



**AGREEMENT FOR THE
PROVISION OF MOBILE
TERMINATING ACCESS
SERVICE**

**Vodafone Network Pty Ltd
(ACN 081 918 061)
and
Vodafone Australia Limited
(ACN 056 161 043))**

**[INSERT NAME OF ACCESS
SEEKER]**

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SERVICE SCHEDULE - VODAFONE DOMESTIC MOBILE TERMINATING ACCESS SERVICE

ANNEXURE 1 – ORDERING AND PROVISIONING

ANNEXURE 2 – BILLING AND PAYMENT

ANNEXURE 3 – INTERCONNECTION MANUAL

ANNEXURE 4 – DISPUTE RESOLUTION PROCEDURES

ANNEXURE 5 – NETWORK OPERATION AND FAULT MANAGEMENT

ANNEXURE 6 – ACCESS TO FACILITIES

ATTACHMENT A - DICTIONARY

DATED [INSERT DATE]

PARTIES

1. **VODAFONE NETWORK PTY LTD (ACN 081 918 461) and VODAFONE AUSTRALIA LIMITED (ACN 056 161 043)** of Level 11, 799 Pacific Highway, Chatswood, NSW, 2067 (together **Vodafone**).
2. **[INSERT NAME] (ACN [XXX XXX XXX]) of [INSERT ADDRESS] (Access Seeker)**.

THE PARTIES AGREE

1. DEFINED TERMS AND INTERPRETATION

Unless otherwise specified:

- (a) capitalised words used in this Agreement have the meaning given to them in the dictionary in Attachment A; and
- (b) the rules of construction and interpretation of this Agreement are in Attachment A.

2. STRUCTURE

2.1 Composition

This Agreement comprises the following documents:

- (a) the main body of this Agreement (the **Supply Terms**);
- (b) the Service Schedule;
- (c) Annexure 1 – Ordering and Provisioning;
- (d) Annexure 2 – Billing and Payment;
- (e) Annexure 3 – Interconnection Manual;
- (f) Annexure 4 – Dispute Resolution Procedures;
- (g) Annexure 5 – Network Operation and Fault Management;

- (h) Annexure 6 – Access to Facilities; and
- (i) Attachment A – Dictionary.

2.2 Scope

This Agreement sets out the terms upon which Vodafone agrees to supply the Service to the Access Seeker.

2.3 Inconsistency

If there is any inconsistency between any of the documents listed in clause 2.1 then the inconsistency must be resolved in accordance with the following descending order of precedence:

- (a) the Supply Terms, which shall prevail over every other document;
- (b) the Service Schedule; and
- (c) the Annexures.

3. TERM

This Agreement becomes effective on the date it is last executed (**Effective Date**) by the Parties and continues in full force and effect until terminated in accordance with its terms.

4. DUTY TO PROVIDE SERVICE

4.1 Services

Vodafone must supply the Service to the Access Seeker in accordance with and subject to the requirements specified in this Agreement.

4.2 Interconnection

The Parties must supply Interconnection Services to each other in accordance with and subject to the terms of this Agreement and the Interconnection Manual.

4.3 Co-location

If the Interconnection Manual contemplates the co-location of a Party's equipment at the premises of the other Party, that equipment will be co-located on the terms set out in Annexure 6 – Access to Facilities.

5. QUALITY OF SERVICE

- (a) In supplying the Service, Vodafone must treat the Access Seeker in a manner consistent with the Standard Access Obligations, which includes without limitation, if requested by the Access Seeker:
 - (i) taking all reasonable steps to ensure that the technical and operational quality of the Service supplied to the Access Seeker is equivalent to that which Vodafone provides to itself; and
 - (ii) taking all reasonable steps to ensure that the Access Seeker receives, in relation to the Service, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which Vodafone provides to itself.
- (b) Vodafone must take all reasonable steps to ensure that if a standard is in force under section 384 of the Telecommunications Act that the Interconnection Services comply with the standard.

6. CHARGES

6.1 Billing Procedure

The Parties must bill and pay for the Service in accordance with the terms and conditions set out Annexure 2 – Billing and Payment.

6.2 Payment

Subject to the Billing Dispute Procedures, the Access Seeker must pay to Vodafone the Charges for the Service by the Due Date.

7. CREDIT MANAGEMENT AND SECURITY

7.1 Credit Review

- (a) Vodafone may conduct a review of the credit worthiness of the Access Seeker:
- (i) by providing notice to the Access Seeker that it wishes to review the creditworthiness of the Access Seeker within six calendar months following the Effective Date; or
 - (ii) if any of the following events occur:
 - A. Vodafone, acting reasonably, considers that there is a possibility of an Insolvency Event occurring in relation to the Access Seeker;
 - B. the Access Seeker has failed to pay any amounts under this Agreement by the Due Date; or
 - C. a forecast provided by the Access Seeker indicates that there will be a significant increase in the amount of the Service to be purchased by the Access Seeker.
- (b) If Vodafone is entitled to conduct a review of the credit worthiness of the Access Seeker pursuant to paragraph (a), the Access Seeker must:
- (i) co-operate with and provide all reasonable assistance to Vodafone or its nominee for the purposes of conducting the review, which includes without limitation, providing to Vodafone or its nominee such financial information (such as profit and loss accounts or cash flow statements) and access to documents, materials and the People of the Access Seeker as is reasonably required by Vodafone or its nominee to determine the ongoing creditworthiness of the Access Seeker; and
 - (ii) ensure that the information it provides to Vodafone or its nominee pursuant to paragraph (i) is accurate and current and gives a true and fair view of the financial position of the Access Seeker at the date it is provided to Vodafone or its nominee.

7.2 Provision of Security

- (a) If after having conducted a review of the credit worthiness of the Access Seeker, Vodafone forms the view that the Access Seeker does not meet its reasonable security

requirements, Vodafone may request by way of notice that the Access Seeker provides a Financial Security or an amended Financial Security in a form and of an amount that meets the reasonable security requirements of Vodafone.

- (b) The Access Seeker must provide at its own cost and expense to Vodafone the Financial Security requested within 10 Business Days following the date of any notice received pursuant to paragraph (a) and must maintain that Financial Security for the duration of the Term or until Vodafone requires it to amend that Financial Security pursuant to paragraph (a).

8. NETWORK PROTECTION, SAFETY AND SECURITY

8.1 Safe Operation

Each Party is responsible for the safe operation of its Network, and must, so far as is reasonably practicable, take all necessary steps to ensure that its Network, its Network operations and the supply of the Service:

- (a) does not endanger the safety or health of any person, including the People of the other Party; and
- (b) does not cause physical or technical harm to the other Party's Network, including but not limited to causing damage, interfering with or causing deterioration in the operation of the other Party's Network.

8.2 Management of Networks

The Parties must manage their Networks to minimise disruption to the Service and, in the event of interruption or failure of the Service, will restore the Service as soon as is reasonably practicable. Each Party must manage, notify and correct faults arising in its Network which affect the provision of the Service:

- (a) as it would in the ordinary course for similar faults affecting the provision of other services by it; and
- (b) in accordance with the fault notification procedures set out in Annexure 5 – Network Operation and Fault Management.

8.3 Use of Network

Each Party:

- (a) must not use or permit the use of the Service, install, connect, link or use (or permit the installation, connection, linking or use of) any telecommunications equipment in contravention of any law;
- (b) must not, and must use reasonable endeavours to ensure that its customers or end users do not, use the Service to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; and
- (c) must not use the Service, and must use reasonable endeavours to ensure that the Service is not used, to send excessive unsolicited data.

9. AMENDMENTS TO SERVICES AND NETWORK

- (a) Vodafone may modify, change or substitute the underlying technology of the Service or the service specifications of the Service if that modification, change or substitution:
 - (i) improves the functionality or performance of the Service;
 - (ii) does not have a material adverse effect on the Access Seeker; and
 - (iii) does not contravene, or result in a contravention of, Vodafone's statutory obligations,

by providing to the Access Seeker no less than 30 days notice of that modification, change or substitution.

- (b) For the avoidance of doubt, such modifications may include the replacement of elements of existing Network infrastructure or systems with alternate technology.

10. INTELLECTUAL PROPERTY

10.1 No Grant

- (a) Except as otherwise expressly provided in this Agreement, all Intellectual Property Rights remain the property of the Party that created or owns those rights.
- (b) Nothing in this Agreement may be construed, and the provision of the Service to the Access Seeker may not be construed, as:
 - (i) an assignment of any Intellectual Property Rights by a Party to the other Party; or

- (ii) the grant of any licence of any Intellectual Property Rights by a Party to the other Party.
- (c) Without prejudice to or limiting this clause 10.1, neither Party is entitled to use any trademarks or service marks (whether registered or not) of the other Party in any document or other medium, without the prior written consent of the other Party.

10.2 Jointly Developed Intellectual Property

The Parties may negotiate arrangements (including in respect of ownership) concerning Intellectual Property Rights jointly developed in the course of performing this Agreement or otherwise arising in respect of this Agreement.

11. CONFIDENTIALITY

11.1 Obligation of Confidentiality

Except as otherwise provided in this Agreement, a Party (**Receiving Party**) must keep the Confidential Information of the other Party (**Disclosing Party**) confidential and must not disclose any of the Disclosing Party's Confidential Information to any person, except:

- (a) in accordance with clause 11.3; or
- (b) on receiving the prior written consent of the Disclosing Party.

11.2 Permitted Use

The Receiving Party must not use or copy the Confidential Information of the Disclosing Party except in connection with and for the purposes of performing its obligations or exercising its rights under this Agreement.

11.3 Disclosure

- (a) The Receiving Party may disclose the Confidential Information of the Disclosing Party to:
 - (i) the Receiving Party's People or Related Bodies Corporate to whom disclosure is necessary in order to perform its obligations or exercise its rights under this Agreement;

- (ii) the Receiving Party's professional advisers, but only to the extent necessary for those advisers to provide advice or protect the rights of the Receiving Party under this Agreement; and
- (iii) the Receiving Party's appointed financial advisers or appointed bankers only to the extent necessary for those financial advisers or appointed bankers to provide financial advice or services to the Receiving Party,

(each an **Authorised Person**).

- (b) The Receiving Party must ensure that each Authorised Person to whom any Confidential Information is disclosed strictly maintains its confidentiality and does not disclose it to any other person.

11.4 Network Information

- (a) Information generated within Vodafone's Network as a result of or in connection with the provision of the Service by Vodafone to the Access Seeker (**Network Information**) is the Confidential Information of the Access Seeker.
- (b) The information referred to in paragraph (a) must:
 - (i) only be used by Vodafone to undertake planning, maintenance or reconfiguration of its Network, for the purposes of this Agreement or billing or as required by the ACA or the Commission; and
 - (ii) only be disclosed to People directly involved in planning, maintenance or reconfiguration of Vodafone's Network or billing.
- (c) Notwithstanding paragraph (a) and this clause 11, Vodafone may use and disclose Network Information provided that it is aggregated with other network information and is disclosed on an anonymous basis.

11.5 Injunctive Relief

Each Party acknowledges that damages are not an adequate remedy for a breach of this clause 11 and that in addition to other remedies that may be available, a Party may seek injunctive relief against such a breach or threatened breach.

11.6 Exclusion

Clause 11.1 does not apply to the disclosure by a Party of the minimum information necessary in order to comply with any applicable law or legally binding order of any governmental agency.

11.7 Notification prior to disclosure

Prior to any use or disclosure pursuant to clause 11.6, a Party must give notice to the other Party of the relevant disclosure. A Party must give the other Party a reasonable opportunity to:

- (a) challenge in a court of law or other appropriate body whether the proposed use or disclosure is in accordance with clause 11.6;
- (b) minimise the amount of information which is disclosed; and
- (c) determine or specify the terms upon which that information is disclosed.

11.8 Return of Confidential Information

- (a) All Confidential Information recorded in any form or any part thereof shall be returned to the Disclosing Party or destroyed by the Receiving Party, as directed and when requested by the Disclosing Party at any time, or when the Receiving Party's need for such information has ended or when this Agreement expires or is terminated, whichever is earlier.
- (b) If a Receiving Party has been directed to destroy the Confidential Information of the Disclosing Party pursuant to paragraph (a), the Receiving Party must certify that such information has been destroyed within 30 days of being so directed.

11.9 Public announcements

A Party must not, without the prior written consent of the other Party, make media or other public statements relating specifically to the performance of or disputes under this Agreement.

12. RELATIONSHIPS

12.1 Between the Parties

- (a) The relationship between the Parties is one of independent contractor only. Nothing in this Agreement may be construed to constitute a relationship of agency or partnership between the Parties.

- (b) Neither Party is authorised to bind the other Party to any obligation. The Parties and their employees, agents and representatives must not engage in any conduct that may lead any person to believe that the Party is an employee, agent or representative of the other Party.
- (c) A Party must not represent that the other Party:
 - (i) participates in any way in the provision of the Party's services, or is a supplier to the Party's own customers, or that the Party is approved by, or is an agent or dealer of, or affiliated with, the other Party; or
 - (ii) has a preferred relationship with the Party, including without limitation in respect of special prices or services.

12.2 Customers

Each Party is responsible for billing its own customers or end users for services provided by that Party to those customers or end users.

13. COMPLY WITH LAWS

- (a) Each Party must, in performing its obligations and exercising its rights under this Agreement, comply with all applicable legislation and statutory instruments, including but not limited to:
 - (i) the Telecommunications Act, including any industry codes or industry standards in force under Part 6 of that Act;
 - (ii) the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)*;
 - (iii) the *Telecommunications (Interception) Act 1979 (Cth)*;
 - (iv) the Trade Practices Act and state and territory fair trading legislation;
 - (v) the *Privacy Act 1988 (Cth)*; and
 - (vi) health and safety related legislation.
- (b) Each Party must provide such assistance as the other Party reasonably requires to comply with applicable legislation and statutory instruments.

14. LIABILITY AND INDEMNITY

14.1 General

To the extent permitted by law, neither Party is liable to the other Party except as provided in this clause 14 or in the Service Schedule.

14.2 Exclusion

Subject to clause 14.5, neither Party is liable, whether in contract or tort (including negligence or otherwise), for any Consequential Loss.

14.3 Limit of liability

Subject to clause 14.4, the aggregate liability of a Party to the other Party in connection with this Agreement at any time:

- (a) in any 12 month period ending on the day before an anniversary of the Effective Date; or
- (b) in a period of less than 12 months from the Effective Date or an anniversary of the Effective Date to the date of termination or expiry of this Agreement,

will not, in any circumstances, exceed \$1,000,000 (one million dollars).

14.4 Exclusion from limit

A Party's liability shall not be limited by clause 14.3 in respect of any of the following:

- (a) any payments of Charges required under this Agreement;
- (b) any indemnities specified in clause 14.5; or
- (c) payments made or to be made to reimburse a Party for its costs pursuant to the terms of this Agreement.

14.5 Indemnities

- (a) Notwithstanding clause 14.2 and subject to paragraphs (b) and (c), each Party indemnifies (**Indemnifying Party**) the other Party (**Indemnified Party**) against all damages, costs, claims, expenses (including legal costs) arising from or relating to:

- (i) any claim against the Indemnified Party arising out of the death of or injury to the People of the Indemnified Party; or
- (ii) any claim for damage to equipment, Network or other tangible property of the Indemnified Party or any third Party,

to the extent that such claim relates to:

- (iii) any breach of this Agreement by the Indemnifying Party or any People of the Indemnifying Party; or
 - (iv) any act or omission of the Indemnifying Party or any People of the Indemnifying Party.
- (b) The Indemnifying Party is not obliged to indemnify the Indemnified Party to the extent that the liability the subject of the indemnity claim is the direct result of a breach of this Agreement, or a negligent act or omission, by the Indemnified Party or the People of the Indemnified Party.
- (c) The Indemnifying Party is not liable to the Indemnified Party to the extent that liability is incurred in connection with an action, claim or demand brought or made against the other Party by a third party to whom the Indemnified Party provides a telecommunications service under a contract, where that liability could legally have been excluded or where that liability could legally have been reduced in that contract by that other Party.

14.6 Separate Limitations

Each provision of this clause 14 is a separate limitation applying and surviving even if one or more limitations is inapplicable or held unreasonable in any circumstance.

14.7 Implied Warranties

- (a) If any applicable law implies warranties or conditions or imposes obligations on Vodafone in respect of the quality of the Service (or any aspect of it), which cannot be excluded, restricted or modified, then to the extent to which Vodafone is entitled to do so, the liability of Vodafone under the applicable law is limited:
- (i) to the supply of the Service again or the payment of the cost of having the Service supplied again, at Vodafone's option;

- (ii) to the repair or replacement of property or paying the cost of repair or replacement, at Vodafone's option; or
 - (iii) to any other remedy prescribed by any applicable law.
- (b) If Vodafone breaches any quality of service requirement prescribed in this Agreement, the Access Seeker's sole remedy is limited to:
 - (i) Vodafone taking all reasonable steps to comply with that quality of service requirement in the future; and
 - (ii) Vodafone making available or offering to the Access Seeker the specific remedy for that quality of service requirement, prescribed in this Agreement.

15. SUSPENSION

- (a) Subject to paragraph (b), Vodafone may suspend this Agreement or the supply, or the use of (as the case may be) the Service immediately on written notice to the Access Seeker if in the reasonable opinion of Vodafone:
 - (i) Vodafone is entitled to terminate this Agreement for any reason;
 - (ii) the Access Seeker's Network or the supply of the Service to the Access Seeker poses:
 - A. a threat to the life of any person;
 - B. a hazard to equipment or property of any person, including Vodafone; or
 - C. an imminent threat to the normal operation, access, integrity or security of Vodafone's Network or any other access seeker's Network;
 - (iii) the Access Seeker suffers an Insolvency Event;
 - (iv) there is an emergency that in Vodafone's opinion requires suspension of this Agreement or the supply of the Service; or
 - (v) the continued operation of this Agreement or the supply of the Service would be unlawful.

- (b) Vodafone may only suspend this Agreement or the supply of the Service to the extent necessary to address the cause of the relevant suspension.
- (c) Vodafone's exercise of its right to suspend this Agreement or the Service does not prejudice any other right or remedy available to it (including any subsequent right to suspend this Agreement or the supply of the Service or to terminate this Agreement or the supply of the Service).

16. TERMINATION

16.1 With Notice

- (a) Vodafone may terminate this Agreement by giving the Access Seeker 30 days written notice of its intention to do so if in the reasonable opinion of Vodafone the Access Seeker has attempted to use, is likely to use, or has used the Service in contravention of any law, whether with or without the authorisation or permission of Vodafone.
- (b) A Party may terminate this Agreement by giving the other Party 30 days written notice of its intention to do so if in the reasonable opinion of that Party:
 - (i) the other Party has breached a material term of this Agreement which is capable of remedy, and has failed to remedy that breach within 30 days of receiving written notice from that Party specifying that breach and requiring it be remedied;
 - (ii) the other Party has committed a material breach of any provision of this Agreement, the breach is not capable of being remedied and the parties have not agreed in writing a basis upon which this Agreement can continue within 30 days of the other Party receiving notice specifying that breach; or
 - (iii) a Party is unable to perform its obligations under this Agreement due to a Force Majeure Event for a consecutive period of 30 days.
- (c) A Party may terminate this Agreement by giving the other Party 6 months written notice of its intention to do so.

16.2 Immediate Termination

A Party may on written notice to the other Party terminate this Agreement with immediate effect if:

- (a) this Agreement or the Service is validly suspended pursuant to clause 15 for more than 30 days if the terminating Party has provided 2 Business Days notice that it intends to terminate this Agreement; or
- (b) the other Party suffers an Insolvency Event.

17. CONSEQUENCES OF TERMINATION

17.1 Termination of Agreement

On termination of this Agreement:

- (a) all sums payable to Vodafone under this Agreement up to the date of termination, including without limitation any Charges in respect of termination, become immediately due and payable;
- (b) Vodafone must refund any amount or proportionate amount paid by the Access Seeker in respect of any period after the date of termination;
- (c) all leases, licenses and other rights conferred on a Party under this Agreement will immediately terminate;
- (d) each Party must at its own expense immediately return all of the other Party's Property in good working condition, fair wear and tear excepted; and
- (e) each Party must at its own expense and for a period of 2 years after termination of this Agreement in accordance with this Agreement, immediately comply with any written notice from the other Party to deliver, destroy, or erase any Confidential Information belonging to that other Party.

17.2 Property

Each Party must reimburse the other Party for any cost incurred by that other Party in repossessing or replacing any Property that was not returned within 30 days after the date of termination, or was returned in a damaged or defective condition.

17.3 Accrued rights and Survival

- (a) Termination of this Agreement will not affect the accrued rights and remedies of either Party.

- (b) Clauses 6 (**Charges**), 11 (**Confidentiality**), 14 (**Liability and Indemnity**) and this clause 17 survive termination or expiry of this Agreement together with any other term which by its nature is intended to do so.

18. DISPUTE RESOLUTION

The Parties must resolve:

- (a) a Pass Through Dispute, in accordance with the dispute resolution procedures set out in Part C of the Service Schedule; and
- (b) any other dispute arising under or in relation to this Agreement, in accordance with the Dispute Resolution Procedures.

19. GENERAL

19.1 Force Majeure

- (a) If a Party is unable to perform an obligation under this Agreement by reason of a Force Majeure Event, that obligation is suspended for the minimum extent and duration of the Force Majeure Event, provided that the Party:
 - (i) gives the other Party prompt notice of and reasonable details of the Force Majeure Event and an estimate of the extent and duration of its inability to perform an obligation under this Agreement; and
 - (ii) uses reasonable endeavours to remove the effect of that Force Majeure Event as quickly as possible.
- (b) Each Party remains liable:
 - (i) for the performance of each obligation, and to comply with and observe each term, of this Agreement that is not affected by the Force Majeure Event; and
 - (ii) to pay all Charges payable in respect of the Service provided during the currency of the Force Majeure Event.
- (c) If the Force Majeure continues for more than 10 Business Days after the notice is given under paragraph (a), the Parties must meet to discuss in good faith a mutually satisfactory resolution of the problem.

19.2 GST

- (a) Any consideration or payment obligation in this Agreement is exclusive of GST unless stated otherwise.
- (b) If a Party makes a Supply under this Agreement, the consideration for the Supply by the supplying Party payable under this Agreement is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.
- (c) The additional amount under paragraph (b) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.
- (d) The receiving Party is not required to pay the additional amount pursuant to paragraph (b) unless the supplying Party has provided to it a valid Tax Invoice which complies with the GST Law.
- (e) Unless otherwise stated in this Agreement, the following principles apply when determining the amount of a payment under this Agreement:
 - (i) if a Party is entitled under this Agreement to be reimbursed or indemnified by the other Party for an expense, claim, loss, liability or cost incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and
 - (ii) if a Party sets off an amount under this Agreement, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph (a).
- (f) If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event is appropriately recognised, including the issue of an Adjustment Note.
- (g) In this clause:
 - (i) **GST** means goods and services tax under the GST Law, as that expression is defined in A New Tax System (Goods and Services Tax) Act 1999; and
 - (ii) a term or expression starting with a capital letter which is defined in the GST Law but not defined in these terms has the same meaning as in the GST Law.

19.3 Variation

Subject to clause 9, no variation of this Agreement is effective unless made in writing and signed by each Party.

19.4 Assignment

A Party may only assign or transfer its rights, obligations or interests under this Agreement if it has first obtained the other Party's prior written consent (such consent not to be unreasonably withheld).

19.5 Non-impairment

Neither Party may engage in any conduct that impairs or might impair the other Party's ability to provide the Interconnection Services or the Service.

19.6 Non-exclusivity

Nothing in this Agreement restricts the rights of either Party to enter into similar agreements with other parties.

19.7 Entire Agreement

- (a) This Agreement supersedes all previous understandings, commitments, representations and agreements between the parties in respect of the Service, and contains the entire Agreement between the Parties about its subject matter.
- (b) A Party may not rely on any representation or warranty about the subject matter of this Agreement except as expressly provided in this Agreement.

19.8 Severance

- (a) Subject to paragraph (b), if the whole or any part of a provision of this Agreement is unenforceable, partly unenforceable, void or illegal in a jurisdiction, then it is severed to the extent necessary to make this Agreement enforceable in that jurisdiction.
- (b) This clause 19.8 does not apply if the severance materially changes the intended effect of this Agreement, alters its basic nature, is contrary to public policy or the Telecommunications Laws.

19.9 Waiver

- (a) A right may only be waived in writing and signed by an authorised officer of the Party granting the waiver.
- (b) No conduct of a Party, including without limitation a failure to exercise, or delay in exercising, a right, operates as a waiver of the right or otherwise prevents the exercise of that right.
- (c) A waiver of a right on one or more occasions does not operate as a waiver of that right in future.

19.10 Exercise of rights

A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy.

19.11 Governing law and jurisdiction

The Agreement is governed by the laws of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.

19.12 Notices

- (a) A notice or other communication given under this Agreement including, but not limited to, a request, demand, consent or approval, to or by a Party to this Agreement:
 - (i) must be in legible writing and in English;
 - (ii) must be addressed to the addressee at the address or facsimile number set out below or to any other address or facsimile number a Party notifies to the others under this clause:

- if to Vodafone:

Address: Vodafone Network Pty Limited
799 Pacific Highway
CHATSWOOD NSW 2067
Attention: General Counsel
Facsimile: 02 9415 7041

- if to the Access Seeker:

Address: **[INSERT ADDRESS]**

Attention: **[INSERT NAME]**

Facsimile: **[INSERT FAX NUMBER]**

- (iii) must be signed by an authorised officer of the sender; and
 - (iv) is deemed to be received by the addressee in accordance with clause 19.12(b).
- (b) Without limiting any other means by which a Party may be able to prove that a notice has been received, a notice is deemed to be received:
- (i) if sent by hand, when delivered to the addressee;
 - (ii) if by post, 3 Business Days after and including the date of postage; and
 - (iii) if by facsimile transmission, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent provided that the original notice has been posted to the other Party within 48 hours of that transmission report or acknowledgement;
- but if the delivery or receipt is not on a Business Day or is after 4.00 pm (addressee's time), it is deemed to be received at 9.00 am on the following Business Day.
- (c) A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under paragraph (b)(iii), and informs the sender that it is not legible.
- (d) In this clause 19.12, a reference to an addressee includes a reference to an addressee's officers, agents or authorised representatives.

19.13 Cumulative rights

The rights, powers and remedies of a Party under this Agreement are cumulative with and do not exclude or limit any other right, power or remedy provided by law or equity independently of this Agreement.

19.14 Intervening Legislation

- (a) If any amendment to the Telecommunications Laws affects any term of this Agreement, including any right or obligation of a Party under this Agreement then the Parties must meet as soon as practicable and negotiate in good faith any amendment to this Agreement necessary or appropriate to ensure that it remains consistent with the Telecommunications Laws.
- (b) If the Parties cannot agree on an amendment, then clause 18 and the Dispute Resolution Procedures will apply.

19.15 Non-merger

The conditions and provisions in this Agreement do not merge or terminate.

19.16 Third Party rights

Only the Parties have or are intended to have a right or remedy under this Agreement or obtain a benefit under it.

19.17 Costs and expenses

Unless otherwise agreed under this Agreement, each Party must bear its own legal and other costs incurred in the preparation, negotiation and execution of this Agreement and all documents contemplated by it.

19.18 Obligations on good faith

Each Party must act in good faith in carrying out its obligations under this Agreement.

SIGNED as an Agreement.

SIGNED by **[INSERT NAME OF SIGNATORY]**
as an authorised signatory for **VODAFONE**
NETWORK PTY LIMITED in the presence of:

Signature of witness

Signature of **[#INSERT NAME OF SIGNATORY#]**

Name of witness (print)

SIGNED by **[INSERT NAME OF SIGNATORY]**
as an authorised signatory for **VODAFONE**
AUSTRALIA LIMITED in the presence of:

Signature of witness

Signature of **[#INSERT NAME OF SIGNATORY#]**

Name of witness (print)

SIGNED by **[INSERT NAME OF SIGNATORY]**
as an authorised signatory for **[ACCESS**
SEEKER] in the presence of:

Signature of witness

Signature of **[#INSERT NAME OF SIGNATORY#]**

Name of witness (print)

SERVICE SCHEDULE

VODAFONE DOMESTIC MOBILE TERMINATING ACCESS SERVICE

PART A – SERVICE DESCRIPTION

1 VODAFONE DOMESTIC MOBILE TERMINATING ACCESS SERVICE

The **Vodafone Domestic Digital Mobile Terminating Access Service** is an Access service for the carriage of voice calls from a Point of Interconnection to a B-Party directly connected to the Vodafone Network (**the Service**).

PART B – PRICE LIST

1 RATES

1.1 The Rates payable by the Access Seeker for the Service comprise:

- (a) a Usage Charge as set out in this Service Schedule; and
- (b) a Network Conditioning Charge for Network Conditioning in Vodafone's Network beyond Vodafone's Interconnect Gateway Exchanges to enable the provision of the Service to the Access Seeker, which will be based on the labour, materials and incidentals involved in undertaking the work required. Such work will not commence until the Access Seeker has accepted a quotation for such work provided to the Access Seeker by Vodafone.

1.2 The Usage Charge payable by the Access Seeker for use of the Service during the applicable Validity Period is specified in Table 1 below:

TABLE 1	
VALIDITY PERIOD	USAGE CHARGE
1. 1 July 2004 – 31 December 2004	21 cpm
2. 1 January 2005 – 31 December 2005	19.38 cpm
3. 1 January 2006 – 31 December 2006	17.77 cpm
4. 1 January 2007 - 30 June 2007	16.15 cpm
Any subsequent Validity Periods	16.15 cpm

PART C – PASS THROUGH SAFEGUARD

1 PASS THROUGH PRINCIPLE

The aim of this Part C is to ensure that end-users who make fixed to mobile calls realise the benefits of reductions in Usage Charges by ensuring those reductions are passed through to end-users or customers in the form of reduced retail rates for fixed to mobile calls. This benefits end-users or customers of fixed to mobile calls, since they will enjoy price reductions, as well as providers of fixed to mobile calls and providers of mobile termination services, since the volume of originated and terminated calls is likely to increase if the retail price falls (**Pass Through Principle**).

2 PASS THROUGH OBLIGATION

The Access Seeker must reduce its Average Retail Price (excluding GST) for calls which terminate on the Vodafone Network during each Validity Period so that it is equal to or less than the Target Average Retail Price specified in Table 2 below (**Pass Through Obligation**).

3 TABLE 2

TABLE 2	
VALIDITY PERIOD	TARGET AVERAGE RETAIL PRICE
1. 1 July 2004 – 31 December 2004	38.5 cpm
2. 1 January 2005 – 31 December 2005	32.72 cpm
3. 1 January 2006 – 31 December 2006	26.93 cpm
4. 1 January 2007 - 30 June 2007	21.15 cpm
Any subsequent Validity Periods	21.15 cpm

4 COMPLIANCE AND PASS THROUGH DISPUTES

- 4.1 The Access Seeker must provide written notice to Vodafone within 20 Business Days of the end of each Validity Period, signed by a Director, stating whether and how the Access Seeker has complied with the Pass Through Obligation for that Validity Period (**Certification of Pass Through**).
- 4.2 Within 2 months following the end of each Validity Period, if Vodafone reasonably considers that the Access Seeker has not complied with the Pass Through Obligation, Vodafone may, by way of written notice, notify the Access Seeker of a dispute (**Pass Through Dispute Notice**).

- 4.3 On receipt of a Pass Through Dispute Notice, the Parties must use their reasonable endeavours to resolve the dispute. In attempting to resolve the dispute in accordance with this clause 4.3, the Parties must act in good faith at all times.
- 4.4 If the Parties cannot resolve the dispute within 10 Business Days following the date of the Pass Through Dispute Notice, either Party may within 20 Business Days following the date of the Pass Through Dispute Notice refer the dispute for expert determination in accordance with clause 5 provided that Party has complied with its obligations under clause 4.3.

5 EXPERT DETERMINATION

- 5.1 Disputes referred for resolution under this clause 5 will be resolved by Expert Determination in accordance with the *Expert Determination Rules* of the Australian Institute of Arbitrators and Mediators and the provisions of this Service Schedule.
- 5.2 Both Parties must:
- (a) co-operate with the expert in its assessment of the Access Seeker's compliance with the Pass Through Obligation; and
 - (b) provide to the expert all information reasonably required by the expert to determine the Access Seeker's Average Retail Price or any other matter that the expert is required to determine, and whether the Access Seeker has complied with the Pass Through Obligation.
- 5.3 When resolving a dispute in relation to the Pass Through Obligation the Parties agree that the expert must have regard to the Pass Through Principle and must resolve the dispute in a manner that best meets the objectives of the Pass Through Principle.
- 5.4 The expert's report must contain conclusions as to:
- (a) whether the Access Seeker has provided sufficient information to assess compliance with the Pass Through Obligation;
 - (b) whether the Access Seeker has reasonably complied with the Pass Through Obligation; and
 - (c) the Access Seeker's Average Retail Price for the relevant Validity Period. If the expert is unable to determine the Average Retail Price as a result of the unavailability of sufficient information, the Average Retail Price shall be deemed to be the average retail price for

the Access Seeker's fixed to mobile calls to all mobile networks as determined by the expert.

- 5.5 The expert's decision will be final and binding upon the Parties and each Party agrees that it will not, unless in the case of manifest error, dispute the findings of the expert.

6 NON COMPLIANCE

- 6.1 If the expert determines that the Access Seeker has not complied with the Pass Through Obligation for a Validity Period, the Access Seeker must pay to Vodafone in accordance with the terms of this Agreement, the rebate calculated in accordance with clause 6.2 (**Pass Through Rebate**).

- 6.2 The Pass Through Rebate for a Validity Period will be an amount equal to the number of Conversation Minutes for that Validity Period, multiplied by the difference between:

- (a) the Usage Charge set out in Table 1 for that Validity Period; and
- (b) the Usage Charge for the earliest prior Validity Period in which the Access Seeker's Average Retail Price is less than the Target Average Retail Price for that Validity Period, as specified in Table 2.

- 6.3 If the Access Seeker does not provide sufficient information to the expert when requested, the Validity Period for the purposes of clause 6.2(b) is Validity Period 1.

7 TRANSIT TRAFFIC

- 7.1 This clause 7 applies to traffic sent to Vodafone by the Access Seeker for which the retail price is set by a Carriage Service Provider other than the Access Seeker (**Transit Traffic**), if the total Transit Traffic being sent by the Access Seeker exceeds 750,000 minutes/month.

- 7.2 The Access Seeker must ensure that at any time at which this clause 7 applies, each Carriage Service Provider to which it supplies transit services (**Transit Carriage Service Provider**) complies with the Pass Through Obligation, including this Part C.

- 7.3 If the Access Seeker sends Transit Traffic to Vodafone for termination, then the Access Seeker must:

- (a) ensure that each Transit Carriage Service Provider:

- (i) is also subject to an obligation to comply with the Pass Through Obligation; and
 - (ii) complies with that obligation; and
 - (b) ensure that any disputes about the compliance of the Transit Carriage Service Provider with its Pass Through Obligation are:
 - (i) capable of resolution in a manner identical to that specified in clause 5; and
 - (ii) resolved in accordance with the procedure specified in clause 5; and
 - (c) provide a separate Certification of Pass Through for each Transit Carriage Service Provider that:
 - (i) identifies each relevant Carriage Service Provider; and
 - (ii) specifies the volume of Transit Traffic of each Carriage Service Provider; and
 - (d) co-operate and provide all reasonable assistance to ensure that each Transit Carriage Service Provider complies with the Pass Through Obligation and that Transit Traffic is not used as a means to avoid or circumvent the Pass Through Principle.
- 7.4 If the Access Seeker cannot or does not comply with this clause 7, the Access Seeker must not send any Transit Traffic to Vodafone for termination.

ANNEXURE 1

ORDERING AND PROVISIONING

[Deliberately left blank – to be agreed between the Parties]

ANNEXURE 2

BILLING AND PAYMENT

1. INTERPRETATION

Except as otherwise stated, all references to clauses in this Annexure are references to a clause of this Annexure.

2. INVOICES

Vodafone must provide an invoice, in writing or other material form agreed with the Access Seeker, setting out all amounts due in respect of the supply of the Service.

The invoice must be accompanied by such information as is reasonably required by the Access Seeker to allow it to properly assess the amounts invoiced. An invoice will not be issued more than once each month and will apply monthly in arrears. Vodafone will use reasonable endeavours to issue invoices to the Access Seeker within 28 days after the end of each month.

3. PAYMENT

All payments must be:

paid by cheque to Vodafone or electronic transfer directly to the nominated account(s) of Vodafone; and

accompanied by such information as is reasonably required by Vodafone to properly allocate payments received.

The Parties will use their reasonable endeavours to develop procedures for electronic transfer of funds for payments between them.

All amounts in invoices must be stated in Australian dollars.

If a Party discovers an error in an invoice, it must notify the other Party as soon as practicable after discovering the error. Vodafone will rectify any errors on the next invoice.

Vodafone may invoice the Access Seeker for Charges previously omitted from an invoice or for Charges to make-up for an under-stated Charge on a previous invoice, provided no

more than 6 months have elapsed since the initial invoice unless the Access Seeker consents to a longer period (such consent not to be unreasonably withheld) and provided that the Charges have been incurred under this Agreement and can be substantiated by Vodafone to the Access Seeker. For the avoidance of doubt, it is reasonable to withhold consent if the Access Seeker is or would be unable to recover those Charges from its customers or service providers.

4. LATE PAYMENT

Vodafone may charge interest on an undisputed overdue amount, provided that the rate of interest is no more than 2% above the then current overdraft rate of Vodafone's principal bankers. Where interest in respect of any due and unpaid amount is due to Vodafone under this clause 4, Vodafone may add the amount of such interest to its next invoice.

An interest claim made in accordance with this clause must be paid within 30 days from the date of the claim.

5. INFORMATION

Vodafone must provide the Access Seeker on a timely basis with all information reasonably required by the Access Seeker to verify rates and charges to be billed by Vodafone to the Access Seeker. The Parties will determine what types of information for this purpose are to be provided.

ANNEXURE 3

INTERCONNECTION MANUAL

[Deliberately left blank – to be agreed between the Parties]

ANNEXURE 4

DISPUTE RESOLUTION PROCEDURES

[Deliberately left blank – to be agreed between the Parties]

ANNEXURE 5

NETWORK OPERATION AND FAULT MANAGEMENT

[Deliberately left blank – to be agreed between the Parties]

ANNEXURE 6

ACCESS TO FACILITIES

[Deliberately left blank – to be agreed between the Parties]

ATTACHMENT A

DICTIONARY

Part 1 – Definitions

In this Agreement, unless the context otherwise requires:

ACA means the Australian Communications Authority and its successors.

Access has the meaning given to it in section 152AF of the Trade Practices Act.

Authorised Person has the meaning provided in clause 11.3.

Average Retail Price means an Access Seeker's revenues from fixed to mobile calls which terminate on the Vodafone Network divided by that Access Seeker's total Conversation Minutes for fixed to mobile calls which terminate on the Vodafone Network during the relevant Validity Period.

Billing Dispute Procedure has the meaning given to it in the Dispute Resolution Procedures.

B-Party means an end-user to whom a telephone call is made.

Business Day means any day of the week other than Saturday, Sunday or a public holiday in New South Wales.

Carriage Service Provider has the same meaning as in the Telecommunications Act.

Carrier Licence has the same meaning as in the Telecommunications Act.

Certification of Pass Through has the meaning given in clause 4.1 of Part C of the Service Schedule.

Charges means the amounts payable by the Access Seeker for use of the Service calculated in accordance with the Rates for the Service.

Commission means the Australian Competition and Consumer Commission.

Confidential Information means (whether or not in material form and whether or not disclosed before, on or after the Effective Date) any information of whatever kind disclosed or revealed by one Party to the other relation to this Agreement that:

is by its nature confidential;

is designated by a Party as confidential; or

the receiving Party knows or reasonably ought to know is confidential.

Consequential Loss means indirect, incidental, consequential, punitive or special damages, including without limitation economic loss such as loss of profits or expectations, business revenue, goodwill, wasted expenditure or anticipated savings, whether based in contract, tort (including negligence), statute or otherwise, even if the other Party is warned or has been warned of the possibility of that loss or damage.

Conversation Minute means the derived period of time (expressed in minutes and calculated and chargeable in multiples of one second or part thereof) from the receipt of an answer signal until receipt of a “clear forward” or “forced release signal” by Vodafone.

Corporations Act means the *Corporations Act 2001 (Cth)*, as amended from time to time.

Disclosing Party has the meaning given in clause 11.1.

Dispute Resolution Procedures means the procedures set out in Annexure 4.

Due Date for Charges for the Service means 30 days after the date of an invoice in which those Charges were included or such other date agreed in the Service Schedule for the Service.

Effective Date has the meaning given in clause 3.

Financial Security means any instrument that secures the payment of amounts due and owing under this Agreement and includes, without limitation, a bank guarantee, a parent company guarantee, a letter of credit, security over a bank deposit, a related company guarantee, a fixed charge or a fixed and floating charge.

Force Majeure Event means any event outside the reasonable control of the Party affected, including without limitation the failure of any supplier to deliver equipment at the prescribed time, an act of God, an industrial dispute of any kind, a war declared or undeclared, military operations, acts of terrorism, a blockade, a civil disturbance, lightning, fire, earthquake, storm, flood, explosion, weather of exceptional severity, interruption or failure of utility service (including but not limited to electric power, gas and water), national or local emergency, meteor, or acts or omissions of persons for whom that Party is not responsible.

Holding Company has the meaning given in the Corporations Act.

Indemnified Party has the meaning given in clause 14.5.

Indemnifying Party has the meaning given in clause 14.5.

Insolvency Event means, in relation to a Party:

- (a) the Party being in liquidation or an order, petition, application, proceeding, meeting or resolution being made, presented, brought, called or passed for the purpose of winding up the Party and not withdrawn;

a controller (within the meaning of the Corporations Act) having possession or control of any of the assets or undertaking of the Party for the purpose of enforcing a charge;

a chargee or other person being entitled to be in, or having threatened to take, possession or control of any of the assets or undertaking of the Party for the purpose of enforcing a charge;

an administrator (within the meaning of the Corporations Act) having been appointed or threatened to be appointed to the Party;

the Party having stopped payments to creditors generally, or being insolvent (within the meaning of the Corporations Act) or unable to pay its debts as and when they fall due; or

equivalent processes or steps to those outlined in paragraph (a) – (c) have occurred with a similar effect in other jurisdictions or under other laws.

Intellectual Property Rights means all rights conferred under statute, common law and equity in and in respect of intellectual property rights, including without limitation trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets, whether registered or not, and all rights and interests in them or licences to use any of them.

Interconnection Manual means the interconnection manual set out in Annexure 3.

Interconnection Services means each service that enables the Network of each Party to interconnect to allow for the provision of the Service by Vodafone to the Access Seeker.

Network of a Party means the Telecommunications Network of that Party, on its side of the POI.

Network Conditioning means the conditioning, equipping, installing or commissioning of equipment, infrastructure or software in Vodafone's Network to enable provision of the Service by Vodafone.

Network Conditioning Charge means the charge set out in 1.1(b) of Part B of the Service Schedule.

Network Information has the meaning given in clause 11.4(a).

Nominated Carrier Declaration has the meaning provided in the Telecommunications Act.

Party means a party to this Agreement.

Pass Through Dispute means a dispute arising under clause 4 of Part C of the Service Schedule.

Pass Through Dispute Notice means a notice of dispute under clause 4.2 of Part C of the Service Schedule.

Pass Through Principle has the meaning given in clause 1 of Part C of the Service Schedule.

Pass Through Rebate has the meaning given in clause 6.1 of Part C of the Service Schedule.

People means directors, officers, employees, agents, contractors, advisors and representatives of a Party other than that Party's customers who act as end users of services provided by means of the Service.

POI means a Point of Interconnection.

Point of Interconnection means:

- (a) a physical point of demarcation between the Access Seeker's Network and the Vodafone Network; and

which is associated with (but not necessarily co-located with) one or more gateway exchanges of the Access Seeker's Network and the Vodafone Network.

Property means any equipment, facility, plant or other property used by a Party under this Agreement, as the case may be.

Rate means the Usage Charge and/or Network Conditioning Charge.

Receiving Party has the meaning given in clause 11.1.

Regulator means an Australian regulatory authority with responsibility for telecommunications, including the Commission or the ACA.

Related Body Corporate has the meaning given to it in the Corporations Act.

Service has the meaning given in the Service Schedule.

Service Schedule means the Schedule to this Agreement.

Standard Access Obligations has the meaning given in section 152AR of the Trade Practices Act.

Supply Terms has the meaning provided in clause 2.1.

Target Average Retail Price means the target average retail prices set out in Table 2 of Part C of the Service Schedule.

Telecommunications Act means the *Telecommunications Act 1997 (Cth)*, as amended from time to time.

Telecommunications Laws means the Telecommunications Act, the *Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)* and the Trade Practices Act and any regulations, Regulators' decisions or subordinate instruments made or licenses granted pursuant to them.

Telecommunications Network has the meaning given to it in the Telecommunications Act.

Term means the period of time during which this Agreement is effective pursuant to clause 3.

Trade Practices Act means the *Trade Practices Act 1974 (Cth)*, as amended from time to time.

Transit Carriage Service Provider has the meaning given to it in clause 7.2 of Part C of the Service Schedule.

Transit Traffic means any traffic which is sent to Vodafone by the Access Seeker where the retail price is set by a Carriage Service Provider other than the Access Seeker.

Ultimate Holding Company has the meaning given in the Corporations Act.

Usage Charge means the Rate applicable to the supply of the Service as set out in Table 1 in Part B of the Service Schedule.

Validity Period means the period in which a Usage Charge applies.

Vodafone Network means Vodafone's GSM Telecommunications Network used to provide a digital mobile telephone service.

PART 2 - INTERPRETATION

(a) In this agreement unless the context otherwise requires:

words importing the singular include the plural and vice versa;

words which are gender neutral or gender specific include each gender;

other parts of speech and grammatical forms of a word or phrase defined in the agreement have a corresponding meaning;

an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;

a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;

a reference to a clause, party, schedule or attachment is a reference to a clause of the agreement, and a party, schedule or attachment to, the agreement and a reference to the agreement includes a schedule and attachment to the agreement;

a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;

a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;

a reference to a party to a document includes that party's successors and permitted assigns;

an agreement on the part of two or more persons binds them jointly and severally;
and

a reference to an agreement, other than this agreement, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing.

Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day.

Headings are for convenience only and do not affect the interpretation of this agreement.

A term or expression starting with a capital letter:

which is defined in this Dictionary, has the meaning given to it in this Dictionary;

which is defined in the Corporations Act but is not defined in this Dictionary, has the same meaning as in the Corporations Act; and

which is defined in the GST Law but is not defined in this Dictionary, has the same meaning as in the GST Law.