeker failing to provide accurate and timely notice under **Clause 22.4**.

22.6 Except as provided by **Clause 22.2**, neither Vodafone nor any other member of the Vodafone Group shall be liable to the Access Seeker,

Access Seeker Group, or Access Seeker Customer, or has to pay any such person for anything caused by or resulting from anything Vodafone Group does or does not do, or delays in doing, in relation to this Undertaking and whether or not it is contemplated or authorised by this Undertaking.

22.7 **Clauses 22.7 and 22.8** apply where:

- a) the Access Seeker is entitled to compensation or any other monetary amount from Vodafone under **Clause 22.2**; or
- b) a member of the Vodafone Group is liable to the Access Seeker, Access Seeker Group member or Access Seeker Customer and, for any reason, can not rely on the exclusion of liability set out in **Clause 22.6**.

22.8 In either case, the maximum combined liability of all the members of the Vodafone Group (together) to the Access Seeker and anyone else who uses the Vodafone Roaming Service provided to the Access Seeker, including any Access Seeker Group members or Access Seeker Customers (together), under or in relation to this Undertaking is:

- a) \$2,000,000 for any event or for any series of related events, but
- b) shall not exceed more than a total of \$4,000,000 in respect of any events or series of events occurring in any 12 month period.

22.9 Vodafone will not be liable for any costs, damages or penalties imposed as a result of any fraudulent use of the Access Seeker Mobile Services by any person.

#### **Liability by the Access Seeker to Vodafone**

22.10 Vodafone may claim compensation from the Access Seeker where the Access Seeker is in breach of this Undertaking.

22.11 If this happens, the Access Seeker will:

- a) pay any reasonable expenses Vodafone incurs in collecting any money the Access Seeker owes Vodafone, or in exercising any of Vodafone's other rights;
- b) indemnify Vodafone and its representatives for any damages, loss or costs (including legal and lawyer/client costs) suffered or incurred by Vodafone; and
- c) protect Vodafone and its representatives from any claim or proceeding to the extent caused or contributed to by the Access Seeker or its representatives,

up to the maximum amounts set out in **Clause 22.14**, as compensation, except to the extent that the expenses or costs resulted from any act or omission of Vodafone.

- 22.12 The Access Seeker will not be liable under **Clause 22.11** for any loss of revenue, business or profits by Vodafone or any liability incurred by Vodafone to any Vodafone Customer or third party.
- 22.13 The Access Seeker shall only be liable to pay Vodafone a monetary amount under **Clause 22.11** if Vodafone notifies the Access Seeker in writing of Vodafone's claim for a monetary amount within 120 days after Vodafone pays the relevant expenses or costs, or incurs the loss or damages.
- 22.14 The maximum combined liability of all the members of the Access Seeker Group (together) will have to pay Vodafone under **Clause 22.11** shall be:
- a) \$2,000,000 for any event or for any series of related events, but
  - b) shall not exceed more than a total of \$4,000,000 in respect of any events or series of events occurring in any 12 month period.

## 23 SECURITY

- 23.1 Vodafone may, from time to time, require the Access Seeker to provide credit support in the form of an unconditional guarantee, bank guarantee or letter of credit, in each case as credit enhancement for the Access Seeker's obligation to pay for the Vodafone Roaming Service (each a **security**). The security must be in a form and in an amount acceptable to Vodafone and from a bank, or other person, which has a credit rating acceptable to Vodafone. In determining whether to require a security under this **Clause 23.1**, Vodafone will apply the same sort of criteria that it applies in respect of creditors of similar financial standing to the Access Seeker.
- 23.2 The amount of the security may be adjusted by Vodafone and notified to the Access Seeker following the conclusion of every six month period during the Term, based on the actual usage charges in the previous six month period and anticipated usage charges over the following six month period.

## 24 DISPUTE RESOLUTION

- 24.1 For the purposes of the procedures set out in the rest of this **Clause 24** and unless Vodafone and the Access Seeker expressly agree otherwise in writing, a dispute is any matter arising under or in connection with this Undertaking about which Vodafone and the Access Seeker disagree or are unable to agree. For the avoidance of doubt, this **Clause 24** will apply, without limiting the generality of the foregoing, where a dispute involves issues under the Commerce Act 1986 or the Fair Trading Act 1986.
- 24.2 Prior to reaching agreement on a dispute, or obtaining an arbitration award under **Clause 24.5**, Vodafone and the Access Seeker agree that neither party is prevented by these dispute resolution procedures from exercising any rights under the Telecommunications Act. If there is a dispute about the extent of a party's rights under the Telecommunications Act, then that dispute may be resolved in accordance with the procedures in that Act,

regardless of whether or not the matter is or has previously been the subject of these dispute resolution procedures.

24.3 Either of Vodafone and the Access Seeker may at any time give notice describing a dispute and invoking the procedures set out in the rest of this Clause.

24.4 If notice under **Clause 24.3** is given, then:

- a) during a maximum negotiation period of 20 Working Days from the date the notice was given, Vodafone and the Access Seeker must attempt in good faith to negotiate a resolution of the dispute;
- b) at any time during the negotiation period, either party may give 3 Working Days notice requiring a meeting, specifying a time and place in Auckland for the meeting and designating its representative with authority to resolve the dispute;
- c) the other party must give 1 Working Day's notice before the meeting designating its representative with authority to resolve the dispute;
- d) the authorised representatives must meet at the specified time and place and as many times as necessary during the negotiation period to attempt in good faith to resolve the dispute;
- e) at any time during the negotiation period, Vodafone and the Access Seeker may agree to refer the dispute to mediation;
- f) a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal;
- g) unless otherwise agreed in writing, then the LEADR New Zealand Inc mediation protocol, in effect at the time of the referral to mediation, must be used, and mediation must be completed within 20 Working Days of Vodafone and the Access Seeker agreeing to refer the dispute to mediation;
- h) all documents disclosed in the course of any mediation proceedings shall be used for purposes of the mediation only, and shall be returned to the party providing the documents at the termination or conclusion of the proceedings; and
- i) unless otherwise agreed in writing, neither party may refer a dispute to arbitration before the end of the negotiation period.

24.5 If a dispute has not been resolved by the end of the negotiation period, either party may then refer the dispute, or any part of the dispute, to arbitration:

- a) Vodafone and the Access Seeker agree that all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules;
- b) the seat of the arbitration shall be Singapore, and the applicable procedural law shall be the International Arbitration Act (Singapore Laws, Chapter 143A);
- c) notwithstanding that the seat of any arbitration will be Singapore, the tribunal may in its discretion order that hearings or meetings be convened in Auckland, New Zealand, if doing so will promote the convenience of the parties or witnesses;
- d) the language of the arbitration shall be English;
- e) Vodafone and the Access Seeker shall take all reasonable steps to ensure the confidentiality of any arbitration, ancillary proceedings, or an application for interim relief under **Clause 33**;
- f) all documents disclosed in the course of the proceedings shall be used for purposes of the arbitration only, and shall be returned to the party providing the documents at the conclusion of the proceedings; and
- g) a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal.

24.6 Neither of Vodafone and the Access Seeker may use, other than to attempt to resolve the dispute, any information disclosed by the other in the course of negotiation, mediation or arbitration under the above procedures. Any such information remains the property of the party supplying it and remains confidential to that party. Disclosure in the course of negotiation, mediation or arbitration under the above procedures is not a waiver of confidentiality.

24.7 Neither of Vodafone and the Access Seeker may disclose any such information to anyone other than an adviser or an expert witness who has entered into a deed undertaking:

- a) not to use any of the information, or any analysis of the information, other than for the purposes of resolving the dispute or the negotiation, mediation or arbitration;
- b) not to disclose any of the information, or any analysis of the information, other than to Vodafone and the Access Seeker, a mediator, the arbitrator or a court, except as compelled by law; and
- c) to return all material on which such information is recorded on completion of the adviser or expert witness' services.

## 25 WORKING GROUP

25.1 Vodafone and the Access Seeker acknowledge that, during the Term, they shall be required to liaise on and resolve:

- a) issues relating to the implementation and provision of the Vodafone Roaming Service; and
- b) technical network operational issues which arise from time to time regarding the provision of Vodafone Roaming Service.

25.2 In recognition of this, Vodafone and the Access Seeker shall establish a Working Group, comprising representatives of both parties:

- a) to discuss and make recommendations on changes to the Operational Procedures; and
- b) to provide a mechanism by which technical and operational issues may initially be resolved without recourse to the dispute resolution procedures set out in this Undertaking.

25.3 The procedures for meetings and other matters relating to the running and administration of the Working Group will be set out in the Operational Procedures.

## 26 ROUTING OF ROAMING TRAFFIC, HANDOVER POINTS AND LINKS

26.1 All Roaming Traffic originating or terminating on the Vodafone Network will be routed to a Handover Point, regardless of the called party's network (the **Handover Principle**).

26.2 For example:

### **Example one**

- a) A Call from a Vodafone End User to an Access Seeker End User roaming on the Vodafone Network would be routed by Vodafone via interconnection links to an interconnection handover point under the terms of any interconnection agreement between Vodafone and Access Seeker;
- b) The Access Seeker would then hand over that Call to Vodafone at a Handover Point via inter-network roaming links for termination to the Access Seeker End User's Handset; and
- c) Vodafone would deliver that Call to the Access Seeker End User's Handset and usage charges would be payable by the Access Seeker for the termination leg of the roaming service provided by Vodafone.

### Example two

- d) A Call from an Access Seeker End User roaming on the Vodafone Network to a Vodafone End User would be routed by Vodafone to a Handover Point and usage charges would be payable by the Access Seeker for the origination leg of the roaming service provided by Vodafone; and
- e) The Access Seeker would then hand over that Call to Vodafone at an interconnection handover point via interconnection links for termination to the Vodafone End User under the terms of any interconnection agreement between Vodafone and the Access Seeker.

### Example three

- f) A Call from an Access Seeker End User roaming on the Vodafone Network to another Access Seeker End User roaming on the Vodafone Network would be routed by Vodafone to a Handover Point and usage charges would be payable by the Access Seeker for the origination leg of the roaming service provided by Vodafone;
- g) The Access Seeker would then hand over that Call to Vodafone at a Handover Point via inter-network roaming links for termination to the Access Seeker End User's Handset; and
- h) Vodafone would deliver that Call to the Access Seeker End User's Handset and further usage charges would be payable by the Access Seeker for the termination leg of the roaming service provided by Vodafone.

### Example four

- i) In the case of a Text Message from a third party network that is handed over to Vodafone via interconnection links at an interconnection handover point that is to an Access Seeker End User roaming on the Vodafone Network and that is delivered by Vodafone to the Access Seeker End User's Handset, roaming charges would be payable by the Access Seeker for the termination leg of the roaming service provided by Vodafone.

### Example five

- j) In the case of a Text Message from a Vodafone End User to an Access Seeker End User roaming on the Vodafone Network, that is delivered by Vodafone to the Access Seeker End User's Handset, roaming charges would be payable by the Access Seeker for the termination leg of the roaming service provided by Vodafone.

26.3 Notwithstanding **Clause 26.1**, Text Messages may be handed over by a third party network to, and accepted by, Vodafone subject to Vodafone's

interconnection arrangements with that third party network. Text Messages that are to an Access Seeker End User roaming on the Vodafone Network that originate from a Vodafone End User shall be delivered by Vodafone directly to the Access Seeker End User.

- 26.4 The Access Seeker will establish and maintain Handover Points for handing over and receiving Roaming Traffic to and from the Vodafone Network in the premises specified by Vodafone in Auckland, Wellington and Christchurch (which will be the same premises as Vodafone has its interconnection handover points). Handover Points for Data Sessions, separate from Handover Points used for other types of Roaming Traffic, will be established and maintained by the Access Seeker in these premises in Auckland and, upon not less than 6 months prior written notice from Vodafone, in Wellington and/or Christchurch, as the case may be.
- 26.5 The Access Seeker will be responsible for provisioning, providing, maintaining, decommissioning and otherwise bearing the full cost of the Handover Point and all inter-network roaming links from the Access Seeker Mobile Network to each Handover Point for all Roaming Traffic that is to be handed over or received at that Handover Point in accordance with this Undertaking, including any new inter-network roaming links required.
- 26.6 The Vodafone Roaming Service will not be provided via any interconnect links between the Access Seeker Mobile Network and the Vodafone Network, except that the same physical links may be used, as long as they are logically distinct.
- 26.7 The Operational Procedures will set out further provisions relating to Handover Points and inter-network roaming links.

## 27 FORECASTS

- 27.1 In the Deed of Acceptance, the Access Seeker shall provide its forecast for the first 24 months of provision of the Vodafone Roaming Service. This forecast will comprise forecasts of:
- a) volumes for each of the categories of Roaming Traffic on a time of day (including peak/off-peak and busy-hour) and geographic basis; and
  - b) the maximum number of the Access Seeker End Users roaming on the Vodafone Network at any point in time during the forecast period, including the date when this is expected to occur, in each of four groups of Vodafone Location Areas ((1) Central Auckland and Northland, (2) South Auckland and Central North Island, (3) Wellington and lower North Island and (4) South Island), known as **Location Area Groups**.

This forecast is to be used for network planning (including capacity planning) purposes.

- 27.2 The Access Seeker will provide Vodafone, on the date of commencement of the Vodafone Roaming Service and after that at the commencement of each calendar quarter, with updated rolling forecasts of the matters referred to in paragraphs (a) and (b) of **Clause 27.1**, separately (where Vodafone's 3G network is a part of the Vodafone Network under **Clause 3**) for Vodafone's 2G network and Vodafone's 3G network. These forecasts will cover the next 24 months, or any lesser period remaining of the Term.
- 27.3 The Access Seeker will provide Vodafone with as much prior notice as practicable of expected material temporary increases in traffic volumes which might impact on the Vodafone Roaming Service or the Vodafone End User Service.
- 27.4 The Access Seeker acknowledges the importance of forecasts under this **Clause 27** to Vodafone providing the Vodafone Roaming Service and, to that end, the Access Seeker will take all reasonable care to provide forecasts which are as accurate as possible and that take into account the Access Seeker's planned network rollout. Any forecast under this **Clause 27** is indicative only and the Access Seeker does not represent or warrant that any forecast is or will be true, accurate or correct. Notwithstanding this, the Access Seeker will promptly notify Vodafone if the Access Seeker becomes aware at any time of any reason (including any planned network build or acquisition) that is likely to result in the forecasts becoming materially inaccurate and that notice will include a statement of the impact that the Access Seeker expects on those forecasts.
- 27.5 Vodafone's support of concurrent Access Seeker End Users roaming on the Vodafone Network is provided through Visitor Location Register (**VLR**) capacity, which is partitioned into the four Location Area Groups. Vodafone has allocated VLR capacity for all Access Seekers that use the Vodafone Roaming Service for 400,000 concurrent end users roaming on the Vodafone Network across the Location Area Groups in line with its current inbound international roaming traffic (**Location Area Group thresholds**) as follows: (1) 100,000 concurrent end users in Central Auckland and Northland, (2) 100,000 concurrent end users in South Auckland and Central North Island, (3) 100,000 concurrent end users in Wellington and lower North Island and (4) 100,000 concurrent end users in South Island.
- 27.6 If the Access Seeker's forecasts provided under **Clause 27.2** indicate that the numbers of concurrent Access Seeker End Users roaming on the Vodafone Network in any of the Location Area Groups would materially exceed the relevant Location Area Group threshold, then Vodafone may charge the Access Seeker for increasing Vodafone's VLR capacity in that Location Area Group. If more than one Access Seeker is the cause of the increase in VLR capacity, then the costs will be shared fairly between them. Once the VLR capacity is increased, then the relevant Location Area Group threshold will be increased by the amount of additional capacity added.

27.7 The Operational Procedures will set out all other obligations of the Access Seeker relating to forecasting.

## **28 NO APPLICATION TO INTERCONNECTION**

28.1 The terms and pricing contained in this Undertaking do not apply to the provision of interconnection services between Vodafone and the Access Seeker, or oblige either party to provide interconnection services to the other party.

28.2 The Access Seeker will be responsible for all interconnection arrangements with third party networks in relation to Roaming Traffic handed over by or to Vodafone under the Handover Principle. The Access Seeker will bear all costs, and will be entitled to all revenues, arising out of those arrangements.

## **29 OPERATIONAL PROCEDURES**

29.1 The Operational Procedures will set out details of agreed operational procedures, which may include, without limitation, procedures covering:

- a) liaison between Vodafone and the Access Seeker's respective network management centres;
- b) handling of Outages, including notification of planned and unplanned Outages;
- c) to the extent that such testing is not covered by this Undertaking (except for any acceptance testing to occur prior to Vodafone making available the Vodafone Roaming Service), appropriate testing by each party to localise and isolate faults in its own Network, or for such other purposes as may be agreed between Vodafone and the Access Seeker;
- d) details of forecasting required under **Clause 27** or any other forecasts;
- e) arrangements for access by each party to the other's premises where such access may be required under this Undertaking;
- f) notification of software and hardware changes proposed for the Access Seeker Mobile Network which may impact on Vodafone's provision of the Vodafone Roaming Service;
- g) management of abnormal and/or disruptive traffic, with a view to minimising any detrimental effects of such traffic on each party's Network and on the Vodafone Roaming Service; and
- h) facilitation of tracing of malicious Roaming Traffic.

## 30 INTERCEPTION

- 30.1 If, after the Services Commencement Date, Vodafone has been given an interception warrant directly by a surveillance agency or any other lawful interception authority that requires Vodafone to assist that agency or authority in relation to an Access Seeker End User who is using the Access Seeker Mobile Services, Vodafone shall provide any assistance that it considers to be necessary or desirable to comply with the terms of that interception warrant (the **Warrant**).
- 30.2 Vodafone will notify the Access Seeker of receipt of the Warrant within a reasonable period of time following receipt.
- 30.3 The Access Seeker shall provide whatever consents and approvals that Vodafone may require to comply with the terms of the Warrant.
- 30.4 For the purposes of this **Clause 30**, the terms “interception warrant”, “surveillance agency” and “interception authority” are defined in the Telecommunications (Interception Capability) Act 2004.

## 31 ASSIGNMENT

- 31.1 Subject to **Clause 31.2**, the Access Seeker may assign or transfer its rights or obligations under this Undertaking, subject to the prior written consent of Vodafone, which consent shall not be unreasonably withheld.
- 31.2 The Access Seeker will not assign or transfer all or any part of its rights or obligations under this Undertaking to an Excluded Operator.

## 32 NOTICES

- 32.1 Any notice required to be served upon Vodafone or the Access Seeker or given to Vodafone or the Access Seeker will be in writing and will be deemed to have been served or given:
- a) as soon as the same is personally delivered to the address given by the Access Seeker to Vodafone or, in the case of Vodafone, as set out below (or such other address as a party may notify to the other by notice);
  - b) two Working Days following the posting of the same by prepaid registered mail to such address;
  - c) immediately if transmission by facsimile is effected to the facsimile number set out below (or such other facsimile number as a party may notify to the other by notice); or
  - d) immediately if transmission is effected by such other electronic medium as Vodafone and the Access Seeker may from time to time agree, to such place, number or code as a party may notify to the other by notice,

provided that, if personal delivery or transmission by facsimile or other electronic means is effected after 5.00 pm on a Working Day (in the place of receipt) or any time on a day other than a Working Day, then such notice will be deemed to be given the next Working Day (in the place of receipt) following the delivery or facsimile or electronic transmission.

### **Vodafone**

20 Viaduct Harbour Avenue  
AUCKLAND

Attention: General Counsel

Telephone: (09) 355 2000

Facsimile: (09) 355 2005

## **33 SAVINGS**

33.1 Subject to the obligation in **Clause 24.5(e)** to take reasonable steps to ensure the confidentiality of any application for interim relief, nothing else in this Undertaking excludes or limits either party's right to enforce this Undertaking by applying for an interim injunction in any New Zealand court of competent jurisdiction.

33.2 Nothing in this Undertaking excludes or limits:

- a) any other statutory liability of either party, to the extent that it is prohibited by law from excluding or limiting such liability; or
- b) either party's liability to pay costs of, or awarded in, any court proceedings, arbitration or mediation.

## **34 NO PARTNERSHIP AND PRIVITY**

34.1 Nothing in this Undertaking or in the relationship between Vodafone and the Access Seeker is to be construed as:

- a) creating a partnership between Vodafone and the Access Seeker; or
- b) giving to either party the right, or subjecting it to the liability, of a partner.

34.2 Vodafone and the Access Seeker declare that it is not the intention of either of them to:

- a) enter into a joint venture with the other; or
- b) constitute a party or its Group an agent or fiduciary of the other party or its Group.

34.3 Each of Vodafone and the Access Seeker acknowledges and declares that, subject to **Clause 34.4**:

- a) none of its obligations in this Undertaking constitutes a promise conferring benefits on a third party which are intended to create, in respect of the benefit, an obligation enforceable at the suit of a third party; and
- b) accordingly, the provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to its promises in this Undertaking

34.4 **Clause 34.3** does not apply:

- a) to each member of each party's Group and its and their officers, employees, contractors or agents; and
- b) to any other person (including a Network Operator (whose network is connected to and with a party's network)) and that person's subsidiaries now or from time to time and their respective officers, employees, contractors or agents,

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

## **35 REMEDIES AND WAIVERS**

35.1 Except as otherwise provided in this Undertaking, no failure to exercise, and no delay in exercising, a right of Vodafone or an Access Seeker under this Undertaking operates as a waiver of that right.

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

35.3 No waiver by Vodafone or an Access Seeker of its rights under this Undertaking is effective unless it is in writing signed by that party.

## **36 ENTIRE AGREEMENT**

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

36.2 Any variation to this Undertaking must be recorded in writing and signed by the authorised representatives of the Access Seeker and Vodafone.

## **37 GOVERNING LAW**

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

**Schedule 4**  
**Technical Specifications**  
**Vodafone Roaming Service**

**Interpretation**

Unless the context otherwise requires, the terms used in these Technical Specifications will have the same meaning as set out in Schedules 1, 2 and 3 of the Undertaking.

**Features, services and functionality**

The tables below list the availability of 3GPP standard 2G GSM, 3G UMTS and 2G and 3G GPRS features to Access Seeker End Users roaming on the Vodafone Network including support of mobility management.

<b><u>TELESERVICES</u></b>	<b><u>Specification</u></b>	<b><u>Applicable</u></b>
Speech telephony	3GPP TS 22.003	2G & 3G
Speech, emergency calls	3GPP TS 22.003	2G & 3G
Short Message Service MT/PP	3GPP TS 22.003	2G & 3G
Short Message Service MO/PP	3GPP TS 22.003	2G & 3G
Short Message Service Cell Broadcast	3GPP TS 22.003	2G
Automatic facsimile gr.3, T	3GPP TS 22.003	2G & 3G

<b><u>SUPPLEMENTARY SERVICES</u></b>	<b><u>Specification</u></b>	<b><u>Applicable</u></b>
Calling line identification presentation (CLIP)	3GPP TS 22.081	2G & 3G

Calling line identification restriction (CLIR)	3GPP TS 22.081	2G & 3G
Call forwarding unconditional (CFU)	3GPP TS 22.082	2G & 3G
Call forwarding on mobile subscriber busy (CFB)	3GPP TS 22.082	2G & 3G
Call forwarding on no reply (CFNRy)	3GPP TS 22.082	2G & 3G
Call forwarding on mobile subscr. not reachable (CFNRc)	3GPP TS 22.082	2G & 3G
Call waiting (CW)	3GPP TS 22.083	2G & 3G
Call hold (HOLD)	3GPP TS 22.083	2G & 3G
Multi party (MPTY)	3GPP TS 22.084	2G & 3G
Barring of all outgoing calls (BAOC)	3GPP TS 22.088	2G & 3G
Barring of all outgoing international calls (BOIC)	3GPP TS 22.088	2G & 3G
Barring of all outgoing international calls except (BOIC-ex HC)	3GPP TS 22.088	2G & 3G

<b><u>BEARER SERVICES</u></b>	<b><u>Specification</u></b>	<b><u>Applicable</u></b>
Asynchronous General Bearer Service, T	3GPP TS 22.002	2G & 3G
Asynchronous General Bearer Service, NT	3GPP TS 22.002	2G & 3G
Synchronous General Bearer Service, T	3GPP TS 22.002	2G & 3G
HSCSD (14.4kbps)	3GPP TS 22.034	2G

<b><u>ADDITIONAL FEATURES</u></b>	<b><u>Specification</u></b>	<b><u>Applicable</u></b>
Call forwarding to abroad, unrestricted		2G & 3G
Operator determined barring (ODB)	3GPP TS 22.041	2G & 3G
Support of DTMF signalling	3GPP TS 23.014	2G & 3G
Implicit deregistration		2G & 3G
CAMEL Phase I & II <sup>1</sup>	3GPP TS 22.078	2G & 3G
GPRS	3GPP TS 23.060	2G & 3G
3G-324M – Video Telephony	3GPP TS 24.008 3GPP TS 29.007	3G

## **HANDOVER POINTS FOR ROAMING TRAFFIC**

Signalling connection between the Vodafone Network and the Access Seeker Mobile Network will be via signalling transfer points using CCS7 signalling as detailed below (or using any other protocols as agreed between the parties).

<b><u>ISDN VOICE CALL</u></b>		
<b><u>Function</u></b>	<b><u>Method</u></b>	
Call Control signalling	NZ PTC.331 ISUP	
Layer 3 signalling	ITU MTP3	and/or SIGTRAN M3UA

<sup>1</sup> Nokia implementation may differ slightly from specifications. Vodafone will make available to the Access Seeker any CAMEL functionality available in the software implemented in the Vodafone Network.

Transport layer	ITU MTP1 & 2 over TDM E1	and/or SIGTRAN SCTP over IP over Ethernet
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### **GSM SIGNALLING**

<b><u>Function</u></b>	<b><u>Method</u></b>	
SCCP Subsystem signalling	MAP	
SCCP layer signalling	SCCP, TCAP	
Layer3 signalling	ITU MTP3	and/or SIGTRAN M3UA
Transport layer	ITU MTP 1 & 2 over TDM E1	and/or SIGTRAN SCTP over IP over Ethernet

### **PACKET DATA PROTOCOL**

<b><u>Function</u></b>	<b><u>Method</u></b>
Control signalling	GTPC version 1
Transport layer signalling	UDP over IP over Ethernet

Circuit switched Roaming Traffic will be routed via direct connection between each network's switching elements at the following Handover Point locations.

### **HANDOVER POINTS FOR CIRCUIT SWITCHED TRAFFIC**

<b><u>Location</u></b>	<b><u>Region</u></b>	<b><u>Address</u></b>
[ ]	Central Auckland North	[ ], Auckland
[ ]	South Akl & central North Is	[ ] South Auckland
[ ]	Wellington & lower North Is	[ ], Wellington
[ ]	South Island	[ ], Christchurch

The exact locations of these Handover Points, which is Confidential Information under this Undertaking, will be disclosed to the Access Seeker following their entry into the Deed of Acceptance.

Packet switched Roaming Traffic will be routed via direct connection between each network's switching elements at the following Handover Point locations.

### **HANDOVER POINTS FOR PACKET SWITCHED TRAFFIC**

Central Auckland handover point

South Auckland handover point

An additional Handover Point for Data Sessions will be established and maintained by the Access Seeker, upon not less than 6 months prior written notice from Vodafone, at Wellington and Christchurch handover points.

## ROUTING OF ROAMING TRAFFIC

No roaming is allowed inside Exclusion Zones.

Roaming Calls originated by Access Seeker End Users while roaming on the Vodafone Network to the emergency call short codes as listed will be terminated by Vodafone to the appropriate emergency service, based on the geographic zone where the Roaming Call originated.

<b><u>SUPPORTED SHORT CODES</u></b>	
Emergency Call	111
Emergency Call	112
Emergency Call	911
Traffic Police	*555
Coast Guard	*500
Automobile Association	*222

For all other Roaming Calls originated by Access Seeker End Users while roaming on the Vodafone Network, Vodafone will route the Roaming Call to the Access Seeker via the nearest circuit switched Handover Point.

All Roaming Calls terminated to Access Seeker End Users while roaming on the Vodafone Network to be routed by the Access Seeker to Vodafone via the circuit switched Handover Point defined by the MSRN range.

All Roaming Data Sessions originated by Access Seeker End Users while roaming on the Vodafone Network to be routed by Vodafone to the Access Seeker via the nearest packet switched Handover Point.

All Roaming Data Sessions terminated to Access Seeker End Users while roaming on the Vodafone Network to be routed by the Access Seeker to Vodafone via the nearest packet switched Handover Point.

By default Access Seeker End Users handsets are to be configured to return to Idle state (for GPRS) or Detached state (for UMTS) when there is no active Roaming Data Session.

All Roaming Text Messages originated by Access Seeker End Users while roaming on the Vodafone Network to be routed by Vodafone to the Access Seeker via the nearest Handover Point over the GSM Signalling interface.

All Roaming Text Messages terminated to Access Seeker End Users while roaming on the Vodafone Network to be routed directly to Vodafone via Vodafone's GSM signalling interconnect links.

Vodafone will use reasonable endeavours to ensure for Access Seeker End Users while roaming on the Vodafone Network that they will hear generic (not Vodafone branded) recorded voice announcements.

### **LOCAL AND MOBILE NUMBER PORTABILITY (LMNP)**

The routing of roaming traffic is not affected by LMNP. Vodafone will not perform LMNP All Call Query on roamers calls, text messages and/or multimedia messages prior to routing the call to the Access Seeker Mobile Network.

Access Seeker End Users with ported numbers will be treated the same as those with non-porting numbers while roaming on the Vodafone Network.

### **HANDOVER BETWEEN NETWORKS**

Due to the technical difficulties, and associated costs of implementation, no Call-Handover from the Vodafone Network to the Access Seeker Mobile Network is offered as a part of the Vodafone Roaming Service under this Undertaking. However, call continuity (i.e. the continuity of calls which originate whilst the Access Seeker End User is roaming and then moves into coverage of the Access Seeker Mobile Network but remains on the Vodafone Network) for both voice and packet data on the Vodafone Network is to be provided. The Access Seeker may, at any time, request call-Handover from the Access Seeker to the Vodafone Network, however this shall be subject to separate commercial agreement between Vodafone and the Access Seeker.

## **BILLING BETWEEN NETWORKS**

Billing will be supported by Vodafone consistent with GSM Association roaming billing standards using TAP files. TAP files to be provided at least daily.

Alternative billing arrangements using standard interconnect billing practices, instead of TAP files, may be deployed subject to commercial and technical agreement.

## **LEGAL INTERCEPT AND FRAUD CONTROL**

Legal intercept will be supported by Vodafone for Access Seeker End Users while roaming on the Vodafone Network in accordance with **Clause 30** of Schedule 3 of this Undertaking. For the avoidance of doubt, this does not include responding to warrants received from the Access Seeker.

Support for fraud control for Access Seeker End Users while roaming on the Vodafone Network will be consistent with the GSM Association standards and supplied in accordance with how Vodafone provides this to itself.

Vodafone and the Access Seeker will co-ordinate the timely sharing of IMEI black list information between each other to ensure the effectiveness of the 3GPP EIR supported functionality for lost and stolen handsets. Vodafone and the Access Seeker will work to specify the appropriate process and format for this information exchange.

## **SECURITY**

The Vodafone Network will support 3GPP standard 2G and 3G security models.

Identity authentication for Access Seeker End Users uses standard 2G and 3G Authentication and Key Agreement procedures.

Access Seeker End User traffic confidentiality is provided with support for 2G encryption (GSM A5/1 and GPRS GEA1) and 3G encryption (UMTS UEA1)

User anonymity is provided by support for Temporary Identities e.g. TMSI and P-TMSI.

## LOCATION INFORMATION

Access Seeker End User location information to be provided by Vodafone using network initiated MAP or CAP messages containing Cell ID. Cell ID to also be available in billing records.

For the avoidance of doubt, Vodafone will not be providing location based services to Access Seeker End Users.

Vodafone will provide detailed coverage maps at the same frequency that it produces coverage maps for its internal use. Those coverage maps will be provided in the same format as they are produced for internal use.

## VODAFONE DIAL PLAN

<b><u>Dial plan</u></b>	
International prefix	00
National prefix	0
Primary short codes used for Voicemail access, customer services, etc. not including emergency codes listed earlier.	777, 707, 888, 808, 197

## Access Seeker IMSI RANGE

The Access Seeker IMSI range that is to be supported for roaming purposes is 530xx.

## Access Seeker MSISDN RANGE

Subject to Clause 16.5 of Schedule 3, the Access Seeker MSISDN ranges that are to be supported for roaming purposes will be the Non-Geographic numbers that are assigned to the Access Seeker by the NAD as well as any ported-in Non-Geographic numbers used by Access Seeker End Users.

**Schedule 5**  
**Deed of Acceptance for Vodafone Roaming Service**

[Date]

By: [Full name of Access Seeker]

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

By this Deed:

1. We refer to the Undertaking given by Vodafone in favour of the New Zealand Commerce Commission dated [ ] 2007 (the **Undertaking**). All capitalised terms used in this Deed will have the same meaning as set out in the Undertaking.
2. We request that Vodafone provide the Vodafone Roaming Service in accordance with all of the terms and conditions of the Undertaking.
3. We agree that the Undertaking is legally binding on us as an Access Seeker for the Vodafone Roaming Service, that we give all warranties of an Access Seeker set out in the Undertaking and that we shall comply with all of the obligations of an Access Seeker set out in the Undertaking. Vodafone may enforce the terms of the Undertaking against us as an Access Seeker.
4. The Schedule to this Deed sets out our forecast for the first 24 months of provision of the Vodafone Roaming Service.
5. Our IRD number is [ ] and our GST registration number is [ ].
6. Our notice details, for the purposes of the Undertaking, are as follows:

[New Zealand address]

Attention: [Name or office]

Telephone: [Number]

Facsimile: [Number]

7. Where we are, at the date of this Deed, a party to an agreement with Vodafone for the provision of services equivalent or substantially similar to the Vodafone Roaming Service, we agree that, when Vodafone begins to provide the Vodafone Roaming Service to us under the terms of the Undertaking, that Vodafone will no longer be required to provide those services to us and that agreement will terminate at that time.

8. We undertake to make available to Vodafone, at any time when we operate a Cellular Mobile Network in New Zealand and at any time requested by Vodafone, a telecommunications service that is the same or substantially similar to the Vodafone Roaming Service on terms that are the same or substantially similar to the terms on which Vodafone makes available the Vodafone Roaming Service under the Undertaking (except that Vodafone would not be regarded as an Excluded Operator).

Executed as a Deed

By [*Full name of Access Seeker*]

Director

Director

[*Insert forecast schedule*]