

Deed of Indemnity

THIS DEED is made on the 21 day of April 2011

BETWEEN Telecom New Zealand Limited ("Telecom")

AND HER MAJESTY THE QUEEN in right of New Zealand acting through the MINISTER OF FINANCE ("the Crown") pursuant to section 65ZD of the Public Finance Act 1989

BACKGROUND

- A. On 16 March 2010, the government announced its \$300 million Rural Broadband Initiative (RBI) policy with the following two objectives:
- enable 97 percent of New Zealand households and enterprises to access broadband services of 5Mbps or better, with the remaining three percent to achieve speeds of at least 1Mbps ("the community objective"); and
 - connect 97 percent of schools to fibre, enabling speeds of at least 100Mbps, with the remaining three percent to achieve speeds of at least 10Mbps ("the schools objective").
- B. Telecom is about to enter into an agreement with the Ministry of Economic Development ("the Ministry") to design and build certain infrastructure and provide certain telecommunications services ("the Agreement") to enable the meeting of the RBI's schools objective and provide backhaul to Vodafone's wireless sites in order for Vodafone to meet the community objective.
- C. The Agreement includes a provision that enables the Ministry to step-in during the deployment stage of the Agreement to ensure that the overall RBI objectives are met.
- D. The Crown has, subject to the following terms and conditions, agreed to provide Telecom a limited indemnity in connection with the Ministry's Step-in rights under the Agreement.

THIS DEED PROVIDES as follows:

1. Definitions & Interpretation

In this Deed:

- (a) capitalised terms used in this Deed, other than those defined in the Background to this Deed, have the same meaning as those terms as defined in the Agreement; and
- (b) a reference to a clause means a reference to a clause in this Deed unless otherwise expressly stated.

2. Terms of the Indemnity

Pursuant to section 65ZD of the Public Finance Act 1989, the Minister of Finance, on behalf of the Crown indemnifies Telecom against any and all direct costs, expenses and liabilities suffered or incurred by Telecom to the extent that these are caused as a direct result of the Ministry, its Nominated Managers and/or its Nominated Contracts;

- a) breaching clause 18.5 of the Agreement; or
- b) failing, in the course of their activities in connection with the Step-in, to exercise the care, diligence and skill that a skilled and experienced telecommunications provider would exercise in similar circumstances,

except to the extent that Telecom could have mitigated those costs, expenses and liabilities during and after the Step-in in accordance with clause 22.7 of the Agreement.

3. Conditions of the Indemnity

3.1. Where a claim is or proceedings are brought against Telecom by a third party against which Telecom has been indemnified in respect of under clause 2, Telecom will only be entitled to indemnification to the extent that;

- a Telecom notifies the Ministry, in writing of the claim or proceedings promptly on becoming aware of the claim or proceedings (or of any facts which would indicate to a reasonable person that the claim or proceeding is imminent); and
- b Telecom keeps the Ministry informed as to the progress of any claim or potential claim or proceedings referred to in clause 3(a); and
- c Telecom acknowledges that the Ministry may, at the Ministry's election, conduct the defence of the third party claim or proceedings referred to in clause 3(a), and agrees to act reasonably in assisting the Ministry (at the Ministry's cost) in the defence or settlement of the claim, provided that:
 - i if the Ministry in any way settles or compromises the claim or proceedings without Telecom's prior written approval, the Ministry must ensure that Telecom has no obligation or liability in relation to that settlement or compromise, and that the Ministry accepts full responsibility for satisfaction of the terms of that compromise or settlement without recourse by any person to Telecom;
 - ii Telecom will always have sole control of, and the Ministry will not ever have control of, any third party claim or proceedings against Telecom:
 - A brought by or concerning Crown Fibre Holdings Limited;
 - B brought by or concerning the Crown or any governmental agency, department, instrument or representative, or any telecommunications customer group or user group (for example, the Telecommunications User Group of New Zealand also known as TUANZ);

- C brought by or concerning the Telecommunications Commissioner in New Zealand or any other person with authority to hear or adjudicate matters that relate to Telecom's Network or telecommunications;
- D concerning any claim or application relating to the Kiwi Share or under the Telecommunications Act 2001;
- E arising in relation to or affecting the Telecommunications Service Obligations (TSO) Deed for Local Residential Telecom Service (December 2001); and/or
- F that involves the Commerce Act, the Commerce Commission or any allegations of conduct that infringes the competition law rights of any person,

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

- d The indemnity provided for in clause 2 is subject to all applicable limitations of liability set out in the clause 22 of the Agreement, including the exclusion of certain unrecoverable losses as set out in clause 22.1 of the Agreement..

3.2. The indemnity provided for in clause 1 does not apply to the extent that Telecom could have mitigated those costs, expenses and liabilities during and after Step-In in accordance with the clause 22.7 of the Agreement.

3.3. For the avoidance of doubt the indemnity provided for in clause 2 only applies if the Ministry exercises its right of Step-In under the Agreement and only in relation to acts done or omitted by the Ministry, its Nominated Managers and/or Nominated Contractors during the Step-in period.

4. Disputes

Any dispute between Telecom and the Crown as to the interpretation or operation of this Deed shall be referred to arbitration under the Arbitration Act 1996 or any Act passed in substitution for it.

5. Amendments

This Deed may only be amended or revoked by an instrument in writing signed by both parties to this Deed.

6. Term

This Deed only applies on and from the date on which the Agreement is executed and continues in effect until revoked in writing in accordance with clause 5.

IN WITNESS of which this Deed has been executed.

SIGNED by the **Honourable Simon William English, MINISTER OF FINANCE**, for and on behalf of the Crown in the presence of:



Witness: *Dasha Leonova*
Occupation: *Economic Adviser*
Address: *Beehive, Wellington*

SIGNED by *Mark Ratcliffe*

for and on behalf of **Telecom New Zealand Limited** in the presence of:



Witness: *C. Sogley*
Occupation: *Caroline Sogley*
Address: *Solicitor*
Auckland