

Agreement due to any Force Majeure and such inability continues for a continuous period of 6 months PROVIDED THAT the Principal ROC shall not be entitled to give such termination notice unless and until the Principal ROC has negotiated or endeavoured to negotiate in good faith with the Service Operator to remedy the Force Majeure relied upon or to amend the terms of this Agreement to enable this Agreement to remain in full force and effect notwithstanding such inability to observe or perform as aforesaid.

- 25.7** in the event of Partial Termination of this Agreement insofar as it relates to a Telecom ROC under Clause 25.6, this Agreement shall forthwith be construed as if the reference to the Telecom ROC specified in the Service Operator's notice 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 the making available and provision of each Telecom ROC's Network Service, 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 any networks, if it does not have an agreement to do so with the operator of the network in question other than the Service Operator's Network, an Other ROC's Network or the Telecom Group's international network pursuant to the provisions of this Agreement; 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** Subject to Clause 30.3, 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** Subject to Clause 30.3, 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.

- 30.3** Notwithstanding anything in Clauses 30.1 and 30.2, any dispute referred to arbitration under Clause 6.9 shall forthwith be referred to one of the permanent arbitrators who have some expertise in accountancy and who are appointed by agreement of the Principal ROC and the Service Operator to act in relation to disputes referred to them pursuant to Clause 6.9 arising while they hold such office, until their retirement from the position to which they are appointed pursuant to this Clause 30.3 or until dismissal by either the Principal ROC or the Service Operator. Failing agreement on the appointment of a permanent arbitrator or permanent arbitrators, the permanent arbitrator (or permanent arbitrators, as the case may be) shall be appointed by the President for the time being of the Arbitrators Institute of New Zealand Inc.. If a permanent arbitrator during the period of his or her appointment is absent from New Zealand or is otherwise unavailable to act as the arbitrator, and there is not another permanent arbitrator to act in respect of such dispute then the Principal ROC and the Service Operator shall appoint another arbitrator ("the alternate arbitrator") to act in respect of disputes arising during that period of the permanent arbitrator's absence or unavailability or, failing agreement on the appointment of the alternate