

# **Network Interconnection Service Supply Agreement**

**[Name of Telco]**

and

**Spark New Zealand Trading Limited**

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Date:

## PARTIES

- (1) **[Name of Telco]**, at **[address]** (together with its successors and permitted assigns and transferees **Telco**);
- (2) **SPARK NEW ZEALAND TRADING LIMITED**, at Auckland (together with its successors and permitted assigns and transferees **Spark NZT**);

each a **Party** and together the **Parties**.

## BACKGROUND

- A Spark NZT operates the Spark NZT Network and carries on the business of providing telecommunications services in New Zealand.
- B Telco operates the Telco Network and carries on the business of providing telecommunications services in New Zealand.
- C The Parties have now agreed the terms and conditions to apply to the interconnection of their Networks (other than under the Mobile Termination Access Terms) in this Agreement and the Network Interconnection Service Contracts. These terms reflect the desire of the Parties (recognising however that the Parties are independent and autonomous entities):
- to interconnect with each other and provide services to each other, without interruption;
  - to maximise the commercial benefits derived by each Party from such interconnection;
  - to behave in a mutual and symmetric basis as network operators, and in particular to consult and co-operate and not to discriminate unreasonably against each other in terms of quality, timeliness of liaison, and provision of operational procedures;
  - to behave in a timely and reasonable manner to the extent reasonably consistent with commercially unavoidable resource constraints by either Party and the need to accommodate each other's reasonable priorities; and
  - to resolve such disputes as may arise in the context of such interconnection in a timely and expeditious but fair manner.
- D Nothing in this Agreement or any Network Interconnection Service Contract is intended to place either Party under any obligation in respect of Mobile Termination Access Services or any matter dealt with in the Mobile Termination Access Terms.
- E The Parties have agreed to move the underlying interconnection technology from a TDM-based Network Interconnection Service to an IP-based Network Interconnection Service. In the TDM-based Network Interconnection Service, the Interconnect Links are 2 Mbit 31 channel links. In the IP-based Network Interconnection Service, the Interconnect Links are carrier ethernet links carrying interconnect VoIP traffic which connect to a Handover Point. Once the IP-based Network Interconnection Links are built and testing is complete, the Parties will agree a Migration plan to migrate the Interconnection traffic from the TDM-based Network Interconnection Service to the IP-based Network Interconnection Service.

**THE PARTIES AGREE** as follows:

NETWORK INTERCONNECTION SERVICE SUPPLY AGREEMENT

- 1 With effect on and from the Commencement Date, the terms and conditions of this Agreement (including the Schedules) and the Network Interconnection Service Contracts entered into by the Parties contemporaneously with this Agreement, each as amended from time to time, shall apply.

**EXECUTED** as an agreement.

**SIGNED** for and on behalf of **[Name of Telco]** by an Authorised Signatory:

**SIGNED** for and on behalf of **SPARK NEW ZEALAND TRADING LIMITED** by an Authorised Signatory:

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
Name:

Title:



## SCHEDULE A

### PART A

#### INTERPRETATION

#### 1 INTERPRETATION

##### Defined terms

Unless the context otherwise requires, the following terms have the following meanings when used in this Agreement and in any Network Interconnection Service Contract:

- 1.1 *Agreed Call* means:
- 1.1.1 a series of signals associated with full duplex, real time, audio communication (which for the avoidance of doubt, includes voice-over-Internet-protocol originated voice calls and transited calls);
  - 1.1.2 including a series of call set up and tear down control signals using the SIP protocol, the details of which are specified in the IP Interconnect Interface Specification between the Parties (for calls that may originate from either Party's Network, terminate on either Network or transit across each other's Network);
  - 1.1.3 contained within a dedicated media (e.g. speech, fax) path established in each direction between the two networks using the RTP/RTCP protocol as are specified in the IP Interconnect Interface Specification between the Parties, to connect the originator and the intended recipient;
  - 1.1.4 where the supported codec list is agreed as specified in the IP Interconnect Interface Specification between the Parties so that a call is always possible with fall back to an agreed default codec of last resort where a higher preference codec can not be agreed by either media end-point;
  - 1.1.5 where the bandwidth provided is determined by the voice or fax codec negotiated between media endpoints or transcoding points as specified in the IP Interconnect Interface Specification between the Parties;
  - 1.1.6 whether or not there is actual communication between the originator and the intended recipient of the signals;
- but does not include:
- 1.1.7 a call or message handed over under the Mobile Termination Access Terms; or
  - 1.1.8 a mms or sms; or
  - 1.1.9 a video telephony call.
- 1.2 *Agreement* means this agreement (including the Schedules) as amended from time to time.
- 1.3 *AMSDP* means, where Spark NZT and Telco are parties to an agreement known as Network Interconnection Service Contract 12 ( *SMS Service*), an SMS Service Delivery Point as defined under that agreement. If Spark NZT and Telco are not party to such an agreement, then all references in this Agreement and in the Network Interconnection Service Contracts to AMSDP shall have no effect.

- 1.4 *Answer Signal* means the message signal in the Signalling Format which indicates that a Call has been answered.
- 1.5 *Artificial Inflation of Traffic* means any situation where Calls, MMS or SMS
- 1.5.1 are made, generated, stimulated, answered and/or prolonged for the commercial benefit of any entity (including a natural person) operating, hosting, using or otherwise connected with a telecommunication service as a result of any activity by or on behalf of any entity; and
- 1.5.2 result in a traffic pattern which is disproportionate to the overall amount, duration and/or extent of Calls, MMS or SMS which would be expected from:
- (a) a good faith usage; or
- (b) genuine communication between end users.
- 1.6 *Bill Rate* means the average 3 month bank bill mid rate as quoted on Reuters Screen page BKBM (known as at the Commencement Date as the *FRA* rate) at or about 10.45 am as at the relevant date **PROVIDED THAT** if on or about that time for any reason the Reuters Screen page BKBM is not then available, then the Bill Rate shall be the last rate quoted on that page before it became unavailable.
- 1.7 *Call* means:
- 1.7.1 a *Telco Call* under the agreement known as Network Interconnection Service Contract 1 (*Call Delivery in the Spark NZT Network*);
- 1.7.2 a *Spark Call* under the agreement known as Network Interconnection Service Contract 2 (*Call Delivery in the Telco Network*);
- 1.7.3 a *Free-phone Call* under the agreement known as Network Interconnection Service Contract 4 (*Free-phone Call Service*);
- 1.7.4 a *Calling Card Call* under the agreement known as Network Interconnection Service Contract 8 (*Calling Card Service*);
- 1.7.5 a *Telco Toll Bypass Call* under the agreement known as Network Interconnection Service Contract 9 (*Spark NZT Toll Bypass Service*);
- 1.7.6 a *Call* to a Premium Rate Service under the agreement known as Network Interconnection Service Contract 13 (*Premium Rate Interconnection Service*); and
- 1.7.7 such other Agreed Call as is agreed to be a *Call* under any Network Interconnection Service Contract.
- but, for the avoidance of doubt, excludes a *Telco SSC Call*.
- 1.8 *CCITT/ITU* means the International Telecommunications Union/Telecommunication Standardisation Section (ITU/TS) and its predecessor, the International Telegraph and Telephone Consultative Committee.
- 1.9 *CCITT/ITU Recommendations* means the relevant recommendations of CCITT/ITU.
- 1.10 *Commencement Date* means [date] unless otherwise agreed by the parties

1.11 *Commission* means the Commerce Commission in the course of performing its functions under the Telecommunications Act 2001.

1.12 *Confidential Customer Information* means:

1.12.1 in the case of Telco, all information which Telco provides to Spark NZT on a confidential basis or which, subject to **Clauses 1.12.3 to 1.12.9** (inclusive), Spark NZT otherwise holds or obtains, concerning any particular Telco Customer or any particular person who intends to become a Telco Customer, including (without limitation) information of the fact that a Spark NZT Customer intends to subscribe for or has subscribed for a Telco End User Service;

1.12.2 in the case of Spark NZT, all information which Spark NZT provides to Telco on a confidential basis or which, subject to **Clauses 1.12.3 to 1.12.9** (inclusive), Telco otherwise holds or obtains, concerning any particular Spark NZT Customer or any particular person who intends to become a Spark NZT Customer, including (without limitation) information of the fact that a Telco Customer intends to subscribe for or has subscribed for a Spark NZT End User Service;

but does not include any such information:

1.12.3 which is aggregated so that it does not identify any particular Customer; and

1.12.4 which, in the case of Spark NZT Confidential Customer Information, is obtained from sources independent of the Spark New Zealand Group, including (for the avoidance of doubt and without limitation) information obtained from the relevant Spark NZT Customer;

1.12.5 which, in the case of Telco Confidential Customer Information, is obtained from sources independent of the Telco New Zealand Group, including (for the avoidance of doubt and without limitation) information obtained from the relevant Telco Customer;

1.12.6 which in the case of Spark NZT Confidential Customer Information was known to Telco at the time of receipt or which is or becomes publicly available otherwise than as a result of a breach of an obligation of confidence;

1.12.7 which in the case of Telco Confidential Customer Information was known to Spark NZT at the time of receipt or which is or becomes publicly available otherwise than as a result of a breach of an obligation of confidence;

1.12.8 which is Confidential Customer Information by virtue of **Clauses 1.13.1 or 1.12.2** but to which **Clause 1.12.3, 1.12.5, 1.12.6 1.12.7 or 1.13.8** subsequently applies;

1.12.9 which is both contained in and generated from:

(a) in the case of Telco, Telco's own billing records related to Telco Customers other than billing records relating to Telco Network Interconnection Service; and

(b) in the case of Spark NZT, Spark NZT's own billing records related to Spark NZT Customers other than billing records relating to Spark NZT Network Interconnection Service.

1.13 *Confidential Information* means all information (including the contents of any Materials) which is confidential or proprietary:

- 1.13.1 in the case of Telco, to Telco or any member of the Telco Group, including:
- (a) information which is confidential or proprietary to a third party and used or disclosed pursuant to or in connection with this Agreement or any Network Interconnection Service Contract by Telco under licence from such third party;
  - (b) information which is confidential or proprietary to Telco or any member of the Telco Group which has been obtained by Spark NZT from any other member of the Spark New Zealand Group or from any person on behalf of any other member of the Spark New Zealand Group; and
  - (c) Telco Confidential Customer Information;
- 1.13.2 in the case of Spark, to Spark NZT or any member of the Spark Group, including:
- (a) information which is confidential or proprietary to a third party and used or disclosed pursuant to or in connection with this Agreement or any Network Interconnection Service Contract by Spark NZT under licence from such third party; and
  - (b) information which is confidential or proprietary to Spark NZT or any member of the Spark Group which has been obtained by Telco from any other member of the Telco Group or from any person on behalf of any other member of the Telco Group;
  - (c) Spark NZT Confidential Customer Information;
- 1.13.3 to both Parties, including the terms and conditions of this Agreement and any Network Interconnection Service Contract,
- but does not include any such information:
- 1.13.4 which is independently developed by the receiving Party outside the scope of this Agreement and any Network Interconnection Service Contract (other than where that information is developed while providing services to, or otherwise for the benefit of, any other member of the Spark New Zealand Group, where Spark NZT is the receiving Party, or the Telco Group, where Telco is the receiving Party, where that Group member is in breach of any obligation of confidentiality that it owes to the supplying Party in relation to that information);
- 1.13.5 which is other confidential or proprietary information obtained from sources independent of either Party (other than, for the avoidance of doubt, information obtained from any other member of the Spark New Zealand Group, in the case of Spark NZT, or the Telco Group, in the case of Telco, or from any person on behalf of any other member of that Group);
- 1.13.6 which was publicly available at the time of receipt or the date of this Agreement;
- 1.13.7 which was known to a Party at the time of receipt or becomes publicly available after the execution of this Agreement otherwise than as a result of a breach of an obligation of confidence;
- 1.13.8 required to be released under any applicable law, the regulations of a stock exchange on which a Party's (or their parent company's) shares are listed, or order of any court, governmental agency or body having legal power to compel disclosure; or

- 1.13.9 which is a press release (or other statement) that is agreed by the Parties regarding the entry into this Agreement and any Network Interconnection Service Contract.
- 1.14 *Customer* means a Telco Customer or a Spark NZT Customer, as the context requires.
- 1.15 *Direct Loss* has the meaning set out in **Clause 8.2**.
- 1.16 *Due Date* means the date specified in an invoice provided in respect of:
- 1.16.1 Network Interconnection Services provided by the Invoicing Party; or
- 1.16.2 amounts otherwise due to that Party under any Network Interconnection Service Contract;
- which may not be less than 20 Working Days following the date of the invoice.
- 1.17 *End User* means a Telco End User or a Spark NZT End User, as the context requires.
- 1.18 *End User Service* means a Telco End User Service or Spark NZT End User Service, as the context requires.
- 1.19 *Expiry Date* means [date]
- 1.20 *Force Majeure* has the meaning set out in **Clause 6.2**
- 1.21 *Group* means, except as specifically provided in any clause, the Telco Group or the Spark NZT Group, as the context requires.
- 1.22 *Hand-off Code* has the meaning ascribed to that term in the Network Terms.
- 1.23 *Handover Point* means an electrical and physical interface point between the Telco Network and the Spark NZT Network at which Calls or Telco SSC Calls are, or are to be, handed over from the Telco Network to the Spark NZT Network, and vice versa.
- 1.24 *Intellectual Property* includes trade marks, service marks, inventions, patents, designs, copyrights, know how, trade secrets and all rights and interests or licences to use any of them.
- 1.25 *Interconnect Link* means a carrier ethernet link carrying interconnect VOIP traffic which connects to a Handover Point
- 1.26 *Interconnect Specifications* means the LMNP Voice Interconnect Specification, the LMNP SMS Interconnect Specification and the LMNP MMS Interconnect Specification.
- 1.27 *Invoicing Party* means, in relation to any invoice in respect of any payment due under this Agreement or any Network Interconnection Service Contract, the Party which renders the invoice.
- 1.28 *IP Interconnect Interface Specification* means the document entitled IP Interconnect Interface Specification provided to Telco by Spark NZT.
- 1.29 *kilobits* or *kbits* means 1,024 bits.
- 1.30 *kilobytes* or *kbytes* means 1,024 bytes.
- 1.31 *Liaison Committee* means the operational liaison committee established pursuant to **Clause 9.2**.

- 1.32 *LMNP Determination* means:
- 1.32.1 Commerce Commission Decision 705 dated 15 December 2010, as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 705; and
  - 1.32.2 includes the Network Terms, the LMNP Terms and the Operational and Support Manual for LMNP.
- 1.33 *LMNP MMS Interconnect Specifications* means the LMNP Interconnect – Multimedia Message Service specifications agreed by the Parties from time to time.
- 1.34 *LMNP SMS Interconnect Specifications* means the LMNP Interconnect Short Message Service specifications agreed by the Parties from time to time.
- 1.35 *LMNP Terms* means the “Terms for Local and Mobile Number Portability in New Zealand – “LMNP Terms”” issued by the Commerce Commission as part of the LMNP Determination, as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 705.
- 1.36 *LMNP Voice Interconnect Specifications* means the document entitled “LMNP Interconnect between Telco and Spark NZT – Technical Realisation of LMNP Voice Interconnect” agreed by the parties from time to time.
- 1.37 *Local Number* means:
- 1.37.1 any Spark NZT Local Number; or
  - 1.37.2 any Telco Local Number,
- as the context requires.
- 1.38 *Local Number Portability* means the “local telephone number portability service” as described in Subpart 2 of Part 2 of Schedule 1 of the Telecommunications Act 2001.
- 1.39 *Manifest Error* means:
- 1.39.1 any erroneous duplication of the items charged in;
  - 1.39.2 any error in a calculation shown on;
  - 1.39.3 any error in the total of the amounts shown on;
  - 1.39.4 any erroneous calculation of discounts shown on;
  - 1.39.5 any erroneous calculation of the GST shown on;
  - 1.39.6 any erroneous inclusion of services not to be provided under this Agreement and/or any Network Interconnection Service Contract in; or
  - 1.39.7 any erroneous application of an incorrect price to a Call, a Telco SSC Call, MMS or SMS, where the Parties are in agreement on the price which should apply to that Call, Telco SSC Call MMS or SMS in;

an invoice rendered by the Invoicing Party, which is apparent on the face of the invoice.

1.40 *Materials* means, in relation to either Party, each document, instructional material, chart, design drawing and manual which is both:

1.40.1 developed by it or a member of its Group or its or their officers, employees, contractors or agents in connection with this Agreement and/or a Network Interconnection Service Contract; and

1.40.2 provided to the other Party by it or a member of its Group for the purposes of this Agreement and/or a Network Interconnection Service Contract.

1.41 *MMSDP* means a Multi-Media Message Service Delivery Point as defined under the agreement known as Network Interconnection Service Contract 5 (*Multi-Media Message Service*).

1.42 *Mobile Number* means:

1.42.1 any Spark NZT Mobile Number; or

1.42.2 any Telco Mobile Number,

1.42.3 Any 3<sup>rd</sup> Party Mobile Number (for transit cases)

as the context requires.

1.43 *Mobile Number Portability* means the “cellular telephone number portability service” as described in Subpart 2 of Part 2 of Schedule 1 of the Telecommunications Act 2001.

1.44 *Mobile Termination Access Terms* means the regulated terms of supply of mobile termination services set out in Commerce Commission Decision 724 dated 5 May 2011, as amended from time to time due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 724.

1.45 *mms or multi-media message* means an asynchronous message, comprising graphics, animation, pictures, photos, images, audio, video or an alphanumeric sequence of text, or comprising any combination of these which generally conforms to 3GPP TS 22.140 and 3GPP TS 23.140 (as amended from time to time) maintained by the Open Mobile Alliance but excludes an sms, an Other Message or a message handed over pursuant to the Mobile Termination Access Terms.

1.46 *MMS* means a MMS as defined under the agreement known as Network Interconnection Service Contract 5 (*Multi-Media Message Service*).

1.47 *Multi-Media Message Signalling Link* means a Signalling Link as defined under the agreement known as Network Interconnection Service Contract 5 (*Multi-Media Message Service*).

1.48 *MVNO* means mobile virtual network operator.

1.49 *NAD* means the Number Administration Deed authorised by the Commission on 17 May 1999, or any agreement (or other arrangement) that replaces the Number Administration Deed.

1.50 *National Number* means:

1.50.1 any Spark NZT National Number; or

- 1.50.2 any Telco National Number,  
as the context requires.
- 1.51 *Network* means the Telco Network or the Spark NZT Network, as the context requires.
- 1.52 *Network Interconnection Operational Procedures* means the operational procedures set out in **Schedule B**, as amended from time to time.
- 1.53 *Network Interconnection Service* means Telco Network Interconnection Service or Spark NZT Network Interconnection Service, as the context requires.
- 1.54 *Network Interconnection Service Contract* means a contract entered into between the Parties and described in **Clauses 2.5 to 2.7** (inclusive), such contract being as amended from time to time, except as the context expressly requires otherwise.
- 1.55 *Network Interconnection Technical Specifications* means the *Network Interconnection Technical Specifications* set out in **Schedule C** or such other document as may be agreed between the Parties, as amended from time to time.
- 1.56 *Network Operator* means a network operator (not being Spark NZT, Telco, or a member of either the Spark New Zealand Group or the Telco New Zealand Group) which has entered into an interconnection agreement with Telco or Spark NZT for the provision by Telco or Spark NZT of services which are the same or similar to Telco Network Interconnection Service or Spark NZT Network Interconnection Service (as applicable).
- 1.57 *Network Terms* means the “Network Terms for Local and Mobile Number Portability in New Zealand – “Network Terms”” issued by the Commerce Commission as part of the LMNP Determination, as amended for any reason, including due to any appeal, judicial review, clarification under section 58 of the Telecommunications Act 2001 or reconsideration under section 59 of the Telecommunications Act 2001 and subject to any exemptions that are granted in accordance with the terms of Decision 705.
- 1.58 *New Zealand Group* means in relation to Spark NZT, the Spark NZT New Zealand Group; and in relation to Telco, means the Telco New Zealand Group.
- 1.59 *Operational and Support Manual for LMNP* means the multilateral agreement of that description agreed or to be agreed between the Parties and various Network Operators (as amended from time to time) that covers operational issues in relation to Local Number Portability and Mobile Number Portability that are not dealt with by the Network Terms.
- 1.60 *Other Message* means any text or other message that is made or is to be made to a Mobile Number that has been allocated to a mobile phone or handset in a Party’s Network excluding:
- 1.60.1 a call or message handed over under the Mobile Termination Access Terms;
- 1.60.2 a sms or mms, Agreed Call, Telco SSC Call, video telephony call, read receipt or delivery receipt;
- Other Messages include (without limitation):
- 1.60.3 Any message utilising push to talk messaging services;
- 1.60.4 Any message that uses a WAP-push or similar system to indirectly transmit a mms;
- 1.60.5 Any message that utilises enhanced messaging service functionality;



- 1.60.6 Any message that utilises machine to machine service functionality such that the message is sent without any human intervention (other than initial establishment of the service) by the relevant customer; and
- 1.60.7 Any message that utilises instant messaging functionality;
- 1.61 *Outage* means the failure by a Party (the *first Party*) to provide, in whole or in part, a Network Interconnection Service to the other Party (the *second Party*) in accordance with this Agreement and the relevant Network Interconnection Service Contract due to:
  - 1.61.1 any health and safety matter which, in the first Party's reasonable opinion, requires the first Party not to supply the Network Interconnection Service; or
  - 1.61.2 any suspension or restriction of the provision of a Network Interconnection Service by the second Party which, in the first Party's reasonable opinion, makes the provision, in whole or in part, of the Network Interconnection Service by the first Party impossible or impracticable; or
  - 1.61.3 any suspension, restriction, fault or other disruption to the network of a Network Operator which, in the first Party's reasonable opinion, makes the provision, in whole or in part, of the Network Interconnection Service by the first Party impossible or impracticable; or
  - 1.61.4 any technical or operational matter, or any other circumstance which, in the first Party's reasonable opinion, requires the first Party not to supply the Network Interconnection Service to manage or protect its Network, including (without limitation):
    - (a) a change to either Party's Network;
    - (b) the testing, repair or maintenance of the first Party's Network;
    - (c) the testing, repair or maintenance of the second Party's Network which gives rise to interference in, or disruption to, the first Party's Network;
    - (d) any instability, congestion or other operational problems in the first Party's Network in circumstances where attempts by the first Party to eliminate the effects by using call management procedures, such as call gapping or selective make-busy, have failed;
    - (e) any emergency situation, such as:
      - (i) immediate danger to the safety of any person;
      - (ii) immediate interference with, disruption to, and/or threat to:
        - (A) either Party's Network;
        - (B) the network of a Network Operator;
        - (C) the provision of Network Interconnection Services and/or End User Service; and/or
        - (D) the provision of network interconnection services and/or end user service by a Network Operator;

including the protection and/or integrity of a network, network interconnection services and/or end user service;

- (f) any event giving rise to danger, interference, disruption and/or a threat of the kind described in **Clause 1.61.4(e)**.

1.62 *Paying Party* means, in relation to any invoice in respect of any payment due under this Agreement or any Network Interconnection Service Contract, the Party to whom the invoice is addressed.

1.63 *Ported Number Register* has the meaning ascribed to that term in the LMNP Terms.

1.64 *Regulatory Event* means any legislative or regulatory change made on or after the Commencement Date by the Government or any regulatory authority (including, without limitation, any determination, direction or decision by a regulatory authority) that concerns the telecommunications services provided under this Agreement or any Network Interconnection Service Contract that directly or indirectly has the effect of:

1.64.1 materially altering the terms of this Agreement or any Network Interconnection Service Contract or imposing terms of supply on the Parties that materially alters the terms of this Agreement or any Network Interconnection Service Contract;

1.64.2 making the operation of this Agreement or any Network Interconnection Service Contract impracticable;

1.64.3 making Spark NZT or Telco incapable of performing this Agreement or any Network Interconnection Service Contract; or

1.64.4 requiring Spark NZT or Telco (voluntarily or otherwise) to materially alter its operations or structure.

1.65 *Release Signal* means the message in the Signalling Format carried from Telco to Spark NZT or from Spark NZT to Telco that indicates that a Call has ended and that a connection is no longer established in respect of that Call.

1.66 *Schedules* means the schedules to this Agreement as created and/or amended from time to time.

1.67 *Signalling Format* means SIP signalling (or such other signalling as may be agreed by the Parties from time to time) in the format described as being available for interconnection in the Network Interconnection Technical Specifications.

1.68 *sms or short message service* means a message, representing an alphanumeric sequence of text, which:

- (a) uses the CCITT No. 7 MAP protocol and generally conforms to GSM Technical Specifications 3GPP TS 03.40 and 3GPP TS 23.40 (as amended from time to time);

but does not include:

- (b) a call or message handed over pursuant to the Mobile Termination Access Terms;

- (c) an Agreed Call, video telephony call or Telco SSC Call;

- (d) an mms; or

- (e) an Other Message.
- 1.69 *SMS* means an sms handed over from one Party's Network to the other Party's Network in accordance with this Agreement and Network Interconnection Service Contract 12 (*SMS Service*) provided that if Spark NZT and Telco are not Party to an agreement known as Network Interconnection Service Contract 12 (*SMS Service*), then all references in this Agreement and in the Network Interconnection Service Contracts to SMS shall have no effect.
- 1.70 *SMS Signalling Link* means, where Spark NZT and Telco are parties to an agreement known as Network Interconnection Service Contract 12 (*SMS Service*), a Signalling Link as defined under that agreement. If Spark NZT and Telco are not party to such an agreement, then all references in this Agreement and in the Network Interconnection Service Contracts to SMS Signalling Link shall have no effect.
- 1.71 *Spark NZT Customer* means a person who has a contractual relationship with Spark NZT or a New Zealand member of the Spark New Zealand Group for the use by that person of a Spark NZT End User Service (which may include a reseller of Spark NZT End User Services for use by customers of that reseller), but does not include the Spark New Zealand Group, Telco or the Telco New Zealand Group.
- 1.72 *Spark NZT End User* means a person who becomes an end user of a retail telecommunications service provided over the Spark NZT Network by Spark NZT or New Zealand member of the Spark NZT New Zealand Group (which may include such retail telecommunications services provided by a reseller of Spark NZT End User Services or a Third Party Reseller of Spark NZT), but does not include the Spark New Zealand Group, Telco or the Telco New Zealand Group.
- 1.73 *Spark NZT End User Service* means the telecommunication service provided by Spark NZT or a New Zealand member of the Spark New Zealand Group to Spark NZT Customers.
- 1.74 *Spark NZT Group* means, jointly and severally, Spark NZT and each and all of its related companies now or from time to time (within the meaning of section 2(3) of the Companies Act 1993 but read as if the expression "company" includes any body corporate whether incorporated in New Zealand or elsewhere) and includes any member of the Spark NZT New Zealand Group including Spark NZT.
- 1.75 *Spark NZT New Zealand Group* means, jointly and severally, Spark NZT and each and all of its related companies now or from time to time (within the meaning of section 2(3) of the Companies Act 1993).
- 1.76 *Spark NZT National Number* means:
- 1.76.1 any eight digit geographic service number, where the first 4 digits of the national toll code are of the form area code (3, 4, 6, 7 or 9) followed directly by NXX, where N equals 2 to 9; and X equals 0 to 9:
- (a) that may be allocated to Spark NZT from time to time in accordance with the NAD (including such numbers allocated to Spark NZT payphones); or
- (b) that has been allocated to a Third Party Reseller that is used on the Spark NZT Network, until such time as Spark NZT notifies Telco that any such geographic service numbers allocated to the Third Party Reseller should not be Spark NZT Local Numbers,
- that is not (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported out of the Spark NZT Network; and

1.76.2 any Local Number (as that term is defined in the Network Terms) that is (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported to the Spark NZT Network in accordance with the LMNP Determination. To avoid doubt, where the number has been ported two or more times (and has not been ported out of the Spark NZT Network since the last port), such port to the Spark NZT Network will be the last of the ports.

1.77 *Spark NZT Mobile Number* means:

1.77.1 any 027 or 02X non-geographic service number:

- (a) that may be allocated to Spark NZT from time to time in accordance with the NAD (including such numbers allocated to Spark NZT payphones); or
- (b) that has been allocated to a Third Party Reseller that is used on the Spark NZT Network, until such time as Spark NZT notifies Telco that any such 02X numbers allocated to the Third Party Reseller should not be Mobile Numbers,

that is not (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported out of the Spark NZT Network; and

1.77.2 any Mobile Number (as that term is defined in the Network Terms) that is (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported to the Spark NZT Network in accordance with the LMNP Determination. To avoid doubt, where the Mobile Number has been ported out two or more times (and has not been ported out of the Spark NZT Network since the last port), such port to the Spark NZT Network will be the last of the ports,

1.77.3 provided that, a Spark NZT Mobile Number does not include any number in any 026 number range allocated to a pager service or 024 number range allocated to a Network Interconnection Service or Spark Standard Service in Antarctica, any number allocated to mobile radio, or any number in "short code" format where the customer does not include all digits of the number plus the 02X prefix.

To avoid doubt, the Spark NZT Mobile Numbers described in 1.77.1 do not include any numbers allocated to any member of the Telco New Zealand Group.

1.78 *Spark NZT Network* means the telecommunication system comprising all links, radio, microwave and other transmission media and equipment, switches, software and related items utilised by Spark NZT and any New Zealand member of the Spark NZT New Zealand Group to make available and provide Spark NZT Network Interconnection Service to Telco, but does not include the Telco Network. For the avoidance of doubt, the *Spark NZT Network* does not include a Telco Handover Point, a Telco AMSDP, a Telco MMSDP or any circuits or equipment of Spark NZT or the Spark NZT New Zealand Group utilised by Telco on the Telco side of any Handover Point, AMSDP or MMSDP.

1.79 *Spark NZT Network Interconnection Service* means all or any *Network Interconnection Services* made available or provided by Spark NZT to Telco, and defined, in the Network Interconnection Service Contracts, but excludes Spark Standard Charges Services, as defined in and provided under the agreement known as Network Interconnection Service Contract 3 (*Spark Standard Charges Services*).

1.80 *Standard Hours of Operation* has the meaning set out in the LMNP Terms.

1.81 *Term* means the period (inclusive) on and from the Commencement Date until:

- 1.81.1 the Expiry Date; or
- 1.81.2 if **Clause 3.3** applies, the date on which this Agreement and all Network Interconnection Service Contracts expire under **Clause 3.3**.
- 1.82 *The Spark Standard Charges or SSC* means the list of charges as determined by Spark NZT, amended from time to time as set out in Network Interconnection Service Contract 3 (*Spark Standard Charges Services*), in respect of telecommunications services provided to landline or mobile customers and other voice calling services provided by Spark NZT New Zealand Group.
- 1.83 *3GPP* means Third Generation Partnership Project. The 3rd Generation Partnership Project (3GPP) is a standards organization which develops protocols for mobile and IP based telephony.
- 1.84 *Third Party Reseller* means:
- 1.84.1 in relation to the Telco Network:
- (a) a third party that Telco has notified Spark NZT is a person that meets the following requirements: that person has numbers which are eight digit geographic service numbers, where the first 4 digits of the national toll code are in the form area code (3, 4, 6, 7 or 9) followed directly by NXX, where N equals 2 to 9, and X equals 0 to 9, allocated to (and not ported away from) the third party (or, in the case where the number is ported to the third party, assigned to the third party) and either:
    - (i) assigned to the third party's customers and used by the third party on the Telco Network for the purposes of resale by the third party of Telco services to those customers; or
    - (ii) assigned to Telco customers and used by the third party on the Telco Network for the purposes of the third party selling Telco services to those Telco customers as an agent of Telco; and
  - (b) a third party that Telco has notified Spark NZT is a person that meets the following requirements: that person has numbers which are 02X numbers or 02X mobile service numbers allocated to (and not ported away from) the third party (or in the case where the number is ported to the third party, assigned to the third party) and either:
    - (i) assigned to the third party's customers and used by the third party on the Telco Network for the purposes of resale by the third party of Telco services to those customers; or
    - (ii) assigned to Telco customers and used by the third party on the Telco Network for the purposes of the third party selling Telco services to those Telco customers as an agent of Telco; and
- 1.84.2 in relation to the Spark NZT Network:
- (a) a third party that Spark NZT has notified Telco is a person that meets the following requirements: that person has numbers which are eight digit geographic service numbers, where the first 4 digits of the national toll code are in the form area code (3, 4, 6, 7 or 9) followed directly by NXX, where N equals 2 to 9, and X equals 0 to 9, allocated to (and not ported away

from) the third party (or, in the case where the number is ported to the third party, assigned to the third party) and either:

- (i) assigned to the third party's customers and used by the third party on the Spark NZT Network for the purposes of resale by the third party of Spark NZT services to those customers; or
  - (ii) assigned to Spark NZT customers and used by the third party on the Spark NZT Network for the purposes of the third party selling Spark NZT services to those Spark NZT customers as an agent of Spark NZT; and
- (b) a third party that Spark NZT has notified Telco is a person that meets the following requirements: that person has numbers which are 027 numbers or 02X mobile service numbers allocated to (and not ported away from) the third party (or, in the case where the number is ported to the third party, assigned to the third party) and either:
- (i) assigned to the third party's customers and used by the third party on the Spark NZT Network for the purposes of resale by the third party of Spark NZT services to those customers; or
  - (ii) assigned to Spark NZT customers and used by the third party on the Spark NZT Network for the purposes of the third party selling Spark NZT services to those Spark NZT customers as an agent of Spark NZT.

1.85 *Toll Free JVA* means the Joint Venture Agreement dated 7 May 1999 relating to toll free numbers.

1.86 *Telco Customer* means a person who has a contractual relationship with Telco or New Zealand member of the Telco New Zealand Group for the use by that person of a Telco End User Service (which may include a reseller of Telco End User Services for use by customers of that reseller), but does not include the Telco New Zealand Group, Spark NZT or the Spark NZT New Zealand Group.

1.87 *Telco End User* means a person who becomes an end user of a retail telecommunications service provided over the Telco Network by Telco or New Zealand member of the Telco New Zealand Group (which may include such retail telecommunications services provided by a reseller of Telco End User Services or a Third Party Reseller of Telco), but does not include the Telco New Zealand Group, Spark NZT or the Spark NZT New Zealand Group.

1.88 *Telco End User Service* means the telecommunication service provided by Telco or a New Zealand member of the Telco New Zealand Group to Telco Customers.

1.89 *Telco Group* means, jointly and severally, Telco and each and all of its related companies now or from time to time (within the meaning of section 2(3) of the Companies Act 1993 but read as if the expression "company" includes any body corporate whether incorporated in New Zealand or elsewhere) and includes any member of the Telco Group.

1.90 *Telco National Number* means:

1.90.1 any eight digit geographic service number, where the first 4 digits of the national toll code are of the form area code (3, 4, 6, 7 or 9) followed directly by NXX, where N equals 2 to 9, and X equals 0 to 9;

- (a) that may be allocated to Telco from time to time in accordance with the NAD;  
or
- (b) that has been allocated to a Third Party Reseller that is used on the Telco Network, until such time as Telco notifies Spark NZT that any such geographic service numbers allocated to the Third Party Reseller should not be Telco Local Numbers,

that is not (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported out of the Telco Network; and

- 1.90.2 any Local Number (as that term is defined in the Network Terms) that is (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported to the Telco Network in accordance with the LMNP Determination. To avoid doubt, where the number has been ported two or more times (and has not been ported out of the Telco Network since the last port), such port to the Telco Network will be the last of the ports.

1.91 *Telco Mobile Number* means:

- 1.91.1 any 02X non-geographic service number:

- (a) that may be allocated to Telco from time to time in accordance with the NAD;  
or
- (b) that has been allocated to a Third Party Reseller that is used on the Telco Network, until such time as Telco notifies Spark NZT that any such 02X numbers allocated to the Third Party Reseller should not be Telco Mobile Numbers,

that is not (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported out of the Telco Network; and

- 1.91.2 any Mobile Number (as that term is defined in the Network Terms) that is (at the time of the relevant Call) identified by reference to the Ported Number Register as a number ported to the Telco Network in accordance with the LMNP Determination. To avoid doubt, where the Mobile Number has been ported out two or more times (and has not been ported out of the Telco Network since the last port), such port to the Telco Network will be the last of the ports; and

- 1.91.3 Telco Mobile Number does not include any number in “short code” format where the customer does not include all digits of the number plus the 02X prefix

To avoid doubt, the Telco Mobile Numbers described in 1.92.1) do not include any numbers allocated to any member of the Spark NZT New Zealand Group.

- 1.92 *Telco Network* means the telecommunication system comprising all links, radio, microwave and other transmission media and equipment, switches, software and related items utilised by Telco and any New Zealand member of the Telco Group to make available and provide Telco Network Interconnection Service to Spark NZT, but does not include the Spark NZT Network. For the avoidance of doubt, the *Telco Network* does not include a Spark NZT Handover Point, a Spark NZT AMSDP or a Spark NZT MMSDP or any circuits or equipment of Telco or the Telco New Zealand Group utilised by Spark NZT on the Spark NZT side of any Handover Point, AMSDP or MMSDP.

- 1.93 *Telco Network Interconnection Service* means all or any *Network Interconnection Services* made available or provided by Telco to Spark NZT, and defined, in the Network Interconnection Service Contracts.
- 1.94 *Telco New Zealand Group* means, jointly and severally, Telco and each and all of its related companies now or from time to time (within the meaning of section 2(3) of the Companies Act 1993 with the exception of Telco Next Generation Services Limited (company number 5741258).
- 1.95 *Telco SSC Call* means a Telco SSC Call as defined in and provided under the agreement known as Network Interconnection Service Contract 3 (*Spark Standard Charges Services*).
- 1.96 *Working Day* means a day other than a Saturday, a Sunday or a statutory holiday in Auckland.

### **General Construction**

Unless the context otherwise requires, in this Agreement and in any Network Interconnection Service Contract:

- 1.97 the singular includes the plural and vice versa;
- 1.98 the headings to the clauses, schedules and parts of this Agreement, are included for convenience only and do not constitute a part of this Agreement;
- 1.99 words denoting natural persons only shall include corporations (whether or not having separate legal personality) and vice versa and words denoting one gender shall include every other gender;
- 1.100 a Party to this Agreement, a Network Interconnection Service Contract, or another agreement includes its successors and its permitted assignees and transferees;
- 1.101 unless a specific Schedule is specified, all references in the Schedules to clause numbers shall be read as references to clauses of **Schedule A**;
- 1.102 any reference to any statute or regulation shall be deemed to be a reference to that statute or regulation as it may from time to time be amended, re-enacted or substituted; and
- 1.103 references to monetary amounts are to New Zealand currency.



## PART B

### 2 SCOPE OF AGREEMENT

- 2.1 Subject to the terms and conditions set out in this Agreement and in any Network Interconnection Service Contract, the Parties agree to connect their Networks at trunkside (inter-switch or inter-exchange) level at the Handover Points, AMSDPs or MMSDPs for the purposes of making available and providing Network Interconnection Services to each other.
- 2.2 This Agreement and the Network Interconnection Service Contracts set out the framework for the conduct of the relationship between the Parties as network operators whose Networks are connected. Accordingly, this Agreement and the Network Interconnection Service Contracts are intended to apply only to:
- 2.2.1 the interconnection of the Telco Network and the Spark NZT Network;
  - 2.2.2 the making available and provision of Spark NZT Network Interconnection Services;
  - 2.2.3 the making available and provision of Telco Network Interconnection Services;
  - 2.2.4 the conduct of each Party in matters relating to making available and providing the Network Interconnection Services;
  - 2.2.5 the making available and provision by Spark NZT of services under the agreement known as Network Interconnection Service Contract 3 (*Spark Standard Charges Services*);
  - 2.2.6 the resolution of certain disagreements or disputes in relation to any matter arising under or in relation to this Agreement or any Network Interconnection Service Contract.
- 2.3 Nothing in this Agreement places either Party under any obligation in respect of the Mobile Termination Access Services or in respect of any calls or messages handed over under the Mobile Termination Access Terms.
- 2.4 Nothing in this Agreement places either Party under any obligation to make available or provide services to an MVNO or an MVNO of the other Party.

#### **Network Interconnection Service Contracts**

- 2.5 Either Party is only obliged to make available and provide a Network Interconnection Service:
- 2.5.1 if a Network Interconnection Service Contract in respect of that Network Interconnection Service is entered into; and
  - 2.5.2 subject to the terms and conditions of this Agreement and of the applicable Network Interconnection Service Contract, to the extent provided for in that Network Interconnection Service Contract.
- 2.6 The terms and conditions applicable to making available and providing each:
- 2.6.1 Network Interconnection Service are set out or referred to in:
    - (a) this Agreement; and
    - (b) the applicable Network Interconnection Service Contract; and

2.6.2 Services under the agreement known as Network Interconnection Service Contract 3 (*Spark Standard Charges Services*) are as set out or referred to in:

(a) this Agreement; and

(b) Network Interconnection Service Contract 3 (*Spark Standard Charges Services*).

However, subject to those terms and conditions:

2.6.3 each of Spark NZT and Telco may use any method of making available and providing such service;

2.6.4 each of the Spark NZT Network and the Telco Network may include and utilise any type of equipment, apparatus, materials, software, circuits and network architecture; and

2.6.5 each of Spark NZT and Telco may connect its Network to any other network.

2.7 A copy of each Network Interconnection Service Contract entered into on the date of this Agreement is annexed to this Agreement.

#### **Interrelationship of Agreement, Network Interconnection Service Contracts and Schedules**

2.8 The Parties acknowledge that this Agreement and the Network Interconnection Service Contracts entered into on the date of this Agreement have been negotiated together and define the relationship between the Parties concerning the matters referred to in **Clause 2.2** with effect on and from the Commencement Date. For the purposes of determining any issue of construction arising in respect of this Agreement or any Network Interconnection Service Contract, unless this Agreement or the relevant Network Interconnection Service Contract provides otherwise:

2.8.1 this Agreement is to be read and construed as one agreement with each Network Interconnection Service Contract to the intent that that agreement comprises the terms and conditions of the Network Interconnection Service Contract and of this Agreement;

2.8.2 if there is a conflict between the terms and conditions of **Schedule A** to this Agreement and of a Network Interconnection Service Contract, the terms and conditions of **Schedule A** to this Agreement prevail;

2.8.3 if there is a conflict between the terms and conditions of **Schedule A** to this Agreement or of a Network Interconnection Service Contract and the terms and conditions of any other Schedule to this Agreement, the terms and conditions of **Schedule A** to this Agreement or of that Network Interconnection Service Contract prevail;

2.8.4 if there is a conflict between the terms and conditions of **Schedule B** to this Agreement and of **Schedule C** to this Agreement, the terms and conditions of **Schedule B** to this Agreement shall prevail; and

2.8.5 if there is a conflict between the terms and conditions of **Schedule D** to this Agreement and of **Schedule B** or **Schedule C** to this Agreement, the terms and conditions of **Schedule D** to this Agreement shall prevail.

### **Contracts (Privity) Act 1982**

2.9 Each Party acknowledges and declares that, subject to **Clause 2.10**:

2.9.1 none of its obligations in this Agreement or in any Network Interconnection Service Contract constitutes a promise conferring benefits on a third party which are intended to create, in respect of the benefit, an obligation enforceable at the suit of a third party; and

2.9.2 accordingly, the provisions of section 4 of the Contracts (Privity) Act 1982 do not apply to its promises in this Agreement or in any Network Interconnection Service Contract.

2.10 **Clause 2.9** does not apply:

2.10.1 to each member of each Party's Group and its and their officers, employees, contractors or agents; and

2.10.2 to any other person (including a Network Operator (whose network is connected to and with its Network), its subsidiaries now or from time to time and their respective officers, employees, contractors or agents);

where the benefit of a promise is expressly conferred on it or them under this Agreement or under any Network Interconnection Service Contract.

### **Responsibility to convey certain Calls MMS and SMS only**

2.11 Neither Party is responsible for the conveyance of any Call, Telco SSC Call, MMS or SMS in the Network of the other Party.

2.12 Neither Party is responsible for the conveyance of any Call, Telco SSC Call, MMS or SMS where a charge for the conveyance of the Call, Telco SSC Call, MMS or SMS by that Party is not specified in, or has not been agreed or determined pursuant to, this Agreement or the applicable Network Interconnection Service Contract.

2.13 Except as expressly provided in this Agreement or in any Network Interconnection Service Contract, neither Party is responsible for the conveyance of Calls, Telco SSC Calls, MMS or SMS to another network if it does not have a Commission determination or an agreement to do so with the operator of that network.

2.14 For the avoidance of doubt, there is no obligation on either Party to transit calls, mms or sms to a third party network except as expressly provided for in this Agreement or in any Network Interconnection Service Contract.

### **No artificial manipulation**

2.15 Neither Party (the first Party) shall artificially manipulate, or procure any other person to artificially manipulate, any presentation information in respect of any Call, Telco SSC Call, MMS or SMS (which shall, for the purposes of this Agreement, include the A-Number and any CLIP, CLIR and CLIR Flag, as those terms are defined in Schedule D) provided to the other Party with the objective that:

2.15.1 the definition of any Call, Telco SSC Call, MMS or SMS or applicable charges that would not otherwise apply but for the artificial manipulation, does apply (based on the presentation information provided to (or otherwise received by) the other Party); and/or

- 2.15.2 the definition of any Call, Telco SSC Call, MMS or SMS or applicable charges that would otherwise apply but for the artificial manipulation, does not apply (based on the presentation information provided to (or otherwise received by) the other Party),

This **Clause 2.15** shall not apply to:

- 2.15.3 anything that occurs as part of the normal service function of the first Party's Network in accordance with normal practice for that network, including under clause 2.30;
- 2.15.4 actions taken by either Party that are referred to in **Clauses 3.1** (in the case of Spark NZT) or **3.2** (in the case of Telco) of **Schedule D**; or
- 2.15.5 Calls from a Telco End User where an emergency services number is the called party number and that number is manipulated for legitimate emergency service purposes.

#### **No restriction on use or resale**

- 2.16 Except as expressly provided otherwise, nothing in this Agreement or in any Network Interconnection Service Contract prevents:
- 2.16.1 Spark NZT from making available or providing services to any person; or
- 2.16.2 Telco from making available or providing services to any person.
- 2.17 For the avoidance of doubt, except as expressly provided in **Clauses 2.17** and **2.18** or elsewhere in this Agreement or in any Network Interconnection Service Contract:
- 2.17.1 neither Party shall restrict the other Party from using for any purpose any Network Interconnection Service, or any service provided by Spark NZT under the agreement known as Network Interconnection Service Contract 3 (*Spark Standard Charges Services*) that it receives under any Network Interconnection Service Contract; and, in particular,
- 2.17.2 nothing in this Agreement or any Network Interconnection Service Contract shall restrict a Party from reselling a Network Interconnection Service that it receives under any Network Interconnection Service Contract or any service provided by Spark NZT under the agreement known as Network Interconnection Service Contract 3 (*Spark Standard Charges Services*).

#### **Availability of Network Interconnection Service**

- 2.18 Subject to **Clause 2.5**, each Party shall make available and provide its Network Interconnection Service to the other with the intent that as far as reasonably practicable its Network Interconnection Service shall be continuously available and, when in use, continuous and fault-free.
- 2.19 Telco acknowledges that Spark NZT does not guarantee that Spark NZT Network Interconnection Service will be continuously available or that, when it is in use, it will be continuous and fault-free.
- 2.20 Spark NZT acknowledges that Telco does not guarantee that Telco Network Interconnection Service will be continuously available or that, when it is in use, it will be continuous and fault-free.

### Responsibility for own Network

2.21 In relation to the connection of the Spark NZT Network to and with the Telco Network, and the making available and provision by Spark NZT to Telco of Spark NZT Network Interconnection Service, and by Telco to Spark NZT of Telco Network Interconnection Service:

2.21.1 Telco is responsible for providing, installing, testing, making operational, maintaining and repairing the Telco Network; and

2.21.2 Spark NZT is responsible for providing, installing, testing, making operational, maintaining and repairing the Spark NZT Network;

subject always to the terms and conditions of this Agreement and of any applicable Network Interconnection Service Contract relating to such making available and provision, installation, testing, operational matters, maintenance and repair.

### Other Members of the Spark NZT New Zealand Group and the Telco Group

2.22 Wherever a Party is expressly required under this Agreement or any Network Interconnection Service Contract to “procure” that any other member of that Party’s Group (or its successors, assigns or transferees) is to do or perform any act, matter or thing under this Agreement or the Network Interconnection Service Contract (a Relevant Obligation), the failure by that Group member to perform that Relevant Obligation at the time and in the manner required by this Agreement or the Network Interconnection Service Contract shall, for the purposes of any proceedings (whether founded in contract, in tort, in equity, for breach of statutory duty or otherwise), be deemed to have been done or omitted to have been done by the Party and this Agreement or the Network Interconnection Service Contract shall be read as though the Relevant Obligation were an obligation of the Party.

2.23 If Spark NZT is required to use the services or the property of another member of the Spark New Zealand Group to perform an obligation under this Agreement or any Network Interconnection Service Contract, that shall not relieve Spark NZT of the responsibility to perform the obligation.

2.24 If Telco is required to use the services or the property of another member of the Telco Group to perform an obligation under this Agreement or any Network Interconnection Service Contract, that shall not relieve Telco of the responsibility to perform the obligation.

### Third Party Resellers

2.25 The Parties agree that, until Telco notifies Spark NZT otherwise, certain terms which are defined in this Agreement or in any Network Interconnection Service Contract shall apply as follows in relation to the provision by Telco of services to a Third Party Reseller in relation to the Telco Network:

2.25.1 such Third Party Reseller is a Telco Customer;

2.25.2 a customer of, or (where the Third Party Reseller is an agent of Telco) contracted by, such Third Party Reseller is a Telco End User;

2.25.3 a Third Party Reseller number that conforms with the description in **Clause 1.84.1(a)** is a Telco National Number; and

2.25.4 a Third Party Reseller number that conforms with the description in **Clause 1.84.1(b)** is a Telco Mobile Number.

- 2.26 The Parties agree that, until Spark NZT notifies Telco otherwise, certain terms which are defined in this Agreement or in any Network Interconnection Service Contract shall apply as follows in relation to the provision by Spark NZT of services to a Third Party Reseller in relation to the Spark NZT Network:
- 2.26.1 such Third Party Reseller is a Spark NZT Customer;
  - 2.26.2 a customer of, or (where the Third Party Reseller is an agent of Spark NZT) contracted by, such Third Party Reseller is a Spark NZT End User;
  - 2.26.3 a Third Party Reseller number that conforms with the description in **Clause 1.84.2(a)** is a Spark NZT National Number; and
  - 2.26.4 a Third Party Reseller number that conforms with the description in **Clause 1.84.2(b)** is a Spark NZT Mobile Number.

### Conditions for providing Network Interconnection Services

- 2.27 Each Party (in this **Clause 2.26**, *the first Party*) is not obliged to provide or continue to provide Network Interconnection Services to the other Party (in this **Clause 2.26**, *the other Party*) unless:
- 2.27.1 the first Party has received evidence reasonably satisfactory to the first Party that the other Party has a long term credit rating for its senior unsecured indebtedness of at least A3 (Moody's Investor Services, Inc.), A- (Standard and Poor's Ratings Group) or B+ (AM Best) (in this **Clause 2.26**, an *Acceptable Credit Rating*). For the purposes of defining an acceptable credit rating, a reference to "the other Party" means:
    - (a) in the case of Telco, Telco; or
    - (b) in the case of Spark NZT, either Spark NZT or Spark New Zealand;as applicable, or if such evidence is not received, then
  - 2.27.2 the first Party has been delivered the other Party's choice of an unconditional:
    - (a) Bank guarantee from a body registered as a registered bank under section 70 of the Reserve Bank of New Zealand Act 1989 (a *Bank*);
    - (b) guarantee from a member of the other Party's Group where the first Party has received evidence reasonably satisfactory to the first Party that that member of the other Party's Group has an Acceptable Credit Rating;
    - (c) letter of credit from a Bank; or
    - (d) prepayment or other security agreed by the first Party in writing,in each case as credit enhancement for the other Party's obligation to pay for Network Interconnection Services (each a *security*). The security must be in a form reasonably acceptable to the first Party. The security shall initially be for an amount that is the greater of:
    - (e) \$100,000;
    - (f) the aggregate amount that would be chargeable by the first Party over a three month period under this Agreement and the Network Interconnection Service

Contracts, based on any forward-looking estimate (taking into consideration any forecasts provided by the other Party) or preceding actual charges, as reasonably determined by the first Party; and

- (g) the aggregate amount of charges for services provided by the first Party to the other Party under this Agreement and the Network Interconnection Service Contracts over the three month period immediately prior to the Commencement Date.

The amount of the security may be adjusted every six months after the Commencement Date. The adjusted security amount shall be an amount that is the greater of:

- (h) \$100,000;
- (i) the aggregate amount that would be chargeable by the first Party over a three month period under this Agreement and the Network Interconnection Service Contracts, based on the forecasts provided by the other Party (if any have been provided) or otherwise reasonably determined by the first Party; and
- (j) the aggregate amount of charges for services provided by the first Party to the other Party under this Agreement and the Network Interconnection Service Contracts over the three month period immediately preceding that adjustment date.

If the adjusted security amount is greater, the other Party shall, within 30 days after that adjustment date, provide replacement or additional security that is equal to that new security amount, or, if the adjusted security amount is less, the other Party may cause the security to be reduced accordingly;

and, in each case, the other Party at all times maintains an Acceptable Credit Rating that complies with **Clause 2.27.1** or, failing that, a security that complies with **Clause 2.27.2**.

#### **Termination on voice mail platforms**

- 2.28 Where a Call that is handed over by the originating Party is delivered to a voice mail platform in the terminating Party's network, it shall be regarded for the purposes of the relevant Network Interconnection Service Contract as having been delivered to the Designated Destination (as defined in that Network Interconnection Service Contract) in respect of that Call.

#### **Two stage international calling**

- 2.29 Telco and Spark NZT agree that, for the purposes of a relevant Network Interconnection Service Contract in respect of this Agreement, including Network Interconnection Service Contract 1 or Network Interconnection Service Contract 2, where a Call (subject to that Network Interconnection Service Contract) that is or has been handed over by the originating Party is or was delivered to a platform in the terminating Party's network for the purposes of two stage international calling or a similar service, the Designated Destination (as defined for the purposes of that Network Interconnection Service Contract) in respect of that Call shall be regarded as being that platform.

#### **End to end Call may comprise two or more Calls**

- 2.30 To avoid doubt, an end-to-end call between a caller and a called party may comprise two or more Calls under this Agreement; for example, a Telco Toll Bypass Call and a Telco Standard Call.

## PART C

### COMMENCEMENT, TERM AND REVIEW

#### 3 COMMENCEMENT, TERM AND REVIEW

##### Commencement

- 3.1 Except as otherwise provided in a Network Interconnection Service Contract, all rights, duties and obligations under this Agreement and the Network Interconnection Service Contracts entered into on the date of this Agreement shall have effect on and from the Commencement Date.

##### Term

- 3.2 Unless terminated earlier by law, or under **Clause 7.1** or any other provision of this Agreement or any Network Interconnection Service Contract which allows for early termination, this Agreement and the Network Interconnection Service Contracts shall continue until the Expiry Date.

- 3.3 Notwithstanding any other term of, or implied into, this Agreement or any Network Interconnection Service Contract, either Party may terminate this Agreement and all Network Interconnection Service Contracts for convenience by giving 3 months' prior notice of termination at any time. At the end of that 3 month period, this Agreement and all Network Interconnection Service Contracts will terminate.

- 3.4 Each Party may, by notice given no earlier than four months before the Expiry Date and no later than two months before the Expiry Date, request that:

3.4.1 a further agreement be entered into; and

3.4.2 negotiations commence on any and all issues related to services provided under this Agreement and the Network Interconnection Service Contracts.

Forthwith after the notifying Party has given notice, the Parties shall meet to discuss and negotiate in good faith with a view to agreeing on the new terms and conditions which will apply after the Expiry Date. However, any failure to agree under this **Clause 3.4** shall not be subject to dispute resolution under **Clause 4**, except that, if the Parties agree it is appropriate with respect to any particular matter, they shall participate in mediation in accordance with **Clause 4**. However, there shall be no recourse to arbitration.

- 3.5 For the avoidance of doubt, unless otherwise agreed in writing, all Network Interconnection Service Contracts terminate immediately on the termination or expiry of this Agreement, or the partial termination of this Agreement such that it is impracticable for all Network Interconnection Service Contracts to continue.

##### Regulatory Events

- 3.6 Should a Regulatory Event occur, either Party may give the other Party notice requiring the other Party to enter into good faith negotiations with a view to amending this Agreement and/or any Network Interconnection Service Contracts. Such notice shall set out the nature of the Regulatory Event and the parts of this Agreement and/or Network Interconnection Service Contracts that the notifying Party considers are affected by the Regulatory Event. On receipt of such notice, the Parties shall meet as soon as practicable and negotiate in good faith such amendments to this Agreement and/or the Network Interconnection Service Contracts as are necessary or appropriate to ensure that notwithstanding the Regulatory Event each of Spark NZT and Telco is able reasonably to continue to perform this Agreement and the Network



Interconnection Service Contracts or as much of this Agreement and the Network Interconnection Service Contracts as possible.

3.7 If the Parties have not reached agreement on the necessary amendments to this Agreement and/or the Network Interconnection Service Contracts by the date that is one month after the date of the notice given under **Clause 3.6**, there shall be no recourse to arbitration in respect of these amendments and either Party may:

3.7.1 if the Regulatory Event affects only a part of this Agreement and/or the Network Interconnection Service Contracts, terminate that part of this Agreement and/or the Network Interconnection Service Contracts on one month's notice; or

3.7.2 if the Regulatory Event affects all of this Agreement and the Network Interconnection Service Contracts, terminate this Agreement and the Network Interconnection Service Contracts in their entirety on one month's notice.

However, if the Parties have not reached agreement on whether there is a Regulatory Event or whether the Regulatory Event affects only a part, or all, of this Agreement and/or the Network Interconnection Service Contracts within one month after the date of the notice given under **Clause 3.6**, then, notwithstanding **Clause 4**, the matter may be referred by either Party to expert determination. An expert (who shall be a retired Judge of the High Court of New Zealand or legal expert of similar standing) shall be appointed by agreement between the Parties (or, if the Parties do not agree within 2 Working Days of notice of referral by either Party, by the President for the time being of the New Zealand Law Society or its successor). The expert shall use expedited procedures to resolve the matter in dispute, so that if at all possible the dispute shall be resolved within one week. The expert shall ensure that the procedures used are consistent with the principles of natural justice. The expert shall determine whether there is a Regulatory Event and whether the Regulatory Event affects only a part (and, if so, which part), or all, of this Agreement and the Network Interconnection Service Contracts. Either Party may then terminate the relevant part of this Agreement and/or the Network Interconnection Service Contracts, or all of the Agreement and the Network Interconnection Service Contracts, as determined by the expert. The Parties shall share the costs of the expert equally. The expert's determination shall be final.

## PART D

### DISPUTE RESOLUTION

#### 4 DISPUTE RESOLUTION

- 4.1 If a dispute (as defined in **Clause 4.2**) arises out of, or in connection with, this Agreement or any Network Interconnection Service Contract, the Parties shall resolve the dispute in accordance with the procedures set out in this **Clause 4**.
- 4.2 For the purposes of the procedures set out in the rest of this **Clause 4** and unless the Parties expressly agree otherwise in writing (including in this Agreement or any Network Interconnection Service Contract), a “dispute” is any dispute, disagreement, question or difference that arises between the Parties in relation to the Agreement or any Network Interconnection Services Contract (other than a matter to which **Clause 19.8** applies). For the avoidance of doubt, this **Clause 4** shall apply, without limiting the generality of the foregoing, where a dispute involves issues under the Commerce Act 1986 or the Fair Trading Act 1986. It is agreed that these provisions under this **Clause 4**, or particular parts of these provisions (such as those relating to arbitration), shall not apply where this Agreement or any Network Interconnection Service Contract expressly provides that they shall not apply.
- 4.3 Prior to reaching an agreement on a dispute, or obtaining an arbitration award under **Clause 4.7** the Parties agree that neither Party is prevented by these dispute resolution procedures from exercising any rights under the Telecommunications Act 2001. If there is a dispute about the extent of a Party’s rights under the Telecommunications Act 2001, then that dispute may be resolved in accordance with the procedures in that Act, regardless of whether or not the matter is or has previously been the subject of these dispute resolution procedures.
- 4.4 Either Party may at any time give notice describing a dispute and invoking the procedures set out in the rest of this **Clause 4**.
- 4.5 If notice under **Clause 4.4** is given, then during a maximum negotiation period of 20 Working Days from the date the notice was given, the Parties shall attempt to negotiate a resolution of the dispute.
- 4.5.1 at any time during the negotiation period, either Party may give 3 Working Days’ notice requiring a meeting, specifying a time and place for the meeting (with each meeting to be held in Auckland, unless otherwise agreed by the parties) and designating its representative with authority to resolve the dispute;
- 4.5.2 the other Party must give 1 Working Days’ notice before the meeting designating its representative with authority to resolve the dispute
- 4.5.3 the authorised representatives must meet at the specified time and place and as many times as necessary during the negotiation period to attempt in good faith to resolve the dispute;
- 4.6 At any time during the negotiation period, the Parties may agree to refer the dispute to mediation:
- 4.6.1 Unless otherwise agreed in writing, the model mediation agreement issued by LEADR New Zealand Inc, in effect at the time of the referral to mediation, shall be used and mediation shall be completed within 20 Working Days of the Parties agreeing to refer the dispute to mediation. Unless otherwise agreed between the Parties, the mediator will be nominated by LEADR.

- 4.6.2 All documents disclosed in the course of any mediation proceedings shall be used for purposes of the mediation only, and shall be returned to the Party providing the documents at the termination or conclusion of the mediation proceedings.
- 4.7 If a dispute has not been resolved by the end of the negotiation period (or mediation period, if applicable), either Party may then give notice referring the dispute, or any part of the dispute, to arbitration by an arbitrator under the Arbitration Act 1996, by giving notice to the other Party ("**Arbitration Referral Notice**") and the following provisions will apply:
- 4.7.1 all disputes referred to arbitration shall be settled in accordance with the Arbitration Act 1996 and the ACICA Arbitration Rules ("**ACICA Rules**") in effect at the time the dispute is referred to arbitration, each as amended by this clause;
- 4.7.2 the tribunal shall consist of a sole arbitrator to be appointed in accordance with the ACICA Rules, save that, in the event the parties do not agree on the arbitrator and ACICA is to appoint the arbitrator in accordance with clause 9.2 of the ACICA Rules, the parties will each be entitled to make a short submission to ACICA as to the identity and/or qualifications of the arbitrator. Further, for the purposes of clauses 9.2 and 9.3 of the ACICA Rules, any arbitrator to be appointed by ACICA must have significant experience in resolving commercial disputes in a common law jurisdiction(s);
- 4.7.3 the seat of the arbitration will be Auckland, New Zealand;
- 4.7.4 the arbitrator must determine the dispute under New Zealand law;
- 4.7.5 the Second Schedule of the Arbitration Act 1996 will not apply to an arbitration under this clause 4, and the parties hereby exclude all rights under clause 5 of the Second Schedule to the Arbitration Act 1996 to appeal from any award arising out of or related to this Agreement, including any award or ruling of an AMINZ Arbitration Appeals Tribunal ("**AAT**");
- 4.7.6 the parties further agree that an appeal may be taken by either or any of them under the AMINZ Arbitration Appeal Rules as applicable at the time of appeal ("**Appeals Rules**") from any arbitral award in relation to a dispute. Any appeal shall be conducted in accordance with the requirements of those Appeals Rules and not the ACICA Rules;
- 4.7.7 the parties further agree not to seek to enforce in New Zealand or in any other jurisdiction in terms of Article 35 of the First Schedule to the Arbitration Act 1996, any award that may be the subject of an appeal to an AAT unless and until the time for filing an appeal under the Appeals Rules has expired and, if an appeal is filed, until there has been a final award by an AAT under the Appeal Rules or the appeal has been withdrawn, abandoned or dismissed;
- 4.7.8 the parties hereby waive and relinquish any and all recourse against any award except by appeal to any AAT, or against any decision or determinations of any AAT, to the full extent that such a waiver may lawfully be;
- 4.7.9 the parties agree that any AAT appointed as a result of any appeal under the Appeals Rules, shall, subject to any limitations expressed in the Appeals Rules, have all the powers exercisable by the High Court on an appeal to that Court under clause 5 of the Second Schedule of the Arbitration Act 1996, save that the AAT shall not have the power to remit the award back to the original arbitral tribunal where that tribunal is unwilling or unable to accept the remission. In the latter case, the AAT itself in its discretion may decide the issue(s) which would otherwise have been remitted;
- 4.7.10 any arbitral tribunal appointed by the parties or by an appointing authority under the arbitration agreement between the parties will acknowledge and agree that the tribunal will accept and action any reference back by an AAT consequent upon any appeal under the Appeals Rules;
- 4.7.11 the arbitration should provide the full protection of the attorney-client privilege to counsel, including, without limitation, in-house counsel;

- 4.7.12 the parties shall take all reasonable steps to ensure the confidentiality of any arbitration, ancillary proceedings, or an application for interim relief. All documents disclosed in the course of the proceedings shall be used for purposes of the arbitration only, and if it is requested by the Party making disclosure of the documents prior to their disclosure, shall be returned to the Party providing the documents at the conclusion of the proceedings; and
  - 4.7.13 the parties will co-operate to ensure the expeditious conduct of the arbitration. In particular, each Party will comply with any reasonable time limits sought by the other for settling the terms of reference, interlocutory matters and all other steps preliminary and incidental to the hearing and decision of the Dispute.
- 4.8 Nothing in this **Clause 4** prevents any Party from seeking interim measures from a court of competent jurisdiction prior to an arbitral tribunal being constituted, and thereafter from the tribunal.

**PART F**

**SUSPENSION, FORCE MAJEURE, TERMINATION AND LIABILITY**

**5 SUSPENSION OR RESTRICTION OF NETWORK INTERCONNECTION SERVICES**

5.1 Either Party (the *suspending Party*) may immediately suspend (in whole or in part) or restrict the provision of a Network Interconnection Service by serving notice on the other Party, which shall only be given where:

5.1.1 under **Clauses 7.1.1** or **7.1.2**, the suspending Party may terminate either this Agreement and/or any Network Interconnection Service Contract then in force (without prejudice to any such right of termination); or

5.1.2 a relevant Network Interconnection Service Contract, Network Interconnection Operational Procedure or Network Interconnection Technical Specification provides for suspension or restriction of that Network Interconnection Service, in which case the suspending Party may only suspend in accordance with and to the extent permitted by the relevant contract, procedure or specification.

Such notice shall be served under **Clause 25.1** and shall be identified as a notice of suspension or restriction (as may be the case).

5.2 In suspending or restricting the provision of a Network Interconnection Service under **Clause 5.1.1**:

5.2.1 the suspending Party shall only take steps reasonably required to effect that suspension or restriction; and

5.2.2 the right to restrict the provision of a Network Interconnection Service includes the right to:

(a) lower the capacity for the delivery of; and/or

(b) block,

any Calls, Telco SSC Calls, MMS and SMS.

5.3 If the suspending Party suspends or restricts a Network Interconnection Service under **Clause 5.1.2**, **Clause 5.4** or **5.6** the suspension or restriction of that Network Interconnection Service shall be to the minimum extent practicable to limit any disruption to the other Party and/or the other Party's End User Services caused by that suspension or restriction and the suspending Party shall lift the suspension or restriction as soon as reasonably practicable following remedy by the other Party of the event that gave rise to the suspension or restriction.

5.4 If:

5.4.1 the suspending Party suspends or restricts the provision of a Network Interconnection Service under a Network Interconnection Service Contract, the Network Interconnection Operational Procedures or the Network Interconnection Technical Specifications pursuant to **Clause 5.1.2**; or

5.4.2 a Network Interconnection Service Contract is terminated for any reason under **Clause 7.1**,

(in each case, the *initial act*) either Party may suspend or restrict the making available and provision of any other Network Interconnection Service under another Network

Interconnection Service Contract (the *other service*) to the extent (and only to the extent) that it is not possible or practicable to make available and provide the other service as a direct or indirect result of the initial act.

- 5.5 No suspension or restriction of a Network Service Interconnection Service under Clause 5.1.1 shall take place until the suspending Party has consulted with the other Party, except where the suspension is urgently required to protect the suspending Party's Network or Customers, the network of any third party or their customers.

### **Outages**

- 5.6 For the avoidance of doubt, in the event of an Outage, a Party may suspend or restrict a Network Interconnection Service in whole or in part, and the suspension or restriction shall be governed by the relevant provisions of this Agreement, the applicable Network Interconnection Service Contract, the Network Interconnection Operational Procedures and the Network Interconnection Technical Specifications concerning Outages.

### **Withdrawal of End User Services**

- 5.7 Either Party may withdraw as part of its Network Interconnection Services the provision of a particular type of End User Service on giving the other Party no less than 3 months' notice (or such lesser notice period as is given in respect of the withdrawal of that service for the first Party's Customers) **PROVIDED THAT** no such service shall be withdrawn unless the first Party is withdrawing that particular type of service from all its Customers (and every other member of its Group).

### **Call MMS or SMS Barring**

- 5.8 It is acknowledged by Telco that Spark NZT may bar any or all Calls, MMS or SMS originated by Spark NZT Customers or Telco Customers (who are also Spark NZT Customers) in the Spark NZT Network (for which there are charges to the Customer), subject always to one or more of the following applying:
- 5.8.1 such Spark NZT Customer has requested that the Calls, MMS or SMS (or certain types of Calls or Messages) be barred; and/or
  - 5.8.2 the Calls, MMS or SMS (or certain types of Calls, MMS or SMS) are barred because Spark NZT has formed the reasonable opinion that the Spark NZT Customer is a credit risk; and/or
  - 5.8.3 Spark NZT reasonably believes that such Spark NZT Customer is using, or is attempting to use, a Spark NZT End User Service in breach of any law or any agreement between Spark NZT and that Spark NZT Customer; and/or
  - 5.8.4 where Spark NZT has legitimate concern over the activities of the Spark NZT Customer and such concerns do not discriminate against the Spark NZT Customer where the Spark NZT Customer is also a Telco Customer; and/or
  - 5.8.5 clause 8.1 of Network Interconnection Service Contract 13 (*Premium Rate Interconnection Service*) applies.
- 5.9 It is acknowledged by Spark NZT that Telco may bar any or all Calls, Telco SSC Calls, MMS or SMS originated by Telco Customers, or Spark NZT Customers (who are also Telco Customers), in the Telco Network (for which there are charges to the Customer), subject always to one or more of the following applying:

- 5.9.1 such Telco Customer has requested that the Calls, Telco SSC Calls MMS or SMS (or certain types of Calls, Telco SSC Calls MMS or SMS) be barred; and/or
- 5.9.2 the Calls, Telco SSC Calls, MMS or SMS (or certain types of Calls, Telco SSC Calls, MMS or SMSs are barred because Telco has formed the reasonable opinion that the Telco Customer is a credit risk; and/or
- 5.9.3 Telco reasonably believes that such Telco Customer is using, or is attempting to use, a Telco End User Service in breach of any law or any agreement between Telco and that Telco Customer; and/or
- 5.9.4 where Telco has legitimate concern over the activities of the Telco Customer and such concerns do not discriminate against the Telco Customer where the Telco Customer is also a Spark NZT Customer and/or
- 5.9.5 clause 8.1 of Network Interconnection Service Contract 13 (*Premium Rate Interconnection Service*) applies

## **6 FORCE MAJEURE**

- 6.1 Notwithstanding any other provisions of this Agreement, but subject to the other provisions of this **Clause 6** if either Party (the *Party claiming suspension*) fails to observe or perform any of its obligations under this Agreement and/or any Network Interconnection Service Contract (other than an obligation to make payment to the other Party), and such failure shall have been occasioned by reason of Force Majeure, such failure shall be deemed not to be a breach of such obligation.
- 6.2 For these purposes, *Force Majeure* means any:
  - 6.2.1 act of God;
  - 6.2.2 confiscation or expropriation;
  - 6.2.3 embargo;
  - 6.2.4 public mains electrical supply failure;
  - 6.2.5 fire, flood or storm;
  - 6.2.6 explosion or nuclear accident;
  - 6.2.7 sabotage, revolution, riot, terrorism, act of war (whether declared or not) or warlike operations;
  - 6.2.8 requirement or restriction of governmental authorities (which may include a Regulatory Event, but not including any determination of the Commission under the Telecommunications Act 2001);
  - 6.2.9 earthquake, land slide or volcanic eruption;
  - 6.2.10 epidemic or quarantine restriction;
  - 6.2.11 other event similar to those described in **Clauses 6.2.2 to 6.2.7**(inclusive), **6.2.9** and **6.2.10**;
  - 6.2.12 industrial action such as strike, lockout, work stoppage or other labour hindrance, provided that, in circumstances where the industrial dispute involves its own

employees, the Party relying on the force majeure event must have taken reasonable actions to prevent such industrial dispute from arising;

6.2.13 failure of a third party (other than a member of the Group of the Party claiming suspension) to provide goods or services,

beyond the reasonable control of the Party claiming suspension.

6.3 The Party claiming suspension shall not be entitled to the benefit of the provisions of **Clause 6** under any or all of the following circumstances:

6.3.1 to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, the contributory negligence of the Party claiming suspension;

6.3.2 to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, a failure or omission of the Party claiming suspension;

6.3.3 to the extent that the Party claiming suspension has failed (to the extent practicable) to mitigate or remedy the event relied upon, and to resume the observance or performance of the particular obligation, with reasonable dispatch;

6.3.4 if the failure was caused by lack of funds of the Party claiming suspension or its Group;

6.3.5 unless, as soon as practically possible after the happening of the event relied upon or as soon as possible after determining that the event was in the nature of Force Majeure and would affect the ability of the Party claiming suspension to observe or perform the particular obligation, the Party claiming suspension shall have served on the other Party notice to the effect that it is unable by reason of Force Majeure (the nature of which shall be specified in the notice) to observe or perform the particular obligation (the nature of which shall also be specified in the notice); or

6.3.6 if, and to the extent that, the particular obligation may be observed or performed notwithstanding the Force Majeure.

6.4 The Party claiming suspension shall:

6.4.1 immediately use all reasonable endeavours to remedy the Force Majeure;

6.4.2 serve notice to the other Party of the event and the likely effect of the event as soon as reasonably practicable after it becomes aware of the event; and

6.4.3 serve notice on the other Party, as soon as possible after the Force Majeure shall have been remedied, to the effect that the same has been remedied and that the Party claiming suspension has resumed, or is then in a position to resume, the observance or performance of the particular obligation.

6.5 Notwithstanding anything to the contrary in this **Clause 6** expressed or implied:

6.5.1 the settlement of industrial actions such as strikes, lockouts, work stoppages and other labour hindrances shall be entirely within the discretion of the Party claiming suspension;

6.5.2 the Party claiming suspension may make settlement at such time and on such terms and conditions as it may deem to be advisable; and



6.5.3 no delay in making such settlement shall deprive the Party claiming suspension of the benefit of **Clause 6.1**.

6.6 Either Party (the *notifying Party*), shall have the right to terminate one or more, or part or all, of this Agreement and any or all Network Interconnection Service Contracts to the extent only that they are affected by reason of Force Majeure, upon 40 Working Days' prior notice served on the other Party if the Party claiming suspension under **Clause 6.1** has been unable to substantially observe or perform a material obligation under this Agreement and/or the Network Interconnection Service Contracts by reason of Force Majeure (as claimed by the Party claiming suspension) and such inability has continued for a continuous period of 130 Working Days **PROVIDED THAT:**

6.6.1 the notifying Party shall not be entitled to give such termination notice unless and until it has negotiated or used reasonable endeavours to negotiate in good faith with the other Party to remedy the Force Majeure relied upon or to amend the terms of this Agreement and/or the relevant Network Interconnection Service Contracts (or any of them) to enable this Agreement and/or the Network Interconnection Service Contracts to remain in full force and effect, notwithstanding such inability to observe or perform; and

6.6.2 unless otherwise agreed in writing, if this Agreement is terminated, or is partially terminated such that it is impracticable for all Network Interconnection Service Contracts to continue, this Agreement and all Network Interconnection Service Contracts shall terminate on the expiry of the 40 Working Days' notice.

## 7 EARLY TERMINATION

7.1 This Agreement and/or any Network Interconnection Service Contract may be terminated immediately by a Party (the *terminating Party*) serving notice on the other Party (the *other Party*) if:

7.1.1 the other Party has committed a material breach under this Agreement or any Network Interconnection Service Contract, where:

- (a) the terminating Party has given a notice to the other Party specifying the breach and requiring remedy of that breach; and
- (b) the other Party has not remedied that breach within 20 Working Days of the date of receipt of the relevant notice;

7.1.2 the other Party has committed (in the aggregate) five substantially similar material breaches under this Agreement or any Network Interconnection Service Contract in any 12 month period, where:

- (a) in the case of the first four breaches, the terminating Party has given a notice to the other Party specifying the breach and requiring remedy of that breach; and
- (b) in the case of the first four breaches, the other Party has remedied each such breach;

7.1.3 distress, attachment or execution is levied or enforced on or against a substantial part of the assets of the other Party and is not discharged or stayed within 60 Working Days;

7.1.4 the other Party:

- (a) is put into (and remains in) liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the terminating Party, such approval not to be unreasonably withheld);
- (b) is wound up or dissolved in circumstances where it is not reconstituted;
- (c) enters into (and remains in) a scheme of arrangement with its creditors or any class of creditors;
- (d) is placed (and remains) under official management or made (and remains) subject to statutory management under the Corporations (Investigation and Management) Act 1989; or
- (e) suffers the appointment of a receiver or manager of a substantial part of its assets and the receiver or manager remains in office for 60 Working Days;

7.1.5 either Party is required by law and has failed within the time specified by law to obtain and maintain a licence, permit or other form of official authorisation which is required by that Party in order for it to provide lawfully that Party's Network Interconnection Services and/or End User Services, or that Party fails to maintain such licence, permit or other official authorisation, and in either case the failure continues unremedied; or

7.1.6 in the circumstances contemplated by **Clause 3.7**.

Such notice shall be served under **Clause 25** and shall be identified as a notice of termination.

#### **Disconnection and Removals**

7.2 On termination or expiry of this Agreement and/or any Network Interconnection Service Contract, either Party may:

7.2.1 carry out disconnection works and removal of its equipment from the other Party's premises; and

7.2.2 after giving the other Party reasonable notice and reasonable opportunity to remove its equipment, disconnect and remove the other Party's equipment from its premises.

In the event of termination under **Clause 7.1** (other than an event of termination to which **Clause 3.6** applies), the Party that did not terminate this Agreement and/or any Network Interconnection Service Contract shall pay to the terminating Party:

7.2.3 the terminating Party's charges for and in respect of such disconnection and removal of equipment under **Clause 7.2.1**; and

7.2.4 the terminating Party's reasonable costs of such disconnection and removal of equipment under **Clause 7.2.2**. Error! Reference source not found.

In the event of termination under **Clause**:

7.2.5 each Party shall bear its own costs for and in respect of such disconnection and removal of equipment under **Clause 7.2.1**; and

7.2.6 the Party receiving notice under **Clause 7.2.2** shall pay to the other Party the other Party's reasonable costs of such disconnection and removal of equipment under **Clause 7.2.2**.

### No Waiver

- 7.3 Subject to **Clause 7.4**, termination or expiry of this Agreement and/or any Network Interconnection Service Contract shall not operate as a waiver of any breach by a Party of any of the provisions of this Agreement or the Network Interconnection Service Contract, and shall be without prejudice to any:
- 7.3.1 rights, liabilities or obligations of either Party which have accrued up to the date of such termination or expiry; and
- 7.3.2 of **Clauses 2.2, 2.9, 4, 7, 8, 19, 20, 21, 23, 24, 29, 30, 31 or 32** of this **Schedule A**, or **Clause 5** of **Schedule B**, which shall continue in full force and effect.
- 7.4 Notwithstanding the termination or expiry of this Agreement and/or any Interconnection Service Contract, any sums payable by either Party to the other pursuant to this Agreement or the Network Interconnection Service Contract at termination shall be paid in the same manner as if this Agreement or the Network Interconnection Service Contract had not terminated or expired.

### Intellectual Property Licences

- 7.5 On termination or expiry of this Agreement, all Intellectual Property licences granted pursuant to **Clause 20.1** in respect of this Agreement shall be cancelled. On termination or expiry of any Network Interconnection Service Contract, all Intellectual Property licences granted pursuant to **Clause 20.1** in respect of that Network Interconnection Service Contract shall be cancelled.

## 8 LIABILITY

- 8.1 Except as provided in **Clauses 8.2, 8.7** and **30.1** under no circumstances shall either Party (the first Party) or its Group, or any of their respective officers, employees, contractors or agents, be liable in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise to compensate the other Party (the second Party) for any loss, injury, liability, damage, costs or expense arising directly or indirectly from any of the following, in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first Party or its Group, or any of their respective officers, employees, contractors or agents, under or in relation to this Agreement or any Network Interconnection Service Contract:
- 8.1.1 any act, omission or delay of the first Party or its Group, or any of their respective officers, employees, contractors or agents;
- 8.1.2 any act, omission or delay in respect of the making available, continued availability, provision, use or termination of the first Party's Network Interconnection Services;
- 8.1.3 the failure by the first Party or its Group, or any of their respective officers, employees, contractors or agents to connect the first Party's Network to the second Party's Network or to make available, continue to make available or provide the first Party's Network Interconnection Services;
- 8.1.4 any failure of the first Party's Network Interconnection Services;
- 8.1.5 any failure of anything which is part of, or associated with, the first Party's Network Interconnection Services;

8.1.6 any interception, distortion or interruption of any communication or attempted communication (including but not limited to any Call MMS or SMS) using the first Party's Network Interconnection Services; or

8.1.7 any act or omission of any Customer of the first Party or its Group and any other third Party for whom the first Party or its Group is not responsible.

8.2 Notwithstanding **Clause 8.1**, but subject to all other provisions of this **Clause 8**, the first Party does not, by this Agreement or any Network Interconnection Service Contract exclude liability:

8.2.1 for Direct Loss suffered by the second Party as a result of the wilful misconduct of the first Party or its Group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first Party;

8.2.2 for Direct Loss suffered by the second Party as a result of the gross negligence of the first Party or its Group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first Party, (for which purpose, gross negligence is any conscious or voluntary act or omission, which results in serious injury or damage by a person who was aware of a clear and present threat or danger that such injury or damage would occur);

8.2.3 for physical damage to the second Party's property occurring in the course of the provision, operation, servicing or termination of the first Party's Network Interconnection Services that is attributable, directly or indirectly and in whole or in part, to the negligence of the first Party or its Group, or any of their respective officers, employees, contractors or agents in each case in the course of their engagement by the first Party;

8.2.4 to indemnify the second Party under **Clauses 8.13, 8.15**, Error! Reference source not found. and **21.11**, or any other express indemnity, from time to time, under this Agreement or any Network Interconnection Service Contract; or

8.2.5 under **Clause 5.5.3 of Schedule B**;

but only to the extent that the liability arises in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first Party or its Group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first Party, under or in relation to this Agreement or any Network Interconnection Service Contract.

For the purposes of **Clauses 8.2.1 and 8.2.2** *Direct Loss* means loss that flows directly, naturally and, in the ordinary course of events, from the relevant act or omission:

For the avoidance of doubt, **Clause 8.2** is capable of application in the event of an Outage, or suspension or restriction of a Network Interconnection Service under **Clause 5.1**.

8.3 In any event, under no circumstances (except to the extent necessary to give effect to **Clauses 8.2.1 and 8.2.2**) shall the first Party or its Group, or any of their respective officers, employees, contractors or agents be liable to the second Party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise for loss of profits, business or anticipated savings or for any indirect or consequential loss whatever arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first Party or its Group, or any of their respective officers, employees, contractors or agents, under or in relation to this Agreement or any Network Interconnection Service Contract, notwithstanding that the first Party or its Group, or any of their respective officers, employees, contractors or agents have been advised of the likelihood of such losses.

- 8.4 If for any reason the first Party, its Group and/or any of their respective officers, employees, contractors and/or agents is or are liable to the second Party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise, the combined maximum liability of the first Party, its Group and their respective officers, employees, contractors and agents to the second Party arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first Party or its Group, and/or any of their respective officers, employees, contractors or agents under or in relation to this Agreement and all Network Interconnection Service Contracts (in the aggregate) shall be:
- 8.4.1 \$10,000,000 in respect of any one event or related series of events; and
  - 8.4.2 in any 12 month period, \$20,000,000 irrespective of the number of events.
- 8.5 Each limitation or exclusion of this **Clause 8** and each protection given to the first Party or its Group, or any of their respective officers, employees, contractors or agents by any provision of this **Clause 8** is to be construed as a separate limitation, exclusion or protection applying and surviving even if for any reason any of the other provisions is held inapplicable in any circumstances.
- 8.6 Nothing in this **Clause 8** shall exclude or limit the liability of the first Party to pay when due the charges, refunds payable (including the issue of credit notes) or interest payable to the second Party under this Agreement or any Network Interconnection Service Contract.
- 8.7 Where any person observes or performs from time to time in whole or in part, as agent or contractor of the first Party, any of the obligations of the first Party under this Agreement or any Network Interconnection Service Contract (any such other person in this **Clause 8** called the *Other Person*), the following provisions shall apply:
- 8.7.1 the observance or performance of any of the first Party's obligations by the Other Person shall be consideration for the agreement of the second Party that the Other Person shall have the benefit of the rights, exemptions, exclusions, limitations, defences and immunities of whatsoever nature contained in this Agreement or any Network Interconnection Service Contract which are applicable to the first Party under this Agreement or any Network Interconnection Service Contract;
  - 8.7.2 the first Party is or shall be deemed to be contracting for the benefit of the rights, exemptions, exclusions, limitations, defences and immunities referred to in **Clause 8.7.1** for the Other Person as agent for the Other Person; and
  - 8.7.3 the Other Person shall be entitled to the benefit of those rights, exemptions, exclusions, limitations, defences and immunities, and the second Party acknowledges that this promise is intended to create an obligation enforceable at the suit of the Other Person, whether by way of defence or otherwise.
- 8.8 In no event shall the first Party or its Group, or any of their respective officers, employees, contractors or agents be liable to the second Party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise in respect of any event or related series of events where the combined amount of the loss incurred by the second Party arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first Party or its Group, and/or any of their respective officers, employees, contractors or agents under or in relation to this Agreement and all Network Interconnection Service Contracts (in the aggregate) in respect of that event or related series of events is less than \$10,000.
- 8.9 The second Party shall use its reasonable endeavours to ensure that a provision shall (to the extent that it is not now included) be included in:

8.9.1 each contract with a Customer of the second Party for the provision of its End User Service which excludes and limits (to the maximum extent permitted by law) any liability of:

- (a) the first Party, its Group, and their respective officers, employees, contractors and agents; and
- (b) any Network Operator (whose network is connected to and with the first Party's Network), its subsidiaries now and from time to time and their respective officers, employees, contractors and agents;

arising directly or indirectly from or in connection with the second Party's End User Service;

8.9.2 each contract with any Network Operator (where the Network Operator's network is connected to and with the second Party's Network) which excludes and limits (to the maximum extent permitted by law) any liability of the first Party, its Group, and their respective officers, employees, contractors and agents arising directly or indirectly from service provided by the second Party to the Network Operator; and

8.9.3 each customer contract of any Network Operator (where the Network Operator's network is connected to and with the second Party's Network) which excludes and limits (to the maximum extent permitted by law) any liability of the first Party, its Group, and their respective officers, employees, contractors and agents arising directly or indirectly from service provided by the Network Operator to its customer.

8.10 The second Party agrees that under no circumstances shall any Network Operator (whose network is connected to and with the first Party's Network), or its subsidiaries now or from time to time, or any of their respective officers, employees, contractors or agents, be liable to compensate the second Party for any loss, injury, liability, damage, costs or expense arising directly or indirectly from the provision by the first Party of a Network Interconnection Service that includes a component provided to the first Party by that Network Operator.

8.11 The second Party is acquiring services under this Agreement and the Network Interconnection Service Contracts from the first Party for the purposes of a business as defined in the Consumer Guarantees Act 1993. The provisions of that Act do not apply to services agreed to be provided under this Agreement and the Network Interconnection Service Contracts whether they are provided or not.

### Intellectual Property Indemnities

8.12 Each Party (in **Clauses 8.12 to 8.15** (inclusive), the *first Party*) indemnifies and saves harmless the other Party (in **Clauses 8.12 to 8.15** (inclusive), the *second Party*), its Group, and their respective officers, employees, contractors or agents from loss, damage, liability, costs or expense which may be suffered or incurred by the second Party, its Group, and/or any of their respective officers, employees, contractors or agents, arising directly or indirectly from any actual or alleged infringement by the second Party, its Group, and/or any of their respective officers, employees, contractors or agents of Intellectual Property rights of a third Party, where, pursuant to this Agreement or any Network Interconnection Service Contract:

8.12.1 such Intellectual Property has been furnished or licensed by the first Party; or

8.12.2 a licence in respect of such Intellectual Property has been procured by the first Party.

Where the first Party has notified the second Party in advance of providing the material or subsequently agrees with the second Party the terms and conditions:

8.12.3 on which such Intellectual Property is furnished or licensed by the first Party; or

8.12.4 of the licence in respect of such Intellectual Property which is procured by the first Party;

the first Party shall only be required to indemnify the second Party, its Group and their respective officers, employees, contractors or agents under this **Clause 8.11** if the second Party, its Group and their respective officers, employees, contractors or agents, have used the relevant Intellectual Property in compliance with the terms and conditions so notified or agreed.

8.13 The first Party shall render all reasonable assistance to and shall co-operate with the second Party for the purpose of defending or otherwise in connection with any actions, proceedings, claims or demands in respect of any such actual or alleged infringement which are brought against the second Party, its Group and/or any of their respective officers, employees, contractors, agents or customers. The first Party may participate at its own expense in the defence of any such action, proceeding, claim or demand. If it so elects within a reasonable time after receipt of the notice referred to below, the first Party may assume the defence of that action, proceeding, claim or demand with counsel chosen by it and reasonably acceptable to the second Party; if so:

8.13.1 the first Party is not liable for any fees and expenses of counsel for the second Party incurred later in connection with that action, proceeding, claim or demand; and

8.13.2 the second Party shall render all reasonable assistance to and shall co-operate with the first Party for that purpose.

The first Party is not liable with respect to any action, proceeding, claim or demand settled without its written consent. The second Party shall notify the first Party as soon as practicably possible after the date on which any such actions, proceedings, claims or demands become known to the second Party.

8.14 The second Party indemnifies and saves harmless the first Party, its Group, and their respective officers, employees, contractors or agents from loss, damage, liability, costs or expense which may be suffered or incurred by the first Party, its Group, and/or any of their respective officers, employees, contractors or agents, arising directly or indirectly from any actual or alleged infringement by the second Party, its Group and/or any of their respective officers, employees, contractors or agents of Intellectual Property rights of a third Party, where, pursuant to this Agreement or to any Network Interconnection Service Contract:

8.14.1 such Intellectual Property is furnished or licensed by the first Party; or

8.14.2 a licence in respect of such Intellectual Property is procured by the first Party;

and the second Party, its Group and/or any of their respective officers, employees, contractors or agents are not in compliance with the terms and conditions:

8.14.3 on which such Intellectual Property is furnished or licensed by the first Party; or

8.14.4 of the licence in respect of such Intellectual Property which is procured by the first Party;

which, in each case, have been notified in advance of providing the material to the second Party by the first Party or subsequently agreed by the Parties.

8.15 The second Party shall render all reasonable assistance to and shall co-operate with the first Party for the purposes of defending or otherwise in connection with any actions, proceedings, claims or demands in respect of any such actual or alleged infringement which are brought

against the first Party, its Group and/or their respective officers, employees, contractors, agents or customers.



**PART G**

**RELATIONSHIP AND NETWORK MANAGEMENT**

**9 LIAISON COMMITTEE**

**Role of Liaison Committee**

- 9.1 The Parties acknowledge that, during the Term, they shall be required to liaise on and resolve technical network operational issues which arise from time to time regarding:
- 9.1.1 the provision of services under this Agreement and each Network Interconnection Service Contract; and
  - 9.1.2 the operation and connection of their respective Networks;
- (the *Operational Issues*).
- 9.2 In recognition of this, the Parties shall establish a Liaison Committee:
- 9.2.1 to liaise on, and to provide a forum for discussion of, Operational Issues; and
  - 9.2.2 to discuss and make recommendations on changes to the Network Interconnection Operational Procedures under **Clause 10.3** and to the Network Interconnection Technical Specifications under **Clause 16.7**.

**Constitution of Liaison Committee**

- 9.3 The Liaison Committee shall consist of one or more (but not more than three) suitably qualified personnel appointed by each Party from time to time (on a permanent or temporary basis), and advised to the other Party by name or position as being that Party's representatives on the Liaison Committee.
- 9.4 The Liaison Committee may regulate its own meetings and procedures, **PROVIDED THAT**:
- 9.4.1 meetings of the Liaison Committee (either in person, or by audio or audio and visual communication) shall be held:
    - (a) at least as regularly as the Liaison Committee shall determine; and
    - (b) at the written request of a member of the Liaison Committee, such request to set out the issues which the member wishes to be discussed by the Liaison Committee;
  - 9.4.2 meetings of the Liaison Committee shall be hosted alternately by each Party;
  - 9.4.3 at least five Working Days' notice of a meeting is given by the Party hosting the meeting to each member of the Liaison Committee, together with written advice of the matters to be discussed at the meeting. However, this notice requirement may be waived with the unanimous consent of the members of the Liaison Committee; and
  - 9.4.4 each meeting of the Liaison Committee shall be chaired by a representative nominated by Telco or Spark NZT (on an alternating basis).

## 10 OPERATIONAL PROCEDURES

### Network Interconnection Operational Procedures

- 10.1 The Parties shall establish and maintain a document entitled *Network Interconnection Operational Procedures* (set out in **Schedule B** and forming part of this Agreement), recording details of agreed operational procedures, which may include, without limitation, procedures covering:
- 10.1.1 liaison between the Parties' respective operations centres referred to in **Clause 1.1** of **Schedule B**;
  - 10.1.2 handling of Outages including notification of planned and unplanned Outages which affect a Party's Network Interconnection Service;
  - 10.1.3 to the extent that such testing is not covered by this Agreement or a Network Interconnection Service Contract, appropriate testing by each Party to localise and isolate faults in its own Network, or for such other purposes as may be agreed between the Parties;
  - 10.1.4 details of forecasting required under **Clause 15**;
  - 10.1.5 detailed arrangements for access by each Party to the other Party's premises under **Clause 12**;
  - 10.1.6 notification of software and hardware changes proposed for either Party's Network which may impact on that Party's provision of Network Interconnection Service;
  - 10.1.7 management of abnormal and/or disruptive traffic, with a view to minimising any detrimental effects of such calling or sending of mms or sms on each Party's Network; and
  - 10.1.8 facilitation of tracing of malicious Agreed Calls, mms or sms which originate in one Party's Network and terminate in the other Party's Network.
- 10.2 The Network Interconnection Operational Procedures as at the date of this Agreement are set out in **Schedule B**. That document, as amended from time to time in accordance with this Agreement, shall form part of this Agreement.

### Changes to Network Interconnection Operational Procedures

- 10.3 Each Party shall review the Network Interconnection Operational Procedures on a regular basis, and shall refer any concerns it may have regarding, or any requests for amendment to, the Network Interconnection Operational Procedures to the Liaison Committee.
- 10.4 Any matters referred to the Liaison Committee under **Clause 10.3** shall be discussed by the Liaison Committee which may determine that an amendment to the Network Interconnection Operational Procedures is appropriate and make recommendations, in accordance with the following provisions:
- 10.4.1 if all the members of the Liaison Committee reach unanimous agreement that an amendment is appropriate, and on the details of that amendment, then the Liaison Committee shall produce a written recommendation to that effect, and send a copy of that recommendation to each of the Parties. Each Party shall consider the recommendation and respond in writing to the Liaison Committee, advising whether it agrees or disagrees with the recommendation. If both Parties agree with the recommendation, then the recommendation shall be implemented by amending the

Network Interconnection Operational Procedures, or taking such other action as the Parties may agree; or

- 10.4.2 if all the members of the Liaison Committee reach unanimous agreement that an amendment is appropriate, but cannot agree on the details of that amendment, or do not reach unanimous agreement that an amendment is appropriate, or if the Parties do not reach agreement with respect to any recommendation of the Liaison Committee or any other matter related to an amendment, the Parties may agree to participate in mediation in accordance with **Clause 4**. However, there shall be no recourse to arbitration.

## 11 ARRANGING HANDOVER POINTS

### Location of Handover Points

- 11.1 Except as agreed otherwise in writing by the Parties, in each of the Handover Locations, each Party shall make available one or more carrier Ethernet ports to each other for the purpose of receiving interconnect traffic via an Interconnect Link. The Handover Point is the interface at which the Interconnect Link managed by one Party interconnects with carrier Ethernet port of the other Party.:
- 11.1.1 Each Telco Handover Point shall be at the end of the Interconnect Link managed by Telco; and
- 11.1.2 Each Spark NZT Handover Point shall be at the end of the Interconnect Link managed by Spark NZT.
- 11.2 Each Party shall be responsible for the provisioning, providing, maintaining, decommissioning and otherwise bearing the full costs of each of their own Handover Points.
- 11.3 The Parties may agree to locate Handover Points on premises other than in accordance with this **Clause 11**, or to make any other mutually acceptable Handover Point arrangements.
- 11.4 The Parties shall, on an ongoing basis, co-operate with each other and use all reasonable endeavours to agree on the Call routes and other technical arrangements which need to be put in place to enable each Party to meet its obligations and exercise its rights under this Agreement and any Network Interconnection Service Contract.

### Changes to Handover Points

- 11.5 Where either Party (in this **Clause 11.5** and in **Clause 11.6**, the *first Party*) intends to change its Handover Point arrangements by installing a new Handover Point, changing the location of one of its Handover Points, substituting one of its Handover Points with another Handover Point, decommissioning one of its Handover Points (in the case of decommissioning a Handover Point, **Clauses 11.5.4** and **11.5.5** shall not apply) or making any other change to the then existing arrangements relating to one of its Handover Points:
- 11.5.1 it shall give reasonable notice to the other Party (in this **Clause 11.5** and in **Clause 11.6**, the *other Party*) of the intended change and the date by which it intends to make those changes;
- 11.5.2 it shall provide whatever information the other Party reasonably requests in order for the other Party to ascertain and do the things it needs to do in order to accommodate the intended change;
- 11.5.3 as soon as is reasonably practicable after receiving the requested information, the other Party shall give notice of whether or not it agrees to accommodate the intended

change (such agreement not to be unreasonably withheld), and, if so, setting out the things it considers it will need to do to accommodate the intended change and when it estimates those things will have been done;

- 11.5.4 as soon as the other Party considers it has done everything necessary to the point that the new or changed Handover Point is ready for joint testing, the other Party shall give notice requesting joint testing to begin. The Parties shall begin joint testing within 2 Working Days after that notice is given and shall use reasonable endeavours to complete joint testing within 5 Working Days of the day joint testing begins; and
- 11.5.5 the new or changed Handover Point is deemed to be available from the date by which the first Party requested all things to have been done to accommodate the intended change, or the date on which joint testing is completed, whichever is later.

This **Clause 11.5** does not limit each Party's forecasting obligations under **Clause 15**.

- 11.6 Each Party is to bear its own costs in relation to any change in Handover Point arrangements that may be agreed by the parties from time to time.

## **12 ACCESS TO HANDOVER POINTS, AMSDPS AND MMSDPS**

## **13 INTERCONNECT LINKS**

### **Responsibility for provisioning Bidirectional Interconnect Links**

- 13.1 In each Handover Location, the Parties will provision one bi-directional Interconnect Link between the Spark NZT Network and the Telco Network. Spark NZT shall be responsible for provisioning the connection between its Network and the Handover Point; the Telco shall be responsible for provisioning the connection between its Network and the Handover Point. The costs of provisioning each connection and the costs of any ongoing port connection charges will be borne by each Party.

### **Responsibility for provisioning**

- 13.2 Responsibility for provisioning Interconnect Links under this **Clause 13** includes bearing the costs of installing those Interconnect Links and responsibility for maintaining and decommissioning those Interconnect Links.

### **Decommissioning**

- 13.3 Each Party may decommission Interconnect Links for which it is responsible for provisioning after having provided the other Party with 20 Working Days' prior notice.

### **Use of a third party**

- 13.4 Where this **Clause 13** imposes an obligation on either Party (the *provisioning Party*) to provision any Interconnect Links, the provisioning Party may provision those Interconnect Links itself or it may procure a third party to provision those Interconnect Links on its behalf.

### **Port charges**

- 13.5 A connection charge as set out in Schedule E (Additional Charges) shall be payable (monthly in advance):
- 13.5.1 by Spark NZT for each of the bi-directional Interconnect Links referred to in **Clause 13.1**; and

13.5.2 by Telco for each of the bi-directional Interconnect Links referred to in **Clause 13.1**.

## 14 PROTECTION OF NETWORKS

### Restriction of certain actions in relation to Networks

- 14.1 Except as contemplated under the terms of this Agreement or any Network Interconnection Service Contract, each Party is to use its reasonable endeavours to ensure that it does not, in connection with the performance or observance of its obligations under this Agreement or any Network Interconnection Service Contract, do or permit to be done or omit or permit the omission of any matter or thing in relation to its Network which shall:
- 14.1.1 cause damage to the other Party's Network or any other network connected with it;
- 14.1.2 except as permitted under this Agreement or any Network Interconnection Service Contract, result in:
- (a) interference with; or
- (b) modification of the operation of;
- the other Party's Network or any other network connected with it (except that any radiofrequency interference shall be dealt with in accordance with the provisions of the Radiocommunications Act 1989); or
- 14.1.3 interfere with the reasonable enjoyment or use:
- (a) of any of the other Party's End User Services by any person; or
- (b) by any person of any other network which is connected to the other Party's Network.
- 14.2 Neither Party may, and each Party shall ensure that no member of its New Zealand Group shall, knowingly connect any equipment (including any SIM box) to the other Party's Network without the other Party's prior consent (which consent shall in the case of any SIM box be in writing and expressly refer to this **Clause 14.2**).
- 14.3 Neither Party may, and each Party shall ensure that no member of its New Zealand Group shall knowingly:
- 14.3.1 use or operate any SIM box connected to the other Party's Network;
- 14.3.2 use or operate any SIM box connected to its own Network to send Agreed Calls, sms or mms to the other Party's Network; or
- 14.3.3 use a transit route to transit Agreed Calls, sms or mms to any:
- (a) Telco National Number, Telco Mobile Number, Spark National Number or Spark Mobile Number via a SIM box connected to a third party's New Zealand Network,
- without the other Party's prior written consent (which consent shall expressly refer to this **Clause 14.3**).
- 14.4 If either Party becomes aware that the other Party is using a transit route to transit a material volume of Agreed Calls, sms or mms to any New Zealand number via a SIM box connected

to any network in New Zealand other than the other Party's Network it shall promptly notify the other Party.

14.5 References in this **Clause 14** to:

14.5.1 a *connection* means a connection by any means including by wireless technology (and *connect* and *connected* shall have a corresponding meaning); and

14.5.2 *connection of a SIM box to a network* means circumstances in which a Party knows that a SIM box is connected to such a network.

### **Sabotage**

14.6 The Parties shall co-operate with each other and adopt reasonable precautions in accordance with their respective usual procedures to prevent acts of sabotage to:

14.6.1 the Telco Network; and

14.6.2 the Spark NZT Network;

by their respective officers, employees, contractors, agents, customers and by third parties.

### **Fraudulent use**

14.7 The Parties shall co-operate to eliminate fraudulent use of either Party's End User Services by End Users and Customers insofar as such fraudulent use has arisen as a result of the connection of the Parties' respective Networks, and the provision of Network Interconnection Service by each Party to the other under this Agreement and/or any Network Interconnection Service Contract.

### **Safety**

14.8 Without limiting anything in **Clauses 14.9, 14.10, 16.3, 16.5 and 16.6**, each Party shall take all necessary and prudent steps and comply with all statutory obligations (including, without limitation, the Health and Safety in Employment Act 1992) to ensure that the performance and observance of its obligations under and the implementation of this Agreement and any Network Interconnection Service Contract will not endanger the health or safety of any persons including, without limitation, the other Party's officers, employees, contractors, agents and End Users and in particular, without limitation, each Party shall be responsible for the safe operation of its own Network.

### **Standards and Quality**

14.9 Each Party shall:

14.9.1 use its reasonable endeavours to and shall co-operate with the other in managing its own Network in a manner that minimises disruptions to the other Party's Network; and

14.9.2 use its reasonable endeavours to ensure that the quality of Calls MMS or SMS delivered to or accepted from the other Party's Network is maintained.

14.10 Each Party shall provide Network Interconnection Service to the other Party of a quality comparable to the same or similar network service provided by the first Party to its Customers and to any other member of the Group to which it belongs.

- 14.11 Where a Call may be transmitted in part to or from an international network, the Parties shall use reasonable endeavours to ensure that they comply with the principles and requirements of any applicable technical standards that may have an impact on call quality and any applicable agreements between the relevant Party and overseas networks, as notified by each Party to the other from time to time.

#### **Outage Preplanning and Joint Network Design**

- 14.12 The Parties acknowledge that it is in each Party's interest to minimise the disruption caused by Outages and to make each Party's Network as available as possible to the other for Call, MMS or SMS acceptance and delivery.
- 14.13 Where the Parties agree that joint pre-planning would be useful in reducing the effect of a network node or transmission Outage on the affected Party's Network, the Parties shall meet and discuss and use reasonable endeavours to develop and agree on a pre-plan that could be invoked if the identified Outages were to occur.
- 14.14 Where the Parties agree that co-operation through joint network design would be useful in reducing the effect of a network node or transmission Outage on the affected Party's Network, the Parties shall meet and discuss and endeavour to develop and agree on a network design that could be implemented between the Parties.

#### **Continuance Planning**

- 14.15 The Parties acknowledge that in the event of a natural disaster which results in large scale destruction of one or both Parties' Networks it is in both Parties' interest to co-operate to restore a level of service to emergency service providers and other rescue services in the destruction area.
- 14.16 At the request of a Party (the first Party), the other Party shall meet with the first Party and discuss and use reasonable endeavours to develop and agree on a disaster continuance plan, covering joint co-operation for the restoration of a level of service to emergency service providers and other rescue services in the destruction area.

#### **Services in the Event of an Emergency**

- 14.17 In the event that:
- 14.17.1 Telco is unable to provide a substantial part of Telco Network Interconnection Service; or
- 14.17.2 Spark NZT is unable to provide a substantial part of Spark NZT Network Interconnection Service;

(the Party with such inability in this **Clause 14.17** called the *Affected Party*) and such inability has been caused by an act of God, natural disaster, act of terrorism or other event which has given rise to the declaration of a state of civil defence emergency, then Telco (in the case where the Affected Party is Spark NZT) and Spark NZT (in the case where the Affected Party is Telco), shall use reasonable endeavours to assist the Affected Party in providing temporary services to enable the Affected Party to provide services to its Customers, any such assistance to be on terms and conditions and charges to be agreed between the Parties. Nothing in this **Clause 14.17** shall oblige Telco or Spark NZT (as the case may be) (the *Assisting Party*) to assist the Affected Party where the assistance would diminish the Assisting Party's normal level of service to its Customers.

### **Routing of traffic**

- 14.18 Each Party shall co-operate with the other in relation to the routing of Calls, Telco SSC Calls, MMS and SMS handed over in accordance with this Agreement and any Network Interconnection Service Contract.

### **Artificial inflation of traffic**

- 14.19 Neither Party shall directly, or indirectly through a third party, intentionally engage in the Artificial Inflation of Traffic affecting the other Party, the other Party's network or the other Party's End Users.
- 14.20 On receipt of written notice from the other Party that Artificial Inflation of Traffic is occurring in connection with the first Party, the first Party shall use reasonable endeavours to ensure that its End Users and, if applicable, the End Users of a third party do not engage in the Artificial Inflation of Traffic, affecting the other Party, the other Party's network or the other Party's End Users.

## **15 FORECASTS OF FUTURE NETWORK REQUIREMENTS**

- 15.1 If requested by a Party, the other Party shall supply to the first Party the forecasts set out in the Network Interconnection Service Contracts and the Network Interconnection Operational Procedures or such other forecasts as are agreed.
- 15.2 Forecasts supplied by one Party to the other under **Clause 15.1** shall be prepared and supplied in accordance with the Network Interconnection Service Contracts and the Network Interconnection Operational Procedures.
- 15.3 Each Party acknowledges the importance of forecasts in providing Network Interconnection Service, and to that end, shall take all reasonable care to provide forecasts which are as accurate as possible. The Parties further acknowledge:
- 15.3.1 that the sole purpose of the forecasts described in **Clause 15.1** is for each Party to make the other Party aware of the likely demands for the other Party's Network Interconnection Service (or service under Network Interconnection Service Contract 3 (*Spark Standard Charges Services*)) and enable the other Party to plan for the provision of such service accordingly; and
- 15.3.2 that any forecast under this **Clause 15** is indicative only and is not binding on the Party giving the forecast. The forecasting Party does not represent or warrant that any forecast is or will be true, accurate or correct.

Notwithstanding this, each Party shall promptly notify the other Party if it becomes aware at any time of any reason (including any planned network build or acquisition) that is likely to result in any forecast provided under this clause 15 becoming materially inaccurate, and that notice will include a statement of the impact that the notifying Party expects on those forecasts.

- 15.4 If either Party considers, based on forecasts it provides under this **Clause 15**, that new Interconnect Links are required, that Party shall notify the other Party of the number of Interconnect Links that it believes are required and the relevant dates by which it believes those Interconnect Links are required.
- 15.5 If the other Party agrees with the number of Interconnect Links forecast by the first Party and the timing for the provision of those Interconnect Links, then each Party will use its best endeavours to provision the Interconnect Links in accordance with **Clause 11** by the relevant dates in the first Party's notice.



- 15.6 If the other Party considers that the number of Interconnect Links forecast by the first Party is more than is required, or that (using its best endeavours) it will not be able to provision the additional Interconnect Links by the relevant dates notified by the first Party, then the other Party shall notify the first Party and the Parties will meet to discuss the first Party's requirements. If the Parties are unable to agree on how many Interconnect Links should be provisioned, or the relevant dates by which those Interconnect Links shall be provisioned, then either Party may refer that matter to dispute resolution in accordance with **Clause 4**.

## **16 NETWORK INTERCONNECTION TECHNICAL SPECIFICATIONS**

### **Network Interconnection Technical Specifications**

- 16.1 Spark NZT Limited shall establish and maintain a document entitled *Network Interconnection Technical Specifications*, recording details of the technical requirements which the Parties have agreed. The Network Interconnection Technical Specifications contain specifications agreed by the Parties that are appropriate to the operation of their respective Networks and the provision of Network Interconnection Services by each Party to the other.
- 16.2 The Network Interconnection Technical Specifications as at the date of this Agreement are set out in **Schedule C**. That document, as amended from time to time in accordance with this Agreement, shall form part of this Agreement.

### **Compliance with Network Interconnection Technical Specifications**

- 16.3 The Parties shall use their reasonable endeavours to comply with the relevant Network Interconnection Technical Specifications referred to in each Network Interconnection Service Contract. In particular, each Party shall use reasonable endeavours to ensure it does not connect anything to the other Party's Network at a Handover Point, MMSDP or AMSDP, nor deliver or accept Calls, MMS or SMS at the Handover Point, MMSDP or AMSDP, except in accordance with the relevant Network Interconnection Technical Specifications. The Parties shall co-operate in a bona fide manner towards achieving compliance with the applicable Network Interconnection Technical Specifications in the connection of their respective Networks, and the delivery and acceptance of Calls and Messages.
- 16.4 Each Party shall undertake testing, in accordance with a testing schedule agreed between the Parties, to determine compliance with the Network Interconnection Technical Specifications. Unless otherwise agreed in writing, such testing should be undertaken:
- 16.4.1 where a Network Interconnection Technical Specification is implemented for the first time; and
  - 16.4.2 where an agreed change is made to a Network Interconnection Technical Specification;
  - 16.4.3 before Telco provides Telco Toll Bypass Service (as defined in the agreement known as Network Interconnection Service Contract 10 (*Telco Toll Bypass Service*));
  - 16.4.4 before either Party provides any Network Interconnection Services under Network Interconnection Services Contract 12 (SMS Service),
- and may occur at any other time agreed between the Parties.
- 16.5 Where the Parties have agreed that no compliance testing is required prior to the implementation or the change referred to in **Clauses 16.4.1 or 16.4.2**, each Party whose Network is affected by such an event shall (to the extent its Network is so affected) certify to the other Party (prior to implementation or change) that the first Party's Network complies with the Network Interconnection Technical Specifications to the extent required under this

Agreement in the form they will take following the implementation or change. For the avoidance of doubt, no such prior certification is required where the Parties have agreed to undertake and have successfully completed compliance testing.

- 16.6 Each Party shall use reasonable endeavours to ensure that, during the Term, its Network continues to comply with the Network Interconnection Technical Specifications.

### **Managing the Network Interconnection Technical Specifications**

- 16.7 Each Party shall refer any issues it may have regarding, or any requests for amendment to, the Network Interconnection Technical Specifications, to the Liaison Committee.
- 16.8 Any matters referred to the Liaison Committee under **Clause 16.7** shall be discussed by the Liaison Committee which may determine that an amendment to the Network Interconnection Technical Specifications is appropriate and make recommendations. The provisions of **Clauses 10.4.1** and **10.4.2** shall apply as if the references to “Network Interconnection Operational Procedures” were references to “Network Interconnection Technical Specifications” and otherwise shall be read mutatis mutandis.

## **17 NETWORK CHANGES**

### **Network Changes**

- 17.1 In the event that one Party (the *notifying Party*):
- 17.1.1 is required to make a change to its Network:
    - (a) by reason of a fault condition or other trouble in its Network; or
    - (b) in order to comply with **Clauses 14.9, 14.10, 14.11** or **16.3**; or
  - 17.1.2 wishes to make a change to its Network where:
    - (c) the change will cause minimal inconvenience or cost to the other Party (the *other Party*); or
    - (d) the notifying Party reasonably believes the change is in both Parties’ mutual interest;
- and the change to the notifying Party’s Network would make it necessary:
- 17.1.3 for a change to be made to the requirements of the Network Interconnection Technical Specifications; and
  - 17.1.4 for changes to be made to the Network of the other Party;
- the notifying Party shall give notice to the other Party requesting the change. Such notice shall set out:
- 17.1.5 full details of the required or desired changes to the notifying Party’s Network;
  - 17.1.6 the preferred timing of such changes; and
  - 17.1.7 where **Clause 17.1.1** applies, the urgency of the condition and the risks to the effective continued operation of its Network in delaying the changes.

- 17.2 On receipt of such notice by the other Party, the Parties shall refer any issues with respect to the implementation of the changes which the notifying Party has requested (including any changes to the Network Interconnection Technical Specifications and the need for testing) to the Liaison Committee, which shall discuss the issues and where it determines appropriate, make recommendations. Any such implementation shall be on terms and conditions agreed by the Parties.

## PART H

### CHARGING AND PAYMENTS

#### 18 CHARGING PRINCIPLES

- 18.1 The charges payable by Spark NZT to Telco and by Telco to Spark NZT for their respective services provided under this Agreement and each Network Interconnection Service Contract are as set out in this Agreement and each Network Interconnection Service Contract.
- 18.2 Except as otherwise specifically provided in this Agreement or any Network Interconnection Service Contract, each of Spark NZT and Telco shall arrange for all charging of and setting charges for its own Customers.

#### Discounts

- 18.3 Where this Agreement or any Network Interconnection Service Contract specifies a charge to apply to a service, no reduction, rebate, saving, bonus or discount of any kind, including, without limitation, any call promotion offers or plans shall apply, unless expressly provided otherwise in this Agreement or any Network Interconnection Service Contract.

#### GST

- 18.4 All references in this Agreement and any Network Interconnection Service Contract to rates, or other charges, are deemed to mean rates and other charges exclusive of GST (unless specifically stated otherwise in the relevant Network Interconnection Service Contract or Spark Standard Charges from time to time). To the extent that rates and other charges are payable under this Agreement and any Network Interconnection Service Contract by the Parties, the GST on such rates and charges shall be invoiced to and payable by the Parties in the same way as the charges themselves under **Clause 19**, and in accordance with the Goods and Services Tax Act 1985.
- 18.5 Each Party is to provide a tax invoice to the other Party in accordance with the Goods and Services Tax Act 1985, on a calendar monthly basis, for recurring and non-recurring charges.
- 18.6 Spark NZT represents and warrants to Telco that the charges set out in this Agreement and the Network Interconnection Service Contracts do not contain any contribution to the cost to Spark NZT of providing the service required by any TSO instrument under Part 3 of the Telecommunications Act 2001.

#### 19 PAYMENT OF CHARGES

##### Billing

- 19.1 The quality of billing of services under this Agreement and each Network Interconnection Service Contract by the Invoicing Party shall be to a standard which is comparable to the quality of the billing provided by the Invoicing Party to its major customers and Network Operators in respect of comparable services. Without limiting the foregoing, all charges and costs payable by the Paying Party, when invoiced to the Paying Party, shall include reasonable information in accordance with normal commercial practice to enable the Paying Party to check the accuracy of the amount charged.

- 19.2 Unless the Parties otherwise agree in writing, and subject to **Clause 19.14** the period to be covered by an invoice under this Agreement, for the provision of Network Interconnection Services, shall be a calendar month. An invoice may include any fixed charges that are payable in advance that arise in relation to that calendar month.
- 19.3 Each Party is to co-operate with the other on billing and invoice verification matters, including:
- 19.3.1 the information to be provided to each other with respect to an invoice;
  - 19.3.2 the methods by which that information is provided;
  - 19.3.3 the need to meet from time to time to resolve billing disputes; and
  - 19.3.4 the need to discuss other matters relating to billing and the verification of charges.

In recognition of this, the Parties may agree to establish a Billing Committee to liaise on, and to provide a forum for discussion of, billing and invoice verification matters and the appropriate membership, rules and procedures of such a Billing Committee.

#### **Due Date**

- 19.4 Subject to **Clause 19.7**, all amounts invoiced by the Invoicing Party to the Paying Party under this Agreement and each Network Interconnection Service Contract shall be due and payable on or before the Due Date of the relevant invoice but shall accrue from the date on which the relevant service was provided.

#### **Payment**

- 19.5 Subject to **Clause 19.7** and **19.15**, all charges and other amounts payable by the Paying Party under this Agreement and the Network Interconnection Service Contracts (including any amount which the Paying Party disputes or intends to dispute pursuant to **Clause 19.11**):
- 19.5.1 shall be paid by the Paying Party to the Invoicing Party, at the place or to a bank account nominated from time to time by the Invoicing Party, and (except to the extent required by law) free of any deductions, set off or withholding on account of any amount; and
  - 19.5.2 shall:
    - (a) where the amount invoiced is in New Zealand dollars, be paid in New Zealand dollars; and
    - (b) where the amount invoiced is in any other currency that the Parties may agree, be paid in that other currency.

For the avoidance of doubt, no payments may be made under this Agreement or any Network Interconnection Service Contract by credit card or debit card.

- 19.6 Acknowledging that the interests of the Parties and their respective Customers require that:
- 19.6.1 as far as reasonably practicable, services under this Agreement and the Network Interconnection Service Contracts be continuously available, and when in use, continuous and fault-free; and
  - 19.6.2 subject to **Clause 19.7** and **19.15**, payments for such services be made without deduction, set off or withholding on account of any amount;

the Parties agree that, in the event of any dispute about the validity or enforceability of this Agreement or of any Network Interconnection Service Contract or of its or their implementation (in either case in whole or in part), each Party shall continue to perform its obligations in accordance with the terms of this Agreement and each Network Interconnection Service Contract until a court of competent jurisdiction (or the arbitrator of an arbitration under **Clause 4**) determines that this Agreement or any Network Interconnection Service Contract or its or their implementation (in either case in whole or in part), is invalid or unenforceable.

## Invoice

19.7 If the Paying Party:

19.7.1 believes on reasonable grounds that there is a Manifest Error in an invoice provided by the Invoicing Party which has resulted in the Invoicing Party overcharging the Paying Party in that invoice; and

19.7.2 has on or before the Due Date, served on the Invoicing Party a notice of Manifest Error, (setting out in the notice details of the relevant invoice and the reasonable grounds in support of the Paying Party's view that the Manifest Error exists),

then the Paying Party shall be entitled to withhold payment to the Invoicing Party of the amount by which, in the reasonable opinion of the Paying Party, the Invoicing Party has overcharged the Paying Party in the invoice as a result of the Manifest Error. The remainder of the amounts charged in the invoice shall be paid by the Paying Party on or before the Due Date in the normal manner. The amount withheld may be withheld until such time as the Invoicing Party and the Paying Party have settled between them in accordance with the disputes procedure set out in **Clause 19.8** whether or not there is a Manifest Error in the invoice and, if there is, the amount of it and the amount properly payable on that invoice after correcting it.

19.8 Following the giving of any notice under **Clause 19.7.2**, the Parties shall use reasonable endeavours to settle any claim of Manifest Error. The Parties shall resolve any claim of Manifest Error in accordance with this **Clause 19.8**. If they do not settle any claim of Manifest Error within 20 Working Days after the due date for payment of the invoice, either Party may give notice referring the matter directly to an independent telecommunications accounting expert (the Expert) to be finally resolved and, unless otherwise agreed in writing:

19.8.1 the Parties shall endeavour to appoint a single Expert. If, within 5 Working Days of the notice under this **Clause 19.8** being given, the Parties are unable to agree on a single Expert, the Expert shall be appointed by the President of the Institute of Chartered Accountants of New Zealand;

19.8.2 the Expert shall adopt a procedure which, in the Expert's opinion, is the most simple and expeditious procedure possible in the circumstances;

19.8.3 any decision reached by the Expert is final and binding, and cannot be challenged by any court, in the absence of fraud;

19.8.4 the provisions of the Arbitration Act 1996 shall not apply to any procedure under this **Clause 19.8**;

19.8.5 the Parties shall provide the Expert with any information that the Expert reasonably requires;

19.8.6 the Expert shall use reasonable endeavours to make a decision on the claim of a Manifest Error within 30 Working Days of appointment; and

19.8.7 the costs of the Expert shall be paid as follows:

- (a) if the Expert decides that there is no Manifest Error or, as a result of a Manifest Error the amount of the invoice (as adjusted by the Invoicing Party, if the Invoicing Party has subsequently adjusted the invoice) is increased after correction, then the Paying Party shall pay the costs of the Expert; or
  - (b) if the Expert decides that there is a Manifest Error and the amount of the invoice (as adjusted by the Invoicing Party, if the Invoicing Party has subsequently adjusted the invoice) is reduced after correction, then the Invoicing Party shall pay the costs of the Expert.
- 19.9 If it is agreed by the Parties or found by the Expert that there was a Manifest Error in the invoice, then if:
  - 19.9.1 the amount by which the Paying Party was overcharged in the invoice as a result of the Manifest Error is less than the amount withheld by the Paying Party, the Paying Party shall forthwith pay to the Invoicing Party the amount of the difference, and shall pay to the Invoicing Party interest on a daily basis at the Bill Rate (as at the Due Date of the invoice) plus 1 percent per annum on the amount of the difference for the period from and including the Due Date to but excluding the date of payment of the amount of the difference, such interest to be paid contemporaneously with the amount of the difference;
  - 19.9.2 the amount by which the Paying Party was overcharged in the invoice as a result of the Manifest Error is equal to the amount withheld by the Paying Party, the Paying Party shall retain the amount withheld;
  - 19.9.3 the amount by which the Paying Party was overcharged in the invoice as a result of the Manifest Error is greater than the amount withheld by the Paying Party, then the Invoicing Party shall forthwith refund to the Paying Party the amount of the difference and shall pay to the Paying Party interest on a daily basis at the Bill Rate (as at the date on which the overpayment was made by the Paying Party) plus 1 percent per annum on that refunded amount for the period from and including the date on which the overpayment was made by the Paying Party to but excluding the date of payment of the refunded amount, such interest to be paid contemporaneously with the payment of the refunded amount.
- 19.10 If it is agreed by the Parties or found by the Expert that there was not a Manifest Error in the relevant invoice, then the Paying Party shall forthwith pay in full the amount withheld and shall pay to the Invoicing Party interest at the Bill Rate (as at the Due Date) plus 1 percent per annum for the period from and including the date of the invoice to but excluding the date of payment of the amount withheld, such interest to be paid contemporaneously with the amount withheld. Nothing in this **Clause 19.10** shall prevent the Paying Party from claiming an amount in accordance with **Clause 19.11**, if the Paying Party has reasonable cause to believe that the invoice contains a billing error which is not a Manifest Error.

### **Settling Other Invoicing Disputes**

- 19.11 If the Paying Party has a claim in respect of the accuracy or correctness of an invoice issued by the Invoicing Party (other than any claim of Manifest Error under Clause 19.7), the Paying Party shall, no later than 6 months after the Due Date of the invoice which it disputes, serve notice on the Invoicing Party setting out details of the relevant invoice, the disputed amount and the grounds for the dispute together with supporting evidence. All disputes under this **Clause 19.11** shall be bona fide disputes for which the Paying Party has reasonable cause to believe that there has been a billing error. For the avoidance of doubt, **Clauses 19.8 to 19.10** (inclusive) do not apply to any notice given under this **Clause 19.11**, and **Clauses 19.12 and 19.13** do not apply to any notice given under **Clause 19.7.2**.

- 19.12 The Invoicing Party and the Paying Party shall use their reasonable endeavours to settle promptly any claim of which the Invoicing Party is notified under **Clause 19.11**. Failing resolution within 40 Working Days of the date of the service of the notice under **Clause 19.11**, either Party may serve notice on the other that it wishes the dispute to be arbitrated and the dispute shall be referred directly to arbitration in accordance with **Clause 4**, on the expiry of 10 Working Days from the date of service of such notice (without the need for prior negotiation). The terms of reference of such arbitration shall be agreed between the Parties but shall relate only to that claim or dispute on the accuracy or completeness of the invoice.
- 19.13 If a claim under **Clause 19.11** is resolved in favour of the Paying Party, then the Invoicing Party shall forthwith refund to the Paying Party:
- 19.13.1 the disputed amount, or so much of it as the resolution of the dispute dictates should be refunded; and
- 19.13.2 interest on a daily basis at the Bill Rate (as at the date on which the overpayment was made by the Paying Party) plus 1% per annum on the refunded amount referred to in **Clause 19.13.1** for the period from and including the date on which the overpayment was made by the Paying Party to but excluding the date of payment of the refunded amount, such interest to be paid contemporaneously with the payment of the refunded amount.

#### **Charges Omitted from Invoices**

- 19.14 Nothing in this Agreement or any Network Interconnection Service Contract or in the terms of any invoice or statement shall prejudice the Invoicing Party's right to charge the Paying Party for any services under this Agreement or any Network Interconnection Service Contract, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted. This right shall be limited to a period of 9 months from the date of the provision of the relevant service, after which no charge may be made for that service. This **Clause 19.14** shall survive termination of this Agreement.
- 19.15 The Invoicing Party may at the direction of the Paying Party apply any amounts payable under **Clauses 19.9.3** and **19.13** as a credit towards other charges payable by the Paying Party under this Agreement or any Network Interconnection Service Contract.

#### **Late Payment**

- 19.16 Where:
- 19.16.1 an amount due from the Paying Party to the Invoicing Party under this Agreement or any Network Interconnection Service Contract remains unpaid after the Due Date of the relevant invoice and that amount is not one to which **Clauses 19.9.1** or **19.10** applies; or
- 19.16.2 an amount due from the Paying Party to the Invoicing Party under **Clauses 19.9.1** or **19.10** remains unpaid on the sixth Working Day after the date of resolution of the dispute;
- then the Paying Party shall be liable to pay to the Invoicing Party interest on a daily basis on that amount at the Bill Rate (as at the Due Date or the date 6 Working Days after the date of resolution of the dispute, as the case may be) plus 5 percent per annum, such interest to be charged:
- 19.16.3 in the case of interest payable in respect of amounts unpaid after the Due Date of the relevant invoice, from and including the Due Date of the relevant invoice to but



excluding the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due;

- 19.16.4 in the case of interest payable in respect of amounts unpaid on the sixth Working Day after the date of resolution of the dispute, from and including the sixth Working Day after the date of resolution of the dispute to but excluding the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due.
- 19.17 Where an amount due from the Invoicing Party to the Paying Party under **Clauses 19.9.3 or 19.13** remains unpaid on the sixth Working Day after the date of resolution of the dispute, then the Invoicing Party shall be liable to pay to the Paying Party interest on that amount at the Bill Rate (as at the date 6 Working Days after the date of resolution of the dispute) plus 5 percent per annum, such interest to be charged on a daily basis from and including the date 6 Working Days after the date of the resolution of the dispute until, but excluding the date the amount due is paid, such interest to be paid contemporaneously with the payment of the amount due.
- 19.18 The Paying Party shall continue to be liable to pay for any charges incurred between the time of termination of any service of the Invoicing Party and the actual discontinuance of the service of the Invoicing Party.
- 19.19 Nothing in **Clause 8** shall exclude or limit Spark NZT's or Telco's liability to pay interest to the other under this **Clause 19** should such a liability arise.
- 19.20 The Parties record that the interest payable under this **Clause 19** constitutes liquidated damages and that the interest rate formulae set out in this **Clause 19** represent a genuine forecast of the approximate loss a Party may suffer as the result of non-payment after taking into account the complexity of each Party's business.

**PART I**

**INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION**

**20 INTELLECTUAL PROPERTY RIGHTS**

- 20.1 Unless the Parties otherwise agree in writing:
- 20.1.1 all Intellectual Property which originates from, or is owned or developed by, a Group shall remain in the ownership of that Group; and
  - 20.1.2 where Intellectual Property is owned or has been developed by a Group for the purposes of observing or performing obligations under this Agreement and/or any Network Interconnection Service Contract, then the other Group shall have a non-exclusive royalty-free licence to use such Intellectual Property for the purposes of the observance or performance of obligations under this Agreement and/or any Network Interconnection Service Contract, until such time as this Agreement is terminated.
- 20.2 Nothing in this Agreement and/or any Network Interconnection Service Contract shall confer or be deemed to confer on a Group any rights or interests in or licences to use or to permit or cause use to be made of the Intellectual Property of the other Group, except as expressly provided in this **Clause 20**.
- 20.3 It shall be the responsibility of each Party to ensure that it (at its own cost) obtains any necessary consents or licences in relation to Intellectual Property used in its Network that may be required to enable the other Party to observe or perform its obligations under this Agreement and/or any Network Interconnection Service Contract.

**21 CONFIDENTIAL INFORMATION AND PRIVACY**

- 21.1 For the purposes of this **Clause 21**, the Party:
- 21.1.1 owning or supplying Confidential Information shall be called the *Supplying Party*; and
  - 21.1.2 receiving Confidential Information shall be called the *Receiving Party*;
- and either expression shall include all members of the relevant Party's Group.

**Confidential Information**

- 21.2 Subject to **Clauses 21.3 and 21.4**, the Receiving Party shall, in respect of Confidential Information received from the Supplying Party or of which the Receiving Party otherwise becomes aware through its implementation or operation of this Agreement and/or any Network Interconnection Service Contract:
- 21.2.1 adopt (if necessary) and maintain procedures adequate to protect the Confidential Information;
  - 21.2.2 hold the Confidential Information in confidence with the same degree of care with which it holds its own confidential and proprietary information, unless the Supplying Party approves in writing the release of the Confidential Information by the Receiving Party;
  - 21.2.3 ensure that neither it nor any of its officers, employees, contractors or agents who receive the Confidential Information discloses or causes or permits to be disclosed,

without the prior written consent of the Supplying Party, the Confidential Information or any part of it to any person other than to:

- (a) the Receiving Party's professional advisers; or
- (b) those of the Receiving Party's officers, employees, contractors or agents directly concerned in the implementation or operation of this Agreement and/or any Network Interconnection Service Contract (but not to any such contractors or agents that are also Network Operators, unless that contractor or agent has entered into an agreement with the Supplying Party (in a form reasonably satisfactory to the Supplying Party) that imposes an obligation of confidentiality on that contractor or agent with respect to the Confidential Information),

and shall advise the Supplying Party from time to time on request of the professional advisers, contractors and agents who are or may be recipients of Confidential Information;

- 21.2.4 not make use of, or cause or permit use to be made of, the Confidential Information or any part of it in any manner whatsoever other than as necessary for the implementation or operation of this Agreement and/or any Network Interconnection Service Contract;
- 21.2.5 enter into such other agreements as the Supplying Party may reasonably require regarding any part of the Confidential Information which is disclosed by the Supplying Party under licence from a third party; and
- 21.2.6 at the Supplying Party's request, use reasonable endeavours to cause any person to whom the Confidential Information is disclosed in accordance with **Clause 21.2.3** (other than officers and employees of the Receiving Party) to provide a written undertaking to the Supplying Party, in terms reasonably acceptable to the Supplying Party, to receive and preserve in confidence the Confidential Information.

For the avoidance of doubt, the Parties agree that if an officer, employee, contractor or agent of the Receiving Party discloses or uses Confidential Information other than as permitted by **Clauses 21.2.3 and 21.2.4**, then the Receiving Party shall be responsible for that use or disclosure as if the use or disclosure had been made by the Receiving Party itself.

21.3 Either Party (the *disclosing Party*) may refer to and disclose:

- 21.3.1 all or any part of this Agreement and/or the Network Interconnection Service Contracts; or
- 21.3.2 any information that is covered by **Clause 21.7**,

to the Commission, provided that:

- 21.3.3 the disclosing Party requests that the information be protected from disclosure to the general public under an applicable Commission confidentiality order (if any); and
- 21.3.4 the disclosing Party requests, if and when the information becomes subject to the Official Information Act 1982, that the information be protected from requests for public disclosure under any applicable ground for availability of publicly held information; and
- 21.3.5 the disclosing Party gives the other Party at least one Working Day's prior notice of disclosure (but the other Party's consent to the disclosure is not required).

- 21.4 The Receiving Party may use and disclose Confidential Customer Information to third party suppliers and Network Operators:
- 21.4.1 as strictly necessary and only to the extent required to supply all or part of the Network Interconnection Services in the manner contemplated by clauses 2.5.3-2.5.5; or
  - 21.4.2 to terminate a Call at the appropriate destination by the handing over of that Call to other network operators.

### **Confidential Customer Information**

- 21.5 Subject to **Clause 21.6**:
- 21.5.1 each Party agrees to use all reasonable care to ensure that, to the extent that it obtains any Confidential Customer Information of the other such information shall not be used by it for sales or marketing purposes; and
  - 21.5.2 for the purposes of **Clause 21.5.1, 21.6** and **21.8** *the use of Confidential Customer Information for sales or marketing purposes* means the use by a Party (the *first Party*) of such information in a manner designed to prevent or encourage a person that is at that time a Customer of the other Party:
    - (a) to transfer from the other Party (or the transfer of a Third Party Reseller's customer from a Third Party Reseller) to the first Party; or
    - (b) to subscribe to a service offered by the first Party (whether or not that service is offered by the other Party).
- 21.6 The Parties acknowledge that in certain circumstances members of their respective staffs engage in multiple roles or functions, which traverse divisional lines within their respective entities. A Party shall not be deemed to have failed to take all reasonable care not to use Confidential Customer Information for sales and marketing purposes merely because Confidential Customer Information may in some circumstances be available to a person who has multiple roles or functions (one of which is sales or marketing) for purposes other than sales or marketing. Nevertheless, nothing in this **Clause 21.6** derogates from, or releases a Party from its absolute obligation to use all reasonable care under, **Clause 21.5**.
- 21.7 The Parties acknowledge that this **Clause 21** is not intended to prevent a member of a Party's Group from using any information about one of that Party's Customers (who may also be a Customer of the other Party) which is generated solely within the first Party's own Network from its own records relating to its own services.
- 21.8 Information that would be Confidential Customer Information but for the fact that it is aggregated so that it does not identify any particular Customer may be disclosed to any of the Receiving Party's officers, employees or professional advisers.

### **Injunctive relief**

- 21.9 Each Party acknowledges that its breach of any of the provisions of **Clause 21** may cause the other Party (and any third party which has given the other Party a licence to use or disclose any Confidential Information for the purposes of this Agreement or any Network Interconnection Service Contract) irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, a Party may seek and obtain injunctive relief (from any court of competent jurisdiction until such time as an arbitral tribunal is constituted and, thereafter, from the tribunal) against the breach or threatened breach of **Clause 21** in addition to any other remedies that may be available.

### **Indemnity**

21.10 The Receiving Party hereby agrees to indemnify and hold the Supplying Party harmless from all loss, damage, liability, costs or expense which may be suffered or incurred by the Supplying Party as a result of a claim by a third Party directly or indirectly arising out of a breach by the Receiving Party of any of the provisions of **Clause 21** other than **Clauses 21.5, 21.6 and 21.8**.

### **Informing officers and employees.**

21.11 In relation to Confidential Information and Confidential Customer Information each Party is to establish (if necessary), maintain and strictly enforce procedures for informing all of its officers and employees of that Party's obligations under this **Clause 21** (including, for the avoidance of doubt, informing officers and employees engaged in multiple roles or functions of obligations under **Clause 21.6**). Each Party confirms that it has established procedures in this regard. For the avoidance of doubt, a Party may discharge its obligation under this **Clause 21.11** by implementing its usual procedures in this regard.

### **Customer Privacy**

21.12 Each Party acknowledges that, in order to preserve the privacy of persons who are its Customers, the provision of any information by it to the other Party relating to its Customers is subject to:

- (a) the Privacy Act 1993;
- (b) the Telecommunications Information Privacy Code 2003;
- (c) any other applicable codes of practice issued under the Privacy Act 1993.

**PART J**

**NUMBERING**

**22 NUMBERING**

- 22.1 Except as expressly provided in this Agreement, this Agreement shall not in itself confer on either Party any right, interest or title in any numbers or codes additional to the existing rights, interest and title (if any) of that Party and shall not affect any such existing rights, interest or title.
- 22.2 In the management of numbering arrangements for their respective networks, the Parties shall comply with and give effect to the NAD (while the Party is a party to the NAD), the Toll Free JVA (while the Party is a party to the Toll Free JVA) and the LMNP Determination (while the Party is a party to that Determination), and, except to the extent that doing so would conflict with an obligation or right of that Party expressly imposed or granted under either the NAD, the Toll Free JVA or the LMNP Determination, the CCITT/ITU numbering plan and any applicable modification to that plan.
- 22.3 The Parties acknowledge that the Ported Number Register shall be used to determine numbers which are ported pursuant to the LMNP Determination.

**Activation and Deactivation of Numbers**

- 22.4 Except as set out in **Clause 22.5**, neither Party is required to activate or deactivate any number or code in its Network, or to route calls, mms or sms to such number or code.
- 22.5 Either Party (in this **Clause 22.5** the *requesting Party*) may request the other Party (in this **Clause 22.5**, the *other Party*) to:
- 22.5.1 activate or deactivate any:
- (a) National Numbers or handover codes in the other Party's Network, where these National Numbers or handover codes are to be used for a Network Interconnection Service in accordance with the terms of this Agreement and the relevant Network Interconnection Service Contract;
  - (b) Mobile Numbers or handover codes in the other Party's Network, where these Mobile Numbers or handover codes are to be used for a Network Interconnection Service in accordance with the terms of this Agreement and the relevant Network Interconnection Service Contract;
  - (c) Free-phone Numbers or handover codes in the other Party's Network, where these Free-phone Numbers or handover codes are to be used for a Network Interconnection Service in accordance with the terms of this Agreement and the relevant Network Interconnection Service Contract;
  - (d) where the requesting Party is Telco, Telco Toll Bypass Access Codes under Network Interconnection Service Contract 9 (*Spark NZT Toll Bypass Service*);
  - (e) where the requesting Party is Spark NZT and the conditions set out in clause 2.2 of Network Interconnection Service Contract 10 (*Telco Toll Bypass Service*) have been satisfied, Spark NZT Toll Bypass Access Codes under Network Interconnection Service Contract 10 (*Telco Toll Bypass Service*); and

- (f) subject to clause 2 of Network Interconnection Service Contract 8 (*Calling Card Service*), Calling Card Numbers of the requesting party's Network under Network Interconnection Service Contract 8 (*Calling Card Service*); and/or

22.5.2 route:

- (a) Calls to those National Numbers or handover codes in accordance with this Agreement and the relevant Network Interconnection Service Contract;
- (b) Calls and/or MMS or SMS to those Mobile Numbers or handover codes in accordance with this Agreement and the relevant Network Interconnection Service Contract;
- (c) Calls to those Free-phone Numbers or handover codes in accordance with this Agreement and the relevant Network Interconnection Service Contract;
- (d) Calls to those Telco Toll Bypass Access Codes or Spark NZT Toll Bypass Access Codes; and
- (e) Calls to those Calling Card Numbers,

and the other Party shall promptly comply with that request, provided that:

- 22.5.3 the number or handover code is allocated or (for ported numbers) assigned to the requesting Party or allocated to a Third Party Reseller and used on the requesting Party's Network (and recorded as such pursuant to the NAD, the TNAS system or Ported Number Register (in each case, where applicable));
- 22.5.4 such activation and/or deactivation and/or routing does not conflict with any express right in this Agreement or any Network Interconnection Service Contract of the other Party to block Calls and/or MMS and/or SMS;
- 22.5.5 the other Party (acting reasonably) is satisfied that activating and/or deactivating and/or routing Calls and/or MMS and/or SMS to that number or handover code to the requesting Party is in accordance with this Agreement and the relevant Network Interconnection Service Contract and does not conflict with any agreement that the other Party has with any person (including, for the avoidance of doubt, any agreement with any wholesale customer of the requesting Party to whom that number or handover code was previously allocated). Where there may be such conflict, the other Party shall use its reasonable endeavours to agree all necessary amendments to its agreement with that person to resolve the conflict; and
- 22.5.6 all technical, operational and billing issues raised by either Party (acting reasonably) are resolved. The Parties shall use their reasonable endeavours to resolve any such issues within 20 Working Days of the request from the requesting Party.

The obligations of the Parties under this **Clause 22.5** are subject to the terms of the LMNP Determination.

## Number Portability

22.6 Each Party shall:

22.6.1 comply with the requirements of, and act in accordance with (insofar as they are applicable to this Agreement, the Network Interconnection Service Contracts and any other agreement between the Parties) the LMNP Determination (including, without limitation, the requirement to act in a competitively neutral and non-discriminatory manner with regard to number portability); and

22.6.2 use their reasonable endeavours to comply with the requirements of, and act in accordance with (insofar as they are applicable to this Agreement, the Network Interconnection Service Contracts and any other agreement between the Parties):

(a) the LMNP Voice Interconnect Specifications;

(b) where Spark NZT and Telco are parties to an agreement known as Network Interconnection Service Contract 5 (*Multi-Media Message Service*), the LMNP MMS Interconnect Specifications; and

(c) where Spark NZT and Telco are parties to an agreement known as Network Interconnection Service Contract 12 (*SMS Service*), the LMNP SMS Interconnect Specifications.

22.7 To the extent that each Party provides a service that relates to, and is an access provider of, the local telephone number portability service and/or the cellular telephone number portability service, the Parties shall use reasonable endeavours to complete joint testing in relation to the provision of relevant services in accordance with the LMNP Voice Interconnect Specifications and/or the LMNP SMS Interconnect Specifications and/or the LMNP MMS Interconnect Specifications (in each case, where applicable) under **Clause 3.4** of **Schedule B**.

22.8 The Parties agree that the following clauses apply to per-number set up charges for porting out of Telco National Numbers, Spark NZT National Numbers, Telco Mobile Numbers and Spark NZT Mobile Numbers:

22.8.1 The price which the losing carrier shall charge and the gaining carrier shall pay for porting out of each Telco Local Number or Spark NZT Local Number is set out in Appendix E;

22.8.2 The price which the losing carrier shall charge and the gaining carrier shall pay for porting out of each Telco Mobile Number or Spark NZT Mobile Number is set out in Appendix E.

22.8.3 For the avoidance of doubt, nothing in this Agreement or in any Network Interconnection Service Contract imposes an obligation on Telco or Spark NZT to process, or continue to process to completion, a port outside of the Standard Hours of Operation. If either party processes or continue to process to completion a port outside of the Standard Hours of Operation then the per number set up charge for porting out of each Telco National Number or Spark NZT National Number shall be in accordance with clause 2.2 of Appendix E and the per number set up charge for porting out of each Telco Mobile Number or Spark NZT Mobile Number shall be in accordance with clause 2.3 of Appendix E.

22.9 Where:

22.9.1 Telco supplies services on the Telco Network to a Third Party Reseller for resale purposes; or



22.9.2 Spark NZT supplies services on the Spark NZT Network to a Third Party Reseller for resale purposes;

Telco (or in the case where Spark NZT supplies, Spark NZT):

22.9.3 shall procure the Third Party Reseller to comply with the requirements of the LMNP Determination and shall use reasonable endeavours to procure the Third Party Reseller comply with the requirements of the LMNP Voice Interconnect Specifications and/or the LMNP SMS Interconnect Specifications and/or the LMNP MMS Interconnect Specifications (in each case, if and to the extent applicable) in so far as they relate to the resold service;

22.9.4 confirms that it has full authority to act at all times on the Third Party Reseller's behalf to implement the LMNP Determination in accordance with the LMNP Voice Interconnect Specifications and/or the LMNP SMS Interconnect Specifications and/or the LMNP MMS Interconnect Specifications (in each case, if and to the extent applicable) in so far as they relate to the resold service; and

22.9.5 shall, on the Third Party Reseller's behalf in relation to (i) numbers in the 02X range; or (ii) eight digit geographic service numbers where the first 4 digits of the national toll code are of the form area code (3, 4, 6, 7, 9) followed directly by NXX, where N = 2-9; and X = 0-9; and handover codes allocated to the Third Party Reseller, implement the LMNP Determination in accordance with the LMNP Voice Interconnect Specifications and/or the LMNP SMS Interconnect Specifications and/or the LMNP MMS Interconnect Specifications (in each case, if and to the extent applicable) in so far as they relate to the resold service.

22.10 Each Party (the *first Party*) shall, for each Call, MMS and SMS handed over from the first Party's Network to the other Party's Network that is to a number that has been ported to or out of the other Party's Network in accordance with the LMNP Determination, add a Hand-off Code to that number as its prefix in accordance with the Network Terms, (in the case of Calls) the LMNP Voice Interconnect Specifications and (in the case of MMS), the LMNP MMS Interconnect Specifications and (in the case of SMS), the LMNP SMS Interconnect Specifications.

22.11 For the avoidance of doubt, in the event that the number portability database of a Party (the *first Party*) fails, such that the first Party is unable to perform all Call query (or otherwise determine the destination network) for, and/or add a Hand-off Code to, a ported number, the following shall apply to the extent and for the duration of such failure:

22.11.1 the first Party shall send to the Network of the other Party (the *other Party*) all Calls, MMS and SMS to numbers prefixed with numbers allocated to:

- (a) the other Party; or
- (b) a Third Party Reseller using the Network of the other Party; and

22.11.2 where the other Party receives a Call, MMS or SMS sent by the first Party under **Clause 22.11.1** to a ported out number (that is, a number referred to in **Clause 22.11.1** that has been ported to the first Party or a third party), it shall be under no obligation to add a Hand-off Code and/or reroute the Call, MMS or SMS and may (at its sole discretion) drop the Call, MMS or SMS.

22.12 Should either Party (the *first Party*) reasonably form the view that the other Party is not complying with the spirit and intent of the LMNP Determination, on account of this Agreement and/or the Network Interconnection Service Contracts and/or the LMNP Voice Interconnect Specifications and/or the LMNP SMS Interconnect Specifications and/or the LMNP MMS

Interconnect Specifications (in each case, where applicable) not adequately reflecting that spirit or intent, the first Party may (on notice to the other Party) require the other Party to use best endeavours to negotiate an amendment to the whole or any part of this Agreement and/or any Network Interconnection Service Contract and/or the LMNP Voice Interconnect Specifications and/or the LMNP SMS Interconnect Specifications and/or the LMNP MMS Interconnect Specifications (in each case, where applicable) to better reflect the LMNP Determination. However, in the event of a failure to agree, there shall be no recourse to dispute resolution under **Clause 4**.

- 22.13 Should the Parties wish to amend any Network Interconnection Service Contract to include a new call or message type, the Parties acknowledge that such amendment will need to address issues related to number portability as they affect that new call or message type.

**PART K**

**MISCELLANEOUS**

**23 ASSIGNMENT**

- 23.1 Either Party may assign or transfer its rights and obligations under this Agreement and the Network Interconnection Service Contracts, subject to the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 23.2 For the avoidance of doubt, a Party may only assign and transfer all of its rights and obligations under this Agreement and all of the Network Interconnection Service Contracts collectively. In no event will a Party:
- 23.2.1 assign and/or transfer some, but not all, of its rights and obligations under this Agreement and the Network Interconnection Service Contracts; or
  - 23.2.2 assign all its rights under this Agreement and the Network Interconnection Service Contracts, without a corresponding transfer of all of its obligations.
- 23.3 Any attempt at assigning or transferring this Agreement or any Network Interconnection Service Contract other than as authorised under this **Clause 23** shall be null and void. Subject to the above restrictions on assignment and transfer, this Agreement and all Network Interconnection Service Contracts shall enure to the benefit of and be binding upon successors, assigns and transferees of the parties.
- 23.4 Subject to **Clause 23.5**, no variation, modification or waiver of any provisions of this Agreement or any Network Interconnection Service Contract shall be of any force or effect unless the same is in writing signed by the Parties.
- 23.5 **Clause 23.4** shall not apply with respect to any provision of this Agreement or any Network Interconnection Service Contract which allows a Party unilaterally to make a change to charges or other terms and conditions.

**24 COUNTERPARTS**

- 24.1 Each of this Agreement and each Network Interconnection Service Contract may be signed in one or more counterparts, each of which shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument.

**25 NOTICE**

- 25.1 Subject to:
- 25.1.1 **Clause 25.2**;
  - 25.1.2 the provisions of this Agreement or any Network Interconnection Service Contract which expressly refer to the giving of oral notice; and
  - 25.1.3 **Clause 1.5 of Schedule B**, which sets out specific provisions for the serving or giving of notices under the Network Interconnection Operational Procedures;
- any notice required to be served upon a Party or given to a Party shall be in writing and shall be deemed to have been served or given:
- 25.1.4 as soon as the same is personally delivered to the address noted below (or such other address as a Party may notify to the other by notice);

25.1.5 4 Working Days following the posting of the same by prepaid registered mail to such address;

25.1.6 immediately if transmission is effected by such other electronic medium as the Parties may from time to time agree in accordance with **Clause 23.4** to such place, email address or code as a Party may notify to the other by notice;

**PROVIDED THAT** if transmission by electronic means is effected after 5.00 pm on a Working Day or any time on a day other than a Working Day, then such notice shall be deemed to be given the next Working Day following the electronic transmission.

**Spark NZT**

Level 2, 167 Victoria Street, Auckland, New Zealand

Attention: Business Manager Spark Wholesale and International

Telephone: +64 9 358 6006

Level 2, 167 Victoria Street

Auckland

Attention: General Counsel

Telephone: +64 9 355 4873

**Telco**

[...]

A notice served or given in accordance with **Clauses 25.1.4 to 25.1.6** (inclusive) (including the proviso to **Clause 25**) shall be deemed to be sufficiently served or given for the purposes of the Network Interconnection Operational Procedures, notwithstanding that it does not comply with the specific provisions of **Clause 1.5** of **Schedule B**.

25.2 Notwithstanding anything in **Clause 25.1**, any notice required to be served or given under **Clauses 3.6, 5** or **7** shall:

25.2.1 in the case of notices given by Telco, be in writing and signed by the Chief Executive Officer (or in his or her absence, the Authorised Signatory) and shall be served or given by either personal delivery to the Managing Director (or in his or her absence, the General Counsel) at the address set out below (or such other address as Spark NZT may notify to Telco by notice) and in either case such notice shall be deemed to be served or given immediately;

25.2.2 in the case of notices given by Spark NZT, be in writing and signed by the Managing Director (or in his or her absence, the General Counsel or General Manager Wholesale and International) and shall be served or given by either personal delivery to the Chief Executive Officer (or, in his or her absence, the Legal & External Affairs Director) at the address set out below (or such other address as Telco may notify to Spark NZT by notice), and in either case such notice shall be deemed to be served or given immediately.

**Spark NZT**

Level 2, 167 Victoria Street  
Auckland  
Attention: Managing Director  
Telephone: +64 93586251

Level 2, 167 Victoria Street  
Auckland  
Attention: General Counsel  
Telephone: +64 9 355 4873

**Telco**

[...]

**26 AMENDMENT**

- 26.1 Subject to **Clause 26.2**, no variation, modification or waiver of any provisions of this Agreement or any Network Interconnection Service Contract shall be of any force or effect unless the same is in writing signed by the parties.
- 26.2 **Clause 26.1** shall not apply with respect to any provision of this Agreement or any Network Interconnection Service Contract which allows a party unilaterally to make a change to charges or other terms and conditions.

**27 OWNERSHIP**

Subject to those provisions of this Agreement or any Network Interconnection Service Contract which allow a Party to use the other Party's Network Interconnection Services provided by the other Party, neither this Agreement nor any Network Interconnection Service Contract passes any right, title or interest in or to the other Party's Network Interconnection Services or the other Party's Network to the first Party or its Group.

**28 NO PARTNERSHIP**

- 28.1 Nothing in this Agreement, in any Network Interconnection Service Contract or in the relationship between the Parties is to be construed as:
  - 28.1.1 creating a partnership between the Parties; or
  - 28.1.2 giving to either Party the right, or subjecting it to the liability, of a partner.
- 28.2 The Parties declare that it is not the intention of either Party to:
  - 28.2.1 enter into a joint venture with the other; or
  - 28.2.2 constitute a Party or its Group an agent or fiduciary of the other Party or its Group

under this Agreement or any Network Interconnection Service Contract.

## **29 REMEDIES AND WAIVERS**

- 29.1 Except as otherwise provided in this Agreement or in any Network Interconnection Service Contract, no failure to exercise, and no delay in exercising, a right of a Party under this Agreement or any Network Interconnection Service Contract operates as a waiver of that right.
- 29.2 A single or partial exercise of a right does not preclude another or a further exercise of that right or an exercise of another right.
- 29.3 No waiver by a Party of its rights under this Agreement or any Network Interconnection Service Contract is effective unless it is in writing signed by that Party.

## **30 SAVINGS**

- 30.1 Nothing in this Agreement (including **Clause 8**) or any Network Interconnection Service Contract shall:
- 30.1.1 limit the right of a Party:
- (a) to enforce this Agreement or any Network Interconnection Service Contract by seeking an order for specific performance; or
  - (b) to apply for an injunction or an interim injunction
- (in any court of competent jurisdiction until such time as an arbitral tribunal is constituted and, thereafter, in the tribunal);
- 30.1.2 exclude or limit any liability of a Party arising under a statute from which it is prohibited by law to exclude or limit liability, to the extent of such prohibition;
- 30.1.3 exclude or limit any liability of a Party under, or limit or affect the application of, the Commerce Act 1986 or the Fair Trading Act 1986; or
- 30.1.4 exclude or limit any liability of a Party to pay costs (if any) in any court proceedings, arbitration or mediation.
- 30.2 Without limiting anything in **Clause 4**, where a Party has more than one cause of action in arbitration arising out of the same:
- 30.2.1 event;
  - 30.2.2 transaction;
  - 30.2.3 event and transaction;
  - 30.2.4 series of events;
  - 30.2.5 series of transactions; or
  - 30.2.6 series of events and series of transactions;

the Party with the causes of action shall, to the fullest extent practicable, combine all such causes of action so that they may be heard and resolved at the same time.

**31 SEVERABILITY**

30.1 If a court of competent jurisdiction or the arbitrator of an arbitration under **Clause 4** shall determine that any provision of this Agreement or any Network Interconnection Service Contract is invalid under any applicable statute or rule of law:

30.1.1 it shall be deemed to be omitted only to the extent that the same shall be in violation of such statute or rule of law and shall be enforced to the maximum extent possible and

30.1.2 either Party may (on notice to the other) require the other Party to use reasonable endeavours to negotiate an amendment to the whole or any part of this Agreement and/or any Network Interconnection Service Contract as the first Party reasonably considers necessary in view of the invalidity. Any failure to agree an amendment shall not be subject to dispute resolution under **Clause 4**, except that if the parties agree it is appropriate with respect to any particular matter, the parties may agree to participate in a mediation in accordance with **Clause 4**. However, there shall be no recourse to arbitration.

**32 GOVERNING LAW**

32.1 This Agreement and all Network Interconnection Service Contracts are made in New Zealand and shall be governed in all respects by and construed in accordance with the laws of New Zealand.

**33 ENTIRE AGREEMENT**

33.1 This Agreement and the Network Interconnection Service Contracts, entered into freely by the respective Parties (who have been independently legally advised), contain the entire final understanding and agreement of the Parties with respect to the subject matter expressly referred to in this Agreement and the Network Interconnection Service Contracts; and, with respect to such subject matter, this Agreement and the Network Interconnection Service Contracts shall prevail over all previous agreements, understandings or commitments between the Parties, and representations and warranties made by either Party, whether oral or written.

## SCHEDULE B

### NETWORK INTERCONNECTION OPERATIONAL PROCEDURES

#### NETWORK INTERCONNECTION OPERATIONAL PROCEDURE 1: OPERATIONAL LIAISON

##### Operations Centres

- 1.1 The Network Interconnection Operational Procedures and obligations described in this **Schedule B** are to be administered and carried out by:
- 1.1.1 Telco at the Telco Network Management Centre; and
  - 1.1.2 Spark NZT at the Network Operations Centre,
- (the *Operations Centres*).

##### Operational help desk

- 1.2 Each Party is to:
- 1.2.1 provide the other Party with an operational help desk function at all times;
  - 1.2.2 notify the other Party of the current location and contact telephone number of that operational help desk; and
  - 1.2.3 through its operational help desk, provide to the other Party:
    - (a) a reception point for logging fault reports and enquiries;
    - (b) fault progress tracking and reporting;
    - (c) Outage notice tracking; and
    - (d) direct contact, as required, between the Parties' specialist operations groups.

##### Availability

- 1.3 Each Party is to use reasonable endeavours to ensure that its Operations Centre is staffed at all times with appropriate persons capable of fulfilling that Party's obligations under **Clauses 1 and 2** of this Network Interconnection Operational Procedure.

##### Escalation procedures

- 1.4 If any matter requiring resolution or agreement under a Network Interconnection Operational Procedure is not resolved or agreed to promptly in accordance with that Network Interconnection Operational Procedure, then it is to be referred on the basis of a peer to peer communication, to:
- (a) in the case of Telco, the Team Leader, Telco Network Management Centre, or, if he or she is unavailable, the Manager, Network Management or, if he or she is unavailable, the General Manager, Network Operations; and
  - (b) in the case of Spark NZT, PSTN Legacy Performance Lead, or, if he or she is unavailable, the Head of Voice and Collaboration Technology or, if he or she is unavailable, the Spark NZT, General Manager - Networks.



- 1.5 Each Party is to notify the other Party of the current names and contact telephone numbers of its staff members holding these positions.

**Notices**

- 1.6 Any notice required to be served or given under this Network Interconnection Operational Procedure may be served or given at the other Party's Operations Centre.
- 1.7 Notices required under this Network Interconnection Operational Procedure may be given orally. A Party giving oral notice is to confirm the terms of that notice by email as soon as practicable.
- 1.8 Each Party is to acknowledge in writing the receipt of each written notice or confirming email.
- 1.9 Each Party is to provide the other Party with a reference number for each notice which is given or received.

## NETWORK INTERCONNECTION OPERATIONAL PROCEDURE 2: OUTAGES

### Application of this procedure

- 2.1 This Network Interconnection Operational Procedure shall apply except where an Outage occurs as a result of Force Majeure. This Network Interconnection Operational Procedure does not apply where a Party exercises its right to suspend or restrict the supply of a Network Interconnection Service under **Clause 5.1.1** of **Schedule A**.

### Obligation to notify

- 2.2 Each Party (the *Responsible Party*) is:
- 2.2.1 to give as much notice as practicable, preferably at least 5 Working Days, to the other Party (the *Affected Party*) of any event or circumstance which:
- (a) has occurred, or could reasonably occur, in the Responsible Party's Network; and
  - (b) will, or could reasonably be anticipated to, directly or indirectly result in an Outage; or
- 2.2.2 if it is not practicable to give prior notice of the Outage, to use its reasonable endeavours to notify the Affected Party within 15 minutes of becoming aware of the Outage.

### Content of the notice

- 2.3.1 Each notice of a potential Outage under **Clause 2.2.1** of this Network Interconnection Operational Procedure is to state in reasonable detail:
- (a) each event or circumstance which will, or could reasonably be anticipated to, result in the Outage;
  - (b) the proposed or anticipated extent, date, time and duration of the Outage;
  - (c) each Network Interconnection Service which would, or could reasonably, be affected by the Outage;
  - (d) the restoration plan for each affected Network Interconnection Service (if relevant), including any necessary testing;
  - (e) any proposed contingency measures or pre-plans for the Outage (if relevant); and
  - (f) the contact names and telephone numbers of the Responsible Party's operational staff dealing with the Outage.
- 2.3.2 Each notice of the occurrence of an Outage under **Clause 2.2.2** of this Network Interconnection Operational Procedure is to state in reasonable detail:
- (a) each event or circumstance which caused or contributed to the Outage;
  - (b) the likely duration of the Outage;
  - (c) the extent to which each affected Network Interconnection Service has failed;

- (d) the restoration plan for each affected Network Interconnection Service (if relevant), including any necessary testing;
- (e) any proposed contingency measures or pre-plans which shall apply to the Outage (if relevant); and
- (f) the contact names and telephone numbers of the Responsible Party's operational staff responsible for handling the Outage.

#### **Agreement on the terms of an Outage**

- 2.4.1 If the Responsible Party gives notice of an Outage under **Clause 2.2.1** of this Network Interconnection Operational Procedure, then the Parties are to discuss the terms of that notice to the extent, and as soon as, practicable, with a view to the Parties agreeing on:
- (a) the extent, date, time and duration of the Outage;
  - (b) the restoration plan for each affected Network Interconnection Service (if relevant), including any necessary testing; and
  - (c) any proposed contingency measures or pre-plans for the Outage (if relevant).
- 2.4.2 If the Responsible Party gives prior notice of an Outage, and the Responsible Party can control:
- (a) whether the Outage occurs; or
  - (b) when the Outage occurs,
- the Responsible Party is to the extent practicable to prevent or delay the occurrence of the Outage until the Parties have agreed on the terms of the notice under **Clause 2.4.1** of this Network Interconnection Operational Procedure. The Affected Party is not unreasonably to withhold its agreement to those terms.
- 2.4.3 If the Responsible Party gives notice of an Outage under **Clause 2.2.2** of this Network Interconnection Operational Procedure, then the Parties are to discuss the terms of that notice as soon as practicable, with a view to the Parties agreeing on, if relevant:
- (a) the restoration plan for each affected Network Interconnection Service, including any necessary testing; and
  - (b) the proposed contingency measures or pre-plans for the Outage.
- 2.4.4 If any of the terms agreed on by the Parties under this **Clause 2.4** of this Network Interconnection Operational Procedure differ from the terms of the Outage notice, the Responsible Party is to give the Affected Party, as soon as practicable, a revised Outage notice which reflects the Parties' agreement.

#### **Liaison**

- 2.5.1 The Responsible Party is to liaise with the Affected Party as often as necessary and practicable to enable the Affected Party to familiarise itself fully with the matters contained in an Outage notice.

- 2.5.2 The Responsible Party is to provide any additional information reasonably requested by the Affected Party in relation to an Outage.

### **Obligations of the Responsible Party**

- 2.6 If an Outage occurs, the Responsible Party is:
- 2.6.1 to comply with the terms of the notice that have been agreed to by the Parties under **Clause 2.4** of this Network Interconnection Operational Procedure; or
- 2.6.2 if the terms of the notice have not been agreed by the Parties under **Clause 2.4** of this Network Interconnection Operational Procedure, to treat the restoration of each affected Network Interconnection Service as urgent.

### **Changes to Outage notice:**

- 2.7.1 If at any stage during the Network Interconnection Service restoration process the Responsible Party considers, on reasonable grounds, that:
- (a) the duration of the Outage will exceed, or has exceeded, the period specified in the notice; or
  - (b) any other term of the notice is no longer appropriate or applicable,
- then, to the extent practicable:
- (c) the Responsible Party is immediately to notify the Affected Party; and
  - (d) the Responsible Party is as soon as practicable to give the Affected Party a revised notice for the Outage.
- 2.7.2 As soon as practicable after the Responsible Party has notified the Affected Party under this **Clause 2.7**, the Parties are to review jointly the need to revise, or implement, any contingency measures.

### **Minimisation of Outages**

- 2.8 The Parties recognise the desirability of working together and with Network Operators to minimise the occurrence of any Outage.

### **Restoration**

- 2.9.1 In the case of an Outage under **Clause 2.2.2** of this Network Interconnection Operational Procedure, the Responsible Party is to notify the Affected Party, as soon as practicable, of the restoration of each affected Network Interconnection Service, stating:
- (a) the time and date of the restoration of that Network Interconnection Service;
  - (b) whether that Network Interconnection Service is being provided by way of contingency measures or permanent repair;
  - (c) the reason for the failure of that Network Interconnection Service (if not previously notified); and

- (d) if the Network Interconnection Service is restored by way of contingency measures, whether or not further Network Interconnection Service failures arising from the permanent-repair process are anticipated.

2.9.2 If restoration of a Network Interconnection Service takes place progressively over a period of hours or days, then the Responsible Party is to give the Affected Party notice of each significant intermediate restoration increment.

**Monthly reconciliation**

2.10 Promptly after the end of each month, each Party is to notify the other Party of each Outage (whether experienced as the Responsible Party or the Affected Party) that occurred in that month.

**Additional discretionary notices**

2.11 Each Party may also give the other Party notice of any event or circumstance (including events or circumstances that are not within the Network of the notifying Party) which:

2.11.1 has occurred or could reasonably occur; and

2.11.2 will, or could reasonably be anticipated to, create a material risk of damage to the other Party's Network.

## NETWORK INTERCONNECTION OPERATIONAL PROCEDURE 3: OPERATIONAL TESTING

### Continuity of service

- 3.1 Each Party is to execute operational testing in accordance with its standard procedures:
- 3.1.1 to identify any fault or other event or circumstance in that Party's Network which has caused or could cause an Outage; and
  - 3.1.2 to confirm, as far as reasonably practicable, that each Network Interconnection Service supplied by that Party is continuously available and fault free.

### Defined testing procedures

- 3.2 If a Network Interconnection Service Contract contains a procedure for the testing and commissioning of a Network Interconnection Service, or other specific testing procedure, the Parties are to carry out that procedure.

### Flood-call testing

- 3.3 Neither Party may undertake flood-call testing without obtaining the prior written consent of the other Party. The other Party is not to withhold consent unreasonably.

### Joint testing

- 3.4.1 If:
- (a) joint testing is required under this Agreement or any Network Interconnection Service Contract (including, for the avoidance of doubt, a requirement for compliance testing under **Clause 16.4** of **Schedule A**); or
  - (b) a Party considers, on reasonable grounds, that joint testing is required;
- that Party shall give notice to the other Party stating, in reasonable detail the reason for, and purpose of, the testing, and its proposals for:
- (c) the date, time and expected duration of the testing;
  - (d) the locations where the testing is to be carried out;
  - (e) which Party is responsible for what part of the testing;
  - (f) the Network elements to be tested;
  - (g) any Network configuration changes required to facilitate the testing; and
  - (h) which Party is responsible for collating the results of the testing.
- 3.4.2 The Parties are then to discuss the notice as soon as practicable (preferably within 2 Working Days), in order to agree:
- (a) whether, in the case where joint testing is not required under this Agreement or any Network Interconnection Service Contract, joint testing is necessary; and

- (b) if so, or if joint testing is required under this Agreement or any Network Interconnection Service Contract, the details of the joint testing (including any agreed charges).

3.4.3 The Parties shall execute joint testing in accordance with any agreed arrangements.

**Co-operation and assistance**

3.5.1 Each Party shall, on request by the other Party, use its reasonable endeavours:

- (a) to liaise with;
- (b) to co-operate with; and
- (c) to assist,

the other Party, when the other Party is undertaking testing.

3.5.2 Each Party, when undertaking testing, is to use its reasonable endeavours to minimise any adverse effect on the other Party.

**Quality control**

3.6 Each Party is to use its reasonable endeavours to ensure that those elements of testing under its control shall comply with quality control procedures that are appropriate for testing in the telecommunications industry.

## NETWORK INTERCONNECTION OPERATIONAL PROCEDURE 4: FORECASTING

### Provision of traffic forecasts

- 4.1.1 If requested by Spark NZT, Telco shall provide Spark NZT with forecasts in respect of Calls, Telco SSC Calls, MMS and SMS that are to be handed over at the Telco Handover Point in accordance with any Network Interconnection Service Contract.
- 4.1.2 If requested by Telco, Spark NZT shall provide Telco with forecasts in respect of all Calls, MMS and SMS that are to be handed over at the Spark NZT Handover Point in accordance with any Network Interconnection Service Contract.

### Content of traffic forecasts

- 4.2 The exact content of traffic forecasts will depend on the requirements of the relevant Network Interconnection Service and any specific requirements set out in the relevant Network Interconnection Service Contract, but in general shall to the extent requested cover (in relation to traffic under this Agreement or any Network Interconnection Service Contract where the forecasting Party is the recipient of the relevant Network Interconnection Service or services under the agreement known as Network Interconnection Agreement 3 (*Spark Standard Charges Services* )):
  - 4.2.1 forecasts for each Handover Point, covering the forecasting Party's existing Call routes, and any changes to Call routing envisaged by that Party during the forecast period, including:
    - (a) peak calling times, busy-hour traffic volume and number of call attempts on routes; and
    - (b) number of traffic circuits required for the total traffic volume forecast in each direction, based on the switching architecture and design grade of the service appropriate to that route; and
  - 4.2.2 If applicable, call and non call related signalling forecasts for each Handover Point,
  - 4.2.3 if applicable, forecasts for each MMSDP, including:
    - (a) mms related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
    - (b) non-mms related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
    - (c) the number of sets of signalling links required, including the number of signalling circuits in each set of signalling links requested by the forecasting Party; and
  - 4.2.4 if applicable, forecasts for each AMSDP, covering CCITT No. 7 signalling, including:
    - (a) sms related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and
    - (b) non-sms related signalling, measured in message signalling units (MSUs) and bytes per second, for each set of signalling links; and



- (c) the number of sets of signalling links required, including the number of signalling circuits in each set of signalling links requested by the forecasting Party.

#### **Interconnect Link forecasts**

- 4.3.1 Within one month of receipt of the Call traffic forecasts described in **Clause 4.1** of this Network Interconnection Operational Procedure (the *traffic forecasts*) the Parties may meet to discuss, with a view to forecasting, future requirements for Interconnect Links (including routing arrangements) appropriate to carry the traffic contemplated by the traffic forecasts.
- 4.3.2 In making the forecasts the Parties shall have regard to the need to ensure that each Party is able to meet its obligations under all of the Network Interconnection Service Contracts.
- 4.3.3 The forecasts may include, without limitation, forecasts of:
  - (a) increases in the number of Interconnect Links;
  - (b) the decommissioning of Interconnect Links;
  - (c) the redistribution of call traffic over different routes.

#### **Forecast period**

- 4.4.1 Forecasts described in **Clauses 4.1** and **4.3** of this Network Interconnection Operational Procedure shall be supplied quarterly during the Term, or as reasonably requested by either Party, and shall cover:
  - (a) the quarter commencing on, in the case of the first quarterly forecasts, the Commencement Date or, for any subsequent quarterly forecasts, the date three months after the date of the last forecast or, for any other forecasts reasonably requested by either Party, the date of the forecasts; and
  - (b) (as far as reasonably practicable) each of the succeeding twelve months.
- 4.4.2 Each quarterly forecast shall specifically give the forecast for the December covered by the forecast, or the forecast for the month in the quarter with the highest volume, if that month is not December (or if the quarter does not include a December).
- 4.4.3 The quarterly forecasts of the next 12 months shall be provided prior to the commencement of each quarter (or, in the case of the quarter commencing on the Commencement Date, as soon as is reasonably practicable after the Commencement Date). Any other forecasts reasonably requested by either Party shall be promptly provided.

#### **Response**

- 4.5 A Party that receives a forecast is, within 25 Working Days of receipt of the forecast, to indicate to the other Party any variations to the forecast which it reasonably considers to be appropriate, based on its own traffic studies and experience.

#### **Forecast updates**

- 4.6.1 Each Party shall promptly notify the other Party of any material changes to forecasts supplied that occur at any time during a forecast period.

4.6.2 In particular should either Party become aware of any event or circumstance which is likely to cause interconnect traffic on any designated route to rise:

- (a) on a short-term or long-term basis; or
- (b) during periods outside the designated “busy hour”;

beyond the level previously forecast for busy-hour traffic in the most recent forecast to the other Party, then that Party is promptly to notify the other Party of the circumstances and likely extent of the increase.

**NETWORK INTERCONNECTION OPERATIONAL PROCEDURE 5: ACCESS AND SAFETY**

Not used

**NETWORK INTERCONNECTION OPERATIONAL PROCEDURE 6: NUMBERING CHANGE NOTIFICATION**

**Numbering notification**

6.1 Each Party shall provide the other Party with details of numbering changes in the first Party's Network which may have an impact on the other Party's Network, or the performance of the other Party's obligations under this Agreement or any Network Interconnection Service Contract, including but not limited to:

6.1.1 full details of any number ranges which are to be activated or deactivated in the first Party's Network and which relate to one or more Network Interconnection Services;

6.1.2 changes in the length or structure of numbers used in the first Party's Network.

Notification under this **Clause 6.1** shall be given to the other Party as early as practicable, and shall set out the date on which such changes will occur.

**SCHEDULE C**

**NETWORK INTERCONNECTION TECHNICAL SPECIFICATIONS**

Network Interconnection Technical Specification

**TBA**

## SCHEDULE D

### A-NUMBERS

#### 1 INTERPRETATION

Unless the context otherwise requires, words and expressions defined or construed in **Schedule A** and not otherwise defined or construed in this **Schedule D**, have the same meanings as defined or construed in **Schedule A** when used in this **Schedule D**. Except as specifically provided in this **Schedule D**, all references in this schedule to clause numbers shall be read as references to clauses of this **Schedule D**. In addition:

- 1.1 *Activate* means, in relation to an A-number to be used for the purpose of CLIP, the use of that A-number by offering that A-number to the Customer who has subscribed for CLIP, and *Activating* and *Activation* shall have a corresponding meaning;
- 1.2 *Apply* means, in relation to an A-number to be used for the purpose of CLIP, to recognise and act in accordance with the information provided regarding that A-number, including, without limitation, honouring CLIR Flags, and *Applying* and *Application* shall have a corresponding meaning;
- 1.3 *Calling number* means the number of the calling party end user subscriber that originated that traffic in the Signalling Format:
  - 1.3.1 described in **Clause 2.2** of this **Schedule D**; and
  - 1.3.2 provided in the form of the international number as defined by CCITT/ITU E164 E-Num Recommendations, including where the traffic originates inside New Zealand;
- 1.4 *Call* includes, for the purposes of this Schedule, a Telco SSC Call;
- 1.5 *Calling Line Identification Presentation* or *CLIP* is the generic name for the service provided by carriers to their customers and end users that provides for the delivery of A-numbers for presentation to the called party;
- 1.6 *Calling Line Identification Restriction* or *CLIR* is the generic name for the service provided by carriers to their customers and end users that provides for the blocking of the A-number of the calling party going forward to the called party;
- 1.7 *CLIR Flag* means an indicator provided together with an A-number for the purposes of CLIP which indicates that the A-number is not to be forwarded to the called party;
- 1.8 *Code* means the Telecommunications Information Privacy Code 2003 (as amended from time to time) and any other applicable code of practice that may be issued under Part VI of the Privacy Act;
- 1.9 *Direct Traffic* is defined in **Clause 2.1.1** of this **Schedule D**;
- 1.10 *Numbering Information* means, in respect of any Direct Traffic the A-number in relation to that traffic:
  - 1.10.1 including CLIR Flags and any other numbering information relating to that traffic; but
  - 1.10.2 not including billing name and address;
- 1.11 *Privacy Act* means the Privacy Act 1993;

1.12 *Providing Party* means:

1.12.1 Telco, where:

(a) Telco is handing over Direct Traffic to Spark NZT; or

1.12.2 Spark NZT, where:

(a) Spark NZT is handing over Direct Traffic to Telco; or

1.13 *Receiving Party* means:

1.13.1 Spark NZT, if the Providing Party is Telco; and

1.13.2 Telco, if the Providing Party is Spark NZT;

1.14 *Roaming Customer* means an international or national roaming customer that is roaming on the Providing Party's Network;

## 2 PROVISION OF A-NUMBERS

### Provision of Calling Numbers

2.1 Subject to the terms and conditions of this **Schedule D**, each Party shall, when they are the Providing Party:

2.1.1 for all Calls, Telco SSC Calls, MMS and SMS that are handed over by the Providing Party to the Receiving Party under this Agreement or any Network Interconnection Service Contract (**Direct Traffic**), provide to the Receiving Party the unaltered Numbering Information (normalized to International format) as part of the signalling for that traffic; and

2.1.2 for all calls, mms and sms:

(a) that are not handed over by the Providing Party to the Receiving Party under this Agreement or any Network Interconnection Service Contract; but

(b) which are handed over by the Providing Party to a third party for eventual handing over to the Receiving Party (either directly by that third party, or by a subsequent third party)

provide the unaltered Numbering Information (normalized to International format) to the third party as part of the signalling for that traffic.

### Meaning of A-numbers

2.2 In this **Schedule D**, the A-numbers are (subject to **Clause 2.3** of this **Schedule D**):

2.2.1 for any Direct Traffic, in each case originating in the Spark NZT Network, Spark NZT National Numbers and Spark NZT Mobile Numbers;

2.2.2 for any Direct Traffic, in each case originating in the Telco Network, Telco National Numbers and Telco Mobile Numbers;

2.2.3 for any Direct Traffic, in each case originating in or transiting another carrier's network (including any such network located outside New Zealand), the A-number in the format received by the Providing Party from that other carrier's network; and

2.2.4 for any Direct Traffic, in each case originating in the Providing Party's Network from a Roaming Customer, an individual number of the Roaming Customer that is allocated by the home network to that customer.

2.3 The Parties acknowledge that:

2.3.1 in circumstances where a Call is subsequently call-forwarded (or subject to any like functionality or service), the A-number for each of those Calls shall be the A-number that applied to the original Call; and

2.3.2 in circumstances where a Call is subsequently routed via a calling card or other platform, the A-number for each of those Calls shall, to the extent reasonably practicable, be the A-number that applied to the original Call.

### **Purposes of use**

2.4 The Receiving Party may use Numbering Information received by the Receiving Party:

2.4.1 for the purposes of:

(a) providing it to a Receiving Party Customer or Receiving Party End User; or

(b) providing it to any Network Operator to whom the Receiving Party on-provides the Numbering Information; or

2.4.2 for any lawful purpose.

### **No charge**

2.5 There shall be no charge for the making available and provision of Numbering Information pursuant to this Schedule D or any other numbering related information provided under this Schedule D.

### **Customer use of A-numbers**

2.6 Each Party will use its best endeavours to:

2.6.1 include a provision in each contract with its Customers which prevents the Customer from spoofing, or otherwise changing, their A-number for any traffic that originates from that Customer; and

2.6.2 enforce that provision whenever it has been notified by the other Party of any breach of that provision by its Customer,

in each case, except in circumstances where **Clauses 3.2.2, 3.2.2 or 3.2.3** of this **Schedule D** apply (and only to the extent contemplated by that clause).

### **Incorrect A-numbers**

2.7 Where the Providing Party provides to the Receiving Party an A-number that it receives from a third party with respect to any Direct Traffic and the Receiving Party notifies to the Providing Party that the A-number is manifestly incorrect, the Providing Party shall:



- 2.7.1 notify that third party and request that the third party rectify the problem of incorrect A-numbers, so as to prevent the problem occurring again; and
- 2.7.2 notify the Receiving Party of progress towards rectification of the problem with that third party.
- 2.7.3 Either Spark or Telco may refuse to accept calls from A numbers which are not currently allocated by the NAD

### **3 SPECIAL CIRCUMSTANCES**

#### **Spark NZT as the Providing Party**

- 3.1 Telco acknowledges that, where Spark NZT is the Providing Party, Spark NZT may refuse to provide A-numbers, may provide modified A-numbers or may attach CLIR Flags to A-numbers, in relation to Direct Traffic:
  - 3.1.1 that originates from Spark NZT payphones;
  - 3.1.2 that originates from Roaming Customers;
  - 3.1.3 that originates in or is routed via parts of the Spark NZT Network which do not support A-numbers;
  - 3.1.4 for which valid A-numbers cannot be provided, or for which A-numbers are impractical to manage or unreasonable to provide; or
    - (a) where A-numbers have not been made available to Spark NZT, either:
      - (b) from a Network Operator; or
      - (c) where the Telco Network is the originating network, from Telco;
  - 3.1.5 for some Calls from Network Operators.
  - 3.1.6 For substitution of original A party numbers with toll free numbers where the end user requests this.
- 3.2 Where Spark NZT is the Providing Party, in relation to Direct Traffic that;
  - 3.2.1 Spark NZT receives from an international network:
    - (a) where Spark NZT has not been provided with the A-number in relation to that traffic; or
    - (b) an A-number that is manifestly incorrect,  
  
Spark NZT shall use reasonable endeavours to provide the digits "0000" (or such other digits agreed by Spark NZT and Telco) to enable Telco and Telco End-Users to identify that the traffic has come from an international network; and
  - 3.2.2 originates from an end-user, where that end-user has been allocated more than one A-number at the same location (which location must be the same location from which the end-user originates the call, and which includes a pilot number which is a valid and dialable A-number), Spark NZT may provide the pilot number as the A-number in respect of that traffic; and

- 3.2.3 originates from a customer on the Spark NZT Network where that customer has been allocated both a dialable Spark NZT Mobile Number and a dialable Spark NZT National Number for use on the same handset, Spark NZT may replace that originating Spark NZT Mobile Number with that Spark NZT National Number (and provide the Spark NZT National Number as the A-number in respect of that traffic) where the Spark NZT National Number is selected by the End User.

### **Telco as the Providing Party**

- 3.3 Spark NZT acknowledges that, where Telco is the Providing Party, Telco may refuse to provide A-numbers, may provide modified A-numbers or may attach CLIR Flags to A-numbers, in relation to Direct Traffic:
  - 3.3.1 that originates from Roaming Customers;
  - 3.3.2 that originates in or is routed via parts of the Telco Network which do not support A-numbers;
  - 3.3.3 for which valid A-numbers cannot be provided or for which A-numbers are impractical to manage or unreasonable to provide;
  - 3.3.4 where A-numbers have not been made available to Telco, either:
    - (a) from a Network Operator; or
    - (b) where the Spark NZT Network is the originating network, from Spark NZT; or
  - 3.3.5 for some Calls from Network Operators.
  - 3.3.6 For substitution of original A party numbers with toll free numbers where the end user requests this.
- 3.4 Where Telco is the Providing Party, in relation to Direct Traffic that:
  - 3.4.1 Telco receives from an international network:
    - (a) where Telco has not been provided with the A-number in relation to that traffic; or
    - (b) an A-number that is manifestly incorrect,  
  
Telco shall use reasonable endeavours to provide the digits "0000" (or such other digits agreed by Spark NZT and Telco) to enable Spark NZT and Spark NZT End-Users to identify that the traffic has come from an international network;
  - 3.4.2 originates from an end-user, where that end-user has been allocated more than one A-number at the same location (which location must be the same location from which the end-user originates the call, and which includes a pilot number which is a valid and dialable A-number), Telco may provide the pilot number as the A-number in respect of that traffic; and
  - 3.4.3 originates from a customer on the Telco Network where that customer has been allocated both a dialable Telco Mobile Number and a dialable Telco National Number for use on the same handset Telco may replace that originating Telco Mobile Number with that Telco National Number (and provide the Telco National Number as the A-number in respect of that traffic) where the Telco National Number is selected by the End User.

#### **4 APPLICATION OF CALLER NUMBERS (A-NUMBERS)**

##### **Application of A-numbers**

- 4.1 Except as otherwise provided, the Receiving Party (with respect to Direct Traffic received by the Receiving Party's Network):
- 4.1.1 shall (where A-numbers (and CLIR Flags) are to be used for the purpose of CLIP within its Network) Apply and Activate, for the purposes of CLIP, the A-numbers (and CLIR Flags) received from the Providing Party's Network; and
- 4.1.2 shall not alter those A-numbers (or CLIR Flags) in any way.

##### **On-provision of A-numbers**

- 4.2 Where the Receiving Party on-provides the A-number back to the Providing Party, or to a third party carrier, for termination in the Providing Party's, or that third party carrier's, network (as the case may be), the Receiving Party:
- 4.2.1 shall not be required to Activate the A-number (or CLIR Flags) for the purposes of CLIP;
- 4.2.2 shall Apply the A-numbers (and CLIR Flags) by providing them to the Providing Party or third party carrier (as the case may be); and
- 4.2.3 shall not alter the A-numbers (or CLIR Flags) in the process.

##### **Suspension or restriction of Activation and Application of A-numbers for the purposes of CLIP**

- 4.3 Subject to **Clause 8** of this **Schedule D**, the Receiving Party may suspend or restrict the Activation and Application of A-numbers for the purposes of CLIP:
- 4.3.1 where the Receiving Party reasonably believes that the A numbers (or CLIR Flags) being provided by the Providing Party are inaccurate, have been improperly altered or are otherwise improperly provided;
- 4.3.2 where the Receiving Party has good reason to believe that the Providing Party is in breach of any of the provisions set out in this Schedule D; or
- 4.3.3 where the Receiving Party reasonably believes that the Privacy Commissioner has performed any statutory function or exercised a statutory power affecting directly or indirectly calling line identification services and the performance of that function or the exercise of that power has or could have the effect of making or continuing to make:
- (a) the operation of this **Schedule D** or any part of it impractical or detrimental to the Receiving Party's reputation; or
- (b) the Receiving Party incapable of performing the Receiving Party's obligations or a part of its obligations under this **Schedule D**.

However this **Clause 4.3** will not remove any obligation on the Providing Party to provide Numbering Information under this **Schedule D**.

## 5 CLIR ON A-NUMBERS PROVIDED FOR CLIP

### Application of CLIR

- 5.1 the Sending Party is to Apply CLIR Flags for A-numbers provided for the purposes of CLIP, for Direct Traffic delivered to the Receiving Party's Network
- 5.2 If a CLIR Flag is provided together with an A-number, the Receiving Party (with respect to Direct Traffic received by the Receiving Party's Network) shall not allow the A-number to be called back from any of its own platforms or its outsourced platforms using the A-number information provided together with the CLIR Flag for the purposes of CLIP, except:
- 5.2.1 with the applicable End User's consent; or
  - 5.2.2 in connection with the operation of the 111 service by Spark.

### Override of CLIR

- 5.3 Spark NZT may override any CLIR Flag for Calls to a 111 service operator.

## 6 PRIVACY

### Compliance with the Privacy Act and the Code

- 6.1 Each Party acknowledges that the disclosure, collection and use of Numbering Information raises significant privacy issues. Each Party agrees:
- 6.1.1 to ensure that it complies with the provisions of the Privacy Act and the Code;
  - 6.1.2 to take reasonable steps to ensure that its Customers who are provided with CLIP are aware of their responsibility to comply with their obligations under the Privacy Act and, in particular to inform its Customers who are provided with CLIP that if those Customers use A-numbers for purposes other than to:
    - (a) potentially identify the calling party; or
    - (b) call (or send an mms or sms) back to the telephone number displayed or stored,then they shall ensure that they comply with the provisions of the Privacy Act and the Code; and
  - 6.1.3 to take reasonable steps to ensure that its Customers are aware that, where they are the calling party, by not using CLIR, they are giving authorisation for collection and use of A-numbers by customers for the purposes referred to in **Clause 6.1.2 (a)** and **(b)** of this Schedule D.

### Authorisations required under the Privacy Act and the Code

- 6.2 The Providing Party shall ensure that it has obtained all authorisations required from any persons in accordance with the Privacy Act and the Code as a direct or indirect result of:
- 6.2.1 the disclosure of the Numbering Information to the Receiving Party; or
  - 6.2.2 the collection of the Numbering Information by:
    - (a) the Receiving Party;

- (b) any Customer or End User of the Receiving Party; or
- (c) any Network Operator to whom the Receiving Party on-provides the Numbering Information; and

6.2.3 the use of the Numbering Information by the Receiving Party for any other lawful purpose agreed by the parties.

### Indemnity

6.3 Each Party (in this **Clause 6.3**, the *indemnifying Party*) indemnifies and saves harmless the other Party against all loss, injury, liability, damages, costs or expense which may be suffered or incurred by the other Party arising from or in connection with any actions, proceedings, claims or demands brought by End Users of either Party's Network which relate directly or indirectly to a breach by the indemnifying Party of its obligations under **Clause 6.1** of this **Schedule D**.

### Further indemnity

6.4 If:

6.4.1 either Party (in this **Clause 6.4**, the *indemnifying Party*) collects from the other Party (in this **Clause 6.4**, the *indemnified Party*) Numbering Information for use for a purpose not expressly contemplated under this **Schedule D**, or for a purpose which includes such a purpose (in this **Clause 6.4** and in **Clause 10** of this **Schedule D**, the *relevant use*); and

6.4.2 the Parties have not agreed, pursuant to **Clause 9** of this **Schedule D** or otherwise, on necessary steps to be taken to ensure that the disclosure or collection of the A-numbers and the relevant use of the A-numbers by the indemnifying Party is lawful,

the indemnifying Party indemnifies and saves harmless the indemnified Party against all loss, injury, liability, damages, costs and expense which may be suffered or incurred by the indemnified Party arising from or in connection with any actions, proceedings, claims or demands brought by any person which relate directly or indirectly to a breach by the indemnifying Party of its obligations under **Clause 6.2** of this **Schedule D**.

## 7 SUSPENSION OR RESTRICTION OF PROVISION OF NUMBERING INFORMATION

7.1 Subject to **Clause 8** of this **Schedule D**, the Providing Party may suspend or restrict the provision of Numbering Information to the Receiving Party in the following circumstances:

7.1.1 where the Receiving Party is in breach of any of the provisions set out in this **Schedule D**, including the use of A-numbers other than for any lawful purpose;

7.1.2 where the Privacy Commissioner has performed any statutory function or exercised a statutory power affecting, directly or indirectly, calling line identification services and the performance of that function or the exercise of that power has or could have the effect of making or continuing to make:

- (a) the operation of this **Schedule D** or any part of it impractical or detrimental to the Providing Party's reputation; or
- (b) either Party incapable of performing that Party's obligations or a part of its obligations under this **Schedule D**.

## 8 PROCEDURE FOR SUSPENSION

### Ability to suspend or restrict

8.1 Where a Party (in this **Clause 8**, the *first Party*) has a right of suspension or restriction as a result of the operation of **Clauses 4.3** or **7.1** of this **Schedule D**, the first Party may suspend or restrict (in the case where the first Party is the Providing Party) the provision of Numbering Information to the Receiving Party, or (in the case where the first Party is the Receiving Party) the Application and Activation of A-numbers for the purposes of CLIP. However, before such suspension or restriction takes place the procedures set out in **Clauses 8.2** to **8.10** (inclusive) of this **Schedule D** shall be complied with.

### Notice to the other Party

8.2 The first Party shall give notice to the other Party (in this **Clause 8**, the *other Party*) setting out full details of the matters giving rise to the proposed suspension or restriction. Such notice shall include sufficient information to identify:

- 8.2.1 the specific event giving rise to the notice;
- 8.2.2 the provisions of the Privacy Act or Code which are relevant; and
- 8.2.3 where practicable, a remedy, solution or outcome which would remove the necessity for the suspension or restriction.

### Consultation

8.3 Following the giving of the notice under **Clause 8.2** of this **Schedule D**, the Parties shall consult.

8.4 The purpose of the consultation shall be for each Party:

- 8.4.1 to establish a better understanding of the matters which have given rise to the first Party's notice; and
- 8.4.2 if possible, to remedy or resolve those matters.

8.5 In the event that the other Party does not enter into the consultation process, the first Party's obligation under **Clause 8.3** of this **Schedule D** shall be limited to making itself available for consultation.

### Resolution of matters that gave rise to suspension or restriction

8.6 If, through the consultation process set out in **Clause 8.3** of this **Schedule D**, the matters that have given rise to the first Party's notice are remedied or resolved, no suspension or restriction shall take place.

8.7 If those matters have not been remedied or resolved, the Parties may agree to refer the matters to dispute resolution in an attempt to resolve those matters. In that event, suspension or restriction may be waived by agreement during the agreed dispute resolution process.

### Period for suspension or restriction

8.8 If the Parties fail to resolve or remedy the matters giving rise to the first Party's notice to the reasonable satisfaction of the first Party within 20 Working Days of the first Party making itself available for consultation with the other Party under **Clause 8.3** of this **Schedule D**, then, in the absence of agreement to the contrary by the Parties, the first Party:

- 8.8.1 may give at least 5 Working Days' notice to the other Party:
- (a) confirming that it will suspend or restrict in accordance with this **Clause 8**; and
  - (b) setting out reasonable details of the intended suspension or restriction; and
- 8.8.2 may suspend or restrict as set out in that notice on the expiry of that notice period.

8.9 Where the first Party has suspended or restricted under this **Clause 8**, and the relevant event that caused the need for the relevant suspension or restriction has been resolved (in the first Party's reasonable opinion), the first Party will resume provision of Numbering Information as soon as reasonably practicable.

#### **Co-operation by the other Party**

8.10 Following delivery of a notice under **Clause 8.8** of this **Schedule D**, the other Party shall co-operate as reasonably required by the first Party to give effect to the suspension or restriction.

### **9 ON-PROVISION OF A-NUMBERS**

#### **On-provision to a network operator**

9.1 Nothing in this Schedule will prevent or oblige the on-provision of A-numbers by the Receiving Party to a Network Operator for delivery in the Network Operator's network. However, where the Receiving Party does on-provide A-numbers to a Network Operator for termination in the Network Operator's network, the Receiving Party shall use reasonable endeavours to ensure that the Network Operator:

- 9.1.1 complies with the Privacy Act and the Code;
- 9.1.2 takes steps to ensure that customers to whom it provides A-numbers are aware of their responsibility to comply with their obligations under the Privacy Act and, if appropriate, the Code, and in particular to inform its customers that if those customers use A-numbers for purposes other than the purposes described in **Clause 6.1.2 (a) and (b)**, they must comply with the Privacy Act and the Code; and
- 9.1.3 complies with **Clauses 4.1 and 5.1** as if the Network Operator was the Receiving Party.

#### **Receipt of A-numbers from network operators**

9.2 Nothing in this Schedule will prevent the Providing Party from receiving, or oblige the Providing Party to receive, A-numbers from a Network Operator for delivery in the Receiving Party's Network. However, where the Providing Party does receive A-numbers from a Network Operator for delivery in the Receiving Party's Network, the Providing Party shall use reasonable endeavours to ensure that the Network Operator:

- 9.2.1 complies with the Privacy Act and, following its commencement, the Code; and
- 9.2.2 takes steps to ensure that its customers, where they are the calling party, are aware that by not using CLIR, they are giving authorisation for collection and use of A-numbers by Customers of the Receiving Party who are provided with CLIP for the purposes referred to in **Clause 6.1.2 (a) and (b)**.

## **10 ADDITIONAL USES OF NUMBERING INFORMATION**

### **Request for meeting**

- 10.1 If either Party (in this **Clause 9**, the *first Party*) wishes to collect Numbering Information provided by the other Party (in this **Clause 9**, the *other Party*) for a relevant use, then it may, by notice to the other Party, request a meeting with the other Party.

### **Meeting between the Parties**

- 10.2 On receipt of such request by the other Party, the Parties shall meet to discuss and negotiate in good faith with a view to agreeing on the necessary steps to be taken (if any) to ensure the proposed disclosure of the Numbering Information to, and collection of the Numbering Information by, the first Party and other persons, and the relevant use of the Numbering Information, is lawful.

### **Failure to meet shall not preclude use**

- 10.3 For the avoidance of doubt, failure by the first Party to give notice under this **Clause 9** shall not preclude the first Party's collection of Numbering Information for the relevant use.

## **11 NETWORK INTERCONNECTION TECHNICAL SPECIFICATIONS**

- 11.1 For the purposes of **Clause 16.3** of **Schedule A**, the Network Interconnection Technical Specification shall apply to the provision of Numbering Information under this **Schedule D**.



**SCHEDULE E**

**PORTING CHARGES**

**1 Number Porting Charges under LNMP Determination process**

- 1.1 The Parties agree that the following charges apply to per-number set up charges for porting out of Telco Local or National Numbers, Spark NZT Local or National Numbers, Telco Mobile Numbers and Spark NZT Mobile Numbers
  - 1.1.1 The price which the losing carrier shall charge and the gaining carrier shall pay is \$5.94 for porting out of each Telco Local or National Number or Spark NZT Local or National Number;
  - 1.1.2 The price which the losing carrier shall charge and the gaining carrier shall pay is \$2.50 for porting out of each Telco Mobile Number or Spark NZT Mobile Number.
- 1.2 If either party processes or continue to process to completion a port outside of the Standard Hours of Operation then the per number set up charge for porting out of each Telco Local Number or Spark NZT Local Number shall be \$35.00.