

Network Infrastructure Project Agreement

Chorus Limited

and

Crown Fibre Holdings Limited

Date 26 January 2017

BELL GULLY

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Contents

1.	Scope and construction of Agreement	2
2.	Company role	7
3.	Term	8
4.	Network	8
5.	Resourcing	12
6.	Performance	14
7.	Ongoing Improvements	21
8.	Project Governance	22
9.	Responsibilities	27
10.	Changes	29
11.	Reliance	30
12.	Warranties	30
13.	Confidentiality	32
14.	Indemnities	33
15.	Liability	34
16.	Insurance	36
17.	Performance Issue and Remedial Plan	36
18.	Dispute resolution	38
19.	Material Breach	40
20.	Termination	42
20A.	Interim Period	45
21.	Force Majeure	49
22.	General Provisions	50
23.	Notices	53
24.	Other agreements	54

Schedules and Annexures

Schedule 1: Definitions

Schedule 2: Commitments

Annexure 1: Business Case Test

Annexure 2: VDSL Upgrades

Schedule 3: Design and Build

Annexure 1: Network Requirements

Annexure 2: Master Deployment Plan and Annual Deployment Schedule

Annexure 3: User Acceptance Testing

Annexure 4: Liquidated Damages/Material Breach Thresholds for Build Complete Milestones

Annexure 5: Notice of Completion

Annexure 6: Network Stage Amounts

Schedule 4: O&M Services

Schedule 5: Service Levels

Annexure 1: Service Level Descriptions

Annexure 2: Service Default Payments

Annexure 3: Connection Satisfaction Survey

Annexure 4: POI Areas

Schedule 6: Services and Pricing

Schedule 7: Project Governance

Annexure 1: Technical and Operational Reports

Annexure 2: Corporate and Financial Reports

Annexure 3: Named Personnel

Annexure 4: Combined Fibre Business Plan Template Form

Annexure 5: Reporting Information

Schedule 8: Change Procedure

Annexure 1: Form of Statement of Work

Annexure 2: Form of Change Authorisation Agreement

- Schedule 9: Not used
- Schedule 10: Commitments – Post Build
- Schedule 11: Health and Safety Management Plan
- Schedule 12: DFP Documents
- Schedule 13: Network Stages
- Schedule 14: ██████████
- Appendix 1: Telecommunications (Property Access and Other Matters) Amendment Bill

This **Project Agreement** is made on 26 January 2017

between (1) **Chorus Limited** (the **Company**)

and (2) **Crown Fibre Holdings Limited** (**CFH**)

Background

- A. The original objective of the Government's Ultra-Fast Broadband initiative was to accelerate the roll-out of Ultra-Fast Broadband to 75 % of the New Zealand population over ten years, concentrating in the first six years on priority broadband users such as businesses, schools and health services, plus greenfield developments and certain tranches of residential areas (the **UFB1 Objective**).
- B. Due to its successful progress towards achieving the UFB1 Objective, the Government has decided to extend its Ultra-Fast Broadband initiative so that a higher percentage of the New Zealand population will have access to Ultra-Fast Broadband (the **UFB2 Objective**).
- C. CFH, a Crown-owned investment company, manages the Crown's investments in the Ultra-Fast Broadband initiative. On 1 September 2015, CFH issued a request for proposals, as varied (the **RFP**) inviting potential partners to submit proposals on how they would co-invest with CFH to achieve the UFB2 Objective.
- D. The Company was the successful respondent under the RFP in relation to the Coverage Area on the basis of an alternative commercial model proposed by the Company rather than the preferred commercial model set out in the RFP.
- E. The overriding objectives of the Company and CFH are to design, build and operate a fibre optic communications infrastructure network in the Coverage Area and to generate widespread uptake of services (including Dark Fibre Services and Bitstream Services) in the Coverage Area, both in accordance with this Agreement.
- F. The Network may include New Infrastructure, designed and built under this Agreement, and Existing Infrastructure already owned by the Company.
- G. The Company will own and control the Network in the Coverage Area and the Company is solely responsible for the Design and Build and, subject to the terms and conditions of this Agreement, takes the risk of any cost and time overruns and any failure to comply with the Requirements. The Company will enter into such subcontracts (including for civil works) as required to build the Network. The Company will be responsible as primary obligor for all work carried out, and materials used or infrastructure provided, by any Subcontractor or Group Company.
- H. The Company has represented that it has the skills and resources necessary to provide the Design and Build of the Network and the O&M Services for the Network (including operation, management and maintenance of the Network) and associated deliverables. In reliance on the Company's representations, CFH has agreed to partner with the Company by agreeing to enter into certain agreements, including this Agreement and an agreement to subscribe for securities to be issued by the Company, subject to the Company meeting certain milestones relating to the UFB2 Objective in the Coverage Area. Under this Agreement, the Company will be solely responsible for the provision of the Design and Build and the O&M Services and associated deliverables on the terms of this Agreement, including in accordance with the Requirements, the Master Deployment Plan and each Annual Deployment Schedule.
- I. This Agreement sets out the relationship between, and the rights and obligations of, the Company and CFH in relation to establishing and operating the Network in the Coverage Area, in a high quality, timely and efficient manner.

It is agreed

1. Scope and construction of Agreement

1.1 Documents comprising this Agreement

(a) **Commencement Date**

As at the Commencement Date, this Agreement comprises the following documents, each of which are deemed to form, and to be read and construed as, part of this Agreement:

- (i) the Base Agreement;
- (ii) the Schedules; and
- (iii) the Annexures (including the Network Requirements).

(b) **Documents to be reviewed and agreed following the Commencement Date**

- (i) Following the Commencement Date, each DFP Document will:
 - (A) be prepared in draft by the Company, and delivered to CFH, no later than the relevant “draft document delivery” date specified in Schedule 12 (*DFP Documents*);
 - (B) reflect and be consistent with the requirements and content outlined for that DFP Document in Schedule 12; and
 - (C) reflect and be consistent with the other terms and conditions under this Agreement, including the requirements on, and obligations of, the Company.
- (ii) The DFP Document will then be subject to comments by CFH, in accordance with the timeframe specified in Schedule 12 or, if not so specified, as soon as reasonably practicable (but, in any event if not so specified, no later than 10 Business Days following receipt of the completed draft DFP Document by CFH). In each case the Company will, working collaboratively with CFH, take those comments into account and resubmit a further draft of the DFP Document to CFH in accordance with the timeframe specified in Schedule 12 or, if not so specified, as soon as reasonably practicable (but, in any event, no later than 10 Business Days following receipt of such comments from CFH).
- (iii) The revised DFP Document will then be reviewed and agreed by CFH within the timeframe specified in Schedule 12 or, if not so specified, as soon as reasonably practicable (but, in any event, no later than 20 Business Days following the process set out in clause 1.1(b)(ii)).
- (iv) If CFH is not in complete agreement on the DFP Document within the timeframe contemplated in clause 1.1(b)(iii), any party may refer the elements of the DFP Document not agreed as a dispute straight to expert determination under clause 18.4.
- (v) Once CFH has agreed a DFP Document and/or all or part of a document has been finalised by expert determination (as the case may be), then CFH and the Company will sign that document in the form so agreed. The DFP Document

will then constitute a Schedule or Annexure (as applicable), including replacing an existing draft DFP Document if applicable, and form part of this Agreement.

- (vi) For the avoidance of doubt, the scope of:
 - (A) the comments on documents to be provided by CFH under clause 1.1(b)(ii); and
 - (B) the role and remit of the expert under clause 1.1(b)(v),
 is, in each case, limited to ensuring that the relevant document complies with clauses 1.1(b)(i)(B) and 1.1(b)(i)(C).
- (vii) CFH's participation in the Document Finalisation Process:
 - (A) does not prejudice any of CFH's rights and remedies against the Company under this Agreement or under Law; and
 - (B) is without prejudice to the performance by the Company of its obligations under this Agreement.
- (viii) Without limiting clause 1.1(b)(vii), the Company acknowledges and agrees that, in the conduct of the Document Finalisation Process for any DFP Document, any comments, failure to make comments or raise objections or any other act or omission on the part of CFH will not constitute approval by CFH that all or part of the relevant DFP Document is factually or technically correct or otherwise complies with this Agreement.

1.2 Precedence

- (a) Subject to clause 1.2(b), if there is any conflict or inconsistency between the documents which comprise this Agreement, the order of precedence is:
 - (i) any Change agreed between the Company and CFH pursuant to a Change Authorisation Agreement, or any other change to this Agreement agreed in accordance with clause 22.9;
 - (ii) the Network Requirements;
 - (iii) the Base Agreement, Schedule 1 (*Definitions*) and Schedule 2 (*Commitments*);
 - (iv) the Schedules (other than Schedule 1 (*Definitions*) and Schedule 2 (*Commitments*)); and
 - (v) the Annexures (other than the Network Requirements).
- (b) If there is any conflict or inconsistency between information contained within the documents having the same level of precedence then, to the extent of any such conflict or inconsistency, the information contained in documents that are later in time will prevail over information contained in earlier documents.
- (c) If there is any conflict or inconsistency between this Agreement and the Open Access Deed, the Open Access Deed will take precedence to the extent of any such conflict or inconsistency.

1.3 Construction

In this Agreement:

(a) **Definitions**

unless the context otherwise requires, the terms used in this Agreement and set out in Schedule 1 (*Definitions*) have the meanings set out in that Schedule;

(b) **Interpretation**

unless the context otherwise requires:

- (i) a reference to a **clause** in the Base Agreement is a reference to a clause of the Base Agreement and a reference to a **clause** in a Schedule or an Annexure is a reference to a clause in that Schedule or Annexure;
- (ii) a reference to a **Schedule** or an **Annexure** is a reference to a schedule or an annexure to this Agreement;
- (iii) a **gender** includes each other gender;
- (iv) the **singular** includes the plural and vice versa;
- (v) a reference to **documentation** includes:
 - (A) a reference to that document as varied, supplemented, novated or substituted from time to time; and
 - (B) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media;
- (vi) a reference to **materials** means a reference to materials of any kind whether in the form of documentation, Software, hardware, network, componentry or otherwise;
- (vii) a reference to the **Company** in this Agreement includes reference to its successors in title and permitted assigns and, where the context so permits, its Personnel, Subcontractors and representatives;
- (viii) a reference to **CFH** in this Agreement includes reference to its successors in title and permitted assigns and, where the context so permits, its Personnel and representatives;
- (ix) any **agreement not to do a thing** also constitutes an agreement not to suffer or permit or cause that thing to be done;
- (x) any reference to a **consent** or an **approval** requires the prior written consent or approval of the party required to give that consent or approval;
- (xi) whenever the words **includes** or **including** are used in this Agreement, they are deemed to be followed by the words “without limitation”;
- (xii) a reference to any **legislation, policy** or **standard** includes a modification of that legislation, policy or standard or, in the case of legislation, legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;

- (xiii) **headings** to clauses in this Agreement and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (xiv) a reference to a **person** includes a partnership and also a body of persons, whether corporate or unincorporated;
- (xv) the **Background** forms part of this Agreement;
- (xvi) a reference to a **Business Day** is a reference to any day of the year other than a Saturday, a Sunday, a New Zealand public holiday or relevant provincial anniversary day in Auckland;
- (xvii) a reference to a **day**, other than a Business Day, is a reference to any calendar day of the year;
- (xviii) a reference to any **time** is a reference to New Zealand time;
- (xix) a reference to **currency** is a reference to New Zealand currency, unless expressly provided otherwise; and
- (xx) if an obligation falls to be performed or a right is to be exercised, on or by a **day that is not a Business Day**, then unless otherwise specified, that obligation is due to be performed or that right may be exercised on the Business Day next following that day; and

(c) **No contra proferentum**

none of its terms are to be construed against a party by reason of the fact that that term was first proposed or was drafted by that party; and

(d) **UFB2 Objectives**

to the extent that any of its terms are ambiguous, those terms are to be interpreted, to the extent reasonably practicable, in a way that gives effect to the UFB2 Objective in respect of the Coverage Area only, without prejudice to the potential application of the Change Procedure.

1.4 Personnel and Subcontractors

Any act or omission or the misconduct of any Personnel, representative or Subcontractor of a party to this Agreement, is deemed to be the act, omission or misconduct of that party.

1.5 Approvals and similar actions

Where, by any term of this Agreement, express provision is made for the giving of any consent, the granting of any approval or the making of any agreement, by any party, then unless stated otherwise:

- (a) that consent, approval or agreement may be given unconditionally or subject to such conditions as the party giving the consent, approval or agreement may stipulate;
- (b) if a consent, approval or agreement is given subject to a condition, the party seeking that consent, approval or agreement must comply with that condition; and
- (c) a consent for, approval of, or an agreement for, anything, does not apply to any other matter.

1.6 Costs

- (a) A party who has an obligation to do anything under this Agreement is to perform that obligation at its own cost, unless a term of this Agreement expressly provides otherwise.
- (b) Notwithstanding any other term of this Agreement, the Company shall bear any and all costs of participating in the RFP process in relation to the UFB2 Objective, including all costs associated with preparation and presentation of its proposal, financial modelling and design and all aspects of negotiation and finalisation of all associated documentation.
- (c) For the avoidance of doubt, if there is a dispute between the Company and any Personnel, representative or Subcontractor of the Company relating to this Agreement, or its subject matter, then the Company shall bear any and all costs relating to such dispute with its Personnel, representative or Subcontractor and no other party to this Agreement shall have liability for such costs and the Company shall, in any case, continue to comply with its obligations under this Agreement.

1.7 Inherent Services

If any services, functions, responsibilities, work, activities or tasks are not specifically described within the definition and description of the Network, Design and Build or the O&M Services but now or in the future are required to properly provide the Network, the Design and Build or the O&M Services because they are a necessary and inherent part of the Network, the Design and Build or the O&M Services, they will be deemed implied by, and included in, the scope of the Network, Design and Build or the O&M Services as if described in this Agreement, provided that any such services, functions, responsibilities, work, activities or tasks are not inconsistent with the Company's obligations under this Agreement, including the obligation to ensure the Network meets the Network Requirements.

1.8 Preservation of rights

- (a) Any approval, acceptance, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act (an **Act**) by CFH, its Personnel or representatives (including any absence of such Act) for any part of the Network, Design and Build and/or any O&M Services will not:
 - (i) limit (whether by waiver, estoppel or otherwise) the Company's responsibility to provide the Network, Design and Build and the O&M Services in accordance with this Agreement; or
 - (ii) prejudice any right or remedy that may be available to CFH under this Agreement or at Law.
- (b) Any reliance by the Company on any representation made, advice given or similar act (**Representation**) by CFH, its Personnel or representatives regarding any part of the Network, Design and Build and/or any O&M Services will be at the Company's sole risk and CFH will not have any liability regarding any such Representation.

1.9 No limit

For the avoidance of doubt, where any Act or Representation is given in accordance with a requirement under this Agreement then neither clause 1.8(a) nor clause 1.8(b) will limit the contractual effect of that Act or Representation as intended under this Agreement.

1.10 Acknowledgement

The Company acknowledges and agrees that:

- (a) certain amendments to this Agreement may be agreed by the parties as a result of CFH entering into arrangements in relation to the RBI2 Initiative in order to ensure that, to the extent necessary, the UFB2 and RBI2 Initiative contractual arrangements are appropriately consistent; and
- (b) if amendments are required as a result of CFH entering arrangements in relation to the RBI2 Initiative, the Company will act reasonably and in good faith with CFH to endeavour to agree any such necessary amendments.

2. Company role

2.1 Agreement

In consideration for CFH entering into this Agreement exclusively with the Company in relation to the Coverage Area, and in reliance on CFH's entry into and performance of its obligations under the Transaction Documents, the Company agrees to be responsible for the delivery of the Network (including deploying the New Infrastructure and integrating the Existing Infrastructure) and the performance of the Design and Build and the O&M Services during the Term, subject and pursuant to the terms of this Agreement.

2.2 Acknowledgements

The Company acknowledges:

(a) **Independent assessment**

it has made its own independent assessment of, and has relied on its own enquiries and investigations as to:

- (i) the subject matter of this Agreement;
- (ii) the quantity, quality, nature and extent of all resources (including human resources), materials and facilities necessary to enable it to meet the Network Requirements and to otherwise comply with, and perform, its obligations under this Agreement, including due to the ground (including underground) and site conditions in the Coverage Area; and
- (iii) the nature and the extent of the risks assumed by it under this Agreement, including regarding the ground (including underground) and site conditions in the Coverage Area;

(b) **Satisfaction**

it is satisfied that the Network Requirements and the obligations assumed by it under this Agreement can be met by the provision of the Design and Build and the O&M Services and by use of the Network; and

(c) **No reliance**

it has not relied on any Representations.

2.3 Group Companies

CFH acknowledges that any Group Company may own all or any part of the Network, and the Company may delegate the performance of any of its obligations under this Agreement to any Group Company. The Company is and remains fully responsible to CFH for the performance of its obligations under this Agreement and, without limiting the foregoing:

- (a) the Company will procure that any Group Company who owns all or any part of the Network, or to whom the Company delegates the performance of any obligations under this Agreement, complies with the terms and conditions of this Agreement (as if the relevant Group Company was, in respect of the relevant terms and conditions, the party to this Agreement in place of the Company); and
- (b) the Company will be responsible for any act or omission of any Group Company (and any Personnel of any Group Company) as if such act or omission were an act or omission of the Company or its Personnel, as the case may be.

3. Term

This Agreement will start on the Commencement Date and will, subject to clause 20 (Termination), and except as expressly stated otherwise, continue until the later of the following dates:

- (a) the date on which all Design and Build obligations of the Company under this Agreement are fulfilled in accordance with Schedule 3 (*Design and Build*); and
 - (b) the first Business Day following 31 December 2025,
- (the **Term**).

4. Network

4.1 Overview

- (a) The Company must build or otherwise deliver in accordance with this Agreement the New Infrastructure Past all Premises in the Coverage Area (including Infill Premises and Greenfield Sites) and the End User-Specific Infrastructure to End Users in the Coverage Area, and, where relevant, integrate the New Infrastructure with the Existing Infrastructure, in accordance with the terms of this Agreement.
- (b) In order to deliver the Network, the Company is responsible for, amongst other things, developing detailed specifications, designing, building, testing, rolling-out and commissioning the New Infrastructure, and integrating the Existing Infrastructure, in accordance with the terms of this Agreement, so that the Network:
 - (i) is developed, implemented and deployed to meet the Requirements;
 - (ii) provides the functions required of it by the Requirements; and
 - (iii) is provided, and performs, in accordance with the Service Levels.
- (c) The Company is to provide the O&M Services for the Network in accordance with Schedule 4 (*O&M Services*).

4.2 The Company's commitment to UFB

The Company will comply with the terms of Schedule 2 (*Commitments*) and Schedule 10 (*Commitments - Post Build*).

4.3 Equivalence of Inputs

- (a) The Company will ensure that the Design and Build, and delivery, of the Network will enable Retail Service Providers to purchase Dark Fibre Services on an Equivalence of Inputs basis from 1 January 2026 such that:
 - (i) there is sufficient space in ducts (or additional dark fibres) to enable Equivalence of Inputs; and
 - (ii) the Company will ensure that its OSS/BSS are capable of supporting Equivalence of Inputs from 1 January 2026.
- (b) For the avoidance of doubt, the obligations of the Company under this clause 4.3 form part of the Network Requirements.

4.4 Backhaul

- (a) As at the Commencement Date, the intention of the parties is for the Backhaul to be provided solely by way of the Company's existing backhaul infrastructure. Only in the event that the Company is unable to provide the Backhaul solely by way of its existing backhaul infrastructure will clauses 4.4(b) and 4.4(c) apply.
- (b) If, and to the extent, any Backhaul is to be built by the Company (**New Backhaul**), the New Backhaul must:
 - (i) in respect of a Network Stage, be built prior to the earlier of the Provisioning Milestone Date and the Build Complete Milestone Date for the relevant Network Stage; and
 - (ii) be made available by the Company on an Open Access Requirements basis as follows:
 - (A) to Retail Service Providers connecting to the Network from 1 January 2026; and
 - (B) for the purposes of the RBI2 Initiative and the Mobile Blackspot Initiative, within three months of Commissioning any Backhaul; and
 - (iii) provide a reasonable fibre allowance to service the likely requirements of the RBI2 Initiative and the Mobile Blackspot Initiative and to provide service to rural premises along the Backhaul route. This may involve breakout points for wireless sites and rural Premises.
- (c) If, and to the extent, any Backhaul is to be delivered by the Company by way of CI Leased Equipment (**Leased Backhaul**), the Leased Backhaul must be accessible by the Company pursuant to the terms of the relevant CI Leased Equipment Agreement prior to the earlier of the Provisioning Milestone Date and the Build Complete Milestone Date for the relevant Network Stage.

4.5 Greenfield Sites and Infill Premises

(a) Communal Infrastructure for Greenfield Sites

- (i) The Company must build Communal Infrastructure for Greenfield Sites in accordance with the Requirements.
- (ii) Without limiting the obligation under clause 4.5(a)(i) or any other obligations of the Company under this Agreement, the Company must, in respect of Greenfield Sites:
 - (A) act reasonably (including in any dealings with a Developer) and in a manner consistent with the objectives of this Agreement;
 - (B) not unreasonably delay the building of Communal Infrastructure to Greenfield Sites in the Coverage Area and build the Communal Infrastructure to Greenfield Sites in the Coverage Area as soon as reasonably practicable;
 - (C) subject to clauses 4.5(a)(ii)(A) and (B), where reasonably applicable, build the Communal Infrastructure to Greenfield Sites in the Coverage Area in a manner and within the timeframes stated publicly by the Company on its website from time to time; and
 - (D) not require, in respect of Infill Greenfield Sites only, the Developer to pay the Company more than ██████ excluding GST per Premises.
- (iii) The Company may:
 - (A) where each individual tenancy in an Infill Greenfield Site MDU is required to be served by a separate lead-in from the Communal Infrastructure, charge the Developer up to ██████ plus GST for each such individual tenancy; and
 - (B) charge the Developer a reticulation charge of ██████ plus GST per individual tenancy in an Infill Greenfield Site MDU, provided that each tenancy is in fact reticulated (subject to RSP approval if required).

(b) Communal Infrastructure for Infill Premises

- (i) The Company must build Communal Infrastructure to all Infill Premises in accordance with the Requirements.
- (ii) Without limiting the obligation under clause 4.5(b)(i) or any other obligations of the Company under this Agreement, the Company must, in respect of Infill Premises:
 - (A) act reasonably (including in any dealings with the relevant property owner or their authorised representative in relation to the Infill Premises) and in a manner consistent with the objectives of this Agreement;
 - (B) not unreasonably delay the building of Communal Infrastructure to all Infill Premises in the Coverage Area and build the Communal Infrastructure to all Infill Premises in the Coverage Area as soon as reasonably practicable; and

- (C) for the avoidance of doubt, not charge the relevant property owner for any part of the build of the Communal Infrastructure to the relevant Infill Premises.

(c) **Review and Escalation**

- (i) The Company must provide such evidence as reasonably requested by CFH from time to time to demonstrate its compliance with its obligations under clauses 4.5(a) and (b).
- (ii) If, in CFH's reasonable opinion, the Company is not complying with its obligations under clause 4.5(a) or 4.5(b), CFH will give the Company notice (a **CFH Build Notice**) of that opinion (together with details of alleged defaults (the **Build Defaults**)) and the parties will in good faith meet and discuss the Build Defaults with a view to resolving them within seven days of the date of the Build Notice (the **Consultation Period**).
- (iii) If the Build Defaults are not resolved to CFH's reasonable satisfaction within the Consultation Period or such other period as the parties agree during the Consultation Period, then CFH may engage an independent third party to review and report to CFH on the Company's performance of its obligations under clauses 4.5(a) or 4.5(b) (as applicable) (a **Build Report**).
- (iv) If the Build Report concludes that the Company may not be complying with its obligations under clauses 4.5(a) or 4.5(b), CFH may escalate the issue to the PCG for resolution (and will provide a copy of the Build Report to the PCG for that purpose).
- (v) If the Build Defaults are not resolved by the PCG, either party may escalate the Build Defaults to the Steering Committee for resolution.

(d) **End User-Specific Infrastructure for Greenfield Sites**

The Company must build End User-Specific Infrastructure for Greenfield Sites, but only when the Company receives a request for a new End User Connection at the relevant Greenfield Site from a Developer or a Retail Service Provider and the Company's standard terms for End Users have been agreed by the End User.

(e) **End User-Specific Infrastructure for Infill Premises**

The Company must build End User-Specific Infrastructure for Infill Premises, but only when the Company receives a request for a new End User Connection at the relevant Infill Premises from a Retail Service Provider and the Company's standard terms for End Users have been agreed by the End User.

4.6 Integrated Test Facility

- (a) The Company will ensure that the Integrated Test Facility:
- (i) is fit for purpose, and appropriately resourced to give effect to that purpose; and
- (ii) is made available in accordance with this Agreement, including so that:
- (A) Retail Service Providers can test and modify their Telecommunications Services to work on the Network, and will cooperate with Retail Service Providers in a timely manner in accordance with Best Industry Practice to support their use of the Integrated Test Facility; and

- (B) CFH has reasonable access to the ITF for the purposes of observing and monitoring UAT.
- (b) For the avoidance of doubt, the obligations of the Company under this clause 4.7 form part of the Network Requirements.
- (c) If the Company arranges for the leasing of an Integrated Test Facility, the Integrated Test Facility shall be treated as CI Leased Equipment and the Company must comply with the obligations set out in clause 6.3.

4.7 **Modification**

The Company will not make any changes to any part of the Network that are inconsistent with the terms of this Agreement other than as expressly authorised in accordance with the terms of this Agreement or otherwise approved in writing by CFH (such approval not to be unreasonably withheld), but may otherwise make any changes to any part of the Network at its discretion.

4.8 **Services and pricing**

- (a) The Company undertakes and agrees that it is bound by the provisions of, and will perform the obligations under, Schedule 6 (*Principles for UFB Services and Pricing*).
- (b) The Company will offer the UFB Services to Retail Service Providers on the terms of the Updated Reference Offer, as it applies to UFB2.
- (c) The Company must not provide any services, including any Retail Services, using the Network, other than the UFB Services, except with the prior written approval of CFH.

5. **Resourcing**

5.1 **General requirements**

The Company will:

- (a) provide sufficient resources (including human resources, equipment, Software, network, premises and other facilities); and
- (b) maintain a programme of maintenance of such resources,

to enable it to perform its obligations on time, safely and otherwise in accordance with this Agreement and will ensure that sufficient funds are available to provide and maintain such resources.

5.2 **Company Personnel**

(a) **Requirements**

The Company will ensure that all of its Personnel who are engaged in providing the Network, the Design and Build and/or the O&M Services:

- (i) are suitably qualified;
- (ii) have obtained all clearances necessary to provide the Network, the Design and Build and the O&M Services;

- (iii) have the requisite skills, expertise, qualifications and experience (including regarding health and safety matters);
- (iv) will carry out their respective duties with due care, skill and diligence; and
- (v) comply with all applicable laws and any applicable security or other policies, codes of conduct and procedures including the Company's and CFH's health and safety requirements under the Relevant Health and Safety Legislation and/or the Health and Safety Management Plan.

(b) **Non-conformance of Company Personnel**

If CFH, acting reasonably, determines that any of the Company's Personnel:

- (i) has acted, or failed to act, or is highly likely to act such that a breach of clause 5.2(a) has occurred; or
- (ii) has otherwise procured or been responsible for a breach of this Agreement,

(Non-Conformance), CFH will notify the Company of such Non-Conformance, and the Company will immediately take all necessary steps to remedy the Non-Conformance. CFH may direct any Non-Conformance to the PCG for resolution.

5.3 Subcontracting

- (a) The Company must consult with CFH prior to engaging any Subcontractor (other than an Approved Subcontractor) to provide goods and/or services in relation to this Agreement that represent a material proportion (in terms of quantity, significance and/or risk) of either the Design and Build or the O&M Services. This requirement will not apply to the extent that the Subcontractor is to be engaged to supply Equipment or CI Leased Equipment.
- (b) The Company is solely responsible for the selection of each Subcontractor and must ensure that:
 - (i) each Subcontractor is creditworthy, suitably qualified and has the relevant experience and history of quality performance (including in relation to all relevant health and safety matters and requirements) to perform the work it is required to carry out for the Company; and
 - (ii) each Subcontract complies with:
 - (A) any Relevant Health and Safety Legislation;
 - (B) the Health and Safety Management Plan; and
 - (C) the Company's health and safety requirements and procedure.
- (c) The Company is and remains fully responsible as primary obligor for all work carried out by any Subcontractor, all materials used by any Subcontractor and for any act or omission of any Subcontractor.

6. Performance

6.1 General

The Company will deliver the Network, Design and Build and the O&M Services:

- (a) in accordance with the terms of this Agreement;
- (b) with due care, skill and diligence;
- (c) by use of techniques, methodologies, processes and materials that accord with Best Industry Practice, including for safety and project management; and
- (d) for the avoidance of doubt, so that all Premises in the Coverage Area are Passed in accordance with Schedule 3 (*Design and Build*).

6.2 Network

(a) **Compliance with the Design and Build, Master Deployment Plan and Annual Deployment Schedules**

The Company will provide the Design and Build and integration of the Existing Infrastructure, in accordance with Schedule 3 (*Design and Build*), the Master Deployment Plan, each Annual Deployment Schedule, and the remainder of this Agreement and, for the avoidance of doubt, the Company must complete the Design and Build of the Network in the Coverage Area by 31 December 2024 (for the avoidance of doubt, this includes the Company satisfying all Build Complete Milestones in respect of the Coverage Area by that date, but does not require the Company to have built Communal Infrastructure for all Infill Premises and Greenfield Sites in the Coverage Area by that date).

(b) **Commission of the Network**

The Company must Commission the Network in accordance with Schedule 3 (*Design and Build*).

(c) **Delay**

If the Company considers that it is (or is likely to be) prevented or delayed from successfully achieving a Build Complete Milestone by the corresponding Build Complete Milestone Date (**Delay**) it will:

- (i) immediately provide notice verbally, and then as soon as reasonably practicable (but in any event within 10 Business Days, or such other period as may be agreed by the parties in writing) provide notice in writing to the PCG copied to CFH (**Notice of Delay**) setting out:
 - (A) the causes for the Delay and its expected duration;
 - (B) the effect of the Delay on its ability to perform its obligations under the Agreement (including any future Build Complete Milestone Dates); and
 - (C) what extension, if any, to the relevant Build Complete Milestone Date is being sought.

- (ii) the Company will, regardless of the cause of delay, take all reasonable steps to eliminate or avoid the Delay and mitigate its effects.
- (iii) as soon as practicable following the receipt of a Notice of Delay, the PCG will meet with a view to agreeing how the Delay should be addressed.
- (iv) if a Build Report has concluded that the Company may not be complying with its obligations under clause 4.5(a) or 4.5(b) and the Build Defaults the subject of the Build Report are not resolved by the PCG or the Steering Committee (as applicable) within 14 Business Days of escalation to the PCG or the Steering Committee (as applicable), then, on giving seven Business Days' notice to the Company, CFH may, or may contract a third party to, complete the build of the Communal Infrastructure Past the relevant Premises, and the build of End User-Specific Infrastructure if requested by a Developer or a Retail Service Provider in relation to Greenfield Sites, or a Retail Service Provider in relation to an Infill Premises (provided that in each case the third party must build in accordance with the Network Requirements and once built the Communal Infrastructure will form part of the Network), and CFH may (without limitation to any other rights or remedies available to it):
 - (A) set-off the reasonable costs incurred (less any amount received by CFH from the relevant Developer for completion of the build) against any amount due under a Call Notice issued pursuant to the Subscription Agreement; and/or
 - (B) or make a claim against the Company for such costs.

The Company acknowledges that costs incurred by CFH and/or a third party under this clause 6.2(c) will not be unreasonable solely because they exceed the costs that the Company would have incurred in building the relevant Communal Infrastructure and/or End User-Specific Infrastructure.

(d) **Extension to Build Complete Milestone Dates**

If the Company has failed to achieve a Build Complete Milestone by the corresponding Build Complete Milestone Date:

- (i) CFH will, subject to clause 6.2(d)(ii), but notwithstanding clause 6.2(e):
 - (A) be entitled to revise the relevant timeframes in this Agreement and each applicable Annual Deployment Schedule to reasonably account for the failure; and
 - (B) notify the Company in writing of any such revision and will update the relevant Annexures. The updated Annexures will then replace the existing Annexures and form part of this Agreement; and
- (ii) if the failure was caused by:
 - (A) any Force Majeure Event;
 - (B) any Third Party Event; or

any act or omission of CFH (other than acts of its Personnel in their capacity as members of any body constituted under this Agreement, including the PCG) or its Personnel (a **Delay Cause**), then:

- (C) the Company will be entitled to a reasonable extension to the relevant Build Complete Milestone Date (and, to the extent reasonably necessary, any subsequent Build Complete Milestone Dates) for such Delay Cause, provided that such extension is proportionate to the duration of the delay, taking into account all measures the Company can reasonably take to mitigate the effect of the delay and make up lost time;
 - (D) any dispute regarding any such extension will be subject to expert determination under clause 18.4; and
 - (E) the Company will not be required to pay any Liquidated Damages to the extent that the failure was caused by that Delay Cause.
- (e) **Liquidated Damages**
- (i) Subject to clause 6.2(d), in respect of a Network Stage if the Company fails to achieve any Build Complete Milestone on or before the applicable Build Complete Milestone Date:
 - (A) CFH will be entitled to claim, and the Company will pay to CFH within 20 Business Days of demand from CFH, the portion of Liquidated Damages attributable to CFH's loss (such portion to be notified in writing by CFH to the Company) applicable to the relevant Build Complete Milestone for each day (or part thereof) that the relevant Build Complete Milestone is not met; and
 - (B) the Crown will be entitled to claim, and the Company will pay to the Crown (or to CFH on account to the Crown if the Crown so directs) within 20 Business Days of the demand from the Crown, the portion of Liquidated Damages attributable to the Crown's loss (such portion to be notified in writing by CFH to the Company) applicable to the relevant Build Complete Milestone for each day (or part thereof) that the relevant Build Complete Milestone is not met.
 - (ii) The parties acknowledge that the Liquidated Damages are a genuine pre estimate of loss having regard to, and have been calculated and negotiated by the parties to reflect, the particular circumstances and significance of the UFB2 Objective and the Network build, by reason of the loss of value in, and reduced use of, the Network due to a failure to meet Build Complete Milestones. (For the avoidance of doubt, "loss" refers to loss of both CFH and the Crown.)
 - (iii) The parties acknowledge that the Liquidated Damages are for the failure to achieve the relevant Build Complete Milestone by the relevant Build Complete Milestone Date, but without prejudice to any other rights, powers or remedies provided under this Agreement (other than termination, which is subject to the regime set out in clause 20) or by Law (including recovery of greater actual damages that may be suffered).
 - (iv) The parties acknowledge that the Liquidated Damages comprise elements of indirect loss and damage and loss of profits, revenue and business, and the Company accepts that such loss comprises part of the Liquidated Damages.

6.3 CI Leased Equipment

- (a) As at the Commencement Date, the intention of the Company is that no Communal Infrastructure will be provided by way of CI Leased Equipment. However, if the Company does deliver any Communal Infrastructure (including for the avoidance of doubt Backhaul) by way of CI Leased Equipment clauses 6.3(b) and 6.3(c) will apply.

- (b) The documentation in respect of any CI Leased Equipment must be:
 - (i) entered into by the Company and the relevant third party counterparty (if applicable) (the **CI Leased Equipment Agreement**); and
 - (ii) signed by all parties, by and effective from, the Network Build Commencement Date, with a full executed copy of such documentation to be provided to CFH on or prior to such date.
- (c) The CI Leased Equipment Agreement must also provide that:
 - (i) any duct or fibre lease arrangement (including an IRU) will be secured for a minimum of 10 years from the Network Build Commencement Date, with appropriate renewal rights; and
 - (ii) any building/site (including, for example, a Central Office) lease and/or pole access rights will be secured for a minimum of 20 years, with appropriate renewal rights.

6.4 Service operations

(a) Service Levels

- (i) The Company will meet or exceed the Service Levels at all times.
- (ii) If a Service Level Default occurs, the Company will pay any applicable Service Default Payments to CFH, the Crown or the applicable Retail Service Provider or End Users (as the case may be), in accordance with Schedule 5 (*Service Levels*), within 20 Business Days of demand from CFH, with:
 - (A) the portion of Service Default Payment attributable to CFH's loss (such portion to be notified in writing by CFH to the Company) applicable to that Service Level Default being payable to CFH; and
 - (B) the portion of Service Default Payment attributable to the Crown's loss (such portion to be notified in writing by CFH to the Company) applicable to that Service Level Default being payable to the Crown (or to CFH on account of the Crown, if the Crown so directs).
- (iii) The parties acknowledge that the Service Default Payments are a genuine pre estimate of CFH's, the Crown's or the Retail Service Provider's loss (as applicable) having regard to, and have been calculated and negotiated by the parties to reflect, the particular circumstances and significance of the UFB2 Objective and the Network build, by reason of the loss of value in, and reduced use of, the Network due to a failure to meet applicable Service Levels, (for the avoidance of doubt, "loss" refers to loss of both CFH and the Crown or the Retail Service Provider (as applicable)).
- (iv) The parties acknowledge that the Service Default Payments are for the failure to achieve the Service Levels during the reporting period, but without prejudice to any other rights, powers or remedies provided under this Agreement (other than termination which is subject to the regime set out in clause 20) or by Law (including recovery of greater actual damages that may be suffered in respect of, and to the extent that, the relevant Service Default Payment is payable to CFH or the Crown and not to a Retail Service Provider or the End Users).

- (v) The parties acknowledge that the Service Default Payments comprise elements of indirect loss and damage and loss of profits, revenue and business, and the Company accepts that such loss comprises part of the Service Default Payments.
- (vi) The Company will comply with the provisions of Schedule 5 (*Service Levels*) regarding Service Levels and Service Default Payments.

(b) **Service Levels compliance management**

- (i) The Company will implement appropriate measurement, monitoring and management tools and procedures to enable it to:
 - (A) detect and seek to prevent any potential failure to meet the Service Levels; and
 - (B) detect, minimise and promptly rectify any failure to meet the Service Levels.
- (ii) If a Service Level Default occurs then the Company will promptly (or, where specified, within the time period set out in Schedule 5 (*Service Levels*)) give CFH notice to that effect.
- (iii) The Company will take such steps and will do all things to remedy and to report on a Service Level Default as soon as possible, including those actions the Company is required to undertake pursuant to Schedule 5 (*Service Levels*).
- (iv) If the Company does not report on performance against Service Levels in a manner that clearly identifies whether the Service Levels are being met, and otherwise in accordance with Schedule 7 (*Project Governance*):
 - (A) CFH will notify the Company of its reporting failure;
 - (B) the Company will remedy the failure promptly, but in any event within five Business Days following CFH's notice, by providing a new report for the same period; and
 - (C) if the new report is not provided within the period required by clause 6.4(b)(iv)(B), or the new report does not remedy the failure, the relevant Service Levels will be deemed to have not been met and CFH, the Crown and Retail Service Providers will be entitled to any applicable Service Default Payments.
- (v) If the Company has failed to meet the same CFH Service Level over a period of three consecutive months (a **Service Level Performance Issue**), in accordance with clause 17.2, a Performance Issue will have occurred and CFH shall be entitled to exercise its rights under clause 17 in respect of the remedying of such Performance Issue in addition to the rights it has under the balance of this clause 6.4(b).

6.5 Challenge to enforceability

- (a) The Company agrees that it will not challenge the enforceability of the Liquidated Damages, Service Default Payments or Material Breach Liquidated Damages in any way whatsoever.

- (b) If the Company challenges the enforceability of any Liquidated Damages, Service Default Payments or Material Breach Liquidated Damages, or has not paid any Liquidated Damages, Service Default Payments or Material Breach Liquidated Damages by the date that is 90 days following the due date for their payment (other than where payment is subject to a bona fide dispute, provided such dispute is not a challenge by the Company to enforceability), then CFH may terminate this Agreement (regardless of whether or not CFH has not made a subscription due to the non-satisfaction of one, or more, of the conditions precedent under clause 4 of the Subscription Agreement), and unless CFH exercises its right to terminate this Agreement, the parties will continue to meet their respective obligations under this Agreement.
- (c) If the Company does not challenge the enforceability of any obligation to pay Liquidated Damages, Service Default Payments or Material Breach Liquidated Damages, but a court or arbitrator finds (for whatever reason) that the obligation is unenforceable, CFH will not be entitled to exercise its right to terminate this Agreement under clause 6.5(b) nor its right to suspend further subscriptions under the Subscription Agreement unless the Company actually relies on the finding and does not pay Liquidated Damages, Service Default Payments or Material Breach Liquidated Damages (however CFH's right to terminate this Agreement will revive at any time that the Company subsequently does not pay Liquidated Damages, Service Default Payments or Material Breach Liquidated Damages in reliance on that finding).

6.6 Health and Safety

- (a) The Company must ensure that at all times and in respect of the build of the Network and the provision of the O&M Services it complies with:
 - (i) any Relevant Health and Safety Legislation;
 - (ii) the Health and Safety Management Plan; and
 - (iii) the Company's health and safety requirements and procedures,

and the Company warrants (with such warranty being repeated on each day of the Term) that the Company is able to and will perform its obligations under and in respect of this Agreement in a manner which meets the requirements of all Relevant Health and Safety Legislation and the Health and Safety Management Plan.
- (b) The Health and Safety Management Plan must at all times reflect Best Industry Practice. The Company must at all times during the Term continuously review and update the Health and Safety Management Plan to reflect Best Industry Practice and the Company must continue to comply with any amended form of Health and Safety Management Plan. Prior to making any amendments to the Health and Safety Management Plan, such amendments must be approved by CFH.
- (c) After consultation with the Company, CFH may at any time require amendments to be made to the Health and Safety Management Plan if CFH believes in its reasonable opinion that such amendments are required to reflect Best Industry Practice.
- (d) The Company must notify CFH as soon as reasonably possible (such notification to CFH to be made to the persons specified in the Protocols for Escalation) upon becoming aware of any notifiable incident or notifiable event (as defined by the Health and Safety Legislation), "near miss", emergency or incident involving injury or potential injury to any person or damage to property and undertake all appropriate investigations and report such events to CFH (including providing any additional information reasonably requested by CFH) in writing and at its own expense.

- (e) In addition to its obligations under clause 6.6(d), the Company must provide reports on its health and safety performance in respect of this Agreement to CFH, prepared in such form, with such content and at such frequency as may reasonably be required from time to time by CFH and otherwise in accordance with CFH's reasonable instructions.
- (f) The Company must:
 - (i) appoint a health and safety manager, who is a member of the Company's Personnel, to oversee the Company's compliance with of its obligations in respect of health and safety under this Agreement (the **Health and Safety Governance Manager**);
 - (ii) undertake regular audits and site inspections at the frequency and standard specified in the Health and Safety Management Plan;
 - (iii) undertake any other audits and site inspections for health and safety purposes as may reasonably be required by CFH; and
 - (iv) allow CFH (or CFH's representatives) reasonable access to the Company's work sites, documents and information to allow CFH (or CFH's representatives) to conduct their own audits and site inspections and the Company must make itself, its Personnel and Subcontractors available to participate in and co-operate fully with, any CFH-led audits and inspections.
- (g) The Health and Safety Liaison Manager must act as a point of contact with CFH in relation to matters of Health and Safety, including in respect of compliance with the Health and Safety Management Plan. The Health and Safety Liaison Manager must report to the PCG once a month on health and safety, including identifying any non-compliance with the health and safety requirements under this Agreement or any breach of the Relevant Health and Safety Legislation.
- (h) The Company must ensure that it obtains safe work method statements from any Subcontractors performing a service on behalf of the Company (under which the Subcontractors agree to also comply with the requirements set out in this clause 6.6, together with any other obligations or requirements in relation to health and safety matters set out in this Agreement, with respect to the Sub-contractors operations and personnel), and supervise Sub-contractors' compliance with those safe work method statements.

6.7 APD

The parties acknowledge and agree that the APD:

- (a) contains, for each Network Stage, the Premises IDs for each of the Brownfield Premises in that Network Stage for which the Company can receive Applicable $CPPP_{L1\ CFH}$ (the number of such Premises per Network Stage being the Applicable N_{Passed} , subject to any reduction to Applicable N_{Passed} made pursuant to Schedule 8 (*Change Procedure*)) following satisfaction of the Build Complete Milestone for that Network Stage, such funding to be made available subject to and in accordance with the terms of the Subscription Agreement;
- (b) identifies the location for each of the Premises referred to in clause 6.7(a);
- (c) does not contain details (including Premises IDs) of any Greenfield Sites or Infill Premises;

- (d) in respect of Brownfield Premises will be used under this Agreement for, amongst other things, calculating the Premises Passed by the Company and determining whether a Build Complete Milestone has been satisfied; and
- (e) contains data originally sourced from the LINZ Data Service, <https://data.linz.govt.nz/layer/772-nz-primary-parcels/> and licenced by LINZ for re-use under the Creative Commons Attribution 3.0 New Zealand licence,

but, for the avoidance of doubt, the use of the APD shall not in any way limit:

- (f) the Company's obligations under clause 4.1(a) to build or otherwise deliver in accordance with this Agreement the New Infrastructure Past all Premises in the Coverage Area (including Infill Premises and Greenfield Sites); or
- (g) the requirement for the Company to Pass all Premises (other than Exempt Premises) in a Network Stage with Communal Infrastructure for the purposes of satisfying the Build Complete Milestone for that Network Stage;

even if the actual number of Premises in a Network Stage to be, and that are, Passed is greater than the number of Premises specified as the Applicable N_{passed} for that Network Stage.

7. Ongoing Improvements

7.1 Continuous improvement

The Company will continually plan and cater for the evolution of the Network and appropriate O&M Services and seek to improve its performance as measured against the Service Levels.

7.2 Improvements

The Company acknowledges that it is necessary for CFH to be kept up to date with:

- (a) improvements, developments and changes in technology, processes, practices, standards, architectures, interfaces and methodologies;
- (b) any changes in the Company's technology strategies and policies; and
- (c) opportunities with third parties,

that will or could improve or have a significant effect on the Network (including Equipment and Software) or the O&M Services (**Improvements**), including by improving efficiency, effectiveness, productivity or customer service or by reducing any costs or related risks.

7.3 Regular reporting and consultation

On each anniversary of the Commencement Date (or earlier each year, if reasonably requested by CFH):

- (a) the Company will provide CFH with a report detailing Improvements as specified in Annexure 1 of Schedule 7 (*Project Governance*); and
- (b) the Company and CFH will meet to discuss in good faith the ongoing adequacy of the Network and the O&M Services and measures which should be implemented, in

accordance with this Agreement, to rectify or improve any aspect of the Network or the O&M Services.

8. Project Governance

8.1 Structure

The project governance structure for, and the relationships contemplated by, this Agreement are set out in Schedule 7 (*Project Governance*), including the establishment of, and rules for, the Project Control Group and the Steering Committee.

8.2 Appointment of Relationship Managers

CFH and the Company will each:

- (a) appoint, and maintain during the Term, a suitably qualified and experienced person as their relationship manager (**Relationship Manager**); and
- (b) consult with the other party about any proposed replacement or redeployment of its Relationship Manager and, in the case of the Company, comply with clause 8.4.

8.3 Scope of role

Each Relationship Manager will have the role set out in Schedule 7 (*Project Governance*).

8.4 Key Personnel

(a) Identity of Key Personnel

The key personnel comprises the Company's Relationship Manager and other individuals identified as such in Schedule 7 (*Project Governance*) as Key Personnel of the Company (the **Key Personnel**).

(b) Replacement of Key Personnel

Subject to clause 8.4(c), if the Company wishes to replace any member of the Key Personnel, the Company must:

- (i) promptly advise CFH and propose a suitable replacement, having regard to the status, skills, qualifications, expertise and experience of the person to be replaced;
- (ii) consult with CFH in relation to any proposed replacement; and
- (iii) if requested by CFH:
 - (A) provide all the information and references that CFH may reasonably require in relation to any proposed replacement; and
 - (B) arrange for CFH to interview any proposed replacement,

and any replacement may only be appointed with CFH's prior written approval, which will not be unreasonably withheld.

(c) **Extenuating circumstances**

The Company will ensure that its Key Personnel fulfil the relevant roles, functions or tasks assigned under this Agreement, except to the extent that an individual is unavailable or unable to, due to circumstances beyond the reasonable control of the Company (including resignation, illness, death and bereavement) (**Extenuating Circumstances**). If any member of the Key Personnel is unavailable for a period greater than one month as a result of Extenuating Circumstances the Company and CFH acknowledge that the Company's primary focus is to ensure the continuity and quality of the performance of its obligations. Consequently, the Company must promptly:

- (i) advise CFH of the Extenuating Circumstances; and
- (ii) provide a suitable replacement or substitute during the period of unavailability, having regard to the status, skills, qualifications, expertise and experience as the Key Personnel to be replaced,

provided that the Company will, to the extent practicable in the circumstances, use its best endeavours to comply with its obligations in clause 8.4(b).

(d) **Continuity of Key Personnel**

The Company acknowledges the importance to CFH of maintaining continuity of Key Personnel and will take all reasonable steps to retain the services of the Key Personnel.

8.5 Compliance Manager

- (a) Without prejudice to any other rights of CFH under the Agreement or at Law: the Compliance Manager may at any time and from time to time conduct a review, to:

- (i) verify the Company's compliance with and/or ability to perform any of its obligations under this Agreement;
- (ii) verify the accuracy of any reports or other information provided, or to be provided, by the Company (at any stage of its development); and/or
- (iii) assess the Company's conduct of Company Testing as part of acceptance testing, including, if requested, at the same time as such testing is being completed by the Company,

(a **Review**).

- (b) The Company will promptly provide:

- (i) access and assistance to the Compliance Manager in respect of a Review, including reasonable access to the Company, its Personnel, facilities, systems, records and resources used in the provision of the Design and Build and the O&M Services; and
- (ii) any explanations, information and documentation that the Compliance Manager may reasonably require in relation to any Review.

- (c) The Compliance Manager may, for the purpose of a Review, inspect, measure and record any element of the Design and Build and/or the O&M Services, including shooting of still or video footage of the physical works for the Design and Build.

- (d) The outcome of a Review may be used by CFH as the basis for requesting a Remedial Plan in accordance with clause 17.
- (e) The Company may request that CFH provide a copy of any written report prepared following a Review. CFH may provide a copy of the full report, a redacted copy or summary of the report, or withhold the report, in its sole discretion.
- (f) The Company will procure that any Subcontracts contain provisions granting CFH and the Compliance Manager the same rights, in respect of the Subcontractor, that CFH and the Compliance Manager have under this clause.
- (g) Each party will be responsible for its own costs in relation to any Review, unless the Review reveals a Material Breach by the Company, in which case the Company will reimburse CFH for its reasonable costs of the Review (including the costs of the Compliance Personnel).

8.6 Reporting and records

(a) Reporting

- (i) The Company must issue written reports as to its performance of each of the Design and Build and the O&M Services:
 - (A) when those reports are required to be provided to CFH; and
 - (B) incorporating such information that is to be contained in those reports, pursuant to the terms of Schedule 7 (*Project Governance*).
- (ii) The Company must provide CFH with the Reporting Information at the frequency specified alongside the relevant Reporting Information in the table in Annexure 5 of Schedule 7 (*Project Governance*), and any other reporting information (which, for the avoidance of doubt, shall include pricing, cost and revenue information and the asset register (including GIS data)) reasonably requested by CFH from time to time.

(b) Records

The Company must, at all times during the Term, maintain true, up to date, accurate and complete records of all of the Company's invoices, reports, operating processes and procedures and other records created or developed for the Network (including OSS/BSS), Design and Build and the O&M Services, in accordance with Best Industry Practice and all Laws, and must ensure that each of its Subcontractors does the same.

(c) Reconciliation

The records maintained by the Company under clause 8.6(a)(ii) must provide sufficient detail to enable CFH to reconcile those records with:

- (i) the contents of the reports the Company issues to CFH under clause 8.6(a); and
- (ii) the Call Notices issued pursuant to the Subscription Agreement.

(d) Access to records and information

CFH will have access to all of the records and other information required to be maintained under clause 8.6(a)(ii) and such records and information are to be provided to CFH on not less than five Business Days' notice (or on not less than 10 Business Days' notice where those records are archived) and CFH may take copies of such records and information. All records and other information required to be maintained under clause 8.6(a)(ii) are to be held in electronic form and hard copy form.

(e) Security of records

All records must be stored and archived in accordance with Best Industry Practice and in a manner which reasonably ensures their continued safety from destruction or loss and their confidentiality. Where records are kept in electronic form, they must be backed-up and copied in accordance with Best Industry Practice for the retention and safety of records of such a nature.

8.7 Review and audit**(a) Right to audit**

(i) CFH may, subject to the remainder of this clause 8.7(a):

(A) carry out an audit in accordance with the terms of clause 8.7(b); or

(B) request the Company to carry out a Self Audit in accordance with the terms of clause 8.7(c),

for the purpose of reviewing the Company's compliance with, and/or ability to perform, any of its obligations under, or in connection with, this Agreement.

(ii) Before any audit is conducted or Self Audit is requested, CFH will consult with the PCG regarding such audit or Self Audit.

(iii) CFH will not conduct an audit, or request that the Company conduct a Self Audit, more than twice (in aggregate) in a calendar year, unless:

(A) CFH believes on reasonable grounds that the Company is in Material Breach; or

(B) CFH is required to do so in order to comply with applicable Crown audit requirements imposed by Law.

(iv) CFH will provide a copy of any written audit report to the Company on request.

(b) Audit requirements

If CFH conducts an audit under clause 8.7(a):

(i) it will be conducted during Business Days and following five Business Days' notice to the Company;

(ii) it will be undertaken by an independent expert (which may be Audit New Zealand), with such expert to be under a duty of confidentiality to the Company;

- (iii) CFH will comply with the Company's reasonable security requirements;
- (iv) CFH will use its reasonable endeavours to minimise any disruption to the Company's business during the course of the audit;
- (v) the Company must co-operate in a timely manner in respect of any audit;
- (vi) the Company must promptly provide:
 - (A) reasonable access and assistance to CFH and the independent expert in respect of any audit (including access to the Company, its Personnel, facilities, systems, records and resources used in the provision of the Design and Build and the O&M Services); and
 - (B) any explanations, information and documentation that CFH or the independent expert may reasonably require in relation to the audit; and
- (vii) the Company will procure that any agreements with its Subcontractors contain provisions granting CFH the same rights, in respect of the Subcontractor, that it has under this clause.

(c) **Self audit**

CFH may, by notice in writing, request the Company to undertake an internal self-audit for the purposes set out in clause 8.7(a)(i) (**Self-Audit**). The Self-Audit will be carried out by the Company's Personnel or its external auditor within 30 days of receiving such notice from CFH. The Company will, following such Self-Audit, provide a written report to CFH detailing the findings of such Self-Audit. The Company will resolve any such findings which are adverse to the proper performance of the Design and Build or the O&M Services as soon as practicable at its cost.

(d) **Cost of audit**

Each party will be responsible for its own costs in relation to any audit undertaken in accordance with this clause 8.7, unless the audit reveals a Material Breach by the Company of this Agreement, in which case the Company will reimburse CFH for its costs in carrying out any audit.

8.8 Quality assurance

- (a) The purpose of the Company's quality assurance programme is to ensure the Design and Build, the O&M Services and the Network are managed and delivered in a way which enables the Company to meet its obligations under this Agreement.
- (b) The Company is to undertake quality assurance reviews. These quality assurance reviews will be undertaken by a senior person from the Company's organisation with extensive experience in conducting quality assurance assignments and who is not part of the Company's team for the Design and Build and the O&M Services nor a person to whom the Company's Relationship Manager reports.
- (c) The objectives of such quality assurance reviews are to provide:
 - (i) a consistent, structured process for measuring and improving the quality of the Design and Build, the O&M Services and the Network;
 - (ii) a means of minimising rework and achieving consistency in service, and the Network, delivery;

- (iii) assistance to the project teams in ensuring that the Company's standards, procedures and methodologies for the management of services similar to the UFB Services are properly deployed and implemented in the management of the UFB Services;
- (iv) a review of activities to check compliance with applicable standards, procedures and methodologies together with assistance in resolving any identified non-compliance; and
- (v) a review of engineering practices involved in the Design and Build, to confirm that they are suitable for a long-term asset.

9. Responsibilities

9.1 Mutual requirements

Subject to clause 1.5(b), each party will proactively and fully co-operate with the other party in good faith with respect to all matters that relate to this Agreement.

9.2 General Company responsibilities

The Company will, without limiting any other provision under this Agreement:

- (a) implement and maintain such engineering practices, project and service management practices and processes, in accordance with Best Industry Practice, to provide the Network (including deploying the New Infrastructure and integrating the Existing Infrastructure), the Design and Build and the O&M Services in accordance with this Agreement;
- (b) proactively identify, assess and monitor operational, technical, commercial and other risks in relation to the Network and relevant stakeholders (including Retail Service Providers and End Users) and take action to minimise those risks to a level that is reasonable in the circumstances (including by the preparation of contingency plans);
- (c) use commercially reasonable endeavours to minimise any disruption to the public, meet Best Industry Practice health and safety standards and respond promptly to, and appropriately deal with, any complaints received from or actions taken by any governmental body or authority or the public in relation to the Design and Build or the O&M Services;
- (d) respond promptly, accurately and adequately to any requests for information made pursuant to this Agreement made by CFH in relation to the Network, the Design and Build or the O&M Services;
- (e) as soon as is practicable, notify CFH of any material problems or issues that arise in relation to the performance of its obligations under this Agreement, including any problems or issues that will or are likely to materially affect the provision or quality of the Network, the Design and Build or the O&M Services, or the ability of the Company to perform its obligations under this Agreement;
- (f) without limiting any other provision of this Agreement, not adversely affect the reputation of CFH or the Crown; and
- (g) not cause CFH to be in breach of, or in a position likely to be in breach of any Law.

9.3 Stock levels and spares

The Company must ensure that it maintains sufficient stock levels of the relevant Equipment, and sufficient spare parts and components, as it reasonably considers necessary to meet its obligations under this Agreement, including under Schedule 5 (*Service Levels*).

9.4 Business continuity

The Company will implement and maintain at all times adequate business continuity (including disaster recovery) arrangements in respect of its own business, in accordance with Best Industry Practice.

9.5 Regulatory compliance

The Company will:

- (a) keep CFH informed of all regulatory and/or legal changes or requirements impacting the Company that will or are likely to impact upon the Network and/or the performance of its obligations under this Agreement, including changes to any district or regional plans, district council bylaws, district council codes of practice and development manuals for roading and New Zealand Transport Agency guidelines and standards; and
- (b) without limiting any of its other obligations under this Agreement, ensure that it:
 - (i) complies with all Laws in performing its obligations under this Agreement, including all applicable district or regional plans, district council bylaws, district council codes of practice and development manuals for roading, New Zealand Transport Agency guidelines and standards, electrical safety standards and optical safety standards, and any relevant TCF codes; and
 - (ii) obtains, maintains and complies with any governmental, legal, regulatory or other approvals, permissions, consents (including resource consents), licences, and requirements necessary to:
 - (A) provide the Design and Build and the O&M Services in accordance with this Agreement, including the Master Deployment Plan and each Annual Deployment Schedule; and
 - (B) enable the Company to provide the Design and Build and the O&M Services, including to make Connections,

from any council, government agency, building owner or occupier, land owner or other third party. For the avoidance of doubt, any failure by the Company to obtain such approvals, permissions, consents, licence or requirements is not a Force Majeure Event or Third Party Event; and
- (c) without limiting any of its obligations under this Agreement, in respect of each Network Stage prior to the relevant Build Start Milestone Date, and at all times thereafter, proactively seek to obtain in advance all consents, permissions or approvals required from any council, government agency, building owner or occupier, land owner or other third party for the installation of fibre to enable the build of Communal Infrastructure (the **Relevant Consents**) in accordance with this Agreement (Pre-consenting). The Company will, without limitation to this general obligation:
 - (i) engage sufficient dedicated personnel and other resources to ensure that:

- (A) all building owners, building occupiers and land owners (**Relevant Parties**) from whom a Relevant Consent is required have been contacted in writing and/or by direct personal contact at least two months prior to Hand Over of the relevant Premises in the relevant Network Stage; and
 - (B) reasonable and appropriate follow ups are made in relation to Relevant Parties who have not responded to prior contact by the Company to ensure that the build of Communal Infrastructure in the Network Stage is completed by the Build Complete Milestone for that Network Stage; and
- (ii) provide quarterly written reports to the PCG updating the PCG in respect of progress towards Pre-consenting, including providing statistics in relation to Relevant Parties contacted;
- (d) if Relevant Consents are required in respect of the build of Communal Infrastructure for Infill Premises and/or Greenfield Sites, the Company will use reasonable endeavours to proactively obtain those Relevant Consents at the appropriate point in time, taking into account the Company's obligations under clause 4.5;
 - (e) (without limiting the Company's obligations under Schedule 5 (Services Levels)), if any consents, permissions or approvals are required from any building owner or occupier, or land owner to enable the build of End User-Specific Infrastructure to a particular Premises (**Required EUSI Consents**), the Company will, from the date on which the Company receives the relevant request for the new End User Connection at the relevant Premises from a Retail Services Provider, use reasonable endeavours to obtain such Required EUSI Consents; and
 - (f) provide such evidence as reasonably requested by CFH from time to time to demonstrate the Company's compliance with this clause 9.5.

9.6 Change in Law

The Company will not be relieved of its obligation to perform this Agreement, including its obligations to perform the Design and Build and the O&M Services in accordance with the terms of this Agreement, nor be entitled to any additional consideration under this Agreement or any Transaction Document as a result of a Change in Law.

9.7 CFH responsibilities

In addition to its other obligations under this Agreement, CFH will:

- (a) give the Company reasonable access to CFH's Personnel to liaise with the Company's Personnel in relation to this Agreement; and
- (b) while its Personnel are on the Company's premises, will ensure that such Personnel observe any reasonable health, safety, security and other procedures which the Company has previously advised CFH of in writing.

10. Changes

10.1 Change Procedure

Any proposed change to the scope of the Design and Build or the O&M Services (each a **Change**) will be governed by the Change Procedure.

10.2 Other changes

- (a) Any change to this Agreement that is not a Change is to be made in accordance with clause 22.9 or any specific provisions for other changes set out in this Agreement (including as set out in clause 10.2(b)).
- (b) Any proposed change to the Service Levels (except where those changes are to be addressed as contemplated by Schedule 5) or the Network (including any Network upgrade) will be governed by the business planning process set out in Schedule 7 (*Project Governance*).

10.3 No further funding for changes

For the avoidance of doubt, no Change (or any other type of change, including variations under the subcontracts to which the Company is party (including for the provision of civil works)) will be passed through to CFH for payment and any Change (or other type of change) will be at the Company's sole cost.

11. Reliance

11.1 Reliance

Other than the mutual promises contained in this Agreement, and in reliance on CFH's obligations under the Transaction Documents, the Company is not entitled to any consideration for the Company's performance of its obligations under this Agreement, including the Company's obligations for deployment of the New Infrastructure, integration of the Existing Infrastructure with the New Infrastructure, provision of the O&M Services and meeting the Service Levels for the Network in the entire Coverage Area, regardless of the actual costs to the Company in performing its obligations under this Agreement.

11.2 Obligation to perform continues

For the avoidance of doubt, except to the extent expressly provided for in this Agreement, if:

- (a) in accordance with the terms of the Subscription Agreement, CFH does not make a subscription due to the non-satisfaction of one, or more, of the conditions precedent under clause 4 of the Subscription Agreement; or
- (b) the Company defaults under any of its obligations under this Agreement, whether represented by a failure to meet Build Milestones, Service Level Defaults, Material Breach or requirement to prepare a Remedial Plan,

such occurrence will not limit or reduce the Company's obligations to provide the Design and Build and the O&M Services, in accordance with this Agreement. Notwithstanding the operation of the Subscription Agreement, the Company is responsible for all funding of the Design and Build and the O&M Services.

12. Warranties

12.1 General warranties

Each party represents, warrants and undertakes that:

- (a) it has full power, capacity and authority to execute, deliver, and perform its obligations under this Agreement;

- (b) it has, and will continue to have, all the necessary consents, permissions, licences and rights to enter into and perform its obligations under this Agreement; and
- (c) once executed this Agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

12.2 Company warranties

The Company represents, warrants and undertakes that:

- (a) the Network will have no Faults as at Acceptance;
- (b) the Network will, on and following Acceptance, meet all of the Network Requirements and comply and conform with the Detailed Specifications (as the Network, or such Network Requirements and Detailed Specifications may be varied or changed in accordance with, or permitted changes made within and in accordance with, the express terms of this Agreement);
- (c) the Network will be able to deliver and provide the specified operational services, including the Dark Fibre Services and the Bitstream Services, following Acceptance;
- (d) the Network and the Equipment will be fit for their intended purposes;
- (e) the Design and Build and the O&M Services will at all times be performed with due care, skill, promptness and diligence and executed in accordance with Best Industry Practice;
- (f) there are no existing agreements, undertakings or arrangements, the terms of which prevent it from entering into this Agreement, or which would impede the performance of its obligations under this Agreement, or that it would breach by entering into this Agreement;
- (g) it has not violated any Laws regarding the offering of unlawful inducements in connection with the entering into or negotiation of this Agreement;
- (h) in responding to the RFP and establishing the charges and costs proposed, such decisions and prices were arrived at independently and without collusion;
- (i) it will not, during the course of this Agreement, engage in any activity likely to compromise its ability to perform its obligations;
- (j) it is not, as at the Commencement Date, a party to any litigation, proceedings or disputes which will adversely affect its ability to perform its obligations under this Agreement; and
- (k) to the best of the Company's knowledge, applying reasonable skill and care, the Documentation (and any other information supplied to CFH) is accurate and complete and suitable for the purpose for which it is supplied to CFH.

12.3 Continuous application

To the extent applicable, the warranties, representations and undertakings set out in clause 12.2 will be deemed to be given continuously throughout the Term by the Company.

12.4 Notification

The Company will promptly notify CFH of any known non-compliance with the warranties in this clause 12.

12.5 Other warranties excluded

All representations or warranties (statutory, express or implied) which are not expressly referred to in this Agreement are excluded to the fullest extent permitted by Law.

13. Confidentiality

13.1 Protection of Confidential Information

(a) Non-disclosure

Subject to clause 13.1(b) and clause 13.2, each party will treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement), any Confidential Information that is the Confidential Information of any other party. CFH will implement such procedures as are reasonably necessary to manage conflicts of interest arising between the interests of the Company in non-disclosure of Confidential Information under this clause 13.1 and the interests of CFH in relation to its position as owner of, or investor in, any local fibre company, or regarding any other person or body.

(b) General exceptions

Clause 13.1(a) does not preclude a party disclosing Confidential Information:

- (i) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (ii) subject to clause 13.3, that the recipient is required by Law or the listing rules by any applicable stock exchange to disclose so long as the recipient provides written notice of the required disclosure promptly upon receipt of notice of the required disclosure;
- (iii) that was lawfully known to the recipient prior to the date it was received;
- (iv) that becomes available to the recipient from a source other than a party to this Agreement provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under Law from disclosing such information;
- (v) that has been or is independently developed by the recipient;
- (vi) to any Professional Adviser for the purposes of rendering professional services to a party and in relation to this Agreement;
- (vii) to the extent that such disclosure is authorised by this Agreement; or
- (viii) if such disclosure is approved for release with the prior written consent of the party from whom the Confidential Information is first received.

13.2 Limited disclosure

(a) Company

Subject to clause 13.2(c), the Company may disclose the Confidential Information of CFH to its Subcontractors, Personnel and Professional Advisers who need to know the same for the sole purpose of enabling the Company to perform its obligations and exercise its rights under this Agreement. The Company will ensure that its Personnel, Professional Advisers and Subcontractors are aware of and comply with the terms of this clause 13.

(b) CFH

Subject to clause 13.2(c), CFH may disclose Confidential Information of the Company to its service providers (including potential service providers), Personnel, Professional Advisers and Ministers of the Crown, The Treasury, the Ministry of Business, Innovation and Employment and any other Ministry of Central Government (each a **Relevant Government Entity**) to whom those parties require CFH to communicate with, in connection with the procurement, operation, administration and management of the Network, the Design and Build, the O&M Services and/or this Agreement, provided that:

- (i) disclosure to a Relevant Government Entity is made only to the extent reasonably required to enable CFH to discharge its reporting obligations; and
- (ii) CFH ensures that its service providers, Personnel, Professional Advisers and any Relevant Government Entity are aware of and comply with the terms of this clause 13.

(c) Disclosure to Subcontractors and service providers

Neither party will disclose the other party's Confidential Information to any Subcontractor or service provider (including any potential service provider), unless the relevant person has given a written confidentiality undertaking to the other party to this Agreement and for the benefit of the other party in terms substantially similar to those set out in this clause 13 (the form of such undertaking to be first approved by the other party to this Agreement). All such undertakings from third parties will be provided to the other party on request.

13.3 Official Information Act

If CFH receives a request pursuant to the Official Information Act 1982 (the **OIA**) that requests any Confidential Information of the Company, CFH will consult with the Company with regard to the request prior to disclosure of any Confidential Information. The Company acknowledges that the OIA provides for responses to be made to requests for information within stipulated time frames. CFH and the Company will use their reasonable endeavours to comply with those time frames and communicate and respond, each with the other, having regard to those time constraints.

14. Indemnities

14.1 Indemnity by the Company

To the fullest extent permitted by law, the Company will, subject to clause 15, fully indemnify CFH (and its Personnel and directors) and the Crown (the **Indemnified Parties**) against all claims, proceedings, actions, liabilities, damages, costs, expenses and losses (including legal costs incurred on a solicitor and own client basis, but excluding, in respect of

paragraphs (b) and (c), any fine or penalty under Relevant Health and Safety Legislation) suffered or incurred by an Indemnified Party as a result of:

- (a) any breach of this Agreement, or any negligence, of the Company or its Personnel or Subcontractors;
- (b) any personal injury, death or loss of or damage to tangible property to the extent caused by the Company or its Personnel or Subcontractors;
- (c) any claim, investigation or prosecution relating to any health and safety matter, arising from the performance by the Company, its Personnel or Subcontractors of the Design and Build and/or the O&M Services;
- (d) any claim, investigation or prosecution relating to any breach or alleged breach of any Law by the Company, its Personnel or its Subcontractors;
- (e) any unlawful or malicious act or omission of the Company or its Personnel or Subcontractors; or
- (f) any claim that the use of any intellectual property used to provide the Network, Design and Build or the O&M Services infringes any third party's Intellectual Property Rights.

15. Liability

15.1 Maximum liability of CFH

Subject to clause 15.5, the maximum aggregate liability of CFH to the Company under or in connection with this Agreement will be, in respect of all claims, proceedings, actions, liabilities, damages, costs, expenses or losses, [REDACTED]. For the avoidance of doubt, this amount excludes any subscription amounts that have been paid, or that are or may become payable, by CFH to the Company under the Subscription Agreement.

15.2 Maximum liability of the Company

Subject to clause 15.5, the maximum aggregate liability (excluding Liquidated Damages, Service Default Payments and Material Breach Liquidated Damages) of the Company to CFH under or in connection with this Agreement will be, in respect of all claims, proceedings, actions, liabilities, damages, costs, expenses or losses, [REDACTED]. For the avoidance of doubt, this amount excludes any repayment amounts under the Subscription Agreement.

15.3 Indirect loss or damage

Subject to, and without limiting the effect of, clauses 15.4 and 15.5, neither party will under any circumstances be liable in relation to this Agreement for any indirect loss or damage or any loss of profits, revenue or business arising out of or in connection with the performance or non-performance of this Agreement.

15.4 Direct loss or damage

- (a) CFH and the Crown have placed their confidence in the Company to perform the Company's obligations, undertakings and commitments under this Agreement despite the Company's own interest in competition with the Network from its copper network assets.
- (b) CFH may bring a claim for direct loss or damage suffered under or in relation to this Agreement (and such loss or damage will include that suffered by both CFH and/or

the Crown where the Crown's loss or damage is not the subject of a separate claim by the Crown and to the extent that the loss suffered by the Crown is separate and additional to the loss or damage suffered by CFH). The following (non-exhaustive) categories will be considered direct loss or damage that CFH (and the Crown) is not prevented from recovering by virtue of clause 15.3 or any other provision of this Agreement:

- (i) Liquidated Damages, Service Default Payments and Material Breach Liquidated Damages; and
- (ii) if this Agreement is terminated (in whole or in part) due to any act or omission of the Company, the additional funding (and costs related to such funding) provided by CFH (and/or the Crown) to another party for the procurement of the equivalent to the Design and Build for the Network and the O&M Services yet to be completed or supplied.

15.5 Exclusions

The limitations and exclusions of liability described in clauses 15.1 to 15.3 will not apply to or limit the liability of:

- (a) the Company under clauses 14.1(b) to 14.1(f); and
- (b) either party for:
 - (i) any fraudulent, malicious or criminal act or omission; and
 - (ii) breach of confidentiality under clauses 13.1 or 13.2.

15.6 Source of liability

The limitations and exclusions of liability in this clause 15 will apply however liability arises, whether in contract (including indemnities), equity, tort (including negligence), breach of statutory duty or otherwise.

15.7 Mitigation

Each party will take reasonable steps to mitigate any claim or loss sustained or incurred as a result of any breach or default of the other party under or in connection with this Agreement (whether claimable under an indemnity or otherwise).

15.8 Specific performance

The Company acknowledges that, in the event of any breach or threatened breach of this Agreement by it, damages may well not be an adequate remedy and CFH may (also taking into account the interests of the Crown) seek specific performance of the terms of this Agreement or injunctive relief or any other similar remedy, in addition to any other rights, powers or remedies provided under this Agreement or by law (including equity).

15.9 Privity

The parties acknowledge and agree that the provisions of this Agreement (including, for the avoidance of doubt, clauses 14 and 15, are also for the benefit of, and enforceable by, the Crown under the Contracts (Privity) Act 1982 (subject at all times to the limitations and exclusions of liability in this clause 15), provided that, while the Crown may bring a claim for loss under this Agreement where separate and additional to any loss the subject of a claim by CFH (and any such loss of the Crown (if not separately the subject of a claim by the

Crown) may be included in a claim by CFH under this Agreement to the extent it constitutes loss separate and additional to the loss of CFH), CFH remains the party responsible as principal for the exercise of rights other than the right to bring a claim for loss under this Agreement.

16. Insurance

16.1 Adequate insurance

The Company will, in accordance with what would ordinarily and reasonably be expected by an experienced person undertaking the type of work contemplated by this Agreement, at its own expense, ensure that it maintains insurances in respect of its potential liability for loss or damage under this Agreement.

16.2 Proof of insurance

The Company will, at CFH's request, promptly provide satisfactory evidence that the Company has complied with the obligations in clause 16.1.

17. Performance Issue and Remedial Plan

17.1 Performance Issue

If at any time a Performance Issue arises, the Company will immediately take all reasonable steps to minimise or mitigate the Performance Issue, prior to the provision of a Remedial Plan.

17.2 Request for Remedial Plan

Without limiting any right or remedy available to CFH, if at any time:

- (a) CFH reasonably considers that the Company has breached, or is likely to breach, any of its obligations under this Agreement, including:
 - (i) where a Service Level Performance Issue has occurred; or
 - (ii) where the Company has given a Notice of Delay under clause 6.2(d),
 but excluding:
 - (iii) minor breaches (which, for the avoidance of doubt, do not include the matters set out in clause 17.2(a)(i) and (ii)); or
 - (iv) failures to achieve a Build Complete Milestone by the relevant Build Complete Milestone Date where such failure is attributable to a Delay Cause in accordance with clause 6.2(e)(ii); or
- (b) the Company has given CFH notice of a breach or likely breach of any of its obligations under this Agreement,

(in each case a **Performance Issue**), CFH may by notice (**Performance Notice**) to the Company setting out its grounds, require the Company to prepare a plan to remedy the Performance Issue (**Remedial Plan**) in accordance with clause 17.3.

17.3 Preparation of Remedial Plan

- (a) As soon as possible after receipt of a Performance Notice (and in any event within 10 Business Days) the Company will, in consultation with the relevant CFH Personnel, prepare and provide to CFH a proposed Remedial Plan setting out:
 - (i) full details of the Performance Issue (including its causes, expected duration and impact on its obligations under this Agreement);
 - (ii) a plan (including milestones and a timetable for satisfaction of such milestones) setting out the steps it will take to eliminate, and mitigate the effect of, the Performance Issue and prevent the Performance Issue from reoccurring, as applicable; and
 - (iii) success criteria to determine whether the Performance Issue has been rectified (the **Success Criteria**).
- (b) If the Company fails to prepare a Remedial Plan in accordance with clause 17.3(a) within 10 Business Days of the date of the Performance Notice CFH will issue a notice to the Company (a **Remedial Plan Reminder Notice**) reminding the Company of its obligation to prepare a Remedial Plan under this clause 17.3.
- (c) If the Company fails to prepare a Remedial Plan in accordance with clauses 17.3(a) and 17.3(b) within 10 Business Days of the date of the Remedial Plan Reminder Notice, then CFH may elect to prepare the Remedial Plan or appoint a third party to prepare the Remedial Plan, with the costs incurred by CFH, or any third party in respect of the preparation of the Remedial Plan to be payable by the Company in accordance with clause 17.6.

17.4 Modifications to Remedial Plan

- (a) The Company will promptly (and, in any event, within five Business Days of a request by CFH) make such amendments to the proposed Remedial Plan as CFH may reasonably require and deliver the Remedial Plan to CFH for review.
- (b) CFH will review the amended Remedial Plan and will, within a reasonable time (and in any event within five Business Days), either:
 - (i) approve the Remedial Plan by written notice to the Company; or
 - (ii) notify the Company of any further required amendments, to be made in accordance with clause 17.4(a).
- (c) The parties acknowledge that the approval by CFH of a Remedial Plan in accordance with this clause 17.4 does not mean CFH takes any responsibility for the Remedial Plan, its implementation or its consequences (as that responsibility remains with the Company), and any such approval is without prejudice to any other right or remedy available to CFH under this Agreement.

17.5 Implementation

- (a) Once CFH has approved the Remedial Plan in accordance with clause 17.4, the Company will implement the Remedial Plan in accordance with its terms and this Agreement.
- (b) If the Company fails to implement the Remedial Plan in accordance with its terms (including any timetable contained in such Remedial Plan) and this Agreement, then

CFH may elect to implement the Remedial Plan or appoint a third party to implement the Remedial Plan, with the reasonable costs incurred by CFH, or any third party, in respect of such implementation to be payable by the Company in accordance with clause 17.6.

- (c) If an approved Remedial Plan fails, the Company may submit a further Remedial Plan to CFH for approval and implementation under this clause 17, provided that the repetition of the Remedial Plan process does not affect CFH's rights under clause 19 or the definition of Material Breach in Schedule 1 (*Definitions*).

17.6 Costs

- (a) The Company will bear all costs (including any reasonable costs incurred by CFH) associated with preparing and implementing the Remedial Plan in accordance with this clause 17, including all reasonable costs of any third party appointed in accordance with clause 17.3(b) or clause 17.5(b). The Company shall be liable to pay to CFH and/or the third party the amount of any costs reasonably incurred by that party on demand.
- (b) The Company acknowledges that CFH may be required to appoint a third party to prepare and/or implement a Remedial Plan at short notice and that this may result in CFH incurring costs that may be considered above market standard rates and/or above the level of costs than would have been incurred by the Company had the Company prepared and/or implemented the relevant Remedial Plan.
- (c) Accordingly, the Company acknowledges that costs incurred by CFH and/or a third party appointed by CFH in preparing and/or implementing a Remedial Plan will not be unreasonable solely because they exceed market standard rates and/or the costs that the Company would have incurred in preparing and/or implementing the relevant Remedial Plan.

17.7 Dispute

Any dispute as to the contents of the Remedial Plan will be resolved in accordance with clause 18 and will be subject to expert determination under that clause.

18. Dispute resolution

18.1 Dispute

Except where expressly subject to a dispute resolution procedure in this Agreement other than that set out in this clause 18, in the event of any dispute, difference or question arising out of or in connection with this Agreement or its formation (a **dispute**), each party must:

- (a) use its reasonable endeavours to resolve the dispute through good faith negotiations and informal dispute resolution techniques within 20 Business Days after the date on which the dispute arose;
- (b) if unresolved, escalate the dispute to the Chief Executive Officer of the Company and the Chief Executive Officer of CFH who will use their reasonable endeavours to resolve the dispute through good faith negotiations within 20 Business Days;
- (c) not commence any arbitration proceeding relating to the dispute unless it has complied with this clause 18.1 and clauses 18.2 and, if applicable, 18.4; and

- (d) continue to perform its obligations under the Agreement as far as possible as if no dispute had arisen pending the final resolution of any dispute, whether by settlement, arbitration or expert determination.

18.2 Arbitration

If:

- (a) the dispute is not resolved under clause 18.1(b) within 20 Business Days from the date that the dispute was referred to the Chief Executive Officers of the Company and CFH;
- (b) this Agreement does not require that the dispute will be subject to expert determination; and
- (c) the relevant parties have not otherwise agreed to refer the dispute to expert determination,

then:

- (d) either relevant party may give written notice to the other relevant party:
 - (i) setting out the subject matter and details of the dispute and requiring that the dispute be referred to arbitration by a sole arbitrator; and
 - (ii) stating the name of the person whom the party giving the notice nominates as an arbitrator;
- (e) if the relevant parties fail to agree on the identity of the arbitrator within 10 Business Days of the date of receipt of the notice referring the dispute to arbitration, the arbitrator will be chosen by the president or vice-president of the Arbitrators' and Mediators' Institute of New Zealand Inc (or his or her nominee);
- (f) the arbitration will be held in Auckland, New Zealand; and
- (g) the arbitrator will decide the dispute in accordance with New Zealand law and conduct the arbitration in accordance with the Arbitration Act 1996 and the arbitration protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc.

18.3 No litigation

All disputes must be dealt with in accordance with this clause 18 and no party is entitled to bring legal proceedings in respect of a dispute in any court unless:

- (a) all parties agree otherwise in writing; or
- (b) the legal proceedings comprise an application for any urgent equitable or other urgent remedy.

18.4 Expert determination

If the dispute is not resolved under clause 18.1 and this Agreement requires that the dispute will be subject to expert determination, either relevant party may, by written notice to the other relevant party, refer the dispute to expert determination under clause 18.5. The relevant parties may also agree in writing to refer any other dispute to expert determination under clause 18.5.

18.5 Process

If a dispute has been referred to expert determination under clause 18.4:

- (a) the expert will be appointed by agreement between the relevant parties or, failing agreement within 10 Business Days, by the president of the New Zealand Institute of Chartered Accountants (or his or her nominee) for financial disputes or the president of the Arbitrators' and Mediators' Institute of New Zealand Inc (or his or her nominee) for non-financial disputes who will be requested to appoint an expert who is suitably qualified and experienced in relation to the subject matter of the dispute (the **Expert**);
- (b) the Expert will act as an expert and not as an arbitrator, and referral of the dispute to the Expert will not be a submission to arbitration for the purposes of the Arbitration Act and the provisions of the Arbitration Act will not govern that referral;
- (c) within 10 Business Days of the Expert accepting the appointment, the relevant parties will send written submissions on the dispute to the Expert and to each other and, within five Business Days of receiving the other relevant party's submission, will submit any written replies they wish to make to the Expert and to each other;
- (d) the relevant parties will give the Expert all necessary assistance that the Expert reasonably requires to determine the dispute including, but not limited to, access to the Company Assets and the Documentation;
- (e) the Expert will, unless the relevant parties otherwise agree, be directed to deliver a written determination to the relevant parties within 10 Business Days of having received the relevant parties' written submissions under clause 18.5(c);
- (f) the Expert will have the power to compel either relevant party to produce any information material to the dispute which that party has in its possession and which that party could be required to produce on discovery in a court proceeding to the Expert and to the other party;
- (g) the Expert's decision will be final and binding and, to the extent it is lawful to do so, the relevant parties waive any right of appeal or review; and
- (h) the Expert's fees will be shared equally by the parties.

19. Material Breach

19.1 Material Breach Liquidated Damages

- (a) If a Material Breach occurs, CFH may, by notice in writing to the Company, require the Company to pay Material Breach Liquidated Damages (**MBLDs**) in accordance with this clause 19.1 and clauses 19.2, 19.3 and 19.4.
- (b) The parties acknowledge that the MBLDs are a genuine pre estimate of loss having regard to, and have been calculated and negotiated by the parties to reflect, the particular circumstances and significance of the UFB2 Objective and the Network build, by reason of the loss of value in, and reduced use of, the Network due to a Material Breach. (For the avoidance of doubt, "loss" refers to loss of both CFH and the Crown).
- (c) The parties acknowledge that the MBLDs are for the occurrence of a Material Breach, but without prejudice to any other rights, powers or remedies provided under this Agreement (other than termination, which is subject to the regime set out in clause 20) or by Law (including recovery of greater actual damages that may be suffered).

- (d) The parties acknowledge that the MBLDs comprise elements of indirect loss and damage and loss of profits, revenue and business, and the Company accepts that such loss comprises part of the MBLDs.

19.2 MBLDs Period

If CFH elects to require the Company to pay MBLDs pursuant to clause 19.1(a) then:

- (a) The period during which the Company must pay MBLDs pursuant to this clause 19 (the **MBLDs Period**) will commence on the date CFH notifies to the Company in writing pursuant to clause 19.1 (the **MBLDs Period Commencement Date**).
- (b) The MBLDs Period will end on the earlier to occur of:
 - (i) the date that no Material Breach is occurring;;
 - (ii) 180 days after the MBLDs Period Commencement Date; and
 - (iii) the date of termination of this Agreement under clause 20.1, (the **MBLDs Period End Date**); and
- (c) CFH may not after the MBLDs Period End Date require payment of further MBLDs in relation to the breach to which the MBLDs Period applied that are not accrued due and owing at the MBLDs Period End Date.

19.3 The Company to pay MBLDs to CFH and the Crown

- (a) From (and including) the MBLDs Period Commencement Date, until (but excluding) the MBLDs Period End Date, the Company is to pay the MBLDs.
- (b) Subject to clause 19.4, the Company will immediately pay on demand:
 - (i) to CFH, the portion of MBLDs attributable to CFH's loss (such portion to be notified in writing by CFH to the Company); and
 - (ii) to the Crown (or to CFH on account to the Crown if the Crown so directs), the portion of MBLDs attributable to the Crown's loss (such portion to be notified in writing by CFH to the Company).
- (c) Notwithstanding clause 19.5, if the MBLDs Period ends pursuant to clause 19.2(b)(i), any MBLDs accrued but unpaid will immediately be due and payable by the Company to CFH and the Crown.

19.4 Subordination to Senior Financiers

CFH and the Company agree for the benefit of the Senior Financiers that the MBLDs are subordinated and subject in point of priority to the prior payment in full of the Senior Indebtedness.

19.5 MBLDs Period End Date

- (a) If the MBLDs Period End Date occurs pursuant to clause 19.2(b)(ii), and a Material Breach is still occurring, CFH may elect to terminate this Agreement under clause 20.1.

- (b) CFH may not cancel or terminate any part of this Agreement or the Subscription Agreement for Material Breach prior to the MBLDs Period End Date, unless an Immediate Termination Event has occurred (in which case, CFH may elect to exercise its rights immediately to terminate this Agreement under the applicable provisions in this Agreement).

19.6 **Contracts Privity**

For the purposes of the Contracts (Privity) Act 1982, clause 19.4, is for the benefit of, and is intended to be enforceable by, the Senior Financiers.

20. **Termination**

20.1 **Termination by CFH for an irremediable Material Breach**

CFH may terminate this Agreement, for Material Breach by the Company, by written notice to the Company, with immediate effect on the date of termination specified in that notice, if CFH is entitled to so terminate under clause 19.5. .

20.2 **Termination by CFH for serious health & safety issue**

CFH may terminate this Agreement by written notice to the Company given within 90 Business Days of the relevant conviction, with immediate effect on the date of termination specified in that notice, if:

- (a) any person is killed or seriously injured in the course of the Company's performance of the Agreement (a **Serious Health and Safety Event**), and
- (b) a conviction is entered against the Company under sections 47 or 48 of the Health and Safety at Work Act 2015 in proceedings brought by WorkSafe New Zealand in respect of the Serious Health and Safety Event.

20.3 **Termination for Force Majeure Event**

CFH may terminate this Agreement by notice in writing to the Company, with immediate effect on the date specified in that notice, if the Company has been unable to provide all, or a substantial part of, the Design and Build or the O&M Services in accordance with this Agreement as a result of a Force Majeure Event or a Third Party Event for a continuous period of 90 Business Days.

20.4 **Termination on termination of other agreements**

This Agreement will terminate immediately on the date the Subscription Agreement is terminated by the Company in accordance with clause 5.1 of the Subscription Agreement or terminated by the Company or the Subscriber in accordance with clause 5.2 of the Subscription Agreement, or otherwise becomes void or is avoided for whatever reason.

20.5 **Termination for challenge to enforceability**

CFH may terminate this Agreement immediately by notice in writing to the Company upon occurrence of the event specified in clause 6.5 (challenge to enforceability).

20.6 Restricted termination by the Company

The Company:

- (a) except as provided in clauses 20.7, 20.8 and 20A, does not have and expressly waives any rights, at Law, including in equity or under statute, and particularly under the Contractual Remedies Act 1979, to terminate this Agreement;
- (b) acknowledges that, except as provided in clauses 20.7 and 20.8, the failure of CFH to perform under this Agreement and the Subscription Agreement does not give rise to the right to terminate this Agreement; and
- (c) may, in the event of material breach of this Agreement by CFH, seek to recover damages, or obtain injunctive relief or specific performance, but may not interrupt, withhold or impair the Design and Build or the O&M Services.

20.7 Termination by the Company in case of termination of Subscription Agreement

The parties agree that this Agreement will terminate automatically without notice upon the Company having validly provided written notice to CFH in accordance with clause 5.1(c) of the Subscription Agreement.

20.8 Termination for funding failure

- (a) In the event that CFH is unable to fulfil its obligations under the Subscription Agreement as a result of CFH not receiving sufficient funding from the Government, CFH will notify the Company (the **Suspension Notice**) as soon as reasonably practicable of such event and the parties' obligations under this Agreement shall be suspended for a period of three months from the date of receipt by the Company of the Suspension Notice from CFH.
- (b) Where a Suspension Notice is given, the Company and CFH will work together in good faith to agree an appropriate revised strategy for the completion of the Network and ongoing Connections to the Network for a period of three months after the date of the Suspension Notice (the **Negotiation Period**).
- (c) If the Company and CFH are unable to reach agreement on an appropriate revised strategy under clause 20.8(b) by the expiry of the Negotiation Period then:
 - (i) the Company or CFH will be entitled to terminate this Agreement with immediate effect by written notice to the other parties; and
 - (ii) each party is released from its obligations under this Agreement except for such obligations that are stated to survive termination and each party retains the rights it had against any other party in respect of any breach of any of those agreements occurring before cancellation, except, for the avoidance of doubt, neither CFH nor the Crown shall have any liability to the Company arising directly or indirectly from or relating to, CFH being unable to fulfill its obligations under the Subscription Agreement.

20.9 Restricted termination by CFH

CFH acknowledges that its rights to terminate this Agreement are limited to the express rights set out in this Agreement.

20.10 Preservation of rights and remedies

Except as is otherwise provided in this Agreement, termination or expiry of this Agreement will not affect:

- (a) any rights and remedies available to a party under this Agreement or at Law which have accrued up to and including the date of termination or expiry; and
- (b) the provisions of:
 - (i) clause 6.4(a) (service levels);
 - (ii) clause 6.5 (challenge to enforceability);
 - (iii) Schedule 5 (*Service Levels*);
 - (iv) Schedule 6 (*Principles for UFB Services and Pricing*); and
- (c) the requirement for the Network to meet and continue to comply with the technical requirements specified in Schedule 3 (*Design and Build*), which, for avoidance of doubt, includes the Network Requirements; and
- (d) all other provisions of this Agreement which expressly, or by their nature, survive termination or expiry, including clauses 1.2 (Precedence), 1.3 (Construction), 13 (Confidentiality), 14 (Indemnities), 15 (Liability), 20 (Termination), , 22 (General Provisions), Schedule 1 (*Definitions*), clause 9 of Schedule 7 (*Project Governance*), Schedule 10 (*Commitments – Post Build*) and including any definitions given to terms used in any such provision.

Notwithstanding clause 20.10(a) to (d), if this Agreement is terminated by the Company under clause 20A.1 or clause 20A.2 then neither party will have any rights whatsoever against the other party as a consequence of any such termination.

20.11 Return of property

After expiry or termination of this Agreement for any reason, each party will, within a reasonable time after receiving written notice from the other party, return to the other party all of the other party's:

- (a) property (including documentation); and
- (b) Confidential Information (or destroy such Confidential Information, if requested),

except to the extent that such property is required to be retained by the Public Records Act 2005, any other Law, for a party's reasonable insurance or other prudential requirements, or is in long term electronic storage.

20.12 Suspension when serious health and safety issue arises

- (a) If:
 - (i) a Serious Health and Safety Event has occurred; or
 - (ii) the Company has committed a material breach of any relevant Health and Safety Legislation; and/or

- (iii) the Company has breached this Agreement and in CFH's reasonable opinion that breach has threatened or may threaten in any material way the health and safety of any person,

(each a **Health and Safety Issue**), CFH may, by notice in writing to the Company, suspend (and will not be liable to the Company for such suspension), the performance by the Company of any or all of the Company's obligations under the Agreement (a **Suspension**), such Suspension to take immediate effect (subject to clause 20.13(b)) and continue until CFH is satisfied on reasonable grounds that the Health and Safety Issue which has led to the suspension has been resolved and is not reasonably likely to recur.

- (b) CFH may only impose a Suspension under clauses 20.12(a)(ii) or 20.12(a)(iii) if it has given the Company 24 hours' notice (the **Serious H&S Issue Notice Period**) of intention to exercise its rights of suspension. The Company has a right to respond to the proposed suspension within the Serious H&S Issue Notice Period, but, at the expiry of the Notice Period, CFH retains the right to impose a Suspension in accordance with this clause 20.12 at its sole discretion.
- (c) CFH may impose a Suspension under 20.12(a)(i) immediately without any requirement for a Notice Period to be given to the Company.
- (d) Where CFH has imposed a Suspension pursuant to this clause 20.12, the Company must immediately cease to perform those of its obligations the subject of the Suspension.

20A. Interim Period

20A.1 Delays in obtaining required authorisations

- (a) If, by 30 April 2017:

- (i) **Authorisations not enacted:**

- (A) sections 11, 12 and 13 of the Proposed Bill (the **Commerce Act Authorisations**); and

- (B) the Telecommunications Act Amendments,

or provisions having substantially similar effect as those sections in respect of UFB2, have not been passed into law by the House of Representatives;

- (ii) **[Not used]**

(together, the **Authorisation Delays** and each an **Authorisation Delay**) then the parties will, on notice in writing given by either of them to the other party, agree amendments to:

- (iii) Build Milestone Dates in the MDP so that Chorus has a three months' lead time before it must commence the build of Network Stages following the achievement of the authorisation the subject of the Authorisation Delay; and
- (iv) this Agreement and/or the Subscription Agreement as otherwise required to extend the date required for the Company to complete the Design and Build of the Network in the Coverage Area, and any other dates that are dependent on that date, by a corresponding period,

provided that the parties acknowledge that no extension can have the effect of extending the last date for the issue of CFH2 Securities beyond 30 June 2025.

- (b) If, on 31 July 2017 an Authorisation Delay is continuing (a **Continued Authorisation Delay**), the parties will, on notice in writing given by either of them to the other party, consult for a period of at least 30 Business Days (the **Authorisation Consultation Period**) in respect of the Continued Authorisation Delay.
- (c) If, on expiry of the Authorisation Consultation Period, the parties have been unable to agree the basis upon which the Transaction Documents will continue (notwithstanding the Continued Authorisation Delay), then either party may, within 30 Business Days, terminate this Agreement by giving the other party 10 Business Days' notice in writing.

20A.2 Adverse Events

- (a) If, on or prior to 31 July 2017:
 - (i) in connection with any credit rating, a Credit Rating Agency advises the Company in writing that:
 - (A) the CFH2 Securities will not be treated in the same manner as the treatment of the CFH1 Securities; or
 - (B) it will alter its treatment of the CFH1 Securities in a way that is adverse to the Company,

as a result of the Company's entry into the Subscription Agreement or the issue of CFH2 Securities pursuant to that Agreement;
 - (ii) the Inland Revenue Department responds to the Tax Ruling Application by:
 - (A) issuing a tax ruling that is not consistent with the required status of the Tax Ruling; or
 - (B) rejecting the Tax Ruling Application; or
 - (iii)
 - (A) the Telecommunications Bill is passed into law by the House of Representatives; and
 - (B) the Telecommunications Bill includes any one or more provisions that:
 - a) were not included in the Proposed Bill; and
 - b) apply to UFB2; and
 - c) are not in any way related to unbundling, property access, Commerce Act Authorisations, Telecommunications Act Amendments and/or the Telecommunications Development Levy; and
 - d) impose obligations, burdens or risks on the Company that are additional to those included in the version of the Bill attached to this Agreement as Appendix 1;

(each an **Adverse Event**), and, the Company, acting in good faith and acting

reasonably, has determined that, as a direct result of an Adverse Event, the net present value of:

- (iv) the cost to the Company of; and/or
- (v) the loss of value to the Company as a result of,

the Company's performance of its obligations under this Agreement, is in excess of [REDACTED] (in aggregate but avoiding any double counting of the same matter under 20A.2(a)(iv) and 20A.2(a)(v)) (the **Consultation Threshold**), then, the parties will, on notice given by either of them to the other party, consult for a period of at least 40 Business Days (the **Consultation Period**) using reasonable endeavours to agree amendments to this Agreement and/or the Subscription Agreement, subject to clause 20A.3, to mitigate the cost and/or loss of value effect of the Adverse Event on the Company.

- (b) If, the Adverse Event consulted on under clause 20A.2(a) is one in respect of which it has been determined that the Adverse Impact Threshold has been crossed (as explained in clause 20A.2(c), and on expiry of the Consultation Period, the parties have not agreed amendments to this Agreement and/or the Subscription Agreement, or the Adverse Event has not been otherwise mitigated, in each case, as referred to under clause 20A.2(a), to below the Adverse Impact Threshold, either party may, within 30 Business Days, terminate this Agreement by giving the other party 30 Business Days' notice in writing.
- (c) In clause 20A.2(b), **Adverse Impact Threshold** will have been crossed if the Company's directors, acting in good faith and acting reasonably and after taking advice from their legal and financial advisers have determined that, as a direct result of an Adverse Event, the net present value of:

- (i) the cost to the Company of; and/or
- (ii) the loss of value to the Company as a result of,

the Company's performance of its obligations under this Agreement, is in excess of:

- (iii) [REDACTED] in respect of an Adverse Event in clauses 20A.2(a)(i) or 20A.2(a)(ii);
or

- (iv) [REDACTED] in respect of the Adverse Event in clause 20A.2(a)(iii),

(but in each case avoiding any double counting of the same matter under 20A.2(c)(i) and 20A.2(c)(ii)).

20A.3 Limitation

The parties acknowledge and agree that nothing in this clause 20A obliges CFH in any way to:

- (a) provide the Company with any additional or new funding; or
- (b) provide any additional or new financial accommodation or payment in any form whatsoever.

20A.4 Notice of potential termination

The Company must give notice to CFH of any matter or event that constitutes, or may constitute, grounds for the Company to terminate this Agreement under clause 20A.1 (as the case may be) as soon as practicable after it becomes aware of such matter.

20A.5 Additional Company obligations

- (a) The Company must take all reasonable steps to obtain all necessary consents and approvals in connection with the matters the subject of its termination rights in clause 20A, including to make and pursue all necessary applications to governmental authorities and engagements with relevant credit rating agencies. The Company will keep CFH reasonably informed of the progress of the application for Tax Ruling and its dealings with the credit rating agencies in terms of the matters set out in clause 20A.2(a)(i).
- (b) In connection with the Tax Ruling:
 - (i) the Company must provide CFH with a draft of its proposed application or documentation for the Tax Ruling (**Draft Documentation**) within 20 Business Days of the Commencement Date.
 - (ii) Within 10 Business Days of receipt of the Draft Documentation, CFH must advise the Company that it approves the Draft Documentation or of any amendments it reasonably considers are required to the Draft Documentation (**Required Amendments**), however, failing notification of either of these within the 10 Business Day period, CFH will be deemed to have approved the Draft Documentation.
 - (iii) the Company shall be free to proceed with its Draft Documentation having incorporated the Required Amendments into its final documentation for the Tax Ruling (providing a copy to CFH), with either party being free to refer any dispute regarding to the Required Amendments to expert determination under clause 18.5 (and upon the matter being so determined the Company may proceed with its Draft Documentation having incorporated any matters being determined into its final documentation for the Tax Ruling) and in each case shall provide a copy of its final documentation to CFH.
 - (iv) the Company agrees to keep CFH informed of correspondence or communications between the Company and Inland Revenue or other approving body which the Company considers (acting reasonably) to be material to the likelihood of a Tax Ruling being issued or provided in accordance with the required status of that Tax Ruling (including as to timing) as described in Appendix 2 and to provide copies to CFH of any such correspondence or communications between the Company and Inland Revenue (on a “counsel to counsel” basis, if necessary). The Company may make reasonable redactions of any confidential or commercially sensitive information from any correspondence or communication required to be provided to CFH in accordance with this clause.

21. Force Majeure

21.1 No default

Subject to this clause 21, no party will be deemed to be in default or breach of this Agreement to the extent that a Force Majeure Event affects that party.

21.2 Force Majeure Notice

If a Force Majeure Event affects a party (the **Affected Party**), then that party will, within three Business Days of it becoming aware of the occurrence of that Force Majeure Event, serve written notice on the other party (a **Force Majeure Notice**) specifying:

- (a) the nature of the Force Majeure Event;
- (b) the obligations of the Affected Party that have been rendered impossible or illegal to perform, or which the Affected Party is prevented from performing or complying with (the **Affected Obligations**);
- (c) the extent to which the Force Majeure Event renders it impossible or illegal for the Affected Party to perform, or prevents the Affected Party from performing or complying with, the Affected Obligations (the **Precluded Extent**);
- (d) the reasons why the Affected Party considers that the occurrence of the Force Majeure Event renders it impossible or illegal to perform, or prevents the Affected Party from performing or complying with the Affected Obligations to the Precluded Extent; and
- (e) the expected duration of any delay arising directly out of the occurrence of the Force Majeure Event.

21.3 Objection to Force Majeure Notice

If a party that receives a Force Majeure Notice does not consider that a Force Majeure Event has occurred in relation to the Affected Party, it may:

- (a) refer the matter to expert determination under clause 18.4 within 10 Business Days of receiving that Force Majeure Notice; or
- (b) exercise such other rights available to it under this Agreement.

21.4 Effect of Force Majeure Notice

If the Affected Party complies with clause 21.2 then, subject to the outcome of any dispute resolution proceedings:

- (a) the Affected Party's obligation to comply with or perform the Affected Obligations will be suspended to the Precluded Extent, for the time (the **Period of Suspension**):
 - (i) it continues to be impossible or illegal to perform the Affected Obligations; or
 - (ii) the Affected Party is prevented from complying with or performing those Affected Obligations as a direct result of that Force Majeure Event; and
- (b) from the date of service of the Force Majeure Notice each party's obligation to perform any obligations dependent on the Affected Obligations (including any payment obligations directly referable to the Affected Obligations) will be suspended until the Affected Party can resume full performance of its obligations. For the avoidance of doubt, CFH will not be required to make any subscriptions pursuant to the Subscription Agreement to the extent that the Design and Build or the O&M Services are not provided by the Company due to a Force Majeure Event.

21.5 Mitigation or avoidance

During the Period of Suspension:

- (a) the Affected Party will use all commercially reasonable endeavours to avoid or mitigate the effect of it being prevented from complying with or performing its Affected Obligations;
- (b) where the Affected Party is the Company, the Company will give at least the same priority in responding to a Force Majeure Event under this Agreement as it gives under any other agreement to which it is party or as it otherwise gives to any of its other areas of business, subject to complying with relevant Laws; and
- (c) each party will agree such reasonable arrangements with the other party, that both parties believe to be prudent to avoid or mitigate the Affected Party's inability to perform the Affected Obligations.

21.6 Force Majeure Event termination

This Agreement may be terminated by CFH under clause 20.3 due to a continuing Force Majeure Event or Third Party Event. Until termination of this Agreement has taken effect, each party will continue to perform those of its respective obligations that are not then Affected Obligations, or that are not obligations the performance of which is dependent on the performance by the other party of Affected Obligations.

22. General Provisions

22.1 Relationship of the parties

- (a) Nothing expressed or implied in this Agreement will, of itself, be deemed to constitute a party as the partner or joint venturer of the other party.
- (b) Except as provided in this Agreement, a party will not be deemed by virtue of this Agreement to be the agent of another party.

22.2 Assignment

Neither party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Agreement without first obtaining the other party's written consent (which consent may be withheld at that party's discretion).

22.2A Coverage Area

Notwithstanding any other provision of this Agreement, the Company's obligations under this Agreement will be limited to the Coverage Area, and no obligation of the Company under this Agreement will have effect in relation to any area outside the Coverage Area, whether as to the provision of the Design and Build and O&M Services, the Company's information and reporting obligations, CFH's rights of or to audit, information or access, or otherwise; in each case, except in respect of parts of the Network that are located outside the Coverage Area but are used (or are to be used) to service any Candidate Area.

22.3 Public relations and communications

Subject to clause 13, the Company agrees that:

- (a) the Company and CFH (or in CFH's absence the Ministry of Business, Innovation and Employment (**MBIE**)) will agree and maintain a timetable of/ potential public relations activities in relation to the build and operation of the Network, and milestones associated with such activities, with such timetable to be prepared on a rolling six monthly basis;
- (b) any media announcements, or public relations activities, in relation to UFB2 Candidate Areas, commencement or deployment or completion of deployment will be made by the Company only after the Crown through the Minister of Communications via MBIE has made such public announcements, unless the Crown through CFH (or in CFH's absence MBIE) specifically agrees otherwise (such agreement not to be unreasonably withheld);
- (c) the Company will only make media announcements, or undertake public relations activities, regarding deployment progress and/or uptake by the Company following the relevant quarterly update from the Crown, unless the Crown through CFH (or in CFH's absence MBIE) specifically agrees otherwise;
- (d) the Company will consult with the Crown through CFH (or in CFH's absence MBIE) prior to the Company making any other public statements, provided that, where the Company's reference to UFB2 in any statement to be made publicly is incidental to and immaterial in the context of, a broader public statement by the Company on a separate matter or matters such consultation need not occur; and
- (e) the Company is to advise CFH, on behalf of the Crown, on a "no surprises" basis of any issue arising in relation to UFB2 that the Company is aware of which is material enough to be of significant media or public interest.

22.4 Signage

- (a) Subject to clauses 22.4(b) and 22.4(c), the Company agrees that within 100 Business Days of the date of this Agreement (the **Signage Deadline**), it will procure that signs are erected at the entrance of each town which forms part of a Network Stage advising that ultra-fast fibre will be coming to the relevant town soon. The signs must be of such size that they can be readily readable by an occupant of a vehicle entering the town at the relevant prescribed speed limit and are otherwise in a form previously approved by CFH (in respect of a particular town, the **Signage Obligation**).
- (b) Where the Company has, from the date of this Agreement:
 - (i) used all reasonable endeavours to obtain any governmental, legal, regulatory or other approvals, permissions, consents (including resource consents) and licenses necessary to enable the Company to comply with the Signage Obligation (a **Required Signage Consent**); and
 - (ii) taken all actions it can reasonably take to mitigate the effect of the delay (including considering alternative sites to the one in respect of which any application for a Required Signage Consent has been rejected,

but has not complied, or cannot reasonably comply, with the Signage Obligation due solely to a failure to obtain one or more Required Signage Consents, the Company may request an extension to the Signage Deadline for that particular town, for a period (an **Extension Period**) that is proportionate to the duration of the delay necessary to

obtain the relevant Required Signage Consents. CFH may not unreasonably withhold its consent to such request for an Extension Period.

- (c) The Company may not request an extension to a Signage Deadline under clause 22.4(b) unless the Company has taken all measures the Company can reasonably take to mitigate the effect of the delay and make up lost time (including considering alternative sites to the one in respect of which any application for a Required Signage Consent has been rejected).
- (d) CFH's granting of an extension under clause 22.4(b) does not affect the Company's obligations under clause 22.4(b).

22.5 Regulation supplants this Agreement

If, on or prior to 31 December 2019, a Specified Service or a Subsequent Service, or a service that is substantially the same as that service, has been regulated (whether by the Commerce Commission or any other Crown agency or branch of government) (each, a **Regulated Service**), then:

- (a) this Agreement except for clauses 1(b), 3(b), 4, 5 and 6 of Schedule 6, and the Updated Reference Offer established under this Agreement except those provisions of the Updated Reference Offer required pursuant to clauses 1(b), 3(b), 4, 5 and 6 of Schedule 6), will cease to apply to any such Regulated Service from the date that the regulation comes into effect if the regulation of that Regulated Service applies to:
 - (i) the prices which the Company may charge Retail Service Providers for that Regulated Service; or
 - (ii) the technical specifications of that Regulated Service as set out in Table A (Specified Service) or Table B (Subsequent Service) of the Price Book; or
- (b) if the regulation of any such Regulated Service does not apply to any of the matters specified in clause 23.5(a), then:
 - (i) the parties will, on notice in writing by either of them to the other, negotiate in good faith to agree amendments to this Agreement, and the Updated Reference Offer established under this Agreement, in relation to that Regulated Service to amend the price and non-price terms of that Regulated Service to which regulation does not apply (**Non Regulated Terms**) to appropriately reflect the effect of the matters to which regulation applies; and
 - (ii) if the parties cannot agree within 30 Business Days of initiating such negotiations, the amendments to the Non Regulated Terms will be, upon written notice being given one party to the other, subject to expert determination under clause 18.4.

22.6 Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable it will be severed from this Agreement without affecting the legality, validity or enforceability of the remaining provisions.

22.7 Waiver

- (a) Neither party will be deemed to have waived any right or remedy under this Agreement unless the waiver is in writing and signed by the parties. Any failure or delay by a party to exercise any right or power under this Agreement will not operate as a waiver of that right or power. Any waiver by a party of any breach, or failure to exercise any right or remedy, under this Agreement will not constitute a waiver of any subsequent breach or continuing right or remedy.
- (b) The exercise of any right or remedy under this Agreement (whether alone or in any combination) by a party will not operate as a waiver (including a waiver by election) of any other right or remedy under this Agreement.

22.8 Entire agreement

- (a) Subject to the Subscription Agreement, the Open Access Commitment Deed, the Open Access Deed, the EA Side Letter and the CFH2 Forward Funding Agreement this Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all previous agreements, arrangements, understandings or representations relating to that subject matter.
- (b) The terms of this Agreement prevail over the terms contained in any standard conditions of sale, invoices, packing slips, delivery dockets and other communications from either party or its Personnel, even if the other party signs or otherwise purports to accept any such terms.

22.9 Amendment

This Agreement may only be amended by agreement in writing signed by the authorised representatives of both parties.

22.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all of which together are to constitute a single instrument.

22.11 Governing law and jurisdiction

This Agreement is governed by, and will be construed in accordance with, the laws of New Zealand. Subject to clause 18, each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining all disputes under or in connection with this Agreement.

23. Notices

23.1 Addresses and references

Each notice under this Agreement is to be in writing and sent by personal delivery or email to the addressee at the address or email address, and marked for the attention of the person or office holder, from time to time designated for this purpose by each party and notified to the other parties in accordance with this clause 24. The initial address, email address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

23.2 Timing of receipt

In the absence of earlier receipt, a notice will be deemed to have been received:

- (a) if delivered by hand, when left at the address of the recipient; or
- (b) if sent by email, on the date and time at which it enters the addressee's information system unless a delivery failure notice has been received by the sender, in which case the notice will be deemed not to have been served,

provided that if a notice is received or deemed to be received on a day which is not a Business Day, or is after 5.00 pm on a Business Day (addressee's time), that notice will be deemed to have been received by the recipient at 9.00 am on the next Business Day.

24. Other agreements

The rights and obligations of the parties under this Agreement do not limit, expand or otherwise affect the rights and obligations of the parties under any other agreement except as expressly stated.

Execution

Signed as an agreement

Chorus Limited

Director/Authorised Signatory

Director/Authorised Signatory

Print Name

Print Name

With Notices to:

Address: Level 10, State Insurance Tower,
1 Willis Street, PO Box 632, Wellington
Email Address: company.secretary@chorus.co.nz
Attention: Andrew Carroll

Crown Fibre Holdings Limited by

Director/Authorised Signatory

Director/Authorised Signatory

Print Name

Print Name

With Notices to:

Address: Level 10, PricewaterhouseCoopers Tower,
188 Quay Street, Auckland
Email Address: kathryn.mitchell@crownfibre.govt.nz
Attention: General Counsel

With a copy to: Bell Gully, Level 22, Vero Centre,
48 Shortland Street, Auckland 1010
Attention: Bell Gully
Email: anna.buchly@bellgully.com

Schedule 1: Definitions

In the Agreement, unless the context otherwise requires:

Acceptance Test Material has the meaning given to it in clause 1.2 of Annexure 3 to Schedule 3 (*Design and Build*);

Access Services means the services set out in Table A Part 1 of the Price Book and as amended by the WSA, provided (or to be provided) within the Coverage Area;

Act has the meaning given in clause 1.8 of the Base Agreement;

Adjoining Greenfield Sites means the subdivision after the Commencement Date of a defined geographical site adjoining a Network Stage which is evidenced by confirmation that the Premises exists in the LINZ title database and located in a private or public property subdivision, complex or community, but excludes Infill Premises and Infill Greenfield Sites, and an **Adjoining Greenfield Site** means an individual geographical site evidenced by confirmation that the Premises exists in the LINZ title database which forms part of the Adjoining Greenfield Sites;

Adverse Event has the meaning given to that term in clause 20A.2(a) of the Base Agreement;

Adverse Impact Threshold has the meaning given to that term in clause 20A.2(c) of the Base Agreement;

Affected Person has the meaning given to that term in clause 10 of the Proposed Bill but shall have the meaning given to that term in the Telecommunications Act if defined in that Act;

Affected Obligations has the meaning given in clause 21.2 of the Base Agreement;

Affected Party has the meaning given in clause 21.2 of the Base Agreement;

Agreement is described in clause 1.1(a) of the Base Agreement;

Ancillary Services means the ancillary services set out in Table A Part 2 of the Price Book and as amended by Appendix 3 of the WSA price list, provided (or to be provided) within the Coverage Area;

Annexure means:

- (a) any document physically attached, or annexed, to a Schedule and identified as such; and
- (b) any document referenced in any Schedule or Annexure and incorporated into this Agreement by express reference;

Annual Deployment Schedule or **ADS** means for each twelve month period from 1 July (or, in respect of the first ADS only, the Commencement Date) to 30 June (inclusive), the operative plan for the conduct of the Design and Build of the Network Stages in accordance with the form set out in Annexure 2 to Schedule 3 (*Design and Build*), with each Annual Deployment Schedule required to be consistent with the Master Deployment Plan;

APD means the geospatial premises dataset (as agreed by the Company and CFH by email exchange between the parties on or about the date of this Agreement) in respect of Brownfield Premises, the function and purpose of which is as set out in clause 6.7 of the Base Agreement;

Applicable CPPP_{L1 CFH}, in respect of a Network Stage, is the amount specified in column 3 of the table in Annexure 6 of Schedule 3 (*Design and Build*) alongside the relevant Network Stage;

Applicable N_{Passed}, in respect of a Network Stage:

- (a) means the number of Brownfield Premises in that Network Stage for which the Company can receive Applicable CPPP_{L1 CFH} following satisfaction of the Build Complete Milestone for that Network Stage, such funding to be made available subject to and in accordance with the Subscription Agreement; and
- (b) has the value specified in column 2 of the table in Annexure 6 of Schedule 3 (*Design and Build*) alongside the relevant Network Stage, as extracted from the APD, and

for the avoidance of doubt, the value of Applicable N_{Passed} cannot be increased under any circumstances, but may be reduced pursuant to Schedule 8 (*Change Procedure*);

Approved Subcontractor means a contractor listed below:

- (a) Visionstream PTY Limited;
- (b) Downer New Zealand Limited;
- (c) Broadspectrum (New Zealand) Limited;
- (d) Universal Communications Group NZ Limited (**UCG**); and
- (e) Electronet Services Limited;

Authorisation Consultation Period has the meaning given to that term in clause 20A.1(b) of the Base Agreement;

Authorisation Delay has the meaning given to that term in clause 20A.1(a) of the Base Agreement;

Availability Period means the shorter of:

- (a) the period of the previous 12 months; and
- (b) the period of months since the Company last failed to meet the relevant Service Level;

Backhaul means the Layer 1 Backhaul and the Layer 2 Backhaul;

Base Agreement means clauses 1 to 24 (inclusive) of this Agreement;

Best Industry Practice means the exercise of the skill, diligence, prudence, foresight and judgement, as determined by reference to good national and international practice generally applied in fibre access projects in OECD countries, which would be expected from a highly skilled and experienced person under the same or similar circumstances to those applicable under the Agreement;

Bitstream Services means the services described in the WSA Service Descriptions as being bitstream services, and set out in the WSA price list in Appendix 1 and Appendix 2;

Blocking Error means an error that prevents the Retail Service Providers or End Users from using all or a substantial part of the Network and for which no workaround can be found;

Board means the board of directors of the Company;

Brownfield Premises means those existing Premises in the Coverage Area as at the Commencement Date;

Build Commencement Conditions means the following conditions:

- (a) completion of the design of the Network in accordance with clauses 4 and 5 of Schedule 3 (*Design and Build*) and the Network Requirements in respect of the relevant Network Stage;
- (b) the Company having entered into agreements with all required subcontractors in respect of the build of the Communal Infrastructure for the relevant Network Stage including in respect of any lease or IRU documentation, including for CI Leased Equipment and any CI Leased Equipment Agreements; and
- (c) the Company having a health and safety management system in place in respect of the build of the Communal Infrastructure and the End User-Specific Infrastructure for the relevant Network Stage;

Build Complete Milestone means, in respect of a Network Stage, the satisfaction of each of the Individual Milestones comprising the Build Complete Milestone as set out in Column B of the table in section 1 of Annexure 2 of Schedule 3 (*Design and Build*);

Build Complete Milestone Date means in respect of a Network Stage, the date by which the Company must achieve the Build Complete Milestone for the relevant Network Stage as set out in the MDP and Annual Deployment Schedule (as applicable);

Build Defaults has the meaning given to that term in clause 4.5 of the Base Agreement;

Build Milestone means a Build Start Milestone, Provisioning Milestone, Handed Over Milestone or a Build Complete Milestone (as applicable);

Build Milestone Date means a Build Start Milestone Date, Provisioning Milestone Date, Handed Over Milestone Date or a Build Complete Milestone Date (as applicable);

Build Report has the meaning given to that term in clause 4.5 of the Base Agreement;

Build Start Milestone means, in respect of a Network Stage, the satisfaction of each of the Individual Milestones comprising the Build Start Milestone as set out in Column B of the table in section 1 of Annexure 2 of Schedule 3 (*Design and Build*);

Build Start Milestone Date means the date by which the Company must achieve the Build Start Milestone for the relevant Network Stage as set out in the Master Deployment Plan and the relevant Annual Deployment Schedule (as applicable);

Business means any undertaking that is carried on, whether for gain or reward or otherwise;

Business Case Test has the meaning given to it in clause 3 of Schedule 2 (*Commitments*) and clause 3 of Schedule 10 (*Commitments – Post Build*);

Business Connection means a Connection requested by an RSP in relation to an End User that is a Business (but excluding an NBAP Connection);

Business Day has the meaning given in clause 1.3(b)(xvi) of the Base Agreement;

Business Park Extended EUSI Distance has the meaning given to it in clause 2.10 of Annexure 1 to Schedule 3 (*Design and Build*);

Call Notice has the meaning given to it in the Subscription Agreement;

Candidate Area means a Network Stage identified in Schedule 13 (*Network Stages*) and any Adjoining Greenfield Sites in relation to the relevant Network Stage;

Central Office or CO means the facilities that house the equipment for terminating the dark fibres from a Premises, and the equipment needed to provide the Bitstream Services (for example, the OLT and/or an EAS). A Central Office is the point at which an RSP will connect to the Dark Fibre Services;

Central Office Termination Point means the connector or splice that connects the fibre from the End User Premises (or NBAP) to either:

- (a) the termination of the fibre on the Central Office main distribution frame;
- (b) the OLT or Ethernet switch at a Central Office site;
- (c) the RSP's equipment at the Central Office co-location site; or
- (d) the Backhaul equipment at the Central Office site;

CFH Build Notice has the meaning given to that term in clause 4.5 of the Base Agreement;

CFH1 Security has the meaning given to the term "CFH Security" in the subscription agreement between CFH and the Company dated 9 November 2011;

CFH2 Forward Funding Agreement has the meaning given to that term in the Subscription Agreement;

CFH2 Security has the meaning given to that term in the Subscription Agreement;

CFH Service Level Commencement Date has the meaning given to that term in clause 3.2 of Schedule 5 (*Service Levels*);

CFH Service Levels means the Service Levels in Annexure 1 of Schedule 5 (*Service Levels*) with the designation CFH;

Change has the meaning given in clause 10.1 of the Base Agreement;

Change Authorisation Agreement means an agreement between the parties recording the terms on which a Change has been agreed, in the form set out in Annexure 2 to Schedule 8 (*Change Procedure*);

Change in Law means any change in Law;

Change Procedure means the process and procedure set out in Schedule 8 (*Change Procedure*), which is used to identify and, if necessary, implement any proposed or required Change;

Change Request means the written documentation by which CFH or the Company may initiate the Change Procedure, in the form agreed between the parties from time to time;

CI Leased Equipment means any Communal Infrastructure which is procured by the Company pursuant to a lease from a third party (which includes the Company itself and any related or associated party of the Company) or an IRU in accordance with clause 6.3 of the Base Agreement;

CI Leased Equipment Agreement has the meaning given in clause 6.3 of the Base Agreement;

Combined Fibre Business Plan means a fibre business plan that relates to:

- (a) the UFB1 Objective, and complies with clause 5 of Schedule 7 of the UFB1 NIPA if a fibre business plan is required to be prepared under the UFB1 NIPA; and

- (b) the UFB2 Objective, and complies with clause 5 of Schedule 7 if a fibre business plan is required to be prepared under this Agreement;

Commencement Date is the date on which this Agreement is signed by the parties;

Commerce Act Authorisations has the meaning given to that term in clause 20A.1(a)(i)(A) of the Base Agreement;

Commission, Commissioned or Commissioning means, in relation to the Network generally, the successful completion of all commissioning testing processes such that the Network and its components are connected, registered and operational in accordance with Schedule 3 (*Design and Build*), and are capable (as described in clause 8.2(b)(iii) of Schedule 3 (*Design and Build*)) of providing the Dark Fibre Services and Bitstream Services to End Users;

Commitment Standard has the meaning given to it in clause 3 of Schedule 2 (*Commitments*) and clause 3 of Schedule 10 (*Commitments – Post Build*);

Communal Infrastructure means the Communal Layer 1 Infrastructure, the Communal Layer 2 Infrastructure, the Layer 1 Backhaul and the Layer 2 Backhaul;

Communal Layer 1 Infrastructure means all passive (i.e., unpowered) infrastructure between (and including) the Premises Boundary Termination Point, the Central Office and the POI (where at least the Premises Boundary Termination Point and the Central Office are within the same Candidate Area), and includes, without limitation, any of the following within the Network Stage:

- (a) POIs;
- (b) Central Offices;
- (c) power supply;
- (d) Fibre Flexibility Points;
- (e) fibre connecting the interconnection points, Central Offices and/or cabinets;
- (f) distribution fibre running along each Road;
- (g) feeder fibre running from Central Offices to cabinets or fibre cross connection points;
- (h) associated ducts and other fixed civil infrastructure required to deploy fibre;
- (i) passive optical equipment installed in the Company's FFP; and

for the avoidance of doubt:

- (j) the fibre link between a POI and a CO, where the POI and the CO are located within the same Candidate Area is Communal Layer 1 Infrastructure; and
- (k) in each case the Communal Layer 1 Infrastructure excludes NBAP Connections;

Communal Layer 2 Infrastructure means all active (i.e., powered) infrastructure between (and including) the Premises Boundary Termination Point, the Central Office and the POI (where at least the Premises Boundary Termination Point and the Central Office are within the same Candidate Area), and includes, without limitation, any of the following within the Network Stage:

- (a) Optical Line Terminal;

- (b) Ethernet Access Switch; and

if the relevant ENNI is outside the Candidate Area in which the Central Office is located, then Communal Layer 2 Infrastructure excludes any incremental active infrastructure (for example WDM), used to provide Backhaul;

Companies Act means the New Zealand Companies Act 1993;

Company Assets means all of the tangible and intangible assets (including Software, hardware, facilities, equipment, documentation, cables, fibre or other items or materials) owned by or leased to the Company and used by or for the benefit of the Company wholly or predominantly to provide or enable the provision of the Design and Build or the O&M Services;

Company Test Plan means a plan prepared by the Company in accordance with clause 7 of Schedule 3 (*Design and Build*);

Company Testing means testing carried out by the Company in accordance with clause 7 of Schedule 3 (*Design and Build*);

Compliance Manager means any individual designated as such by CFH from time to time provided such person is a CFH representative on the PCG, the first of which shall be John Greenhough;

Confidential Information of CFH or Chorus (**Owner**) means:

- (a) all information obtained by the other party (**Holder**) from the Owner which by its nature is, or would reasonably be expected to be, confidential and trade secrets already communicated or subsequently communicated by the Owner to the Holder under or in connection with this Agreement or with respect to the Network or otherwise with respect to the subject matter of this Agreement, including any information obtained by the Holder from the Owner:
- (i) in the course of negotiations leading to the conclusion of this Agreement; or
 - (ii) in the performance of this Agreement;
- (b) any information about the business or property of the Owner including any information:
- (i) relating to the financial position of the Owner;
 - (ii) concerning the Owner's suppliers and customers or its agents or brokers;
 - (iii) relating to the Owner's internal management, structure, personnel or strategies; or
 - (iv) comprising the terms of this Agreement;
- (c) all Data collected by the Owner and provided to the Holder (and for the purpose of this defined term only, "collected" does not include where the Data is collected by CFH from Chorus); or
- (d) the contents of any materials in which the Owner has Intellectual Property Rights under the terms of this Agreement;

Connection means in respect of each End User, the connection of that End User's Premises to the Network by way of the End User-Specific Infrastructure and **Connected** and **Connections** will be construed accordingly;

Connection Satisfaction Commencement Date has the meaning given to that term in clause 2.5 of Schedule 5 (*Service Levels*);

Connection Satisfaction Score means the average of all percentage scores given by End Users who complete a Connection Satisfaction Survey as part of a Quarterly Connection Satisfaction Survey. By way of example, for an individual End User the Connection Satisfaction Survey has a maximum possible score of 70, so if an End User gave the Company a score of 50, the connection satisfaction score for that individual survey would be 71.4% (being 50 divided by 70 multiplied by 100). The Connection Satisfaction Score for the Quarterly Connection Satisfaction Survey would be the average of the percentage of connection satisfaction scores given by each End User;

Connection Satisfaction Survey means the survey agreed by the Company and CFH pursuant to Schedule 5 (*Service Levels*);

Consultation Period for the purposes of:

- (a) clause 4.5 of the Base Agreement, has the meaning given to that term in clause 4.5 of the Base Agreement; and
- (b) clause 20A of the Base Agreement, has the meaning given to that term in clause 20A of the Base Agreement;

Consultation Threshold has the meaning given to that term in clause 20A.2(a) of the Base Agreement;

Continued Authorisation Delay has the meaning given to that term in clause 20A.1(b) of the Base Agreement;

Coverage Area means (i) all of the Candidate Areas; and (ii) such other areas as are agreed by CFH and the Company in writing to be part of the "Coverage Area" under this Agreement;

Credit Rating Agency means Standard & Poor's Rating Service or Moody's Investor Services;

Critical Error means:

- (a) any material defect or error encountered in the Network during User Acceptance Testing; and/or
- (b) any material deviation from any Requirement that is identified in the functioning and operation of the Network during User Acceptance Testing;

Crown Deed means the deed dated 11 November 2011, as amended, between the Company and Her Majesty the Queen in right of New Zealand relating to certain operational and governance undertakings;

Current UFB1 Fibre Business Plan means the fibre business plan agreed between CFH and the Company pursuant to the UFB1 NIPA in force at the date of this Agreement;

Dark Fibre Services means the services described in the WSA Service Descriptions as being direct fibre access services and set out in Appendices 1 and 2 of the WSA price list, as provided (or to be provided) in the Coverage Area;

Data means, as the context permits, all or any End User Data and Operational Data;

Delay has the meaning given in clause 6.2(c) of the Base Agreement;

Design and Build means the activities, services, functions and duties of the Company for the design and build of the Network, as set out in Schedule 3 (*Design and Build*);

Detailed Specifications means the detailed specifications, as prepared in accordance with Schedule 3 (*Design and Build*);

Developer means a developer of Infill Premises or a Greenfield Site;

Developer Levy means, in respect of Infill Greenfield Sites, the contribution from the relevant developer of a maximum of [REDACTED] excluding GST per Premises in the Infill Greenfield Site, and in respect of Adjoining Greenfield sites, the relevant contribution from the Developer per Premises in the Adjoining Greenfield Site;

Dispute has the meaning given in clause 18.1 of the Base Agreement;

Document Finalisation Process means the process for finalising documents as set out in clause 1.1(b) of the Base Agreement;

Document Finalisation Process Documents (or DFP Documents) means the documents set out in Schedule 12;

Documentation means all documentation and reports relating to the Network, Design and Build or the O&M Services as are reasonably necessary for the Company to use, support, operate and obtain the full benefit of the Network, the Design and Build and the O&M Services (including specifications, manuals, processes, descriptions, methodologies, user guides, maintenance libraries, and procedures), and includes all documentation that:

- (a) must be provided by the Company under this Agreement; and
- (b) has been, or will be, prepared or used by the Company for the purpose of providing the Design and Build or the O&M Services,

together with additions, modifications to, and replacements of, that documentation made in accordance with this Agreement;

Downtime means the length of time that an End User is without a UFB Service, measured from the time that a fault is detected, either by an End User fault report or by a Network surveillance system, to the time the fault is resolved and the UFB Service is restored and, if an End User's UFB Service does not meet the "Layer 2 Traffic" Service Level (see clause 7 of Annexure 1 to Schedule 5 (*Service Levels*)) for one or more five minute intervals (as defined in the Layer 2 Traffic Service Level) then the End User will be deemed to be without a UFB Service for the relevant five minute interval(s) however, Downtime excludes user-initiated service interruptions and customer premises equipment outages due to power failure;

Draft Documentation has the meaning given to that term in clause 20A.5(b) of the Base Agreement;

DWDM means dense wave division multiplexing and has the same meaning as WDM;

End User means the recipient of a service (within the Coverage Area) that is dependent on a UFB Service;

End User Data means any data, information, record, list, configuration and work (in whatever form and on any medium) that relates to the interaction by an End User or Retail Service Provider with the Network;

End User-Specific Infrastructure means all passive (i.e., unpowered) and active (i.e., powered) infrastructure between the Premises Boundary Termination Point and the ITP (inclusive) for passive infrastructure, or UNI (inclusive) for active infrastructure, in a Premises, and includes the following:

- (a) fibre from a Premises to the Communal Infrastructure already in place outside the boundary of a Premises;
- (b) any fibre, electronic and/or optical equipment the Company may be required to install on Premises;

- (c) associated ducts and other fixed civil infrastructure required to deploy these End User-specific fibre assets;
- (d) all other infrastructure necessary to enable the provision of Dark Fibre Services and Bitstream Services to the relevant End User, including all infrastructure from the Premises Boundary Termination Point, in the case of an underground connection, or from the Nearest Pole, in the case of an aerial connection and terminates inside the Premises at either:
 - (i) the ITP, in the case of a Dark Fibre Service; or
 - (ii) the ONT, in the case of Bitstream Services;
- (e) any capitalised investment directly associated with each marginal End User (for example, the value of any software licences that might be supplied to the Company on a “per End User” basis);
- (f) any active electronic equipment installed in a Premises required to provide the Bitstream Services; and
- (g) includes the elements of a Standard Installation and a Non-Standard Installation as set out in clause 2.10 of Annexure 1 to Schedule 3 (*Design and Build*),

but excludes all Communal Infrastructure;

ENNI or **E-NNI** means External Network to Network Interface as defined in the TCF ELAS Document and the WSA;

Equipment means any and all tangible assets (including Communal Infrastructure and End User-Specific Infrastructure, Central Offices, Software, hardware, equipment, documentation, cables, fibre or other items or materials) purchased by, or otherwise supplied to, the Company in relation to this Agreement (but excluding CI Leased Equipment);

Equivalence of Inputs or EOI has the meaning given to it from time to time in the Open Access Deed;

Error(s) means any Blocking Error, Critical Error, Non-Critical Error and/or a Systemic Error;

Ethernet means Ethernet as defined by IEEE802.3;

Ethernet Access Switch or **EAS** means Ethernet aggregation switch as defined by the TCF in the TCF ELAS Document, and in most cases provides the ENNI interface;

EUSI Distance has the meaning given to that term in clause 2.10(a) of Annexure 1 of Schedule 3 (*Design and Build*);

Exclusive Boundary means the area on which the relevant Premises is physically located and, in respect of which, the occupier of such Premises has an exclusive ownership, leasehold or other occupation interest, and excludes any area in respect of which the occupier has a non-exclusive ownership, leasehold, or other occupation or access interest;

Existing Infrastructure means any Company equipment (including but not limited to the UFB1 Communal Infrastructure, POIs, Backhaul, End User Specific Infrastructure, or management systems) owned or operated by the Company, that:

- (a) existed prior to the Commencement Date and/or is deployed under the UFB1 NIPA; and
- (b) is located between (and including) an ONT at any Premises in a Candidate Area and the POI (inclusive) used (or to be used) to serve that ONT, as specified in Annexure 4 of Schedule 5;

Expert has the meaning given in clause 18.5(a) of the Base Agreement;

Extension Period has the meaning given to that term in clause 22.4(b) of the Base Agreement;

External Termination Point (or **ETP**) means a suitable fibre termination facility located as an attachment to an external structure located at the End-User's Premises, or at the NBAP. It is not mandatory for the fibre to be broken and terminate at that point, although it will serve as an access point for breaking and testing should the need arise;

Fibre Access Point or **FAP** has the same meaning as Premises Boundary Termination Point;

Fibre Flexibility Point or **FFP** means the passive infrastructure used to provide the connection between the feeder duct and fibre infrastructure, and the distribution duct and fibre infrastructure. The FFP houses the splitters and the fibre cross connection points and may also house and manage the air blown fibre tubes if air blown fibre is used in the distribution;

Financial Year means a financial year, ending on the Company's balance date, as those terms are used in the Financial Reporting Act 2013;

Force Majeure Event means an event or circumstance beyond the reasonable control of a party which makes it impossible or illegal to perform, or prevents compliance with or the performance of, that party's obligations under this Agreement, including:

- (a) fire, floods, storms, tempest, earthquake or other act of God;
- (b) any act of a public enemy, war, riot, act of civil or military authority;
- (c) nuclear, chemical or biological contamination; and
- (d) any act of a third party (not being an employee, agent or subcontractor of that party) engaged in subversive or terrorist activity or sabotage;

but does not include an event to the extent that:

- (e) the effect of that event could have been substantially prevented, avoided or overcome or mitigated by:
 - (i) implementation of any contracted business continuity or disaster recovery service, or any contingency plans agreed between the parties or which a party has represented it has in place;
 - (ii) exercising a reasonable standard of care; or
 - (iii) using information provided by the other party or which is available in the public domain;
- (f) it is an event which this Agreement expressly identifies as one for which the party affected is or was directly responsible in circumstances that would otherwise constitute a Force Majeure Event;
- (g) that event is constituted or caused by any failure of a Subcontractor or supplier of the party seeking to rely on clause 21 of the Base Agreement unless and to the extent that the Subcontractor or supplier was itself affected by an event which, if it occurred in relation to either party, would have been a Force Majeure Event;
- (h) that event is constituted or caused by the insolvency of the party seeking to rely on clause 21 of the Base Agreement or a Subcontractor or supplier of the party seeking to rely on clause 21 of the Base Agreement or lack of funds for any reason;

- (i) risks associated with that event have been expressly accepted by the relevant party by the terms of this Agreement in circumstances that would otherwise constitute a Force Majeure Event; or
- (j) that event is constituted by a Change in Law;

Force Majeure Notice has the meaning given in clause 21.2 of the Base Agreement;

FTTB means fibre to the basement;

FTTP means fibre to the Premises;

Government means the Government of New Zealand;

GPON means Gigabit Passive Optical Networking and is defined by the ITU in the G.984 series of recommendations;

Greenfield Sites means Adjoining Greenfield Sites and Infill Greenfield Sites;

Group Company means any of the Company's wholly owned subsidiary companies;

Hand Over means the hand over of Commissioned Premises, with Test Readiness and Commissioning Complete Certificates to CFH for the commencement of UAT and **Handed Over** will be construed accordingly;

Handed Over Milestone has the meaning given to that term in section 1 of Annexure 2 of Schedule 3 (*Design and Build*);

Handed Over Milestone Date means, in respect of a Network Stage, the date by which the Company must achieve the Handed Over Milestone for the relevant Network Stage as set out in the MDP and Annual Deployment Schedule (as applicable);

Health and Safety Management Plan means the health and safety management plan prepared by the Company as set out in Schedule 11, as updated and modified from time to time in accordance with the terms of this Agreement;

Health and Safety Milestone has the meaning given to that term in column B of the table in section 2 of Annexure 2 of Schedule 3 (*Design and Build*);

Immediate Termination Event means a Material Breach described in subclause (a), (e) or (f) of the definition of "Material Breach";

Impact Statement has the meaning given to it in clause 2.2 of Schedule 8 (*Change Procedure*);

Improvements has the meaning given in clause 7.2 of the Base Agreement;

Income Tax Act means the Income Tax Act 2007;

Indemnified Parties has the meaning given in clause 14.1 of the Base Agreement;

Individual Milestone means, in respect of a Build Milestone, each of the items listed in column B of the table in section 1 of Annexure 2 of Schedule 3 (*Design and Build*) alongside that Build Milestone;

Infill Greenfield Sites means the subdivision of a defined geographical site in the Coverage Area which is evidenced by confirmation that the Premises exists in the LINZ title database, into greater than four defined geographical sites which are evidenced by certificates of title created after the Commencement Date, and located in a private or public property subdivision, complex or community,

but excludes Infill Premises and Adjoining Greenfield Sites and an **Infill Greenfield Site** means an individual geographical site evidenced by independent confirmation that the Premises exists in the LINZ title database which forms part of the Infill Greenfield Sites;

Infill Premises means Premises which are constructed after the Commencement Date in the Coverage Area on land which is subdivided into four or less defined geographical sites which are evidenced by confirmation that the Premises exists in the LINZ database, or leased or subleased from or otherwise comprise land surrounding, a Premises existing at the Commencement Date, but excludes Infill Greenfield Premises and Adjoining Greenfield Premises;

In-Scope Fibre Access Services has the meaning given to it in clause 2(a) of Schedule 10 (*Commitments – Post Build*);

Insolvency Event means, in relation to the Company:

- (a) any borrowed moneys indebtedness of the Company exceeding [REDACTED] (in aggregate) or its equivalent in any other currency is not repaid on its original maturity date (or within any applicable grace periods), or becomes due and payable by reason of default before its original maturity date, other than where contested in good faith by appropriate proceedings;
- (b) an order is made by any competent Court or an effective resolution is passed or legislation is enacted for the liquidation, winding up or dissolution of the Company, or a statutory manager is appointed in respect of the Company under the Corporations (Investigations and Management) Act 1989 or any analogous or replacement legislation, or any analogous proceedings are taken in respect of the Company;
- (c) the Company ceases or threatens in writing to cease to carry on the whole or substantially the whole of its business, other than for the purposes of a reconstruction, amalgamation or reorganisation where the Company is solvent and which has been approved by CFH;
- (d) an encumbrancer takes possession or a receiver is appointed of the whole or any material part of the Company's assets or undertaking, or a distress or execution in an amount exceeding [REDACTED] (or its equivalent in any other currency) is levied or enforced upon or sued out against all or any material part of the Company's assets or undertaking, except where the same is discharged or stayed within 30 days of commencement or is contested by the Company in good faith by appropriate proceedings; or
- (e) the Company is unable to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the readjustment or rescheduling of its indebtedness generally, or makes a general assignment for the benefit of or an arrangement or a composition with or for the benefit of its creditors;

Integrated Test Facility or **ITF** means that technical infrastructure environment which substantially replicates the configuration and sizing of the Network and which is, or is to be, used to:

- (f) test Network functionality, operation and performance during User Acceptance Testing and subsequently in respect of Changes that are made or are to be made to the Network; and
- (g) allow Retail Service Providers to test and modify their Telecommunications Services to work on the Network;

Integrated Test Facility Milestone has the meaning given to that term in column B of the table in section 2 of Annexure 2 of Schedule 3 (*Design and Build*);

Intellectual Property Rights means copyright, all rights relating to inventions (including patents), registered and unregistered trade marks, registered and unregistered design, semiconductor or circuit layout rights, trade or other proprietary rights or rights derivative of those rights (including licence rights) anywhere in the world as well as any other rights in intellectual property which are recognised or protected under law;

Internal Termination Point or **ITP** means the SC or LC connector that terminates the fibre inside the End User's Premises, and plugs into the ONU/ONT or the Retail Service Provider's equipment;

IRD means the New Zealand Inland Revenue Department;

IRU means an exclusive, unrestricted, and indefeasible right to use granted by a third party;

Key Personnel has the meaning given in clause 8.4(a) of the Base Agreement;

Law means:

- (a) any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a party is subject;
- (b) the common law and the law of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard enforceable by law; or
- (e) any applicable direction, policy, permission, consent, licence rule or order that is binding on a party and that is made or given by any governmental, legal or regulatory body having jurisdiction over a party or any of that party's assets, resources or business,

in any jurisdiction that is applicable to this Agreement, including all applicable district or regional plans, district council bylaws, district council codes of practice and development manuals for roading and New Zealand Transport Agency guidelines and standards;

Layer 1 Backhaul means all passive (i.e. unpowered) infrastructure between the Central Office (inclusive) and the ENNI used (or to be used) to serve a Candidate Area, where the ENNI is outside the Candidate Area in which the Central Office is located (but would not include the fibre link between a POI and a CO, where the POI and the CO are located within the same Candidate Area);

Layer 1 Central Office Termination Point means the connector or splice which connects the fibre from the End User's Premises (or NBAP) to either:

- (a) the termination of the fibre on the Central Office main distribution frame;
- (b) the OLT or Ethernet switch at a Central Office site;
- (c) the RSP's equipment at the co-location site; or
- (d) the Backhaul equipment at the Central Office site;

Layer 1 Services means the Dark Fibre Services and the point to multipoint fibre used to provide Layer 2 Services as provided (or to be provided) within the Coverage Area;

Layer 2 Backhaul means all active (i.e. powered) infrastructure required to provide connectivity between a Central Office and the ENNI used (or to be used) to serve a Candidate Area, where the ENNI is located outside the Candidate Area. This includes WDM equipment (but would not include the OLT chassis or the EAS chassis which form part of the Communal Layer 2 Infrastructure);

Layer 2 Services means the components of the Bitstream Services provided within the Coverage Area that are not Layer 1 Services. The Layer 2 Services rely on Layer 1 Services, and Schedule 5 (*Service Levels*) often requires the Service Levels for Layer 2 Services to be measured separately to the Service Levels for the Layer 1 Services, as provided (or to be provided) within the Coverage Area;

Layer 2 Traffic Performance Measurement and Reporting Regime means the regime set out in the document available at <https://www.crownfibre.govt.nz/wp-content/uploads/2011/12/UFB-Performance-Management-and-Reporting-17-Nov.pdf>;

LC Connector means an LC Angle Polished Connector (**APC**) conforming to Grade B insertion loss and Grade 1 return loss performance as per IEC 61755-1;

LFC has the meaning given to it in clause 3(a) of Schedule 2 (*Commitments*) and clause 3(a) of Schedule 10 (*Commitments – Post Build*);

Leased Backhaul has the meaning given to that term in clause 4.4 of the Base Agreement;

Limit has the meaning given to it in the Subscription Agreement;

Liquidated Damages means those damages payable by the Company to CFH and the Crown, calculated pursuant to the terms of Annexure 4 of Schedule 3 (*Design and Build*), in respect of a failure on the part of the Company to achieve a Build Complete Milestone;

Master Deployment Plan or **MDP** means the overarching plan for the conduct of the Design and Build of all Network Stages in the Coverage Area set out in Annexure 2 to Schedule 3 (*Design and Build*);

Material Adverse Event means the Company has, as a result of any act or omission of the Company, been subject to, or necessarily in the future will be subject to, a material adverse change resulting in the Company being unable to, or necessarily in the future being unable to, perform such of its obligations under the Agreement that CFH is or will thereby substantially be deprived of the achievement of the UFB2 Objective and the UFB Uptake Objective in the Coverage Area;

Material Breach means any one or more of the following:

- (a) the occurrence of an Insolvency Event in relation to the Company;
- (b) the occurrence of a Material Adverse Event in relation to the Company;
- (c) a failure by the Company to remedy a Service Level Performance Issue within three months of the date the Service Level Performance Issue arose;
- (d) a failure by the Company to prepare a Remedial Plan in accordance with clauses 17.3 within 10 Business Days of the date of the Remedial Plan Reminder Notice, where CFH elects not to prepare the relevant Remedial Plan or have a third party prepare the Remedial Plan;
- (e) failure to meet a Build Complete Milestone that is defined as a “Material Breach” in Annexure 4 of Schedule 3 (*Design and Build*);
- (f) any failure by the Company to comply with, observe or perform any of the terms of this Agreement, in circumstances where that contract breach, or that contract breach together with any other contract breach, demonstrates repudiation or anticipatory repudiation by the Company of this Agreement; and/or
- (g) any indebtedness under a Third Party Finance Agreement in excess of [REDACTED] (or its equivalent in other currencies) becoming due and payable prior to its stated maturity by reason of an event of default or similar event (whatever called);

Material Breach Liquidated Damages means the amount of [REDACTED] per day;

MBLDs has the meaning given to that term in clause 19.1 of the Base Agreement;

MBLDs Period has the meaning given to that term in clause 19.1 of the Base Agreement;

MBLDs Period Commencement Date has the meaning given to that term in clause 19.2 of the Base Agreement;

MBLDs Period End Date has the meaning given to that term in clause 19.2 of the Base Agreement;

MDP Change Request Notice has the meaning given to that term in clause 2.2 of Schedule 3 (*Design and Build*);

Milestone means a milestone set out in the Master Deployment Plan or Annual Deployment Schedules;

Mobile Blackspot Initiative means the Government's proposed plan to create a [REDACTED] fund to extend mobile coverage into black spot areas of main highways and key tourist areas, as further explained in the ROI – Supply and the ROI – Support;

MOFDF means a main optical fibre distribution frame being a facility in the central office for terminating access fibres;

Multi-Dwelling Unit or **MDU** means a multi-dwelling unit or multi tenancy unit located within the Coverage Area;

NBAP Connection means the connection of an NBAP to the Network;

Nearest Pole means, in respect of aerial deployment, the pole closest to the Premises Boundary, subject to clause 2.6(c) of Schedule 3 (*Design and Build*);

Negotiation Period has the meaning given to that term in clause 20.8 of the Base Agreement;

Network means the New Infrastructure, Existing Infrastructure and any CI Leased Equipment;

Network Build Commencement Date means the earlier of:

- (a) the Build Start Milestone Date for the first Network Stage; or
- (b) the date on which the Company commences any physical works in respect of the build of the Network;

Network Design Documentation has the meaning given in clause 5.1 of Schedule 3 (*Design and Build*);

Network Requirements means those requirements set out in Annexure 1 of Schedule 3 (*Design and Build*);

Network Stage means each individual town identified in the maps set out in Schedule 13 (*Network Stages*), as further described in the Master Deployment Plan and the relevant Annual Deployment Schedule (to avoid doubt, each Network Stage excludes Greenfields Sites and Infill Premises);

Network Stage Amount means, in respect of a Network Stage, the amount equal to Applicable N_{passed} multiplied by Applicable $\text{CPPP}_{\text{L1 CFH}}$, which is the amount set out in Column 4 of the table in Annexure 6 of Schedule 3 (*Design and Build*) in respect of the relevant Network Stage and relevant Applicable N_{passed} (subject to any reduction in Applicable N_{passed} made pursuant to Schedule 8 (*Change Procedure*));

New Backhaul has the meaning given to that term in clause 4.4 of the Base Agreement;

New Infrastructure means the Communal Infrastructure and End User-Specific Infrastructure built pursuant to this Agreement;

Non-Consented Premises has the meaning given to that term in clause 2.3 of Schedule 3 (*Design and Build*);

Non-Critical Error means:

- (a) any defect or error encountered in the Network User Acceptance Testing that is not a Blocking Error or Critical Error; and/or
- (b) any deviation from any Requirement that is identified in the functioning and operation of the Network during User Acceptance Testing that is not a Blocking Error or Critical Error;

Non-Building Access Point or **NBAP** means a location for a Connection within the Coverage Area that either is not a Premises (e.g. a cell site or pumping station) or does not have a physical address (e.g. a bus shelter or lamp post) other than a location that is a concentration point for a regulated backhaul service (for example, a fibre to the node cabinet owned or controlled by the Company);

Non Standard Installation or **NSI** has the meaning given in clause 2.10 of Annexure 1 to Schedule 3 (*Design and Build*);

Notice of Completion means a notice issued by the Company to CFH in accordance with clause 10 of Schedule 3 (*Design and Build*) and in the form set out in Annexure 5 of Schedule 3 (*Design and Build*);

Notice of Delay has the meaning given in clause 6.2(d) of the Base Agreement;

O&M Services means those operational services and maintenance services to be provided by the Company relating to the Network during the Term as described in Schedule 4 (*O&M Services*);

Object Code means the executable version of the Software;

ONT means the optical network termination, and generally denotes the end-point of a GPON network on an End User's Premises;

ONU means the optical network unit, and generally denotes the end-point of a point-to-point Bitstream Service on an End User's Premises;

Open Access Commitment Deed has the meaning given to the term "Commitment Deed" in clause 1(e) of Schedule 6 (*Services and Pricing*);

Open Access Deed has the meaning given to the term "UFB2 Deed of Open Access Undertakings for Fibre Services" in clause 1(e) of Schedule 6 (*Services and Pricing*);

Open Access Requirements means the requirements set out in the Open Access Deed;

Open Systems Interconnection Mode or OSI Model means the seven-layer model of network architecture known as the "Open Systems Interconnection Model" as described in the ISO X.200 requirements;

Operational Data means any data, information, record, list, configuration and work (in whatever form and on any medium) that relates to operation of the Network;

Operational Processes Milestone has the meaning given to that term in column B of the table in section 2 of Annexure 2 of Schedule 3 (*Design and Build*);

Optical Line Termination or **OLT** means optical line termination as defined in the ITU-T G.984 series specifications and is the device that is located in the Central Office and is the endpoint of a PON;

OSS/BSS means the operational support system and business support system;

OTDR means the optical time domain reflectometer or iOLM;

P1 Towns means the Network Stages designated as 'P1 Towns' in the Master Deployment Plan;

P2 Towns means the Network Stages designated as 'P2 Towns' in the Master Deployment Plan;

P3 Towns means the Network Stages designated as 'P3 Towns' in the Master Deployment Plan;

Passed means when a Premises has been passed with Communal Infrastructure and is capable of Connection from the Premises Boundary Termination Point without further civil works required on the Communal Infrastructure or outside the Premises Boundary and **Past** shall have a corresponding meaning (to avoid doubt, the road crossings referred to in clause 2.6 of Annexure 1 of Schedule 3 need not be completed to meet the definition of Passed);

Performance Issue has the meaning given in clause 17.2 of the Base Agreement;

Performance Notice has the meaning given in clause 17.2 of the Base Agreement;

Period of Suspension has the meaning given in clause 21.4 of the Base Agreement;

Personnel includes employees, agents, officers and individual independent contractors;

POI means the Point of Interconnection that meets the Network Requirements, and is identified in Annexure 4 of Schedule 5 as the POI used (or to be used) to serve a Network Stage; in the context of any particular Premises or Central Office, a reference to a POI is a reference to the POI used (or to be used) to serve that Premises or Central Office, as specified in Annexure 4 of Schedule 5;

POI Area means a POI Area as defined in Annexure 4 of Schedule 5;

Point of Interconnection means, in respect of any dark fibre wholesale services, the central office or point of interconnection to the Network and, in respect of all other wholesale services, the point of interconnection to the Network;

PON means a passive optical network;

Precluded Extent has the meaning given in clause 21.2 of the Base Agreement;

Premises means:

- (a) a single building or structure; or
- (b) a Retirement and Business Complex,

located on a defined geographical site within the Coverage Area (such as may be evidenced by the LINZ title database), which has a unique physical address recognised by New Zealand Post, and is occupied by or could readily be occupied by a potential End User but, for the avoidance of doubt does not include:

- (c) a NBAP; or
- (d) any single building or structure that is part of a state school, a state-integrated school, a public hospital, or an integrated family health centre,

and a multi-tenanted building or structure only constitutes a single Premises. For the purposes of clause 4 and clause 6.2 of the Base Agreement, Schedule 3 (*Design and Build*), and any other clause of this Agreement dealing with or referring to a Premises in the context of Greenfield Sites and/or Infill Premises, the term **Premises** shall be interpreted on the basis that:

- (e) in respect of an Adjoining Greenfield Site, a Premises shall exist if, after the Commencement Date, the relevant site is shown as a separate site on the LINZ title database, which comprises part of the Adjoining Greenfield Site;
- (f) in respect of an Infill Greenfield Site, a Premises shall exist if, after the Commencement Date, the relevant site is shown as a separate site on the LINZ title database, which comprises part of the Infill Greenfield Site; and
- (g) in respect of an Infill Premises, a Premises shall exist if, after the Commencement Date, the LINZ database contains independent confirmation of the relevant site as a separate site, which comprises part of the Infill Premises,

in each case, notwithstanding that no building or structure may yet have been built on that particular site;

Premises Boundary means:

- (a) in respect of individual Premises located down and accessed by a ROW or a Retirement and Business Complex, the point where the public road adjoins the entrance to the ROW or the Retirement and Business Complex (as applicable); and
- (b) in respect of all other Premises, that part of the Exclusive Boundary of an individual Premises which is adjoining the nearest Road to such Premises;

Premises Boundary Termination Point means the point where the Communal Layer 1 Infrastructure connects to the End User-Specific Infrastructure. This is:

- (a) for underground deployment, the point where the duct or fibre is left at the Premises Boundary; or
- (b) for aerial deployment, the Nearest Pole to the Premises Boundary; or
- (c) in the case of a hybrid deployment (i.e. a mixture of underground and aerial deployment), this includes the fibre or duct between the Nearest Pole and the Premises Boundary;

Premises Handed Over means Commissioned Premises that have passed company testing by the Company and have been handed to CFH for User Acceptance Testing;

Premises ID means the unique number identifying a Brownfield Premises and set out in the APD;

Price Book means Schedule 10 (*Price Book*) of the UFB1 NIPA and, for the avoidance of doubt, includes any amendments to Schedule 10 of the UFB1 NIPA made subsequent to the date of the UFB1 NIPA;

Professional Adviser means any accounting, legal or technical services professional;

Project means the project, solely within the Company's responsibility, to complete the Design and Build and provide the O&M Services within the Coverage Area and timeframes, and to meet the requirements, set out in this Agreement;

Project Control Group or **PCG** has the meaning given in Schedule 7 (*Project Governance*);

Property Estate means any of the following within the Coverage Area:

- (a) a residential private gated housing community, estate or subdivision;
- (b) any other form of private property residential or commercial subdivision, complex or community;
or
- (c) a private right of way, driveway, laneway, service lane or alleyway, the entrance of which adjoins a public road, and which has more than 10 Premises down it which are accessed by such private right of way, driveway, laneway, service lane or alleyway,

but excludes a Retirement and Business Complex;

Proposed Bill means the version of the Telecommunications Bill set out in Part 1 of Appendix 1;

Provisioning Milestone means, in respect of a Network Stage, the satisfaction of each of the Individual Milestones comprising the Provisioning Milestone as set out in Column B of the table in section 1 of Annexure 2 of Schedule 2 (*Design and Build*);

Provisioning Milestone Date means, in respect of a Network Stage, the date on which the Company makes the first Connection for the relevant Network Stage;

PTD means project to date;

Qualified UAT Certificate means a UAT Certificate containing such qualifications and limitations as CFH deems necessary in accordance with clause 5.3 of Annexure 3 of Schedule 3 (*Design and Build*);

Quarterly Connection Satisfaction Survey has the meaning given to it in clause 2.5(a) of Schedule 5 (*Service Levels*);

RBI Initiative means the planned phase 1 of the Government's rural broadband initiative as further explained in the ROI – Support and ROI – Supply;

RBI2 Initiative means the planned phase 2 of the Government's rural broadband initiative as further explained in the ROI – Support and ROI – Supply;

RED Towns means the Network Stages designated as 'RED Towns' in the Master Deployment Plan;

Reference Offer has the meaning given in clause 1(e) of Schedule 6 (*Services and Pricing*);

Relationship Manager has the meaning given in clause 8.2(a) of the Base Agreement;

Relevant Authority has the meaning given to that term in clause 2.2 of Schedule 3 (*Design and Build*);

Relevant Consents has the meaning given to that term in clause 9.5 of the Base Agreement;

Relevant Circumstances has the meaning given to that term in clause 2.2 of Schedule 3 (*Design and Build*);

Relevant Government Entity has the meaning given to that term in clause 13.2 of the Base Agreement;

Relevant Parties has the meaning given to that term in clause 9.5 of the Base Agreement;

Relevant Health and Safety Legislation means the Health and Safety at Work Act 2015, the Electricity Act 1992, the Gas Act 1992 and the Hazardous Substances and New Organisms Act 1996 (and any successor legislation) and any regulations under those Acts, rules, standards, approved codes of practice and any other applicable law relating to health and safety;

Remedial Plan has the meaning given in clause 17.2 of the Base Agreement;

Remedial Plan Reminder Notice has the meaning given to that term in clause 17.3 of the Base Agreement;

Reporting Information means the reporting information listed in Annexure 5 of Schedule 7 (*Project Governance*);

Representation has the meaning given in clause 1.8 of the Base Agreement;

Requested Changes has the meaning given to that term in clause 2.2 of Schedule 3 (*Design and Build*);

Requested Changes Response has the meaning given to that term in clause 2.2 of Schedule 3 (*Design and Build*);

Required Amendments has the meaning given to that term in clause 20A.5(b) of the Base Agreement;

Required Ancillary Services means a service or item of equipment which supports the supply of services using the Network and required to be offered by the Company, as described in Table A, Appendix 3 of the WSA price list;

Required Signage Consent has the meaning given to that term in clause 22.4(b) of the Base Agreement;

Requirements means all requirements for or in relation to the Network set out in this Agreement including the Network Requirements;

Residential Connections means a Connection requested by an RSP in relation to an End User that is not a Business;

Residential Gateway or RGW means End User Premises equipment, provided by the RSP;

Retail Service Provider or RSP means an entity that has a contractual relationship with the Company for use of all or part of the Network and that has, or is to have, a contractual relationship with End Users for the provision of Telecommunications Services;

Retail Services means Telecommunications Services provided to an End User in the Coverage Area pursuant to a contractual relationship between the relevant person and the End User;

Retirement and Business Complex means:

- (a) a retirement village or complex; or
- (b) a business park or complex which is located wholly on a single certificate of title,

in each case, within the Coverage Area;

RFP has the meaning given in the Background of the Base Agreement;

RFP Documentation means the Company's original tender response to the RFP as clarified and amended by subsequent correspondence (including questions and answers), whether by electronic means or otherwise, between CFH and its advisers and the Company prior to the Commencement Date;

Road means:

- (a) a public road;
- (b) a private road;
- (c) a paper road;
- (d) a laneway, service lane or alleyway;
- (e) all public roads, private roads, paper roads, laneways, service lanes, alleyways, right of ways and driveways within a Property Estate; and
- (f) any other area which is analogous to any of those set out above,

and, for the avoidance of doubt:

- (g) includes any footpath and/or berm area next to or associated with such areas; but
- (h) excludes a ROW, and excludes any private road, paper road, laneway, service lane, alleyway, right of way or driveway within a Retirement and Business Complex;

ROW means a private road, right of way, driveway, laneway, service lane or alleyway, the entrance of which adjoins a public road, and which has between two to 10 Premises located down it which are accessed by such private road, right of way, driveway, laneway, service lane or alleyway, but excludes a private road, right of way, driveway, laneway, service lane or alleyway forming part of a Property Estate;

ROW Extended EUSI Distance has the meaning given to it in clause 2.10(b) of Annexure 1 of Schedule 3 (*Design and Build*);

RSP Service Level Commencement Date has the meaning given to that term in clause 3.1 of Schedule 5 (*Several Levels*);

RSP Service Levels means the Service Levels in Annexure 1 of Schedule 5 (*Several Levels*) with the designation RSP;

SC Connector means an SC Angle Polished Connector conforming to Grade B insertion loss Grade 1 return loss performance as per IEC 61755-1;

Schedules means the Schedules to the Base Agreement for the time being and includes the Annexures (where the context so allows);

Self-Audit has the meaning given in clause 8.7(c) of the Base Agreement;

Senior Committee means the representatives of the UFB1 Senior Committee for the purposes of Schedule 7 (*Project Governance*);

Senior Financier means, in respect of any Senior Indebtedness under a Third Party Finance Agreement, either:

- (a) the person entitled to payment or repayment of the Senior Indebtedness (**Senior Creditor**); or

- (b) if the Senior Creditor is represented by a trustee or other representative pursuant to the terms of the Third Party Finance Agreement, the trustee or representative of the Senior Creditor;

Senior Indebtedness means present and future indebtedness (whether actual or contingent) of the Company that ranks equally with all present and future unsecured and unsecured indebtedness of the Company (except indebtedness preferred solely by operation of law);

Serious Health and Safety Breach has the meaning given to that term in clause 20.2 of the Base Agreement;

Service Default Payments means the payments to be made by the Company for Service Level Defaults, in accordance with Schedule 5 (*Several Levels*);

Service Level Commencement Date means:

- (a) in respect of the RSP Service Levels, the RSP Service Level Commencement Date;
- (b) in respect of the CFH Service Levels, the CFH Service Levels Commencement Date; and
- (c) in respect of the Customer Installation Experience Service Level, the Connection Satisfaction Commencement Date;

Service Level Default means a failure by the Company to meet one or more Service Levels;

Service Level Performance Issue has the meaning given to that term in clause 6.4(b)(iv)(D) of the Base Agreement;

Service Levels means the performance levels, including for the O&M Services, as set out in Schedule 5 (*Several Levels*);

SFP means small form-factor pluggable, a compact, hot-pluggable transceiver used for both telecommunications and data communications applications. The SFP transceiver is not standardised by any official standards body, but rather is specified by a multi-source agreement among competing manufacturers;

Signage Deadline has the meaning given to that term in clause 22.4(a) of the Base Agreement;

Signage Obligation has the meaning given to that term in clause 22.4(a) of the Base Agreement;

Software means the Object Code version of:

- (a) any software, database, or protocol;
- (b) updates, releases, versions, corrections, modifications, enhancements or developments to any software, protocols or databases; and
- (c) any documentation related to (a) or (b);

Specified Layer 1 Services means the Layer 1 Services that are Specified Services as defined in the UFB1 Schedule;

Specified Layer 2 Services means the Layer 2 Services that are Specified Services as defined in the UFB1 Schedule;

Specified Services has the meaning given to that term in the UFB1 Schedule;

Standard Installation has the meaning given in clause 2.10 of Annexure 1 to Schedule 3 (*Design and Build*);

Steering Committee means the steering committee set up under Schedule 7 (*Project Governance*);

Subcontractor means any person to whom the Company has subcontracted any part of its obligations under this Agreement or who is a supplier to the Company in respect of this Agreement and includes the Personnel and subcontractors of that person and **Subcontracts** and **Subcontracting** and like terms will be construed accordingly;

Subscription Agreement means the subscription agreement dated on or around the date of this Agreement;

Subsequent Services means the services set out in Table B of the Price Book;

Success Criteria has the meaning given in clause 17.3 of the Base Agreement;

Suspension Notice has the meaning given to that term in clause 20.8 of the Base Agreement;

Systemic Error means an Error that may indicate a systemic issue, being:

- (a) an Error reported in multiple TPRs by CFH UAT testers; or
- (b) an Error identified by the Company as prevalent in multiple instances, even though this may not have yet resulted in TPRs, but may have resulted in non-conformance reports produced by the Company (listed Errors identified during Company Testing);

TAA means the Tax Administration Act 1994;

Tax Ruling means the tax ruling set out in Schedule 14 (*Tax Ruling*);

Tax Ruling Application means the Company's application to the IRD for the Tax Ruling;

TCF means the New Zealand Telecommunications Forum;

TCF ELAS Document means the TCF's Ethernet line access service document (2015 draft);

TCF UFB BSS/OSS Industry Standards means the TCF created set of documents that describe a common interface framework and are published on the TCF website (<http://www.tcf.org.nz/content/b35c7ff0-3d0f-4b4e-a371-1a75b741c9c4.html>), in the form available as at the date of this Agreement;

Telecommunications Act means the Telecommunications Act 2001;

Telecommunications Act Amendments means the amendments to the Telecommunications Act set out in Part 2 of Appendix 1;

Telecommunications Bill means the Telecommunications (Property Access and Other Matters) Amendment Bill, the proposed form of which (as at the date of this Agreement) being the Proposed Bill;

Telecommunications Development Levy has the meaning given to that term in the Telecommunications Act;

Telecommunication Services means a telecommunications service as defined in the Telecommunications Act 2001;

Term has the meaning given in clause 3 of the Base Agreement;

Test Data means the data required by CFH for User Acceptance Testing;

Test Problem Report or **TPR** has the meaning given in Annexure 3 of Schedule 3;

Test Readiness and Commissioning Complete Certificate means the certificate provided by the Company certifying that Company Testing is complete for each of the Premises specified in the Test Readiness and Commissioning Complete Certificate, and certifying that the Detailed Specifications have been complied with, and including, in respect of the Premises specified in the Test Readiness and Commissioning Complete Certificate, the following information:

- (a) associated FFPs by reference to the FFP ID;
- (b) total number of Premises Passed per FFP;
- (c) type of OFDF (connectorised vs fusion spliced); and
- (d) type of deployment (single-sided or double-sided/aerial or underground);

Third Party Event means any act or omission of a third party (including a Retail Service Provider or End User, but excluding any Subcontractor, supplier of the Company or any person within the control or under the responsibility of the Company (whether through contract or otherwise and including for the avoidance of doubt in relation to CI Leased Equipment)), except to the extent that such act or omission has been caused or contributed by:

- (a) any act or omission of the Company or its Personnel (including a failure of the Company to perform its obligations under this Agreement); or
- (b) any act or omission of the Third Party that has received the Company's prior written approval;

Third Party Finance Agreement means any agreement or deed documenting the terms of financial accommodation made available to the Company (or any wholly owned direct or indirect subsidiary of the Company) from time to time pursuant to which the Company (or any wholly owned direct or indirect subsidiary of the Company) may borrow or raise financial accommodation in an aggregate principal amount of more than [REDACTED];

TPR or **Test Problem Report** means a problem report detailing test failures and Errors identified during the User Acceptance Testing;

Transaction Documents means:

- (a) this Agreement;
- (b) the Subscription Agreement;
- (c) the Open Access Commitment Deed;
- (d) the Open Access Deed;
- (e) the UFB2 NIPA Side Letter; and
- (f) CFH2 Forward Funding Agreement;

UAT Certificate means, in relation to User Acceptance Testing, the notice of the passing of UAT, as set out in Annexure 3 of Schedule 3 (*Design and Build*);

UAT Period means the periods specified in clause 2.2 of Annexure 3 of Schedule 3 (*Design and Build*) for completion of that User Acceptance Test;

UAT Plan means:

- (a) a defined set of activities to be undertaken during User Acceptance Testing which shall be provided to the Company by CFH and may be amended by CFH from time to time as required; and
- (b) includes information concerning User Acceptance Testing, such as:
 - (i) details of UAT Test Cases and the sequence in which they are to be executed;
 - (ii) a description of the conditions that are required to exist before different forms of testing can start;
 - (iii) particulars of expected test results; and
 - (iv) details of the Test Data required;

UAT Test Cases means a test case prepared by CFH and delivered to the Company, for User Acceptance Testing which sets out a comprehensive description of functions to be executed during User Acceptance testing to ensure that the requirements of the Agreement (including but not limited to the Network Requirements) are met;

UFB Services means the Access Services and the Ancillary Services;

UFB Uptake Objective has the meaning set out in the Recitals of Schedule 2 (*Commitments*) and Schedule 10 (*Commitments – Post Build*);

UFB1 means the Government's initial [REDACTED] investment in Ultra-Fast Broadband infrastructure;

UFB1 NIPA means the network infrastructure project agreement dated 24 May 2011 between Telecom Corporation of New Zealand Limited and CFH;

UFB1 Objective has the meaning given in recital A of the Base Agreement;

UFB1 Schedule has the meaning given to that term in clause 1(a) of Schedule 6 (*Principles for UFB Services and Pricing*);

UFB1 Senior Committee means the senior committee formed pursuant to the UFB1 NIPA;

UFB2 means the Government's further investment in Ultra-Fast Broadband infrastructure of approximately [REDACTED]

UFB2 NIPA Side Letter means the letter agreement dated on or about the date of this Agreement between CFH and the Company relating to, among other things, CFH's option to extend the Coverage Area;

UFB2 Objective has the meaning given in recital B of the Base Agreement;

UFB2 Partners means the Company and any other party that enters into agreements with CFH as part of UFB2 to achieve the UFB2 Objective;

Ultra-Fast Broadband means a fibre to the Premises network that can provide an uncontended bandwidth of 100Mbps downstream and 50Mbps upstream to every End User and is capable of

upgrades to at least speeds of 1Gbps downstream and 500Mbps upstream for mass market End Users and up to speeds of 10Gbps symmetrical to business, school and hospital End Users;

UNI means User Network Interface and is either the voice port or the Ethernet port of the ONT that complies with the requirements of the WSA;

Updated Reference Offer has the meaning given to that term in clause 2(a)(ii) of Schedule 6 (*Principles for UFB Services and Pricing*);

User Acceptance Testing or UAT means all or any acceptance testing of the Network in accordance with the processes and procedures for that kind of testing as set out in Annexure 3 of Schedule 3 (*Design and Build*) (and User Acceptance Test means any one test in the UAT);

WDM means wavelength division multiplexing as defined by the ITU-T and includes Dense Wave Division Multiplexing and Course Wavelength Division Multiplexing;

Week means a seven-day period commencing Monday and ending Sunday;

Wholesale Service means a wholesale telecommunications service that is provided using, or that provides access to, unbundled elements of the Network;

Wholesale Services Agreement or **WSA** means the standard wholesale services agreement general terms of the Company together with any particular terms relating to a specific UFB Service, which has been approved by CFH;

Wholesale Services Agreement Milestone has the meaning given to that term in column B of the table in section 2 of Annexure 2 of Schedule 3 (*Design and Build*);

Works Access Permit has the meaning given to that term in the State Highway Control Manual published by the New Zealand Transport Agency and available at <https://www.nzta.govt.nz/assets/resources/state-highway-control-manual/docs/sm012.pdf>; and

WSA Requirements has the meaning given to that term in clause 2(b) of Schedule 6 (*Principles for UFB Services and Pricing*).

Schedule 2: Commitments

1. Recitals

- (a) This Schedule records certain undertakings by the Company and CFH in relation to copper investment, fibre product development and assistance to uptake within the Candidate Areas.
- (b) In addition to the Government's UFB2 Objective (as defined in Recital B of the Base Agreement), the Government's UFB policy includes the objective of maximising connections to the Network (**UFB Uptake Objective**).
- (c) The Company has entered into obligations in respect of the UFB2 Objective and the UFB Uptake Objective and CFH believes it is capable of, and committed to delivering, both the UFB2 Objective and positively assisting the Government's UFB Uptake Objective.
- (d) The Company is a listed company, and the Company's Board will act in the best interests of the Company and its shareholders.
- (e) The Company will ensure its fibre access assets, and its relationships with Retail Service Providers, are utilised in a manner that give the UFB Uptake Objective every chance of success. The Company will proactively seek to develop and deliver fibre products and services that both drive and meet wholesale customers' needs, and thereby contribute to achieving the UFB Uptake Objective.
- (f) This introduction to this Schedule shall provide a guide to the interpretation and application of the following provisions in the event of any ambiguity or uncertainty as to the intention of any provision.

2. Market Context

- (a) The Company's commitments to the UFB2 Objective are set out in the relevant provisions of this Agreement.
- (b) Those provisions provide that, amongst other things:
 - (i) the Company will build the open access fibre access network in agreed locations, in accordance with an agreed master deployment plan and annual deployment schedules and to an agreed quality standard;
 - (ii) the Company will (as the Network is built) make available on the Network certain specified products. These specified products will be made available at agreed prices and are expected to accommodate the bulk of demand from Retail Service Providers;
 - (iii) the Company is required to connect and interconnect End Users to the Communal Infrastructure within agreed timeframes and at agreed connection charges (zero in the case of residential End Users); and
 - (iv) liquidated damages apply under this Agreement if the Company does not meet certain requirements in respect of the build of the open access fibre access network.

- (c) The Company is a wholesaler of fibre access and has legislated/regulated business line restrictions on the scope of its business and services, as set out in the Telecommunications Act 2001 as at the date of this Agreement, and the Telecommunications (Property Access and Other Matters) Amendment Bill that is likely to be enacted following the date of this Agreement (In-Scope Fibre Access Services). Its customers are a relatively small number of Retail Service Providers, who in turn use its In-Scope Fibre Access Services to deliver services to a large number of End Users.
- (d) The demand for fibre access services is driven by the attractiveness of fibre services to End Users. This in turn is influenced by the behaviour of the Company and the behaviour of Retail Service Providers. The parties recognise that fibre access will be competing with other access technologies (e.g. mobile and copper based access and other fibre networks).

3. General Commitment Standard

- (a) The Company shall seek to maximise uptake on the Network with a level of commitment which is consistent with that of other local fibre companies in which CFH is a shareholder or investor, or was previously at any time a shareholder or investor, that provide wholesale Ultra-Fast Broadband services to Retail Service Providers in New Zealand (**LFCs**). The Company's commitment to fibre products and service innovation and development shall, subject to satisfying the business case test in Annexure 1 of this Schedule (**Business Case Test**), be consistent with that of relevant international benchmarks.
- (b) This level of commitment is referred to as the **Commitment Standard** and, unless expressly stated to the contrary, is intended to be applied in determining whether the Company has performed its undertakings under this Schedule to the required standard (but for no other purpose).
- (c) The purpose of this Schedule is to address the risks to the Government's UFB2 Objective that might arise due to the fact that the Company also provides a copper network, and services and products over that copper network.
- (d) Nothing in this Schedule shall have the effect of:
 - (i) limiting the Company's ability to respond to competition from other providers, including that the Company may respond, at its discretion with competitive fibre (subject to Schedule 6), copper or other products, services or prices (provided that, where the Company proposes to respond to any such competition with competitive copper products, services or prices, it will first consult with CFH in good faith and provide CFH with reasons why the Company believes this is the appropriate response to that competition);
 - (ii) limiting the Company's ability to complete the VDSL technology upgrades and product development summarised in Annexure 2 (**VDSL Upgrades**), provided that:
 - (A) the Company will not deploy any further copper-based cabinets beyond those included in the Company's existing cabinetisation programme; and
 - (B) the Company will restrict VDSL deployment to the sites (cabinets and exchanges) that were in existence as at the Commencement Date; or
 - (iii) constraining the Company's ability to deploy other technologies other than copper or fibre.

4. Network Investment

- (a) The Company currently delivers access services and products using its existing multi technology telecommunications network (which includes copper access assets).
- (b) Both parties recognise the importance of the Company providing services and products on copper access assets for the foreseeable future, but the parties wish to ensure that this does not diminish or inhibit the Company's performance of, or adherence to, the undertakings in this Schedule or the Company's commitment to positively assist fibre uptake in accordance with the Commitment Standard, and that End User fibre uptake is not compromised by the Company's ongoing investment in copper access assets and VDSL technology assets beyond that contemplated by this clause 4.
- (c) The Company undertakes to prioritise new investment in fibre access and uptake, and to minimise ongoing investment in copper access assets and VDSL technology assets in all future business plans.
- (d) The Company will offer only fibre access services in relation to Greenfield Sites and Infill Premises in accordance with clause 4.5 of the Base Agreement and Schedule 3 (*Design and Build*). The only exceptions to these undertakings will be where offering fibre only access will deprive residential End Users of satisfactory fixed line services for an extended period. Such circumstances will include where the new development is located some distance from planned fibre build or where Retail Service Providers are not offering satisfactory fibre services.
- (e) Other than as provided for in the preceding paragraph, the Company will not build any new 'copper to the home' networks or VDSL technology networks in the Candidate Areas.
- [REDACTED]
- (g) CFH acknowledges that the Company's undertakings in clause 4(c) of this Schedule to minimise investment in copper assets and in clause 4(d) of this Schedule in relation to Greenfield Sites are subject to:
- (i) fibre access services being available or imminently available in particular areas;
 - (ii) any specific legal requirements that are now, or may in the future be, imposed on the Company, including any regulatory obligations to provide other services and investment in any other technology operated, or to be operated by the Company;
 - (iii) there being no limit on the Company's ability to continue to provide existing services using the copper access network and VDSL technology networks in the Candidate Areas to current or new End Users; and
 - (iv) there being no limit on the Company's ability to make such other investments and offer such other services as is necessary or desirable in order to:
 - (A) prevent End User migration to competitors or to prevent, resolve or mitigate End User dissatisfaction; or

- (B) ensure, over the long term, technology and End User requirements are adequately anticipated and responded to by the Company.
- (h) The Company undertakes not to implement financial incentives of any kind or in any form whatsoever (including by way of price discounts or bonus or loyalty programmes of any kind):
 - (i) for the purposes of encouraging End Users not to migrate to fibre access services from copper access services or VDSL technology services; or
 - (ii) to prevent End Users of copper access services or VDSL technology services from migrating to competitors without first consulting with CFH in good faith.

5. Uptake Assistance

- (a) In addition to the contracted products, prices and connection terms outlined in this Agreement, the parties acknowledge that the Company can have a positive influence on fibre uptake by developing products for and with Retail Service Providers to facilitate Retail Service Provider product offerings to End Users. This will allow Retail Service Providers to increase the attractiveness of fibre access to their customers and therefore encourage fibre uptake.
- (b) Primarily, product development and promotion activities will revolve around:
 - (i) working proactively with Retail Service Providers to develop additional wholesale fibre access products;
 - (ii) ensuring that Retail Service Providers know the capabilities of the fibre access network and the deployment schedule so they can plan and market to their End Users;
 - (iii) ensuring that End Users know that fibre access is available in their locale so they can engage with Retail Service Providers immediately upon fibre access being available;
 - (iv) ensuring that the Company has a simple, transparent and efficient process for Retail Service Providers seeking to work with the Company's Layer 2 services to develop enhanced fibre products; and
 - (v) monitoring relevant local and international product developments.
- (c) The most likely areas of product development currently envisaged are with respect to TV and video services and various packages of enhanced EIR/CIR upstream/downstream bandwidth. Further areas may arise over time.
- (d) With respect to fibre products and services the Company makes the following undertakings:
 - (i) the Company will undertake all the activities referred to in clause 5(b) of this Schedule;
 - (ii) the Company will ensure its Layer 2 fibre access service supports any Retail Service Providers voice service requirements in a Wholesale Services Agreement and hand over voice traffic over to Retail Service Providers as per UFB technical specifications;

- (iii) the Company will engage with Retail Service Providers to ascertain Retail Service Providers' views on appropriate Layer 2 wholesale products for fibre access;
 - (iv) the Company will ensure its fibre access services will have the capability to support video services including IPTV, RF overlay and OTT and provide the required interconnection to video services providers to deliver these services (recognising that other than multicast and RF overlay, the Company is limited to In-Scope Fibre Access Services);
 - (v) the Company will advise Retail Service Providers that fibre access services are its preferred offering and will seek to maximise early uptake (and also minimise connection costs) by actively promoting fibre connections at the same time as initial construction work is being undertaken on a street by street basis;
 - (vi) the Company will actively promote fibre access to Retail Service Providers through its account managers and may also participate in appropriate proportionate promotional campaigns (including joint campaigns with Retail Service Providers in Candidate Areas where fibre access is shortly expected to be deployed);
 - (vii) except where it is acting in accordance with clauses 4(d) and 4(f) of this Schedule, the Company will not specifically promote existing copper access in any Candidate Areas and the Company will encourage Retail Service Providers to migrate customers to fibre access;
 - (viii) when a Retail Service Provider wishes to migrate customers from copper to fibre access, the Company will ensure such migration is as smooth and seamless as possible; and
 - (ix) the Company's activities in this clause 5(d) must be in accordance with the Commitment Standard.
- (e) With respect to fibre products and services the Company makes the following additional undertakings:
- (i) the Company will, within the agreed product framework, deliver products to Retail Service Providers on request (for example different combinations of upstream/downstream bandwidth, CIR etc.); and
 - (ii) the UFB Services and Requirements relate to products and services which are currently envisaged on fibre access. In the future, any new Layer 2 (currently unforeseen) products and services will be provided or supported by the Company.
- (f) CFH acknowledges that the Company's undertakings in clauses 5(d) and 5(e) of this Schedule in relation to fibre products and services are subject to any specific legal requirements that are now, or may in the future be, imposed on the Company, including any regulatory obligations to provide other services.

6. Business Plan Process and Monitoring

- (a) Schedule 7 of this Agreement outlines CFH's role in the approval of the Company's Combined Fibre Business Plans and the procedures that are to be followed if agreement cannot be reached in relation to a Combined Fibre Business Plan.

- (b) The matters covered by this Schedule must be addressed in each Combined Fibre Business Plan that has been put in place in accordance with Schedule 7. They must also be covered in the monitoring and review material that the Company has agreed with CFH with respect to each Combined Fibre Business Plan.
- (c) The Company and CFH will address the matters in this Schedule fully in each Combined Fibre Business Plan approval process and in the monitoring of the Company's progress against the Combined Fibre Business Plan.
- (d) CFH and the Company agree to the following monitoring and transparency initiatives to assist determination of the Company's adherence to the undertakings in this Schedule:
 - (i) uptake on the Network will be monitored by the Company and information provided to CFH;
 - (ii) a reasonable open book approach on fibre access uptake will be adopted, and the information provided by the Company to CFH will include copper access comparative information;
 - (iii) monitoring information will include feedback from major Retail Service Provider CEOs (both existing and prospective) and other customer satisfaction survey information;
 - (iv) information derived from complaints under the Wholesale Services Agreement complaints mechanism will also be available to CFH and used, as relevant;
 - (v) comparative information based on CFH's other LFCs established under the RFP model, provided by CFH to the Company (to the extent it is available to CFH);
 - (vi) comparative information based on Singapore and NBN benchmarks, with the differences that exist between those countries and New Zealand (including but not limited to the relative stages at fibre deployment, differences in regulation and industry structure and differences in income levels and prices) being acknowledged; and
 - (vii) information on any investment in the copper network based on the exceptions set out in clauses 3(d)(ii), 4(d), 4(g) or 4(h)(ii) of this Schedule, plus the Company's reasoning and justification as to why the investment in copper falls within the relevant exception in clauses 3(d)(ii), 4(g) or 4(h)(ii) of this Schedule, as the case may be (provided that no information will be required in relation to routine maintenance or individual projects with a value of less than ████████).

7. Expected Promotional/Product Development Spend

- (a) CFH and the Company agree that the Current UFB1 Fibre Business Plan will be amended to increase the product marketing and branding spend by ████████ per annum to an aggregate of ████████ per annum in respect of product marketing and branding spend in respect of both the UFB1 Coverage Area and UFB2 Coverage Area by the Company until 31 December 2019, and that such spend will include one off promotions of the fibre access network on the Company entering into the UFB2 arrangements with CFH. This will comprise generic promotion (such as airport signage, but not television) and 'street by street' targeted information flyers in conjunction with deployment.

- (b) In addition, CFH and the Company agree that the Combined Fibre Business Plan will provide for a product marketing and branding spend for the UFB2 Coverage Area of [REDACTED] per annum from 1 January 2020.
- (c) The Company's Combined Fibre Business Plan will provide for an appropriate product development and marketing spend for the Company over time, to be determined using the Business Case Test. The Company will meet those product development and promotion undertakings referred to in clauses 5(d) and 5(e) of this Schedule to the extent that they are specifically addressed in the Combined Fibre Business Plan using the product development and marketing spend for those relevant undertakings specifically addressed in the Combined Fibre Business Plan (but subject to clause 8 of this Schedule, in the case of breach).

8. Breach and Remedial actions

- (a) If either CFH or the Company considers the other party to be, or to potentially be, in breach of any of these provisions, it shall raise the matter with the other party at the earliest possible opportunity (and in any event, not more than 12 months after the date of the alleged breach), providing a detailed outline of the alleged breach and views on how the breach could be remedied.
- (b) Allegations of breach shall be raised in the first instance by CFH or the Company (as applicable) with the other party's CEO (as per the dispute resolution process set out in Schedule 7). If there is no agreement CFH or the Company (as applicable) can refer its position to the Senior Committee (SC), and if the SC is unable to agree unanimously whether or not a breach has occurred, the issue shall be determined by an independent expert (as per the dispute resolution process set out in clause 6 of Schedule 7).
- (c) If any of the provisions are found to have been breached by the Company, then, subject to clause 8(e) and 8(f) of this Schedule, the Company shall make such increased investment, operational changes and undertake such other actions as is required in order to (i) achieve as soon as possible the level of uptake on the Network that would have been achieved had the breach not occurred, and (ii) ensure the breach ceases and does not continue (**Remedial Actions**).
- (d) Appropriate Remedial Actions shall be determined unanimously in the first instance by the SC and if the SC does not unanimously determine a Remedial Action, the Remedial Actions shall be determined by an independent expert (as per the SC dispute resolution process set out in clause 6 of Schedule 7).
- (e) The Company cannot be required to undertake any Remedial Actions to the extent that:
 - (i) the Remedial Actions relate to any breach of these provisions occurring more than 12 months prior to CFH raising the allegation of breach with the Company; or
 - (ii) in respect of the first breach of any provision of this Schedule (**First Breach**), the total cost of any increased investment or operational changes required by Remedial Actions in any year would exceed an amount equal to 200% of the business plan spend on the matters referred to in clause 7 of this Schedule for the year prior to the year in which that breach occurs.
- (f) The Company agrees that:
 - (i) if the same provision of this Schedule is found to have been breached by the Company a second time (a **Second Breach**), then in respect of any Remedial

Actions required to be undertaken in respect of the Second Breach, the cap on the total cost of any increased investment or operational changes required by the Remedial Actions in clause 8(e)(ii) will not apply; and

- (ii) if the same provision of this Schedule is found to have been breached by the Company three or more times, then in the case of the third breach and any subsequent breaches of that provision of this Schedule (each, a **Further Breach**), the cap on the total cost of any increased investment or operational changes required by the Remedial Actions in clause 8(e)(ii) will not apply and CFH will be able to direct the Company on how to implement the Remedial Actions determined by the SC or the independent expert (as applicable) in respect of any Further Breach, and the Company will ensure that its employees and contractors comply with any such reasonable directions from CFH.
- (g) CFH agrees that the Company will not be in breach of any of these provisions in relation to any matter if that matter is specifically included in a business plan approved in accordance with Schedule 7 and that matter is then implemented by the Company as contemplated by that business plan.
- (h) Except for injunctive relief, the Remedial Actions are CFH's exclusive rights and remedies under this Agreement for the first breach by the Company of a provision of this Schedule. This limitation on the available legal remedies will not apply to the second or any subsequent breaches of the same provision of this Schedule.
- (i) Any disputes regarding this Schedule are to be dealt with in accordance with clause 6 of Schedule 7.

9. General

- (a) Nothing in this Schedule shall require the Company to provide products at prices or specifications lower than are set out in the agreed Price Book (although it is entitled to do so at its choice).
- (b) The Company's undertakings set out in this Schedule will apply to the Coverage Area.

Annexure 1: Business Case Test

Business Case Test for Fibre Access Business Initiatives and Product Development Activities

Note: This is the business case test referred to in this Schedule.

1. Objective

The business case test is designed to:

- (i) provide an objective measure of when the Company should undertake these activities as if it were only a fibre access operator; and
- (ii) confirm that the Company is not required to undertake activities that are not economic, when analysed on the basis of fibre-related investment, costs and revenues only.

The business case test described below is the business case test that a fibre only operator would apply to the evaluation of new fibre access business or product initiatives, (the **Initiatives**). The Company will not be a fibre only operator in the foreseeable future, but is undertaking to CFH that it will behave as if it were a fibre only operator in relation to Initiatives.

2. Methodology

The methodology for the business case test shall be a standard discounted cashflow methodology using an appropriate hurdle rate to calculate the net present value of expected after tax net cashflows that are attributable to the Initiative over the expected life of that Initiative. The hurdle rate must be reasonable, relative to the WACC assessed for the project. It is assumed that the hurdle rate for the project will be the WACC assessed for the Company as a whole.

3. Net Cashflows

Net Cashflows from an Initiative will accrue from:

- (i) the expected net after tax cash flows attributable to the Initiative; and
- (ii) the marginal net cashflows arising from the impact of the Initiative on fibre uptake.

Further detail on these items is provided below.

3.1 Expected after tax cash flows

These will include:

- (i) the capital and operating costs of product development and engaging with Retail Service Providers (including reasonable recoveries of appropriate overheads resulting from that Initiative and associated OSS/BSS upgrading etc.); and
- (ii) the additional net revenue that the Initiative is expected to deliver relative to the then current base uptake forecast.

3.2 **Marginal net cashflows**

The marginal net cashflows arising from the impact of the Initiative on uptake captures the expected value consequence of an Initiative's impact on forecast uptake relative to the uptake that would have occurred without the Initiative.

This will be net cashflows attributable to the bringing forward of revenue and costs for incremental fibre connections, adjusted as appropriate for the impact on the pricing of those brought forward connections.

For the avoidance of doubt, it is noted that the analysis above must not factor in losses in revenue on copper access or any changes in the value of copper access assets as a result of that Initiative.

Annexure 2: VDSL Upgrades

The VDSL Upgrades comprise:

- investment to ensure the VDSL2 capable lines post-cabinetisation can be offered a VDSL product; and
- subject to actual or anticipated competitive pressures investments required to develop the current product to have superior performance.

This investment will primarily involve re-arrangement of DSLAM cards, purchase of new VDSL2 DSLAM FD cards and GigE ports, dynamic line management, cabling re-arrangement/tidy ups in urban locations to remove anomalies and product development.

Schedule 3: Design and Build

1. Introduction

1.1 Purpose

This Schedule describes, in general terms, the Design and Build to be undertaken by the Company. The Company will have discretion to determine the manner in which the Design and Build is to be provided, subject to ensuring that the Design and Build is consistent with this Schedule 3 and the other terms and conditions of this Agreement.

1.2 Activities

- (a) This Schedule:
 - (i) describes the process the Company and CFH will follow to ensure that the planning, design, development, build, roll-out, testing and commissioning of the Network meets the Requirements; and
 - (ii) is overarching in nature and applies to the Communal Infrastructure and the End User-Specific Infrastructure, as applicable.
- (b) The deployment of the build is to be undertaken in accordance with:
 - (i) the Master Deployment Plan;
 - (ii) the relevant Annual Deployment Schedule; and
 - (iii) in respect of Greenfield Sites and Infill Premises, in accordance with clause 4.5 of the Base Agreement.
- (c) The obligations set out in this Schedule 3 (*Design and Build*) apply to all Premises in the Coverage Area (including all Infill Premises and all Greenfield Sites), regardless of whether such Premises have been included in the APD.
- (d) For Infill Premises and all Greenfield Sites, the obligations of the Company under this Schedule 3 (*Design and Build*) to build and roll out Communal Infrastructure and End User-Specific Infrastructure will end on 31 December 2025, or the date of the Notice of Completion for the last Network Stage, whichever is later.

1.3 Design and Build steps

The Design and Build includes:

- (a) preparing and submitting Annual Deployment Schedules to CFH and finalising the form of each Annual Deployment Schedule;
- (b) developing the Detailed Specifications;
- (c) building and rolling out the Communal Infrastructure Past each Premises and building the End User-Specific Infrastructure for each Premises to End Users;
- (d) integrating the Existing Infrastructure with the New Infrastructure as part of the build process for each Network Stage;

- (e) Company Testing the Premises;
- (f) Commissioning the Premises;
- (g) User Acceptance Testing for each Commissioned Premises (including User Acceptance Testing of UFB Services);
- (h) the Connection of End Users with End User-Specific Infrastructure;
- (i) User Acceptance Testing of End User-Specific Infrastructure if CFH so elects in accordance with this Schedule 3; and
- (j) issuing a Notice of Completion for each Network Stage under clause 10 of this Schedule 3,

in accordance with this Agreement and in particular this Schedule.

2. Master Deployment Plan

2.1 Master Deployment Plan

- (a) The Company will build the Network in accordance with this clause 2 and the MDP set out in Annexure 2 of this Schedule.
- (b) The MDP will be used to guide each Annual Deployment Schedule (with each Annual Deployment Schedule required to be consistent with the fulfilment of the MDP) and will be binding on the parties. For the avoidance of doubt, if any elements of the MDP conflict with an Annual Deployment Schedule, the MDP will prevail to the extent of the conflict.
- (c) The Company must satisfy the Build Milestones in the MDP for the first and each subsequent Network Stage, as set out in the MDP as attached in Annexure 2 of this Schedule.
- (d) The MDP will:
 - (i) provide for each Build Complete Milestone Date to be a date no later than 12 months after the Build Start Milestone Date for the relevant Network Stage, except that, where Chorus commences the build of the Communal Infrastructure to Premises in a Network Stage prior to the Build Start Milestone Date for that Network Stage, the build for that Network Stage may be for a period of up to 15 months, provided the Build Complete Milestone Date for the relevant Network Stage is not extended;
 - (ii) ensure that the MDP reflects a substantially even deployment of Communal Infrastructure Passed each Premises for each Financial Year identified in the MDP; and
 - (iii) provide for the Company to complete the Design and Build of the Network in the Coverage Area by 31 December 2024 (for the avoidance of doubt, this includes the Company satisfying all Build Complete Milestones in respect of the Coverage Area by that date);
 - (iv) prioritise the build of the Communal Infrastructure to RED Towns;

- (v) in respect of each RED Town, provide for the Build Complete Milestone Date to be a date no later than the Build Complete Milestone Date for the relevant RED Town as set out in the Core MDP;
 - (vi) in respect of each P1 Town and each P2 Town, provide for the Build Complete Milestone Date to be a date no later than 31 December 2022; and
 - (vii) in respect of the first P3 Town to be built, provide for the Build Start Milestone Date to be a date no later than 1 December 2018.
- (e) Where the Company has not yet started the build for a Network Stage, the Company may nonetheless deploy Communal Infrastructure in tandem with civil works already being undertaken in the Road by a local or regional council or the New Zealand Transport Agency, or overhead-undergrounding work already being undertaken by the Company or an electricity lines company. For the purpose of measuring the 15 month periods in clause 2.1(d)(i) above, the deployment of this Communal Infrastructure will not be taken as the start of the build for that Network Stage.
- (f) For the avoidance of doubt, the MDP does not apply to Greenfield Sites or Infill Premises.

2.2 Amendments required to reflect unforeseen material impediments

- (a) The MDP attached to section 3, Part A, Annexure 2 of this Schedule as at the date of this Agreement (the **Core MDP**) will be the MDP for the purposes of this Agreement, unless amended with the written approval of CFH in accordance with this clause 2.2.
- (b) Subject to clause 2.2(c), the Company may request amendments to the Build Milestone Dates in the MDP (which, in the first instance only, will be the Core MDP) required to reflect unforeseen material impediments by giving to CFH a notice (**MDP Change Request Notice**) setting out:
- (i) the requested amendment(s) to the MDP (the **Requested Changes**), together with all reasonable details explaining the reasons for the Requested Changes and why they are permitted under this clause 2.2;
 - (ii) a revised draft of the Master Deployment Plan incorporating the Requested Changes, such document to clearly identify the Requested Changes;
 - (iii) evidence of satisfaction of the matters set out in clause 2.2(c) and 2.2(g); and
 - (iv) details of any other facts or circumstances that are reasonably necessary for CFH to assess the Requested Changes in accordance with this clause 2.2.
- (c) The Company may not give an MDP Change Request Notice in respect of Requested Changes if:
- (i) the MDP Change Request Notice is not received by CFH at least one month before any Build Milestone Date affected by the Requested Changes;
 - (ii) the Requested Changes:
 - (A) if made, will change the MDP materially (unless the MDP Change Request Notice which includes the relevant Requested Changes is received by CFH within 90 days of the date of this Agreement);

- (B) are not the minimum changes necessary to address the underlying reasons for the Requested Changes as set out in the MDP Change Request Notice; and/or
- (C) if made, will not reflect and/or will not be consistent with the requirements for the MDP set out in clause 2.1(d), except the Requested Changes may be inconsistent with:
 - a) the requirement for each Build Complete Milestone Date to be a date no later than 12 months after the Build Start Milestone Date for the relevant Network Stage as set out in clause 2.1(d)(i)); or
 - b) the requirement in clause 2.1(d)(v), provided that the MDP Change Request Notice which includes the relevant Requested Changes is received by CFH within 90 days of the date of this Agreement;
- (iii) for the particular Network Stage in respect of which the Requested Changes are sought, the Company has not, as soon as reasonably practicable after the Commencement Date, notified the relevant local or regional council or government agency (each a **Relevant Authority**) of its intended build period for that Network Stage (such build period as set out in the Core MDP);
- (iv) the Company has not taken all measures that the Company can reasonably take to avoid the need for the Requested Change and/or mitigate the effect of the circumstances giving rise to the Requested Change; or
- (v) the primary reason for the Requested Change is due to the Company being unable to build Communal Infrastructure to a Premises because any consents or other approvals required from any building owner or occupier, land owner or other third party have not been obtained.
- (d) Subject to clause 2.2(c), the parties acknowledge and agree that the Company may submit a MDP Change Request Notice in respect of Requested Changes the Company considers are reasonably required as a result of a failure by the Company to reach agreement for access to poles with a lines company, despite having used all reasonable endeavours to do so.
- (e) CFH will, within 10 Business Days of receipt of a MDP Change Request Notice, give notice to the Company (the **Requested Changes Response**) specifying whether it:
 - (i) approves any of the Requested Changes; and/or
 - (ii) rejects any of the Requested Changes, in which case the Requested Changes Notice will include CFH's reasons for rejecting the relevant Requested Changes.
- (f) Provided CFH does not unreasonably withhold its approval of a Requested Change, CFH may approve or reject any Requested Change in any MDP Change Request Notice in its sole discretion.
- (g) The parties acknowledge and agree that it would be unreasonable for CFH to withhold its approval of a Requested Change where that Requested Change is reasonably necessary as a result of any of the following circumstances (the **Relevant Impeding Circumstances**):
 - (i) a Relevant Authority has advised the Company in writing:

- (A) of public works scheduled to be undertaken at, or around, the same time as the build period for that Network Stage notified by Chorus to the Relevant Authority; or
 - (B) that the Company will be unable to obtain any Works Access Permit required by the Company to build the Communal Infrastructure for the Brownfield Premises in that Network Stage; or
- (ii) an archaeological or burial site, or site of cultural significance to iwi is discovered in a Network Stage subsequent to the Commencement Date,
- and, in each case,:
- (iii) the Relevant Impeding Circumstances, will, or are reasonably likely to, materially impede the Company's ability to build the Communal Infrastructure for the Brownfield Premises in that Network Stage in accordance with the build period specified for that Network Stage in the MDP; and
 - (iv) the Requested Change is limited to changing the Build Milestone Dates for the affected Network Stage (and the Build Milestone Dates for any other Network Stage to the extent such change is necessary to ensure that the MDP continues to reflect a substantially even deployment in accordance with clause 2.1(d)).
- (h) Where, in accordance with this clause 2.2, CFH has:
- (i) approved any Requested Changes (the **Approved Requested Changes**), the MDP will be deemed to be amended (as will the relevant Annual Deployment Schedule(s) to the extent applicable) to incorporate the Approved Requested Changes (and the parties will prepare an amended document reflecting the Approved Requested Changes, such document to be initialled by the parties and attached as Section 3, Part A, Annexure 2 of this Schedule (*Design and Build*) as soon as reasonably practicable (but in any event within 15 Business Days of the date of CFH's approval); and
 - (ii) rejected any Requested Changes, the MDP will not be amended to incorporate those Requested Changes.
- (i) The Company must update its website and any signs erected pursuant to clause 23.4 of the Base Agreement to reflect any Approved Requested Changes as soon as reasonably practicable (but in any event within 15 Business Days of the date of CFH's approval).
- (j) For the avoidance of doubt, the parties acknowledge and agree that this clause 2.2 cannot be used by the Company to propose any amendment to the value of Applicable N_{passed} and/or Applicable $CPPP_{L1\ CFH}$ in respect of a Network Stage.

2.3 Non-Consented Premises

- (a) Where the Company has, in respect of a particular Premises:
- (i) complied with its pre-consenting obligations under clause 9.5(c) and 9.5(f) of the Base Agreement;
 - (ii) used all reasonable endeavours to exercise all available statutory rights of access (provided that the Company is not required to apply to a Court for access to any Premises),

- (iii) is prevented from building Communal Infrastructure to that Premises (a **Non-Consented Premises**) solely due to an Affected Person withholding their consent and/or issuing the Company with an objection notice;
- (iv) notified CFH of the Non-Consented Premises (such notification to include the Premises ID for the Non-Consented Premises); and
- (v) provided CFH reasonable evidence matters in clause 2.3(a)(i)-(iii) if requested by it, then

the Company will not be required to Pass the Non-Consented Premises (**Exempt Premises**) to satisfy the Build Complete Milestone for the Network Stage in which the Non-Consented Premises are located (a **Premises Exemption**).

- (b) The parties acknowledge that a Premises Exemption is intended to ensure that:
 - (i) the Company is not prevented from satisfying the Build Complete Milestone for the relevant Network Stage and therefore charged Liquidated Damages for a failure to satisfy a Build Complete Milestone; and
 - (ii) the Company is not prevented from making a call for CFH to subscribe for the Build Complete Subscription in respect of the relevant Network Stage in accordance with the terms of the Subscription Agreement,

in each case, due solely to the existence of Non-Consented Premises in the relevant Network Stage.

- (c) Nothing in this clause shall in any way limit or reduce any other obligation required to be satisfied by the Company in respect of a Build Complete Milestone.

3. Annual Deployment Schedule

3.1 Development

The Company is to develop and finalise an Annual Deployment Schedule, in substantially the same format as set out in Annexure 2 to this Schedule, for each period from 1 July (or the Commencement Date in respect of the first Annual Deployment Schedule) to 30 June (being the Financial Year) until the build of the entire Network has been completed. Each Annual Deployment Schedule must detail how the Design and Build will occur for the relevant Financial Year in accordance with the terms of this Agreement, including the Requirements.

3.2 Submission

- (a) The Company will complete and submit each Annual Deployment Schedule to the PCG by 1 April of each Financial Year for review and comment (including assessing whether it satisfies the relevant requirements of this Schedule 3).
- (b) The Annual Deployment Schedule for the first Financial Year (being the period commencing on the Commencement Date and ending on 30 June 2018) is attached to this Schedule 3 in Part B of Annexure 2.

3.3 Content

Each Annual Deployment Schedule will:

- (a) be consistent with the MDP;
- (b) specify the Network Stages (each an Included Network Stage) and Candidate Areas included in the Annual Deployment Schedule;
- (c) specify, in respect of each Included Network Stage:
 - (i) the number of Brownfield Premises in that Included Network Stage;
 - (ii) the number of Infill Greenfield Sites that the Company forecasts in respect of that Included Network Stage;
 - (iii) the Premises IDs for all such Premises extracted from the APD;
 - (iv) the Backhaul relevant to the Included Network Stage;
 - (v) any Communal Infrastructure for the Included Network Stage which is to be delivered by the Company by way of CI Leased Equipment;
 - (vi) the Applicable N_{Passed} , Applicable $\text{CPPP}_{\text{L1 CFH}}$, Build Start Milestone Date, Handed Over Milestone Date, and Build Complete Milestone Date for that Included Network Stage, which must reflect those set out in the MDP. These will not be subject to change except to the extent required to reflect any agreed change by the parties to the MDP;
 - (vii) if Backhaul is required in respect of that Included Network Stage, when the Backhaul for that Included Network Stage is to be built, which must reflect that such Backhaul is to be built by the earlier of the Provisioning Milestone Date and the Build Complete Milestone Date for that Included Network Stage; and
 - (viii) any other specific milestones that must be achieved before other parts of the deployment can be commenced or continued (as applicable), at all times consistent with the provisions of this Agreement.

3.4 Progress report

The Company will provide a report monthly, by the 10th Business Day of each month, reporting against the relevant Annual Deployment Schedule showing the actual Premises which have been Handed Over.

3.5 Failure to submit

If an Annual Deployment Schedule is not submitted by the due date then CFH may complete and submit an Annual Deployment Schedule on behalf of the Company and the Company will be bound by that Annual Deployment Schedule submitted by CFH so long as it complies with this Schedule.

3.6 Company's methodologies

CFH may request, and the Company will provide, not more than twice in any 12 month period, on not less than three Business Days' written notice, current and controlled copies of all of the Company's methodologies, processes and procedures for the management of the Design and Build and the O&M Services.

4. Network Requirements

4.1 Network Requirements

- (a) The Network Requirements are attached as Annexure 1 of this Schedule 3.
- (b) The Design and Build of the Network must at all times be in compliance with, amongst other things, the Network Requirements.

4.2 Detailed Specifications

- (a) The Company shall prepare detailed specifications for the Network (Detailed Specifications) prior to the Network Build Commencement Date, including:
 - (i) Network Design Documentation;
 - (ii) product specifications, describing the deployment specifications for the products deployed in the Network (for example, the vendor specifications for minimum bend radius for ducts and fibre or the installation specifications for pits, manholes and enclosures);
 - (iii) installation practices and guidelines describing the materials, tools, and installation practices and guidelines the Company will use when installing the Equipment;
 - (iv) labelling specifications, describing how and where the Communal Infrastructure and End User-Specific Infrastructure will be labelled; and
 - (v) Network and End User records describing how and where assets inventory, infrastructure inventory and logical representations will be stored accessed and managed.
- (b) The Detailed Specifications must:
 - (i) be prepared by the Company and submitted to CFH for review one month prior to the Network Build Commencement Date;
 - (ii) reflect and be consistent with the suppliers installation standards, the Requirements and Best Industry Practice;
 - (iii) be clear, unambiguous and complete, so as to be understood by the person reading them;
 - (iv) conform to their description and be fit for purpose;
 - (v) not impose obligations or requirements on CFH beyond those contemplated by this Agreement;
 - (vi) be consistent with every other project deliverable;
 - (vii) be of professional quality; and
 - (viii) be factually correct.
- (c) The Company will submit the Detailed Specifications to CFH for review upon their completion and in accordance with the timeframe specified in clause 4.2(b)(b)(i) of this

Schedule. Because the Detailed Specifications form part of UAT, CFH may notify the Company if, in CFH's opinion, the Detailed Specifications do not conform to the Requirements.

- (d) Without limiting clause 1.8 of the Base Agreement, CFH's review, inspection or failure to raise any issues with the Detailed Specifications will not constitute any form of acceptance of the Detailed Specifications by CFH and will not relieve the Company of any of its obligations or liabilities under this Agreement. Furthermore the Company's compliance with the Detailed Specifications shall not relieve the Company of its duties, liabilities and obligations under the Agreement.
- (e) The Company is to keep CFH informed at regular intervals while developing the Detailed Specifications so that CFH Personnel, who are to review the Detailed Specifications, have a reasonable knowledge of the anticipated content of the Detailed Specifications by the time the review of the Detailed Specifications is to take place.

5. Network Design Documentation

5.1 Network Design Documentation

The Company will prepare network design documentation describing the Network design rules and how the Network will be designed to meet the Requirements and the Service Levels. The network design documentation should set out parameters including, but not limited to, the fibre cable size, fibre count per FFP, duct sizes and quantities to be installed, the optical budget, Central Office design, FFP design and size, and the design of the GPON and Ethernet networks, the Backhaul network, the feeder network and the distribution network (**Network Design Documentation**).

5.2 Requirements

The Company must satisfy itself that the design complies with the Requirements. Any discrepancies between the Detailed Specifications and the Requirements, including the Network Design Documentation, and the Network Requirements may be raised as an Error by CFH during UAT.

5.3 Consistent with Agreement

The Company must ensure that the Network Design Documentation is based on, is consistent with, and does not conflict with any relevant term of this Agreement.

5.4 CFH review

The Network Design Documentation will be provided to CFH for review in accordance with clause 4.2 of this Schedule.

5.5 Required components

The Network Design Documentation must define the required components of the Network based upon the Requirements, the Detailed Specifications and the Master Deployment Plan, including the design of:

- (a) the technical architecture for the Network;
- (b) the security architecture;
- (c) external interfaces;

- (d) Backhaul; and
- (e) all installations.

6. Network build

6.1 Purpose

The purpose of the build phase is to deploy the Communal Infrastructure and the End User-Specific Infrastructure in a manner consistent with the UFB2 Objective, the MDP, the relevant Annual Deployment Schedule and this Agreement.

6.2 Establishment of Communal Infrastructure and End User-Specific Infrastructure

The Company's functions, tasks and responsibilities for and in relation to the establishment of Communal Infrastructure and End User-Specific Infrastructure include the following (as applicable):

Description	
1.	The procurement and supply of all tools, utilities, Equipment and materials, including cabling (relating to civil works or otherwise), forming part of the Company's solution, including all those tools and utilities necessary for the deployment, management and monitoring of the Network.
2.	Establishing the CO and POI and all Network connections necessary for the proper functioning and operation of that CO and POI. Ensuring that the CO and POI are properly integrated with the networks through which they are to communicate and that all Network components are appropriately sized, with allowance for redundancy where specified by the design or the Requirements, or where needed to meet the Service Levels.
3.	<p>Ensuring that processes and procedures are in place that enable the Company to:</p> <ul style="list-style-type: none"> • identify and control all products or materials used or developed and all changes to the evolving versions of those products and their use; • maintain the integrity of all products and materials used in or which are the result of the Network build work; • promptly identify and report problems; • promptly determine the cause of any such problems and to then promptly implement all necessary corrective measures; • review any corrective measure taken and to conduct such testing to determine the effectiveness of such measures; • ensure that all products used and modifications made to these products as a result of corrective or other measures taken are properly integrated; and • <input type="checkbox"/> update the Detailed Specifications to reflect any changes or clarifications to the Detailed Specifications and notify CFH of any such changes.
4.	The deliverables required from the Company include documentation and other materials providing objective evidence that the Detailed Specifications have been met at all times and will be provided in respect of each of the Premises at the same time as the Test Readiness and Commissioning Complete Certificate for such Premises is provided.

Description	
5.	Preparing a detailed list of the location and dimension of assets deployed, linked with GIS (i.e., ensuring that the OSS/BSS, GIS and inventory management systems record what has been deployed in a timely and accurate manner).
6.	Preparing a communication plan for the build and Commissioning of the Network, to ensure appropriate and timely communications between the Company, Retail Service Providers and End Users (as applicable).
7.	Preparing technical guidance documentation for use by Retail Service Providers to help them establish readiness for installation of Equipment and connection to the Network.

6.3 Build of Communal Infrastructure and End User-Specific Infrastructure

The Company's tasks, functions and responsibilities for and in relation to the build of the Communal Infrastructure and End User-Specific Infrastructure, and integration with Backhaul and any CI Leased Equipment, includes, without limitation, the following (as applicable):

Description	
1.	Completion of all civil, mechanical, electrical, cabling and Equipment installation works necessary for the build of the Communal Infrastructure and End User-Specific Infrastructure.
2.	Providing Backhaul from a CO to a POI.
3.	Completion of all integration work necessary to combine any existing or third party infrastructure (including the POI) with the Communal Infrastructure and End User-Specific Infrastructure.
4.	Trouble shooting issues raised during the build of the Network, including in regards to establishing readiness for Network connection.
5.	Configuring Equipment at each POI and CO and integrating and connecting the Equipment to the Network at that POI and CO.
6.	Establishing connections between the Equipment at each POI and the Network, including any Backhaul.
7.	Allowing CFH and/or any representatives of CFH to have full and unrestricted access to sites, facilities, areas, resources and Personnel.

7. Company Testing

7.1 Overview

The Company must establish all operational processes and operating environments necessary to support the conduct of Company Testing, User Acceptance Testing and the implementation and operation of the Network, including the Integrated Test Facility.

7.2 Alignment

Company Testing must align to the UAT Plan and includes:

- (a) lab-based testing and limited network testing of the Communal Layer 2 Infrastructure;
- (b) functional testing to test that each different part of the Network performs the functions that it is intended to perform (in accordance with the Requirements):
 - (i) by itself; and
 - (ii) with those of the other technical environments of the Network with which it is to interact; and
 - (iii) with those external systems with which it is to interface; and
- (c) integration testing to ensure that all elements of the Network are properly integrated and operate on a compatible basis with each other module and sub-system comprising the Network;
- (d) performance testing to ensure that the Service Levels can be met including:
 - (i) interface testing;
 - (ii) load and volume testing, where practicable; and
 - (iii) end to end testing;
- (e) physical infrastructure inspection and testing to ensure that the Detailed Specifications are complied with;
- (f) field-based testing of the Communal Infrastructure, including receipt of all applicable Company testing results, with such results to be provided to CFH in accordance with clause 9.3 of this Schedule;
- (g) testing of O&M processes to ensure that there are no deviations from the required processes under clause 7.1 in the functioning and operation of the Network; and
- (h) any other testing required to satisfy the Company that:
 - (i) all technical infrastructure comprising the Network (including the Integrated Test Facility and any network to which the Network is connected) meets the Requirements, and respective design specifications;
 - (ii) the Service Levels will be satisfied by the Network; and
 - (iii) the Network has been sufficiently tested to enable User Acceptance Testing to proceed.

7.3 CFH role

The Company is to allow CFH (and any third party acting on its behalf), to observe the conduct of Company Testing.

7.4 Company's task, functions and responsibilities

The Company's tasks, functions and responsibilities for and in relation to the Company Testing include:

Description – Overall Test Strategy	
1.	<p>Preparation of a Company Test Plan that:</p> <ul style="list-style-type: none"> • is aligned with the UAT Plan; • prescribes test criteria for Company Testing to demonstrate that the different parts of the Network meet their respective design requirements, Detailed Specifications, and the Requirements; • specifies Company test cases, test plans and procedures for the conduct of tests on the Network of the type that may be subsequently executed by CFH as part of User Acceptance Testing; • establishes protocols and standards for testing and testing sign-off; and • defines the responsibilities of Personnel participating in the testing.
2.	The conduct of testing as outlined above of all the different components comprising the Integrated Test Facility.
3.	<p>Providing CFH with the following deliverables:</p> <ul style="list-style-type: none"> • documentation and other materials providing objective evidence that the purposes of the Company Testing have been met; • results of Company Testing; and • details of all faults and Errors captured in a non-conformance report.

8. Commissioning

8.1 Company confirmation

The Company will confirm that the Premises are Commissioned on or prior to Hand Over for User Acceptance Testing.

8.2 Requirements for Commissioning

In order for the Premises to be Commissioned:

- (a) the Premises must be Passed with Communal Infrastructure; and
- (b) the Company must:
 - (i) complete Company Testing;
 - (ii) enter all relevant documentation such as (but not limited to), as-built records into appropriate OSS/BSS systems such as (but not limited to) GIS and inventory management systems, and provide access to all relevant documentation to CFH; and

- (iii) verify that the Company could, if the Premises were Connected, for each such Premises, offer the services set out in the Wholesale Services Agreement to Retail Service Providers.

8.3 Provisioning Milestone

The Company cannot provide UFB Services to an RSP in respect of a particular Premises unless the Company has satisfied the Provisioning Milestone in respect of the relevant Network Stage.

9. User Acceptance Testing

9.1 Nature and purpose

- (a) The overall purpose of the User Acceptance Testing is to assist CFH to determine whether or not the required functionality of the Network has been delivered in accordance with this Agreement, including that such system operates and performs:
 - (i) in satisfaction of the Requirements;
 - (ii) in satisfaction of the Detailed Specifications;
 - (iii) in compliance with the Network Design Documentation; and
 - (iv) in accordance with the Service Levels.
- (b) User Acceptance Testing will involve a series of technical, functional, performance and other tests to be performed in relation to the Network. This may include the testing of end-to-end processes (including the interfacing of the Network).
- (c) CFH may elect, in its sole discretion, whether or not to undertake User Acceptance Testing on any Communal Infrastructure, End User-Specific Infrastructure, and/or UFB Services in accordance with the terms of this Agreement.
- (d) CFH may elect to have a third party conduct UAT, in which case CFH will notify the Company of the appointment of such third party in accordance with Annexure 3 of this Schedule.
- (e) The parties acknowledge and agree that as at the Agreement Date, CFH has not determined whether it will conduct UAT on the End User-Specific Infrastructure. However, CFH may elect at any time after the Agreement Date, by notice in writing to the Company, to either:
 - (i) conduct UAT on the End User-Specific Infrastructure; or
 - (ii) have a third party conduct UAT on the End User-Specific Infrastructure on its behalf.

The Company and CFH will agree the amendments required to be made to this Schedule (including Annexure 3) to reflect the different nature of the End User-Specific Infrastructure and the UAT required, however, all such amendments must be consistent with, and reflect the principles that apply to, UAT as set out in this Schedule 3 (including Annexure 3).

9.2 Regime

- (a) All User Acceptance Testing will be conducted in accordance with the process set out in Annexure 3 of this Schedule, together with this clause 9 and the UAT Plan, which will form the basis of the User Acceptance Testing regime.
- (b) The Company will, on or prior to the Handed Over Milestone Date for a Network Stage, Hand Over all Premises in that Network Stage (other than Exempt Premises) to CFH for UAT by issuing a Test Readiness and Commissioning Complete Certificate confirming that the requirements for Commissioning set out in clause 8.2 have been completed in respect of each Premises in that Network Stage (other than Exempt Premises) and to which a list of the Premises IDs (including Exempt Premises) extracted from the APD for all Premises in that Network Stage is attached.
- (c) In respect of an Infill Premises or a Premises located on Infill Greenfield Sites or Adjoining Greenfield Sites, the Company will Hand Over such Premises by notifying CFH of the Passing and Commissioning of that Premises pursuant to clauses 10(b)(vi) and 10(b)(vii).

9.3 Company’s tasks, functions and responsibilities

The Company’s tasks, functions and responsibilities for and in relation to the User Acceptance Testing include:

Description – User Acceptance Testing	
1.	Providing CFH with copies of all test plans, and test cases utilised in Company Testing.
2.	Providing CFH with the actual results of all testing undertaken as part of Company Testing.
3.	Providing CFH with all necessary tools and resources to support CFH in carrying out its duties with respect to UAT, including those activities and tools required for performance and/or stress testing.
4.	Supplying training in the proper use of the Network, sufficient to enable CFH Personnel to execute any functions described in the Requirements.
5.	Configuring the Integrated Test Facility in a manner that simulates as far as is practicable the live operational environment in which the Network will function and operate. This must include the replication of typical Equipment behaviours and the ability to reproduce concurrent POI connections.
	<p><i>Notes:</i></p> <p>References to CFH in this table shall include any third party acting on its behalf.</p> <p>The Company will be required to provide the information referred to in items 1 and 2 above, in respect of:</p> <ul style="list-style-type: none"> • Premises in a Greenfield Site or Infill Premises, on request by CFH; and • Premises in a Network Stage, at the same time as the Test Readiness and Commissioning Complete Certificate is provided for such Premises.

10. Notice of Completion

- (a) Following receipt of a UAT Certificate for a Network Stage, the Company may submit a Notice of Completion to CFH for that Network Stage in accordance with this clause 10.
- (b) The Notice of Completion must:
 - (i) specify the Network Stage in respect of which the Notice of Completion is being given (the Relevant Network Stage);
 - (ii) attach:
 - (A) the UAT Certificate for the Relevant Network Stage; or
 - (B) where a UAT Certificate is deemed to have been issued by CFH in accordance with clauses 5.1 and 5.2 of Annexure 3, a description of the circumstances in which the UAT Certificate for the Relevant Network Stage was deemed to have been issued;
 - (iii) attach the Test Readiness and Commissioning Complete Certificate for the Relevant Network Stage;
 - (iv) identify the Applicable N_{passed} for the Relevant Network Stage;
 - (v) specify whether the UAT Certificate for the Network Stage is a Qualified UAT Certificate;
 - (vi) identify the number of Premises that are Infill Premises or located on Infill Greenfield Sites or Adjoining Greenfield Sites and which have been Passed and Commissioned in the period between the date of the current Notice of Completion and the most recent Notice of Completion issued prior to the current Notice of Completion;
 - (vii) in respect of the Premises referred to in clause 10(b)(vi), specify the:
 - (A) associated FFPs by reference to the FFP ID;
 - (B) total number of Premises Passed per FFP;
 - (C) type of OFDF (connectorised vs fusion spliced); and
 - (D) type of deployment (single-sided or double-sided/aerial or underground);
 - (viii) include a confirmation by the Company that the Build Complete Milestone for the Relevant Network Stage has been satisfied in accordance with Annexure 2 of Schedule 3 (including a confirmation that, for the avoidance of doubt, each of the Individual Milestones required to be satisfied in order to satisfy the Build Complete Milestone have been satisfied);
 - (ix) include a confirmation by the Company that each Premises in the Relevant Network Stage (other than Exempt Premises) has been Passed with Communal Infrastructure; and
 - (x) be in the form set out in Annexure 5.

11. Network Stage Amounts

The table in Annexure 6 sets out, in:

- (a) Column 1, each Network Stage;
- (b) Column 2, the Applicable N_{passed} for each Network Stage extracted from the APD;
- (c) Column 3, the Applicable $CPPP_{L1\text{ CFH}}$ for each Network Stage; and
- (d) Column 4, the Network Stage Amount for each Network Stage.

Annexure 1: Network Requirements

1. Network Objectives

- (a) The Company must design, build and operate the Network to ensure that it will:
 - (i) provide long lasting telecommunications infrastructure;
 - (ii) cater for growth and expansion;
 - (iii) support UFB Services; and
 - (iv) be easily upgradeable to support new services and bandwidth.
- (b) The Network, UFB Services, and underlying support processes must be compatible with the existing UFB1 Network infrastructure in order to make it as easy as possible to interconnect with RSPs and remove barriers to market entry.
- (c) The Company must be able to provide all UFB Services on the Network, including the Dark Fibre Services and Bitstream Services, on a non-discrimination basis. The Company must be able to provide all of the Subsequent Services (including Dark Fibre Services) provided on the Network, from 1 January 2026 on an Equivalence of Inputs basis and must continue to provide all other UFB Services (other than the Dark Fibre Services) on a non-discrimination basis.
- (d) The Company must design the Network and associated support systems and processes to accommodate RSPs that may wish to gain access to all Dark Fibre Services (point-to-point and point-to-multipoint) on an Equivalence of Inputs basis from 1 January 2026.

2. The Network Infrastructure

2.1 Network Extent

The Network infrastructure is to be made up of:

- (a) Communal Layer 1 Infrastructure;
- (b) Communal Layer 2 Infrastructure;
- (c) Layer 1 Backhaul;
- (d) Layer 2 Backhaul; and
- (e) End User-Specific Infrastructure,

for the avoidance of doubt, Communal Layer 1 Infrastructure, Communal Layer 2 Infrastructure, Layer 1 Backhaul and Layer 2 Backhaul includes all CI Leased Equipment that is delivered by the Company in accordance with this Agreement.

2.2 Network Topology

The Network may be either a point-to-point network, or a mixture of point-to-point and point-to-multipoint (for example, GPON, xGPON, or WDM PON) networks, or any other FTTP network. The Network is to be all fibre, from the POI to the End Users (except for some specific exclusions such as FTTB for certain types of MDUs as specified in clause 3(e) of this Annexure, microwave backhaul as specified in clause 2.7(e) of this Annexure, or emerging copper technologies subject to clause 6 of this Annexure). The Network may be a mixture of underground and overhead infrastructure.

2.3 Integrated Test Facility

The Company must build or have access to an ITF. The ITF is a facility where the Company and/or RSP can test services and network functionality prior to implementation in the Network. CFH must have reasonable access to the ITF for carrying out UAT. If co-operating with an existing UFB1 LFC, using the same architecture and equipment as the UFB1 LFC deployed for UFB1, then the Company may (through a service arrangement with the UFB1 LFC), use the UFB1 LFC's ITF, provided the Company has obtained full access rights to that ITF and complies with the requirements of clauses 4.6 and 6.3 of the Base Agreement.

2.4 Communal Infrastructure: Central Offices

- (a) A CO may be an active cabinet, "containerised", or located in a suitable building (including leased space, as long as the lease is for a period of 20 years or more with appropriate renewal rights and complies with the requirements of clause 6.4 of the Base Agreement). The CO must be built to a standard that allows the Company to meet the Service Levels and all other Requirements, and, except in respect of a CO already in existence as at the Commencement Date, takes into account any natural hazards (for example, has seismic bracing, and is outside of potential risk areas such as flood plains, tsunami zones, or landslip areas).
- (b) The Layer 1 Central Office Termination Point is the SC or LC connector which connects the fibre from the End User Premises (or NBAP) to either:
 - (i) the termination of the fibre on the CO main distribution frame; or
 - (ii) the OLT or Ethernet switch at a CO site; or
 - (iii) the RSP's equipment at the co-location site; or
 - (iv) the Backhaul equipment at the CO site.
- (c) The Company is required to connect all fibres (point-to-multipoint may be via a splitter) from all individual Connections back to the closest Layer 1 Central Office Termination Point. The CO is the point at which RSPs connect to the Dark Fibre Services. Access to the Bitstream Services is not available from a CO, unless that CO is also a POI (as discussed in clause 2.7 of this Annexure).
- (d) The CO must:
 - (i) provide accommodation and facilities (co-location) for RSPs to unbundle fibre services. This requirement may be met either by providing space within the CO in compliance with the co-location service descriptions in the WSA, or by providing a tie cable to a separate structure provided by the RSP (if the RSP and the Company agree);
 - (ii) provide a minimum of 8 hours on-site back-up power supply. If an on-site generator is not available, then facilities for a plug-in generator must be

available and the Company must have access to the generator when there is a power failure to ensure uninterrupted service;

- (iii) have secure access for authorised personnel only;
- (iv) be located away from any potential risk areas such as tsunami areas, flood plains, or areas at high risk of landslides; and
- (v) have appropriate fire-suppression equipment on site.

2.5 Communal Infrastructure: Points of Interconnect

- (a) POIs are the access point for Bitstream Services. The POI is where RSPs may locate their network routers, Ethernet switches, and Backhaul facilities and equipment in order to gain access to the Bitstream Services offered by the Company. The POI must conform to the CO requirements described in clause 2.4 of this Annexure, and:
 - (i) provide housing for the appropriate infrastructure and/or Network equipment; and
 - (ii) enable the convenient linking of terminal equipment and/or systems to enable the provision of inter-network connectivity; and
 - (iii) provide a co-location service for equipment of RSPs accessing the Bitstream Services (either within the POI or by means of a tie cable to a separate structure); and
 - (iv) provide the environmental services required to support the above, as per the co-location service description.
- (b) Unless CFH has agreed otherwise in writing in respect of the matters in this clause 2.5(b), to minimise the national number of POIs, all Bitstream Services must terminate on an existing aggregation point for telecommunications services (such as one of the existing UFB1 POIs, or an existing RBI Initiative wholesale handover point) with access to at least two wholesale backhaul providers. If creating a POI in a Candidate Area that does not have an existing POI, then the POI must have access to at least two wholesale backhaul providers and serve a minimum of 10,000 End Users. All End Users must be accessible by an RSP from a single POI.
- (c) The RSP will be responsible for deployment and management of its equipment deployed in the co-location facilities (including the POI and the CO).
- (d) The Company must provide RSPs with access to the COs and POIs, in order for the RSPs to connect the CO with other networks, and to the RSP's co-location space.

2.6 Communal Infrastructure: Duct and Fibre Infrastructure

- (a) The Company must build sufficient fibre or duct infrastructure to allow for two fibres per End User, including an allowance for growth and spares. The fibre count must allow for GPON (if used) and for point-to-point services, keeping in mind that RSPs may require point-to-point Dark Fibre Services.
- (b) If the Network is a GPON network, the split ratio must allow for uncontested traffic of 100Mbps downstream and 50Mbps upstream per End User. Typically, this will mean a maximum split ratio of 24:1 and may be either a single splitter or a combination of splitters (e.g. 2:1 in Central Office and 12:1 in the field).

- (c) If aerial deployment is used, then the Company must provide sufficient fibre when building the Communal Layer 1 Infrastructure to meet the Network Requirements. The aerial infrastructure may be built down one side of the Road (the Build Side). In such cases:
 - (i) all Communal Layer 1 Infrastructure (excluding road crossings) is required to be installed to the Nearest Pole, except for laterals, which must be installed from the Nearest Pole to the Premises Boundary, for the Premises to meet the definition of Passed; and
 - (ii) the Company is required to install road crossings to the Nearest Pole (as part of the Communal Layer 1 Infrastructure) for Premises located on the non-Build Side of the Road, but only when the Company receives a request for a new End User Connection at the relevant Premises from an RSP. For the avoidance of doubt, the Company cannot charge any fee to the RSP in respect of the installation of the road crossing.
- (d) If duct is used, then the Company must provide sufficient feeder and distribution duct space to provide for two fibres per End User, and provide sufficient feeder fibre to the FFP splitters, and provide two fibres per end user in a GPON network, or direct from the CO to the Premises in a Point to Point network.
- (e) The Company must ensure infrastructure is clearly and consistently labelled and must keep accurate and up to date records of the fibre and duct infrastructure as set out in the Detailed Specifications.
- (f) When dimensioning the Network, the Company must make a reasonable allowance:
 - (i) for links between Candidate Areas or where a Central Office is not located in a Candidate Area;
 - (ii) for point-to-point NBAP capacity at the edge of a Candidate Area to serve possible RBI Initiative, RBI2 Initiative and Mobile Blackspot Initiative wireless services;
 - (iii) of fibre or duct capacity to cater for demand under the RBI2 Initiative and the Mobile Blackspot Initiative, including providing for NBAPs and cell tower sites outside the Coverage Area at a future date; and
 - (iv) future opportunities to provide additional 'rural' fibre to some Premises on the edge of each Network Stage by utilising Backhaul fibres that may be constructed.

2.7 Backhaul

- (a) The Company must provide Backhaul from the CO to the POI, when the POI is in a location other than the applicable Candidate Area, in order to deliver the Bitstream Services to the POI. For the avoidance of doubt, the fibre link between a POI and a CO, where the POI and the CO are located within the same Candidate Area is not Backhaul.
- (b) The Company must ensure that the Backhaul has sufficient capacity, or the ability to lease or build additional capacity, to meet End-User growth, and the growth of traffic per End User.
- (c) The Backhaul must meet the Service Levels, including, for the avoidance of doubt, the Layer 2 Traffic Service Levels, and CFH will be entitled to carry out UAT on the UFB Services at any time on or from the earlier of the Provisioning Milestone Date and the Build Complete Milestone Date for the relevant Network Stage.

- (d) If constructing new Backhaul, the Company must provide a reasonable fibre allowance to service the likely requirements of the RBI2 Initiative and the Mobile Blackspot Initiatives and to provide service to rural premises along the Backhaul route. This may involve breakout points for wireless sites and rural premises.
- (e) For the avoidance of doubt, if CFH has approved the Company using technologies other than fibre, such as microwave radio, for Backhaul, such technologies must meet or exceed the Service Levels, and any other requirements specified in the approval.

2.8 Position of Communal Infrastructure

- (a) For a Premises to be Passed, the Network duct and/or fibres must be positioned to:
 - (i) meet the definition of Passed; and
 - (ii) comply with the Network Requirements.
- (b) The Communal Layer 1 Infrastructure and Communal Layer 2 Infrastructure (if applicable) must extend down each Road (including for the avoidance of doubt in a Property Estate) to the Premises Boundary Termination Point at each individual Premises on the applicable Road.
- (c) In the case of a hybrid deployment (i.e. an aerial deployment, with an underground Connection) the Communal Layer 1 Infrastructure and Communal Layer 2 Infrastructure (if applicable) must extend from the fibre termination at the Nearest Pole to the Premises Boundary Termination Point.

2.9 Position of End User-Specific Infrastructure

- (a) For a ROW or a Retirement and Business Complex, sufficient Communal Infrastructure and End User-Specific Infrastructure must be positioned:
 - (i) in respect of a ROW, at the entrance of the ROW to Connect all End Users whose Premises are accessed by that ROW, including sufficient capacity for growth of Premises down that ROW (if applicable); or
 - (ii) in respect of a Retirement and Business Complex, at the entrance of the Retirement and Business Complex to Connect all End Users located within the Retirement and Business Complex including sufficient capacity for growth of End Users in that Retirement and Business Complex (if applicable).
- (b) As End Users are Connected, the End User-Specific Infrastructure must be installed down the ROW or to End Users in the buildings within Retirement and Business Complexes as part of the Connection.

2.10 Standard Installations and Non-Standard Installations

- (a) Subject to clause 2.10(b) of this Annexure, a Standard Installation is a Connection where the distance required to install the End User-Specific Infrastructure is up to 200m from the Premises Boundary Termination Point to the ETP on the outside wall of the Premises (EUSI Distance).
- (b) For:
 - (i) a ROW, all Premises within 200 metres multiplied by the number of Premises accessed by that ROW, measured from the Premises Boundary Termination Point to the ETP on the outside wall of each Premises accessed by that ROW (**ROW Extended EUSI Distance**), will be Standard Installations. For example,

where there are three Premises accessed by a ROW, all such Premises whose ETP on the outside wall are located (or partially located) within 600 metres of the Premises Boundary Termination Point will be Standard Installations;

- (ii) a Retirement and Business Complex:
 - (A) Connections to all End Users that are located in a retirement village or complex are deemed to be Standard Installations; and
 - (B) for a business park or complex, all End Users that are within 200 metres multiplied by the number of End Users located in the business park or complex, measured from the Premises Boundary Termination Point to the ETP on the outside wall of the building in which an End User is located (**Business Park Extended EUSI Distance**) will be Standard Installations.
- (c) Notwithstanding clauses 2.10(a) and 2.10(b) of this Annexure, a Standard Installation includes the ETP and the internal Premises wiring (including MDU wiring). Premises and MDU wiring includes, for Dark Fibre Services:
 - (i) installing the ITP at the location specified by the End User;
 - (ii) establishing connectivity between the CO and the ITP;
 - (iii) conducting an insertion loss test and confirming results are within the link loss budget (as set out in the ITU G.984 services specification); and
 - (iv) when requested by an End User, conducting an OTDR test or similar to show that optical splices and connections are within specification.
- (d) Notwithstanding clauses 2.10(a) and 2.10(b) of this Annexure, for Bitstream Services, a Standard Installation also includes:
 - (i) installing the ONT inside the Premises at the location specified by the End User and Connecting it to the Network (generally at the point of highest data usage in the Premises, such as behind the TV set); and
 - (ii) connecting the RGW inside the Premises (where provided by the RSP) and carrying out a speed test; and
 - (iii) conducting an insertion loss test and confirming results are within the insertion loss budget.
- (e) Best Industry Practice applies when Connecting an End User, ensuring that the End User-Specific Infrastructure and associated Connections are to a high standard. This would, for example, limit the use of surface mounting within a Premises to situations where alternatives are not possible.
- (f) Connections must be made on a like-for-like basis unless otherwise agreed by the End User. This means that where an existing telecommunications service is underground, then the fibre End User-Specific Infrastructure must be underground, and where the existing telecommunications service is aerial, then the fibre End User-Specific Infrastructure must be aerial.
- (g) The fibre End User-Specific Infrastructure can only be a 'fence-line' installation if the Company first consults with the End User and obtains the End User's prior written consent to a 'fence-line' installation.

- (h) Re-statement for any form of End User-Specific Infrastructure is to be on a like-for-like basis; for example, a concrete surface must be replaced with a concrete surface, an asphalt surface with an asphalt surface, and a grass surface with a grass surface. However, an exact match is not required (for example, a coloured surface may be patched with an uncoloured surface) and full-width replacement is not required (but always consistent with the duty to act in accordance with Best Industry Practice).
- (i) Non-Standard Installations are Connections where the distance required to install the End User-Specific Infrastructure to Premises exceeds:
 - (i) the EUSI Distance; or
 - (ii) in the case of a ROW, the ROW Extended EUSI Distance; or
 - (iii) in the case of a Retirement and Business Complex which is a business park or complex, the Business Park Extended EUSI Distance,

but for the avoidance of doubt, the Company will not be entitled to recover any charges for performing the requirements set out in clauses 2.10(a), 2.10(b), 2.10(c) and 2.10(d) of this Annexure.

3. MDUs

- (a) The Company must procure that UFB Services are provided to any or all End Users in an MDU on request by an RSP.
- (b) The Company must provide sufficient fibre to each MDU to meet the needs of the entire MDU, consistent with the number of End Users in the MDU.
- (c) The Company must terminate the lead-in fibre(s) inside an MDU at a location that makes sense to the Company and the owner(s) of that MDU or their authorised representatives. This will generally be a communications room or an optical fibre distribution frame.
- (d) Clause 2.10 of this Annexure applies to the installation of all End User-Specific Infrastructure for all Connections to End Users in MDUs.
- (e) The Company must Connect End Users in each MDU in accordance with the Service Levels.
- (f) Under exceptional circumstances where access consents cannot be obtained by the Company in accordance with clause 9.10 of the Base Agreement, the Company may:
 - (i) choose to offer a FTTB solution in an MDU and supply UFB Services to End Users in that MDU that can support, at a minimum, the 100Mbps downstream and 50Mbps upstream products plus a 70Mbps allowance for Multicast services, with CFH's prior agreement, subject to the Company ensuring that the Network meets these requirements; and
 - (ii) deliver Bitstream Services to an MDU using a copper modem (for example, G.fast or DSL Modem) where copper is available in the relevant MDU.

4. Dark Fibre Services

4.1 General Requirements

The Company must ensure that Dark Fibre Services meet the Requirements and comply with the provisions of the WSA and the Service Levels.

4.2 Dark Fibre Service Termination Points

- (a) The Dark Fibre Services terminate at the ITP within each End User's Premises, and the CO Termination Point within the CO.
- (b) An ETP is not required in an MDU if a communications facility such as a communications room or distribution board exists. For the avoidance of doubt, in a block of flats that meets the definition of an MDU, with no common communications infrastructure between the flats, an ETP should be installed outside each flat.
- (c) In accordance with clause 2.8(c) of this Annexure, the Company must build laterals to the Premises Boundary for all underground End User-Specific Infrastructure as part of Communal Layer 1 Infrastructure in order for the Premises to be Passed. This includes aerial deployments where there will be underground End User-Specific Infrastructure.

4.3 Operational Standards

The Company must meet all operational standards, for example, provisioning and restoration response times, are required to meet the Service Levels and the requirements of the WSA. Note that the service levels in the WSA do not override the Service Levels. They are to be read together for the purposes of delivering the UFB Services.

5. Bitstream Services

5.1 General Requirements

The Company must ensure that the Bitstream Services meet the Requirements and comply with the provisions of the WSA and the Service Levels.

5.2 Point of Delivery of Bitstream Services

- (a) The RSP-facing ports on the EAS are the E-NNI. The E-NNI interface in the POI is the point of delivery of Bitstream Services to RSPs.
- (b) End-User facing ports in the Premises are on the ONT or ONU and these are the Bitstream Services UNI ports.
- (c) Within the Premises, the Company may initially provide a single Ethernet UNI port and a single voice UNI port, and provide additional UNI ports on demand up to a minimum of four Ethernet UNI ports, two voice ports, and one WiFi port.
- (d) If the Company chooses to install single UNI ports, they must provide additional ports on demand and may not pass on any costs for installing and configuring these additional ports to any party, including the End User.
- (e) The Company must provide sufficient OLT and EAS ports to meet demand for the period during which the Service Levels apply.

- (f) The Company must not combine ONT/ONU functions with Residential Gateway functions.
- (g) The Company must provide network visibility of the performance of ONT ports to the RSP that is utilising that ONT port. If the ONT provides UFB Services to the End User (for example, via the ATA port or a WiFi port), then the Company must provide management access to the RSP, so the RSP can configure End User parameters such as passwords etc.

5.3 Support for Multiple Retail Service Providers

- (a) The End User-Specific Infrastructure and any resulting Connection must be configured so that RSPs are able to deliver the relevant UFB Services to an individual End User directly, with each Ethernet UNI able to be allocated to a different RSP. The WiFi and voice ports only need to support one RSP.
- (b) The Company must provide suitable terminal equipment that meets the requirements of the WSA.
- (c) In the case of a residential GPON service, the ONT must meet the Requirements and comply with the provisions of the WSA.

5.4 Operational Standards

The Company must allow for any “overclocking” required to deliver the advertised internet bandwidth to the End User (for example, deliver 100Mbps of internet access to the End User, rather than 100Mbps of Ethernet access) for bandwidth speeds under 900 Mbps.

5.5 Bitstream Services in MDUs

- (a) Subject to clause 3(f) of this Annexure, the Bitstream Services may be delivered to an MDU using:
 - (i) an ONT/ONU located in the tenancy; and/or
 - (ii) an ONT/ONU located in a central location with multiple physical ports, where each End User of the Bitstream Service connects to an individual port on the ONT/ONU through existing building cabling where the cabling meets the Cat5e (or better) standard.
- (b) Regardless of the connectivity option chosen, all UFB Services must be available to End Users in an MDU at the specified Service Levels. If the Company chooses to make use of existing copper infrastructure for in-building distribution, and an RSP orders a UFB Service that the Company cannot deliver without fibre, then the Company must seek all consents necessary to install the fibre, in accordance with clause 9.10 of the Base Agreement.

5.6 Bitstream Service Traffic Performance

The TCF ELAS Document and the WSA describe the required Bitstream Services performance metrics. The Company must ensure that the Bitstream Services meet such performance metrics, including those contained in any updates or revisions to the TCF ELAS Document and/or the WSA.

6. Use of Emerging Copper Technologies

Except in the case of an MDU to which clause 3 of this Annexure shall apply, if the Company uses emerging copper technologies, then the technology must be capable of supporting the Bitstream Services up to 1Gbps, and CFH's prior written consent must be obtained.

7. Network specifications

The Network must, in addition to the other requirements of this Annexure, comply with the following:

Network Specifications	
1	<p>The Network and splitter ratios (if any) must support a minimum connection speed of 100 Mbps downstream and 50Mbps upstream (typically, a maximum split ratio of 24:1 for GPON).</p> <p>Sufficient splitters and OLT/EAS ports must be installed at the time the Communal Infrastructure is built to support 25% of the End Users on that PON circuit.</p>
2	<p>The Network must be capable of supporting all UFB Services.</p>
3	<p>Sufficient duct and fibre must be installed to support:</p> <ul style="list-style-type: none"> (a) two fibres per Premises (in a GPON network, this means capacity from the CO to the splitter housing for feeder fibre, and from the splitter housing to the Premises for distribution and End User-Specific Infrastructure fibre); (b) the provision of point-to-point services where requested; (c) the provision of fibre to meet the Open Access Requirements; and (d) a reasonable forecast of growth (if any) due to increased demand over the life of the asset. The forecast should include, for example, NBAPs deployments, Infill Premises, Greenfield Sites, Communal Layer 1 Infrastructure, and Open Access Requirements from 1 January 2026 (including Open Access Backhaul). <p>In an underground Communal Infrastructure deployment, fibre to meet the future Communal Layer 1 Infrastructure unbundling requirements may be provided on demand, but duct infrastructure must be provided from the date the Premises are Commissioned. In an aerial Communal Infrastructure deployment, the fibres to meet the future Communal Layer 1 Infrastructure unbundling requirements must be provided from the date the Premises are Commissioned.</p>
4	<p>Optical parameters for fibres are:</p> <ul style="list-style-type: none"> (a) the fibre in the Network must comply with ITU-TG.652D, and optionally with ITU-T G.657A (except existing Backhaul fibre); (b) where a point-to-multipoint architecture is chosen, the Network must support the Layer 1 requirements of GPON (ITU-T G.984 series). Regardless of architecture, the fibre must not exceed the distance standards set out in the ITU-T G.984 series of standards; (c) all optical connectors in the Network must be SC or LC angle polished connectors with the following specifications: <ul style="list-style-type: none"> (i) Grade B for insertion loss performance (IEC 61755-1), $\leq 0.25\text{dB}$ for 97% of connectors; (ii) Grade 1 for return loss performance (IEC 61755-1), $\geq 60\text{dB}$ per mated connector; and (iii) all connectors must have zirconia ceramic ferrules; (d) total GPON insertion Loss OLT to ONT design target is $\leq 27.0\text{db}$ (28.5db from ITU-T G.984 – 1.5db lifetime ageing factor); (e) Network return loss $\geq 32\text{db}$; (f) optical fibre attenuation co-efficient (ITU-T G.652D and G.657A) $\leq 0.4\text{db/km}$; (g) maximum allowable bi-directional splice loss $\leq 0.15\text{db}$;

Network Specifications	
	<ul style="list-style-type: none"> (h) maximum allowable uni-directional splice loss $\leq 0.25\text{db}$; (i) mated connector loss $\leq 0.3\text{db}$; (j) mated connector reflection $\geq 55\text{db}$; and (k) GPON splitter insertion loss performance: <ul style="list-style-type: none"> (i) 1:32 way split $\leq 17\text{db}$; (ii) 1:16 way split $\leq 14\text{db}$; (iii) 1:8 way split $\leq 11\text{db}$; (iv) 1:4 way split $\leq 7.3\text{db}$; and (v) 1:2 way split $\leq 4.0\text{db}$.
5	<p>The Network must comply with the following:</p> <ul style="list-style-type: none"> (a) GPON (if used) must comply with the ITU-T G.984 series standards; and (b) UNI and E-NNI ports must align with the requirements of the WSA, and: <ul style="list-style-type: none"> (i) align with industry standard specifications, such as Institute of Electrical and Electronics Engineers (IEEE); (ii) the Ethernet UNI ports must be compatible with the requirements of the TCF ELAS Document (2015 draft); and (iii) the Ethernet E-NNI port must be compatible with the requirements of the TCF ELAS Document (2015 draft).
6	Street cabinets or FFPs must be in a position to accommodate splitters for Communal Layer 1 Infrastructure unbundling; the Company must provide splitters to RSPs on request from 1 January 2026.
7	<p>An ONT/ONU must have a minimum of one Ethernet Port and one voice port. A minimum of 2 voice ports, 4 Ethernet ports, and a WiFi port are either;</p> <ul style="list-style-type: none"> (a) to be made available on demand (with no installation charge); or (b) provisioned as part of the first order. <p>Each port is to be available for purchase by separate RSPs. The ONT/ONU is to be separate from the residential gateway or other Premises equipment typically owned or installed by the RSP or End User. Other than for the number of ports provided on installation of the End User-Specific Infrastructure, the network termination devices must meet the requirements of the WSA.</p>
8	Co-location services must comply with the co-location service description specified in the WSA.
9	The Company will design, build, and operate the Network to meet or exceed the Service Levels for Dark Fibre Services and Bitstream Services.
10	The Company will not offer UFB Services which connect to End User end points or UFB Services where at least one point does not terminate at a CO or other handover point, except under direction from an RSP and evidenced by a valid UFB Service order. For the avoidance of doubt, this includes to UNI to UNI connections (being a transmission path between End User ports) that do not connect through an RSP's equipment at the POI or CO.
11	<p>The Company must provide one CO per Network Stage. The CO must:</p> <ul style="list-style-type: none"> (a) provide facilities for RSPs seeking Dark Fibre Services (but not Bitstream Services) interconnection; (b) provide Layer 2 connectivity to one or more POIs for all End Users connected to that CO, with all End Users available at each POI that the CO connects to; (c) provide accommodation and facilities for RSPs on request, either within the CO, or by means of a tie cable to a second location (e.g. an RSP data centre). If a tie cable is deployed, the Network must still comply with the Requirements, including the optical budget;

Network Specifications	
	<ul style="list-style-type: none"> (d) provide environmental services, including back-up power, air-conditioning, and fire suppression. The Company must provide a minimum of 8 hours on-site back-up power supply. If an on-site generator is not available, then facilities for a plug-in generator must be available and the Company must have access to the generator when there is a power failure to ensure uninterrupted service; (e) have secure access; and (f) be located away from any potential risk areas such as tsunami areas, or areas at high risk of landslides.
12	<p>The Company must provide, either alone or in conjunction with others, POIs for Bitstream Services, and Backhaul between COs and POIs for Bitstream Services. The POIs must:</p> <ul style="list-style-type: none"> (a) serve more than 10,000 End Users (but only if the POI is located in a Candidate Area that does not have an existing POI); (b) provide accommodation for Backhaul service providers and their equipment in compliance with the Co-location services description; (c) provide for connectivity between RSPs within the POI; (d) provide the E-NNI in accordance with the WSA; and (e) provide environmental services, including back-up power, air conditioning, and fire suppression. <p>All End Users within a Candidate Area must be accessible from a single POI.</p>

Annexure 2: Master Deployment Plan and Annual Deployment Schedule

Part A: Master Deployment Plan

Section 1: Build Milestone Descriptions and subscriptions associated with satisfaction of the relevant Build Milestones

For the purposes of the NIPA and all other associated documents, including this Master Deployment Plan, the Individual Milestones required to be satisfied in order to satisfy a Build Milestone are as set out below. In respect of a particular Individual Milestone, where the Company has previously provided reasonable evidence of the satisfaction of that Individual Milestone, the Company will not be unreasonably required to reproduce that evidence on the applicable Build Milestone Date, but for the avoidance of doubt will still be required to provide evidence of the *continued* satisfaction of that Individual Milestone.

Column A	Column B	Column C
Build Milestones	Individual Milestone	Subscription associated with satisfaction of a Build Milestone by prescribed date
Build Start Milestone for each Network Stage	To satisfy the Build Start Milestone for the relevant Network Stage, the Company must have: <ul style="list-style-type: none"> (a) the ability to commence the build of the Communal Infrastructure for the Network Stage, including the ability to access any CI Leased Equipment which will form part of the CI Leased Equipment for the Network Stage, within seven Business Days if the Company was requested to do so by CFH; (b) satisfied the Health and Safety Milestone; (c) satisfied the Build Commencement Conditions; and (d) satisfied the Signage Obligation. 	N/A – no subscription.
Provisioning Milestone	To satisfy the Provisioning Milestone for the relevant Network Stage, the Company must have: <ul style="list-style-type: none"> (a) completed the build and delivery of Backhaul for the relevant Network Stage; (b) satisfied the Wholesale Services Agreement Milestone; (c) satisfied the Integrated Test Facility Milestone; and (d) satisfied the Operational Processes Milestone. 	N/A – no subscription.

Column A	Column B	Column C
Build Milestones	Individual Milestone	Subscription associated with satisfaction of a Build Milestone by prescribed date
Handed Over Milestone for relevant Network Stage	The completion of the Hand Over of all Premises (other than Exempt Premises) for the relevant Network Stage in accordance with this Schedule. The Handed Over Milestone Date must be scheduled prior to the Build Complete Milestone Date and to allow sufficient time to conduct UAT for the relevant Network Stage in accordance with Annexure 3 of this Schedule.	N/A – no subscription.
Build Complete Milestone for relevant Network Stage	<p>To satisfy the Build Complete Milestone for the relevant Network Stage the Company must have:</p> <ul style="list-style-type: none"> (a) satisfied the Build Start Milestone for the relevant Network Stage and continue to satisfy the Build Start Milestone as at the date of satisfaction of the Build Complete Milestone; (b) if the Provisioning Milestone has occurred, satisfied the Provisioning Milestone for the relevant Network Stage and continue to satisfy the Provisioning Milestone as at the date of satisfaction of the Build Complete Milestone; (c) if the Provisioning Milestone has not occurred, satisfied the Wholesale Services Agreement Milestone, the Integrated Test Facility Milestone and the Operational Processes Milestone for the relevant Network Stage; (d) completed the build and delivery of all Communal Infrastructure for the relevant Network Stage, with no outstanding UAT issues or operational issues, and with all required documentation provided; (e) Passed all Premises (other than Exempt Premises) in the relevant Network Stage with Communal Infrastructure; (f) received the UAT Certificate for the relevant Network Stage (or a UAT Certificate is deemed to have been issued in accordance with clauses 5.1(b) and 5.2); and (g) submitted the Notice of Completion for the relevant Network Stage. 	Build Complete Subscription

Section 2: Individual Milestones

For the purposes of the NIPA and all other associated documents, including this Master Deployment Plan, the Individual Milestones required to be satisfied in order to satisfy a Build Milestone have the meaning set out below.

Column A	Column B	Column C
Individual Milestones	Description	Associated subscription
Health and Safety Milestone	<p>The Company must have:</p> <ul style="list-style-type: none"> (a) a Health and Safety Management Plan in place and approved by relevant PCBUs; and (b) a health and safety management system in place in respect of the build of the Communal Infrastructure and the End User-Specific Infrastructure. 	<p>Build Complete Subscription</p> <p>Must be satisfied by the Network Build Commencement Date and remain in place at all times during the build of the Network (including the ongoing build of End User-Specific Infrastructure).</p>
Integrated Test Facility Milestone	The ITF is available for use by CFH, the Company and RSPs in accordance with clause 2.3 of Annexure 1 of Schedule 3 (<i>Design and Build</i>).	Build Complete Subscription
Wholesale Service Agreement Milestone	A satisfactory and complete WSA for the Network must be available for RSPs to sign (as prepared in accordance with Schedule 6 (Principles for Services and Pricing). The WSA includes the general terms, End-User terms, service descriptions, operations manuals, and Service Levels for the UFB Services (including the Network interface specifications).	Build Complete Subscription
Operational Processes Milestone	<p>Operational processes that enable the Company to fulfil an order for UFB Services from an RSP and manage the Network (including faults) must be in place. The operational processes must be consistent with Best Industry Practise and must include appropriate processes to ensure continuous improvement of the delivery of the UFB Services.</p> <p>These operational processes include:</p> <ul style="list-style-type: none"> (a) delivery of unfettered access to: <ul style="list-style-type: none"> (ii) an OSS/BSS portal that provides a portal interface from the Company to the RSP for placing orders, and calendar integration for setting order completion dates; and (iii) a business to business interface to RSPs that provides an electronic interface from the Company to the RSP for placing orders, automates Company workflow and provides jeopardy management; and (b) establishment of a service desk, network operations centre, field force and all associated or necessary contracts, processes, and procedures for the acceptance and fulfilment of orders, installation of End User-Specific Infrastructure, billing RSPs and the fixing of faults. 	Build Complete Subscription

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Part B: Annual Deployment Schedule for the period from the date of this Agreement until 30 June 2018

[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

If using FFPs then enter the number of FFPs that will be built and handed over as part of each Milestone.

Annexure 3: User Acceptance Testing Process

1. Preparation for User Acceptance Testing

1.1 CFH's obligations prior to User Acceptance Testing

CFH will provide the Company with the UAT Test Cases and UAT Plan (including expected test results).

1.2 Company's obligations prior to User Acceptance Testing

Prior to the start of physical User Acceptance Testing, the Company will review the UAT Test Cases, the UAT Plan and the expected test results that have been prepared by CFH (the **Acceptance Test Material**). The Company will provide advice to CFH on the feasibility and utility of the tests set out in the Acceptance Test Material. The Company will notify CFH as soon as practicable of any objections it may have to the Acceptance Test Material, but the Company may only do so if it can demonstrate to CFH on reasonable grounds that the Acceptance Test Material requires testing in relation to matters that are outside the scope of the Requirements in relation to the Network.

2. Conduct of User Acceptance Testing

2.1 CFH's obligations

If CFH elects to undertake UAT in accordance with clause 2.2 of this Annexure, CFH will:

- (a) perform such UAT on the Network as CFH considers necessary to determine whether or not the Network meets the Requirements;
- (b) perform the User Acceptance Tests in accordance with the UAT Plan and within the UAT Period (if applicable); and
- (c) document and issue TPRs to the Company for resolution.

2.2 UAT Period

- (a) CFH may, at its discretion, carry out and complete User Acceptance Testing on Premises Handed Over at any time by providing not less than 5 Business Days' prior written notice to the Company.
- (b) For the avoidance of doubt, CFH may conduct User Acceptance Testing on Handed Over Premises comprising part of a Network Stage notwithstanding that not all of the Premises in that Network Stage have been Handed Over. However, CFH will not issue a UAT Certificate in respect of such Premises Handed Over comprising part of a Network Stage until all Premises (other than Exempt Premises) comprising that Network Stage have been Handed Over and otherwise in accordance with this Annexure 3.
- (c) When a Network Stage, Infill Premises, or Greenfield Site has been completed then, on completion of the preparation requirements in clause 1.2 of this Annexure and clause 9.3 of this Schedule, User Acceptance Testing must be completed within 15 Business Days of CFH being notified by the Company of the completion of Company Testing via a Test Readiness and Commissioning Complete Certificate (UAT Period).

- (d) CFH will issue a Test Problem Report to the Company within 5 Business Days of completion of User Acceptance Testing and the Company will provide CFH with its response to the Test Problem Report within 5 Business Days of receipt of the Test Problem Report.
- (e) For the purposes of this Annexure 3, the term Business Day shall have the meaning given to that term in Schedule 1 (*Definitions*) but shall also exclude any day during the period 20 December to 10 January (inclusive).

2.3 Company's obligations

The Company will:

- (a) issue a Test Readiness and Commissioning Complete Certificate and release notes;
- (b) monitor performance of the Network in each User Acceptance Test;
- (c) refresh the database(s) used in UAT on an "as required" basis; and
- (d) at CFH's request, provide such support services for the Network during UAT (including the handling and resolution of Errors) as are necessary for the proper and efficient performance of the UAT,

in accordance with the timeframes and requirements set out in this Agreement.

2.4 Additional UAT

- (a) Prior to the commencement of UAT, CFH may, acting reasonably, propose additional UAT Tests and/or extend UAT to include further Premises. In that event, the Company will review the additional UAT Tests prepared by CFH as soon as practicable.
- (b) The Company may only reject additional UAT Test Cases prepared by CFH if the Company can demonstrate on reasonable grounds that the time to run those additional UAT Test Cases and/or extend UAT cannot reasonably be accommodated within the time left for User Acceptance Testing during the UAT Period and in that event, CFH may request and the Company will agree a reasonable extension of the UAT Period.

3. User Acceptance Test Process

- (a) For the purposes of UAT, there are four types of Errors:
 - (i) Non-Critical Errors;
 - (ii) Critical Errors;
 - (iii) Blocking Errors; and
 - (iv) Systemic Errors; and
- (v) at the conclusion of each run of a User Acceptance Test, CFH will document:
- (vi) whether or not that User Acceptance Test has been completed;

- (vii) whether or not that User Acceptance Test has been run with or without Blocking Errors;
 - (viii) whether or not that User Acceptance Test has been run with or without any other (Critical or Non-Critical) Errors; and
 - (ix) whether or not that User Acceptance Test has been run with one or more Errors which, alone or together with any other Error from any other User Acceptance Test, constitute a Systemic Error.
- (b) If a User Acceptance Test run has been completed within the UAT Period without any Errors (Blocking Error or otherwise) having been encountered, that User Acceptance Test will be deemed to have been successfully completed.
 - (c) If a User Acceptance Test run has been completed within the UAT Period, and the only type of Errors encountered during the run are Non-Critical Errors, then that User Acceptance Test will be deemed to have been successfully completed on a qualified basis.
 - (d) If a User Acceptance Test run has not been completed or a User Acceptance Test run has been completed but the Errors encountered during the User Acceptance Test run are Blocking Errors, Critical Errors and/or Systemic Errors, then CFH may direct the User Acceptance Test run to be repeated once the Error has been diagnosed, corrected and re-tested by the Company.
 - (e) A User Acceptance Test will be deemed to be successfully completed if CFH fails to undertake that User Acceptance Test within the UAT Period, provided the Company has complied with all of its obligations relevant to that User Acceptance Test. A User Acceptance Test will not otherwise be deemed to be successfully completed or successfully completed on a qualified basis if the User Acceptance Test is not completed within the UAT Period.

4. Test Problem Reports (TPRs)

4.1 Errors during User Acceptance Test runs

If, during the course of a User Acceptance Test, an Error is encountered, CFH may issue a TPR to the Company.

4.2 Test Problem Reports

Each TPR will describe:

- (a) the activities being undertaken during the User Acceptance Test run; and
- (b) what occurred and the nature and severity of any Errors.

4.3 Outstanding Test Problem Reports

A TPR will remain outstanding until CFH confirms in writing that the TPR has been resolved by the correction and re-testing by the Company of all outstanding Errors the subject of that TPR.

5. UAT Certificates

5.1 UAT complete

- (a) User Acceptance Testing will only be complete or deemed to be complete when:
- (i) all UAT Test Cases have been run within the UAT Period for all User Acceptance Testing and CFH issues a UAT Certificate to the Company pursuant to clause 5.2 of this Annexure; or
 - (ii) CFH has notified the Company in writing of a decision not to undertake UAT, or
 - (iii) if CFH has not advised the Company that it has commenced, or will commence, performance of UAT within 10 Business Days of CFH being notified of the completion of Company Testing through receipt by CFH of a Test Readiness and Commissioning Complete Certificate, in which case User Acceptance Testing will only be deemed complete subject to and in accordance with clause 5.1(b); or
 - (iv) CFH has failed to undertake UAT within the UAT Period, in which case User Acceptance Testing will only be deemed complete subject to and in accordance with clauses 5.1(b).
- (b) If at any time the Company believes that clause 5.1(a)(iii) or clause 5.1(a)(iv) applies:
- (i) the Company will notify CFH to that effect (the UAT Reminder Notice);
 - (ii) CFH will, within five Business Days of receiving a UAT Reminder Notice, either issue the Company with a UAT Certificate pursuant to clause 5.2, or provide the Company with reasons why it believes the requirements of clause 5.2 have not been met, and the provisions of clause 4 will apply to remedy any non-compliance; and
 - (iii) if CFH fails to respond to the UAT Reminder Notice by issuing a UAT Certificate pursuant to clause 5.2 or a TPR pursuant to clause 4 within five Business Days of receiving the UAT Reminder Notice (the UAT Reminder Deadline), User Acceptance Testing will be deemed to be completed on the UAT Reminder Deadline and CFH will issue the Contractor with a UAT Certificate pursuant to clause 5.2.

5.2 Issuance of UAT Certificates

CFH will issue a UAT Certificate if all User Acceptance Testing for all UAT Test Cases (including any additional UAT Test Cases) are complete, no TPRs are outstanding and no Errors are recorded on or in an attachment to the UAT Certificate as still requiring resolution in respect of the relevant Network Stage, Infill Premises or Greenfield Sites, and provided that for any Communal Infrastructure for Premises in a Network Stage, all the Premises in the relevant Network Stage (other than Exempt Premises) have been Passed by the relevant Communal Infrastructure and Handed Over, with such UAT Certificate to be issued within 10 Business Days of the date of completion of all such matters. Where UAT is deemed to be complete pursuant to clause 5.1(a)(ii) the date of completion of all such matters shall be the date on which CFH notified the Company of its decision not to undertake UAT. Where UAT is deemed to be complete pursuant to clauses 5.1(a)(iii) and 5.1(b) or 5.1(a)(iv) and 5.1(b) the date of completion of all such matters shall be the UAT Reminder Deadline.

5.3 Qualified UAT Certificate

If:

- (a) all User Acceptance Testing for all UAT Test Cases (including any additional UAT Test Cases) are complete;
- (b) there are Errors outstanding but there is a TPR in place to resolve each such Error; and
- (c) the Company warrants to CFH in writing that:
 - (i) all of the outstanding Errors will be remedied during the remediation period set out in the relevant TPR; and
 - (ii) the existence of those Errors will not affect the operation of the Network,

then CFH may, but is not obliged to, issue a Qualified UAT Certificate (except where the only Errors outstanding are non-Critical Errors, in which case CFH must issue a Qualified UAT Certificate, subject to the satisfaction of the requirements in this clause 5.3). In this instance the Company may still submit a Notice of Completion to CFH in respect of the relevant Network Stage, provided that where the UAT Certificate attached to a Notice of Completion is a Qualified UAT Certificate, CFH may withhold a part of the relevant payments to the Company for that Network Stage that is reasonably proportionate to the extent of such outstanding Errors until such outstanding Errors have been remedied. Where a Qualified UAT Certificate relates to Infill Premises and/or Greenfield Sites for which no payment by CFH is required, CFH may withhold from any payment then due to the Company on account of any Network Stage an amount that is reasonably proportionate to the extent of such outstanding Errors in respect of such Infill Premises and/or Greenfield Sites until the outstanding Errors in respect of such Infill Premises and/or Greenfield Sites have been remedied.

5.4 User Acceptance Test failure

If at the expiry of the UAT Period:

- (a) User Acceptance Testing in relation to any UAT Test Case (including any additional UAT Test Case) and/or the overall User Acceptance Testing remains incomplete; or
- (b) any TPRs referencing Blocking Errors, Critical Errors and/or Systemic Errors remain outstanding,

then CFH may:

- (c) direct the Company to remedy any Blocking Errors, Critical Errors and/or Systemic Errors within such reasonable time as specified by CFH, or such other time as agreed between the parties; and
- (d) in the event that the Company fails to remedy all of the Blocking Errors, Critical Errors and/or Systemic Errors within the time period specified under clause 5.4(c) of this Annexure, CFH may elect to:
 - (i) extend the period within which the Company is to remedy the remaining Blocking Errors, Critical Errors and/or Systemic Errors;
 - (ii) if a period of 30 days has elapsed since the completion of UAT, reject the Network Stage, Infill Premises or Greenfield Site (as applicable) as a result of its failure to successfully pass the User Acceptance Tests; or

- (iii) accept the Network Stage, Infill Premises or Greenfield Site (as applicable) on terms agreed by the parties.

Annexure 4: [REDACTED]

	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

	[REDACTED]	[REDACTED]	[REDACTED]
			<ul style="list-style-type: none">[REDACTED][REDACTED][REDACTED][REDACTED][REDACTED][REDACTED][REDACTED][REDACTED][REDACTED][REDACTED]

Annexure 5: Notice of Completion

Date: *[insert date]*

To: Crown Fibre Holdings Limited

1. We refer to the Network Infrastructure Project Agreement dated 26 January 2017 between Chorus Limited and Crown Fibre Holdings Limited (the Agreement). A capitalised term used but not defined in this Notice of Completion has the meaning given to that term in the Agreement.
2. This is a Notice of Completion as referred to in clause 10 of Schedule 3 of the Agreement in respect of [**identify Network Stage**] (the **Relevant Network Stage**).
3. [A. The UAT Certificate for the Relevant Network Stage is set out in Appendix A.]

OR
4. [B. A UAT Certificate was deemed to have been issued by CFH for the Relevant Network Stage in accordance with clauses 5.1(b) and 5.2 of Annexure 3 as a result of ***[insert description of circumstances in which the UAT Certificate was deemed to have been issued]***].
5. The Test Readiness and Commissioning Complete Certificate for the Relevant Network Stage is set out in Appendix B.
6. In respect of the Relevant Network Stage, Appendix C sets out:
 - (a) the Applicable N_{passed}; and
 - (b) whether the UAT Certificate attached as Appendix A is a Qualified UAT Certificate and, if so, details as to why the Qualified UAT Certificate was issued.
7. Appendix C also identifies:
 - (c) the number of Premises that are Infill Premises or located on Infill Greenfield Sites or Adjoining Greenfield Sites and which have been Passed in the period between the date of the current Notice of Completion and the most recent Notice of Completion issued prior to the current Notice of Completion; and
 - (d) in respect of the Premises referred to in paragraph 6(a), the:
 - (i) relevant FFPs by reference to the FFP ID;
 - (ii) total number of Premises Passed per FFP;
 - (iii) type of OFDF (connectorised vs fusion spliced); and
 - (iv) type of deployment (single-sided or double-sided/aerial or underground).
8. We confirm that the Build Complete Milestone for the Relevant Network Stage has been satisfied in accordance with Annexure 2 of Schedule 3 (and, for the avoidance of doubt, confirm the satisfaction of each of the Individual Milestones required to be satisfied in order to satisfy the Build Complete Milestone).

- 9. We confirm that each Premises in the Relevant Network Stage (other than Exempt Premises) has been Passed with Communal Infrastructure.

- 10. We will inform you immediately if, between the date of this Notice of Completion and the Issue Date, any of the matters in this Notice of Completion are no longer correct, or if we become aware of circumstances that may result in one or more of the matters in this Notice of Completion being no longer correct on or before the Issue Date.

Yours faithfully

Signed for and on behalf of Chorus Limited

by: _____

Name and Title: _____

Authorised Signatory

Dated _____

Enc.

Appendix A: UAT Certificate for the Relevant Network Stage

**Appendix B: Test Readiness and Commissioning Complete
Certificate for the Relevant Network Stage**

Appendix C: Details required by clause 10(b) of Schedule 3 to the Agreement

1. **Applicable N_{passed}**
[insert]
2. **Unique Premises IDs**
[insert]
3. **Details of Qualified UAT Certificate (if applicable)**
[insert]
4. **Infill Premises / Infill Greenfield Sites / Adjoining Greenfield Sites**
[insert]

Schedule 5: Service Levels

1. Principles

- 1.1 This Schedule defines the principles which apply to the measurement and calculation of Service Levels and Service Default Payments, in accordance with and subject to the provisions of clause 6.4 of the Base Agreement.
- 1.2 If, in respect of a particular Service Level set out in Annexure 1 of this Schedule, a change to that Service Level is:
- (a) agreed through the TCF; and
 - (b) approved by CFH, subject to any conditions attached to such approval being agreed to by the Company,
- (an **Approved Service Level Amendment**),
- then this Schedule shall be amended to give effect to the Approved Service Level Amendment but only to the extent necessary.

2. Commencement, Measurement and Reporting of Service Levels

- 2.1 The Company must begin measuring and reporting its performance against the Service Levels from the applicable Service Level Commencement Date.
- 2.2 Unless otherwise specified in this Schedule, the Company's performance of each Service Level will be measured and reported monthly.
- 2.3 The Service Levels measure performance in the Coverage Area as a whole, other than the:
- (a) Layer 1 Service Availability - Average Downtime Service Level (set out in clause 4.1 of Annexure 1 of this Schedule); and
 - (b) Layer 2 Service Availability – Average Downtime Service Level (set out in clause 5.1 of Annexure 1 of this Schedule),
- which measure performance in each POI Area individually (and the performance in each POI Area must meet the minimum specified level of performance in order for the Service Level to be met).
- 2.4 The Company's performance of the Customer Installation Experience Service Levels (set out in clause 3 of Annexure 1 of this Schedule) will be measured on a quarterly basis by way of the results of the Connection Satisfaction Survey.
- 2.5 The Company must:
- (a) in respect of each quarter from the date 12 months after the date on which Premises are Commissioned in the first Network Stage (the **Connection Satisfaction Commencement Date**), procure that sufficient End Users in the Coverage Area which has been Connected in the relevant quarter are provided with a copy of the Connection Satisfaction Survey (the **Quarterly Connection Satisfaction Survey**)

such that the Company can achieve a statistically significant sample responses. The Company will not provide a Connection Satisfaction Survey to End Users where the relevant RSP declines to permit the Company to do so (reasonable evidence of which the Company must provide to CFH);

- (b) use all reasonable efforts to receive a statistically significant sample of completed Connection Satisfaction Surveys from End Users in the Coverage Area;
- (c) if unable to achieve a statistically significant sample of completed Connection Satisfaction Surveys despite using all reasonable efforts, consider incentive programmes for End Users to complete the Connection Satisfaction Survey.
- (d) not make any changes to the Connection Satisfaction Survey, unless:
 - (i) the changes have been made following consultation with RSPs in relation to any such changes and the Company has, in good faith, taken into account feedback received from RSPs during such consultation; and
 - (ii) CFH has been consulted on the relevant changes; and
- (e) conduct the Quarterly Connection Satisfaction Survey process in a neutral manner, without influencing the End Users being surveyed.

3. Service Default Payments

- 3.1 In accordance with clause 6.4 of the Base Agreement, the Company will, from the date on which Premises in a Network Stage are Commissioned (the **RSP Service Level Commencement Date**), be liable to pay the Service Default Payments for a failure to meet the RSP Service Levels.
- 3.2 In addition to the Company's liability to pay Service Default Payments for failures to meet the RSP Service Levels pursuant to clause 3.1 of this Schedule, the Company will, from the date on which the Build Complete Milestone is achieved for the relevant Network Stage (**CFH Service Level Commencement Date**) also be liable to pay the Service Default Payments for a failure to meet the CFH Service Levels.
- 3.3 In addition to the Company's liability to pay Service Default Payments for failures to meet the RSP Service Levels and the CFH Service Levels pursuant to clauses 3.1 and 3.2 of this Schedule, the Company will, from the Connection Satisfaction Commencement Date, be liable to pay the Service Default Payments for a failure to meet the Customer Installation Experience Service Level set out in clause 3.2 of Annexure 1.

Annexure 1: Service Level Descriptions

1. Dark fibre access provisioning Service Levels

- 1.1 The Service Levels set out in this clause 1 do not apply to Premises which are not Passed by Communal Infrastructure.
- 1.2 Subject to clause 1.3 of this Annexure, the Company will complete the installation of Connections as follows:
- (a) **Fibre Connection (excluding NBAPs)**
- (i) **RSP**
- (A) Each installation of a Connection (whether Residential or Business) must be completed on the date agreed between the Company and the RSP and/or End User (as applicable) (the **Agreed Connection Date**).
- (B) Subject to clause 1.4, 90% or more of all Agreed Connection Dates (whether relating to Residential or Business Connections, but excluding NBAPs) must be scheduled to be completed within 60 days of the receipt by the Company of a properly completed order from an RSP to connect an End User and all necessary consents and permissions required by Law (excluding road opening notices) for that Connection. The Company will use reasonable endeavours to serve notices, procure the necessary consents and permissions for which it is responsible as soon as practicable
- (ii) **CFH**
- 75% or more of all installations of Connections (whether Residential or Business) must be completed by the Agreed Connection Date.
- (b) **NBAP – Fibre Connection – RSP**
- Each installation of an NBAP Connection must be completed within 60 Business Days following receipt of all necessary permissions and consents required by Law (excluding road opening notices) or such later date agreed between the RSP and the relevant End User with permissions and consents to be sought by the Company within one Business Day of the Company's receipt of a properly completed order from an RSP.
- 1.3 Any time period during which:
- (a) any Force Majeure Event prevents installation of a Connection or prevents restoration of Connection which is subject to Downtime; or
- (b) the Company is, due to a Force Majeure Event, unable to safely access any location or premises where physical access is required to install a Connection or restore a Connection which is subject to Downtime,

will be added to the periods specified in clauses 1.2(a) and 1.2(b) of this Annexure as applicable.

- 1.4 The Service Level in clause 1.2(a)(i)(B) will not apply to any Connections ordered in any month by an RSP:
- (a) in excess of the limits set out in clause 6.13 of the Bitstream Operations Manual that forms part of the Reference Offer (**Bitstream Operations Manual**); or
 - (b) where an RSP has not provided the forecasts required by clauses 6.5 to 6.11 of the Bitstream Operations Manual, in excess of the deemed forecasts pursuant to clause 6.12 of the Bitstream Operations Manual.
- 1.5 Connections in excess of the limits set out in clause 6.13 of the Bitstream Operations Manual (including Connections in excess of the deemed forecasts pursuant to clause 6.12 of the Bitstream Operations Manual) will not be taken into account when calculating the service level in clause 1.2(a)(ii).
- 1.6 Clauses of the Bitstream Operations Manual referred to in this Schedule will, notwithstanding the expiry of the Bitstream Operations Manual, remain applicable for the purposes of this Schedule until the expiry of this Schedule.

2. **Layer 2 Service provisioning Service Levels**

- 2.1 Subject to clause 2.2 of this Annexure, the Company will provision the Layer 2 Services as follows:
- (a) **Layer 2 Services (excluding NBAP)**
 - (i) **RSP**

Layer 2 Services ordered in relation to a Connection (whether relating to Residential or Business Connections, but excluding NBAPs):

 - (A) at the same time as an installation of a Connection are to be provisioned concurrently with the completion of the Connection; or
 - (B) if independently from an order for an installation of a Connection (provided that the relevant Premises has previously been Connected (even if a UFB Service is not currently being provided) and that Connection remains intact and capable of remote activation) are to be provisioned within five Business Days of a properly completed order being received by the Company (or such later date as agreed between the RSP and the relevant End User).
 - (ii) **CFH**

75% or more of all Layer 2 Services due to be delivered within the time frames determined in accordance with clause 2.1(a)(i) of this Annexure must be completed within the relevant periods specified in clause 2.1(a)(i) of this Annexure.
 - (b) **NBAP - Layer 2 Services**
 - (i) **RSP**

Layer 2 Services ordered in relation to an NBAP Connection:

- (A) at the same time as an installation of an NBAP Connection are to be provisioned concurrently with the completion of the Connection; or
 - (B) if independently from an order for an installation of an NBAP Connection (provided that the relevant Premises is already Connected) are to be provisioned within five Business Days of a properly completed order being received by the Company (or such later date as agreed between the RSP and the relevant End User).
- (ii) **CFH**
- 75% or more of all Layer 2 Services due to be delivered within any given month as determined in accordance with clause 2.1(b)(i) of this Annexure must be completed within the relevant periods specified in clause 2.1(b)(i) of this Annexure.
- (c) **Bandwidth upgrade of Layer 2 Services**
- (i) **RSP**
- A Bandwidth upgrade of Layer 2 Services must be provisioned within one Business Day following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the relevant End User).
- (ii) **CFH**
- 75% or more of all Layer 2 Services upgrades due to be provisioned within a month as determined in accordance with clause 2.1(c)(i) of this Annexure must be completed within the period specified in clause 2.1(c)(i) of this Annexure.
- (d) **Multicast – RSP**
- A multicast service must be provisioned for an RSP within 3 months from the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the Company and the RSP).
- (e) **Multicast - End User**
- (i) **RSP**
- Provided that the necessary multicast service has previously been provisioned for the relevant RSP, a multicast service must be provisioned for an End User (provided that the relevant Premises is Connected) within one Business Day following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the relevant End User).
- (ii) **CFH**
- 75% or more of all multicast services due to be provisioned within a month as determined in accordance with clause 2.1(e)(i) of this Annexure must be completed within the period specified in clause 2.1(e)(i) of this Annexure.

2.2 Any time period during which:

- (a) any Force Majeure Event prevents provisioning of a Layer 2 Service, Bandwidth upgrade or multicast service; or
- (b) the Company is, due to a Force Majeure Event, unable to safely access any location or premises where physical access is required to provision a Layer 2 Service, Bandwidth upgrade or multicast service,

will be added to the periods specified in 2.1(a), 2.1(b), 2.1(c), 2.1(d) and 2.1(e) of this Annexure as applicable.

3. Customer Installation Experience Service Levels

3.1 Fibre Connections – Customer Satisfaction – RSP

The Company must achieve a Connection Satisfaction Score of 70% or more in a Quarterly Connection Satisfaction Survey completed in accordance with clauses 2.4 and 2.5 of this Schedule.

3.2 Fibre Connections – Customer Satisfaction – CFH

The Company must achieve a Connection Satisfaction Score of 60% or more in at least one out of every two consecutive Quarterly Connection Satisfaction Surveys completed in accordance with clause 2.4 and 2.5 of this Schedule.

4. Layer 1 Service Availability

4.1 Layer 1 Service Availability – Average Downtime - CFH

The Layer 1 dark fibre service between the Premises or NBAP terminations and the CO fibre distribution frame (excluding the non-diverse Layer 1 Backhaul that serves the relevant POI Area) must meet the following minimum Service Level (excluding Downtime directly caused by Force Majeure Events):

Service Level:

The Average Downtime per End User within each POI Area in the Availability Period that is caused by a fault in the Layer 1 dark fibre service must be ≤ 2 hours.

Definition:

“Average Downtime per End User within each POI Area in the Availability Period that is caused by a fault in the Layer 1 dark fibre service” = A/B.

A = the sum of the Downtime for all End Users within the relevant POI Area in the Availability Period that is caused by a fault in the Layer 1 dark fibre service; and

B = the average total number of End Users within the POI Area over the Availability Period.

4.2 Layer 1 Service Availability – Maximum Downtime - RSP

The Layer 1 dark fibre service between the Premises or NBAP terminations in a POI Area and the CO fibre distribution frame (excluding the non-diverse Layer 1 Backhaul that serves the relevant POI Area) must meet the following minimum Service Level (excluding Downtime directly caused by Force Majeure Events):

Service Level:

Maximum Downtime for each End User in the Availability Period that is caused by a fault in the Layer 1 dark fibre service must be:

- (a) ≤ 48 hours (the **Layer 1 Service Default Service Level**); or
- (b) ≤ 24 hours (the **Layer 1 Service Enhanced Service Level 1**); or
- (c) ≤ 12 hours (the **Layer 1 Service Enhanced Service Level 2**); or
- (d) ≤ 8 hours (the **Layer 1 Service Enhanced Service Level 3**).

The Layer 1 Service Enhanced Service Level 1, the Layer 1 Service Enhanced Service Level 2 and the Layer 1 Service Enhanced Service Level 3 are collectively referred to as the **Layer 1 Service Enhanced Service Levels**.

Definition:

Maximum Downtime for each End User in each Availability Period that is caused by a fault in the Layer 1 dark fibre service = the sum of the Downtime experienced by the End User in the Availability Period that is caused by a fault in the Layer 1 dark fibre service.

4.3 Enhanced Layer 1 Service Availability – Maximum Downtime Service Levels - RSP

- (a) The Layer 1 Service Default Service Level set out in clause 4.2 of this Annexure is the default Service Level provided to each End User unless the End User elects to purchase a Layer 1 Service Enhanced Service Level in accordance with clause 4.3(b) of this Annexure.
- (b) The Layer 1 Service Enhanced Service Levels (as set out in clause 4.2 of this Annexure):
 - (i) must be offered by the Company to RSPs to offer to End Users in relation to Business Connections and NBAP Connections and must be provided to each such End User that elects to purchase a Layer 1 Service Enhanced Service Level; and
 - (ii) may, at the Company's discretion, be offered to RSPs to offer to End Users in relation to Residential Connections and must be provided to each such End User that elects to purchase a Layer 1 Service Enhanced Service Level.

5. Layer 2 Service Availability

5.1 Layer 2 Service Availability – Average Downtime - CFH

The Layer 2 Service, between the ONT port and the CO (including the OLT, but excluding any Layer 1 Service and any non-diverse Layer 2 Backhaul that serves the relevant POI Area) must meet the following minimum Service Level (excluding Downtime directly caused by Force Majeure Events):

Service Level:

The Average Downtime per End User within each POI Area in each Availability Period that is caused by a fault in the Layer 2 Service must be ≤ 30 minutes.

Definition:

“Average Downtime per End User within each POI Area in the Availability Period that is caused by a fault in the Layer 2 Service” = A/B.

A = the sum of the Downtime for all End Users within the relevant POI Area in the Availability Period that is caused by a fault in the Layer 2 service; and

B = the average total number of End Users within the POI Area over the Availability Period.

5.2 Layer 2 Service Availability – Maximum Downtime – RSP

The Layer 2 Service, between the ONT port and the POI (including the ENNI, but excluding any Layer 1 Service and any non-diverse Layer 2 Backhaul that serves the relevant POI Area) must meet the following minimum Service Level (excluding Downtime directly caused by Force Majeure Events):

Maximum Downtime for each End User in each Availability Period that is caused by a fault in the Layer 2 Service must be:

- (a) ≤ 12 hours (excluding Downtime caused by an ONT failure) (the **Layer 2 Service Default Service Level**); or
- (b) ≤ 12 hours (including Downtime caused by an ONT failure) (the **Layer 2 Service Enhanced Service Level 1**); or
- (c) ≤ 8 hours (including Downtime caused by an ONT failure) (the **Layer 2 Service Enhanced Service Level 2**).

The Layer 2 Service Enhanced Service Level 1 and the Layer 2 Service Enhanced Service Level 2 are collectively referred to as the **Layer 2 Service Enhanced Service Levels**.

Definition:

Maximum Downtime for each End User in each Availability Period that is caused by a fault in the Layer 2 Service = the sum of the Downtime experienced by the End User in the Availability Period that is caused by a fault in the Layer 2 service.

5.3 Enhanced Layer 2 Service Availability Service Levels - RSP

- (a) The Layer 2 Service Default Service Level set out in clause 5.2 of this Annexure is the default Service Level provided to each End User unless the End User elects to purchase a Layer 2 Service Enhanced Service Level in accordance with clause 5.3(b) of this Annexure.
- (b) The Layer 2 Service Enhanced Service Levels (as set out in clause 5.2 of this Annexure):
- (i) must be offered by the Company to RSPs to offer to End Users in relation to Business Connections and NBAP Connections and must be provided to each such End User that elects to purchase a Layer 2 Service Enhanced Service Level; and
 - (ii) may, at the Company's discretion, be offered to RSPs to offer to End Users in relation to Residential Connections and must be provided to each such End User that elects to purchase a Layer 2 Service Enhanced Service Level.

- 5.4 The Layer 2 Service Availability Service Levels (set out in clauses 5.1 (Average Downtime) and clause 5.2 (Maximum Downtime) of this Annexure) measure Layer 2 Service availability only. Downtime caused directly by the failure of an underlying Layer 1 Service will not be included in the measurement of the Layer 2 Service Availability Service Levels, but will be included in Layer 1 Service Availability Service Levels.

6. Layer 2 – Disconnections

6.1 Disconnections – RSP

Each disconnection of a Connection must be completed within one Business Day following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the relevant End User).

6.2 Disconnections – CFH

75% or more of all disconnections of a Connection due to be made within a month in accordance with clause 6.1 of this Annexure must be completed within the period set out in clause 6.1 of this Annexure.

7. Layer 2 Traffic

7.1 Layer 2 Traffic Service Levels

Each End User's traffic for point to point services must be delivered to the POI within the following Service Levels, measured over each five minute interval (24 hours per day):

	Frame Delay must be:	Frame Delay Variation must be:	Frame Loss must be:
CIR Primary	≤ 7 mS	≤ 1 mS	≤ 0.1%
CIR Secondary	≤ 12 mS	≤ 1 mS	≤ 0.1%
EIR	n/a	n/a	≤ 2%

The CIR Primary measures apply unless the primary backhaul link has failed and the traffic has been transferred to a secondary link in which case the CIR Secondary measures apply. CIR Secondary measures apply for a maximum of 96 hours following the failure of the primary backhaul in a Candidate Area after which the Company must comply with the CIR Primary measure.

The traffic should be within these Service Levels for at least 99% of the time within the five minute measurement interval, otherwise the service is to be considered unavailable for that five minute interval.

7.2 End User traffic – GPON services

Each End User's traffic for GPON services must be delivered to the POI within the following Service Levels, measured over each five minute interval (24 hours per day):

	Frame Delay must be:	Frame Delay Variation must be:	Frame Loss must be:
CIR Primary	≤ 7 mS	≤ 3 mS	≤ 0.1%
CIR Secondary	≤ 12 mS	≤ 3 mS	≤ 0.1%
EIR	n/a	n/a	≤ 2%

The CIR Primary measures apply unless the primary backhaul link has failed and the traffic has been transferred to a secondary link in which case the CIR Secondary measures apply. CIR Secondary measures apply for a maximum of 96 hours following the failure of the primary backhaul in a Candidate Area after which the Company must comply with the CIR Primary measure.

At least 99% of the frames within the five minute measurement interval must be within the above Service Levels, otherwise the GPON service is to be considered unavailable for that five minute interval.

7.3 Measurement of Layer 2 Traffic Service Level

The Company must comply with the Layer 2 Traffic Performance Measurement and Reporting Regime.

8. Co-location Provisioning Service Levels

8.1 The Company will provision the Standard Installation for the co-location Services in accordance with the following Service Levels:

(a) **Co-location Space Allocation**

(i) **New Interconnection Point**

Space, racks, power and tie cables at any new Interconnection Point will be provisioned by the Company within 20 Business Days following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the Company).

(ii) **Existing Interconnection Point**

Space, racks, power and tie cables at any Interconnection Point where the RSP already receives co-location services will be provisioned by the Company within 20 Business Days following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the Company).

(b) **Additional Tie Cables**

Additional tie cables will be provisioned by the Company within 20 Business Days following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the Company).

(c) **MOFDF Service Orders**

Work on the MOFDF (such as running cross patch jumpers but excluding jumpers that form part of an individual connection order from an RSP) will be provisioned by the Company within four Business Days following the Company's receipt of a properly completed order from an RSP (or such later date as agreed between the RSP and the Company).

8.2 Any time period during which:

- (a) any Force Majeure Event prevents provisioning of a co-location service; or
- (b) the Company is, due to a Force Majeure Event, unable to access any location or Premises where physical access is required to provision a co-location service,

will be added to the periods specified in 8.1(a)(i), 8.1(a)(ii), 8.1(b) and 8.1(c) as applicable.

9. **RSP Establishment Service Levels**

The on boarding process for RSPs (the **Process**) is set out in the Wholesale Services Agreement. The Company will establish RSPs on the Network in accordance with the following Service Levels:

(a) **Layer 1 RSP**

The Company will, on receipt of a request from an RSP, establish the RSP on the Network and enable the RSP to provide access to Layer 1 services to End Users using the Network (including service testing, completion of co-location services, provision of the Wholesale Services Agreement and OSS/BSS readiness) within that number of Business Days following the Company's receipt of a properly completed request from the RSP seeking such establishment that is specified in the Process for the items necessary for the establishment of the RSP.

(b) **Layer 2 RSP**

The Company will, on receipt of a request from an RSP, establish the RSP on the Network and enable the RSP to provide access to Layer 2 Services to End Users using the Network (including service testing, completion of co-location services, provision of the Wholesale Services Agreement and OSS/BSS readiness) within that number of Business Days following the Company's receipt from a properly completed request from the RSP seeking such establishment that is specified in the Process for the items necessary for the establishment of the RSP.

10. Backhaul Service Levels

10.1 The Company must report quarterly to the PCG (in December, March, June and September) on Average Backhaul Downtime.

10.2 The Backhaul must meet the following minimum Service Levels:

Maximum Average Backhaul Downtime means nine hours and thirty minutes. This is the average downtime of all Chorus backhaul across the whole of the Chorus network calculated as at November 2016 over the preceding 12-month period.

Average Backhaul Downtime means the average amount of time (over the preceding 12-month period), measured in minutes, that Backhaul is unable to provide service (but excluding time that Backhaul is unable to provide service as a result of Force Majeure Events) measured as A/B where:

A = the sum of all downtime on Backhaul (excluding downtime caused by Force Majeure Events)

B = the number of times that Backhaul is subject to downtime.

Where there is a diverse link, then all links must be unavailable before downtime is counted towards the Average Backhaul Downtime.

10.3 Backhaul – Maximum Downtime – CFH:

- (a) The Company must use all reasonable endeavours to restore any fault in or failure of any Backhaul as soon as practicable, but in any event the Average Backhaul Downtime must not exceed the Maximum Average Backhaul Downtime.
- (b) If the Average Backhaul Downtime exceeds the Maximum Average Backhaul Downtime (**Backhaul Restore Excessive Delay**), then the Company must, within one month of the Backhaul Restore Excessive Delay occurring, provide CFH with a written report (**Restoration Report**) explaining the reason for the Backhaul Restore Excessive Delay, and the steps the Company will take to prevent a Backhaul Restore Excessive Delay reoccurring.
- (c) If the Company does not provide a Restoration Report that is satisfactory to CFH (acting reasonably), or there are three or more Backhaul Restore Excessive Delays over a 12-month period, then CFH may request a Remedial Plan to be prepared in accordance with clause 17 of the Base Agreement.

11. Service Level Extensions

11.1 Subject to clause 11.2, the Company Service Level response times set out in this Annexure 1 shall be extended in the following circumstances:

- (a) satisfaction of the Service Level is prevented as a direct result of a serious health and safety issue outside of the Company's control;
- (b) satisfaction of the Service Level is prevented as a direct result of a delay in the provision of materials or information to be supplied by the RSP, required to complete the service;

- (c) acts or omissions of RSPs that prevent the Company from meeting a Service Level (unless the RSP has received the Company's prior approval for such act or omission);
- (d) acts or omissions of End Users that prevent the Company from meeting a Service Level (unless the End User has received the Company's prior approval for such act or omission);
- (e) any period of extension agreed with the relevant End User; and
- (f) A Force Majeure Event prevents satisfaction of the Service Level, including, for the avoidance of doubt, any Force Majeure Event affecting a Subcontractor or supplier of the Company which, if it occurred in relation to the Company, would have been a Force Majeure Event (as referenced in clause (g) of the definition of "Force Majeure" in this Agreement),

each a **Service Impairment**.

11.2 Any Service Level extension under clause 11.1:

- (a) will be limited to the time that the Service Impairment continues to prevent or make illegal the Company's performance of the applicable Service Level; and
- (b) is subject to the Company promptly taking all reasonable steps, in accordance with Best Industry Practice, to eliminate or avoid the Service Impairment and mitigate its effect; and
- (c) in relation to any Service Level extension under clause 11.1(a) to (e) only, will not be given to the extent the Service Impairment is caused or contributed to by the Company or its Subcontractors' acts or omissions, the acts or omissions of any supplier of the Company, or any person within the control or under the responsibility of the Company.

Annexure 2: Service Default Payments

Service Default Payments

The following table specifies the Service Default Payments payable to CFH by the Company. Those Service Levels identified as “RSP” are not payable to CFH, but the Company must pay the Service Default Payments to the relevant RSP in accordance with the relevant Wholesale Services Agreement. The remaining Service Default Payments (being those payments connected with Service Levels identified as “CFH”) are payable to CFH and/or the Crown in accordance with clause 6.4(b) of the Base Agreement.

Service Level (references are to clauses in Annexure 1)	Service Default Payments
Dark fibre access provisioning Service Levels	
1.2(a)(i)(A) - Fibre Connection (excluding NBAPs) - RSP	One month's rental fee for the relevant service(s) per Connection that is not installed by the Agreed Connection Date.
1.2(a)(i)(B) – Fibre Connection (excluding NBAPs) - RSP	One month's rental fee for the relevant service(s) per Connection that is not scheduled within the timeframe specified in clause 1.2(a)(i)(B) of Annexure 1 of this Schedule.
1.2(a)(ii) – Fibre Connection (excluding NBAPs) - CFH	0.5% of the annual rental fee for Layer 1 and Layer 2 Services in the UFB2 Coverage Area.
1.2(b) – NBAP - Fibre Connection – RSP	One month's rental fee for the relevant service(s) per Connection that is not installed within the timeframe specified in clause 1.2(b) of Annexure 1 of this Schedule.
Layer 2 Service provisioning Service Levels	
2.1(a)(i)(A) – Layer 2 Services (excluding NBAP) – RSP	One month's rental fee for the relevant service(s) each time the provisioning is not made within the timeframe specified in clause 2.1(a)(i)(A).
2.1(a)(i)(B) – Layer 2 Services (excluding NBAP) – RSP	One month's rental fee for the relevant service(s) each time the provisioning is not made within the timeframe specified in clause 2.1(a)(i)(B).
2.1(a)(ii) – Layer 2 Services (excluding NBAP) – CFH	0.5% of the annual rental fee for Layer 1 and Layer 2 Services in the UFB2 Coverage Area.
2.1(b)(i)(A) – NBAP – Layer 2 Services - RSP	One month's rental fee for the relevant service(s) each time the provisioning is not made within the timeframe specified in clause 2.1(b)(i)(A).
2.1(b)(i)(B) – NBAP – Layer 2 Services – RSP	One month's rental fee for the relevant service(s) each time the provisioning is not made within the timeframe specified in clause 2.1(b)(i)(B).
2.1(c)(i) - Bandwidth upgrade of Layer 2 Services - RSP	10% of the applicable monthly rental fee for the service per complete three-hour period that the service is late (capped at one month's rental).
2.1(c)(ii) – Bandwidth upgrade of Layer 2 Services - CFH	0.5% of the annual rental fee for Layer 2 service(s) in the UFB2 Coverage Area.
2.1(d) - Multicast - RSP	10% of the applicable monthly rental fee for the service per complete business day that the service is late (capped at one month's rental).

Service Level (references are to clauses in Annexure 1)	Service Default Payments
2.1(e)(ii) – Multicast - End User – CFH	0.5% of the annual rental fee for the Layer 2 service(s) in the UFB2 Coverage Area.
Customer Installation Experience Service Levels	
3.2 - Fibre Connections – Customer Satisfaction – CFH	0.25% of the annual rental fee for the Layer 1 and Layer 2 services in the UFB2 Coverage Area.
Layer 1 Service Availability Service Levels	
4.1 Layer 1 Service Availability – Average Downtime - CFH	0.5% of annual rental fee for the Layer 1 and Layer 2 service(s) in the UFB2 Coverage Area.
4.2 - Layer 1 Service Availability - Maximum Downtime - RSP	<p>Percentage of the applicable monthly rental fee for the Connection and any service(s) provided over the Connection per complete hour of Downtime over the Maximum Downtime:</p> <p>(a) Default Service Level: 10% (capped at one month's rental fee for Layer 1 and Layer 2 service(s));</p> <p>(b) Enhanced Service Level 1: 15% (capped at two months' rental fee for Layer 1 and Layer 2 service(s));</p> <p>(c) Enhanced Service Level 2: 15% (capped at two months' rental fee for Layer 1 and Layer 2 service(s)); and</p> <p>(d) Enhanced Service Level 3: 15% (capped at three months' rental fee for Layer 1 and Layer 2 service(s)).</p>
Layer 2 Service Availability Service Levels	
5.1 Layer 1 Service Availability – Average Downtime - CFH	0.5% of annual rental fee for the Layer 1 and Layer 2 service(s) in the UFB2 Coverage Area.
5.2 - Layer 2 Service Availability - Maximum Downtime - RSP	<p>Percentage of applicable monthly rental fee for the Connection and any service(s) provided over the Connection per complete hour of Downtime over the Maximum Downtime:</p> <p>Default Service Level: 10% (capped at one month's rental fee for Layer 1 and Layer 2 service(s));</p> <p>Enhanced Service Level 1: 15% (capped at two months' rental fee for Layer 1 and Layer 2 service(s)); and</p> <p>Enhanced Service Level 2: 15% (capped at two months' rental fee for Layer 1 and Layer 2 service(s)).</p>
Layer 2 - Disconnections Service Levels	
6.1 – Layer 2 Disconnections – RSP	10% of the applicable monthly rental fee for the Connection and any service(s) provided over the Connection per complete three-hour period that the disconnection is late (capped at one month's rental).
6.2 – Layer 2 Disconnections – CFH	0.5% of the annual rental fee for the Layer 1 and Layer 2 service(s) in the UFB2 Coverage Area.
Co-location Service Levels	
8.1(a)(i) – Co-location Space Allocation (New Interconnection Point)	25% of the applicable monthly rental fee for the service for every 5 Business Days (or part thereof) that the service is late (capped at one month's rental).

Service Level (references are to clauses in Annexure 1)	Service Default Payments
8.1(a)(ii) – Co-location Space Allocation (Existing Interconnection Point)	25% of the applicable monthly rental fee for the service for every 5 Business Days (or part thereof) that the service is late (capped at one month's rental).
8.1(b) – Additional Tie Cables	25% of the applicable monthly rental fee for the new tie cable capacity for every 5 business days (or part thereof) that the service is late (capped at one month's rental).
8.1(c) – MOFDF Service Level	10% of the applicable service fee charged by the Company for the service for every complete hour that the service is late (capped at one month's rental).
RSP Establishment	
9.1(a) – Layer 1 RSP	<ul style="list-style-type: none"> (i) \$1,000 for every day (or part day) that the completion of the establishment is late (up to 7 days); and (ii) \$10,000 for every day (or part day) that the completion of the establishment is late (after the first 7 days).
9.1(b) – Layer 2 RSP	<ul style="list-style-type: none"> (i) \$1,000 for every day (or part day) that the completion of the establishment is late (up to 7 days); and (ii) \$10,000 for every day (or part day) that the completion of the establishment is late (after the first 7 days).

Annexure 3: Connection Satisfaction Survey

Project Install Experience Questionnaire (PN 109107898)

INSERT CONTACT DETAILS

- Name
- Telephone
- RSP
- Contact
- Residence type

INTRODUCTION

CATI:

- Good Afternoon my name is *** from Colmar Brunton, the market research company. May I please speak to (insert named contact)?

IF UNAVAILABLE - ARRANGE TO CALL BACK. RE-INTRODUCE IF NECESSARY

- You recently had a fibre broadband service installed. We are calling on behalf of Chorus who did the installation to get some feedback on your experience. If you qualify for the survey it will take around 10 minutes to complete. You will also have the option of completing it online, which will take you around 5 minutes. If you complete the survey, either on the phone, or online you will go into the draw to win \$500, but first I need to ask a few questions to make sure that you qualify.

QS1. Did you get fibre broadband installed...? READ OUT

At home → GO TO QS2	1
At work	2
At a home business →GO TO QS2	3

IF AT WORK ONLY AT QS1 SAY:

QS1a. I'm sorry, but at this stage we are only collecting information on people's experiences with having fibre broadband installed at home. However, we will be conducting a survey on business installs at some point in the future, would you be interested in taking part in this research?

Yes	1
No	2

THANK AND CLOSE

IF BOTH AT HOME AND AT WORK AT QS1 SAY:

Today we are asking about people's experiences with having fibre broadband installed at home. For the rest of this survey, please think about your experience of having fibre broadband installed at your home.

QS2. Can I please double check that you are the person who remained at home during the installation?

Yes → CONTINUE SKIP S2b	1
No → RECORD AND REINTRODUCE	2

ASK IF NO AT QS2

S2b. Is this person available to do the survey now?

Yes RE-INTRODUCE AND CONTINUE	1
No ASK FOR APPOINTMENT	2

Great, you are the person we are looking to talk to today. The survey should take about 10 minutes to complete, and we can interview you over the phone or send you a link to complete the survey online in your own time. Which would you prefer?

IF ONLINE:

Collect email contact details

IF PHONE:

Is now a convenient time to go through the survey with you?

MAKE APPOINTMENT IF NECESSARY

ONLINE INTRO

Today we are talking about your experience with the recent installation of fibre broadband at your home. We would like to talk to the person who remained home during the installation, if this isn't you please pass this survey on to them. *Please click on the next button to continue*

Just a couple of quick questions before we start.

ASK IF CODE 3 NOT SELECTED AT QS1

S3. Firstly, do you have your own business that you operate from home?

ONLINE: Please select one only

Yes	1
No	2

PRE INSTALLATION

INFORMATION AND ADVICE BEFORE INSTALLATION

Thinking back to before you had fibre broadband installed, and the information and advice that you were given:

Q1a. **CATI:** Using a scale of 1 to 10, where 1 means strongly disagree and 10 means strongly agree, How strongly do you agree or disagree that...: READ OUT

Information on how to get fibre was easy to find	1
Information on how to get fibre was easy to understand	2
You were given a realistic picture of the installation process	3
You were able to speak to someone knowledgeable about fibre	4
Your personal information was known – you did not have to repeat yourself	5
Ordering fibre was simple	6

Strongly disagree

Strongly agree

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

don't know

Q1b. Overall, how satisfied were you with the information and advice that you received before the installation?

CATI: Using a scale of 1 to 10, where 1 means extremely dissatisfied and 10 means extremely satisfied,

Extremely dissatisfied					Extremely satisfied				
1	2	3	4	5	6	7	8	9	10

don't know

APPOINTMENTS

Q2a. Did you receive a confirmed date for when an installer would come to your home to agree an installation plan?

Yes	1
No	2
Don't know	3

Q2b. Did you receive a confirmed date for when an installer would come to your home to connect your fibre?

Yes	1
No	2
Don't know	3

IF YES OR DON'T KNOW AT Q2 ASK Q4a – Q4b

Q4a. Did you have an appointment date that was changed?

CATI: Read out top 3 if yes ALLOW MULTIPLE RESPONSES

ONLINE: Please select all that apply

Yes it was rescheduled with enough notice	1
Yes it was rescheduled with not enough notice	2
Yes it was rescheduled multiple times	3
Yes, I changed the appointment date	
No it was not rescheduled	4
Don't know CATI: Do not read out	5

Q4b. Did the technician turn up at the scheduled time? MULTI RESPONSE

CATI: Do not read out

Yes	1
No	2
Don't know	3

Q5. Overall, how satisfied were you with the appointment setting process?

CATI: Using a scale of 1 to 10, where 1 means extremely dissatisfied and 10 means extremely satisfied

Extremely dissatisfied					Extremely satisfied				
1	2	3	4	5	6	7	8	9	10

don't know

Q6. thinking about the number of days it took from when you ordered fibre broadband to when Chorus turned up to install it, was that...

CATI: READ OUT

ONLINE: Please select one only

Longer than you expected	1
About the same amount of time you expected	2
Faster than you expected	3
Don't know CATI: Do not read out	

INSTALLATION

We would now like to ask you some questions about the actual installation of fibre broadband at your home.

INSTALLER PERFORMANCE

Q7. Thinking about the main person that you dealt with during the installation of your fibre broadband, **CATI:** *Using a scale of 1 to 10, where 1 means strongly disagree and 10 means strongly agree, how strongly do you agree or disagree that they...:* READ OUT

Was well-presented, courteous and professional
Called ahead to confirm time of arrival
Took the time to explain the installation process, and understand any concerns or needs you had
Explained what would happen outside and inside your home
Provided options, such as where fibre could be installed both inside and outside your house
Kept you well informed of progress at all stages during the installation process
Had the knowledge to answer your questions and provide advice
Came prepared - had all the necessary equipment to complete the job
Took ownership of the success of the installation and ensured you had a fully working solution before leaving

Strongly disagree	Strongly agree								
1	2	3	4	5	6	7	8	9	10

don't know

Q8. Overall, how satisfied were you with the job the technician did installing your new fibre broadband connection?

CATI: *Using a scale of 1 to 10, where 1 means extremely dissatisfied and 10 means extremely satisfied,*

Extremely dissatisfied	Extremely satisfied								
1	2	3	4	5	6	7	8	9	10

don't know

TOTAL INSTALLATION

Thinking now about the entire process of having fibre broadband installed at your home, before, during and after the installation, and how you felt during this process.

OVERALL SENTIMENT

Q9a. Select the one word that best describes how you felt.

[ONE CODE ONLY. RANDOMISE WORDS] READ OUT

In control	01
Reassured	02
Concerned	03
Confused	04

Q9b. Which one of these best describes how you felt?

[ONE CODE ONLY. RANDOMISE WORDS] READ OUT

Excited	01
Informed	02
Anxious	03
Frustrated	04

Q9C. And which one of these best describes how you felt?

[ONE CODE ONLY. RANDOMISE WORDS] READ OUT

Confident	01
Respected	02
Uninformed	03
Angry	04

Q9D. Was the level of contact and communication you received throughout the whole process ...? READ OUT

ONLINE: Please select one only

Not enough	1
About right	2
Too much	3
Don't know DO NOT READ OUT	4

OVERALL SATISFACTION

Q10. Based on your experience overall, how satisfied are you with the process of installing fibre broadband with (INSERT RSP)?

CATI: Using a scale of 1 to 10, where 1 means extremely dissatisfied and 10 means extremely satisfied,

Extremely dissatisfied

Extremely satisfied

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

don't know

Q11. And using the same scale, how satisfied are you with the overall performance of your fibre broadband since it was installed?

Extremely dissatisfied

Extremely satisfied

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

don't know

Q12. Using a scale of 0 to 10, where 0 means you would definitely not recommend it, and 10 means you would definitely recommend it, how likely would you be to recommend getting fibre broadband installed to people you know?

I would definitely not recommend it

I would definitely

0	1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	---	----

don't know

ASK ALL:

Q13. Why do you say that?

Q14. And how much do you agree or disagree that (insert RSP) and Chorus worked together well to ensure everything went smoothly.

CATI: Using a scale of 1 to 10, where 1 means strongly disagree and 10 means strongly agree

Strongly disagree

Strongly agree

1	2	3	4	5	6	7	8	9	10
---	---	---	---	---	---	---	---	---	----

don't know

Q15. Overall, how much effort did you personally have to put forth to have fibre broadband installed at your home?

CATI: READ OUT

ONLINE: Please select one only

Very low effort	1
Low effort	2
Neutral	3
High Effort	4
Very high effort	5

Q16. and was this...

Less effort than you were expecting to put forth	1
About the same amount of effort you were expecting to put forth	2
More effort than you were expecting to put forth	3

PERSONAL DEMOGRAPHICS

Now a few questions about you...

R3. Are you? Please select one only CODE DIRECTLY IF CATI

Male	1
Female	2

R4. Which of these age groups do you fit into? Please select one only READ OUT

16 – 19 Years Old	3
20 – 24 Years Old	4
25 – 29 Years Old	5
30 – 39 Years Old	6
40 – 49 Years Old	8
50 – 59 Years Old	10
60 – 69 Years Old	12
70+ Years Old	14
Would prefer not to say CATI: Do not read out	15

QRC. Would you be happy to be contacted again by us to take part in further research about your experience?

Yes	1
No	2

QRC2. And finally, would you be happy for us to pass your responses back to [INSERT RSP], who may wish to contact you to discuss your experience?

Yes	1
No	2

– CATI: IF YES AT QRC OR QRC2 CONFIRM NAME AND PHONE NUMBER:

NAME: [INSERT FROM SAMPLE]

PHONE NUMBER: [INSERT FROM SAMPLE]

END

ONLINE: That's the end of the survey, thank you for your time today. It's great that you've taken the time to share your views with us and help (RSP) improve the installation experience for their customers. Your feedback really makes a difference. You may now close your browser.

CATI: As I said before, my name is *** from Colmar Brunton Research.
Thank you that's all the questions I have for you today. It's great that you've taken the time to share your views with us and help (RSP) improve the installation experience for their customers. Your feedback really makes a difference.
If you have any further questions, please feel free to contact my supervisor on 0508 SURVEY.
(0508 787 8 39)
Good Bye

Annexure 4: POI Areas

Part A: List of Network Stages and corresponding POI Areas

POI Area	Candidate Area	Premises
Ashburton	Methven	788
Ashburton	Lake Hood	86
Ashburton	Rakaia	553
Auckland	Helensville/Parakai	1,401
Auckland	Waimauku	396
Auckland	Snells Beach	2,138
Auckland	Muriwai Beach	577
Auckland	Tuakau	1,574
Auckland	Waiatarua	802
Auckland	Warkworth	1,725
Auckland	Parau	1,297
Auckland	Pukekohe	165
Auckland	Wellsford	819
Auckland	Waiau Beach	547
Auckland	Piha	735
Auckland	Omaha	1,252
Auckland	Anselmi Ridge Rd	84
Auckland	Auckland Zone	1,490
Auckland	Fred Taylor Rd	66
Auckland	Matakana Village	125
Auckland	Brigham Creek Rd	33
Auckland	Waiheke	292
Blenheim	Picton	2,208
Blenheim	Renwick	923
Blenheim	Blenheim	258
Blenheim	Blenheim Riverlands	60
Blenheim	Blenheim Roselands Commercial	2
Blenheim	Havelock	287
Christchurch	Southbridge	343
Christchurch	Leeston	716
Christchurch	Christchurch - Lincoln	143
Christchurch	Christchurch - Rangiora	61
Christchurch	West Melton	49
Christchurch	Christchurch - Woodend	74
Christchurch	Waikuku Beach	404
Christchurch	Darfield	1,044
Christchurch	Akaroa	924
Christchurch	Amberley	789
Christchurch	Diamond Harbour	804
Christchurch	Oxford	693

POI Area	Candidate Area	Premises
Christchurch	Cheviot	210
Christchurch	Culverden	189
Christchurch	Kaikoura	1,377
Dunedin	Balclutha	2,056
Dunedin	Milton	1,010
Dunedin	Dunedin	479
Dunedin	Outram	275
Dunedin	Waikouaiti	751
Gisborne	Ruatoria	188
Gisborne	Tologa Bay	145
Gisborne	Gisborne	123
Greymouth	Hokitika	1,552
Greymouth	Runanga	578
Greymouth	Reefton	545
Greymouth	Westport Urban	2,370
Hamilton	Thames	3,112
Hamilton	Hamilton - Horotiu	192
Hamilton	Hamilton - Whatawhata	336
Hamilton	Hamilton - Rukuhia	281
Hamilton	Hamilton - Taupiri	168
Hamilton	Hamilton - Ohaupo	182
Hamilton	Te Puru	269
Hamilton	Te Kauwhata	554
Hamilton	Temple View	207
Hamilton	Coromandel	791
Hamilton	Matamata	3,097
Hamilton	Pirongia	421
Hamilton	Ngatea	549
Hamilton	Taumarunui	2,342
Hamilton	Morrinsville	2,981
Hamilton	Te Aroha	1,901
Hamilton	Te Kuiti	1,792
Hamilton	Paeroa	1,921
Hamilton	Otorohanga	1,264
Hamilton	Turangi	2,080
Hamilton	Piopio	196
Invercargill	UFB 1 Fringe: Otatara	1,114
Invercargill	Te Anau	1,821
Invercargill	Winton	1,268
Invercargill	Riverton West	1,496
Invercargill	Bluff	1,202
Levin	Foxton	2,763
Levin	Shannon	702
Masterton	Carterton	2,046
Masterton	Greytown	1,167

POI Area	Candidate Area	Premises
Masterton	Featherston	1,116
Masterton	Martinborough	918
Napier	UFB 1 Fringe: Clive Beach/Bay View	1,682
Napier	Waipawa/Waipukurau	2,558
Napier	Dannevirke	2,484
Napier	Wairoa	1,838
Napier	Otane	238
Napier	Awatoto Industrial	41
Napier	Napier-Hastings	154
Napier	Wall Rd	30
Nelson	Ruby Bay	748
Nelson	Motueka	2,899
Nelson	Kaiteriteri	416
Nelson	Takaka	549
Nelson	Wakefield/Brightwater	1,369
Nelson	Murchison	242
Nelson	Nelson The Brook	132
New Plymouth	Opunake	778
New Plymouth	Manaia	626
New Plymouth	Patea	486
New Plymouth	Okato	234
New Plymouth	Urenui	167
Oamaru	UFB 1 Fringe: Weston	396
Palmerston North	Palmerston North	101
Palmerston North	Summerhill	1,171
Palmerston North	Marton	2,346
Palmerston North	Ashhurst	1,113
Palmerston North	Feilding	28
Palmerston North	Taihape	916
Palmerston North	Bulls	786
Palmerston North	Woodville	820
Palmerston North	Ohakune	1,144
Palmerston North	Pahiatua	1,268
Palmerston North	Raetihi	532
Paraparaumu	Otaki	2,998
Paraparaumu	Kapiti	181
Paraparaumu	Pukeko St Area	13
Queenstown	Cromwell	2,395
Queenstown	Wanaka/Lake Hawea	4,695
Queenstown	Alexandra	2,437
Queenstown	Arrowtown/Lake Hayes Estate	1,869
Queenstown	Arthurs Point	310
Queenstown	Queenstown	164
Queenstown	Jacks Point	269
Queenstown	Clyde	797

POI Area	Candidate Area	Premises
Queenstown	Roxburgh	367
Rotorua	Murupara	744
Rotorua	Hinemoa Point	57
Rotorua	Fairy Springs Road	33
Rotorua	Rotorua	52
Taupo	Taupo	101
Taupo	Taupo Airport	1
Tauranga	UFB 1 Fringe: Te Puna	678
Tauranga	Waihi town & Beach	4,908
Tauranga	Maketu	453
Tauranga	Whitianga	3,129
Tauranga	Paengaroa	215
Tauranga	Whangamata	4,172
Tauranga	Tairua	3,783
Timaru	Temuka	1,996
Timaru	Lake Tekapo	513
Timaru	Geraldine	1,447
Timaru	Pleasant Point	546
Timaru	Twizel Community	1,448
Timaru	Waimate	1,775
Wellington	Alexander Rd	45
Wellington	Ward Street	1
Wellington	Wellington Zone	321
Wellington	Racecourse Rd	3
Whakatane	Opotiki	1,621
Whakatane	Ohope/Coastlands	1,935
Whakatane	Kawerau	2,712
Whakatane	Matata	303
Whakatane	Edgecumbe	652
Whangarei	Moerewa/Kawakawa	1,010
Whangarei	Kerikeri	2,540
Whangarei	Kaikohe	1,543
Whangarei	Kaitaia	2,041
Whangarei	Paihia	1,314
Whangarei	Russell	615
Whangarei	Ahipara	534
Whangarei	Taipa Bay-Mangonui	1,388

Part B: Premises per POI Area

POI Area	Total Premises
Ashburton	1,427
Auckland	15,518
Blenheim	3,738
Christchurch	7,820
Dunedin	4,571
Gisborne	456
Greymouth	5,045
Hamilton	24,636
Invercargill	6,901
Levin	3,465
Masterton	5,247
Napier	9,025
Nelson	6,355
New Plymouth	2,291
Oamaru	396
Palmerston North	10,225
Paraparaumu	3,192
Queenstown	13,303
Rotorua	886
Taupo	102
Tauranga	17,338
Timaru	7,725
Wellington	370
Whakatane	7,223
Whangarei	10,985
Grand Total	168,240

Schedule 7: Project Governance

1. Introduction

1.1 Purpose

This Agreement is to be managed by the Company in a manner that is intended to facilitate:

- (a) achievement of the UFB2 Objective and UFB Uptake Objective; and
- (b) compliance by the Company with this Agreement,

each a **Monitoring Goal**, and collectively the **Monitoring Goals**.

1.2 Overview of monitoring arrangements

The following project monitoring arrangements have been agreed for the purpose of achieving the Monitoring Goals:

- (a) the Relationship Managers will be the first point of contact for communications relating to the provision of the Design and Build and the O&M Services. The provisions relating to the appointment, functions and duties of the Relationship Managers are set out in clauses 2.1 and 2.2 of this Schedule;
- (b) the Project Control Group will oversee the provision of the Design and Build and the O&M Services by the Company. The Project Control Group is intended to focus on technical, project management and operational issues. The provisions relating to the establishment, composition, functions and powers of the Project Control Group are set out in clause 3 of this Schedule; and
- (c) the Steering Committee will oversee all material matters in relation to the Company deploying and operating the Network. The provisions relating to the establishment, composition, functions and powers of the Steering Committee are set out in clause 4 of this Schedule.

2. Relationship Management

2.1 Company's Relationship Manager

- (a) The Company's initial Relationship Manager will be notified to CFH within 10 Business Days of the Commencement Date.
- (b) The Company's Relationship Manager's project functions and duties include the following:
 - (i) acting as a first point of contact for communications relating to the provision of the Design and Build and the O&M Services;
 - (ii) ensuring that the Network is implemented and is available in accordance with this Agreement, including the Master Deployment Plan and the Annual Deployment Schedules;
 - (iii) ensuring that monitoring procedures for the Service Levels are in place, are robust and are adhered to;

- (iv) management of the Company's compliance with this Agreement (including ensuring that management monitoring procedures are in place and are adhered to);
 - (v) acting on Service Level Defaults in accordance with this Agreement;
 - (vi) initiating Change Requests on behalf of the Company and overseeing the preparation of submissions in response to Change Requests from CFH;
 - (vii) primary responsibility for provision of reports and management of other information flows required under this Agreement;
 - (viii) developing and maintaining an awareness within the Company of the Monitoring Goals and the Requirements;
 - (ix) liaising with senior management of the Company, and in particular managing any dispute or potential dispute in accordance with agreed escalation procedures;
 - (x) effectively liaising with CFH's Relationship Manager and other CFH Personnel, both formally and informally;
 - (xi) working with CFH's Relationship Manager to identify opportunities for improvements to the Network and the O&M Services; and
 - (xii) liaising with CFH's Relationship Manager and third parties as required to facilitate the performance of the Design and Build and the O&M Services.
- (c) The Company's other Key Personnel will be notified to CFH within 10 Business Days of the Commencement Date, in the form set out in Part A of Annexure 3 to this Schedule.

2.2 CFH's Relationship Manager

CFH's initial Relationship Manager will be notified to the Company within 10 Business Days of the Commencement Date. Other CFH Personnel who will have key involvement with the Company with respect to this Agreement will be notified to the Company within 10 Business Days of the Commencement Date, in the form set out in part B of Annexure 3 to this Schedule.

2.3 Escalation

- (a) In the first instance, any issues that may affect the relationship between the parties will be raised by one Relationship Manager to the other Relationship Manager.
- (b) Any issues that cannot be resolved or which require wider discussion will be escalated to the PCG.
- (c) Any issues that cannot be resolved by the PCG will be escalated to the Steering Committee.
- (d) Any issues that arise in connection with Schedule 2 (*Commitments*) are solely for the Steering Committee to resolve.
- (e) Except as to the matters that expressly fall for determination under this Schedule 7, the process in this clause 2.3 does not override the dispute resolution process set out in clause 18 of the Base Agreement.

2.4 Reports

(a) Company's reporting

The Company will prepare each of the reports identified in Annexures 1 (Technical and Operational Reports) and 2 (Corporate and Financial Reports) of this Schedule, in accordance with those Annexures.

(b) Information and maintenance of records

The Company must maintain books, records and reports in accordance with all Laws including the Companies Act 1993, the Income Tax Act 2007 and the Goods and Services Tax Act 1985.

3. Project Control Group

3.1 Establishment

The parties will establish the PCG, with the composition, functions, and powers set out in this clause 3, as soon as reasonably practicable, but in any event within 10 Business Days of the Commencement Date.

3.2 Composition of PCG

(a) Composition

The PCG will comprise:

- (i) two representatives of CFH nominated from time to time by CFH that are approved by the Company (such approval not to be unreasonably withheld or delayed), one of whom (as nominated by CFH following consultation with the Company) is to be chairperson (the **Chairperson**) of the PCG and one of whom must be the CFH Relationship Manager (who may also be, but is not required to be, the Chairperson); and
- (ii) two representatives of the Company nominated from time to time by the Company that are approved by CFH (such approval not to be unreasonably withheld or delayed) (one of whom must be the Company's Relationship Manager).

(b) Qualifications of representatives

Each of the representatives of the PCG must be suitably experienced and qualified, having regard to the functions, powers and duties of the PCG.

(c) Continuity

Each party will use reasonable endeavours to ensure that its initial representatives remain on the PCG for a minimum of 24 months from the Commencement Date and that, where replacement representatives are required over the Term, replacement does not occur more frequently than on a 12 monthly basis thereafter.

(d) Alternates

- (i) A representative may from time to time appoint any person to be his or her alternate representative who may attend meetings and fully participate as a

member of the PCG in the absence of his or her appointer. To appoint an alternate representative, the representative must:

- (A) give notice in writing to the other party and to the PCG, identifying the alternate representative, confirming that the alternate representative meets the criteria set out in clause 3.2(b) of this Schedule and setting out any conditions or details of his or her appointment; and
 - (B) for an alternate for a Company representative, obtain the prior written approval of CFH, and for an alternate for a CFH representative, obtain the prior written approval of the Company, to the appointment of that alternate representative (such approval not to be unreasonably withheld or delayed).
- (ii) A representative who appoints an alternate representative may, at any time, revoke that appointment by giving a notice in writing to the alternate representative and the PCG to that effect.

(e) **Retirement, removal and replacement of representatives**

- (i) Subject to clause 3.2(c) of this Schedule, a representative:
 - (A) may retire or resign at any time, and a party may terminate the appointment of a representative at any time, on the provision of written notice to that representative and the PCG;
 - (B) that is a representative of the Company, is to be removed by the Company following service of written notice by CFH advising the Company that the representative is no longer acceptable to CFH (with CFH acting reasonably); and
 - (C) that is a representative of CFH, is to be removed by CFH following service of written notice by the Company advising CFH that the representative is no longer acceptable to the Company (with the Company acting reasonably).
- (ii) Where a representative is removed or retires, the relevant party must appoint a new representative, meeting the criteria set out in clause 3.2(b) of this Schedule and with the approval of the other party, in accordance with clause 3.2(a) of this Schedule, as soon as is reasonably practicable and in any event before the next scheduled meeting of the PCG.

3.3 Functions of the PCG

The PCG will have the following technical, project management and operational functions and duties:

- (a) overseeing the provision of the Design and Build and the O&M Services by reference to reports received from the Relationship Managers and any other information available to it;
- (b) discussing issues relating to the performance of the Company's obligations under this Agreement;
- (c) discussing issues relating to any Act or Representation of CFH or its Personnel (as those terms are defined in clause 1.8 of the Base Agreement);

- (d) discussing and, to the extent practicable, resolving disputes that may arise under or in respect of the Agreement;
- (e) reviewing functional and performance capabilities associated with advances in technology methods used to perform similar services;
- (f) reviewing quality review reports, overseeing any remedial action to be taken by any party if such report reveals any failure on the part of that party to comply with its obligations under this Agreement, and making any recommendations that the PCG considers should be made as a result of the findings set out in that report;
- (g) reviewing reports from any review or audit;
- (h) periodically discussing procurement and subcontracting policies, issue management, risk management and change management procedures;
- (i) periodically reviewing the quality of performance of the Company's obligations as to service delivery, data security and record keeping as against the terms of this Agreement and Best Industry Practice;
- (j) periodically discussing and reviewing the quality of the Company's performance against the Build Milestones and Service Levels;
- (k) considering any changes in the circumstances of each party affecting or that may affect the performance by that party of its obligations under this Agreement; and
- (l) performing such other functions as the parties agree ought to be performed by the PCG.

3.4 Sub-committees

- (a) The PCG may at any time appoint one or more sub-committees consisting of members of the PCG or other Personnel of CFH or the Company (each a **Sub-Committee**). The Sub-Committees will report directly to the PCG.
- (b) Each Sub-Committee must include a representative of CFH nominated from time to time by CFH (the **CFH Sub-Committee Representative**) and a representative of the Company nominated from time to time by the Company.

3.5 Meetings

Subject to the following provisions of this clause 3.5, the PCG may regulate its own meetings procedure, and the meetings procedure of each Sub-Committee, as it sees fit.

(a) Design and Build meetings

The Design and Build meetings:

- (i) will be for the purpose of reviewing progress against the Build Milestones for the relevant Network Stage during the Design and Build and otherwise discussing the relevant progress reports;
- (ii) must be held not less than every month until the Design and Build is complete; and
- (iii) may be held by a Sub-Committee or the PCG either assembling together at the date, time and place appointed for the meeting and/or meeting by means of

audio or audio and visual communication by which all such members can simultaneously hear each other throughout the meeting.

(b) Operations meetings

The operations meetings:

- (i) will be for the purpose of:
 - (A) reviewing performance against the Service Levels;
 - (B) reviewing issue management – issue reporting, trend analysis and proactive maintenance; and
 - (C) raising items under general business;
- (ii) must be held not less than every month after the Design and Build is complete, once the report on the previous month's operation is available, or at such shorter or longer scheduled intervals as the PCG may decide; and
- (iii) may be held by a Sub-Committee or the PCG either assembling together at the date, time and place appointed for the meeting and/or meeting by means of audio or audio and visual communication by which all such members can simultaneously hear each other throughout the meeting.

(c) Technology forum

The technology forum meetings:

- (i) will be for the purpose of reviewing:
 - (A) any relevant report;
 - (B) issue management – issue reporting, trend analysis and proactive maintenance;
 - (C) O&M Services continuity and security;
 - (D) technology direction and plans; and
 - (E) anything else relating to technology;
- (ii) must be held not less than every month until the Design and Build is complete; and
- (iii) may be held by a Sub-Committee or the PCG either assembling together at the date, time and place appointed for the meeting and/or meeting by means of audio or audio and visual communication by which all such members can simultaneously hear each other throughout the meeting.

(d) Other meetings

Any representative of the PCG or any Sub-Committee may at any time request the Chairperson to convene an unscheduled meeting of the PCG or any Sub-Committee with respect to which they are a representative.

(e) Notice

- (i) Any regular meeting set out in clause 3.5(a) to (c) inclusive is to be convened by service of not less than 10 Business Days' written notice by the Chairperson to the other representatives.
- (ii) Any other meeting may be convened on not less than five Business Days' written notice by the Chairperson to the other representatives.

(f) Quorum and attendance

- (i) The quorum for any meeting of the PCG or any Sub-Committee will be two representatives, one of which must be a representative of CFH and one of which must be a representative of the Company, unless the PCG determines a different quorum for any Sub-Committee (provided that a quorum must always comprise an equal number of representatives of each party). No business will be transacted at a meeting of the PCG or any Sub-Committee unless a quorum is present.
- (ii) When a meeting of the PCG or any Sub-Committee is called in accordance with this Schedule, one representative of each party must attend the meeting and a failure to attend (without due cause) is a breach of this Agreement by the non-attending party.

(g) Outside representation

The Chairperson may invite one or more outside representatives to any meeting of the PCG or Sub-Committee by giving notice in writing to the representatives of the PCG or relevant Sub-Committee (as the case may be), stating the name and position of that outside representative. Such outside representative may include:

- (i) nominated senior representatives of a Subcontractor;
- (ii) a professional representative of a party (such as a lawyer or auditor);
- (iii) senior management of a party;
- (iv) specialised Personnel (such as technology specialists); and
- (v) any other person the Chairperson considers appropriate to invite in the circumstances of the relevant meeting,

provided that such outside representation will not have the right to vote on any matter discussed in a meeting of the PCG or any Sub-Committee.

(h) Agenda

The Company is responsible for the preparation of an agenda for each meeting (to be prepared in consultation with CFH), together with any relevant issue papers or discussion papers, which are to be circulated at least two Business Days prior to the meeting, to members of the PCG or Sub-Committee convening that meeting.

(i) Minutes

The Company will be responsible for recording the minutes of all meetings of the PCG and each Sub-Committee. Such minutes will be circulated by the Company and signed off on by CFH's representatives on the PCG or relevant Sub-Committee (as the case may be), and the CFH Representative or CFH Sub-Committee

Representative (as the case may be), prior to the next meeting of the PCG or that Sub-Committee. Any unresolved dispute regarding such minutes may be referred to expert determination in accordance with clause 18.5 of the Base Agreement.

(j) **Conduct of business**

The PCG and each Sub-Committee is to conduct its business:

- (i) by taking a reasonable and pragmatic approach to fact finding and to decision making;
- (ii) by endeavouring to resolve issues as quickly and as informally as is reasonably possible; and
- (iii) by endeavouring to reach consensus on an issue wherever reasonably practicable.

(k) **Call for resolution**

Subject to clause 3.5(l), the Chairperson may call for any matter before a meeting of the PCG or relevant Sub-Committee, which the Chairperson considers has been agreed by the PCG or that Sub-Committee (as the case may be), to be recorded in writing as a resolution of the PCG or that Sub-Committee (as the case may be) and to be signed by all representatives.

(l) **Referral to Steering Committee**

Either party may refer a matter in respect of which a resolution of the PCG is not passed to the Steering Committee for its review and determination in accordance with clause 4 of this Schedule, except where the matter is expressly subject to the dispute resolution process set out in clause 18 of the Base Agreement.

(m) **Call for position paper**

The Chairperson may call for any matter before the PCG or relevant Sub-Committee, which he or she considers is unlikely to be agreed by the PCG or relevant Sub-Committee (as the case may be), to be recorded in a position paper to reflect as far as is practicable the positions of the parties in relation to that matter, or the issues raised by that matter (including those that are agreed as well as those where different positions have been taken).

4. **Steering Committee**

4.1 **Establishment**

The parties will establish the Steering Committee, with the composition, functions, and powers set out in this clause 4, as soon as reasonably practicable, but in any event within 10 Business Days of the Commencement Date.

4.2 **Composition of Steering Committee**

(a) The Steering Committee will comprise:

- (i) up to three senior executives of CFH nominated from time to time by CFH (each a **CFH SC Representative**);

- (ii) up to three senior executives of the Company nominated from time to time by the Company (each a **Company SC Representative**); and
 - (iii) one independent person, appointed by agreement between CFH and the Company, who is to be the chairperson (the **Chairperson**) of the Steering Committee, or failing agreement within one month of the Commencement Date, by the President of the Institute of Directors in New Zealand (Inc). The independent member will be appointed to the Steering Committee for a three year term. Any replacement of the independent member will be appointed in the same manner as is set out in this clause 4.2(a)(iii), within 10 Business Days of the position falling vacant.
- (b) The parties acknowledge that:
- (i) while the Steering Committee will be comprised of the same people that form the steering committee established pursuant to, and for the purposes of, the UFB1 NIPA (the **UFB1 Steering Committee**);
 - (ii) except as set out in clause 5.2, the Steering Committee and the UFB1 Steering Committee are to operate as independent committees with separate functions, objectives and obligations provided for in this Agreement and the UFB1 NIPA;
 - (iii) any changes to the functions, objectives and obligations of the UFB1 Steering Committee will be considered by the parties (acting reasonably) for application to the Steering Committee, with a view to optimising the efficiency and effectiveness of the two committees, subject to clause 4.2(b)(ii); and
 - (iv) the termination or expiry of the UFB1 NIPA will not affect the functions, objectives and obligations of the Steering Committee under this Agreement.

4.3 Initial Members of Steering Committee

Each party's initial members of the Steering Committee will be notified to the other party within 10 Business Days of the Commencement Date.

4.4 Functions of the Steering Committee

The Steering Committee's functions will be to oversee and direct the following material matters in relation to the Company deploying, owning and operating the Network:

- (a) reviewing and determining any matters referred to the Committee pursuant to this Agreement (including by the Project Control Group);
- (b) reviewing and dealing with the Combined Fibre Business Plan in accordance with this Schedule;
- (c) making any decisions required to be referred to the Steering Committee pursuant to this Schedule; and
- (d) assisting to facilitate dispute resolution.

Once the entire Network has been built, the parties may agree to revise the functions of the Steering Committee and/or the PCG to better reflect the appropriate nature and extent of the on-going oversight and direction required at that time. Any such revised functions must be agreed in writing by the parties.

4.5 Meetings

(a) Monthly meetings

The Steering Committee will meet at least monthly (as scheduled by the Chairperson of the Steering Committee), but no more than eleven times in each calendar year. Meetings will be held by the Steering Committee either assembling together at the date, time and place appointed for the meeting and/or meeting by means of audio or audio and visual communication by which all such members can simultaneously hear each other throughout the meeting. Once the entire Network has been built, the parties may agree in writing that the Steering Committee will meet on a less frequent basis than as outlined above.

- (b) The Company acknowledges that, where the Steering Committee and the UFB1 Steering Committee are comprised of the same people, one meeting may be held which satisfies the requirement for both the Steering Committee and the UFB1 Steering Committee to hold a meeting at least monthly (a **Combined Meeting**). Where a Combined Meeting is held, the Steering Committee and the UFB1 Steering Committee will continue to satisfy the obligations applying to each relevant committee under this Agreement and the UFB1 NIPA.

(c) Notice

- (i) Any regular meeting is to be convened by service of not less than 10 Business Days' written notice by the Chairperson to the other representatives.
- (ii) Any other meeting may be convened on not less than five Business Days' written notice by the Chairperson to the other representatives.
- (iii) The Company is responsible for the preparation of an agenda for each of those meetings, to be prepared in consultation with CFH.

(d) Quorum

The quorum for any meeting of the Steering Committee will be three representatives, one of whom must be a CFH SC Representative, one of whom must be a Company SC Representative and one of which must be the Chairperson. No business will be transacted at a meeting of the Steering Committee unless a quorum is present.

(e) Agenda and information

An agenda for a meeting, together with any relevant issue papers or discussion papers, is to be circulated with or following the notice sent to members of the Steering Committee convening that meeting. The information circulated will relate to the Company's fibre business, and will include the business as usual operations (including KPIs), revenue, ARPU figures and customer end reporting, with the specific form and format to be agreed by the parties. If the parties fail to agree on the form and format, then the issue will be a dispute that is subject to expert determination in accordance with clause 18.5 of the Base Agreement.

(f) Conduct of business

The Steering Committee is to conduct its business:

- (i) by taking a reasonable and pragmatic approach to fact finding and to decision making;

- (ii) by endeavouring to resolve issues as quickly and as informally as is reasonably possible; and
- (iii) by endeavouring to reach consensus on an issue wherever reasonably practicable.

(g) **Decisions**

Decisions of the Steering Committee must be made by majority vote, other than approving, modifying or amending the Combined Fibre Business Plan (which will be governed by clause 5 of this Schedule).

(h) **Call for resolution**

The Chairperson may call for any matter before a meeting of the Steering Committee, which the Chairperson considers has been agreed by the Steering Committee, to be recorded in writing as a resolution of the Steering Committee and to be signed by all representatives.

(i) **Call for position paper**

The Chairperson may call for any matter before the Steering Committee, which he or she considers is unlikely to be agreed by the Steering Committee, to be recorded in a position paper to reflect as far as is practicable the positions of the parties in relation to that matter, or the issues raised by that matter (including those that are agreed as well as those where different positions have been taken).

(j) **Consideration of decisions**

The Company will give due consideration to all decisions and recommendations made by the Steering Committee in accordance with this Schedule.

5. Combined Fibre Business Plan

5.1 General

The Company must conduct its fibre business in accordance with the then current Combined Fibre Business Plan.

5.2 Acknowledgement

The Company acknowledges that:

- (a) following the date of this Agreement and until termination or expiry of the UFB1 NIPA, the Combined Fibre Business Plan will be in relation to the achievement by the Company of both the UFB1 Objective and the UFB2 Objective;
- (b) the Combined Fibre Business Plan described in clause 5.2(a) will be prepared in accordance with this Agreement and the UFB1 NIPA, so as to ensure that the requirements under both this Agreement and UFB1 NIPA are satisfied; and
- (c) following the expiry or termination of the UFB1 NIPA, each subsequent Combined Fibre Business Plan will be prepared in accordance with this Agreement for the sole purpose of the Company achieving the UFB2 Objective.

5.3 Form of Combined Fibre Business Plan

Each Combined Fibre Business Plan will be prepared on a rolling three Financial Years basis and will include (at a minimum):

- (a) a detailed annual budget and forecasts for the first Financial Year covered by that Combined Fibre Business Plan;
- (b) an indicative annual budget and forecasts for each of the second and third Financial Years covered by that Combined Fibre Business Plan; and
- (c) details, plans and information addressing each of the subject matter set out in Annexure 4 of this Schedule.

5.4 New Combined Fibre Business Plan and the Current UFB1 Fibre Business Plan

The Company will submit to the Steering Committee and the UFB1 Steering Committee not later than 60 days after the date of this Agreement the new Combined Fibre Business Plan that will be in relation to both the UFB1 Objective and the UFB2 Objective, which shall be subject to the Combined Fibre Business Plan process set out below (other than in clauses 5.6 to 5.8) and the fibre business plan process under the UFB1 NIPA. Following the approval of the new Combined Fibre Business Plan, the Current UFB1 Fibre Business Plan will cease to apply.

5.5 Preparation of Combined Fibre Business Plans

CFH will continue to have a CFH representative to work with the Company's team preparing each Combined Fibre Business Plan. At least 90 days prior to the end of each Financial Year, the Company will submit to the Steering Committee a draft Combined Fibre Business Plan covering the next three Financial Years commencing at the beginning of the next Financial Year.

5.6 Approval of Combined Fibre Business Plans

- (a) The Steering Committee will use all reasonable endeavours to unanimously agree any draft Combined Fibre Business Plan submitted in accordance with clause 5.5, with such amendments as they consider appropriate, in accordance with this clause 5.6 not less than 60 days prior to the beginning of the first Financial Year covered by that Combined Fibre Business Plan.
- (b) Subject to clause 5.6(c), once a draft Combined Fibre Business Plan has been unanimously agreed by the Steering Committee pursuant to clause 5.6(a), it will be promptly submitted to the Board of the Company for review and, if they consider appropriate, approval prior to the beginning of the first Financial Year covered by that Combined Fibre Business Plan.
- (c) Any draft Combined Fibre Business Plan that relates to both the UFB1 Objective and the UFB2 Objective, must be unanimously agreed to by both the Steering Committee and the UFB1 Steering Committee prior to it being submitted to the Board of the Company in accordance with clause 5.6(b) of this Schedule.
- (d) If the Company's Board require any amendments to be made to the draft Combined Fibre Business Plan unanimously agreed by the Steering Committee, and the UFB1 Steering Committee (as applicable), pursuant to clause 5.6(a) (each a **Revised Draft Combined Fibre Business Plan**), that Revised Draft Fibre Business Plan will be

submitted to the Steering Committee, and the UFB1 Steering Committee (as applicable), not less than 45 days prior to the beginning of the first Financial Year covered by that Combined Fibre Business Plan. The provisions of clauses 5.6(a) and (b) will apply equally to that Revised Draft Fibre Business Plan (with the timing references in clause 5.6(a) to be 30 days).

5.7 Failure to agree Combined Fibre Business Plan

- (a) If a draft Combined Fibre Business Plan (or Revised Draft Fibre Business Plan) has not been approved by the Steering Committee (and the UFB1 Steering Committee as applicable), and the Board of the Company under clause 5.6 by the date that is 20 days prior to the beginning of the First Financial Year covered by that Combined Fibre Business Plan, then either party may by notice in writing to the other given at any time on or after that date refer that matter to the Senior Committee for determination in accordance with this clause 5.7.
- (b) The Senior Committee will comprise the Chairman of the Company, the Chairman of CFH and the Chairperson. The Senior Committee will act as the Senior Committee for the purposes of both this Agreement and the UFB1 NIPA.
- (c) In considering a draft Combined Fibre Business Plan or Revised Draft Fibre Business Plan referred to it in accordance with clause 5.7(a), the Senior Committee must only have regard to disputed items in that draft Combined Fibre Business Plan.
- (d) The decision of the Senior Committee must be made by majority vote. The Senior Committee must only approve disputed items as amendments to the draft Combined Fibre Business Plan or Revised Draft Fibre Business Plan (**Amendments**) if it is satisfied that:
- (i) the Amendments satisfy the Business Case Test set out in Annexure 1 of Schedule 2 (*Commitments*) of this Agreement and Annexure 1 of Schedule 2 (*Commitments*) of the UFB1 NIPA;
 - (ii) the Amendments would not require the Company to spend in any Financial Year more than an amount equal to [REDACTED] (but the requirement in this clause 5.7(d)(ii) will not take into account any Amendments relating to the Company's obligation to upgrade to next generation PON as set out in clause 4(f) of Schedule 2 (*Commitments*) of this Agreement and clause 4(f) of Schedule 2 (*Commitments*) of the UFB1 NIPA); and
 - (iii) in respect of matters the subject of Schedule 2 (*Commitments*) of this Agreement and Schedule 2 (*Commitments*) of the UFB1 NIPA, the Amendments do not require the Company to do anything over and above what it has committed to do under Schedule 2 (*Commitments*) of this Agreement and Schedule 2 (*Commitments*) of the UFB1 NIPA,
- (the requirements of clauses 5.7(d)(i) to (iii) together being the **Fibre Business Plan Requirements**).
- (e) The Senior Committee must make its determination as soon as practicable and must notify each of the parties of its determination in writing (with the resulting fibre business plan being the **Proposed Fibre Business Plan**). If the Senior Committee has not made a determination within 10 Business Days of the date on which the draft Combined Fibre Business Plan was referred to it, then the Combined Fibre Business Plan for that Financial Year will comprise:

- (i) the undisputed items of the draft Combined Fibre Business Plan (all of which will be deemed to be agreed in accordance with clause 5.7(d)); and
 - (ii) in respect of the disputed items, the corresponding items (if any) contained in the agreed Combined Fibre Business Plan covering the preceding Financial Year will be substituted for those disputed items until they are agreed by the parties (and will then be deemed to have been agreed for the purposes of clause 5.7(d)).
- (f) The Company and CFH will give due consideration to all decisions and recommendations made by the Senior Committee in accordance with this Schedule. If:
- (i) the Company considers that any of the Amendments approved by the Senior Committee as part of the Proposed Fibre Business Plan does not satisfy each of the Fibre Business Plan Requirements, then the Company may determine to reject the Proposed Fibre Business Plan; or
 - (ii) CFH considers that any of the Amendments approved by the Senior Committee as part of the Proposed Fibre Business Plan does not satisfy each of the Fibre Business Plan Requirements, then CFH may determine to reject the Proposed Fibre Business Plan,

by notifying the other party within 10 Business Days of notification by the Senior Committee under clause 5.7(e) (**Objection Notice**). If an Objection Notice is issued by either party, the Company will (subject to clause 5.7(g)) adopt the draft Proposed Fibre Business Plan submitted by the Company in accordance with clauses 5.6 together with any amendments to it that were not disputed items referred to the Senior Committee under clause 5.7(a) (the **Revised Fibre Business Plan**). The Company will provide CFH with a copy of the Revised Fibre Business Plan with its Objection Notice if it is the objecting party, or within five Business Days of CFH's Objection Notice if CFH is the Objecting Party.

- (g) If a party receives an Objection Notice from the other party (**Objecting Party**) but believes that the Proposed Fibre Business Plan should not have been rejected by the Objecting Party under clause 5.7(f), it may, within 10 Business Days of receiving the Objection Notice, give written notice to the Objecting Party referring the matter to be determined by an independent expert in accordance with clause 5.7(h). If the party receiving the Objection Notice does not give notice to the Objecting Party in accordance with this clause 5.7(g), then it is deemed to have accepted the Revised Fibre Business Plan as the Combined Fibre Business Plan.
- (h) The following provisions will apply to a matter to be determined in accordance with this clause 5.7(h):
- (i) the matter will be determined using the expert determination process in clause 18.5 of the Base Agreement;
 - (ii) in making its written determination, the expert will be required to determine whether the Objecting Party was entitled to reject the Proposed Fibre Business Plan under clause 5.7(f) and:
 - (A) if the expert determines that the Objecting Party was entitled to reject the Proposed Fibre Business Plan under clause 5.7(f), then the Revised Business Plan will be the Combined Fibre Business Plan (which will be deemed to be agreed in accordance with clause 5.6); or

- (B) if the expert determines that the Objecting Party was not entitled to reject the Proposed Fibre Business Plan under clause 5.7(f), then the Proposed Fibre Business Plan will be the Combined Fibre Business Plan (which will be deemed to be agreed in accordance with clause 5.6); and
- (iii) notwithstanding clause 18.5 of the Base Agreement, if the expert determines that the Objecting Party was entitled to reject the Proposed Fibre Business Plan under clause 5.7(f), the other party will be responsible for paying all of the expert's costs. Alternatively, if the expert determines that the Objecting Party was not entitled to reject the Proposed Fibre Business Plan under clause 5.7(f), the Objecting Party will be responsible for paying all of the expert's costs.

5.8 Pending agreement or determination of revised Combined Fibre Business Plan

If a draft Combined Fibre Business Plan is not agreed by the Steering Committee (and the UFB1 Steering Committee as applicable) and the Board of the Company under clause 5.6, or determined in accordance with clause 5.7, by the commencement of the first Financial Year covered by that Combined Fibre Business Plan, then pending such agreement or, as the case may be, resolution of any matter in dispute, the Combined Fibre Business Plan for that Financial Year will comprise:

- (a) the undisputed items of the draft Combined Fibre Business Plan (all of which will be deemed to be agreed in accordance with clause 5.6); and
- (b) in respect of the disputed items, the corresponding items (if any) contained in the agreed Combined Fibre Business Plan covering the preceding Financial Year will be substituted for those disputed items until they are agreed by the parties or are determined under clause 5.7 (and will then be deemed to have been agreed for the purposes of clause 5.6).

5.9 Variations

A Combined Fibre Business Plan which has previously been approved or determined under clauses 5.6 or 5.7 above may be modified or amended at any time in accordance with this clause 5.

6. Commitments

6.1 Escalation of Commitments disputes

In the event of any dispute, difference or question arising out of or in connection with Schedule 2 (*Commitments*), then:

- (a) the Chief Executive Officers of CFH and the Company will use their efforts to resolve the matter through good faith negotiations for 20 Business Days after the date on which the issue arose;
- (b) if unresolved by the Chief Executive Officers of the parties by the end of that 20 Business Day period, either party may by notice in writing to the other refer the matter to the Senior Committee; and
- (c) if no decision is made by the Senior Committee, either party may by notice in writing to the other refer the matter to expert determination in accordance with clause 18.5 of the Base Agreement.

6.2 Senior Committee

Except to the extent specified in clause 5.7(d) in connection with the Steering Committee's role in respect of the Combined Fibre Business Plans, all matters concerning Schedule 2 (*Commitments*) are for the Senior Committee as set out in this Schedule.

6.3 Proposed Fibre Business Plans

No dispute, difference or question may be raised in relation to a draft or final Combined Fibre Business Plan, except as set out in clause 5.7.

7. Meeting of Chairpersons

The respective Chairpersons of the Company and CFH are to meet each half year in the first two years from the Commencement Date and annually thereafter to discuss vision and progress in deployment of the Network and achieving uptake and revenues for the Network.

8. Appointment/termination of the Company's most senior executive responsible for fibre

The Company will consult with CFH, and have regard to CFH's reasonable views, prior to any appointment or termination of the employment of the Company's most senior executive responsible for the fibre business.

9. Ratings Downgrades

If the Company's credit rating falls below investment grade, the Company will not, without CFH's approval, pay any distributions on its ordinary shares during any period during which the Company's credit rating is below investment grade. This clause 9 will survive termination or expiry of this Agreement and will continue until the first date on which there are no outstanding "CFH2 Securities" (as that term is defined in the Subscription Agreement).

10. Company Board

CFH may from time to time nominate one person to be an independent director of the Company. The Company will consider any such nomination in good faith, provided that the appointment and removal of that person as director is in accordance with Law and the Company's ordinary process for director appointments and removals.

Annexure 1: Technical and Operational Reports

1 Master Deployment Plan and Annual Deployment Schedules

The Company will prepare (or contribute to preparing) the Master Deployment Plan and the Annual Deployment Schedules in accordance with clause 2 of Schedule 3 (*Design and Build*).

2 Status reports

(a) Design and Build progress report

The Company will provide a monthly work in progress status report regarding the Design and Build, and containing information specified in the table below to CFH within five Business Days of the end of each month.

Executive Summary	A high level commentary will be provided summarising overall progress of the Design and Build against the Build Milestones for the relevant period, significant trends, areas of improvement or concern and any major initiatives underway for rectification or improvement.
Performance	<ul style="list-style-type: none"> Master Deployment Plan and Annual Deployment Schedules task status (not started, in-progress - % complete, completed). Build Milestone Dates and the actual dates of satisfaction of such milestones. Key issues and resolution recommendations.
Change Management	Reporting of all Change Requests, including details of volume of change, successful Changes, and issues encountered.
Issue Management	Reporting of all issues, including number of issues, status, root cause, resolution activities, timeframes, business impacts and outstanding Change Requests relating to issue resolution.
Resolution and outcome	Reporting on the resolution and outcome of all issues.

(b) Operations report

A monthly status report on the O&M Services, which is to contain the information specified in the table below. Each such report will be provided to CFH within five Business Days of the end of each month.

Executive Summary	A high level commentary will be provided summarising overall Service Level performance for the relevant period, significant trends, areas of improvement or concern and any major initiatives underway for rectification or improvement.
Performance	<p>An analysis of availability and performance.</p> <p>Performance information including:</p> <ul style="list-style-type: none"> summary of the performance of the O&M Services and comparisons with earlier periods; the number of faults by severity categories;

	<ul style="list-style-type: none"> • user-impacting faults; • any “red flag” issues; • a risk matrix for operations; • observations on the Network performance and investment recommendations; and • key network parameters - actual performance against the Service Levels.
Capacity	An analysis of capacity and performance that shows current usage of resources, trends and growth forecasts. Documenting any variations in the O&M Services and recommendations.
Change Management	Reporting of all Change Requests, including details of volume of change, Service Level performance, successful changes and issues encountered.
Incident Management	Reporting of incidents, including number of incidents, status, resolution activities, timeframes achieved, business impacts, trending information and number of incidents passed to problem management.
Issue Management	Reporting of all issues, including number of issues, status, root cause, resolution activities, timeframes, Service Level performance, business impacts and outstanding Change Requests relating to issue resolution.
Resolution and outcome	Reporting on the resolution and outcome of all issues.

(c) **Purpose of status reports**

Each status report in clauses 2(a) and (b) above is to:

- (i) clearly present to CFH the current status of the Company’s performance under this Agreement, financial reporting obligations (for the Design and Build) and any issues arising in relation to the Network, the Design and Build, the O&M Services, the Service Levels or in respect of the relationship between CFH and the Company;
- (ii) form the basis of discussions at the PCG or the relevant Sub-Committee as to contract compliance, performance of applicable obligations and issues relating to the Network, Design and Build, delivery of the O&M Services and Service Levels; and
- (iii) highlight any relevant risks or issues that may threaten or be detrimental to the achievement of the UFB2 Objective or otherwise may adversely affect the relationship between the Company and CFH.

3 **Other status reports**

The Company is to provide CFH with such other reports as reasonably required by CFH from time to time, and the Company is to participate as reasonably required in CFH briefings. If the provision of such a report would require the Company to incur material additional costs, then, if requested by the Company, the report will be provided only upon a direction to that effect given by the PCG.

4 Operational reporting to Steering Committee

The Company must provide the information set out in column 2 of the table below, to the Steering Committee, no less frequently than the timings set out in column 3. All such information must be consistent with the corresponding information prepared for the Board of the Company and be provided to the Steering Committee no later than the time that information is provided to the Board of the Company.

	Item	Frequency
1.	All Service Levels performance.	As provided to CFH in accordance with clause 3 of this Annexure 1.
2.	The Company's annual and half yearly financial reports, and any other financial reports provided for in Annexure 2.	As provided to CFH in accordance with Annexure 2.
3.	Regional reporting information by Candidate Area.	As provided to CFH in accordance with clause 3 of this Annexure 1.

5 Commitments reports

CFH and the Company agree to the following monitoring and transparency initiatives to assist determination of the Company's adherence to the undertakings in Schedule 2 (*Commitments*):

- (a) uptake on the Network will be monitored by the Company and information provided to CFH;
- (b) a reasonable open book approach on fibre access uptake will be adopted, and the information provided by the Company to CFH will include copper access comparative information;
- (c) monitoring information will include feedback from major Retail Service Provider CEOs (both existing and prospective) and other customer satisfaction survey information;
- (d) information derived from complaints under the Wholesale Services Agreement complaints mechanism will also be available to CFH and used, as relevant;
- (e) comparative information based on CFH's other LFCs established under the RFP model, provided by CFH to the Company (to the extent it is available to CFH);
- (f) comparative information based on Singapore and NBN benchmarks, with the differences that exist between those countries and New Zealand (including but not limited to the relative stages of fibre deployment, differences in regulation and industry structure and differences in income levels and prices) being acknowledged; and
- (g) information on any investment in the copper network based on the exceptions set out in clauses 1.4.4 and 1.4.6 of Schedule 2 (*Commitments*), plus the Company's reasoning and justification as to why the investment in copper falls within the relevant exception in clause 1.4.6 of Schedule 2 (*Commitments*) (provided that no information will be required in relation to routine maintenance or individual projects with a value of less than ████████).

6 Service Level Defaults

If a Service Level Default occurs, the Company will promptly give CFH notice to that effect in accordance with clause 6.4(b)(ii) of the Base Agreement.

7 Delays

If the Company considers that it is (or is likely to be) prevented or delayed from successfully achieving a Build Milestone by the corresponding Build Milestone Date, it will provide notice in writing to CFH in accordance with clause 6.2(c) of the Base Agreement.

8 Remedial Plan

On request, in accordance with clause 17.2 of the Base Agreement, the Company will prepare and provide CFH with a proposed Remedial Plan in accordance with clause 17.3 to 17.7 of the Base Agreement.

9 O&M Documentation

The Company will develop documentation for the O&M Services in accordance with Schedule 4 (*O&M Services*).

10 Access to records

CFH will have access to all records and other information required to be maintained under clause 8.6(b) of the Base Agreement, in accordance with clause 8.6(d) of the Base Agreement.

11 Improvements reporting and consultation

On each anniversary of the Commencement Date (or earlier each year, if reasonably requested by CFH):

- (a) the Company will provide CFH with a report detailing Improvements, including:
 - (i) the expected and actual availability of Improvements that could be incorporated as part of the O&M Services (including by replacing, modifying or supplementing the existing O&M Services);
 - (ii) opportunities for CFH to test Improvements; and
 - (iii) the Company's use and intended use of Improvements; and
- (b) the Company and CFH will meet to discuss in good faith the ongoing adequacy of the Network and the O&M Services and measures which should be implemented, in accordance with this Agreement, to rectify or improve any aspect of the Network or the O&M Services.

12 Company Testing

On completion of the Company Testing, the Company will provide CFH with a summary of the test results, in accordance with clause 7.4 of Schedule 3 (*Design and Build*).

13 **Self Audit reports**

If the Company has carried out a Self-Audit in accordance with clause 8.7(c) of the Base Agreement, the Company will provide a written report to CFH of the findings of that Self-Audit as required under that clause.

Annexure 2: Corporate and Financial Reports

1 Combined Fibre Business Plan

The Company will prepare draft Combined Fibre Business Plans in accordance with clause 5 of this Schedule, to be agreed as set out in that clause.

2 Corporate reporting

(a) Annual and half yearly financial reports

The Company must provide copies of its annual and half yearly financial statements to CFH immediately after they have been publicly released.

(b) Governmental reporting requirements

The Company must provide any assistance or information reasonably requested from time to time by CFH or the Crown (as a shareholder in the Company) for the purpose of enabling each or both of them to comply with any reporting, audit or other obligations under Law, at CFH's cost.

3 Services and pricing reports

(a) The Company will provide CFH with monthly reports in a form and containing certain prescribed matters as agreed between the Company and CFH from time to time.

(b) Prescribed matters will include:

- (i) actual and projected Network build costs during the relevant reporting period;
- (ii) subject to any legal restrictions, details of the Company's End Users, including number and location of End Users, volume of services purchased by individual or specific groups of End Users;
- (iii) the number of Wholesale Service Agreements executed by the Company in the period since the previous report;
- (iv) any variations to any Wholesale Services Agreements during the relevant reporting period;
- (v) the number of End Users for each Specified Service (and, as applicable, Subsequent Service) and each Retail Service Provider as at the date of the report, and the prices and revenues by Candidate Area;
- (vi) Network performance metrics over the relevant reporting period;
- (vii) compliance with network record keeping requirements; and
- (viii) any other information reasonably requested by CFH and agreed with the Company.

4 Regular business review

At the completion of the second Financial Year, and at the completion of each subsequent two Financial Year periods, the Company will report on, and senior executives of CFH and the Company shall meet and review, the following:

- (a) market conditions for UFB services;
- (b) the services offered by the Company, the price levels and price structures of those services, and their influence on take up of UFB services;
- (c) a review of, and an updated business case for the Company's UFB investment, including:
 - (i) actual as compared to forecast revenues and expenditures since the commencement of Schedule 6 (*Principles for UFB Services and Pricing*);
 - (ii) updated projections of revenues and expenditures, including underlying assumptions; and
 - (iii) an updated balance sheet to reflect acquisition of new assets, asset disposals, and transfer of existing assets used to provide UFB services at current value. Once assets are entered on the UFB balance sheet they will not be revalued but updating will maintain the real financial value of the assets; and
- (d) projections for the price of UFB services after 1 January 2026 if the Company is to recover its UFB investment and earn a reasonable return on the investment over a reasonable period.

5 Regulatory reporting

The Company will keep CFH informed of all regulatory and/or legal changes or requirements impacting the Company that will or are likely to impact upon the Network and/or the performance of its obligation under this Agreement, in accordance with clause 9.8(a) of the Base Agreement.

Annexure 3: Named Personnel

Part A: Key Personnel

The following Company Personnel (within the PCG or Steering Committee) are Key Personnel, and will be available for the periods set out below (with such details in Part A and Part B below to be notified in writing by each party to the other within 10 Business Days of the Commencement Date).

Name and title	Role	Assigned period	Standing Member of the PCG (Yes/No)
[insert]	[insert]		
[insert]	[insert]		
[insert]	[insert]		

Part B: Named CFH Personnel

Name and title	Role	Assigned period	Standing Member of the PCG (Yes/No)
[insert]	[insert]		
[insert]	[insert]		
[insert]	[insert]		

Annexure 4: Combined Fibre Business Plan Template Form

Overall

- Plan to end of 31 December 2025
- Deployment schedule and costings
- Financial forecasts
- Strategy to drive fibre uptake
- Actual / planned comparison of financial and deployment information and variance analysis

Marketing Plan

- Description of fibre promotion programmes for direct and RSP marketing
- Marketing budget
- Use of external advertising agencies
- Analysis of customer responses
- KPIs for marketing
- Actual / planned comparison of marketing efforts and outcomes and variance analysis

RSP Engagement Plan

- Status of relationship
- Proposed development activities
- Outline of development opportunities and budget for expenses
- Comparison of RSP performance and growth

Product Development Plan

- Overview of current and potential new products
- Analysis of potential demand and net value contribution for new products
- Comparison to overseas uptake of products and demand drivers

Technology Roadmap

- Development schedules
- Review of impact of deploying new technology including potential impact of competitor deployment on revenue and cost
- Capex and opex impacts

Change process

- Any changes to the Service Levels
- Any proposed upgrading of, or technology changes in respect of, the Network

Customer Satisfaction Review / Engagement Plan

- Updated review of RSP and end customer satisfaction
- Analysis of trends
- Potential Company responses

Video Distribution Plan

- Proposed products
- Engagement plan with RSPs and content providers
- Product pricing

Other

- Management incentives

Annexure 5: Reporting Information

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
PREMISES HANDED OVER			
	INCREMENTAL		Number of Commissioned Premises Handed Over to CFH for UAT during the month prior to the date of reporting. For the avoidance of doubt monthly incremental totals represent the movement in monthly project to date (PTD) totals (and historic restatements are reflected in incremental movements).
P1	Residential	Monthly	Incremental number of residential Premises Handed Over during the month prior to the date of reporting
P2	Total Premises	Monthly	Incremental number of all Premises Handed Over during the month prior to the date of reporting– an auditable measure of build progress
	CUMULATIVE		Number of Commissioned Premises Handed Over to CFH for UAT on a PTD basis (i.e. since the start of the project).
P3	Residential	Monthly	Cumulative number of residential Premises Handed Over PTD
P4	Total Premises	Monthly	Total number of all Premises Handed Over PTD – an auditable measure of build progress
	CUMULATIVE - CANDIDATE AREA BREAKDOWN		Number of Commissioned Premises Handed Over to CFH for UAT on a PTD basis (i.e. since the start of the project) in respect of a particular Candidate Area.
P5	[Candidate Area A] <i>[Insert names of Network Stages which form the base of the Candidate Areas.]</i>	Quarterly	Cumulative number of Commissioned Premises Handed Over in respect of [Candidate Area A] on a PTD basis
P6	[Candidate Area B]	Quarterly	Cumulative number of Commissioned Premises Handed Over in respect of [Candidate Area B] on a PTD basis
P7	[Candidate Area C]	Quarterly	Cumulative number of Commissioned Premises Handed Over in respect of [Candidate Area C] on a PTD basis
P8	[Candidate Area D]	Quarterly	Cumulative number of Commissioned Premises Handed Over in respect of [Candidate Area D] on a PTD basis
P9	Total Premises	Quarterly	Total cumulative number of Commissioned Premises for all Candidate Areas

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
END USERS ABLE TO RECEIVE UFB			
	INCREMENTAL		<p>The number of End Users that were Connected and able to receive a service that is dependent on a UFB Service (based on Premises Handed Over) during the month prior to the date of reporting.</p> <p>For the avoidance of doubt monthly incremental totals represent the movement in monthly PTD totals (and historic restatements are reflected in incremental movements).</p>
EU1	Residential	Monthly	Incremental number of residential End Users Connected and able to receive a service that is dependent on a UFB Service during the month prior to the date of reporting
EU2	Total End Users	Monthly	Incremental number of all End Users Connected and able to receive a service that is dependent on a UFB Service during the month prior to the date of reporting
	CUMULATIVE		The number of End Users that are Connected and able to receive a service that is dependent on a UFB Service on a PTD basis (i.e. since the start of the project) (based on Premises Handed Over).
EU3	End Users Connected in respect of residential Premises	Monthly	Number of End Users that are Connected in respect of residential Premises and able to receive a service that is dependent on a UFB Service on a PTD basis
EU4	End Users Connected in respect of all Premises	Monthly	Total number of End Users that are Connected in respect of all types of Premises and able to receive a service that is dependent on a UFB Service on a PTD basis
	CUMULATIVE – CANDIDATE AREA BREAKDOWN		The number of End Users that are Connected and able to receive a service that is dependent on a UFB Service on a PTD basis (i.e. since the start of the project) (based on Premises Handed Over).
EU5	[Candidate Area A] <i>[Insert names of Candidate Areas.]</i>	Quarterly	Cumulative number of End Users Connected and able to receive a service that is dependent on a UFB Service in respect of [Candidate Area A]
EU6	[Candidate Area B]	Quarterly	Cumulative number of End Users Connected and able to receive a service that is dependent on a UFB Service in respect of [Candidate Area B]
EU7	[Candidate Area C]	Quarterly	Cumulative number of End Users Connected and able to receive a service that is dependent on a UFB Service in respect of [Candidate Area C]
EU8	[Candidate Area D]	Quarterly	Cumulative number of End Users Connected and able to receive a service that is dependent on a UFB Service in respect of [Candidate Area D]
EU9	Total End Users	Quarterly	Total cumulative number of End Users Connected and able to receive a service that is dependent on a UFB Service in respect of all Candidate Areas

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
CONNECTIONS			
	INCREMENTAL		<p>End Users that connected to a GPON, DFAS or P2P service net of disconnections during the month.</p> <p>Classification based on RSP order. Excludes E-NNI's, Colo, tie cable or other products that do not connect an End User. For the avoidance of doubt monthly incremental totals represent the movement in monthly PTD totals (and historic restatements are reflected in incremental movements). Classification based on RSP order.</p>
CON1	Residential	Monthly	Incremental number of End Users connected to a GPON, DFAS or P2P service net of disconnections in respect of residential Premises during the month prior to the reporting date based on GPON order type
CON2	Total Incremental Connections	Monthly	Incremental number of End Users connected to a GPON, DFAS or P2P service net of disconnections in respect of all Premises during the month prior to the reporting date based on GPON order type.
	CUMULATIVE		<p>End Users that connected to a GPON, DFAS or P2P service net of disconnections on a PTD basis. (i.e. since the start of the project).</p> <p>Classification based on RSP order. Excludes E-NNI's, Colo, tie cable or other products that do not connect an End User. Classification based on RSP order.</p>
CON3	Residential	Monthly	Cumulative number of End Users connected to a GPON, DFAS or P2P service net of disconnections in respect of residential Premises on a PTD basis based on order type
CON4	Total Cumulative Connections	Monthly	Total of all cumulative number of End Users connected to a GPON, DFAS or P2P service net of disconnections in respect of all types of Premises on a PTD basis based on order type
	INCREMENTAL – RSP BREAKDOWN		<p>End Users that connected to a GPON, DFAS or P2P service net of disconnections during the month. Classification based on RSP order. Excludes E-NNI's, Colo, tie cable or other products that do not connect an End User. For the avoidance of doubt monthly incremental totals represent the movement in monthly PTD totals (and historic restatements are reflected in incremental movements).</p>
CON5	RSP #1	Monthly	<i>[Include top 10 RSPs in order of volume.]</i>
CON6	RSP #2	Monthly	
CON7	RSP #3	Monthly	
	..		
	..		

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
CON13	RSP #10	Monthly	
CON14	Other	Monthly	
CON15	Total Incremental Connections	Monthly	Incremental number of End Users connected to a GPON, DFAS or P2P service net of disconnections by top 10 RSPs in the month. Excludes E-NNI's, Colo, tie cable or other products that do not connect an End User. Should equal Total monthly UFB connections
	CUMULATIVE – RSP BREAKDOWN		End Users that connected to a GPON, DFAS or P2P service net of disconnections on a PTD basis (i.e. since the start of the project). Classification based on RSP order. Excludes E-NNI's, Colo, tie cable or other products that do not connect an End User.
CON16	RSP #1	Monthly	<i>[Include top 10 RSPs in order of volume.]</i>
CON17	RSP #2	Monthly	
CON18	RSP #3	Monthly	
	..		
	..		
CON25	RSP #10	Monthly	
CON26	Other	Monthly	
CON27	Total Cumulative Connections	Monthly	Cumulative number of End Users connected to a GPON, DFAS or P2P service net of disconnections by top 10 RSPs PTD. Excludes E-NNI's, Colo, tie cable or other products that do not connect an End User. Should equal Total Cumulative Connections PTD
UFB ORDERS			
	INCREMENTAL – RSP BREAKDOWN		Total monthly incremental gross UFB Orders received for new GPON, DFAS or P2P products (excludes Moves Adds or changes MACs and customer moving RSP). This is gross UFB orders before cancelations or rejections.
ORD1	RSP #1	Monthly	<i>[Include top 10 RSPs in order of volume.]</i>

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
ORD2	RSP #2	Monthly	
ORD3	RSP #3	Monthly	
	..		
	..		
ORD10	RSP #10	Monthly	
ORD11	Other	Monthly	[Include UFB Orders from any other RSPs that have more than 1% market share.]
ORD12	Total Incremental UFB Orders	Monthly	Incremental number of gross UFB Orders received for new GPON, DFAS or P2P products in the month prior to the reporting date (excludes [Moves Adds] or changes MACs and customer moving RSP). This is gross orders before cancellations or rejections
	UFB WIP ORDERS		
WIP1	WIP Orders in Progress Opening Balance	Monthly	
WIP2	+ Orders Received	Monthly	Gross UFB orders received in the month for GPON, DFAS or P2P services
WIP3	- Orders Rejected	Monthly	UFB orders rejected in the month
WIP4	- Orders Cancelled	Monthly	UFB orders cancelled in the month (including MDUs where consents have not been received)
WIP4	Orders available to connect	Monthly	Orders in progress + orders received - orders rejected - orders cancelled
WIP5	- Orders Completed	Monthly	End Users Connected in the month (should match Total monthly Connections and Total Monthly Connections by RSP)
WIP6	WIP Orders in Progress Closing Balance	Monthly	Orders available to Connect - orders completed
WIP7	Average number of days WIP	Monthly	Average number of calendar days of WIP
WIP8	Median number of days WIP	Monthly	Median number of calendar days of WIP

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
	Aged WIP		
WIP9	<30 Days	Monthly	Orders outstanding for less than 30 calendar days from time the order is taken by RSP
WIP10	31-40 Days	Monthly	Orders outstanding between 31 and 40 calendar days from time the order is taken by RSP
WIP11	41-50 Days	Monthly	Orders outstanding between 41 and 50 calendar days from time the order is taken by RSP
WIP12	51-60 Days	Monthly	Orders outstanding between 51 and 60 calendar days from time the order is taken by RSP
WIP13	>60 Days	Monthly	Orders outstanding longer than 60 calendar days from time the order is taken by RSP
WIP14	Churn	Monthly	UFB Connections disconnected due to moving house or terminating service. It does not include End Users changing RSP or moves adds or changes. NB: Some LFC's use the term RQ (or relinquishments)
	PROVISIONING		
PRO1	Network SLA Fibre Connections – RSP and CFH	Monthly	% and number of monthly Connections that are completed on the Agreed Completion Date
PRO2	Network SLA Fibre Connections - RSP	Monthly	% and number of monthly Connections that are scheduled to be completed within 60 days of receipt of order
PRO3	Network SLA Fibre Connections – NBAP – RSP	Monthly	% and number of monthly NBAP Connections completed within 60 Business Days following receipt of all permissions and consents
	TIME TO CONNECT		
TTC1	Average Provisioning time (Res SDU)	Monthly	Average time to connect measured in calendar days from receipt of residential SDU order to completed connection. Number of days will be impacted by consents and % of install dates agreed in advance. Classification based on RSP order and GIS property definition of residential SDU.
TTC2	Median Provisioning time (Res SDU)	Monthly	Median time to connect measured in calendar days from receipt of residential SDU order to completed connection. Number of days will be impacted by consents and % of install dates agreed in advance. Classification based on RSP order and GIS property definition of residential SDU.
TTC3	Average Provisioning time (Bus. SDU)	Monthly	Average time to connect measured in calendar days from receipt of business SDU order to completed connection. Number of days will be impacted by consents and % of install dates agreed in advance. Classification based on RSP order and GIS property definition of business SDU.

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
TTC4	Median Provisioning time (Bus. SDU)	Monthly	Median time to connect measured in calendar days from receipt of business SDU order to completed connection. Number of days will be impacted by consents and % of install dates agreed in advance. Classification based on RSP order and GIS property definition of business SDU.
TTC5	Average Provisioning time (MDU/ROW)	Monthly	Average time to connect measured in calendar days from receipt of MDU/ROW customer order to completed connection. Number of days will be impacted by consents and % of install dates agreed in advance. Classification based on RSP order and GIS property definition of MDU/ROW. Subsequent MDU order is measured as an SDU.
TTC6	Median Provisioning time (MDU/ROW)	Monthly	Median time to connect measured in calendar days from receipt of MDU customer order to completed connection. Number of days will be impacted by consents and % of install dates agreed in advance. Classification based on RSP order and GIS property definition of MDU. Subsequent MDU order is measured as an SDU.
	TIME TO RESTORE		
RES1	Layer 1 restoration	Monthly	The number of Layer 1 faults repaired in compliance with the SLA.
RES2	Layer 2 restoration	Monthly	The number of Layer 2 faults repaired in compliance with the SLA.
	CONNECTIONS BY CANDIDATE AREA (CUMULATIVE)		
CONCA1	[Candidate Area A] <i>[Insert names of Candidate Areas.]</i>	Quarterly	Cumulative number of Connections made in respect of [Candidate Area A]
CONCA2	[Candidate Area B]	Quarterly	Cumulative number of Connections made in respect of [Candidate Area B]
CONCA3	[Candidate Area C]	Quarterly	Cumulative number of Connections made in respect of [Candidate Area C]
CONCA4	[Candidate Area D]	Quarterly	Cumulative number of Connections made in respect of [Candidate Area D]
CONCA5	[Candidate Area E]	Quarterly	Cumulative number of Connections made in respect of [Candidate Area E]
	CONNECTIONS BY PRODUCT (CUMULATIVE)		
	BUSINESS DOWNSTREAM		
PROD1	<100Mbps [GPON]	Quarterly	
PROD2	>100Mbps [GPON]	Quarterly	

ITEM	REPORTING INFORMATION	FREQUENCY	DESCRIPTION
PROD3	>100Mbps [P2P]	Quarterly	
PROD4	1 Gbps [P2P]	Quarterly	
PROD5	10 Gbps [P2P]	Quarterly	
PROD6	DFAS	Quarterly	
PROD7	Business Total	Quarterly	Number of cumulative business products based on RSP order classification PTD
	RESIDENTIAL DOWNSTREAM		
PROD15	Voice Only	Quarterly	
PROD16	30Mbps [GPON]	Quarterly	
PROD17	50Mbps [GPON]	Quarterly	
PROD18	100Mbps [GPON]	Quarterly	
PROD19	200Mbps [GPON]	Quarterly	
PROD20	>200Mbps [GPON]	Quarterly	
PROD21	1 Gbps [GPON]	Quarterly	
PROD22	Residential Total	Quarterly	Number of cumulative residential products based on RSP order classification PTD
PROD23	Total Cumulative Connections	Quarterly	Cumulative End Users connected split by UFB speed/product bands [total should match Cumulative End User Connection PTD]

Schedule 10: Commitments – Post Build

1. Recitals

- (a) This Schedule records certain undertakings by the Company and CFH in relation to copper investment, fibre product development and assistance to uptake within the Candidate Areas which are to apply during the period following completion of the build until there are no CFH2 Securities outstanding, or the company and CFH jointly agree that this Schedule 10 no longer serves any useful purpose. In addition to the Government's UFB2 Objective (as defined in Recital B of the Base Agreement), the Government's UFB policy includes the objective of maximising connections to the Network (**UFB Uptake Objective**).
- (b) The Company has entered into obligations in respect of the UFB2 Objective and the UFB Uptake Objective and CFH believes it is capable of, and committed to delivering, both the UFB2 Objective and positively assisting the Government's UFB Uptake Objective.
- (c) The Company is a listed company, and the Company's Board will act in the best interests of the Company and its shareholders.
- (d) The Company will ensure its fibre access assets, and its relationships with Retail Service Providers, are utilised in a manner that give the UFB Uptake Objective every chance of success. The Company will proactively seek to develop and deliver fibre products and services that both drive and meet wholesale customers' needs and thereby contribute to achieving the UFB Uptake Objective.
- (e) This introduction to this Schedule shall provide a guide to the interpretation and application of the following provisions in the event of any ambiguity or uncertainty as to the intention of any provision.

2. Market Context

- (a) The Company is a wholesaler of fibre access and has legislated/regulated business line restrictions on the scope of its business and services, as set out in the Telecommunications Act 2001 as at the date of this Agreement, and the Telecommunications (Property Access and Other Matters) Amendment Bill that is likely to be enacted following the date of this Agreement (**In-Scope Fibre Access Services**). Its customers are a relatively small number of Retail Service Providers who in turn use its In-Scope Fibre Access Services to deliver services to a large number of End Users.
- (b) The demand for fibre access services is driven by the attractiveness of fibre services to End Users. This in turn is influenced by the behaviour of the Company and the behaviour of Retail Service Providers. The parties recognise that fibre access will be competing with other access technologies (e.g. mobile and copper based access and other fibre networks).

3. General Commitment Standard

- (a) The Company shall seek to maximise uptake on the Network with a level of commitment which is consistent with that of other local fibre companies in which CFH is a shareholder or investor, or was previously at any time a shareholder or investor, that provide wholesale Ultra-Fast Broadband services to Retail Service Providers in New Zealand (**LFCs**). The Company's commitment to fibre products and service

innovation and development shall, subject to satisfying the business case test in Annexure 1 of this Schedule (**Business Case Test**), be consistent with that of relevant international benchmarks.

- (b) This level of commitment is referred to as the **Commitment Standard** and, unless expressly stated to the contrary, is intended to be applied in determining whether the Company has performed its undertakings under this Schedule to the required standard (but for no other purpose).
- (c) The purpose of this Schedule is to address the risks to the UFB2 Objective that might arise due to the fact that the Company also provides a copper network, and services and products over that copper network.
- (d) Nothing in this Schedule shall have the effect of:
 - (i) limiting the Company's ability to respond to competition from other providers, including that the Company may respond, at its discretion with competitive fibre (subject to Schedule 6), copper or other products, services or prices (provided that, where the Company proposes to respond to any such competition with competitive copper products, services or prices, it will first consult with CFH in good faith and provide CFH with reasons why the Company believes this is the appropriate response to that competition);
 - (ii) limiting the Company's ability to complete the VDSL technology upgrades and product development summarised in Annexure 2 (**VDSL Upgrades**), provided that:
 - (A) the Company will not deploy any further copper-based cabinets beyond those included in the Company's existing cabinetisation programme; and
 - (B) the Company will restrict VDSL deployment to the sites (cabinets and exchanges) that were in existence as at the Commencement Date; or
 - (iii) constraining the Company's ability to deploy other technologies other than copper or fibre.

4. Network Investment

- (a) The Company currently delivers access services and products using its existing multi technology telecommunications network (which includes copper access assets).
- (b) Both parties recognise the importance of the Company providing services and products on copper access assets for the foreseeable future, but the parties wish to ensure that this does not diminish or inhibit the Company's performance of, or adherence to, the undertakings in this Schedule or the Company's commitment to positively assist fibre uptake in accordance with the Commitment Standard, and that End User fibre uptake is not compromised by the Company's ongoing investment in copper access assets beyond that contemplated by this clause 4.
- (c) The Company undertakes to prioritise new investment in fibre access and uptake and to minimise ongoing investment in copper access assets in all future business plans.
- (d) The Company will offer only fibre access services in relation to:
 - (i) Adjoining Greenfield Sites, in accordance with clause 4.5(a) of the Base Agreement and Schedule 3 (*Design and Build*);

- (ii) Infill Greenfield Sites, in accordance with clause 4.5(a) of the Base Agreement and Schedule 3 (*Design and Build*): and
- (iii) Infill Premises, in accordance with clause 4.5(b) of the Base Agreement and Schedule 3 (*Design and Build*).

The only exceptions to these undertakings will be where offering fibre only access will deprive residential End Users of satisfactory fixed line services for an extended period. Such circumstances will include where the new development is located some distance from planned fibre build or where Retail Service Providers are not offering satisfactory fibre services.

- (e) Other than as provided for in the preceding paragraph, the Company will not build any new 'copper to the home' networks in the Candidate Areas.
- (f) The Company will upgrade to next generation PON for the Network when it is commercially available (noting that the normal lifecycle of technology is approximately seven years) on the basis that any upgrades to next generation PON will be subject to those upgrades (A) satisfying the Business Case Test (via the Combined Fibre Business Plan process in Schedule 7 of this Agreement) and (B) not requiring the Company to exceed the Commitment Standard or otherwise do anything beyond what it has committed to under any other provision of this Schedule.
- (g) CFH acknowledges that the Company's undertakings in clause 4(c) of this Schedule to minimise investment in copper assets and in clause 4(d) of this Schedule in relation to Greenfield Sites are subject to:
 - (i) fibre access services being available or imminently available in particular areas;
 - (ii) any specific legal requirements that are now, or may in the future be, imposed on the Company, including any regulatory obligations to provide other services and investment in any other technology operated, or to be operated by the Company;
 - (iii) there being no limit on the Company's ability to continue to provide existing services using the copper access network in the Candidate Areas to current or new End Users; and
 - (iv) there being no limit on the Company's ability to make such other investments and offer such other services as is necessary or desirable in order to:
 - (A) prevent End User migration to competitors or to prevent, resolve or mitigate End User dissatisfaction; and/or
 - (B) ensure, over the long term, technology and End User requirements are adequately anticipated and responded to by the Company.
- (h) The Company undertakes not to implement financial incentives of any kind or in any form whatsoever (including by way of price discounts or bonus or loyalty programmes of any kind):
 - (i) for the purposes of encouraging End Users not to migrate to fibre access services from copper access services; and/or
 - (ii) to prevent End Users of copper access services from migrating to competitors without first consulting with CFH in good faith.

5. Uptake Assistance

- (a) In addition to the contracted products, prices and connection terms outlined in this Agreement, the parties acknowledge that the Company can have a positive influence on fibre uptake by developing products for and with Retail Service Providers to facilitate Retail Service Provider product offerings to End Users. This will allow Retail Service Providers to increase the attractiveness of fibre access to their customers and therefore encourage fibre uptake.
- (b) Primarily, product development and promotion activities will revolve around:
 - (i) working proactively with Retail Service Providers to develop additional wholesale fibre access products;
 - (ii) ensuring that Retail Service Providers know the capabilities of the fibre access network and the deployment schedule so they can plan and market to their End Users;
 - (iii) ensuring that End Users know that fibre access is available in their locale so they can engage with Retail Service Providers immediately upon fibre access being available;
 - (iv) ensuring that the Company has a simple, transparent and efficient process for Retail Service Providers seeking to work with the Company's Layer 2 services to develop enhanced fibre products; and
 - (v) monitoring relevant local and international product developments.
- (c) With respect to fibre products and services the Company makes the following undertakings:
 - (i) the Company will undertake all the activities referred to in clause 5(b) of this Schedule;
 - (ii) the Company will ensure its Layer 2 fibre access services will support legacy services (where economic) and hand such traffic over to Retail Service Providers as per UFB technical specifications;
 - (iii) the Company will engage with Retail Service Providers to ascertain Retail Service Providers' views on appropriate Layer 2 wholesale products for fibre access;
 - (iv) the Company will ensure its fibre access services will have the capability to support video services including IPTV, RF overlay and OTT and provide the required interconnection to video services providers to deliver these services (recognising that other than multicast and RF overlay, the Company is limited to In-Scope Fibre Access Services);
 - (v) the Company will advise Retail Service Providers that fibre access services are its preferred offering and will seek to maximise early uptake (and also minimise connection costs) by actively promoting fibre connections at the same time as initial construction work is being undertaken on a street by street basis;
 - (vi) the Company will actively promote fibre access to Retail Service Providers through its account managers and may also participate in appropriate proportionate promotional campaigns (including joint campaigns with Retail Service Providers in Candidate Areas where fibre access is shortly expected to be deployed);

- (vii) except where it is acting in accordance with clauses 4(d) and 4(f) of this Schedule, the Company will not specifically promote existing copper access in any Candidate Areas and the Company will encourage Retail Service Providers to migrate customers to fibre access;
 - (viii) when a Retail Service Provider wishes to migrate customers from copper to fibre access, the Company will ensure such migration is as smooth and seamless as possible; and
 - (ix) the Company's activities in this clause 5(d) must be in accordance with the Commitment Standard.
- (d) With respect to fibre products and services the Company makes the following additional undertakings:
- (i) the Company will, within the agreed product framework, deliver products to Retail Service Providers on request (for example, different combinations of upstream/downstream bandwidth, CIR etc.); and
 - (ii) the UFB Services and Requirements relate to products and services which are currently envisaged on fibre access. In the future, any new Layer 2 (currently unforeseen) products and services will be provided or supported by the Company.
- (e) CFH acknowledges that the Company's undertakings in clauses 5(d) and 5(e) of this Schedule in relation to fibre products and services are subject to any specific legal requirements that are now, or may in the future be, imposed on the Company, including any regulatory obligations to provide other services.

6. Business Plan Process and Monitoring

- (a) The matters covered by this Schedule must be addressed, in accordance with the Business Case Test, in an annual business plan prepared by the Company.
- (b) The Company will provide a copy of each such business plan to CFH (in confidence) for its information. The material provided to CFH can be limited to fibre-specific aspects of the Company's operations provided the information excluded is not material to CFH's understanding of the operation during the years of those fibre-specific components of the Company's business.
- (c) The Company will brief CFH every six months (or such other periods as they may agree) on the matters covered by this Schedule.
- (d) CFH and the Company agree to the following monitoring and transparency initiatives to assist determination of the Company's adherence to the undertakings in this Schedule:
 - (i) uptake on the Network will be monitored by the Company and information provided to CFH;
 - (ii) a reasonable open book approach on fibre access uptake will be adopted, and the information provided by the Company to CFH will include copper access comparative information;
 - (iii) monitoring information will include feedback from major Retail Service Provider CEOs (both existing and prospective) and other customer satisfaction survey information;

- (iv) information derived from complaints under the Wholesale Services Agreement complaints mechanism will also be available to CFH and used, as relevant;
- (v) comparative information based on CFH's other LFCs established under the RFP model, provided by CFH to the Company (to the extent it is available to CFH);
- (vi) comparative information based on Singapore and NBN benchmarks, with the differences that exist between those countries and New Zealand (including but not limited to the relative stages at fibre deployment, differences in regulation and industry structure and differences in income levels and prices) being acknowledged; and
- (vii) information on any investment in the copper network based on the exceptions set out in clauses 3(d)(ii), 4(d) and 4(g) of this Schedule, plus the Company's reasoning and justification as to why the investment in copper falls within the relevant exception in clause 3(d)(ii) or 4(g) of this Schedule, as the case may be (provided that no information will be required in relation to routine maintenance or individual projects with a value of less than [REDACTED]).

7. [Not used]

Not used.

8. Breach and Remedial actions

- (a) If CFH considers the Company to be, or potentially to be, in breach of any of these provisions, it shall raise the matter with the Company at the earliest possible opportunity (and, in any event, not more than 12 months after date of the alleged breach) providing a detailed outline of the alleged breach and views on how the breach could be remedied.
- (b) Allegations of breach shall be raised in the first instance by CFH with the Company's CEO. If there is no agreement on the allegation, the issue shall be determined by an independent expert (as per the dispute resolution process set out in clause 6 of Schedule 7).
- (c) If any of the provisions are found to have been breached by the Company, then, subject to clause 8(e) and 8(f) of this Schedule, the Company shall make such increased investment, operational changes and undertake such other actions as is required in order to (i) achieve as soon as possible the level of uptake on the Network that would have been achieved had the breach not occurred, and (ii) ensure the breach ceases and does not continue (**Remedial Actions**).
- (d) Appropriate Remedial Actions shall be determined unanimously in the first instance by the CEOs of CFH and the Company. If there is no agreement between them, the Remedial Actions shall be determined by an independent expert (as per the SC dispute resolution process set out in clause 6 of Schedule 7).
- (e) The Company cannot be required to undertake any Remedial Actions to the extent that:
 - (i) the Remedial Actions relate to any breach of these provisions occurring more than 12 months prior to CFH raising the allegation of breach with the Company; or

- (ii) in respect of the first breach of any provision of this Schedule (and assuming there has not been any breach of the equivalent provisions of Schedule 2) (**First Breach**), the total cost of any increased investment or operational changes required by Remedial Actions in any year would exceed [REDACTED].
- (f) CFH agrees that the maximum amount the Company is required to spend in any year under clause 4(f) of this Schedule is [REDACTED] (to be adjusted annually by the CPI index after completion of the build programme) and the Company will not be in breach of clause 4(f) of this Schedule for failing to spend more than that.
- (g) Except for injunctive relief, the Remedial Actions are CFH's exclusive rights and remedies under this Agreement for the first breach by the Company of a provision of this Schedule.

9. [Not used]

Not used.

10. General

- (a) Neither CFH nor the Company will have any binding obligations in relation to the matters referred to in this Schedule until the end of the Term.
- (b) The provisions of this Schedule will survive termination or expiry of this Agreement and will continue until the first date on which there are no outstanding "CFH2 Securities".
- (c) Nothing in this Schedule shall require the Company to provide products at particular prices or specifications.
- (d) The following provisions of the Agreement shall be deemed to be incorporated by reference into this Schedule with effect from the end of the Term:
 - (i) any capitalised term set out in Schedule 1 (*Definitions*) which is used in this Schedule;
 - (ii) clauses 1.3(b), 1.4, 22.1, 22.2, 22.5, 22.6, 22.7, 22.8, 22.9, 22.11 and 23 of the Base Agreement;
 - (iii) clause 13 of the Base Agreement;
 - (iv) clause 15 of the Base Agreement, provided that:
 - (A) for the purposes of clauses 15.1 of the Base Agreement, the amount stated as the maximum aggregate liability of CFH shall be an amount equal to [REDACTED] less the aggregate of all amounts for which CFH was liable in respect of all claims, proceedings, actions, liabilities, damages, costs, expests or losses during the Term; and
 - (B) for the purposes of clauses 15.2 of the Base Agreement, the amount stated as the maximum aggregate liability of the Company shall be an amount equal to [REDACTED] less the aggregate of all amounts for which the Company was liable in respect of all claims, proceedings, actions, liabilities, damages, costs, expests or losses during the Term,

and any reference in any of those provisions to “this Agreement” shall accordingly be deemed to be a reference to this Schedule.

Annexure 1: Business Case Test

Business Case Test for Fibre Access Business Initiatives and Product Development Activities

Note: This is the business case test referred to in this Schedule.

1. Objective

The business case test is designed to:

- (i) provide an objective measure of when the Company should undertake these activities as if it were only a fibre access operator; and
- (ii) confirm that the Company is not required to undertake activities that are not economic, when analysed on the basis of fibre-related investment, costs and revenues only.

The business case test described below is the business case test that a fibre only operator would apply to the evaluation of new fibre access business or product initiatives, (the **Initiatives**). The Company will not be a fibre only operator in the foreseeable future, but is undertaking to CFH that it will behave as if it were a fibre only operator in relation to Initiatives.

2. Methodology

The methodology for the business case test shall be a standard discounted cashflow methodology using an appropriate hurdle rate to calculate the net present value of expected after tax net cashflows that are attributable to the Initiative over the expected life of that Initiative. The hurdle rate must be reasonable, relative to the WACC assessed for the project. It is assumed that the hurdle rate for the project will be the WACC assessed for the Company as a whole.

3. Net Cashflows

Net Cashflows from an Initiative will accrue from:

- (i) the expected net after tax cash flows attributable to the Initiative; and
- (ii) the marginal net cashflows arising from the impact of the Initiative on fibre uptake.

Further detail on these items is provided below.

3.2 Expected after tax cash flows

These will include:

- (i) the capital and operating costs of product development and engaging with Retail Service Providers (including reasonable recoveries of appropriate overheads resulting from that Initiative and associated OSS/BSS upgrading etc.); and
- (ii) the additional net revenue that the Initiative is expected to deliver relative to the then current base uptake forecast.

3.3 Marginal net cashflows

The marginal net cashflows arising from the impact of the Initiative on uptake captures the expected value consequence of an Initiative's impact on forecast uptake relative to the uptake that would have occurred without the Initiative.

This will be net cashflows attributable to the bringing forward of revenue and costs for incremental fibre connections, adjusted as appropriate for the impact on the pricing of those brought forward connections.

For the avoidance of doubt, it is noted that the analysis above must not factor in losses in revenue on copper access or any changes in the value of copper access assets as a result of that Initiative.

Annexure 2: VDSL Upgrades

The VDSL Upgrades comprise:

- investment to ensure the VDSL2 capable lines post-cabinetisation can be offered a VDSL product; and
- subject to actual or anticipated competitive pressures investments required to develop the current product to have superior performance.

This investment will primarily involve re-arrangement of DSLAM cards, purchase of new VDSL2 DSLAM FD cards and GigE ports, dynamic line management, cabling re-arrangement/tidy ups in urban locations to remove anomalies and product development.

Schedule 14: [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

