

**TERMS OF REFERENCE FOR
THE ULTRAFAST BROADBAND PRODUCT FORUM
2023
Final Approved**

1. Establishment and Membership of UFB Product Forum

- 1.1. In 2011, the industry agreed to establish a multi-party UFB Product Forum (**Product Forum**). From 1 January 2022, a new fibre regulatory regime and other regulatory changes took effect. These Terms of Reference were updated in June 2023 to reflect those changes and will continue to be updated from time to time as required.
- 1.2. Chorus Limited, Enable Networks Limited, Northpower Fibre Limited and Tuatahi First Fibre Limited (together referred to as **LFCs**) have each agreed in their respective wholesale services agreements (each referred to as a **WSA**) that they will participate in the Product Forum to facilitate dialogue between LFCs and Retail Service Providers (**Service Providers**), as well as other industry stakeholders (where relevant), in relation to certain technical and/or operational fibre product matters and issues.
- 1.3. The objective of the Product Forum is to:
- 1.3.1. Provide an industry-wide forum for technical and operational level discussions in respect of the regulated and unregulated wholesale services, wholesale ancillary services and the development of new wholesale services supplied by LFCs to Service Providers (together, the **Fibre Products**), as further described at clause 2 below.
 - 1.3.2. Provide a mechanism for LFCs and Service Providers to seek industry consultation on proposed changes to Fibre Products which do not require Change Management Forum (**CMF**) consultation or approval, in line with their respective WSA terms and for Service Providers to raise matters.
 - 1.3.3. Consider technical and / or operational issues in relation to Fibre Services.
 - 1.3.4. Deal with matters referred to it by a CMF.

1.4. Membership

- 1.4.1. Principle: Membership of the Product Forum is intended to be broad to enable a range of key industry stakeholders to participate. In particular, Product Forum membership will comprise the following parties (collectively referred to as the **Product Forum Parties**, and individually as a **Product Forum Party**):

Product Forum Parties:	
LFCs (Regular Members)	Chorus Limited, Enable Networks Limited, Northpower Fibre Limited and Tuatahi First Fibre Limited
Service Providers (Regular Members)	All signatories to a WSA with one or more LFCs
Observers	Ministry of Business, Innovation and Employment (MBIE), the New Zealand Commerce Commission (Commerce Commission) and the TCF as Forum Administrator (see clause 3.1 below)

- 1.4.2. The Product Forum is to be a single industry-wide forum. Other working groups may be established by the Product Forum (in accordance with these Terms of Reference) to assist with its function.

- 1.4.3. The Product Forum will comprise technical and / or operational representatives and experts from LFCs and Service Providers who wish to participate.
- 1.4.4. The TCF is the Forum Administrator as anticipated by clause 3.
- 1.4.5. Regular Members:
- a. LFCs and Service Providers which are and remain current signatories of a WSA will be regular members of the Product Forum (**Regular Members**).
 - b. Upon becoming a signatory to a WSA, a Service Provider will automatically become a Regular Member of the Product Forum and eligible, but not obligated, to attend any Product Forum meeting and engage in any activity performed by the Product Forum. A Service Provider may nominate an individual, individuals or entity as their representative at the Product Forum. A Service Provider must inform the Forum Administrator that they have nominated a representative at least 48 hours prior to a Product Forum meeting. A representative's nomination will remain in place until it is revoked by the Service Provider who made the nomination.
 - c. The termination of a WSA by a Service Provider will result in the immediate termination of that Service Provider's membership of the Product Forum as a Regular Member (unless that Service Provider remains a signatory to a WSA with another LFC).
- 1.4.6. Observers: MBIE and the Commerce Commission will have an open invitation to attend and participate in the Product Forum meetings as observers (**Observers**). The TCF (as the Forum Administrator) will also be considered an Observer.
- 1.4.7. Invited Guests: Other industry stakeholders including potential signatories to a WSA, may be invited to attend one or more Product Forum meetings from time to time (**Invited Guests**).

Any party (who is not a Regular Member or representative of a Regular Member or an Observer) wishing to attend a Product Forum meeting will notify the Forum Administrator at least 7 days before the scheduled meeting. The Forum Administrator must notify all Regular Members of this request to attend. A Regular Member may register their objection to the party attending via email to the Forum Administrator, who will notify the Product Forum, a decision on whether the party is able to attend will be decided on case-by-case basis.

An Invited Guest's right to attend each Product Forum meeting will usually be by separate invitation (and, on each occasion, subject to no objections received by Regular Members), such that an invitation to one meeting does not automatically entitle an Invited Guest to attend further meetings. However, the Regular Members may agree an Invited Guest may attend any number of additional meetings, and the Forum Administrator will notify that Invited Guest of such rights to attend.

2. Purpose

- 2.1. The key purpose of the Product Forum is to discuss and consult on technical and operational Fibre Product related matters and issues or an LFC's product development plan, technology changes and innovations that may impact Service Providers, including in relation to:
- 2.1.1. technology matters or issues (including Fibre Product or network performance and Fibre Product equipment performance or replacement); and
 - 2.1.2. process matters or issues (including Fibre Product installations, fault restoration, consents and land access).

- 2.2. The Product Forum's role is to review these matters or issues in accordance with these Terms of Reference.
- 2.3. The Product Forum will be a consultation and advisory forum as contemplated in the relevant clauses of each WSA.
- 2.4. If required, the Product Forum will facilitate industry consultation on behalf of one or more LFC relating to changes to any Fibre Product submitted to the Product Forum. Other purposes of the Product Forum include:
 - 2.4.1. For any Service Provider or LFC to raise a Fibre Product related matter or issue. The Product Forum will then outline any desired resolution(s) to that matter or issue. Where the matter or issue relates to LFCs, LFCs will be requested to present solution options back to the Product Forum. Matters and issues that require a wider industry solution will need to be dealt with on a case-by-case basis.
 - 2.4.2. For any Service Provider to suggest Fibre Product improvements that they would like the LFCs to consider. The Product Forum can endorse any suggested Fibre Product improvements and the LFC can respond to the Product Forum with product improvement options.
 - 2.4.3. For any LFC to introduce new Fibre Products for consultation and feedback. The LFC will take any feedback into consideration when deciding whether to make the new Fibre Product commercially available.
 - 2.4.4. For any LFC to raise and discuss with the Product Forum Parties advancements in technology that will or may influence current or future Fibre Products.
 - 2.4.5. For any LFC to present any proposed solutions to Fibre Product related issues. Once that proposed solution is suitable, the LFC will then commit to a timetable for delivering it, provided that, where required under a WSA, implementation of any such proposed solution or change will be subject to approval by the relevant CMF(s).
 - 2.4.6. For any LFC to present Fibre Product improvement options before the LFC decides whether to make the improvements commercially available.
 - 2.4.7. For Service Providers and LFCs to raise and discuss more general issues affecting the telecommunications industry, allowing for free flow of information and industry discussion.
 - 2.4.8. For a Service Provider to notify the Forum Administrator and Regular Members of a referral of any matter to a CMF and the reasons for that referral.
- 2.5. Excluded Matters:
 - 2.5.1. Regular Members of the Product Forum are aware of the provisions of the Commerce Act 1986 (**Commerce Act**) and, in particular, the prohibitions against restrictive trade practices contained in sections 27 and 30. The activities of the Product Forum will at all times comply with the Commerce Act and the Product Forum will not be used to discuss matters which may contravene the Commerce Act including, without limitation, the matters set out at clause 2.5.2.
 - 2.5.2. By way of example, rather than a complete list of matters that may not be discussed at the Product Forum, in order to comply with the provisions of the Commerce Act, the business of the Product Forum **will not include:**
 - a. discussion on pricing or features that relate to price;
 - b. matters preventing, restricting or in any way limiting the supply of any service (including Fibre Products);

- c. the sharing, or allocation, of particular markets (including, but not limited to, allocation of particular types of customers or geographic areas);
 - d. discussion of retail services; or
 - e. any other matter or conduct which may amount to price fixing, sharing markets, rigging bids or restricting output of goods and services, or otherwise have the effect of substantially lessening competition in any market.
- 2.5.3. If any member is of the view that any discussion or conduct may risk breaching the Commerce Act, that member must raise an objection straight away.
- 2.5.4. LFCs may inform the Product Forum of a consultation it intends to conduct outside of the Product Forum (including at the CMF) in accordance with the LFC's WSA.
- 2.5.5. The Product Forum is not a forum for dealing with disputes between Regular Members.
- 2.6. Other meetings: The Product Forum has no role or responsibility in respect of other meetings between LFCs and Service Providers.

3. Operation and Administration

- 3.1. Register of Regular Members:
- 3.1.1. The Forum Administrator will maintain a register of Regular Members;
 - 3.1.2. LFCs will provide the Forum Administrator with contact details of a new Service Provider who has become a signatory to a WSA.
 - 3.1.3. LFCs will inform the Forum Administrator of the termination of a WSA by a Service Provider. The Forum Administrator will check whether or not that Service Provider remains a signatory to a WSA with another LFC and if they do not will remove them from the register.
 - 3.1.4. It is the responsibility of the LFC to ensure that the correct contact details of a Service Provider who is WSA signatory are provided to the Forum Administrator.
- 3.2. Forum Administrator: A Forum Administrator will provide administrative services to the Product Forum including:
- 3.2.1. Acting as Chair of Product Forum meetings;
 - 3.2.2. Maintaining a register of Regular Members and their respective contact details;
 - 3.2.3. Coordinating Product Forum communications;
 - 3.2.4. Circulating meeting agendas (to include the information referred to in clause 3.5 below) and minutes to Product Forum Parties in a timely manner;
 - 3.2.5. Facilitating the Product Forum in a way that complies with these Terms of Reference;
 - 3.2.6. The New Zealand Telecommunications Forum (TCF) was appointed Forum Administrator to the Product Forum in 2014. In performing this role, the TCF will:
 - 3.2.6.1. Comply with its own internal governance processes;
 - 3.2.6.2. Provide the administrative services and other functions outlined in these Terms of Reference to the Product Forum; and

3.2.6.3. Endeavour to be solely responsible for the costs of providing these administrative services within its current budgets.

3.2.7. The LFCs may agree to change the Forum Administrator from time to time.

3.3. Operating Principles: The Regular Members and Forum Administrator will each use their best endeavours to ensure the Product Forum is conducted in accordance with the following principles:

3.3.1. The Product Forum will be a consultation forum where Product Forum Parties engage in open communication and should aim to achieve consensus on matters and issues where possible;

3.3.2. Regular Members will work cooperatively and collaboratively to address issues presented to the Product Forum; and

3.3.3. Regular Members will endeavour to raise matters or issues in the Product Forum that are likely to have broader industry relevance and generally avoid using it as a forum for dealing with matters or issues that are generally immaterial or which are relevant only to a single Product Forum Party. For the sake of clarity, a change to a single Fibre Product would usually have broader industry relevance even if only one Service Provider actually purchases or is expected to purchase the relevant Fibre Product.

3.4. Meetings/Agenda:

3.4.1. Any Product Forum Party may submit specific matters or issues to the Forum Administrator for inclusion on a Product Forum meeting agenda.

3.4.2. The Forum Administrator will place that new matter or issue on the agenda clearly stating if the item is:

3.4.2.1. For information purposes only: The matter or issue will be discussed and noted in the minutes;

3.4.2.2. For consultation: If a Regular Member submits a matter or issue for consultation (submitting party), they must allow a minimum 14-day period for Product Forum Parties to review the matter or issue and submit their feedback. Feedback must be provided directly to the submitting party. Regular Members have the right to ask for an additional 10 days to consider the matter and the submitting party must reasonably consider the request.

It is the responsibility of the submitting party to manage the feedback received as part of the consultation, including sharing or publishing that feedback to the Product Forum or via their own channels:

- a) The submitting party will distribute, or otherwise make available, any non-confidential feedback to Regular Members. When a Regular Member provides feedback to the submitting party that includes commercially sensitive or confidential information, the Regular Member should provide a clearly labelled confidential version and a version for distribution.
- b) The responsibility for ensuring confidential information is not included in a non-confidential version of a submission rests entirely with the Regular Member submitting the feedback.
- c) If the submitting party considers information disclosed in the confidential version to be in the interest of the Product Forum, they will obtain the consent of the Regular Member that provided the information before any such disclosure is made.

- d) Following the distribution of feedback, any Regular Member may request further discussion at the Forum on the matter or issue for consultation and the feedback that has been submitted in relation to the matter or issue.

3.4.2.3. For confirmation: Following the required consultation period a final document and a marked-up version, if required, will be submitted to the Product Forum.

3.4.3. The Forum Administrator will ensure each agenda item raised by a Product Forum Party is described clearly and is accompanied by appropriate background and supporting information and detail (to be circulated with the meeting agenda).

3.4.4. The Forum Administrator will send out a standard agenda for each Product Forum meeting to the Product Forum Parties at least 7 days prior to the meeting.

3.4.5. The Forum Administrator will organise a conference call, or venue for the meeting to take place and will notify members thereof at the same time as it provides the agenda. The Forum Administrator will endeavour to rotate the physical venue, if one is required, between the various LFC regions and will also ensure Product Forum Parties can attend meetings by teleconference.

3.4.6. The Regular Members will work with the Forum Administrator to provide meeting rooms and other facilities to host meetings if required.

3.4.7. Regular Members are expected to:

- a. Ensure their representative attends all of the Product Forum meetings, or send apologies to the Forum Administrator prior to a meeting;
- b. Observe the Operating Principles set out in clause 3.3 above;
- c. Review all documents for discussion in advance of the meeting;
- d. Actively and constructively participate in the Product Forum;
- e. Complete agreed action points on time.

3.5. Frequency of meetings

3.5.1. Product Forum meetings will be held monthly unless Regular Members agree otherwise.

3.5.2. In addition to these monthly meetings, if an LFC or Service Provider identifies or raises a matter that requires specific or urgent consultation then more frequent additional consultation meetings could be held (e.g., weekly for a period of 4 weeks consultation).

3.5.3. Additional ad hoc meetings may be held as required.

3.6. Governance

3.6.1. **Consensus**: The Product Forum will generally use all reasonable endeavours to build a consensus on Fibre Product matters and issues.

3.6.2. **Non-binding decision-making**: Any decision(s) made by the Product Forum are not contractually binding on Product Forum Parties.

3.6.3. **Single Submission**: Individual Regular Members or a minority of Regular Members may submit a paper to the Product Forum for consideration and/or direction where it may be a Fibre Product related matter or issue.

3.7. Referral to another body or Sub-groups

- 3.7.1. The Product Forum may seek views, input or updates from Observers on matters relating to Fibre Products.
- 3.7.2. The Product Forum is entitled to establish, manage and prioritise work-streams or sub-groups which must operate under the same rules set out in these Terms of Reference. Sub-groups may be established to consider specific issues or matters.
- 3.7.3. Wherever a sub-group is established, a Product Forum representative of that sub-group will be responsible for:
 - a. Reporting to the Product Forum on progress of the work of that sub-group; and
 - b. Drafting a position paper or issue paper as required.
- 3.7.4. A standing slot at Product Forum meetings will be made available if required for updates from various technical Fibre Product workstreams.
- 3.7.5. The Product Forum may express a view on the matters addressed to it by technical Fibre Product workstreams, including any proposed course of action, and may express a view on the priorities, timeframes and other matters to resolve any such matters. The Product Forum may establish a sub-group to work with the relevant technical Fibre Product workstream to facilitate a resolution of any issue(s) contained in an issues paper if it considers it beneficial to do so.
- 3.7.6. The Product Forum may make a recommendation to the TCF to establish a working group to address a particular Fibre Product issue or matter. The Product Forum would be included in consultation on any outcomes from the relevant TCF working party.

3.8. Timeframes

- 3.8.1. The Product Forum will work to consider and discuss matters and issues, and resolve Fibre Product matters quickly and efficiently.
- 3.8.2. Each workstream will seek to establish reasonable timeframes for resolution of Fibre Product related matters and issues and report on its performance against such timeframes.
- 3.8.3. Timeframes will be agreed for consultation on specific Fibre Product related matters and issues brought to the Product Forum. Reasonable timeframes for consultation will be discussed with the Forum Administrator and the Regular Members and set by the Forum Administrator.

3.9. Budget

- 3.9.1. If the TCF administers the Product Forum this service will be funded by the TCF. If the TCF no longer administers the Product Forum then the general budget of the operation of the Product Forum will be funded by the Regular Members of the Product Forum.
- 3.9.2. The Forum Administrator will endeavour to ensure that the services it provides are funded out of its budget for the provision of member services.
- 3.9.3. The budget for specific workstreams that falls outside of the day-to-day management of the Product Forum or that may be of a capital-intensive nature must be approved in advance by the relevant Product Forum Parties.
- 3.9.4. Each Product Forum Party is responsible for their own costs for attending and participating in the Product Forum.

3.10. Other matters:

3.10.1. **Interpretation:** These Terms of Reference must be read and interpreted in conjunction with the terms of a WSA, any applicable TCF code (where definitions of the terms used in these Terms of Reference can be found).

In these Terms of Reference, unless the context otherwise requires:

- a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- b) whenever the words "includes" or "including" are used in these Terms of Reference they are deemed to be followed by the words "without limitation";
- c) words in singular include the plural and vice versa;
- d) a reference to a person includes a reference to an individual, bodies, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality, whether corporate, political or otherwise; and
- e) any obligation not to do anything will include an obligation not to suffer, permit, or cause that thing to be done.

3.10.2. **Changes:** Regular Members and/or the Forum Administrator may propose or request a change to these Terms of Reference at any time on giving notice to the Product Forum via the Forum Administrator. If it is proposed that the Product Forum change all or any part of these Terms of Reference, the proposed change(s) will only be adopted if consensus is reached by the Regular Members. For the avoidance of doubt, these Terms of Reference cannot be altered, added to or rescinded by the TCF or the TCF Board, and the TCF Rules do not apply to these Terms of Reference.

3.10.3. **Liability:** No action in law or other claim may be taken by Regular Member or any other person against any other Regular Member, any member of the TCF Board or the Forum Administrator, or officer of the same in respect of these Terms of Reference or the actions of the Product Forum, notwithstanding any irregularity or informality occurring in or about the doing or omitting or suffering of any act, matter or thing.

3.10.4. **Records and Information:** All of the information and records of the Product Forum shall be available to Regular Members at their request. Information which is the subject of a confidentiality provision or agreement, or which has been noted by the Product Forum or the relevant Regular Member as not available for general distribution, shall not be made available.

3.10.5. **Notices:** All notices to be given under these Terms of Reference shall be in writing and may be delivered by post or email to the designated address of the relevant party as advised to the Forum Administrator from time to time.

3.10.6. **No partnership:**

- a) Nothing in these Terms of Reference, or in any document attached, or forming part of or referred to in these Terms of Reference, creates or evidences a partnership, joint venture or trust relationship between any two or more of the Product Forum Members and the TCF.
- b) Without limiting any express obligation in these Terms of Reference to act in good faith, nothing in these Terms of Reference creates or evidences a fiduciary relationship between any or all of the Product Forum Members; accordingly, any fiduciary duties which may otherwise be implied are hereby excluded.

- 3.10.7. **Precedence:** If there is any conflict or inconsistency between these Terms of Reference and a WSA (including any of the documents forming part of the WSA), the WSA will take precedence.