

**TELECOM NEW ZEALAND LIMITED**  
("Telecom")

**COMMERCE COMMISSION**  
("Commission")

**VODAFONE NEW ZEALAND LIMITED**  
("Vodafone")

**KORDIA GROUP LIMITED**  
("Kordia")

**ORCON LIMITED**  
("Orcon")

**CALLPLUS HOLDINGS LIMITED**  
("CallPlus Holdings")

**CALLPLUS LIMITED**  
("CallPlus")

**AIRNET NZ LIMITED**  
("Airnet")

**COMPASS COMMUNICATIONS LIMITED**  
("Compass")

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**SETTLEMENT DEED**

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## Contents

INTERPRETATION .....	1
BACKGROUND.....	1
AGREEMENT .....	2
Acknowledgement by Telecom / no admission of liability .....	2
Payment to service providers .....	2
Commission's costs .....	3
No further action by the Commission or other party .....	3
General .....	3
<i>Severability</i> .....	4
<i>Governing law</i> .....	4
<i>Official Information Act requests</i> .....	4
<i>Counterparts</i> .....	4
<i>Date of Deed</i> .....	4
SCHEDULE 1 .....	8
SETTLEMENT AMOUNT .....	8
SCHEDULE 2 .....	9
VODAFONE NEW ZEALAND LIMITED (VODAFONE).....	9
SCHEDULE 3 .....	10
KORDIA GROUP LIMITED (KORDIA) .....	10
SCHEDULE 4 .....	11
ORCON LIMITED (ORCON) .....	11
SCHEDULE 5 .....	12
CALLPLUS HOLDINGS LIMITED (CALLPLUS HOLDINGS).....	12
SCHEDULE 6 .....	13
CALLPLUS LIMITED (CALLPLUS) .....	13
SCHEDULE 7 .....	14
AIRNET NZ LIMITED (AIRNET).....	14
SCHEDULE 8 .....	15
COMPASS COMMUNICATIONS LIMITED (COMPASS) .....	15

## PARTIES

**TELECOM NEW ZEALAND LIMITED** a company incorporated under the Companies Act 1993 ("**Telecom**")

**COMMERCE COMMISSION** a statutory body established under section 8 of the Commerce Act 1986 ("**the Commission**")

**VODAFONE NEW ZEALAND LIMITED** a company incorporated under the Companies Act 1993 ("**Vodafone**")

**KORDIA GROUP LIMITED** a company incorporated under the Companies Act 1993 ("**Kordia**")

**ORCON LIMITED** a company incorporated under the Companies Act 1993 ("**Orcon**")

**CALLPLUS HOLDINGS LIMITED** a company incorporated under the Companies Act 1993 ("**CallPlus Holdings**")

**CALLPLUS LIMITED** a company incorporated under the Companies Act 1993 ("**CallPlus**")

**AIRNET NZ LIMITED** a company incorporated under the Companies Act 1993 ("**Airnet**")

**COMPASS COMMUNICATIONS LIMITED** a company incorporated under the Companies Act 1993 ("**Compass**")

## INTERPRETATION

1. In this Deed:

A reference to **parties** means the parties to this Deed;

collectively, Vodafone, Kordia, Orcon, CallPlus Holdings, CallPlus, Airnet and Compass are referred to as the "**Service Providers**"; and

"**Telecom Undertakings**" means the Telecom Separation Undertakings as provided to the Minister of Communications on 25 March 2008 in accordance with section 69K(2)(c) of the Telecommunications Act 2001, as subsequently varied from time to time.

## BACKGROUND

2. Telecom, through its Wholesale division, provides an unbundled bitstream access service ("**UBA**") to Service Providers.
3. Sub-Loop Extension Service ("**SLES**") is a commercial product provided by Telecom, through its Access Network Service Arm ("**Chorus**"), which provides Service Providers with access to, and interconnection with, the copper feeder cable running between a Telecom local exchange ("**Exchange**") and an active Telecom distribution cabinet ("**Cabinet**").
4. In October 2010, the Commission launched an investigation into an alleged breach by Telecom of the Telecom Undertakings ("**UBA with SLES Investigation**").

5. On 26 May 2011, the Commission announced it intended to issue proceedings alleging that Telecom was likely to have discriminated under the Telecom Undertakings in failing to provide service providers with UBA in conjunction with SLES when it provided what the Commission considered to be an equivalent service to its own retail business.
6. In addition, CallPlus and Kordia/Orcon have lodged claims with Telecom regarding UBA with SLES, based in contract, estoppel and under the Fair Trading Act 1986 (and indicated that other claims would also be brought, for example, under the Telecom Undertakings and in tort).
7. Telecom does not accept the Commission's and Service Providers' allegations concerning UBA with SLES.
8. Despite these differences, the parties have reached an agreed settlement to resolve the UBA with SLES Investigation without initiating any proceedings.

## AGREEMENT

### **Acknowledgement by Telecom / no admission of liability**

9. For the purposes of this settlement, Telecom acknowledges that it failed to meet expectations that it would provide a UBA service with SLES in a timely manner.
10. For the avoidance of doubt, nothing in this Settlement Deed, nor in any negotiations, communications and discussions preceding or concerning it, shall constitute an admission by any party of any liability, wrongdoing or fault whatsoever or give rise to any presumption or inference of any violation or breach of any statutory, legal or equitable obligation.

### **Payment to service providers**

11. Telecom will pay to each Service Provider the amount set out in the relevant schedule to this Deed corresponding to that Service Provider (the aggregate of those amounts being the "**Settlement Amount**", as set out in Schedule 1), in relation to the UBA services previously supplied by Telecom to those Service Providers.
12. Telecom will make the payments to Service Providers set out in clause 11 and the schedules to this Deed within 5 business days of the date of this Deed.
13. Each Service Provider that is party to this Deed agrees that it will treat its share of the Settlement Amount as assessable income for income tax purposes and acknowledges that the Settlement Amount has been determined on that basis.
- 14.

**Commission's costs**

15. In addition to the Settlement Amount, Telecom will, within 5 business days of the date of this Deed, pay \$250,000 (plus GST, if any) to the Commission, as a contribution to the Commission's costs and expenses incurred in relation to its UBA with SLES Investigation.

**No further action by the Commission or other party**

16. Upon execution of this Deed, the Commission will immediately close the UBA with SLES Investigation and undertakes to take no further action in connection with the UBA with SLES Investigation.
17. Except in enforcement of its provisions, the execution of this Deed fully and finally settles, releases Telecom, its related companies, officers and employees, from, and may be relied upon as a complete bar to, and/or defence against, any and all claims, proceedings or actions (including, without limitation, under the Commerce Act 1986, the Telecommunications Act 2001, the Fair Trading Act 1986, in contract, tort or equity) that the Commission and/or the other parties to this Deed, have or may now or in the future have against Telecom and/or any of its related companies, officers and employees (whether or not known to, or capable of being known by, the Commission or any other party) arising out of or in connection with:
- (a) the facts and matters relating to the UBA with SLES Investigation; and
  - (b) in the case of CallPlus, Kordia and Orcon, those claims and matters referred to in the letter from Wigley & Company to Telecom dated 19 July 2011 (and subsequent related correspondence).
18. Each of Vodafone, Kordia, Orcon, CallPlus Holdings, CallPlus, Airnet and Compass agree that it will procure that none of its subsidiaries or related companies, as such terms are defined in the Companies Act 1993, shall bring any claim, proceeding or action against Telecom, its related companies, officers and employers including, without limitation, under the Commerce Act 1986, the Telecommunications Act 2001, the Fair Trading Act 1986, or in contract, tort or equity, arising out of or in connection with the facts and matters set out in clause 17 above, whether known or not known or capable of being known.
19. The parties acknowledge that Telecom is in the process of rolling out its new Access Seeker Voice service, as notified in the Telecom Wholesale Informer of 21 June 2011 (as amended by the Informer of 11 July 2011) ("**AS Voice**") to Service Providers.
20. For the avoidance of doubt, clauses 16, 17 and 18 will not prevent the Commission or Service Providers from investigating or taking claims, proceedings or actions in relation to the roll out and/or supply of AS Voice from the date of settlement, or any other services other than UBA with SLES.

**General**

- 21.
- 22.
- 23.

24. The parties will keep the fact and contents of the Deed confidential until the Commission's media release is released to the media in accordance with clause 21. Save as is disclosed in the media releases and in the public version of the Deed annexed as Schedule 9, the terms and conditions of the Deed will be kept confidential by the parties, unless required by GAAP.
25. The parties will take all steps as are necessary and desirable to give effect to the terms of this Deed.
26. This Settlement Deed constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this Deed and the parties confirm that they have not relied on any statement or representation by any of the other parties in entering into this Deed.

*Severability*

27. If any provision of this Settlement Deed is, or becomes, unenforceable, illegal or invalid for any reason, it shall be deemed to be severed from this Settlement Deed without affecting the validity of the remainder of this Settlement Deed and shall not affect the enforceability, legality, validity or application of any other provision of this Settlement Deed.

*Governing law*

28. This Settlement Deed is governed by the laws of New Zealand.

*Official Information Act requests*

29. If the Commission receives any request for a copy of this Settlement Deed, or drafts or communications relating and leading to the negotiation of this Settlement Deed, or for any other correspondence and/or information provided to the Commission during the course of the UBA with SLES Investigation, it agrees to consult with Telecom as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982.

(a)

(b)

*Counterparts*

30. This Deed may be signed in counterparts (including counterparts signed, scanned and transmitted by email), which when taken together will constitute one Deed.

*Date of Deed*

31. The date of this Deed will be the date on which the last party to execute the Deed executes it.

**SIGNED AS A DEED**

**TELECOM NEW ZEALAND LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**COMMERCE COMMISSION** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**VODAFONE NEW ZEALAND LIMITED**  
by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**KORDIA GROUP LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ORCON LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CALLPLUS HOLDINGS LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CALLPLUS LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**AIRNET NEW ZEALAND LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**COMPASS COMMUNICATIONS  
LIMITED** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SCHEDULE 1**  
**SETTLEMENT AMOUNT**

1. The Settlement Amount payable by Telecom in accordance with this Deed shall be a total of \$31.6 million (plus GST, if any).

**SCHEDULE 2**

**VODAFONE NEW ZEALAND LIMITED (VODAFONE)**

1. The sum payable by Telecom to Vodafone shall be \$[ ] (plus GST, if any).

**SCHEDULE 3**

**KORDIA GROUP LIMITED (KORDIA)**

1. The sum payable by Telecom to Kordia shall be \$[ ] (plus GST, if any).

**SCHEDULE 4**  
**ORCON LIMITED (ORCON)**

1. The sum payable by Telecom to Orcon shall be \$[ ] (plus GST, if any).

**SCHEDULE 5**

**CALLPLUS HOLDINGS LIMITED (CALLPLUS HOLDINGS)**

1. The sum payable by Telecom to CallPlus Holdings shall be \$[ ] (plus GST, if any).

**SCHEDULE 6**  
**CALLPLUS LIMITED (CALLPLUS)**

1. The sum payable by Telecom to CallPlus shall be \$[ ] (plus GST, if any).

**SCHEDULE 7**  
**AIRNET NZ LIMITED (AIRNET)**

1. The sum payable by Telecom to Airnet shall be \$[ ] (plus GST, if any).

**SCHEDULE 8**

**COMPASS COMMUNICATIONS LIMITED (COMPASS)**

1. The sum payable by Telecom to Compass shall be \$[ ] (plus GST, if any).