

RURAL BROADBAND AGREEMENT

This Rural Broadband Agreement is made on the day of 2011

BETWEEN

- 1 **HER MAJESTY THE QUEEN** in right of New Zealand acting by and through David Smol, Chief Executive, Ministry of Economic Development, of Wellington (**the Ministry**) and
- 2 **Vodafone New Zealand Limited**, of 20 Viaduct Harbour Avenue, Auckland.
(Vodafone)

BACKGROUND

- A. The Government has embarked on a subsidy programme to upgrade infrastructure and extend the reach of broadband services to those rural schools and communities where service is currently not available or where the service is deemed to be inadequate.
- B. On 25 August 2010 the Ministry issued a Request for Proposals (**RFP**) inviting potential suppliers to provide detailed proposals for the provision of broadband infrastructure designed to meet the following objectives:
 - i. improve broadband coverage in Zone 4 such that 80% of Zone 4 households and enterprises are able to access broadband services (**the rural community objective**);
 - ii. provide an ultrafast connection to at least 93% of Zone 4 schools which have a reasonable cost per pupil (**the rural schools objective**); and
 - iii. to make available open access backhaul services across the grant funded fibre connections.
- C. Following the completion of the RFP process Vodafone and Telecom are to be appointed by the Ministry under separate contracts to construct certain infrastructure, and make available certain telecommunications services, with a view to meeting the rural schools objective and the rural community objective (together the **Rural Broadband Objectives**).
- D. Telecom is to be appointed under a separate agreement with the Ministry, to provide infrastructure and telecommunications services intended to meet the rural schools objective and provide fibre connectivity to the cell sites to be built by Vodafone under this Agreement.
- E. Vodafone is to be appointed under this Agreement to provide infrastructure and

telecommunications services intended to help meet the rural community objective.

- F. The Rural Broadband Objectives will be facilitated through a Government Grant, part of which is to be paid to Vodafone in accordance with this Agreement, in order to subsidise the construction of the Grant Funded Infrastructure.
- G. This Agreement sets out the relationship between, and the rights and obligations of, the Crown and Vodafone in relation to the construction, operation and maintenance of the Infrastructure, and the provision of the Rural Telecommunications Services over that Infrastructure.

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of HER)
MAJESTY THE QUEEN in right of New)
Zealand acting by and through David)
Smol, Chief Executive, Ministry of)
Economic Development:)

Signature

SIGNED for and on behalf of Vodafone)
New Zealand Limited by:)

Authorised Signatory

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TERMS OF THIS AGREEMENT

It is agreed

1 INTERPRETATION

1.1 Definitions: In this Agreement:

<i>Term</i>	<i>Meaning</i>
Access Seeker	a Service Provider who has made a request to Vodafone in the form reasonably prescribed by Vodafone seeking access to the Wholesale Service or Co-location Service.
Act	the Telecommunications Act 2001
Additional Infrastructure	has the meaning given in Schedule 2.
Adjustment Event	<p>any of the following events or circumstances affecting the Design and Build Services, to the extent that, at the time of entry into this Agreement, those events or circumstances could not reasonably have been anticipated and allowed for by a skilled and experienced contractor providing services and deliverables of the same or similar type to those being provided by Vodafone under this Agreement:</p> <ul style="list-style-type: none"> (a) highly abnormal weather conditions falling short of a Force Majeure Event; (b) unanticipated community opposition to installation of Infrastructure prior to the issuing of the RMA consent for that infrastructure; (c) delays to civil works arising from matters under the authority of the Historic Places Trust, including discovery of archaeological sites while trenching; (d) delays in RMA or other consents from third parties, or requirements to co-ordinate works, including any conditions imposed by NZTA or a local or territorial authority, or other utility owners failing to identify their networks or provide necessary consents;

<i>Term</i>	<i>Meaning</i>
	<ul style="list-style-type: none"> (e) unanticipated opposition to the installation of Infrastructure from local authorities and/or territorial authorities; (f) material delay by Telecom in the performance of its obligations under the Fibre Build Contract; (g) material failure by Telecom to provide the Backhaul Service.
Aggregate Cap	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].
Agreement	this agreement, including the Schedules, in each case as amended or replaced from time to time in accordance with this Agreement.
Authorised Representative	a person appointed by a Party to that role under clause 10.1.
Available	<p>in relation to any Rural Telecommunications Service, means that Vodafone:</p> <ul style="list-style-type: none"> (a) has in place all the assets and systems which Vodafone considers necessary to enable the provision of that service; and (b) is ready and willing to contract with: <ul style="list-style-type: none"> 1. Retail Customers to supply them with the Retail Service; 2. Service Providers to supply them with the Wholesale Service.
Backhaul Agreement	an agreement between Vodafone and Telecom on terms acceptable to Vodafone under which Telecom is to implement Backhaul Services (and support those services) that will enable Vodafone to provide the Rural Telecommunications Services.
Backhaul Service	a Layer 2 Service providing backhaul from the Grant Funded Sites and the non-Grant Funded Sites to a nominated handover point in a manner that is materially the same as that provided by Telecom to Vodafone as at the date of this Agreement.

<i>Term</i>	<i>Meaning</i>
Bill	the Telecommunications (TSO, Broadband and Other Matters) Amendment Bill 2010
Business Day	any day in Wellington, New Zealand, not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.
Change	has the meaning given to it in Schedule 5.
Co-location Services	has the meaning given in Schedule 1.
Commerce Act Authorisation	<p>an authorisation that:</p> <ul style="list-style-type: none"> (a) except as set out in (e) below, has the same effect as if it had been granted in accordance with sections 58(1), (2), (5) and (6) of the Commerce Act 1986; (b) has the effect stated in sections 58A(1) and (2) of that Act; (c) applies to any contract, arrangement or understanding entered into before the date on which the authorisation comes into force as if the authorisation was in force at the time of entry; (d) except as provided for in this Agreement, does not apply to any contract, arrangement, or understanding that is entered into later than 6 months after the date on which the authorisation comes into force; and (e) is not subject to sections 65 and 91 to 97 of that Act.
Commercial Terms	Vodafone's standard terms of business for the provision of the Wholesale Service to Service Providers, as updated or replaced by Vodafone from time to time.

<i>Term</i>	<i>Meaning</i>
Confidential Information	<p>in relation to a Party, means:</p> <ul style="list-style-type: none"> (a) the terms and conditions of this Agreement; (b) any Documentation produced by that Party; and (c) any information about that Party's business, assets, customers, suppliers, contractors and/or related entities, which is not public knowledge and which is obtained by the other Party in the course of, or in connection with, this Agreement.
Consents Granted	has the meaning given to it in Schedule 2.
Deed of Undertaking	the deed to be entered into by Vodafone in the form set out in Schedule 7.
Deliverables	the Infrastructure, the Documentation and such other materials as Vodafone is required to provide to the Ministry in performing its obligations under this Agreement.
Design and Build Services	the design, construction and commissioning of the Infrastructure as further described in Schedule 2, including all activities that are ancillary to those services, but excluding any activities which this Agreement expressly designates as the responsibility of the Ministry or a third party.
Documentation	all documentation, reports, procedures, plans, audit plans, charters, processes and other written materials produced or provided by Vodafone in connection with the performance of its obligations under this Agreement.
End User	in relation to a Telecommunications Service, a person who through a contract with Vodafone or a Service Provider is entitled to receive a Telecommunications Service and who is the ultimate recipient of that service.
Fibre Build Contract	an agreement dated on or about the date of this Agreement between the Ministry and Telecom for Telecom to provide the Wireless Backhaul CDBP Requirements.
Final Completion Date	30 June 2017.
Force Majeure Event	has the meaning given in clause 21.7.

<i>Term</i>	<i>Meaning</i>
Grant	the amounts payable for the provision of the Design and Build Services, which become payable in accordance with clause 13 and Schedule 4.
Grantable Costs	has the meaning given in Schedule 4.
Grant Funded Infrastructure	has the meaning given in Schedule 2.
Grant Funded Site	Each of the cell sites, identified in accordance with the process set out in Schedule 2, on which the Grant Funded Infrastructure will be built.
GST	goods and services tax payable under the Goods and Services Tax Act 1985.
Infrastructure	the Grant Funded Infrastructure and Additional Infrastructure.
Insolvency Event	in relation to Vodafone: <ul style="list-style-type: none"> a it is, becomes, or is deemed by applicable legislation or a competent court having proper jurisdiction to be insolvent, liquidated or bankrupt; b it makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors; c it goes into receivership or has an administrator, liquidator, receiver, trustee and/or manager (including a statutory manager) appointed in respect of it or all or any of its property; or d any resolution is passed or proceedings are commenced for its amalgamation with any person, or its bankruptcy or liquidation (except for a solvent amalgamation or reconstruction with the prior written approval of the Ministry, such approval not to be unreasonably withheld, or where the proceedings for bankruptcy or liquidation are stayed or withdrawn within 20 Business Days).

<i>Term</i>	<i>Meaning</i>
Intellectual Property Rights	includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, and all other rights resulting from intellectual activity. Intellectual Property has a corresponding meaning.
Interception Capability	capability to intercept a telecommunication as described in section 8 of the Telecommunications (Intercept Capability) Act 2004. Intercept Capable has a corresponding meaning.
Layer 2	Layer 2 of the OSI Model, which is normally associated with active fibre optic network infrastructure.
Layer 2 Service	any service which operates at Layer 2.
Minister	The Minister of the Crown responsible for telecommunications under the Telecommunications Act 2001
Ministry IP	The Ministry's Pre-existing Intellectual Property together with any of the following which is not Vodafone's Pre-existing Intellectual Property: <ul style="list-style-type: none"> (a) any Intellectual Property that is created by the Ministry or its personnel, whether or not such creation is independent of this Agreement; and (b) any Intellectual Property that is licensed to the Ministry to use.
Ongoing Services	The Co-Location Services and the Rural Telecommunication Services.
OSI Model	the seven-layer model of network architecture known as the Open Systems Interconnection Model.
Parties	the Ministry and Vodafone, including their permitted assigns.
Performance Issue	has the meaning given in clause 18.1.
Performance Notice	has the meaning given in clause 18.1.

<i>Term</i>	<i>Meaning</i>
Pre-existing Intellectual Property	in respect of a Party, all Intellectual Property Rights that were owned by or proprietary to that Party or its licensors prior to the date of this Agreement, or developed or acquired by that Party or its licensors independently of their activities under Agreement, together with the Intellectual Property Rights in any modification, enhancement or derivative work made in relation to that Intellectual Property by either Party, or any personnel of either Party, in connection with this Agreement.
Proposal	the proposal submitted by Vodafone and Telecom that led to the entry into this Agreement, being the document titled "Proposal to deliver zone 4 rural broadband for the New Zealand Government Rural Broadband Initiative" submitted to the Ministry on 12 November 2010.
RBI	the Government's broadband initiative for Zone 4 as outlined in the RFP, being a subset of the Government's overall Rural Broadband Initiative.
RFP	has the meaning given in the Background to this Agreement.
Remedial Plan	has the meaning given in clause 18.3.
Retail Customer	an End User who through a contract with Vodafone is entitled to receive the Retail Services from Vodafone.
Retail Services	those services identified as such in Schedule 1.
Rural Telecommunications Services	the Wholesale Services and/or the Retail Services.
Sensitive Information	any information about Vodafone or its business, finances, related companies or other affairs which Vodafone reasonably considers to be commercially sensitive or the source of a competitive advantage, including any details of Vodafone's input costs, but to avoid doubt information will not be considered commercially sensitive merely because it indicates that Vodafone has breached its obligations under this Agreement.
Services	the Design and Build Services and the Ongoing Services.

<i>Term</i>	<i>Meaning</i>
Service Provider	any person (other than Vodafone) who provides a Telecommunications Service to an End User.
Schedule	a schedule to this Agreement and includes any appendix attached to a Schedule.
Site Integrated	has the meaning given to it in Schedule 2.
Site Test Certificate	A certificate in the form reasonably agreed between the parties.
Specified Layer 2 Service	a Layer 2 Service which complies with the Specified Layer 2 Service technical product specification recorded in Schedule 1.
Taxes	any and all taxes (including GST, value added tax, income tax and withholding taxes), duties and levies imposed by any competent authority in any jurisdiction.
TCF Codes	any code that is published by the Telecommunications Carriers' Forum.
Telecom	Telecom New Zealand Limited.
Telecommunications Service	Any service that enables or facilitates 'telecommunication' as defined in section 5 of the Telecommunications Act 2001.
Telecom Zones 1, 2 and 3	the Telecom line density zones known as Zone 1, Zone 2, Zone 3a and Zone 3b and generally used by Telecom to describe those urban density areas of New Zealand served by telephone exchanges with a total line count of greater than 500 lines, and which at 30 June 2008 together include not less than 80% of total Existing PSTN Lines.
Timetable	has the meaning given to it in Schedule 3.

<i>Term</i>	<i>Meaning</i>
Unplanned Event	<ul style="list-style-type: none"> (a) an Adjustment Event; (b) a Force Majeure Event, unless the Agreement has been terminated by either party under clause 20.3 for that particular Force Majeure Event; (c) an act or omission of the Ministry or its personnel; (d) a termination (including a partial termination) or a material breach of the Fibre Build Contract; (e) a termination, including a partial termination, of the performance of the Backhaul Service or a change in the provider of the Backhaul Service; (f) a suspension by Vodafone in accordance with clause 20.7; (g) an event that results in Telecom's obligations under the Fibre Build Contract or the provision of the Backhaul Services being provided by more than one company, including a separation of Telecom's wholesale division from its services division; (h) any material delays arising as a result of the proper application of the dispute resolution process set out in clause 19; or (i) any material amendments to the Fibre Build Contract or the Backhaul Agreement that are required due to the outcome of the dispute resolution process under one or both of those agreements; or (j) partial termination of this Agreement in accordance with clause 20.10.
Wholesale Services	those services identified as such in Schedule 1.
Wilful Default	any act or omission which is a material breach of this Agreement and is wilfully committed or wilfully allowed to continue by a Party with the knowledge that such act or omission is a breach of this Agreement.

<i>Term</i>	<i>Meaning</i>
Wireless CBDP Backhaul Requirements	The build of fibre connectivity to the Grant Funded Sites and the making available of a Layer 2 ethernet backhaul service suitable for supporting the Rural Telecommunications Services.
Zone 4	areas of New Zealand (except the Chatham Islands) that are not in Telecom Zones 1, 2 and 3.

1.2 Interpretation: In this Agreement:

- a the headings to clauses in this Agreement and the table of contents are for convenience only and have no legal effect;
- b the singular includes the plural and vice versa and, where a term is defined, that definition applies to all grammatical forms of that term;
- c a reference to:
 - i a **clause** is a reference to a clause of this Agreement;
 - ii a reference to a **Schedule** or an **Annexure** is a reference to a schedule or annexure to this Agreement;
 - iii a **person** includes a body corporate, unincorporated association or a partnership;
 - iv **\$ or dollars** is a reference to New Zealand currency;
 - v **personnel** includes officers, employees, and contractors;
 - vi **including** and similar words do not imply any limitation; and
 - vii a statute includes references to regulations, orders or notices made under or in connection with the statute and all amendments or replacements of any of them from time to time;
- d none of the terms or clauses of this Agreement are to be construed against a Party by reasons of the fact that that term or clause was first proposed or drafted by that Party;
- e to the extent that any terms or clauses in this Agreement are ambiguous, those terms or clauses are to be interpreted, to the extent reasonably practicable, in a way that gives appropriate weight to the Rural Broadband Objectives amongst other things; and

- f any capitalised term that is not defined in clause 1.1 above but which is defined in the Schedules shall have that meaning in the whole of this Agreement;
- g the following order of precedence applies to the documents forming part of, incorporated into, or referred to in this Agreement if any conflict or inconsistency arises:
 - i the main body of this Agreement;
 - ii the Schedules and Appendices; and
 - iii any Documentation or other document referred to in this Agreement.

2 APPOINTMENT AND ACKNOWLEDGEMENTS

- 2.1 **Appointment:** The Ministry appoints Vodafone to perform the Design and Build Services, provide the Co-location Services and make Available the Rural Telecommunications Services, and Vodafone accepts that appointment, subject to and in accordance with the terms of this Agreement.
- 2.2 **Acknowledgements:** In entering into this Agreement Vodafone acknowledges that:
- a except as provided for in this Agreement, it has not relied on any representation made, or information supplied to it, by the Ministry that not has been independently verified by Vodafone;
 - b the Ministry expressly disclaims any representation, warranty or undertaking, express or implied, as to the specified level of demand for the Ongoing Services;
 - c it has made its own independent assessment of, and has relied on its own enquiries and investigations as to:
 - i the subject matter of this Agreement;
 - ii the quantity, quality, nature and extent of all resources (including human resources), materials, infrastructure, equipment and facilities necessary to enable it to comply with, and perform, its obligations under this Agreement; and
 - iii the nature and the extent of the risks assumed by it under this Agreement,
 - d the payment of the Grant will not fully fund the Infrastructure required to provide the Rural Telecommunications Services, and except where this Agreement expressly provides otherwise, Vodafone is responsible for obtaining all other funding required to enable it to perform its obligations in accordance

with this Agreement; and

- e. it is satisfied that the obligations assumed by it under this Agreement can be met.

3 MINISTRY OBJECTIVES

3.1 **Objectives:** The Ministry's objectives in entering into this Agreement include to:

- a ensure the Availability of the Wholesale Services to Access Seekers;
- b contribute to the achievement of the rural community objective (as defined in paragraph B of the Background section);
- c ensure that any Grant Funded Infrastructure can be accessed by Access Seekers; and
- d simplify the management of the contractual arrangement with Vodafone by ensuring that each Party's roles and responsibilities are clearly defined to ensure certainty of the outcomes for the activities covered by this Agreement.

4 TERM

4.1 **Duration:** Other than clause 5, this Agreement commences on the later of the date it is signed or the date on which the conditions in clause 5.1 are met. Clause 5 commences on the date this Agreement is signed. Unless terminated earlier in accordance with the terms of this Agreement this Agreement will continue until Vodafone is entitled to cease providing the Ongoing Services.

4.2 Vodafone will provide:

- a the Rural Telecommunications Services for a term of 5 years from the date this Agreement commences (the **Initial Term**). Six months prior to the end of the Initial Term, Vodafone must, if it believes that there is effective and workable competition for wholesale layer 2 services in Zone 4 (**Effective Competition**), provide a report to the Ministry demonstrating with evidence that there is Effective Competition. If, acting reasonably, the Ministry disagrees that there is Effective Competition, either Party may refer that question to an expert for determination in accordance with clause 19.3. If Vodafone does not provide such a report to the Ministry or if the expert determines that there is not Effective Competition Vodafone will provide the Rural Telecommunications Services for a further period of three years, measured from the end of the Initial Term, or such shorter period as the expert may advise or the Parties may agree is appropriate to allow Effective Competition. If the Ministry agrees (acting reasonably), or an expert determines, that there is Effective Competition, Vodafone's obligations in respect of the provision of the Rural Telecommunications Service will cease upon the later of the expiry of the

Initial Term or the date of the expert's determination; and

- b The Co-location Services for a term of 25 years from the date this Agreement commences.

5 PRE CONDITIONS

5.1 Conditions: This Agreement is conditional upon:

- a the passing of the Bill;
- b the Bill not including, on the date that it is passed, any provisions that provide for or contemplate:
 - i any form of separation of Vodafone; or
 - ii any price or non-price terms on any Vodafone products or services except as provided for in the agreed undertakings under the Act that relate to non-discrimination on the Grant Funded Infrastructure, as such process for agreeing undertakings is contemplated in the Bill as at the date that this Agreement is signed; or
 - iii any undertakings required by the Minister under the Act as amended by the Bill that relate to non-discrimination on the Grant Funded Infrastructure which are materially more onerous than those given by Vodafone in favour of the Crown in the Deed of Undertaking,
- c the inclusion of a Commerce Act Authorisation in the Telecommunications (TSO, Broadband and Other Matters) Amendment Bill 2010 on the date that it is passed, in respect of:
 - i the Proposal made by Vodafone and Telecom (and the subsequent modifications made to the Proposal after discussions with the Ministry); and
 - ii any agreement entered into between the Ministry and Vodafone, or the Ministry and Telecom, for the purposes of the Rural Broadband Objectives; and
 - iii any agreement entered into between the Telecom and Vodafone for the purposes of assisting in meeting the Rural Broadband Objectives;
- d the Ministry obtaining government approval for the government grant and appropriations for the RBI in an aggregate amount of not less than \$285 million, and confirming the same to Vodafone by notice in writing;
- e the approval of this Agreement by the Minister of Finance and the Minister of Communications and Information Technology, followed by the Ministry

confirming the same to Vodafone by notice in writing;

- f Vodafone entering into the Backhaul Agreement;
- g the Ministry entering into the Fibre Build Contract; and
- h Vodafone providing the Ministry with the Deed of Undertaking validly executed.

5.2 Ministry conditions: The conditions in clause 5.1 (d) and (e) are for the benefit of the Ministry and may only be waived or amended by the Ministry by notice in writing to Vodafone.

5.3 Joint conditions: The conditions in clauses 5.1 (a), (b), (c), (f),(g) and (h) are for the benefit of both the Ministry and Vodafone, and may only be waived or amended by a joint decision recorded in writing and signed by both the Ministry and Vodafone.

5.4 Failure of Conditions:

- a If a condition in clauses 5.1 (a), (b), (c), (d), (e), (f) or (g) has not been satisfied (or waived in accordance with clause 5.2 or 5.3, as applicable) on or before 30 July 2011, then the Ministry may cancel this Agreement by notice in writing to Vodafone.
- b If a condition in clauses 5.1 (a), (b), (c), (f) or (g) has not been satisfied (or waived in accordance with clause 5.3) on or before 30 July 2011, then Vodafone may cancel this Agreement by notice in writing to the Ministry.
- c Subject to clause 5.4 (d), upon this Agreement being cancelled in accordance with clause 5.4 (a) or (b), neither Party will have any right against, or obligation to, the other Party, except in respect of any breach of this Agreement occurring prior to its cancellation.
- d Upon this Agreement being cancelled in accordance with clause 5.4 (a) or (b), the Ministry will pay to Vodafone all unavoidable, unrecoverable costs reasonably incurred or committed by Vodafone in contemplation of performing its obligations under this Agreement should it proceed, provided that those costs have been approved in writing by the Ministry in advance of Vodafone incurring them (such approval not to be unreasonably withheld). Notwithstanding this Vodafone will use reasonable endeavours to avoid and/or mitigate those costs, including following cancellation.

6 GRANT

6.1 Payment of Grant: The Ministry must pay the Grant at the rate and the manner set out in clause 13 and Schedule 4. The payment of the Grant is the total amount payable by the Ministry for the performance of the Design and Build Services, the provision of the Co-location Services and the making Available of the Rural

Telecommunications Services.

- 6.2 **Vodafone consideration:** In consideration of the Grant, Vodafone must provide the Design and Build Services and the Co-location Services and make Available the Rural Telecommunications Services, in accordance with this Agreement.

7 MINISTRY OBLIGATIONS

- 7.1 **Provision of information and assistance:** The Ministry must:

- a promptly and so as not to delay the performance by Vodafone of its obligations under this Agreement, provide to Vodafone all information in its power to obtain which Vodafone reasonably requires to perform its obligations under this Agreement;
- b provide resources and suitably qualified personnel appropriate for the performance by the Ministry of its obligations under this Agreement;
- c assist Vodafone in performing its obligations under this Agreement by making timely decisions and providing approvals, (such approvals not to be withheld other than on grounds defined in this Agreement), where required, including those in relation to:
 - i build and asset plans;
 - ii change management requests and decisions; and
 - iii payment of the Grant, and
- d use all reasonable endeavours to ensure that there is an agreement in place between the Ministry and a telecommunications provider that provides for the Wireless CBDP Backhaul Requirements.

8 VODAFONE OBLIGATIONS

- 8.1 **Design and Build Services:** Vodafone must provide the Design and Build Services promptly, efficiently and with reasonable skill and care in accordance with:

- a the terms of this Agreement, including the standards and timeframes set out in the Schedules; and
- b practices which at the date of providing the relevant service are commonly accepted as good industry practice applicable to the Design and Build Services.

- 8.2 **Rural Telecommunications Services:** Subject to clause 8.3 as each Grant Funded Site is completed Vodafone must make Available the Rural Telecommunications Services from that Grant Funded Site.

- 8.3 **Undertaking:** Vodafone will not provide Rural Telecommunication Services until

such time as it has agreed an undertaking to the Minister in relation to Grant Funded Infrastructure such undertaking not to be materially different to the Deed of Undertaking.

- 8.4 **Infrastructure and equipment:** Vodafone acknowledges that, other than the provision of the Wireless CBDP Backhaul Requirements (which is to be secured by the Ministry in the Fibre Build Contract) it, and not the Ministry, is responsible for procuring and operating the Infrastructure and all other infrastructure and technical equipment required for Vodafone to meet its obligations under this Agreement (regardless of whether such infrastructure or equipment was funded by the Grant or not).
- 8.5 **Implementation:** Without limiting clause 8.1, Vodafone must provide the Design and Build Services in accordance with Schedule 2. Vodafone will provide plans to the Ministry and work with the Ministry in the manner set out in Schedule 3.
- 8.6 **Co-Location Services:** Without limiting clause 8.1, Vodafone must provide the Co-location Services to Access Seekers in the manner set out in Schedule 1.
- 8.7 **Wholesale Services:** Without limiting clause 8.2, Vodafone must make Available the specified Wholesale Services to Service Providers at the price set out in Schedule 10.
- 8.8 **Commissioning:** When each Grant Funded Site has been completed, the Parties will acceptance test that site in the manner set out in Schedule 9. Once a Grant Funded Site has successfully completed the acceptance tests Vodafone must:
- a supply a Site Test Certificate to the Ministry; and
 - b publish information on their publically available website that confirms that a Granted Funded Site has been completed and is now Available to Access Seekers for them to use the Wholesale Services.
- 8.9 **Receipt:** The receipt of a Site Test Certificate will not signify acceptance by the Ministry of the Infrastructure or Rural Telecommunications Services or any technical or business process forming part of the Infrastructure but will be made for the purposes of evidencing Vodafone's view that a Grant Funded Site has been completed.
- 8.10 **No limit:** The obligations in this Agreement do not substitute or limit the obligation of Vodafone to comply with the Commerce Act 1986, the Telecommunications Act 2001 or any other applicable legislative or regulatory requirement.
- 8.11 **Interception capability:** For the avoidance of doubt Vodafone acknowledges its obligations under the Telecommunications (Intercept Capability) Act 2004 (**Interception Act**) and in particular, its obligations to:

- a have an Interception Capability;
- b ensure that its Interception Capability is for the purposes contemplated under the Interception Act and for no other purpose, (including network performance monitoring, operational support and/or network maintenance); and
- c upon request, make available such system documentation, including source code and schematics (including those of the supporting network elements) to assure to the satisfaction of an appropriately qualified officer of the New Zealand Government, that the Infrastructure does not intentionally provide any Interception Capability, or like function that could compromise the reasonable expectation of privacy of any individual using the network or the security of New Zealand, except as allowed for in the Interception Act and other relevant legislation.

The Parties acknowledge that this clause is not intended to create any right for the Ministry or place any greater obligations on Vodafone than those set out in the Interception Act. Any breach of the Interception Act will be addressed in the manner set out in the Interception Act and will not be treated as a breach of this Agreement.

8.12 Stakeholder Engagement:

- a Vodafone will comply with its obligations in Schedule 8.
- b Accordingly, the Parties acknowledge that:
 - i nothing in Schedule 8 will require Vodafone to share any commercially sensitive information with any stakeholders or other third parties;
 - ii Schedule 8 does not alter Vodafone's obligations in relation to the Infrastructure, Design and Build Services or Rural Telecommunications Services; and
 - iii nothing in Schedule 8 obliges Vodafone to implement any request, feedback or decision made by any stakeholder or stakeholder group, or to pursue any opportunity identified through engagement with any stakeholder or stakeholder group.

9 DELAYS

9.1 **Delays:** This clause 9 applies to all delays in the performance of the Design and Build Services.

9.2 **Notice:** If Vodafone considers that it is (or is likely to be) prevented or delayed from successfully achieving a milestone in accordance with the Timetable (**Delay**), it will promptly provide notice verbally, and then as soon as reasonably practicable (but in any event within 10 Business Days of becoming aware of the Delay, or such other

period as may be agreed by the Parties in writing) provide notice in writing to the Ministry (**Notice of Delay**) setting out:

- a the causes for the Delay and its expected duration;
- b the expected effect of the Delay on Vodafone's ability to perform its obligations under the Agreement (including the meeting of any other due dates specified in this Agreement);
- c what extension, if any, to the affected due dates is being sought; and
- d what steps, if any, the Ministry may take to mitigate the effect of the Delay.

9.3 **Mitigation:** Vodafone will, regardless of the cause of the Delay, take all reasonable steps to eliminate or avoid the Delay and mitigate its effects.

9.4 **Addressing Delays:** As soon as practicable following the receipt of a Notice of Delay, Vodafone and the Ministry will meet with a view to agreeing how the Delay should be addressed.

9.5 **Unplanned delay:** Where Vodafone considers, acting reasonably, the Delay is due in whole or in part to an Unplanned Event:

- a Vodafone will be entitled to such of the following:
 - i a reasonable extension to the Timetable;
 - ii an increase in the amount payable to Vodafone having regard to the increased costs, any such costs to be minimised by Vodafone to the extent reasonably possible, to Vodafone arising out of or in connection with the Unplanned Event;
 - iii an amendment to the Services to account for the impact of the Unplanned Event; and/or
 - iv an amendment to the obligations of either party under this Agreement to account for the impact of the Unplanned Event, and

as is considered reasonable to accommodate the impact of the Unplanned Event, provided that in determining what is reasonable the Parties acknowledge that they should look to Vodafone's increased costs, any such costs to be minimised by Vodafone to the extent reasonably possible, but the Ministry:

 - v will only reimburse Vodafone for Grantable Costs; and
 - vi will not be required to pay Vodafone and Telecom more than the amount approved in clause 5.1(d) in association with meeting the Rural

Broadband Objectives,

and any further accommodation required to address the impact of the Unplanned Event will be through the Parties making the changes set out in clauses 9.5(a)(i) and 9.5(a)(iii) and (iv); and

- b such Changes will be implemented in accordance with the process set out in Schedule 5 for Changes resulting out of Unplanned Events.

9.6 **Extension to Timetable:** Subject to clause 9.5 and without limiting the other rights and remedies available to the Ministry and (if applicable) Vodafone, if Vodafone has failed to successfully achieve a milestone in accordance with the Timetable then the Ministry may (at its option) revise the milestones in the Timetable. The Ministry will notify Vodafone in writing of any such revision and will update the Timetable.

10 RELATIONSHIP MANAGEMENT AND INFORMATION SUPPLY

10.1 Relationship management:

- a Each Party must maintain an Authorised Representative, who is authorised to represent that Party in communications under this Agreement, to act for it under this Agreement. The first Authorised Representative for each Party is described in Schedule 3.
- b A Party may appoint an alternate or replacement Authorised Representative by notice to the other Party.

10.2 **Records:** Vodafone must maintain proper and accurate records in relation to its use (or proposed use in the case of payment arrears) of the Grant and in relation to the performance of its obligations under this Agreement. Subject to clause 10.9, Vodafone must make such records relating to its use of the Grant available on an open book basis as soon as reasonably practicable following a written request from the Ministry, including allowing the Ministry to inspect and take copies of those records.

10.3 **Ongoing compliance:** The Ministry may call on the chief executive or a director of Vodafone at any time to provide a certificate, signed by that chief executive or director, confirming that Vodafone, to the best of Vodafone's knowledge and belief, after making due enquiry, continues to comply in all material respects with its obligations under this Agreement, or otherwise certifying where and how Vodafone has materially failed to comply with its obligations under this Agreement.

10.4 Meetings:

- a Vodafone must:
 - i attend such meetings with the Ministry's personnel as are reasonably

required by the Ministry (but in any case no more often than monthly) to discuss Vodafone's progress and other matters relating to Vodafone's performance of and under this Agreement, including attending six monthly meetings between senior executives of the Parties to be held in Wellington; and

- ii at least 10 Business Days prior to each 6 monthly meeting, provide the Ministry with a report containing the information required under Schedule 3, and any other information required for that meeting in accordance with clause 10.5.
- b Each year the Parties will meet to discuss the Services, including:
- i. any new technology that either Party reasonably believes may be useful in the provision of the Services;
 - ii the performance of the Services in comparison with the internet broadband services being provided in Zones 1, 2 and 3; and
 - iii the market for rural broadband services as a whole, including the level of competition that is existing in that market,

provided that there will be no obligation to change the Services or either Party's obligations under this Agreement unless both Parties agree to do so.

10.5 Supply of information:

- a Vodafone will supply the Ministry with the reports specified in Schedule 3, at its own cost, in accordance with the timeframes set out in Schedule 3.
- b Without limiting any reporting or information disclosure requirements set out in this Agreement or at law, Vodafone must promptly provide to the Ministry any progress reports or other information reasonably requested by the Ministry relating to the Design and Build Services and/or the Grant Funded Infrastructure (including long term asset maintenance plans), but in each case only where the Ministry has provided reasonable advance notice of the nature and extent of the information required, and only where the Ministry has agreed in writing to reimburse Vodafone for the reasonable costs (including internal costs) of locating, collating and supplying that information.

10.6 Audits and reviews:

- a For the avoidance of doubt nothing in this clause 10.6 and clause 10.7 limits the specific provisions of Schedule 4 that enable the Ministry to confirm invoices received by Vodafone.
- b Subject to clause 10.9 Vodafone will allow the Ministry (or an independent

auditor, as agreed between the Parties, with appropriate experience and qualifications) to conduct audits or reviews of Vodafone's provision of the Design and Build Services, the Availability of the Rural Telecommunications Services, and Vodafone's compliance with this Agreement (during both the construction and operation phases), including the accuracy of any contractor's or supplier's invoices, its use of the Grant, and its compliance with technical specifications set out in this Agreement relating to the Infrastructure, and technical equipment used to provide the Design and Build Services and support the Rural Telecommunications Services.

- c Vodafone will use all reasonable endeavours to procure that its subcontractors co-operate with the Ministry or any auditor for the purposes of any audit or review carried out under this clause 10.6.
- d The costs of the auditor (if any) will be borne by the Ministry unless the audit reveals that there is a material non-compliance with this Agreement that has not previously been disclosed by Vodafone, in which case Vodafone must reimburse the Ministry for the reasonable cost of the audit or review.
- e Subject to clause 10.6(f) below, the Ministry will not exercise its rights under this clause 10.6 more than once in any 12 month period except where the Ministry:
 - i believes on reasonable grounds that Vodafone is in material breach of its obligations under this Agreement; or
 - ii is required to do so in order to comply with applicable Crown audit requirements imposed by law.
- f During the first five years of the term of this Agreement, the Ministry may perform one additional audit in any 12 month period in accordance with this clause 10.6 solely for the purpose of auditing Vodafone's use of the Grant.
- g Where any audit or review of the matters in clause 10.6(b) is carried out pursuant to section 25 of the Public Audit Act 2001 or any other power conferred by statute or regulation, the Ministry agrees that:
 - i for the purposes of this Agreement, the audit or review will be deemed to be an exercise of the Ministry's rights in clause 10.6; and
 - ii to the extent permitted by law, the Ministry will ensure that the audit or review is carried out in a manner consistent with the provisions of clause 10.

10.7 Audit requirements: If an audit or review is conducted under clause 10.6, then subject to clause 10.9:

- a the audit or review will be conducted during Business Days and following at least ten Business Days' notice to Vodafone by the Ministry, and that notice will provide reasonable details of the proposed scope of the audit or review, within the limits of clause 10.6;
- b the Ministry and the auditor (if any) will be under a duty of confidentiality in respect of use and disclosure of audited information to persons other than Vodafone and the Ministry (and the auditor if any), and if requested by Vodafone the Ministry will ensure that the auditor executes a confidentiality undertaking in Vodafone's favour, on terms reasonably required by Vodafone;
- c the Ministry and the auditor (if any) will comply with Vodafone's reasonable security requirements;
- d the Ministry will use its reasonable endeavours to minimise any disruption to Vodafone's business during the course of the audit;
- e Vodafone must co-operate in a timely manner in respect of any audit or review;
- f Vodafone must promptly provide:
 - i access and assistance to the Ministry or the auditor (if any) in respect of any audit (including access to Vodafone, its personnel, facilities, systems, records and resources used in the provision of the Services and Deliverables); and
 - ii any explanations, information and documentation that the Ministry or the auditor (as applicable) may reasonably require in relation to the audit or review,

provided that nothing in this clause requires Vodafone to provide the Ministry or the auditor (as the case may be) with any assistance, or any access to Vodafone's systems or information, that is not relevant to the scope of the audit as notified under clause 10.7(a).

10.8 Remedy non-compliance: If the resulting audit or review report reveals any non-compliance with this Agreement on the part of Vodafone that is not caused by the Ministry then, without limiting any other right or remedy of the Ministry, Vodafone must promptly and at its own cost:

- a remedy that non-compliance, where it is capable of remedy; or
- b if the non-compliance is not capable of remedy, develop plans to avoid the same non-compliance happening in the future.

10.9 Sensitive Information: [Withheld under s 9(2)(b)(ii) of the Official Information]

[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].

[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].

10.10 **Savings:** Nothing in this clause 10 is intended to limit any audit rights conferred by statute or regulation on the Ministry or any other agent of the Crown, except to the extent that those rights may lawfully be limited by contract.

11 PRODUCT REVIEWS

11.1 The Ministry may, at any time but not more than once in any 12 month period, request a Vodafone conduct a Product Review of the Services provided by Vodafone under this Agreement.

11.2 The Parties will comply with the provisions of Schedule 6 in relation to all Product Reviews.

12 CHANGE

12.1 **Change request:** Subject to clause 9.6, the Parties will comply with the provisions of Schedule 5 in relation to all Changes.

12.2 For the avoidance of doubt, where a Change is requested as a result of a breach by a Party of its obligations under this Agreement, the treatment of that breach as an Unplanned Event will be without prejudice to any other rights or remedies that a Party may have in connection with that breach.

13 PRICING AND PAYMENT

13.1 **Obligation to pay:** In consideration of Vodafone performing its obligations under this Agreement, subject to the provisions of Schedule 4 the Ministry will pay the Grant to Vodafone for the delivery of the Grant Funded Infrastructure.

13.2 **Total cost:** The Grant comprises the total amount payable by the Ministry to Vodafone under this Agreement in respect of the Design and Build Services and the Availability of the Rural Telecommunications Services (other than those obligations

for which Vodafone is entitled to additional reimbursement in accordance with the express provisions of this Agreement).

- 13.3 **Grant:** For the purposes of section CX47 of the Income Tax Act 2007 the amount payable under the Grant is a government grant.
- 13.4 **Taxes:** Other than GST, all taxes, levies and duties payable by Vodafone in connection with this Agreement under any law are to be paid by Vodafone and not passed onto the Ministry.
- 13.5 **Invoicing:** Vodafone will invoice the Ministry for the Grant as detailed in Schedule 4.
- 13.6 **Invoice disputes:** If the Ministry disputes an invoice in good faith, the Ministry may withhold any disputed sum until the dispute is resolved, but will pay the undisputed portion in accordance with Schedule 4. Vodafone will not be excused from performing its obligations under this Agreement while an invoice is disputed by the Ministry.
- 13.7 **Set-off:** Either Party may set off any amount owing by it to the other under or in connection with this Agreement against any undisputed amounts owed by the other Party under or in connection with this Agreement.

14 INTELLECTUAL PROPERTY

- 14.1 **Pre-existing Intellectual Property:** Intellectual Property Rights in any Pre-existing Intellectual Property, which is used for the purpose of this Agreement, remains the property of the current owner.
- 14.2 **Deliverables:** The Intellectual Property Rights in the Infrastructure and any other intellectual property created or developed by or on behalf of Vodafone in performing its obligations under this Agreement are owned by Vodafone from the date those rights arise.
- 14.3 The Ministry grants, and will procure that its licensors and personnel grant, to Vodafone a royalty-free, non-exclusive, non-transferable, irrevocable licence to use, adapt and modify the Ministry IP provided by the Ministry to Vodafone in connection with this Agreement.
- 14.4 Vodafone grants, and will procure that its licensors and personnel grant, to the Ministry a royalty-free, non-exclusive, non-transferable, irrevocable licence to use, adapt and modify Vodafone's Pre-existing Intellectual Property provided to the Ministry by Vodafone in connection with this Agreement to enable the Ministry to use the relevant Pre-Existing Intellectual Property to perform its obligations and exercise its rights under this Agreement.

15 CONFIDENTIALITY

15.1 Security and non-disclosure: Each Party must:

- a keep the Confidential Information belonging to the other Party confidential at all times;
- b not use, communicate, copy, make available or re-supply the Confidential Information belonging to the other Party to any person other than its personnel, or professional advisors or contractors to whom disclosure is necessary for the purposes of performing this Agreement;
- c effect and maintain adequate security measures to safeguard the Confidential Information belonging to the other Party from access or use by unauthorised persons, as may be reasonably appropriate given the manner in which the information is received and is contemplated to be used under this Agreement; and
- d ensure that any personnel to whom it discloses Confidential information belonging to the other Party are aware of, and comply with, the provisions of this clause 15.

For the avoidance of doubt, any Sensitive Information that may be disclosed to the Ministry by Vodafone must not be disclosed by the Ministry to any other personnel, professional advisor or contractor without prior written permission and must be returned to Vodafone immediately. Subject to clause 10.9 the Parties acknowledge that Vodafone will have no obligation to disclose any Sensitive Information to the Ministry or its personnel.

15.2 Disclosure required: The obligations of confidentiality in clause 15.1 do not apply to any disclosure of Confidential Information:

- a where the disclosure of the other Party's Confidential Information has been approved by the other Party in writing in advance of that disclosure;
- b required by law (including the Official Information Act 1982) or any stock exchange provided that where such disclosure is required the Party obligated to make the disclosure will give the Party that owns the Confidential Information (Owner) such prior notice of the requirement to disclose as it is reasonably able to and:
 - i will consult with the Owner on the information to be disclosed;
 - ii will take into account information provided by the Owner during that consultation when making the disclosure; and
 - iii will only disclose the information to the extent legally required by law;

- c to the extent that such disclosure is necessary in order to perform an obligation under this Agreement, or to enforce any rights or powers in accordance with this Agreement provided that the Party disclosing the Confidential Information belonging to the other Party will ensure that the party to whom it provides such Confidential Information is under obligations of confidentiality no less strenuous than those set out in this Agreement;
- d which is publicly available through no fault of a Party or its personnel; or
- e which was rightfully received from a third party without restriction or without breach of this Agreement.

15.3 **Publicity:** All public statements or disclosures by Vodafone or the Ministry relating to this Agreement (other than those required by law or any stock exchange) must be agreed between the Parties in writing in advance, provided that this clause 15.3 does not prevent Vodafone from making public statements and disclosures relating to operational aspects of the Services and Deliverables.

16 WARRANTIES

16.1 **General warranties:** Vodafone warrants on an ongoing basis for the duration of this Agreement that:

- a at the date of entry into this Agreement, to the best of Vodafone's knowledge and belief after making due enquiry, there are no circumstances or matters that are likely to have a material adverse effect on the performance of its obligations under this Agreement, other than those disclosed to the Ministry in writing;
- b in providing the Services and Deliverables, it and its personnel will use all reasonable skill, care and diligence;
- c subject to securing agreement on an appropriate undertaking as contemplated in clause 8.3, it has in place, or will have in place at the relevant time, all consents, licences, authorisations, easements and approvals necessary to provide the Services and Deliverables, subject to any relief to which Vodafone is entitled under clause 9 of this Agreement;
- d the supply of the Services and Deliverables, and the use of those Services and Deliverables by Service Providers that Vodafone has contracted with or End Users that Vodafone has contracted with, will, if such use is in accordance with this Agreement and all other terms and conditions applicable to the relevant Services, not in and of itself constitute a breach of any third party's Intellectual Property Rights; and
- e the supply of the Services and Deliverables by Vodafone will be undertaken in accordance with all applicable laws and regulatory requirements relating to

the operation of a telecommunications network in a manner that at the time of providing the relevant Service or Deliverable is commonly accepted as good industry practice and with reasonable regard to TCF Codes.

16.2 **Proposal:** All factual information provided in writing by Vodafone to the Ministry under or in connection with this Agreement or in Vodafone's responses contained in the Proposal was, to the best of Vodafone's knowledge and belief, materially accurate and not misleading as at the time of supply of the information to the Ministry.

17 CONFLICT OF INTEREST

17.1 Avoiding conflicts:

- a Vodafone must maintain a high standard of honesty and integrity at all times in the performance of this Agreement.
- b Vodafone warrants that at the time of entry into this Agreement it is not aware of any matters in relation to its personnel or its interactions with the Ministry that could reasonably be viewed as compromising the fairness or objectivity of the evaluation, selection and negotiation process conducted by the Ministry in relation to this Agreement, other than matters which have been fully and fairly disclosed to the Ministry in writing.

17.2 During the term of this Agreement, Vodafone will use all reasonable endeavours to keep the Ministry informed of any matters coming to Vodafone's attention that relate to Vodafone's personnel or its interactions with the Ministry which could reasonably be viewed as compromising the objectivity and independence of:

- i the Ministry in managing and enforcing this Agreement; or
- ii Vodafone in fulfilling its obligations under this Agreement; and
- iii Vodafone will provide all reasonable assistance to the Ministry to allow it to address, avoid or mitigate such matters.

18 PERFORMANCE ISSUES AND REMEDIAL PLAN

18.1 **Performance Notice:** The Ministry may give notice to Vodafone requiring the preparation of a Remedial Plan (**Performance Notice**) at any time where:

- a Vodafone has committed a breach of this Agreement the impact or potential impact of which is more than trivial, and Vodafone has yet to remedy that breach or eliminate its effects;
- b Vodafone has committed a material breach of its obligations under this Agreement, and Vodafone's remedial efforts have yet to cure that breach or reduce its effects to a level where it ceases to qualify as a material breach;

and/or

- c there are reasonable grounds to anticipate an imminent material breach by Vodafone of its obligations under this Agreement,

(in each case, a **Performance Issue**).

- 18.2 **Performance Issue:** If at any time the Ministry issues a Performance Notice in accordance with clause 18.1, Vodafone will immediately take all reasonable steps to minimise or mitigate the associated Performance Issue, prior to the provision of a Remedial Plan.
- 18.3 **Remedial Plan:** Where the Ministry issues a Performance Notice to Vodafone, that Performance Notice must set out reasonable details of the Performance Issue, and request Vodafone to prepare a plan to remedy the Performance Issue (**Remedial Plan**) in accordance with clause 18.4.
- 18.4 **Preparation of Remedial Plan:** As soon as possible after receipt of a Performance Notice (and in any event within 10 Business Days) Vodafone will, in consultation with the relevant Ministry personnel, prepare and provide to the Ministry for approval a proposed Remedial Plan setting out:
- a full details of the Performance Issue (including its causes, expected duration and impact on Vodafone's obligations under this Agreement);
 - b a plan (including milestones) setting out the steps Vodafone proposes to take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from reoccurring, as applicable; and
 - c success criteria to determine whether the Performance Issue has been rectified (the **Success Criteria**).
- 18.5 **Review:** The Ministry will review the proposed Remedial Plan and will, within a reasonable time (and in any event within five Business Days of receiving each draft), either:
- a approve the Remedial Plan by written notice to Vodafone (such approval not to be withheld unless the steps proposed in the Remedial Plan have no reasonable prospect of successfully remedying the Performance Issue); or
 - b notify Vodafone of any amendments which the Ministry requires to be made to the proposed Remedial Plan (but only to the extent those amendments are needed to ensure that the steps proposed in the Remedial Plan have a reasonable prospect of successfully remedying the Performance Issue).
- 18.6 **Modifications to Remedial Plan:** Following receipt of each response from the Ministry under clause 18.5, Vodafone will promptly (and, in any event, within five

Business Days):

- a If Vodafone agrees with the Ministry's requirements, make such amendments to the proposed Remedial Plan as the Ministry requires in accordance with clause 18.5, and will deliver the agreed Remedial Plan to the Ministry;
- b If Vodafone does not agree with the Ministry's requirements provide the Ministry with a Remedial Plan setting out any further suggested changes for the Ministry's review.

18.7 Failure to agree the Remedial Plan: If the Parties are unable to agree a Remedial Plan after one iteration of the review process set out in clause 18.6 then:

- a. if the Performance Notice was given in respect of a Performance Issue described in either clause 18.1(a) or clause 18.1(b), the Remedial Plan will not be subject to the dispute resolution process and upon request from either Party will be abandoned and, subject to clause 18.10(a), the Parties may seek any other remedies to which they are entitled; or
- b. if the Performance Notice was given in respect of a Performance Issue described in clause 18.1(c), the Remedial Plan will be referred to an expert to be determined in accordance with clause 19.3.

18.8 Implementation: If the Parties have agreed a Remedial Plan or an expert has determined a Remedial Plan in accordance with clause 18.7(b), Vodafone will promptly implement the Remedial Plan in accordance with its terms and this Agreement.

18.9 Costs: Unless Vodafone has committed a material breach of its obligations under this Agreement, each Party will bear its own costs associated with preparing and implementing the Remedial Plan in accordance with this clause 18 and will share the costs of any expert engaged in accordance with clause 18.7(b). If Vodafone has committed a material breach of its obligations under this Agreement then Vodafone will bear all costs (including any reasonable costs incurred by the Ministry) associated with preparing and implementing the Remedial Plan in accordance with this clause 18.

18.10 Other Remedies: For the avoidance of doubt:

- a a failure of the Parties to agree a Remedial Plan shall not in itself constitute a material breach by Vodafone of its obligations under this Agreement;
- b the Ministry requesting a Remedial Plan in relation to a material breach of Vodafone under this Agreement shall not prejudice any other right that the Ministry may have in relation to that material breach; and

- c where Vodafone is implementing a Remedial Plan:
 - i then the breach (whether actual or imminent) that is to be remedied by that Remedial Plan will not be treated as a breach unless it remains unremedied at the end of the implementation of that Remedial Plan; and
 - ii and Vodafone commits an act or omission that is required by or contemplated in that Remedial Plan and that act or omission would otherwise be a breach of this Agreement, such act or omission will not be treated as a breach of this Agreement.

19 DISPUTE RESOLUTION

19.1 In the event of any dispute, difference or question arising out of or in connection with this Agreement or its formation (a **dispute**), each Party must:

- a use its best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques for 15 Business Days after the date on which the existence and details of the dispute are notified in writing by one Party to the other Party;
- b if unresolved, escalate the dispute to the Chief Executive Officer of Vodafone and the Chief Executive Officer of the Ministry who will use their best efforts to resolve the dispute through good faith negotiations for a further 20 Business Days; and
- c continue to perform its obligations under the Agreement as far as possible as if no dispute had arisen pending the final resolution of any dispute, whether by settlement, arbitration or expert determination.

19.2 **Arbitration:** If:

- a the dispute is not resolved under clause 19.1(b) within 15 Business Days from the date that the dispute was referred to the Chief Executive Officers of Vodafone and the Ministry;
- b this Agreement does not expressly require that the dispute will be subject to expert determination; and
- c the relevant parties have not otherwise agreed to refer the dispute to expert determination,

then:

- d either Party may give written notice to the other Party:
 - i setting out the subject matter and details of the dispute and requiring that the dispute be referred to arbitration by a sole arbitrator; and

- ii stating the name of the independent arbitrator whom the Party giving the notice nominates as an arbitrator;
- e if the relevant Parties fail to agree on the identity of the arbitrator within 10 Business Days of the date of receipt of the notice referring the dispute to arbitration, the arbitrator will be chosen by the president or vice-president of the Arbitrators' and Mediators' Institute of New Zealand Inc (or his or her nominee);
- f the arbitration will be held in Wellington, New Zealand;
- g the arbitrator will decide the dispute in accordance with New Zealand law and conduct the arbitration in accordance with the Arbitration Act 1996 and the Arbitration Protocols of the Arbitrators' and Mediators' Institute of New Zealand Inc; and
- h to avoid doubt, in the absence of manifest error or fraud, the arbitrator's award is final and binding on the parties. Subject to the preceding sentence, the Parties hereby waive any and all rights of judicial challenge, review or appeal, to the fullest extent that such waivers are permissible under New Zealand law.
- i Notwithstanding clause 19.2(h), should a Party (an **unsuccessful challenger**) apply to, or petition, any court to challenge the arbitrator's award and the unsuccessful challenger's application or petition is not sustained and upheld by that court, then the unsuccessful challenger shall be required to pay all costs and the full legal fees actually paid or incurred by the Party opposing the court challenge.

19.3 **Expert determination:** If this Agreement expressly requires that the dispute will be subject to expert determination, either Party may, by written notice to the other Party, refer the dispute to expert determination under clause 19.4. The Parties may also agree in writing to refer any other dispute to expert determination under clause 19.4.

19.4 **Process:** If a dispute has been referred to expert determination under clause 19.3:

- a the independent expert will be appointed by agreement between the Parties or, failing agreement within 10 Business Days, by the president of the New Zealand Institute of Chartered Accountants (or his or her nominee) for financial disputes or the president of the Arbitrators' and Mediators' Institute of New Zealand Inc (or his or her nominee) for non-financial disputes, and in each case the appointing person will be requested to appoint an expert who is suitably qualified, independent and experienced in relation to the subject matter of the dispute (the **Expert**);

- b the Expert will act as an expert and not as an arbitrator, and referral of the dispute to the Expert will not be a submission to arbitration for the purposes of the Arbitration Act 1996 and the provisions of that Act will not govern that referral;
- c all documents and submissions provided to the Expert will be provided on a strictly confidential basis, and the Expert's terms of appointment will include confidentiality undertakings in favour of both Parties (the form and substance of those undertakings to be reasonably acceptable to both Parties);
- d the Expert will be entitled to adopt his or her own procedure, so long as that procedure is consistent with the requirements of this clause 19;
- e within 10 Business Days of the Expert accepting the appointment, the Parties will send written submissions on the dispute to the Expert and to each other and, within five Business Days of receiving the other Party's submission, will submit any written replies they wish to make to the Expert and to each other;
- f the Parties will give the Expert all necessary assistance that the Expert reasonably requires to determine the dispute including access to documentation held by either Party;
- g the Expert will, unless the Parties otherwise agree, be directed to deliver a written determination to the Parties within 10 Business Days of having received the Parties' written submissions under clause 19.4(e), although where the Expert considers appropriate, he or she may issue an interim decision within that same period, and allow the Parties a further 5 Business Days to make submissions on that decision, after which he or she will issue a final decision within a further 5 Business Days following that additional period for submissions;
- h the Expert will have the power to compel either Party to produce any information material to the dispute which that Party has in its possession and which that Party could be required to produce on discovery in a court proceeding to the Expert and to the other Party;
- i to avoid doubt, in the absence of manifest error or fraud, the Expert's decision will be final and binding on the Parties. Subject to the preceding sentence the Parties hereby waive any and all rights of judicial challenge, review or appeal, to the fullest extent that such waivers are permissible under New Zealand law;
- j the Expert may, within 5 Business Days of being requested to do so by either Party, correct any clerical, typographical or computational error in his or her decision; and

- k the Expert's fees will be shared equally by the Parties unless otherwise directed by the Expert.

19.5 **Urgent relief:** Nothing in this clause 19 will preclude either Party from taking immediate steps to seek urgent equitable relief before a New Zealand Court provided that if arbitration proceedings have been commenced and an arbitration tribunal already constituted, notice of such court action shall be given to the arbitrator at the earliest opportunity.

20 TERMINATION

20.1 **Termination by the Ministry for an irremediable Material Breach:** The Ministry may terminate this Agreement by written notice to Vodafone, with immediate effect on the date of that notice, if Vodafone commits a material breach of its obligations under this Agreement which is not capable of being remedied. A material breach which is not capable of being remedied is deemed to include the occurrence of an Insolvency Event in relation to Vodafone.

20.2 **Termination for cause by Ministry:** The Ministry may terminate this Agreement by written notice to Vodafone, with immediate effect on the date of that notice if:

- a Vodafone commits a material breach of its obligations under this Agreement which is capable of remedy and is not remedied within 20 Business Days of notice from the Ministry setting out the material breach; and
- b the material breach remains unremedied at the time of the Ministry's notice of termination.

20.3 **Termination for Force Majeure Event:** Either Party may terminate this Agreement by notice in writing to the other Party, with immediate effect on the date of notice, if a Party has been unable to perform all, or a substantial part of, its obligations in relation to the Design and Build Services in accordance with this Agreement as a result of a Force Majeure Event for a continuous period of 180 Business Days. Where this Agreement is terminated by reason of a Force Majeure Event, then the sole obligation of the Ministry to Vodafone, and Vodafone's sole right in respect of the Ministry is the payment of the termination charges calculated in accordance with clause 20.5.

20.4 **No fault termination:** The Ministry may otherwise terminate this Agreement by providing no less than 180 Business Days' prior written notice where there has been a change in Government policy necessitating in the termination of this Agreement, in which case the Ministry's sole liability to Vodafone and Vodafone's sole exclusive remedy in relation to such termination is the payment of the termination charges calculated in accordance with clause 20.5.

20.5 **Termination charges:**

- a In the event that this Agreement is terminated under clauses 20.3 and 20.4 the Ministry will pay Vodafone termination charges calculated in accordance with this clause 20.5.
- b Termination charges must be calculated based on:
 - i Vodafone's reasonable unrecovered sunk capital costs incurred for the purposes of performing this Agreement;
 - ii plus any other cost which Vodafone has incurred or will incur by reason of the termination where:
 - > Vodafone has entered into commitments, arrangements or agreements that it is not able to terminate (or that involve a cost to terminate) and which will not expire prior to the termination date; and/or
 - > it is reasonably necessary for Vodafone to incur additional costs in order to ensure the orderly wind-down of the Design and Build Services in a manner that complies with the law (for example re-instating partially completed earthworks).
- c Termination charges must exclude:
 - i all elements of profit that Vodafone would otherwise add to its costs, and any post termination operation costs in connection with providing the Rural Telecommunications Services; and
 - ii any costs that have been recovered by Vodafone as a result of the Ministry paying the Grant up to the date of termination.
- d Vodafone must use reasonable endeavours to minimise the termination charges.
- e The termination charges must not exceed \$60 million, less any amounts already paid by the Ministry to Vodafone, and must be audited by a competent auditor.

20.6 Restricted termination: The Parties acknowledge that their rights to terminate this Agreement for any actual or anticipated breach by the other are limited to the express rights set out in this Agreement.

20.7 Termination by Vodafone for non-payment: If the Ministry fails to pay any Grant or part of any Grant payable to Vodafone under this Agreement, and such payments:

- a are due and payable;
- b represent a material amount; and

c are not the subject of a good faith dispute between any of the Parties;

then without limiting Vodafone's other rights or remedies:

d Vodafone may give a written notice to the Ministry which demands payment of the Grant or part of the Grant and clearly and expressly states that, at the expiry of a period of 20 Business Days from the date of receipt of the notice by the Ministry, Vodafone will terminate or suspend this Agreement if the Grant or part of the Grant is not paid within 20 Business Days from the date of receipt of that notice;

e if, following expiry of the 20 Business Day period referred to in the notice issued under clause 20.7(d), the relevant Grant or part of the Grant remains unpaid:

i Vodafone may immediately terminate this Agreement by written notice of termination to the Ministry; or

ii Vodafone may immediately suspend the performance of the Design and Build Services, in which case: (1) Vodafone will give notice lifting the suspension as soon as the Ministry pays the relevant Grant amount; (2) Vodafone will be entitled to request a Unplanned Change to the Agreement in accordance with Schedule 5 and (3) Vodafone may terminate this Agreement immediately on written notice to the Ministry at any time before the Ministry pays the relevant Grant amount.

20.8 Termination by Vodafone for Material Breach: Vodafone may terminate this Agreement by written notice to the Ministry, with immediate effect on the date of that notice, if the Ministry commits a material breach of its obligations under this Agreement (other than non-payment) which is:

i. not capable of being remedied; or

ii. is capable of being remedied and is not remedied within 20 Business Days of its receipt of a notice setting out that a material breach has occurred.

20.9 Termination for Irremediable Delay: Either Party may terminate this Agreement, without limiting either Party's other rights or remedies, by written notice to the other Party, with immediate effect on the date of that notice, if the Design and Build Services are not completed by the date that is three years after the Final Completion Date.

20.10 Partial termination: If the Ministry seeks to properly terminate this Agreement prior to completion of the last Grant Funded Site it may, without prejudice to any other right or remedy available to the Ministry, elect to exercise that right of termination in respect of any remaining Design and Build Services in which case:

- a the rights and obligations under this Agreement will be terminated to the extent they relate to:
 - i if the termination is due to a Force Majeure Event or material breach, the Service or site that was subject to the Force Majeure Event or was the cause of the material breach (an Excluded Site or Service);
 - ii non Grant Funded Sites or Services to be provided using the non Grant Funded Sites;
 - iii the Design and Build Services at Grant Funded Sites where civil construction has not begun at the date of termination and those Grant Funded Sites that are not Site Integrated at the date of termination and which, with the Ministry's agreement (not to be unreasonably withheld), Vodafone elects not to complete;
 - iv Ongoing Services in relation to Grant Funded Sites that have not been completed or will not be completed pursuant to clause 20.10(b);
- b Vodafone will provide the Design and Build Services for those Grant Funded Sites that it had commenced construction of at the date of termination and which it, with the Ministry's agreement (not to be unreasonably withheld), elects to complete;
- c the Ministry will continue to pay the Grant for any completed Grant Funded Sites whether completed at the date of termination or completed after termination (in accordance with clause 20.10(b));
- d Vodafone will continue to provide the Ongoing Services in relation to the Grant Funded Sites that are complete at the date of termination or which are completed after termination in accordance with clause 20.10(b) (other than in respect of any Excluded Site or Service) but the nature of the Services to be provided in relation to these sites will change so that Vodafone is only required to provide these Services at the levels of coverage and other quality of service that the relevant site is operating at when the site completed the acceptance testing;
- e The Ministry shall not be entitled to recover any Grants paid or any costs incurred by it in building (or having built) broadband infrastructure that covers in whole or part any coverage achieved by the Grant Funded Sites that Vodafone continues to provide Ongoing Service from.
- f where the right of termination arises under clause 20.3 or 20.4 the Ministry will pay termination charges calculated in accordance with clause 20.5 but recognising the partial nature of the termination; and
- g this Agreement will be amended with any other variations necessary to give

effect to the partial termination and this will be treated as an Unplanned Event, but otherwise will continue unaffected.

20.11 Payments on termination or expiry: Subject to clause 20.10, in the event of termination or expiry of this Agreement, the Ministry will not be obliged to make any further payments under this Agreement, except for:

- a any termination charges payable in accordance with clause 20.5;
- b any unpaid Grant amounts owing to Vodafone for work performed prior to the date of termination or expiry;
- c any Grant amounts that become payable to Vodafone for work completed in accordance with Schedule 4; and/or
- d any amounts subsequently settled or awarded in Vodafone's favour.

20.12 Effect of termination on Design and Build Services: Except as expressly set out in clause 20.10, where either Party terminates, or partially terminates, this Agreement Vodafone will cease to carry out any Design and Build Services immediately.

20.13 Effect of termination on Infrastructure: Termination of this Agreement will not affect the ownership of any Infrastructure.

20.14 Migration Assistance: If this Agreement is terminated under any clause except clauses 20.7 or 20.8, then during the 90 days immediately following that termination, Vodafone will supply the Ministry with any information and assistance reasonably within Vodafone's power, as reasonably requested by the Ministry for the purpose of allowing the Ministry (or its nominated contractor) to commence work on alternative services and infrastructure in substitution for those parts of the Infrastructure and Design and Build Services that have yet to be completed as at the date of termination (Migration Assistance).

20.15 Reimbursement: Except where this Agreement is terminated under clause 20.1 or 20.2, the Ministry will reimburse Vodafone for the reasonable costs which Vodafone incurs in providing Migration Assistance requested by the Ministry, including internal labour costs at the labour rates used by Vodafone for self-funded capital projects. Where requested by the Ministry from time to time, Vodafone will provide the Ministry with reasonable estimates of these costs for particular tasks forming part of the Migration Assistance, and will not proceed with those tasks unless and until the Ministry approves those estimates in writing, and will keep the Ministry reasonably informed of its progress against those estimates once approved.

20.16 No transfer: To avoid doubt, clause 20.15 will not oblige Vodafone to transfer any of its assets or personnel to the Ministry or its nominated contractor.

20.17 Preservation of rights and remedies: Except as is otherwise provided in this

Agreement, termination or expiry of this Agreement will not affect:

- a any rights and remedies available to a Party under this Agreement which have accrued up to and including the date of termination or expiry; and
- b the provisions of this Agreement which expressly, or by their nature, survive termination or expiry, including clauses 1, 7, 10.9, 13, 14, 15, 19, 20.5, 20.11 to 20.18, 23.1 to 23.4, 23.10, 23.11, 24.3, 24.7, 24.9, and 24.10.

20.18 Return of property: After expiry or termination of this Agreement for any reason, except in the case of a partial termination under clause 20.10, each Party will, within twenty Business Days of written notice from the other Party, return to the other Party all of the other Party's:

- a property (including Documentation); and
- b Confidential Information (or destroy such Confidential Information, if requested),

except to the extent that such property or Confidential Information is required to be retained by the Public Records Act 2005 or any other law, or may be required (in that Party's reasonable opinion) in order to resolve a dispute in progress at the time of termination or enforce any surviving provisions of this Agreement. For the avoidance of doubt any Infrastructure whether complete or not will remain the property of Vodafone.

21 FORCE MAJEURE

21.1 No default: Subject to this clause 21, no Party will be deemed to be in default or breach of this Agreement to the extent that a Force Majeure Event affects that Party, except that nothing in this clause 21 will excuse any failure to make a monetary payment required by this Agreement.

21.2 Force Majeure Notice: If a Force Majeure Event affects a Party (the **Affected Party**), then that Party will, within three Business Days of it becoming aware of the occurrence of that Force Majeure Event, serve written notice on the other Party (a **Force Majeure Notice**) specifying:

- a the nature of the Force Majeure Event;
- b the obligations of the Affected Party that have been rendered impossible or illegal to perform, or which the Affected Party is prevented from or delayed in performing or complying with (the **Affected Obligations**);
- c the extent to which the Force Majeure Event renders it impossible or illegal for the Affected Party to perform, or prevents the Affected Party from performing

or complying (or delays its performance or compliance) with, the Affected Obligations (the **Precluded Extent**);

- d the reasons why the Affected Party considers that the occurrence of the Force Majeure Event renders it impossible or illegal to perform, or prevents the Affected Party from performing or complying (or delays its performance or compliance) with the Affected Obligations to the Precluded Extent; and
- e the expected duration of any delay arising directly out of the occurrence of the Force Majeure Event.

21.3 Objection to Force Majeure Notice: If a Party that receives a Force Majeure Notice does not consider that a Force Majeure Event has occurred in relation to the Affected Party, it may:

- a refer the matter to arbitration under clause 19.2 within 10 Business Days of receiving that Force Majeure Notice; or
- b exercise such other rights available to it under this Agreement (including applying to Court for interlocutory relief under clause 19.5).

21.4 Effect of Force Majeure Notice: If the Affected Party complies with clause 21.2 then, subject to the outcome of any dispute resolution proceedings under clause 21.3:

- a the Affected Party's obligation to comply with or perform the Affected Obligations will be suspended to the Precluded Extent, for the time (the **Period of Suspension**):
 - i it continues to be impossible or illegal to perform the Affected Obligations; or
 - ii the Affected Party is prevented from or delayed in complying with or performing those Affected Obligations as a direct result of that Force Majeure Event;
- b from the date of service of the Force Majeure Notice each Party's obligation to perform any obligations dependent on the Affected Obligations (including any payment obligations directly referable to the Affected Obligations) will be suspended until the Affected Party can resume full performance of its obligations. For the avoidance of doubt, the Ministry will not be required to pay any Grant or part thereof to the extent that the Design and Build Services are not provided by Vodafone due to a Force Majeure Event; and
- c following the Period of Suspension either Party will be entitled to request a Change to the Agreement for an Unplanned Event in accordance with Schedule

5.

21.5 Mitigation or avoidance: During the Period of Suspension:

- a the Affected Party will use all reasonable endeavours to avoid or mitigate the effect of it being prevented from or delayed in complying with or performing its Affected Obligations including by applying relevant insurance proceeds to promptly replace or repair materials required to meet the Affected Obligations;
- b where the Affected Party is Vodafone, Vodafone will give at least the same priority in responding to a Force Majeure Event under this Agreement as it gives under any other agreement to which it is party or as it otherwise gives to any of its other lines of business, subject to complying with relevant laws and the requirements of any emergency services; and
- c each Party will agree such reasonable arrangements with the other Party that both Parties believe to be prudent to avoid or mitigate the Affected Party's inability to perform the Affected Obligations.

21.6 Force Majeure Event termination: This Agreement may be terminated by either Party under clause 20.3 due to a continuing Force Majeure Event. Until termination of this Agreement has taken effect, each Party will continue to perform those of its respective obligations that are not then Affected Obligations (and will perform the Affected Obligations except to the Precluded Extent) or that are not obligations the performance of which is dependent on the performance by the other Party of Affected Obligations.

21.7 Force Majeure: For the purposes of this Agreement **Force Majeure Event** means an event or circumstance beyond the reasonable control of the Party affected by the event which makes it impossible or illegal to perform, or prevents or delays compliance with or the performance of, a Party's obligations under this Agreement, including:

- a fire, floods, storms, tempest, earthquake or other act of God;
- b any act of a public enemy, war, riot, act of civil or military authority;
- c nuclear, chemical or biological contamination; and
- d any act of a third party (not being personnel of that Party) engaged in subversive or terrorist activity or sabotage;

but does not include an event or circumstance, including those listed in clause (a) - (d) of this clause, to the extent that:

- e the effect of that event could have been substantially prevented, avoided or

overcome or mitigated by:

- i implementation of any reasonable and industry standard business continuity or disaster recovery plan, or any contingency plans agreed between the Parties or which a Party has represented it has in place;
 - ii exercising a reasonable standard of care; or
 - iii using information provided by the other Party or which is available in the public domain;
- f is an event for which the Party affected is or was directly responsible;
 - g that event is constituted or caused by the insolvency of the Party;
 - h that event is constituted by a change in law.

22 REMEDIES

- 22.1 **Exercise of remedy:** Either Party may exercise any remedy with or without exercising another remedy and may exercise multiple remedies against the other, to the extent those remedies are not inconsistent with one another.
- 22.2 **Specific Performance:** Vodafone acknowledges that damages may not be an adequate remedy for the Ministry in the event of a refusal by Vodafone to make Available one or more Rural Telecommunications Services in the circumstances required by this Agreement. Accordingly, Vodafone agrees that in the event of such a refusal the Ministry may seek an order for specific performance of Vodafone's obligation to make Available the Rural Telecommunications Services in accordance with the terms of this Agreement.

23 LIABILITY AND INSURANCE

- 23.1 **Unrecoverable loss:** Neither Party is liable for any loss of profit, loss of revenue or any indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 23.2 **Vodafone limitation:** Subject to clause 23.4, but notwithstanding any other provision of this Agreement, the total combined liability of Vodafone and its personnel under or in connection with this Agreement, in respect of all the events that occur up to any given point in time, will not in any circumstances exceed in aggregate the Aggregate Cap.
- 23.3 **Ministry limitation:** Subject to clause 23.4, but notwithstanding any other provision of this Agreement, the total liability of the Ministry to Vodafone under or in connection with this Agreement is limited in aggregate to the Aggregate Cap, although this limitation will not apply to the Ministry's obligations to pay the Grant

and other monetary amounts expressly payable under this Agreement.

23.4 Exclusions: Clauses 23.1, 23.2 and 23.3 do not apply to limit:

- a a Party's liability for breach of clause 15; or
- b either Party's liability under or in connection with this Agreement for:
 - i damage to the other's property or for personal injury or death; or
 - ii fraud or Wilful Default of this Agreement.

23.5 Indemnity: Subject to clause 23.1, 23.2 and 23.6, Vodafone indemnifies, and keeps indemnified the Ministry from and against all damages, liability, loss, reasonable cost or expense (including reasonable legal costs on a solicitor and own client basis) arising from or in connection with any and all third party claims or proceedings successfully brought against the Ministry as a result of:

- a personal injury or death caused by Vodafone in the course of performing the Services;
- b loss or damage to any property caused by Vodafone in the course of performing the Services;
- c any material breach of its obligations under this Agreement by Vodafone; and
- d any infringement by Vodafone of a third party's Intellectual Property Rights in the course of performing the Services.

23.6 Conditions of Indemnity: Subject to clause 23.7, the Ministry may conduct the defence of any claim or proceedings brought by a third party that might result in the indemnity set out in clause 23.5 being triggered, provided that the Ministry must:

- a notify Vodafone promptly in writing of any claim or proceedings brought by a third party that might result in the indemnity set out in clause 23.5 being triggered;
- b keep Vodafone informed as to the progress of the claim;
- c without limiting clause 23.8, act reasonably in providing Vodafone with the opportunity to comment and give reasonable recommendations as to the defence or settlement of the claim, including by using competent counsel, and will give due consideration to such recommendations in its conduct of such defence; and
- d not settle any claims or proceedings without Vodafone's prior written consent, such consent not be to unreasonably withheld, provided that:
 - i it will be reasonable for Vodafone to withhold its consent where such

settlement is anything other than a full and final payment with no ongoing obligations in relation to that claim or proceedings; and

- ii where Vodafone withholds its consent on any other basis than that set out in clause 23.6(d)(i) and notwithstanding this, the Ministry elects to settle a claim or proceeding, clause 23.8 will apply.

23.7 Vodafone to control claim: Notwithstanding clause 23.6, Vodafone will always have sole control of, and the Ministry will not ever have control of, any third party claim or proceedings against Vodafone:

- a brought by or concerning the Crown or any governmental agency, department, instrument or representative; or
- b that involves the Commerce Act, the Commerce Commission or any allegations of conduct that infringes the competition law rights of any person,

provided that in any such case Vodafone will afford the Ministry the opportunity to express its interests and views on the conduct of any defence and or settlement of the claim or proceedings, and a reasonable opportunity (so far as is practicable in the circumstances) to review and comment on significant actions planned to be taken by Vodafone.

23.8 Ministry elects to settle: If the Ministry elects to settle a claim or proceeding in accordance with clause 23.6(d)(ii), notwithstanding that Vodafone has withheld its consent to such a settlement, then the amount Vodafone will be liable for will be reduced by the difference between the settlement amount and that lesser amount (if any) an independent barrister jointly appointed by the Parties for the purpose has certified to the Parties:

- a that he or she reasonably believes would have been:
 - i the damages awarded and the reasonable costs incurred had the case proceeded to judgement; or
 - ii the amount that the claimant would have settled for.

23.9 Factors to be considered: In determining the net amount which Vodafone is not liable to pay by reason of the operation of clause 23.8, the barrister will factor any savings in costs as a result of the settlement into the calculation.

23.10 No liability for other's failure: Subject to clause 9, neither Party shall be responsible, liable, or held to be in breach of this Agreement for any failure to perform its obligations under this Agreement or otherwise, to the extent that such failure is directly attributable to the other Party failing to comply with its obligations under this Agreement, or to the negligence or misconduct of the other Party or its

personnel.

23.11 **Mitigation:** Each Party must take all reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other Party under or in connection with this Agreement, and neither Party will be entitled to claim from the other (whether by way of indemnity or otherwise) any loss or damage to the extent that it should reasonably have been avoided through such reasonable steps.

23.12 **Application:** The limitations and exclusions in this clause 23 will apply to all liability that each Party may have under or in connection with this Agreement, whether arising in equity, at common law, in tort (including negligence), under statute or on any other legal basis whatsoever, except to the extent that such liability cannot lawfully be excluded or limited (as the case may be) by contract.

23.13 **Insurance:**

- a Vodafone must, at its own expense, effect and maintain for the period it is to provide a Service, insurance for all infrastructure, assets and equipment used in connection with the supply of that Service against all common risks which, in accordance with good commercial practice, would normally be insured against, including full replacement value insurance against loss or damage by fire, explosion, earthquake, flood, and other physical damage.
- b Without limiting clause 23.13(a), Vodafone must ensure that it maintains insurances in respect of its potential liability for loss or damage under this Agreement.
- c Vodafone must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

24 GENERAL PROVISIONS

24.1 **Costs:** A Party who has an obligation to do anything under this Agreement is to perform that obligation at its own cost, unless a term of this Agreement expressly provides otherwise.

24.2 **Relationship of the Parties:** Nothing expressed or implied in this Agreement will, of itself, be deemed to constitute a Party as the partner or joint venturer of the other Party.

24.3 **Non-waiver:** Neither Party will be deemed to have waived any right under this Agreement unless the waiver is in writing and signed by that Party. A failure to exercise or delay in exercising any right or power under this Agreement will not operate as a waiver of that right or power. Any waiver by a Party under this Agreement will not constitute a waiver of any subsequent or continuing right or of

any other provision in this Agreement.

24.4 **Subcontracting:** The Ministry acknowledges that Vodafone may subcontract parts of the Design and Build Services and the operation of the Rural Telecommunications Services, but this will not in any way relieve Vodafone of its obligations under this Agreement. Other than those subcontractors named in the Proposal the Vodafone will consult with the Ministry on the appointment of any subcontractors for the purposes of this Agreement where the value of the subcontract is greater than \$2 million per annum.

24.5 **Assignment and transfer:**

- a The rights and obligations of Vodafone under this Agreement are personal to it and may only be assigned with the prior approval in writing of the Ministry (such approval not to be unreasonably withheld). It will be reasonable for the Ministry to withhold consent where the Ministry has reasonable cause to believe that the assignee will not be able to provide the Services or maintain the Grant Funded Infrastructure. It will also be reasonable for the Ministry as a condition of consent to require written undertakings from the assignee in relation to its compliance with the terms of this Agreement, including the requirement to make Available the Rural Telecommunications Services and to provide ongoing maintenance and operation of the Grant Funded Infrastructure. Except where the Ministry agrees otherwise in writing, Vodafone remains liable for performance of its obligations under this Agreement despite any approved assignment.
- b To avoid doubt and except to the extent prevented by the arrangements contemplated by clause 17, nothing in this Agreement prevents Vodafone from obtaining third party (e.g. iwi) investment in respect of the Infrastructure or other infrastructure and equipment used to provide the Rural Telecommunications Services, provided that it gives written notice to the Ministry of the investor and the extent of the investment. Vodafone must ensure that the terms of any third party investment are not inconsistent with this Agreement.

24.6 **Variation:** This Agreement may only be varied or amended by agreement in writing signed by the authorised representatives of both Parties.

24.7 **Governing law:** This Agreement is governed by New Zealand law and will be construed in accordance with the laws of New Zealand. Where the courts are to have jurisdiction under this Agreement the courts of New Zealand will have exclusive jurisdiction.

24.8 **Severability:** If any term of this Agreement is held to be illegal, unenforceable or invalid it will be severed from this Agreement without affecting the legality,

enforceability or validity of the remaining provisions of this Agreement.

24.9 Notices:

- a Each notice or other formal communications under this Agreement must be in writing and signed by its Authorised Representative and delivered by hand, by post, by facsimile, or by email to the address (as applicable) of the other Party specified in Schedule 3 (as that address may be amended by each Party by notice given to the other in accordance with this clause).
- b A communication under this Agreement is only effective:
 - i in the case of personal delivery, when delivered;
 - ii if posted, 2 Business Days after posting; and
 - iii if sent by facsimile or email:
 - if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the recipient; or
 - if sent by email, at the time the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the email at the time of sending or any 'out of office' message or equivalent relating to the recipient,

provided that any communication received or deemed received after 5 pm or on a day which is not a Business Day is deemed not to have been received until the next Business Day.
- c Despite the above, notices under clauses 18, 19, 20 and 21 must not be sent only by email.

24.10 Entire Agreement: This Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes any previous agreement to the extent that the subject matter of the previous agreement is dealt with in this Agreement. No earlier representation, warranty or agreement in relation to any matter dealt with in this Agreement has any force from the date of this Agreement. In particular, MED undertakes in entering into this Agreement it has relied only on the warranties and representations expressly set out in this Agreement, and otherwise has relied solely on its own knowledge, experience and judgement in respect of all other matters influencing its entry into this Agreement.

24.11 Further acts: Each Party must sign and deliver any document and undertake any act, matter or thing which is reasonably required or requested by the other Party to carry

out and give effect to the terms of this Agreement in accordance with their true intent.

24.12 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all of which together are to constitute a single instrument.

Schedule 1

Service Descriptions

PART A: INTRODUCTION

1 Definitions

1.1 In this Schedule, unless the context otherwise requires:

“**Collocation Services**” means allowing an Access Seeker to locate their equipment on Grant Funded Infrastructure in accordance with the process set out in part C of this Schedule;

“**Wholesale Services**” has the meaning set out in paragraph B 1.1;

“**Retail Services**” has the meaning set out in part D;

“**Enhanced RBI Broadband Service**” means the wholesale service described in paragraph B4;

“**Lawful Intercept**” means interception performed in accordance with the Telecommunications (Intercept Capability) Act 2004;

“**Operations Manual**” means the Operations Manual to be published by Vodafone from time to time;

“**RBI Broadband plus Voice Service**” means the wholesale service described in paragraph B5;

“**RBI Broadband Service**” means the wholesale service described in paragraph B2; and

“**Vodafone’s Device Network Approvals Process**” means the process described in paragraph 9.2.

1.2 Unless otherwise provided in this Schedule, capitalised terms shall have the meaning given to them in clause 1 of this Agreement.

2 Available Services

2.1 Provided that Telecom builds fibre links in the manner contemplated in paragraph A2.5 below then after building the Grant Funded Infrastructure and installing the Additional Infrastructure, Vodafone will be in a position to provide the following services:

2.1.1 co-location services; and

2.1.2 mobile voice and data services.

2.2 The services set out in paragraph A2.1 above, together with access to the Telecom network that either Vodafone has secured or the Ministry has required Telecom to provide open access to, will enable Vodafone to make available in Zone 4 a broadband service with minimum peak speeds of 5Mbps downlink and 500 Kbps uplink (the “**Rural Broadband Service**”);

2.3 Vodafone will make available on Vodafone’s standard terms and conditions the Rural Broadband Service to Vodafone’s wholesale and retail customers.

2.4 Notwithstanding paragraph A2.3, Vodafone has committed to the Ministry that the specific wholesale product set out in Part B below, and the specific retail product set out in Part D below (the “**Ministry RBI Services**”) will be available to be accessed by 80% of households in

Zone 4, (such calculation to be determined based on the Terralink data that was supplied by Vodafone to the Ministry in the Proposal) (“**Covered Households**”) on the following terms and conditions and in accordance with its obligations under the Agreement.

2.5 In order for Vodafone to be able to provide the Ministry RBI Services, the Ministry will ensure that the Fibre Build Contract requires Telecom to:

2.5.1 build fibre to the Grant Funded Sites; and

2.5.2 make available to Vodafone backhaul services as a Layer 2 Service suitable for supporting the Rural Telecommunications Services,

within timescales that reasonably allow Vodafone to meet its obligations under this Agreement.

2.6 The Ministry acknowledges that in order for Vodafone to provide the Rural Telecommunications Services, Vodafone will need a Layer 2 Service, which service is materially the same as that provided by Telecom to Vodafone as at the date of this Agreement, and which service will be from the Grant Funded Sites and the non-Grant Funded Sites from which the Rural Telecommunications Services are to be provided to a nominated handover point.

PART B: WHOLESALE SERVICE

1 Wholesale Service Description

1.1 Vodafone will provide Access Seekers with the opportunity to purchase the “Vodafone Rural Broadband” product set described in paragraph B1.3 below (the “**Wholesale Services**”), which will allow Access Seekers 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 the Access Seeker.

1.2 The Access Seeker 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) at the End User premises along with any required wiring or external antennas in accordance with Vodafone’s installation guidelines.

1.3 Vodafone will offer Access Seekers 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 3 below. This service will be designed to support G.729 and will be available by 31 March 2012; and

1.3.3 the “**RBI Broadband plus Voice Service**” that offers its Ends Users the RBI Broadband Service together with a voice service.

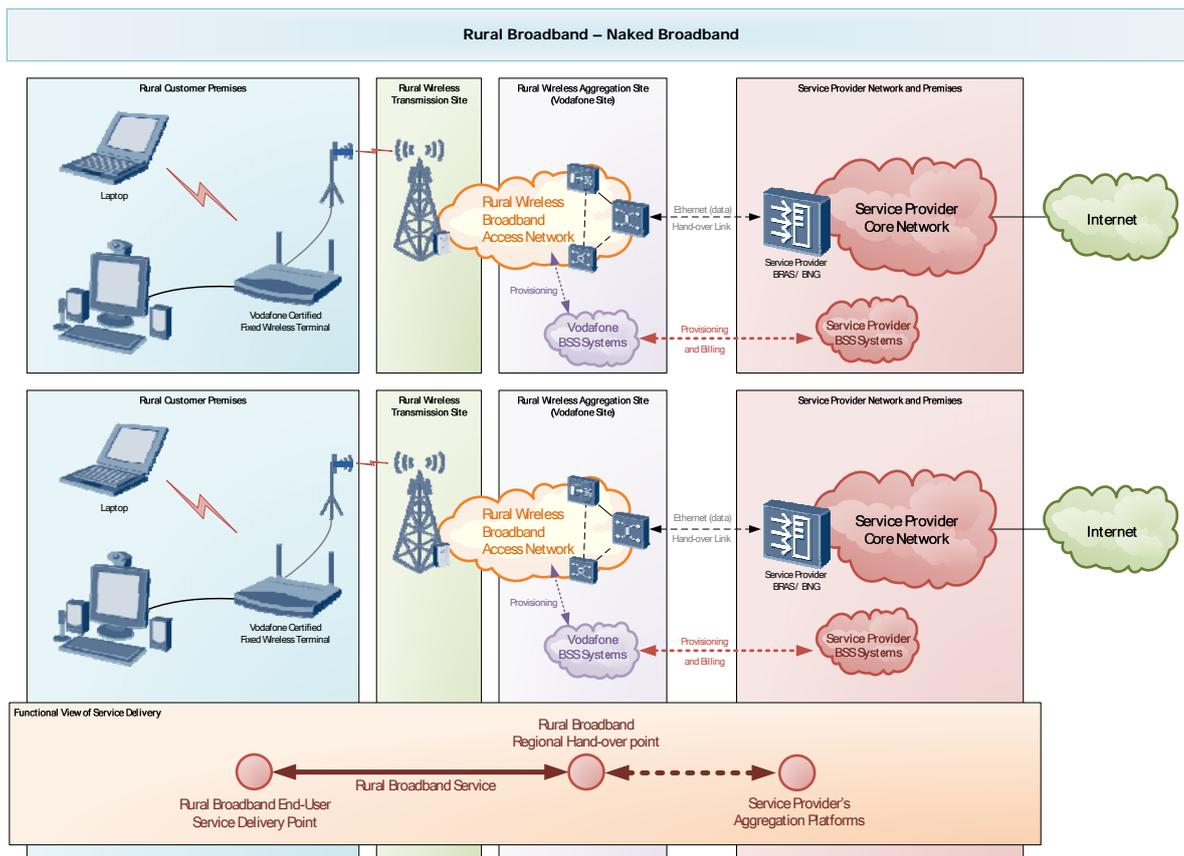
1.4 The Wholesale Services are not available for sale directly to End Users. However the Wholesale Services are available for sale to Access Seekers.

2 RBI Broadband Service Specifications

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MED1192540

- 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 an Access Seeker with an internet grade "best efforts" bitstream service and enables an Access Seeker to offer its End Users 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 the Access Seeker in accordance with Vodafone's guidelines;
 - transports an Access Seeker'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 B2.2 and B2.3 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 and that meets the requirements set out in the column headed "External Antenna Specification" in the table in Appendix 1 - Engineering Design Standards (an "Appropriate Aerial").
- 2.5 The supply of the RBI Broadband Service is not conditional on a requirement that the Access Seeker, 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:

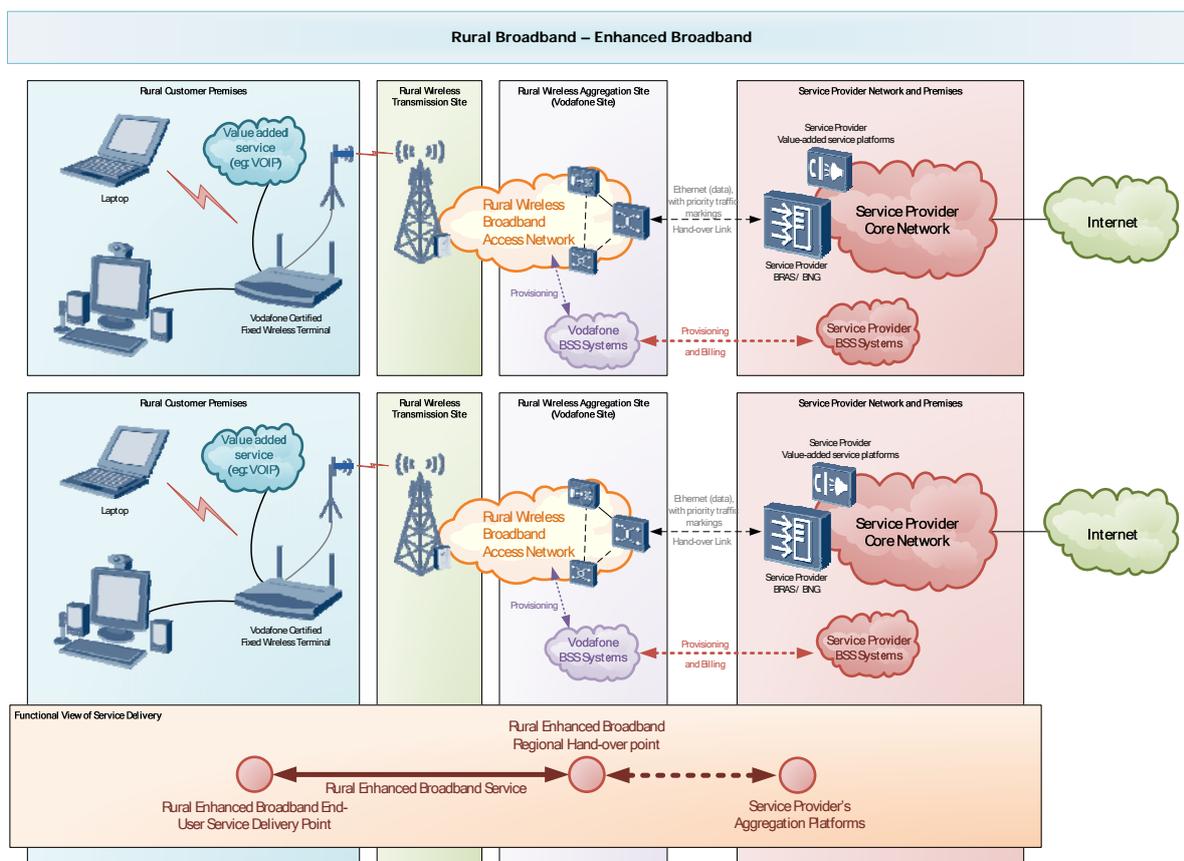
- 3.1.1 Specification of the WT;
- 3.1.2 Incorrect installation of WT, wiring or antenna;
- 3.1.3 Absence of an Appropriate Aerial or incorrect installation of the Appropriate Aerial or any wiring;
- 3.1.4 The configuration and/or quality of wiring of End User computer equipment or other connected equipment;
- 3.1.5 Performance of antenna;
- 3.1.6 The Access Seeker's network;
- 3.1.7 End User'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:



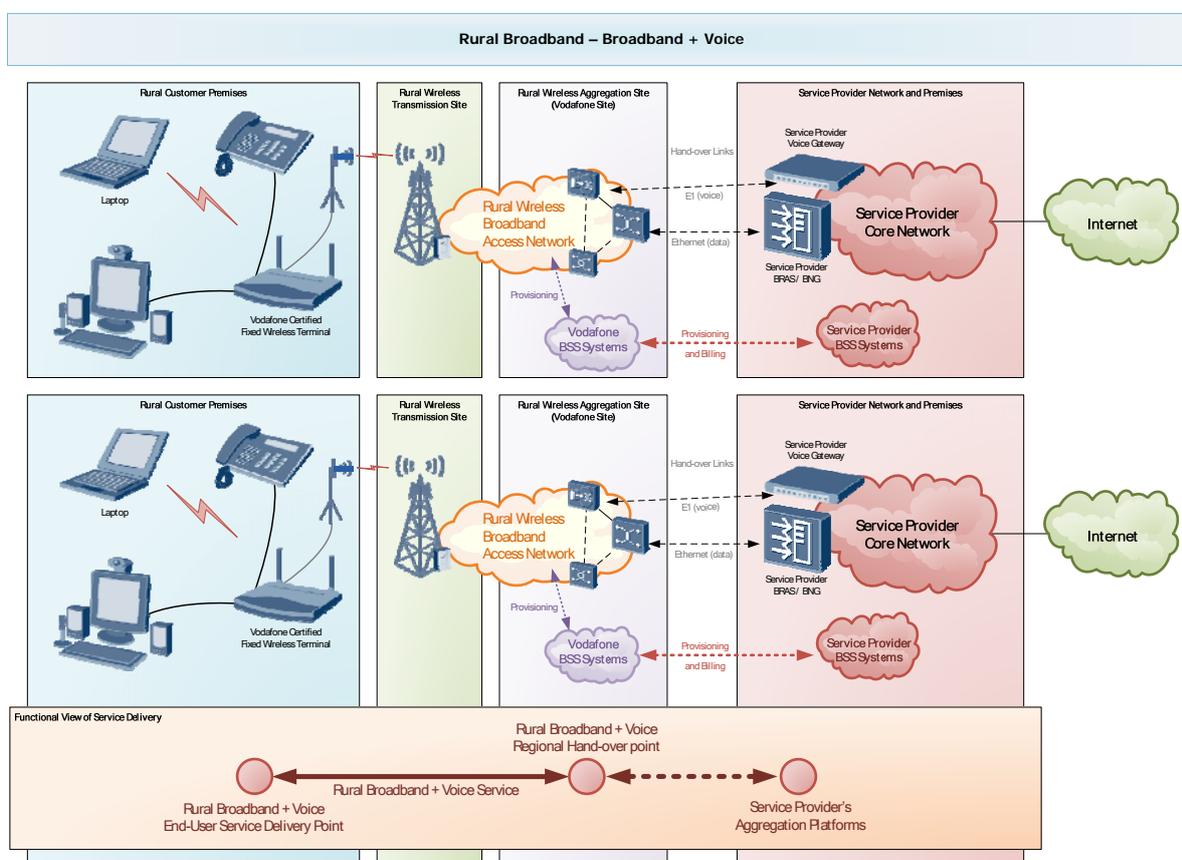
5 RBI Broadband plus Voice Service

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 The Access Seeker is to fulfil any authentication, authorisation and addressing functions for the service provided to End Users and is responsible for providing internet connectivity and any other value-added services. The Access Seeker is to provide all Layer 3 functions and is responsible for interactions with the emergency services relating to its End Users.
- 6.2 Vodafone will perform voice-based Lawful Intercept.
- 6.3 The Access Seeker will be responsible for data-based Lawful Intercept. Vodafone will send all the Access Seeker's customer traffic over the L2TP handover link and the Access Seeker will

implement the required trace for their subscriber on the L2TP terminating device (B-RAS, BNG).

7 Handover

7.1 The Access Seeker is required to interconnect with Vodafone at the nearest handover point set out in paragraph B7.2 below (each, a "Handover Point") in accordance with paragraph B7.3. 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 Handover Points will be located in Auckland, Wellington and Christchurch.

7.3 Traffic originating from End Users located:

7.3.1 in the South Island will be handed over at the Handover Point located in Christchurch;

7.3.2 north of Taupo will be handed over at the Handover Point located in Auckland; and

7.3.3 south of Taupo will be handed over at the Handover Point located in Wellington,

Exact boundaries for Handover Points are available from Vodafone on request.

7.4 Broadband traffic will be delivered to the Access Seeker as L2TP (version 2) using the technical standards set out in the table at paragraph 7.5 below:

7.5 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

7.6 The Service Provider is responsible for providing handover fibres that connect from the Access Seeker'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 The MED acknowledges that 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 Access Seekers 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 an Operations Manual.

- 9.2 Access Seekers may purchase a WT terminal from Vodafone or may provide their own WT which must meet the requirements of the reference installation set out in Appendix A and be approved by Vodafone. Vodafone's "Device Network Approvals Process" is set out below:

- 9.2.1 Access Seeker 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 Access Seeker and to return 3 of the devices to the Access Seeker. 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 the Access Seeker's monthly invoice. Charges will be set out in the Operations Manual. At the date of this Agreement the charge is generally approximately \$8,000 per device model for testing.

- 9.3 If an Access Seeker 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 in accordance with the Operations Manual. Once approved Vodafone will provide the Access Seeker with the current WT price list. Updates to the price list will be provided on a regular basis. To order a WT from Brightpoint the Access Seeker 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 Supplier 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 the Access Seeker'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 Access Seekers 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, the Access Seeker 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 Non Price Terms

11.1 Subject to paragraphs B11.2 and B11.3 below, Vodafone will meet the service levels attached in Appendix 2 in respect of the Wholesale Services ("Service Levels").

11.2 Vodafone will calculate whether or not it has met the Service Levels in accordance with the following calculation, provided that Vodafone will only be required to calculate whether or not it has met the Service Levels where there is a minimum of 10 incidents or requests in a Service Level category in that month:

11.2.1 Service Level to be attained= number of incidents in a Service Level category in a month that meet the per incident target set out in Appendix 2 /the total number of incidents in that Service Level category in that month.

This result is rounded down to the nearest incident or request. For example, if an Access Seeker sent Vodafone 10 Priority 3 incidents then to meet its Service Level Vodafone would need to restore 9 of these within 3 days.

11.3 Vodafone will not be liable for any failure to meet a Service Level (a "Service Level Default") where:

11.3.1 a Service Level Default is due to a Force Majeure Event;

11.3.2 a Service Level Default is a direct result of an Access Seeker failing to comply with an express obligation under its agreement with Vodafone;

11.3.3 the Operations Manual states that Vodafone is not required to meet the Service Levels and sets out the reasons why;

11.3.4 a Service Level Default is a direct result of:

a) a fault that is the Access Seeker's responsibility;

b) anything (including any fault) caused by the communications network or equipment of any third party or the Access Seeker's network or the Access Seeker's equipment; or

c) the absence or incorrect installation of an Appropriate Aerial,

11.3.5 a fault is reported and no fault for which Vodafone is responsible is detected when the Wholesale Service is tested from end to end;

11.3.6 a Service Level Default is due to a failure by the Access Seeker or its End User to allow access to the premises or equipment when reasonably requested by Vodafone or its agent;

- 11.3.7 remedying a Service Level Default would result in a material health and safety risk for a Vodafone employee or agent, the avoidance of which could not have been realistically predicted by Vodafone; or
 - 11.3.8 it is agreed between Vodafone and the Access Seeker that Vodafone is not required to meet the Service Levels.
- 11.4 Where Vodafone decides that a Service Level Default has not occurred because one or more of the exclusions set out in paragraph B11.3 apply, the details of the exclusion are to be recorded and reported in Vodafone's monthly performance reports.
- 11.5 In the event of a Service Level Default (except in respect of Priority 3 and Priority 4 Incidents - as defined in Appendix 2 to this schedule) Vodafone will provide a report to the all Access Seeker(s) setting out:
- 11.5.1 the cause of and procedure to correcting such Service Level Default; and
 - 11.5.2 the steps taken to remedy the Service Level Default and the effectiveness of those steps.
- 11.6 The reports provided as above must be made available to Access Seekers via a restricted area on the Vodafone Wholesale website.

12 Portal Service

- 12.1 Access Seekers 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.
- 12.2 Faults are to be logged directly with the Vodafone call centre on such number as advised by Vodafone from time to time.

PART C: CO-LOCATION SERVICE

1 Availability

- 1.1 The Co-location Service will be available at the Grant Funded Sites. Access Seekers can also apply for co-location on all existing Vodafone sites (or third party sites where Vodafone is co-located) under the current collocation service as described by the "Standard Terms Determination for Co-Location on Cellular Mobile Transmission Sites" issued under the Telecommunications Act 2001, as updated or replaced from time-to-time (the "Mobile Co-location STD").

2 RBI Co-location Database

- 2.1 Vodafone will publish an on-line database containing information on the status and progress of Grant Funded Sites ("Co-Location Database"). The intent is to enable Access Seekers to monitor the progress of the Grant Funded Sites and to be in a position to make informed decisions about receiving the Co-Location Services. The Co-Location Database will include the following information:
- 2.1.1 Site name and site code;
 - 2.1.2 Location through eastings and northings; and
 - 2.1.3 The intended key programme milestones with dates, including those relating to design, acquisition and build tasks.
- 2.2 Access Seekers must register and agree to terms and conditions in order to access the Co-location Database.
- 2.3 Vodafone will notify Access Seekers that have registered to use the Co-location Database when a preferred Grant Funded Location has reached a stage of sufficient certainty as to where that Grant Funded Site will be located that Access Seekers may apply for a site data pack, which will contain an additional level of site-specific information about that Grant Funded Site, including expected terms of agreement with landowner, RMA considerations and other relevant information (the "Site Data Pack"). The purpose of the Site Data Pack is to provide Access Seekers with enough information to enable the Access Seeker to determine if they wish to participate in the Detailed Site Design Process for that Grant Funded Site described in paragraph C3 below.
- 2.4 Access Seekers must notify Vodafone if they wish to be involved in the Detailed Site Design Process for a Grant Funded Site within 20 Working Days of being notified that a Site Data Pack for that Grant Funded Site is available (the "Design Opt In Period").
- 2.5 Vodafone reserves the right to charge Access Seekers a cost-based application fee for the Site Data Pack, not to exceed \$500 (adjusted annually to take into account any increase in the "Consumer Price Index").

3 Detailed Site Design

- 3.1 Access Seekers that elect to participate in the process set out in paragraphs C3.3 to 3.5 below (the "Detailed Site Design Process") for a Grant Funded Site before the end of the Design Opt In Period ("Relevant Access Seekers") will pay a cost-based fee for the design phase not to exceed \$2000 (adjusted annually to take into account any increase in the "Consumer Price Index"). Vodafone will apply such fees received to the design of the Grant Funded Assets and any claim by Vodafone for the Grant will reflect any such fees received by Vodafone.
- 3.2 Relevant Access Seekers and Vodafone must comply with the following principles during the Detailed Site Design Process:

- 3.2.1 participate fully and negotiate in good faith with the aim of finding an allocation of space within the relevant Grant Funded Site that is mutually agreeable to all parties;
 - 3.2.2 adhere to any process agreed for the conduct of the negotiations and any further commitments made relating to the protection of Confidential Information;
 - 3.2.3 consider, and respond to, any proposals made by the other parties promptly;
 - 3.2.4 where a party does not accept a proposal, state the reason or reasons for its non-acceptance;
 - 3.2.5 work together to identify barriers to agreement and will actively explore ways to overcome those differences. However, the parties are not required to continue to meet and discuss matters which have been considered and responded to; and
 - 3.2.6 not behave in ways which may undermine the good faith nature of the negotiations.
- 3.3 Vodafone will:
- 3.3.1 co-ordinate and distribute the detailed site design notes;
 - 3.3.2 provide the Relevant Access Seekers with an initial site design for the Relevant Access Seekers to comment on, which will incorporate reasonable technical information supplied by the Access Seeker;
 - 3.3.3 arrange, if requested, for the Relevant Access Seekers to visit the relevant Grant Funded Site at up to 30 days following the start of the Detailed Site Design Process; and
 - 3.3.4 consider any reasonable feedback provided by the Relevant Access Seekers and, if appropriate, circulate an updated draft site design for comment.
- 3.4 The output of the Detailed Site Design Process will be a “Final Detailed Site Design” for the relevant Grant Funded Site.
- 3.5 If Vodafone and the Relevant Access Seekers cannot agreed on a Final Detailed Site Design within 60 Working Days of the end of the Design Opt In Period, Vodafone will determine the Final Detailed Site Design for the Grant Funded Site and provide such Final Detailed Site Design to the Access Seekers.
- 3.6 Upon receipt of the Final Detailed Site Design:
- 3.6.1 if Vodafone has determined the Final Detailed Site Design in accordance with paragraph C3.4 above, the Relevant Access Seekers will have 10 Working Days to notify Vodafone if they do not wish to receive the Co-location Services in respect of that Grant Funded Site, after which; or
 - 3.6.2 if the Access Seekers have mutually agreed the Final Detailed Site Design in accordance with paragraph C3.3, then,
- (subject to paragraph C4.5) the Relevant Access Seeker will be deemed to have committed to receive the Co-Location Services for that Grant Funded Site.
- 3.7 If an Access Seeker does not participate in the Detailed Site Design Process, and at some subsequent stage, but prior to achieving Consents Granted at the relevant Grant Funded Site, wishes to redesign the Grant Funded Site to accommodate that Access Seeker’s equipment, the following principles will apply:

- 3.7.1 the late Access Seeker will take responsibility for producing a redesign of the Grant Funded Site and will circulate that for any Relevant Access Seekers and Vodafone to consider;
- 3.7.2 the late Access Seeker, the Relevant Access Seekers and Vodafone will act in good faith, and act reasonably, when considering whether or not to accept the re-design but will not be obliged to accept the re-design if it may:
- a) materially degrade the services that the Relevant Access Seeker will be able to offer to End Users, or will be able to receive from Vodafone, from that Grant Funded Site;
 - b) delay Vodafone's achievement of any of the Milestones in respect of the Grant Funded Infrastructure or delay the installation of the Additional Infrastructure, including the achievement of Consents Granted; or
 - c) substantially increase costs to either Vodafone in providing the Design and Build Services or the Rural Telecommunications Services or to Relevant Access Seekers in receiving the Co-Location Service or providing services to End Users; or
 - d) adversely affect Vodafone's ability to comply with its obligations to the Ministry in this Agreement; or
 - e) adversely affect Vodafone's ability to comply with its commitments to, or to receive the benefits of its commitments from, Telecom under the Backhaul Agreement or any other agreement with Telecom upon which Vodafone relies to enable it to meet its obligations under this Agreement; and
- 3.7.3 the late Access Seeker will bear the costs of the re-design, as well as obtaining any landowner or RMA consents that may be required.

Alternatively, the late Access Seeker may apply to put equipment on the Grant Funded Site once it is built, in accordance with the Mobile Co-Location STD collocation service.

4 Landlord/Third Party Approvals and RMA Consent

- 4.1 Vodafone may work to obtain Lease Finalised and/or Consents Granted contemporaneously with running the Detailed Site Design Process for a Grant Funded Site.
- 4.2 Relevant Access Seekers will need to provide Vodafone with any information and evidence necessary to support any Resource Management Act 1991 ("RMA") application or hearing, in a timely manner. Parties may need to review and repeat some parts of the Detailed Site Design Process as a result of RMA requirements.
- 4.3 If:
- 4.3.1 RMA consent is:
 - a) declined for a Grant Funded Site;
 - b) granted on terms which are unacceptable to Vodafone;
 - c) appealed; or
 - d) is considered to be unlikely to be obtained; or
 - 4.3.2 there is substantial community opposition in respect of the Grant Funded Site,

leading to significant delays to the Design and Build Services at that Grant Funded Site project or a material change in the design is required that materially negatively affects the service that the Relevant Access Seekers may be able to offer End Users from that Grant Funded Site, then Vodafone:

- 4.3.3 shall not, without the consent of Relevant Access Seekers (such consent not to be unreasonably withheld, delayed or conditioned), proceed to construct the Grant Funded Infrastructure at the relevant Grant Funded Site using a different design; and
 - 4.3.4 may decide not to further pursue that Grant Funded Site and will notify the Relevant Access Seekers accordingly. In such circumstances Vodafone will have no liability to any Access Seekers relating to that Grant Funded Site.
- 4.4 Vodafone will supply each Relevant Access Seeker with a copy of the signed document that has led to it obtaining Lease Granted in respect of a Grant Funded Site once available.
- 4.5 At the latter of the conclusion of the Final Site Design Phase and obtaining Lease Granted, each Relevant Access Seeker will be required to formally commit to receive the Co-Location Service and to installing its equipment at the Grant Funded Site. Vodafone will issue to the Relevant Access Seekers a "Schedule of Site Specific Conditions" which includes each Relevant Access Seeker's estimated pro-rata share of the site rental and ongoing charges. A Relevant Access Seeker has 10 Working Days from receipt of the Schedule of Site Specific Conditions to request any reasonable amendments to those conditions, which Vodafone may take into account, and thereafter will be deemed to commit to receive the Co-location Services at that Grant Funded Site. For the avoidance of doubt, a Relevant Access Seeker will only be able to notify Vodafone that it does not want to receive the Co-Location Services in respect of that Grant Funded Site if:
- 4.5.1 the terms of the lease in respect of the Grant Funded Site are materially adversely different from the terms that were outlined in the Site Data Pack; or
 - 4.5.2 the RMA consent that was granted in respect of the Grant Funded infrastructure means that such Grant Funded Infrastructure will be materially adversely different from the infrastructure contemplated in the Final Detailed Site Design.
- 4.6 The Relevant Access Seeker will be liable for Co-location Charges from the date that it notifies Vodafone that it commits to co-locate at that Grant Funded Site or in the event that no response is received, the date that it is deemed to commit to co-locate at that Grant Funded Site in accordance with paragraph C4.5, such Co-Location Costs to be payable in accordance with the terms set out in the Schedule of Site Specific Conditions.

5 Construction Drawings

- 5.1 The Relevant Access Seekers will provide Vodafone with further technical and standard information necessary for Vodafone to prepare construction drawings for the Grant Funded Infrastructure to be built at a Grant Funded Site ("Construction Drawings"). A draft of the Construction Drawings will be distributed and the parties will have the opportunity to request reasonable changes, and subject to paragraph C5.2, a final set of Construction Drawings will be produced as mutually agreed.
- 5.2 If Construction Drawings are unable to be agreed within 40 Working Days of the date that Vodafone distributes the first draft of the Construction Drawings, Vodafone will determine the final Construction Drawings. In agreeing Construction Drawings the parties will comply with the principles set out in paragraph C3.2 above as reasonably appropriate to this stage of the process.
- 5.3 Vodafone will issue a notice of an intended construction commencement date to the Relevant Access Seekers a minimum of 3 months prior to the start of the Build Complete Milestone.

Vodafone will prepare a project plan which will be circulated for review and comment which will detail the methodology and timing of the construction activities.

6 Build

- 6.1 The Relevant Access Seekers must use their reasonable endeavours to work together with each other and with Vodafone to co-ordinate the build activities to maximise efficiency and to reduce costs. Nominally each Relevant Access Seeker is responsible for sourcing and installing Relevant Access Seeker-specific equipment needs, including cabinets, feeder cables, antenna and brackets. Parties may however choose to use common suppliers of these installation activities.
- 6.2 Following the Grant Funded Site being Site Integrated, each Relevant Access Seeker may perform checks to ensure that there are no material interference issues at the Grant Funded Site. To the extent that there are any interference issues, each Relevant Access Seeker will be responsible for remedying such issues, as appropriate. Minor defects in the site build will be identified and remedied, and project closure documentation including the generation of "as built" plans will be produced and issued to the Relevant Access Seekers.
- 6.3 Once a Grant Funded Site becomes Site Integrated that site becomes a "Relevant Facility" as per the Mobile Co-location STD and the ongoing terms and conditions, future operation of the site will fall under the Mobile Co-location STD.

7 Co-location Pricing

- 7.1 "Co-location Costs" means Vodafone's costs directly incurred in maintaining the Grant Funded Site (including for the avoidance of doubt, associated infrastructure such as access tracks, fences, and landscaping) and includes site rental costs, break fix costs and planned preventative maintenance costs.
- 7.2 For each Grant Funded Site, the Co-location Costs will be shared equally between all Relevant Access Seekers (including Vodafone) in respect of that Grant Funded Site in the proportions set out below.
- 7.3 When calculating the number of Relevant Access Seekers on a Grant Funded Site a Small Access Seeker will count as half an Access Seeker. Small Access Seeker means an Access Seeker who meets the following criteria:
- 7.3.1 All equipment is located within the bottom 2/3 thirds of the height of the mast*;
 - 7.3.2 Monopoles: up to 5 antenna (of any type) on the mast, only 1 of which may be a parabolic dish antenna with a maximum diameter of 1.2m;
 - 7.3.3 Lattice: up to 5 antenna (of any type) on the mast, only 1 of which may be a parabolic dish antenna with a maximum diameter of 1.8m;
 - 7.3.4 <9 sqm equipment housing area e.g. shelter or cabinets; and
 - 7.3.5 Parabolic dish antenna dimensions are as per the manufacturers specifications, rounded up to the nearest .1m.

*Calculated on the height of the mast = Highest point of mast inclusive of antenna etc

- 7.4 An Access Seeker will not be classified as a Small Access Seeker if any of the above criteria in paragraph 7.3 above are not met.

PART D: RETAIL SERVICES

Vodafone will make available to potential Retail Customers a service which provides the same functionality as the RBI Broadband Service.

Appendix 1 Engineering Design Standards

Towers

Subject to obtaining any necessary resource consent and landowner authorisation, Vodafone will construct all Grant Funded Infrastructure:

- to a height, and of a structural strength, sufficient to enable co-location of:
 - at least two other Access Seekers (other than Vodafone) , across at least two upper levels of the Tower; and
 - at least three other Small Access Seekers (as defined in part C above) , at lower positions on the Tower provided that there may be restrictions on the amount of equipment a Small Access Seeker can install where other Small Access Seekers have already installed equipment.
- of a structural strength sufficient to enable the addition of a mast extension (and associated antennae) of up to 5 metres, except in cases of masts 30 metres and higher;
- with at least one carousel headframe or other appropriate headframe, at any of the upper levels of the Tower, irrespective of whether there is an Access Seeker that has confirmed that it wishes to receive the Collocation Services at the time of Tower design and resource consenting.

Except where the terrain or other exceptional factors render it unnecessary (such as in the case of some hilltops), a sufficient height will be interpreted to mean:

- where Vodafone co-locates on the same level as the XT network, at least 25 metres; and
- where Vodafone co-locates at a different level from the XT network, any height sufficient to enable the achievement of the RBI coverage and co-location objectives.

To avoid doubt, Vodafone will be free to construct Towers to a height exceeding 25 metres, subject to obtaining any necessary resource consent and landowner authorisation.

Once Grant Funded Infrastructure has been constructed as per the above and an Access Seeker wishes additional infrastructure to be built, e.g. a second headframe or a mast extension, then the Access Seeker concerned will bear all responsibility and expenses associated with:

- effecting and maintaining the co-location, including for the avoidance of doubt the cost of adding or retro-fitting headframes and/or mast extensions; and
- obtaining and renewing any necessary resource consent and/or landowner authorisation.

Design life

Network equipment will have a design life of 8 years. Physical infrastructure such as ducts, towers and building will have a design life of at least 25 years.

Power supplies

The solution is designed with 12 hours of battery back-up. All sites will have external connection for a community provided 230v ac generator.

Initial capacity

Community broadband systems must have sufficient capacity to enable Access Seekers to provide End User connections for 3 years post completion of each area.

The number of End users who may sign up for the Enhanced Broadband Service is limited to 15 at each cell site. Vodafone reserves the right to apply a fair use policy to the Enhanced Broadband Service.

WT reference installation

This is Vodafone’s initial reference specification. Vodafone may update this from time to time and will update this Appendix accordingly. These are specifications for a reference installation and in some cases the actual installation may vary.

<p>External Antenna Specification</p> <p>-must meet each of these requirements</p> <p>Electrical Specifications</p> <ul style="list-style-type: none"> • Frequency Range (MHz) 900 ~ 960 • Gain(dBi) 15 ± 0.5 • VSWR ≤ 1.5 • Front-to-back Ratio (dB) > 16 • Impedance (Ω) 50 • Maximum Input Power (W) 100 <p>Mechanical Specifications</p> <ul style="list-style-type: none"> • Antenna Length (mm) 1400 • Antenna Weight (kg) 1 • Rated Wind Velocity (m/s) 60 • Operating Temperature (°C) -55 ~ 65 <p>•</p>	<p>WT</p> <p>- must meet each of these requirements</p> <ul style="list-style-type: none"> • HSUPA/HSDPA/WCDMA 2100/900MHz • GSM/GPRS/ /900/1800MHz • HSDPA 7.2Mbps/HSUPA 5.76Mbps • WLAN:IEEE 802.11b/g • Ethernet:RJ45 port for 10/100Mbps Ethernet connection • Telephony: RJ11 port analogue phone connection • Able to support an Appropriate Aerial
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LTE

The radio equipment to be installed by Vodafone on the Grant Funded Towers will be “LTE ready” in that it will be upgradeable to LTE.

Appendix 2 – Service Levels

Priority 1	<p>Priority given to an incident that has critical impact on the Access Seeker’s business operations, including loss of revenue, corruption of data, or major failure in functionality in a live service/network</p> <p>Results in switching failure, multiple or cyclic restart/reload, congestion or degraded traffic handling capacity of 25% or greater, or loss of product or facility</p> <p>Examples:</p> <ul style="list-style-type: none"> • A complete outage of any service • Loss or severe degradation of inter-carrier exchange capability • Isolation of a large geographical area • a complete outage of a cell site or sites
Priority 2	<p>Priority given to a fault which substantially affects the Access Seeker’s ability to conduct its business as a result of the failure of a key feature to perform as specified, resulting in substantial performance degradation, and/or inability to use a major feature of the network or service.</p> <p>Example:</p> <ul style="list-style-type: none"> • A significant number of wholesaler end customers are impacted/potentially impacted
Priority 3	<p>Priority given to a minor fault which does not substantially impair the functioning of the Wholesale service and does not significantly impact End Users, resulting in the inability of non-essential parts to perform to specifications.</p> <p>Examples:</p> <ul style="list-style-type: none"> • Single wholesale end user faults • Recurring incident with no customer impact that has the potential if left to become service impacting - errors on links.
Priority 4	<p>Priority given to an issue that only requires information or has no immediate impact on the solution functionality or service to customers.</p> <p>Examples</p> <ul style="list-style-type: none"> • Fault has no measurable business impact <ul style="list-style-type: none"> • Immediate attention is not required and problems identified can wait until business hours to be evaluated • An acceptable workaround for a Priority 1 to Priority 3 Fault exists and has been implemented, but final Resolution must be made within Operate and Maintain Service level times <ul style="list-style-type: none"> • Immediate attention is not required

Accessibility: The percentage of 3G Rel99 sessions which were set-up successfully (not congested).

Retainability: The percentage of 3G Rel99 sessions which were terminated successfully by user (not dropped).

Truck Roll Failure Rate

Truck Roll Failure Rate = $A/B * 100$

where:

A = the total number of unsuccessful installations (i.e despite an attempted installation the service is unable to be received) of Rural Telecommunications Services in each consecutive 3 month period

B = the total number of attempted installation of Rural Telecommunications Services at locations within the coverage areas shown on Vodafone Wholesale's website in that 3 month period .

If the Truck Roll Failure Rate exceeds 5% then Vodafone will conduct a review of its planning assumptions for the coverage and performance of the Rural Telecommunications Services, and advise the Ministry of the outcome of that review and any actions or changes it intends to take as a result of the review.

Schedule 2

Design and Build Services

1 Definitions

1.1 In this Schedule, unless the context otherwise requires:

“Additional Infrastructure” means such cellular mobile equipment to be installed on the Grant Funded Infrastructure and on Towers that are at additional locations as determined by Vodafone to enable Vodafone to make Available the Rural Telecommunications Services;

“Build Complete” means the Grant Funded Infrastructure to be built at the Grant Funded Location has been completed;

“Consents Granted” means that Vodafone has obtained the consents and permissions reasonably required to enable it to commence building of the Grant Funded Infrastructure at a Grant Funded Site;

“Grant Funded Location” means each of the locations identified in Section 1 of Appendix A, as may be amended in accordance with paragraph 4;

“Grant Funded Infrastructure” means a Tower of the kind Vodafone considers is needed to provide the Ongoing Services from the relevant Grant Funded Location but for the avoidance of doubt, specifically excludes any equipment that is placed on such Towers, or any associated cabinets, to allow the Access Seekers to use the Co-Location Services, including:

(a) the antenna and ancillary equipment;

(b) the antenna line; and

(c) radio equipment and housings;

“Lease Finalised” means the acquisition by Vodafone of the right to access the site where it intends to locate the Grant Funded Infrastructure (but for the avoidance of doubt, does not mean the obtainment of the right to erect any Tower);

“Milestone” means each of Lease Finalised, Consents Granted, Build Complete and Site Integrated;

“non-Grant Funded Site” means each of the cell sites identified in Section 2 of Appendix A as may be amended in accordance with paragraph 5;

“Replacement Location” means a location that Vodafone proposes to substitute for a Grant Funded Location if it determines that it is unlikely to be able to achieve Site Integrated in a manner that will enable it to meet its obligations relating to the Ongoing Services under this Agreement;

“Site Integrated” means the Infrastructure in relation to a Grant Funded Site is completed and that Infrastructure is integrated to Vodafone’s network;

“**Success Notice**” has the meaning given to it in Schedule 9; and

“**Tower**” means the structure upon which cellular telephony equipment can be placed to enable it to send and receive signals for the purposes of voice and data communication.

1.2 Unless otherwise provided in this Schedule, capitalised terms shall have the meaning given to them in clause 1 of this Agreement.

2 Design and Build Services

2.1 Vodafone will, for each Grant Funded Location (unless a Grant Funded Location is varied in accordance with the process set out in paragraphs 4.2 to 4.6 below) work to achieve the Milestones for that Grant Funded Location in accordance with Vodafone’s obligations set out in paragraph 3 (the “**Design and Build Services**”).

2.2 Vodafone will identify the order in which it intends to provide the Design and Build Services to each of the Grant Funded Locations in accordance with the process set out in Schedule 3.

2.3 In order for Vodafone to be able to provide the Rural Telecommunications Services, the Ministry will ensure that the Fibre Build Contract requires Telecom to:

- (a) build fibre to the Grant Funded Sites; and
- (b) make available to Vodafone backhaul services as a Layer 2 Service suitable for supporting the Rural Telecommunications Services,

within timescales that reasonably allow Vodafone to meet its obligations under this Agreement.

2.4 The Ministry acknowledges that in order for Vodafone to provide the Rural Telecommunications Services, Vodafone will need a Layer 2 Service, which service is materially the same as that provided by Telecom to Vodafone at the date of this Agreement, and which service will be from the Grant Funded Sites and the non-Grant Funded Sites from which the Rural Telecommunications Services are to be provided to a nominated handover point.

3 Milestone Achievement

3.1 Lease Finalised

- (a) In order to achieve Lease Finalised in respect of each Grant Funded Location Vodafone will do all things reasonably necessary to obtain a right to occupy the Grant Funded Location, including:
 - (i) identifying the best and most efficient site within a Grant Funded Location; and
 - (ii) entering into an agreement with the relevant landowner allowing Vodafone to have access to site.
- (b) Lease Finalised will be considered complete when Vodafone confirms to the Ministry that it has a right to occupy the Grant Funded Location. Any site at which Lease Finalised is complete will become a Grant Funded Site.

3.2 Consents Granted

- (a) In order to achieve Consents Granted in respect of each Grant Funded Location Vodafone will do all things reasonably necessary to obtain the consents and permissions reasonably required to be able to construct the Grant Funded Infrastructure and to be able to perform such other tasks as may be reasonably required to meet its obligations under this Agreement, including:
- (i) determining the appropriate Tower to build on the Grant Funded Site that will enable it to provide the Ongoing Services;
 - (ii) designing the Tower suitable for the relevant Grant Funded Site; and
 - (iii) obtaining consent under the Resource Management Act 1991 to enable it to commence construction.
- (b) Consents Granted will be considered complete when Vodafone notifies the Ministry that it has obtained the consents and permissions reasonably required to enable it to commence construction of the Grant Funded Infrastructure.

3.3 Build Complete

- (a) In order to achieve Build Complete in respect of each Grant Funded Location Vodafone will do all things reasonably necessary to build the Grant Funded Infrastructure.
- (b) Build Complete will be considered complete five days after Vodafone advises the Ministry that the build of the Grant Funded Infrastructure is complete and Vodafone is ready to commence installing the Additional Infrastructure on that Grant Funded Infrastructure, provided that the Ministry does not advise Vodafone during that five day period that, acting reasonably, it does not agree that the build of the Grant Funded Infrastructure is complete.
- (c) Where the Ministry, acting reasonably, advises Vodafone that it does not agree that the build of the Grant Funded Infrastructure is complete, the matter will be determined in accordance with expert determination under clause 19.3.

3.4 Site Integrated

- (a) In order to achieve Site Integrated in respect of each Grant Funded Location Vodafone will do all things reasonably necessary to ensure that the Grant Funded Infrastructure is integrated in to Vodafone's network including:
- (i) determining the appropriate Additional Infrastructure to be installed on the Grant Funded Infrastructure that will enable it to provide the Rural Telecommunication Services;
 - (ii) procuring the Additional Infrastructure to be installed on the Grant Funded Infrastructure;
 - (iii) installing the Additional Infrastructure on the Grant Funded Infrastructure; and

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- (iv) connecting the Infrastructure at the Grant Funded Site to Vodafone's network so that calls and data sessions can be carried and terminated.
- (b) Site Integrated will be considered complete when Vodafone has submitted a valid Success Notice to the Ministry in respect of that Grant Funded Site in accordance with Schedule 9.

4 Grant Funded Locations

4.1 The initial Grant Funded Locations are set out in Section 1 of Appendix A.

4.2 If for any reason Vodafone determines that:

- (a) it is unlikely to be able to achieve Site Integrated at a Grant Funded Location in a manner that will enable it to meet its obligations relating to the Ongoing Services under this Agreement; or
- (b) it will incur materially unusual costs in the performance of its obligations under this Agreement in respect of that Grant Funded Location,

Vodafone may substitute a Replacement Location for that Grant Funded Location. Where Vodafone wishes to do so it will advise the Ministry of this, providing details of the Grant Funded Location affected and the location of the proposed Replacement Location in writing ("Replacement Notice"). The Ministry shall promptly, but in any event no later than 10 Business Days after Vodafone has given the Ministry the Replacement Notice, provide Vodafone with any comments ("Replacement Response") that it might have regarding the proposed Replacement Location.

- 4.3 Where the Ministry does not provide a Replacement Response within the time period set out above, Vodafone may proceed to substitute the relevant Replacement Location for the Grant Funded Location and Section 1 of Appendix A will be updated accordingly.
- 4.4 Where the Ministry does provide a Replacement Response Vodafone and the Ministry will meet to discuss the Ministry's Replacement Response within 5 Business Days after the Ministry has given its Replacement Response.
- 4.5 Following the Parties discussing the Ministry's Replacement Response Vodafone will determine what is an appropriate Replacement Location, having given appropriate consideration to the comments from the Ministry, and advise this to the Ministry. Vodafone may proceed to substitute this Replacement Location for the Grant Funded Location and Section 1 of Appendix A will be updated accordingly.
- 4.6 The Ministry acknowledges that the Replacement Location need not be in the same area as the Grant Funded Location.

5 non-Grant Funded Sites

5.1 The initial list of non-Grant Funded Sites is set out in Section 2 of Appendix A.

5.2 Vodafone may change the list of non-Grant Funded Sites by:

- (a) notifying the Ministry that it wishes to amend the list of non-Grant Funded Sites and providing the Ministry with the new list;
- (b) the Ministry will consider the proposed alterations and provide Vodafone with any comments that it might have within 10 Business Days of the notice set out in paragraph 5.2(a); and
- (c) Vodafone will consider the Ministry's comments and provide the Ministry with a final, updated version of the list set out in Section 2 of Appendix A, provided that such updated list will still enable Vodafone to make Available the Rural Telecommunications Services.

Appendix A -Locations

1. Grant Funded Locations

Number	Site ID	SITE NAME	Zone 4 Percentage coverage	Zone 4 address count	Estimated Build Year
1	64031316	Stewart Island	0.20%	694	YR 1
2	64090523	Waitakere Village	0.15%	533	YR 1
3	64041321	Riversdale Beach	0.12%	417	YR 1
4	64091309	Claris	0.09%	335	YR 1
5	64030521	Mt Prospect	0.07%	232	YR 1
6	64031315	Centre Hill	0.03%	108	YR 1
7	64040581	Marton Central	0.05%	169	YR 1
8	64040151	Hurdon	0.18%	653	YR 1
9	64091322	Tamahere East (SH1)	0.16%	568	YR 1
10	64090549	Eureka	0.11%	393	YR 1
11	64090547	Mystery Events Centre	0.05%	162	YR 1
12	64030551	West Melton Central	0.33%	1167	YR 1
13	64031308	Ohoka	0.28%	982	YR 1
14	64091307	Kingseat	0.26%	930	YR 1
15	64030561	Kaianga	0.32%	1118	YR 1
16	64030557	Clarkville	0.14%	513	YR 1
17	64090546	Newstead Central	0.13%	469	YR 1
18	64031320	Takaka	0.13%	449	YR 1
19	64091310	Puketaha	0.12%	415	YR 1
20	64040525	Oakura	0.09%	303	YR 1
21	64030553	Yaldhurst	0.08%	275	YR 1
22	64040580	Ashhurst	0.06%	220	YR 2
23	64090583	Beachlands East	0.04%	135	YR 2
24	School2152	Auroa School	0.20%	692	YR 2
25	School2057	Waimana School	0.17%	599	YR 2
26	School1151	TKK o Te Puaha o Waikato	0.14%	495	YR 2
27	School1870	Oropi School	0.15%	530	YR 2
28	Relo0003	Naseby	0.10%	372	YR 2
29	Relo0015	Nikau Valley	0.12%	420	YR 2

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30	School0394	The Catlins Area School	0.13%	449	YR 2
31	Relo0001	Huia	0.11%	384	YR 2
32	Relo0004	Bayliss Beach	0.09%	312	YR 2
33	School2551	Crownthorpe School	0.10%	338	YR 2
34	2bVerified23	Lake Okareka	0.09%	314	YR 2
35	School0297	Tapawera Area School	0.08%	291	YR 2
36	School2646	Porangahau School	0.08%	286	YR 2
37	School3566	Waiau School	0.07%	256	YR 2
38	School3489	Ross School	0.07%	251	YR 2
39	2bVerified44	Blackball	0.08%	269	YR 2
40	Relo0013	Frotrose	0.08%	287	YR 2
41	School0161	Benneydale School	0.05%	174	YR 2
42	School4040	Waimahaka School	0.05%	184	YR 2
43	School0176	Ohura Valley Primary	0.05%	177	YR 2
44	2bVerified18	Castle Point	0.08%	281	YR 2
45	2bVerified135	Castle Hill	0.06%	210	YR 2
46	2bVerified140	Kumara Township	0.06%	228	YR 2
47	2bVerified151	Hira	0.05%	187	YR 2
48	2bVerified47	Te Puru	0.23%	816	YR 2
49	2bVerified222	Kaueranga Valley	0.18%	635	YR 2
50	School1854	Nukuhou North School	0.04%	150	YR 2
51	School4030	Tokanui School	0.04%	148	YR 2
52	School0147	Te Whanau-A-Apanui Area School	0.04%	142	YR 2
53	2bVerified214	Camerons	0.04%	135	YR 2
54	CAP-COX	Copy of COX	0.47%	1670	YR 2
55	CAP-MKS	Copy of MKS	0.44%	1570	YR 2
56	CAP-MPT	Copy of MPT	0.47%	1666	YR 2
57	CAP-KTK	Copy of KTK	0.43%	1520	YR 2
58	CAP-KMU	Copy of KMU	0.41%	1445	YR 2
59	CAP-TPK	Copy of TPK	0.39%	1373	YR 2
60	64030472	Motueka Central	0.43%	1515	YR 2
61	CAP-COR	Copy of COR	0.13%	475	YR 2
62	CAP-MCL	Copy of MCL	0.20%	712	YR 2
63	CAP-MNU	Copy of MNU	0.30%	1058	YR 2
64	School1799	Manawahe School	0.35%	1247	YR 2
65	School2123	Lake Brunner School	0.13%	468	YR 2
66	School1786	Kutarere School	0.20%	695	YR 2

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67	School4036	Waikaia School	0.09%	325	YR 3
68	64040524	Carrington Rd	0.27%	942	YR 3
69	64090563	Houhora Central	0.15%	528	YR 3
70	School2800	Akitio School	0.05%	182	YR 3
71	School2200	Mokau School	0.05%	194	YR 3
72	CAP-CKB	Copy of CKB	0.35%	1251	YR 3
73	CAP-CKP	Copy of CKP	0.33%	1188	YR 3
74	CAP-WHK	Copy of WHK	0.32%	1131	YR 3
75	CAP-MTR	Copy of MTR	0.34%	1200	YR 3
76	CAP-31308	Copy 1 of 64031308	0.31%	1088	YR 3
77	CAP-HWA	Copy of HWA	0.29%	1045	YR 3
78	CAP-WWA	Copy of WWA	0.28%	1002	YR 3
79	CAP-BLC	Copy of BLC	0.26%	929	YR 3
80	CAP-PTK	Copy of PTK	0.25%	896	YR 3
81	CAP-MRA	Copy of MRA	0.25%	895	YR 3
82	CAP-MKO	Copy of MKO	0.23%	821	YR 3
83	CAP-GSW	Copy of GSW	0.23%	819	YR 3
84	CAP-PIR	Copy of PIR	0.21%	753	YR 3
85	CAP-RKA	Copy of RKA	0.21%	745	YR 3
86	CAP-LEE	Copy of LEE	0.22%	780	YR 3
87	CAP-LVN	Copy of LVN	0.21%	749	YR 3
88	CAP-OKN	Copy of OKN	0.21%	735	YR 3
89	CAP-EEG	Copy of EEG	0.20%	725	YR 3
90	CAP-OMU	Copy of OMU	0.20%	701	YR 3
91	CAP-THN	Copy of THN	0.18%	627	YR 3
92	CAP-LMS	Copy of LMS	0.18%	624	YR 3
93	CAP-AMB	Copy of AMB	0.00%	16	YR 3
94	CAP-MVL	Copy of MVL	0.17%	592	YR 3
95	CAP-GRY	Copy of GRY	0.16%	561	YR 3
96	CAP-MAR	Copy of MAR	0.15%	548	YR 3
97	CAP-TKU	Copy of TKU	0.15%	526	YR 3
98	CAP-OAI	Copy of OAI	0.14%	509	YR 3
99	CAP-FDG	Copy of FDG	0.13%	457	YR 3
100	CAP-HBT	Copy of HBT	0.13%	445	YR 3
101	CAP-STF	Copy of STF	0.13%	453	YR 3
102	CAP-PRB	Copy of PRB	0.10%	371	YR 3
103	CAP-MMR	Copy of MMR	0.01%	18	YR 3

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104	CAP-MKA	Copy of MKA	0.09%	316	YR 3
105	CAP-CAR	Copy of CAR	0.08%	299	YR 3
106	CAP-SFW	Copy of SFW	0.08%	301	YR 3
107	School0012	Tauraroa Area School	0.23%	818	YR 3
108	School3207	Motupipi School	0.19%	673	YR 3
109	School3352	Glentunnel School	0.20%	700	YR 3
110	School2114	Beaconsfield School	0.20%	712	YR 3
111	School0245	Rathkeale College	0.19%	667	YR 3
112	School1763	Karangahake School	0.16%	558	YR 3
113	School3393	Kaniere School	0.14%	511	YR 3
114	School1128	Whangarei Heads School	0.14%	481	YR 3
115	School1077	Paparoa School	0.12%	426	YR 3
116	School1405	Orere School	0.09%	323	YR 3
117	School2369	Kai Iwi School	0.09%	336	YR 3
118	School2379	Kimbolton School	0.13%	450	YR 3
119	School1793	Maihihi School	0.10%	372	YR 4
120	School0221	Te Wharekura o Ruatoki	0.30%	1051	YR 4
121	School2086	Wharepapa South School	0.09%	329	YR 4
122	2bVerified145	Karamea	0.10%	364	YR 4
123	Relo0014	Frotrose	0.08%	287	YR 4
124	School1122	Waima School	0.09%	308	YR 4
125	School1874	Otewa School	0.07%	240	YR 4
126	School1788	Lake Rotoma School	0.07%	256	YR 4
127	School2672	Sherenden and Districts School	0.12%	415	YR 4
128	School2469	Upokongaro School	0.07%	266	YR 4
129	School1116	Totara North School	0.06%	218	YR 4
130	School2642	Patoka School	0.06%	224	YR 4
131	School2012	Te Miro School	0.06%	208	YR 4
132	School1200	Ahuroa School	0.07%	257	YR 4
133	School2024	Te Uku School	0.08%	298	YR 4
134	School1756	Kaharoa School	0.05%	195	YR 4
135	School1905	Pukemiro School	0.05%	192	YR 4
136	School2333	Apiti School	0.05%	176	YR 4
137	2bVerified211	Lorneville	0.58%	2063	YR 4
138	2bVerified105	Fernside	0.40%	1409	YR 4
139	CAP-WOD2	Waikuku Beach	0.32%	1152	YR 4
140	Relo0010	Himatangi Beach	0.25%	875	YR 4

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141	CAP-NWH	CAP-NWH	0.21%	753	YR 4
142	Relo0012	Tapu	0.11%	384	YR 4
143	Relo0007	Hector	0.13%	461	YR 4
144	2bVerified225	Matapouri	0.16%	570	YR 4
145	2bVerified154	Ophir	0.08%	293	YR 4
146	Relo0009	Bunnythorpe	0.31%	1089	YR 4
147	Relo0008	Mapua West	0.43%	1532	YR 4
148	2bVerified148	Wakefield	0.23%	815	YR 4
149	Relo0006	Omori	0.36%	1270	YR 4
150	2bVerified83	Pataua	0.13%	460	YR 4
151	CAP-LGH	Copy of LGH	0.46%	1637	YR 4
152	CAP-HAH	Copy of HAH	0.29%	1042	YR 4
153	School1916	Pyes Pa Road School	0.35%	1238	YR 5
154	2bVerified71	Maketu	0.19%	670	YR 5

“Estimated Build Year” column is an estimate only. Actual build year may vary depending on site acquisition and RMA progress. Updates to the estimated build year will be provided by Vodafone via the Deployment Planning process set out in Schedule 3.

2. non-Grant Funded Sites

Site ID	SITE NAME	Council Region	Addresses Covered	Percentage coverage
1	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Ashburton District	803	0.23%
2		Ashburton District	1052	0.30%
3		Ashburton District	815	0.23%
4		Ashburton District	499	0.14%
5		Ashburton District	455	0.13%
6		Ashburton District	210	0.06%
7		Ashburton District	796	0.22%
8		Auckland City	174	0.05%
9		Buller District	249	0.07%
10		Buller District	522	0.15%
11		Carterton District	1183	0.33%
12		Central Hawke's Bay District	935	0.26%
13		Central Hawke's Bay District	523	0.15%
14		Central Hawke's Bay District	675	0.19%
15		Central Otago District	1112	0.31%
16		Central Otago District	482	0.14%
17		Central Otago District	250	0.07%
18		Central Otago District	398	0.11%
19		Central Otago District	523	0.15%
20		Central Otago District	310	0.09%
21		Central Otago District	926	0.26%
22		Christchurch City	176	0.05%
23		Christchurch City	868	0.24%
24		Christchurch City	233	0.07%
25		Christchurch City	307	0.09%
26		Christchurch City	357	0.10%
27		Christchurch City	273	0.08%
28		Christchurch City	427	0.12%
29		Christchurch City	481	0.14%
30		Christchurch City	391	0.11%
31		Clutha District	529	0.15%
32		Clutha District	916	0.26%
33		Clutha District	427	0.12%
34		Clutha District	458	0.13%

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35		Clutha District	322	0.09%
36		Dunedin City	494	0.14%
37		Dunedin City	275	0.08%
38		Dunedin City	1013	0.29%
39		Dunedin City	320	0.09%
40		Dunedin City	1090	0.31%
41		Dunedin City	257	0.07%
42		Dunedin City	958	0.27%
43		Far North District	775	0.22%
44		Far North District	525	0.15%
45		Far North District	146	0.04%
46	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Far North District	663	0.19%
47		Far North District	550	0.16%
48		Far North District	160	0.05%
49		Far North District	792	0.22%
50		Far North District	424	0.12%
51		Far North District	810	0.23%
52		Far North District	1093	0.31%
53		Far North District	743	0.21%
54		Far North District	980	0.28%
55		Far North District	166	0.05%
56		Far North District	326	0.09%
57		Far North District	384	0.11%
58		Far North District	259	0.07%
59		Far North District	384	0.11%
60		Far North District	629	0.18%
61		Far North District	261	0.07%
62		Far North District	393	0.11%
63		Far North District	207	0.06%
64		Far North District	614	0.17%
65		Far North District	236	0.07%
66		Far North District	324	0.09%
67		Franklin District	681	0.19%
68		Franklin District	247	0.07%
69		Franklin District	327	0.09%
70		Franklin District	431	0.12%
71		Franklin District	325	0.09%
72		Franklin District	666	0.19%
73		Franklin District	564	0.16%
74		Franklin District	663	0.19%

75	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Franklin District	364	0.10%
76			Franklin District	322	0.09%
77			Franklin District	284	0.08%
78			Franklin District	735	0.21%
79			Franklin District	473	0.13%
80			Franklin District	958	0.27%
81			Franklin District	820	0.23%
82			Franklin District	228	0.06%
83			Gisborne District	955	0.27%
84			Gisborne District	275	0.08%
85			Gisborne District	275	0.08%
86			Gisborne District	551	0.16%
87			Gisborne District	484	0.14%
88			Gisborne District	694	0.20%
89			Gisborne District	296	0.08%
90			Gore District	785	0.22%
91			Gore District	725	0.20%
92			Gore District	681	0.19%
93			Grey District	550	0.16%
94			Hamilton City	401	0.11%
95			Hamilton City	277	0.08%
96			Hastings District	731	0.21%
97			Hastings District	605	0.17%
98			Hastings District	635	0.18%
99			Hastings District	265	0.07%
100			Hastings District	991	0.28%
101			Hastings District	614	0.17%
102			Hastings District	336	0.09%
103	Hastings District	357	0.10%		
104	Hauraki District	381	0.11%		
105	Hauraki District	702	0.20%		
106	Hauraki District	559	0.16%		
107	Hauraki District	289	0.08%		
108	Hauraki District	441	0.12%		

10				
9			Hauraki District	539 0.15%
11	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Horowhenua District	377 0.11%
0			Horowhenua District	646 0.18%
11			Horowhenua District	1172 0.33%
11			Horowhenua District	1070 0.30%
2			Hurunui District	539 0.15%
11			Hurunui District	612 0.17%
3			Hurunui District	531 0.15%
11			Hurunui District	216 0.06%
4			Hurunui District	1027 0.29%
11			Invercargill City	218 0.06%
5			Invercargill City	384 0.11%
11			Invercargill City	58 0.02%
6			Kaikoura District	576 0.16%
11			Kaipara District	961 0.27%
7			Kaipara District	522 0.15%
11			Kaipara District	853 0.24%
8			Kaipara District	975 0.27%
11			Kapiti Coast District	211 0.06%
9			Kapiti Coast District	199 0.06%
12			Kapiti Coast District	332 0.09%
13			Kapiti Coast District	1118 0.32%
0			Kapiti Coast District	291 0.08%
13			Mackenzie District	360 0.10%
1	Mackenzie District	377 0.11%		

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13			Manawatu District	707	0.20%
4					
13	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Manawatu District	226	0.06%
5			Manawatu District	335	0.09%
13			Manawatu District	208	0.06%
6			Manawatu District	147	0.04%
13			Manukau City	140	0.04%
7			Manukau City	220	0.06%
13			Manukau City	437	0.12%
8			Manukau City	393	0.11%
13			Manukau City	330	0.09%
9			Manukau City	597	0.17%
14			Marlborough District	451	0.13%
0			Marlborough District	1012	0.29%
14			Marlborough District	323	0.09%
14			Marlborough District	287	0.08%
1			Marlborough District	684	0.19%
14			Marlborough District	243	0.07%
14			Marlborough District	234	0.07%
2			Marlborough District	578	0.16%
15			Marlborough District	493	0.14%
3			Marlborough District	268	0.08%
15	Masterton District	253	0.07%		
4	Masterton District	289	0.08%		
15	Masterton District	653	0.18%		
5	Matamata-Piako District	914	0.26%		
15	Matamata-Piako District	1133	0.32%		
6					
15					
7					
15					
8					
15					
9					

16			Matamata-Piako District	264	0.07%
0					
16	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Matamata-Piako District	723	0.20%
1			Matamata-Piako District	542	0.15%
16			Matamata-Piako District	1251	0.35%
2			Napier City	992	0.28%
16			Napier City	503	0.14%
3			Napier City	313	0.09%
16			Napier City	710	0.20%
4			Nelson City	256	0.07%
16			New Plymouth District	431	0.12%
5			New Plymouth District	323	0.09%
16			New Plymouth District	821	0.23%
6			New Plymouth District	389	0.11%
16			New Plymouth District	939	0.26%
7			North Shore City	90	0.03%
16			Opotiki District	493	0.14%
8			Otorohanga District	771	0.22%
16			Otorohanga District	598	0.17%
9			Otorohanga District	1804	0.51%
16			Otorohanga District	217	0.06%
17			Palmerston North City	361	0.10%
0			Palmerston North City	218	0.06%
16			Palmerston North City	120	0.03%
1			Palmerston North City	850	0.24%
16			Papakura District	226	0.06%
2			Papakura District	166	0.05%

18			Papakura District	324	0.09%
6					
18	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Papakura District	369	0.10%
7			Papakura District	465	0.13%
18			Papakura District	354	0.10%
8			Porirua City	182	0.05%
18			Queenstown-Lakes District	288	0.08%
9			Queenstown-Lakes District	1062	0.30%
18			Queenstown-Lakes District	706	0.20%
19			Queenstown-Lakes District	641	0.18%
0			Rangitikei District	368	0.10%
19			Rangitikei District	671	0.19%
1			Rangitikei District	214	0.06%
19			Rangitikei District	711	0.20%
2			Rodney District	330	0.09%
19			Rodney District	196	0.06%
3			Rodney District	420	0.12%
19			Rodney District	419	0.12%
4			Rodney District	368	0.10%
19			Rodney District	417	0.12%
5			Rodney District	247	0.07%
19			Rodney District	1075	0.30%
6			Rodney District	877	0.25%
20	Rodney District	504	0.14%		
7	Rodney District	361	0.10%		
19	Rodney District	706	0.20%		
8	Rodney District	354	0.10%		
20					
9					
21					
0					
21					
1					

21			Rodney District	486	0.14%
2					
21	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Rodney District	121	0.03%
3			Rodney District	304	0.09%
21			Rodney District	185	0.05%
4			Rodney District	309	0.09%
21			Rodney District	930	0.26%
5			Rodney District	185	0.05%
21			Rodney District	361	0.10%
6			Rodney District	228	0.06%
21			Rodney District	316	0.09%
7			Rodney District	175	0.05%
21			Rodney District	463	0.13%
8			Rodney District	331	0.09%
21			Rotorua District	208	0.06%
9			Rotorua District	550	0.16%
22			Rotorua District	368	0.10%
0			Rotorua District	1064	0.30%
22			Rotorua District	540	0.15%
22			Rotorua District	928	0.26%
1			Rotorua District	248	0.07%
22			Rotorua District	161	0.05%
2	Ruapehu District	516	0.15%		
23	Ruapehu District	311	0.09%		
3	Ruapehu District	211	0.06%		
23	Ruapehu District	810	0.23%		
4	Ruapehu District	533	0.15%		
23					
5					
23					
6					
23					
7					

23			Selwyn District	699	0.20%		
8			Selwyn District	558	0.16%		
23	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Selwyn District	563	0.16%		
9			Selwyn District	765	0.22%		
24			Selwyn District	946	0.27%		
0			Selwyn District	439	0.12%		
24			Selwyn District	506	0.14%		
1			Selwyn District	1200	0.34%		
24			Selwyn District	560	0.16%		
2			Selwyn District	561	0.16%		
24			South Taranaki District	703	0.20%		
3			South Taranaki District	312	0.09%		
24			South Taranaki District	426	0.12%		
4			South Taranaki District	441	0.12%		
24			South Taranaki District	325	0.09%		
5			South Waikato District	422	0.12%		
24			South Waikato District	450	0.13%		
6			South Waikato District	653	0.18%		
24			South Waikato District	593	0.17%		
7			South Wairarapa District	621	0.18%		
24			South Wairarapa District	594	0.17%		
8			Southland District	1003	0.28%		
25			Southland District	318	0.09%		
9			Southland District	393	0.11%		
26			Southland District	691	0.19%		
0			Southland District	281	0.08%		
26							
1							
26							
2							
26							
3							

26			Southland District	206	0.06%
4					
26	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Southland District	397	0.11%
5			Southland District	1040	0.29%
26			Southland District	805	0.23%
6			Southland District	231	0.07%
26			Southland District	823	0.23%
7			Southland District	1548	0.44%
26			Southland District	717	0.20%
8			Stratford District	790	0.22%
26			Stratford District	879	0.25%
9			Tararua District	860	0.24%
27			Tararua District	474	0.13%
0			Tararua District	679	0.19%
27			Tararua District	577	0.16%
1			Tararua District	177	0.05%
27			Tararua District	899	0.25%
2			Tasman District	807	0.23%
27			Tasman District	373	0.11%
3			Tasman District	1284	0.36%
27			Tasman District	612	0.17%
4			Tasman District	477	0.13%
27	Tasman District	347	0.10%		
5	Taupo District	514	0.14%		
28	Taupo District	494	0.14%		
6	Taupo District	309	0.09%		
28	Taupo District	691	0.19%		
7					
8					
28					
9					

29			Taupo District	722	0.20%
0					
29	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Taupo District	974	0.27%
1			Taupo District	315	0.09%
29			Taupo District	633	0.18%
2			Tauranga City	282	0.08%
29			Tauranga City	183	0.05%
3			Tauranga City	107	0.03%
29			Tauranga City	195	0.05%
4			Tauranga City	228	0.06%
29			Tauranga City	305	0.09%
5			Thames-Coromandel District	224	0.06%
29			Thames-Coromandel District	792	0.22%
6			Thames-Coromandel District	816	0.23%
29			Thames-Coromandel District	489	0.14%
7			Thames-Coromandel District	389	0.11%
29			Thames-Coromandel District	230	0.06%
8			Thames-Coromandel District	449	0.13%
29			Thames-Coromandel District	400	0.11%
9			Thames-Coromandel District	263	0.07%
30			Thames-Coromandel District	298	0.08%
0			Timaru District	399	0.11%
31			Timaru District	706	0.20%
1			Timaru District	937	0.26%
31			Timaru District	278	0.08%
2			Timaru District	782	0.22%
31			Timaru District	336	0.09%
3					
31					
4					
31					
5					

31			Upper Hutt City	196	0.06%
6					
31	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Upper Hutt City	300	0.08%
7			Waikato District	1095	0.31%
31			Waikato District	411	0.12%
8			Waikato District	1139	0.32%
31			Waikato District	646	0.18%
9			Waikato District	171	0.05%
32			Waikato District	532	0.15%
0			Waikato District	177	0.05%
32			Waikato District	697	0.20%
1			Waikato District	554	0.16%
32			Waikato District	225	0.06%
2			Waikato District	495	0.14%
32			Waikato District	454	0.13%
3			Waikato District	710	0.20%
32			Waikato District	203	0.06%
4			Waimakariri District	1003	0.28%
33			Waimakariri District	340	0.10%
0			Waimakariri District	194	0.05%
33			Waimakariri District	208	0.06%
1			Waimakariri District	550	0.16%
33			Waimate District	803	0.23%
2	Waimate District	752	0.21%		
33	Waipa District	807	0.23%		
3	Waipa District	716	0.20%		
33	Waipa District	317	0.09%		
4					
0					
34					
1					

34			Waipa District	416	0.12%
2					
34	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Waipa District	407	0.11%
3			Waipa District	698	0.20%
34			Waipa District	828	0.23%
4			Waipa District	559	0.16%
34			Waipa District	250	0.07%
5			Waipa District	168	0.05%
34			Waipa District	228	0.06%
6			Waipa District	511	0.14%
34			Waipa District	287	0.08%
7			Waipa District	871	0.25%
34			Waipa District	165	0.05%
8			Waipa District	872	0.25%
34			Waipa District	482	0.14%
9			Waipa District	615	0.17%
35			Waipa District	521	0.15%
0			Waipa District	442	0.12%
35			Waipa District	343	0.10%
1			Waipa District	290	0.08%
35			Waipa District	362	0.10%
2			Waipa District	601	0.17%
35			Waipa District	547	0.15%
3	Waipa District	179	0.05%		
36	Waipa District	264	0.07%		
4	Waipa District	611	0.17%		
36	Waipa District	349	0.10%		
5	Waipa District				
36	Waipa District				
6	Waipa District				
36	Waipa District				
7	Waipa District				

36			Western Bay of Plenty District	914	0.26%	
8						
36	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	[Withheld under s 9(2)(b)(ii) of the Official Information Act 1982].	Westland District	247	0.07%	
9						
37						
0						
37						
1						
37						
2						
37						
3						
37						
4						
37						
5						
37						
6						
37						
7						
37						
8						
37						
9						
38						
0						
38						
1						
38						
2						
38						
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38						
4						
38						
5						
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38						
7						

202071 56.96%

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Schedule 3

Project Planning

1 Definitions

1.1 In this Schedule, unless the context otherwise requires:

“Additional Infrastructure” has the meaning given to it in Schedule 2;

“Build Complete” has the meaning given to it in Schedule 2;

“Consents Granted” has the meaning given to it in Schedule 2;

“Construction Period” means each successive period of 6 months, commencing on 1 July and 1 January in each year, until there are no further Design and Build Services to be completed under this Agreement;

“Consultation Period” means, in relation to a Construction Period and/or Draft Plan, the corresponding “Consultation Period” specified in Appendix B;

“Consents Granted” has the meaning given to it in Schedule 2;

“Draft Plan” has the meaning given to it in paragraph 4.1;

“Draft Timetable Date” means, in relation to a Construction Period and/or Timetable, the corresponding “Draft Timetable Date” specified in Appendix B;

“Expected Draft Plan Publication Date” means, in relation to a Construction Period and/or Draft Plan, the corresponding “Expected Draft Plan Publication Date” specified in Appendix B;

“Grant Funded Location” has the meaning given to it in Schedule 2;

“Lease Finalised” has the meaning given to it in Schedule 2;

“Local Broadband Aggregation Point” or “LBAP” means the Telecom exchange or cabinet specified as an ‘LBAP’ in appendix A of Schedule 2 of the Fibre Build Contract;

“Milestone” has the meaning given to it in Schedule 2;

“non-Grant Funded Site” has the meaning given to it in Schedule 2;

“Primary Location” means a Grant Funded Location which Vodafone advises in its Timetable as being a Grant Funded Location at which it intends to meet a Milestone in the relevant Construction Period;

“Release Date” means, in relation to a Construction Period and/or Draft Plan, the corresponding “Release Date” specified in Appendix B;

“Secondary Location” means a Grant Funded Location which Vodafone advises in its Timetable as being a Grant Funded Location at which it intends to meet a Milestone in the relevant Construction Period if it cannot achieve the equivalent Milestone at a Primary Location;

"Timetable" means a list setting out which of the:

- (a) Grant Funded Locations Vodafone proposes will reach each Milestone; and
- (b) non-Grant Funded Locations Vodafone proposes will be Upgraded,

in the next Construction Period;

"Site Integrated" has the meaning given to it in Schedule 2;

"Timetable Publication Date" means, in relation to a Construction Period and/or Timetable, the corresponding "Timetable Publication Date" specified in Appendix B;

"Tower" has the meaning given to it in Schedule 2;

"Update Period" means, in relation to a Construction Period and/or Draft Plan, the corresponding "Update Period" specified in Appendix B; and

"Upgrade" in respect of each non-Grant Funded Site means installing Additional Infrastructure on a Tower, integrating such Additional Infrastructure with Vodafone's network and performing additional services each as reasonably determined by Vodafone in order to enable Rural Telecommunications Services to be made Available from that non-Grant Funded Site, and **"Upgraded"** and **"Upgrading"** shall have corresponding meanings.

1.2 Unless otherwise provided in this Schedule, capitalised terms shall have the meaning given to them in clause 1 of this Agreement.

2 Deployment Planning

2.1 The approximate high-level overall plans for:

- (a) the achievement of Lease Finalised, Consents Granted, Build Complete and Site Integrated for each of the Grant Funded Locations; and
- (b) performing the Upgrade of the non-Grant Funded Sites,

are set out in Appendix A to this Schedule.

3 First Construction Period

3.1 Within 30 days of the date of this Agreement, Vodafone will provide the Ministry with a draft Timetable for the Construction Period commencing 1 July 2011.

3.2 Vodafone and the Ministry will each take all steps within their power to ensure that Telecom's plans for the construction of fibre connectivity during that Construction Period are consistent with the draft Timetable.

3.3 Vodafone will consider any comments that the Ministry might have regarding the draft Timetable prepared by Vodafone in accordance with paragraph 3.2 and provide the Ministry with a final Timetable for the Construction Period commencing 01 July 2011 within 30 days of its receipt of the Ministry's comments.

4 Subsequent Construction Periods

- 4.1 For each Construction Period that commences on or after 1 July 2012, Vodafone will provide the Ministry on or before the relevant Release Date with a draft plan that will identify the general geographic areas in which Vodafone intends to perform the Design and Build Services in that Construction Period (“Draft Plan”).
- 4.2 The Ministry will:
- (a) provide, and will use its reasonable endeavours to ensure that Telecom provides, its comments on the Draft Plan on or before the end of the Consultation Period; and
 - (b) use its reasonable endeavours to ensure that any planning process that it undertakes with Telecom in respect of the building of fibre will prioritise the build of fibre to schools, hospitals and Tower sites over cabinets.
- 4.3 Within the Update Period and to the extent reasonably practical, Vodafone will update the Draft Plan:
- (a) to reflect the reasonable feedback (if any) received during the Consultation Period; and
 - (b) to confirm a number of primary LBAPS that Vodafone reasonably believes will need to be completed during that Construction Period in order to allow Vodafone to proceed with the Design and Build Services that it has planned for that Construction Period, together with a number of secondary LBAPs that Vodafone determines that it will not be able to use a primary LBAP,
- and provide the Ministry with a final Draft Plan which will be published no later than the Expected Draft Plan Publication Date for that Construction Period.
- 4.4 On or before the relevant Draft Timetable Date, Vodafone will provide the Ministry with a draft Timetable. The draft Timetable will:
- (a) be sufficient to enable Vodafone to materially meet the high level overall plan set out in Section 1 of Appendix A;
 - (b) be sufficient to enable Vodafone to meet 90% of the Upgrades indicated for the relevant Construction Period by the high level overall plan set out in Section 2 of Appendix A; and
 - (c) to the extent reasonably practical and subject to paragraph 4.10, only identify Grant Funded Locations that Vodafone believes will use (i) the LBAPs that were identified in the Draft Plan; or (ii) LBAPs that are already available as at the Draft Timetable Date, in order to make Available the Rural Telecommunications Services from those Grant Funded Locations.
- 4.5 Each Timetable must identify the Primary Locations and a number of additional Secondary Locations that is equal to 20% of the number for Primary Locations, for which Vodafone may swap any affected Primary Locations where Vodafone believes:
- (a) a Primary Location will not, or is not likely to, meet the relevant Milestone set out in the Timetable; and

- (b) it will be able to achieve the same Milestone in respect of the relevant Secondary Location instead.

The proportion of each type of Milestone to be achieved in the relevant Construction Period in relation to the Primary Locations must remain the same to the extent that any Secondary Locations are swapped in under this, paragraph 4.5.

4.6 In preparing each draft Timetable, Vodafone will have regard to the following matters:

- (a) the desirability of Upgrading or deploying the Infrastructure in logical geographic clusters but the parties agree that there may be legitimate reasons why any Upgrade is not part of a logical geographic cluster. In those circumstances the draft Timetable will include the rationale for incomplete coverage;
- (b) the desirability of Upgrading or deploying the Infrastructure in "hotspots" or areas of greatest customer demand;
- (c) the date by when any necessary pre-requisites for the Upgrade of a non-Grant Funded Site (such as upgrades to core nodes and transmission infrastructure) are expected to be completed;
- (d) what has been discussed during the stakeholder engagement process outlined in Schedule 8; and
- (e) any prior consultation Vodafone has had with Telecom with respect to the Grant Funded Locations.

4.7 For the avoidance of doubt:

- (a) the intent of paragraph 4.6(a) is not to allow the Ministry to request changes to the draft Timetable but rather to maintain transparency and allow the Ministry to advise the Minister, his colleagues and constituents of the rationale behind decisions that impact them; and
- (b) nothing in paragraph 4.6 will oblige Vodafone to perform any Upgrades or build or deploy any Infrastructure at a rate that is quicker than that contemplated by the overall high-level plans set out in Appendix A.

4.8 Notwithstanding paragraphs 4.1 and 4.5 above the Timetable need not include Secondary Locations for a Milestone where there are no Grant Funded Locations remaining that have not already achieved the relevant Milestone or where all relevant Grant Funded Locations are already identified as Primary Locations for that Milestone.

4.9 The Ministry shall promptly (but in any event no later than 10 Business Days after its receipt) provide Vodafone with any comments that it might have regarding:

- (a) the Milestones that will be reached;
- (b) the Primary Locations that will be worked on; or
- (c) the Upgrades that will be performed,

according to that draft Timetable.

- 4.10 Vodafone and the Ministry will meet to discuss the Ministry's comments within 5 Business Days after the Ministry has given its comments. Vodafone will take the Ministry's comments into account where reasonably practicable and provide:
- (a) the Ministry with a final Timetable for the next Construction Period; and
 - (b) Telecom with confirmation of the LBAPS that it believes need to be made available in respect of the Primary Locations and the Secondary Locations identified in the Timetable in order to provide the Rural Telecommunications Service from those locations. To the extent that the LBAPs are LBAPs that are not already available as at the Draft Timetable Date or LBAPs that were not identified in the Draft Plan, the Ministry shall use its reasonable endeavours to procure Telecom to accommodate the change in LBAP, provided that such confirmation is given to Telecom,

no later than the Timetable Publication Date for that Construction Period.

5 Reporting

- 5.1 Within 30 days of the end of each Construction Period, Vodafone will provide the Ministry with a report setting out:
- (a) which of the Grant Funded Locations achieved each of the Milestones;
 - (b) what Grant Funded Infrastructure was built; and
 - (c) which of the non-Grant Funded Sites were Upgraded;
- during the previous Construction Period.

- 5.2 The Parties will agree, on or before 1 August 2011:

- (a) the reports that Vodafone will provide to the Ministry with reports in respect of its performance of the Services; and
- (b) the information that will be contained in the report that Vodafone will provide to the Ministry for the six-monthly meetings in accordance with clause 10.4(b),

acting reasonably, and with the intention that such reports shall be straight forward to produce from information generated in Vodafone's systems.

6 Contract Administration

- 6.1 As at the date this Agreement is signed, the Authorised Representative:
- (a) for Vodafone is Mark Jones; and
 - (b) for the Ministry is Bradley Ward.
- 6.2 Vodafone's address for the provision of notices under this Agreement is:

Vodafone Building
20 Viaduct Harbour Avenue
Auckland

Email: marka.jones@vodafone.com

6.3 The Ministry's address for the provision of notices under this Agreement is:

Ministry of Economic Development
33 Bowen Street
Wellington

Email: Brad.Ward@med.govt.nz

Appendix A - Approximate Overall Plans

1. Grant-Funded Sites

	Dec-11	Jun-12	Dec-12	Jun-13	Dec-13	Jun-14	Dec-14	Jun-15	Dec-15	Jun-16
MS1 Lease Finalised	21	21	20	24	24	20	15	9	0	0
MS2 Consents Granted	15	21	21	20	24	24	20	9	0	0
MS3 Build Completed	10	11	12	18	14	18	15	18	18	20
MS4 Site Integrated	8	10	11	12	18	15	18	18	20	24

Cumulative	Dec-11	Jun-12	Dec-12	Jun-13	Dec-13	Jun-14	Dec-14	Jun-15	Dec-15	Jun-16
MS1 Lease Finalised	21	42	62	86	110	130	145	154	154	154
MS2 Consents Granted	15	36	57	77	101	125	145	154	154	154
MS3 Build Completed	10	21	33	51	65	83	98	116	134	154
MS4 Site Integrated	8	18	29	41	59	74	92	110	130	154

2. Non-Grant Funded Sites

	Dec-11	Jun-12	Dec-12	Jun-13	Dec-13	Jun-14	Dec-14	Jun-15	Dec-15	Jun-16	Dec-16	Jun-17
Zone 3, 4 Site Upgrades (Cumulative)	34	69	104	136	171	203	238	270	305	337	362	387
Zone 3, 4 Site Upgrades	34	35	35	32	35	32	35	32	35	32	25	25

Appendix B - Timetable for preparing and consulting on Detailed Plans

Construction Period	Release Date	Consultation Period	Update Period	Expected Draft Plan Publication Date	Draft Timetable Date	Timetable Publication Date
1 January 2012 to 30 June 2012	30 days after the date of this Agreement	Starts on Release Date Ends 1 June 2011	15 days following the end of the Consultation Period	1 July 2011	1 September 2011	30 November 2011
1 July 2012 to 31 December 2012	30 days after the date of this Agreement	Starts on Release Date Ends on 1 July 2011	30 days following the end of the Consultation Period	1 October 2011	1 March 2012	1 April 2012
1 January 2013 to 30 June 2013	1 October 2011	Starts on Release Date Ends on 1 January 2012	30 days following the end of the Consultation Period	1 April 2012	01 September 2012	01 October 2012
1 July 2013 to 31 December 2013	1 April 2012	Starts on Release Date Ends on 1 July 2012	30 days following the end of the Consultation Period	1 October 2012	01 March 2013	01 April 2013

Construction Period	Release Date	Consultation Period	Update Period	Expected Draft Plan Publication Date	Draft Timetable Date	Timetable Publication Date
1 January 2014 to 30 June 2014	1 October 2012	Starts on Release Date Ends on 1 January 2013	30 days following the end of the Consultation Period	1 April 2013	01 September 2013	01 October 2013
1 July 2014 to 31 December 2014	1 April 2013	Starts on Release Date Ends on 1 July 2013	30 days following the end of the Consultation Period	1 October 2013	01 March 2014	01 April 2014
1 January 2015 to 30 June 2015	1 October 2013	Starts on Release Date Ends on 1 January 2014	30 days following the end of the Consultation Period	1 April 2014	01 September 2014	01 October 2014
1 July 2015 to 31 December 2015	1 April 2014	Starts on Release Date Ends on 1 July 2014	30 days following the end of the Consultation Period	1 October 2014	01 March 2015	01 April 2015

Construction Period	Release Date	Consultation Period	Update Period	Expected Draft Plan Publication Date	Draft Timetable Date	Timetable Publication Date
1 January 2016 to 30 June 2016	1 October 2014	Starts on Release Date Ends on 1 January 2015	30 days following the end of the Consultation Period	1 April 2015	01 September 2015	01 October 2015
Each subsequent Construction Period (if any)	15 months before Construction Period begins	Starts on Release Date Ends on date 12 months before Construction Period begins	30 days following the end of the Consultation Period	9 months before Construction Period begins	4months before Construction Period begins	3 months before Construction Period beings

SCHEDULE 4
Payment Schedule and Process

1 Definitions

1.1 Unless the context otherwise requires:

“**Additional Allocation**” means any additional funding allocated to the Maximum Funding Limit under paragraph 6.1;

“**Build Complete**” has the meaning given to it in Schedule 2;

“**Consents Granted**” has the meaning given to it in Schedule 2;

“**Cumulative Grant**” has the meaning given to it in paragraph 2.3;

“**Grantable Costs**” has the meaning given to it in paragraph 3.1;

“**Lease Finalised**” has the meaning given to it in Schedule 2;

“**Maximum Funding Limit**” means \$60,000,000 (excluding GST) plus the Additional Allocation (if any);

“**Milestone**” has the meaning given to it in Schedule 2;

“**Retention Amount**” means, for each Grant Funded Site, ten per cent of the Grantable Costs incurred in achieving Build Complete for that site;

“**Site Integrated**” has the meaning given to it in Schedule 2;

“**Success Notice**” has the meaning given to it in Schedule 9;

“**Telecom Shortfall**” means that Telecom’s total grantable costs incurred in the completion of its “Design and Build Services” under the Fibre Build Contract are greater than \$225,000,000 plus GST;

“**Telecom Surplus**” means that Telecom’s total grantable costs incurred in the completion of its “Design and Build Services” under the Fibre Build Contract are less than \$225,000,000 plus GST;

“**Tower**” has the meaning given to it in Schedule 2;

“**Vodafone Shortfall**” means that Vodafone has incurred Grantable Costs that exceed the Cumulative Grant at Year 5; and

“**Vodafone Surplus**” means that Vodafone has claimed an aggregate amount of Grantable Costs that is less than the Cumulative Grant at Year 5.

1.2 Unless otherwise provided in this Schedule, capitalised terms have the meaning given to them in clause 1 of this Agreement.

2 Costs Incurred

2.1 Upon achievement of a Milestone at a Grant Funded Site, Vodafone may submit an invoice to the Ministry in respect of the Grantable Costs incurred in achieving that Milestone, or in the

case of a Grant Funded Site becoming Site Integrated, an invoice for the Retention Amount. In the case of Build Complete Vodafone shall deduct the Retention Amount from its invoice, which shall become payable in accordance with paragraph 4.

- 2.2 Notwithstanding paragraph 2.1, Vodafone may also invoice the Ministry for Grantable Costs incurred prior to achieving the Milestones of Lease Finalised and Consents Granted in respect of a Grant Funded Site provided that at the time of such invoice, no more than \$5 million (excluding GST) of such Grantable Costs have been invoiced which relate to Grant Funded Sites that have not achieved Site Integrated. Vodafone will provide a report matching the Grantable Costs to the tasks and deliverables to which they relate at the time of submitting such invoices to the Ministry.
- 2.3 Vodafone may not issue an invoice if this would cause the aggregate total of invoices issued for Grantable Costs by Vodafone for that year to exceed the cumulative grant available for the relevant year as set out below (“Cumulative Grant”):

Cumulative Grant at Year 1	Cumulative Grant at Year 2	Cumulative Grant at Year 3	Cumulative Grant at Year 4	Cumulative Grant at Year 5
\$18.947 million (excluding GST)	\$38.737 million (excluding GST)	\$47.579 million (excluding GST)	\$56.421 million (excluding GST)	\$60 million (excluding GST)

- 2.4 For the avoidance of doubt:
- a) if Vodafone does not issue invoices in any one year up to the total of the Cumulative Grant for that year, the un-invoiced proportion of the Cumulative Grant will be available to be invoiced in subsequent years of this Agreement; and
 - b) if the Cumulative Grant at the then-current year would not be exceeded, Vodafone may issue invoices for Grantable Costs incurred in prior years that have not been paid for previously by the Ministry.
- 2.5 The Ministry will only become liable for any Grantable Costs once Vodafone has issued an invoice.
- 2.6 In no event may the Grant be used:
- a) other than in connection with Vodafone performing the Design and Build Services; or
 - b) as security for indebtedness.
- 2.7 Payment of the Grant by the Ministry will not constitute approval of any design, or other documentation reviewed by the Ministry.

3 Grantable Costs

- 3.1 Vodafone may claim from the Ministry costs associated with the building of the Grant Funded Sites which are able to be capitalised as per International Financial Reporting Standards (“Grantable Costs”), including (without limitation) costs associated with:
- a) site acquisition (including costs of acquiring and negotiating leases and easements);
 - b) obtaining consent under the Resource Management Act 1991;
 - c) site preparation;

- d) Access Seeker interactions;
- e) civil construction;
- f) ducting/troughs;
- g) site design;
- h) provision of AC and DC power;
- i) construction of Towers, fences, open access cabling, access roading;
- j) landscaping;
- k) programme management and governance;
- l) labour capitalised in accordance with generally accepted accounting principles for self-constructed assets, using labour rates and methodology consistent with the labour rates and methodology used by Vodafone for all other capital projects in each financial year (as approved each year in Vodafone's annual audit) of its statutory accounts;
- m) Vodafone's participation in the stakeholder engagement process set out in Schedule 8 (including staff and travel costs) to the extent that such costs may be capitalised against Infrastructure in accordance with International Financial Reporting Standards and Vodafone's usual accounting practices for self funded projects; and
- n) development of the Vodafone wholesale website to a maximum of \$100,000.

3.2 For the avoidance of doubt, Grantable Costs exclude:

- a) operating expenditure;
- b) costs relating to operational support systems;
- c) costs associated with interconnection facilities at Points of Interconnect;
- d) Customer Premises Equipment;
- e) interest; and
- f) any electronics associated with the provision of community broadband.

4 Retention

Once Vodafone has submitted a Success Notice to the Ministry in accordance with Schedule 9 for a Grant Funded Site, it may issue an invoice to the Ministry for payment to Vodafone of the Retention Amount. Unless the Ministry in good faith disputes the Success Notice in accordance with Schedule 9, the Ministry will pay Vodafone the full Retention Amount in respect of the relevant Grant Funded Site in accordance with paragraph 5.

5 Payment

The Ministry will pay any invoice received from Vodafone in respect of the Grantable Costs or the Retention Amount within 15 days of the date of the invoice.

6 Surplus Funding

- 6.1 If following the completion of the Design and Build Services and the design and build services to be provided by Telecom under the Fibre Backhaul Agreement (the “Telecom Build”) there is a Vodafone Shortfall and a Telecom Surplus, then the funding represented by the Telecom Surplus will be added to the Maximum Funding Limit, so that Vodafone may claim additional Grantable Costs in accordance with this Agreement to cover the Vodafone Shortfall.
- 6.2 If at the completion of the Design and Build Services and the Telecom Build there is a Telecom Shortfall and a Vodafone Surplus, then Vodafone acknowledges that the Ministry may reallocate the funding represented by the Vodafone Surplus so that it is available to Telecom to cover the Telecom costs in respect of the Telecom Build.
- 6.3 If at the completion of the Design and Build Services and the Telecom Build:
- a) there is a Vodafone Surplus and a Telecom Surplus; or
 - b) a portion of the funding represented by a Telecom Surplus is not required in order to cover a Vodafone Shortfall under paragraph 6.1; or
 - c) a portion of the funding represented by a Vodafone Surplus is not required in order to cover a Telecom Shortfall under paragraph 6.2,
- (in each case, a “Surplus”) then, as soon as reasonably practicable:
- d) the Ministry will issue a notice to Telecom and Vodafone seeking proposals on additional broadband infrastructure projects which Telecom and/or Vodafone could undertake in order to utilise the Surplus in furtherance of the Rural Broadband Objectives (“Surplus Projects”);
 - e) the Ministry will consult with Telecom and Vodafone on its goals and priorities for Surplus Projects, and will then provide Telecom and Vodafone with a period of not less than 30 Business Days in which they will each have the opportunity to prepare and submit proposals for Surplus Projects (“Submission Period”);
 - f) during the Submission Period, Vodafone may submit its proposals for Surplus Projects in the form of one or more Change Requests, which seek (A) to incorporate those Surplus Projects as part of the Design and Build Services under this Agreement, and (B) to add some or all of the Surplus to the Maximum Funding Limit so that Vodafone may claim additional Grantable Costs that would arise in the performance of the Surplus Projects in accordance with this Agreement;
 - g) the Ministry will consider any such Change Requests in accordance with the Change Procedure, and will consider any Surplus Projects proposed by Telecom during the Submission Period in accordance with an equivalent procedure in the Fibre Backhaul Agreement to the procedure outlined in paragraph 6.3(f) above; and
 - h) the Ministry will consider in good faith each of the Change Requests submitted by Vodafone under this paragraph 6 and by Telecom under the equivalent procedure in the Fibre Build Contract to the procedure set out in this paragraph 6, although Vodafone acknowledges that in considering the Surplus Projects proposed by Vodafone and Telecom, the Ministry:
 - (i) will aim to select the Surplus Projects which the Ministry considers offer the best value for money in furtherance of the Rural Broadband Objectives;
 - (ii) all else being equal, will aim to favour Surplus Projects proposed by the Party that created the associated Surplus (recognising the positive incentives this creates for Telecom and Vodafone); and

- (iii) need not select any Surplus Project which the Ministry considers does not offer good value for money in the furtherance of the Rural Broadband Objectives.

6.4 The Ministry will ensure that Telecom and Vodafone are each afforded a fair and equal opportunity to participate in the process described in this paragraph 6.

6.5 Unless the Ministry, Telecom and Vodafone agree otherwise in writing, the Ministry will ensure that any Surplus Projects agreed with:

- a) Vodafone consist of additional deployments of the same classes of infrastructure and services as the Infrastructure and the Design and Build Services, and that any Surpluses allocated to Surplus Projects proposed by Vodafone will be payable only in respect of Grantable Costs; and
- b) Telecom consist of additional deployments of the same classes of infrastructure and services as the Telecom Build, and that any Surpluses allocated to Surplus Projects proposed by Telecom will be payable only in respect of Telecom costs.

Schedule 5 Change Procedure

1 Definitions

1.1 Unless the context otherwise requires:

“Change” has the meaning given to it in paragraph 2.1;

“Change Authorisation Agreement” has the meaning given to it in paragraph 2.2;

“Change Impact Statement” has the meaning given to it in paragraph 4.1;

“Change Control Group” means the group formed in accordance with paragraph 10 that has the roles and responsibilities set out in paragraph 10; and

“Senior Executive Group” means the group formed in accordance with paragraph 11 that has the roles and responsibilities set out in paragraph 11.

1.2 Unless otherwise provided in this Schedule, capitalised terms shall have the meaning given to them in clause 1 of this Agreement.

2 Application of process

2.1 The Parties will comply with the Change Procedure set out in this Schedule for all changes to the Agreement (a “Change”) (unless another mechanism is expressly set out in this Agreement for a specific type of change) including:

(a) changes to the scope of the Design and Build Services, the Infrastructure or the Rural Telecommunications Services;

(b) changes to the Timetable except as specifically provided for in Schedule 3; and

(c) changes required in the event of an Unplanned Event.

2.2 No Change will be effective unless and until the details of the Change, the associated Change Impact Statement, and the terms on which the Change will be implemented, have been incorporated into a written memorandum signed by both Parties, (in each case a “Change Authorisation Agreement”.)

3 Submission of Change Requests

3.1 Either the Ministry or Vodafone may, at any time, request a Change by submitting to the other Party a written change request (substantially in the form to be agreed between the Parties) that describes the Change and the reasons for it (a “Change Request”).

3.2 Where:

(a) Vodafone believes that a Change proposed by Vodafone or the Ministry will, or is likely to, impact on the Wireless CBDP Backhaul Requirements; or

(b) the Ministry believes that a Change proposed by Vodafone or the Ministry will, or is likely to, impact on the Fibre Build Contract then the Ministry will notify Vodafone of that belief setting out such detail to enable Vodafone to fulfil its obligations under paragraph 3.2(c) below and,

when preparing the Change Impact Statement under paragraph 4:

(c) Vodafone will use all reasonable endeavours to engage with Telecom, to make Telecom aware of the proposed Change and to reflect (to the extent reasonably appropriate) all relevant issues and changes across the Fibre Build Contract and this Agreement in the Change Impact Statement. Without limiting paragraph 5, such Change Impact Statement must take into account to the extent reasonably appropriate the results of Vodafone’s engagement with Telecom; and

- (d) the parties will use all reasonable endeavours to include Telecom in the Change Control Group and the Senior Executive Group and to otherwise have Telecom follow the processes set out in paragraph 12.

3.3 Where Vodafone receives a request from Telecom to consider the impact or likely impact of a change to the Fibre Build Contract on this Agreement, Vodafone will use all reasonable endeavours to:

- (a) promptly provide Telecom with all information reasonably required by Telecom in respect of the likely impact that the change to the Fibre Build Contract might have on this Agreement and provide Telecom with all information that Vodafone would have included in a Change Impact Statement had that change been a Change Request made by the Ministry; and
- (b) participate as a member of the "Change Control Group" and the "Senior Executive Group", and participate in any dispute resolution process, as provided for in the Fibre Build Contract and implement any Change Impact Statement that is agreed between Vodafone, Telecom and the Ministry, or determined by an arbitrator or an expert, in each case after following a process that is similar to the process contemplated in this Agreement and that provides for Vodafone's position and views to be taken into account.

4 Preparation of Impact Statement

4.1 For each Change Request, Vodafone will undertake an assessment of the Change and provide to the Ministry a written statement describing the Change and its impact (the "Change Impact Statement") as follows:

- (a) if Vodafone is submitting the Change Request, with its Change Request; or
- (b) if the Ministry has submitted the Change Request, as soon as reasonably possible (or such other period as may be agreed by the parties, acting reasonably) taking into account the scope and complexity of the analysis required by the Change Procedure.

4.2 The Ministry will supply Vodafone with any information, clarifications or feedback reasonably requested by Vodafone for the purpose of preparing a Change Impact Statement that:

- (a) is or is likely to be material to the Change Impact Statement;
- (b) is held or controlled by the Ministry; and
- (c) the Ministry is legally able to provide that information to Vodafone.

5 Contents of Change Impact Statement

5.1 Each Change Impact Statement will specify, in reasonable detail:

- (a) the Change, its feasibility, and how and when it will be implemented;
- (b) the likely impact of the Change on the Design and Build Services (including the Timetable), the Rural Telecommunications Services, the Infrastructure, the associated telecommunications network, other terms of the Agreement, and the ability of Vodafone to perform its obligations under the Agreement;
- (c) the likely impact of the Change on the Grant and any increase or decrease to the Grantable Costs and the likely impact of the Change on Vodafone's costs;
- (d) whether the Change is consistent with Vodafone's technology strategies and architectural guidelines;
- (e) the implications of not implementing the Change;
- (f) risk analysis of the Change;

- (g) the impact of the Change on the Wireless CDBP Backhaul Requirements, including the outcome of any engagement with Telecom under paragraph 3.2;
- (h) the changes requested to the Agreement and any Schedule to implement the Change;
- (i) any other matter reasonably requested by the Ministry or that is likely to be relevant to the Ministry in its consideration of the Change; and
- (j) a draft Change Authorisation Agreement.

5.2 Where a Party considers that one or more Changes requested should be reviewed and considered under a single Change Request, Vodafone may prepare a single combined Change Impact Statement for all of those Changes and the other provisions of this Schedule will be applied as if those Changes had been requested under a single consolidated Change Request.

6 Truncated Process

6.1 Where the Parties agree, on a Change-by-Change basis, that a Change is:

- (a) minor and operational in scope that does not involve:
 - (i) a material or significant alteration or deviation from the Agreement, including the Schedules; or
 - (ii) a material or significant alteration to the Timetable; or
- (b) urgent

the Parties may agree in writing to a truncated change control process to deal with that Change, provided that the following will still apply:

- (c) the Authorised Representatives will sign a Change Authorisation Agreement in relation to the Change; and
- (d) once that Change Authorisation Agreement has been signed in accordance with paragraph 6.1(c) of this Schedule it will be deemed that this Agreement is amended in accordance with the terms of the Change Authorisation Agreement;
- (e) any Change agreed to through a truncated process must be included in the Change Register; and
- (f) the Change may be moved to the full review process provided in paragraph 7 at any time by either Party upon notice to the other Party.

7 Review Process

7.1 Once the Change Impact Statement is submitted to the Ministry:

- (a) the Change Control Group will have 10 Business Days in which to review the Change Impact Statement;
- (b) at any time during that period the Change Control Group can give notice accepting the Change Impact Statement, requesting alterations to the Change Impact Statement, withdrawing the Change Request, or referring the matter to the Senior Executive Group;
- (c) the Parties will attempt to reach agreement on any alterations requested by the Change Control Group and any consequential changes to the Change Impact Statement;
- (d) if the Change Impact Statement is accepted by the Change Control Group (with or without amendments), the Parties will sign the accompanying Change Authorisation Agreement and the Change will be implemented accordingly; and

- (e) if by the end of the 10 Business Days the Change Control Group has not accepted the Change Impact Statement, any member of the Change Control Group may refer the matter to the Senior Executive Group.

7.2 If a Change Impact Statement is referred to the Senior Executive Group, then unless the associated Change Request is withdrawn by the agreement of the Parties:

- (a) the Change Control Group will immediately provide the Change Impact Statement and any related Change Control Group documents to the Senior Executive Group;
- (b) the Senior Executive Group will have 10 Business Days in which to review the Change Impact Statement;
- (c) at any time during that period the Senior Executive Group can give notice accepting the Change Impact Statement, requesting alterations to the Change Impact Statement, withdrawing the Change Request, or (if applicable) referring the matter to dispute resolution in accordance with paragraph 8 below;
- (d) the Parties will attempt to reach agreement on any alterations requested by the Change Control Group and any consequential changes to the Change Impact Statement;
- (e) if the Change Impact Statement is accepted by the Senior Executive Group (with or without amendments), the Parties will sign the accompanying Change Authorisation Agreement and the Change will be implemented accordingly; and
- (f) if by the end of the 10 Business Days the Senior Executive Group has not accepted the Change Impact Statement, then
 - (i) if the Change Request relates to an Unplanned Event any member of the Senior Executive Group may (if applicable) refer the matter to dispute resolution under paragraph 8 below; or
 - (ii) If the Change Request relates to any other matter that Change Request, in relation to that matter, is deemed to have been withdrawn.

8 Dispute Resolution

8.1 If any aspect of a Change Impact Statement is to be referred to dispute resolution pursuant to paragraph 7.2(f)(i) above:

- (a) where the Parties agree that the questions for resolution are wholly or predominantly technical in nature, the parties will refer the Change to expert determination under clause 19.3 of this Agreement for the expert to consider how to address the matters set out in the Change Impact Statement and how to implement the related Change in the Agreement. Once the expert has issued his or her decision, unless the initiating Party agrees to withdraw the Change Request, the Change Impact Statement will be modified in accordance with the expert's decision, the Parties will sign the accompanying Change Authorisation Agreement and the Change will be implemented accordingly; and
- (b) otherwise, the parties will refer the Change Impact Statement to be determined by arbitration under clause 19.2 of this Agreement for the arbitrator to consider how to address the matters set out in the Change Impact Statement and how to implement the related Change in the Agreement. Once the arbitrator has issued his or her decision, unless the initiating Party agrees to withdraw the Change Request, the Change Impact Statement will be modified in accordance with the arbitrator's decision, the Parties will sign the accompanying Change Authorisation Agreement and the Change will be implemented accordingly,

and for the avoidance of doubt, the process set out in clause 19.1 will not need to be followed in respect of such disputes prior to referring the dispute to arbitration or expert determination.

8.2 In relation to any matter referred to arbitration or expert determination pursuant to paragraph 8.1 the arbitrator or expert may take into account the following matters when reaching a decision on how to address the matters set out in the Change Impact Statement and how to implement the related Change in the Agreement:

- (a) the impact the Change will have on Vodafone's costs in Vodafone accommodating the Change and otherwise performing its obligations under the Agreement;
- (b) whether the Change will materially increase the risk of failures, errors or outages on Vodafone's network or systems;
- (c) whether the Change will materially adversely affect Vodafone's ability to provide the Ongoing Services, meet its other requirements under the Agreement, meet its commitments to third parties or comply with legislative or regulatory requirements (including any Standard Terms Determination issued under the Telecommunications Act 2001);
- (d) the impact that the Change will have on the health and safety risks associated with the Design and Build Services or the Infrastructure, and/or the operation or maintenance of the Vodafone telecommunications network;
- (e) the impact of the Change on Vodafone's ability to perform its obligations under this Agreement; and
- (f) the impact that the Change may have on the Wireless CBDP Backhaul Requirements and the Backhaul Service,

and where the Change Impact Statement indicates that the Change will have an impact on the Fibre Build Contract, the principles set out above in paragraph 8.2 will also be considered in respect of Telecom by the arbitrator or expert in determining how to address the matters set out in the Change Impact Statement and how to implement the related change in the Fibre Build Contract, with the word "Vodafone" being replaced by "Telecom".

8.3 The Parties acknowledge that the arbitrator or expert appointed in accordance with paragraph 8.1 will only be able to determine how to reasonably address the matters set out in the Change Impact Statement and how to implement the related Change in the Agreement as a result of the Unplanned Event and not whether or not a Change is required as a result of the Unplanned Event.

9 Change Principles (Unplanned Events)

9.1 Where either Party submits a Change Request in relation to a Unplanned Event Vodafone will be entitled, with consideration required if the unplanned event was due to a breach by Vodafone of its obligations under this Agreement, to such of the following:

- (a) a reasonable extension to the Timetable;
- (b) an increase or decrease in the amount payable to Vodafone having regard to the increased or decreased costs to Vodafone arising out of or in connection with the Unplanned Event;
- (c) an amendment to the Services to account for the impact of the Unplanned Event; and/or
- (d) an amendment to the obligations of either party under this Agreement to account for the impact of the Unplanned Event,

as is considered reasonable to accommodate the impact of the Unplanned Event, provided that in determining what is reasonable the Parties acknowledge that they should look to Vodafone's increased or decreased costs but the Ministry:

- (e) will only reimburse Vodafone for Grantable Costs; and

- (f) will not be required to pay to Vodafone and Telecom in aggregate more than the moneys committed to be payable in aggregate to Vodafone under this Agreement and to Telecom under the Fibre Build Contract or to pay any part of the Grant at a rate that exceeds the annual limits payable to Vodafone under this Agreement and to Telecom under the Fibre Build Contract,

and any further accommodation required to address the impact of the Unplanned Event will be through the Parties making the changes set out in paragraphs 9.1(a) and 9.1(c) and (d).

10 Change Control Group

- 10.1 The Change Control Group is a committee comprised of up to two Ministry representatives and up to two Vodafone representatives, with the relevant delegated authority to agree to the Change.
- 10.2 The Change Control Group will be chaired by one of the representatives from the Ministry.
- 10.3 Each Party may replace its Change Control Group appointees from time to time by written notice to the other Party, but will use reasonable endeavours to ensure continuity, and an orderly handover where a change is necessary.
- 10.4 Each action or decision of the Change Control Group requires the unanimous approval of the members of each Party. No member will have a casting vote.
- 10.5 The Change Control Group will meet within 5 Business Days of the submission of each Change Impact Statement, and otherwise as reasonably necessary to perform the functions contemplated by this Schedule 5.
- 10.6 Meetings of the Change Control Group will be held in Wellington except where the Change Control Group agrees otherwise, but members may also attend by audio-conference or video-conference.
- 10.7 The quorum for a meeting of the Change Control Group is all members. Each Party will use reasonable endeavours to ensure that its appointees attend each meeting of the Change Control Group.
- 10.8 The Change Control Group has only the powers expressly conferred by this Schedule 5, and any action or decision outside the scope of those powers is void.

11 Senior Executive Group

- 11.1 The Senior Executive Group is a committee comprised of the Chief Executive Officer of the Ministry and the Chief Executive Officer of Vodafone. For the avoidance of doubt the Chief Executive Officers may delegate their responsibilities under this Schedule to a senior executive.
- 11.2 The Senior Executive Group will be chaired by the Chief Executive Officer of the Ministry or his/her delegate.
- 11.3 Each Party may replace its Senior Executive Group appointee from time to time by written notice to the other Party, but will use reasonable endeavours to ensure continuity, and an orderly handover where a change is necessary.
- 11.4 Each action or decision of the Senior Executive Group requires unanimous approval.
- 11.5 The Senior Executive Group will meet within 5 Business Days of a Change Impact Statement being referred to it under this Schedule 5, and otherwise as reasonably necessary to perform the functions contemplated by this Schedule 5.
- 11.6 Meetings of the Senior Executive Group will be held in Wellington except where the Senior Executive Group agrees otherwise, but members may also attend by audio-conference or video-conference.

11.7 The quorum for a meeting of the Senior Executive Group is all members. Each Party will use reasonable endeavours to ensure that its appointee attends each meeting of the Senior Executive Group.

11.8 The Senior Executive Group has only the powers expressly conferred by this Schedule 5, and any action or decision outside the scope of those powers is void.

12 Vodafone and Telecom Relationship

12.1 If the Change Impact Statement indicates that the Fibre Build Contract will be affected by a Change then:

- (a) the Change Control Group will be expanded to include up to two Telecom representatives with the relevant delegated authority to agree to the Change;
- (b) the Senior Executive Group will be expanded to include the Telecom Chief Executive (or his/her delegate with the relevant delegated authority to agree to the Change);
- (c) the Parties will use reasonable endeavours to procure that Telecom:
 - (i) works in good faith to find a solution that is mutually acceptable to all Parties;
 - (ii) agrees to implement any agreed or determined Change Impact Statement, including making any required changes to the Fibre Build Contract; and
 - (iii) where the Change is referred to arbitration or expert determination, shares equally the fees of the arbitrator or of the expert unless otherwise directed by the expert or arbitrator.

13 Costs

13.1 Unless expressly agreed otherwise by the Ministry and Vodafone in writing (acting reasonably), each Party will be responsible for its own costs and expenses incurred in complying with the Change Procedure (including, in the case of Vodafone, the preparation of the Change Impact Statement).

14 Liability for Changes

14.1 The Ministry will have no liability for any costs or expenses in relation to any Change, and Vodafone will not undertake any Change, until both have agreed to the details of the Change in a Change Authorisation Agreement signed in accordance with paragraphs of this Schedule.

15 Maintenance of register

15.1 Vodafone must prepare and maintain an electronic register ("Change Register") that details all the current and past Changes that are or have been subject to the Change Procedure, and it will promptly make the Change Register available to the Ministry on request.

16 Logging Change Requests

16.1 Vodafone will assign a unique number to each Change Request and log the Change Request in the Change Register.

17 Details

17.1 The Change Register must include the following details for each Change:

- (a) a unique number for the Change;
- (b) the date of registration of the Change;
- (c) the name of the originating Party;
- (d) a description of the Change; and

(e) the current status of the Change.

Schedule 6

Product Review Procedure

1 Purpose of the Product Review Procedure

- 1.1 The purpose of the product review procedure set out in this schedule (the **Product Review Procedure**) is to establish a mechanism by which the Parties will periodically consider what, if any, changes it is reasonable to make to the Wholesale Service to maximise the benefit for End Users in Zone 4 from the Infrastructure to improve the Wholesale Service to the service levels proposed by Vodafone in the Proposal (the **Purpose**) provided that any such consideration must be subject to the Review Principles set out in paragraph 2 below.

2 Guiding Principles of the Product Review Procedure

- 2.1 In undertaking the Product Review Procedure, the Parties (and any arbitrator appointed under paragraph 5 below) must adhere to the following principles (the Review Principles):

2.1.1 The sole reason for undertaking the Product Review Procedure is the Purpose;

2.1.2 Any change to the Wholesale Service must not decrease the pricing of the Wholesale Service and, save as otherwise agreed by Vodafone in writing, may only change the following elements of the Wholesale Service:

- a. size of data caps;
- b. throughput of prioritised traffic class;
- c. the minimum average downlink and uplink speeds;
- d. the design target for latency for the Enhanced RBI Broadband Service; or
- e. the restriction on the number of customers able to take the Enhanced RBI Broadband Service.

2.1.3 Any change to the Wholesale Service must be capable of being delivered by Vodafone:

- a. using the Infrastructure: or
- b. where Vodafone has commercially deployed LTE at 700 MHz on its telecommunications network, by using LTE on all Grant Funded Sites and non Grant Funded Sites, which have:

- i. not yet been upgraded to HSPA+ or had HSPA+ hardware ordered for such sites; or
- ii. been upgraded to HSPA+ but using HSPA+ hardware previously installed on a non-rural site.

2.1.4 Any change to the Wholesale Service must not:

- c. materially affect Vodafone's plans that it has for capital investment to enable it to provide the Services (either at the time of the review or in the future);
- d. materially affect operating expenditure or other costs incurred by Vodafone to enable it to provide the Services (either at the time of the review or in the future);
- e. adversely affect Vodafone's ability to meet its obligations under the Agreement (including without limitation the 80% coverage or peak speed requirements);
- f. adversely affect Vodafone's ability to comply with its commitments to Telecom under the Backhaul Agreement or any other agreement with Telecom upon which Vodafone relies to enable it to meet its obligations under this Agreement;
- g. adversely affect Vodafone's ability to receive the benefit of commitments from Telecom under the Backhaul Agreement or any other agreement with Telecom upon which Vodafone relies to enable it to meet its obligations under this Agreement;
- h. increase the risk of failures, errors or outages on Vodafone's network or systems; or
- i. create inconsistency with Vodafone's technology architecture or roadmaps (both from a local perspective and also from a global / group perspective); and

2.1.5 Any change to the Wholesale Service must allow sufficient network capacity for all services that Vodafone forecasts to be run over the Vodafone network, including without limitation, mobile voice and data products that are not Rural Telecommunications Services.

3 Timing

- 3.1 Unless agreed otherwise the first product review meeting will occur during July 2012.
- 3.2 Subsequent reviews will occur annually thereafter on or around the anniversary of the first review date.
- 3.3 Prior to each review Vodafone will provide the Ministry with a Product Review Report as described below.

4 Content of Product Review Reports

- 4.1 Each Product Review Report prepared by Vodafone will contain the following information and analysis:
 - 4.1.1 A market assessment that covers Vodafone's view of customer expectations, and its view of the current status of wholesale services in rural and urban environments;
 - 4.1.2 Network utilisation reports, which take into account all usage (i.e., not just usage for the purposes of the Rural Telecommunications Services) on and off peak and both historical and forecast;
 - 4.1.3 Vodafone's deployment plans, if any, relating to any new technology (including any LTE deployment plans);
 - 4.1.4 The following data:
 - a. Forecast connections by Access Seekers in respect of Wholesale Services and Retail Customers;
 - b. Actual connections by Access Seekers in respect of Wholesale Services and Retail Customers; and
 - c. End User data usage (on and off peak) relating to the Rural Telecommunications Service; and
 - 4.1.5 Any proposed product variation(s) or technology changes based on the information and analysis provided.

5 Review Process & Referral to Arbitration

- 5.1 Once the Product Review Report is submitted to the Ministry, the Parties will meet within 20 Business Days to discuss the report bearing in mind the Purpose and the Review Principles.

- 5.2 If the Parties agree that no changes should be made to Wholesale Services then no further action will be required by either Party.
- 5.3 If the Parties agree a change should to be made to a Wholesale Service then the parties will agree a Change Authorisation Agreement in respect of that Change and it will be implemented in accordance with Schedule 5.
- 5.4 If, following the Product Review Procedure, either Party proposes a change to a Wholesale Service and the other Party does not accept that change or there is any other dispute in relation to the proposed change (in either case a Dispute for the purposes of this schedule), such Dispute will be, in the first instance, dealt with in accordance with clause 19.1 of the Agreement (Internal Escalation) and secondly, where necessary, referred to arbitration in accordance with clause 19.2 of the Agreement.
- 5.5 In the event that a Dispute is referred to arbitration, the sole matter to be considered by the arbitrator will be whether the change to the Wholesale Service proposed by the Ministry is reasonable to achieve the Purpose while complying with the Review Principles.

6 Costs

- 6.1 Each party will be responsible for its own costs and expenses incurred in complying with the Product Review Procedure, provided that Vodafone will be responsible for its costs and expenses incurred in the preparation of the Product Review Report.

Schedule 7
Form of Deed of Undertaking

Deed of Undertaking

This DEED is made on the day of 2011

BY Vodafone New Zealand Limited (“Vodafone”)

BACKGROUND

- A. The government’s objectives for its \$300 million Rural Broadband Initiative (RBI) policy are to:
- i. improve broadband coverage in Zone 4 such that 80% of Zone 4 households and enterprises are able to access broadband services (the Rural Community Objective);
 - ii. provide an ultrafast connection to at least 93% of Zone 4 schools which have a reasonable cost per pupil; and
 - iii. make available open access backhaul services across the grant funded fibre connections.
- B. Vodafone is about to enter into an agreement with the Ministry of Economic Development (“the Ministry”) to design and build certain infrastructure and provide certain telecommunications services (“the Agreement”) to assist the Ministry in meeting the Rural Community Objective.
- C. One of the objectives of the Agreement is to ensure the availability of wholesale services to Access Seekers.
- D. The obligations contained in this Deed are intended to form the substance of an enforceable non-discrimination undertaking that Vodafone will submit to the Minister responsible for telecommunications (“Minister”) under the terms of the Telecommunications Act as modified by the Telecommunications (TSO, Broadband and Other Matters) Amendment Bill 2010, assuming that Bill passes into law (“the New Undertaking”).
- E. Vodafone is entering into this Deed, in favour of the Crown, to set out certain undertakings relating to its provision of the Co-location Service and Broadband Services to Access Seekers, pending approval of the New Undertaking by the Minister as evidenced by notification in the *Gazette*, at which time this Deed will terminate.

THIS DEED PROVIDES as follows:

DEFINITIONS AND INTERPRETATION

1. In this Deed, unless the context requires otherwise:

Access Seeker means any person who seeks access from Vodafone to:

- (a) the Co-location Service on RBI Infrastructure; or
- (b) a Broadband Service.

Agreement means the agreement between Vodafone and the Ministry of Economic Development dated on or about the date of this Deed prescribing the terms and conditions on which Vodafone will provide infrastructure and telecommunications services to assist the Ministry in meeting the Rural Community Objective.

Broadband Services means the Rural Broadband Service, the Rural Broadband plus Voice Service and the Enhanced Broadband Service, each as described in Schedule 1.

Co-location Service means a service that enables the co-location of telecommunications transmission and reception equipment (including any necessary supporting equipment) on or with the RBI Infrastructure.

Discriminate means to treat differently, except to the extent that a particular difference in treatment is objectively justifiable and does not harm competition in any telecommunications market.

New Undertaking is defined in recital D of the Background section of this Deed.

Relevant Retail Service means a retail broadband service, provided by Vodafone:

- (a) to a wireless terminal in Zone 4 of a type materially similar to the reference installation in Appendix 1 of Schedule 1;
- (b) that is:
 - a. provided using end-user devices that use type allocation code-locked SIM cards;
 - b. provided using the RBI Infrastructure in Zone 4;
 - c. specifically marketed to customers in Zone 4; and
 - d. provided to the RBI service specifications; and
- (c) that competes with retail broadband services offered by Access Seekers that are provided using any Broadband Services.

RBI Infrastructure means the cell towers funded in whole or in part by the Crown RBI grant pursuant to the Agreement.

Rural Community Objective is defined in paragraph A of the Background.

Schedule 1 means Schedule 1 of the Agreement.

Schedule 4 means Schedule 4 of the Agreement.

Telecommunications Act means the Telecommunications Act 2001.

Vodafone-Related Party means any related company of Vodafone within the meaning of section 2(3) of the Companies Act 1993.

2. Interpretation

- 2.1. Examples used in this Deed are only illustrative of the clauses to which they relate. They do not limit those clauses. If an example and a clause are inconsistent, the clause prevails.

- 2.2. In this Deed, unless the context requires otherwise:
- (a) Clause headings are for convenience only, and are not part of this Deed;
 - (b) References to clauses are references to clauses in this Deed;
 - (c) The singular includes the plural and vice versa;
 - (d) Words denoting natural persons include any legal entity or association of entities and vice versa;
 - (e) Reference to a statute means that statute as amended and includes subordinate legislation;
 - (f) Except where this Deed expressly provides otherwise, reference to a document means that document as amended;
 - (g) Reference to the agreement of a party means written agreement;
 - (h) Reference to approval, authorisation or consent means prior written approval authorisation or consent; and
 - (i) The words “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the clause of the Deed to which that example relates.
- 2.3. Unless otherwise provided in this Deed, capitalised terms used in this Deed have the same meaning as those terms are defined in the Agreement.
3. Scope and Application
- 3.1. This Deed is binding on Vodafone and is given by Vodafone in favour of the Crown.
- 3.2. The undertakings given in this Deed are enforceable by the Crown in the High Court of New Zealand.
- 3.3. If anything in this Deed and anything in respect of the Broadband Services or the Co-location Service in any agreement or arrangement in respect of Vodafone or between:
- (a) Vodafone and the Ministry; and
 - (b) Vodafone and any Access Seeker;
- are inconsistent, this Deed will prevail in relation to the obligations of Vodafone.
4. Commencement and Term
- 4.1. The obligations of Vodafone and undertakings given by Vodafone, in each case which are contained in this Deed and relate specifically to Co-location Service apply from the date of this Deed.
- 4.2. The obligations of Vodafone and undertakings given by Vodafone, in each case which are contained in this Deed and relate specifically to Broadband Services and / or Relevant Retail Services apply from the date that all of the pre-conditions in clause 5.1 of the Agreement are satisfied (such that the Agreement comes into full force and effect). For the avoidance of doubt, and save as otherwise provided in the Agreement, Vodafone is not required to provide any Broadband Services and / or Relevant Retail Services until the New Undertaking is approved by the Minister as evidenced by notification in the Gazette.
- 4.3. All obligations and undertakings of Vodafone under this Deed continue until this Deed terminates in accordance with clause 4.4 below.
- 4.4. This Deed will terminate on the earlier of:
- (a) the date that the Agreement expires or is terminated; and
 - (b) the date on which the Minister has approved Vodafone’s New Undertaking as evidenced by notification in the *Gazette*.
- 4.5. The New Undertaking will not include any obligations on Vodafone that are additional or materially different to those set out in this Deed (e.g., it will not require equivalence).

5. Obligation not to Discriminate

- 5.1. When doing or omitting to do anything in relation to the supply of the Co-location Service on RBI Infrastructure or Broadband Services, Vodafone will not Discriminate:
- (a) between Access Seekers; or
 - (b) in favour of Vodafone or any Vodafone-Related Party relative to Access Seekers.
- 5.2. Vodafone's compliance with its obligation in clause 5.1 will be demonstrated only by compliance with the obligations specified in clause 6 of this Deed.
- 5.3. To the extent that any of the specific obligations and other matters set out in clause 6 are found to treat an Access Seeker differently either with respect to Vodafone (or any Vodafone-Related Party) or to another Access Seeker, that different treatment is deemed to be objectively justifiable and to not harm competition in any telecommunications market.
- 5.4. Clause 5.3 also applies where a non-discrimination obligation is imposed on Vodafone as a result of the Telecommunications (TSO, Broadband and Other Matters) Amendment Bill being passed into law.

6. Meaning of non-discrimination obligation

- 6.1. As its non-discrimination obligation, Vodafone makes the following five commitments:
- (a) Provision of Co-location Service as provided for in clauses 6.2 - 6.9;
 - (b) Provision of Broadband Services as provided for in clauses 6.10 - 6.12;
 - (c) Pricing of Broadband Services as provided for in clauses 6.13 - 6.20;
 - (d) Handling of Information as provided for in clauses 6.21 - 6.22; and
 - (e) Transparency in provision of services as provided for in clause 6.23 - 6.27.

Provision of a Co-location Service

- 6.2. Vodafone will deploy RBI Infrastructure subject to and in accordance with the terms of the Agreement. Prior to the deployment of RBI Infrastructure, Vodafone will use the process set out in Schedule 1 to determine the design of the RBI Infrastructure to be deployed.
- 6.3. After the deployment of the RBI Infrastructure, and subject to clauses 6.4 to 6.9 (inclusive) below, Vodafone will supply the Co-location Service on the RBI Infrastructure to Access Seekers as though it were existing infrastructure, on the terms set out in the Mobile Co-location Standard Terms Determination dated 11 December 2008 ("STD") (including any subsequent clarifications or amendments to that STD).
- 6.4. In the event that the STD expires or is superseded, then Vodafone will continue to supply the Co-location Service in accordance with the superseded terms or in accordance with the STD terms as they stood prior to expiry.
- 6.5. Vodafone may not reserve capacity on RBI Infrastructure on the basis of its forecast requirements unless it has reasonable intent, ability, and commitment to deploy in accordance with those forecasts.
- 6.6. Vodafone must not reserve capacity on the basis of its forecast requirements for anti-competitive purposes.
- 6.7. Vodafone must absorb the portion of operating costs for RBI Infrastructure specified in accordance with Schedule 1 for any capacity that it reserves on the RBI Infrastructure regardless of whether the reserved capacity is in use or not.
- 6.8. If:
- (a) Vodafone reserves capacity on any RBI Infrastructure; and
 - (b) Vodafone does not use that reserved capacity on the RBI Infrastructure within four years of reserving that capacity,

then:

- (c) if Access Seekers have requested space on that RBI Infrastructure under the terms on which the Co-location Service is provided;
- (d) Vodafone's capacity reservation will lapse.

6.9. Notwithstanding the provisions of clauses 6.1 to 6.8 (inclusive) above:

- (a) Vodafone will supply the Co-location Service on existing infrastructure to Access Seekers in accordance with the STD, including any subsequent clarifications or amendments to that STD.
- (b) In respect of RBI Infrastructure where any new site has been completed in accordance with the Agreement, Vodafone will enter into an agreement with Access Seekers who are not an access seeker for the purposes of the STD, for the supply of the Co-location Service on terms that are substantially consistent with the STD. In any case, the process for access by such Access Seekers to the RBI Infrastructure and their rights in terms of the ongoing management of the RBI Infrastructure will be consistent with the STD.
- (c) Vodafone will take reasonable steps to ensure that Access Seekers who participate in the design of the RBI Infrastructure are not prevented by the co-location process from installing their equipment at the relevant site in accordance with the STD contemporaneously with Vodafone provided that any such Access Seeker has co-operated with Vodafone for the purpose of undertaking installation of equipment within a reasonable time and is not itself responsible for the delay.

Provision of Broadband Services

6.10. Vodafone will supply Broadband Services to Access Seekers:

- (a) in accordance with the service descriptions;
- (b) in accordance with the provisioning and supply processes; and
- (c) in accordance with the Service Level Agreements;

all of which are set out in Schedule 1.

6.11. Vodafone is not required to supply the Broadband Services to itself.

6.12. Vodafone may offer Relevant Retail Services. Compliance with the obligation in clause 5.1 to achieve non-discrimination in respect of the Broadband Services will be demonstrated by compliance with the Service Level Agreement (SLA) targets and process standards set out in the table below.

	Broadband Service Delivery	Corresponding element with respect to Relevant Retail Services
Provisioning	<ul style="list-style-type: none"> • Staff will be assigned to provisioning the Broadband Services for Access Seekers, and these staff will not also work on provisioning Relevant Retail Services. • Option of self provisioning if self funded 	<ul style="list-style-type: none"> • Same SLA targets for provisioning requests • Shared processes and systems for completing of provisioning requests
Migration	<ul style="list-style-type: none"> • Staff will process all orders to move end users from existing service providers, including Vodafone, to the Access Seekers in the order that they are received. 	<ul style="list-style-type: none"> • End users will be able to migrate from Vodafone to Access Seeker broadband services enabled by the Broadband Services on the same timeframes as other customer acquisitions made by Access Seekers.

Reporting	<ul style="list-style-type: none"> Publish SLA results on the co.nz website 	<ul style="list-style-type: none"> Same SLA reporting framework targets for network, systems and provisioning performance reporting
Faults	<ul style="list-style-type: none"> Monthly SLA reporting provided to Access Seekers Regular operational reviews of SLA performance 	<ul style="list-style-type: none"> Same agreed target SLAs Tickets prioritised due to severity in the same way Same SLA reporting framework
New propositions	<ul style="list-style-type: none"> Access to resources required to develop new propositions 	<ul style="list-style-type: none"> New retail capabilities offered to wholesale customers at the same time (except for any layer 3 + elements). Same capability available to bring propositions to market.
Network Performance	<ul style="list-style-type: none"> Monthly network reports provided to wholesale customers with action plans to address any areas where target SLAs not achieved. 	<ul style="list-style-type: none"> Same network quality with no ability to prioritise customers (except for the prioritisation features of the Enhanced Broadband Service) Same agreed target SLAs Same reporting framework

Pricing of Broadband Services

Wholesale pricing

- 6.13. Vodafone will supply the Broadband Services to Access Seekers at prices not greater than those specified in Schedule 4. For the avoidance of doubt, Vodafone may provide the Broadband Services to Access Seekers at any level below those prices.
- 6.14. The RBI grant requires Vodafone to provide the Broadband Services at subsidised wholesale prices, to help achieve the Rural Community Objective. This in turn will help ensure that rural New Zealanders get affordable access to broadband.
- 6.15. It is acknowledged that the prices specified in Schedule 4, including prices for overage, are lower than the costs actually incurred by Vodafone in the provision of the Broadband Services. The prices specified in Schedule 4 reflect the RBI Crown funding, which effectively subsidises wholesale pricing, and will not provide for full cost recovery. The challenging business case means that below-cost pricing is necessary to meet the Government's objectives around affordable rural broadband. The RBI Crown funding is a key element in allowing Vodafone to offer the pricing set out in Schedule 4.

Retail pricing

- 6.16. Vodafone will not supply the Relevant Retail Services to Vodafone retail customers at a weighted average retail price, calculated over the period of 12 months (or such other period agreed with the Commission as part of the methodology referred to below), less than the wholesale price for the Broadband Services plus a retail margin adjustment. The retail margin adjustment will be a percentage of the wholesale price for each relevant Broadband Service. For the avoidance of doubt:
- Vodafone may set retail prices at any level above this, so long as the retail margin adjustment is maintained; and
 - Vodafone may continue to supply Relevant Retail Services if it does not comply with the weighted average price requirement. For the avoidance of doubt, payment of a rebate does not preclude a finding of a breach of this Deed.

- 6.17. Expressed formulaically:

$$\text{wholesale price} \times (1 + \text{retail margin adjustment}) \leq \text{Vodafone weighted average retail price}$$
- 6.18. Vodafone will use all reasonable endeavours to agree with the Commerce Commission the methodology for determining its compliance with this formula before the launch of commercial services (Broadband Services or the Relevant Retail Services).
- 6.19. The methodology will include the following steps:
- (a) Taking into account actual or projected usage of Access Seeker customers in determining the wholesale price (given the fixed and overage pricing of the Broadband Services) as well as any rebates paid by Vodafone to Access Seekers;
 - (b) Imputing the retail price for the Relevant Retail Service - this may involve adjustments to the retail price to remove the retail price for bundled elements and ensure it reflects only the cost of broadband services. The detailed approach to doing this will be agreed with the Commission. Temporary promotional pricing that Vodafone may offer for its own Relevant Retail Services may be excluded for the purposes of imputing the retail price;
 - (c) Taking from the retail price an allowance for Vodafone's costs of any international or national data that is sold as a component of the Relevant Retail Service;
 - (d) Weighting the imputed prices for each plan for the Relevant Retail Service by the number of retail customers on each plan, and taking into account actual or projected usage of Vodafone retail customers on each plan, to give a weighted average retail price.
- 6.20. Vodafone will, not less than once each quarter and at least one week prior to the launch of any new plan for the Relevant Retail Service or any price change to an existing relevant retail plan, review the Vodafone weighted average retail price with a view to ensuring that it is pricing in accordance with the above formula. The results of this review will be communicated to the Commerce Commission, as appropriate:
- (a) within one month of the quarter concerned; or
 - (b) at least one week prior to the retail plan launch or price change.

Handling of Information

Provision of information to Access Seekers

- 6.21. Vodafone will provide Access Seekers with:
- (a) timely advance notice of network or service developments and scheduled outages that impact upon the delivery of the Broadband Services; and
 - (b) timely information and status updates concerning any unscheduled or emergency outages of the Broadband Services.

Confidentiality of information concerning Access Seekers

- 6.22. Vodafone will:
- (a) separate all information regarding the supply of services to Access Seeker customers in a manner that only allows access to those of Vodafone's personnel authorised and required to provide services to Access Seeker customers;
 - (b) separate operational decision-making and governance on services to Access Seeker customers from the operational decision-making and governance on Vodafone's retail products and services; and exclude those personnel that are solely engaged with Vodafone's retail products from participating in this governance and decision-making; and
 - (c) separate all customer records within Vodafone's IT systems in order to keep information about Access Seeker customers' end users separate from information

about Vodafone's retail end users, and in a manner that only allows access to those personnel authorised and required to provide services to Access Seeker customers.

Transparency in provision of services

- 6.23. Vodafone will make available to Access Seekers and to the Commerce Commission not later than 10 working days after it supplies services all of the terms and conditions on which it has agreed to provide:
- (a) the Co-location Service on RBI Infrastructure; and
 - (b) Broadband Services,
- in each case to Access Seekers.
- 6.24. This obligation includes any related or linked agreements or arrangements in each case with Access Seekers, and any variations or additions to those terms and conditions.
- 6.25. Vodafone may withhold public disclosure of terms and conditions under this clause with the consent of the Commerce Commission:
- (a) at the request of an Access Seeker that is not a Vodafone-Related Party; or
 - (b) where Vodafone considers on reasonable grounds that public disclosure would be inappropriate given commercial sensitivity or confidentiality.
- 6.26. Vodafone will also prepare and publish on its website, within six months of the conclusion of the Agreement and quarterly thereafter (within one month of the end of the quarter concerned), public information that is sufficient to see Vodafone's level of compliance with its non-discrimination obligations.
- 6.27. This information means:
- (a) for its Co-location Service on RBI Infrastructure, information on Vodafone's performance against the process set out in Schedule 1;
 - (b) for its Broadband Services:
 - reports on Vodafone's performance in the delivery to Access Seekers against the provisioning and supply processes and the Service Level Agreements set out in Schedule 1;
 - reports on Vodafone's performance in the delivery of its own retail services against the provisioning and supply processes and the Service Level Agreements set out in Schedule 1; and
 - reports on Vodafone's performance against the Vodafone weighted average retail price commitment.

7. Miscellaneous

- 7.1. For the avoidance of doubt, the obligation not to Discriminate (in terms of Broadband Services or Co-location Service) will not require Vodafone to:
- physically separate any personnel involved in the supply of Broadband Services or the Co-location Service to Access Seeker customers from personnel involved in the supply of Vodafone's retail services;
 - separate the accounting or financial reporting of the supply of Broadband Services or the Co-location Service from its other business reporting; or
 - institute any internal trading arrangements within its business,
- and the obligation in clause 5.1 will be interpreted accordingly.
- 7.2. Any disputes between Vodafone and the Crown or the Ministry as to the interpretation or operation of this Deed shall be referred to arbitration under the Arbitration Act 1996 or any Act passed in substitution for it.

IN WITNESS of which this Deed has been executed.

SIGNED for and on behalf of
Vodafone New Zealand Limited by:

Name:
Director

in the presence of:

Witness name:
Occupation:
Address:

Name:
Director

in the presence of:

Witness name:
Occupation:
Address:

Schedule 8

Stakeholder Engagement Process

Part 1: Regional Stakeholder Engagement

1 Background

Collaboration with regional stakeholders will create opportunities to manage deployment costs and extend broadband reach further and faster into rural New Zealand. Regional entities have indicated a willingness to work collaboratively with Telecom and Vodafone to achieve these ends.

In this Part 1, “**Stakeholder Region**” means Northland, Auckland, Waikato, Bay of Plenty, Gisborne/East Coast, Hawke’s Bay, Taranaki, Manawatu/Wanganui, Wairarapa/Wellington, Nelson/Marlborough, West Coast, North and Mid Canterbury, South Canterbury, Otago and Southland.

2 Obligation

Vodafone will actively participate in the Regional Stakeholder process established and maintained by Telecom alongside the Ministry and Telecom (including attending and participating in meetings with Regional Stakeholders in each Stakeholder Region). Vodafone will build constructive collaborative relationships with key regional stakeholders with the objective of identifying efficiencies and other community benefits that can be achieved in the course of the Design and Build Services.

As part of the process surrounding each Regional Stakeholder Meeting, Vodafone will participate in supplementary meetings arranged by Telecom with Regional Māori Stakeholders.

3 Regional Stakeholders

The Regional Stakeholder Engagement Process will be targeted at local authorities, economic development agencies, Iwi and other Māori entities, lines companies, wireless broadband providers, and user representatives (e.g. farmers, educational institutions, District Health Boards, etc.) (“**Regional Stakeholders**”).

Regional Māori Stakeholders will include Iwi organisations, Māori Land Trusts, Regional Māori ICT organisations, marae, Māori broadcasters, Māori education providers and Regional representatives from the New Zealand Māori Council, the Iwi Leaders Group, and the Federation of Māori Authorities

Background in relation to Māori Engagement

The Ministry, Telecom and Vodafone are committed to facilitating meaningful Māori engagement with deployment planning and implementation of the Rural Broadband Initiative.

The Regional Stakeholder Engagement Process is the primary framework within which the Ministry, Telecom and Vodafone will raise awareness within Māori communities about the opportunities arising from the RBI, and ensure appropriate dialogue between Telecom, Vodafone and Māori communities and groups, with a view to ensuring that Māori can take advantage of these opportunities.

Māori will have other interests as users of broadband services, either individually or collectively, for example, for health, educational, business or cultural purposes. Where possible, the Ministry, Telecom and Vodafone intend to assist with these discussions, while recognising that the key focus of engagement with Māori under this Agreement is infrastructure deployment. The Ministry, Telecom and Vodafone recognise that community education may also be required to support these discussions.

The Ministry, Telecom and Vodafone acknowledge that the interests of Regional Māori Stakeholders in relation to infrastructure deployment under the RBI may include identifying opportunities for Māori community sites (such as marae) to be connected to the Infrastructure, potential Partnering Opportunities in relation to the Design and Build Services, facilitating land access for the Design and Build Services, leveraging or enhancing existing infrastructure owned by Regional Māori Stakeholders, opportunities for Māori ICT organisations to access Infrastructure or provide services making use of that Infrastructure, and Māori employment opportunities.

The Ministry, Telecom and Vodafone acknowledge that they will require capability and capacity in order to undertake meaningful and appropriate engagement with Māori.

Part 2: National Stakeholder Engagement

1 Background

Obtaining high-level guidance and advice from key users and beneficiaries of the RBI will help to ensure that Vodafone's deployment plans in relation to the RBI are informed by (and are better able to meet) end user expectations, and will also raise awareness amongst end users and help to stimulate demand for rural broadband services.

2 Obligation

Vodafone will actively participate in the RBI National Stakeholder Engagement Process established and maintained by Telecom, alongside the Ministry and Telecom. Vodafone will participate as a member in the National Advisory Committee to build constructive relationships with key national stakeholders, obtaining guidance and advice from those representatives on issues affecting the RBI, and generating support from those stakeholders for Telecom and Vodafone's plans in relation to the RBI.

3 National Stakeholders

The National Stakeholder Engagement Process will be targeted at local authorities, rural business organisations, rural education organisations, rural health organisations and Māori ("**National Stakeholders**").

Part 3: Community Engagement

1 Background

Working with rural communities will inform Vodafone's deployment plans will improve community satisfaction with the deployment, and will also help to mitigate concerns that communities might otherwise have over practical aspects of the deployment, such as resource consent, land access, road closures, and construction work.

Providing rural communities with information on the broadband services available in their area will also maximise their ability to get the full benefit of those services as and when they arrive.

2 Purpose

Accordingly, during the provision of the Design and Build Services, Vodafone will establish and maintain a community engagement programme in accordance with this Part 3 ("**Community Engagement Programme**"), with a view to creating awareness and interest in the RBI amongst rural communities, stimulating broadband uptake amongst target users, and promoting a positive community perception of the Design and Build Services.

Where practical Vodafone will co-ordinate its Community Engagement programme activities as part of the National and Regional Stakeholder Engagement processes, as well as with Telecom's Community Engagement programme.

3 Activities

The Community Engagement Programme will include:

- (a) developing a communications plan supporting the Design and Build Services;
- (b) developing a public relations and community campaign to inform and celebrate the commissioning of new towers and upgrades of existing Vodafone sites; and
- (c) building close working relationships with local authorities, land owners, Iwi and other interested parties with a view to ensuring an efficient resource consent process; and
- (d) allowing stakeholders reasonable opportunities to have their views heard and considered through a variety of engagement mechanisms - including regional meetings, a postal address and an email address.

4 Principles

In carrying out the Community Engagement Programme, as far as reasonably practicable, Vodafone will endeavour to:

- (a) make as much information as possible available to the public as early as possible;
- (b) communicate early and clearly with affected residents and communities;
- (c) raise any issues, likely to attract significant public concern, promptly to the Ministry and Telecom; and
- (d) minimise disruption to communities.

Schedule 9 Acceptance Testing

1 Definitions

1.1 Unless the context otherwise requires:

“Acceptance Criteria” means each criterion set out under the heading “Acceptable Result Criteria” for each KPI in the table in paragraph 5;

“Acceptance Test Methodology” means the test methodology proposed by Vodafone as a suitable proxy for the End User experience, namely testing using a car-roof mounted low gain omni antenna with a height of approximately 1.5 metres above ground, as such methodology may be modified in accordance with paragraphs 3.6, 3.7 and 3.8;

“Acceptance Thresholds” means each of the thresholds set out under the “Acceptance Threshold as Measured by Drive Test” in the table in paragraph 5 below;

“KPI” means each of the key performance indicators set out under “KPI Name” in the table in paragraph 5;

“RBI Broadband Service” has the meaning given to it in Schedule 1;

“Site Integrated” has the meaning given to it in Schedule 2; and

“Test Routes” means the driving routes proposed by Vodafone in accordance with paragraph 4.2.

1.2 Unless otherwise provided in this Schedule, capitalised terms shall have the meaning given to them in clause 1 of this Agreement.

2 Acceptance Test Process

Vodafone will perform acceptance testing in two stages: the verification stage (as described further in paragraph 3 below) and the acceptance testing stage (as described in paragraph 4 below).

3 Verification Stage

3.1 Vodafone will perform the following verification acceptance tests to allow the Parties to verify the following (the “Verification Purpose”):

- a the Acceptance Test Methodology provides a suitable proxy for End User experience, namely that: drive testing of coverage of the RBI Broadband Service on the Test Routes is a suitable proxy for the experience of End User households;
- b the Acceptance Thresholds accurately represent, the reception for a yagi antenna at a height of 4.5m above ground; and
- c Vodafone’s Radio Frequency prediction and population coverage models are valid,

(each being a “Verification Test”)

3.2 Vodafone will provide the Ministry with no less than five Business Days’ notice of the times and places of the Verification Test(s) and the Ministry may be present to observe and (if it reasonably requests) participate in the Verification Tests.

- 3.3 Vodafone will conduct the Verification Tests for the following three Grant Funded Sites (or such other Grant Funded Sites as suggested by Vodafone and approved by the Ministry, such approval not to be unreasonably withheld):
- 3.3.1 TAU Taumarunui South
 - 3.3.2 WIA Wairoa
 - 3.3.3 STF Stratford,
- each, a "Verification Test Site".
- 3.4 Vodafone will conduct the Verification Tests at its own cost at a maximum of 20 address points for each Verification Test Site, such address points to be determined by Vodafone and subject to the Ministry's approval, such approval not to be unreasonably withheld, delayed or conditioned ("Test Addresses").
- 3.5 The details of the tests will be as reasonably agreed between the parties and designed to achieve the Verification Purpose.
- 3.6 As soon as practical following the completion of the Verification Tests the Parties will jointly review the result of the Verification Tests and discuss any changes that may reasonably be required to the Acceptance Test Methodology or Acceptance Thresholds in order to ensure that the Parties can reasonably rely on the Acceptance Test Methodology.
- 3.7 If the Parties agree to amend the Acceptance Thresholds or the Acceptance Test Methodology, Vodafone will draft such amendments and provide them to the Ministry for comment. Vodafone will consider the Ministry's comments and, where reasonably practicable, update the Acceptance Thresholds and/or Acceptance Test Methodology to take such comments into account, and such updated Acceptance Thresholds and/or Acceptance Test Methodology will be incorporated into this Agreement as a replacement for the Acceptance Thresholds and/or Acceptance Test Methodology. The Verification Tests will be repeated in accordance with this paragraph 3 in respect of the new Acceptance Thresholds and Acceptance Test Methodology until the Verification Tests show that the Acceptance Thresholds and the Acceptance Test Methodology meet the Verification Purpose.
- 3.8 If:
- 3.8.1 There is a dispute as to whether or not the Verification Tests show that the Acceptance Thresholds and the Acceptance Test Methodology meet the Verification Purpose; or
 - 3.8.2 the Acceptance Thresholds and/or Acceptance Test Methodology are not determined in accordance with paragraph 3.7 within 2 iterations of first testing;
- either Party may refer the matter to be resolved through expert determination in accordance with clause 19.3 of this Agreement.
- 4 Acceptance Testing**
- 4.1 Following completion of the Verification Testing, Vodafone will conduct acceptance testing in accordance with the Acceptance Test Methodology on each Grant Funded Site that it believes is Site Integrated ("Acceptance Tests").
- 4.2 Vodafone will establish, for each Grant Funded Site, a route that it believes, acting reasonably, will provide a fair assessment of how the Rural Telecommunications Service is available within the predicted coverage area for that Grant Funded Site. For the avoidance of doubt, a Test Route will not include a requirement on Vodafone to drive down every road contained in the coverage area for that Grant Funded Site.

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- 4.3 A Grant Funded Site will have successfully passed the Acceptance Tests when it meets or exceeds the Acceptance Criteria.
- 4.4 Vodafone will:
- 4.4.1 provide the Ministry with no less than five Business Days' notice of the times and places of the Acceptance Test(s) and the Ministry may be present to observe and (if it reasonably requests) participate in the Acceptance Testing;
 - 4.4.2 perform the Acceptance Tests at its own cost; and
 - 4.4.3 as soon as practical following the completion of the Acceptance Tests, Vodafone will provide the results of the Acceptance Tests to the Ministry.
- 4.5 If the results of the Acceptance Tests demonstrate to Vodafone's reasonable satisfaction that the relevant Grant Funded Site meets the Acceptance Criteria, Vodafone will advise the Ministry of this in writing (a "Success Notice") and unless Vodafone receives notification from the Ministry within five Business Days of the Success Notice that the Ministry, acting reasonably, is not satisfied that the results demonstrate that a Grant Funded Site meets the Acceptance Criteria including reasonable detail of the Ministry's reasons ("Failure Notice"), Vodafone will issue the Ministry with an acceptance certificate ("Site Test Certificate").
- 4.6 If:
- 4.6.1 the results of an Acceptance Test carried out under paragraph 4.4 above do not demonstrate to Vodafone's reasonable satisfaction that the relevant Grant Funded Site meets the Acceptance Criteria; or
 - 4.6.2 the Ministry gives Vodafone a Failure Notice,
- then, subject to paragraph 4.7, Vodafone will, at its cost, promptly identify and remedy any defect with the Grant Funded Site and undertake the relevant Acceptance Test again in accordance with paragraph 4.4 above. This paragraph 4.6 shall apply again until the Grant Funded Site meets the relevant Acceptance Criteria.
- 4.7 If Vodafone notifies the Ministry that it disputes a Failure Notice it may refer the matter to be resolved by expert determination in accordance with clause 19.3 of the Agreement. If the outcome of the expert determination is that the Failure Notice:
- 4.7.1 was justified then the Ministry's Failure Notice will be deemed to be validly given at the date the determination was made under the process set out in clause 19.3 and Vodafone shall identify and remedy any defect identified in the Failure Notice (as upheld by the expert) and test the Grant Funded Site again in accordance with paragraph 4.4; or
 - 4.7.2 was not justified then Vodafone's Success Notice will be deemed to have been validly given at the date the Success Notice was actually given to the Ministry under paragraph 4.5 and Vodafone may issue the Ministry with a Site Test Certificate.

5 Acceptance Criteria

Vodafone will apply the KPIs set out below in order to determine whether a Grant Funded Site has met the Acceptance Criteria:

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KPI Name	Acceptance Threshold as Measured by Drive Test	Acceptable Result Criteria
RSCP	-100.7 dBm	90% of all samples are equal or higher than Acceptance Threshold
Average RSCP	-100.7 dBm	Average RSCP of all samples equals or higher than Acceptance Threshold
Ec/Io	-9.0 dB	90%% of all samples are equal or higher than Acceptance Threshold
Average Ec/Io	-9.0 dB	Average Ec/Io of all samples equals or higher than Acceptance Threshold

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Schedule 10

Wholesale Service Pricing

1. Definitions

1.1 Unless the context otherwise requires:

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

“Initial Term” has the meaning given to it in clause 4.2(a) of this Agreement;

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

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

“Off Peak” means the hours of 12am to 6am every day.

1.2 Unless otherwise provided in this Schedule, capitalised terms shall have the meaning given to them in clause 1 of this Agreement.

2. Pursuant to clause 8.7 of the Agreement this Schedule details the price Vodafone may charge for Wholesale Services it provides to Access Seekers during the Initial Term and any extension to the Initial Term agreed pursuant to clause 4.2(a).

3. The prices listed below are the maximum prices Vodafone may charge for the Wholesale Services subject to any direction of the Telecommunications Commissioner or the Commerce Commission pursuant to the Act.

Product	Maximum Price	Datacap per month	Overage rate
RBI Broadband Service	\$44.35	10 GB on-peak 50 GB off-peak	\$1.50 per Gigabyte
RBI Broadband plus Voice Service	\$52.17	10 GB on-peak 50 GB off-peak	\$1.50 per Gigabyte
Enhanced RBI Broadband Service	\$64.40	Not applicable	Not applicable

Unused capacity will not be carried forward for usage in future months.

4. Access Seekers must pay Vodafone for installation and rental of handover connections at the following prices:

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

- The prices and rates set out in this schedule are exclusive of GST; and
- 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.

5. The Ministry acknowledges that:

- the above pricing and rates reflect the Grant -which effectively subsidises pricing for the Wholesale Services and does not provide for full cost recovery for Vodafone;
- these below cost prices and rates are necessary to meet the Ministry's objectives for affordable rural broadband; and
- the Grant is a key element in allowing Vodafone to offer these rates and prices for the Wholesale Services.