

under Clause 25.6 has been deleted from Item 1 of Schedule A. Where the Telecom ROC specified in the Service Operator's notice under Clause 25.6 is the Principal ROC, the Other ROCs shall forthwith after such Partial Termination appoint a new Principal ROC.

## **26. SCOPE OF AGREEMENT**

26.1 For the avoidance of doubt this Agreement is intended to apply only to the Connection of the Service Operator's Network and each Telecom ROC's Network and to related matters and shall not be construed as conferring benefits on any third parties (including but not limited to the Service Operator's Customers or the Service Operator's End Users) except to the extent that the Agreement expressly confers specific rights, benefits and protections on:

26.1.1 Telecom Group and its officers, employees, contractors and agents;

26.1.2 the officers, employees, contractors and agents of the parties.

26.2 A Telecom ROC has no responsibility—

26.2.1 to convey Calls or Chargeable Calls to other networks if it does not have an agreement to do so with the operator of the network in question; or

26.2.2 for any Call once it is handed over to the Service Operator's Network.

## **27. NO PARTNERSHIP**

27.1 The parties hereto declare that it is not the intention of any of them to enter into a joint venture with each other hereby and nothing herein shall be deemed to constitute a partnership between the parties hereto. The parties also declare it is not the intention to constitute the Service Operator the agent of a Telecom ROC or TCNZ for any purpose whatsoever or to constitute a Telecom ROC or TCNZ the agent for the Service Operator.

## **28. NON-WAIVER**

28.1 If any party fails to perform any term of this Agreement and the other party does not then enforce that term, the failure to enforce on that one occasion shall not prevent enforcement unless waived and shall not prevent enforcement of that term on any other occasion.

## **29. SEVERABILITY**

29.1 If any provision of this Agreement shall be considered to be invalid under any applicable statute or rule of law 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. In addition, the invalidity of any particular provision shall not in any way affect the validity of any other provision.

## **30. ARBITRATION**

30.1 If any dispute arises between the parties to this Agreement touching the construction, meaning or effect of this Agreement or the rights and liabilities of the parties to this Agreement, the parties shall meet to discuss the matter in dispute and shall negotiate in good faith to resolve the matter without recourse to arbitration.

30.2 If any such dispute has not been resolved between the parties within 7 days after the date on which the party claiming in such dispute gave notice to the other party, then, unless otherwise specifically agreed to in writing between the parties, such dispute shall be referred to arbitration by two arbitrators in New Zealand, one to be appointed by the Service Operator and one by the Principal ROC and in the event of the arbitrators differing, to an umpire who shall have been appointed by the two arbitrators before they enter upon their deliberations. Such arbitration shall be conducted in all respects in accordance with the provisions of the Arbitration Act 1908.

## **31. GOVERNING LAW**

31.1 The Agreement is made in New Zealand and shall be governed in all respects by and construed in accordance with the laws of New Zealand.

## **32. ENTIRE AGREEMENT**

32.1 This Agreement contains the entire final understanding of the parties with respect to the subject matter expressly referred to in this Agreement and with respect to such subject matter, this Agreement shall prevail over all previous agreements, understandings or commitments between the parties or representations made by either party whether oral or written, and shall not be modified except in accordance with Clauses 13 and 20.

## **SCHEDULE C**

### **REFERENCE SCHEDULE**

#### **ITEM 1—TELECOM ROC's NETWORK SERVICE (Clause 1.49)**

[Example shown below]

##### **(a) Telecom [Auckland]**

"Telecom ROC's Network Service" in relation to Telecom [Auckland] means the following telecommunication services:

1.1 delivery of or, in those cases where a free Link is not available in the Service Operator's Network, the offer of delivery of Calls (which are originated in Telecom [Auckland's] Telecom ROC's Network (or which are delivered to Telecom [Auckland's] Telecom ROC's Network from another network referred to in Item 6 of this Schedule) and which are preceded by the Access Code) to the appropriate Service Delivery Point having regard to the Principle of Call Hand-over;

1.2 provision for each Call delivered to the Service Operator's Network pursuant to Clause 1.1 of Item 1(a) of this Schedule, of details of the called Telecom national number in the format defined in PTC 301, or the number which the Service Operator's End User has dialled;