

[1] Name
[2] Short name
[3] City of company
[4] Company number
[5] Tax #
[6] GST #
Address for notices page 37

Agreement

relating to

the provision of Wholesale Services

Vodafone New Zealand Limited

and

[1]

Date

2014

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Date:

2014

PARTIES

Vodafone New Zealand Limited at Auckland, company number 927212 (together with its successors and permitted assigns and transferees, **Vodafone**); and

[1] at [3], company number [4] (together with its successors and permitted assigns and transferees, [2]).

BACKGROUND

- A. [2] wishes to use the Wholesale Services from Vodafone to provide the [2] RBI Broadband Services, either directly itself or through [2] Resellers, to [2] End Customers.
- B. Vodafone and [2] have been in discussions and negotiations regarding the terms for the provision by Vodafone of the Wholesale Services to [2].
- C. The parties have now agreed the terms for the supply of the Wholesale Services by Vodafone to [2] as set out in this Agreement.

THE PARTIES AGREE as follows:

1 INTERPRETATION

Defined terms

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

- 1.1 **Agreement** means this agreement (including the Schedules), as amended from time to time;
- 1.2 **Availability Date** means the date on which Vodafone has made available the Wholesale Services for use by [2] in compliance with the Operations Manual and Implementation Plan, which the parties intend shall be no later than the date specified in the Implementation Plan as the latest date for the Wholesale Services to be made available for use by [2];
- 1.3 **Bill Rate** means the average 90 day bank bill mid rate as quoted on Reuters Screen page BKBM (known as at the Commencement Date as the FRA rate) at or about 10.45 am as at the relevant date, provided that if, on or about that time for any reason the Reuters Screen page BKBM is not then available, the last rate quoted on that page before it became unavailable;
- 1.4 **[2] End Customer:**
 - 1.4.1 means any end-user customer of, and having a direct contractual relationship with, [2] for the receipt of [2] RBI Broadband Services;
 - 1.4.2 includes, where the end-user customer is not a natural person and where the context requires, any natural person that uses the [2] RBI Broadband Services provided to the end-user customer;

- 1.4.3 includes employees of [2] that use the [2] RBI Broadband Services provided to those employees; but
- 1.4.4 excludes any [2] Reseller (except when they are themselves an end-user customer, as opposed to a wholesale customer, of [2]);
- 1.5 **[2] Group** means [2] and every related company of [2], all officers, employees and contractors of any of those companies, and everyone else any of those companies is responsible for;
- 1.6 **[2] RBI Broadband Services** means retail, commercial, end-to-end cellular mobile services of [2] that comprise the Wholesale Services;
- 1.7 **[2] Reseller** means:
- 1.7.1 a person who enters into an agreement with [2] to sell [2] Wholesale RBI Services to End Customers on behalf of [2] ; and
- 1.7.2 any other person approved by Vodafone (such approval to be in Vodafone's absolute and sole discretion),
- 1.8 **Commencement Date** means the date of this Agreement;
- 1.9 **Commission** means the New Zealand Commerce Commission;
- 1.10 **Confidential Information** means all information which is confidential or proprietary:
- 1.10.1 in the case of Vodafone, to Vodafone or any member of the Vodafone Group, including (without limitation):
- (a) the Wholesale SPL;
 - (b) information which is confidential or proprietary to a third party and used or disclosed pursuant to, or in connection with, this Agreement by Vodafone under licence from such third party; and
 - (c) information which is confidential or proprietary to Vodafone or any member of the Vodafone Group which has been obtained by [2] from any other member of the [2] Group or from any person on behalf of any other member of the [2] Group;
- 1.10.2 in the case of [2], to [2] or any member of the [2] Group, including (without limitation):
- (a) information which is confidential or proprietary to a third party and used or disclosed pursuant to, or in connection with, this Agreement by [2] under licence from such third party; and
 - (b) information which is confidential or proprietary to [2] or any member of the [2] Group which has been obtained by Vodafone from any other member of the Vodafone Group or from any person on behalf of any other member of the Vodafone Group;
- 1.10.3 to both parties, including (without limitation) the terms and conditions of this Agreement (other than the Wholesale SPL),

but does not include any such information:

- 1.10.4 which is independently developed by the receiving party outside the scope of this Agreement;
- 1.10.5 which is other confidential or proprietary information obtained from sources independent of either party (other than, for the avoidance of doubt, information obtained from any other member of the [2] Group, in the case of [2] 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);
- 1.10.6 which was publicly available at the time of receipt or the date of this Agreement; or
- 1.10.7 which was known to a party at the time of receipt or becomes publicly available after the execution of this Agreement, otherwise than as a result of a breach of an obligation of confidence, which breach could reasonably be known by a member of the [2] Group (in the case of Vodafone Confidential Information) or the Vodafone Group (in the case of [2] Confidential Information);

1.11 **Due Date** means:

- 1.11.1 where an invoice is received by the paying party no more than 7 calendar days following the last day of the period covered by the invoice, the 20th day of the month following the last day of the period covered by the invoice (for example, where the last day of the period covered by the invoice is 31 July, and the invoice is received by the paying party on 7 August, the Due Date shall be 20 August);
- 1.11.2 where an invoice is received by the paying party after 7 calendar days following the last day of the period covered by the invoice, the 20th day of the month following the month in which the invoice is received by the paying party (for example, where the last day of the period covered by the invoice is 31 July, and the invoice is received by the paying party on 8 August, the Due Date shall be 20 September); or
- 1.11.3 where any provision of this Agreement 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;

1.12 **Excluded Operator** means:

- 1.12.1 any member of the group of companies of which Telecom New Zealand Limited is a part;
- 1.12.2 any member of the group of companies of which Two Degrees Mobile Limited is a part; or
- 1.12.3 an operator of a mobile telecommunications network in New Zealand or a related company of such an operator (other than [2]);

1.13 **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 the party seeking to rely on clause 30;

1.14 **Group** means the Vodafone Group or the [2] Group, as the context requires;

- 1.15 **GST** means goods and services tax, as defined in the Goods and Services Tax Act 1985;
- 1.16 **Implementation Plan** means the implementation plan that will detail the tasks to be performed and deliverables to be provided by each party leading up to the commencement of the Wholesale Services, as agreed between the parties, as contemplated by clause 3.1 and, as amended from time to time;
- 1.17 **Intellectual Property** includes trade marks, service marks, inventions, patents, designs, copyrights, know how, trade secrets and all rights and interests or licences to use any of them;
- 1.18 **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 multinetwork services*", Decision 554, dated 31 August 2005 as amended by the Commission's "*Clarification of the Determination on the Multiparty Application for Determination on the Local and Cellular Number Portability Designated Multinetwork Services*", Decision 579, dated 17 May 2006, and any requirements that the Commission may impose in the future pursuant to either of these determinations;
- 1.19 **Nominated Supplier** means a third party supplier to Vodafone whose goods and/or services are used in the provision of the Wholesale Services and whose terms of supply, in Vodafone's opinion, directly or indirectly impact on the provision of the Wholesale Services to [2]. Vodafone will notify [2] from time to time of the names of Nominated Suppliers. From the date of this Agreement, Apple/iPhone and RIM/Blackberry shall be Nominated Suppliers;
- 1.20 **Operations Manual** means Vodafone's Operations Manual relating to the Wholesale Services, as well as certain other terms and conditions, which are referred to in clause 14, as amended or replaced by Vodafone from time to time, and forming part of this Agreement;
- 1.21 **Outage** means the failure by Vodafone to provide, in whole or in part, the Wholesale Services to [2] in accordance with this Agreement 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 Wholesale Services;
- 1.22 **Reasonable and Actual Costs** means:
- 1.22.1 demonstrable costs incurred by Vodafone or [2] (as the case may be), without mark-up or profit included for the benefit of that party or its Group; and
- 1.22.2 any time expended by Vodafone's or [2]'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;
- 1.23 **Regulatory Event** is defined in clause 22.4;
- 1.24 **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 Wireless Terminal, enables access to the [2] RBI Broadband Services;
- 1.25 **Software** means any computer software stored on, or associated with, a Wireless Terminal;

- 1.26 **Term** means the term of this Agreement, as set out in clause 2.1;
- 1.27 **Vodafone End Customer** means a Vodafone retail customer or end-user and, where the context permits, means a Vodafone on-account retail customer or end-user or a Vodafone pre-pay retail customer or end-user;
- 1.28 **Vodafone Group** means Vodafone Group Plc, Vodafone and every related company of Vodafone Group Plc, all officers, employees and contractors of any of those companies, and everyone else any of those companies is responsible for;
- 1.29 **Vodafone Network** means Vodafone's 3G UMTS & HSPA network in New Zealand;
- 1.30 **Vodafone RBI Broadband Services** means retail, commercial, end-to-end cellular mobile services of Vodafone that comprise the Wholesale Services;
- 1.31 **Wholesale RBI Coverage Area** means those parts of Zone 4 indicated on the Vodafone wholesale website. For clarity, Zones 1, 2, and 3 are excluded from the Wholesale RBI Coverage Area;
- 1.32 **Wholesale Services** means the product set described in Schedule 1 of this Agreement;
- 1.33 **Wireless Terminal** or **WT** means a Vodafone approved wireless terminal that enables [2] End Customers to use or access [2] RBI Broadband Services on the Vodafone Network;
- 1.34 **Wholesale SPL** means the "Vodafone Wholesale Service Price List" prepared by Vodafone and attached as Schedule 2 to this Agreement; and
- 1.35 **Working Day** means a day other than a Saturday, a Sunday or a statutory holiday in Auckland.

Interrelationship of the parts of this Agreement

- 1.36 For the purposes of determining any issue of construction arising in respect of this Agreement, if there is any conflict between the parts of, or attachments to, this Agreement then the order of precedence will be, unless otherwise specifically stated in the relevant part of this Agreement:
- 1.36.1 clauses 1 to 31 of this Agreement;
- 1.36.2 the Wholesale SPL;
- 1.36.3 the Implementation Plan; and
- 1.36.4 the Operations Manual.

2 TERM AND REVIEW

Term

- 2.1 Unless terminated earlier under any provision of this Agreement which allows for early termination, the term of this Agreement (the **Term**) commences on the Commencement Date and will end 60 months from the Availability Date.

Review

- 2.2 Each party shall, at the request of the other party (which shall be no more than once in any 12 month period), meet and negotiate with a view to agreeing any changes to the terms and conditions of this Agreement (including any changes to the pricing in the Wholesale SPL) that the other party may request. Any such negotiations will include (where requested) a review of the Wholesale RBI Coverage Area. If the parties are unable to agree the changes to be made to the terms and conditions to this Agreement, Vodafone may change the terms and conditions to this Agreement (except for the Term and any pricing in the Wholesale SPL) on giving not less than 20 Working Days notice to [2] and there shall be no recourse to dispute resolution under clause 21 in relation to any dispute arising out of these changes. Any change made by Vodafone to the terms and conditions of this Agreement will not have retrospective application.
- 2.3 If Vodafone has changed the terms and conditions of this Agreement under clause 2.2 [2] may, after the date of the notice given by Vodafone in accordance with clause 2.2 and on giving not less than 20 Working Days' notice to Vodafone, terminate this Agreement.

3 IMPLEMENTATION AND AVAILABILITY

Implementation

- 3.1 As a condition precedent to their respective rights and obligations under this Agreement (except clauses 1-3, 5, 7, 13, 14, 19-35 which commence from the Commencement Date) the parties must have reached agreement on the Implementation Plan (signified by each party signing the cover of the Implementation Plan).
- 3.2 If the parties have not reached agreement on the Implementation Plan referred to in clause 3.1, this will not be a dispute for the purposes of clause 21.
- 3.3 The condition in clause 3.1 may only be waived by agreement between the parties.
- 3.4 If the condition set out in clause 3.1 has not been satisfied or waived by the date that is 60 days from the Commencement Date, then either party may terminate this Agreement on giving not less than 10 days written notice.
- 3.5 Vodafone will commence implementing the Wholesale Services from the date specified for the commencement of implementation in the Implementation Plan.
- 3.6 The Implementation Plan shall include (without limitation) the following:
- 3.6.1 the date that the parties intend for the commencement of implementation of the Wholesale Services;
 - 3.6.2 the latest date that the parties intend for the Wholesale Services to be made available for use by [2];
 - 3.6.3 the tasks to be performed and deliverables to be provided by each party (if any) leading up to the commencement of Wholesale Services;
 - 3.6.4 the initial training of [2] Group employees and contractors;
 - 3.6.5 the requirements for a provisioning interface to be used by [2] for establishing billing, network and service profiles for new [2] End Customers;
 - 3.6.6 the provision of billing feeds and CDRs; and

3.6.7 acceptance testing procedures.

3.7 Each party shall comply with their respective obligations under the Implementation Plan.

Availability

3.8 Vodafone must:

3.8.1 subject to clauses 3.10 and 4.3, ensure that the Wholesale Services are available by the Availability Date;

3.8.2 keep [2] informed of its progress towards the milestones identified in the Implementation Plan for the launch of the Wholesale Services, including any details of any likely delays as soon as practicable; and

3.8.3 supply the Wholesale Services to [2] over the Vodafone Network:

(a) in compliance with the Operations Manual; and

(b) in accordance with the terms and conditions of this Agreement.

3.9 Vodafone shall not be liable for any failure to meet the Availability Date to the extent that the delay in making available the Wholesale Services for use by [2] is caused by or materially contributed to (and then only for the period where that delay is caused by or materially contributed to) by:

3.9.1 [2]' failure to perform any task or provide any deliverable set out in, and in accordance with, the Implementation Plan;

3.9.2 defects in any products or services provided by [2] or any member of the [2] Group;

3.9.3 any Force Majeure Event;

3.9.4 any changes made to the Wholesale Services (including the Operations Manual) from those set out in this Agreement or the Implementation Plan which are not agreed by Vodafone; and

3.9.5 any changes made to the devices that use the [2] RBI Broadband Services that were not contemplated by the Implementation Plan or otherwise agreed by Vodafone.

3.10 If the conditions set out in clause 4.3 have been satisfied, and the Availability Date has not occurred by the later of:

3.10.1 the date that the parties intend for the commencement of implementation of the Wholesale Services; and

3.10.2 30 days following satisfaction of the conditions set out in clause 4.3,

then [2]'s sole remedy as a result will be to terminate this Agreement on giving 3 months' prior notice to Vodafone. To avoid doubt, the provisions of clause 18 shall apply in the event of such termination.

3.11 At any time after the Availability Date, [2] may order Wholesale Services pursuant to clause 6 of this Agreement.

- 3.12 Vodafone will not be required to provide any Wholesale Service at any time before the Availability Date.

Limitations

- 3.13 To avoid doubt, Vodafone may provide services equivalent or similar to the Wholesale Services to any other persons at any time, including a date earlier than the Availability Date or the date Vodafone begins implementing the Wholesale Services for [2] under this Agreement. Any such provision to third parties by Vodafone will not give rise to any additional obligation on Vodafone to implement, make available or begin providing the Wholesale Services to [2] under this Agreement.
- 3.14 This Agreement does not create any obligation on Vodafone to provide any other services to [2], including any services introduced through a change in the legislative or regulatory environment.

4 PROVISION OF WHOLESALE SERVICES

Provision

- 4.1 Subject to the terms of this Agreement, Vodafone will make available and provide the Wholesale Services to [2] and to any other members of the [2] Group approved by Vodafone.
- 4.2 Vodafone may choose other members of the Vodafone Group or any other person (including without limitation any international roaming partner) to provide all or part of any Wholesale Service to [2] pursuant to clause 4.1, at Vodafone's sole discretion.

Conditions

- 4.3 Vodafone will not be required to provide, or to continue to provide, a Wholesale Service to [2] or any [2] Reseller unless the following have been satisfied (at all times):
- 4.3.1 all testing required by Vodafone in relation to the [2] RBI Broadband Services has been completed to Vodafone's satisfaction;
 - 4.3.2 all consents required by either party from third parties have been obtained, and no such consent has been withdrawn or terminated;
 - 4.3.3 all inputs required by Vodafone from [2] under the Operations Manual and the Implementation Plan in order to provide the Wholesale Services have been provided by [2] to Vodafone's satisfaction;
 - 4.3.4 [2] staff have attended training as directed by Vodafone from time to time, to Vodafone's satisfaction;
 - 4.3.5 [2] has passed any credit checking undertaken by Vodafone or any [2] Reseller to Vodafone's satisfaction; and
 - 4.3.6 any security requirement notified by Vodafone under clause 7 has been satisfied by [2] and the details of this security are provided to Vodafone.

If the conditions set out in clause 4.3 have not been satisfied or waived by Vodafone by the latest date that the parties intend for the Wholesale Services to be made available for use by [2], as specified in the Implementation Plan, then Vodafone may terminate this

Agreement on giving not less than 10 days notice. To avoid doubt, the provisions of clause 18 shall apply in the event of such termination.

Networks

4.4 The Wholesale Services will be provided over the Vodafone Network, provided that, Vodafone may, at any time during the Term, subject only to clauses 4.1 and 9 and giving [2] such period of prior notice as Vodafone gives to its own retail and/or marketing divisions:

4.4.1 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 radio spectrum management rights, or cellsite leases, have expired or because its 2G GSM and GPRS network is being decommissioned in that area); or

4.4.2 reduce the capacity of the Vodafone Network or any part of the Vodafone Network in any area.

The Wholesale Services will not be provided over any other part of any other network deployed by Vodafone or any member of the Vodafone Group, except to the extent agreed between the parties.

4.5 Vodafone may, at its absolute and sole discretion and at any time, choose to provide the Wholesale Services, in respect of [2] End Customers that have Wireless Terminals that are able to use any other Vodafone network, over any part of any other Vodafone network, but will not be required to. In these circumstances, Vodafone is still required to provide Wholesale Services over the Vodafone Network for the remaining [2] End Customers.

4.6 The Wholesale Services are provided within the Wholesale RBI Coverage Area. [2] acknowledges that the Wholesale RBI Coverage Area may change from time to time, including (without limitation) as a result of seasonal and event-driven demand fluctuations. Vodafone will disconnect any [2] End Customer whose WT is outside the Wholesale RBI Coverage Area, and notify [2] accordingly.

4.7 Vodafone may, at any time and without liability to [2], suspend, restrict or withdraw any part of the Wholesale Services, including in any particular part of the Vodafone Network, where it suspends, restricts or withdraws the equivalent service to Vodafone End Customers (where applicable) in the particular part of the Vodafone Network.

4.8 Vodafone may, at any time, send messages to any [2] End Customer in relation to the operation and use of the Vodafone Network and using any Vodafone Network functionality available to Vodafone.

General

4.9 Vodafone may, by notice to [2], require [2] to sell the [2] RBI Broadband Services to [2] End Customers on particular terms provided that Vodafone will not impose any term on [2] that would discriminate between [2] End Customers as compared to Vodafone Retail RBI End Customers. Nothing in this clause 4.9 prevents [2] from setting the prices for its [2] RBI Broadband Services at any level or in any manner in its sole discretion.

Ongoing availability

4.10 To the extent reasonably practicable, and subject to the terms of this Agreement, Vodafone will ensure the Wholesale Services will be continuously available and fault-free. [2] acknowledges that Vodafone does not guarantee that the Wholesale Services will be continuously available or fault-free.

Responsibility for own services

- 4.11 Vodafone is not responsible in any way for the [2] RBI Broadband Service or the management of any [2] Resellers or [2] End Customers.

No restriction

- 4.12 The parties acknowledge and agree that this Agreement is not intended to limit or restrict in any way:

4.12.1 how or when either party rolls out, deploys or uses any new telecommunications network or system (including, without limitation, any 3G UMTS, HSPA or long-term evolution network or changes to existing networks), whether or not this new telecommunications network or system provides services that compete with any telecommunications services of the other party or any member of that other party's Group, the Vodafone RBI Broadband Services, the [2] RBI Broadband Services or any other services of either party (or any member of that party's Group, or a [2] Reseller); or

4.12.2 how or when either party markets or prices any of its services, or develops new services, whether or not these services compete with the Vodafone RBI Broadband Services, the [2] RBI Broadband Services or any services of the either party (or any member of that party's Group, or a [2] Reseller),

including, without limitation, by virtue of the fact that Vodafone may become aware, through the operation of this Agreement, of details regarding the [2] RBI Broadband Services or any services of [2] (or a member of the [2] Group or a [2] Reseller) and when those services are intended to be launched.

This does not, however, relieve Vodafone of its obligations under clauses 4.1, 8, and 16. This also does not, however, relieve [2] of its obligations under clauses 4, 5, 9.5, 10, 12, 15 and 16. It will not be assumed that Vodafone has breached any obligations of confidentiality under clause 16 solely by virtue of Vodafone undertaking any marketing activity or providing any new services around the time of the intended launch date. Vodafone and [2] acknowledge that there are likely to be public statements by [2] of the approximate date on which it will launch the [2] RBI Broadband Services and, if made, Vodafone cannot be prevented or limited in responding to the publicised impending launch in its marketing activities or service provision.

- 4.13 To avoid doubt, nothing in this Agreement will restrict or prevent Vodafone from offering services equivalent or similar to the Wholesale Services, 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 [2] or a [2] Reseller.
- 4.14 To avoid doubt, nothing in this Agreement will restrict or prevent [2] (or a member of the [2] Group or a [2] Reseller) from obtaining services equivalent or similar to the Wholesale Services, or from receiving any other services, from any third parties (including Excluded Operators) at any time before, during or after the Term.
- 4.15 The Wholesale Services are provided to [2] for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to the Wholesale Services provided to [2] under this Agreement.
- 4.16 [2] acknowledges that Vodafone may be providing the Wholesale Services without all third party consents having been obtained. In these circumstances, where Vodafone identifies a necessary consent that has not been obtained, it may need to, at any time (and whether

or not it is making the same change to Vodafone retail services), change the Wholesale Services to remove or change the element of the Wholesale Services to the extent necessary to avoid any potential liability to the third party. Vodafone will use its reasonable endeavours to consult with [2] prior to making any such removal or change.

5 [2]'S RESPONSIBILITIES

5.1 [2] will:

- 5.1.1 follow Vodafone's reasonable directions about the use of the Wholesale Service by [2] End Customers (as notified to [2] from time to time or as set out in the Operations Manual);
- 5.1.2 comply with any technical specifications specified by Vodafone in respect of a Wholesale Service;
- 5.1.3 ensure all information it gives Vodafone is correct and complete;
- 5.1.4 ensure that its use of the Wholesale Services complies with any acceptable use policy, as notified by Vodafone to [2] from time to time;
- 5.1.5 use its reasonable endeavours to ensure that [2] End Customers and [2] Resellers use the Wholesale Services and the [2] RBI Broadband Services for lawful purposes and without being a nuisance to anyone;
- 5.1.6 not interfere with the reasonable use of any service by Vodafone End Users or any other service provider of Vodafone, and use its reasonable endeavours to ensure that no [2] End Customer or [2] Reseller does so;
- 5.1.7 be responsible to Vodafone for anyone else who uses any Wholesale Service or any part of any Wholesale Service provided to [2] (including [2] End Customers and [2] Resellers), or does anything unauthorised relating to a Wholesale Service or any part of any Wholesale Service provided to [2] (including [2] End Customers and [2] Resellers);
- 5.1.8 obtain any necessary consents or licences in relation to any Intellectual Property used in the provision of the [2] RBI Broadband Services that may be required to enable Vodafone to perform its obligations under this Agreement; and
- 5.1.9 obtain, or assist Vodafone in obtaining, any third party authorisation, licence or consent necessary or prudent for Vodafone to provide the Wholesale Services to [2] (such as resource management or building consents), other than authorisations, licences or consents required generally by Vodafone to operate the Vodafone Network.

Permitted use of Wholesale Services

- 5.2 Subject to clause 5.3, [2] must only use the Wholesale Services for resale as a [2] RBI Broadband Service to [2] End Customers or [2] Resellers.

Responsibility for use of Wholesale Services

- 5.3 [2] will be solely responsible for any use of a Wholesale Service or part of a Wholesale Service by [2] End Customers and [2] Resellers, and [2] will be liable accordingly.

- 5.4 Vodafone will not be responsible for any GST treatment adopted by [2] or any [2] Reseller in relation to either its purchase of the Wholesale Services under this Agreement or its own provision of the [2] RBI Broadband Services.
- 5.5 Notwithstanding clause 9.3, Vodafone will not be liable for any costs, damages or penalties imposed as a result of any fraudulent use of the [2] RBI Broadband Services by any [2] Reseller or [2] End Customer. [2] indemnifies (and protects from any claim or proceeding) Vodafone 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 to any fraudulent use of the [2] RBI Broadband Services by any [2] End Customer or [2] Reseller. [2]'s liability under this clause 5.5 is not limited by clause 20 of this Agreement.

6 ORDERING AND AMENDING WHOLESALE SERVICES

- 6.1 [2] may request provision of the Wholesale Services from Vodafone by following the procedure set out in the Operations Manual, if any.
- 6.2 SIMs will be activated by Vodafone when they have been associated with a voice and/or a data Wholesale Service by [2] in accordance with the procedure in the Operations Manual.

No warranty as to availability of any particular Wholesale Service

- 6.3 Vodafone does not warrant that any Wholesale Service will be available by the Availability Date or by any date in response to an order. If a Wholesale Service is not available by the expected due date in response to an order, then Vodafone will promptly notify [2].

Amendments to Wholesale Services and Wholesale SPL updates

- 6.4 Vodafone may, at any time, provided 60 days advance notice is given, provide written notice to [2] that it is amending the Wholesale Services (including, without limitation for the purposes of this clause 6, amending the terms and conditions of a Wholesale Service or withdrawing a Wholesale Service). This amendment may be made by changing the Wholesale SPL (including any online version). Vodafone will provide [2] with the access details for any online version of the Wholesale SPL. Vodafone's rights under this clause 6.4 are subject to the non-discrimination provisions in clause 8. Further, Vodafone must not use this clause 6.4 to amend the maximum pricing in the Wholesale SPL.
- 6.5 [2] acknowledges that any amendment may affect those [2] End Customers that were using the relevant [2] RBI Broadband Service at the time of the amendment.
- 6.6 Where Vodafone is proposing to introduce a new Wholesale Service, then Vodafone may at any time add the Wholesale Service to the Wholesale SPL.

7 SECURITY

- 7.1 Subject to clauses 7.2 to 7.5, Vodafone may, by notice to [2], require [2] to comply with the remainder of this clause 7.1 (a **compliance notice**). If a compliance notice is given by Vodafone, [2]:
- 7.1.1 must provide credit support in the form of an unconditional guarantee, bank guarantee or letter of credit, in each case as credit enhancement for [2]'s obligation to pay for the Wholesale Services (each a **security**). The security must be in a form reasonably acceptable to Vodafone and from a bank, or other person, which has a credit rating acceptable to Vodafone; and

- 7.1.2 [2] will take steps to gain such security and in any event will gain and provide Vodafone with the security within 20 Working Days from the date of the compliance notice.
- 7.2 The initial security amount, which will apply if and when Vodafone first requires a security under clause 7.1, will be the greater of \$100,000 or the aggregate charges that Vodafone expects to receive under this Agreement over a 90 day period, based on forecasts provided by [2] prior to the date of this Agreement or (if no forecasts have been provided) as determined by Vodafone.
- 7.3 Vodafone may give a compliance notice under clause 7.1 at any time if:
- 7.3.1 [2], fails to pass any credit checking undertaken by Vodafone to Vodafone's satisfaction;
 - 7.3.2 [2] has failed to pay an amount due under this Agreement (other than where the failure to pay has been occasioned by Force Majeure under clause 30, or where the failure to pay is for an amount that has been legitimately withheld under clause 12.7, or for any other reason that the parties may agree) and that payment has not been made within 7 Working Days after the due date for that payment;
 - 7.3.3 there is a change of control (as that term is defined in clause 23.4 below) of [2];
 - 7.3.4 Vodafone is entitled to and requires [2] to provide security to Vodafone under any other agreement between the parties; or
 - 7.3.5 Vodafone has received evidence reasonably satisfactory to Vodafone that, for each of the previous two financial years of [2], [2] has reported a profit before taxation of less than the amount that Vodafone reasonably considers would be payable by [2] under this Agreement over the following 12 month period but not in any other circumstances.
- 7.4 In the event that [2] disputes Vodafone's right to give a compliance notice under clause 7.3, [2] shall comply with the compliance notice despite such dispute. However, [2] will have recourse to the dispute resolution procedure in clause 25.
- 7.5 The amount of the security under clause 7.1 may be adjusted by Vodafone and notified to [2] following the conclusion of every twelve month period following a compliance notice, based on the actual usage volumes in the previous twelve month period and anticipated usage volumes over the following 60 day period. Where Vodafone has adjusted the amount of the security, [2] will take steps to gain such revised security and in any event will gain and provide Vodafone with the revised security within 20 Working Days from the date of Vodafone's notice.

8 NON-DISCRIMINATION

- 8.1 Subject to clause 8.2, Vodafone will not discriminate against [2] End Customers, as compared to Vodafone End Customers using the Vodafone Network or (where the context requires) the particular part of the Vodafone Network, with respect to coverage area, availability, quality of service and the exercise of Vodafone's rights, powers or discretions under clauses 4.1, 4.9, 4.10, 5.1.1, 6.4, 9.10 and 17.1. However, Vodafone will not be required to provide any better standard of service to [2] End Customers or [2] Resellers, as compared to Vodafone End Customers.
- 8.2 Clause 8.1 is limited by the following factors:

- 8.2.1 the Vodafone retail mobile telecommunications service and the [2] RBI Broadband Service (as it relates to the Wholesale Services on the Vodafone Network) may not be comparable:
- (a) because the Vodafone retail mobile service may include features, functionality and service qualities that are not included in the Wholesale Services; or
 - (b) due to any intervention of [2] or any member of the [2] Group in the provision of the [2] RBI Broadband Service;
- 8.2.2 the exercise by Vodafone of its rights under this Agreement;
- 8.2.3 reasonable technical and operational practicability having regard to the Vodafone Network;
- 8.2.4 security and safety of the Vodafone Network;
- 8.2.5 existing legal duties on Vodafone to provide a defined level of service to users of services similar to the Wholesale Services or Vodafone End Customers;
- 8.2.6 the inability, or likely inability, of [2] or any [2] Reseller to comply with any reasonable conditions on which the Wholesale Services are supplied;
- 8.2.7 [2] failing to comply with an obligation under this Agreement, the Implementation Plan or the Operations Manual and fulfilment of that obligation is required to enable the provision of the Wholesale Services;
- 8.2.8 any request for a lesser standard of service from [2] or any [2] Reseller; and
- 8.2.9 any difference in the provision of the [2] RBI Broadband Service that arises because of the nature of the Wholesale Services.
- 8.3 Clause 8.1 does not require Vodafone to:
- 8.3.1 make available, as Wholesale Services, any of the services or service elements that Vodafone makes available to Vodafone End Customers or any other Vodafone customers, end users or resellers; or
 - 8.3.2 provide Wholesale Services that are the same as a Vodafone retail service.

9 RETAIL PROPOSITION

Customer relationship

- 9.1 All [2] End Customers and [2] Resellers will be customers of [2] and, as users of the [2] RBI Broadband Services, will not be customers of Vodafone for the purposes of this Agreement. To avoid doubt, Vodafone does not grant any right upon the [2] End Customers or [2] Resellers to receive the Wholesale Services pursuant to this Agreement. The only rights conferred (to the extent that any are conferred under this Agreement) are upon [2] as a party to this Agreement.
- 9.2 [2] will not enter into an agreement, arrangement or understanding with a telecommunications service provider whose business is located outside of New Zealand ("Overseas Provider") that would allow any customer or end-users of that telecommunications service provider to directly or indirectly use the Wholesale Services.

This clause 9.2 shall not limit customers or end users of an Overseas Provider who are also [2] End Customers being able to use the Wholesale Services, provided that:

- 9.2.1 They are not [2] End Customers, and are not using the Wholesale Services as a result of any agreement between any member of the [2] Group and the Overseas Provider; and
 - 9.2.2 They are using the Wholesale Services in their capacity as [2] End Customers.
- 9.3 [2] will provide and manage all services provided to [2] End Customers and [2] Resellers, including without limitation:
- 9.3.1 pricing of all services provided to [2] End Customers or [2] Resellers (as the case may be);
 - 9.3.2 customer acquisition and management activities, including advertising, marketing, packaging and marketing collateral;
 - 9.3.3 activation and deactivation of [2] End Customers;
 - 9.3.4 billing and collection, including bad debts;
 - 9.3.5 contact with the Police and other governmental authorities for legal intercept and fraud investigation purposes;
 - 9.3.6 Wireless Terminal subsidies;
 - 9.3.7 provision of Wireless Terminals and Wireless Terminal repairs to [2] End Customers or [2] Resellers (as the case may be), including warranty repairs;
 - 9.3.8 provision of SIMs and SIM repairs, including warranty repairs; and
 - 9.3.9 help desk services (including services relating to [2] End Customer billing enquiries, but subject to any help desk services that Vodafone may provide to [2] under the Operations Manual).
- 9.4 [2] End Customers will be, and only they will be, the ultimate recipient of:
- 9.4.1 the Wholesale Services; and
 - 9.4.2 the [2] RBI Broadband Services.

SIMs and Wireless Terminals

- 9.5 Vodafone will, at [2]'s reasonable request, and for the charge to be advised on request by Vodafone to [2], supply [2] with non-branded SIMs in lots of 50, in accordance with the requirements of the Operations Manual.
- 9.6 Ownership in the SIMs will not pass to [2] or any [2] End Customer or [2] Reseller, but Vodafone will grant [2] sufficient rights to use the SIMs for the purposes of using the Wholesale Services pursuant to the terms of this Agreement. All SIMs used on the Vodafone Network will remain the property of Vodafone.
- 9.7 [2] acknowledges that there may be parts of the SIMs provided by Vodafone that are licensed exclusively for use on the Vodafone Network, and which may not be transferred by Vodafone to [2].

- 9.8 [2] may acquire Wireless Terminals and associated Software from any source that [2] may select, provided that no Wireless Terminal may be used on the Vodafone Network by [2], any [2] End Customer or [2] Reseller until both the Wireless Terminal and the Software installed on that Wireless Terminal have been approved by Vodafone in accordance with the procedure set out in the Operations Manual.
- 9.9 From time to time, Vodafone will provide [2] with a list of Wireless Terminals and associated Software that are pre-approved for use on the Vodafone Network. Vodafone may change this list at Vodafone's discretion. Vodafone will notify [2] of any changes to the list in a timely manner.
- 9.10 Vodafone will make available to [2] a Wireless Terminal and Software approval process that may be used by [2] in relation to any Wireless Terminal or Software that have not been approved by Vodafone pursuant to clause 9.9. Use of the process will be charged for by Vodafone, and paid for by [2], in accordance with the terms of the Operations Manual.
- 9.11 Vodafone is not responsible for, and does not warrant, the availability, capability or suitability of any SIM, Wireless Terminal or Software for use with the Wholesale Services, notwithstanding that Vodafone may have provided, tested or approved that SIM, Wireless Terminal or Software or type of SIM, Wireless Terminal or Software.
- 9.12 Vodafone may immediately suspend the provision of Wholesale Services in respect of any Wireless Terminal and/or associated Software where (in Vodafone's sole opinion):
- 9.12.1 that Wireless Terminal; or
- 9.12.2 the Software associated with that Wireless Terminal,
- have not been approved by Vodafone in accordance with clauses 9.8, 9.9, or 9.10 (or where the approval has been withdrawn) or if any change is made to that Wireless Terminal or Software.
- 9.13 [2] 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 to the use by any [2] End Customer of any SIM, Wireless Terminal or Software that was not approved by Vodafone pursuant to clauses 9.8, 9.9, or 9.10 if any change is made to any SIM, Wireless Terminal or Software. [2]' liability under this clause 9.13 is not limited by clause 20 of this Agreement where the relevant SIM, Wireless Terminal, Software was provided to the [2] End Customer by or on behalf of [2], any member of the [2] Group or any [2] Reseller.

Miscellaneous

- 9.14 Subject to clause 4.13, [2] will not use the network or other infrastructure of an Excluded Operator in providing the [2] RBI Broadband Services to [2] End Customers.

10 BRANDING, SALES AND MARKETING

- 10.1 Subject to the remainder of this clause 10 and the Operations Manual, wherever technically and economically practicable, Vodafone will provide the Wholesale Services to [2] without the attachment of the Vodafone brand or other brands (this form of service provision being described as a "white-label basis").
- 10.2 Subject to clause 10.4, [2] will not, and [2] will ensure that the [2] Resellers do not:

- 10.2.1 use any brand in the sale, marketing and advertising of the [2] RBI Broadband Services that Vodafone in good faith considers is likely to bring the Vodafone brand into disrepute;
 - 10.2.2 represent that Vodafone participates (other than as a Wholesale Services supplier pursuant to clause 10.4.2) in the provision of the [2] RBI Broadband Services to [2] End Customers; nor
 - 10.2.3 represent that [2] or a [2] Reseller is approved by, or an agent or dealer of, or affiliated with Vodafone.
- 10.3 Subject to clause 10.2, [2] is only permitted to use the Wholesale Services to provide the [2] RBI Broadband Services, or to allow [2] Resellers to provide the [2] RBI Broadband Services, to [2] End Customers if those [2] RBI Broadband Services are provided using the [2] brand.
- 10.4 [2] will only use, and will ensure that any [2] Reseller will only use, Vodafone's name, logo, brand or trademark in relation to the [2] RBI Broadband Services:
- 10.4.1 where it is not technically and economically practicable for Vodafone to remove the Vodafone brand or other brands from the Wholesale Services in accordance with clause 10.1 and it is not technically and economically practicable for [2] to remove those brands for use in any part of the [2] RBI Broadband Services; or
 - 10.4.2 with Vodafone's prior written approval (which approval may be withheld at Vodafone's absolute and sole discretion), except that this approval will not be required if [2] is only referring to Vodafone as the Wholesale Services supplier and then is only using Vodafone's name in that regard and not its logo or brand; or
 - 10.4.3 where the Wholesale Services include a service which is supplied to [2] for use as part of its [2] RBI Broadband Service in a form which contains the Vodafone name, logo, brand or trademark.
- Where it is not technically and economically practicable for Vodafone to remove the Vodafone brand or other brands from the Wholesale Services in accordance with clause 10.1, and it is technically and economically practicable for [2] to remove these brands, then [2] shall do so in accordance with the requirements set out in the Operational Procedures. To the extent that it is technically and economically practicable to remove those brands before using the Wholesale Services as part of the [2] RBI Broadband Services, [2] shall do so in accordance with the requirements set out in the Operations Manual.
- 10.5 Where [2] is using, or any [2] Reseller is using, Vodafone's name, logo, brand or trademark in relation to the [2] RBI Broadband Services in accordance with clause 10.4, it shall only do so in accordance with the requirements set out in the Operations Manual.
- 10.6 [2] will ensure that a provision is included in each contract with [2] End Customers (and [2] will ensure that each [2] Reseller includes such a provision in its contract with [2] End Customers) which:
- 10.6.1 defines the "Network Provider" as the host network being used by [2] for the provision of [2] RBI Broadband Services;
 - 10.6.2 provides that the [2] End Customer consents to [2] sharing information about that [2] End Customer with the Network Provider to the extent necessary for the Network Provider to provide the Wholesale Services and to comply with any fraud investigation co-operation or emergency response services requirements and

that the [2] End Customer consents to the Network Provider using that information for these purposes;

10.6.3 provides that the Network Provider does not provide, grant or confer any benefit, right or privilege on any [2] End Customer; and

10.6.4 excludes (to the maximum extent permitted by law) all liability of the Network Provider and its group and personnel arising from, or in connection with, those services.

10.7 [2] acknowledges that the Operations Manual will include further detail of requirements on [2] related to the use of the name, logo, brand or trademark of any Nominated Supplier (to the extent imposed on Vodafone under its contractual arrangements, or the contractual arrangements with any member of the Vodafone Group, in relation to the service from the Nominated Supplier) and that [2] and Vodafone will need to agree [2]' liability in relation to failure to comply with such requirements as a part of agreeing the Operations Manual.

11 RESALE

11.1 [2] may resell, re-supply or wholesale the [2] RBI Broadband Services to, and only to ([2] End Customers excepted), a [2] Reseller. Vodafone will not be required to provide any support to any [2] Reseller, or have any other dealings with any [2] Reseller. Vodafone is not responsible for providing any services directly to any [2] Reseller, including in circumstances where a [2] Reseller contacts Vodafone for assistance. In this case, that [2] Reseller will be directed to contact [2], and [2] will then provide the necessary assistance to the [2] Reseller. [2] will not direct or encourage any [2] Reseller to contact Vodafone for assistance.

11.2 [2] will be solely responsible for any arrangement it enters into for the resale, re-supply or wholesale of the [2] RBI Broadband 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 Wholesale Services in order to accommodate a [2] Reseller. This clause 11.2 does not derogate from Vodafone's general obligation under this Agreement to supply the Wholesale Services to [2].

11.3 [2] will not, and will ensure that members of the [2] Group and [2] Resellers do not, appoint any person other than a [2] Reseller as an agent to enter into agreements on [2]', or members of the [2] Group's or the [2] Reseller's, behalf for the provision of [2] RBI Broadband Services.

11.4 [2] will not, and will ensure that members of the [2] Group and [2] Resellers do not, sell the [2] RBI Broadband Services through any of the distribution channels that are used exclusively by Vodafone. Vodafone will, upon written request by [2], provide details of its exclusive distribution channels to [2]. If [2] is uncertain whether a particular distribution channel is used exclusively by Vodafone, [2] will notify Vodafone and request clarification on this point before proceeding with negotiating an arrangement for sales through that channel.

11.5 [2] will ensure that a provision is included in each contract with [2] Resellers which:

11.5.1 provides that Vodafone does not provide, grant or confer any benefit, right or privilege on any [2] Reseller; and

11.5.2 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 Wholesale Services.

12 CHARGES

Billing

- 12.1 The quality of billing of services under this Agreement by Vodafone will be to a standard which is comparable to the quality of the billing provided by Vodafone to its major customers and network operators in respect of comparable services. Without limiting the foregoing, all charges and costs payable by [2] will, when invoiced to [2], include reasonable information in accordance with normal commercial practice to enable [2] to check the accuracy of the amount charged.

Charges

- 12.2 [2] will pay the charges calculated in accordance with the Wholesale SPL (the **charges**), including during the period of any suspension under clauses 4.7, 9.12 or 17.
- 12.3 Vodafone may following the Commencement Date amend the Wholesale SPL to reflect any changes in the Producer Price Input Index (all industries), provided that Vodafone may not amend the Wholesale SPL more than once in any 12 month period and any change will not be greater than the % change in the Producer Price Input Index (all industries) over that same period .
- 12.4 All amounts invoiced by Vodafone under this Agreement must be paid by [2] by electronic funds transfer in cleared funds to a place or bank account nominated by Vodafone free of any deduction, set off or withholding. Payments must not be made by credit card.
- 12.5 Vodafone may deduct from, or set off against, any amount that is or may become payable by Vodafone to [2], any amount that is or may become payable to Vodafone by [2].

Due Date

- 12.6 All amounts invoiced by Vodafone to [2] under this Agreement will be due and payable by [2] on or before the Due Date for the relevant invoice.

Dealing with Invoice Errors

- 12.7 Except as expressly provided in this Agreement, if [2]:
- 12.7.1 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 (an **Invoice Error**), which is obvious on the face of the invoice and which has resulted in Vodafone overcharging [2] on that invoice; and
- 12.7.2 before three Working Days before the due date for payment, gives notice setting out in full details of the invoice, the Invoice Error, the grounds for [2] belief that the Invoice Error exists and the amount by which [2] believes that Vodafone has overcharged it on that invoice by reason of the Invoice Error,
- [2] 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 the parties have settled in accordance with clause 12.9 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, [2] must supply a full extract showing each withheld item to Vodafone within 10 days of the Due Date for payment.
- 12.8 If [2] fails to follow the notice requirements set out in clause 12.7.2, then Vodafone may treat any resulting withholding or deduction by [2] as a breach of this Agreement.

- 12.9 Following the giving of any notice under clause 12.7.2, the parties 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 notice referring the matter directly to an independent telecommunications accounting expert (the **Expert**) to be finally resolved and, unless otherwise agreed in writing:
- 12.9.1 the parties must endeavour to appoint a single Expert. If, within 5 Working Days of the notice under this clause 12.9 being given, the parties are unable to agree on a single Expert, the Expert shall be appointed by the President of the Institute of Chartered Accountants of New Zealand;
 - 12.9.2 the Expert must adopt a procedure which, in the Expert's opinion, is the most simple, fair and expeditious procedure possible in the circumstances for determining the disputed issues;
 - 12.9.3 the provisions of the Arbitration Act 1996 will not apply to any procedure under this clause 12.9;
 - 12.9.4 the parties will provide the Expert with any information that the Expert reasonably requires;
 - 12.9.5 either party may identify information provided to the Expert as being Confidential Information, in which case the Expert shall be a Receiving Party for the purposes of clause 15. The 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 15;
 - 12.9.6 the Expert must use reasonable endeavours to make a decision on the claim of an Invoice Error within 30 Working Days of appointment; and
 - 12.9.7 the costs of the Expert shall be paid as follows:
 - (a) if the Expert decides that there is no Invoice Error or, as a result of an Invoice Error the amount of the invoice is increased after correction, then [2] will pay the costs of the Expert;
 - (b) if the Expert decides that there is an Invoice Error and the amount of the invoice is reduced by 5% or less after correction, then [2] and Vodafone will equally share and pay the costs of the Expert; and
 - (c) if the Expert decides that there is an Invoice Error and the amount of the invoice is reduced by more than 5% after correction, then Vodafone will pay the costs of the Expert.
- 12.10 If it is agreed by the parties or found by the Expert that an Invoice Error exists in the invoice then, depending on whether the amount properly payable by [2] 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 [2] or Vodafone must forthwith pay to the other the amount of the difference between the amount paid and the amount properly payable by [2] on the invoice after correction of that Invoice Error, plus:
- 12.10.1 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, or the date clause 12.14 becomes applicable, whichever is earlier; or

12.10.2 in the case of an overpayment, interest on the amount of the difference at the Bill Rate (as at the date [2] made the overpayment) plus 1% from the date it made the overpayment to the date of payment of the amount of the difference, or the date clause 12.14 becomes applicable, whichever is earlier.

12.11 If it is agreed by the parties or found by the Expert that there is not an Invoice Error in the invoice, [2] 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, or the date clause 12.14 becomes applicable, whichever is earlier.

Settling other invoicing disputes

12.12 No later than 6 months after the Due Date of any invoice, [2] 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 [2]' belief together with any supporting evidence available from its records. The parties must settle the dispute in accordance with clause 12.13. To avoid doubt, clauses 12.9 to 12.13 do not apply to any notice given under this clause 12.12, and clauses 12.15 and 12.16 do not apply to any notice given under clause 12.7.2.

12.13 The parties must use reasonable endeavours to settle promptly any dispute under clause 12.12. If they do not settle the dispute by agreement within 40 Working Days after notice was given under clause 12.12, either party may give notice referring the matter directly for settlement by arbitration under clause 21 without the need for prior negotiation. The arbitration must commence no earlier than 10 Working Days after the date the notice is given and the terms of the reference must be confined to that claim or dispute.

12.14 If a dispute under clause 12.12 is settled in favour of [2], 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 or the date clause 12.12 becomes applicable, whichever is earlier.

Charges omitted from invoices

12.15 Nothing in this Agreement or in the terms of any invoice or statement shall prejudice Vodafone's right to charge [2] for any services under this Agreement, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted. This right shall be limited in the following ways:

- (a) subject to clause 12.15(b), if the omitted charge is not raised with [2] by Vodafone within 30 days after the date of the provision of the relevant service, the charge may be made only if [2] manages to recover the corresponding charge from the relevant End Customer; and
- (b) if the omitted charge is not raised with [2] by Vodafone within 90 days from the date of the provision of the relevant service, no charge may be made for that service (i.e. the omitted charge ceases to be payable by [2]).

This clause 12.15 shall survive termination of this Agreement.

Interest on unpaid amounts

12.16 Where an amount due from [2] to Vodafone under this Agreement remains unpaid after the Due Date of the relevant invoice, then [2] 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 percent 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.

- 12.17 [2] will continue to be liable to pay for any charges incurred between the time of termination of any Wholesale Service and the actual discontinuance of the relevant Wholesale Service.
- 12.18 Nothing in clause 20 will limit or exclude [2]'s liability to pay interest to Vodafone under this clause 12, should such a liability arise.
- 12.19 The parties record that the interest payable under this clause 12 constitutes liquidated damages and that the interest rate formulae set out in this clause 12 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.

Withholding tax

- 12.20 [2] will pay all charges under this Agreement without set-off, counterclaim, required withholding or deduction unless prohibited by any applicable law. If [2] is obliged by any applicable law to deduct withholding tax from the charges, [2] will make all necessary filings in order to ensure the provisions of the applicable law apply to the charge. [2] will request from Vodafone in a timely manner all necessary information required to make the relevant filings.
- 12.21 If withholding tax is payable by [2] in respect of the charges, [2] will, simultaneously with paying the charges under this Agreement, 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 [2] has accounted to the relevant authority for the sum withheld or deducted.
- 12.22 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 [2] but paid to Vodafone in accordance with clause 12.21, will be reimbursed by Vodafone to [2] 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.

Miscellaneous

- 12.23 Nothing in this Agreement or in the terms of any invoice or statement shall prejudice Vodafone's right to charge [2] for any services or other amount due under this Agreement, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted.
- 12.24 The usage charges set out in this Agreement apply during the course of any testing or trials by [2] of the Wholesale Services, including any such testing or trials held prior to the Availability Date.
- 12.25 Under no circumstances does payment of any amount unpaid under this Agreement release [2] from liability for any interest payable on that amount.
- 12.26 Neither [2]'s obligation to pay interest under this Agreement, nor the performance of that obligation, prejudices Vodafone's rights in respect of [2]' non-payment of an amount on its due date.

- 12.27 [2] 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 Agreement.
- 12.28 All charges and other prices in this Agreement (including the Wholesale SPL) are exclusive of GST, if any. If GST is chargeable in respect of any amount payable, [2] shall, upon receipt of a valid tax invoice, pay to Vodafone the GST chargeable in respect of that payment.

13 NUMBERING AND NUMBER PORTABILITY

- 13.1 Vodafone will make Geographic Service Numbers from the Vodafone Geographic Service Number Range available to [2] End Customers, facilitate the porting to the Wholesale Services of [2] End Customers Geographic Service numbers, and manage Geographic Service Number porting requests from [2] End Customers, in accordance with the Operations Manual.
- 13.2 [2] will, at its own expense, execute all such documents and do all such acts and things as may reasonably be required by Vodafone.
- 13.3 Vodafone will notify [2] when it is ready to begin activating port requests for numbers to be ported into the Vodafone Network.

14 OPERATIONS MANUAL

- 14.1 The parties shall comply with the terms and conditions set out in the Operations Manual.
- 14.2 Vodafone will notify [2] of any amendment to the Operations Manual, which will take effect no earlier than 60 days from the date of the notice.
- 14.3 The Operations Manual detail the operational procedures for the Wholesale Services and certain other terms and conditions (which may include charges payable by [2]), including (without limitation):
- 14.3.1 the format of, and processes for, ordering;
 - 14.3.2 not used;
 - 14.3.3 forecasting requirements;
 - 14.3.4 the provision of support services to [2] and [2] End Customers (first level customers support and service to be provided by [2], Vodafone support systems will take over issue resolution beyond first level support);
 - 14.3.5 ongoing training of [2] Group employees and contractors;
 - 14.3.6 billing processes (including billing information to be provided in electronic form by Vodafone to [2] sufficient for [2] to identify the charges applying to each [2] End Customer);
 - 14.3.7 requirements for making changes or additions to the available Wholesale Services;
 - 14.3.8 requirements for the migration of Vodafone End Customers to become [2] End Customers and migration of [2] End Customers to become Vodafone End Customers;

- 14.3.9 the provision of billing feeds and CDRs;
- 14.3.10 contact between the parties in relation to provisioning and faults;
- 14.3.11 the information required in relation to particular [2] End Customers to enable Vodafone to provide the Wholesale Services and to comply with any interception, security, fraud investigation or emergency response requirements;
- 14.3.12 assistance to be provided to the law enforcement agencies, authorised interception agencies and emergency services where urgent action is required;
- 14.3.13 tracking and prevention of nuisance calls;
- 14.3.14 reporting of faults; and
- 14.3.15 requirements for the migration of [2] End Customers to another service following the termination or expiry of this Agreement.

15 INTELLECTUAL PROPERTY RIGHTS

- 15.1 Unless the parties otherwise agree in writing:
 - 15.1.1 all Intellectual Property which originates from, or is owned or developed by, the Vodafone Group will remain in the ownership of the Vodafone Group;
 - 15.1.2 all Intellectual Property which originates from, or is owned or developed by, the [2] Group will remain in the ownership of the [2] Group;
 - 15.1.3 all Intellectual Property which originates from, or is owned or developed by, any other person and which is incorporated into the SIMs, Wireless Terminals, Software or other technology used in the provision of the Wholesale Services will remain in the ownership of that other person; and
 - 15.1.4 where Intellectual Property is owned or has been developed by the Vodafone Group for the purposes of [2] observing or performing obligations under this Agreement, then [2] 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 Agreement, until such time as this Agreement is terminated.
- 15.2 Nothing in this Agreement will confer, or be deemed to confer, on [2], any member of the [2] Group, any [2] End Customer or any [2] 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 15.
- 15.3 Notwithstanding clause 15.1.2, all Intellectual Property rights in any improvements or changes to any Wholesale Service devised or made by anyone during the time Vodafone is providing the Wholesale Services to [2] belong to Vodafone.
- 15.4 [2] will not be entitled to sub-licence (except to [2] Resellers and [2] End Customers and then only to the extent necessary for the observance or performance of this Agreement) any Intellectual Property of the Vodafone Group where it has received a licence to use that Intellectual Property under clause 15.1. For the avoidance of doubt, [2] will not be entitled to sub-licence any Intellectual Property of the Vodafone Group for use outside of New Zealand.

16 CONFIDENTIAL INFORMATION

16.1 For the purposes of this clause 16, the party:

16.1.1 owning or supplying Confidential Information will be called the **Supplying Party**;
and

16.1.2 receiving Confidential Information will be called the **Receiving Party**;

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

Publicity

16.2 Subject to clause 16.3, neither party shall make any announcement, or comment upon, or originate any publicity or press release or otherwise provide any information to any third party concerning this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld or delayed.

Submissions to the Commission

16.3 Either party (the **disclosing party**) may refer to and disclose all or any part of this Agreement in any form of submissions or correspondence to the Commission, provided that:

16.3.1 where a confidentiality order has been issued by the Commission, the disclosing party requests that the information be protected from disclosure to the general public under an applicable Commission confidentiality order under the Telecommunications Act 2001 or the Commerce Act 1986 (as the case may be);
and

16.3.2 in all cases, the disclosing party requests that, if and when the information becomes subject to the Official Information Act 1982, the information be protected from requests for public disclosure under any applicable ground for availability of publicly held information; and

16.3.3 the disclosing party gives the other party at least one Working Day's prior notice of disclosure (but the other party's consent to the disclosure is not required).

16.4 No information procured under clause 21 will be disclosed to the Commission pursuant to this clause 16, except if there is a legal requirement on the party that receives the information to provide that information to the Commission.

Confidential Information

16.5 Subject to clauses 16.2 and 16.3, 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 Agreement:

16.5.1 adopt (if necessary) and maintain procedures adequate to protect the Confidential Information;

16.5.2 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;

16.5.3 ensure that neither it nor any of its officers, employees, contractors or agents who receive the Confidential Information discloses or causes or permits to be disclosed, without the prior written consent of the Supplying Party, the Confidential Information or any part of it to any person other than to:

- (a) the Receiving Party's professional advisers; or
- (b) those of the Receiving Party's officers, employees, contractors or agents directly concerned in the implementation or operation of this Agreement (but not, where [2] 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;

16.5.4 not make use of, or cause or permit use to be made of, the Confidential Information or any part of it in any manner whatsoever, other than as necessary for the implementation or operation of this Agreement;

16.5.5 enter into such other agreements as the Supplying Party may reasonably require regarding any part of the Confidential Information which is disclosed by the Supplying Party under licence from a third party; and

16.5.6 at the Supplying Party's request, use reasonable endeavours to cause any person to whom the Confidential Information is disclosed in accordance with clause 16.5.3 (other than officers and employees of the Receiving Party) to provide written undertaking to the Supplying Party, in terms reasonably acceptable to the Supplying Party, to receive and preserve in confidence the Confidential Information.

To avoid doubt, the parties agree that, if an officer, employee, contractor or agent of the Receiving Party discloses or uses Confidential Information other than as permitted by clauses 16.5.3 and 16.5.4, 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.

16.6 Nothing in this Agreement prevents Vodafone from disclosing standard industry offers, templates or generic information on the terms and conditions on which Vodafone provides wholesale services.

Injunctive relief

16.7 Each party acknowledges that its breach of any of the provisions of clause 16 may cause the other party (and any third party which has given the other party a licence to use or disclose any Confidential Information for the purposes of this Agreement) irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, a party may seek and obtain injunctive relief (from any court of competent jurisdiction until such time as an arbitral tribunal is constituted and, thereafter, from the tribunal) against the breach or threatened breach of clause 16 in addition to any other remedies that may be available.

17 SUSPENSION

Suspension of service

- 17.1 Vodafone may suspend or restrict the provision of any Wholesale Service in whole or in part where:
- 17.1.1 Vodafone is entitled to terminate this Agreement pursuant to clause 18;
 - 17.1.2 Vodafone is required or instructed to do so by a governmental agency or governmental authority;
 - 17.1.3 in the event of an Outage;
 - 17.1.4 Vodafone carries out system and network management and/or maintenance or upgrades of the Vodafone Network; or
 - 17.1.5 Vodafone reasonably requires the suspension or restriction of the Wholesale Service for any other reason, including in respect of particular [2] End Customers, [2] Resellers or particular SIMs, Wireless Terminals or Software or type of SIMs, Wireless Terminals or Software.
- 17.2 In suspending or restricting the provision of any Wholesale Service under clauses 17.1.2 to 17.1.5, Vodafone will only take steps reasonably required to affect that suspension or restriction.
- 17.3 Suspension or restriction of provision of any Wholesale Service under this clause 17 includes refusal of any order by [2] for any Wholesale Service.

Suspension for [2] End Customers

- 17.4 Vodafone may, at any time, deactivate any service numbers of a [2] End Customer in the following circumstances:
- 17.4.1 if Vodafone can show that there has been fraud or illegal activity by the [2] End Customer in its use of the Wholesale Services;
 - 17.4.2 if any Wireless Terminal, SIM or other equipment of the [2] End Customer is causing interference with the Vodafone Network;
 - 17.4.3 if Vodafone believes or suspects the [2] End Customer is jeopardising the operation and quality of the Vodafone Network or the services Vodafone supplies to Vodafone End Customers; or
 - 17.4.4 if Vodafone is required or instructed to do so by a governmental agency or governmental authority.

18 TERMINATION

- 18.1 This Agreement may be terminated immediately by a party (the **terminating party**) serving notice on the other party (the **other party**) if:
- 18.1.1 the other party has committed a material breach of this Agreement, and in the case of such material breach:

- (a) the terminating party has given a notice to the other party specifying the material breach and requiring remedy of that breach;
 - (b) the other party has not remedied that breach within 10 Working Days of the date of receipt of the relevant notice; and
 - (c) the other party is not in dispute (excluding any vexatious dispute) with the terminating party in relation to that breach;
- 18.1.2 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 \$100,000 and is not discharged or stayed within 20 Working Days;
- 18.1.3 the other party:
- (a) is put into (and remains in) liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the terminating party, such approval not to be unreasonably withheld);
 - (b) is wound up or dissolved in circumstances where it is not reconstituted;
 - (c) enters into (and remains in) a compromise with its creditors or any class thereof in an amount greater than \$100,000;
 - (d) is placed (and remains) under official management or made (and remains) subject to statutory management under the Corporations (Investigation and Management) Act 1989; or
 - (e) 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;
- 18.1.4 the other party:
- (a) is required by law and has failed within the time specified by law to obtain and maintain a licence, permit or other form of official authorisation which is required by the other party in order for it to provide lawfully the Wholesale Services (in the case of Vodafone) or the [2] RBI Broadband Services (in the case of [2]) and the failure continues unremedied;
 - (b) fails to maintain such licence, permit or other official authorisation, and the failure continues unremedied; or
 - (c) is otherwise prevented or substantially prevented or restricted by any law from (in the case of Vodafone) providing lawfully the Wholesale Services or (in the case of [2]) the [2] RBI Broadband Services (as the case may be), including as a result of termination or revocation of any licence, permit or other official authorisation; or
- 18.1.5 the other party fails to pay any amount which is due and payable under this Agreement 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 Agreement pursuant to this clause and that other party has failed to rectify this non-payment during that notice period.

- 18.2 Acceptance of part payment or the continued supply of the Wholesale Services by Vodafone, either before or after its powers to terminate have become exercisable, does not constitute a waiver of Vodafone's rights under this clause 18.
- 18.3 Termination or expiry of this Agreement shall not operate as a waiver of any breach by a party of any of the provisions of this Agreement, and shall be without prejudice to any:
- 18.3.1 rights, liabilities or obligations of either party which have accrued up to the date of such termination or expiry; and
- 18.3.2 of clauses 1, 12, 15, 16, 18.2–18.5, 20, 21, 24, 25, 26 to 28, 30, 31, and any other terms which expressly or impliedly are intended to survive termination or expiry, which shall continue in full force and effect.
- 18.4 On termination or expiry of this Agreement 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
- 18.5 Notwithstanding the termination or expiry of this Agreement, any sums payable by either party to the other pursuant to this Agreement at termination or expiry shall be paid in the same manner as if this Agreement had not terminated or expired.

19 WARRANTIES

- 19.1 [2] warrants and represents to Vodafone on a continuing basis, from the date of this Agreement, that:
- 19.1.1 [2] is duly constituted as a company under the Companies Act;
- 19.1.2 the constituting documents of [2] empower [2] to enter into this Agreement and to do all things which are required by this Agreement;
- 19.1.3 [2] is not aware of any other act, matter, thing or circumstance by reason of which [2] is not able to, or may not be able to in the future, perform its obligations under this Agreement;
- 19.1.4 all action has been taken by [2] required for the proper authorisation and execution of this Agreement to render this Agreement binding upon and legally enforceable against [2] in accordance with its terms;
- 19.1.5 [2] is tax resident in New Zealand with the tax number [5] 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 [2] changes tax residency, [2] will immediately provide any documentation required by Vodafone evidencing its new tax residency. If Vodafone is not reasonably informed of a change in tax residence by [2], [2] will indemnify and hold Vodafone harmless against any resulting costs, including but not limited to withholding tax, interest and penalties thereon. [2]'s liability under this clause 19.1.5 is not limited by clause 20 of this Agreement; and
- 19.1.6 [2] is GST registered in New Zealand and the provision of [2] RBI Broadband Services (by [2] or any [2] Resellers) is a supply (as defined in the Goods and Services Tax Act 1985) that is subject to GST, and advises that its GST registration number is [6].

20 COMPENSATION AND LIABILITY

Liability of Vodafone to [2]

- 20.1 Vodafone will only be liable to [2] for the following:
- 20.1.1 where a Wholesale Service is affected because of a default by Vodafone (excluding a breach of the Operations Manual) and [2] reasonably incurs direct expenses as a direct result; or
 - 20.1.2 in providing a Wholesale Service, Vodafone causes physical damage to [2]' property, or to the property of a [2] End Customer, through not taking reasonable care.
- 20.2 If this happens, Vodafone will:
- 20.2.1 refund all the net direct expenses reasonably incurred by [2]; and
 - 20.2.2 pay any direct and reasonable costs of repairing the physical damage,
- up to the maximum amounts set out in clause 20.8, as compensation, except to the extent that the expenses or costs resulted from any act or omission of [2].
- 20.3 Vodafone will not be liable under clause 20.1 for:
- 20.3.1 any loss of revenue, business or profits, anticipated savings or any indirect or consequential loss whatever, by [2] or any third party; or
 - 20.3.2 any liability incurred by [2] to any [2] Reseller, [2] End Customer or third party.
- 20.4 For Vodafone to be liable to [2] under clause 20.1, [2] must notify Vodafone in writing of [2]' claim for compensation within 120 days after the Wholesale Service is first affected, or the property of [2], [2] End Customer or third party is damaged.
- 20.5 Neither Vodafone, nor any member of the Vodafone Group, is liable to [2] for any breach of, or loss under, this Agreement, where that breach is directly or indirectly attributable to [2].
- 20.6 Except for any liability to [2] by Vodafone under clause 20.1, neither Vodafone nor any other member of the Vodafone Group, nor their respective officers, employees, contractors and agents, is liable to [2], any member of the [2] Group, any [2] Reseller or any [2] End Customer for anything caused by or resulting from anything any of them does or does not do, or delays in doing, in relation to this Agreement and whether or not it is contemplated or authorised by this Agreement. This exclusion applies:
- 20.6.1 whatever [2], any member of the [2] Group, any [2] Reseller or any [2] End Customer is claiming for (including loss of profits or business); and
 - 20.6.2 however liability arises or might arise whether in contract, tort (including negligence) or otherwise.
- 20.7 This clause 20.7 and clause 20.8 apply where:
- 20.7.1 [2] is entitled to compensation or any other monetary amount from Vodafone; or

- 20.7.2 Vodafone, or any other member of the Vodafone Group, or any of their respective officers, employees, contractors and agents, is liable to [2], any member of the [2] Group, any [2] Reseller or any [2] End Customer and, for any reason, cannot rely on the exclusion of liability set out in clause 20.6.
- 20.8 The maximum combined liability of Vodafone and all members of the Vodafone Group and their respective officers, employees, contractors and agents (together) to [2], any member of the [2] Group, any [2] Reseller or any [2] End Customer and anyone else who uses the Wholesale Service provided to [2] (together) under or in relation to this Agreement (the **maximum Vodafone liability**) is
- 20.8.1 in respect of any one event or related series of events \$1,000,000; and
- 20.8.2 in any 12 month period, irrespective of the number of events, \$3,000,000.

Liability of [2] to Vodafone

- 20.9 Subject to clause 20.18 below, [2] will only be liable to Vodafone for the following:
- 20.9.1 where [2] breaches its obligations under this Agreement and Vodafone reasonably incurs direct expenses as a direct result; or
- 20.9.2 in using a Wholesale Service, [2] causes physical damage to Vodafone's property, or to the property of a Vodafone End Customer, through not taking reasonable care.
- 20.10 If this happens, [2] will:
- 20.10.1 refund all the net direct expenses reasonably incurred by Vodafone; and
- 20.10.2 pay any direct and reasonable costs of repairing the physical damage,
- up to the maximum amounts set out in clause 20.16, as compensation, except to the extent that the expenses or costs resulted from any act or omission of Vodafone.
- 20.11 [2] will not be liable under clause 20.9 for:
- 20.11.1 any loss of revenue, business or profits, anticipated savings or any indirect or consequential loss whatever, by Vodafone or any third party; or
- 20.11.2 any liability incurred by Vodafone to any Vodafone End Customer or third party.
- 20.12 For [2] to be liable to Vodafone under clause 20.9, Vodafone must notify [2] in writing of Vodafone's claim for compensation within 120 days after the Wholesale Service is first affected, or the property of Vodafone, Vodafone End Customer or third party is damaged.
- 20.13 Neither [2], nor any member of the [2] Group, is liable to Vodafone for any breach of, or loss under, this Agreement, where that breach is directly or indirectly attributable to Vodafone.
- 20.14 Except for any liability to Vodafone by [2] under clauses 20.9 and 20.18, neither [2] nor any other member of the [2] Group, nor their respective officers, employees, contractors and agents, is liable to Vodafone, any member of the Vodafone Group or any Vodafone End Customer for anything caused by or resulting from anything any of them does or does not do, or delays in doing, in relation to this Agreement and whether or not it is contemplated or authorised by this Agreement. This exclusion applies:

- 20.14.1 whatever Vodafone, any member of the Vodafone Group or any Vodafone End Customer is claiming for (including loss of profits or business); and
- 20.14.2 however liability arises or might arise whether in contract, tort (including negligence) or otherwise.
- 20.15 This clause 20.15 and clause 20.16 apply where:
- 20.15.1 Vodafone is entitled to compensation or any other monetary amount from [2]; or
- 20.15.2 [2], or any other member of the [2] Group, or any of their respective officers, employees, contractors and agents, is liable to Vodafone, any member of the Vodafone Group or any Vodafone End Customer and, for any reason, cannot rely on the exclusion of liability set out in clause 20.14.
- 20.16 The maximum combined liability of [2] and all members of the [2] Group and their respective officers, employees, contractors and agents (together) to Vodafone, any member of the Vodafone Group or any Vodafone End Customer and anyone else who provides, or is involved in providing, the Wholesale Service to [2] (together) under or in relation to this Agreement (the **maximum [2] liability**) is:
- 20.16.1 in respect of any one event or related series of events \$1,000,000; and
- 20.16.2 in any 12 month period, irrespective of the number of events \$3,000,000.

Vodafone's right to indemnity from [2]

- 20.17 Where [2] breaches its obligations under this Agreement, [2] must:
- 20.17.1 pay any reasonable expenses Vodafone incurs in collecting any money [2] owes Vodafone, or in exercising any of Vodafone's other rights;
- 20.17.2 indemnify Vodafone and its representatives for any damages, loss or cost (including legal and lawyer/client costs) suffered or incurred by Vodafone or its representatives as a result of [2] breaching its obligations under this Agreement; and
- 20.17.3 protect Vodafone and its representatives from any claim or proceeding to the extent such claim or proceeding was caused or contributed to by [2] or its representatives or any [2] Reseller.

Liability for charges and interest

- 20.18 Nothing in this clause 20 shall exclude or limit the liability of [2] to pay when due the charges or interest payable to Vodafone under this Agreement,.

21 DISPUTE RESOLUTION

- 21.1 If a dispute (as defined in clause 21.2) arises out of, or in connection with, this Agreement, the parties must resolve the dispute in accordance with the proceedings set out in this clause 21.
- 21.2 For the purposes of the procedures set out in the rest of this clause and unless the parties expressly agree otherwise in writing (including in this Agreement), a "**dispute**" is any matter

(other than an Invoice Dispute) arising under or in connection with relating to this Agreement about which the parties disagree or are unable to agree. For the avoidance of doubt, this clause 21 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.

- 21.3 Prior to reaching agreement on a dispute, or obtaining an arbitration award under clause 21.6, the parties agree that neither party is prevented by these dispute resolution procedures from exercising any rights under the Telecommunications Act 2001. If there is a dispute about the extent of a party's rights under the Telecommunications Act 2001, then that dispute may be resolved in accordance with the procedures in that Act, regardless of whether or not the matter is or has previously been the subject of these dispute resolution procedures. If the parties disagree as to whether the dispute involves the extent of a party's rights under the Telecommunications Act (the **threshold dispute**), then either party may refer the threshold dispute to arbitration under clause 21.6. In this case, the arbitrator shall determine when, and under what circumstances, a party may pursue a dispute in accordance with the procedures of the Telecommunications Act (as opposed to using arbitration under clause 21.6).
- 21.4 Either party may at any time give notice describing a dispute and invoking the procedures set out in the rest of this clause.
- 21.5 If notice under clause 21.4 is given, then:
- 21.5.1 during a maximum negotiation period of 20 Working Days from the date the notice was given, the parties must attempt in good faith to negotiate a resolution of the dispute;
 - 21.5.2 at any time during the negotiation period, either party may give 3 Working Days notice requiring a meeting, specifying a time and place in Auckland for the meeting and designating its representative with authority to resolve the dispute;
 - 21.5.3 the other party must give 1 Working Day's notice before the meeting designating its representative with authority to resolve the dispute;
 - 21.5.4 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;
 - 21.5.5 at any time during the negotiation period, the parties may agree to refer the dispute to mediation;
 - 21.5.6 a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal;
 - 21.5.7 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 the parties agreeing to refer the dispute to mediation;
 - 21.5.8 all documents disclosed in the course of any mediation proceedings shall be used for purposes of the mediation only, and shall be returned to the party providing the documents at the termination or conclusion of the proceedings; and
 - 21.5.9 unless otherwise agreed in writing, neither party may refer a dispute to arbitration before the end of the negotiation period and, if applicable, the mediation period.

- 21.6 If a dispute has not been resolved by the end of the negotiation period, either party may then refer the dispute, or any part of the dispute, to arbitration:
- 21.6.1 the parties agree that all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules;
 - 21.6.2 the seat of the arbitration shall be Auckland;
 - 21.6.3 if the tribunal is to consist of three (3) arbitrators, the wishes of each of the parties shall be considered in the selection of the presiding arbitrator;
 - 21.6.4 the arbitral tribunal should provide the full protection of the attorney-client privilege to counsel, including, without limitation, in-house counsel;
 - 21.6.5 the parties shall take all reasonable steps to ensure the confidentiality of any arbitration, ancillary proceedings, or an application for interim relief under clause 25.1 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
 - 21.6.6 a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal.
- 21.7 Neither party may use any information disclosed by the other in the course of negotiation, mediation or arbitration under the above procedures for any purpose other than the limited purpose for which it was disclosed. Any such information remains the property of the party supplying it and remains confidential to that party. Disclosure in the course of negotiation, mediation or arbitration under the above procedures is not a waiver of confidentiality.
- 21.8 Neither party may disclose any such information to anyone other than an adviser or an expert who has entered into a deed undertaking:
- 21.8.1 not to disclose any of the information, or any analysis of the information, other than for the purposes of resolving the dispute or the negotiation, mediation or arbitration;
 - 21.8.2 not to disclose any of the information, or any analysis of the information, other than to the other party, a mediator, the arbitrator or a court, except as compelled by law; and
 - 21.8.3 to return all material on which such information is recorded on completion of the adviser's or expert's services.

22 REGULATORY EVENT

- 22.1 If a Regulatory Event occurs, or is likely to occur, which, in Vodafone's reasonable opinion, prevents or restricts (or is likely to prevent or restrict) in a material manner either party from discharging a material obligation or receiving a material benefit under this Agreement, Vodafone will notify [2] and the parties will enter into good faith negotiations as soon as practicable, to amend or vary this Agreement to the extent necessary to mitigate or alleviate the relevant effect.
- 22.2 The provisions of this Agreement will remain in full force and effect during any negotiations conducted under clause 22.1 until commencement of any agreement replacing or amending this Agreement.

- 22.3 If the parties are unable to reach agreement within 15 Working Days of notice by Vodafone under clause 22.1, then Vodafone may terminate this Agreement or the delivery of particular Wholesale Services on 30 Working Days' notice. This matter will not be referred to dispute resolution under clause 21.
- 22.4 For the purposes of this clause 22, a **Regulatory Event** means any legislative or regulatory change made by the Government or any regulatory authority (including, without limitation, any determination, direction or decision by a regulatory authority).

23 ASSIGNMENT

- 23.1 Subject to clause 23.2, either party may assign or transfer its rights or obligations under this Agreement, subject to the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 23.2 [2] will not assign or transfer all or any part of its rights or obligations under this Agreement to an Excluded Operator. For the avoidance of doubt [2] will not be in breach of this clause 23.2 where any member of the [2] Group satisfies the definition of Excluded Operator by becoming an operator of a mobile telecommunications network in New Zealand.
- 23.3 A change of control of a party will, for these purposes, amount to an assignment or transfer of this Agreement.
- 23.4 For the purposes of clause 23.3, a **change of control** means a change in the legal or beneficial ownership of the shares in:
- 23.4.1 a party;
 - 23.4.2 any intermediate holding company of a party (except where the ultimate holding company of the party's Group remains unchanged); or
 - 23.4.3 the ultimate holding company of the party's Group (except where this ultimate holding company is a publicly listed company),

which results in any other person holding or ultimately controlling, directly or indirectly, shares in a party which, when added to the shares (if any) already held or ultimately controlled by that person:

- 23.4.4 amounts to at least 50 percent of the issued or paid up capital of the party; or
 - 23.4.5 enables that other person directly or indirectly to control at least 50 percent of the voting power at a meeting of the party or to appoint the majority of the directors of the party; or
 - 23.4.6 enables that other person effectively to control the party by any other means,
- (and **control** has a corresponding meaning in this Agreement) provided that this clause 23.4 will have no application to a transfer of the shares in a party within that party's Group where the ultimate holding company of the Group remains unchanged.
- 23.5 For the avoidance of doubt, the assigning party may only assign and transfer all of its rights and obligations under this Agreement collectively. In no event shall the assigning party:
- 23.5.1 assign and/or transfer some, but not all, of its rights and obligations under this Agreement; or

23.5.2 assign all its rights under this Agreement, without a corresponding transfer of all of its obligations.

24 NOTICE

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

24.1.1 as soon as the same is personally delivered to the address set out below (or such other address as a party may notify to the other by notice);

24.1.2 two Working Days following the posting of the same by prepaid registered mail to such address;

24.1.3 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

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

provided that, if transmission by facsimile or other electronic means is effected after 5.00 pm on a Working Day (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 facsimile or electronic transmission.

[2]

Street Address

Town

Attention:

Telephone: (OX)

Facsimile: (OX)

Vodafone

20 Viaduct Harbour Avenue

AUCKLAND

Attention: Legal Director

Copy: General Manager, Wholesale and New Business Development, Corporate Affairs

Telephone: (09) 355 2000

Facsimile: (09) 355 2005

25 SAVINGS

25.1 Subject to the obligation in clause 21.6.5 to take reasonable steps to ensure the confidentiality of any application for interim relief, nothing else in this Agreement excludes or limits either party's right to enforce this Agreement by applying for urgent interlocutory or injunctive relief in any New Zealand court of competent jurisdiction until such time as the arbitral tribunal is constituted.

25.2 Nothing in this Agreement excludes or limits:

25.2.1 any other statutory liability of either party, to the extent that it is prohibited by law from excluding or limiting such liability; or

25.2.2 either party's liability to pay costs of, or awarded in, any court proceedings, arbitration or mediation.

26 INDEPENDENT CONTRACTOR / PRIVACY

- 26.1 No legal partnership, employer/employee, principal/agent or joint venture relationship is created or evidenced by this Agreement.
- 26.2 No contract, obligation or other legal relationship is created between Vodafone and any [2] End Customer, [2] Reseller or third party by this Agreement. Vodafone does not provide, grant or confer any right, benefit or privilege on any of the [2] End Customers or [2] Resellers under this Agreement.
- 26.3 No [2] End Customer, [2] Reseller or third party will have the benefit of or be entitled to enforce, any part of this Agreement under the Contracts (Privity) Act 1982 or otherwise, except where this agreement provides otherwise or as provided by law. This clause 26.3 does not apply to any member of the Vodafone Group where this Agreement expressly confers a benefit on that member of the Vodafone Group.

27 ENTIRE AGREEMENT

- 27.1 This Agreement, entered into freely by the respective parties, contains the entire final understanding and agreement of the parties with respect to the subject matter expressly referred to in this Agreement; and, with respect to such subject matter, this Agreement will prevail over all previous agreements, understandings or commitments between the parties, and representations and warranties made by either party, whether oral or written.
- 27.2 Any variation to this Agreement must be recorded in writing and signed by the authorised representatives of [2] and Vodafone. To avoid doubt, this clause 27.2 does not limit Vodafone's ability to amend the Operations Manual or the Wholesale SPL under this Agreement in accordance with clause 6.

28 GOVERNING LAW

- 28.1 This Agreement is made in New Zealand and will be governed in all respects by, and construed in accordance with, the laws of New Zealand.
- 28.2 Subject to clauses 21 and 25, the parties agree that the Courts of New Zealand will have exclusive jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and, for such purposes, irrevocably submit to the jurisdiction of the Courts of New Zealand.
- 28.3 Subject to clauses 21 and 25, each party irrevocably waives any objection which it might now or hereafter have to the Courts referred to in clause 28.2 being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement, and agrees not to claim that any such Court is not a convenient or appropriate forum.

29 COUNTERPARTS

- 29.1 This Agreement may be signed in one or more counterparts (including facsimile copies), each of which will be deemed an original, but all of which counterparts together will constitute one and the same instrument.

30 REMEDIES AND WAIVERS AND FORCE MAJEURE

- 30.1 Except as otherwise provided in this Agreement, no failure to exercise, and no delay in exercising, a right of a party under this Agreement operates as a waiver of that right.
- 30.2 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.
- 30.3 No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.
- 30.4 Notwithstanding anything to the contrary in this Agreement, no member of the Vodafone Group or of the [2] Group will be liable to pay compensation or any other monetary amount to the other (except for any usage charges payable by [2]), and will not be in breach of this Agreement for not meeting, or any delay in meeting, any responsibility or obligation under this Agreement because of a Force Majeure Event.

31 MISCELLANEOUS

- 31.1 If a court of competent jurisdiction or the arbitrator of an arbitration under clause 21 shall determine that any provision of this Agreement is invalid under any applicable statute or rule of law:
- 31.1.1 it shall be deemed to be omitted only to the extent that the same shall be in violation of such statute or rule of law and shall be enforced to the maximum extent possible; and
- 31.1.2 either party may (on notice to the other) require the other party to use reasonable endeavours to negotiate an amendment to the whole or any part of this Agreement as the first party reasonably considers necessary in view of the invalidity. Notwithstanding clause 21.1, any failure to agree an amendment shall not be subject to dispute resolution under clause 21, except that if the parties agree it is appropriate with respect to any particular matter, the parties may agree to participate in a mediation in accordance with clause 21. However, there shall be no recourse to arbitration.
- 31.2 Subject to those provisions of this Agreement which allow [2] to use the Wholesale Services, this Agreement does not pass any right, title or interest in or to the Vodafone Network to [2], any member of the [2] Group, any [2] Reseller or any [2] End Customer.

EXECUTED as an agreement.

SIGNED for and on behalf of
VODAFONE NEW ZEALAND LIMITED
by:

Name:

Title:

SIGNED for and on behalf of
[1]
by:

Name:

Title:

Schedule 1

Wholesale Services

1 Wholesale Services Description

- 1.1 Vodafone will provide [2] with the opportunity to purchase the “Vodafone Rural Broadband” product set described in paragraph 1.3 below (the “Wholesale Services”), which will allow [2] to offer end users their own-branded wireless broadband and voice services. These services are delivered from a Vodafone-approved wireless terminal (“WT”) to the point of interconnect nearest to the rural region of the relevant Infrastructure (“POI”) with [2].
- 1.2 [2] will:
- 1.2.1 carry the data and/or voice traffic (as appropriate) from the POI, on its own network; and
 - 1.2.2 supply and install the WT (as approved by Vodafone), using only Vodafone approved installers as specified in the Operations manual, at the [2] End Customer premises along with any required wiring or external antennas in accordance with Vodafone’s installation guidelines.
- 1.3 Vodafone will offer [2] the following three products under the Wholesale Services:
- 1.3.1 the “RBI Broadband Service” – a best efforts broadband packet data service described in further detail in paragraph 2 below;
 - 1.3.2 the “Enhanced RBI Broadband Service” that offers its end users simultaneous delivery of the RBI Broadband Service and a prioritised traffic class (up to 40Kbps) over a single wireless connection and which is described in more detail in paragraph 4 below. This service will be designed to support G.729 and will be available by 31 March 2013; and
 - 1.3.3 the “RBI Broadband plus Voice Service” that offers its ends users the RBI Broadband Service together with a voice service.
- 1.4 The Wholesale Services are available to end users in New Zealand only and do not include any roaming capability.

2 RBI Broadband Service Specifications

- 2.1 The RBI Broadband Service is a wireless service that enables access to, and interconnection with, that part of Vodafone’s network that connects end users premises to Vodafone’s local data network (or equivalent facility) and includes backhaul from that local data network back to a POI. It provides [2] with an internet grade “best efforts” bitstream service and enables [2] offer [2] End Customers fixed wireless broadband services.
- 2.2 The RBI Broadband Service (nominal 1500 byte packet):
- consists of a single “best efforts” IP broadband service. The service is designed to have a peak throughput of at least 5Mbps downlink and 500Kbps uplink, and dimensioned to deliver a 99.9% probability of providing to any end user a minimum average throughput of 45Kbps downlink during any 15 minute period;

- is supplied to an end user by a wireless radio transmitter located at a Vodafone cell site and a wireless terminal that has been installed by [2] in accordance with Vodafone’s guidelines;
- transports [2]’s internet traffic from the WT at an end user’s premises to the relevant Handover Point (as described in paragraph 5 below);
- has a mean one way packet delay of <1 second; and
- has no specific metric for packet delay variation or packet loss ratio.

2.3 The RBI Broadband Service will initially be based on HSPA+ technology operating in the 900 MHz band that is designed to provide the following peak speeds:

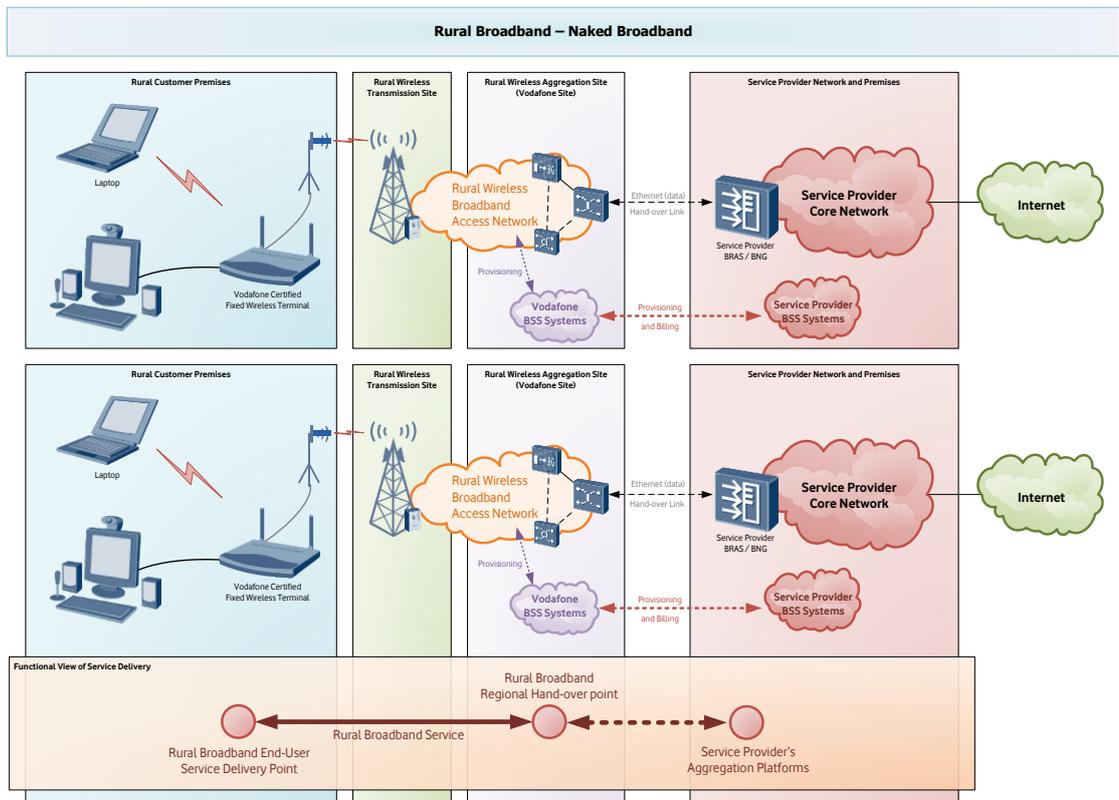
2.3.1 Downstream 21Mbps; and

2.3.2 Upstream 5Mbps.

2.4 Achievement of coverage such that 80% of Covered Households in Zone 4 can receive a rural broadband service in the manner set out in paragraphs 2.2 and 2.3 above is based on the use of a Vodafone-approved WT connected to an external antenna that is mounted at least 4.5m above ground.

2.5 The supply of the RBI Broadband Service is not conditional on a requirement that [2], the end user, or any other person must purchase any other product from Vodafone.

2.6 The following diagram illustrates the RBI Broadband Service:

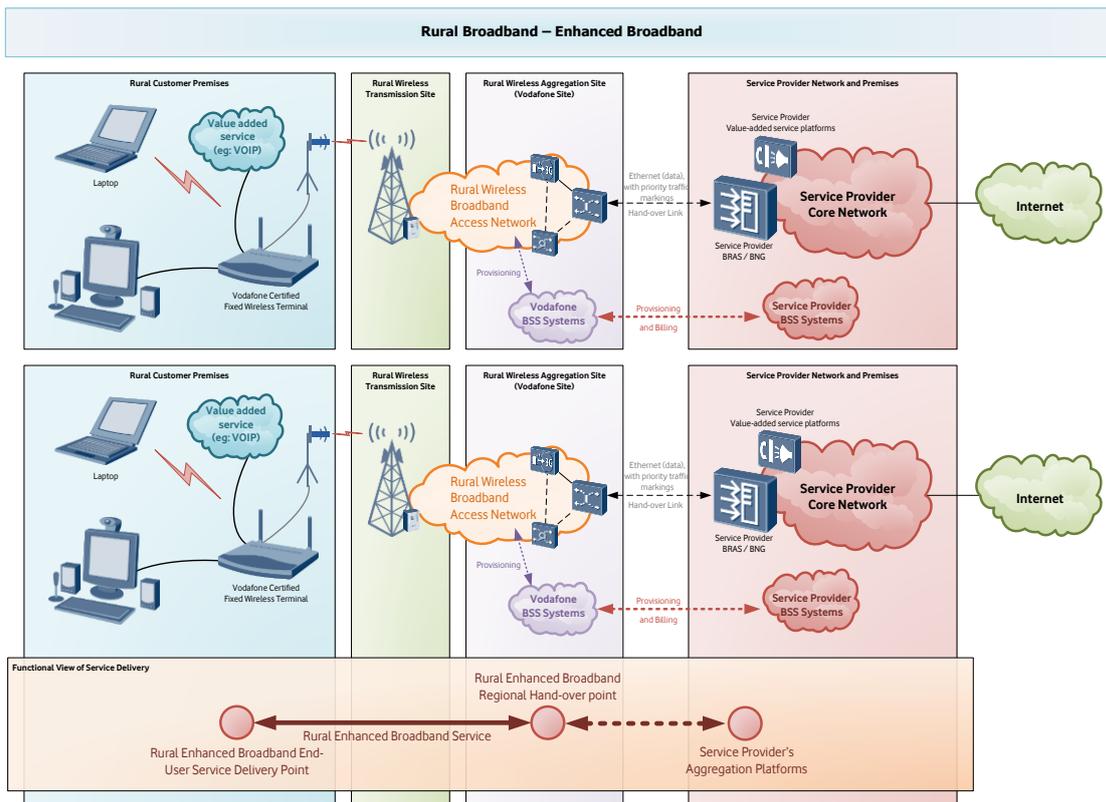


3 RBI Broadband Service Constraints

- 3.1 The maximum upstream or downstream speed that may be experienced by end users in respect of the RBI Broadband Service is subject to and may be limited by:
- 3.1.1 Specification of the WT;
 - 3.1.2 Incorrect installation of WT, wiring or antenna;
 - 3.1.3 Absence of an Appropriate Aerial or incorrect installation of the Appropriate Aerial or any wiring;
 - 3.1.4 The configuration and/or quality of wiring of end user computer equipment or other connected equipment;
 - 3.1.5 Performance of antenna;
 - 3.1.6 [2]'s network;
 - 3.1.7 [2] End Customer's location;
 - 3.1.8 The level of network congestion; and
 - 3.1.9 Presence and degree of external interference (from potential sources such as poor suppression of AC power, electric fences, radio transmitters etc).

4 Enhanced RBI Broadband Service

- 4.1 The Enhanced RBI Broadband Service consists of:
- 4.1.1 the RBI Broadband Service; and
 - 4.1.2 a prioritised internet protocol traffic capability with the following metrics:
 - a) throughput of 40 Kbps (200byte packet); and
 - b) a design target for latency of 100ms or better 99% of the time (as measured between the WT and the Handover Point (as defined in paragraph B7.1).
- 4.2 The following diagram illustrates the Enhanced RBI Broadband Service:



- 4.3 The Enhanced RBI Broadband Service is available to a maximum of 15 end users per Rural Wireless Transmission Site. [2] acknowledges that Vodafone may refuse or suspend Enhanced RBI Broadband Service to the last in time of any [2] End Customer in excess of that maximum seeking access to Enhanced RBI Broadband Service.
- 4.4 The Enhanced RBI Broadband Service is subject to Vodafone's Fair Use Policy. Vodafone may apply its Fair Use Policy where in Vodafone's reasonable opinion a [2] End Customer's usage of the Enhanced RBI Broadband Service is excessive and/or unreasonable as detailed in this paragraph 4.4. Vodafone has developed its Fair Use Policy by reference to average customer profiles and estimated customer usage. If a [2] End Customer's use of the Enhanced RBI Broadband Service materially exceeds estimated use patterns over any month, that [2] End Customer's usage will be excessive and/or unreasonable, and Vodafone may request [2] to procure that the [2] End Customer stop or alters its usage so that it complies with Vodafone's Fair Use Policy. If the [2] End Customer's excessive or unreasonable usage continues after receipt by [2] of a request from Vodafone to procure that the usage stop or alter, Vodafone may, without further notice to [2], suspend, modify, or restrict that [2] End Customer's use of the Enhanced RBI Broadband Service, or withdraw the Enhanced RBI Broadband Service from that [2] End Customer.

5 RBI Broadband plus Voice Service

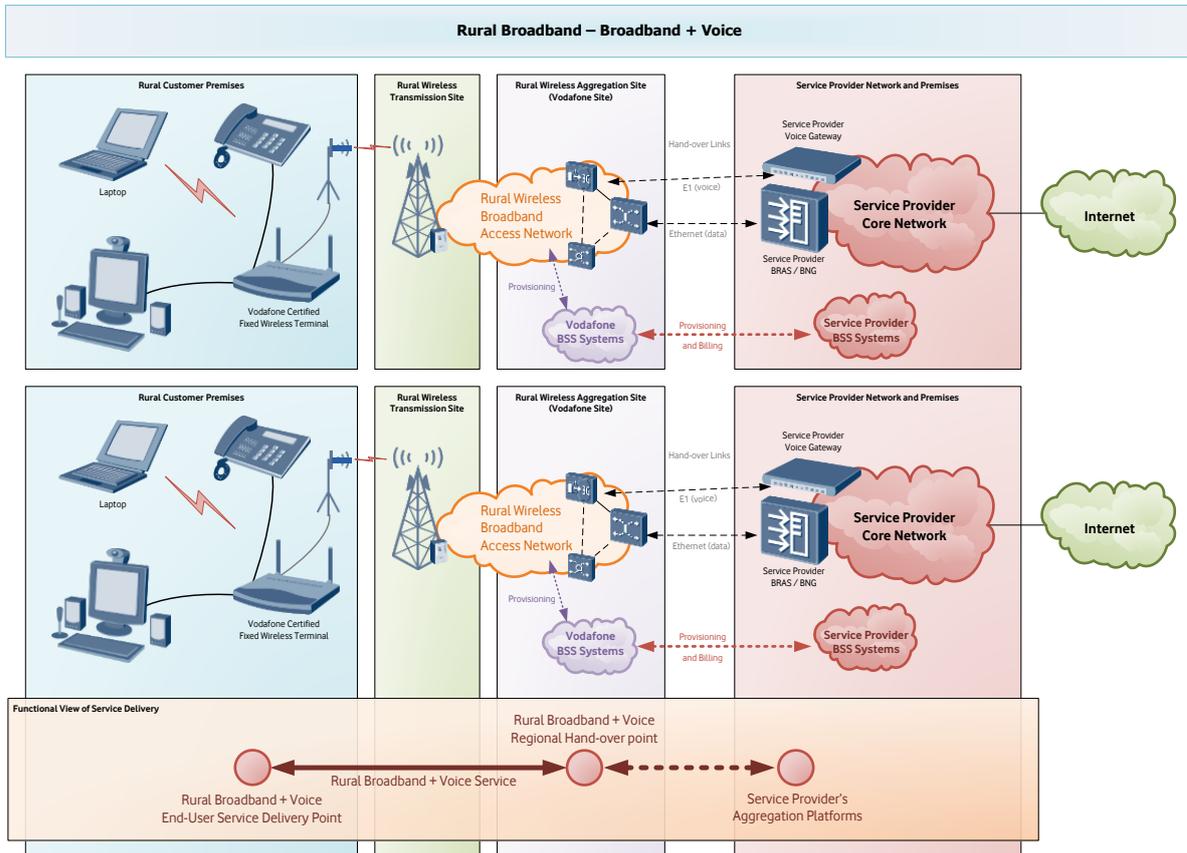
5.1 The RBI Broadband plus Voice Service consists of:

- 5.1.1 the RBI Broadband Services; and

5.1.2 a voice service that is delivered via a separate 3GPP Release 99 GSM/WCDMA circuit switched voice channel. This voice channel supports voice service only and it will not be suitable for supporting:

- a) fax service;
- b) monitored house alarm;
- c) medic alarm link;
- d) remote to download SKY “pay per view” movies or games, or use Sky betting or similar SKY services;
- e) unapproved calling cards;
- f) 3 way calling or audio conference calling; or
- g) text messages (SMS).

5.2 The following diagram illustrates the Rural Broadband plus Voice Service:



6 General Wholesale Service Requirements

6.1 [2] is to fulfil any authentication, authorisation and addressing functions for the service provided to [2] End Customers and is responsible for providing internet connectivity and any other value-added services. [2] to provide all Layer 3 functions and is responsible for interactions with the emergency services relating to [2] End Customers.

7 Handover

- 7.1 [2] is required to interconnect with Vodafone at the nearest handover point set out in paragraph 7.2 below (each, a “Handover Point”) in accordance with paragraph 7.3. Interconnection at the Handover Point is required for handover of the RBI Broadband Service, Enhanced RBI Broadband Service and the RBI Broadband plus Voice Service.
- 7.2 Vodafone will provide single Handover Points in Auckland, Wellington and Christchurch.
- 7.2.1 Exact boundaries for Handover Points are available from Vodafone on request.
- 7.3 Broadband traffic will be delivered [2] as L2TP (version 2) using the technical standards set out in the table at paragraph 7.5 below:
- 7.4 Voice traffic interconnect links will conform to the defacto standard of ISUP (ISDN User Part) - PTC331 (Permit to connect). The voice payload is carried in a specific 64k timeslot within an E1 bearer (or multiple E1s) transcoded to the G.711 standard.

Service	Interface	Physical connection
RBI Broadband Service	Gigabit Ethernet (Handover links will consist of a single VLAN over which data to and from the regional serving node will be exchanged with the wholesale service provider using the L2TP protocol)	Optical
Voice	E1 (2Mbit/s)	Electrical

- 7.5 [2] is responsible for providing handover fibres that connect from [2]’s network to the Vodafone Optical Fibre Distribution Frame (OFDF) at the Handover Point.

8 Geographic Availability

- 8.1 The RBI Broadband Service, Enhanced RBI Broadband Service and RBI Broadband plus Voice Service are only available in those parts of Zone 4 indicated on the Vodafone wholesale website and may not be used outside these areas.
- 8.2 Due to geographic factors, there may be certain locations within the area described above where the Wholesale Services cannot be received or can only be received with degraded levels of performance. Vodafone will publish such locations on the Vodafone wholesale website as they become known and amend its coverage maps accordingly.
- 8.3 Vodafone will provide access to a coverage tool that will enable [2] to determine where the RBI Broadband Service is available.

9 Operations and Processes

- 9.1 Operational processes and installation standards will be set out in the Operations Manual.
- 9.2 [2] may purchase a WT terminal from Vodafone or may provide their own WT which must be approved by Vodafone. Vodafone’s “Device Network Approvals Process” is set out below:

- 9.2.1 [2] to send 4 units of the device to Vodafone Wholesale Operations Manager as set out in the Operations Manual.
 - 9.2.2 Wholesale Operations Manager to contact Vodafone's Terminals Service Specialist to organise the correct test scripts being sent to Vodafone's third party test partner (currently WDS).
 - 9.2.3 Wholesale Operations Manager to send devices to WDS for testing. Testing process takes approximately 3 weeks to complete.
 - 9.2.4 Once testing is completed, WDS to send devices back to Wholesale Operations Manager and to advise of status of device e.g. approved/not approved.
 - 9.2.5 Wholesale Operations Manager to communicate test results to [2] and to return 3 of the devices to [2]. One is kept at WDS in case further testing is required.
 - 9.2.6 Wholesale Operations Manager to raise debit adjustment for device testing on [2]'s monthly invoice. Charges will be set out in the Operations Specifications. At the date of this Agreement the charge is generally approximately \$8,000 per device model for testing.
- 9.3 If [2] wishes to purchase WTs from Vodafone it must do so via Vodafone's logistics partner, Brightpoint. The Access Seeker must complete an application for a Brightpoint account and lodge this with the Vodafone Operations Manager as specified in the Operations Manual in accordance with the Operations Specifications. Once approved Vodafone will provide [2] with the current WT price list. Updates to the price list will be provided on a regular basis. To order a WT from Brightpoint [2] must comply with the process below:
- 9.3.1 Obtain price & product code from the latest RBI WT price list;
 - 9.3.2 Raise purchase order on Brightpoint;
 - 9.3.3 Send purchase order to Brightpoint; and
 - 9.3.4 Order is automatically accepted & dispatched if stock is available & order is correct.
- 9.4 It is [2]'s responsibility to ensure that WTs are installed in accordance with any guidelines issued by Vodafone from time to time.

10 SIM Cards and TAC Locking

- 10.1 [2] must only use SIM cards purchased from Vodafone to provide the Wholesale Services. SIM cards must be ordered in minimum quantities of 500.
- 10.2 All SIM cards must be "TAC locked", i.e. the SIM will only be able to be used with certain approved devices. This is achieved through the first eight digits of the approved device's IMEI number i.e. the TAC (Type Allocation Code) being loaded onto the SIM at the point of manufacture. The IMEI is the WT unique device number.
- 10.3 At the time of ordering SIM cards, [2] must specify to Vodafone the TAC code or codes which it would like to have imbedded onto the SIM cards. The number of TAC codes able to be loaded onto a SIM card will be limited and Vodafone will advise Access Seekers of the then-current limits.

11 Portal Service

- 11.1 [2] will be able log requests (e.g. new connections, moves, adds, changes) via a web-based portal service. This will be available for use from 01 December 2011 onwards. Once available all such requests must be logged via the portal service as this will be the mechanism for tracking incidents and reporting on Service Level performance.
- 11.2 Faults are to be logged directly with the Vodafone call centre on such number as advised by Vodafone from time to time.

Schedule 2

Wholesale Services Price List

(All prices in this Wholesale SPL exclude GST)

A: Definitions

The definitions provided below are in addition to those included in the Wholesale Services Agreement, and should be read in conjunction with those definitions. Unless the context otherwise requires, the terms used in this RBI Wholesale SPL will have the same meanings as set out in the Wholesale Services Agreement.

“**Access Seeker**” means Vodafone’s wholesale customer;

“**Enhanced RBI Broadband Service**” has the meaning defined in Schedule 1;

“**Off Peak**” means the hours of 12 a.m. to 6 a.m. every day.

“**RBI Broadband plus Voice Service**” has the meaning defined in Schedule 1; and

“**RBI Broadband Service**” has the meaning defined in Schedule 1.

Section 1 - RBI Wholesale Plans Pricing and Terms

Listed below are the standard pricing and terms for services included in the RBI Wholesale Services Schedule 1. The prices listed below may be amended by Vodafone to reflect any changes in the Producer Price Input Index (all industries) provided that Vodafone may not change the price more than once in any 12 month period and any change will not be greater than the % change in the Producer Price Input Index (all industries) over that same period.

General information:

- The prices and rates set out in this schedule are exclusive of GST;
- If the Off Peak Data cap per month is exceeded:
 - Off Peak Data usage is aggregated and billed at the overage rate in blocks of 1GB
 - The On Peak data entitlement including the 4G add on, will continue to be used for On Peak Data usage.

- If the On Peak Data cap per month, including the 4G add on, is exceeded:
 - On Peak Data usage is aggregated and billed at the overage rate in blocks of 1GB
 - The Off Peak data entitlement will continue to be used for Off Peak Data usage.
- If both the Off Peak Data limit AND the On Peak Data limit is exceeded including the 4G add on then BOTH On Peak Data AND Off Peak Data usage is aggregated and billed at the overage rate in blocks of 1Gb
- The minimum Call Detail Record (CDR) size is 1KB.
- Unused Datacap capacity will not be carried forward for usage in future months
- 1 Megabyte (MB) equals 1,024 Kilobytes, and 1Gigabyte equals 1,024 Megabytes.
- Usage is billed for both uplinking and downlinking traffic.
- The pricing in this Section is available for domestic use only. Roaming capability is not available.
- For end users of the RBI Broadband plus Voice Service there is no charge to access the Vodafone Voicemail platform
- The Enhanced RBI Broadband service is limited to 15 end users per cell site.
- The Enhanced RBI Broadband service is subject to a Fair Use Policy.
- 4G is only available on connections where a 4G add on is purchased and the connection is within the 4G coverage area.
- 4G is not available on the Enhanced Rural Broadband Plan.
- The 4G add-on can only be applied once per month.
- Once the 4G add on is selected, all data (the product base of 80GB on-peak and off-peak and the 4G add-on) is consumed as 4G.
- Unused data on the 4G add on does not carry over to the next month.

Product	Maximum Price	Datacap per month	4G add on data entitlement	4G add on Maximum Price	Overage rate
RBI Broadband Service	\$44.35	30 GB on-peak 50 GB off-peak	50GB on-peak	\$9.66	\$1.15 per Gigabyte
RBI Broadband plus Voice Service	\$52.17	30 GB on-peak 50 GB off-peak	50GB on-peak	\$9.66	\$1.15 per Gigabyte
Enhanced RBI Broadband Service	\$64.40	Not applicable	Not applicable	Not applicable	Not applicable

Section 2 - RBI Wholesale Handover Connection Pricing

Access Seekers must pay Vodafone for installation and rental of handover connections in Auckland , Wellington and Christchurch at the following prices:

	GigE	2Mbits (E1)
Monthly Rental charge per connection	\$212	\$360
New connection Installation Fee per connection	\$490	\$800

Section 3 - RBI Wholesale Set-Up Charges

Wholesale RBI Set up per wholesale customer - \$5,700 paid over the first 12 months from launch (\$475 / per month)