

RBI 2 Co-location Agreement (WISP Version)

Rural Connectivity Group Limited

[Registered WISP]

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RBI 2 CO-LOCATION AGREEMENT

DATE:

PARTIES

Rural Connectivity Group Limited a duly incorporated company having its registered office at C/- The Office of Minter Ellison Rudd Watts, Level 20, Lumley Centre, 88 Shortland Street, Auckland 1010 (**Access Provider**), and

[**Insert name of WISP**] which has successfully registered as a WISP via the RCG Wholesale Web Portal (**Registered WISP**).

BACKGROUND

- A The Access Provider has committed to Crown Infrastructure Partners (**CIP**) to design, build and deploy the RBI 2 Towers subject to and in accordance with the RBI 2 Agreement.
- B The Access Provider has further committed in the RBI 2 Agreement to provide a Wholesale Tower Co-location Service to the "First In WISP" (as defined in this Agreement) seeking to co-locate the Standard Co-location Equipment at each RBI 2 Site and also to address any other Site Applications received from time to time from additional WISPs or Access Seekers on a case by case basis in accordance with the STD (as defined in this Agreement) after the relevant RBI 2 Tower is constructed.
- C This Agreement sets out the terms and conditions governing how the Access Provider will make the Wholesale Tower Co-location Service available to the Registered WISP at an RBI 2 Site, including where: (i) the Registered WISP is the First In WISP for that particular RBI 2 Site, (ii) where the Access Provider permits a Registered WISP to participate in the Design & Build Process for a particular RBI 2 Site in addition to the First In WISP, (iii) the Access Provider rejects a Site Application and requires the Registered WISP to reapply under the STD after the RBI 2 Tower has been constructed and is Site Integrated, or (iv) where the Registered WISP submits its Site Application after the RBI 2 Tower has been constructed and is Site Integrated.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this Agreement defined terms appear with capitalised initial letters and, unless the context requires otherwise, have the meaning set out in the Glossary below or in the other schedules or appendices to this Agreement. Any defined terms used in this Agreement which are not defined in the Agreement are defined in the STD General Terms.

1.2 **Glossary**

In this Agreement, unless the context requires otherwise:

Access Provider Equipment means any telecommunications, transmission and reception equipment (including any necessary supporting equipment, cabinets or shelters) used by, or which is to be used by, the Access Provider. Access Provider Equipment includes the equipment of any person other than the Access Provider where such equipment is being, or is to be, used to support the Access Provider's telecommunication, transmission and reception equipment.

Access Seeker means a Retail Service Provider or Network Operator who has successfully registered as an Access Seeker via the RCG Wholesale Web Portal.

Access Seeker Equipment means any Access Seeker equipment which the Access Provider permits to be located at a RBI 2 Site at which the Registered WISP receives the Wholesale Tower Co-location Service.

Accredited means accredited as defined in clause 17 of the RBI 2 Operations Manual and "Accreditation" has the corresponding meaning.

Act means the Telecommunications Act 2001.

Additional Equipment means WISP Equipment that exceeds the Standard Co-location Equipment.

Additional Requirements means the additional requirements for Non-Cellular Access Seekers as set out in schedule 3 of this Agreement.

Agreement means this RBI 2 Co-location Agreement including all of its schedules and appendices.

Annual Co-location Charge means the annual charge detailed in Schedule 2 (RBI 2 Co-location Pricing) and payable by the Registered WISP for the RBI 2 Co-location Service, provided it is the First In WISP, and otherwise in accordance with this Agreement and the RBI 2 Operations Manual.

Appendix means an appendix to the RBI 2 Operations Manual.

Authority includes a government, statutory or regulatory authority in New Zealand.

Broadcasting has the same meaning as in section 2(1) of the Broadcasting Act 1989.

Build Programme means the Access Provider's programme of works to construct and enable Site Integration of the RBI 2 Sites to enable the Access Provider to meet its obligations under the RBI 2 Agreement.

Building means any building (or part thereof) on an RBI 2 Site that is associated with the RBI 2 Tower and that is the subject of a Relevant Occupation by an Access Provider that is used to house equipment in connection with the Access

Provider's Network, and includes a container, cabinet, pillar, pedestal, pit and Cable Housing.

Business Hours means 8am to 5pm on any Working Day.

Cable Housing means any duct, conduit or tray used by the Access Provider in the operation of its Network and which is used for housing or running a cable.

Commencement Date means the date on which the Access Provider grants the Registered WISP access to the RCG Wholesale Web Portal.

Confidential Information means this Agreement itself, all conversations and documents related to the negotiation, variation or amendment of this Agreement or any replacement agreement, any correspondence about this Agreement marked or identified as confidential and all information which is confidential or proprietary to the Disclosing Party and is used, disclosed or collected in connection with this Agreement, including information which is confidential or proprietary to a third party and is used or disclosed in connection with this Agreement by the Disclosing Party under licence from that third party and including information derived from Confidential Information, but excludes:

- (a) information which is independently developed by the Receiving Party outside the scope of this Agreement, provided that such development did not rely on any Confidential Information;
- (b) information obtained from a source independent of the Disclosing Party other than by a breach of an obligation of confidence;
- (c) information which was publicly available at the time it was received;
- (d) information which was known to the Receiving Party at the time it was received or becomes publicly available after the time it was received other than by a breach of an obligation of confidence;
- (e) information expressly stated under this Agreement to be disclosed to the public or telecommunications industry;
- (f) information expressly stated under this Agreement not to be Confidential Information; or
- (g) any press release or other public statement that is agreed by the Parties.

To avoid doubt, all information contained on the RCG Wholesale Web Portal (or accessed by the Registered WISP via the RCG Wholesale Web Portal) may not be disclosed by the Registered WISP to any third party or used by the Registered WISP other than as expressly permitted under this Agreement.

Deadlock has the meaning given in the STD General Terms.

Deed of Undertaking means the Deed of Open Access Undertakings delivered by the Access Provider to the Crown pursuant to the Telecommunications Act.

Default means any failure, refusal or inability by a Party to meet any of its obligations under this Agreement or the STD (as the context may require).

Design & Build Process means the Access Provider's design and build process for each RBI 2 Site as set out in this Agreement and the RBI 2 Operations Manual.

Design & Build Process Charges means the Design & Build Process Charges detailed in Schedule 2 (RBI 2 Co-location Pricing) and payable by the Registered WISP in accordance with this Agreement and the RBI 2 Operations Manual.

Design Considerations has the meaning given in clause 10.5 of the RBI 2 Operations Manual.

Design Principles has the meaning given in clause 10.4 of the RBI 2 Operations Manual.

Detailed Site Design means a detailed design for the RBI 2 Site including the WISP Equipment, which is intended to form the basis for the supply of the Wholesale Tower Co-location Service to the Registered WISP at that RBI 2 Site.

Dispute has the meaning given in clause 13 of this Agreement.

Downtime means any period of time that a Registered WISP is without the Wholesale Tower Co-location Service at a particular RBI 2 Site, measured from the time that a fault is detected (either Registered WISP reported or system reported) to the time that the Wholesale Tower Co-location Service is fully restored and excludes:

- (a) Registered WISP-initiated service interruptions;
- (b) planned outages;
- (c) Force Majeure Events or Third Party Events; and
- (d) any period of time where it would be a breach of Health and Safety Law for the Access Provider to access the RBI 2 Site.

End User means, in relation to a Telecommunications Service a person who has a mobile handset/modem/device capable of receiving the relevant Telecommunications Service, that has a contractual relationship with a Retail Service Provider for the provision of that Telecommunications Service and who is the ultimate recipient of that service.

Equipment means both the Access Provider Equipment and the WISP Equipment.

Escalation Protocol means the protocol set out in Appendix B to the RBI 2 Operations Manual.

Excluded Towers: means the following towers which are excluded from the Wholesale Tower Co-location Service:

- (a) RBI 2 Sites that are supplied by a Solar Power Solution;
- (b) RBI 2 Towers which the Access Provider and CIP determine are temporary sites (note this will include, amongst other things, all 3G only RBI 2 Towers); and
- (c) RBI 2 Towers not owned or controlled by the Access Provider (i.e., where the Access Provider co-locates its equipment on a third party tower / site).

Fault Management System means the Access Provider's system for managing faults.

Final Detailed Site Design means a Detailed Site Design which has been finalised in accordance with clause 10.6 of the RBI 2 Operations Manual.

First In WISP means the first WISP who, following a Site Notification in respect of an RBI 2 Site, submits a Site Application to the Access Provider for, and to whom the Access Provider subsequently agrees to grant, access to the Wholesale Tower Co-location Service at that RBI 2 Site in accordance with the terms of this Agreement.

Force Majeure Event has the meaning given in the STD General Terms.

Grant Funding means the grant funding provided by CIP to the Access Provider to fund all or part of the design and build by the Access Provider of the RBI 2 Towers.

Health and Safety Law means the Health and Safety at Work Act 2015, the Hazardous Substances and New Organisms Act 1996, the Building Act 2004, the Electricity Act 1992 and all related legislation, regulations, mandatory codes of conduct and standards, in each case as amended from time to time, and also includes all related and applicable New Zealand case law.

Indirect Damages has the meaning given in the STD General Terms, provided that the term "Mobile Co-location Terms" as used in that definition will be deemed to also include this Agreement.

Intellectual Property has the meaning given in the STD General Terms.

Landlord means the grantor of the relevant right of Relevant Occupation but, for the avoidance of doubt, does not include the Access Provider.

Month means a calendar month.

Network means, in relation to a Party, the telecommunication systems which that Party uses from time to time to provide services to its customers, including all transmission media, telecommunications equipment, operational support

systems, business support systems and associated equipment, structures and premises, but excluding the other Party's equipment, systems or premises.

Network Operator means a person declared to be a network operator for the purposes of providing a Telecommunications Service or Broadcasting pursuant to section 102 of the Act.

Non-Cellular Access Seeker means a WISP who wishes to obtain the Wholesale Tower Co-location Service from the Access Provider for an RBI 2 Site and who is not an "Access Seeker" in respect of the specified service "co-location on cellular mobile transmission sites" as defined in Part 3 of Schedule 1 of the Act.

Notice has the meaning given in clause 14.1 of this Agreement.

New Zealand RF Standard has the meaning given in clause 26.4.1 of the RBI 2 Operations Manual.

NOC means the Access Provider's or Registered WISP's (as applicable) network operations centre or equivalent facility.

Party means (as the context requires) the Access Provider or the Registered WISP and *Parties* means both the Access Provider and the Registered WISP.

Permit to Work means the Access Provider's permit to work procedure for working on the RBI 2 Sites.

Personnel means, in respect of a Party, any individual who is a director, officer, employee, contracted staff member or other worker of that Party, or of that Party's agents or contractors.

Project Closure Checklist has the meaning given in clause 13.2 of the RBI 2 Operations Manual.

Project Plan has the meaning given in clause 12.2 of the RBI 2 Operations Manual.

RBI 2 Agreement means the Network Infrastructure Project Agreement entered into between the Access Provider and CIP on 30 August 2017 (as may be amended from time to time).

RBI 2 Operations Manual means the RBI 2 Operations Manual attached as schedule 1 of this Agreement (as may be updated from time to time by the Access Provider).

RBI 2 Site or *Site* means the land or property on which the RBI 2 Tower is, or is going to be, located, and that is the subject of a Relevant Occupation by the Access Provider.

RBI 2 Tower or *Mast* means new Access Provider cell towers (including without limitation any relevant Building, Mast or Utility Service), where the construction of such towers is funded in whole or in part by Grant Funding received from CIP. To avoid doubt, an RBI 2 Tower specifically excludes, the Excluded Towers, any

Access Provider Equipment, any WISP Equipment and any equipment that is placed on such towers, or any associated cabinets or shelters, to allow the Registered WISP to use the Wholesale Tower Co-location Service, including:

- (a) the antenna and ancillary equipment;
- (b) antenna feeder cables and bridge section between (i) horizontal gantry provided by Access Provider and (ii) any associated cabinets or shelters; and
- (c) radio equipment and housings.

RCG Wholesale Web Portal means the Access Provider's online portal that the Registered WISP will receive access to on Commencement of this Agreement.

Rental Costs means any payments payable by the Access Provider under the Relevant Occupation for the RBI 2 Site, not covered by way of Grant Funding.

Relevant Facility has the meaning set out in the STD General Terms.

Relevant Occupation means a lease, sub-lease, sub-licence or other right to occupy or possess (which may arise, without limitation, as a result of ownership) by the Access Provider of any RBI 2 Site.

Retail Service Provider means any person who provides a Telecommunications Service (as that term is defined in the Act) to an End User.

RMA Consent means any consents and permissions reasonably required to enable the Access Provider and a First In WISP to install and maintain the Access Provider Equipment and the Standard Co-location Equipment respectively at the RBI 2 Site, under the Resource Management Act 1991, and all amendments.

Schedule of Site Specific Conditions means the document for each RBI 2 Site detailing the Charges for that RBI 2 Site and the interests of any third parties that will need to be considered by the Parties as part of the ongoing provision of the Wholesale Tower Co-location Service at the RBI 2 Site.

Site Acquisition Milestone means that the Access Provider has obtained an unconditional Relevant Occupation for the RBI 2 Site, and RMA consent has been obtained for the RBI 2 Tower on that RBI 2 Site.

Site Application means an application to receive the Wholesale Tower Co-location Service at an RBI 2 Site, which is submitted by the Registered WISP to the Access Provider in accordance with this Agreement.

Site Application Charge has the meaning set out in clause 1.1 of schedule 2 (RBI 2 Co-location Pricing) to this Agreement.

Site Integrated means in relation to an RBI 2 Tower, the Access Provider Equipment is integrated to the Access Provider's Network at that RBI 2 Site.

Site Notification means notification by the Access Provider to Registered WISPs and Access Seekers via the RCG Wholesale Web Portal that an RBI 2 Site has achieved the Site Acquisition Milestone.

Solar Power Solution means an RBI 2 Site that is not connected to a maintained electricity network, and instead is powered by solar.

Standard Co-location Equipment means an antenna or antennas of up to 0.4 square metre surface area in total, and associated radios with not more than 250 Watts AC power and 2U of equipment space.

STD means the *Standard Terms Determination for Co-location on Cellular Mobile Transmission Sites* issued under the Act, as updated or replaced from time to time.

STD General Terms means the *Mobile Co-location General Terms* forming part of the STD, as updated or replaced from time to time.

Telecommunications Service means a telecommunications service as defined in the Act.

Third Party Equipment means equipment of any third party (other than a WISP or Access Seeker) which the Access Provider permits to be located on an RBI 2 Site at which the Registered WISP receives the Wholesale Tower Co-location Service.

Third Party Event means any act or omission of a third party including CIP, and any WISP (other than the Registered WISP), Access Seeker or End User, in each case except to the extent that such act or omission has been caused by the Access Provider or its Personnel.

Utility Service means any utility service that the Access Provider will supply and maintain at the relevant RBI 2 Site in accordance with clause 18 of the RBI 2 Operations Manual.

Wholesale Tower Co-location Project Manager means the person who will liaise with the other Party in relation to the implementation and supply of the Wholesale Tower Co-location Service at the relevant RBI 2 Site, and each Party must nominate such a person. The full name and contact details for the Registered WISP's project manager must be supplied as part of the registration process on the RCG Wholesale Web Portal. The Access Provider will provide details for its nominated project manager to the Registered WISP following its successful registration. Each party shall provide reasonable notice of any changes to those persons or details from time to time.

Wholesale Tower Co-location Service means a service that enables the Registered WISP to locate its WISP Equipment on an RBI 2 Site in accordance with this Agreement.

Wholesale Tower Co-location Service Charges or *Charges* means all of the charges payable by the Registered WISP to the Access Provider pursuant to this Agreement in respect of the Wholesale Tower Co-location Service including,

without limitation, the Design & Build Process Charges and the Annual Co-location Charge as detailed in schedule 2 (RBI 2 Co-location Pricing).

Wholesale Tower Co-location Service Manager means the person responsible for the overall relationship between the Parties with respect to the Wholesale Tower Co-location Service, and each Party must nominate such a person. The full name and contact details for the Registered WISP's service manager must be supplied as part of the registration process on the RCG Wholesale Web Portal. The Access Provider will provide details for its nominated service manager to the Registered WISP following its successful registration. Each party shall provide reasonable notice of any changes to those persons or details from time to time.

WISP means a regional wireless internet service provider, which at the time of registration on the RCG Wholesale Web Portal already provides a wireless broadband retail service to rural End Users in a region (for example a WISP does not include a nation-wide Retail Service Provider) and which also does not just self-consume its services.

WISP Build means any works undertaken by or on behalf of the Registered WISP for the purpose of installing the WISP Equipment, in accordance with the terms and conditions of this Agreement including the RBI 2 Operations Manual.

WISP Equipment means any telecommunications, transmission and reception equipment (including any necessary supporting equipment, cabinets or shelters) used by, or which will be used by, the Registered WISP in connection with the Wholesale Tower Co-location Service at the RBI 2 Site. WISP Equipment will include, without limitation, the equipment of any person other than the Registered WISP where such equipment is being, or is to be, used to support the Registered WISP's Network, on the relevant RBI 2 Tower.

WISP Space means the physical space on or within the RBI 2 Site that is occupied, or which is to be occupied by the WISP Equipment.

Working Day has the same meaning as given to that expression in the Act.

1.2 **Construction**

In the construction of this Agreement, unless the context requires otherwise:

Application of the STD: where this Agreement specifies that a provision of the STD will apply as between the Parties, then any reference to the "Access Seeker" in the relevant provisions of the STD will be deemed to be a reference to the Registered WISP who is party to this Agreement (as applicable).

Clauses, Schedules and Appendices: except where this Agreement expressly provides otherwise, a reference to a clause or a schedule or an appendix is to a clause or schedule or appendix of this Agreement;

Currency: a reference to any monetary amount is to New Zealand currency;

Headings: headings appear as a matter of convenience and do not affect the construction of this Agreement;

Inclusions: a reference to “includes” is to “includes without limitation”, and references to “included” and “including” shall be construed accordingly;

No Contra Proferentem Construction: the rule of construction known as the contra proferentem rule does not apply to this Agreement;

Parties: a reference to a party to this Agreement or any other document includes that party’s personal representatives, successors and permitted assigns;

Person: a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporate;

Related Terms: where a word or expression is defined in this Agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

Schedules and Appendices: the schedules and appendices form part of this Agreement;

Sections: except where this Agreement expressly provides otherwise, a reference in a schedule or appendix to a section is a reference to a section in that schedule or appendix;

Singular, Plural and Gender: the singular includes the plural and vice versa, and words importing one gender include the other genders;

Statutes and Regulations: a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations; and

Writing: a reference to “written” or “in writing” includes all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.

1.3 **Order of Priority**

To the extent that there are any conflicts between the various parts of this Agreement and the STD, they will be read and applied in the following (descending) order of precedence:

- (a) the body of this Agreement;
- (b) the schedules and appendices to this Agreement; then
- (c) the STD.

2 **TERM**

This Agreement will take effect on the Commencement Date and will continue until terminated in accordance with its terms.

3 SITE APPLICATIONS AND SITE DESIGN & BUILD PROCESS

3.1 Site Applications

The Registered WISP may submit a Site Application in respect of an RBI 2 Site following Site Notification and in accordance with the RBI 2 Operations Manual.

3.2 Design & Build Process

Where the Registered WISP is the First In WISP in relation to a particular RBI 2 Site, it will have the opportunity to participate in the Design & Build Process for that RBI 2 Site in accordance with the terms and processes outlined in this Agreement and the RBI 2 Operations Manual.

The Access Provider may, at its discretion, allow other WISPs who have submitted a Site Application for the same RBI 2 Site to participate in the Design & Build Process for that RBI 2 Site, in accordance with clause 10.2.7 of the RBI 2 Operations Manual. Clause 10.2 of the RBI 2 Operations Manual sets out various circumstances in which the Access Provider may reject Site Applications received from WISPs, and details options available to WISPs in the event that this occurs.

If the Access Provider does permit other WISPs, beyond the First In WISP, to participate in the Design & Build Process for an RBI 2 Site then this will be in accordance with the terms and processes outlined in this Agreement and the RBI 2 Operations Manual.

3.3 Non-Cellular Access Seekers

If the Registered WISP is a Non-Cellular Access Seeker, then it will also be subject to the Additional Requirements in relation to undertaking the Design & Build Process.

4 PROVISION OF THE WHOLESALE TOWER CO-LOCATION SERVICE

4.1 Access Provider to provide Wholesale Tower Co-location Service

- (a) Subject to sub-clauses (b) and (c) below, the Access Provider will make the Wholesale Tower Co-location Service available to the Registered WISP at RBI 2 Sites where Site Applications have been accepted by the Access Provider and otherwise in accordance with the terms of this Agreement.
- (b) The Wholesale Tower Co-location Service will only be available at a particular RBI 2 Site once the Design & Build Process is complete and its RBI 2 Tower is Site Integrated.
- (c) Once an RBI 2 Tower is Site Integrated it becomes a "Relevant Facility" as defined in the STD General Terms at which time, subject to clause 4.2 below and save as otherwise expressly provided in this Agreement, the Access Provider will make the Wholesale Tower Co-location Service available to the Registered WISP in accordance with the STD and the pricing provisions of this Agreement.
- (d) In the event that the STD expires or is superseded, then the Access Provider will continue to make the Wholesale Tower Co-location Service at a

particular RBI 2 Site available to the Registered WISP in accordance with the superseded non-price terms or in accordance with the non-price STD terms as they stood immediately prior to expiry, at the option of the Access Provider.

- (e) Each Party (including any Non-Cellular Access Seeker) will comply with, and will procure that its Personnel comply with, the terms of the Relevant Occupation (as notified by the Access Provider to the Registered WISP) for any RBI 2 Sites in respect of which the Registered WISP receives the Wholesale Tower Co-location Service. Each Party (the **Indemnifying Party**) will indemnify and hold harmless the other Party (the **Indemnified Party**) from and against any and all claims, proceedings, liabilities, losses, costs, damages and expenses (including court and legal costs) that may be suffered or incurred by the Indemnified Party arising out of or in connection with:
 - (i) where the Access Provider is the Indemnifying Party, any breach of the Relevant Occupation by the Indemnifying Party or its Personnel; or
 - (ii) where the Registered WISP (including any Non-Cellular Access Seeker) is the Indemnifying Party, any act or omission by the Registered WISP or its Personnel which causes the Access Provider to breach the Relevant Occupation.

4.2 **Non-Cellular Access Seekers**

If the Registered WISP is a Non-Cellular Access Seeker, then, save as otherwise expressly provided in this Agreement, the Access Provider will make the Wholesale Tower Co-location Service available to the Registered WISP in accordance with the STD (but subject to the Additional Requirements) and the pricing provisions of this Agreement.

5 **WHOLESALE TOWER CO-LOCATION SERVICE CHARGES AND PAYMENT**

5.1 **Design & Build Process Charges**

Where the Access Provider permits the Registered WISP to participate in the Design & Build Process for an RBI 2 Site, the Registered WISP will be liable to pay the Design & Build Process Charges to the Access Provider in accordance with this clause 5, schedule 2 (RBI 2 Co-location Pricing) of this Agreement and the RBI 2 Operations Manual.

5.2 **Annual Co-location Charge**

The Registered WISP will become liable to pay the Annual Co-location Charge in relation to a particular RBI 2 Site to the Access Provider with effect from the earlier of:

- (a) the date when the Registered WISP receives the Final Detailed Site Design in accordance with clause 10.6.3(a) of the RBI 2 Operations Manual; and

- (b) the date when the Registered WISP notifies the Access Provider that it commits to receive the Wholesale Tower Co-location Service at the relevant RBI 2 Site in accordance with clause 10.6.3(b) of the RBI 2 Operations Manual,

and will remain liable to pay the Annual Co-location Charges for so long as it continues to obtain the Wholesale Tower Co-location Service at that RBI 2 Site.

5.3 **Variation of Charges**

The Charges may be varied by the Access Provider upon no less than 30 days' written notice to the Registered WISP, but the Charges must continue to reflect the pricing principles detailed in clause 5.4 below.

5.4 **Pricing Principles**

In determining the Charges the Access Provider may, amongst other things, take into account:

- (a) any up-front fee, for example to cover administration, feasibility design and project establishment, that does not exceed \$500 + GST* (* assumes Site Application is for Standard Co-location Equipment);
- (b) reasonable installation charges (including labour and material that is not funded by way of Grant Funding);
- (c) any excess land units acquired for the purpose of providing the Wholesale Tower Co-location Service that have not been funded by way of Grant Funding; and
- (d) a reasonable contribution to the on-going operational fees at the RBI 2 Site to cover power and maintenance.

Note: this is not an exhaustive list.

5.5 **Rental Costs**

Rental Costs will not form part of the Charges for RBI 2 Sites for a period of ten (10) years from the date of the signed Relevant Occupation for the relevant RBI 2 Site. At the conclusion of that period the Access Provider may undertake a review of the Charges for the relevant RBI 2 Site, and at its discretion increase the Annual Co-location Charge to include a share of the Rental Costs.

5.6 **Parties to comply with STD payment provisions**

Except where this Agreement provides otherwise, the Parties will comply with the following provisions of the STD General Terms with respect to all Charges, payment, non-payment and invoice disputes arising under or in connection with this Agreement:

- (a) Clause 12 (Payment Principles);
- (b) Clause 13 (Invoicing and payment of Charges);
- (c) Clause 14 (Non-payment); and

(d) Clause 15 (Invoice Disputes).

Notwithstanding the above sub-clause (b), the Access Provider's payment processes and requirements may include the Registered WISP paying Charges by way of credit cards.

6 CONFIDENTIAL INFORMATION

6.1 Parties to comply with STD

Except where this Agreement expressly provides otherwise, the Parties will comply with clause 30 (Confidential Information) of the STD General Terms with respect to the disclosure of Confidential Information by either Party. Notwithstanding the foregoing, the Access Provider may publish this Agreement (or information related to it) to the extent required by the Crown, CIP or otherwise pursuant to its Deed of Undertaking.

7 INTELLECTUAL PROPERTY

7.1 Ownership

Except where this Agreement expressly provides otherwise, any Intellectual Property created or owned by the Access Provider shall remain the property of the Access Provider, and any Intellectual Property created or owned by the Registered WISP shall remain the property of the Registered WISP. Nothing in this Agreement:

- (a) confers any assignment, right, title or licence of one Party's Intellectual Property to the other; or
- (b) restricts the rights of either Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property.

7.2 Parties to comply with STD

Notwithstanding any other provision in this Agreement, the Parties will comply with clause 28 (Intellectual Property) of the STD General Terms in relation to any Intellectual Property matters arising under or in relation to this Agreement.

7.3 Jointly Developed Intellectual Property

The Parties may from time to time discuss and agree formal terms upon which they will jointly develop Intellectual Property under or in relation to this Agreement, such terms to clarify ownership of, and rights to use, any such jointly developed Intellectual Property.

8 REGISTERED WISP'S LIABILITY

- 8.1 Save as otherwise expressly provided in this clause 8 or clause 17 or, where the context requires, in the Additional Requirements, the Registered WISP's liability to the Access Provider in respect of any and all Defaults, negligent acts or omissions or breaches of statutory duty of or by the Registered WISP

or its Personnel under or in relation to this Agreement is governed by clause 16 (Access Seeker's liability) of the STD General Terms, provided that:

- (a) the terms "*Defaults*" and "*Indirect Damages*" as used in that clause 16 shall each have the meaning given in this Agreement;
- (b) the term "*Mobile Co-location Service*" as used in that clause 16 shall be replaced with "*the Design & Build Process or the provision of the Wholesale Tower Co-location Service*" and those terms shall each have the meaning given in this Agreement;
- (c) the term "*Mobile Co-location Terms*" as used in that clause 16 shall be deemed to also include this Agreement; and
- (d) the term "*Other Service Providers*" as referenced in clauses 16.6 to 16.9 (inclusive) of the STD General Terms, will be deemed to include other WISPs or Access Seekers or other third parties with Third Party Equipment on the same RBI 2 Tower or RBI 2 Site who make any action, proceeding, claim or demand against the Access Provider in relation an RBI 2 Site.

8.2 **Costs of recovering Charges**

The reference to Charges in clause 16.5 of the STD General Terms will also include any Charges the Registered WISP is liable to pay under this Agreement.

9 **ACCESS PROVIDER'S LIABILITY**

9.1 **Limitation of Access Provider's liability**

Save as otherwise expressly provided in this clause 9 or 17 (General Indemnities) or, where the context requires, in the Additional Requirements, the Access Provider's liability to the Registered WISP in respect of any and all Defaults, negligent acts or omissions or breaches of statutory duty of or by the Access Provider under or in relation to this Agreement is governed by clause 17 (Access Provider's liability) of the STD General Terms, provided that:

- (a) the terms "*Defaults*" and "*Indirect Damages*" as used in that clause 17 shall each have the meaning given in this Agreement;
- (b) the term "*Mobile Co-location Service*" as used in that clause 17 shall be replaced with "*the Design & Build Process or the provision of the RBI 2 Co-location Service*" and those terms shall each have the meaning given in this Agreement; and
- (c) the term "*Mobile Co-location Terms*" as used in that clause 17 shall be deemed to also include this Agreement.

10 **INSURANCE**

10.1 **Registered WISP's Insurance Obligations**

Save as otherwise provided, where the context requires, in the Additional Requirements, the Registered WISP must, at its own expense, obtain and maintain insurance during the term of this Agreement in accordance with clause 6.6 of the STD General Terms.

10.2 **Access Provider's Insurance Obligations**

The Access Provider must, at its own expense, obtain and maintain insurance during the term of this Agreement consistent with prudent commercial practice having regard to the scope and nature of the liabilities assumed by the Access Provider under the terms of this Agreement.

11 **TERMINATION**

11.1 **Rights of termination**

Neither Party will have any right to terminate or cancel this Agreement except as expressly set out in this Agreement or, as the context may require, the STD General Terms.

11.2 **Termination of CIP Agreement**

The Access Provider may terminate this Agreement or certain Wholesale Tower Co-location Services provided by the Access Provider under or in connection with this Agreement (at the Access Provider's sole discretion) with immediate effect by giving notice to the Registered WISP, if the CIP Agreement is terminated. In the event of such termination, the Access Provider will make a pro rata refund to the Registered WISP of any Annual Co-location Charge paid in advance for the impacted Wholesale Tower Co-location Service(s) but only if and to the extent such service has not been received by the Registered WISP as at the effective date of termination of this Agreement. For the avoidance of doubt there will be no refund (partial or otherwise) of any Design & Build Process Charges in the event of such termination.

11.3 **RBI 2 Site Relocation**

Under the RBI 2 Agreement, the Access Provider may in certain circumstances move an RBI 2 Site to an alternative site, which will deliver similar coverage outcomes in the same approximate geographic area (**Alternative Site**). By way of example only, this could be due to higher than anticipated build costs, or technical or other reasons. This could potentially include the relocation of an already notified RBI 2 Site in respect of which the Registered WISP has already submitted a Site Application to receive the Wholesale Tower Co-location Service.

In the event that the Access Provider does relocate to an Alternative Site, the Access Provider will promptly notify the Registered WISP if impacted and the Registered WISP will be given the opportunity to retain its status at the Alternative Site (i.e. First In WISP or other status), and it will not be charged an additional Site Application Charge for the Alternative Site, in each case provided the Registered WISP confirms it wishes to do so in writing to the Access Provider within 5 Working Days of receipt of the Access Provider's notice.

If the Registered WISP does not respond within this time period, the Access Provider will complete Site Notification of the new Alternative Site and the Access Provider cannot guarantee that the Registered WISP will continue to be able to receive the Wholesale Tower Co-location Service at that RBI 2 Site. If the Registered WISP advises the Access Provider that it does not wish to proceed with the Alternative Site, or fails to respond in time, then the Registered WISP's Site Application will terminate and it will not be entitled to a refund of any Charges incurred to that point in time. The Registered WISP will have no other rights, redress or claims against the Access Provider, or any related party of the Access Provider or CIP under this Agreement or otherwise at law in respect of such Alternative Site.

11.4 **Access Provider may not proceed with an RBI 2 Site**

Under the RBI 2 Agreement, the Access Provider may in certain circumstances, and with CIP's prior agreement, elect not to proceed with an RBI 2 Site, which has already been notified to WISPs and Access Seekers and in respect of which a First In WISP has already been determined (and possibly other WISP or Access Seeker Site Applications previously accepted by the Access Provider) and the Access Provider has also determined that there is no viable Alternative Site (**Abandoned Site**). By way of example only, an Abandoned Site could result from higher than anticipated build costs, or technical or other reasons. In the event of an Abandoned Site, the Access Provider will refund any Charges already paid by a First In WISP (or other WISP or Access Seeker) to the Access Provider in relation to that particular RBI 2 Site and the First In WISP, along with any impacted WISP or Access Seeker, will have no other rights, redress or claims against the Access Provider, or any related party of the Access Provider or CIP under this Agreement or otherwise at law in respect of such Abandoned Site.

11.5 **Surviving rights and obligations**

The cancellation, termination or expiry of all or any part of this Agreement shall be without prejudice to the rights of the Parties accrued up to the date of such cancellation, termination or expiry. In any case, clauses 6, 7, 8, 9, 11.3, 11.4, 13, 16, 17 and 18.12 shall continue indefinitely notwithstanding any cancellation, termination or expiry of this Agreement.

12 **FORCE MAJEURE**

12.1 **Parties to comply with STD**

Except where this Agreement expressly provides otherwise, the Parties will comply with clause 19 (Force Majeure) of the STD General Terms with respect to any Force Majeure Event which prevents or restricts either Party's ability to perform its obligations under this Agreement.

13 **DISPUTE RESOLUTION**

13.1 **Parties to comply with STD**

In the event of any dispute, difference or question arising out of or in connection with this Agreement or its formation (a **Dispute**), then, save as otherwise expressly provided in this Agreement, the Parties must comply with the dispute

resolution procedure set out in clause 35 (Dispute Resolution) of the STD General Terms.

14 **NOTICES**

14.1 **Parties to comply with STD**

Subject to clause 14.2 below and save as otherwise expressly provided in this Agreement, any notice, consent, approval, agreement, undertaking, report or other communication given by a Party for the purposes this Agreement (a **Notice**) will be given by that Party in compliance with clause 42 (Notices) of the STD General Terms.

14.2 **Formal Notices**

Any notice of a Dispute or termination notice given by a Party must, in addition to complying with clause 14.1 above, be delivered in writing to the Wholesale Tower Co-location Service Manager, using the contact details supplied by the WISP during the registration process and by the Access Provider via the RCG Wholesale Web Portal.

15 **OTHER REGISTERED WISP COMMITMENTS**

15.1 Each Party will, and will procure that its Personnel, take all reasonable care, while accessing any RBI 2 Site during the Design & Build Process, not to cause any damage, harm or interruption to:

- (a) the RBI 2 Site;
- (b) any Access Provider Equipment or Access Seeker Equipment or Third Party Equipment at the RBI 2 Site;
- (c) other personnel at the RBI 2 Site; and
- (d) any access track leading to the RBI 2 Site and any other land, fencing, equipment or stock, in each case on or neighbouring the RBI 2 Site and whether or not owned by the Access Provider.

15.2 The Registered WISP will comply with, and will procure that its Personnel comply with, the terms of the Relevant Occupation for any RBI 2 Site which the Registered WISP or its Personnel access during the Design & Build Process, subject to the Access Provider giving the Registered WISP a copy of such Relevant Occupation.

16 **HEALTH AND SAFETY**

16.1 **Compliance with law and STD**

Each Party must, in relation to the performance of their respective obligations under the Agreement, comply, and ensure that its Personnel comply, with all material and relevant Health and Safety Law and its respective obligations under clause 36 (Health and Safety) of the STD General Terms.

16.2 Indemnity

To the fullest extent permitted by the Health and Safety Law, each Party (**Indemnifying Party**) shall indemnify and hold harmless the other Party against any and all claims, proceedings, liabilities, losses, costs, damages and expenses (including court and legal costs) that may be suffered or incurred by that other Party arising out of or in connection with this Agreement as a result of any breach of any Health and Safety Law by the Indemnifying Party or its Personnel, or any breach of clause 16.1 by the Indemnifying Party or its Personnel, in either case that results in the other Party either being in breach of any Health and Safety Law or being the subject of any claim or proceedings by any third party against or involving the other Party.

17 GENERAL INDEMNITIES

17.1 Public Liability

- (a) Each Party will indemnify and hold harmless the other Party from and against any and all claims, proceedings, liabilities, losses, costs, damages and expenses (including court and legal costs) that may be suffered or incurred by that other Party arising out of or in connection with any physical damage to that other Party's tangible property, or any claim brought by a third party against that other Party for any physical damage to that third party's tangible property, or any personal injury or death, in each such case caused by the activities of the first Party or its Personnel under or in connection with the Design & Build Process (**Public Liability Claim**).
- (b) Where a Party (**Indemnified Party**) seeks to be indemnified under this clause 17.1 in respect of any Public Liability Claim, other than a claim in respect of physical damage to the Indemnified Party's tangible property:
 - (i) the Indemnified Party must notify the other Party (**Indemnifying Party**) as soon as reasonably practicable after becoming aware of the Public Liability Claim, setting out reasonable details of the Public Liability Claim and claiming indemnification under this clause 17.1;
 - (ii) the Indemnifying Party may elect to defend the Public Liability Claim at its own cost, in which case:
 - (A) the Indemnified Party must render all reasonable assistance to, and co-operate with, the Indemnifying Party for that purpose, at the Indemnifying Party's cost; but
 - (B) the Indemnifying Party will not admit liability or settle the Public Liability Claim without the Indemnified Party's prior consent (not to be unreasonably withheld or delayed).

17.2 Compliance with Relevant Occupation

- (a) Each Party (the **Indemnifying Party**) will indemnify and hold harmless the other Party (the **Indemnified Party**) from and against any and all claims, proceedings, liabilities, losses, costs, damages and expenses (including court and legal costs) that may be suffered or incurred by the Indemnified Party arising out of or in connection with:

- (i) where the Access Provider is the Indemnifying Party, any breach of the Relevant Occupation by the Indemnifying Party or its Personnel during the Design & Build Process; or
 - (ii) where the Registered WISP (including any Non-Cellular Access Seeker) is the Indemnifying Party, any act or omission by the Registered WISP or its Personnel which causes the Access Provider to breach the Relevant Occupation during the Design & Build Process subject to the Access Provider giving the Registered WISP a copy of such Relevant Occupation.
- (b) Once an RBI 2 Tower is Site Integrated and becomes a Relevant Facility then the Parties' respective liability in terms of compliance with the Relevant Occupation is as set out in the STD.

18 GENERAL

18.1 Mutual warranties

As at the date of this Agreement, each Party represents to the other that, subject to any express provision to the contrary in this Agreement:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement;
- (b) there is no other agreement, arrangement, understanding or requirement binding on it, that would prevent or impede its entry into or performance of this Agreement; and
- (c) the performance of its obligations under this Agreement shall not result in the breach of any statute or regulation.

18.2 Further assurances

Each Party agrees to execute and deliver any documents and to do all things as may reasonably be required by the other Party to obtain the full benefit of this Agreement according to its true intent.

18.3 No reliance

Each Party undertakes that in entering into this Agreement it has relied only on the warranties and representations expressly set out in this Agreement, and otherwise has relied solely on its own knowledge, experience and judgement in respect of all other matters influencing its entry into this Agreement.

18.4 Entire agreement

This Agreement constitutes the sole and entire understanding between the Parties with respect to the subject matter hereof and supersede all prior discussions, representations and understandings, written or oral.

18.5 Costs

Each Party will meet its own legal, accounting and other professional and advisory costs and expenses incurred in relation to the negotiation, preparation and

execution of this Agreement and any future amendments to it. Each Party will meet its own costs in performing its obligations under this Agreement, except to the extent this Agreement expressly provides otherwise, or where the Parties expressly agree otherwise.

18.6 Legal nature of relationship

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to or will imply or be construed as a fiduciary obligation, or create a legal relationship of partnership or joint venture, or give either Party any right to act on behalf of or bind the other Party in any way, except as expressly permitted by this Agreement.

18.7 Privity

This Agreement is not intended to confer any benefit on or create any obligation enforceable at the suit of any person not a party to this Agreement, except where this Agreement expressly provides otherwise.

18.8 No waiver

No failure, delay or indulgence by any Party in exercising any power or right conferred on that Party by this Agreement shall operate as a waiver of that power or right. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights under this Agreement.

18.9 Consistency of agreements

The Access Provider will ensure that its equivalent agreements with other WISPS wishing to participate in the Design & Build Process and obtain the Wholesale Tower Co-location Service on any RBI 2 Towers will not differ materially from the terms of this Agreement.

18.10 Amendments

The Access Provider may from time to time amend the terms of this Agreement (including changes to the RBI 2 Operations Manual) and those updated terms will be deemed to be binding on the Registered WISP from the date of notification of the updated terms to the Registered WISP. Any such amended terms will continue to be subject to the Deed of Undertaking.

18.11 Invalidity

Any unlawful provision of this Agreement will be amended to the minimum extent necessary to ensure that it is not unlawful and, as far as is possible, to ensure that it is consistent with the intent and effect of the provision. The remaining provisions will be enforceable as if such unlawful provision had not been included in this Agreement. If the provision is unable to be amended without materially altering the intent and effect of the provision, it will be severed, and the remaining provisions enforceable, but only if the severance does not frustrate this Agreement.

18.12 Law and jurisdiction

This Agreement will be governed by, and construed in accordance with, the laws of New Zealand. Where the courts are to have jurisdiction under this Agreement the courts of New Zealand will have exclusive jurisdiction.

18.13 **Counterparts**

This Agreement may be executed in any number of counterparts (including facsimile or scanned and emailed copies). So long as each Party has received a counterpart or counterparts carrying the signatures of the other Party, the counterparts together shall constitute a binding and enforceable agreement between the Parties.

Schedule 1 – RBI 2 OPERATIONS MANUAL

Schedule 2 – RBI 2 CO-LOCATION PRICING

The Registered WISP will be liable to pay to the Access Provider the Charges set out in this Schedule in accordance with the Agreement (including this schedule and the RBI 2 Operations Manual).

DEFINITIONS & INTERPRETATION:

Annual Co-location Charge means the annual charge detailed below in this Schedule 2 (RBI 2 Co-location Pricing) and payable by the Registered WISP for the Wholesale Tower Co-location Service received in relation to an RBI 2 Site in accordance with this Agreement and the RBI 2 Operations Manual.

Design & Build Process Charges means the Design & Build Process Charges detailed below in this Schedule 2 (RBI 2 Co-location Pricing) and payable by the Registered WISP if it participates in the Design & Build Process for any RBI 2 Site in accordance with this Agreement and the RBI 2 Operations Manual.

Wholesale Tower Co-location Service Charges or Charges means all of the charges payable by the Registered WISP to the Access Provider pursuant to this Agreement in respect of the Wholesale Tower Co-location Service including, without limitation, the Design & Build Process Charges and the Annual Co-location Charge as detailed in this schedule 2 (RBI 2 Co-location Pricing).

All Charges set out in this Schedule are GST exclusive.

All Charges are subject to annual review and, where applicable, increase in accordance with the percentage increase in Consumer Price Index (All Groups) for the corresponding period published by Statistics New Zealand or other applicable Government agency. To avoid doubt, a CPI adjustment will not be made more frequently than annually during the term of the Agreement. Any such increase will take effect on the first day of the relevant Year. The Access Provider will notify the Registered WISP of any required increase, and provide supporting calculations.

DESIGN & BUILD PROCESS CHARGES

1. Site Application Charge

- 1.1 On confirmation of acceptance by the Access Provider of the Registered WISP's Site Application, the Access Provider will charge the Registered WISP and the Registered WISP will be liable to pay a standard Site Application charge of \$500 (**Site Application Charge**), which encompasses amongst other things costs associated with processing and reviewing the Site Application and site design activities. This remains subject to clauses 1.2 and 1.3 below.
- 1.2 The Access Provider reserves the right to increase any of the Wholesale Tower Co-location Service Charges for a Site Application that includes a request for Additional Equipment.
- 1.3 The Access Provider will notify the Registered WISP of any increase to the above Site Application Charge where the Registered WISP's Site Application includes a

request for Additional Equipment. The Registered WISP must pay such increased Site Application Charge before the Access Provider will produce a Detailed Site Design.

2. **Incremental Capital Costs**

- 2.1 During preparation of the Detailed Site Design, the Access Provider will confirm to the Registered WISP any additional incremental capital costs associated with Additional Equipment requested within a Site Application (**Incremental Capital Costs**). The Registered WISP must agree in writing to pay such Incremental Capital Costs before the Access Provider will produce a Final Detailed Site Design. The Access Provider will charge the Registered WISP and the Registered WISP will be liable to pay those additional costs on completion of the Final Detailed Site Design.

ANNUAL CO-LOCATION CHARGE

3. **Annual Co-location Charge**

- 3.1 The standard Annual Co-location Charge for each RBI 2 Site will be \$1,275 per annum, provided that this assumes the Registered WISP's Site Application does not exceed the Standard Co-location Equipment parameters (i.e., there is no Additional Equipment requested), and that the Registered WISP is the First In WISP.
- 3.2 The Access Provider will notify the First In WISP of any uplift to the above Annual Co-location Charge where the First In WISP's Site Application includes a request for Additional Equipment. The First In WISP must agree in writing to pay such increased Charges before the Access Provider will produce a Detailed Site Design.
- 3.3 If the Registered WISP is not the First In WISP or requests access to the Wholesale Tower Co-location Service in accordance with the STD following construction and Site Integration of the RBI 2 Site, the Access Provider will notify the Registered WISP of the Annual Co-location Charge applicable to it. The Annual Co-location Charge will be set in accordance with the pricing principles detailed in clause 5.4 of the Agreement.
- 3.4 The Annual Co-location Charge is subject to adjustment as provided for in clause 6 of this Schedule.

Inclusions

- 3.5 The Annual Co-location Charge includes (amongst other things):
- (a) Site, Mast and Utility Service repairs and maintenance but excludes any cabinet /shelter work;
 - (b) access track maintenance, vegetation control and fencing and gate maintenance but excludes major road works, major vegetation control and work on concrete pads;

- (c) structural compliance but excludes major Mast maintenance; and
- (d) managing the relationship between the Landlord and the Access Provider, including:
 - i. requesting an invoice from the Landlord for the Rental Costs and setting up banking requirements for the ongoing monthly payments to the Landlord; and
 - ii. attending to any reviews (including of Rental Costs) and renewals, as may be provided for under the Relevant Occupation.

Exclusions

- 3.6 The Access Provider will provide the First In WISP with 2U of space at each RBI 2 Site. Any second or subsequent Registered WISP or an Access Seeker that the Access Provider grants access to an RBI 2 Site will be responsible for providing equipment housing for its associated radios at the RBI 2 Site at its own cost.
- 3.7 The Access Provider will provide the First In WISP with 250 watts of power, charged at a flat rate and included in the Annual Co-location Charge of \$1,275 per annum. Any second or subsequent Registered WISP or an Access Seeker that the Access Provider grants access to an RBI 2 Site will be advised of the charge applicable for power usage, and may be required to arrange a separate meter in accordance with the STD.
- 3.8 The Annual Co-location Charge allows for planned maintenance only and excludes Force Majeure Events. For Force Majeure Events repair costs will be shared between the Access Provider and the Registered WISP and any Access Seekers co-located on the particular RBI 2 Site at the time of the event, as reasonably determined by the Access Provider.
- 3.9 Costs associated with high Voltage Power line maintenance, including the cost to fix any fault, replacement of transformers, poles, cross arms, insulators and vegetation control immediately under the High Voltage line are excluded from the Annual Co-location Charge. The Access Provider may (at its discretion) charge the Registered WISP a reasonable pro rata share of any such costs incurred.

4. WISP Space

- 4.1 Where work must be undertaken on or around the RBI 2 Site for the purpose of resolving a fault outside of any WISP Space and where the fault is the responsibility of the Registered WISP, the Access Provider will decide whether the fault is repaired by the Access Provider or by the Registered WISP. Where the Access Provider repairs the fault, the Registered WISP must pay the Access Provider's actual reasonable costs incurred to fix the fault.

5. **Other Costs associated with installation of WISP Equipment**

- 5.1 The Charges do not include charges associated with the installation of WISP Equipment (including labour and material that is not funded by way of Grant Funding). The Registered WISP will be responsible for the installation of its WISP Equipment and will be required to pay for any labour and materials and any other costs associated with such installation. If the Registered WISP wants the Access Provider to supply an accredited rigger or other accredited contractor to assist with installation of its WISP Equipment then the Access Provider will charge the Registered WISP for all associated costs.
- 5.2 The Charges do not include costs associated with the Access Provider arranging the Registered WISP's power connection to the RBI 2 Site. The Access Provider may recover its reasonable costs of arranging the power connection from the Registered WISP.

6. **Annual Co-location Charge Review**

- 6.1 Prior to each anniversary of the Commencement Date (in each case an **Annual Co-location Charge Renewal Date**), the Access Provider may undertake a review of the current Annual Co-location Charge as against its expected costs for the following 2 year period (a **Co-location Charge Review**). Following each such Co-location Charge Review (and no less than 40 Working Days prior to the relevant Annual Co-location Charge Renewal Date) the Access Provider will give notice to the Registered WISP, (in each such case the **Co-location Charge Review Notice**) confirming the new Annual Co-location Charge that the Access Provider has determined will apply with effect from the relevant Annual Co-location Charge Renewal Date and attaching a summary of the Co-location Charge Review (such summary to include reasonable supporting information).

Schedule 3 - ADDITIONAL REQUIREMENTS

Part A: Non-Cellular Access Seeker Liability to Access Provider

If the Registered WISP is a Non-Cellular Access Seeker then, notwithstanding clauses 8 (Registered WISP's Liability) and 17 (General Indemnities) of the Agreement, the Registered WISP's total liability to the Access Provider in respect of any and all Defaults, negligent acts or omissions or breaches of statutory duty of or by the Registered WISP or its Personnel under or in relation to this Agreement is limited to:

- \$100,000 for a single event; and
- \$500,000 in aggregate for all events (connected or unconnected) occurring in any Year,

provided that these limitations are subject to:

- the same exceptions set out in clause 16.4 (Exceptions to the limitation and exclusion of the Registered WISP's liability) of the STD General Terms; and
- the exclusion of liability set out in clause 16.2 of the STD General Terms.

Part B: Access Provider Liability to Non-Cellular Access Seeker

If the Registered WISP is a Non-Cellular Access Seeker then, notwithstanding clause 9 (Access Provider's Liability) and 17 (General Indemnities) of the Agreement, the Access Provider's total liability to the Registered WISP in respect of any and all Defaults, negligent acts or omissions or breaches of statutory duty of or by the Access Provider or its Personnel under or in relation to this Agreement is limited to:

- \$100,000 for a single event; and
- \$500,000 in aggregate for all events (connected or unconnected) occurring in any Year,

provided that these limitations are subject to:

- the same exceptions set out in clause 17.4 (Exceptions to the limitation and exclusion of the Access Provider's liability) of the STD General Terms; and
- the exclusion of liability set out in clause 17.2 of the STD General Terms.

Part C: Non-Cellular Access Seeker's Insurance Obligations

Notwithstanding any other provision of this Agreement and the STD, if the Registered WISP is a Non-Cellular Access Seeker, it must, at its own expense, obtain and maintain in place during the term of the Agreement a policy or policies of insurance which:

- cover the Registered WISP in respect of any liability to the Access Provider arising out of or in connection with the performance of the Registered WISP's

obligations under the Agreement and the STD (as it applies under this Agreement);

- are for a sum insured of not less than \$100,000 for any one claim;
- are for an aggregate sum insured of not less than \$500,000 in aggregate for all claims (connected or unconnected) occurring in any Year;
- are provided by an insurer or insurers acceptable to the Access Provider (acting reasonably); and
- are governed by New Zealand law and subject to New Zealand jurisdiction.

The Registered WISP must provide copies of the relevant insurance policies and certificates to the Access Provider within 15 Working Days of the Commencement Date and promptly following each annual renewal date of those policies during the term of the Agreement.

Save as otherwise agreed by the Parties, this is the full extent of the Registered WISP's insurance obligations to the Access Provider under the Agreement.

Note: This Part C is not intended to relieve the Registered WISP from its insurance obligations with respect to covering its potential liability to other WISPs, Access Seekers or "Other Service Providers" under the STD (but as qualified in clause 8.1 of the Agreement).

Part D: Other Variations to the STD for Non-Cellular Access Seekers

If the Registered WISP is a Non-Cellular Access Seeker then, once an RBI 2 Tower at an RBI 2 Site is Site Integrated, the Access Provider will make the Wholesale Tower Co-location Service available to the Registered WISP on that particular RBI 2 Tower in accordance with the STD subject to the following amendments:

- Definitions: references to Mobile Co-location Service in the STD will be deemed to be a reference to the Wholesale Tower Co-location Service.
- STD General Terms: there is no "Mobile Co-location Implementation Plan" or "Implementation Plan" in the context of the provision of Wholesale Tower Co-location Service.
- STD General Terms: Clause 6.2 of the STD General Terms (Security Requirements) will apply at the discretion of the Access Provider such that, with effect from the Commencement Date, the Registered WISP will satisfy the security requirements on request by the Access Provider.
- STD Schedule 1 (Service Description) – Section 6 (Service Levels) will not apply in relation to the provision of the Wholesale Tower Co-location Service to any WISP that is a Non-Cellular Access Seeker.

- STD Schedule 3 (Operations Manual) - Part 2 Forecasting, Section (8 Access Seeker Forecasting) will not apply in its entirety in relation to the provision of the Wholesale Tower Co-location Service to any WISP that is a Non-Cellular Access Seeker.
- STD Schedule 3 (Operations Manual) - Appendix C (Forecasting) will not apply in relation to the provision of the Wholesale Tower Co-location Service to any WISP that is a Non-Cellular Access Seeker.
- STD Schedule 2 (Service Level Terms) will not apply to the provision of the Wholesale Tower Co-location Service to any WISP that is a Non-Cellular Access Seeker unless otherwise agreed in writing between Access Provider and the WISP. The Access Provider and the WISP may agree alternative service level metrics to use as performance KPIs for particular projects. Notwithstanding any of the above, or any contrary provision in the Agreement, the Access Provider will have no liability whatsoever (including without limitation any liability for performance penalties) to the WISP for a breach of any agreed service levels in relation to the provision of the Wholesale Tower Co-location Service.

The STD, including an up to date version of those parts of the STD General Terms which may be changed, are available from the Commerce Commission website, being: www.comcom.govt.nz