

Schedule 2

Supplementary Agreement

between

[insert full name of the Operator]

and

[insert full name of Vodafone AirTouch subsidiary or company in which it has an
economic interest]

STANDARD FORM FRAMEWORK AGREEMENT

for a

PAN-EUROPEAN INTER-OPERATOR ROAMING TARIFF

This Supplementary Agreement is made the day of [month] 2000 •

Between

[[Operator] registered in [] No. [] having its registered office at [address](the “**Operator**”); and

[Vodafone AirTouch Plc subsidiary or a VFAT affiliated company, provided it agrees to participate in the Roaming Tariff] which is a mobile network operator • (the “**VFAT Operator**”); together the “**parties**”.

Whereas:

- (A) The Operator is a mobile telecommunications operator;
- (B) The VFAT Operator is a mobile telecommunications operator being a subsidiary or a holding company or a VFAT affiliated company which has agreed to offer the Roaming Tariff
- (C) The Roaming Tariff (as defined below) has been Launched (as defined below) by one or more members of the VFAT Group;
- (D) Vodafone AirTouch Plc has given undertakings to the European Commission, which undertakings are attached to the decision in Case M.1795 - Vodafone/Mannesmann dated 12 April 2000 which the European Commission has required in order to ensure that mobile telecommunications operators are able to replicate advanced pan-European retail services offered by VFAT affiliated companies where those services rely upon access to the Discounts (as defined below) underlying the Roaming Tariff offered by any member of the VFAT Group including for the sake of clarity any Operator in which Vodafone AirTouch Plc has an economic interest as defined in Clause 21 of the Undertakings (and subject always to the Best Endeavours obligation set out in that clause) in connection with the launch of a Pan-European retail offer;
- (E) The VFAT Operator holds a mobile telecommunications network operator licence issued in [*1] and runs public telecommunications systems pursuant to such licence in [*1];
- (F) The Operator provides mobile telecommunications services in [*2] pursuant to a license or authorisation issued in [*2];

*[N.B. *1 and *2 should refer to different countries]*

- (G) If the VFAT Operator can show to the satisfaction of the Operator or (if the parties cannot agree) by means of the fast track dispute resolution procedure, that the Operator can replicate the Roaming Tariff without entering into this agreement but through a similar agreement with one or more of its affiliated companies, the VFAT Operator is not obliged to enter into this agreement, it being understood that pending the fast track dispute resolution procedure, the VFAT Operator shall provide, on an interim basis, the Discounts to the Operator in accordance with the terms and conditions of this agreement (with the right to reimbursement/ compensation thereof in any case in which the arbitrators subsequently hold that the VFAT

Operator is not obliged to enter into an agreement on the terms and conditions set out herein);

- (H) The Operator has requested the Inter-Operator Roaming Tariff referred to in the Undertakings and the VFAT Operator has, pursuant to those Undertakings offered to enter into this agreement for the purposes of providing such services to the Operator.

This Agreement is supplemental to an International GSM Roaming Agreement between the parties which provides for the establishment of International Roaming Services. It is hereby agreed as follows:

1 Definitions and Interpretation

- 1.1 In this Supplementary Agreement the terms set out below will have the meanings set out beside them. All terms used in this Supplementary Agreement will have the same meanings as in the GSM Agreement, unless otherwise stated.

“Discounted IOT” means the relevant IOT discounted by any agreed Discount to be provided pursuant to clauses 2 and 3;

“Discounts” means the reciprocal discounts applicable to the respective IOTs of the parties set out in Annex 1.3.1 of the GSM Agreement which have been negotiated on a bilateral basis by the parties and which are set out in Schedule1;

“Eligible Calls” means all telephone calls made by a subscriber of a party to this agreement when roaming abroad on the other party’s network which terminate within one of the countries listed in Schedule 2 (as modified from time to time), except those types of calls for which no Discount applies (e.g. premium rate calls), as defined (from time to time) for the purposes of the Roaming Tariff;

“Eligible Subscribers” means those customers of the VFAT Group who subscribe to the Roaming Tariff from time to time, as defined (from time to time) for the purpose of the Roaming Tariff;

“GSM Agreement” means the International GSM Roaming Agreement to which this Supplementary Agreement is Schedule 2;

“IOT” means the Inter-Operator Tariff provided by the VFAT Operator and the Operator respectively as detailed in Annex 1.3.1 of the GSM Agreement;

“Launched” means that any two or more members of the VFAT Group have announced or offered a Roaming Tariff, or are providing a Roaming Tariff to at least one Eligible Subscriber;

“Roaming Tariff” means any retail pan-European roaming tariff, for any telecommunication services, to be charged to Eligible Subscribers in at least two countries within the EEA by any two or more operators who are members of the VFAT Group for Eligible Calls within the EEA,

“**Term**” means the period from the date of this Supplementary Agreement until the date being 12 April 2003, unless otherwise terminated pursuant to Clause 13 below

“**Undertakings**” means the undertakings agreed with the European Commission and attached to the decision in Case M. 1795 - Vodafone/Mannesmann of 12 April 2000;

“**VFAT affiliated company**” means a mobile telecommunications operator in which Vodafone AirTouch Plc has an economic interest from time to time. Economic interest means any influence falling short of sole control under the Merger Regulation;

“**VFAT Group**” means Vodafone AirTouch Plc and all Operators in which it owns 50 per cent or more of the voting shares or has the right to appoint 50 per cent or more of the directors;

- 1.2 In the event of any doubt regarding the interpretation of any provision of this agreement, then the provision in question shall be construed in a manner consistent with the Undertakings and with the purpose of the decision of the European Commission in Case M.1795 – Vodafone/Mannesmann.
- 1.3 The recitals are for the purposes of interpretation only and do not create binding obligations between the parties.
- 1.4 The headings of clauses are for ease of reference and will not affect the construction of this document.
- 1.5 [Indicative only – The Interpretation Act 1978 will apply for the purpose of interpreting this agreement as if it were an act of Parliament][References to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or replaced]

2 The VFAT Operator’s IOT

- 2.1 The VFAT Operator shall provide the Discounted IOT to the Operator in accordance with the principles set out in the Undertakings and in particular Clauses 21 and 22 and Annexes 1 and 4 thereof.
- 2.2 If and to the extent that the VFAT Operator does not comply with any of the requirements referred to in sub-clause 2.1 above the VFAT Operator will make such alterations to its Discounted IOT as are appropriate to ensure that its Discounted IOT does comply with such requirements and shall make such payments to the Operator as are appropriate to compensate the Operator for the extent to which VFAT Operator’s Discounted IOT has not so complied (to be determined pursuant to the fast track dispute resolution procedure referred in Section 5.2. below).

3 Provision of Discounts (this clause to be included where the parties have agreed Discounts)

3.1 Each party shall make available to the other the Discounts applicable to the relevant IOT in accordance with the criteria set out in Schedule 1 hereto.

3.2 The VFAT Operator will make the relevant Discount available to the Operator for all Eligible Calls made whilst roaming on the VFAT Operator's network by those categories of subscribers of the Operator who are equivalent to Eligible Subscribers.

3.3 The Operator will make the relevant Discount available to the VFAT Operator for all Eligible Calls made whilst roaming on the Operator's network by Eligible Subscribers.

4 IOT Billing process

(Billing will take place pursuant to the terms of the International GSM Roaming Agreement entered into between the parties as amended by this Supplementary Agreement to take account of the best technology available from time to time(e.g. TAP3) which has actually been implemented by the operators participating in the Roaming Tariff. Credit claims will be verified between the Operator and the VFAT Operator as set out below [to be agreed between the parties].

5 Dispute Resolution

5.1 [If a dispute arises under this Supplementary Agreement and is not a dispute to which clause 5.2 applies:

5.1.1 a party (the "**First Party**") will notify the other party by notice in writing (the "**Dispute Notice**") of:

- (i) the dispute;
- (ii) the relevant facts and circumstances surrounding the dispute; and
- (iii) the name and contact details of a representative of the First Party nominated by the First Party to resolve the dispute, together with that person's seniority and area of expertise within the First Party's organisation which is to be a senior level with some knowledge of the area in dispute;

5.1.2 within seven days of receipt of a Dispute Notice, a duly appointed representative of the other party who is of equivalent seniority and expertise in the relevant area in the other party's organisation to the first person's representative as specified in the Dispute Notice, will contact the First Party's duly appointed representative and the parties' representatives will use all reasonable endeavours to resolve the dispute within 14 days;

5.1.3. if the dispute is not resolved in accordance with clause 6.1.2 the dispute will be referred to the [*] of each party who shall use all reasonable endeavours to resolve the dispute within 14 days; and

5.1.4. if the dispute is not resolved in accordance with 7.1.3 the dispute will be referred to the [*] of each of the parties who shall use all reasonable endeavours to resolve the dispute within 14 days.]

[or alternatively]

[Insert a dispute resolution procedure to be negotiated and settled between the parties locally]

5.2 If a dispute arises under this Supplementary Agreement and involves the Operator disputing any matter arising in respect of those obligations of Vodafone AirTouch Plc under the Undertakings which are referred to in and implemented by this Supplementary Agreement then the following procedure will apply:

5.2.1 the Operator will notify the VFAT Operator in writing ("**Fast Track Notice**") specifying:

- (i) the dispute;
- (ii) the relevant detailed facts and circumstances surrounding the dispute; and
- (iii) a nominated arbitrator;

5.2.2 within 14 days of receiving a Fast Track Notice, the VFAT Operator will provide to the Operator notice of its nominated arbitrator and the relevant detailed facts and circumstances surrounding the dispute which will be justified by relevant data and information on network capacity, technical feasibility, accounting and technical quality which members of the Vodafone AirTouch Group are required to keep under the Undertakings;

5.2.3 within seven days of provision to the Operator of the information under clause 5.2.2, the arbitrators nominated by the Operator and the VFAT Operator will appoint a third arbitrator;

5.2.4 within 30 days of appointment of the third arbitrator, the three arbitrators will establish an arbitration tribunal to make a decision as to the compliance by the VFAT Operator and the members of the Vodafone AirTouch Group or any VFAT Operator with the Undertakings in respect to the non-discriminatory nature of the terms offered by the VFAT Operator under this Supplementary Agreement. The arbitration will be in the English language and will be conducted in accordance with the rules of the London Court of Arbitration. However, the rules of the London Court of Arbitration will be amended for any more specific provisions under this clause 5.2 and further, the arbitration tribunal shall, in addition to its powers under the rules of the London Court of Arbitration, have the same powers as the English court to award specific performance of this agreement.

5.2.5 for the purposes of sub-clause 5.2.4, any of the arbitrators will be entitled to request any relevant information from the members of the Vodafone AirTouch Group or the Operator. If the information required to be kept by the Commitments is not available, the arbitrators shall decide in favour of the Operator having taken account of the significance of the information which is unavailable;

5.2.6 the burden of proof in any dispute under this clause 5.2 is as follows:

(iv) the Operator must produce evidence of a *prima facie* case; and

(v) if the Operator produces evidence of a *prima facie* case, the arbitrator must find in favour of the Operator unless the VFAT Operator or members of the Vodafone AirTouch Group can produce evidence to the contrary;

5.2.7 the arbitrators will keep confidential information which is marked as confidential and provided to them under this clause 5.2. The standard to be attributed to confidential information, including business secrets are those as set out in accordance with European Community competition law.

5.3 If a dispute arises under this agreement and it is not resolved in accordance with clause 5.1, the parties will exclusively refer the dispute to arbitration at the London Court of Arbitration.

5.4 Recourse to the fast track dispute resolution procedure described in Clause 5.2 shall be the exclusive remedy of the parties in respect of any matter arising in respect of those obligations of Vodafone AirTouch Plc under the Undertakings which are referred to in and implemented by this Supplementary Agreement.

6 Liability

6.1 Neither party excludes liability for death or personal injury attributable to its own negligence or deceit.

6.2 The Operator will not be liable to the VFAT Operator for claims, proceedings or actions brought or made against the VFAT Operator by a user of telecommunications equipment which is connected to the VFAT Operator's system nor will the VFAT Operator be liable to the Operator for claims, proceedings or actions brought or made against the Operator by a user of telecommunications equipment which is connected to the Operator's system. The provisions of this clause 6.2 will apply notwithstanding that such claims, proceedings, or actions arise from the actions or omissions of the Operator or the VFAT Operator respectively.

6.3 The liability of each party to the other for all damages, losses and expenses which are recoverable at law arising in contract, tort (including negligence or breach of statutory duty) or otherwise arising by or from a breach of this Supplementary Agreement will be limited to • (•) for any one incident or series of events arising from a single incident and to • (•) for any series of incidents related or unrelated in any period of 12 months.

- 6.4** In any event neither party will be liable to the other for loss of profits, business or anticipated savings whether incurred directly or indirectly, or for any indirect or consequential damage whatever either in contract or otherwise.
- 6.5** The amounts specified in clause 6.3 will be adjusted on each 1 January after the date of this Supplementary Agreement by the percentage change in the • [inflation] index compared with the [•] index published in the previous year.
- 6.6** Each provision of this clause limiting or excluding liability operates separately and survives independently of the others.

7 Confidentiality

- 7.1** Subject to clause 7.2 each party will treat and procure that its directors and employees treat as confidential all information whether of a technical or business nature or otherwise relating in any manner to the business or affairs of the other party or relating to this Supplementary Agreement and will not disclose such information to any persons firm or operator (including for the avoidance of doubt, any VFAT affiliated companies) and will not use such information other than for the purposes of this Supplementary Agreement.
- 7.2** The provisions of clause 7.1 will not apply to any information which is:
- 7.2.1 in or comes into the public domain other than by default of the recipient party;
 - 7.2.2 obtained by the recipient party from a bona fide third party having free right of disposal of such information and without breach by the recipient party;
 - 7.2.3 previously known by the recipient party at the time of its receipt from the disclosing party;
 - 7.2.4 properly disclosed pursuant to and in accordance with a relevant statutory, taxation or regulatory obligation or to obtain or maintain any listing on a Stock Exchange.
- 7.3** Information which is the subject of the provisions of clause 7.1:
- 7.3.1 will only be used for the purpose for which it was delivered and/or for the purposes of performing the obligations of the parties under this Supplementary Agreement ; and
 - 7.3.2 may be disclosed to agents, sub-contractors and professional advisers of the parties who have a need to know such information provided that all such agents, sub-contractors and professional advisers will prior to receiving such information enter into a confidentiality undertaking in the form of this clause 7 (with the exception of this sub-clause) with the disclosing party.
- 7.4.** The provisions of this clause 7 will apply for a period of ten years from the date of disclosure.

8 Publicity – to be agreed between the parties

9 No Partnership

The parties hereto declare that it is not the intention of either of them to enter into a joint venture with each other by this Supplementary Agreement and nothing in this Supplementary Agreement will be deemed to constitute a partnership between the parties or constitute one party the agent of the other for any purpose whatsoever.

10 Waivers

Failure by either party at any time to enforce any of the provisions of this Supplementary Agreement will not be construed as a waiver by such party of any such provision or in any way affect the validity of this Supplementary Agreement or any party to it.

11 Assignment

11.1 This Supplementary Agreement shall be capable of assignment to the same extent as the GSM Agreement.

12 Commencement, Duration and Termination

12.1 This Supplementary Agreement will come into force on the date it is executed and, without prejudice to the provisions for earlier termination contained in this Supplementary Agreement, it will continue until terminated by either party by giving to the other party [•] months notice in writing to expire on or at any time after the Term.

12.2 This Supplementary Agreement will terminate upon:

12.2.1 The VFAT Operator ceasing to supply the Roaming Tariff

12.2.2 the expiry, earlier revocation or other termination of either party's licence, without there being a replacement or other licence granted to that party to run its telecommunications system

12.2.3 the termination of the GSM Agreement; .

12.3 The operation of this Supplementary Agreement and all interconnections and/or services or any part of any of them provided under or pursuant to this Supplementary Agreement may be suspended on 30 days' notice by either party in the event that and for so long as the other party will be in material breach of this agreement (including non-payment of any sums and

failing to meet the IOT Discount criteria set out in Schedule 1 and will have failed to remedy such breach within 30 days after receipt of a notice specifying the breach and requiring it to be remedied PROVIDED THAT in case of emergency such suspension may be implemented without prior notice but, in any case, such suspension will only apply to such services provided under this Supplementary Agreement as are affected by the emergency.

12.4 This Supplementary Agreement may be terminated immediately by either party:

12.4.1 upon the expiration of 60 days' written notice given by either party to the other at any time following the suspension in accordance with and pursuant to clause 12.3 provided that the other remains in material breach of this Supplementary Agreement upon such expiry; or

12.4.2 if either party will have been prevented from performing all or a substantial part of its obligations under this Agreement as a result of an event of force majeure for a period exceeding 60 days for a reason mentioned in clause 13.1; or

12.4.3 by notice in writing to the other if the other ceases to trade or a resolution or petition to wind up the other party is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or a receiver of any of the other party's assets or undertaking is appointed or if the other party becomes unable to pay its debts within the meaning of any relevant insolvency legislation or other circumstances arise which entitle the court or a creditor to appoint a receiver or administrator or to make a winding-up order in respect of the other party.

12.5 Termination or expiry of this Supplementary Agreement will not:

12.5.1 operate as a waiver of any breach by a party of any of the provisions of this Supplementary Agreement and will be without prejudice to any rights, liabilities or obligations of either party which have accrued up to the date of such termination or expiry; and

12.5.2 affect the coming into force or the continuation in force of any provision of this Supplementary Agreement which is expressly or by implication intended to come into force on or after such termination or expiry.

13 Force Majeure

13.1 Neither party will be liable for any breach of this Supplementary Agreement caused by force majeure which expression will mean act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority, industrial disputes of any kind (whether or not involving that party's employees), fire, lightning, explosion, subsidence, inclement weather, acts or omissions of persons or bodies for whom the party affected by the force majeure is not responsible or any other cause whether similar or dissimilar outside the control of that party.

13.2 The party affected by force majeure will promptly notify the other of the estimated extent and duration of such inability to perform its obligations.

13.3 Upon the cessation of the delay or failure resulting from force majeure the party affected by force majeure will promptly notify the other of such cessation.

14 Severability

14.1 The validity or enforceability for any reason of any part of this Supplementary Agreement will not prejudice or effect the validity or enforceability of the remainder of this agreement.

14.2 If further lawful performance of this Supplementary Agreement or any part of it will be rendered impossible by the final judgement or final order of any court of competent jurisdiction, commission, or governmental agency or similar authority having jurisdiction over either party, the parties undertake that they will immediately use their best endeavours to agree on an amendment or amendments to this Supplementary Agreement or on modifications of their practices under this Supplementary Agreement in such manner as will fully comply with such judgement or order and render further performance lawful.

15 Governing Law

This Agreement and all matters relating to it will be governed, construed and take effect in accordance with the laws of governing the International GSM Roaming Agreement between the parties.

16 Notices

16.1 Any notice or other communications required to be given for the purposes of this Supplementary Agreement will be given by letter sent by first class pre-paid post or by facsimile immediately confirmed by a letter sent by first class pre-paid post.

Any letter sent for the purposes of this Supplementary Agreement will, if addressed to the Operator, be sent to:

The Secretary

Facsimile:

and if addressed to the VFAT Operator, be sent to:

The Secretary

Facsimile:

or such other address and/or facsimile number in [•] as may be notified in writing by either party to the other.

16.2 Any notice sent by post will be deemed (in the absence of evidence of earlier receipt) to have been delivered on the third working day following its despatch and in proving the fact of despatch it will be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted. Any notice by facsimile will be deemed to have been received upon confirmation in the transmission log of the facsimile machine that the facsimile has been received in its entirety.

17 Previous agreements between the parties

This Supplementary Agreement supersedes all previous agreements, understandings or commitments made between the parties or representations made by either party whether oral or written relating to the subject hereof.

In the event of a contradiction between any terms of this Supplementary Agreement and the International GSM Roaming Agreement entered into between the parties, the provisions of this Supplementary Agreement will prevail. • [Further provisions may be required by applicable local laws].

18 Variation

18.1 Subject to clause 18.2 below, except where otherwise expressly provided for in this Supplementary Agreement, no amendment, variation or waiver of any provision of this Supplementary Agreement will be effective except by a written instrument signed by the duly authorised representatives of each of the parties.

18.2 The VFAT Operator may from time to time serve a written notice on the Operator amending Schedule 1 and/or Schedule 2 hereto.

AS WITNESS the hand of a duly authorised representative of each of the parties this [•] day of [•].

Signed by

[Operator]

Signed by

[VFAT subsidiary]

SCHEDULE 1 – [IOT Discounts Criteria] {

- Discounts
- Discount differentiation
including but not limited to increased volumes, brand development, joint product promotion and efforts in achieving an efficient technical implementation of the Service (e.g. through IOT billing reconciliation).
- Qualification criteria
[credit risk, technical interface compliance etc.]

SCHEDULE 2 - DISCOUNTS ROAMING ZONE