



**Ultrafast Fibre Input Services Wholesale
Services Agreement**
General Terms

CONTENTS

1.	CONSTRUCTION	4
2.	INITIATION.....	7
3.	CONNECTING TO THE LFC NETWORK	8
4.	ORDERING SERVICES.....	9
5.	SUPPLY OF SERVICES.....	10
6.	FAULTS	10
7.	PAYMENT.....	11
8.	SECURITY REQUIREMENTS.....	14
9.	THE ACCESS SEEKER'S RESPONSIBILITIES	15
10.	END USERS.....	15
11.	FORECASTING	16
12.	LFC EQUIPMENT	17
13.	PERSONAL PROPERTY RIGHTS.....	19
14.	INTELLECTUAL PROPERTY RIGHTS	19
15.	INFORMATION	20
16.	RECORDS.....	21
17.	INDEMNITIES	21
18.	LIABILITY	22
19.	FORCE MAJEURE	23
20.	DISPUTE RESOLUTION	23
21.	SUSPENSION OF INPUT SERVICES	24
22.	TERMINATION.....	25
23.	CONSEQUENCES OF TERMINATION	26
24.	CHANGES.....	26
25.	GENERAL	29

INPUT SERVICES WHOLESALE SERVICES AGREEMENT

Between: **ULTRAFAST FIBRE LIMITED**, a New Zealand registered company (number 3226213) (the **LFC**):

Postal Address:	PO Box 27050, Garnett Avenue, Hamilton 3247
Address for Service:	11 Ken Browne Drive, Te Rapa, Hamilton 3200
Fax Number:	
Email Address:	
Account Manager:	

And: **[INSERT LEGAL NAME OF ACCESS SEEKER]**, [a [New Zealand] registered company (number **[insert]**)]
(the **Access Seeker**):

Postal Address:	
Address for Service:	
Fax Number:	
Email Address:	
Account Manager:	

This Input Services Wholesale Services Agreement governs the supply of Input Services by the LFC to the Access Seeker.

SIGNED for and on behalf of
ULTRAFAST FIBRE LIMITED by:

SIGNED for and on behalf of
[NAME OF ACCESS SEEKER] by:

Signature of Authorised Person

Signature of Authorised Person

Name of Authorised Person

Name of Authorised Person

Position

Position

Date

Date

GENERAL TERMS

1. CONSTRUCTION

1.1 **Agreement:** This Agreement comprises the attached cover pages (signed by both parties), these General Terms, the Input Services Price List and each Input Services Service Order.

1.2 **Precedence:** If there is any conflict or inconsistency between any of the documents forming part of this Agreement, the order of precedence is:

- (a) these General Terms;
- (b) the Input Services Price List;
- (c) each Input Services Service Order (in order of acceptance, with the most recent Input Services Service Order having the highest precedence) and, in relation to the documents forming part of the Input Services Service Order:
 - (i) the base terms of that Input Services Service Order;
 - (ii) the applicable Input Services Service Level Terms;
 - (iii) the applicable Input Services Service Description; and
 - (iv) the applicable Input Services Operations Manual; and
- (d) the cover pages.

1.3 **Defined Terms:** In this Agreement, unless the context requires otherwise:

Access Seeker Premises means a premises which the Access Seeker owns, occupies or has control over and where LFC (Access Seeker) Equipment is (or is to be) installed;

Agreement has the meaning given in clause 1.1;

Agreement Change has the meaning given in clause 24.1(a);

Best Industry Practice means the exercise of the skill, diligence, prudence, foresight and judgement, as determined by reference to good international practice generally applied in OECD countries, which would be expected from a highly skilled and experienced person under the same or similar circumstances to those applicable under the Input Services;

Bill Rate means the average 90 day bank bill mid rate as quoted on Reuters Screen page BKBM or the equivalent page replacing page BKBM (known at the date of these terms as the FRA rate) at or about 10.45 am on the relevant date or, if at that time page BKBM or the equivalent replacement page is not available, the last rate quoted on that page before it became unavailable;

Business Day means a calendar day, other than a Saturday, a Sunday, a New Zealand public holiday, or a regional anniversary day in the region in which the Access Seeker is providing services (as the context requires);

Business Hours means 8 am to 5 pm on a Business Day;

Candidate Area means, in relation to an Input Service, a part of the geographic area in which the Input Services are available, as described in the applicable Input Services Operations Manual;

CIP means Crown Infrastructure Partners Limited, a New Zealand registered company (number 2346751);

Coverage Area has the meaning given in the Input Services Service Level Terms for Input Direct Fibre Access Service & PONFAS (UFB1 Candidate Areas);

Downtime means the length of time that an Access Seeker is without service, measured from the time that a fault is detected, either by an Access Seeker report or by an LFC Network surveillance system, to the time the fault is resolved, and the service is restored. Downtime excludes service interruptions as a result of any End User, Reseller or Access Seeker actions and/or equipment;

Effective Date means the date that this Agreement is signed by both parties or, if there are 2 different dates, the later date;

Emergency means an event or circumstance requiring the LFC to take immediate action:

- (a) to protect the Network, the Input Services or the network of any Other Access Seeker; or
- (b) to respond to an actual or suspected Network Threat; or
- (c) to comply with an order or instruction of CIP, a Crown agency or any other competent authority in connection with a Network Threat which the LFC is required to comply with as a matter of law; or
- (d) to provide or safeguard network access and capacity for essential services; or
- (e) to mitigate or eliminate a threat to the safety or health of any person or property;

End User means the recipient of a service which incorporates an Input Service, other than a Reseller (except as otherwise provided in the definition of that term) or the Access Seeker;

End User Premises means either: (i) an SDU; or (ii) an End User Tenancy, in each case which the End User owns, occupies or has control over and where LFC (End User) Equipment is (or is to be) installed and to which the Access Seeker requests the LFC to provide an Input Service. For the avoidance of any doubt, End User Premises does not include NBAPs;

End User Tenancy means the occupancy of an End User (for example, an apartment, townhouse, office or shop) in a MDU to which the Access Seeker requests the LFC to provide an Input Service. For the avoidance of any doubt, End User Tenancy does not include common areas within a MDU, and NBAPs;

External Event means an event that is caused by an act or omission of, or by any equipment of, any person other than the LFC and its contractors and agents;

Fault has the meaning given in clause 6.1(a);

Force Majeure Event means an event or circumstance beyond the reasonable control of either party that makes it impossible or illegal to perform, or prevents compliance with or the performance of, a party's obligations under this Agreement, including:

- (a) fire, flood, storm, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, or act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) any act of a third party (not being an employee, agent or contractor of that party) engaged in subversive or terrorist activity or sabotage,

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or mitigated by:
 - (i) implementing any contracted business continuity or disaster recovery service or any contingency plan agreed between the parties or that a party has represented it has in place; or
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or information that is available in the public domain; or
- (f) it is an event that the party affected is or was directly responsible for; or
- (g) that event is constituted or caused by any failure of a contractor or supplier of the party seeking to rely on clause 19 unless and to the extent that the contractor or supplier was itself affected by an event that, if it occurred in relation to either party, would have been a Force Majeure Event; or
- (h) the event is constituted or caused by the insolvency of either party or a contractor or supplier of the party seeking to rely on clause 19, or lack of funds for any reason; or
- (i) risks associated with the event have been accepted by the affected party by the terms of this Agreement; or
- (j) the event is constituted or caused by a change in law;

General Terms means clauses 1 to 25 of this Agreement;

GST means goods and services tax, as defined in the Goods and Services Tax Act 1985;

Handover Point means the point in the LFC Central Office or LFC POI where an Input Service is handed over from the LFC to the Access Seeker;

Input Fibre Access Services means the Input Fibre Access Service described in the Input Fibre Access Services Service Description;

Input Services means the input services to be made available by the LFC on its fibre-to-the-premises access network on an equivalence basis from 1 January 2020 in accordance with the Undertakings and as more particularly described in each of the Input Services Service Descriptions, Input Services Service Level Terms and Input Services Operations Manual;

Input Services Ancillary Charges means all amounts payable under this Agreement by the Access Seeker for Input Services Ancillary Services, as further described in the Input Services Price List;

Input Services Ancillary Service means a service or equipment set out in the Input Services Service List supplied in connection with an Input Service;

Input Service Category means:

- (a) the Input PON Fibre Access Service; and
- (b) the Input Central Office and POI Co-location Service,

and each such category shall include any additional service comparable to an existing Input Service within that category or any replacement service for any Input Service within that category, as determined by the LFC from time to time;

Input Service Charges means all amounts payable under this Agreement by the Access Seeker for an Input Service and an Input Service Ancillary Service, as further described in the Input Services Price List;

Input Services Forum has the meaning given in clause 24.11;

Input Services Operations Manual means the operations manual for an Input Service, maintained by the LFC and available at www.ultrafast.co.nz, as amended from time to time;

Input Services Price List means the list of Input Service Charges payable by access seekers for Input Services and Input Services Ancillary Services which are available at www.ultrafast.co.nz, as amended from time to time;

Input Services Service Level Terms means the description of the service levels and service rebates applicable to an Input Service;

Input Services Service Description means the service description for the relevant Input Service supplied by the LFC;

Input Services Service List means all of the Input Services listed in the Input Services Price List;

Input Services Service Order means an Input Services Service Request accepted by the LFC in accordance with clause 4.4(b)(i), and includes Input Services Service Description, Input Services Service Level Terms, Input Services Operations Manual and Input Service Charges applicable to the Input Services to be provided by the LFC that are the subject of that Input Services Service Request;

Input Services Service Request means a written or electronic request for the supply of a new Input Service, Input Service or Ancillary Service, or a move, add, change or termination of an existing Input Service, Input Service or Ancillary Service provided by the LFC under this Agreement, issued by the Access Seeker to the LFC in accordance with the applicable Input Services Operations Manual;

Input Service Start Date means the date that the LFC activates or otherwise makes available Input Service ordered by the Access Seeker;

Input Services Wholesale Services Agreement means the LFC's standard wholesale services agreement for the supply of Input Services to access seekers in accordance with the Undertakings;

Interconnection Point means the interconnection point as described in the applicable Input Services Service Description;

Invoice Error has the meaning given to it in clause 7.6(a);

LFC (Access Seeker) Equipment means any equipment or software owned, operated or controlled by the LFC (including any connecting line and all associated equipment and infrastructure) that the LFC installs on (or any of the LFC's predecessors has installed on) an Access Seeker Premises or Reseller Premises for the purpose of providing an Input Service to such locations now or in the future. For the avoidance of any doubt, LFC (Access Seeker) Equipment does not include any LFC (End User) Equipment but will include an ONT (if applicable) and will include any such equipment or software that the LFC installs;

LFC Central Office means the LFC premises defined as the "Central Office" in the applicable Input Services Operations Manual;

LFC (End User) Equipment means any equipment or software owned, operated or controlled by the LFC (including any connecting line and all associated equipment and infrastructure) that the LFC installs on (or any of the LFC's predecessors has installed on) an End User Premises for the purpose of providing an Input Service to such locations now or in the future. For the avoidance of any doubt, LFC (End User) Equipment does not include, without limitation, the ONT;

LFC Equipment means the LFC (End User) Equipment and the LFC (Access Seeker) Equipment;

LFC Input Services (End User) Terms means the LFC's applicable standard terms, which are intended to be entered into between the LFC and the relevant End User and relate to LFC (End User) Equipment, and which are in the form available at www.ultrafast.co.nz, as amended from time to time;

LFC POI means the LFC premises defined as the "POI" in the applicable Input Services Operations Manual;

Minimum Service Term means the minimum term for supply by the LFC of an Input Service, being:

- (a) the period of 12 months following the applicable Input Service Start Date; or
- (b) any longer period specified in the applicable Input Services Service Order or otherwise agreed between the parties in writing;

Minimum Standard means a G.711A codec standard, a packetisation rate of 10ms and a maximum delay allowance for jitter of 20ms, and providing an analogue interface compliant with PTC 220 Section 5;

Multi Dwelling Unit (or MDU) means a premises containing within its boundaries more than 1 residential or commercial occupancy (or both). Examples of MDUs (albeit a non-exhaustive list) are set out in the relevant Input Services Operations Manual;

NBAP (or Non-Building Access Point) means a location, other than End User Premises, Access Seeker Premises or Reseller Premises, which may not have a physical address;

Network has the meaning given to it in the Undertakings;

Network Threat means any External Event that is likely to result in harm, degradation or loss of service to the Network, the Access Seeker, Other Access Seekers, Resellers or End Users or a threat to national security if allowed to spread or continue;

ONT means the LFC Optical Network Terminal that terminates the Input Services in the End User Premises, Access Seeker Premises or Reseller Premises (as applicable);

Operational Readiness Programme means the programme of work to be undertaken by the Access Seeker to prepare for connection to the Network and the supply of Input Services by the LFC to the Access Seeker, including the testing and commissioning of processes, products and interfaces, as described in the Input Services Operations Manual;

Other Access Seeker means any access seeker (other than the Access Seeker) which is a party to a Input Services Wholesale Services Agreement with the LFC;

Reseller means any person who is a customer receiving an Input Service directly or indirectly from the Access Seeker for the purposes of resale. For the avoidance of any doubt, a Reseller that receives an Input Service from the Access Seeker for the Reseller's own internal purposes (i.e. self-consumption) will be an End User under this Agreement;

Reseller Premises means premises which the relevant Reseller owns, occupies or has control over and where LFC (Access Seeker) Equipment is (or is to be) installed;

Security Requirements means the requirement under clause 8 to either have an Acceptable Credit Rating or provide a Security;

Service means an Input Service or an Input Services Ancillary Service;

Service Provider has the meaning given to that term in the UFB Wholesale Services Agreement;

Single Dwelling Unit (or **SDU**) means premises containing within its boundaries only 1 residential or commercial occupancy, excluding any part of the land used to locate, or otherwise used to connect to, a NBAP;

Term means the duration of this Agreement, as described in clause 2.1;

Third Party Premises means any privately owned land or buildings adjacent to End User Premises, Access Seeker Premises or Reseller Premises (as applicable) which is used (or is to be used) to connect LFC Equipment to the rest of the Network in circumstances where, at the time of installation of the relevant LFC Equipment, the owner, occupier or controller of that adjacent land or building will not benefit from that connection directly by receiving a service which incorporates an Input Service through that connection. For the avoidance of any doubt, Third Party Premises does not include End User Premises, Access Seeker Premises or Reseller Premises;

UFB Price Cap means a UFB price cap published by CIP on its website;

UFB Wholesale Services Agreement means the LFC's wholesale services agreement which is entered into between the LFC and a Service Provider and which relates to the supply of UFB services by the LFC to that Service Provider;

Undertakings means the Deed of Open Access Undertakings for Fibre Services entered into by the LFC in favour of the Crown in accordance with Part 4AA of the Telecommunications Act 2001;

User Network Interface or **UNI** has the meaning given to that term in the Input Services Operations Manual; and

Wholesale Service Input Services Agreement (and **Input Services WSA**) means an agreement which is in substantially similar form to this Agreement save for the fact that it is entered into between the LFC and any Other Access Seeker.

- 1.4 **Defined Terms in Other Documents:** Unless the context requires otherwise, capitalised terms used in this Agreement, but not defined in clause 1.3, have the meanings set out in the applicable Input Services Service Level Terms, Input Services Service Description or Input Services Operations Manual.

2. INITIATION

- 2.1 **Term:** This Agreement has effect from the Effective Date and will continue until terminated in accordance with clause 22.

- 2.2 **Conditions:** The LFC's performance of any obligations under this Agreement is conditional upon the Access Seeker:

- (a) completing the applicable Operational Readiness Programme to the reasonable satisfaction of the LFC;
- (b) fulfilling the Security Requirements;
- (c) connecting to the Network at the applicable Interconnection Point; and
- (d) complying with its obligations with respect to the LFC Input Services (End User) Terms as required under clause 10.2(c).

- 2.3 **Reasonable Assistance:** The LFC will provide the Access Seeker with such assistance as the Access Seeker reasonably requires to comply with the conditions in clauses 2.2(a) and (c).

- 2.4 **Failure of Conditions:** The LFC may terminate this Agreement for irremediable breach under clause 22.1(a) if the Access Seeker has not continued to meet the Security Requirements during the Term, and the Access Seeker has not remedied that breach within the period of 20 Business Days following the date that the LFC has given the Access Seeker notice of such failure.

- 2.5 **Contract Management:** Each party will appoint and maintain throughout the Term a suitably qualified and experienced person as account manager. Each account manager will supervise the performance of his or her appointing party's obligations under, and liaise with the other party's account manager regarding all aspects of, this Agreement. The initial account managers appointed by each party are named on the cover page of this Agreement.

3. CONNECTING TO THE LFC NETWORK

3.1 **Interconnection Point:** The Access Seeker is responsible for connecting to the Network at the Interconnection Point. The LFC may only change an Interconnection Point if a change is necessary to protect the security or integrity of that Interconnection Point in order to maintain the continuity of supply of the Input Services. In the event of any such change:

- (a) the LFC will give the Access Seeker not less than 6 months' notice, unless the change is required to respond to a change in the Undertakings or an Emergency (in which case the LFC will give the Access Seeker as much notice as is practicable in the circumstances, acting reasonably);
- (b) the LFC will submit the proposed change to the Input Services Forum in accordance with clause 24.6 and consult in good faith with the Access Seeker through the Input Services Forum during the notice period to understand the implications of the change for the Access Seeker and will use all reasonable endeavours to mitigate the cost to the Access Seeker of reconnection to a new Interconnection Point, and will not charge the Access Seeker any fee for that reconnection; and
- (c) the Access Seeker will be responsible, at its own cost, for reconnecting to the Network at the new Interconnection Point or Interconnection Points, including managing customer migration and data transfers.

If a negligent act or omission of the LFC or its contractors or agents has directly given rise to the need for a change to the Interconnection Point to protect the security or integrity of that Interconnection Point, then clauses 3.1(a) and (b) (but not clause 3.1(c)) will apply, and:

- (d) the LFC will reimburse the Access Seeker for its reasonable costs in reconnecting to the Network at the new Interconnection Point or Interconnection Points, including managing customer migration and data transfers; and
- (e) such reconnection, migration and transfers will be carried out in the way (consistent always with good industry practice) that the LFC considers to be the most efficient.

3.2 **Access Seeker Equipment:** In relation to all equipment (including software):

- (a) used by the Access Seeker or Resellers to connect to the Network; or
- (b) provided to End Users by the Access Seeker or Resellers,

the Access Seeker (in the case of Access Seeker equipment (including software)):

- (c) is responsible for selecting, supplying and maintaining that equipment, and will ensure that each item of equipment meets applicable standards set out in the Input Services Operations Manual;
- (d) will test that equipment to ensure that it will work in connection with the Network;
- (e) will follow the LFC's reasonable directions in relation to the connection of that equipment; and
- (f) will make any modifications to that equipment that the LFC reasonably requires to avoid any danger or interference that equipment may cause to the Input Services, other network operators, Other Access Seekers' services, or the Network,

and in the case of Reseller equipment (including software), the Access Seeker will procure that the Reseller carries out each of the obligations in clauses 3.2(c) to (f).

3.3 **LFC Premises:**

- (a) If the supply of any Input Service requires the installation of Access Seeker equipment (which for these purposes includes Reseller equipment) on the LFC's premises, the LFC will:
 - (i) ensure that the Access Seeker's representatives have safe access to those premises at any time in accordance with the applicable Input Services Operations Manual so that they can install, inspect, maintain, replace or remove the equipment;
 - (ii) provide a safe and secure operating environment for the equipment;
 - (iii) use its best endeavours to protect the equipment from environmental hazards (including radio or electrical interference, power fluctuations and other abnormal environmental conditions);
 - (iv) use all reasonable endeavours to protect the equipment from alteration, repair, movement or other interference, except by the Access Seeker or with the Access Seeker's prior written consent;
 - (v) immediately notify the Access Seeker if it becomes aware of:
 - (A) any damage or unauthorised access to the equipment; or
 - (B) that the equipment requires maintenance;
 - (vi) not damage or interfere with the equipment, and promptly notify the Access Seeker if it is lost, stolen or damaged; and
 - (vii) not sell, lease, encumber, or part with possession of, that equipment.
- (b) The Access Seeker will ensure that, when attending the LFC's premises, its representatives comply with the LFC's reasonable directions, and all health, safety and security policies and procedures notified to the Access Seeker by the LFC during the Term.

- 3.4 **Capacity:** The parties acknowledge that the LFC has no responsibility for the Access Seeker's decisions regarding maintaining sufficient equipment, processes and capacity (including spares, redundancy and backhaul) to operate and maintain its network and services.
- 3.5 **LFC Consents:** Subject to clauses 10.2(c) to (g), 12.2 and 12.3, the LFC will be responsible for obtaining and maintaining any and all third party authorisations, licences and consents required by the LFC generally to operate the Network, including local territorial authority, council and Land Transport Agency consents for network construction and civil works.

4. ORDERING SERVICES

- 4.1 **Input Services Service List:** The Input Services Service List describes the Input Services and Input Services Ancillary Services available to be provided by the LFC under this Agreement. During the Term the Access Seeker may request the supply of an Input Service in accordance with the terms of this clause 4.

- 4.2 **Pre-Qualification System:** The LFC will maintain a pre-qualification system in accordance with the Input Services Operations Manual.

- 4.3 **Input Services Service Requests:** The Access Seeker may:

- (a) request the supply of an Input Service; or
- (b) request a change to an existing Input Service; or
- (c) terminate an existing Input Service,

by completing and delivering to the LFC an Input Services Service Request, in accordance with the process set out in the Input Services Operations Manual applicable to that Input Service.

- 4.4 **Input Services Service Order:** The following process will govern the formation of Input Services Service Orders, except to the extent expressly varied by the Input Services Operations Manual applicable to the Input Service and associated Input Services Ancillary Services that are the subject of the Input Services Service Order:

- (a) Within 4 Business Hours following receipt of an Input Services Service Request the LFC will acknowledge receipt.
- (b) Following acknowledgement of receipt of an Input Services Service Request the LFC will, within the timeframe set out in the applicable Input Services Operations Manual, notify the Access Seeker that either:
 - (i) the Input Services Service Request is accepted (and becomes an Input Services Service Order), setting out the order number and the planned Input Service Start Date for the new or changed Input Service and associated Input Services Ancillary Services (as applicable); or
 - (ii) further information is reasonably required before the Input Services Service Request can be accepted, identifying the information required; or
 - (iii) if it has good cause to reject the Input Services Service Request (acting reasonably), that the Input Services Service Request is rejected, giving reason(s).
- (c) The Access Seeker may withdraw an Input Services Service Request by notice to the LFC at any time before the Input Services Service Request is accepted in accordance with clause 4.4(b)(i).
- (d) An Input Services Service Order will bind the LFC and the Access Seeker, and form part of this Agreement, from the date that the Input Services Service Request that constitutes the Input Services Service Order is accepted by the LFC in accordance with clause 4.4(b)(i).
- (e) Unless specifically agreed otherwise in an Input Services Service Order, the Access Seeker may request a change to an Input Services Service Order at any time prior to the planned Input Service Start Date, by notice to the LFC. Clause 4.4(b) will apply to that change request as if it was an Input Services Service Request.
- (f) If the actual Input Service Start Date for an Input Service is later than the planned Input Service Start Date set out in an Input Services Service Request accepted under clause 4.4(b)(i), any service rebate payable under clause 6.5 in relation to that Service will be calculated from the planned Input Service Start Date.

4.5 Availability:

- (a) Notwithstanding anything to the contrary in this Agreement or any Input Services Service Order, subject to clause 4.5(b), the LFC is not obliged to make an Input Service available in a geographic location where either:
 - (i) the area is not located in a Coverage Area;
 - (ii) the Undertakings do not apply;
 - (iii) the LFC has not previously made that Service available, and either:
 - (A) there is no Network; or
 - (B) the Network is not technically capable of providing the Input Service,

provided that this clause 4.5(a)(ii) will not excuse the LFC's obligation to comply with the Undertakings; or

- (iv) subject to clause 4.5(c), although the Input Service is available at that geographic location, the further provision of that Service at that geographic location (either by itself or in combination with other Services provided at that geographic location) exceeds the capacity or technical capability of the Network (but not as a result of any fault in the Network or which would represent a breach of the Undertakings) and, in the LFC's reasonable opinion, it is not economically viable to undertake the work necessary to address those capacity or technical capability issues to support the requested Service (**Upgrade Work**), and the LFC will provide reasonable supporting evidence of this to the Access Seeker as soon as reasonably practical on request.
 - (b) Save as provided in clause 4.5(a)(ii), the LFC will be obliged to make an Input Service available to the extent otherwise required by this Agreement and any applicable Input Services Service Order in a geographic location where the LFC has previously made that Service available and in accordance with the LFC's obligations in the Undertakings.
 - (c) Where clause 4.5(a)(iii) applies, the LFC will consult with the Access Seeker as soon as reasonably practical in relation to the Upgrade Work with the objective of identifying a cost-effective solution that enables the LFC to undertake the Upgrade Work and make the requested Service available.
 - (d) The LFC will, from time to time, advise the Access Seeker of the geographic locations in which the Input Services are available and the proposed launch dates of Input Services.
- 4.6 **Specifications:** The specifications of an Input Service are set out in the applicable Input Services Service Description. The LFC will provide the Input Service to meet those specifications. Subject to the Undertakings, the LFC is free to determine the manner in which it uses technology to provide an Input Service, provided those specifications continue to be met.

5. SUPPLY OF SERVICES

- 5.1 **Start Supply:** The LFC will make the supply of the Input Service and associated Input Services Ancillary Services available to the Access Seeker on the Input Service Start Date specified in the applicable Input Services Service Order or, if no Input Service Start Date is specified, in accordance with the provisioning service level under the applicable Input Services Service Level Terms.
- 5.2 **End Supply:** The LFC will end the supply of an Input Service if the LFC is no longer obligated to provide the Input Services or if the Undertakings are withdrawn or otherwise deemed under law to no longer have effect.
- 5.3 **Continuity of Supply:** An Input Services Service Order will continue until terminated in accordance with this Agreement. A change to an Input Services Service Order will not initiate a new Input Services Service Order, or cause the existing Input Services Service Order to terminate, unless expressly agreed in writing. In particular, a change to an Input Services Service Order that is implemented by the LFC electronically and does not require a physical visit to a site or Interconnection Point will not cause the Input Services Service Order to terminate.
- 5.4 **Service Standards:** When providing an Input Service the LFC will:
- (a) use reasonable care and skill;
 - (b) meet the specifications for that Service as set out in the applicable Input Services Service Description; and
 - (c) meet the Input Services Service Levels for that Service, as set out in the applicable Input Services Service Level Terms together with any specific service levels that the parties have agreed in writing will apply in respect of an individual Reseller or End User (subject always to the LFC's obligation to provide Input Services on a non-discriminatory basis).
- 5.5 **Maintaining the Network:** Without prejudice to the LFC's obligations to meet the availability and connection service levels specified in the Input Services Service Level Terms, the LFC will temporarily suspend or restrict an Input Service in order to carry out maintenance or development work on the Network. In doing so the LFC will, unless the suspension or restriction is required to respond to an Emergency:
- (a) give the Access Seeker not less than 5 Business Days' notice of the suspension or restriction;
 - (b) use best endeavours to ensure that the suspension or restriction takes place during the planned outage window for that Service, as specified in the applicable Input Services Operations Manual; and
 - (c) use its best endeavours to minimise disruption to the Access Seeker, Resellers and End Users, and fully reinstate the Input Service as soon as the maintenance or development work is completed.

6. FAULTS

- 6.1 **Responsibility for Faults:**
- (a) The LFC is responsible for monitoring, diagnosing, repairing and resolving any fault in an Input Service and the LFC's layer 1 Network (a **Fault**) in accordance with the procedures set out in each applicable Input Services Operations Manual.
 - (b) The LFC is not responsible for any fault in the Access Seeker's equipment or network but may, at the Access Seeker's request and cost, agree to fix such faults. Notwithstanding the foregoing and without prejudice to the Access Seeker's other rights and remedies under this Agreement, where that fault arises as a result of a breach of this Agreement or any wilful or negligent act or omission by the LFC or any of its contractors or agents, the LFC will, at the request of the Access Seeker, fix such fault at the LFC's sole cost.
 - (c) The LFC will provide such access to the LFC's operational support systems and business support systems, documentation and training as is necessary for the Access Seeker to meet its obligations set out in clause 6.2.

6.2 Reporting of Faults:

- (a) The Access Seeker will use its best endeavours to operate, throughout the Term, a competent and sufficiently resourced Fault reporting service for its Resellers and End Users, and to report Faults in respect of any Input Services used for the Access Seeker's internal purposes.
- (b) The Access Seeker will comply with its obligations in the applicable Input Services Operations Manual in relation to any Input Service where the Access Seeker, or the LFC, identifies a Fault as not being a Fault that the LFC is responsible for under clause 6.1.
- (c) Before reporting a Fault to the LFC the Access Seeker will:
 - (i) use its reasonable endeavours to confirm the presence of the Fault;
 - (ii) perform an initial diagnosis to identify where the Fault has arisen;
 - (iii) use its reasonable endeavours to investigate the Fault and to find out all relevant information from Resellers and End Users; and
 - (iv) use its reasonable endeavours to confirm that the fault is a Fault that the LFC is responsible for under clause 6.1.
- (d) When reporting a Fault to the LFC, the Access Seeker will provide to the LFC all relevant information held by the Access Seeker in respect of the Fault.
- (e) If the Access Seeker's diagnosis of a fault indicates that it is a Fault that the LFC is responsible for, the Access Seeker will report that Fault to the LFC in accordance with the procedure set out in the applicable Input Services Operations Manual.
- (f) A Fault relating to an Input Service will be managed by the LFC and the Access Seeker in accordance with the LFC's Input Services Service Level Terms.

6.3 **Fault Affecting a Input Service:** If the LFC discovers a Fault that affects an Input Service that is being provided to the Access Seeker by the LFC under this Agreement, the LFC will promptly notify the Access Seeker of that Fault.

6.4 Resolution of Faults:

- (a) The LFC will use its best endeavours to diagnose and resolve each Fault promptly, and in any event will diagnose and resolve each Fault in accordance with the applicable Input Services Service Levels set out in the Input Services Service Level Terms for the applicable Input Service.
- (b) The Access Seeker will give the LFC and its representatives such access to the relevant Access Seeker Premises as the LFC considers reasonably necessary to diagnose and resolve a Fault, and will use all reasonable endeavours to procure that Resellers and other persons controlling any premises (where LFC (Access Seeker) Equipment is installed) or applicable Third Party Premises do the same if the LFC is required to enter the relevant Reseller Premises or Third Party Premises.

6.5 Service Rebate:

- (a) The LFC will provide each Service to meet or exceed the Input Services Service Levels set out in the Input Services Service Level Terms applicable to that Service, in accordance with clause 5.4.
- (b) If the LFC fails to meet an Input Services Service Level it will, subject to clause 6.5(c) and the applicable Input Services Service Level Terms, credit an amount equal to the applicable service rebate set out in the Input Services Service Level Terms (a service rebate) to the next invoice payable for that Service or, if no further invoice is payable in respect of that Service, will pay or otherwise refund the amount to the Access Seeker.
- (c) No service rebate will be payable for a failure to meet an Input Services Service Level if that failure was caused by the suspension, restriction or cessation of the applicable Service in accordance with clauses 5.2, 21 or 22 (excluding where the Access Seeker exercises its right to terminate pursuant to clauses 22.1(a) or 22.1(b) or 22.1(d)).
- (d) If, as a result of 1 incident or set of circumstances, the LFC fails to meet 2 or more Input Services Service Levels in respect of an instance of an Input Service provided in respect of the same End User at the same End User Premises, the LFC will only be obliged to provide a rebate for the failure to meet 1 of those Input Services Service Levels (the greater of the rebates).
- (e) If, as a result of 1 incident or set of circumstances, the LFC fails to meet 2 or more Input Services Service Levels in respect of an instance of an Input Service provided to the Access Seeker at the same Access Seeker Premises and used for the Access Seeker's internal purposes, the LFC will only be obliged to provide a rebate for the failure to meet 1 of those Input Services Service Levels (the greater of the rebates).

7. PAYMENT

7.1 Input Service Charges:

- (a) The Access Seeker will pay the Input Service Charges, plus GST (if any) in accordance with this clause 7.
- (b) Except as expressly provided otherwise in this Agreement, recurring Input Service Charges (as indicated in the Input Services Price List) will be invoiced in advance, and transactional and Input Services Ancillary Charges (as indicated in the Input Services Price List) will be invoiced in arrears.

7.2 **Additional Charges:** The LFC will charge (as part of the Input Services Ancillary Charges) the Access Seeker on a time and materials basis, in accordance with the schedule of hourly rates for LFC personnel set out in the Input Services Price List, to recover any costs that it incurs (acting reasonably):

- (a) as a direct result of any rework required to implement a change to an Input Services Service Order made in accordance with clause 4.4(e), where the LFC has commenced fulfilment of the Input Services Service Order before the change request is made;
- (b) in the identification, diagnosis and resolution of any fault, and restoration of the Input Service, an Input Service or Network (as applicable), if the fault:
 - (i) is caused by an act or omission of, or by any equipment of, the Access Seeker or a Reseller; or
 - (ii) subject to clause 6.2(b), falls outside the scope of the LFC's responsibilities (set out in clause 6.1); or
 - (iii) is reported by the Access Seeker but cannot be identified or replicated by the LFC after the LFC has used all reasonable endeavours to do so,

but will seek the Access Seeker's express authorisation before diagnosing or resolving a fault set out in clause 7.2(b)(ii) unless the diagnosis or resolution is required to respond to an Emergency. The LFC will reimburse the Access Seeker for any amount charged by the LFC to the Access Seeker for any fault set out in clauses 7.2(b)(ii) or 7.2(b)(iii) that is subsequently found to be a Fault for which the LFC is responsible, together with interest on that amount at the Bill Rate (as at the date the Access Seeker made the payment) plus 2% for the period from the date the Access Seeker made the payment to the date of reimbursement by the LFC;

- (c) as a direct result of any Fault that the Access Seeker has knowledge of, but fails to diagnose and report in accordance with clauses 6.2(c) and 6.2(d); and
- (d) as a direct result of any failure by the Access Seeker to give to, or procure for, the LFC and its representatives such access (at the appointed time(s) agreed between the LFC and the Access Seeker) to:
 - (i) Access Seeker Premises; or
 - (ii) Reseller Premises; or
 - (iii) Third Party Premises adjacent to Access Seeker Premises or Reseller Premises,

in each case as is reasonably required by the LFC to diagnose and resolve a Fault or perform an Input Services Service Order. To avoid doubt, this clause 7.2(d) is not intended to extend the scope of the Access Seeker's obligations with respect to obtaining access consents beyond that set out in clause 12.

7.3 **Invoices:** The LFC will issue a valid GST invoice to the Access Seeker for the Input Service Charges and GST each month in accordance with the billing procedure set out in the Input Services Operations Manual. The Access Seeker will be liable for all Input Service Charges and GST applicable to each Service provided from the later of:

- (a) each applicable Input Service Start Date; or
- (b) the requested Input Service Start Date as set out in the relevant Input Services Service Order,

provided that if any other date has been agreed between the parties in writing as the date the Input Service is to be activated or otherwise made available then, provided the applicable Input Service commences on such date the Access Seeker will be liable for all Input Service Charges and GST applicable to the relevant Input Service from that date. The Access Seeker will provide the LFC with sufficient information to allow the LFC to allocate any amount received to a particular invoice.

7.4 **Expiry of right to issue an invoice:**

- (a) Subject to clause 7.4(b), the LFC will not issue an invoice for any Input Service Charges more than 99 days after the date of supply of the Input Service to which those Input Service Charges relate.
- (b) If the LFC (acting reasonably) requires additional information from the Access Seeker to prepare an invoice:
 - (i) it will, promptly following the date of supply of the applicable Input Service (and in any event no more than 60 days after that date), notify the Access Seeker of its requirements, clearly specifying the additional information required; and
 - (ii) the Access Seeker will, within 20 days following the date of receipt of the LFC's notice, provide such information as is reasonably within the scope of the LFC's requirements.
- (c) If the Access Seeker fails to comply with clause 7.4(b)(ii), the 99 day period set out in clause 7.4(a) will be extended by a period equal to the additional number of days it takes the Access Seeker to provide the information (so that the LFC has a further 20 days following receipt of the information to issue an invoice).

7.5 **Payment:**

- (a) Subject to clauses 7.5(c) and 7.6, the Access Seeker will pay each invoice issued by the LFC on or before the 20th day of the month following the month in which the invoice is issued without withholding any amount or making any deduction.

- (b) The LFC may apply any payment received in reduction of any amount that the Access Seeker owes to the LFC, and (save where the Access Seeker is withholding payment under this Agreement in the event of an unresolved dispute in relation to an Invoice Error under clause 7.6 or an unresolved dispute under clause 7.7), may set off any amount that the Access Seeker owes to the LFC against any amount payable by the LFC to the Access Seeker.
- (c) The Access Seeker may apply any payment received in reduction of any amount that the LFC owes to the Access Seeker, and may set off any amount that the LFC owes to the Access Seeker against any amount payable by the Access Seeker to the LFC.
- (d) No payment will be made by credit card.

7.6 Dealing with Invoice Error Disputes:

- (a) If the Access Seeker reasonably and in good faith believes there is a manifest error in either the Input Service Charges in an invoice or in the calculation of the amount of an invoice (**Invoice Error**), the Access Seeker may give notice to the LFC before the due date setting out the full details of:
 - (i) the invoice;
 - (ii) the Invoice Error;
 - (iii) the grounds for the Access Seeker's belief that the Invoice Error exists; and
 - (iv) the amount by which the Access Seeker believes that the LFC has overcharged or undercharged it by reason of the Invoice Error.
- (b) Where the Access Seeker believes the LFC has overcharged it by reason of an Invoice Error, the Access Seeker may withhold payment of the amount it believes it has been overcharged until the issue has been resolved in accordance with this clause 7.6. Whenever payment is withheld under this clause 7.6(b) the Access Seeker must, within 10 Business Days after the due date, give the LFC a full extract detailing each withheld Input Services Charge.
- (c) If the Access Seeker fails to follow the notice requirements set out in clause 7.6(a), then any right under clause 7.6 to withhold payment of the amount it believes it has been overcharged does not apply.
- (d) Following the giving of any notice of an Invoice Error, the Access Seeker and the LFC must treat that notice as a dispute notice and resolve the dispute in accordance with clause 20. If the parties cannot resolve the dispute in accordance with the procedure in set out in clause 20.2, the Access Seeker and the LFC must refer the dispute to expert decision under clause 20.4.
- (e) If it is agreed by the parties or decided under clause 20 that an Invoice Error exists in an invoice, depending on whether the amount properly payable by the Access Seeker is more than the amount paid (an underpayment) or less than the amount paid (an overpayment), then:
 - (i) in the case of an underpayment, the Access Seeker must forthwith pay to the LFC the amount of the difference between the amount paid and the amount properly payable, plus interest on that amount at the Bill Rate (as at the date the Access Seeker made the underpayment) plus 2% for the period from the date the Access Seeker made the underpayment to the date of payment, or the date clause 7.8 becomes applicable, whichever is earlier, and the LFC will record that payment in a separate statement of account to be issued by the LFC for the following month; or
 - (ii) in the case of an overpayment, the LFC must forthwith pay to the Access Seeker the amount of the difference between the amount paid and the amount properly payable, plus interest on that amount at the Bill Rate (as at the date the Access Seeker made the overpayment) plus 2% for the period from the date the Access Seeker made the overpayment to the date of payment, or the date clause 7.8 becomes applicable, whichever is earlier, and the LFC will record that payment in a separate credit note to be issued by the LFC for the following month; or
 - (iii) in the case of an Invoice Error that affects 3 or more of any 5 consecutive invoices and constitutes an overpayment by the Access Seeker that is more than 5% of the amount properly payable by the Access Seeker under such invoices, the LFC must forthwith pay to the Access Seeker the amount of the difference between the amount paid and the amount properly payable, plus interest on that amount at the Bill Rate (as at the date the Access Seeker made the first overpayment) plus 4% for the period from the date the Access Seeker made the first overpayment to the date of payment, or the date clause 7.8 becomes applicable, whichever is the earlier, and the LFC will record that payment in a separate credit note to be issued by the LFC for the following month.
- (f) If it is agreed by the parties or decided under clause 20 that an Invoice Error does not exist, the Access Seeker must forthwith pay any amount withheld plus interest on the amount withheld at the Bill Rate (as at the date of the invoice) plus 2% for the period from the day after the due date to the date of payment of the amount withheld, or the date clause 7.8 becomes applicable, whichever is earlier.

7.7 Other Invoice Disputes:

- (a) Regardless of whether or not the Access Seeker has previously given notice of an Invoice Error in relation to any invoice, the Access Seeker may give the LFC a dispute notice in respect of that invoice, provided that a dispute notice cannot be given later than 99 days after the date of the invoice. Any dispute notice under this clause 7.7(a) must comply with clause 20.2 and set out details of the invoice, the disputed amount and the grounds for the dispute together with any available supporting evidence. The Access Seeker and the LFC must resolve the dispute in accordance with clause 20.

- (b) If a dispute under clause 7.7(a) is resolved in favour of the Access Seeker, the LFC must forthwith pay the amount agreed or found to have been overpaid plus interest at the Bill Rate (as at the date of the overpayment) plus 2% on the overpaid amount for the period from the date the overpayment was made to the date of refund of the overpayment or the date clause 7.8 becomes applicable, whichever is earlier, and the LFC will record that payment in a separate credit note to be issued by the LFC for the following month.
- (c) If a dispute under clause 7.7(a) is resolved in favour of the LFC, the Access Seeker must forthwith pay the amount agreed or found to have been underpaid plus interest at the Bill Rate (as at the date the underpayment became due) plus 2% on the underpaid amount for the period from the date the underpayment was paid to the date of payment of the balance or the date clause 7.8 becomes applicable, whichever is earlier, and the LFC will record that payment in a separate statement of account to be issued by the LFC for the following month.

7.8 Interest on Unpaid Amounts: Where:

- (a) subject to clauses 7.5(c) and 7.6, an amount due from the Access Seeker under clause 7.5(a) remains unpaid on the date that payment is due under clause 7.5(a), the Access Seeker must pay interest on that amount at the Bill Rate (as at the date that payment was due) plus 5% for the period from the date that payment was due to the date of payment of that amount, in addition to the amount due under clause 7.5(a); and
- (b) an amount due from the LFC or the Access Seeker under clause 7.6(e), 7.7(a), 7.7(b) or 7.7(c) remains unpaid on the 20th Business Day after the date the dispute is resolved, that party must pay interest on that amount at the Bill Rate (as at that 20th Business Day) plus 5% for the period from that 20th Business Day to the date of payment of that amount, in addition to the amount due under clause 7.6(e), 7.7(a), 7.7(b) or 7.7(c).

8. SECURITY REQUIREMENTS

8.1 Acceptable Credit Rating:

- (a) The Access Seeker will have an Acceptable Credit Rating if it has a credit rating of not less than BBB (Standard & Poor's), Baa (Moody's Investor Services) or BBB (Fitch) (**Acceptable Credit Rating**).
- (b) If the Access Seeker has a credit rating that meets or exceeds the Acceptable Credit Rating, it will provide to the LFC documentary evidence, to the LFC's reasonable satisfaction, that the Access Seeker has a credit rating that meets or exceeds the Acceptable Credit Rating, within 20 Business Days following the Effective Date. The LFC may subsequently require that the Access Seeker provide that documentary evidence again at any time that the LFC has reasonable grounds to believe that the Access Seeker does not have an Acceptable Credit Rating.

8.2 Security:

- (a) If the Access Seeker:
 - (i) has not provided the documentary evidence required by the LFC to the LFC's satisfaction in accordance with clause 8.1; or
 - (ii) fails to pay an undisputed invoice by its due date without an explanation reasonably satisfactory to the LFC,

the LFC may require the Access Seeker to provide, and maintain until further notice, security to cover amounts payable by the Access Seeker under this Agreement (**Security**). The Security is to be in the form of (at the Access Seeker's discretion) either:

- (A) a cash prepayment; or
- (B) a bank guarantee, letter of credit or performance bond, in a form acceptable to the LFC (acting reasonably) and, in the case of a bank guarantee or a letter of credit, from a bank with a credit rating that meets or exceeds the Acceptable Credit Rating; or

with the LFC's approval (not to be unreasonably withheld) a guarantee from the parent company of the Access Seeker in a form acceptable to the LFC (acting reasonably), provided that the parent company has a credit rating that meets or exceeds the Acceptable Credit Rating.

- (b) The LFC will specify the amount of the Security, provided that the LFC may not specify an amount greater than the LFC's reasonable estimate of the total value of Input Service Charges likely to be payable by the Access Seeker under this Agreement:
 - (i) in the case of the Security to be provided for the period of 3 months following the Effective Date, during the 4th and 5th months, taking into account the forecasts provided by the Access Seeker under clause 11; and
 - (ii) in the case of any other period, based on the Input Service Charges payable by the Access Seeker under this Agreement during the previous 2 consecutive month period.
- (c) If:
 - (i) this Agreement is terminated; or
 - (ii) after the date the Security is provided, the Access Seeker:
 - (A) provides the documentary evidence required by the LFC to the LFC's satisfaction in accordance with clause 8.1; and

- (B) pays any undisputed invoice and thereafter pays all undisputed invoices by their due dates for a period of 12 months,

the LFC will return to the Access Seeker any Security that is not required to cover any amount owed by the Access Seeker to the LFC.

8.3 Provide Security:

- (a) The Access Seeker will provide Security (including any adjusted Security required under clause 8.3(b)) to the LFC within 20 Business Days of the LFC's notice to the Access Seeker that the Security (or additional Security) is required.
- (b) At 6 month intervals after the Security is provided the Access Seeker may request, or the LFC may require, the amount of the Security to be adjusted. The adjusted Security must meet the requirements of clause 8.2.

The Access Seeker will not be required to provide the Security if that Access Seekers has entered into a UFB Wholesale Services Agreement with the LC and previously provided an acceptable security to the LFC.

8.4 **Apply Security:** The LFC may, without recourse to the Access Seeker, deduct any overdue amount owed by the Access Seeker under this Agreement (other than amounts that are subject to a dispute in accordance with clauses 7.6 or 7.7) from any Security, and if it does so it will promptly notify the Access Seeker of the amount deducted. Any such deduction will be without prejudice to the Access Seeker's continuing obligation to maintain the Security in accordance with the requirements of clause 8.2. The Access Seeker will ensure that, within 10 Business Days of receiving notice of such deduction, it provides any additional Security required to restore compliance with clause 8.2.

9. THE ACCESS SEEKER'S RESPONSIBILITIES

9.1 **General Responsibilities:** The Access Seeker will:

- (a) not interfere with the reasonable use of Input Services by the other customers of the LFC or any other network operator;
- (b) only use the Input Services for the provision of telecommunications services to Resellers and End Users and for its own internal purposes provided that any Input Services used for the Access Seeker's internal purposes must not comprise more than 25% of the Input Services to be supplied by the LFC to the Access Seeker in any year, and any other purposes contemplated by this Agreement and, for the avoidance of doubt, not for any purpose that could interfere with or damage the Network; and
- (c) not infringe or otherwise diminish any of the LFC's intellectual property rights in relation to the Input Services.

10. END USERS

10.1 **Responsibility:** The Access Seeker:

- (a) is responsible, and acknowledges that (save as otherwise provided in clauses 10 and 12) the LFC is not responsible, for all interactions with Resellers and End Users, including provisioning, billing, customer services, contact with the police and other government authorities, fault reporting and dispute management; and
- (b) acknowledges that the LFC is not responsible for the use of Input Services by Resellers, End Users and any other third parties (whether authorised by the Access Seeker or not), including the content of any data or information that they send or receive using Input Services.

10.2 **Supply of Input Services:**

- (a) The Access Seeker will ensure that each contract it has with a Reseller (being in clauses 10.2(a) and (b), a **counterparty**) for the supply or use of an Input Service, or a service which incorporates an Input Service, contains terms with the effect that:
- (i) the counterparty consents to the Access Seeker sharing information about that counterparty with the LFC, to the extent necessary for the LFC to provide the Input Services;
- (ii) the counterparty will not damage or tamper with any Network or equipment provided by the LFC for the delivery of an Input Service to the Access Seeker and will follow the Access Seeker's instructions in relation to all such Network and equipment;
- (iii) the LFC does not confer any right or benefit on the counterparty; and
- (iv) all liability of the LFC to the Reseller or any person related to a Reseller is excluded, to the maximum extent permitted by law.
- (b) The Access Seeker will ensure that its contract with the counterparty requires the counterparty to ensure that each contract it has with a Reseller for the supply or use of an Input Service, or a service which incorporates an Input Service, contains terms equivalent to those required by clause 10.2(a), as if the Reseller was a counterparty.
- (c) The Access Seeker will procure, on behalf of the LFC that each End User receives and agrees to be bound by the LFC Input Services (End User) Terms, provided that the Access Seeker may elect not to procure that an End User agrees to be bound by the LFC Input Services (End User) Terms in any of the following circumstances:
- (i) where the Access Seeker determines (acting reasonably) that an End User is a large business customer of the Access Seeker; and

- (ii) where the customer of the Access Seeker is a Reseller, in which case the Access Seeker must procure that the Reseller will procure that each End User who receives a service which incorporates an Input Service receives and agrees to be bound by the LFC Input Services (End User) Terms, provided that the Access Seeker may grant the Reseller an exception which has the same substance to clause 10.2(c)(i),

in which case the Access Seeker will issue the LFC with a notice of such election when the Access Seeker submits its Input Services Service Order. This clause 10.2(c) is not intended to apply where the receipt of a service which incorporates an Input Service by an End User does not include or involve the provision, location or use of LFC (End User) Equipment on the relevant End User Premises as part of that service.

- (d) The LFC acknowledges and agrees that the Access Seeker's obligation under clause 10.2(c) to procure that an End User agrees to be bound by the LFC Input Services (End User) Terms will be discharged if the Access Seeker procures that the End User:

- (i) receives the LFC Input Services (End User) Terms (which the LFC acknowledges may be done by providing the End User with a physical copy of the terms or by disclosing the terms verbally over the phone or by other electronic means, including (by way of example) providing a link to where the terms are available online or issuing the End User with an email attaching a copy of the terms); and

- (ii) clearly agrees to be bound by the LFC Input Services (End User) Terms (which the LFC acknowledges may be done in writing, verbally or by some other means, including completion of an online confirmation or tick box),

in each case, before the date on which the LFC is scheduled to carry out installation of relevant LFC (End User) Equipment or, if no installation work is required, the planned Input Service Start Date with respect to that Service. Without prejudice to the foregoing or clause 10.2(f), the Access Seeker will (upon request) provide the LFC with evidence, to the LFC's reasonable satisfaction, that the Access Seeker has complied with the above requirements, provided that the LFC may only make such a request within 3 months after the Input Service Start Date and after it has used reasonable endeavours (but failed) to sign up LFC Input Services (End User) Terms directly with the relevant End User.

- (e) The Access Seeker's liability to the LFC for any failure by it to procure that an End User agrees to be bound by the LFC Input Services (End User) Terms under clause 10.2(c) (but not any liability arising under clause 10.2(g) and clause 12.3(c)(i)) will cease at the earlier of:

- (i) the point in time that the Access Seeker discharges its obligations under clause 10.2(d); or

- (ii) the point in time that the LFC itself obtains written confirmation from the End User that the End User is bound by the LFC Input Services (End User) Terms. The LFC will (upon request) confirm to the Access Seeker whether it has obtained such written confirmation, provided that the Access Seeker may only make such a request within 3 months after the Input Service Start Date; or

- (iii) the point in time that the LFC commences installation at an End User Premises.

- (f) If the Access Seeker or a Reseller procures that an End User agrees to be bound by the LFC Input Services (End User) Terms then the LFC acknowledges and agrees that the LFC has prepared the LFC Input Services (End User) Terms and, accordingly, the LFC (and not the Access Seeker and not the Reseller) is responsible for the content of the LFC Input Services (End User) Terms (including whether rights and obligations of the kind included in the LFC Input Services (End User) Terms are legally enforceable).

- (g) Clauses 10.2(c) to (f) inclusive relate only to LFC (End User) Equipment and do not limit anything in this Agreement that relates more generally to the Network or the LFC (Access Seeker) Equipment.

10.3 Representations and Contact with End Users:

- (a) The Access Seeker will not, except as expressly provided for under clauses 10.2 or 12.3:

- (i) represent that the LFC participates in the supply of services to the Access Seeker's Resellers or End Users, other than as a wholesale supplier to the Access Seeker; or

- (ii) represent that there will be a continuing relationship between the LFC and any of the Access Seeker's Resellers or End Users.

- (b) Neither the LFC nor the Access Seeker will attribute blame for a fault, the need for maintenance of a network or the suspension of an Input Service to the other party if it would be misleading, unethical, deceptive or defamatory to do so.

10.4 **No Relationship with the LFC:** No obligation or other legal relationship is created between the LFC and the Access Seeker's Resellers or End Users by this Agreement (other than, in the case of End Users, by virtue of the LFC Input Services (End User) Terms). This Agreement does not confer any right, benefit or privilege on any such Reseller or End User.

10.5 **No Contact:** The LFC will not contact any Reseller or End User in relation to any Input Service, or any service which incorporates an Input Service, and is provided to that Reseller or End User without the Access Seeker's prior consent, except to the extent provided for in clauses 10.2(c) to (g) inclusive, 12.3 or the Input Services Operations Manual.

11. FORECASTING

11.1 **Forecasting Report:** Within 10 Business Days following each of:

- (a) the Effective Date; and

- (b) the last day of each subsequent calendar month during the Term,

the Access Seeker will provide a report to the LFC setting out its forecast for the volume of orders for Input Services for each month of the period of 6 consecutive months following the month in which the forecast is provided (**Forecasting Report**).

- 11.2 **Scope of Forecasting Report:** Each Forecasting Report must set out the Access Seeker's forecast for Input Services by reference to each applicable Candidate Area. The requirements of the Forecasting Report are set out further in the Input Services Operations Manual.

12. LFC EQUIPMENT

12.1 Title:

- (a) Title to all LFC Equipment will remain with the LFC at all times unless otherwise expressly agreed in writing. The parties acknowledge that, although the LFC will retain title to LFC Equipment, this will not prevent or restrict the Access Seeker's access to the Input Services provided under this Agreement in any way.
- (b) The Access Seeker will not:
 - (i) enter into any agreement dealing with the LFC Equipment; or
 - (ii) encumber the LFC's title to the LFC Equipment or expose that title to third party claims, and will notify the LFC if the Access Seeker becomes aware of any third party claim; or
 - (iii) do any other thing that might affect the LFC's access to, use or ownership of the LFC Equipment, including instructing the End User or any other person to access, use, remove, destroy, relocate or do any other thing to any LFC Equipment.

12.2 Access to LFC (Access Seeker) Equipment:

- (a) If the supply of any Input Service requires any LFC (Access Seeker) Equipment to be installed on Access Seeker Premises or Reseller Premises, the Access Seeker will:
 - (i) obtain any third party authorisation, licence or consent, including for access to any applicable Third Party Premises, necessary for the LFC to construct, install (including pre-installation design work), inspect, maintain, relocate or replace that LFC (Access Seeker) Equipment at, or remove it from, those locations together with acknowledgement (in a manner to be determined in the sole discretion of the Access Seeker) from the owner of the relevant Access Seeker Premises or Reseller Premises, that the LFC (not the owner of the relevant Access Seeker Premises or Reseller Premises) will own that LFC (Access Seeker) Equipment. For the avoidance of any doubt, the LFC will promptly notify the Access Seeker if the LFC becomes aware of any such required authorisation, licence or consent; and
 - (ii) subject to clause 12.2(b), use all reasonable endeavours to provide or procure safe access for the LFC's representatives to those locations and any applicable Third Party Premises so that the LFC's representatives can construct, install (including pre-installation design work), inspect, maintain, replace, relocate or remove LFC (Access Seeker) Equipment.
- (b) In accessing the Access Seeker Premises, Reseller Premises or any applicable Third Party Premises, the LFC will comply with any applicable and reasonable policies, procedures and existing arrangements for access, provided that copies of such policies and procedures (and reasonable details of any such existing access arrangements) are given to the LFC in advance.
- (c) The Access Seeker acknowledges that until all required authorisations, licences or consents are obtained, the LFC is not obliged to proceed with (or complete or continue) the relevant installation or work and/or the supply of Input Services to the relevant Access Seeker Premises or Reseller Premises and shall have no liability arising from any failure to do so. In addition, the LFC will be entitled to charge the Access Seeker the "Inability To Complete Request" fee whenever:
 - (i) having received an Input Services Service Request, where the LFC's representatives arrive at the relevant Access Seeker Premises or Reseller Premises to install LFC (Access Seeker) Equipment at those premises, the owner, occupier or controller of the relevant Access Seeker Premises or Reseller Premises fails to consent to the actual works required for installation of the relevant LFC (Access Seeker) Equipment before the commencement of those works, provided that the LFC (or its representative) will use reasonable endeavours to explore alternative installation options, where practical and only to the extent the alternative does not add installation cost or create installation delay for the LFC, with a view to obtaining such consent; or
 - (ii) the LFC's representatives are denied access to, or otherwise not provided timely and safe access to the relevant Access Seeker Premises or Reseller Premises such that any construction, installation (including pre-installation design work), inspection, maintenance, replacement or relocation of the relevant LFC (Access Seeker) Equipment cannot be carried out or completed.
- (d) Save as provided above in this clause 12.2, the LFC acknowledges and agrees that it is responsible for obtaining any additional authorisation, licence or consent relating to land or buildings which is used (or is to be used) by the LFC to connect LFC (Access Seeker) Equipment to the rest of the Network.

12.3 Access to LFC (End User) Equipment: If the supply of any Input Service requires any LFC (End User) Equipment to be installed on End User Premises, then:

- (a) the LFC will be responsible for obtaining any building or land owner authorisation, licence or consent, including for access to any applicable Third Party Premises, necessary for the LFC to construct, install (including pre-installation design work), inspect, maintain, replace or relocate and own that LFC (End User) Equipment at, or remove it from, those End User Premises, and to connect that LFC (End User) Equipment to the rest of the Network, subject to and in accordance with the following:

(i) the Access Seeker will use all reasonable endeavours to obtain and provide to the LFC contact and other information (including information that the LFC reasonably requests the Access Seeker to obtain and provide because the LFC considers it necessary for the LFC to properly assess what authorisations, licences or consents are necessary, and after that to obtain those authorisations, licences or consents) about:

(A) an End User and the End User Premises (including, in the case of an End User Tenancy, contact information for the relevant MDU building owner or body corporate (as applicable)); and

(B) the broader circumstances of, or affecting, the End User and the End User Premises, including whether any Third Party Premises may be involved,

and the Access Seeker shall use its reasonable endeavours to ensure that all such information is correct and complete at the time it is provided, provided that the Access Seeker has no liability to the LFC in the event that information provided by the End User is not accurate;

(ii) the LFC will have sole discretion as to the extent to which it uses any rights or powers available to it (including under the Telecommunications Act 2001) to obtain, maintain, or enforce such required authorisation, licence or consent; and

(iii) any conditions which a third party seeks to impose on the giving of its authorisation, licence or consent in respect of Third Party Premises must be acceptable to the LFC (acting reasonably).

For this purpose, payment by the LFC of any rental or other fee, or an amount on account of the third party's costs or expenses, in connection with procuring or maintaining that authorisation, licence or consent shall be considered unreasonable;

(b) for each End User:

(i) the Access Seeker will procure that an End User, who occupies the End User Premises (whether as a tenant, licensee or otherwise) and is not the sole or joint owner of those End User Premises, agrees to obtain the authorisation and consent of the owner(s) of the End User Premises for the LFC to construct, install (including pre-installation design work), inspect, maintain, replace or relocate and own the LFC (End User) Equipment at, or remove it from, those End User Premises. For the avoidance of any doubt the Access Seeker's obligations under this clause 12.3(b)(i) will be discharged when it has complied with its obligations under clause 10.2(c) in accordance with clauses 10.2(d) and (f);

and the Access Seeker agrees that if:

(ii) having been requested to do so by the LFC (or its representative) the End User (or its representative) fails to consent to the actual works required for installation of the relevant LFC (End User) Equipment, before the commencement of those works, provided that the LFC (or its representative) will use reasonable endeavours to explore alternative installation options, where practical and only to the extent the alternative does not add installation cost or create installation delay for the LFC, with the End User (or its representative) with a view to obtaining its consent; or

(iii) having been requested to do so by the LFC (or its representative) the End User (or its representative) fails to confirm that the End User is bound by the LFC Input Services (End User) Terms, before the commencement of any work required to install the relevant LFC (End User) Equipment; or

(iv) the LFC's representatives are denied access to, or otherwise not provided timely and safe access to, End User Premises such that any construction, installation (including pre-installation design work), inspection, maintenance, replacement or relocation of the relevant LFC (End User) Equipment cannot be carried out or completed then:

(A) in the case of clauses 12.3(b)(ii) and (iii) above, the LFC is not obliged to proceed with (or complete or continue) the relevant installation or work and/or the supply of Input Services to those End User Premises; and

(B) in the case of clauses 12.3(b)(ii) above, the LFC will be entitled to charge the Access Seeker the "Inability To Complete Request" fee for each such occurrence. For the avoidance of any doubt, the LFC will not be entitled to charge the "Inability To Complete Request" fee in any instance where: (a) installation of LFC (End User) Equipment has not proceeded due to the End User choosing to retain existing telecommunications services and/or telecommunications infrastructure at the End User Premises or End User Tenancy as the case may be; and (b) where it is not possible to install LFC (End User) Equipment and retain existing telecommunications infrastructure at that End User Premises or End User Tenancy as the case may be;

(c) in any case the Access Seeker acknowledges that:

(i) until all required authorisations, licences or consents are obtained, the LFC is not obliged to proceed with (or complete or continue) the relevant installation or work and/or the supply of Input Services to the relevant End User Premises; and

(ii) if the LFC has used its reasonable endeavours to obtain each required authorisation, licence and consent then the LFC shall have no liability arising from any failure to obtain them (except where the LFC elects to proceed with the relevant installation or work and/or the supply of Input Services to the relevant End User Premises notwithstanding this);

(d) where the customer of the Access Seeker is a Reseller, the Access Seeker must procure that the Reseller complies with this clause 12.3, as if references to "Access Seeker" were to "Reseller"; and

- (e) the LFC will not be entitled to charge the "Inability To Complete Request" fee in any instance where the relevant LFC work is work other than: (a) the installation (including pre-installation design work) of the relevant LFC (End User) Equipment; or (b) other LFC work required by an End User in respect of LFC (End User) Equipment which is initiated by way of an Input Services Service Request.

12.4 **LFC (Access Seeker) Equipment:** The Access Seeker will, in relation to all LFC (Access Seeker) Equipment installed on premises not owned or controlled by the LFC (including Access Seeker Premises and Reseller Premises):

- (a) use its best endeavours to provide a safe and secure operating environment;
- (b) use its best endeavours to protect the LFC (Access Seeker) Equipment from environmental hazards (including radio or electrical interference, power fluctuations and other abnormal environmental conditions) and ensure that the LFC (Access Seeker) Equipment is not altered, repaired, serviced, removed or moved, except with the LFC's prior written consent;
- (c) use its best endeavours to ensure that the LFC (Access Seeker) Equipment is not used other than in accordance with the terms of the applicable Input Services Operations Manual;
- (d) immediately notify the LFC if it becomes aware of any damage or unauthorised access to the LFC (Access Seeker) Equipment or if the LFC (Access Seeker) Equipment requires maintenance; and
- (e) if requested by the LFC, return the LFC (Access Seeker) Equipment to the LFC when it is no longer required by the Access Seeker, and take reasonable care to ensure that the LFC (Access Seeker) Equipment is not damaged while being returned.

12.5 **Fit For Purpose:** The LFC will ensure that all LFC Equipment is safe, free from material defects and fit for the purpose of providing the applicable Input Services.

13. PERSONAL PROPERTY RIGHTS

13.1 **Interpretation:** Terms used in this clause 13 have the meaning given in the Personal Property Securities Act 1999 (**PPSA**).

13.2 **No Beneficial Interest:** Acquiring an Input Service does not give the Access Seeker any property rights or beneficial interest in any part of the Network. Neither the supply of any LFC Equipment to, nor use of any LFC Equipment by, the Access Seeker or any End User gives any beneficial interest in that LFC Equipment to either the Access Seeker or any End User.

13.3 **Security Interest:** If any lease or bailment of LFC Equipment to the Access Seeker or any End User constitutes a security interest for the purposes of the PPSA, the LFC may perfect its security interest by registering a financing statement in the Personal Property Securities Register. This clause 13.3 constitutes a security agreement for the purposes of the PPSA.

13.4 **Waiver:** The Access Seeker waives its PPSA rights:

- (a) to receive a copy of any verification statement in respect of any financing statement or financing change statement registered by the LFC;
- (b) to receive a notice that the LFC intends to sell any personal property over which a security interest is granted (**Goods**), or to retain the Goods on enforcement of the security interest granted to the LFC under this Agreement;
- (c) to object to a proposal by the LFC to retain Goods in satisfaction of any obligation owed by the Access Seeker to the LFC;
- (d) to receive a statement of account on the sale of Goods;
- (e) to redeem Goods; and
- (f) where any Goods become installed in or affixed to other goods, to receive notice of removal of the accession and to apply to the Court for an order relating to removal of the accession.

13.5 **Further Assistance:** The Access Seeker will provide all information and do all things reasonably required by the LFC to ensure that the LFC has a perfected security interest in the Input Service, Input Service and LFC Equipment under the PPSA, including by registration of a financing statement.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 **Rights:**

- (a) All property rights (including copyright, trademarks, design and other intellectual property rights) contained in or relating to any software, equipment or other materials forming part of an Input Service, or otherwise provided by the LFC under an Input Services Service Order, belong to the LFC or its licensors (**LFC IP**).
- (b) Subject to clause 10.3, neither party will use the name, trade name or logo of the other party without that party's prior written consent, except that the Access Seeker may use the name, trade mark or logo of the LFC in referring to the LFC as a wholesale supplier to the Access Seeker.

14.2 **LFC IP (excluding software):** The LFC grants to the Access Seeker a non-exclusive, non-transferable licence to use, subject to clause 14.1(b), the LFC IP (excluding software) required to provide the Input Services during the Term, only to the extent required to exercise its rights and perform its obligations under this Agreement or to provide services to the Access Seeker's Resellers or End Users using an Input Service and for no other purpose. To the extent that a Reseller or an End User requires a right to use the LFC IP (excluding software) in order to use the services provided by the Access Seeker which have the Input Services as an input, the LFC grants to the Access Seeker the right to sub-licence the use of the LFC IP (excluding software) to that Reseller or End User.

14.3 **Software:** If the LFC provides any software to the Access Seeker in connection with the supply of Input Services or an Input Service:

- (a) the LFC grants a non-exclusive, non-transferable and royalty-free licence to the Access Seeker to use that software during the Term solely for the purposes of providing telecommunications services using the Input Services, and such other purposes expressly contemplated by this Agreement, in accordance with this Agreement and any other terms on which the software is ordinarily licensed or that the LFC notifies to the Access Seeker in writing prior to making available that Input Service to the Access Seeker. To the extent that a Reseller or an End User requires a right to use the software in order to use the services provided by the Access Seeker which have the Input Services as an input, then the LFC grants to the Access Seeker the right to sub-licence the use of the software to that Reseller or End User;
- (b) except in respect of Input Services, any applicable software licence fee is incorporated within the Input Service Charges such that there will be no additional cost to the Access Seeker associated with its use or sub-licensing of the software;
- (c) the Access Seeker will not copy, modify or reverse assemble the software except as expressly agreed with the LFC; and
- (d) the Access Seeker will implement any software upgrades provided by the LFC within the timeframe reasonably specified by the LFC.

14.4 **IP Indemnity:** The LFC will indemnify the Access Seeker against any cost, damage or loss (including reasonable legal costs) suffered or incurred by the Access Seeker as a direct result of any claim by a third party that the Access Seeker's use or sub-licensing of any software licensed to it by the LFC, or use of Input Services or LFC (Access Seeker) Equipment provided by the LFC, in accordance with this Agreement infringes any patent, copyright, design, trade name, trade mark, service mark or other intellectual property rights of that third party (**a claim**), provided that the Access Seeker:

- (a) does not admit liability or settle any claim without the LFC's prior written consent; and
- (b) permits the LFC (at the LFC's cost) to defend the claim, and renders all reasonable assistance to the LFC for that purpose.

The Access Seeker shall give the LFC written notice of the claim by the third party for which the indemnity is claimed under this clause 14.4 within 10 Business Days of becoming aware of it.

15. INFORMATION

15.1 **Confidential Information:** Each party will treat the arrangements contemplated by this Agreement and all information (in whatever form) of a confidential nature provided under or in connection with it (together, **Confidential Information**) as confidential and will not use that information or disclose it to any person except:

- (a) as required by law or by the rules of any stock exchange, provided that (where possible) the party required to disclose the information will notify the other party beforehand; or
- (b) to its employees, agents and contractors to the extent necessary to perform its obligations under this Agreement or exercise any rights under this Agreement; or
- (c) where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause 15); or
- (d) with the other party's prior written consent.

15.2 **General Disclosure:**

- (a) Notwithstanding clause 15.1, the LFC may disclose the Access Seeker's Confidential Information:
 - (i) to third party suppliers (including other network operators) only to the extent necessary to enable those suppliers to supply all or part of an Input Service;
 - (ii) to comply with its obligations in the Undertakings;
 - (iii) to CIP and Government agencies for reporting purposes;
 - (iv) to credit reporting organisations so that they can run credit checks on the LFC's behalf; and
 - (v) to other third parties solely on a need to know basis for the purposes of billing and credit management, planning, provisioning, operating, maintaining or reconfiguring the Network, and to otherwise give effect to the purpose that the Confidential Information was provided for,

provided that LFC may not disclose the Access Seeker's Confidential Information under clause 15.2(a)(i) to any access seeker competitor of the Access Seeker in any part of New Zealand, without the Access Seeker's prior written consent.

- (b) Notwithstanding clause 15.1, either party may disclose the other party's Confidential Information to its holding company. For the purposes of this clause 15.2(b), "holding company" shall have the meaning given in section 5 of the Companies Act 1993, as if the word "company" in that section included any body corporate, wherever incorporated.
- (c) Neither party will disclose the other party's Confidential Information to any third party or a holding company pursuant to clause 15.2(b) (other than, in respect of disclosure by the LFC, under clauses 15.2(a)(ii) and 15.2(a)(iii)) without first informing the recipient of the confidential nature of the information and requiring the recipient of that Confidential Information to comply with the terms of this clause 15.

15.3 **Privacy:** The LFC will not collect and hold information about Resellers and End Users, including generating information within the Network when an Input Service is used, or provide this information to the LFC's employees, contractors, agents, suppliers and network operators except for lawful purposes connected with the LFC's business operations and in full compliance with clauses 15.1 and 15.2 and the Privacy Act 1993 (including its applicable codes).

15.4 **Announcements:** Neither party will issue any press release or public announcement concerning this Agreement without the other party's prior written consent. The Access Seeker acknowledges that the LFC intends to publish a copy of this Agreement on its website. This clause 15 will not apply to limit that publication.

16. RECORDS

16.1 **Maintain Records:** The LFC will, at all times, use reasonable endeavours to maintain, store and archive up to date, accurate and complete records of all invoices, reports and all Input Services ordered and supplied, operating processes and procedures and other records relating to its performance under this Agreement. The Access Seeker will, at all times, use reasonable endeavours to maintain, store and archive up to date, accurate and complete records of all Input Services ordered and supplied, in accordance with normal commercial practices.

16.2 **Assistance:** Each party will provide any information (including copies of any records to be maintained under clause 16.1) and other assistance that the other party may reasonably require to perform its obligations under this Agreement, and ensure that all such information provided to the other party is correct and complete.

17. INDEMNITIES

17.1 **Common Indemnity:** Each party (the **indemnifying party**) will indemnify the other party against any cost, damage or loss suffered or incurred by the other party under or in connection with this Agreement as a result of any:

- (a) unlawful or malicious act or omission of the indemnifying party; or
- (b) fraud or wilful default of the indemnifying party; or
- (c) personal injury or death caused by a negligent act or omission of the indemnifying party; or
- (d) breach by the indemnifying party of clauses 15.1 and 15.3.

17.2 LFC Indemnity:

- (a) The LFC will, subject to clauses 17.2(b) and 18.2, indemnify the Access Seeker (including its personnel, contractors, agents and representatives) against any loss of, or damage to, tangible property (to the extent only of the Access Seeker's loss, including arising from any third party claims) arising as a direct result of:
 - (i) the LFC's breach of clause 3.3; or
 - (ii) any wilful or negligent act or omission of the LFC or any contractor or agent of the LFC in providing the Input Service including in their construction, installation, inspection, maintenance, replacement or removal of any LFC Equipment in the premises of the Access Seeker and any third party (including an End User).
- (b) Subject to clause 18.2, the aggregate liability of the LFC for all costs, damages and losses arising under or in connection with this clause 17.2 for all acts or omissions giving rise to any loss or damage relating to any of the Input Services is limited to \$50,000,000 for each of the Input Services.

17.3 Access Seeker Indemnity:

- (a) The Access Seeker will, subject to clauses 17.3(b) and (c) and 18.2, indemnify the LFC (including its personnel, contractors, agents and representatives) against:
 - (i) any loss of, or damage to, tangible property (but to the extent only of the LFC's loss, including arising from any third party claims) arising as a direct result of any wilful or negligent act or omission of the Access Seeker, Reseller or any contractor or agent of the Access Seeker or Reseller in the Access Seeker's or Reseller's (or their respective contractor's or agent's):
 - (A) construction, installation, inspection, maintenance, replacement or removal of any Access Seeker or Reseller equipment in the LFC's premises or the premises of any third party; or
 - (B) use of any LFC (Access Seeker) Equipment installed on premises not owned or controlled by the LFC; or
 - (ii) any claim by any Reseller or End User relating solely and directly to any services which incorporate an Input Service, except where:
 - (A) that claim is a direct result of any breach of this Agreement by the LFC or any unlawful, wilful or negligent act or omission of the LFC or any contractor or agent of the LFC; or
 - (B) the Access Seeker has discharged its obligations under clause 10.2(c) in accordance with clauses 10.2(d) and (f); or
 - (iii) any loss of, damage to, or interference with, LFC (End User) Equipment caused by the End User (including interference with the LFC's right to construct, install, inspect, maintain, replace, own or remove any LFC (End User) Equipment) that may at any time be installed on End User Premises.
- (b) Subject to clause 18.2, the aggregate liability of the Access Seeker for all costs, damages and losses arising under or in connection with clauses 17.3(a)(i) and (ii) is limited to:

- (i) for all acts or omissions giving rise to any loss or damage relating to any of the Input Services, a maximum of \$2,000,000 for each of the Input Services; and
- (ii) for all acts or omissions giving rise to any loss or damage relating to the Input Central Office and POI Co-location Service, a maximum of \$50,000,000,

and the aggregate liability of the Access Seeker for all costs, damages and losses arising under or in connection with clauses 17.3(a)(i) and (ii) shall not exceed a maximum of \$50,000,000.

- (c) Subject to clause 18.2, the aggregate liability of the Access Seeker for all loss, damage or interference arising under or in connection with clause 17.3(a)(iii) is limited to \$50,000,000.
 - (d) The Access Seeker shall not be liable under clause 17.3(a)(iii) in respect of an End User who, at the time of the loss, damage or interference that would otherwise give rise to liability under clause 17.3(a)(iii), has ceased to be a customer of the Access Seeker.
- 17.4 **Parties to Mitigate:** Each party will take reasonable steps to mitigate any loss incurred as a result of any act or omission by the other party (whether or not claimable under an indemnity).
- 17.5 **Contribution:** The obligations to indemnify set out in clauses 17.1 to 17.3 (inclusive) will not apply to the extent that the other party directly contributes to the applicable cost, damage or loss.
- 17.6 **Conduct of Claims:** If either party (referred to in this clause 17.6 as the **indemnified party**) becomes aware of a matter that may give rise to a claim under clauses 17.1, 17.2 or 17.3 against the other party (referred to in this clause 17.6 as the **indemnifying party**) then the indemnified party must give the indemnifying party written notice of the claim within 20 Business Days of becoming aware of it. The indemnifying party will have no liability under clauses 17.1, 17.2 or 17.3:
- (a) if the indemnified party admits liability or settles any claim without the indemnifying party's prior written consent, such consent not to be unreasonably withheld; or
 - (b) unless the indemnified party permits the indemnifying party (at the indemnifying party's cost) to defend the claim, and renders all reasonable assistance to the indemnifying party for that purpose.
- 17.7 **Related Indemnity Claims:** Where an act or omission giving rise to loss or damage under clauses 17.2(a) or 17.3(a)(i) or (ii) (as the case may be) is attributable to more than 1 Service in more than 1 Input Service Category, such act or omission will be deemed subject to the greatest of the liability caps applicable to those Services.

18. LIABILITY

18.1 Maximum Liability:

- (a) The aggregate liability of the LFC to the Access Seeker for all costs, damages and losses arising under or in connection with this Agreement during any 12 month period is limited to the lesser of:
 - (i) the aggregate value of the Input Service Charges paid and payable by the Access Seeker during that period; and
 - (ii) \$500,000.
- (b) The aggregate liability of the Access Seeker to the LFC for all costs, damages and losses arising under or in connection with this Agreement during any 12 month period is limited to the lesser of:
 - (i) the aggregate value of the Input Service Charges paid and payable by the Access Seeker during that period; and
 - (ii) \$500,000.
- (c) Clauses 18.1(a) and 18.1(b) will not limit the liability of:
 - (i) each party for fraud;
 - (ii) the Access Seeker to pay the Input Service Charges; and
 - (iii) each party under the indemnity set out in clause 17.1, the LFC under the indemnities set out in clauses 14.4 and 17.2, and the Access Seeker under the indemnity set out in clause 17.3.

18.2 **Exclusions:** Neither party has any liability to the other in contract, tort (including negligence), equity, under statute or otherwise for any economic loss, loss of data, loss of revenue, loss of anticipated profit or savings, or for any indirect or consequential loss or damage, however caused.

18.3 **No Other Warranties:** All representations and warranties not expressly set out in this Agreement, whether implied by law or based on any oral or written representations not expressed in this Agreement or otherwise, are excluded to the maximum extent permitted by law.

18.4 **Consumer Guarantees Act:** The Access Seeker:

- (a) acknowledges that it is acquiring the Input Services for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply; and
- (b) will, to the maximum extent permitted by law, exclude the application of the Consumer Guarantees Act 1993 from all agreements between the Access Seeker and its Resellers and End Users that in any way relate to the Input Services.

18.5 **No Liability to Third Parties:**

- (a) Neither the LFC nor any third party engaged by the LFC (including their officers, employees, contractors and agents) (each an **interested party**) confers any benefit, right or privilege on any person other than the Access Seeker under this Agreement.
- (b) No interested party (other than the LFC), will be liable to the Access Seeker for loss or damage of any kind solely by virtue of the supply of Input Services under this Agreement.
- (c) For the purposes of the Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, clauses 18.5(a) and (b) confer a benefit upon each interested party.

18.6 **Access Seeker Insurance:**

During the Term, and for a period of 2 years following the effective date of termination, the Access Seeker will, at its own expense, ensure that it maintains adequate insurance (including cover for, without limitation, public liability, property damage and business interruption) in respect of its potential liability for loss or damage arising under or in connection with this Agreement, including:

- (a) for a sum insured of not less than \$2,000,000 in respect of the relevant liability amounts set out in clauses 17.3(b)(i) and (ii) for any claim or series of claims arising out of 1 event; and
- (b) for a sum insured of not less than \$50,000,000 in respect of the relevant liability amount set out in clause 17.3(b)(iii) for any claim or series of claims arising out of 1 event.

The Access Seeker will, at the LFC's request, promptly provide such evidence as the LFC may reasonably require (including a copy of each insurance policy and certificate of currency) to demonstrate that the Access Seeker has complied with clause 18.6(a) and (if applicable) clause 18.6(b).

18.7 **LFC Insurance:**

- (a) During the Term, and for a period of 2 years following the effective date of termination, the LFC will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Agreement, including public liability insurance for a sum of not less than \$50,000,000 for any claim or series of claims arising out of 1 event.
- (b) The LFC will, at the Access Seeker's request, promptly provide such evidence as the Access Seeker may reasonably require (including a copy of each insurance policy and certificate of currency) to demonstrate that the LFC has complied with clause 18.7(a).

19. **FORCE MAJEURE**

19.1 **Obligations Suspended:** Neither party will be liable to the other party for any failure to perform its obligations under this Agreement (other than the Access Seeker's obligation to pay the Input Service Charges) during the time and to the extent that such performance is prevented by reason of a Force Majeure Event.

19.2 **Required Actions:** The party affected by the Force Majeure Event will notify the other party as soon as practicable after the Force Majeure Event occurs and use reasonable endeavours to:

- (a) provide information regarding the extent of its inability to perform and an estimate of the time required to overcome the Force Majeure Event;
- (b) remedy or mitigate the effect of the Force Majeure Event;
- (c) complete its obligations under this Agreement to the greatest extent practicable, as quickly as is practicable, with regard to the nature and effect of the Force Majeure Event; and
- (d) upon cessation of the effects of a Force Majeure Event, give notice to the other party of such cessation as quickly as practicable.

19.3 **Charges:** The Access Seeker will not be required to pay any Input Service Charges for any Input Service to the extent that the Input Service is not provided due to a Force Majeure Event.

20. **DISPUTE RESOLUTION**

20.1 **Compliance:** If any dispute arises out of this Agreement, neither party will commence proceedings relating to the dispute unless that party has first complied with this clause 20. The parties will continue to comply with their obligations under this Agreement during the dispute resolution process.

20.2 **Notice of Dispute:** The party claiming a dispute has arisen will give notice to the other party setting out full particulars of the dispute. The parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means, including by escalation to the Chief Executive of each party if the dispute is not resolved within the period of 10 Business Days following the date of the notice of dispute.

20.3 **Mediation:** If the parties do not resolve the dispute within 20 Business Days of the date of the notice given under clause 20.2 notice (or any longer period agreed in writing) then the parties may agree to refer the dispute to mediation by a single mediator. The mediator, and location of the mediation, will be appointed by the chairperson of LEADR New Zealand Inc., or the nominee of that chairperson. The dispute will be mediated in accordance with the standard mediation agreement of the New Zealand chapter of LEADR.

20.4 **Expert Decision:** Where the parties must in accordance with this Agreement, or have agreed in writing to, refer a dispute to expert decision (**Expert Referral Agreement**), the following provisions will apply:

- (a) the expert will be appointed by agreement between the parties. However, if the parties cannot agree on the expert within 5 Business Days of the Expert Referral Agreement, then an appropriately qualified and experienced expert will be appointed at the written request of either party by the Chair of the Telecommunications Carriers' Forum. The party making this request will use, and where possible ensure that the Chair of the Telecommunications Carriers' Forum uses, best endeavours to ensure that the appointment of the expert occurs no later than 15 Business Days from the date of the Expert Referral Agreement. The party making this request must copy the request to the other party;
- (b) to be eligible for appointment, the expert must be independent and impartial, experienced in the relevant area of telecommunications and will preferably be experienced in dispute resolution procedures. Unless the parties agree otherwise, he or she must not have performed any duties, whether as an employee, consultant or contractor, for any of the parties or any related company (as defined in section 2(3) of the Companies Act 1993) during a 12 month period prior to the date the dispute notice was given;
- (c) the expert may seek independent legal advice regarding the appropriate procedures for resolution of the dispute;
- (d) the expert must adopt a procedure which, in the expert's opinion, is the most simple and expeditious procedure practicable in the circumstances;
- (e) the parties will provide the expert with any information that the expert reasonably requires in a timely manner. The expert is entitled to make a decision in the absence of the information requested being provided, but subject to a reasonable time being given to the relevant party to provide that information;
- (f) the expert will act as an expert and not as an arbitrator under the Arbitration Act 1996. The expert will be entitled to rely on the expert's own judgement and opinion;
- (g) the expert will provide the parties with a draft decision for comment prior to finalising it. The expert must provide the parties with a reasonable period in which to comment on the draft decision and must take any comments received during that period into account in finalising a decision;
- (h) the expert must provide a decision (which must include reasons for that decision) to the parties in writing as soon as reasonably practicable and, in the absence of manifest error or bad faith, that decision will be final and binding upon the parties. Either party has 10 Business Days from the date the decision is provided to assert that the expert's decision contains a manifest error or the expert has acted in bad faith;
- (i) the expert must use all reasonable endeavours to reach a final decision within 40 Business Days after appointment, and the parties must co-operate reasonably with the expert to achieve that timetable;
- (j) except as set out in clause 20.4(k), the costs of the expert will be borne equally by the parties. Each party will bear its own costs in relation to the expert's decision; and
- (k) where a party has asserted that the expert's decision contains a manifest error or the expert has acted in bad faith, and such assertion is not upheld in that party's favour by the relevant court or other authority, then the party making the assertion will bear the costs (that is, all court or other authority costs) of both parties.

20.5 **Arbitration:** If the parties do not resolve the dispute within 20 Business Days of the date of the notice given under clause 20.2 notice (or any longer period agreed in writing) then (except where the dispute has been referred to expert decision under clause 20.4) either party may refer the dispute to arbitration, in accordance with the current protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. (**AMINZ**). The arbitration will be conducted by a single arbitrator appointed by the president of AMINZ, as soon as possible at Auckland in accordance with the provisions of the Arbitration Act 1996. The award of the arbitrator will be an award with reasons and the reasons will form part of the award. The award of the arbitrator will be final and binding on the parties and, to the extent that it is lawful to do so, the parties waive any right of appeal or review.

20.6 **Costs:** The parties will bear their own costs and an equal share of the expenses of the mediation or the arbitration unless, in the context of an arbitration, the arbitrator determines that a party will bear some proportion or all of the costs of the other party.

20.7 **Urgent Relief:** Nothing in this clause 20 prevents either party from seeking urgent injunctive or interlocutory relief.

21. **SUSPENSION OF INPUT SERVICES**

21.1 **Suspension:** The LFC may, subject to clause 21.2, immediately and without liability suspend or restrict any or all of the Input Services at any time:

- (a) in response to a change to the Undertakings or any of the Undertakings' underlying legislation, where such change directly relates to the supply of the Input Services by the LFC; or
- (b) in response to an Emergency; or
- (c) if the Access Seeker has committed a material and irremediable breach of this Agreement, or a material remediable breach that is not remedied in accordance with clause 22.1(b); or
- (d) if the LFC reasonably suspects fraud or any other illegal activity by the Access Seeker (or its employees, agents or contractors) in connection with any Input Service; or
- (e) if an insolvency event (defined in clause 22.1(e)) occurs in relation to the Access Seeker; or
- (f) if the Access Seeker fails to maintain compliance with the Security Requirements.

- 21.2 **Proportionate Response:** The LFC may only exercise its rights under clause 21.1 to suspend or restrict an Input Service to the extent, and for the period of time, that such suspension or restriction is reasonably necessary.
- 21.3 **Notice:** The LFC will provide as much prior notice of the suspension as is possible in the circumstances or, if no prior notice is possible, will notify the Access Seeker as soon as possible after the suspension commences.
- 21.4 **Recommencement:** The LFC will recommence providing a suspended Input Service as soon as reasonably possible in the circumstances after it decides, in its sole discretion (but acting reasonably), that the reason for the suspension has ceased.
- 21.5 **Continued Payment:** If any Input Services are suspended or restricted in accordance with clause 21.1, the Access Seeker will not pay the Input Service Charges for the Input Services that have been suspended and will continue to pay the Input Service Charges for the Input Services that have not been suspended.

22. TERMINATION

- 22.1 **Immediate Termination:** Either party (the **terminating party**) may terminate this Agreement or any Input Services Service Order at any time by giving the other party notice in writing if:
- (a) the other party commits a material breach of this Agreement that is not capable of being remedied; or
 - (b) the other party commits a material breach of this Agreement that is capable of being remedied, but that is not rectified within 20 Business Days of that party receiving written notice of the material breach from the terminating party; or
 - (c) in response to a change to the Undertakings or any of the Undertakings' underlying legislation, where such change requires the LFC to cease the supply of any of the Input Services; or
 - (d) a Force Majeure Event substantially prevents, hinders or delays the other party from performing its obligations under this Agreement for 60 consecutive days; or
 - (e) an insolvency event occurs in relation to the other party, being:
 - (i) the presentation of an application for its liquidation that is not discharged within 30 days of filing or demonstrated to the terminating party to be frivolous or vexatious before the expiry of that 30 day period; or
 - (ii) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors; or
 - (iii) the appointment of a liquidator, receiver, statutory manager, or similar official, to that party; or
 - (iv) the suspension or threatened suspension of the payment of its debts; or
 - (v) cessation of a whole or any relevant part of its business in New Zealand; or
 - (vi) the enforcement of any security against the whole or a substantial part of its assets; or
 - (vii) any analogous insolvency event or proceedings.
- 22.2 **Minor Breaches:** For the purpose of clauses 22.1(a) and 22.1(b), repeated breaches of the same obligation or a series of minor breaches of different obligations which taken together have a material impact on a party may constitute a material breach of this Agreement.
- 22.3 **Termination of this Agreement by Notice:**
- (a) Subject to clause 22.3(b), the LFC may terminate this Agreement by 12 months' notice to the Access Seeker, but if it does so any Input Services Service Order with a Minimum Service Term that has not yet expired will continue until the expiry of that Minimum Service Term (subject to the Access Seeker's continued payment of the Input Service Charges).
 - (b) The LFC may not issue a notice to terminate this Agreement pursuant to clause 22.3(a) before 1 January 2020.
 - (c) The Access Seeker may terminate this Agreement at any time by 60 days' notice to the LFC, but if it does so during the Minimum Service Term of any then-current Input Services Service Order the LFC may require the Access Seeker to pay the early termination charges (if any) set out in the Input Services Service List.
- 22.4 **Ending an Input Services Service Order:**
- (a) If the LFC has given notice to the Access Seeker in accordance with clause 5.2 ending the supply of an Input Service and associated Input Services Ancillary Services, the Input Services Service Order governing the supply of that Input Service and associated Input Services Ancillary Services will, subject to clause 5.2 and unless the parties agree otherwise, end on the date specified in the LFC's notice.
 - (b) The Access Seeker may terminate an Input Services Service Order at any time, by 20 Business Days' notice to the LFC given in accordance with clause 4.3, but if it does so during the applicable Minimum Service Term the LFC will require the Access Seeker to pay the early termination charges (if any) set out in the Input Services Service List. No such early termination charges shall be payable where an Input Services Service Order is terminated by the LFC pursuant to clause 5.2 or by the Access Seeker pursuant to clause 22.1 or 24.5(d)(ii).

22.5 **No New Input Services Service Requests:** The LFC may, in its sole discretion and by notice to the Access Seeker:

- (a) if the LFC has the right to terminate this Agreement, or if the Access Seeker is in breach of its payment obligations in clauses 7.1, 7.2 and/or 7.5, cease to accept any Input Services Service Request from the Access Seeker until the Access Seeker has remedied the breach of the reasonable satisfaction of the LFC; or
- (b) if the LFC has the right to terminate an Input Services Service Order, instead cease to accept any Input Services Service Request related to that Input Services Service Order.

23. CONSEQUENCES OF TERMINATION

23.1 Disconnection:

- (a) If any Input Services Service Order is terminated, or comes to an end, in accordance with clause 22.4:
 - (i) the LFC will, subject to clause 5.2, cease to fulfil that Input Services Service Order;
 - (ii) to the extent that the Access Seeker's connection to the Network at an Interconnection Point is only relevant to the Input Service that is the subject of that Input Services Service Order:
 - (A) the LFC will disconnect the Access Seeker from the Network at that Interconnection Point; and
 - (B) the Access Seeker will promptly remove the Access Seeker's equipment from that Interconnection Point; and
 - (iii) each party will immediately return to the other party any information, or other item, which is related to the Input Service that is the subject of that Input Services Service Order (but not to any continuing Input Service), which is in its possession and that belongs to the other party.
- (b) If this Agreement is terminated:
 - (i) the LFC will, subject to clause 22.3(a) cease to fulfil, and terminate, all Input Services Service Orders and disconnect the Access Seeker from the Network at each Interconnection Point, so that the Access Seeker is no longer able to receive the Input Services;
 - (ii) the Access Seeker will promptly remove the Access Seeker's equipment from each Interconnection Point and any other location within the possession or control of the LFC;
 - (iii) each party will immediately return to the other party any information or other item that is in its possession and that belongs to the other party; and
 - (iv) the LFC will return any Security to the Access Seeker in accordance with clause 8.2(c).

23.2 **Input Service Charges for early termination of an Input Services Service Order:** If the Access Seeker terminates an Input Services Service Order under clause 22.3(c) or clause 22.4(b) during the Minimum Service Term, or if the LFC terminates an Input Services Service Order under clause 22.1(a), (b) or (d), then the LFC will require the Access Seeker to pay the early termination charges (if any) set out in the Input Services Service List. To avoid doubt, no early termination charges will be payable in the event of termination of an Input Services Service Order by the LFC or the Access Seeker under clause 22.1(c).

23.3 **Survival:** Termination and early termination charges will be without prejudice to any rights or obligations either party may have under this Agreement. Termination does not affect any rights or responsibilities under this Agreement that are intended to survive termination, including clauses 1 (Construction), 7 (Payment), 8 (Security Requirements), 14.4 (IP Indemnity), 15 (Information), 16 (Records), 17 (Indemnities), 18 (Liability), 20 (Dispute resolution), 23 (Consequences of termination) and 25 (General).

24. CHANGES

24.1 Agreement Changes:

- (a) If the LFC wishes to propose an "Agreement Change", being either:
 - (i) a change to an Input Services Operations Manual, but only if that change is likely to result in a significant change to the Access Seeker's procedures, facilities or systems or any additional material costs being incurred by the Access Seeker; or
 - (ii) a non-trivial change to the General Terms, the Input Services Price List, an Input Services Service Description, an Input Services Service Level Terms or an Input Services Service Order,

it will notify the Access Seeker of such proposal and comply with the requirements of clause 24.6 with respect to consulting Access Seekers via the Input Services Forum prior to making any such Agreement Change. If the LFC considers (acting reasonably) that the Agreement Change is only relevant to the Access Seeker and not any Other Access Seekers (a **Bilateral Agreement Change**), the LFC may choose to negotiate that change directly with the Access Seeker and, if the LFC and the Access Seeker (each acting in their sole discretion) agree to the proposed Bilateral Agreement Change, the LFC may implement the proposed Bilateral Agreement Change with the Access Seeker without first having to comply with the requirements of clause 24.6.

- (b) The Access Seeker is not permitted to propose an Agreement Change, being:
- (c) For the purposes of clause 24.1(a)(ii), a "non-trivial change" includes a change that is likely to:
 - (i) materially alter the LFC's or the Access Seeker's rights or obligations under this Agreement; or

- (ii) impose material additional costs on the Access Seeker or the LFC (including if the change is likely to result in a significant change to the Access Seeker's or the LFC's procedures, facilities or systems); or
 - (iii) materially alter the Input Services being provided to the Access Seeker.
- (d) In the case of any Agreement Change, if either the LFC or the Access Seeker requires additional time to make any consequent change to its procedures, facilities or systems (the **Requesting Party**) it will notify the other party. The time for those consequent changes will, to the extent required by the Requesting Party, be extended:
- (i) automatically, for up to 40 Business Days; or
 - (ii) such other period as agreed by the LFC and the Access Seeker.

24.2 **Required Changes:** The LFC may propose a change required as a result of the Undertakings, or any amendment of the Undertakings, in each case referred to as a "**Required Change**". If the LFC wishes to propose a Required Change, it will comply with the requirements of clause 24.6 prior to implementing the Required Change. This clause 24.2 does not apply to the annual reset of the Input Service Charges by the LFC in accordance with clause 24.3.

24.3 **Changes to Input Service Charges:** The LFC may change, add to, delete or replace an Input Service Charge (**Input Service Charge Change**) on giving 60 Business Days' prior written notice to the Access Seeker, provided that Input Service Charge Change complies with the Undertakings.

24.4 **Changes to Input Services Ancillary Charges:** The LFC may change, add to, delete or replace an Input Services Ancillary Charge on giving 30 Business Days' prior written notice to the Access Seeker.

24.5 **Changes to Technology or LFC Equipment:**

- (a) The LFC may propose, by notice to the Access Seeker:
 - (i) a change to the technology used to provide an Input Service (a **Technology Change**); or
 - (ii) without limiting the LFC's obligation to meet the Input Services Service Levels set out in, or, the Input Services Service Level Terms, any modification or substitution of any of the LFC Equipment provided that the LFC continues to meet the specifications for an Input Service as set out in the applicable Input Services Service Description (an **LFC Equipment Change**).
- (b) Where a proposed Technology Change or LFC Equipment Change is in the reasonable opinion of the LFC likely to affect or impact upon the Access Seeker, the LFC will consult with access seekers via the Input Services Forum in accordance with clause 24.11 for no less than 30 days following the date of any notice given under clause 24.6(a).
- (c) Following completion of consultation in accordance with clause 24.6(b) and clause 24.11, the LFC may implement the Technology Change or LFC Equipment Change:
 - (i) for a minor change, by giving the Access Seeker at least 1 months' notice of implementation; or
 - (ii) for a major change, by giving the Access Seeker at least 3 months' notice of implementation.

Whether a Technology Change or LFC Equipment Change is a "minor" or "major" change shall be determined by the LFC in accordance with the Undertakings.

- (d) For any Technology Change or LFC Equipment Change:
 - (i) the LFC will provide all reasonable assistance to the Access Seeker to migrate to the new technology or LFC Equipment to be used to provide the Input Services; and
 - (ii) if the Access Seeker (acting reasonably) considers that the Technology Change or LFC Equipment Change proposed by the LFC is likely to result in a significant change to the Access Seeker's procedures, facilities or systems or impose any additional material costs on the Access Seeker, the Access Seeker may terminate any affected Input Services Service Order prior to the relevant change being made operational by the LFC. For the avoidance of any doubt, clause 22.4(b) shall apply to such termination.
- (e) In making any LFC Equipment Change, the LFC will:
 - (i) ensure that any such modified or substituted LFC Equipment is fully compatible with the Network and the current Input Services Service Descriptions; and
 - (ii) use reasonable efforts to ensure that any such modified or substituted LFC Equipment is fully compatible with all other equipment, software and technology that the LFC Equipment interoperates with.

24.6 **Input Services Forum Change Process:**

- (a) If the LFC wishes to make:
 - (i) an Agreement Change proposed by the LFC (including an Input Service withdrawal in accordance with clause 5.2), that is not a Bilateral Agreement Change; or
 - (ii) a Required Change; or
 - (iii) a Technology Change; or
 - (iv) an LFC Equipment Change; or

(v) any other type of change to this Agreement that this Agreement requires be referred to the Input Services Forum, (each a **Proposed Change**), the LFC will submit that Proposed Change to the Input Services Forum for consultation in accordance with clause 24.11. A Bilateral Agreement Change is not a Proposed Change.

- (b) The LFC must consult in good faith with the Access Seeker and all Other Access Seekers (each an **Affected Party**) on each Proposed Change through the Input Services Forum in accordance with clause 24.11 to ensure that all Affected Parties understand the potential consequences of the Proposed Change and the related positions and material concerns of each Affected Party.
- (c) Following completion of Input Services Forum consultation on a Proposed Change, if required, the LFC:
- (i) will reasonably consider any responses relating to the Proposed Change provided to the LFC through the consultation process;
 - (ii) may make any amendments to the Proposed Change that the LFC considers appropriate to reflect the consultation; and
 - (iii) will implement the Proposed Change.

24.7 **Trivial changes:** The LFC may, by giving at least 20 Business Days' prior notice to the Access Seeker, make:

- (a) a change to the General Terms, the Input Services Price List (but not an Input Services Price Change or Input Services Ancillary Price Change), an Input Services Service Description, any Input Services Service Level Terms or an Input Services Service Order, in each case that the LFC (acting reasonably) considers trivial; or
- (b) a change to an Input Services Operations Manual that the LFC (acting reasonably) considers is not likely to result in a significant change to the Access Seeker's procedures, facilities or systems,

provided that "trivial change" complies with the Undertakings. The LFC will include reasonable details of the proposed "trivial change" in its notice to the Access Seeker.

24.8 **Merger of Proposed Changes:** Where any 2 or more Proposed Changes relate to the same underlying proposal by the LFC (as determined by the LFC, acting reasonably), such Proposed Changes may be consolidated in a single change process (including notices). Any such consolidation shall not otherwise affect any specific consultation, notice, approval, implementation or any other requirement of this Agreement in relation to any Proposed Change.

24.9 **Other Changes:**

- (a) Where the LFC wishes to introduce a new Input Service, the LFC may:
 - (i) at its discretion, and if the new Input Service complies with the Undertakings, refer the proposed Input Services Service Description, Input Services Operations Manual and/or Input Services Service Level Terms for that new Input Service, and/or the proposed changes to the Input Services Price List to add that new Input Service and associated Input Service Charges, to the Input Services Forum for consultation; and
 - (ii) only implement the Input Services Service Description, Input Services Operations Manual (if applicable) and Input Services Service Level Terms (if applicable) for the new Service, and the proposed changes to the Input Services Price List to add that new Input Service and associated Input Service Charges, by giving the Access Seeker at least 30 Business Days' notice of such change prior to implementation.
- (b) The LFC may only implement a change to the LFC Input Services (End User) Terms by giving the Access Seeker at least 30 Business Days' notice of such change prior to implementation and and if that change complies with the Undertakings.
- (c) Other than as set out in clauses 24.1 to 24.8, 24.9(a) and 24.9(b), no change to the Input Services General Terms, an Input Services Service Description, the Input Services Price List, any Input Services Service Level Terms, an Input Services Operations Manual or an Input Services Service Order will be binding unless the change is in writing and signed by the authorised representatives of both parties.

24.10 **Regulation:** If an Input Service, or a service that is substantially the same as that service, or an Input Service is subject to either a change the Undertakings, a standard terms determination or a determination under the Telecommunications Act 2001, then this Agreement will either automatically amend or cease to apply (whichever applies under the determination) in relation to that Input Service or service that is substantially the same as that Input Service from the date that the relevant determination comes into effect.

24.11 **Input Services Forum:**

- (a) The LFC will establish a multi-party Input Services forum (**Input Services Forum**), which will be open to the Access Seeker and all Other Access Seekers and the Commerce Commission, provided that no access seeker (including the Access Seeker) will be obliged to participate in the Input Services Forum. For the avoidance of any doubt, the intention is that the Input Services Forum will comprise technical and/or operational representatives and experts from the LFC, the Access Seeker and all Other Access Seekers who wish to participate.
- (b) The purpose of the Input Services Forum will include consideration of change notices, proposals and Access Seeker requests, technical and/or operational issues in relation to the Input Services and this Agreement.
- (c) The Input Services Forum will operate in accordance with procedures and rules to be known as the "Input Services Forum Processes" which will be developed and made publicly available by the LFC in due course.

24.12 **Commerce Act:** Nothing in this clause 24 or otherwise in this Agreement obliges either party to enter into any arrangements or take any action that would amount to a breach of the Commerce Act 1986.

25. GENERAL

25.1 **Entire Agreement:** This is the entire agreement between the parties in relation to the Input Services and supersedes all prior agreements, understandings and representations.

25.2 **Notices:** Every notice or other communication given under or in connection with this Agreement will be made in writing, addressed to the other party and personally delivered, posted by pre-paid registered mail or sent by fax or email to the address, fax number or email address of that party specified on the cover page of this Agreement, or such other address, fax number or email address as is notified by that party to the other party. No notice or communication will be effective until received. A notice or other communication sent:

- (a) by prepaid registered mail will be considered to have been received by the addressee 3 days after it was posted;
- (b) by fax will be considered to have been received by the addressee on the Business Day that it is sent or, if sent outside Business Hours, when Business Hours recommence; and
- (c) by email will be considered to have been received at the time that the email leaves the communications system of the sender, provided that the sender does not receive any related error message at the time of sending and has received an automated delivery receipt from the communications system of the recipient.

25.3 **Relationship:** Nothing expressed or implied in this Agreement will be deemed to constitute either party as the partner, agent or joint venturer of the other party.

25.4 **Comply with Laws:** Each party will comply with the Civil Defence Emergency Management Act 2002, the Telecommunications Act 2001, the Telecommunications (Interception Capability) Act 2004 and all other applicable laws, and mandated industry standards and codes, at all times when performing its obligations and exercising its rights under this Agreement.

25.5 **Assignment:** Either party may assign any of its rights and obligations under this Agreement to any other person, provided that it has obtained the prior written consent of the other party with such consent not to be unreasonably withheld. Any change in the effective management or control of the Access Seeker or the Access Seeker's parent company, through whatever means, where management or control passes to an access seeker (or a person who had management or control of an access seeker) whose agreement with the LFC has been terminated for material breach or an insolvency event will be deemed an assignment of this Agreement requiring the LFC's prior written consent.

25.6 **Subcontracting:** Each party may subcontract the performance of its obligations under this Agreement, but if it does so it will remain fully responsible and liable for all work carried out by the contractor, all materials used by the contractor and all acts and omissions of the contractor.

25.7 **Further Assurances:** Each party will (at its own expense) promptly do everything reasonably required to give full effect to this Agreement.

25.8 **No Waiver:** No waiver by either party of its rights under this Agreement will be effective unless in writing and signed by that party. If either party delays or fails to enforce any of its rights under this Agreement, this will not constitute a waiver by that party of that or any other right available to it.

25.9 **Remedies Cumulative:** The rights, powers and remedies in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law. The exercise of any of the rights, powers and remedies provided in this Agreement will not prejudice the exercise of any other right, power or remedy under this Agreement or at law.

25.10 **Severability:** If 1 or more of the terms of this Agreement is, or becomes, unenforceable, invalid or illegal for any reason, that term will be deemed to be modified to the extent necessary to remedy such unenforceability, invalidity or illegality. If this is not possible then that provision will be severed from this Agreement, without affecting the enforceability, validity or legality of any other term of this Agreement.

25.11 **Governing Law:** This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

25.12 **Interpretation:** When interpreting this Agreement:

- (a) any reference to a party includes that party's successors in title and permitted assigns (and, where the context permits, its personnel, contractors, agents and representatives);
- (b) a gender includes each other gender;
- (c) the singular includes the plural and vice versa;
- (d) any agreement not to do something constitutes an agreement not to suffer, permit or cause that thing to be done;
- (e) any reference to a consent requires the prior written consent of the person required to give that consent;
- (f) a reference to any legislation, policy or standard includes a modification of that legislation, policy or standard or, in the case of legislation, legislation enacted in substitution for that legislation and any regulation or other instrument issued or made under that legislation;
- (g) reference to a clause is to a clause of this Agreement, and any heading to a clause is included for ease of reference only and not to have any effect on interpretation;

- (h) the words include and including are deemed to be followed by the words "without limitation";
- (i) reference to a person includes an individual, partnership, body corporate, association, trust, governmental or local authority, or any other entity, whether corporate or unincorporated;
- (j) where a word is defined, its other grammatical forms have a corresponding meaning;
- (k) all currency references are to New Zealand dollars and all amounts payable are payable in New Zealand dollars; and
- (l) a reference to any day that is not a Business Day will be deemed to be a reference to the next Business Day.