



DEED FOR SERVICES

Broadband Shared Property Access Dispute Resolution Scheme

DATE:

BETWEEN THE SOVEREIGN in right of New Zealand acting by and through Brad Ward, GM Commerce Consumers & Communications, Ministry of Business, Innovation and Employment ("Ministry");

AND UTILITIES DISPUTES LIMITED (Company No. 6148169) of 50 Customhouse Quay, Wellington 6011 ("Scheme Provider").

AGREEMENT

The Ministry engages the Scheme Provider, and the Scheme Provider accepts engagement by the Ministry, to provide the Services and Deliverables on the terms and conditions set out in Schedule 1 (Details) and Schedule 2 (Terms and Conditions) ("Agreement").

EXECUTED AS A DEED

Signed for and on behalf of THE SOVEREIGN in right of New Zealand by Brad Ward, GM Commerce Consumers & Communications, Ministry of Business, Innovation and Employment:

Brad Ward

Signature

Date: 24-7-2017

Witnessed by:

Name: *Andrew Burns*
Occupation: *Senior Policy Advisor, MBIE*
Address: *15 Stout St, Wellington*

Andrew Burns

Signature

Date: 24/07/2017

Signed for and on behalf of UTILITIES DISPUTES LIMITED by [insert name and position]:

Heather Roy
Utilities Disputes Ltd Chair.

Heather Roy

Signature

Date: 28/7/17

Witnessed by:

Name: *Joe Cruden*
Occupation: *Research Analyst, Utilities Disputes Ltd.*
Address: *50 Customhouse Quay, Wellington*

Joe Cruden

Signature

Date: 28/7/17

SCHEDULE 1

DETAILS

1. **Context and Purpose** (*clause 2.2, Schedule 2*)
 - 1.1 The Telecommunications (Property Access and Other Matters) Amendment Act 2017 (“**Act**”) came into force on 3 May 2017. The various amendments introduced by this Act commence at different dates. Section 13 of the Act, as far as it replaces subpart 3 of Part 4, came into effect by Order in Council on 9 June 2017.
 - 1.2 The Act allows for the establishment of a dispute resolution scheme to resolve disputes between two or more parties under Section 155ZI of the Act relating to a proposed installation, an installation being carried out or a completed installation. This Agreement governs the relationship between the Ministry and the Scheme Provider in relation to the implementation of the dispute resolution scheme but does not in any way override the Act.
 - 1.3 Clause 155ZH of the Act provides that every Fibre to the Premises (“**FTTP**”) service provider and network operator (“**FTTP Provider**”) that relies on a statutory right of access under the Act (unless otherwise excluded under the Act) must be a member of the dispute resolution scheme as defined in Section 2 of Schedule 3C to the Act (“**Scheme**”) and must remain a member of the Scheme until 1 January 2026 (“**Member**”).
 - 1.4 The purpose of the Scheme is to ensure that, if two or more parties have a dispute in relation to an installation, they have access to a dispute resolution scheme for resolving that dispute. The Scheme is established to provide a range of dispute resolution processes so that the parties’ disputes can be assessed promptly.
 - 1.5 The procedures for referring disputes to the Scheme are as set out in Schedule 3C of the Act.
 - 1.6 Under clause 3 of Schedule 3C of the Act, the Scheme Provider has applied to the Minister for approval of their proposed Broadband Shared Property Access Disputes Scheme (“**BSPAD Scheme**”).
2. **Services** (*clause 2, Schedule 2*)
 - 2.1 The Scheme Provider will provide the BSPAD Scheme in accordance with the Act, the Telecommunications (Property Access) Regulations 2017 (“**Regulations**”) (and any amendments made from time to time) and as further stipulated in its Scheme Rules or as otherwise agreed between the Parties in writing (“**Services**”).
 - 2.2 For the avoidance of doubt, the Services provided by the Scheme Provider will include:
 - a. **First Response Service:** receiving enquires by post, email, telephone call or via its website and will identify whether the complaint is within the jurisdiction of the Scheme. Where any complaint is not within the jurisdiction of the Scheme, the Service Provider will use reasonable endeavours to refer the complainant to the appropriate place for dispute resolution. Enquirers may request information in relation to the Scheme (including its dispute resolution services) or seek to lodge a complaint with the Scheme to be addressed through dispute resolution.

- b. **Facilitation Service:** where appropriate bringing the parties together to reach agreement.
- c. **Adjudication Service:** where appropriate seeking to resolve an accepted dispute as defined by the Scheme Rules (“Accepted Dispute”) by adjudication after considering submissions from the parties and making a determination thereafter.
- d. **Scheme Member Training Workshop Service:** where appropriate conducting dispute management workshops for Members as agreed.

3. Deliverables *(clause 2, Schedule 2)*

- 3.1 The Scheme Provider will establish all platforms and systems necessary and will provide a range of dispute resolution processes in accordance with the Scheme Rules or as otherwise agreed between the Parties in writing so that the parties can resolve any dispute promptly and in accordance with the timeframes set out in the Scheme Rules and in accordance with Clause 8.1 below.
- 3.2 The Scheme Provider shall, in accordance with its Constitution, establish an Advisory Committee to consult with scheme stakeholders on any proposed changes to the Scheme Rules or changes to other aspects of the Scheme, including fees charged to Members. The Advisory Committee will be established within three (3) months of the Scheme becoming operational. The purpose of the Advisory Committee will be to monitor scheme performance, consider any issues raised by Members or the Scheme Provider, and make recommendations to the Scheme Provider or MBIE as appropriate.
- 3.3 The Scheme Provider is required to convene Advisory Committee meetings sufficiently frequently to enable consultation with its stakeholders. The Advisory Committee will act at all times in accordance with the Scheme Rules, any applicable statutory requirements and any other applicable rules or regulations.

4. Charges *(clause 3.1, Schedule 2)*

- 4.1 There are no Charges payable by the Ministry or the Crown to the Scheme Provider under this Agreement.

5. Expenses *(clause 3.1, Schedule 2)*

- 5.1 There are no Expenses payable by the Ministry or the Crown to the Scheme Provider under this Agreement.

6. Scheme Provider’s Charges *(clause 3.2, Schedules 2 and 3)*

- 6.1 The Scheme Provider may charge Scheme Members’ fees according to its Scheme Rules (as attached at Schedule 3).
- 6.2 Where the Scheme Provider wants to amend its fees in any way, it may do so in accordance with the Act. The Scheme Provider must undertake any and all necessary consultation in order to amend or change the Scheme Rules (including any proposed change to the fees charged).

7. Invoice Terms *(clause 3, Schedule 2)*

- 7.1 No invoices are payable by the Ministry or the Crown to the Scheme Provider under this Agreement.
- 7.2 Where the Scheme Provider is charging a fee to a Member it must provide a valid tax invoice.

8. Commencement Date (*clause 1.1, 4.1, Schedule 2*)

8.1 The Scheme Provider will commence the Scheme within 10 working days of the execution of this Deed ("**Commencement Date**"). The Scheme Provider will have all necessary platforms and systems established by the Commencement Date so that it can supply the Services as set out in this Agreement.

9. Completion Date (*clause 1.1, 4.1, Schedule 2*)

9.1 The Scheme Provider will provide the Services as outlined in this Agreement for a term of three years from the Commencement Date ("**Term**"), and for the Further Term (if awarded under clause 9.2) and any Subsequent Term (if agreed under clause 9.3) unless otherwise terminated in accordance with clause 5, Schedule 2 or approval of the Scheme is withdrawn under Schedule 3C of the Act.

9.2 The Ministry has the right to grant another term under this Agreement for a further three years ("**Further Term**"). Where the Ministry awards a Further Term, the Ministry will communicate this in writing to the Scheme Provider six months prior to the expiry of the Term.

9.3 Six months prior to the expiry of the Further Term, a subsequent term may be granted to the Scheme Provider by the Ministry as mutually agreed between the Parties in writing ("**Subsequent Term**").

9.4 Where the Ministry terminates this Agreement or at its sole discretion elects not to grant a Further Term or Subsequent Term, the Scheme Provider will commence its exit as outlined in Clause 12 below.

10. Reporting Requirements (*clause 7.1, Schedule 2*)

10.1 The Scheme Provider will provide a report to the Ministry (not intended to be published unless required) on the first Monday of each month after the Commencement Date ("**Monthly Report**") to include the following detail:

- a. the number of queries received;
- b. the number of disputes received and the outcomes;
- c. the time taken to resolve each dispute;
- d. the number of level 1 and level 2 disputes (the levels relating to the proposed fee structure as defined in the Scheme Rules);
- e. the number of disputes relating to category 1 or 2 installations;
- f. a register of Members;
- g. the scheme rule compliance of Members; and
- h. such other detail that the Scheme Provider considers relevant or as required by the Ministry from time to time.

10.2 In addition, the Scheme Provider will provide a quarterly report to the Ministry within 20 Business

Days from the end of each quarter of the Financial Year on the quantity and quality of the service being provided (“**Quarterly Report**”) which may be published. The Quarterly Report will provide such information as may be reasonably necessary for the Ministry to track and assess the performance and use of the BSPAD Scheme.

10.3 The Scheme Provider will also provide any other reasonable information related to the Scheme which is requested by the Ministry in writing within five (5) Business Days of receiving the request.

11. Scheme Provider’s Conflicts of Interest (*clause 11.2, Schedule 2*)

11.1 The Scheme Provider will confirm to the Ministry in writing on the Commencement Date and every anniversary thereafter any conflicts of interest or perceived conflicts of interest that may exist. Where the Ministry determines that a serious conflict of interest exists, the Ministry may take any and all reasonable action required to resolve such conflict including termination of this Agreement.

12. Exit Services (*clause 5, Schedule 2*)

12.1 Where the Scheme Provider decides to withdraw from offering its services as outlined in this Agreement or the Ministry elects to terminate this Agreement, the Scheme Provider will do all things necessary and reasonable to cooperate fully with any successor scheme provider for a transition period of not less than sixty (60) Business Days before the end of the Term, the Further Term or Subsequent Term of this Agreement or following any notice of termination in accordance with this Agreement (“Transition Period”).

12.2 Subject to clause 5 of Schedule 2, the Scheme Provider will make reasonable efforts to ensure there is no interruption to the Scheme during the Transition Period. The Scheme Provider’s cooperation includes without limitation:

- a. exchange of information in relation to the provision of the Scheme;
- b. transfer of the relevant information including without limitation, databases containing registration, service configuration, accounts and billing information;
- c. phasing out of systems used by the Scheme Provider to provide the Scheme and the phasing in of systems of any successor.

12.3 The Scheme Provider will work in good faith to implement the transition plan before the end of the Transition Period.

12.4 The Scheme Provider shall be entitled to recover the actual and reasonable costs incurred in providing the Exit Services, such recovery to be via contributions from Scheme Members. The Scheme Provider will submit a proposal to the Ministry detailing its Exit Services and the reasonable costs it wants to recover from the Members. The Ministry will respond to the Scheme Provider in writing either approving the proposal or suggesting an alternative.

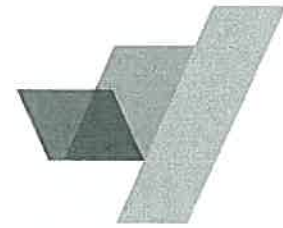
13. Address for Notices (*clause 17.5, Schedule 2*)

13.1 The following points of contact will be used for any address for notices unless otherwise specified by either Party.

Ministry:	Scheme Provider:
Ministry of Business, Innovation and Employment 15 Stout Street PO Box 1473 WELLINGTON Email: jane.tier@mbie.govt.nz Attention: Manager ICT Policy and Programmes	Utilities Disputes Limited 50 Customhouse Quay WELLINGTON Email: n.moreau@utilitiesdisputes.co.nz Attention: Commissioner

14. Intellectual Property (*clause 9, Schedule 2*)

- 14.1 The Ministry acknowledges that, to store and manage some of the data it generates through providing the Schemes it administers, the Scheme Provider uses case management software that it licenses from a third party.
- 14.2 To avoid doubt, nothing in clause 9 of Schedule 2 or in any other clause of this Deed for Services has the effect of conferring any ownership or licensing rights on the Ministry in the software that the Scheme Provider is using and the Ministry may not request, whether before or as part of any Exit Services, that the Scheme Provider transfers or licenses the software to the Ministry or a successor scheme provider. The Scheme Provider is able to export data from the software and will, on request as part of the Exit Services, use all reasonable endeavours to transfer data, to which the Ministry is entitled under this Deed for Services, to the Ministry or a nominated successor scheme provider. The Ministry accepts that if it or a successor scheme provider wishes to use the software, it or the successor scheme provider will need to obtain its own licence.



SCHEDULE 2

SERVICES AGREEMENT TERMS AND CONDITIONS

1. Definitions

1.1 In this Agreement, the following terms have the stated meanings:

Act means the Telecommunications (Property Access and Other Matters) Amendment Act 2017;

Agreement means this agreement, including Schedules 1 and 2;

Business Day means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

Charges means the charges set out in the Details;

Commencement Date means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement;

Completion Date means the completion date set out in the Details;

Confidential Information means the terms and conditions of this Agreement, the Deliverables and all information and data (in any form) produced or acquired by the Scheme Provider or its Personnel in connection with this Agreement or the performance of the Services, and the Ministry Data;

Deliverables means the deliverables (if any) described in the Details and any other documents, reports or other materials produced by the Scheme Provider in the course of providing the Services;

Details means Schedule 1;

Exit Services has the meaning given in clause 5.5;

GST means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

Intellectual Property Rights includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity, and **Intellectual Property** has a corresponding meaning;

Milestone means an event or task under this Agreement to be performed at or by a particular date and time, as set out in the Details (if any);

Ministry Data means all information and data (in any form) belonging to the Ministry that is acquired by the Scheme Provider or its Personnel in connection with this Agreement or the performance of the Services and includes the Ministry's information systems and processing facilities, all data relating to the Ministry's operations and clients and all data or business knowledge about the Ministry, its Personnel, customers and suppliers;

Parties means the Ministry and the Scheme Provider, including their permitted assigns;

Personnel means all employees, contractors, agents and officers;

Services means the services described in the Details together with all other work to be performed by the Scheme Provider to supply the Deliverables and perform its other obligations under this Agreement.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 "Including" and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 References to "NZD" or "\$" are to New Zealand currency, except where expressly stated otherwise.

1.8 The rule of construction known as *contra proferentem* does not apply to the interpretation of this Agreement.

1.9 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail, except where the Details expressly state otherwise.

2. Services and Deliverables

- 2.1 The Scheme Provider must provide the Services and the Deliverables promptly, efficiently, with reasonable skill and care and using suitably skilled, experienced and qualified Personnel, in accordance with:
- a. this Agreement, including the standards and other timeframes (if any) set out in the Details;
 - b. all applicable laws, regulations, rules and professional codes of conduct or practice, including the Employment Relations Act 2000, the Immigration Act 2009 and the Health and Safety at Work Act 2015; and
 - c. the Ministry's security and health and safety policies and requirements where the Scheme Provider is providing any of the Services and Deliverables on the Ministry's premises; and
 - d. the reasonable directions of the Ministry.
- 2.2 The Scheme Provider must ensure that the Services and Deliverables are fit for the purpose set out in the Details (if any).
- 2.3 The Scheme Provider must obtain all third party consents, licences, authorisations and approvals required for it to provide the Services and Deliverables under this Agreement.
- 2.4 If the Services or Deliverables are not, in the Ministry's reasonable opinion, provided in accordance with this Agreement (including in accordance with any due dates set out in the Details or as otherwise agreed) the Ministry may (without limiting its other remedies) require the Scheme Provider to remedy the deficiency immediately, at the Scheme Provider's cost.
- 2.5 The Scheme Provider must provide the Deliverables in such format, and on such medium, as is reasonably required by the Ministry.
- 2.6 The Scheme Provider agrees to co-operate fully and collaborate in good faith with the Ministry and any external suppliers in a timely manner, including:
- a. providing information reasonably required to ensure that the Ministry and any external supplier is able to perform their relevant responsibilities and functions; and
 - b. to the extent that it is within the Scheme Provider's control, achieving efficiency and reliability of services and deliverables provided to the Ministry and to ensure efficient change control processes across all suppliers.

3. Charges and invoicing

- 3.1 There are no Charges or Expenses payable by the Ministry under this Agreement.
- 3.2 Where the Scheme Provider is charging a fee to a Member or an FTTP Provider it must provide valid tax invoices. The recipient of the invoice has no obligation to pay the charges set out on an invoice, if it is not a valid tax invoice.

4. Term

- 4.1 Subject to clauses 5 and 16.2 of this Schedule and subject to withdrawal of approval to the scheme under Schedule 3C of the Act, this Agreement will commence on the Commencement Date and will continue until the end of the Term, the Further Term or any Subsequent Term or as otherwise agreed between the Parties.
- 4.2 Services and Deliverables provided prior to the date of this Agreement are deemed to have been provided under the terms of this Agreement.

5. Termination

- 5.1 This Agreement will terminate where the Minister withdraws approval for an approved scheme under Clause 8 or Clause 10(3) of Schedule 3C of the Act. Termination will be effective from and will coincide with the date that the approved scheme is withdrawn.

The Scheme Provider may request that the Minister withdraw approval of the dispute resolution scheme consistent with the terms of this Agreement and the Act. Where such a request is made, the Minister will as soon as practicable withdraw the approval in accordance with Clause 10(3) of Schedule 3 of the Act.

- 5.2 Where the Scheme Provider decides to withdraw from offering its services as outlined in this Agreement and the Act, the Scheme Provider must cooperate with the Minister in the transition to a new set of arrangements for dispute resolution.
- 5.3 Termination or expiry of this Agreement does not affect the rights and obligations of the Parties accrued up to and including the date of termination.
- 5.4 Except to the extent the Scheme Provider is legally required to retain any Confidential Information, the Scheme Provider must, within five (5) Business Days of termination or expiry of this Agreement:
- a. return to the Ministry:
 - i. all Confidential Information in the Scheme Provider's possession or control; and

- ii. all other property of the Ministry relating in any way to this Agreement (including documents, data, work-in-progress and materials in which the Intellectual Property Rights of the Ministry are vested and back-up copies) which is in the possession or control of the Scheme Provider or its Personnel; and/or
 - b. if requested by the Ministry, destroy or erase all copies in any form of the Confidential Information or Ministry Intellectual Property and any other documents prepared by or for the Scheme Provider which contain or reflect any Confidential Information or Ministry Intellectual Property.
- 5.5 The Scheme Provider must, if requested by the Ministry, provide the exit services set out in the Details, if any, (“Exit Services”), before or from the expiry or termination of this Agreement.
- 5.6 To avoid any doubt, the terms of this Agreement continue to apply to the Exit Services, with any and all necessary modification.
- 5.7 The provisions of this Agreement which, by their nature, are intended to survive termination or expiry of this Agreement, including those provisions as set out in this Schedule relating to remedying deficiencies in the Services and Deliverables (clause 2.4), termination (clause 5) reporting requirements (clause 7.2), intellectual property (clause 9), confidentiality (clause 10), and liability and insurance (clause 12) will continue after the expiry or termination of this Agreement.
- 6. Good Employer**
- The Scheme Provider must ensure that it operates policies and systems that promote fair and proper treatment of employees in all aspects of their employment.
- 7. Reporting Requirements**
- 7.1 The Scheme Provider must report on the progress of the Services and Deliverables (including, if requested, providing copies of current versions of the Deliverables) to the Ministry:
- a. as set out in the Scheme Rules, the Details or as otherwise requested by the Ministry or as agreed between the Parties; and
 - b. in any format and on any medium reasonably required by the Ministry.
- 7.2 The Scheme Provider must:
- a. respond promptly, accurately and adequately to any request for information made by the Ministry in relation to this Agreement.
 - b. ensure that all information provided to the Ministry contains sufficient content and detail to enable the Ministry to make use of the information for the purpose for which it was requested including transferring to the Ministry or a third party, at the Ministry’s request, the complete records maintained by the Scheme Provider in accordance with this Agreement.
- 8. Warranty**
- Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with the terms of this Agreement.
- 9. Intellectual Property**
- 9.1 The following Intellectual Property (including any modification, enhancement or derivative work of that Intellectual Property) remains the property of the current owner, regardless of its use in the Deliverables:
- a. Intellectual Property that existed prior to the date of this Agreement; and
 - b. Intellectual Property that was developed independently of this Agreement.
- To avoid doubt, all Intellectual Property Rights in the Ministry Data (including in any modification, enhancement or derivative work of that Ministry Data) remain the property of the Ministry, regardless of its use in any Deliverables.
- 9.2 Subject to clauses 9.1 and 9.4 and unless stated otherwise in the Details, all new Intellectual Property Rights in the Confidential Information (including any enhancement, modification or derivative work of that Confidential Information) and any other Intellectual Property created or developed by the Scheme Provider or its Personnel in providing the Services and Deliverables will be owned by the Ministry from the date the Intellectual Property is created or developed.
- a. The Ministry grants to the Scheme Provider a non-exclusive, royalty-free, perpetual and irrevocable licence to retain, possess, store, use and reproduce, for its own business purposes, new Intellectual Property that the Scheme Provider creates in the course of providing the Scheme, excluding individual dispute case files. This licence survives the expiry or termination of this Deed for any reason. There is no ongoing obligation on the Ministry to provide copies of any Intellectual Property.
- 9.3 The Scheme Provider must not develop, create or use in the course of performing this Agreement any Deliverable or

other material which infringes or is likely to infringe the Intellectual Property Rights of any person.

- 9.4 The Scheme Provider must not incorporate any Intellectual Property owned by it or a third party into the Confidential Information or any Intellectual Property created or developed in providing the Services and Deliverables unless:
- a. the Scheme Provider's (and any third party's) Intellectual Property Rights are listed in the Details; and
 - b. the Scheme Provider grants or obtains for the Ministry an irrevocable, transferable, perpetual, royalty-free licence to use, modify, licence, market and disseminate the relevant Intellectual Property for the purpose set out in the Details or, if there is no purpose set out, for the Ministry's general purposes, including any purpose reasonably contemplated when the Services and Deliverables were provided.
- 9.5 The Scheme Provider must indemnify and keep indemnified the Ministry from and against all claims, proceedings, damages, liability, loss, costs or expense (including legal costs on a solicitor own client basis) in connection with the infringement or alleged infringement of any third party's Intellectual Property Rights (**IP Claim**) arising out of or in connection with the Services or the Deliverables or the supply to or the possession or use by the Ministry (or its Personnel) of the Deliverables as contemplated by this Agreement.
- 9.6 The Scheme Provider is not required to indemnify the Ministry under this clause 9.6 to the extent that an IP Claim arises as a result of:
- a. the Ministry's breach of this Agreement; or
 - b. modification or alteration of the Deliverables by a person other than the Scheme Provider (but only to the extent of the modification or alteration).
- 9.7 Without limiting the indemnity in clause 9.5 or any other rights of the Ministry under this Agreement, if at any time an IP Claim is made, or in the Scheme Provider's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, at the Ministry's request the Scheme Provider must (at the Scheme Provider's cost and option):
- a. obtain for the Ministry the right to continue using the items which are the subject of the IP Claim; or
 - b. modify, replace or re-perform the items which are the subject of the IP Claim so they become non-infringing, provided that this does not detract from the performance of the Services or Deliverables.
- 9.8 Without limiting the Ministry's other rights and remedies, if the remedies in clause 9.7 are exhausted without remedying or settling, to the Ministry's satisfaction, the IP Claim, the Ministry may terminate this Agreement.
- 10. Confidentiality**
- 10.1 The Scheme Provider must, unless it has the prior written consent of the Ministry:
- a. keep the Confidential Information confidential at all times; and
 - b. not disclose any Confidential Information to any person other than its Personnel or any successor scheme provider to whom disclosure is necessary for the purposes of providing the Services and Deliverables; and
 - c. ensure that it has in place adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons including, as a minimum, complying with all relevant requirements imposed from time to time by the New Zealand Government on the holding, access, use, retention and disposal of government information; and
 - d. upon request by the Ministry, provide the Ministry with independent verification of its compliance with clause 10.1c;
 - e. ensure that any Personnel to whom it discloses Confidential information is aware of, and comply with, the provisions of this clause 10; and
 - f. except where retention of the Confidential Information is required by law, or for internal approval, compliance, corporate governance or audit purposes, where requested by the Ministry, the Scheme Provider will immediately destroy and certify the destruction of, or deliver to the Ministry the Confidential Information. Destruction of any Confidential Information stored in electronic form will only be required to the extent reasonably practicable.
- 10.2 The obligations of confidentiality in clause 10.1 do not apply to any disclosure of Confidential Information:
- a. required by law;
 - b. to the extent that such disclosure is necessary for the purposes of providing the Services and Deliverables or exercising rights under this Agreement; or
 - c. where such information has become public other than through a breach of the obligation of confidentiality in this clause 10 by the Scheme Provider, or its Personnel, or was disclosed to the Scheme Provider on a non-confidential basis by a third party who is not in breach of any obligation of confidentiality to the Ministry.
- 10.3 The Scheme Provider must not, without the Ministry's prior written approval:

- a. make any public statement in relation to this Agreement or the provision of the Services or Deliverables to the Ministry, including making press releases or naming the Ministry on any customer list; or
- b. offer any customer reference in relation to this Agreement.

11. Conflict of Interest

- 11.1 The Scheme Provider must maintain a high standard of honesty and integrity at all times in the performance of this Agreement and must avoid conflicts of interest. Conflicts of interest include:
- a. situations which could give rise to a conflict of interest or compromise the Scheme Provider's or the Ministry's integrity; or
 - b. any financial or other interest or undertaking that could interfere with or compromise the performance of the Scheme Provider's obligations under this Agreement, or the integrity or standing of the Ministry.
- 11.2 Unless otherwise stated in the Details, the Scheme Provider warrants that it has no conflicts of interest at the date of this Agreement.
- 11.3 The Scheme Provider must advise the Ministry in writing of any actual or potential conflict of interest that might arise in the performance of the Services and the development of the Deliverables as soon as the Scheme Provider becomes aware of it, and must assist the Ministry to address or avoid or mitigate that conflict of interest.

12. Liability and Insurance

- 12.1 Neither Party is liable for any loss of profit, revenue, data, savings, business and/or goodwill or any other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement, regardless of whether the other Party had been advised of the possibility of such loss or damage.
- 12.2 Clause 12.1 does not apply to limit the Scheme Provider's liability:
- a. under the Intellectual Property indemnity in clause 9.5;
 - b. in connection with a breach of clause 10; or
 - c. under clause 12.4.
- 12.3 The Ministry does not offer any indemnity to the Scheme Provider in connection with this Agreement. The Scheme Provider indemnifies the Ministry and the Crown against any claim, liability, loss or expense, including legal fees (together, "Loss"), brought or threatened against, or incurred by the Ministry, arising from fraud or wilful misconduct by the Scheme Provider or its Personnel or personal injury or death as a result of, or in connection with, an act or omission of the Scheme Provider or its Personnel in breach of this Agreement to the extent permitted by law, except to the extent that Loss arises out of an act or omission by the Ministry.
- 12.4 The Scheme Provider must:
- a. at its own expense, ensure that it has in place for the term of this Agreement:
 - i. adequate insurance to cover standard commercial risks and the indemnities under this Agreement; and
 - ii. other insurance reasonably required by the Ministry; and
 - b. upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

13. Audit

- 13.1 At the Ministry's request, the Scheme Provider must allow the Ministry (or an independent auditor nominated by the Ministry) to conduct audits of the Scheme Provider's compliance with this Agreement.
- 13.2 If an audit reveals any material non-compliance with this Agreement, the Scheme Provider must bear all of the Ministry's costs in carrying out that audit, in addition to any other rights and remedies the Ministry may have in respect of the non-compliance.
- 13.3 Without limiting clause 13.1, the Scheme Provider must co-operate in a timely manner in relation to any audit undertaken in accordance with this clause 13, including promptly providing the Ministry or the auditor (as the case may be) with reasonable access and assistance in respect of any audit, including reasonable access to the Scheme Provider, its Personnel, and the facilities, records and resources which are owned by the Scheme Provider and used in the provision of the Services and Deliverables.
- 13.4 The Ministry or the auditor (as the case may be) may make copies of any records or other information acquired by it for the purposes of any audit undertaken in accordance with this clause 13.

14. Independent Party

- 14.1 The Scheme Provider is engaged to provide the Services and Deliverables as an independent party. The Scheme Provider (including its Personnel, if any) is not an employee of the Ministry or of the Chief Executive of the Ministry.

At no time will the Ministry have any liability to meet any of the Scheme Provider's obligations under the Health and Safety at Work Act 2015 or to pay to the Scheme Provider:

- a. holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- b. redundancy or any other form of severance pay; or
- c. taxes or levies, including any levies under the Accident Compensation Act 2001.

14.2 The Scheme Provider indemnifies the Ministry against any taxes, levies, penalties, damages or compensation which the Ministry may be liable to deduct, withhold or pay by reason of the Scheme Provider, or any person used by the Scheme Provider to provide the Services or Deliverables, being held to be an employee of the Ministry or of the Chief Executive of the Ministry.

15. Dispute Resolution

15.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.

15.2 If the Parties' senior managers are unable to resolve the dispute within ten (10) Business Days of it being referred to them, the Parties will refer the dispute to the Minister for Communications for a final and binding resolution of the dispute.

15.3 The Parties will pay their own costs relating to any advice sought in this regard.

15.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

15.5 Nothing in this clause 15 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand court.

16. Force Majeure

16.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including acts of God, communication line failures, power failures, riots, strikes, lock-outs, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). To avoid doubt, a Party cannot rely on this clause 16.1 to the extent that it could have avoided the effects of the Force Majeure Event by taking reasonable steps. The Party affected must:

- a. notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- b. use its best endeavours to overcome the Force Majeure Event and minimise the loss to the other Party; and
- c. continue to perform its obligations as far as practicable.

16.2 If by reason of a Force Majeure Event a Party has been unable to perform any material obligation under this Agreement for a period of one month, the other Party may, after consulting with the Party affected by the Force Majeure Event, immediately terminate this Agreement by giving notice to that Party.

17. General

17.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

17.2 Assignment: The rights and obligations of the Scheme Provider under this Agreement are personal to the Scheme Provider and may not be assigned, delegated or transferred without the Ministry's written approval

17.3 This Agreement may only be varied by agreement in writing signed by the Parties.

17.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties. Where any determination needs to be made in relation to interpretation the Minister for Communications will where necessary make a determination and the Minister's decision will be final.

17.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by post, courier or email to the Parties' respective addresses as set out in the Details. Any notice is deemed to be received:

- a. if personally delivered, when delivered; or
- b. if posted, three Business Days after posting; or

- c. if sent by courier, on the date it is delivered; or
 - d. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.
- 17.6 Any notice received after 5pm or on a day which is not a Business Day is deemed not to have been received until the next Business Day.
- 17.7 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.
- 17.8 This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.
- 17.9 This Agreement will be governed by and construed in accordance with New Zealand law. Subject to clause 16, each Party submits to the exclusive jurisdiction of the New Zealand courts in relation to any dispute connected with this Agreement.