

Deed of Undertaking

This DEED is made on the 22nd day of September 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 entered into an agreement with the Ministry of Economic Development (“the Ministry”) dated 20 April 2011 (“the Agreement”) in relation to:
- i. the design and construction of RBI Infrastructure; and
 - ii. the provision of certain telecommunications services, being the Co-location Service and the Broadband Services (as defined below), to Access Seekers using RBI Infrastructure,
- in each case to assist the Ministry in meeting the Rural Community Objective.
- C. The undertakings contained in this Deed relate to Vodafone’s provision of the Co-location Service and the Broadband Services, to Access Seekers using the RBI Infrastructure and comprise enforceable non-discrimination undertakings in relation to those services given by Vodafone in favour of the Crown in accordance with the Act.
- D. Once this Deed is approved by the Minister, as evidenced by notification in the Gazette, it will become enforceable by the Commission in accordance with the Act.

THIS DEED PROVIDES as follows:

DEFINITIONS AND INTERPRETATION

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

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

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

Act means the Telecommunications Act 2001.

Agreement has the meaning given in recital B of the Background, and includes any variations to the Agreement agreed between Vodafone and the Ministry from time to time.

Broadband Services means any or all of the RBI Broadband Service, the RBI Broadband plus Voice Service and the Enhanced RBI 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.

Commencement Date means the date on which the Minister's approval of this Deed is notified in accordance with section 156A(5) of the Act.

Commission has the meaning given to that term in section 5 of the Act.

Deed means this Deed of Undertaking.

Discriminate means:

- (a) to treat Access Seekers differently; or
- (b) where Vodafone supplies itself with the Co-location Service or the Broadband Services, in each case on RBI Infrastructure, to treat itself or any Vodafone-Related Party differently from Access Seekers,

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

Enhanced RBI Broadband Service has the meaning given to that term in Schedule 1.

Functionally Equivalent Broadband Service means the Broadband Service that shares the same characteristics (in terms of broadband performance and the inclusion (or otherwise) of a voice service) with a Relevant Retail Service.

Grant Funding means the Crown grant funding to be provided to Vodafone for the purposes of establishing the RBI Infrastructure in accordance with the Agreement.

Minimum Retail Mark-Up has the meaning given to that term in clause 6.21.

Non-Cellular Access Seeker means an Access Seeker who wishes to obtain the RBI Co-location Service from Vodafone and who is not an "Access Seeker" in respect of the specified service "co-location on cellular mobile transmission sites" as defined in Part 3 of Schedule 1 of the Act.

RBI Broadband Service has the meaning given to that term in Schedule 1.

RBI Broadband plus Voice Service has the meaning given to that term in Schedule 1.

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

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; and
- (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;
 - d. provided to the RBI service specifications; andthat competes with retail broadband services offered by Access Seekers that are provided using any Broadband Services.

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

Schedule 1 means Schedule 1 to the Agreement.

Schedule 10 means Schedule 10 to the Agreement.

STD has the meaning given in clause 6.3 of the Deed.

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

Wireless Terminal means a Vodafone approved wireless terminal as contemplated in clause B1.1 of Schedule 1.

Working Day has the meaning given to that term in section 5 of the Act.

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 or expressly stated 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) 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. This Deed is enforceable by the Commission in the High Court of New Zealand in accordance with the Act.
- 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 undertakings given by Vodafone in this Deed commence on the Commencement Date and, save where this Deed is terminated earlier in accordance with the Act, will continue:
 - (a) in respect of Vodafone's undertakings in this Deed which relate to the provision of Broadband Services, until such time as Vodafone ceases to provide Broadband Services in accordance with the Agreement; and
 - (b) in respect of Vodafone's undertakings in this Deed which relate to the provision of the Co-location Service, until such time as Vodafone ceases to provide the Co-location Service in accordance with the Agreement.
- 4.2. This Deed may be varied in accordance with sections 156AL and 156AM of the Act.

5. Obligation not to Discriminate

- 5.1. Subject to clause 5.2, when doing or omitting to do anything in relation to the supply of the Co-location Service or Broadband Services, Vodafone will not Discriminate.
- 5.2. Vodafone will achieve compliance with clause 5.1 through compliance with the obligations specified in clause 6 of this Deed.
- 5.3. For the purposes of clause 5.1, to the extent that any term of this Deed provides for different treatment between Access Seekers or in favour of Vodafone or any Vodafone-Related Party relative to Access Seekers, such different treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market.

6. Meaning of non-discrimination obligation

- 6.1. To achieve non-discrimination, Vodafone makes the following four commitments:
 - (a) Provision of Co-location Service as provided for in clauses 6.2 – 6.11;
 - (b) Pricing of Co-location Service as provided for in clauses 6.12 – 6.14
 - (c) Provision of Broadband Services as provided for in clauses 6.15 – 6.17; and
 - (d) Pricing of Broadband Services and Relevant Retail Services as provided for in clauses 6.18 – 6.30.

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 specified in Schedule 1 (as varied by agreement between Vodafone and the Ministry from time to time) to determine the design of the RBI Infrastructure to be deployed.
- 6.3. Subject to clauses 6.4, 6.5 and 6.6 below, after commissioning of each part of the RBI Infrastructure Vodafone will supply the Co-location Service 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 (as amended) (“STD”).
- 6.4. Vodafone will make the Co-location Service available to Non-Cellular Access Seekers on non-price terms that are substantially consistent with the STD.
- 6.5. In clause 6.4, “substantially consistent” means substantially consistent subject to:
 - (a) trivial differences;
 - (b) differences relating to:
 - i. liability caps;
 - ii. insurance;
 - iii. security requirements;
 - iv. forecasting;
 - v. service levels; and
 - (c) other differences for the purposes of encouraging greater participation on, and/or efficient utilisation of, the RBI Infrastructure.
- 6.6. 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.
- 6.7. 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.
- 6.8. Vodafone will not reserve capacity on the basis of its forecast requirements for anti-competitive purposes.
- 6.9. Vodafone will not pass on to Access Seekers the portion of operating costs for RBI Infrastructure (as 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.
- 6.10. If:
 - (a) Vodafone reserves capacity on any RBI Infrastructure (“Relevant Infrastructure”); and
 - (b) Vodafone does not use that reserved capacity on the Relevant Infrastructure within two years of reserving that capacity, or three years where the forecast relates to any plans for the future deployment of new Telecommunications Services; and
 - (c) Access Seekers have requested space on the Relevant Infrastructure under the terms on which the Co-location Service is provided;then:
 - (d) Vodafone’s capacity reservation on the Relevant Infrastructure will lapse.

6.11. Vodafone will take reasonable steps to ensure that Access Seekers who participate in the design of the RBI Infrastructure are able to install their equipment at the relevant site contemporaneously with Vodafone.

Pricing of Co-location Service

6.12. In order to encourage greater participation on, and/or efficient utilisation of, the RBI Infrastructure, Vodafone will charge Access Seekers for the Co-location Service on the basis of a per ‘antenna unit’ pricing regime. The antenna unit price will be different for ‘Tier 1’ antenna units and ‘Tier 2’ antenna units. To avoid doubt:

- (a) Tier 1 antenna unit refers to antenna units located on the top third (1/3) of the Height of the Mast; and
- (b) Tier 2 antenna unit refers to antenna units located on the bottom two thirds (2/3) of the Height of the Mast.

6.13. “Height of the Mast” as used in clauses 6.12 and 6.14 means the height of the mast at the highest point inclusive of any antenna.

6.14. An Access Seeker electing to put all their equipment on the bottom two thirds of the Height of the Mast will be subject to a lower application fee for processing an application for the Co-location Service.

Provision of Broadband Services

6.15. 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.

6.16. Where Vodafone offers Relevant Retail Services, Vodafone is not required to provide the Broadband Services to itself.

6.17. Achievement of the following Service Level Agreement (“SLA”) targets and process standards set out in the table below will be evidence of Vodafone’s compliance with clause 5.1 in respect of the matters to which the process standards and SLAs relate.

	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 	<ul style="list-style-type: none"> • 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 [and from Access Seekers to 	<ul style="list-style-type: none"> • End users will be able to migrate from Vodafone to Access Seeker [and Access Seeker to Vodafone] broadband services enabled by the Broadband Services on the same timeframes as other

	Vodafone] in the order that they are received	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 as wholesale 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 as wholesale • Tickets prioritised due to severity in the same way as wholesale • Same SLA reporting framework as wholesale
New broadband services	<p>For any “new broadband service”, being a new Specified Layer 2 Service (as defined in the Agreement) supplied over RBI Infrastructure, Vodafone will:</p> <ul style="list-style-type: none"> • Provide access to new broadband services • Provide at least 30 days’ notice to Access Seekers of new broadband services • New broadband services to be considered a new Functionally Equivalent Broadband Service, for the purposes of clause 6.21 below • New broadband services do not include any layer 3 + elements or any Wireless Terminal 	<ul style="list-style-type: none"> • New relevant retail service not to be provided before the launch of relevant new broadband service
Network Performance	<ul style="list-style-type: none"> • Monthly network reports provided to Access Seekers 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 as wholesale • Same reporting framework as wholesale
<ul style="list-style-type: none"> • References to “same” in this table in relation to an act or thing are a reference to the same act or thing that Vodafone provides to Access Seekers. 		

Pricing of Broadband Services

Wholesale pricing

- 6.18. Vodafone will supply the Broadband Services to Access Seekers at prices not greater than those specified in Schedule 10. For the avoidance of doubt, Vodafone may provide the Broadband Services to Access Seekers at any level below those prices.
- 6.19. The Agreement requires Vodafone to provide 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.
- 6.20. It is acknowledged that the prices specified in Schedule 10, 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 10 reflect the provision of Grant Funding, which effectively subsidises wholesale pricing, and will not provide for full cost recovery. The challenging business case for Vodafone means that below cost pricing is necessary to meet the Government's RBI objectives in terms of delivering affordable broadband. The Grant Funding is a key element in allowing Vodafone to offer the pricing set out in Schedule 10.

Retail pricing

- 6.21. Vodafone will not supply the Relevant Retail Services to Vodafone retail customers at a weighted average retail price, calculated over the average term of Vodafone's retail customer lifetime, less than the aggregate of:
- (a) the wholesale price for the relevant Functionally Equivalent Broadband Service; and
 - (b) a minimum retail margin adjustment mark up of 38% of the wholesale price of the relevant Functionally Equivalent Broadband Service ("Minimum Retail Mark-Up").
- 6.22. For the purposes of clause 6.21, the weighted average retail price is calculated by:
- (a) identifying the advertised Vodafone price for each Relevant Retail Service, (but not including any overage charges);
 - (b) subtracting from Relevant Retail Services any 'bundled' plain old telephone service ("POTS") local access and calling resale service supplied with the RBI Broadband Service or RBI Enhanced Broadband Service (temporary promotional pricing that Vodafone may offer for a Relevant Retail Service may be excluded for the purposes of imputing the retail price); and
 - (c) Weighting the imputed prices for each 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 Relevant Retail Service, to give a weighted average retail price.
- 6.23. For the purposes of determining compliance with the undertaking in clause 6.21 the weighted average retail price of the Relevant Retail Services sharing the same characteristics (in terms of broadband performance and the inclusion (or otherwise) of a voice service) as the:
- (a) RBI Broadband Service will only be measured against the RBI Broadband Service for the purposes of measuring whether the Minimum Retail Mark-Up has been maintained; or

- (b) RBI Broadband plus Voice Service will only be measured against the RBI Broadband plus Voice Service for the purposes of measuring whether the Minimum Retail Mark-Up has been maintained; or
 - (c) Enhanced RBI Broadband Service will only be measured against the Enhanced RBI Broadband Service for the purposes of determining whether the Minimum Retail Mark-Up has been maintained.
- 6.24. If Vodafone is found to be in breach of clause 6.21, Vodafone may continue to supply Relevant Retail Services provided that:
- (a) Vodafone has not acted in bad faith; and
 - (b) Vodafone pays a rebate to affected Access Seekers of Broadband Services.
- The amount of any such rebate will be determined by Vodafone (acting reasonably), however it will be no less than the amount by which the weighted average retail price for the Relevant Retail Service exceeds the price floor established in clause 6.21 and will be paid to affected Access Seekers within a reasonable period of time after Vodafone is found to have breached clause 6.21.
- 6.25. To avoid doubt, Vodafone may set retail prices for Relevant Retail Services at any level above the aggregate of:
- (a) the Retail Mark-Up; and
 - (b) the wholesale price of the relevant Functionally Equivalent Broadband Service.
- 6.26. Where the Relevant Retail Service consists of a 'bundle' of the RBI Broadband Service or Enhanced RBI Broadband Service and the POTS local access and calling resale service then Vodafone will pass through the full cost of supplying the POTS local access and calling resale service.
- 6.27. Whenever Vodafone offers overage pricing for Relevant Retail Services, it will always charge overage pricing in excess of the relevant Broadband Service overage charge. This commitment does not include data charges incurred for a throttled service.
- 6.28. Where a Relevant Retail Service does not include an overage charge at the Functionally Equivalent Broadband Service data cap then Vodafone will throttle the Relevant Retail Service end-user's service to a speed of no greater than 64 kilobits per second when the Functionally Equivalent Broadband Service data cap is exceeded.
- 6.29. Vodafone may enter into arrangements with third parties for the supply of goods or services related to the provision of Relevant Retail Services (for example installation services) and may supply those goods and services to end-users on any terms and conditions. Should Vodafone choose to offer such goods and services to end-users at a discount, credit, rebate or subsidy then the quantum of the discount, credit, rebate or subsidy must be recovered within the actual retail-mark-up (being the difference between the wholesale price of the Relevant Functionally Equivalent Broadband Service and the actual retail price for the retail service for which the discount is being offered).
- 6.30. 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 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.

7. Handling of Information

Provision of information to Access Seekers

- 7.1. Vodafone will provide Access Seekers with:
- (a) advance notice of network or service developments and scheduled outages that impact upon the delivery of the Broadband Services; and
 - (b) information and status updates concerning any unscheduled or emergency outages of the Broadband Services,
- in each case as soon as practicable after Vodafone becomes aware of such developments or outages.

Confidentiality of information concerning Access Seekers

- 7.2. Vodafone will:
- (a) separate all information regarding the supply of Co-location Service or Broadband Services to Access Seekers 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 the supply of the Co-location Service or Broadband Services to Access Seekers 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's 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

- 7.3. Vodafone will make available to the Commission not later than 10 Working Days after it supplies Co-location Service or Broadband Services to Access Seekers, all of the terms and conditions (including any amendments from time to time) on which it has agreed to provide those services to Access Seekers.
- 7.4. Subject to clause 7.5 below, Vodafone will also prepare and publish on its website once it has commenced providing the Co-location Service or Broadband Services and quarterly thereafter (within one month of the end of the quarter concerned), public information that is sufficient for interested persons to assess Vodafone's level of compliance with this Deed.
- 7.5. To avoid doubt, to satisfy the requirements of clause 7.4, the relevant information will comprise:
- (a) for the Co-location Service (once such service has commenced), information on Vodafone's performance against the process set out in Schedule 1; and
 - (b) for the Broadband Services (once any such service has commenced):
 - i. reports on Vodafone's performance in the delivery of such services to Access Seekers against the provisioning and supply processes and the Service Level Agreements set out in Schedule 1;

- ii. reports on Vodafone's performance in the delivery of services inclusive of Relevant Retail Services against processes and the Service Level Agreements set out in Schedule 1; and
 - iii. reports on Vodafone's compliance with clause 6.18.
- 7.6. Vodafone will, on request, supply to the Commission within a reasonable period of time such relevant information as it reasonably requires to support its assessment of Vodafone's compliance with the undertakings in this Deed.

8. Miscellaneous

- 8.1. For the avoidance of doubt, nothing in this Deed requires Vodafone to:
- (a) 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;
 - (b) separate the accounting or financial reporting of the supply of Broadband Services or the Co-location Service from its other business reporting; or
 - (c) institute any internal trading arrangements within its business,
- and the obligation in clause 5.1 will be interpreted accordingly.
- 8.2. Vodafone will not be in breach of its obligations or undertakings set out in this Deed if it fails to comply with any such obligation or undertaking and the failure to comply is trivial or *de minimis*.

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: