



COMMERCE COMMISSION

**STANDARD TERMS DETERMINATION FOR  
TELECOM'S SUB-LOOP UNBUNDLED  
COPPER LOCAL LOOP NETWORK  
SERVICES**

**SERVICE APPENDIX 2, SCHEDULE 5  
SUB-LOOP CO-LOCATION ACCESS TERMS**

**PUBLIC VERSION**

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## **SUB-LOOP CO-LOCATION ACCESS TERMS**

### **1 DEFINITIONS**

1.1 Except where expressly provided otherwise, in the Sub-loop Co-location Access Terms:

**HDP** means the handover distribution point on the Distribution Cabinet DF.

**HSE Act** means the Health and Safety in Employment Act 1992.

**Invitee** includes any employee, agent, contractor, subcontractor or visitor.

**Permitted Use** means:

- (a) operating and installing, maintaining, repairing, altering, removing and/or replacing the Access Seeker Equipment; or
- (b) having installed, maintained, altered, removed and/or replaced any tie cables connecting the Access Seeker Equipment to the HDP block(s) or a network fibre cable for backhaul,

exclusively for the purpose of access to, and interconnection with, the Sub-loop Network pursuant to the Sub-loop Services.

1.2 Clause 1.1 sets out definitions for terms used in the Sub-loop Co-location Access Terms that are not defined in the Sub-loop Services General Terms and/or the Sub-loop Co-location Operations Manual, otherwise, the definitions set out in the Sub-loop Services General Terms and/or the Sub-loop Co-location Operations Manual apply.

### **2 INTERPRETATION**

2.1 References to clauses or sections are references to clauses or sections in the Sub-loop Co-location Access Terms unless expressly provided otherwise.

**3 GENERAL**

- 3.1 The Sub-loop Co-location Access Terms apply in addition to the Sub-loop Services General Terms. If there is any conflict between the Sub-loop Co-location Access Terms and the Sub-loop Services General Terms, the Sub-loop Services General Terms will prevail.
- 3.2 The Sub-loop Co-location Access Terms are drafted in the singular but apply equally and severally to each supply of the Sub-loop Co-location Service to the Access Seeker in respect of every Rackprint, including where the Access Seeker Equipment is moved from one Rackprint to another..

**4 BASIC RIGHTS AND OBLIGATIONS**

- 4.1 For the time that the Access Seeker is supplied with the Sub-loop Co-location Service under the Sub-loop Services Terms, the Access Seeker has a non-exclusive right to:
- (a) gain access to the Distribution Cabinet for the purposes of the Permitted Use in the Rackprint; and
  - (b) gain escorted access to the Distribution Cabinet for the purpose of inspecting any Access Seeker Equipment in, on or around the Distribution Cabinet outside of the Rackprint.
- 4.2 For the time that the Access Seeker is supplied with the Sub-loop Co-location Service under the Sub-loop Services Terms, the Access Seeker also has a non-exclusive right to have Telecom install an Intra-Distribution Cabinet Tie Cable, Inter-Rackprint Tie Cable or a Sub-loop Co-location External Tie Cable in accordance with the Sub-loop Services Terms.
- 4.3 The Access Seeker's rights under the Sub-loop Co-location Access Terms are subject to the Sub-loop Services Terms.
- 4.4 The Sub-loop Co-location Access Terms do not:
- (a) give the Access Seeker any interest or estate in the Rackprint, the Distribution Cabinet or any land on which the Distribution Cabinet is located;
  - (b) confer on the Access Seeker any right to the exclusive possession of any part of the Distribution Cabinet;
  - (c) give the Access Seeker any rights in relation to any Distribution Cabinet or the land on which any Distribution Cabinet is located except to the extent

(if any) that Telecom is lawfully entitled to grant such rights to the Access Seeker in accordance with the Sub-loop Services Terms;

- (d) give the Access Seeker a right to unescorted access to any cable or other thing in, on or about the Distribution Cabinet outside of the Rackprint;
- (e) give the Access Seeker a right to fix or install any cable or other thing outside of the Rackprint other than by procuring Telecom to do so on the Access Seeker's behalf; or
- (f) make Telecom responsible in any way for the Access Seeker's business.

4.5 Telecom is entitled to grant additional rights in connection with the Distribution Cabinet to any third parties.

**Use of the Distribution Cabinet**

4.6 The Access Seeker will access the Distribution Cabinet and use the Rackprint in the Distribution Cabinet for the Permitted Use and for no other purposes.

4.7 The Access Seeker will ensure that any access to the Distribution Cabinet by the Access Seeker or its Invitees is in accordance with the access and security procedures set out in the Sub-loop Co-location Operations Manual and in compliance with any additional reasonable request and direction of Telecom.

**5 THINGS THE ACCESS SEEKER MUST NOT DO**

5.1 The Access Seeker must not and will ensure that its Invitees will not do any of the following:

- (a) use the Distribution Cabinet for any purpose other than the Permitted Use;
- (b) except as expressly permitted under the Sub-loop Services Terms, impede or interfere with Telecom's rights of possession and control of the Rackprint or the Distribution Cabinet;
- (c) obstruct or interfere with Telecom's Network or the operation of Telecom's Network in the Distribution Cabinet;
- (d) access any part of the Distribution Cabinet not within the Rackprint; or
- (e) obstruct or interfere with any third party's use, occupation or enjoyment of the Distribution Cabinet.

**6 THINGS THE ACCESS SEEKER MUST DO**

6.1 The Access Seeker must do and ensure its Invitees do all of the following at the Access Seeker's own expense:

**Installation and maintenance**

- (a) Carry out any installation, maintenance, repair, alteration, removal and/or replacement of the Access Seeker Equipment in accordance with the Sub-loop Co-location Operations Manual.
- (b) To the reasonable satisfaction of Telecom, maintain any Access Seeker Equipment installed in the Distribution Cabinet in good and proper repair and working order and employing suitably qualified people to do so.

**No danger to others**

- (c) Take all reasonable steps to ensure that no part of the Access Seeker Equipment becomes a danger to the safety of Telecom, Telecom's Invitees or third parties.
- (d) At all times take all practical and proper precautions to the reasonable satisfaction of Telecom for the prevention of risks at the Distribution Cabinet.

**Rubbish**

- (e) Remove all rubbish from the Distribution Cabinet and its surrounds resulting from the Access Seeker's access to or use of the Distribution Cabinet.

**Compliance**

- (f) Comply in all respects with:
  - (i) any law or requirement of any Authority that applies in relation to anything that is done or to be done by the Access Seeker, or its Invitees, under the Sub-loop Co-location Access Terms, or that relates to the Access Seeker's or the Access Seeker's Invitees' use of the Distribution Cabinet;
  - (ii) without limiting the generality of the foregoing, the Resource Management Act 1991, and any relevant district plan or regional plan and the terms of any resource consent and any other applicable law; and
  - (iii) the Sub-loop Services Terms.

- (g) Co-operate with any reasonable request made by Telecom in relation to inspections, maintenance of Telecom's Network, and general repairs and maintenance undertaken in connection with the Distribution Cabinet.
- (h) In respect of any Distribution Cabinet that is located on any land pursuant to a Land Occupation Arrangement, the Access Seeker will not and will ensure that its Invitees do not permit or do any act or thing on or in relation to the Distribution Cabinet:
  - (i) which would or may cause Telecom to be in breach of its covenants as tenant, licensee or grantee (as the case may be) or the conditions contained in the Land Occupation Arrangement provided that the Access Seeker is aware, or ought reasonably to be aware, that the act or thing would or may cause Telecom to be in such breach; or
  - (ii) which, if done by Telecom, would or may constitute a breach of the Land Occupation Arrangement provided that the Access Seeker is aware, or ought reasonably to be aware, that the act or thing if done by Telecom would or may constitute such a breach.

**Consents and permits**

- (i) Obtain and comply with any additional consent or permit required for the installation, operation and use of the Access Seeker Equipment in the Distribution Cabinet.

**Access Seeker Equipment**

- (j) Ensure that the Access Seeker Equipment complies in all respects with the Sub-loop Co-location Operations Manual.

**Notice**

- (k) The Access Seeker will promptly advise Telecom in writing on becoming aware of any:
  - (i) material damage to the Distribution Cabinet, Telecom's Network, or any property of any third party in, on or around the Distribution Cabinet;
  - (ii) accident or serious harm to any person caused by the condition of the Distribution Cabinet or Telecom's Network; or
  - (iii) potential hazards, safety issues or other matters likely to affect the integrity or security of the Distribution Cabinet or Telecom's Network.

**Health and safety**

- 6.2 The Access Seeker must comply with its obligations under the HSE Act and all approved codes of practice under the HSE Act. In particular, the Access Seeker must establish procedures to ensure compliance with the HSE Act for anything it does and/or allows to be done in, or around, the Distribution Cabinet. At Telecom's request, the Access Seeker must give Telecom details of those procedures and of how they are being implemented.
- 6.3 Any access to the Distribution Cabinet by Invitees of the Access Seeker is at the sole risk of the Access Seeker and the Access Seeker has the sole responsibility for identifying and advising its Invitees of all existing and potential hazards in, or around, the Distribution Cabinet which its Invitees could encounter.

**7 THINGS TELECOM MAY DO OR WILL DO**

- 7.1 Telecom will:
- (a) not interfere with any Access Seeker Equipment or the operation of any Access Seeker Equipment except where specifically permitted under the Sub-loop Services Terms;
  - (b) provide or procure the provision of the Distribution Cabinet Services in accordance with the Sub-loop Co-location Operations Manual; and
  - (c) where necessary, provide the Access Seeker with reasonable assistance in obtaining any third party authorisation, licence or consent necessary or prudent for the occasion to be supplied with the Sub-loop Co-location Service other than authorisations, licences or consents required generally by the Access Seeker to operate its network. For avoidance of doubt, this clause 7.1(c) does not limit Telecom's obligations in relation to Landlord approvals in section 14 of the Sub-loop Co-location Operations Manual.
- 7.2 Telecom will promptly give Notice in writing to the Access Seeker on becoming aware of any:
- (a) material damage to the Distribution Cabinet, any Access Seekers Equipment or any property of any third party (including, without limitation, any property of any Other Service Provider) in, on or around the Distribution Cabinet;
  - (b) accident or serious harm to any person caused by the condition of the Distribution Cabinet, any Access Seeker Equipment or any Other Service Provider's equipment; or

- (c) potential hazards, safety issues or other matters likely to affect the integrity or security of the Distribution Cabinet or Access Seeker Equipment;

7.3 Telecom has the right to do anything Telecom reasonably believes necessary in relation to any of the following, providing Telecom has given not less than one month's Notice to the Access Seeker of its intention to undertake such actions if those actions are likely to have any material effect on the Access Seeker's rights under the Sub-loop Co-location Access Terms:

- (a) complying with any law or any requirement of any Authority;
- (b) viewing the state of repair of the Distribution Cabinet;
- (c) maintaining and repairing the Distribution Cabinet; and
- (d) modifying, expanding or altering the Distribution Cabinet provided that any such modification, expansion or alteration be subject to Telecom's obligations under the Sub-loop Co-location Operations Manual.

7.4 If any part of the Distribution Cabinet is located on land that is subject to a Land Occupation Arrangement, then Telecom will:

- (a) observe and perform its obligations under section 14 of the Sub-loop Co-location Operations Manual in relation to Landlord approvals;
- (b) observe and perform its obligations under the relevant Land Occupation Arrangement;
- (c) subject to clause 14.2.2 of the Sub-loop Co-location Operations Manual, provide the Access Seeker with a copy of the lease, licence or other document that sets out the relevant Land Occupation Agreement no later than on the first day the Access Seeker is entitled to gain access to the site under the Sub-loop Co-location Terms (unless the relevant documentation has been already provided to the Access Seeker under section 14 of the Sub-loop Co-location Operations Manual); and
- (d) if Telecom believes that a copy of the Land Occupation Agreement documentation is not required, it will notify the Access Seeker in writing to explain why.

## 8 **SUSPENSION**

8.1 Where Telecom suspends supply of the Sub-loop Co-location Service under the Sub-loop Services General Terms, the Access Seeker's rights under the Sub-loop

Co-location Access Terms are extinguished for the duration of that suspension, and, for the same duration:

- (a) the Access Seeker ceases to have any right to use the Access Seeker Equipment to provide services to Access Seeker Customers;
- (b) the Access Seeker must allow and facilitate Telecom to disable the power supply to Access Seeker Equipment so that it cannot be used to provide services to Access Seeker Customers; and
- (c) Telecom will allow the Access Seeker reasonable escorted access to the Distribution Cabinet for the purpose of remedying the Access Seeker's default.

## 9 TERMINATION

### Termination under the Sub-loop Services General Terms

9.1 Where the Access Seeker or Telecom terminates supply of the Sub-loop Co-location Service under the Sub-loop Services General Terms or the Sub-loop Services Terms come to an end:

- (a) the Access Seeker will allow Telecom to take the Rackprint over; and
- (b) the Access Seeker will, within 20 Working Days of the date the Sub-loop Co-location Service is terminated or the Sub-loop Services Terms come to and end, at the Access Seeker's cost and to Telecom's satisfaction:
  - (i) remove the Access Seeker Equipment from the Distribution Cabinet;
  - (ii) make good any damage resulting from that removal;
  - (iii) leave the Distribution Cabinet in good clean order, repair and condition; and
  - (iv) reinstate the affected parts of the Distribution Cabinet as near as reasonably possible to their condition as at the first day the Access Seeker gained access to the Distribution Cabinet under the Sub-loop Services Terms, fair wear and tear excepted,

and for these purposes the access rights in these Sub-loop Co-location Access Terms continue to apply.

9.2 If the Access Seeker has not removed the Access Seeker Equipment from the Distribution Cabinet within 40 Working Days from the date the Sub-loop Co-location Service is terminated or the Sub-loop Services Terms come to an end,

Telecom will be entitled to treat the Access Seeker Equipment as its own and may retain or dispose of all or any part of it as Telecom sees fit.

- 9.3 The Access Seeker will reimburse Telecom for any reasonable cost Telecom incurs in removing and disposing of all or any part of the Access Seeker Equipment the Access Seeker leaves behind including the cost of making good any damage resulting from that removal. Telecom will not be liable for any loss as a result.