

Network Infrastructure Project Agreement

[Note: Public Version incorporates amendments to 14 November 2011]

UltraFast Broadband Limited

and

UltraFast Fibre Limited

and

Crown Fibre Holdings Limited

Date 15 December 2010

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND
TEL 64 9 916 8800 FAX 64 9 916 8801

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This **Project Agreement** is made on 15 December 2010

between (1) **UltraFast Broadband Limited (LFC)**

and (2) **UltraFast Fibre Limited (the Contractor)**

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

Background

- A. On 21 October 2009 the New Zealand Government issued an invitation to participate, as varied (the **ITP**) to invite potential partners to submit proposals on how they would co-invest with the Government to achieve its Ultra-Fast Broadband objective (the **UFB Initiative**).
- B. The Government's objective of the UFB Initiative is to accelerate the roll-out of Ultra-Fast Broadband to 75 percent 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 **UFB Objective**).
- C. The Government has established a Crown-owned investment company, CFH, to manage its investment in the UFB Initiative. The Contractor was the successful respondent under the ITP in relation to the Coverage Area and CFH and the Contractor have formed the LFC.
- D. The overriding objectives of the LFC are to maximise availability of an industry best practice fibre optic communications infrastructure network in the Coverage Area and generate widespread uptake of services (including Layer 1 Services and Layer 2 Services) in the Coverage Area.
- E. The Network will include New Infrastructure, designed and built under this Agreement, and Existing Infrastructure acquired by the LFC from the Contractor under the Assets Transfer Agreement.
- F. The LFC will own and control the Network in the Coverage Area, however the Contractor is solely responsible for the Design and Build and takes the risk of any cost and time overruns and any failure to comply with the Requirements. The Contractor will enter into such subcontracts (including for civil works) as required to build the New Infrastructure for delivery to the LFC. The Contractor will be responsible as primary obligor for all work carried out, and materials used or infrastructure provided, by any subcontractor.
- G. The Contractor has represented that it has the skills and resources necessary to provide the Design and Build of the New Infrastructure and the O&M Services for the Network (including operation, management and maintenance of the Network) and associated deliverables. In reliance on the Contractor's and the Parent Company's representations, the LFC has engaged the Contractor to be solely responsible for the provision of the Design and Build and the Services and associated deliverables on the terms of this Agreement, including in accordance with the Requirements and the Network Deployment Plan.
- H. This Agreement sets out the relationship between, and the rights and obligations of, the LFC, the Contractor 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 Requirements).

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

- (i) Following the Commencement Date, each document subject to the Document Finalisation Process will:
 - (A) be prepared in draft by the Contractor, and delivered to the LFC, no later than the relevant "draft document delivery" date specified in the Network Deployment Plan and/or the relevant Schedule;
 - (B) reflect and be consistent with the requirements and content outlined for that document in the relevant Schedule or Annexure; and
 - (C) reflect and be consistent with the other terms and conditions under this Agreement, including the requirements on, and obligations of, the Contractor.
- (ii) The document will then be subject to comments by the PCG, in accordance with the timeframe specified in the Network Deployment Plan and/or the relevant Schedule 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 document). In each case the Contractor will, working collaboratively with the LFC, take those comments into account and resubmit a further draft of the document to the PCG in accordance with the timeframe specified in the Network Deployment Plan and/or the relevant Schedule 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 such comments).
- (iii) The document will then be reviewed and agreed by the PCG within the timeframe specified in the Network Deployment Plan and/or the relevant Schedule or, if not so specified, as soon as reasonably practicable (but, in any event, if not so specified, no later than 20 business days following the process set out in clause 1.1(b)(ii)).
- (iv) If complete agreement on the document is not reached by the PCG within the timeframe contemplated in clause 1.1(b)(iii), either party may refer the elements of the document not agreed as a dispute straight to expert determination under clause 20.5.

- (v) Once the PCG has agreed a document and/or all or part of a document has been finalised by expert determination (as the case may be), then the LFC and the Contractor will sign that document in the form so agreed. The document will then constitute a Schedule or Annexure (as applicable), including replacing an existing draft document if applicable, and form part of this Agreement.
- (vi) The LFC's and CFH's participation in the Document Finalisation Process (whether through the PCG or otherwise):
 - (A) does not prejudice any of the LFC's and CFH's rights and remedies against the Contractor under this Agreement or under Law; and
 - (B) is without prejudice to the performance by the Contractor of its obligations under this Agreement.
- (vii) Without limiting clause 1.1(b)(vi), the Contractor acknowledges and agrees that, in the conduct of the Document Finalisation Process for any document, any comments, failure to make comments or raise objections or any other act or omission on the part of the LFC or CFH will not constitute approval by the LFC or CFH that all or part of the relevant 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 Contract Change agreed between the Contractor and the LFC pursuant to a Change Authorisation Agreement;
 - (ii) the Requirements;
 - (iii) the Base Agreement and Schedule 1 (Definitions);
 - (iv) the Schedules (other than Schedule 1 (Definitions)); and
 - (v) the Annexures (other than the 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.

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** is a reference to a clause of this Agreement;
- (ii) a reference to a **Schedule** or an **Annexure** is a reference to a schedule or an annexure to this Agreement;
- (iii) a reference to **payment** means the payment of, or mechanism of transferring, consideration from one party to another in the form of cash, equity securities or otherwise, in accordance with this Agreement, and references to **paid**, **payable** and **pay** shall be construed accordingly;
- (iv) a **gender** includes each other gender;
- (v) the **singular** includes the plural and vice versa;
- (vi) 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;
- (vii) a reference to **materials** means a reference to materials of any kind whether in the form of documentation, Software, hardware, network, componentary or otherwise;
- (viii) a reference to the **Contractor** in this Agreement includes reference to its successors in title and permitted assigns and, where the context so permits, its Personnel, Subcontractors and representatives;
- (ix) a reference to the **LFC** in this Agreement includes reference to its successors in title and permitted assigns and, where the context so permits, its Personnel and representatives;
- (x) any **agreement not to do a thing** also constitutes an agreement not to suffer or permit or cause that thing to be done;
- (xi) any reference to a **consent**, requires the prior written consent of the party required to give that consent;
- (xii) whenever the words **includes** or **including** are used in this Agreement, they are deemed to be followed by the words "without limitation";
- (xiii) 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;
- (xiv) **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;
- (xv) a reference to a **person** includes a partnership and also a body of persons, whether corporate or unincorporated;
- (xvi) the **Background** forms part of this Agreement;

- (xvii) 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 provincial anniversary day;
- (xviii) a reference to a **day**, other than a business day, is a reference to any calendar day of the year;
- (xix) a reference to any **time** is a reference to New Zealand time;
- (xx) a reference to **currency** is a reference to New Zealand currency, unless expressly provided otherwise;
- (xxi) 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
- (xxii) a reference to **use** in relation to Software includes reference to the execution, transmission, performance or display of that Software;

(c) No contra proferentem

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) UFB Objective

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 UFB Objective in respect of the LFC and 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, any thing, does not apply to any other matter.

1.6 Exercise of the LFC's rights

- (a) CFH may, at its discretion, direct the LFC to:

- (i) exercise, or not exercise, any right, discretion or remedy of the LFC; or
 - (ii) provide, or not provide, any approval or consent of the LFC,
under or in connection with the Agreement.
- (b) If, for whatever reason, such directions are not followed then CFH may, at its discretion, act on behalf of the LFC in exercising, or electing not to exercise, such right, discretion or remedy or providing, or electing not to provide, such approval or consent.
- 1.7 Costs**
- 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.
- 1.8 Inherent Services**
- If any ancillary services, functions, responsibilities, work, activities or tasks are not specifically described within the definition and description of the Network, Design and Build or the Services but now or in the future are required to properly provide the Network, the Design and Build or the Services because they are a necessary and are an implicitly inherent part of the Network, the Design and Build or the Services, they will be deemed implied by, and included in, the scope of the Network, Design and Build or the Services as if described in this Agreement and there will be no additional costs or charges payable by the LFC in respect of such services, functions, responsibilities, work, activities or tasks, provided that any such ancillary services, functions, responsibilities, work, activities or tasks are not inconsistent with the Contractor's obligations under this Agreement, including the obligation to ensure the Network meets the Requirements.
- 1.9 Preservation of rights**
- (a) Any approval, acceptance, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the LFC or CFH or their personnel (including any absence of approval) 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 Contractor's responsibility to provide the Network, Design and Build and the Services in accordance with this Agreement; or
 - (ii) prejudice any right or remedy that may be available to the LFC or CFH under this Agreement or at Law.
 - (b) Any reliance by the Contractor on any representation made, advice given or similar act by the LFC or CFH or their personnel regarding any part of the Network, Design and Build and/or any O&M Services will be at the Contractor's sole risk and neither the LFC or CFH will have any liability regarding any such representation, advice or similar act.
- 1.10 Priority**

The Contractor must give at least the same priority in performing its obligations 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 lines of business, subject to complying with relevant Laws and the requirements of any emergency services.

- 1.11 New Services**
- The LFC may, at any time during the Term, request New Services via the Change Procedure.
- 2. Appointment**
- 2.1 Appointment and acceptance**
- The LFC appoints the Contractor to be responsible for the delivery of the New Infrastructure and the provision of the Design and Build and the Services during the Term, and the Contractor accepts that appointment, subject and pursuant to the terms of this Agreement.
- 2.2 Non-exclusive**
- This Agreement is entered into on a non-exclusive basis and nothing in this Agreement will restrict the right of the LFC to obtain further goods, equipment, Software, documentation or services of any type from any other person. For the avoidance of doubt, unless expressly provided otherwise in this Agreement, the LFC will not use any person other than the Contractor to provide the New Infrastructure, Design and Build and the Services during the Term (other than during any period of step-in under clause 22 or the Disengagement Period).
- 2.3 Acknowledgements**
- By accepting its appointment under clause 2.1, the Contractor 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 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; and
 - (b) **Satisfaction**

it is satisfied that the 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.
 - (c) **No reliance**

it has not relied on any representations made, or advice given, or similar act, by CFH or the LFC.

3. Term

3.1 Initial Period

This Agreement will start on the Commencement Date and will, subject to clause 3.2 and clause 21 (Termination), continue for a term of 10 years (**Initial Term**).

3.2 Renewal

Upon expiry of the Initial Term, all or part of this Agreement (other than provisions solely applicable to the Design and Build, but without prejudice to any rights or remedies of either party under this Agreement or at Law in relation to the Design and Build, and unless otherwise agreed by the parties in writing) will extend for a further term of up to two years (**Renewal Term**) if the LFC, in its sole discretion, gives the Contractor written notice to that effect not less than six months before the end of the Initial Term. This Agreement may also be extended by the Contractor making a written offer not less than three months prior to the end of the Initial Term to the LFC which the LFC, in its sole discretion, accepts in writing.

3.3 Conditions

- (a) Notwithstanding any other provision of this Agreement, receipt by the LFC of:
 - (i) a certificate from the Contractor's insurers or brokers confirming that the insurance requirements set out in this Agreement are in place;
 - (ii) the Parent Company Guarantee executed by the Parent Company; and
 - (iii) the Performance Bond executed by the issuer of such bond,is each a condition precedent to the Contractor's entitlement to any payment under this Agreement.
- (b) The conditions in clause 3.3(a) are inserted for the benefit of the LFC, which may waive any of the conditions at its discretion by written notice to the Contractor.
- (c) If the conditions set out in clause 3.3(a) have not been fulfilled or waived within four weeks of the Commencement Date, or such later date as may be agreed in writing by the parties:
 - (i) the LFC may suspend the provision of the Design and Build or terminate this Agreement for irreparable Material Breach under clause 21.1, notwithstanding that the Contractor may have been permitted to proceed with the provision of the Design and Build; and
 - (ii) the Contractor will not be entitled to any compensation whatsoever as a consequence of such suspension or termination.

4. Network

4.1 Overview

- (a) In order to deliver the Network, the Contractor 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 and the other requirements for the Network as set out in this Agreement;
 - (ii) provides the functions required of it by the Requirements and the other requirements for the Network as set out in this Agreement; and
 - (iii) is provided, and performs, in accordance with the Service Levels.
- (b) The Contractor is to provide the O&M Services for the Network (being the New Infrastructure designed and built under this Agreement and the Existing Infrastructure acquired by the LFC under the Assets Transfer Agreement).

4.2 Equivalence of Inputs

- (a) The Contractor will ensure that the Design and Build, and delivery, of the Network will enable Access Seekers to purchase Layer 1 Services from the LFC on an Equivalence of Inputs basis after 1 January 2020. For example, the Contractor will ensure that by 1 January 2020:
 - (i) there is sufficient space in ducts (or additional dark fibres) to enable Equivalence of Inputs; and
 - (ii) the LFC's Operational and Business Support Systems (OSS and BSS) are capable of supporting Equivalence of Inputs on implementation.
- (b) The LFC will provide all O&M Services directly related to the provision of Layer 1 Services to Access Seekers on an Equivalence of Inputs basis from 1 January 2020.
- (c) For the avoidance of doubt, the obligations of the Contractor under this clause 4.2 form part of the Requirements.

4.3 Integrated Test Facility

- (a) The Contractor will ensure that the Integrated Test Facility is made available in accordance with this Agreement, including so that Service Providers can test and modify their Telecommunications Services to work on the Network.
- (b) For the avoidance of doubt, the obligations of the Contractor under this clause 4.3 form part of the Requirements.

4.4 Interoperability

- (a) The Contractor will ensure that the Network achieves Interoperability in accordance with the timing set out in the Network Deployment Plan.
- (b) The Contractor will at all times:
 - (i) take steps within its power to resolve any problems or incidents related to Interoperability;
 - (ii) take preventative and reactive steps practicable to ensure that Interoperability is effectively implemented, operated and maintained in the Network; and

- (iii) take all steps to ensure the Network is not compromised as a result of any Interoperability.

4.5 Pilot Project

- (a) The LFC may, on the basis set out in the Shareholders' Agreement, purchase the fibre assets created by a pilot project in the Coverage Area as part of the Deployment Standards Initiative (DSI) being undertaken by the Ministry of Economic Development (the **Pilot Project Assets**).
- (b) If the LFC purchases the Pilot Project Assets then the Pilot Project Assets will be deemed to:
 - (i) form part of the relevant New Infrastructure; and
 - (ii) otherwise be subject to this Agreement in every respect as if deployed by the Contractor, provided that the LFC will not be required to pay any Charges for the delivery of the Pilot Project Assets.

4.6 Modification

The Contractor will not make any changes to any part of the Network that do not meet the Requirements or are not required by any other of the terms of this Agreement or otherwise approved in writing by the LFC.

4.7 Use of the Network

No part of the Network may be used by the Contractor, or made available by the Contractor for any use by any third party, unless expressly permitted by the terms of this Agreement or a separate usage agreement between the LFC and the Contractor or otherwise with the prior written consent of the LFC.

4.8 No attachment

The Contractor must not attach or connect any Equipment to any part of the Network that performs any function inconsistent with, or additional to, the functions authorised for the Network by the terms of this Agreement, except for the purpose of meeting the Contractor's express obligations under this Agreement or with the prior written consent of the LFC.

4.9 Location

The Contractor may not locate any part of the Network outside the Coverage Area or relocate any part of the Network to another location inside or outside the Coverage Area, without the prior written consent of the LFC, except as otherwise contemplated under this Agreement.

5. Resourcing

5.1 General requirements

The Contractor will:

- (a) provide sufficient resources (including human resources, equipment, Software, network, premises and other facilities);

- (b) maintain a programme of maintenance of such resources; and
- (c) provide sufficient funding for the provision and maintenance of such resources, to enable it to perform its obligations on time and otherwise in accordance with this Agreement.

5.2 Contractor Personnel

(a) Requirements

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

- (i) are suitably qualified;
- (ii) have obtained all security and criminal clearances required by the LFC or necessary to provide the Network, the Design and Build and the 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 any health, safety and security policies, codes of conduct and procedures, and any other reasonable policies, codes of conduct and procedures, as may be specified in writing by the LFC from time to time.

(b) Removal of Contractor Personnel

The LFC may require the removal of the Contractor's Personnel from performance of the Design and Build or the Services if the LFC, acting reasonably, determines that the individual concerned:

- (i) has acted, or failed to act, or is highly likely to act such that a breach of clause 5.2(a) has occurred;
- (ii) has otherwise procured or been responsible for a breach of this Agreement; or
- (iii) is otherwise not suitable,

provided that the LFC will consult with the Contractor prior to requiring the removal of any Contractor Personnel.

5.3 Subcontracting and Subcontracting arrangements

(a) Subcontracting

- (i) The Contractor must not subcontract the whole, or any part, of the performance of any of its obligations under this Agreement, except with the prior written consent of the LFC and CFH (such consent not to be unreasonably withheld).
- (ii) The Contractor is solely responsible for the selection of each Subcontractor and must ensure that each Subcontractor is creditworthy, suitably qualified and has

the relevant experience to perform the work it is required to carry out for the Contractor.

- (iii) The Contractor 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.
- (iv) Notwithstanding clause 5.3(a)(i), the Contractor does not need to comply with the Subcontractor requirement provisions in clause 5.3(c) for a Subcontractor that is to provide goods and/or services (i.e. a supplier) in relation to this Agreement that do not represent a material proportion (in terms of quantity and/or significance) of either the Design and Build or the O&M Services. In addition, a supplier of Equipment will not be subject to the consent process in clause 5.3(a)(i).

(b) Approved Subcontractors

The LFC has consented to the Contractor's entry into subcontracts with the Approved Subcontractors. The Contractor and the LFC may agree in writing further Subcontractors to be Approved Subcontractors.

(c) Subcontractor arrangements

The Contractor must ensure that any subcontract with a Subcontractor provides for the following:

- (i) that in respect of the work or goods the subject of the subcontract, the Subcontractor will undertake towards the Contractor the like obligations and liabilities as are imposed on the Contractor by the terms of the Agreement in proportion (in terms of quantity or significance) that the extent of the work or goods the subject of the subcontract bear to the total project which is the subject of this Agreement;
- (ii) that the subcontract is for the benefit of, and directly enforceable by, the LFC and CFH under the Contracts (Privity) Act 1982;
- (iii) that the work or provision of goods the subject of the subcontract will not be further subcontracted without the prior written consent of the LFC and CFH (acting reasonably), provided that such consent will not be required where the further subcontracting is to provide goods and/or services (i.e. a supplier) in relation to the Subcontract that do not represent a material proportion (in terms of quantity and/or significance) of the subcontracted work under the Subcontract;
- (iv) novation of the subcontract to the LFC at the option of the LFC following termination of this Agreement without any requirement to obtain any consent or approval from the subcontractor and at no cost to the LFC; and
- (v) termination of the subcontract if this Agreement is terminated.

(d) Removal of Subcontractors

If:

- (i) in the LFC's and/or CFH's reasonable opinion, a Subcontractor is materially not performing in accordance with the requirements of this Agreement:
 - (A) the LFC and/or CFH may, by written notice to the Contractor, require the Contractor to have that Subcontractor remedy such non-performance within 15 business days of such notice, failing which the LFC and/or CFH may, by written notice to the Contractor, require the Contractor to remove that Subcontractor; and
 - (B) in such event the Contractor will promptly remove the Subcontractor, except where it can demonstrate to the LFC and/or CFH that the removal of that Subcontractor will materially affect the ability of the Contractor to perform the Design and Build or the Services in accordance with this Agreement, in which case the Contractor and the LFC and/or CFH will use all reasonable endeavours to agree upon a satisfactory way to resolve the situation within the proposed timescale set out in the applicable notice; or
- (ii) in its sole discretion, the LFC and/or CFH believes that any of the Subcontractors are a material threat to the health, safety or security of any of the LFC's Personnel or property, any Service Provider, any Service Provider's property, any End User or End User's property, or have breached security or confidentiality requirements under this Agreement, then the Contractor will procure and ensure the immediate removal of the relevant Subcontractor.

6. Delivery

6.1 General

The Contractor will deliver the Network, Design and Build and the Services:

- (a) in accordance with the terms of this Agreement;
- (b) with due care, skill and diligence; and
- (c) by use of techniques, methodologies, processes and materials that accord with Best Industry Practice, including for project management.

6.2 Network

(a) Conditions

The Contractor will provide the Design and Build subject to the LFC first approving the relevant Conditions have been satisfied in advance of the Contractor commencing each Network Stage, in accordance with Schedule 2 (Design and Build).

(b) Compliance with the Network Deployment Plan

The Contractor will provide the Design and Build (including Design, build, testing and Commissioning), and integration of the Existing Infrastructure, in accordance with

Schedule 2 (Design and Build), the Network Deployment Plan and the remainder of this Agreement.

(c) **Commission the Network**

The Contractor must Commission the Network in accordance with the Network Deployment Plan.

(d) **Delays**

- (i) If the Contractor considers that it is (or is likely to be) prevented or delayed from successfully achieving a Milestone by the corresponding Milestone Date (**Delay**) it will immediately provide notice verbally, and then as soon as reasonably practicable (but in any event within five business days) provide notice in writing to the LFC (**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 Milestone Dates);
 - (C) what extension, if any, to the relevant Milestone Date is being sought; and
 - (D) what steps, if any, the LFC may take to mitigate the effect of the Delay.
- (ii) The Contractor will, regardless of the cause of the 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 Contractor and the LFC will meet with a view to agreeing how the Delay should be addressed.

(e) **Extension to Milestone Dates**

- (i) If the Contractor has failed to achieve a Milestone by the corresponding Milestone Date then, notwithstanding clause 6.2(f), the LFC will be entitled to revise the relevant timeframes in this Agreement and the Network Deployment Plan to account for the failure. The LFC will notify the Contractor 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.
- (ii) To the extent that the Contractor is not liable for a failure to achieve a Milestone by the corresponding Milestone Date due to an Act or Omission of the LFC, any Force Majeure Event or any third party (excluding any Subcontractor, supplier of the Contractor or any person within the control or under the responsibility of the Contractor (whether through contract or otherwise)):
 - (A) the Contractor will be entitled to a reasonable extension to the relevant Milestone Date (and, to the extent reasonably necessary, any subsequent Milestone Dates);
 - (B) such extension will be implemented in accordance with the Change Procedure (with the LFC being the party that submits the Change Request for the extension); and

(C) for the avoidance of doubt, the Contractor will not be required to pay any Liquidated Damages to the extent of such delay.

(iii) If:

- (A) the Contractor has failed to achieve a Milestone by the corresponding Milestone Date; and
- (B) the LFC has claimed, and the Contractor has paid, the Liquidated Damages applicable to that Milestone under clause 6.2(f),

then the LFC will revise the timeframes in this Agreement and the Network Deployment Plan by extending the due date for achievement of all subsequent Milestones by a period equal to the number of days of delay for which Liquidated Damages were recovered by the LFC (or such longer period as may be agreed by the parties). The LFC will notify the Contractor 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.

(iv)

The Contractor is not liable for a failure to achieve a Milestone by the corresponding Milestone Date to the extent that any such failure is due to the proper application of the dispute resolution process in clause 20, including as a result of expert determination under the Document Finalisation Process. In such case:

- (A) the Contractor will be entitled to a reasonable extension to the relevant Milestone Date (and, to the extent unavoidable, any subsequent Milestone Dates);
- (B) such extension will be implemented in accordance with the Change Procedure (with the LFC being the party that submits the Change Request for the extension); and
- (C) for the avoidance of doubt, the Contractor will not be required to pay any Liquidated Damages to the extent of such delay.

(f) **Liquidated Damages**

- (i) Subject to clause 6.2(e), if the Contractor fails to achieve any Milestone to which Liquidated Damages apply on or before the applicable Milestone Date, the LFC will be entitled to claim, and the Contractor will pay on demand (such demand from either the LFC or CFH), the Liquidated Damages applicable to that Milestone for each day (or part thereof) that any such Milestone is not met.
- (ii) The parties acknowledge that the Liquidated Damages are:
 - (A) a genuine pre estimate of loss; and
 - (B) for the failure to achieve that Milestone by the due date, but without prejudice to any other rights, powers or remedies provided under this Agreement (including termination) or by Law.
- (iii) The LFC will, on receiving a written request from CFH, pay to CFH the amount of any such liquidated damages received from the Contractor as a dividend.

(g) **Premises Connections**

If the Premises Connection Percentage for a Candidate Area:

- (i) at any of the [REDACTED] of the date of commencement of construction of the Network in such Candidate Area (each an **Anniversary Date**), falls below the relevant target Premises Connection Percentage for that Candidate Area set out in Schedule 7 of the Shareholders' Agreement; or
- (ii) at any time following the [REDACTED] falls below the relevant target Premises Connection Percentage for that Candidate Area,

then:

- (iii) the parties will meet to discuss in good faith what, if any, changes are necessary to this Agreement (including the Network Deployment Plan and the approach of the Contractor) in order to meet or exceed the relevant target Premises Connection Percentage, and any such changes will only be final if agreed in writing by the parties;
- (iv) the LFC and/or CFH may, at its discretion, regardless of whether any changes to the Agreement are agreed under clause 6.2(g)(iii), suspend the Contractor's performance of all or part of this Agreement for a period of up to [REDACTED] from the relevant Anniversary Date (or such other period as agreed by the parties) in order to assist the Contractor to focus on meeting and exceeding the relevant target Premises Connection Percentage;
- (v) the Contractor will be entitled to an extension to the relevant Milestone Date (and, to the extent unavoidable, any subsequent Milestone Dates) for the period of any such good faith discussions and/or suspension;
- (vi) such extension will be implemented in accordance with the Change Procedure (with the LFC being the party that submits the Change Request for the extension); and
- (vii) for the avoidance of doubt, the Contractor will not be required to pay any Liquidated Damages to the extent of such delay.

6.3 Risk and title

- (a) Risk in, and title to, each item of Equipment comprising the New Infrastructure will pass to the LFC on payment of the full Charges in accordance with the Payment Milestone for the relevant Network Stage, as set out in Schedule 2 (Design and Build), including the Network Deployment Plan.
- (b) Risk and title to the Existing Infrastructure will pass to the LFC in accordance with the Assets Transfer Agreement and this Agreement, including the Network Deployment Plan.

6.4 Service operations

(a) **Service Levels**

- (i) The Contractor will:

- (A) ensure that those O&M Services to which Service Levels apply will at all times be provided to meet or exceed those Service Levels; and
 - (B) if a Service Level Default occurs, credit any applicable Service Credits against the Charge that is next due to be paid, in accordance with Schedule 5 (Service Levels).
- (ii) Service Credits are agreed to reflect the reduced value of the relevant part of the O&M Services affected by the Service Level Default(s) during the relevant reporting period and are acknowledged to be the sole and exclusive remedy in respect of Service Level Defaults and such Service Level Defaults will not constitute a breach of this Agreement. For the avoidance of doubt, this clause does not restrict the Contractor's liability, and the ability for the LFC to bring a claim or action (including any right of termination), for any Act or Omission of the Contractor (or any Subcontractor) that caused such Service Level Default.
 - (iii) In no event will the amount of all Service Credits credited against the Charges in each monthly reporting period exceed, in total, the At Risk Amount.
 - (iv) The Contractor and the LFC will comply with the provisions of Schedule 5 (Service Levels) regarding Service Levels.

(b) **Service Levels compliance management**

- (i) The Contractor will implement appropriate measurement, monitoring and management tools and procedures to enable it to:
 - (A) detect and 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 Contractor will promptly (or, where specified, within the period set out in Schedule 5 (Service Levels)) give the LFC notice to that effect.
- (iii) The Contractor 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 Contractor is required to undertake pursuant to Schedule 5 (Service Levels).
- (iv) If the Contractor does not report on performance against Service Levels in a manner that clearly identifies whether the Services Levels are being met and otherwise in accordance with Schedule 8 (Governance):
 - (A) the LFC will notify the Contractor of its reporting failure;
 - (B) the Contractor will remedy the failure promptly, but in any event within five business days following the LFC'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 the LFC will be entitled to any applicable Service Credits.

7. Ongoing Improvements

7.1 Continuous improvement

Without prejudice to the potential application of the Change Procedure, the Contractor will continually plan and cater for the evolution of the Network and the Services and seek to improve its performance as measured against the Service Levels.

7.2 Improvements

The Contractor acknowledges that it is necessary for the LFC 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 Contractor'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 Services, or otherwise benefit the LFC (**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 the LFC):

- (a) the Contractor will provide the LFC and CFH with a report detailing Improvements, including:
 - (i) the expected and actual availability of Improvements that could be incorporated as part of the Services (including by replacing, modifying or supplementing the existing Services);
 - (ii) opportunities for the LFC to test Improvements; and
 - (iii) the Contractor's use and intended use of Improvements; and
- (b) the Contractor and the LFC will meet to discuss in good faith the ongoing adequacy of the Network and the Services and measures which should be implemented, in accordance with this Agreement, to rectify or improve any aspect of the Network or the Services.

7.4 Availability of Improvements

The Contractor will make Improvements available under this Agreement to the LFC either before or at the time it makes such Improvements available to its other customers. Any Improvements will be requested, agreed and implemented in accordance with the Change Procedure.

8. Governance

8.1 Structure

The governance structure for, and the relationships contemplated by, this Agreement are set out in Schedule 8 (Governance), including the establishment of, and rules for, the PCG and the Steering Committee.

8.2 Appointment of Relationship Managers

Each party will:

- (a) appoint, and maintain during the Term, a suitably qualified and experienced person as 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 Contractor, comply with clause 8.4.

8.3 Scope of role

Each Relationship Manager will:

- (a) serve as the primary point of contact with the other party;
- (b) have overall responsibility for managing and co-ordinating the performance of his or her appointing party's obligations under this Agreement, as further set out in Schedule 8 (Governance);
- (c) be authorised to act for and on behalf of his or her appointing party concerning all matters relating to this Agreement; and
- (d) have such further responsibilities as may be allocated to him or her under this Agreement.

8.4 Key Personnel

(a) Identity of Key Personnel

The Contractor's Key Personnel comprises the Contractor's Relationship Manager and the other Contractor Personnel individuals identified as such in Schedule 8 (Governance) as well as any other person the LFC may (acting reasonably) determine from time to time to be Key Personnel of the Contractor.

(b) Replacement of Key Personnel

Subject to clause 8.4(c), if the Contractor wishes to replace any Key Personnel or if any Key Personnel are to be removed under clause 5.2(b) the Contractor must:

- (i) promptly advise the LFC and propose a suitable replacement who has at least the same or better status, skills, qualifications, expertise and experience as the Key Personnel to be replaced;

- (ii) consult with the LFC in relation to any proposed replacement; and
- (iii) if requested by the LFC:
 - (A) provide all the information and references that the LFC may reasonably require in relation to any proposed replacement; and
 - (B) arrange for the LFC to interview any proposed replacement,

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

(c) **Extenuating circumstances**

The Contractor 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 Contractor (including resignation, illness, death and bereavement) (**Extenuating Circumstances**). If any Key Personnel are unavailable as a result of Extenuating Circumstances the Contractor and the LFC acknowledge that the Contractor's primary focus is to ensure the continuity and quality of the performance of its obligations. Consequently, the Contractor must promptly:

- (i) advise the LFC of the Extenuating Circumstances; and
- (ii) provide a suitable replacement or substitute during the period of unavailability that has at least the same or better status, skills, qualifications, expertise and experience as the Key Personnel to be replaced,

provided that, the Contractor 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 Contractor acknowledges the importance to the LFC of maintaining continuity of Key Personnel and will:

- (i) take all reasonable steps to retain the services of the Key Personnel; and
- (ii) liaise with the LFC prior to the approval of any annual leave or other planned continuous absences in excess of two weeks.

8.5 Reporting and records

(a) **Reporting**

The Contractor must issue written reports as to its performance of each of the Design and Build and the Services:

- (i) when those reports are required to be provided to the LFC; and
- (ii) incorporating such information that is to be contained in those reports,

pursuant to the terms of Schedule 8 (Governance).

(b) **Records**

The Contractor must, at all times during the Term, maintain true, up to date, accurate and complete records of all of the Contractor's invoices, reports, operating processes and procedures and other records created or developed for the Design and Build and the Services, in accordance with Best Industry Practice, and must ensure that each of its Subcontractors does the same.

(c) **Reconciliation**

The records maintained by the Contractor under clause 8.5(b) must provide sufficient detail to enable the LFC to reconcile those records with:

- (i) the contents of the reports the Contractor issues to the LFC under clause 8.5(a); and
- (ii) the invoices that the Contractor renders to the LFC under clause 11.

(d) **Access to records and information**

(i) The LFC will have access to:

- (A) all of the records and other information required to be maintained under clause 8.5(b); and
- (B) the Succession Package (when available under this Agreement),

and such records and information are to be provided to the LFC on two business days' notice (or on three business days' notice where those records are archived) and the LFC may take copies of such records and information.

- (ii) The Succession Package is to be held in electronic form as well as hard copy form. The Contractor must ensure that the Succession Package is accessible by the LFC electronically in a format compatible with the LFC's electronic databases and systems for the time being, including the LFC's IT systems, provided that the LFC implements electronic databases and systems (including IT systems) approved by the Contractor (such approval not to be unreasonably withheld or delayed). All records and other information required to be maintained under clause 8.5(b) 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.

(f) **Ownership and return of records**

- (i) The Contractor acknowledges that the records maintained by the Contractor under clause 8.5(b) are owned by the LFC and that it must, on expiry or termination of this Agreement or at such other time as is required by the LFC:

- (A) provide the LFC with full and complete information on such records that it holds; and

- (B) provide to the LFC, or to a third party as directed by the LFC, all such records requested by the LFC,
provided that the Contractor may retain copies of such records to the extent required by Law or to exercise its Intellectual Property Rights.
- (ii) Where, on expiry or termination of this Agreement or such other time as required by the LFC, the Contractor continues to have possession of such records which are not requested by the LFC, it will retain such records for a minimum period of three years, and will provide them to the LFC if requested to do so during that period. After the expiry of the three year period, the Contractor will consult with the LFC before destroying any such records for a further four year period.

8.6 Review and audit

(a) Right to audit

The LFC and/or CFH may carry out an audit for the purpose of:

- (i) reviewing the Contractor's compliance with, and/or ability to perform, any of its obligations under, or in connection with, this Agreement; or
 - (ii) confirming the accuracy of the Contractor's invoices,
- provided that the LFC and/or CFH may not do so more than once in each calendar year, except where:
- (iii) the LFC and/or CFH believes on reasonable grounds that the Contractor is in Material Breach; or
 - (iv) the LFC and/or CFH is required to do so in order to comply with applicable Crown audit requirements imposed by Law.

(b) Audit requirements

If the LFC and/or CFH conducts an audit under clause 8.6(a):

- (i) it will be conducted during business days and following five business days' notice to the Contractor;
- (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;
- (iii) the LFC and/or CFH will comply with the Contractor's reasonable security requirements;
- (iv) the LFC and/or CFH will use its reasonable endeavours to minimise any disruption to the Contractor's business during the course of the audit;
- (v) the Contractor must co-operate in a timely manner in respect of any audit (such co-operation to include complying with any of the LFC's and/or CFH's audit provisions);
- (vi) the Contractor must promptly provide:

- (A) access and assistance to the LFC and/or CFH in respect of any audit (including access to the Contractor, its Personnel, facilities, systems, records and resources used in the provision of the Design and Build and the Services); and
- (B) any explanations, information and documentation that the LFC and/or CFH may require in relation to the audit; and
- (vii) the Contractor will procure that any agreements with its Subcontractors contain provisions granting the LFC the same rights, in respect of the Subcontractor, that it has under this clause.

(c) Cost of audit

Each party will be responsible for its own costs in relation to any audit undertaken in accordance with this clause 8, unless the audit reveals a Material Breach by the Contractor of this Agreement, in which case the Contractor will reimburse the LFC and/or CFH (as applicable) for its costs in carrying out any audit.

9. Responsibilities

9.1 Mutual requirements

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 Proactive resolution of problems

The Contractor and the LFC acknowledge that problems with the Network, the Design and Build or the Services may be caused by a variety of factors, including acts or omissions by third parties, not easily identified at the time a problem arises. Without limiting any other obligations under this Agreement, the Contractor and the LFC will use all reasonable endeavours to promptly remedy any problems with the Network, the Design and Build or the Services, without having first allocated or apportioned responsibility for the cause of the problem or the cost or responsibility for fixing it and, for the avoidance of doubt, this is without prejudice to the potential application of the Change Procedure.

9.3 General Contractor responsibilities

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

- (a) provide the LFC with general advice concerning the operation and use of the Network;
- (b) implement and maintain such project and service management practices and processes, in accordance with Best Industry Practice, to provide the New Infrastructure, the Design and Build and the Services in accordance with this Agreement;
- (c) ensure that where possible all Software is purchased in the LFC's name, with LFC to be the owner of all licences and documentation for such Software and, where that is not possible, the Contractor will hold the Software, licences and documentation on behalf of the LFC;
- (d) provide the LFC with access to the Contractor Assets, premises, facilities and systems to the extent set out in this Agreement and at Law and as, and to the extent, that the

LFC may otherwise reasonably request from time to time, provided that the LFC gives reasonable notice (to the extent practical in the circumstances) before accessing the Contractor's Assets, premises, facilities and systems and complies with any applicable reasonable workplace and security policies of the Contractor notified in writing to the LFC;

- (e) proactively identify, assess and monitor operational, technical, commercial and other risks in relation to the Network and relevant stakeholders (including 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);
- (f) meet Best Industry Practice health and safety standards and respond with urgency 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 Services;
- (g) in agreeing and finalising the content of the Network Deployment Plan, and executing the Network Deployment Plan, minimise any disruption to the public to the fullest extent it is able to while ensuring that the Network Deployment Plan is met;
- (h) respond promptly, accurately and adequately to any requests for information made by the LFC or CFH in relation to the Network, the Design and Build or the Services;
- (i) as soon as is practicable, notify the LFC of any 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 affect the provision or quality of the Network, the Design and Build or the Services, or the ability of the Contractor to perform its obligations under this Agreement;
- (j) without limiting any other provision of this Agreement, not adversely affect the reputation of the LFC, CFH or the Crown;
- (k) not cause the LFC to be in breach of, or in a position likely to be in breach of, any Law;
- (l) not insert or permit to be inserted any Disabling Code at any time in any part of the Network, including upon the expiry or termination of this Agreement; and
- (m) not engage in any activity likely to compromise its ability to perform its obligations under this Agreement or that constitutes or that may constitute a Conflict of Interest in the performance of those obligations.

9.4 Instructions

The Contractor will promptly comply with the LFC's reasonable requests, requirements and directions in relation to the provision of the Network, the Design and Build and the Services to the extent not inconsistent with the Contractor's obligations set out in this Agreement.

9.6 Co-operation with third party suppliers

9.7 Co-operation with Service Providers and End Users

9.8 Interface problems

Without limiting any of the Contractor's other obligations under this Agreement, the Contractor will take all reasonable steps within its power to resolve any problems or incidents with any Third Party Interfaces, without prejudice to the potential application of the Change

Procedure and, for the avoidance of doubt, the reasonable direct costs incurred by the Contractor in taking such steps may form part of any potential Change Request.

9.9 Business continuity

The Contractor will:

- (a) 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; and
- (b) provide the business continuity services set out in Schedule 4 (O&M Services) and the Business Continuity Plan.

9.10 Regulatory compliance

The Contractor will:

- (a) keep the LFC and CFH informed of all regulatory and/or legal changes or requirements impacting the Contractor 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;
- (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
 - (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 Services in accordance with this Agreement; and
 - (B) enable the Contractor to provide the Design and Build and the Services,

except to the extent that any such governmental, legal, regulatory or other approvals, permissions, consents, licences and requirements are expressly required to be obtained by the LFC under the terms of this Agreement. For the avoidance of doubt, any failure by the Contractor to obtain such approvals, permissions, consents, licence or requirements is not a Force Majeure Event or Third Party Event.

[REDACTED]

[REDACTED]

[REDACTED]

9.12 LFC responsibilities

(a) Government funding

The performance and discharge by the LFC of its responsibilities and obligations under this Agreement, including its obligation to provide payment for the Charges under clause 11, are subject to CFH obtaining sufficient funding from the Government to meet its CFH Funding Obligations under the Shareholders' Agreement.

(b) **Design and Build**

The LFC's responsibilities in relation to the Contractor's delivery of the Design and Build are set out in Annexure 7 to Schedule 2 (Design and Build). Subject to clause 9.12(d), other than to the extent provided in that Annexure, the Contractor has sole responsibility for the delivery of the Design and Build in accordance with the terms of this Agreement.

(c) **O&M Services**

The LFC's responsibilities in relation to the Contractor's delivery of the O&M Services are set out in Annexure 3 to Schedule 4 (O&M Services). Subject to clause 9.12(d), other than to the extent provided in that Annexure, the Contractor has sole responsibility for the delivery of the O&M Services in accordance with the terms of this Agreement.

(d) **General**

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

- (i) co-operate with, and provide assistance reasonably required to, the Contractor and the Subcontractors in relation to the provision of the Design and Build and the Services;
- (ii) provide the Contractor with all information reasonably requested by it, in a timely manner, to enable it to provide the Design and Build and the Services;
- (iii) provide reasonable assistance to the Contractor to obtain any approvals reasonably required by it to provide the Design and Build or the Services;
- (iv) give the Contractor reasonable access to the LFC's Personnel to liaise with the Contractor's Personnel in relation to the LFC's ongoing technical and operational requirements of the Network;
- (v) allow the Contractor and its authorised representatives access to its premises and systems, on the provision by the Contractor of reasonable prior notice and to the extent reasonably necessary, to enable the Contractor to provide the Design and Build and the Services, subject to any applicable LFC policies and security arrangements;
- (vi) while its Personnel are on the Contractor's premises, use all reasonable efforts to ensure that such Personnel observe any reasonable health, safety, security and other procedures which the Contractor has previously advised the LFC of in writing; and
- (vii) ensure that it complies with all Laws.

10. Changes

10.1 Contract Changes

The Contractor and the LFC will comply with the Change Procedure in relation to all Contract Changes.

10.2 **Operational Changes**

The Contractor and the LFC will comply with the Change Procedure and the Network Deployment Plan and the O&M Plan (as applicable) in relation to all Operational Changes.

10.3 **Implementation of Changes**

The Contractor will ensure that all Contract Changes and Operational Changes do not have an adverse effect on or change the Design and Build or the Services except to the extent specifically approved by the LFC in a Change Authorisation Agreement.

10.4 **Subcontract variations**

For the avoidance of doubt, variations (i.e. changes) under the subcontracts to which the Contractor is party (including for the provision of civil works) will not be passed through to the LFC as a Contract Change under this Agreement.

11. Pricing and Payment

11.1 **Obligation to pay**

In consideration of the Contractor performing its obligations under this Agreement, subject to clause 9.12(a), the LFC will pay to the Contractor:

- (a) for the delivery of the New Infrastructure, the amounts set out in, and calculated in accordance with, Schedule 6 (Charges) and the Network Deployment Plan;
- (b) for the O&M Services, the amounts set out in, and calculated in accordance with, Schedule 6 (Charges); and
- (c) for the Disengagement Services, the amounts set out in, and calculated in accordance with, Schedule 6 (Charges).

11.2 **Total cost**

The Charges comprise the total amount payable by the LFC to the Contractor in relation to the Network and the Services under this Agreement, subject to any Contract Changes.

11.3 **Taxes**

Except for any GST payable by the LFC, all taxes, levies and duties payable in connection with this Agreement under any Law are to be paid by the Contractor and not passed onto the LFC. The LFC may deduct from any payments to be made to the Contractor any withholding taxes or other deductions that it is required by Law to make.

11.4 **Invoicing and payment**

The Contractor will invoice the LFC for the Charges as detailed in Schedule 6 (Charges).

11.5 **Invoice disputes**

If the LFC disputes an invoice, the LFC may withhold any disputed sum until the dispute is resolved, but will pay the undisputed portion in accordance with Schedule 6 (Charges). The

Contractor will not be excused from performing its obligations under this Agreement while an invoice is disputed by the LFC.

11.6 Set-off

The LFC may deduct from, or set-off against, any amount owing to the Contractor under this Agreement or the Assets Transfer Agreement any amount payable to the LFC under this Agreement or the Assets Transfer Agreement, including any amount by which an invoice paid by the LFC is subsequently found to have overstated the amount properly payable (in accordance with the process set out in Schedule 6 (Charges)).

11.7 Suspension of payment

Without prejudice to any other right or remedy that may be available to the LFC if:

- (a) the Contractor is in Material Breach;
- (b) the LFC has requested that the Contractor prepare a Remedial Plan in accordance with clause 19.2; or
- (c) the LFC has served a Notice of Step-in on the Contractor in accordance with clause 22.2,

the LFC may suspend payment of that part of the Charges to which the Material Breach, Remedial Plan or Notice of Step-in applies until that matter is remedied.

12. Benchmarking

During the Term, the LFC may submit all or part of the O&M Services or Charges for the O&M Services to a benchmarking procedure to be carried out in accordance with Schedule 7 (Benchmarking).

13. Warranties

13.1 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 will 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.

13.2 Contractor warranties

The Contractor represents, warrants and undertakes that:

- (a) the Network will have no Faults as at Acceptance;

- (b) the Network will meet all of the Requirements, on and following Acceptance;
- (c) the Network will be able to deliver and provide the specified operational services, including the Specified Layer 1 Services and the Specified Layer 2 Services, on and following Acceptance;
- (d) the Design and Build and the Services will at all times be performed with due care, skill, promptness and diligence and executed in a workmanlike manner, in accordance with Best Industry Practice;
- (e) it has, or will have prior to title passing to the LFC, good title to all Equipment supplied as part of the New Infrastructure, the Design and Build or the Services and such title is, or will be prior to title passing to the LFC, free of all liens, charges, encumbrances and other security interests;
- (f) it has authority to grant, assign or licence (as the case may be) all Intellectual Property Rights granted to the LFC under this Agreement;
- (g) 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;
- (h) it has not violated any Laws regarding the offering of unlawful inducements in connection with the entering into or negotiation of this Agreement;
- (i) in responding to the ITP and establishing the Charges proposed, such decisions and prices were arrived at independently and without collusion;
- (j) the possession or use of any item of Developed Material, Data, Contractor Material or Third Party Software by the LFC, where this has been provided or supplied by the Contractor, will not infringe the Intellectual Property Rights of any third party;
- (k) it will not, during the course of this Agreement, engage in any activity likely to compromise its ability to perform its obligations fairly and independently;
- (l) as at the Commencement Date, it is not (and nor is any of its respective directors or Personnel) a party to any litigation, proceedings or disputes which will adversely affect its ability to perform its obligations under this Agreement;
- (m) all Software used or supplied by or on behalf of the Contractor in the performance of its obligations under this Agreement (including Software embedded in or forming an integral part of any hardware supplied by or on behalf of the Contractor), will:
 - (i) conform to the specifications for that Software;
 - (ii) meet any requirements for that Software as set out in this Agreement;
 - (iii) be currently supported and properly installed; and
 - (iv) be free of any known or detectable Viruses or other material performance impediments at the time of installation;
- (n) the Documentation (and any other information supplied to the LFC) is accurate and complete;

- (o) all Equipment (excluding the Pilot Project Assets, unless agreed otherwise by the parties in writing) will:
 - (i) conform to the manufacturer's specifications and any product description for the Equipment;
 - (ii) meet any requirements for the Equipment set out in this Agreement;
 - (iii) be free from material defects in materials and workmanship (other than for Third Party Equipment purchased in the LFC's name);
 - (iv) be new and unused at the time of first use for the purposes of this Agreement (other than any Assets acquired under the Assets Transfer Agreement); and
 - (v) be installed, commissioned and operated in accordance with the manufacturer's specifications and any product description for the Equipment; and
- (p) all materials, equipment and facilities owned or controlled by the LFC that are used by the Contractor in providing the New Infrastructure, the Design and Build and the Services will be maintained by the Contractor in the same good order as it was in prior to use by the Contractor (fair wear and tear excepted), will be protected at all times from unauthorised access or use by third parties and will be returned (if applicable) to the LFC upon request in good condition apart from reasonable wear and tear.

13.3 Continuous application

To the extent applicable, the warranties, representations and undertakings set out in clause 13.2 will be deemed to be given continuously throughout the Term by the party giving such warranty, representation or undertaking.

13.4 Notification

The Contractor will promptly notify the LFC of any known non-compliance with its warranties in clause 13.2.

13.5 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.

13.6 Subcontractors

The Contractor will ensure that all Subcontractors also provide industry standard warranties to the same effect as those set out above, to the extent applicable, and that those warranties are expressed to be for the benefit of and enforceable by the LFC and CFH.

13.7 Third party warranties

Where the Contractor supplies any Equipment or other items that have been procured from a third party other than an Approved Subcontractor (**Third Party Equipment**), the warranties applicable to such Third Party Equipment will be limited to those warranties given by the relevant third party, and in such case the Contractor will:

- (a) assign to the LFC, to the extent permitted by Law and the relevant third party terms, the benefits of the warranties and indemnities given by the third party; or

- (b) if the Third Party Equipment is purchased in the LFC's name, ensure that the Third Party Equipment is purchased subject to the LFC's right to first approve the terms of any relevant agreement or other applicable documentation relating to that Third Party Equipment.

14. Intellectual Property Rights

14.1 Acknowledgement

(a) LFC ownership

The Contractor acknowledges and agrees that the LFC:

- (i) or its licensor is and remains owner of, and retains all Intellectual Property Rights in, all of the LFC Materials, and all associated Intellectual Property Rights;
- (ii) is and remains owner of all Developed Materials, at each and every stage of their development, and all associated Intellectual Property Rights; and
- (iii) has and continues to have sole and exclusive ownership of, and all Intellectual Property Rights in, all of the Data.

(b) Contractor Materials

LFC acknowledges that the Contractor or its licensor, as the case may be, is and remains owner of, and retains all Intellectual Property Rights in:

- (i) the Contractor Materials, and all associated Intellectual Property Rights; and
- (ii) any pre-existing proprietary methodologies of the Contractor utilised in the course of providing the Network, the Design and Build or the Services under this Agreement.

14.2 Licence

(a) Contractor licence for the Network

The Contractor hereby grants a non-exclusive, non-transferable, perpetual, irrevocable, royalty-free licence to the LFC and any Successor Service Provider to access, possess, store, use and reproduce (for disaster recovery, security and testing purposes):

- (i) the Contractor Materials, and all associated Intellectual Property Rights in the Contractor Materials; and
- (ii) all pre-existing proprietary methodologies, and all associated Intellectual Property Rights in the pre-existing proprietary methodologies, of the Contractor, used by the Contractor for the purpose of providing the Network, the Design and Build or the Services, solely in order to use, operate, maintain and support, and otherwise obtain the full benefit of, the Network.

(b) **LFC licence**

The LFC hereby grants to the Contractor a non-exclusive, non-transferable (other than the right to sub-license to Subcontractors), irrevocable, royalty-free licence to access, possess, store, use and reproduce the LFC Materials and Data, and all associated Intellectual Property Rights, solely for the purposes of providing the Network, the Design and Build and the Services and as authorised by this Agreement, during the Term.

(c) **Developed Materials licence**

The LFC hereby grants to the Contractor a non-exclusive, transferable (including the right to sub-license), perpetual, irrevocable, worldwide, royalty-free licence to access, possess, store, use, reproduce, modify, adapt, develop and exploit the Developed Materials.

14.3 Third Party Software

If any Third Party Software is necessary for delivery of the Network, the Design and Build or the Services (including by way of incorporation into any Developed Material), the Contractor will:

- (a) not use any Third Party Software without first notifying the LFC;
- (b) not use any Third Party Software that is not Commonly Available Material without the prior written consent of the LFC;
- (c) for any Third Party Software that is not licensed in the LFC's name, if required by the LFC and permitted by the terms of the third party licence, sub-licence or assign the Contractor's rights under, or cause a novation of the Contractor's rights and obligations under, the relevant licence, on termination or expiry of this Agreement for whatever reason or during the Term; and
- (d) maintain an up-to-date list of all Third Party Software.

14.4 Lien

To the extent that the Contractor (or any of its Subcontractors) may under any Law have any ownership right in or ownership claim to all or any of the Developed Materials, the LFC Materials (and any adaptations, modifications or new versions of the same) or the Data, the Contractor (by itself and for its Subcontractors) waives all rights of lien or similar rights as may now or later be claimed in those works, those materials or that Data. The Contractor must sign all documents and do all acts and things that are necessary to give effect to this clause 14.4.

14.5 Know how

Nothing in this Agreement restricts either the LFC or the Contractor from using any general ideas, concepts, know-how or techniques which either party, individually or jointly, develops or discloses under this Agreement, except to the extent such use infringes the Intellectual Property Rights of the other party or breaches an obligation of confidentiality under clause 15.

15. Confidentiality

15.1 Protection of Confidential Information

(a) **Non-disclosure**

Subject to clause 15.1(b) and clause 15.2, 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.

(b) **General exceptions**

Clause 15.1(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) that the recipient is required by Law to disclose so long as the recipient provides written notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by Law);
- (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.

15.2 Limited disclosure

(a) **Contractor**

Subject to clause 15.2(c), the Contractor may disclose the Confidential Information of the LFC to its Subcontractors, Personnel and Professional Advisers who need to know the same for the sole purpose of enabling the Contractor to perform its obligations and exercise its rights under this Agreement. The Contractor will ensure that its Personnel, Professional Advisers and Subcontractors are aware of and comply with the terms of this clause 15.

(b) **LFC**

Subject to clause 15.2(c), the LFC and CFH may disclose Confidential Information of the Contractor to its service providers (including potential service providers),

Personnel and Professional Advisers who need to know the same, in connection with the procurement, operation, administration and management of the Network, the Design and Build, the Services and/or this Agreement, and the LFC and CFH (as the case may be) will ensure that its service providers, Personnel and Professional Advisers are aware of and comply with the terms of this clause 15.

(c) **Disclosure to Subcontractors and service providers**

No 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 15 (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.

15.3 Data

The Contractor will:

- (a) not use any of the Data for its own purposes or for any other purposes different from those contemplated by this Agreement, except as expressly authorised by this Agreement or by the LFC in writing;
- (b) not transfer, or permit to be removed, any of the Data outside New Zealand, except as expressly authorised by this Agreement or by the LFC in writing; and
- (c) ensure that all information for the time being populating any database maintained by the Contractor or its Personnel or Subcontractors relating to the Network (and any backup archives of that information) is kept in secure custody and is managed and protected and only disclosed or otherwise dealt with in accordance with the security and privacy protocols set out in the Requirements or as otherwise specified in this Agreement.

15.4 Security breach

(a) **Action to be taken**

If either party becomes aware or suspects that any unauthorised person (**unauthorised person**) has obtained, attempted to obtain, or may obtain access to or interfere with the Network, the Data or any Confidential Information or has used or attempted to use the Network, Data or any Confidential Information for purposes not authorised or permitted by the terms of this Agreement:

- (i) that party will immediately notify the other party;
- (ii) the Contractor will take such reasonable steps as are available to it to identify those unauthorised persons and to comply with the LFC's directions; and
- (iii) after consultation with the LFC, the Contractor will make such changes to the Network and to its operations (at its own cost where the security breach was due to an Act or Omission of the Contractor, and in all other cases by way of a Contract Change) that are necessary to prevent, as far as is practicable, the occurrence of the same or similar breaches of security in the future.

(b) **Viruses**

If the Contractor becomes aware or suspects that any Virus has entered the Network or is affecting the Network's operations, it will immediately notify the LFC, and:

- (i) take all action necessary to:
 - (A) eliminate or block the Virus so that it no longer affects the Network's operations and is removed from the Network; and
 - (B) restore all Data lost or corrupted as a result; and
- (ii) after consultation with the LFC, make such changes to or in relation to the Network or the Network's operations, that are necessary to prevent, as far as practicable, the occurrences of the same or similar breaches of security,

at its own cost where the Virus entered the Network or affected the Network's operations due to an Act or Omission of the Contractor, and in all other cases by way of a Contract Change.

(c) **No limitation**

The obligations imposed on the Contractor under this clause 15.4, do not limit the Contractor's other obligations as regards the protection or security of Data and Confidential Information set out elsewhere in this Agreement.

16. Indemnities

16.1 Indemnity by the Contractor

The Contractor will fully indemnify the LFC (and its personnel and directors), 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) suffered or incurred by an Indemnified Party as a result of:

- (a) any personal injury, death or loss of or damage to tangible property to the extent caused by an Act or Omission of the Contractor or its Personnel or Subcontractors;
- (b) any claim, investigation, prosecution, fine or penalty relating to any health and safety matter, arising from the performance by the Contractor or its Personnel or Subcontractors of the Design and Build and/or the Services;
- (c) any claim, investigation, prosecution, fine or penalty relating to any breach or alleged breach of any Law by the Contractor, its Personnel or its Subcontractors; or
- (d) any unlawful or malicious act or omission of the Contractor or its personnel or subcontractors.

16.2 Intellectual property indemnity

The Contractor will fully indemnify 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) suffered or incurred by an Indemnified Party as a result of any claim or alleged claim that the possession or use of any intellectual property supplied,

developed or licensed by the Contractor, or the use of any intellectual property used to provide the Network, Design and Build or the O&M Services (excluding any LFC Materials and any Developed Materials and Data to the extent not developed or created by the Contractor (or its Personnel or Subcontractors), infringes any third party's Intellectual Property Rights.

16.3 LFC's obligations to the Contractor

In the event of any claim or alleged claim under clause 16.2 (in each case, a **Claim**), the LFC will:

- (a) give written notice of the Claim to the Contractor as soon as practicable;
- (b) permit the Contractor (at the Contractor's cost) to handle all negotiations for settlement and to control and direct any litigation that may follow; and
- (c) provide all reasonable assistance to the Contractor (at the Contractor's cost) in the handling of any negotiations and litigation.

16.4 Requirements on the Contractor

The Contractor will:

- (a) keep the LFC informed of the defence or negotiations in relation to a Claim at all material times;
- (b) diligently conduct any litigation or negotiations, in a manner that does not adversely effect the name or reputation of the LFC; and
- (c) not enter into any settlement or compromise in relation to any Claim without first obtaining the written consent of the LFC (which must not be unreasonably withheld or delayed).

16.5 Continued use or replacement of infringing material

Where any Claim disrupts the LFC's use or enjoyment of the Network, the Contractor will (unless otherwise requested by the LFC) at its own expense and at the Contractor's option immediately:

- (a) obtain for the LFC the legal right to continued use of the infringing items; or
- (b) replace, modify or resupply the infringing items so that there is no further infringement, without adversely affecting their performance or functionality.

16.6 Exceptions

The Contractor will have no liability under clause 16.2 to the extent that any Claim arises from modification by the LFC, or any third party over which the Contractor has no control, or any unauthorised use by the LFC, of any item of intellectual property without the approval of the Contractor.

16.7 Privity

The parties acknowledge and agree that the provisions of clause 16.2 are also for the benefit of, and enforceable by, the Crown under the Contracts (Privity) Act 1982.

17. Liability

17.1 Maximum liability of the LFC

Subject to clause 17.5, in addition to its obligation to pay the Charges, the maximum aggregate liability of the LFC to the Contractor under or in connection with the Transaction Agreements will be, in respect of all claims, proceedings, actions, liabilities, damages, costs, expenses or losses, \$ [REDACTED]. For the avoidance of doubt, subject to clause 17.5, CFH has no liability to the Contractor under this Agreement or the Assets Transfer Agreement.

17.2 Maximum liability of the Contractor

Subject to clause 17.5, the maximum aggregate liability (including Liquidated Damages and Service Credits and unfulfilled obligations to purchase A Shares) of the Contractor to all or any person(s) entitled to a benefit under or in connection with the Transaction Agreements will, in respect of all claims, proceedings, actions, liabilities, damages, costs, expenses or losses, be \$ [REDACTED].

17.3 Indirect loss or damage

Subject to, and without limiting the effect of, clauses 17.4 and 17.5, neither the Contractor or the LFC will under any circumstances be liable in relation to the Transaction Agreements for any indirect loss or damage, including any loss of profits to the extent that such loss is indirect, arising out of or in connection with the performance or non-performance of any of the Transaction Agreements.

17.4 Direct loss or damage

The following categories will be considered direct loss or damage that the LFC is not prevented from recovering by virtue of clause 17.3 or any other provision of this Agreement or any other Transaction Agreement:

- (a) Liquidated Damages or Service Credits;
- (b) if this Agreement is terminated due to a Material Breach of the Contractor, the additional costs of procuring the New Infrastructure, the Design and Build and the Services from another supplier for the remainder of the Term and transitioning the Design and Build and the Services to that supplier;
- (c) any loss of profits that arise naturally (that is, in the ordinary course) from any Act or Omission of the Contractor;
- (d) any expenditure, liabilities, losses and costs relating to:
 - (i) implementing workarounds;
 - (ii) disaster recovery, data recovery, and maintenance;
 - (iii) replacing lost, stolen or damaged equipment;

- (iv) Personnel (including overtime, travel allowances and meal allowances);
 - (v) fines and penalties at Law; or
 - (vi) reconstructing or reloading Data,
- arising from any Act or Omission of the Contractor; and
- (e) without limiting (a) to (d) above, any loss arising naturally (that is, in the ordinary course) from any Act or Omission of the Contractor.

17.5 Exclusions

The limitations and exclusions of liability described in clauses 17.1 to 17.3 will not apply to or limit the liability of:

- (a) the Contractor:
 - (i) under clause 16.2; and
 - (ii) for breach of any Intellectual Property Rights under clause 14; and
- (b) the Contractor, the LFC or CFH for:
 - (i) any personal injury or death;
 - (ii) any fraudulent, malicious or criminal act or omission; and
 - (iii) breach of confidentiality under clause 15.1 or 15.2 (or any other confidentiality provisions under any of the Transaction Agreements).

17.6 Source of liability

The limitations and exclusions of liability in this clause 17 will apply however liability arises, whether in contract (including indemnities), equity, tort (including negligence), breach of statutory duty or otherwise.

17.7 Default Events

The Contractor's liability for any failure to perform its obligations under any of the Transaction Agreements (including a failure to meet Service Levels) will reduce proportionately to the extent that such failure has been caused by an LFC Default Event or a Third Party Event. The Contractor will promptly:

- (a) provide the LFC in writing with full details of the LFC Default Event and its impact on the Contractor's obligations; and
- (b) take all reasonable steps, in accordance with Best Industry Practice, to eliminate or avoid the LFC Default Event or Third Party Event and mitigate its effect.

17.8 Apportionment of Service Credits and Liquidated Damages

To the extent that under clause 17.7 the Contractor is not solely liable for a failure to meet a:

- (a) Milestone Date to which Liquidated Damages apply; or
- (b) Service Level to which Service Credits apply,

the Contractor and the LFC will in good faith negotiate with a view to agreeing the extent to which the Liquidated Damages or Service Credits (as the case may be) should be fairly and reasonably reduced to reflect the extent to which an LFC Default Event or Third Party Event has contributed to the failure. If an LFC Default Event or Third Party Default Event is the sole cause of any failure by the Contractor to perform its obligations under this Agreement then, for the avoidance of doubt, there will be no Liquidated Damages or Service Credits that otherwise would have been applicable to such failure. If there is a dispute as to the reduction that should apply the dispute will be resolved in accordance with clause 20 and will be subject to expert determination under that clause.

17.9 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 any of the Transaction Agreements (whether claimable under an indemnity or otherwise).

17.10 Damages payment

The LFC will, on receiving a written request from CFH, pay to CFH the amount of any loss or damages received from the Contractor under any claim made by the LFC against the Contractor under or in relation to this Agreement as a dividend.

18. Insurance

18.1 Adequate insurance

The Contractor will, at its own expense, ensure that it maintains adequate insurance in respect of its potential liability for loss or damage under this Agreement.

18.2 Proof of insurance

The Contractor will, at the LFC's request, promptly provide satisfactory evidence that the Contractor has complied with the obligations in clause 18.1.

19. Performance Issue and Remedial Plan

19.1 Performance issue

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

19.2 Request for Remedial Plan

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

- (a) the LFC or CFH reasonably considers that the Contractor has breached any of its obligations under this Agreement; or

- (b) the Contractor has given the LFC notice of a breach or likely breach of any of its obligations under this Agreement (including, as the context requires, by the giving of a Notice of Delay under clause 6.2(d)),

in each case a **Performance Issue**, it may by notice (**Performance Notice**) to the Contractor setting out its grounds require the Contractor to prepare a plan to remedy the Performance Issue (**Remedial Plan**) in accordance with clause 19.3.

19.3 Preparation of Remedial Plan

As soon as possible after receipt of a Performance Notice (and in any event within 10 business days) the Contractor will, in consultation with the relevant LFC Personnel, prepare and provide to the LFC and CFH a proposed Remedial Plan setting out:

- (a) full details of the Performance Issue (including its causes, expected duration and impact on its obligations under this Agreement);
- (b) a plan (including 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
- (c) success criteria to determine whether the Performance Issue has been rectified (the **Success Criteria**).

19.4 Modifications to Remedial Plan

- (a) The Contractor will promptly (and, in any event, within five business days of a request by the LFC) make such amendments to the proposed Remedial Plan as the LFC and CFH may reasonably require and deliver the Remedial Plan to the LFC and CFH for review.
- (b) the LFC and 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 Contractor; or
 - (ii) notify the Contractor of any further required amendments, to be made in accordance with clause 19.4(a).

19.5 Implementation

Once the LFC and CFH have approved the Remedial Plan in accordance with clause 19.4, the Contractor will implement the Remedial Plan in accordance with its terms and this Agreement.

19.6 Costs

The Contractor will bear all costs (including any costs incurred by the LFC and CFH) associated with preparing and implementing the Remedial Plan in accordance with this clause 19.

19.7 Dispute

Any dispute as to the contents of the Remedial Plan will be resolved in accordance with clause 20 and will be subject to expert determination under that clause.

20. Dispute Resolution

20.1 Dispute

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 best efforts to resolve the dispute through good faith negotiations and informal dispute resolution techniques for 20 business days after the date on which the dispute arose;
- (b) if unresolved, escalate the dispute to the Chief Executive Officer of the LFC and the Chief Executive Officer of the Contractor and the Chief Executive Officer of CFH (as applicable) who will use their best efforts to resolve the dispute through good faith negotiations for a further 20 business days;
- (c) not commence any arbitration proceeding relating to the dispute unless it has complied with this clause 20.1 and clauses 20.2, 20.4 and, if applicable, 20.5; 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.

20.2 Arbitration

If:

- (a) the dispute is not resolved under clause 20.1(b) within 20 business days from the date that the dispute was referred to the Chief Executive Officers of the LFC, the Contractor and/or 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 Protocols of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 20.3 Urgent relief**
- Nothing in this clause 20 will preclude either relevant party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.
- 20.4 Expert determination**
- If the dispute is not resolved under clause 20.1 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 20.5. The relevant parties may also agree in writing to refer any other dispute to expert determination under clause 20.5.
- 20.5 Process**
- If a dispute has been referred to expert determination under clause 20.4:
- 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**);
 - 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;
 - 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;
 - 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 Contractor Assets and the Documentation;
 - 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 20.5(c);
 - 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;
 - 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
 - the Expert's fees will be shared equally by the parties.

21. Termination

21.1 Termination by LFC for an irremediable Material Breach

The LFC may terminate this Agreement by written notice to the Contractor, with immediate effect on the date of termination specified in that notice, if the Contractor commits a Material Breach which is not capable of being remedied. For the avoidance of doubt, the material breach in paragraph (a) of the definition of "Material Breach" is deemed incapable of being remedied.

21.2 Termination for cause by LFC

The LFC may only terminate this Agreement for breach, by written notice to the Contractor, with immediate effect on the date of termination specified in that notice:

- if the Contractor commits a Material Breach which is capable of being remedied, and:
 - a Performance Notice has been issued under clause 19.2 in relation to that breach; and
 - either:
 - the Partner has not prepared a Remedial Plan in accordance with clauses 19.3 and 19.4; or
 - the Partner has failed to implement the relevant Remedial Plan in accordance with clause 19.5; or
- if a Contractor's Act or Omission causes the LFC to be in breach of the Deed of Undertaking.

21.3 Termination for Force Majeure Event

- The LFC may terminate this Agreement by notice in writing to the Contractor, with immediate effect on the date specified in that notice, if the Contractor has been unable to provide all, or a substantial part of, the Design and Build or the Services in accordance with this Agreement as a result of a Force Majeure Event or Third Party Event for a continuous period of 90 business days.
- The Contractor may terminate this Agreement by notice in writing to the LFC, with immediate effect on the date specified in that notice, if the Contractor has been unable to provide all, or a substantial part of, the Design and Build or the Services in accordance with this Agreement as a result of a Force Majeure Event or Third Party Event for a continuous period of 12 months.

21.4 Termination on termination of other agreements

The LFC may terminate this Agreement by notice in writing to the Contractor, with immediate effect on the date specified in that notice if:

- the Contractor is in breach of its obligation to provide any funding in accordance with the Shareholders' Agreement for a period of more than five business days; or

- (b) the Shareholders' Agreement and/or the Assets Transfer Agreement have been terminated due to breach by the Contractor or the Shareholders' Agreement is terminated pursuant to clause 6.2(e)(iii)(A)a. of that agreement.

21.5 Restricted termination by the Contractor

Except as provided in clause 21.6, the Contractor:

- (a) 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 the failure of the LFC to perform under this 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 the LFC, seek to recover damages, or obtain injunctive relief or specific performance, but may not interrupt, withhold or impair the Design and Build or the Services.

21.6 Termination by the Contractor for non-payment

If the LFC fails to pay any Charges payable to the Contractor under this Agreement, and such Charges:

- (a) are due and payable;
- (b) represent a material amount (from the perspective of the Contractor, acting reasonably); and
- (c) are not the subject of a good faith dispute between any of the parties,

then the Contractor may:

- (d) give a written notice to the LFC which demands Payment of the Charges and clearly and expressly states that, at the expiry of a period of 20 days from the date of receipt of the notice by the LFC, the Contractor is considering issuing a further notice under clause 21.6 which may give rise to a right to terminate this Agreement if the relevant charges are not paid within 20 days from the date of receipt of that further notice;
- (e) if, following expiry of the 20 day period referred to in the notice issued under clause 21.6(d), the relevant charges remain unpaid, give a further written notice to the LFC which clearly and expressly states that the Contractor may terminate this Agreement at the expiry of a period of 20 days from the date of receipt of that further notice if the relevant charges are not paid within that period; and
- (f) if, following expiry of the 20 day period referred to in the notice issued under clause 21.6(e), the relevant charges remain unpaid, immediately terminate this Agreement by written notice of termination to the LFC.

21.7 No termination by the Contractor for funding failure

- (a) The Contractor is not entitled to terminate this Agreement under clause 21.6 if the LFC fails to pay any Charges due and payable as a result of an LFC Funding Failure, except to the extent such a right of termination exists under the Shareholders' Agreement.

21.8 Partial termination

- (a) If the LFC is entitled to terminate this Agreement it may, without prejudice to any other right or remedy available to the LFC, elect to only terminate parts of the Design and Build or one or more of the Services (or parts of the Services), in which case:
 - (i) the LFC will provide written notice of termination to the Contractor (**Notice of Partial Termination**) setting out:
 - (A) the parts of the Agreement that are to be terminated;
 - (B) any amendments required to the Agreement, including any corresponding reduction in the aggregate Charges (and reduction or increase in individual charges), to be finalised under the Change Procedure; and
 - (C) the date of termination;
 - (ii) this Agreement will be varied, and the relevant parts of the Agreement terminated, on the date, and in the manner, specified in the Notice of Partial Termination (subject to completion of the Change Procedure under clause 21.8(a)(i)(B)); and
 - (iii) unless the Contractor and the LFC agree otherwise, the Contractor will provide the Disengagement Services in relation to those parts of the Agreement that have been terminated in accordance with this clause 21.

21.9 Payments on termination or expiry

In the event of termination or expiry of this Agreement, the LFC will not be obliged to make any further Payments under this Agreement, except for any unpaid and undisputed charges payable under clause 11.1 and owing to the Contractor for work performed prior to the date of termination or expiry and amounts subsequently settled or awarded in the Contractor's favour.

21.10 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 which have accrued up to and including the date of termination or expiry; and
- (b) the provisions of this Agreement which expressly, or by their nature, survive termination or expiry, including clauses 1.2 (Precedence), 1.3 (Construction), 14 (Intellectual Property Rights), 15 (Confidentiality), 16 (Indemnities), 17 (Liability), 21 (Termination), 23 (Disengagement), 26 (General Provisions) and Schedule 1 (Definitions).

21.11 Return of property

After expiry or termination of this Agreement for any reason, each party will, within five business days of 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 or Confidential Information is required as part of the Disengagement Services or is licensed under clause 14 or is required to be retained by the Public Records Act 2005 or any other Law.

21.12 CFH's rights on termination

If the LFC terminates this Agreement in accordance with clauses 21.1, 21.2, 21.3 or 21.4, or terminates parts of the Design and Build or one or more of the Services (or parts of the Services) in accordance with clause 21.8, in addition to its rights under this Agreement, CFH may exercise its rights under the Shareholders' Agreement.

22. Step-in

22.1 Grounds for Step-in

If:

- (a) the LFC is entitled to terminate this Agreement for Material Breach under clause 21; or
- (b) the LFC or CFH forms the view, acting in good faith on reasonable grounds, that the Contractor has been, or is likely to be, subject to a material adverse change resulting in the Contractor being unable or being unlikely in the future to satisfy its obligations under this Agreement at the time and in the manner contemplated in this Agreement and the LFC and/or CFH has notified the Contractor of its specific concerns and determined in good faith that such concerns have not been addressed by any response in relation to such concerns which is received from the Contractor within five business days after the LFC and/or CFH notifies the Contractor,

(**Grounds for Step-in**), the LFC and/or CFH may, at its discretion, address the default or non-performance (or potential default or non-performance) that gave rise to the Grounds for Step-in, including by:

- (c) assisting the Contractor to discharge its obligations under this Agreement;
- (d) taking control of any Design and Build or Services related to the Grounds for Step-in; and/or
- (e) appointing any person or persons to assist with the actions required under this clause 22 (**Separate Contractor**).

22.2 Prior notice

Before the LFC and/or CFH takes any action under clause 22.1, the LFC and/or CFH will serve notice (**Notice of Step-in**) on the Contractor setting out:

- (a) the action the LFC and/or CFH will take;
- (b) the reason for, and the objective of, taking the action; and
- (c) the date the action will commence and the estimated time period required.

22.3 Contractor substitution

Following service of the Notice of Step-in:

- (a) the LFC and/or CFH will have the right to take the action set out in the Notice of Step-in and any consequential or additional action it reasonably believes is necessary (together, the **Required Action**); and
- (b) the Contractor will provide all the necessary assistance and co-operation required by the LFC and/or CFH or the Separate Contractor (as applicable), including access to all relevant Personnel and Contractor Assets, to:
 - (i) remedy the default or non-performance (if any) that gave rise to the Grounds for Step-in; and
 - (ii) assist with actions taken by the LFC and/or CFH or the Separate Contractor under this clause 22.

22.4 Consequences of the Required Action

If the LFC and/or CFH takes any Required Action:

- (a) the Contractor acknowledges that the Required Action is designed to mitigate the LFC's loss and that taking the Required Action will not prevent the LFC from pursuing any other right or remedy under this Agreement or at Law;
- (b) the LFC and/or CFH may cease the Required Action at any time and terminate the Notice of Step-in by written notice to the Contractor, in each case at its discretion, and if the Required Action has continued for more than 30 consecutive business days, the LFC and/or CFH and the Contractor will, within five business days of the LFC and/or CFH terminating a Notice of Step-in, agree a transition plan for the relevant obligations, including a timeline and task plan, and if the Contractor and the LFC and/or CFH do not agree such plan within that time period then the matter will be referred to expert determination under clause 20.5;
- (c) following notice of termination of this Agreement, the LFC and/or CFH may continue to take the Required Action (or to require the Separate Contractor to continue to take the Required Action) in order to mitigate any loss;
- (d) the LFC will not be required to pay any further Charges which become due and payable under this Agreement and the Contractor will not be entitled to any A Share Acquisitions to the extent that the Contractor's obligations have been performed by the Required Action;
- (e) the Contractor will bear all costs (including the LFC's and CFH's internal and legal costs) associated with the LFC and/or CFH taking the Required Action; and
- (f) the Contractor will not be responsible or liable for any failure to meet its obligations under this Agreement (including under any indemnities) to the extent that such failure was caused by the performance of the Required Action by the LFC and/or CFH and/or the Separate Contractor, provided that the Contractor has taken all reasonable steps, in accordance with Best Industry Practice, to eliminate or avoid such failure and, in all cases, mitigate its effect.

22.5 CFH's rights if Material Breach occurs

If the Contractor commits a Material Breach of this Agreement and this Agreement is terminated, CFH may, in addition to its rights under this Agreement, exercise its rights under the Shareholders' Agreement.

23. Disengagement

23.1 Disengagement Services

Subject to clause 23.8, the LFC may, by written notice to the Contractor (**Disengagement Services Notice**), following a party providing notice of termination, or a reasonable time prior to the expiry, of this Agreement, require the Contractor to provide Disengagement Services. The Disengagement Services will be provided:

- (a) in accordance with Schedule 10 (Disengagement) and the relevant Disengagement Plan; and
- (b) for the period set out in the relevant Disengagement Services Notice, such period not to exceed 18 months (**Disengagement Period**).

23.2 Disengagement Period

Each Disengagement Period will start on the date specified by the LFC in the Disengagement Services Notice.

23.3 Modification of the Disengagement Period

The LFC may, by written notice to the Contractor:

- (a) at least 10 business days prior to the expiry of the then current Disengagement Period, extend the Disengagement Period by the time set out in such notice; or
- (b) at any time, shorten the Disengagement Period to the extent set out in such notice, provided that the Contractor will not be required to perform any applicable Disengagement Services within an unreasonably short timeframe.

23.4 Ongoing provision

During the Disengagement Period, and except to the extent otherwise specified in the Disengagement Plan, the Contractor will, to the extent required by the LFC, continue to deliver the Design and Build and the Services in accordance with the terms of this Agreement (including, as applicable, from the date of termination or expiry of this Agreement, or the relevant part of this Agreement, until expiry of the Disengagement Period).

23.5 Mitigation

The parties will take all reasonable steps to mitigate any loss, cost, expense or liability that they may incur or which accrue as a result of termination or cancellation of all or part of this Agreement, except where to do so would impair the provision of the Design and Build and the Services during the Disengagement Period.

23.6 Disengagement Charges

The LFC will pay the Charges for the Disengagement Services (if any) to the extent required by Schedule 10 (Disengagement).

23.7 Partial termination

If the LFC terminates parts of the Design and Build or one or more of the Services (or parts of Services) under clause 21.8 (the **Partially Terminated Services**) the Contractor will provide the Disengagement Services:

- (a) in relation to the Partially Terminated Services for the Disengagement Period and in accordance with the relevant Disengagement Plan; and
- (b) for the avoidance of doubt, in relation to any of the remaining Design and Build or Services in accordance with this clause 23.

23.8 Cause of termination irrelevant

The Contractor will provide the Disengagement Services, and comply with the requirements of Schedule 10 (Disengagement), regardless of the reason for the termination of all or any part of this Agreement.

24. Force Majeure

24.1 No default

Subject to this clause 24, 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.

24.2 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.

24.3 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 20.5 within 10 business days of receiving that Force Majeure Notice; or
- (b) exercise such other rights available to it under this Agreement (including applying to Court for interlocutory relief under clause 20.3).

24.4 Effect of Force Majeure Notice

If the Affected Party complies with clause 24.2 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, the LFC will not be required to pay any Charges to the extent that the Design and Build or the Services are not provided by the Contractor due to a Force Majeure Event.

24.5 Mitigation or avoidance

During the Period of Suspension:

- (a) the Affected Party will use its 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 Contractor, the Contractor 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 lines of business, subject to complying with relevant Laws and the requirements of any emergency services; 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.

24.6 Force Majeure Event termination

This Agreement may be terminated by the LFC under clause 21.4 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.

25. Security

25.1 Delivery

The Contractor must deliver to the LFC the Parent Company Guarantee, and the Performance Bond in accordance with clause 3.3.

25.2 Draw down under Performance Bond

The LFC and/or CFH will be entitled to draw down on the Performance Bond for any and all of the following amounts determined by the LFC and/or CFH if, in the LFC's and/or CFH's opinion (with such opinion not to be frivolous or vexatious), the Contractor has failed to perform any of its obligations in accordance with any of the Transaction Agreements:

- (a) damage or loss sustained or incurred by the LFC or CFH, or any other amount for which the Contractor is responsible, under or in relation to any of the Transaction Agreements;
- (b) any debt due from the Contractor to the LFC or CFH under any of the Transaction Agreements; or
- (c) any amount which the LFC or CFH is entitled to be paid by the Contractor under or by virtue of any provision of the any of the Transaction Agreements or otherwise at Law.

25.3 Entitlement to Performance Bond

If the LFC and/or CFH becomes entitled to exercise all or any of its rights under clause 25.2, the LFC and CFH will not be liable for any loss occasioned by such a draw down except where such draw down is not in accordance with this clause 25. The Contractor must not take any steps to injunct or otherwise restrain:

- (a) any issuer of a Performance Bond from paying the LFC and/or CFH under such Performance Bond;
- (b) the LFC and/or CFH from taking any steps for the purpose of making a demand under the Performance Bond or receiving payment under the Performance Bond; or
- (c) the LFC and/or CFH using the money received under the Performance Bond.

26. General Provisions

26.1 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.

26.2 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).

26.3 Public disclosures

Subject to clause 15, all public disclosures by the Contractor relating to this Agreement, including the fact of its existence, and promotional or marketing material (but not including any announcement intended solely for internal distribution, or as required by legal, accounting or regulatory requirements) will be co-ordinated with and must first be approved in writing by the LFC prior to its release.

26.4 Notices

Each notice or other communication under this Agreement is to be made in writing and delivered by post, personal delivery, facsimile or email to the addressee at the addressee's physical address, facsimile address or email address (as applicable) marked for the attention of the person or office holder (if any) from time to time designated for that purpose by the addressee. Each party's initial physical address, facsimile address or email address is set out below.

UltraFast Broadband Limited

Attention: The Board of Directors

Address: c/- Bell Gully, Level 22 Vero Centre, 48 Shortland Street, Auckland

Facsimile: 64 9 916 8800

Email: anna.buchly@bellgully.com

UltraFast Fibre Limited

Attention: The Board of Directors

Address: 114 Maui Street, Te Rapa, Hamilton

Facsimile: 64 7 850 3210

Email:

Crown Fibre Holdings Limited

Attention: Graham Mitchell, Chief Executive Officer

Address: Level 10, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland

Facsimile: 64 9 368 9201

Email: graham.mitchell@crownfibre.govt.nz

With a copy to:

Bell Gully

Attention: Anna Buchly/Dean Oppenhuys

Address: Level 22, 48 Shortland Street, Auckland

Facsimile: 64 9 916 8800

Email: anna.buchly@bellgully.com / dean.oppenhuys@bellgully.com

(a) This contact information may be amended by written notice to the other party.

(b) A notice or other communication will be deemed to be received:

(i) in the case of a letter sent to the addressee's postal address, on the second business day after posting;

(ii) in the case of a facsimile or email:

(A) if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the addressee's facsimile number;

(B) if sent by email, at the time the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the email at the time of sending or any "out of office" message or equivalent relating to the recipient,

on the business day on which it is dispatched or, if dispatched after 5.00 p.m. (in the place of receipt) on the next business day after the date of dispatch; and

(iii) in the case of personal delivery, when delivered.

26.5 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.

26.6 Waiver

Neither party will be deemed to have waived any right 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, under this Agreement will not constitute a waiver of any subsequent breach or continuing right.

26.7 Remedies cumulative

Except as is expressly stated otherwise in this Agreement:

- (a) the rights, powers and remedies provided in this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by Law or under this Agreement; and
- (b) the exercise of any of the rights, powers and remedies provided in this Agreement will not prejudice the exercise of any other right, power or remedy under this Agreement or existing at Law.

26.8 Entire agreement

- (a) Subject to the Shareholders' Agreement and the Assets Transfer 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 docketts and other communications from either party or its Personnel, even if the other party signs or otherwise purports to accept any such terms.

26.9 Amendment

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

26.10 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.

26.11 Governing law and jurisdiction

This Agreement is governed by, and will be construed in accordance with, the laws of New Zealand. Subject to clause 20, 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.

Execution

Signed as an agreement

SIGNED by UltraFast Broadband Limited
by:

Authorised Signatory

Print Name

SIGNED on behalf of UltraFast Fibre
Limited by:

Authorised Signatory

Print Name

SIGNED by Crown Fibre Holdings Limited
by:

Authorised Signatory

Print Name

Schedule 1: Definitions

In the Agreement, unless the context otherwise requires:

Acceptance means the acceptance by the LFC of the relevant part or parts of the New Infrastructure in accordance with Schedule 2 (Design and Build), and **Accept** and **Accepted** have a corresponding meaning;

Access Seeker means a person who is obtaining a contract for services, or has indicated to the LFC a desire to contract for services, from the LFC;

Act or Omission means an act or failure to act that breaches an obligation or duty, however the obligation or duty arises, whether in contract (including indemnities) or at Law (including in tort or in equity);

Agreement is described in clause 1.1 of the Base Agreement;

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;

Approved Subcontractors means [REDACTED] and any other party that is agreed to be an Approved Subcontractor under clause 5.3;

A Share Acquisition means an acquisition of A Shares from CFH by the Contractor in accordance with Schedule 6 (Charges);

A Shares has the meaning given in the Shareholders' Agreement;

Assets Transfer Agreement means the network infrastructure assets transfer agreement between the LFC, CFH and the Contractor dated on or about the date of this Agreement;

At Risk Amount means for any month during the Term, the amount set out in Schedule 5 (Service Levels);

Base Agreement means clauses 1 to 26 (inclusive) of this Agreement;

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

B Shares has the meaning given in the Shareholders' Agreement;

Business Continuity Plan means any business continuity plan prepared by the Contractor and approved by the LFC under Schedule 4 (O&M Services);

Candidate Area has the meaning given in the Shareholders' Agreement;

Central Office means the physical building used to house the Network's exchange equipment;

CFH Funding Obligation means any funding obligation of CFH to the LFC under the Shareholders' Agreement;

Change Authorisation Agreement means an agreement between the parties recording the terms on which a Contract Change has been agreed, in the form set out in Annexure 2 to Schedule 9 (Change Procedure);

Change in Law means any change in Law;

Change of Control Event has the meaning given in the Shareholders' Agreement;

Change Procedure means the change procedure set out in Schedule 9 (Change Procedure);

Change Request means the written documentation by which LFC or the Contractor may initiate the Change Procedure;

Charges means the charges as described in Schedule 6 (Charges);

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

Commission 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 2 (Design and Build);

Commonly Available Material means Software and other works and materials the Intellectual Property Rights in which are vested in a third party, which are generally available for licensing to any person and generally supported in the New Zealand and international market on reasonably standard industry terms;

Communal Infrastructure means any network infrastructure in the Coverage Area which is deployed independently of any End-User Specific Infrastructure and which is not located on Premises, including any of the following within the Coverage Area;

- (a) interconnection points;
- (b) Central Offices;
- (c) cabinets and/or fibre cross connection points;
- (d) intra-Coverage Area backhaul fibre connecting the interconnection points, Central Offices and cabinets;
- (e) distribution fibre running along each street, past Premises;
- (f) feeder fibre running from Central Offices to cabinets or fibre cross connection points;
- (g) associated ducts and other fixed civil infrastructure required to deploy fibre; and
- (h) passive optical equipment installed in the LFC's cabinet and/or a Central Office;

Communal Layer 2 Infrastructure means any electronic and/or optical equipment installed in the LFC's cabinet, Central Office and/or POI, and any active electronic equipment installed in the Central Offices or cabinets, in the Coverage Area, required to provide the Specified Layer 2 Services;

Concession Period has the meaning given in the Shareholders' Agreement;

Conditions means the pre-conditions for the commencement of each Network Stage, as set out in Annexure 3 to Schedule 2 (Design and Build);

Confidential Information means:

- (a) all information which by its nature is, or would reasonably be expected to be, confidential and trade secrets already communicated or subsequently communicated 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:
 - (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 either party including any information:
 - (i) relating to the financial position of that party;
 - (ii) concerning that party's suppliers and customers or its agents or brokers;
 - (iv) relating to that party's internal management, structure, personnel or strategies; or
 - (v) comprising the terms of this Agreement;
- (c) all Data; or
- (d) information in respect of any materials in which that party has Intellectual Property Rights under the terms of this Agreement;

Conflict of Interest means any conflict of interest, including:

- (d) the use or disclosure of any Data other than as permitted by the terms of this Agreement;
- (e) the supply or proposed supply of services to a person that:
 - (i) may adversely affect the LFC's use of the Network or the Services; and
 - (ii) adversely prejudice the security of any of the LFC's Confidential Information;

Connection means:

- (f) the cable joining the Fibre Access Point to the External Termination Point of a Premises, with such cable to be either from the pit on the adjoining boundary of two properties where the Fibre Access Point is located in underground deployment, or from the pole nearby to a number of premises in aerial deployment; and
- (g) all other infrastructure (excluding Communal Infrastructure) necessary to enable the provision of the Specified Layer 1 Services and Specified Layer 2 Services to the relevant End User,

and "**Connected**" will be construed accordingly;

Contract Change has the meaning given in Schedule 9 (Change Procedure);

Contractor 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 Contractor and used by or for the benefit of the Contractor to provide or enable the provision of the Design and Build or the Services;

Contractor Material means any works or materials (including Software) already existing as at the date those works or materials are first used for the purposes of this Agreement, where the Intellectual Property Rights are vested in the Contractor (or a Related Company of the Contractor), but does not include (for the avoidance of doubt) any of the Data, Third Party Software or the Developed Material;

Coverage Area has the meaning given in the Shareholders' Agreement;

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

Deed of Undertaking means the deed poll made by the LFC in favour of the Crown;

Design and Build means the activities, services, functions and duties of the Contractor for the design and build of the Network, as set out in Schedule 2 (Design and Build);

Design means the design of New Infrastructure, as prepared in accordance with Schedule 2 (Design and Build);

Detailed Specifications means the detailed specifications, as prepared in accordance with Schedule 2 (Design and Build);

Developed Material means any materials or works created or developed by the Contractor (or any Subcontractor) or jointly by the Contractor, any Subcontractor and/or the LFC for the purposes of this Agreement, including all modifications, new versions or adaptations of LFC Materials;

Disabling Code means any programming code or Virus, which could or has the effect of disabling or otherwise adversely affecting the LFC's or any End User's full use of the Network or the Services (as relevant);

Disengagement means the migration of responsibility for providing the Design and Build and/or the Services from the Contractor to a Successor Service Provider or to the LFC as set out in clause 23 of the Base Agreement and in Schedule 10 (Disengagement);

Disengagement Completion Date has the meaning given in clause 4.4 of Schedule 10 (Disengagement);

Disengagement Deliverables means the assets and contracts nominated by the LFC under clause 4.2 of Schedule 10 (Disengagement);

Disengagement Deliverables Price means the price for the Disengagement Deliverables as set out in Annexure 2 to Schedule 10 (Disengagement);

Disengagement Manager is the Key Person appointed to act in that role as described in clause 2 of Schedule 10 (Disengagement);

Disengagement Period has the meaning given in clause 23.1 of the Base Agreement;

Disengagement Plan means the operative document that sets out the Disengagement Services required to effect Disengagement to be provided by the Contractor in accordance with clause 3.2 of Schedule 10 (Disengagement);

Disengagement Services means those services to be provided by the Contractor pursuant to the terms of Schedule 10 (Disengagement);

Disengagement Services Notice has the meaning given in clause 23.1 of the Base Agreement;

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

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

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

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

End User means in relation to a Telecommunications Service, a person that has a contractual relationship with a Service Provider for the provision of a Telecommunications Service and who is the ultimate recipient of that Telecommunications 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 a Service Provider with the Network;

End User-Specific Infrastructure means the infrastructure in the Coverage Area separate from, and connecting with, the Communal Infrastructure and the Communal Layer 2 Infrastructure to provide service to End User connections, including the following:

- (a) fibre from a Premises to the Communal Infrastructure already in place outside the boundary of a Premises;
- (b) any electronic and/or optical equipment the LFC 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) any capitalised investment directly associated with each marginal End User (for example, the value of any software licences that might be supplied to the LFC on a “per End User” basis); and
- (e) any active electronic equipment installed in a Premises required to provide the Specified Layer 2 Service;

Equivalence of Inputs or EOI means that the LFC will be able to:

- (a) provide each Access Seeker and the LFC itself with the same Wholesale Service;
- (b) deliver that Wholesale Service to each Access Seeker and to the LFC itself on the same timescales and on the same terms and conditions (including price and service levels);
- (c) use the same systems and processes (including operational support processes) to deliver the Wholesale Services to each Access Seeker and the LFC itself;

(d) provide the Access Seeker and the LFC itself with the same information about the Wholesale Services, systems and processes; and

(e) ensure each Access Seeker is able to use in the same way, and with the same degree of reliability and performance as the LFC itself, the Wholesale Services, systems and processes that are used by the LFC, and

for the avoidance of doubt, will include:

(f) providing enough fibres to ensure each Premises can be served by two Layer 2 Access Seekers and, where a point-to-multipoint network architecture is adopted, either accommodation for a second Access Seeker's splitters or tie cables to an Access Seeker's splitter housing; and

(g) regardless of architecture chosen Central Office co-location facilities, allowing for alternative Access Seekers (provided that in the case of a PON network these do not need to be provided until after 2020);

Equipment means any and all tangible assets (including Software, hardware, equipment, documentation, cables, fibre or other items or materials) purchased by, or otherwise supplied to, the LFC under this Agreement;

Existing Communal Infrastructure means the Communal Infrastructure which is acquired by the LFC from the Contractor in accordance with the Assets Transfer Agreement;

Existing Communal Layer 2 Infrastructure means the Communal Layer 2 Infrastructure which is acquired by the LFC from the Contractor in accordance with the Assets Transfer Agreement;

Existing End User-Specific Infrastructure means the End User-Specific Infrastructure which is acquired by the LFC from the Contractor in accordance with the Assets Transfer Agreement;

Existing Infrastructure means the Existing Communal Infrastructure, Existing Communal Layer 2 Infrastructure and Existing End User-Specific Infrastructure acquired by the LFC from the Contractor in accordance with the Assets Transfer Agreement;

Expert has the meaning given in clause 20.5 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 non building access point. It is not mandatory for the fibre to be broken and terminated at that point, although it will serve as an access point for breaking and testing should the need arise;

Fault means:

- (a) a material defect, error, deficiency or non-conformance with the Detailed Specifications;
- (b) any functionality or performance of the Equipment below or not in material accordance with the relevant Detailed Specifications;
- (c) a faulty design attribute of any Equipment which results in recurrent material defects of the same or similar type which fall outside the incidence of random failures (if any) specified in the Detailed Specifications or in the manufacturer's instructions; or
- (d) any material partial performance or material non-performance of any Equipment,

except to the extent arising due to an LFC Default Event or a Third Party Event;

Fibre Access Point (or FAP) means a point at the Premises boundary where the lead-in connects to the distribution fibre;

Force Majeure Event means an event or circumstance beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with or the performance of, a 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;
- (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 which is consistent with Best Industry Practice, 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) such event was caused by an Act or Omission of the party affected;
- (g) that event is constituted or caused by any failure of a Subcontractor or supplier of the party 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 either party or a Subcontractor or supplier of the party; or
- (i) that event is constituted by a Change in Law;

GST means goods and services tax as defined in the Goods and Services Tax Act 1985;

Guaranteed Maximum Charge means the guaranteed maximum amount payable by the LFC for the New Communal Infrastructure, as set out in Schedule 6 (Charges);

Insolvency Event means, in relation to the Contractor:

- (a) the presentation of an application for its liquidation that is not discharged within 30 days of its filing or which is not demonstrated to CFH's reasonable satisfaction prior to the expiry of that 30 day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;
- (c) the appointment of a liquidator, receiver, voluntary administrator, statutory manager, or similar official, to that party;

- (d) the suspension or threatened suspension by that party of the payment of its debts;
- (e) cessation by that party of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of its assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

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

- (a) test the Network functionality, operation and performance during User Acceptance Testing and subsequently in respect of changes to the Network approved by the LFC in writing that are made or are to be made to the Network; and
- (b) allow Service Providers to test and modify their Telecommunications Services to work on the Network;

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;

Interoperability means the ability for the Network to interoperate successfully with interconnected networks;

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

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 Services means layer 1 of the OSI Model, being passive fibre optic network infrastructure;

Layer 2 Services means layer 2 of the OSI Model, being active fibre optic network infrastructure;

LFC Default Event means any Act or Omission of the LFC, except to the extent that such Act or Omission has been caused or contributed by:

- (a) any Act or Omission of the Contractor or its Personnel (including a failure of the Contractor to perform its obligations under this Agreement); or
- (b) any Act or Omission of the LFC that has received the Contractor's prior written approval;

LFC Funding Failure means CFH is unable to fulfil any of its funding obligations under the Shareholders' Agreement as a result of CFH not receiving sufficient funding from the Government;

LFC Materials means any works and materials, that exist as at the date on which such materials are first used for the purposes of this Agreement, the Intellectual Property Rights of which are vested in the LFC or a licensor of the LFC, and includes any adaptations, modifications and new versions of those LFC Materials undertaken or produced for the purposes of this Agreement;

Liquidated Damages means those damages payable by the Contractor pursuant to the terms of Schedule 2 (Design and Build), in respect of a failure on the part of the Contractor to achieve a Milestone in respect of which Liquidated Damages are payable;

Material Breach means any material breach by the Contractor of the terms of this Agreement or the occurrence of any event having a material effect on the ability of the Contractor to perform its obligations under this Agreement, and includes:

- (a) the occurrence of an Insolvency Event in relation to the Contractor;
- (b) the occurrence of a Change of Control Event of the Contractor or any ultimate or intermediate holding company of the Contractor, including the Parent Company, without the prior written consent of the LFC;
- (c) any failure on the part of the Contractor to comply with, observe or perform any of the terms of this Agreement (together a "contract breach"), in circumstances where that contract breach or that contract breach together with other contract breaches is considered by the LFC on reasonable grounds to result in:
 - (i) the Contractor being unable or being likely to be unable to perform its other obligations under this Agreement; or
 - (ii) materially affecting the ability of the LFC to utilise the Network and/or the Services in the manner contemplated by the Requirements;
- (d) any material breach by the Contractor of any Partner Funding Obligation under the Shareholders' Agreement;

Milestone means the milestone for each Network Stage set out in the Network Deployment Plan;

Milestone Date means each due date for achievement of a Milestone as set out in the Network Deployment Plan;

Multi-Dwelling Unit Infrastructure or Multi-Business Unit Infrastructure means the individual fibre connection from the point that the End User-Specific Infrastructure terminates at the Premises to an individual residence or commercial tenancy in a multi-tenant building;

Network means the New Infrastructure and the Existing Infrastructure;

Network Deployment Plan means the operative document which sets out the plan for the conduct of the Design and Build, and integration of Existing Infrastructure, in accordance with the form set out in Annexure 1 to Schedule 2 (Design and Build) and as prepared in accordance with Schedule 2 (Design and Build);

Network Stage means each stage or segment of the Design and Build, and integration of Existing Infrastructure, as set out in the Network Deployment Plan;

New Communal Infrastructure means the new Communal Infrastructure deployed in accordance with Schedule 2 (Design and Build);

New Communal Layer 2 Infrastructure means the new Communal Layer 2 Infrastructure deployed in accordance with Schedule 2 (Design and Build);

New End User-Specific Infrastructure means the new End User-Specific Infrastructure deployed in accordance with Schedule 2 (Design and Build);

New Multi-Dwelling Unit Infrastructure or Multi-Business Unit Infrastructure means the new Multi-Dwelling Unit Infrastructure or Multi-Business Unit Infrastructure deployed in accordance with Schedule 2 (Design and Build);

New Infrastructure means the New Communal Infrastructure, New Communal Layer 2 Infrastructure, New End User-Specific Infrastructure and New Multi-Dwelling Unit Infrastructure or Multi-Business Unit Infrastructure;

New Services means new services to be provided by the Contractor to the LFC, which are not changes in the scope of performance of the O&M Services, and to which the parties have agreed the Agreement will apply;

Non-Building Access Point or NBAP means a location for a Connection that 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 Telecom New Zealand Limited);

Object Code means the executable version of the Software;

Open Systems Interconnection Model 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;

O&M Manual means the operative manual document that is to be used to regulate and manage day to day procedures for the O&M Services, the statement of principles for which is set out in Schedule 4 (O&M Services);

O&M Plan means the operative planning document that is to be used to regulate and manage day to day procedures for the O&M Services, the statement of principles for which is set out in Schedule 4 (O&M Services);

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

Operational Change has the meaning given in Schedule 9 (Change Procedure);

Parent Company means WEL Networks Limited;

Parent Company Guarantee means the guarantee that the Parent Company is required to give to the LFC, substantially in the form set out in Schedule 11 (Security);

Partner Funding Obligation means any funding obligation of the Contractor to the LFC under the Shareholders' Agreement;

Passed means when Premises have been passed with Communal Infrastructure (and, where the context requires, includes Layer 2 Communal Infrastructure) and is capable of Connection from the nearest point to the private boundary (if underground) or nearest pole (if aerial);

Payment Milestone means a Milestone in respect of which part of the Charges are payable by the LFC to the Contractor;

Performance Issue has the meaning given in clause 19.2 of the Base Agreement;

Performance Bond means the performance bond to be issued by the Parent Company's bank, in the form set out in Schedule 11 (Security), and for an amount not less than [REDACTED];

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

Premises means a single building or structure located on a defined geographical site (such as may be evidenced by a certificate of title), which has a unique physical address recognised by NZ Post, and is occupied by or could readily be occupied by a potential End User and, for the avoidance of doubt, a premises does not include a NBAP, and a multi-tenanted building or structure only constitutes a single Premises;

Premises Connection Percentage has the meaning given in the Shareholders' Agreement;

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

Project Control Group or **PCG** means the project control group set up under Schedule 8 (Governance);

Related Company has the meaning given in the Companies Act 1993 provided that, for the purposes of this Agreement, a reference to "company" in that section refers to any body corporate notwithstanding its jurisdiction of incorporation;

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

Requirements means those requirements set out in Annexure 2 to Schedule 2 (Design and Build);

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

Service Charges means the charges for the O&M Services, as set out in Schedule 6 (Charges);

Service Credits means the credits to be applied against the Charges for Service Level Defaults, in accordance with Schedule 5 (Service Levels);

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

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

Service Provider means an entity that has a contractual relationship with the LFC 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;

Services means any and all of the services to be provided, and obligations to be performed, by the Contractor under this Agreement, including the:

- (a) O&M Services;
- (b) New Services; and
- (c) Disengagement Services;

Services and Pricing Schedule means Schedule 1 (Services and Pricing) to the Shareholders' Agreement;

Shareholders' Agreement means the shareholders' agreement between CFH, the Contractor and the LFC dated on or about the date of this 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);

Source Code means the human readable form of the relevant Software and includes all documentation, algorithms, technical data, tools and any other materials necessary for a reasonably competent software developer to understand, modify and support that Software;

Specified Layer 1 Services means the Layer 1 Services that are listed in the Services and Pricing Schedule;

Specified Layer 2 Services means the Layer 2 Services that are listed in the Services and Pricing Schedule;

Steering Committee means the steering committee set up under Schedule 8 (Governance);

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

Succession Package means the information set out in Annexure 1 to Schedule 10 (Disengagement);

Successor Service Provider means a person appointed by the LFC, or who the LFC advises the Contractor it intends to appoint, as service provider in succession to the Contractor;

Tax means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment or in respect of any import and export of a product or service under this Agreement;

PUBLIC VERSION

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

Term means the Initial Term and any Renewal Term, as set out in clause 3 of the Base Agreement;

Third Party Equipment has the meaning given in clause 13.7 of the Base Agreement;

Third Party Event means any Act or Omission of a third party (including a Service Provider or End User, but excluding any Subcontractor, supplier of the Contractor or any person within the control or under the responsibility of the Contractor (whether through contract or otherwise)), except to the extent that such Act or Omission has been caused or contributed by:

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

Third Party Interfaces means a Service Provider technological, operational or organisational interface with the Network, Design and Build and/or the Services;

Third Party Software means any Software existing as at the date such Software is first used for the purposes of this Agreement, where the Intellectual Property Rights are vested in a third party (other than a Related Company of the Contractor);

Transaction Agreements means this Agreement, the Assets Transfer Agreement and the Shareholders' Agreement;

UFB Objective means the Government's objective to accelerate the roll-out of Ultra-Fast Broadband to 75 percent of the New Zealander 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;

Ultra-Fast Broadband means a minimum uncontested 100 Mbps downlink and 50 Mbps uplink;

Virus means any program code or programming instructions, or any thing or device, which may damage, interfere with, impair or otherwise adversely affect the operation of the Network, prevent or hinder access to any program or data, or enable unauthorised access to any program or data, impair or disrupt the operation of any program or the reliability of any data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise), including malicious code, trojan horses, worms, spyware, malware, computer viruses, logic bombs, backdoors, disabling code and other similar things; and

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

Schedule 2: Design and Build

[NOTE: The entire contents of this Schedule have been redacted]

BELL GULLY
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Schedule 3: Existing Infrastructure Acquisition

[NOTE: This Schedule contains the Network Infrastructure Assets Transfer Agreement,
the public version of which is contained in a separate document]

Schedule 4: O&M Services

1. Introduction

1.1 Purpose

This Schedule describes the O&M Services to be provided by the Contractor to, or at the direction of, the LFC. The O&M Services are to be provided by the Contractor as part of the Network, including in the Integrated Test Facility.

1.2 Activities

This Schedule describes the O&M Services for the Network, including:

- (a) all reporting and other services the LFC is obliged to provide in order to meet its obligations under the Services and Pricing Schedule to the Shareholders' Agreement; and
- (b) operation, maintenance, and support services relating to the Network.

1.3 Definitions

Terms defined in the Base Agreement have the same meaning when used in this Schedule.

2. O&M Services

2.1 Provision of the O&M Services

The Contractor will provide the O&M Services in accordance with the description of the O&M Services set out in this Schedule, including the O&M Manual and the O&M Plan.

2.2 Service Levels

- (a) The Contractor will provide the O&M Services in accordance with the Service Levels set out in Schedule 5.
- (b) The Contractor will provide a suitable OSS/BSS solution to (without limitation):
 - (i) provide a seamless electronic interface to Service Providers;
 - (ii) otherwise support the delivery of Wholesale Services by the LFC in a nationally consistent manner; and
 - (iii) ensure that the Contractor complies with:
 - (A) the Service Levels;

- (B) the Contractor's asset inventory obligations under this Agreement; and
- (C) the Contractor's reporting obligations under this Agreement.

3. O&M Manual

3.1 Draft O&M Manual

A draft O&M Manual is set out in Annexure 1.

3.2 Requirements

- (a) The O&M Manual will describe the O&M Services in detail.
- (b) The O&M Manual must:
 - (i) reflect and be consistent with the Requirements;
 - (ii) reflect and be consistent with the UFB Objective;
 - (iii) follow standard industry frameworks (including ITIL and TMF);
 - (iv) be realistic in terms of timeframes, tasks and Personnel;
 - (v) be clear and unambiguous, so as to be understood by the person reading it;
 - (vi) conform to its description and be fit for purpose;
 - (vii) not impose obligations or requirements on the LFC or CFH beyond those contemplated by this Agreement;
 - (viii) be consistent with every other project deliverable;
 - (ix) be of professional quality; and
 - (x) be factually correct.
- (c) The Contractor will keep the LFC informed at regular intervals while the O&M Manual is being developed so that the LFC Personnel who are to review the O&M Manual have a reasonable knowledge of its contents by the time of the review.
- (d) The Contractor will complete and submit the O&M Manual in accordance with the relevant timeline in the Network Deployment Plan. The Document Finalisation Process will apply to the O&M Manual.

4. O&M Plan

4.1 Draft O&M Plan

A draft O&M Plan is set out in Annexure 2.

4.2 Requirements

- (a) The O&M Plan will describe the business management of the O&M Services, and will include:
 - (i) detailed task plans, including the Key Personnel involved in particular tasks;
 - (ii) identification of tools and methodologies to be used in the O&M Services;
 - (iii) detail as to how the O&M Services will be delivered, managed and controlled; and
 - (iv) the procedure for O&M changes.
- (b) The O&M Plan must:
 - (i) reflect and be consistent with the Requirements;
 - (ii) reflect and be consistent with the UFB Objective;
 - (iii) follow standard industry frameworks (including ITIL and TMF);
 - (iv) be realistic in terms of timeframes, tasks and Personnel;
 - (v) be clear and unambiguous, so as to be understood by the person reading it;
 - (vi) conform to its description and be fit for purpose;
 - (vii) not impose obligations or requirements on the LFC or CFH beyond those contemplated by this Agreement;
 - (viii) be consistent with every other project deliverable;
 - (ix) be of professional quality; and
 - (x) be factually correct.
- (c) The Contractor will keep the LFC informed at regular intervals while the O&M Plan is being developed so that the LFC Personnel who are to review the O&M Plan have a reasonable knowledge of its contents by the time of the review.
- (d) The Contractor will complete and submit the O&M Plan in accordance with the relevant timeline in the Network Deployment Plan. The Document Finalisation Process will apply to the O&M Plan.

5. LFC responsibilities

The LFC will perform each of its specific responsibilities for the O&M Services as set out in Annexure 3.

Annexure 1: O&M Manual

The draft O&M Manual consists of the following outline and the draft content attached to this Annexure 1:

- 1. Summary
 - 1.1 Objectives;
 - 1.2 Background; and
 - 1.3 References.
- 2. Services
 - 2.1 Service Desk;
 - 2.2 Build, Support, Maintenance and Upgrades (Network, Hardware and Applications);
 - 2.3 OSS/ BSS
 - 2.4 MACs (physical and logical);
 - 2.5 Equipment and Software Procurement;
 - 2.6 Business Continuity and Disaster Recovery;
 - 2.7 Security
 - 2.8 Change Management
 - 2.9 Network Strategy
 - 2.10 Documentation
 - 2.11 Benchmarking
- 3. Service Desk
 - 3.1 Location;
 - 3.2 Hours of operation;
 - 3.3 Ticket logging, tracking and co-ordination;
 - 3.4 Network/system monitoring;
 - 3.5 Service Level management;
 - 3.6 Availability management;
 - 3.7 Capacity management
 - 3.8 Service continuity;

- 3.9 Configuration management;
- 3.10 Help desk services;
- 3.11 Incident and Problem management;
- 3.12 Asset inventory management:
- (a) establish inventory system (including GIS);
 - (b) populate and maintain accuracy of inventory system;
- 3.13 MAC management;
- 3.14 Change management;
- 3.15 Release management;
- 3.16 Conduct RSP satisfaction surveys; and
- 3.17 Reporting.
4. Support, Maintenance and Upgrades (Network, Hardware and Service capability);
- 4.1 Contractor Coordination;
 - 4.2 Service Development;
 - 4.3 Capability development;
 - 4.4 Support, maintenance (including preventative maintenance) and upgrades of:
 - (a) Network;
 - (b) Software (applications and operating systems);
 - (c) Hardware;
 - 4.5 Incident and Problem management and resolution;
 - 4.6 Warranty claim management; and
 - 4.7 Planning.
5. Network Operation
- 5.1 Service Provisioning;
 - 5.2 Billing and customer relationship management;
 - 5.3 Operation of Layer 2 systems;
 - 5.4 Product and service development
 - 5.5 Service management and operations;
- 5.6 Resource management and operations.
6. OSS/ BSS
- 6.1 Design, development, implementation and operation of OSS/BSS
7. MACs (physical and logical);
- 7.1 Installs
 - 7.2 Moves;
 - 7.3 Adds; and
 - 7.4 Changes.
8. Equipment and Software Procurement and Disposal;
- 8.1 Equipment and Software Procurement; and
 - 8.2 Equipment Disposal.
9. Business Continuity and Disaster Recovery;
- 9.1 Developing, maintaining and updating disaster recovery plans;
 - 9.2 Planning, testing, implementing and executing disaster recovery plans.
10. Security
- 10.1 Develop, maintain and implement security policies.
11. Change Management
12. Network Strategy
- 12.1 Overall Layer 2 network architecture design and management;
13. Documentation
- 13.1 Preparation of Design, Operation, Maintenance and User Documentation;
 - 13.2 Update and Maintain Documentation.
14. Benchmarking
- 14.1 Participation and cooperation in benchmarking exercises.

Annexure 2: O&M Plan

The draft O&M Plan consists of the following outline and the draft content attached to this Annexure 2:

1. Summary
 - 1.1 Business Concept
 - 1.2 Mission and Objectives
 - 1.3 Background
 - 1.4 References
2. Functional Organisation Overview
3. Operations
4. Maintenance
5. Contract Management
 - 5.1 Performance Reporting
 - 5.2 Contract Administration
6. Engineering
 - 6.1 Enquiries Management
 - 6.2 System Engineering
 - 6.3 ITF Management
 - 6.4 Change Management
 - 6.5 Release Management
7. Support Services
 - 7.1 Human Resources
 - 7.2 Information Technology
 - 7.3 Final Accounting
 - 7.4 Quality
 - 7.5 Communication and Marketing
8. Organisation
 - 8.1 O&M Context
 - 8.2 External Parties

- 8.3 Organisational Structure
- 8.4 Organisational Roles and Responsibilities
- 8.5 Accommodation

Annexure 3: LFC Responsibilities

To be agreed by the parties, if any.

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 Credits.
- 1.2 The Document Finalisation Process will be applied to this Schedule 5 to form the Service Levels regime. Accordingly, the terms of this Schedule 5 will form the basis for the first draft Service Levels regime, to be submitted by the Contractor to the PCG in accordance with the Network Deployment Plan. Further Service Levels and Service Credits (for example, Service Levels relating to moves, adds and changes and other O&M Services will be defined and agreed in accordance with the Document Finalisation Process).

2. Definitions

Terms defined in the Base Agreement have the same meaning when used in this Schedule. In addition, the following terms have the following meanings unless the context indicates otherwise:

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

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

Business Hours means 8 a.m. to 5 p.m. on a business day;

Connection means:

- (a) the cable joining the Fibre Access Point to the External Termination Point of a Premises, with such cable to be either from the pit on the adjoining boundary of two properties where the Fibre Access Point is located in underground deployment, or from the pole nearby to a number of premises in aerial deployment; and
- (b) all other infrastructure (excluding Communal Infrastructure) necessary to enable the provision of the Specified Layer 1 Services and Specified Layer 2 Services to the relevant End User,

and "**Connected**" will be construed accordingly.

Concession Period means the period commencing on the date the LFC is incorporated and ending on the 10th anniversary of the date of the LFC's incorporation;

Downtime means the length of time that an End User is without 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 service is restored. (If an End User's service does not meet the "Layer 2 Traffic" Service Level (see clause 6 of Appendix 1 to Schedule 5) 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 service for the relevant five minute interval(s). Downtime excludes user-initiated service interruptions and CPE outages due to power failure;

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 non building access point. It is not mandatory for the fibre to be broken and terminated at that

point, although it will serve as an access point for breaking and testing should the need arise;

Fibre Access Point (or FAP) means a point at the Premise boundary where the lead-in connects to the distribution fibre;

NBAP Connection means a Connection to an NBAP;

O&M Service Charges means the total Charges for the O&M Services in the relevant month;

Passed means a Premises has been passed with Communal Infrastructure and is capable of Connection from the nearest point to the private boundary (if underground) or nearest pole (if aerial) (and **Pass** is to be interpreted accordingly);

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

Service Level Commencement Date means the date that the LFC Accepts the first Network Stage, as defined in Schedule 2 (Design and Build) and in the Network Deployment Plan.

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

3. Commencement, Measurement and Reporting of Service Levels

- 3.1 The Contractor must begin measuring and reporting its performance against the Service Levels from the Service Level Commencement Date.
- 3.2 Unless otherwise specified in this Schedule, the Contractor's performance of each Service Level will be measured and reported monthly.
- 3.3 The Service Levels measure performance in the Coverage Area as a whole, other than:
 - (a) Layer 1 Service Availability - Average Downtime Service Level (set out in clause 3.1 of Appendix 1 of this Schedule); and
 - (b) Layer 2 Service Availability – Average Downtime Service Level (set out in clause 4.1 of Appendix 1 of this Schedule),

which measure performance in each Candidate Area individually (and the performance in each Candidate Area must meet the minimum specified level of performance in order for the Service Level to be met).

4. Service Credits

- 4.1 Notwithstanding clause 3.1 or clause 6.4(a)(i) of the Base Agreement:
 - (a) for the first 12 months following the Service Levels Commencement Date, the Contractor will be liable to pay Service Credits for a failure to meet the following Service Levels only:
 - (i) Residential – Fibre Connections Service Levels (Individual) (specified in clause 1.2(a)(i) of Appendix 1 of this Schedule);

- (ii) Business – Fibre Connections Service Levels (Individual) (specified in clause 1.2(b)(i) of Appendix 1 of this Schedule);
 - (iii) Residential – Layer 2 services (Individual) Service Levels (specified in clause 2.1(a)(i) of Appendix 1 of this Schedule);
 - (iv) Business – Layer 2 services (Individual) Service Levels (specified in clause 2.1(b)(i) of Appendix 1 of this Schedule);
 - (v) Layer 1 Service Availability – Maximum Downtime Service Level (specified in clause 3.2 of Appendix 1 of this Schedule);
 - (vi) Layer 2 Service Availability – Maximum Downtime Service Level (specified in clause 4.2 of Appendix 1 of this Schedule);
 - (vii) Layer 2 Traffic Service Level (specified in clause 6.1 of Appendix 1 of this Schedule); and
 - (viii) Restore Connection Service Level (specified in clause 1.2(d) of Appendix 1 of this Schedule).
- (b) in addition to the Contractor's liability to pay Service Credits for failure to meet the Service Levels specified in clause 4.1(a) of this Schedule, the Contractor will also be liable to pay Service Credits for a failure to meet the:
- (i) Residential – Fibre Connections Service Levels (Aggregate) (specified in clause 1.2(a)(ii) of Appendix 1);
 - (ii) Business – Fibre Connections Service Levels (Aggregate) (specified in clause 1.2(b)(ii) of Appendix 1 of this Schedule);
 - (iii) Layer 1 Service Availability – Average Downtime Service Level (clauses 3.1 of Appendix 1);
 - (iv) Layer 2 Service Availability – Average Downtime Service Level (clauses 4.1 of Appendix 1 of Appendix 1 of this Schedule);
 - (v) Layer 2 Disconnections Service Levels (clause 5 of Appendix 1 of Appendix 1 of this Schedule);
 - (vi) Residential – Layer 2 Services (Aggregate) Service Level (specified in clause 2.1(a)(ii) of Appendix 1 of this Schedule);
 - (vii) Business – Layer 2 Services (Aggregate) Service Level (specified in clause 2.1(b)(ii) of Appendix 1 of this Schedule);
 - (viii) NBAP – Fibre Connection (Individual) Service Level (specified in clause 1.2(c)(i) of Appendix 1 of this Schedule);
 - (ix) Bandwidth upgrade of Layer 2 Services (Aggregate) Service Level (specified in clause 2.1(d)(ii) of Appendix 1 of this Schedule);
 - (x) Multicast (End User) (Aggregate) Service Level (specified in clause 2.1(f)(ii) of Appendix 1 of this Schedule);
 - (xi) RF Overlay Service Level (specified in clause 2.1(g) of Appendix 1 of this Schedule); and
- (xii) NBAP – Layer 2 services (Individual) Service Level (specified in clause 2.1(c)(i) of Appendix 1 of this Schedule),
following the expiry of the first 12 months following the Service Level Commencement Date. These Service Levels will only measure performance across Candidate Areas in which:
 - (xiii) 3,000 or more End Users within the Candidate Area; or
 - (xiv) 20% of Premises within the Candidate Area (as specified in the Network Deployment Plan),
are (or have been) Connected to the Network (whichever occurs first). This includes any End Users Connected to the Network on the Service Level Commencement Date.

5. Continuous Improvement of Service Levels

- 5.1 Before the expiry of the Concession Period:
- (a) the Contractor will have implemented for itself and for the LFC (at the Contractor's cost), and operate, appropriate technical solutions (including the LFC having an appropriate fully functional OSS/BSS implemented) to enable all Layer 2 Services that do not require a physical visit to the relevant Premises to be provisioned in near real time over electronic interfaces (following the receipt of a properly completed order by the LFC); and
 - (b) the Contractor will provision all Layer 2 Services that do not require a physical visit to the relevant Premises in near real time over electronic interfaces (following the LFC's receipt of a properly completed order) (the **Improved Services**).
- 5.2 As part of the Document Finalisation Process a continuous improvement regime for the Service Levels will be developed and included within this Schedule to ensure that the Service Levels reflect the Improved Services before the expiry of the Concession Period.

Appendix 1: Service Levels

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 clauses 1.3 and 1.4, the Contractor will complete the installation of Connections as follows:

(a) **Residential – Fibre Connection:**

(i) **Individual**

Each installation of Residential Connection must be completed within four business days following receipt of all necessary permissions and consents required by Law (excluding road opening notices) (or such later date as agreed between the Access Seeker and the relevant End User), with permissions and consents to be sought by the Contractor within one business day of the LFC's receipt of a properly completed order from an Access Seeker.

(ii) **Aggregate**

75% or more of all installations of Residential Connections due to be completed within a month in accordance with clause 1.2(a)(i) of this Appendix must be completed within the period specified in clause 1.2(a)(i) of this Appendix.

(b) **Business - Fibre Connection:**

(i) **Individual**

Each installation of a Business Connection must be completed within six business days following receipt of all necessary permissions and consents required by Law (excluding road opening notices) (or such later date as agreed between the Access Seeker and the relevant End User), with permissions and consents to be sought by the Contractor within one business day of the LFC's receipt of a properly completed order from an Access Seeker.

(ii) **Aggregate**

75% or more of all installations of Business Connections due to be completed within a month in accordance with clause 1.2(b)(i) of this Appendix must be completed within the period specified in clause 1.2(b)(i) of this Appendix.

(c) **NBAP – Fibre Connection:**

(i) **Individual**

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 as

agreed between the Access Seeker and the relevant End User), with permissions and consents to be sought by the Contractor within one business day of the LFC's receipt of a properly completed order from an Access Seeker

(ii) **Aggregate**

75% or more of all installations of NBAP Connections due to be completed within a month in accordance with clause 1.2(c)(i) of this Appendix must be completed within the period specified in clause 1.2(c)(i) of this Appendix.

(d) **Restore Connection:** Each Connection which is subject to Downtime must be restored within 48 hours of the Downtime first occurring.

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 Contractor 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 1.2(a)(i), 1.2(b)(i), 1.2(c)(i) and 1.2(d) as applicable.

1.4 The service levels in 1.2(a)(i), 1.2(b)(i) and 1.2(c)(i) will not apply to any Connections ordered in any Week by an Access Seeker in excess of 25% of the number of Connections forecast by that Access Seeker for the calendar month in which that Week falls (or, where the Week partly falls in one calendar month and partly in another, 25% of the number of Connections forecast by that Access Seeker for the earlier of those two months), and such Connections will not be taken into account when calculating the service levels in 1.2(a)(ii), 1.2(b)(ii) and 1.2(c)(ii).

2. Layer 2 Service provisioning Service Levels

2.1 Subject to clause 2.2 of this Appendix, the Contractor will provision the Layer 2 Services as follows:

(a) **Residential - Layer 2 services:**

(i) **Individual**

Layer 2 services ordered in relation to a Residential Connection:

- (A) at the same time as an installation of a Residential Connection are to be provisioned concurrently with the completion of the Connection; or
- (B) independently from an order for an installation of a Connection (provided that the relevant Premises is already Connected) are to be provisioned within three business days of a properly completed order being received by the LFC.

(ii) **Aggregate**

75% or more of all Layer 2 services due to be delivered within a month in accordance with clause 2.1(a)(i) of this Appendix must be completed within the relevant periods specified in clause 2.1(a)(i) of this Appendix.

(b) **Business - Layer 2 services:**

(i) **Individual**

Layer 2 services ordered in relation to a Business Connection:

- (A) at the same time as an installation of a Business Connection are to be provisioned concurrently with the completion of the Connection; or
- (B) independently from an order for an installation of a 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 LFC (or such later date as agreed between the Access Seeker and the relevant End User).

(ii) **Aggregate**

75% or more of all Layer 2 services due to be delivered within a month in accordance with clause 2.1(b)(i) of this Appendix must be completed within the relevant periods specified in clause 2.1(b)(i) of this Appendix.

(c) **NBAP - Layer 2 services:**

(i) **Individual**

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) 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 LFC (or such later date as agreed between the Access Seeker and the relevant End User).

(ii) **Aggregate**

75% or more of all Layer 2 services due to be provisioned within a month in accordance with clause 2.1(c)(i) of this Appendix must be completed within the relevant periods specified in clause 2.1(c)(i) of this Appendix.

(d) **Bandwidth upgrade of Layer 2 services:**

(i) **Individual**

A Bandwidth upgrade of Layer 2 services must be provisioned within one business day following the LFC's receipt of a properly completed order from an Access Seeker (or such later date as agreed between the Access Seeker and the relevant End User).

(ii) **Aggregate**

75% or more of all Layer 2 services upgrades due to be provisioned within a month in accordance with clause 2.1(d)(i) of this Appendix must be completed within the period specified in clause 2.1(d)(i) of this Appendix.

(e) **Multicast (Access Seeker):**

- (i) A multicast service must be provisioned for an Access Seeker within 30 business days following the LFC's receipt of a properly completed order from an Access Seeker (or such later date as agreed between the Access Seeker and the LFC).

(f) **Multicast (End User):**

(i) **Individual**

Provided that the necessary multicast service has previously been provisioned for the relevant Access Seeker, a multicast service must be provisioned for an End User within 1 business day following the LFC's receipt of a properly completed order from an Access Seeker (or such later date as agreed between the Access Seeker and the relevant End User).

(ii) **Aggregate**

75% or more of all multicast services due to be provisioned within a month in accordance with clause 2.1(f)(i) of this Appendix must be completed within the period specified in clause 2.1(f)(i) of this Appendix.

(g) **RF Overlay:** An RF Overlay service must be provisioned within the period agreed between the LFC and the relevant Access Seeker.

2.2 Any time period during which:

- (a) any Force Majeure Event prevents provisioning of a Layer 2 Service, Bandwidth upgrade, multicast service or RF Overlay service; or
- (b) the Contractor 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, multicast service or RF Overlay service,

will be added to the periods specified in 2.1(a)(i), 2.1(b)(i), 2.1(c)(i), 2.1(d)(i), 2.1(e), 2.1(f)(i) and 2.1(g) as applicable.

3. Layer 1 Service Availability

3.1 **Layer 1 Service Availability – Average Downtime:**

The Layer 1 dark fibre service between the Premises or NBAP terminations and the CO fibre distribution frame 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 Candidate Area in the previous 12 month 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 Candidate Area in the previous 12 month 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 Candidate Area in the previous 12 month 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 Candidate Area over the previous 12 month period.

3.2 Layer 1 Service Availability – Maximum Downtime:

The Layer 1 dark fibre service between the Premises or NBAP terminations in a Candidate Area and the CO Fibre Distribution Frame 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 previous 12 month period that is caused by a fault in the Layer 1 dark fibre service must be:

- (a) ≤ 48 hours ("Default Service Level"); or
- (b) ≤ 24 hours ("Enhanced Service Level 1"); or
- (c) ≤ 12 hours ("Enhanced Service Level 2"); or
- (d) ≤ 8 hours ("Enhanced Service Level 3").

Definition:

Maximum Downtime for each End User in each 12 month 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 previous 12 month period that is caused by a fault in the Layer 1 dark fibre service.

3.3 Default and Enhanced Layer 1 Service Availability – Maximum Downtime Service Levels

- (a) The Default Service Level set out in clause 3.2 of this Appendix is the default Service Level provided to each End User unless the End User elects to purchase an Enhanced Service Level in accordance with clause 3.3(b) of this Appendix.
- (b) The Enhanced Service Levels (as set out in clause 3.2 of this Appendix):
 - (i) must be offered by the LFC to Access Seekers 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 an Enhanced Service Level; and
 - (ii) may, at the LFC's discretion, be offered to Access Seekers to offer to End Users in relation to Residential Connections and must be provided to each such End User that elects to purchase an Enhanced Service Level.

4. Layer 2 Service Availability

4.1 Layer 2 Service Availability – Average Downtime:

The Layer 2 Service, between the ONT port and the POI (including the Hand-over port, but excluding any Layer 1 Service) 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 Candidate Area in each 12 month period that is caused by a fault in the Layer 2 Service must be ≤ 30 minutes.

Definition:

"Average Downtime per End User within each Candidate Area in the previous 12 month 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 Candidate Area in the previous 12 month period that is caused by a fault in the Layer 2 service; and

B = the average total number of End Users within the Candidate Area over the previous 12 month period.

4.2 Layer 2 Service Availability – Maximum Downtime

The Layer 2 Service, between the ONT port and the POI (including the Hand-over port, but excluding any Layer 1 Service) must meet the following minimum Service Level (excluding Downtime directly caused by Force Majeure Events):

Maximum Downtime for each End User in each 12 month period that is caused by a fault in the Layer 2 Service must be:

- (a) ≤ 12 hours (excluding Downtime caused by an ONT failure) ("Default Service Level"); or
- (b) ≤ 12 hours (including Downtime caused by an ONT failure) ("Enhanced Service Level 1"); or
- (c) ≤ 8 hours (including Downtime caused by an ONT failure) ("Enhanced Service Level 2").

Definition:

Maximum Downtime for each End User in each 12 month period that is caused by a fault in the Layer 2 Service = the sum of the Downtime experienced by the End User in the previous 12 month period that is caused by a fault in the Layer 1 dark fibre service.

4.3 Default and Enhanced Layer 2 Service Availability Service Levels

- (a) The Default Service Level set out in clause 4.2 above is the default Service Level provided to each End User unless the End User elects to purchase an Enhanced Service Level in accordance with clause 4.3(b) of this Appendix.
- (b) The Enhanced Service Levels (as set out in clause 4.2 above):
 - (i) must be offered by the LFC to Access Seekers 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 an Enhanced Service Level; and
 - (ii) may, at the LFC's discretion, be offered to Access Seekers to offer to End Users in relation to Residential Connections and must be provided to each such End User that elects to purchase an Enhanced Service Level.

- 4.4 The Layer 2 Service Availability Service Levels (set out in clauses 4.1 (Average Downtime) and clause 4.2 (Maximum Downtime) of this Appendix) 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.

5. Layer 2 – Disconnections

5.1 Disconnections – Individual

Each disconnection of a Connection must be completed within one business day following the LFC's receipt of a properly completed order from an Access Seeker (or such later date as agreed between the Access Seeker and the relevant End User).

5.2 Disconnections - Aggregate

75% or more of all disconnections of a Connection due to be made within a month in accordance with clause 5.1 of this Appendix must be completed within the period set out in clause 5.1 of this Appendix.

6. Layer 2 Traffic

- 6.1 Each End User's traffic 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	≤ 5 mS	≤ 1 mS	≤ 0.1%
EIR	n/a	n/a	≤ 2%

The traffic should be within these Service Levels for at least 99.9% of the time within the five minute measurement interval, otherwise the service is to be considered unavailable for that five minute interval.

6.2 Measurement of Layer 2 Traffic Service Level:

- (a) The Layer 2 Traffic Service Level for End Users that have selected the Layer 2 Service Availability Default Service Level (set out in clause 4.1 of this Appendix) will be measured on a sample basis (using a statistically significant sample randomly selected each month (**Sample End Users**)). If the Layer 2 Traffic Service Level for one or more of the Sample End Users is not met, it will be deemed to have been failed for all the Sample End Users.
- (b) The Layer 2 Traffic Service Level for End Users that have selected a Layer 2 Service Availability Enhanced Service Level (set out in clause 4.2 of this Appendix) will be measured on an individual Connection basis.

Appendix 2: Service Credits

1. The following table specifies the Service Credits payable to the LFC by the Contractor in the event of a Service Level Default:

Service Level (references are to clauses in Appendix 1)	Service Credit
LFC dark fibre access provisioning Service Levels	
1.2(a)(i) - Residential - Fibre Connections (Individual)	10% of the applicable monthly rental fee for the Connection per complete three-hour period that the Connection is late (capped at one month's rental).
1.2(a)(ii) - Residential - Fibre Connections (Aggregate)	1% of the O&M Service Charges for the applicable month.
1.2(b)(i) – Business - Fibre Connections (Individual)	10% of the applicable monthly rental fee for the Connection per complete three-hour period that the Connection is late (capped at one month's rental).
1.2(b)(ii) – Business - Fibre Connections (Aggregate)	1% of the O&M Service Charges for the applicable month.
1.2(c) – NBAP - Fibre Connections (Individual)	10% of the applicable monthly rental fee for the Connection per complete three-hour period that the Connection is late (capped at one month's rental).
1.2(d) – Restore Connection	10% of the applicable monthly rental fee for the Connection per complete hour that the restoration is late (capped at one month's rental).
Layer 2 Service provisioning Service Levels	
2.1(a)(i) – Residential – Layer 2 Ethernet services (Individual)	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(a)(ii) – Residential – Layer 2 Ethernet services (Aggregate)	1% of the O&M Service Charges for the applicable month.
2.1(b)(i) – Business – Layer 2 Ethernet services (Individual)	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(b)(ii) – Business – Layer 2 Ethernet services (Aggregate)	1% of the O&M Service Charges for the applicable month.
2.1(c)(i) – NBAP – Layer 2 services (Individual)	10% of 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(d)(i) - Bandwidth upgrade of Layer 2 services (Individual)	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).

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2.1(d)(ii) - Bandwidth upgrade of Layer 2 services (Aggregate)	1% of the O&M Service Charges for the applicable month.
2.1(e)(i) - Multicast (Access Seeker)	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).
2.1(f)(i) - Multicast (End User) (Individual)	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(f)(ii) - Multicast (End User) (Aggregate)	1% of the O&M Service Charges for the applicable month.
2.1(g) - RF Overlay	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).
Availability Service Levels	
3.1 - Layer 1 Service Availability (Average Downtime)	1% of the O&M Service Charges for the applicable month.
3.2 - Layer 1 Service Availability (Maximum Downtime)	10% of the applicable monthly rental fee for the Connection per complete hour of Downtime over the Maximum Downtime (capped at one month's rental).
4.1 – Layer 2 Service Availability (Average Downtime)	1% of the O&M Service Charges for the applicable month.
4.2 - Layer 2 Service Availability (Maximum Downtime)	10% of the applicable monthly rental fee for the Connection per complete hour of Downtime over the Maximum Downtime (capped at one month's rental).
Disconnection Service Level	
5.1 – Layer 2 Disconnections (Individual)	10% of the applicable monthly rental fee for the Connection per complete three-hour period that the disconnection is late (capped at one month's rental).
5.2 – Layer 2 Disconnections (Aggregate)	1% of the O&M Service Charges for the applicable month.

2. At Risk Amount

The At Risk Amount for the Contractor will be 30% of the total Charges for the O&M Services in the relevant month.

Schedule 6: Charges

1. Introduction

1.1 Purpose

This Schedule sets out:

- (a) the principles underlying the Charges;
- (b) the Project Infrastructure Price, the Service Charges and charges for Contract Changes;
- (c) the indexation principles to be applied to the Specified Pricing Components and the charges for Contract Changes;
- (d) the invoicing and payment procedure for the Project Infrastructure Price and the Service Charges; and
- (e) the escalation principles and formula that apply to the Service Charges and the charges for Contract Changes.

1.2 Definitions

Terms defined in the Base Agreement have the same meaning when used in this Schedule. In addition, the following terms have the following meanings unless the context indicates otherwise:

Book Value means the book value of the relevant asset as shown in the Other Vendor's financial records as at the date of delivery of that asset to the Contractor;

CBD Network Stage means a Network Stage which is identified in the Network Deployment Plan as being in a central business/industrial district;

CBD Network Stages N_{passed} means N_{passed} for all CBD Network Stages as set out in clause 1 of Annexure 1 of this Schedule 6;

Communal Infrastructure Price means the price calculated in accordance with clause 3.2 of this Schedule;

Communal Layer 2 Infrastructure Price means the price calculated in accordance with clause 3.3 of this Schedule;

Completion has the meaning set out in clause 5(a) of Annexure 1 of this Schedule;

Completion Certificate means the certificate to be issued by the LFC following the completion of work for a Payment Milestone in accordance with clause 6.2 of this Schedule;

Depreciated Replacement Cost means the replacement cost of the relevant asset depreciated at a reasonable rate over the period from the date on which the Other Vendor acquired the relevant asset and ending on the date of transfer of that asset to the LFC is completed in accordance with the Network Deployment Plan;

Due Diligence Process means the due diligence process to be conducted by the LFC in accordance with the Assets Transfer Agreement;

Existing End User-Specific Infrastructure Price means the price calculated in accordance with clause 3.4(b) of this Schedule;

GST means tax as defined in the GST Act;

GST Act means the Goods and Services Tax Act 1985;

MDUI and MBUI Price means the price calculated in accordance with clause 3.5 of this Schedule;

New End User-Specific Infrastructure Price means the price calculated in accordance with clause 3.4(d) of this Schedule;

Network Build Period has the meaning set out in clause 5(a) of Annexure 1 of this Schedule;

O&M Phase means the phase during which O&M Services are being provided by the Contractor;

Other Network Stage means any Network Stage other than a CBD Network Stage;

Other Network Stages N_{passed} means N_{passed} for all Other Network Stages as set out in the table in clause 1 of Annexure 1 of this Schedule;

Other Vendor has the meaning given to that term in the Network Infrastructure Assets Transfer Agreement;

Payment Notice means a notice given by the LFC to the Contractor under clause 6.5, 6.7 or 7.1(c) of this Schedule;

Pricing Components means pricing components used to calculate the Project Infrastructure Price which are set out in clause 1 of Annexure 1 of this Schedule;

Project Infrastructure Price means the maximum amount payable by the LFC for the New Infrastructure as set out in clause 3 of this Schedule;

Specified Pricing Components means each of the CPPP, CPPP_{CBD}, CPPP_{Other}, CPPP_{L2}, CPPC, CPPC_{L2} and CPPC_{MD};

Tax Invoice has the meaning given in the GST Act; and

Unusual Connections means a Connection which requires the New End User-Specific Infrastructure to cover a distance of greater than 30 metres.

In this Schedule 6, references to **actual costs** are references to the actual costs incurred by the Contractor, including margins, unless specifically provided otherwise.

2. Principles and overview

2.1 Principles

The following principles apply to all pricing under this Agreement and the Assets Transfer Agreement:

- (a) subject to clauses 4, 5 and 6 of Annexure 1 of this Schedule 6, the Project Infrastructure Price is a fixed maximum amount (i.e., a cap), and will not be escalated, subject to any Contract Change and indexation of the Specified Pricing Components in accordance with Annexure 1 of this Schedule and Annexure 3 of this Schedule.
- (b) subject to clauses 4, 5 and 6 of Annexure 1 of this Schedule 6, to the extent that the actual cost of delivering the Existing Infrastructure and the New Infrastructure exceeds the Project Infrastructure Price, the Contractor will be solely responsible for, and liable to pay or fund, any additional amount in excess of the Project Infrastructure Price. Subject to clauses 4, 5 and 6 of Annexure 1 of this Schedule 6, no A Shares or B Shares will be issued by the LFC to the Contractor, nor will any cash payment be made by the LFC to the Contractor, in respect of the Contractor's obligation to meet any cost or time over-runs where the actual cost of delivering the Existing Infrastructure and the New Infrastructure exceeds the Project Infrastructure Price.

2.2 Overview

The Charges are divided into three categories:

- (a) the Project Infrastructure Price;
- (b) Service Charges; and
- (c) ad hoc payments as part of Contract Changes.

3. Project Infrastructure Price

3.1 Project Infrastructure Price

The Project Infrastructure Price comprises the:

- (a) Communal Infrastructure Price;
- (b) Communal Layer 2 Infrastructure Price;
- (c) End User-Specific Infrastructure Price; and
- (d) MDUI and MBUI Price.

3.2 Communal Infrastructure Price

- (a) Subject to clauses 4 and 5 of Annexure 1 of this Schedule 6, the maximum Communal Infrastructure Price for New Communal Infrastructure is:

CPPP x N_{Passed}

and,

$\text{CPPP} \times N_{\text{Passed}} = (\text{CPPP}_{\text{CBD}} \text{ (from time to time as determined in accordance with this Schedule)} \times \text{CBD Network Stages } N_{\text{Passed}}) + (\text{CPPP}_{\text{Other}} \text{ (from time to time as determined in accordance with this Schedule)} \times \text{Other Network Stages } N_{\text{Passed}})$.

- (b) The amount payable by the LFC under this Agreement for the New Communal Infrastructure (other than payments pursuant to clauses 4 and 5 of Annexure 1 of this Schedule 6) represents the guaranteed maximum charge (GMC). Subject to clauses 4 and 5 of Annexure 1 of this Schedule 6, no A Shares will be issued by the LFC to the Contractor, nor will any cash payment be made by the LFC to the Contractor, in respect of the Contractor's obligation to meet any cost over-runs where the actual cost of establishing the Communal Infrastructure exceeds the GMC.
- (c) For the avoidance of doubt, subject to clauses 4 and 5 of Annexure 1 of this Schedule 6, no additional payments will be made by the LFC to the Contractor for any of the following (by way of example only) that lead to the actual cost of establishing the Communal Infrastructure exceeding the GMC for a Network Stage:
 - (i) the number of Premises actually Passed for a Network Stage being greater than the number of Premises estimated for the purpose of CPPP;
 - (ii) costs of obtaining any consents, permits or inspections;
 - (iii) costs arising from the need to excavate in any kind of ground encountered (including rock);
 - (iv) costs from reinstatement of existing facilities, roads, pavements and planted areas disturbed; and
 - (v) cost of any site or area security necessary during deployment.
- (d) The LFC and CFH acknowledge and agree that the Contractor will be paid for each Premise Passed by Existing Communal Infrastructure at the time that Existing Communal Infrastructure is transferred to the LFC pursuant to the Assets Transfer Agreement.
- (e) The GMC has been determined at a point in the design process which is deemed adequate by the parties to define the cost of the Communal Infrastructure with a precision acceptable to the parties. The Contractor accepts that this will not include full and final design or documentation. Other than for adjustments expressly authorised by this Agreement, the Contractor accepts that the development to completion of the final design and documentation for build purposes will not give rise to any reason for adjustment of the GMC.
- (f) The Contractor will provide the LFC with detailed and complete accounting records, prior to a relevant Payment Milestone, of:
 - (i) the actual cost of such Design and Build and new Communal Infrastructure following successful Acceptance Testing; and
 - (ii) the number of actual Premises Passed,
 for the relevant Network Stage.
- (g) Upon completion of all of the Network Stages and until the end of the Concession Period, the Contractor may submit, in not more than three monthly intervals, claims for

additional Premises Passed (being Premises which were not in existence at the time the Network build was completed, or which have subsequently come within the definition of Premises). The Contractor will provide the LFC with such evidence as is reasonably required by the LFC to enable the LFC to confirm that the Premises the subject of that claim have not already been paid for pursuant to this Schedule 6. The LFC will pay the Contractor for all such additional Premises Passed, up to a maximum number of N_{Passed} , in accordance with this Schedule 6.

- (h) The LFC and CFH acknowledge and agree that the Contractor is not required to construct the Network so that the Premises Passed by the Network exceeds N_{Passed} .

3.3 Communal Layer 2 Infrastructure Price

- (a) Subject to clause 3.3(b) of this Schedule, the maximum Communal Layer 2 Infrastructure Price for New Communal Layer 2 Infrastructure is:

$$\text{CPPP}_{L2} \times N_{\text{Passed}}$$

- (b) The Pricing Component CPPP_{L2} will be subject to downward adjustments if the Existing Communal Layer 2 Infrastructure:
 - (i) has been valued by the Contractor for the purposes of determining CPPP_{L2} at a value greater than:
 - (A) the Book Value of the Existing Communal Layer 2 Infrastructure; and
 - (B) the Depreciated Replacement Cost of the Existing Communal Layer 2 Infrastructure; or
 - (ii) does not meet the Requirements.

Any such adjustments will be determined by the LFC, the Contractor and CFH as part of the Due Diligence Process.

3.4 End User-Specific Infrastructure Price

- (a) Subject to clause 6 of Annexure 1 of this Schedule, the End User-Specific Infrastructure Price shall be the aggregate of the Existing End User-Specific Infrastructure Price and the New End User-Specific Infrastructure Price.
- (b) Subject to clause 3.4(c) of this Schedule, the maximum Existing End User-Specific Infrastructure Price is the lesser of:
 - (i) the lesser of:
 - (A) the Book Value of the Existing End User-Specific Infrastructure; and
 - (B) the Depreciated Replacement Cost of the Existing End User-Specific Infrastructure; and
 - (ii) the sum of CPPC and CPPC_{L2} multiplied by the total number of Premises ultimately Connected on the Network by the Existing End User-Specific Infrastructure.
- (c) The Pricing Components CPPC and CPPC_{L2} will be subject to a downward adjustment with respect to Existing End User-Specific Infrastructure only if the Existing End User-

Specific Infrastructure does not meet the Requirements. Any such adjustments will be determined by the LFC, the Contractor and CFH as part of the Due Diligence Process.

- (d) The maximum New End User-Specific Infrastructure Price is the sum of CPPC and CPPC_{L2} multiplied by the total number of Premises ultimately Connected on the Network by the New End User-Specific Infrastructure. The only exception to this is in respect of Unusual Connections, where the relevant New End User-Specific Infrastructure Price for such Connection will be the actual costs of building the relevant End User-Specific Infrastructure incurred by the Contractor

3.5 MDUI and MBUI Price

The maximum MDUI and MBUI Price is CPPC_{MD} multiplied by the number of individual residences or commercial tenancies in all the Multi-Dwelling Units and Multi-Business Units ultimately Connected to the Network by that infrastructure.

4. Payment or satisfaction of Project Infrastructure Price

4.1 Timing of payments or satisfaction of Project Infrastructure Price

- (a) The LFC will make payments of the Project Infrastructure Price progressively in accordance with clauses 4.2, 4.3, 4.4 and 4.5 of this Schedule on the delivery of each Network Stage in accordance with the Payment Milestones.
- (b) The LFC may at any time set off against an amount payable by the LFC to the Contractor the amounts payable to the LFC by the Contractor under clause 5 of this Schedule. To the extent that the obligations of the Contractor under that clause are not fully satisfied by such set off, the Contractor will not be relieved of its obligations under clause 5 of this Schedule. The LFC must give written notice to the Contractor of any amounts set off by the LFC pursuant to this clause 4 of this Schedule.

4.2 Payment and satisfaction of Communal Infrastructure Price

The LFC will satisfy any payment on account of part or all of the Communal Infrastructure Price which is due in respect of a particular Payment Milestone by:

- (a) for a CBD Network Stage, paying to the Contractor a cash amount equal to the applicable $\text{CPPP}_{CBD} \times$ the actual number of Premises Passed in that CBD Network Stage; and
- (b) for an Other Network Stage, paying to the Contractor a cash amount equal to the applicable $\text{CPPP}_{\text{Other}} \times$ the actual number of Premises Passed in that Other Network Stage,

on the date that such payment is due in accordance with this Schedule 6,

except that no cash payment will be made to the Contractor to the extent that:

- (c) the total number of Premises Passed for all Network Stages (including Premises Passed by Existing Communal Infrastructure) to date exceeds N_{Passed} ; and
- (d) if the relevant Network Stage is a CBD Network Stage, the total number of Premises actually Passed for all CBD Network Stages to date (including Premises Passed by Existing Communal Infrastructure) exceeds CBD Network Stages N_{Passed} ; and

- (e) if the relevant Network Stage is an Other Network Stage, the total number of Premises actually Passed for all Other Network Stages to date (including Premises Passed by Existing Communal Infrastructure) exceeds Other Network Stages N_{Passed} .

4.3 Satisfaction of Communal Layer 2 Infrastructure Price

The LFC will satisfy any payment on account of part or all of the Communal Layer 2 Infrastructure Price which is due in respect of a particular Payment Milestone by issuing on the date that such payment is due in accordance with this Schedule 6 that number of B Shares to the Contractor equal to CPPP_{L2} x the actual number of Premises Passed for the relevant Network Stage by New Communal Layer 2 Infrastructure divided by the issue price for B Shares, calculated in accordance with item 2 of Schedule 2 of the Shareholders' Agreement, except that no B Shares will be issued to the Contractor to the extent that the total number of Premises Passed for all Network Stages to date exceeds N_{Passed} (including Premises Passed by Existing Communal Layer 2 Infrastructure).

4.4 Payment and satisfaction of Existing End User-Specific Infrastructure Price

- (a) Subject to clause 4.4(b) of this Schedule, the LFC will satisfy any payment on account of part or all of the Existing End User-Specific Infrastructure Price which is due in respect of a particular Payment Milestone by:

- (i) issuing to the Contractor that number of B Shares to the Contractor equal to [REDACTED]
 - (A) [REDACTED] the Book Value and the Depreciated Replacement Cost of the relevant Existing End User-Specific Infrastructure being acquired as part of the relevant Network Stages, as agreed pursuant to the Assets Transfer Agreement; and
 - (B) the sum of CPPC and CPPC_{L2} multiplied by the total number of Premises ultimately Connected through the relevant Existing End User-Specific Infrastructure being acquired as part of the relevant Network Stages,

with such number of B Shares being calculated in accordance with item 3 of Schedule 2 of the Shareholders' Agreement and issued in accordance with clause 7.4(b) of the Shareholders' Agreement; and

- (ii) paying the Contractor in cash, from existing LFC debt facilities, that amount equal to [REDACTED]
 - (A) [REDACTED] the Book Value and the Depreciated Replacement Cost of the relevant Existing End User-Specific Infrastructure being acquired as part of the relevant Network Stages, as agreed pursuant to the Assets Transfer Agreement; and
 - (B) the sum of CPPC and CPPC_{L2} multiplied by the total number of Premises ultimately Connected through the relevant End User-Specific Infrastructure being acquired,

both on the date that such payment is due in accordance with this Schedule 6.

- (b) In the event that the LFC has insufficient debt facilities available to it to make the cash payment due under clause 4.4(a)(i) of this Schedule, such payment will be satisfied by the LFC issuing additional B Shares to the Contractor, such number of B Shares to be calculated using the methodology set out in item 3 of Schedule 2 of the Shareholders'

Agreement and to be issued in accordance with clause 7.4(b) of the Shareholders' Agreement.

4.5 Payment and satisfaction of New End User-Specific Infrastructure Price

- (a) Subject to clauses 4.5(b) and 4.5(c) of this Schedule, the LFC will satisfy any payment on account of part or all of the New End User-Specific Infrastructure Price which is due in respect of a particular Payment Milestone by:
 - (i) issuing to the Contractor that number of B Shares equal to [REDACTED] of the sum of CPPC and CPPC_{L2} multiplied by the total number of Premises ultimately Connected through the relevant End User-Specific Infrastructure being acquired, with such number of B Shares being calculated in accordance with item 3 of Schedule 2 of the Shareholders' Agreement and issued in accordance with clause 7.4(b) of the Shareholders' Agreement; and
 - (ii) paying the Contractor in cash, from existing LFC debt facilities, that amount equal to [REDACTED] of the sum of CPPC and CPPC_{L2} multiplied by the total number of Premises ultimately Connected through the relevant End User-Specific Infrastructure being acquired,

on the date that such payment is due in accordance with clause 6 of this Schedule.

- (b) The New End User-Specific Infrastructure Price payable under clause 4.5(a) of this Schedule, will be increased to reflect any Unusual Connections which have occurred in respect of the relevant Payment Milestone, where the relevant New End User-Specific Infrastructure Price for such Connection will be the actual costs of building the relevant End User-Specific Infrastructure incurred by the Contractor.
- (c) In the event that the LFC has insufficient debt facilities available to it to make the cash payment due under clause 4.5(a)(ii) of this Schedule, such payment will be satisfied by the LFC issuing additional B Shares to the Contractor, such number of B Shares to be calculated using the methodology set out in item 3 of Schedule 2 of the Shareholders' Agreement and to be issued in accordance with clause 7.4(b) of the Shareholders' Agreement.

4.6 Payment and satisfaction of MDUI and MBUI Price

- (a) Subject to clause 4.6(b) of this Schedule, the LFC will satisfy any payment on account of part or all of the MDUI and MBUI Price which is due in respect of a particular Payment Milestone by:
 - (i) issuing to the Contractor that number of B Shares equal to [REDACTED]
 - (A) the actual cost to the Contractor of building the relevant Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure which is being acquired; and
 - (B) CPPC_{MD} multiplied by the total number of individual residences or commercial tenancies ultimately Connected through the relevant Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure being acquired,

with such number of B Shares being calculated in accordance with item 4 of the Shareholders' Agreement and issued in accordance with clause 7.4(b) of the Shareholders' Agreement; and

- (ii) paying the Contractor in cash, from existing LFC debt facilities, that amount equal to [REDACTED]
 - (A) the actual cost to the Contractor of building the relevant Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure which is being acquired; and
 - (B) CPPC_{MD} multiplied by the total number of individual residences or commercial tenancies ultimately Connected through the relevant New End User-Specific Infrastructure being acquired,

on the date that such payment is due in accordance with this Schedule 6.

- (b) In the event that the LFC has insufficient debt facilities available to it to make the cash payment due under clause 4.5(a)(ii) of this Schedule, such payment will be satisfied by the LFC issuing additional B Shares to the Contractor, such number of B Shares to be calculated using the methodology set out in item 4 of the Shareholders' Agreement and to be issued in accordance with clause 7.4(b) of the Shareholders' Agreement.

5. Liquidated Damages

- (a) Liquidated Damages will only be payable in respect of Network Stage Completion Milestones.
- (b) Each Network Stage will have an associated "estimated" number of Premises within that stage (the **Estimated Stage Premises Number**) (as specified in the Network Deployment Plan).
- (c) If a Network Stage Completion Milestone is missed by more than 30 days then:
 - (i) on the 31st day, Liquidated Damages equal to the following will be payable = (Estimated Stage Premises Number x CPPP_C) x [REDACTED] and
 - (ii) on each day (or part day) thereafter (until the Network Stage Completion Milestone is achieved), Liquidated Damages equal to the following will be payable = (Estimated Stage Premises Number x CPPP_C) x [REDACTED]

6. Invoicing and payment

6.1 Request

- (a) Notwithstanding any acceptance testing or certification requirement in this Agreement, following completion of work for a Payment Milestone, the Contractor will send a written request to the LFC for a Completion Certificate and a draft invoice in respect of such Payment Milestone, along with all supporting information and details reasonably required by the LFC for the relevant Payment Milestone.
- (b) If work for a Payment Milestone is substantially complete but cannot reach final completion for some time because of circumstances outside of the reasonable control of the Contractor, the Contractor may request the LFC to issue a Completion Certificate for part of the Payment Milestone. The LFC will consider the Contractor's request and may approve such request in its absolute discretion.

6.2 Completion Certificate

Except to the extent that the LFC is delayed by reasonably requiring further details regarding the completion of work or details of the draft invoice, the LFC will, within ten business days of receiving the request, provide to the Contractor a Completion Certificate and a Payment Notice pursuant to clause 6.4 or a written response to the Contractor detailing areas of deficiency in respect of the supporting information requiring remediation before a Completion Certificate or Payment Notice will be issued by the LFC.

6.3 Remedy deficiencies

If the LFC provides a written response to the Contractor detailing areas of deficiency requiring remediation in respect of the supporting information, then the Contractor will remedy such deficiencies as soon as possible and, within ten days of such remediation, the LFC will comply with the request process set out in this Schedule.

6.4 Payment Notice

If the Contractor has complied with clause 6.1(a), the LFC will give to the Contractor a Payment Notice at the same time as it issues a Completion Certificate. The Payment Notice will state the payment which, in the opinion of the LFC, is to be made by the LFC to the Contractor, which must be consistent with the draft invoice unless the LFC, acting in good faith, disagrees with the draft invoice.

6.5 Difference

If the amount set out in the Payment Notice is more or less than the amount set out in the draft invoice, the LFC will set out in the Payment Notice the calculations used and the reasons for the difference, and the LFC and the Contractor will meet within five business days to discuss the difference. If no agreement is reached at such meeting:

- (a) the LFC will, subject to receipt of a final invoice, pay the undisputed portion of the invoice in accordance with clause 6.7; and
- (b) in respect of the disputed portion of the invoice, either the LFC or the Contractor may initiate the dispute resolution process in accordance with clause 20 of the Base Agreement.

6.6 Correction or amendment

The LFC may, in any Payment Notice to the Contractor:

- (a) correct any error in any previous Payment Notice; or
- (b) modify any previous Payment Notice issued by the LFC unless a final invoice has already been paid by the LFC with respect to that Payment Notice.

6.7 Final invoice

- (a) Following the issuance of a Payment Notice by the LFC, the Contractor will provide a final invoice to the LFC, with such invoice to be consistent with the Payment Notice (unless the LFC has disputed a portion of the invoice, in which case the final invoice will be for the undisputed portion of the invoice).
- (b) If:

- (i) the LFC has disputed the draft invoice pursuant to clause 6.5(b), the Contractor will issue a final invoice for the amount determined in accordance with the dispute resolution process in accordance with clause 20 of the Base Agreement; or
- (ii) if neither party has initiated the dispute resolution in accordance with clause 20 of the Base Agreement within 15 business days of having the right to do so under clause 6.5(b), the Contractor will issue a final invoice for the amount reflected in the Contractor's draft invoice, less the amount of the undisputed portion paid in accordance with clause 6.5(a), which may not be disputed.
- (c) If the Contractor provides the final invoice on or before the last business day of a month, the LFC will pay the amount due to the Contractor within ten business days of receipt of a final invoice invoice.

6.8 No approval

No payment or part payment made by the LFC to the Contractor pursuant to clause 4 of this Schedule will constitute an approval by the LFC of the Contractor's performance of its obligations under this Agreement or that all or any part of the relevant phase or the Network is in accordance with this Agreement, including that work associated with the relevant Payment Milestone has been successfully completed.

7. Service Charges

7.1 Invoicing

- (a) The Contractor will invoice the LFC on the last business day of each month of the O&M Phase, for █% of the Service Charges for the subject month (or part thereof where there is less than a month remaining in the O&M Phase).
- (b) At the same time the Contractor issues an invoice under clause 7.1(a) of this Schedule, it will provide the LFC with an invoice for the At Risk Amount for the previous invoice period, amended by any Service Credits in accordance with Schedule 5 (O&M Services), together with supporting information and details reasonably required by the LFC to consider the invoice.
- (c) Except to the extent the LFC is delayed by reasonably requiring further details regarding the draft invoice or calculation of the Service Credits, the LFC will give the Contractor a Payment Notice within five business days of receiving the draft invoice under clause 7.1(b) of this Schedule, which must be consistent with the draft invoice unless the LFC, acting in good faith, disagrees with the draft invoice.
- (d) If the amount set out in the Payment Notice is more or less than the amount of the draft invoice, the LFC will set out in the Payment Notice the calculations used and the reasons for the difference, and the LFC and the Contractor will meet within five business days to discuss the difference.
- (e) Following the issuance of a Payment Notice by the LFC under clause 7.1(d) of this Schedule, the Contractor will provide a final invoice to the LFC, with such invoice to be consistent with the Payment Notice (unless the LFC has disputed a portion of the invoice).

7.2 Payment

- (a) If the Contractor provides an invoice under clauses 7.1(a) or (e) of this Schedule to the LFC on or before the last business day of the relevant month and subject to clause 7.2(b), the LFC will pay the amount due to the Contractor within 10 business days of receipt unless the LFC disputes the invoice, in which case:
 - (i) the LFC will pay the undisputed portion of the invoice in accordance with this clause 7.2; and
 - (ii) in respect of the disputed portion of the invoice, either the LFC or the Contractor may initiate the dispute resolution process in accordance with clause 20 of the Base Agreement.
- (b) If
 - (i) the LFC has disputed the draft invoice pursuant to clause 7.2(a)(ii), the Contractor will issue a final invoice for the amount determined in accordance with the dispute resolution process; or
 - (ii) if neither party has initiated the dispute resolution within 10 business days of having the right to do so under clause 6.5(b), the Contractor will issue a final invoice for the amount reflected in the Contractor's draft invoice, less the amount of the undisputed portion paid in accordance with clause 6.5(a), which may not be disputed.
- (c) The LFC is not obliged to make a payment unless all information required to be submitted with the invoice was provided in accordance with this Schedule and the invoice is in the form of or accompanied by a Tax Invoice.

8. Contract Changes

8.1 Principles

Subject to any escalation applicable in Annexure 3 of this Schedule, the principles set out in Annexure 4 of this Schedule will apply to all Contract Changes unless expressly agreed otherwise in a Change Authorisation Agreement. For the avoidance of doubt, Contract Changes will be priced using the rates and unit Equipment prices set out in Annexure 4 of this Schedule.

8.2 Invoicing and payment

The invoicing and payment provisions set out in this Schedule will apply to any Contract Change unless expressly agreed otherwise in the relevant Change Authorisation Agreement.

9. GST

9.1 GST exclusive

All amounts payable under this Schedule 6 (other than under this clause 9) are stated before the addition of any GST.

9.2 Payment of GST

In addition to the payment set out in clause 4 of this Schedule, the LFC must at the time that any payment is due under clause 4 of this Schedule pay to the Contractor, in cash, an amount equal to the GST shown as chargeable on the Tax Invoice rendered by the Contractor to the LFC in respect of that payment.

9.3 Relevant Expense

If an amount payable under or in connection with this Schedule 6 is calculated or determined by reference to an expense, cost, loss or outgoing of a party ("Relevant Expense"), the amount of the Relevant Expense for the purpose of calculating the payment is to be reduced by an amount equal to any GST credit available to the person who incurred the Relevant Expense, or where that person is a member of a group as contemplated by section 55 of the GST Act, to the representative member of that group.

Annexure 1: Project Infrastructure Price

1. Pricing Components

Subject to clauses 2, 3 and 4 of this Annexure, each of the following Pricing Components will have the values set out below and the provisions of this Agreement shall be interpreted accordingly.

Pricing Component	Description	Agreed value as at the date of this Agreement	
N_{passed}	A specified number of Premises in the Coverage Area to be passed in building the Network	[REDACTED]	[REDACTED]
CPPP	Cost per Premises Passed for Communal Infrastructure	[REDACTED]	[REDACTED]
CPPP _{CBD}	Cost Per Premises Passed for Communal Infrastructure in a CBD Network Stage	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
CPPP _{Other}	Cost Per Premises Passed for Communal Infrastructure in an Other Network Stage	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
CPPP _{L2}	Cost per Premises Passed for Communal Layer 2 Infrastructure	[REDACTED]	[REDACTED]
CPCC	Cost per Premises Connected for End User-Specific Infrastructure	[REDACTED]	[REDACTED]
CPCC _{L2}	Cost per Premises Connected for End User-Specific Layer 2 Infrastructure	[REDACTED]	[REDACTED]

CPPC _{MD}	Cost per residence or commercial tenancy connected to the point that the End User Infrastructure terminates at the relevant Multi-Dwelling Units and Multi-Business Units	[REDACTED]
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2. Adjustment to values

- (a) The values ascribed to CPPP, CPPP_{CBD}, CPPP_{Other}, CPPP_{L2}, CPPC, CPPC_{L2} and CPPC_{MD} will be subject to indexation adjustments in accordance with Annexure 3 of this Schedule.
- (b) In the event that the LFC acquires any of the Assets (as that term is defined in the Assets Transfer Agreement), an adjustment may be required to be made to the Pricing Component N_{Passed} to reflect that the Contractor will not be required to build all of the required New Infrastructure and that the consideration for such acquisition was cash.
- (c) The values ascribed to CPPP_{CBD} and CPPP_{Other} in clause 1 of this Annexure recognise that the Contractor has amortised the costs of the central offices to be installed in accordance with Network Deployment Plan over the [REDACTED]
[REDACTED]
- (d) The parties acknowledge that, in accordance with the Network Deployment Plan, it is anticipated that [REDACTED] of Network Deployment Plan.
- (e) Each Quarter, the Contractor, the LFC and CFH will review the number of Premises Passed in the CBD Network Stages and, if the number of Premises Passed in the CBD Network Stages is at the time of such review, materially less than was anticipated by the Network Deployment Plan, the Contractor, the LFC and CFH will, in good faith, agree an appropriate amendment to the values ascribed to CPPP_{CBD} and CPPP_{Other} to reflect the concept that the cost of the central offices will be amortised over the first three years of the build of the Network. Any such review must take into account the requirement that at all times, CPPP x N_{Passed} = (CPPP_{CBD} (from time to time as determined in accordance with this Schedule) x CBD Network Stages N_{Passed}) + (CPPP_{Other} (from time to time as determined in accordance with this Schedule) x Other Network Stages N_{Passed}).

3. General review of values

3.1 [REDACTED] Review

At the completion of the [REDACTED] following the date of commencement of the build in accordance with the Network Deployment Plan and at the completion of each subsequent two Financial Year period, the Specified Pricing Components will, at CFH's discretion, be subject to a review (a [REDACTED] Review) to determine if, as a result of any net reduction in all input prices, net efficiencies gained by the Contractor or changes in any other factor affecting the cost of building the New Infrastructure, the actual costs being incurred by the Contractor in relation to

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building the New Infrastructure is materially less than what was previously assumed for the purposes of calculating the Specified Pricing Components.

3.2 Application of [REDACTED] Review

For the avoidance of doubt, the only changes which can be made to CPPP_{CBD} and CPPP_{Other} as part of a [REDACTED] Review is to reflect any change to the value of CPPP as a result of any [REDACTED] Review. No change can be made to the relative proportions of CPPP divided between CPPP_{CBD} and CPPP_{Other}.

3.3 Notice

If CFH wishes to undertake a [REDACTED] Review, it must issue a notice (a **Review Notice**) to the Contractor within two months of the commencement of the relevant Financial Year requesting that a [REDACTED] Review is undertaken.

3.4 Consideration

If a Review Notice is issued, CFH and the Contractor must within ten business days of the date of the Review Notice meet and review each of the Specified Pricing Components and consider any evidence provided by either CFH or the Contractor regarding reductions in relevant input prices.

3.5 Agreement

- (a) If CFH and the Contractor agree reductions to the values of any of the Specified Pricing Components, then such reductions shall apply from the commencement of the then current Financial Year.
- (b) Subject to clause 3.6 of this Annexure, if CFH and the Contractor cannot agree any reductions to the values of the Specified Pricing Components within two months of the date of the Review Notice, the [REDACTED] Review will terminate and CFH and the Contractor may cease holding discussions. In such circumstances, if the LFC and the Contractor cannot agree on an adjustment, the relevant value will remain unchanged.

3.6 Reasonable evidence

If, as part of any [REDACTED] Review, CFH provides the Contractor with independent evidence reasonably substantiating that the underlying net actual costs to the Contractor associated with the relevant Specified Pricing Components have reduced, the relevant Specified Pricing Components must be reduced proportionately to reflect such net actual cost reductions with effect from the commencement of the then current Financial Year.

4. Open Book Tender

4.1 Five year build programme

- (a) The pricing offered by the Contractor to the LFC and set out in this Schedule 6 is based on a five year build programme commencing from the date the build commences in accordance with the Network Deployment Plan and will cease to apply at the end of such period.
- (b) If the build of the Network has not been completed within five years of the date of commencement of the build in accordance with the Network Deployment Plan, the Contractor may not earlier than six months prior to the end of that five year period, issue

a notice (a **Review Notice**) to the LFC and CFH stating that in accordance with the then current Network Deployment Plan, the Network build will not be completed within the relevant five year period and that the Contractor requires the pricing regime set out in this Schedule 6 to be reviewed in light of changes to then current market pricing for the provision of comparable goods and services.

4.2 Review of prices

- (a) Within ten business days of the date of the Review Notice, the LFC, CFH and the Contractor must meet and negotiate in good faith any amendments required to the pricing regime set out in this Schedule 6 to reflect the then current market pricing for the provision of comparable goods and services.
- (b) If the LFC, CFH and the Contractor are unable to agree appropriate amendments to the pricing regime set out in this Schedule 6 within 20 business days of the date of the Review Notice, the LFC, CFH or the Contractor may elect by notice in writing to the other parties (an **Election Notice**), that the Contractor undertake an open book tender with third parties pursuant to which third parties will tender to provide goods and services to the Contractor in order to enable the Contractor to fulfil its obligations under the Base Agreement.
- (c) If an Election Notice is issued, the Contractor must run the open book tender process, including setting the timetable for such process, and will keep LFC and CFH fully informed in relation to the open book tender process.

4.3 Subcontractors

- (a) The LFC and CFH will determine (in its absolute sole discretion) which of the parties who have participated in the open book tender process will be appointed as subcontractors under clause 5.3 of the Base Agreement and the pricing agreed with such subcontractors will be reflected in this Agreement.
- (b) The LFC, CFH and the Contractor will make all necessary amendments to the pricing regime set out in this Schedule 6 required to reflect the final pricing of the successful subcontractors and the Contractor's reasonable project management expenses agreed by the LFC and CFH. For the avoidance of doubt, the Contractor will not be entitled to charge the LFC a margin on such prices, whether directly or indirectly. If the LFC, CFH and the Contractor are unable to agree the level of project management expenses such dispute must be resolved in accordance with the Expert Determination under clause 20 of the Base Agreement.
- (c) For the avoidance of doubt, the appointment of a subcontractor pursuant to such tender process will not in any way limit the obligations of the Contractor to the LFC or CFH under the Base Agreement.

5. Comparison of Costs – Communal Infrastructure

- (a) If the aggregate actual costs incurred by the Contractor to Design and Build the Communal Infrastructure (the **Communal Actual Costs**) for the period from the date of commencement of the first Network Stage up to completion of all Network Stages in accordance with the Network Deployment Plan (and clause 10 of Schedule 2 (Design and Build)) (**Completion**) (the **Network Build Period**) exceed $CPPP \times N_{Passed}$ (i.e., the GMC) the Contractor will be entitled to be issued additional B Shares in accordance with this clause 5 of this Annexure.

- (b) Subject to clause 5(c) of this Annexure, the number of additional B Shares to be issued to the Contractor will be determined using the following formula:

$$\text{Additional B Shares to be issued} = \frac{\text{Communal Actual Costs} - (\text{CPPP} \times N_{Passed})}{\$1.00}$$

- (c) The maximum number of B Shares to be issued to the Contractor under this clause 5 of this Annexure will be that number of B Shares equal to:

$$\frac{(\text{CPPP} \times N_{Passed})}{\$1.00} \times 0.10$$

In the event that the number of B Shares determined in accordance with clause 5(b) of this Annexure is greater than the number determined in accordance with this clause 5(c) of this Annexure, the Contractor will be issued with that number of B Shares determined in accordance with this clause 5(c) of this Annexure and the LFC will have no further obligation to issue B Shares to the Contractor under this clause 5 of this Annexure.

- (d) Upon Completion, the Contractor will determine the aggregate Communal Actual Cost for the Network Build Period.
- (e) The Contractor will, within 20 business days following Completion, issue to the LFC a notice (a **Communal Cost Comparison Notice**) which specifies:
 - (i) the Communal Actual Costs for the Network Build Period (and also attach reasonable evidence of all such costs);
 - (ii) the amount by which the Communal Actual Costs exceed the GMC or the GMC exceeds the Actual Costs; and
 - (iii) in the event that the Communal Actual Costs exceed the GMC, the number of additional B Shares to be issued to the Contractor, determined in accordance with clauses 5(b) and 5(c) of this Annexure .
- (f) If the LFC disagrees with any of the matters set out in the Communal Cost Comparison Notice, it may within 10 business days of receipt of the Communal Cost Comparison Notice, deliver a notice to the Contractor specifying those matters it disagrees with. The LFC and the Contractor will try to resolve any such disagreement and the LFC will be entitled to require the Contractor to undertake an audit in accordance with clause 8.6 of the Base Agreement (such audit not counting as the yearly audit to which the LFC is entitled).
- (g) If the LFC does not dispute any of the matters set out in the Communal Cost Comparison Notice in accordance with clause 5(f) of this Annexure, or any dispute of a Cost Comparison Notice has been settled or determined, the LFC must issue any B Shares required to be issued to the Contractor under this clause 5 of this Annexure within 20 business days of the date of the Communal Cost Comparison Notice.

6. Comparison of Costs – End User-Specific Infrastructure

- (a) If the aggregate actual costs incurred by the Contractor to construct the End User-Specific Infrastructure (the **End User-Specific Actual Costs**) during the Concession Period exceed $(CPPC + CPPC_{L2}) \times N_{Passed}$ the Contractor will be entitled to be issued additional B Shares in accordance with this clause 6 of this Annexure.

- (b) Subject to clause 6(c) of this Annexure, the number of additional B Shares to be issued to the Contractor will be determined using the following formula:

Additional B Shares to be issued =

$$\text{End User-Specific Actual Costs} - ((\text{CPPC} + \text{CPPC}_{L2}) \times N_{\text{Passed}})$$

\$1.00

- (c) The maximum number of B Shares to be issued to the Contractor under this clause 6 of this Annexure will be that number of B Shares equal to:

$$((\text{CPPC} + \text{CPPC}_{L2}) \times N_{\text{Passed}}) \times 0.10$$

\$1.00

In the event that the number of B Shares determined in accordance with clause 6(b) of this Annexure is greater than the number determined in accordance with this clause 6(c) of this Annexure, the Contractor will be issued with that number of B Shares determined in accordance with this clause 6(c) of this Annexure and the LFC will have no further obligation to issue B Shares to the Contractor under this clause 6 of this Annexure.

- (d) Six months prior to the end of the Concession Period, the Contractor will determine the aggregate End User-Specific Actual Cost for the Concession Period and issue to the LFC a notice (a **End User-Specific Cost Comparison Notice**) which specifies:
- (i) the End User-Specific Actual Costs for the Concession Period (and also attach reasonable evidence of all such costs);
 - (ii) the amount by which the End User-Specific Actual Costs exceed $(\text{CPPC} + \text{CPPC}_{L2}) \times N_{\text{Passed}}$ or the $((\text{CPPC} + \text{CPPC}_{L2}) \times N_{\text{Passed}})$ exceeds the End User-Specific Actual Costs; and
 - (iii) in the event that the End User-Specific Actual Costs exceed the $(\text{CPPC} + \text{CPPC}_{L2}) \times N_{\text{Passed}}$, the number of additional B Shares to be issued to the Contractor, determined in accordance with clauses 6(b) and 6(c) of this Annexure .
- (e) If the LFC disagrees with any of the matters set out in the End User-Specific Cost Comparison Notice, it may within 10 business days of receipt of the End User-Specific Cost Comparison Notice, deliver a notice to the Contractor specifying those matters it disagrees with. The LFC and the Contractor will try to resolve any such disagreement and the LFC will be entitled to require the Contractor to undertake an audit in accordance with clause 8.6 of the Base Agreement (such audit not counting as the yearly audit to which the LFC is entitled).
- (f) If the LFC does not dispute any of the matters set out in the End User-Specific Cost Comparison Notice in accordance with clause 6(d) of this Annexure, or any dispute of a Cost Comparison Notice has been settled or determined, the LFC must issue any B Shares required to be issued to the Contractor under this clause 6 of this Annexure within 20 business days of the date of the End User-Specific Cost Comparison Notice.
- (g) If for any reason the shares issuable under this clause 6 cannot be issued during the Concession Period, the Contractor will be issued ordinary shares in the LFC instead of B shares in an amount and for an aggregate purchase price as if the Contractor had been issued B Shares immediately prior to the end of the Concession Period.

Annexure 2: Service Charges

1. Service Charges and Cost Principles

1.1 Service Charges

- (a) The Service Charges will be equal to the sum of:
 - (i) the actual costs incurred by the Contractor in providing the O&M Services (excluding all taxes payable by the Contractor in respect of the supply of the O&M Services) (**O&M Actual Costs**);
 - (ii) any taxes payable to third party suppliers by the Contractor in respect of the supply of the O&M Services; and
 - (iii) [REDACTED] % of the O&M Actual Costs (**O&M Margin**).
- (b) References in this Annexure to "actual costs" incurred by the Contractor are references to the amounts incurred by the Contractor without mark-up or fees of any kind from the Contractor and exclude any corporate overhead of the Contractor. Any rebates, commissions, revenue shares or the like received by the Contractor in respect of such actual costs will be passed on in full to the LFC (by way of reduction of such actual costs).

1.2 Cost Principles

The Contractor will:

- (a) ensure that the components of the O&M Actual Costs are market competitive;
- (b) ensure that any components forming part of the O&M Services provided to the Contractor by a Subcontractor or third party supplier are provided to the Contractor on arm's length terms;
- (c) perform the O&M Services efficiently and ensure that the resources and costs relating to the O&M Services are minimised to the maximum extent practicable;
- (d) provide the O&M Services on an open book basis and provide all information requested by the LFC (on not less than three business days' written notice) in relation to the Service Charges; and
- (e) when invoicing the LFC for the O&M Services, provide details of the components of the O&M Actual Costs, including details of Personnel, Software, Equipment, materials and the like included within the O&M Actual Costs.

Annexure 3: Indexation

1. Interpretation

1.1 Definitions

In this Annexure, unless the context otherwise requires:

PPI means Group J, Communication Services (PPIQ.SNJ) of the PPI for the New Zealand dollar published by Statistics New Zealand.

1.2 General

In addition, in this Annexure a quarter means each three calendar month period ending on 31 March, 30 June, 30 September and 31 December.

2. Indexation principles

2.1 Specified Pricing Components

The Specified Pricing Components will be subject to indexation adjustments in accordance with clause 3 of this Annexure.

2.2 Contract Changes

- (a) For calculation of the pricing of Contract Changes, the inputs set out in Annexure 4 are subject to indexation in accordance with clause 3.11 of this Annexure.
- (b) Subject to the determination of the price for Contract Change in accordance with clause 8 of this Schedule 6, the Charges relating to a Contract Change will subsequently be indexed from the date of the Change Authorisation Agreement in accordance with clause 3.1 of this Annexure.

3. Indexation

3.1 Indexation of Specified Pricing Components

The Specified Pricing Components will be adjusted at the beginning of each Financial Year to reflect the movement in PPI over the four most recent consecutive quarters for which there is information available.

3.2 Commencement Date

The Specified Pricing Components set out in Annexure 1 of this Schedule will be indexed from the Commencement Date.

3.3 Revisions for PPI

The new values for each of the Specified Pricing Components will not be further adjusted if revisions for PPI for any quarters included in the calculation of such new values are

subsequently made by Statistics New Zealand, but such revisions will be taken into account in the next adjustment pursuant to clause 3.1 of this Annexure.

3.4 Calculation

The Contractor must calculate the annual indexation factor for the PPI in accordance with clause 3.3 of this Annexure and will by 1 May each year provide a notice (**Adjustment Notice**) to the LFC which:

- (a) states the indexation factor for the PPI for the four most recent consecutive quarters;
- (b) states the new values for each of the Specified Pricing Components applying that indexation factor;
- (c) provides detailed calculation of the new values for each of the Specified Pricing Components; and
- (d) attaches copies of the Statistics New Zealand publications evidencing the relevant indexation factor for the four most recent consecutive quarters.

3.5 Application

If the LFC does not issue a Dispute Notice in accordance with clause 3.6 of this Annexure, the new values for each of the Specified Pricing Components set out in the Adjustment Notice will apply with effect from 1 July of that year and all calculations under this Agreement will use those new values.

3.6 Dispute Notice

If the LFC disagrees with the indexation factor and/or any of the adjusted Specified Pricing Components set out in an Adjustment Notice, the LFC must within twenty business days of the date of the Adjustment Notice, issue a notice (**Dispute Notice**) to the Contractor setting out which items in the Adjustment Notice it disputes. The dispute must be resolved in accordance with Expert Determination under clause 20 of the Base Agreement.

3.7 Specified Pricing Components

If the LFC issues a Dispute Notice, the Specified Pricing Components applying for the prior annual period will continue to apply until the date (the **Dispute Resolution Date**) on which the dispute is resolved by the LFC and the Contractor in accordance with clause 3.6 of this Annexure or by the independent person (as applicable). The new Specified Pricing Components once agreed will apply with effect from 1 July of the relevant year, and within 10 Business Days of the Dispute Resolution process, the LFC will notify the Contractor whether any adjustment payment is required to be made by the LFC to the Contractor, or vice versa, to reflect the agreed new Specified Pricing Components. Any such adjustment payment must be paid by the relevant party within 10 business days of the LFC's notice.

3.8 Acknowledgement

The parties acknowledge that the adjustments under this clause 3 of this Annexure could result in an increase or decrease of the Specified Pricing Components.

3.9 Indexation of Contract Changes

The:

- (a) inputs set out in Annexure 4; and
- (b) the price for any Contract Changes determined in accordance with clause 8 of this Schedule 6,

will be subject to indexation in accordance with clauses 3.1 to 3.10 of this Annexure as if they were Specified Pricing Components.

Annexure 4: Pricing for Contract Changes

When preparing an Impact Statement for a Change Request, the Contractor will apply the labour rates and unit Equipment prices set out in the following tables when assessing the impact to the Charges of the Change Request.

Table 1 : Labour Rates

Labour Category	Hourly Rates Excluding GST
Project Manager	NZD
Designer	
CAD / GIS Specialist	
PM Administrator	
General Labourers	
Field Managers	
Plant Operators	
Electrical Lineman (Normal Hours)	
Electrical Lineman (After Hours)	
Fibre Joiner (normal Hours)	
Fibre Joiner (After Hours)	
Faultman	
Technician	

Table 2: Equipment Price List for Contract Charges

Description	Hourly rates (unless stated otherwise) NZD
Excavator 1.5 tonne	
Excavator4.5 tonne	
Truck stores/techs/faultman	
Utes/Vans	
Car	
Forklift	
Concrete Cutter	
Compactor	
Trailer Small	
Personnel Bucket (Glove and Barrier)	
Personnel Bucket	
Fibre Joiner Van	
Drilling Machine Ditchwitch 2020	
Chain Trencher	
Fibre Joiner Van	

Schedule 7: Benchmarking

1. Purpose

Each party acknowledges that a key objective of the LFC in appointing the Contractor to deliver the O&M Services (including Service Levels) is to ensure value for money and continuous improvement in delivery and value. Accordingly, pursuant to clause 12 of the Base Agreement (Benchmarking) at any time, but no more than once in any 12 month period, during the Term, the LFC and/or CFH may submit all or part of the O&M Services (including Service Levels) and/or the Service Charges to a benchmarking procedure (**Benchmarking**).

2. Process

2.1 Benchmarker

Benchmarking will be performed by an independent third party. The LFC and/or CFH may use any third party advisor or agency listed in Annexure 1 (Approved Benchmarkers) to carry out Benchmarking (**Benchmarker**). The initial list will be agreed by the parties within 90 days of the Commencement Date and the PCG will review Annexure 1 (Approved Benchmarkers) at least once every 12 months and the parties will agree on any changes to the Annexure. If the parties do not agree the initial list or any such changes requested by a party within the specified period or, if no period is specified, then within a reasonable time, then a party may regard the initial list, or the party requesting the change, may submit the matter to expert determination under clause 20.5 of the Base Agreement.

2.2 Co-operation

The Contractor will fully co-operate with the Benchmarker and promptly provide it with all information and records (including information and records relating to the Contractor's actual costs or profits) as the Benchmarker may request in connection with Benchmarking, in the form and manner requested by the Benchmarker.

2.3 Information

The Contractor will, in addition to clause 2.2 of this Schedule, provide all information reasonably requested by the LFC, CFH and/or the Benchmarker, including service, cost and process efficiency against the Contractor's own continuous improvement targets.

2.4 Terms and conditions

Each party will, subject to clauses 4.4 to 4.7 (inclusive) of this Schedule, accept such standard terms and conditions for benchmarking exercises as the Benchmarker may seek to impose in relation to the discharge of its functions under this Schedule.

3. Comparison of Charges and Services

The Benchmarker will:

- (a) following consultation with the Contractor, compare the Service Charges and O&M Services (including Service Levels) with the charges and services being obtained from

other similar service contracts in New Zealand and/or comparable international market charges and services for third parties (**Comparison Services**) taking into account:

- (i) the scope, volume and complexity of the O&M Services;
- (ii) the terms and conditions on which they are provided; and
- (iii) the circumstances of the Network by comparison to other applicable circumstances.
- (b) assess, in light of this comparison, whether the Service Charges and/or O&M Services (including Service Levels) (as applicable) are market competitive and represent good value for money; and
- (c) present a written report (**Benchmarking Report**) to the LFC and CFH as soon as practicable but in any event no later than 40 business days following the appointment of the Benchmarker, setting out its conclusions and any recommendations as to changes to the Service Charges and/or O&M Services (including Service Levels) (as appropriate) which would, in its opinion, best serve to ensure the benchmarked Service Charges and/or O&M Services (including Service Levels) (as applicable) are market competitive and represent good value for money (without recommending any changes greater than those necessary to do so).

4. Competitive Deficit

4.1 Notification to contractor

If the LFC and/or CFH considers, acting reasonably, following receipt of the Benchmarking Report, that there is a difference between the Service Charges and/or O&M Services (including Service Levels) and what is market competitive or what represents good value for money (a **Competitive Deficit**), the LFC and/or CFH:

- (a) will notify the Contractor in writing accordingly, including providing full details of the extent of such Competitive Deficit (a **Deficit Notification**);
- (b) will notify the Contractor of the findings of any Benchmarking; and
- (c) may propose a solution in the Deficit Notification.

4.2 Proposed solution

Within 30 business days of the date of a Deficit Notification, the Contractor will propose a solution in writing to address the Competitive Deficit, which may be based upon:

- (a) a reduction in the Service Charges;
- (b) a variation in the O&M Services;
- (c) an increase in the standard of the performance of the O&M Services; or
- (d) any combination of the above,

and will include a reasonable period in which it would be practical to implement the relevant changes, such period to be no longer than 30 business days (the **Correction Period**).

4.3 Implementation of proposed solution

If the Contractor's proposed solution is approved by the LFC and/or CFH:

- (a) the proposed solution will be recorded by the parties as agreed using the Change Procedure; and
- (b) the Contractor will implement the proposed solution as soon as practicable and in any event within the Correction Period but with retrospective effect (for any reduction in the Charges) from the date the Benchmarking was instigated.

4.4 Alternative solution

If the LFC and/or CFH:

- (a) does not approve the Contractor's proposed solution; or
- (b) approves the Contractor's proposed solution, but the Contractor anticipates that it would not be able to implement the proposed solution as required within the Correction Period,

the Contractor will promptly propose to the LFC and/or CFH in writing an alternative solution based on its best alternative price, service and service level offerings.

4.5 Implementation of alternative solution

If this alternative solution is approved by the LFC:

- (a) the alternative solution will be recorded by the parties using the Change Procedure; and
- (b) the alternative solution will be implemented by the Contractor as soon as possible but in any event no later than four months from the date of the Deficit Notification (also, a **Correction Period**), but with retrospective effect (for any reduction in the Service Charges) from the date on which the Service Charges and/or O&M Services (including Service Levels) were referred to the Benchmark (the **Referral Date**).

4.6 Payment

If either the proposed solution or alternative solution of the Contractor under clauses 4.2 or 4.4 of this Schedule respectively is approved by the LFC and/or CFH (the **Approved Proposal**), then, where the Benchmark has concluded that the benchmarked Service Charges are not market competitive or do not represent good value for money, the Contractor will promptly pay to the LFC an amount equal to the difference between:

- (a) the amount otherwise payable by the LFC to the Contractor under this Agreement in relation to the period between the date the Benchmarking was instigated and the time at which the Approved Proposal takes effect; and
- (b) the amount that would have been payable during such period had the Approved Proposal been effective from the Referral Date.

4.7 Termination of O&M Services

If the alternative solution fails to reduce the Competitive Deficit by █ or more, the LFC will only be entitled to terminate the O&M part of this Agreement (rather than the whole Agreement) and the LFC must not, for a period of █ following any such partial termination, enter into a new contract with a third party to provide equivalent services to the O&M Services on terms more favourable to that third party than the terms for the provision of the O&M Services under this Agreement or any improved terms for the provision of the O&M Services proposed by the Contractor.

5. Costs

LFC and/or CFH will bear its own internal costs arising out of the conduct of the Benchmarking and the LFC and/or CFH will pay the Benchmark's charges and costs, provided that the Contractor will pay the Benchmark's charges and costs if the Competitive Deficit represents a difference of more than █ between the Service Charges and/or O&M Services (including Service Levels) and what is market competitive. The Contractor will bear its own internal costs arising out of the conduct of the Benchmarking.

Annexure 1: Approved Benchmarkers

To be inserted, as per clause 2.1 of this Schedule.

Schedule 8: Governance

1. Purpose

The Agreement is to be managed by the Contractor in a manner that is intended to facilitate:

- (a) achievement of the UFB Objective; and
- (b) compliance by the Contractor with this Agreement,

(each a **Governance Goal**, and collectively the **Governance Goals**).

2. Relationship Management

2.1 Contractor's Relationship Manager

- (a) The identity of the Contractor's Relationship Manager will be notified in writing by the Contractor to the LFC and CFH within 30 days of the Commencement Date. The Contractor's Relationship Manager will be one of the Key Personnel and is named in Annexure 2 to this Schedule.
- (b) The Contractor'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 Services;
 - (ii) ensuring that the Network is implemented and is available in accordance with the Network Deployment Plan and the Agreement;
 - (iii) ensuring that monitoring procedures for the Service Levels are in place, are robust and are adhered to;
 - (iv) management of the Contractor's compliance with this Agreement (including ensuring that management monitoring procedures are in place and are adhered to);
 - (v) management of billing and charging procedures to the LFC;
 - (vi) acting on Service Level Defaults in accordance with this Agreement;
 - (vii) initiating Change Requests on behalf of the Contractor and overseeing the preparation of submissions in response to Change Requests from the LFC;
 - (viii) primary responsibility for provision of reports and management of other information flows required under this Agreement;
 - (ix) developing and maintaining an awareness within the Contractor of the Governance Goals and the Requirements;
 - (x) liaising with senior management of the Contractor, and in particular managing any dispute or potential dispute in accordance with agreed escalation procedures;

- (xi) effectively liaising with the LFC's Relationship Manager and other LFC Personnel, both formally and informally;
 - (xii) working with the LFC's Relationship Manager to identify opportunities for improvements to the Network and the Services;
 - (xiii) liaising with the LFC Relationship Manager and third parties as required to facilitate the performance of the Design and Build and the Services, and liaison and other matters as required under this Agreement from time to time; and
 - (xiv) performing the duties of the Disengagement Manager, unless the LFC has been notified in writing (and provided with the contact details) of another of the Key Personnel who is to assume those duties.
- (c) The other Key Personnel are set out in Annexure 2 to this Schedule.

2.2 LFC's Relationship Manager

The identity of the LFC's Relationship Manager will be notified in writing by the LFC to the Contractor within 30 days of the Commencement Date. Those of the LFC's Personnel that will have key involvement with the Contractor with respect to this Agreement are listed in Annexure 2.

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) The process in this clause 2.3 of this Schedule does not override the dispute resolution process set out in clause 20 of the Base Agreement.

2.4 Maori Advisory Group

The parties acknowledge that:

- (a) the National Maori Broadband Working Group (previously named Nga Pu Waea) (the **Working Group**) has been established with the purpose of providing advice about Maori development opportunities associated with the roll-out of the Rural Broadband Initiative;
- (b) the Working Group is to work with Vodafone New Zealand Limited and Telecom Corporation of New Zealand Limited on an ongoing basis and hold bi-monthly meetings and the Working Group, Vodafone New Zealand Limited and Telecom Corporation of New Zealand Limited will directly report back to the Minister of Maori Affairs and the Minister of Communications and Information Technology on a biannual basis; and
- (c) the Working Group and its activities are to be extended to also cover the UFB Initiative and the parties will work together, and with the Working Group, in good faith in order to facilitate, and follow through on, such extension.

3. Steering Committee

3.1 Establishment

The parties agree to establish the Steering Committee, 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 Steering Committee

The Steering Committee will comprise:

- (a) one senior executive of the LFC nominated from time to time by the LFC (subject to the approval in writing of CFH);
- (b) two senior executives of the Contractor nominated from time to time by the Contractor; and
- (c) one representative of CFH nominated from time to time by CFH (the **CFH Representative**), who is to be the chairperson (the **Chairperson**) of the Steering Committee.

3.3 Quarterly relationship meeting

- (a) The Steering Committee will meet at least quarterly (as scheduled by the Chairperson of the Steering Committee). This meeting 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.
- (b) The purpose of this meeting will be to provide an update on any relationship matters including:
 - (i) any escalated issues;
 - (ii) the appropriateness of all reporting and review processes;
 - (iii) development of strategic directions and initiatives; and
 - (iv) any other issue or matter that the Steering Committee wishes to discuss.

3.4 Notice

- (a) Any regular meeting is to be convened by service of not less than three business days' written notice by the Chairperson to the other representatives.
- (b) Any other meeting may be convened on not less than one business day's written notice by the Chairperson to the other representatives.
- (c) The Contractor is responsible for the preparation of an agenda for each of those meetings, to be prepared in consultation with the LFC and CFH.

3.5 Quorum

The quorum for any meeting of the Steering Committee will be three representatives, one of which must be the CFH Representative, one of which must be a representative of the LFC and one of which must be a representative of the Contractor. No business will be transacted at a meeting of the Steering Committee unless a quorum is present.

3.6 Agenda

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.

3.7 Decision making

(a) 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.

(b) 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.

(c) CFH Representative veto

A matter may only be agreed by the Steering Committee, and a resolution of the Steering Committee may only be passed in respect of a matter, if the CFH Representative has voted in favour of (or, where no vote occurs, has recorded his or her agreement to) that matter.

(d) 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).

4. Project Control Group

4.1 Establishment

The parties agree to establish the PCG, with the composition, functions, and powers set out in this Schedule, as soon as reasonably practicable, but in any event within 10 business days of the Commencement Date.

4.2 Composition of PCG

(a) Composition

The PCG will comprise:

- (i) two representatives of the LFC nominated from time to time by the LFC (subject to the approval in writing of CFH), one of which (as nominated by the LFC) is to be chairperson (the **Chairperson**) of the PCG;
- (ii) two representatives of the Contractor nominated from time to time by the Contractor that are approved by the LFC (such approval not to be unreasonably withheld or delayed); and
- (iii) one representative of CFH nominated from time to time by CFH (the **CFH Representative**).

(b) Qualifications of representatives

Each of the representatives of the PCG:

- (i) must be suitably experienced and qualified, having regard to the functions, powers and duties of the PCG; and
- (ii) is not precluded from being a member of the PCG merely because that representative is also a Relationship Manager.

(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 parties and to the PCG, identifying the alternate representative, confirming that the alternate representative meets the criteria set out in clause 4.2(b) of this Schedule and setting out any conditions or details of his or her appointment; and

(B) for an alternate for a Contractor representative, obtain the prior written approval of the LFC, and for an alternate for an LFC representative, obtain the prior written approval of CFH, 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 4.2(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; and
 - (B) that is a representative of the Contractor is to be removed by the Contractor following service of written notice by the LFC advising the Contractor that the representative is no longer acceptable to the LFC (with the LFC 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 4.2(b) of this Schedule and, in respect of a new representative of the LFC, obtain CFH's approval in accordance with clause 4.2(a)(i) of this Schedule, as soon as is reasonably practicable and in any event before the next scheduled meeting of the PCG.

4.3 Functions of the PCG

The PCG will have the following functions and duties:

- (a) overseeing the provision of the Design and Build and the 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 Contractor's obligations under this Agreement;
- (c) discussing and, to the extent practicable, resolving disputes that may arise under or in respect of the Agreement;
- (d) reviewing functional and performance capabilities associated with advances in technology methods used to perform similar services;
- (e) 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;
- (f) reviewing reports from any review or audit;
- (g) overseeing any Benchmarking exercise;

- (h) periodically, discussing procurement and subcontracting policies, issue management, risk management and change management procedures;
- (i) periodically, reviewing the Contractor's obligations as to Service delivery, Data security and record keeping as against Best Industry Practice;
- (j) periodically, discussing and reviewing the quality of the Contractor's performance against the 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.

4.4 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 the LFC, the Contractor and CFH (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**).

4.5 Meetings

Subject to the following provisions of this clause 4.5 of this Schedule, the PCG may regulate its own meetings procedure and the meetings procedure of each Sub-Committee as it sees fit.

(a) Review meetings

The purpose of review meetings is to review operational performance, relationship issues and any other matters, including those matters to be reported in the status reports listed in clause 7.1 of this Schedule. In light of the importance of the review process, each party will ensure it appropriately resources its preparation for the review meeting. These review meetings will be scheduled by the Chairperson and:

- (i) must be held not less than every month until the Design and Build is complete, and after that completion at least once every three months; and
- (ii) must be held by the PCG (and not a Sub-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.

(b) Progress meetings

(i) Design and Build meetings

The purpose of Design and Build meetings is to review progress against Milestones during Design and Build. These Design and Build meetings will be scheduled by the Chairperson and:

- (A) may be held on a weekly basis if requested by the LFC or CFH in writing to the Contractor until the Design and Build is complete; and

- (B) 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

(ii) Monthly operations meetings

This monthly meeting will be held once the report on the previous month's operation is available and will be scheduled by the Chairperson. These monthly operations meetings:

- (A) must be held not less than every month after the Design and Build is complete, or at such shorter or longer scheduled intervals as the PCG may decide;
- (B) 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; and
- (C) 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.

(c) Technology forum

This meeting will be scheduled from time to time by the Chairperson. These technology forum meetings:

- (i) must be held not less than every three months after the Design and Build is complete, or at such shorter or longer scheduled intervals as the PCG may decide;
- (ii) 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; and
- (iii) will be for the purpose of reviewing:
 - (A) any relevant report;
 - (B) issue management – issue reporting, trend analysis and proactive maintenance;
 - (C) Services continuity and security;
 - (D) technology direction and plans; and
 - (E) anything else relating to technology.

(d) **Direction and initiatives meeting**

This meeting will be scheduled from time to time by the Chairperson. The purpose of this meeting will be to discuss directions and initiatives relating to the Network. This meeting 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.

(e) **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.

(f) **Notice**

- (i) Any regular meeting set out in clause 4.5(a) to (d) (inclusive) of this Schedule is to be convened by service of not less than seven business days' written notice by the Chairperson to the other representatives.
- (ii) Any other meeting may be convened on not less than three business days' written notice by the Chairperson to the other representatives.

(g) **Quorum and attendance**

- (i) The quorum for any meeting of the PCG or any Sub-Committee will be three representatives, one of which must be the CFH Representative or CFH Sub-Committee Representative (as the case may be), one of which must be a representative of the LFC and one of which must be a representative of the Contractor, unless the PCG determines a different quorum for any Sub-Committee. 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 the Agreement by the non-attending party.

(h) **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.

(i) **Agenda**

The Contractor is responsible for the preparation of an agenda for each meeting, 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.

(j) **Minutes**

The Contractor will be responsible for recording the minutes of all meetings of the PCG and each Sub-Committee. Such minutes will be circulated by the Contractor and signed off on by the LFC'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 20.5 of the Base Agreement.

5. Procedures in PCG meetings

5.1 Decision making

(a) **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.

(b) **Call for resolution**

The Chairperson may call for any matter before a meeting of the PCG, which the Chairperson considers has been agreed by the PCG, to be recorded in writing as a resolution of the PCG and to be signed by all representatives.

(c) **CFH Representative veto**

A matter may only be agreed by the PCG, and a resolution of the PCG may only be passed in respect of a matter, if the CFH Representative has voted in favour of (or, where no vote occurs, has recorded his or her agreement to) that matter.

(d) **Call for position paper**

The Chairperson may call for any matter before the PCG, which he or she considers is unlikely to be agreed by the PCG, to be recorded in a position paper to reflect as far as 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).

6. Quality Assurance

6.1 Quality assurance reviews

- (a) The purpose of the Contractor's quality assurance programme is to ensure the Design and Build, the Services and the Network are managed and delivered in a way which enables the Contractor to meet the Governance Goals, including meeting the Requirements.
- (b) The Contractor is to undertake quality assurance reviews. These quality assurance reviews will be undertaken by a senior person from the Contractor's organisation with extensive experience in conducting quality assurance assignments and who is not part of the Contractor's team for the Design and Build and the Services nor a person to whom the Contractor 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 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 Contractor's standards, procedures and methodologies for the management of services similar to the Services are properly deployed and implemented in the management of the 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) an assessment as to whether or not the Governance Goals are then being met.
- (d) The Contractor's Relationship Manager will notify the LFC of the completion of a quality assurance review and make the reports or findings generated by that review available to the LFC.
- (e) A quality assurance review is to be completed each month for the first three months and every two months thereafter during Design and Build and quarterly thereafter. Each quality assurance report is to:
 - (i) describe the activities undertaken by the quality assessor during the relevant period;
 - (ii) provide details of the current status of the Design and Build, the Services and the Network;
 - (iii) identify issues arising out of the review that are not being adequately managed or are yet to be addressed;
 - (iv) provide an assessment of the overall "health" of the Services; and

- (v) set out such recommendations as the Contractor considers appropriate.

The quality assurance review may be used by the LFC as the basis for requesting a Remedial Plan in accordance with clause 19 of the Base Agreement.

7. Reports

7.1 Status reports

The Contractor must provide the LFC with the following status reports:

- (a) **Design and Build progress report**

A weekly work in progress status report regarding the Design and Build, which is to contain the information specified in part A of Annexure 1 to this Schedule. In addition, a consolidated and comprehensive progress status report regarding the Design and Build for a completed Network Stage, which is to contain the information specified in part A of Annexure 1 to this Schedule. Each such report will be provided to the LFC within two business days of the end of each week (or within four business days of the completion of the relevant Network Stage for each consolidated and comprehensive progress status report) and may be provided physically or electronically (including online).
- (b) **Operations report**

A weekly status report on the O&M Services is to contain the information specified in part B of Annexure 1 to this Schedule. Each such report will be provided to the LFC within two business days of the end of each week.
- (c) **Disengagement report**

A weekly status report during the Disengagement Period regarding the process of Disengagement and the conduct of the Disengagement Services is to contain the information specified in part C of Annexure 1 to this Schedule. Each such report will be provided to the LFC within two business days of the end of each week.
- (d) **Purpose of reports**

Each report is to:

 - (i) clearly present to the LFC the current status of the Contractor's performance under this Agreement, financial reporting obligations (for 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 the LFC and the Contractor;
 - (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 UFB Objective or otherwise may adversely affect the relationship between the Contractor and the LFC.

(e) **Procedure**

The Contractor is to prepare and provide a draft of each status report to the LFC Relationship Manager no later than two business days prior to the date of the next scheduled meeting of the PCG (or the relevant Sub-Committee as determined by the Management Committee). The LFC Relationship Manager is to then review the draft report, note any suggested changes and provide a copy of that amended report to the Contractor Relationship Manager the following business day.

7.2 Other Reports

The Contractor is to provide the LFC with:

(a) **Quality assurance reports**

quality assurance reports in accordance with clause 6.1(e) of this Schedule; and

(b) **Other reports**

such other reports as reasonably required by the LFC from time to time and the Contractor is to participate as required in CFH briefings.

Annexure 1: Content of Reports

Part A: Design and Build Report

Executive Summary	A high level commentary will be provided summarising overall progress in the Design and Build against the 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"> Network Deployment Plan task status (not started, in-progress - % complete, completed); Milestone completion dates (actual or projected); and 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.

Part B: Operational Services Report

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 Operational Services and comparisons with earlier periods. • The number of faults by severity categories. • User-impacting faults. • Any "red flag" issues. • A risk matrix for operations. • Observations on the Network performance and investment recommendations. • 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 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.

Part C: Disengagement Status Report

1. Changes in operation instructions
2. Changes in Documentation
3. Changes in Key Personnel

Annexure 2: Key Personnel

Part A: The Contractor's Key Personnel

The following Contractor Key Personnel will be available for the periods set out below.

Name and title	Role	Assigned period	Standing Member of the Management Committee (Yes/No)
[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]		

Part B: LFC's Personnel (for the avoidance of doubt, not "Key Personnel" as such term only applies to the Contractor)

Name and title	Role	Assigned period	Standing Member of the Management Committee (Yes/No)
[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]		
[REDACTED]	[REDACTED]		

Schedule 9: Change Procedure

1. Change Procedure for all Changes

1.1 Application of process

The parties will comply with the Change Procedure set out in this Schedule:

- (a) for all changes to the scope of the Design and Build (such as a change to the Requirements and excluding, for the avoidance of doubt, any change due to ground or site conditions (regardless of whether such change constitutes a variation under any of the Contractor's subcontracts)) and/or the Services (such as a change to the Service Levels);
- (b) for any New Services; and
- (c) in the event of any partial termination,

(**Contract Changes**), provided that all changes where:

- (d) the tasks required by the change are well known and proven;
- (e) authority is given by the LFC in advance; and
- (f) expenditure budgetary approval will not be required,

are operational changes (**Operational Changes**), the procedure for which will be set out in a section of the Network Deployment Plan and the O&M Manual.

2. Operational Changes

2.1 Operational Change becoming a Contract Change

If a party requires that an Operational Change be subject to the Change Procedure as a Contract Change or considers, acting reasonably, that an Operational Change will or is likely to:

- (a) have a detrimental effect on the ability of the Contractor to perform its obligations under the Agreement;
- (b) require capital expenditure or any other charges; or
- (c) result in a change to the Design and Build and/or the Services or the Agreement,

then it will advise the other party and the procedures set out in this Schedule will apply to such Operational Change as if it were a Contract Change.

3. Submission of Change Requests and Impact Statements

3.1 Submission of Change Requests

Either the LFC or the Contractor may, at any time, request a Contract Change by submitting to the other party a written Change Request (substantially in the form to be agreed between the parties) that describes the Contract Change and the reasons for it.

3.2 Contractor may not refuse Change Request

The Contractor must not refuse or reject, whether directly or indirectly, any Change Request submitted by the LFC, unless the implementation of such Change Request would be illegal or is technically impossible. Indirect grounds for refusing or rejecting a Change Request include:

- (a) demanding unreasonable fees for the proposed Contract Change; and
- (b) imposing conditions for, or specifying any impact or consequences of, undertaking the proposed Contract Change, which are not consistent with the scope of the proposed Contract Change or the ability of the Contractor to implement the proposed Contract Change.

3.3 Preparation of Impact Statement

For each Change Request made by the Contractor or the LFC, the Contractor will undertake an assessment of the Contract Change and provide to the LFC a written statement describing the Contract Change and its impact (the **Impact Statement**) as follows:

- (a) if the Contractor is submitting the Change Request, with its Change Request; or
- (b) if the LFC has submitted the Change Request, within 10 business days of receiving the Change Request (or such other period as may be agreed by the parties, acting reasonably).

3.4 Contents of Impact Statement

Each Impact Statement will specify, in reasonable detail:

- (a) the Contract Change, its feasibility, and how and when it will be implemented;
- (b) the impact of the Contract Change on the Milestones, Design and Build, Services, Service Levels, timeframes, other terms of the Agreement, and the ability of the Contractor to perform its obligations under the Agreement;
- (c) the impact of the Contract Change on the costs to, and resources of, each party (including, in particular, any Service Charges payable by the LFC), where relevant, using the pricing for Contract Changes set out in Schedule 6 (Pricing);
- (d) a breakdown of the price into its components, such as for Equipment, Personnel, Software, etc, where relevant;
- (e) alternative solutions for implementation of the Contract Change, wherever practicable (including pricing);

- (f) the implications of not implementing the Contract Change;
- (g) risk analysis of, and a back out plan (as relevant) for, the Contract Change;
- (h) the acceptance process (if applicable);
- (i) any other matter reasonably requested by the LFC or that is likely to be relevant to the LFC in its consideration of the Contract Change; and
- (j) a draft Change Authorisation Agreement substantially in the form set out in Annexure 2 of this Schedule, and setting out any changes required to the Agreement.

3.5 Inclusion of Statement of Work

In the case of New Services, or where otherwise appropriate in the circumstances or reasonably requested by the LFC, an Impact Statement must include a statement of work (**Statement of Work**) the indicative content of which is set out in Annexure 1 of this Schedule. The terms of any Statement of Work must, as far as is reasonably appropriate in the circumstances, be consistent with the terms of the Agreement.

3.6 Review of Impact Statements

Within 10 business days (or such other period as may be agreed by the parties) of receiving an Impact Statement from the Contractor (including an updated Impact Statement under clauses 3.6(b) or 3.6(c) of this Schedule) the LFC will notify the Contractor whether it:

- (a) approves the Impact Statement, in which case:
 - (i) the parties will sign the Change Authorisation Agreement approved in the relevant Impact Statement; and
 - (ii) once that Change Authorisation Agreement has been signed in accordance with clause 3.6(a)(i) of this Schedule it will be deemed that this Agreement is amended in accordance with the terms of the Change Authorisation Agreement;
- (b) requests changes to the Impact Statement (including the addition of further relevant information), in which case the Contractor will promptly (and in any event within 10 business days or such other period as may be agreed by the parties, acting reasonably) provide to the LFC an updated Impact Statement that incorporates the LFC's reasonably requested changes;
- (c) wishes to negotiate the Impact Statement, in which case the parties will promptly (and in any event within five business days) use their best endeavours to negotiate and agree the Impact Statement, and the Contractor will provide to the LFC an updated Impact Statement that incorporates the parties' agreed Changes promptly upon the parties reaching such agreement; or
- (d)
 - (i) at its sole discretion, in relation to a Change Request initiated by the LFC, withdraws that Change Request;
 - (ii) at its sole discretion in relation to a Change Request initiated by the Contractor regarding Design and Build (or, if the Change Request relates to a Contract Change that is required to properly provide the Design and Build and is a necessary and an implicitly inherent part of the Design and Build but which

would not be possible to achieve in compliance with this Agreement without the clarification by way of Contract Change and does not increase any Charges, in which case the LFC, acting reasonably) rejects the Impact Statement;

- (iii) acting reasonably, in relation to a Change Request initiated by the Contractor regarding O&M Services, rejects the Impact Statement,

in which case the Contractor will not implement the Contract Change and the Change Request and Impact Statement will be of no effect.

3.7 Consequences of the LFC requiring a Contract Variation to be implemented

The Contractor and the LFC acknowledge and agree that, notwithstanding clauses 3.1 to 3.6 of this Schedule, the LFC may, ultimately, require the Contractor to implement a Contract Change (unless such implementation would be illegal or technically impossible). If the parties dispute the pricing for the Contract Change that dispute will be determined by an expert in accordance with clause 20.5 of the Base Agreement (applying the same relevant (and most recent) margins as applied by the Contractor for pricing under this Agreement), and any such dispute will not delay the Contractor's implementation of the relevant Contract Change. The LFC will provide the Contractor with a written instruction to proceed, which specifies a maximum amount to which the Contractor is authorised to incur costs, before the Contractor is required to commence any such implementation.

3.8 Truncated process

Where the parties have agreed that a Contract Change is:

- (a) relatively minor (in terms of cost and impact and does not involve a material alteration or deviation from the Agreement); or
 - (b) urgent,
- the parties may agree in writing to a truncated change control process to deal with that Contract Change, provided that the following will still apply:
- (c) the Relationship Managers will sign a Change Authorisation Agreement substantially in the form set out in Annexure 2 to this Schedule in relation to the Contract Change; and
 - (d) once that Change Authorisation Agreement has been signed in accordance with clause 3.8(c) of this Schedule it will be deemed that this Agreement is amended in accordance with the terms of the Change Authorisation Agreement.

3.9 Contractor's Costs

Unless expressly agreed otherwise by the LFC and the Contractor in writing or expressly set out in this Agreement, each party will be responsible for its own costs and expenses incurred in complying with the Change Procedure (including, in the case of the Contractor, the preparation of the Impact Statement).

3.10 Liability for Contract Changes

The LFC will have no liability for any costs or expenses in relation to any Contract Change, and the Contractor will not undertake any Contract Change, until both parties have agreed to the details of the Contract Change in a Change Authorisation Agreement signed in accordance with clauses 3.6(a) or 3.6(c) of this Schedule (as the case may be), other than work undertaken as a requirement by the LFC under clause 3.7.

4. Assistance with Impact Statement

The LFC will provide the Contractor with:

- (a) information reasonably requested by the Contractor in preparing an Impact Statement that:
 - (i) is, or is likely to be, material to the Impact Statement;
 - (ii) is held or controlled by the LFC; and
 - (iii) the LFC is permitted to provide to the Contractor; and
- (b) such reasonable assistance as is necessary in the circumstances to enable the Contractor to prepare the relevant Impact Statement in accordance with this Schedule.

5. Change Register

5.1 Maintenance of register

The Contractor must prepare and maintain an electronic register (**Change Register**) that details all the current and past Contract Changes that are or have been subject to the Change Procedure, and it will promptly make the Change Register available to the LFC on request.

5.2 Logging Change Requests

The Contractor will assign a unique number to each Change Request and log the Change Request in the Change Register.

5.3 Details

The Change Register must include the following details for each Change:

- (a) a unique number for the Contract Change;
- (b) the date of registration of the Contract Change;
- (c) the name of the originating party;
- (d) a description of the Contract Change; and
- (e) the current status of the Contract Change.

Annexure 1: Form of Statement of Work

Each Statement of Work will include an introduction and background and a description of the following:

- Requirements;
- Equipment;
- scope of work and milestones;
- services;
- responsibilities;
- acceptance criteria and process (where relevant);
- contingency plans;
- project management, including necessary changes to the Deployment Plan;
- Key Personnel (as defined in the relevant Statement of Work);
- plan for deployment;
- Charges; and
- additional terms and conditions (including, as relevant, any required Changes to the Agreement and additional warranties and provisions relating to any deliverables).

Schedule 10: Disengagement

1. Introduction

This Schedule describes the obligations of the Contractor to ensure that there is, following service by the LFC of a Disengagement Services Notice on the Contractor (pursuant to clause 23.1 of the Base Agreement), an orderly and timely migration of responsibility for providing the Design and Build, O&M Services and New Services (or the relevant part of the Design and Build, O&M Services and New Services in the case of partial termination) from the Contractor to a Successor Service Provider or to the LFC with no, or minimal, disruption to the business and operations of the LFC and to the service provided to Access Seekers and End Users.

2. Disengagement Manager

2.1 Appointment

The Disengagement Manager is to be the Contractor's Relationship Manager.

2.2 Responsibilities

The Contractor will ensure that the Disengagement Manager:

- (a) is responsible for ensuring that the Contractor complies with the terms of this Schedule;
- (b) has the necessary authority within the Contractor's organisation to arrange access to, and co-ordinate the provision of, such resources of the Contractor as are necessary to enable the Contractor to comply with the terms of this Schedule; and
- (c) liaises with the LFC Relationship Manager in relation to all issues relevant to the handover of the Design and Build, O&M Services and New Services and all matters connected with this Schedule and the Contractor's compliance with the terms of this Schedule.

3. Disengagement and Disengagement Services

3.1 General

The scope, nature and extent of Disengagement and the Disengagement Services provided or to be provided by the Contractor are or will be as specified in this Schedule and in the Disengagement Plan. During the Disengagement Period, the Contractor will:

- (a) continue providing the Design and Build, O&M Services and New Services throughout the Disengagement Period, in accordance with this Agreement, except to the extent otherwise expressly provided by the terms of the Disengagement Plan; and
- (b) provide the Disengagement Services in accordance with the Disengagement Plan and this Schedule.

3.2 Disengagement Plan

(a) Preparation and submission of draft Disengagement Plan

The Disengagement Manager must, no later than 90 days from the Commencement Date, prepare and submit to the LFC a draft Disengagement Plan which is consistent with the provisions of this Schedule and complies with the requirements for such plan as set out in this Schedule. The Document Finalisation Process will apply to the Disengagement Plan.

(b) Approval of the Disengagement Plan

If a Disengagement Services Notice is issued before a Disengagement Plan is agreed, the provisions of this Schedule will provide the basis for Disengagement and the obligations the Contractor is required to perform to prepare for the seamless migration referred to in this Schedule.

(c) Maintenance of the Disengagement Plan

(i) The Disengagement Plan will:

- (A) be in the form of a single document;
- (B) deal with Disengagement in respect of the Design and Build, O&M Services and New Services; and
- (C) be kept in the possession of the persons acting in the capacity of the LFC Relationship Manager and the Disengagement Manager.

(ii) Following approval of the initial Disengagement Plan, the Disengagement Plan will be maintained, and updated to reflect the then current state of the performance of the Agreement, under the responsibility of the Disengagement Manager:

- (A) every 12 months during the Term;
- (B) within seven days following the receipt of a Disengagement Services Notice by the Contractor, and the updated Disengagement Plan will be subject to the Document Finalisation Process in order to be finalised as a more detailed updated Disengagement Plan (including milestones); and
- (C) otherwise, as reasonably directed by the LFC during the Disengagement Period.

(iii) No change to the Disengagement Plan will be recognised as forming part of that plan until that change has been:

- (A) approved in writing by both the LFC Relationship Manager and the Disengagement Manager, such approval not to be unreasonably withheld or delayed; or
 - (B) with respect to changes under clause 3.2(c)(ii)(B) of this Schedule, finalised in accordance with the Document Finalisation Process.
- (d) **Provisions of the Disengagement Plan**

The Disengagement Plan will specify the tasks, the resources and the Personnel to be used to effect Disengagement in accordance with this Schedule and to provide the Disengagement Services. The Disengagement Plan must not contain anything which is materially inconsistent with the provisions of this Schedule. More specifically, the Disengagement Plan will:

- (i) specify the processes and procedures to give effect to the seamless migration of responsibility for the provision of the Design and Build, O&M Services and New Services in accordance with the terms of this Schedule; and
- (ii) include a detailed description of the following:
 - (A) the management structure (including the involvement of the Disengagement Manager) and roles and responsibilities of the Contractor's Personnel to be used for the Disengagement Services (including the transfer process);
 - (B) hand-over plans (for the Disengagement Deliverables and for the delivery or return of any relevant LFC Materials, Developed Materials or other assets or materials owned or vested in the LFC), data migration processes, ramp-down procedures for the Design and Build, O&M Services and New Services and sign-off criteria and procedures for specified Disengagement related tasks;
 - (C) the tasks to be performed to effect Disengagement;
 - (D) the Disengagement Deliverables which the LFC may elect to acquire from the Contractor pursuant to clause 4.1(b) of this Schedule;
 - (E) the fees for the supply of the Disengagement Services, calculated in accordance with clause 3.9(b) of this Schedule;
 - (F) a timetable incorporating staged cut-overs of different parts of the Network;
 - (G) key dependencies and risks;
 - (H) risk mitigation planning, including provision for parallel running (where practicable) of existing and new Service environments and "fall-back" contingency planning in the event of disruption to the Network during the Disengagement Period;
 - (I) a list of the Contractor's Personnel who are identified as necessary to give effect to Disengagement;
 - (J) the rights of access to the Contractor's Personnel for the purpose of effecting Disengagement;

- (K) all consultancy and training support services to be provided;
- (L) appropriate communications (in consultation with the LFC) with the Contractor's Personnel;
- (M) the rights of access to, and use of, any premises which are owned or leased by the Contractor and used in the provision of the Design and Build, O&M Services and New Services by the LFC or a Successor Service Provider (together with the charges payable (if any)), in each case, subject to the relevant party signing a confidentiality agreement and complying with any relevant security and health and safety procedures; and
- (N) post Disengagement review processes.

3.3 Disengagement options and selection of Successor Service Provider

- (a) A Disengagement Services Notice issued to the Contractor by the LFC will specify which of the following Disengagement options the LFC is to exercise:
 - (i) acquire all or part of the Disengagement Deliverables in accordance with the call option in clause 4.1 of this Schedule and employ all or some of the Contractor's Personnel in accordance with clause 5. The LFC may also procure that its nominated Successor Service Provider exercises this option in accordance with clause 4.2 of this Schedule; or
 - (ii) not acquire the Disengagement Deliverables or, except as provided for by clause 5(a) of this Schedule, the Contractor's Personnel.
- (b) The Contractor acknowledges that the LFC may, on or following the commencement of Disengagement Services:
 - (i) invite any person to tender for the provision of all or any part of the Design and Build, O&M Services and New Services; or
 - (ii) adopt another process for the appointment of a Successor Service Provider to act as provider of the Design and Build, O&M Services and New Services,

and in each case, the LFC will notify the Contractor in writing of the current status.
- (c) The LFC will ensure that, before providing the Succession Package to the appointed Successor Service Provider or any information relevant to the Disengagement, Disengagement Deliverables, the Design and Build, the O&M Services and/or the New Services, such Successor Service Provider enters into a confidentiality agreement with the LFC and the Succession Package or any such information is subject to any intellectual property rights restrictions under this Agreement.

3.4 Succession Package

(a) Preparation and updating

The Contractor will, no later than 30 days after completion of the Design and Build, prepare and regularly update (in any event, not less than once every 12 months thereafter) the Succession Package to ensure that the person nominated by the LFC as the Successor Service Provider has immediate access to relevant information concerning the provision of the Design and Build, O&M Services and New Services.

(b) **Recording and security**

The Contractor will ensure that the information in the Succession Package is recorded at all times in an easily accessible form and kept safe and secure.

(c) **Availability**

- (i) The Contractor will make the information in the Succession Package available to the LFC for inspection:
 - (A) at least 10 days prior to the annual review date or any quality review; and
 - (B) at any other reasonable time on request.
- (ii) The Contractor will, in addition to making the material available at these times, also send a copy of all, or such parts of, such information to the LFC (if requested), except to the extent that the LFC already holds up to date copies of such information.

3.5 Assistance with the succession process

The Contractor will, following an invitation from the LFC to a person nominated by the LFC as the Successor Service Provider, or following an indication that the LFC wishes to assume responsibility for the Network:

- (a) provide reasonable assistance in the succession process for the relevant Design and Build, O&M Services and New Services;
- (b) provide the LFC and/or such Successor Service Provider, with copies of the Succession Package;
- (c) provide the LFC and such Successor Service Provider with reasonable access to the Contractor's Personnel and the Disengagement Deliverables solely for the purpose of enabling the relevant parties to complete the succession process;
- (d) provide such additional information about the Design and Build, O&M Services and New Services and the Network as the LFC and/or such Successor Service Provider may reasonably require;
- (e) provide reasonable assistance with the verification of any information relating to the provision of the Design and Build, O&M Services, New Services and the Network, including the provision of answers to verification questions; and
- (f) ensure that all information provided by it is true and correct and is not misleading, whether by omission or otherwise.

3.6 Assistance to facilitate seamless migration

(a) **All things reasonably necessary**

In addition to its specific obligations in the Disengagement Plan, the Contractor will, during the Disengagement Period, do all things reasonably necessary to facilitate a seamless migration of responsibility for the provision of the Design and Build, O&M Services and New Services from the Contractor to the Successor Service Provider or to the LFC.

(b) **Continuing assistance**

- (i) If, after Disengagement has been completed, the LFC and/or the Successor Service Provider requires further service or assistance, whether to complete effective Disengagement or otherwise assist the LFC to maintain the operation of the Network, the Contractor will provide (or procure the provision of) access for the LFC and/or the Successor Service Provider to:
 - (A) such information relating to the Design and Build, O&M Services and New Services as remains in the possession or control of the Contractor; and
 - (B) to the extent reasonably practicable, such Contractor Personnel as have been involved in the Design and Build, O&M Services, New Services or the Network,
- in each case, as is reasonably required to complete effective Disengagement or otherwise assist the LFC to maintain the operation of the Network, for a period of 12 months following the Disengagement Completion Date.
- (ii) The Contractor's obligation to provide such continuing assistance is subject to appropriate terms and conditions being discussed and agreed at the end of the Disengagement Period. If the parties cannot agree any such terms and conditions within 10 business days following the end of the Disengagement Period then the LFC may refer the resolution of such terms and conditions to expert determination under clause 20.5 of the Base Agreement.

(c) **Generally**

The Contractor will not do anything which prejudices or frustrates the seamless migration of the responsibility for the provision of the Design and Build, O&M Services or New Services from the Contractor to the Successor Service Provider or the LFC.

3.7 Service Personnel

(a) **Availability**

The Contractor must use all reasonable efforts to ensure that an appropriate number of Contractor Personnel (having sufficient skills, qualifications and experience) are available to be employed or engaged by a Successor Service Provider or the LFC in order to enable continued provision of the Design and Build, O&M Services and New Services.

(b) **Specific undertakings during the Disengagement Period**

The Contractor specifically undertakes that, during the Disengagement Period, it will not (unless it has the written consent of the LFC):

- (i) through its own act or omission, increase or decrease the number of the Contractor's Personnel except to the extent expressly provided in the Disengagement Plan. For the avoidance of doubt, this does not apply to voluntary resignations (if any) among the Contractor's Personnel; and
- (ii) materially increase or decrease, or contract to increase or decrease, any payment, remuneration or benefits of, or to, the Contractor's Personnel beyond due entitlements.

3.8 Stock take

(a) Purpose of stock take

The LFC will appoint an independent and qualified third party to undertake a stock take of the Disengagement Deliverables, subject to signing a confidentiality agreement in favour of the Contractor, in order to verify inventory information set out in the Succession Package (including those particulars pertaining to the Subcontracts). The LFC will provide a copy of its terms of appointment to the Contractor.

(b) Timing of the stock take

The stock take is to be commenced no later than 14 days after the commencement of the Disengagement Period.

(c) Conduct of stock take

- (i) The person appointed to undertake the stock take is to make reasonable efforts to ensure that the stock take is undertaken in a manner which causes minimal disruption to the Design and Build, O&M Services and New Services or to the conduct of the Contractor's business.
- (ii) The Contractor is to provide such information and offer such assistance to the person appointed to undertake the stock take, as is reasonably required.
- (iii) The person appointed to undertake the stock take is to use all reasonable efforts to complete that stock take within 30 days from its commencement.

(d) Results of the stock take

- (i) The results of the stock take are to be presented by the person appointed to undertake the stock take in a report to the LFC (the **Stock Take Report**). The LFC may comment on that report and add to that report as necessary and the LFC will then deliver the Stock Take Report to the Contractor.
- (ii) The Stock Take Report will identify:
 - (A) items that are missing from, or additional to, the inventory information set out in the Succession Package;
 - (B) items in the Succession Package that are damaged beyond repair;
 - (C) items otherwise damaged or in a state of repair which require remedial work on the part of the Contractor in order to be in compliance with the terms of this Agreement;
 - (D) the time period (the **Remedial Period**) in which it is reasonable (in all the circumstances) for the Contractor to perform the obligations it is required to perform pursuant to clause 3.8 (the **Remedial Work**) having regard for those purposes to the length of the Disengagement Period (if the stock take is being undertaken after the start of the Disengagement Period) and the terms of the then current Disengagement Plan.
- (iii) The Contractor will review the Stock Take Report and advise the LFC if there are any misunderstandings or errors in the Stock Take Report which need to be rectified. Once the LFC has considered the Contractor's comments and, acting

reasonably, updated the Stock Take Report, then clause 3.8(e) of this Schedule will apply.

(e) Contractor's obligations

The Contractor will at its own cost and expense and no later than the end of the Remedial Period:

- (i) replace, install and integrate all items identified in the Stock Take Report (as amended by the LFC under clause 3.8(d)(iii) of this Schedule, if relevant) as missing or damaged beyond repair with equivalent items at equivalent or better levels of release in terms of operation and performance; and
- (ii) undertake such upgrade and Remedial Work to ensure that those items identified in such Stock Take Report requiring upgrading and repairing, are upgraded or repaired to a standard consistent with the obligations of the Contractor under this Agreement.

(f) Inspection

- (i) Within five days following the end of the Remedial Period, the Contractor will provide a report to the LFC on the Remedial Work and actions it has taken to comply with its obligations under this clause 3.8 of this Schedule.
- (ii) The person appointed to undertake the stock take will then carry out an inspection of the work undertaken by the Contractor in response to the Stock Take Report in order to assess whether the Contractor has complied with its obligations under clause 3.8(e) of this Schedule.

(g) Actions by the LFC

If the inspection undertaken pursuant to clause 3.8(f) of this Schedule reveals a shortfall in the performance by the Contractor of its obligations pursuant to clause 3.8(e) of this Schedule, the LFC may:

- (i) require the Contractor to make good those shortfalls; or
- (ii) (if those shortfalls are not rectified within a reasonable period by the Contractor) appoint another person to perform those actions that ought to have been performed but have not been performed by the Contractor pursuant to clause 3.8(e) of this Schedule and charge the cost of that work to the LFC back to the Contractor.

(h) Successor Service Provider

For the avoidance of doubt, the LFC may provide any report or the results of any inspection provided to it under this clause 3.8 of this Schedule to any Successor Service Provider.

3.9 Disengagement Charges

(a) Only Charges payable

During the Disengagement Period, the only Charges payable by the LFC are:

- (i) those Charges for the Design and Build, O&M Services and New Services that are required by the LFC during the Disengagement Period;
- (ii) the Disengagement Deliverables' Price (calculated in accordance with Annexure 2), plus GST (if any) in respect of Disengagement Deliverables if the LFC exercises the call option pursuant to clause 4.1(a) of this Schedule but then only in relation to those Disengagement Deliverables that are the subject of a transfer notice; and
- (iii) the fees for the supply of the Disengagement Services on the basis specified in clause 3.9(b) of this Schedule.

(b) Fees for Disengagement Services

- (i) The fees for the provision of the Disengagement Services relate only to the services which are applied to Disengagement during the Disengagement Period.
- (ii) The fees for the Disengagement Services are to be no more than the product of the approved number of hours worked multiplied by the hourly charge out rate that is not in excess of the relevant Service Rate (as defined in Schedule 6 (Charges)) for the relevant Personnel, plus GST in each case.
- (iii) Each week during the Disengagement Period, the Contractor will provide the LFC with a worksheet estimating the number of hours that will be worked in the provision of Disengagement Services during the following week. The LFC Relationship Manager will be deemed to have approved that worksheet unless the Contractor is notified otherwise prior to the commencement of work. If more hours are worked in a week on Disengagement Services than those already estimated and approved (**Extra Hours**), the Contractor will report to the LFC as to the reasons why and the LFC may then approve those Extra Hours, such approval not be unreasonably withheld or delayed.
- (iv) In no event may the Contractor charge any fee to the LFC for work done by it in discharge of its obligations pursuant to clause 3.8(e) of this Schedule or clause 3.8(g) of this Schedule.

(c) Payment and invoicing

The terms of clause 11 of the Base Agreement will apply with respect to the payment and invoicing of the Disengagement Charges.

4. Transfer on Disengagement

4.1 Call option for Disengagement Deliverables

(a) Grant of call option

In consideration of the sum of \$ [REDACTED] paid to the Contractor by the LFC (the receipt and adequacy of which is acknowledged), the Contractor grants the LFC an irrevocable option to have sold, transferred, novated and/or delivered to the LFC, all or any of the Disengagement Deliverables (as specified by the LFC pursuant to clause 4.1(b)) of this Schedule, in each case free from any encumbrances or security interests of any kind, on the terms set out in this Schedule and in accordance with the Disengagement Plan.

(b) Exercise of call option

The LFC may exercise the call option granted pursuant to clause 4.1(a) of this Schedule as soon as reasonably practicable after the start of the Disengagement Period, in respect of such of the Disengagement Deliverables as it elects to have sold, transferred or novated to it in its absolute discretion. The call option is to be exercised by giving the Contractor a transfer notice in respect of one or more Disengagement Deliverables or one or more classes of Disengagement Deliverables, specifying the completion date for such sale, transfer or novation, which date will be not earlier than 14 days following the date of that transfer notice, or as otherwise agreed between the parties, nor later than the Disengagement Completion Date and which will comply with the requirements of clause 4.1(c) of this Schedule.

(c) Information and assistance

During the Disengagement Period, the Contractor is to, at its cost (i.e. included within the Charges for Disengagement Services):

- (i) provide such information, advice and assistance as the LFC and its authorised representative may reasonably require in relation to the Disengagement Deliverables; and
- (ii) permit the LFC and its authorised representatives reasonable access to the Disengagement Deliverables and to the Contractor's premises and business records directly pertaining to the Disengagement Deliverables,

in order to help the LFC to exercise or make decisions in relation to the exercise of the call option referred to in clause 4.1(a) of this Schedule, provided that it does not unreasonably hinder or prejudice the delivery of the Design and Build, O&M Services or New Services by the Contractor.

4.2 Nominee

(a) Successor Service Provider

All rights and obligations of the LFC under clauses 4.1, 4.3 to 4.5 (inclusive), 5 and 6 of this Schedule, may be exercised and performed by a Successor Service Provider nominated by the LFC subject to:

- (i) the LFC notifying the Contractor of the proposed successor at least 20 days before the Disengagement Completion Date;
- (ii) the Successor Service Provider entering into a confidentiality undertaking with the LFC and the Contractor; and
- (iii) any intellectual property rights provisions pursuant to clause 14 of the Base Agreement.

(b) Privity of contract

For the purposes of section 4 of the Contracts (Privity) Act 1982, the Contractor acknowledges that the rights and powers conferred on the LFC, under clauses 4.1, 4.4 to 4.6 (inclusive) and 5 and 6 of this Schedule, constitute obligations which confer, or are intended to confer, a benefit on a Successor Service Provider nominated by the LFC.

4.3 Conduct of business

The Contractor will, during the Disengagement Period (unless and until the call option under clause 4.1 of this Schedule has been exercised):

- (a) maintain all Disengagement Deliverables that the LFC may elect to be transferred to it in good operating condition and repair in accordance with the terms of this Agreement and otherwise in accordance with Best Industry Practice;
- (b) not dispose, lease or allow any encumbrance or security interest of any kind to subsist over, any Disengagement Deliverable that the LFC may elect to have transferred to it, without the prior written consent of the LFC (such consent not to be unreasonably withheld or delayed); and
- (c) not terminate, breach or alter the terms of any Subcontract that the LFC may elect to have transferred to it as part of the Disengagement Deliverables, except in the case of a termination for breach of any Subcontract, in which case the Contractor will obtain the LFC's prior consent to termination (such consent not to be unreasonably withheld or delayed).

4.4 Disengagement completion

(a) Disengagement Deliverables completion

- (i) Disengagement completion in relation to a Disengagement Deliverable the subject of a transfer notice will take place on the completion date referred to in that transfer notice. If the transfer notice does not refer to a completion date then the completion date for that Disengagement Deliverable will be:
 - (A) the date (if any) specified in the Disengagement Plan for the sale, transfer or novation of that Disengagement Deliverable (or the class of deliverable of which that Disengagement Deliverable is part); or
 - (B) in the absence of specification of a date in the Disengagement Plan in respect of that Disengagement Deliverable, the Disengagement Completion Date.
- (ii) Disengagement completion in relation to a Disengagement Deliverable will occur at a place to be agreed by the parties (but, in the absence of agreement, at the LFC's head office).

(b) Disengagement Completion Date

Unless otherwise agreed between the parties, all Disengagement Services and the completion of the sale, transfer or novation of all Disengagement Deliverables the subject of a transfer notice are to be effected on or before the last day of the Disengagement Period (the **Disengagement Completion Date**).

(c) Generally

- (i) Possession of (and, where appropriate), risk in and title to or responsibility for, the Disengagement Deliverables the subject of a transfer notice will be given and taken on the completion date for the sale, transfer or novation of those Disengagement Deliverables. Provided the Contractor has complied, where relevant, with its obligations under clause 3.8(e) of this Schedule, such Disengagement Deliverables will be transferred by the Contractor on an as is,

where is, basis and with the benefit of all remaining warranties and guarantees provided by third parties in respect of those Disengagement Deliverables, recognising however, fair wear and tear and the age of the Disengagement Deliverable.

- (ii) The Contractor will give the LFC possession and control of each Disengagement Deliverable the subject of a transfer notice on the completion date for that Disengagement Deliverable.
- (iii) Subject to full payment by the LFC of the applicable Disengagement Deliverables' Price, if the Contractor fails to deliver or make available to the LFC a Disengagement Deliverable the subject of a transfer notice on the completion date for that Disengagement Deliverable, and the Contractor does not remedy that default within five days' notice from the LFC requiring the default to be remedied, the LFC will have the right, upon prior written notice to the Contractor (within business hours and only when accompanied by Contractor Personnel made reasonably available by the Contractor), to enter the Contractor's premises to remove such Disengagement Deliverable, at the Contractor's cost and expense.
- (iv) The Contractor warrants that, as at the relevant completion date for a Disengagement Deliverable, it has full right and entitlement to sell, transfer or novate that Disengagement Deliverable to the LFC as required by the terms of this Schedule.

(d) Tangible assets

Where a Disengagement Deliverable comprises equipment, fittings, furniture, hardware, physical electronic components or other assets of a tangible nature, the Contractor must deliver to the LFC on the relevant completion date any documents of title or other documentary evidence of ownership held by the Contractor in respect of those Disengagement Deliverables, together with (where relevant and required to transfer ownership) signed change of ownership forms for any such Disengagement Deliverable.

(e) Subcontracts

Where a Disengagement Deliverable the subject of a transfer notice is a Subcontract, possession and control of that Disengagement Deliverable will pass from the Contractor to the LFC pursuant to clause 4.4(c)(ii) of this Schedule by delivery of:

- (i) the original executed counterpart of that Subcontract;
- (ii) the original of a deed of novation in respect of that Subcontract duly executed by the Contractor, the LFC and each counterparty to that Subcontract, such deed of novation to be in, or substantially in, the form of the deed exhibited as Annexure 3 to this Schedule; and
- (iii) any required third party consents to the novation of the Subcontract to the LFC.

(f) Other obligations of the Contractor

As at the completion date for a Disengagement Deliverable the subject of a transfer notice, the Contractor must deliver to the LFC:

- (i) releases of all encumbrances and security interests of any kind over that Disengagement Deliverable; and

- (ii) a GST invoice for the Disengagement Deliverables' Price for that Disengagement Deliverable, including the GST payable by the LFC on the Disengagement Deliverables' Price.

(g) Payment

In consideration of all of the obligations of the Contractor under this Schedule, the LFC will, in respect of a Disengagement Deliverable the subject of a transfer notice, pay to the Contractor, by transfer of immediately available funds to the Contractor's nominated bank account, the Disengagement Deliverables' Price (plus GST, if any) for that Disengagement Deliverable on the completion date for the sale, transfer or novation of that Disengagement Deliverable.

(h) Payment following apportionment

The LFC or the Contractor (as the case may be) must pay to the Contractor or LFC (as the case may be) the amount of any adjustment or payment required under clause 4.4(j) of this Schedule within 30 days following receipt of an apportionment statement pursuant to clause 4.4(k) of this Schedule.

(i) Lowest price

No Disengagement Deliverables' Price includes any capitalised interest and the parties agree that that price is the "lowest price" for the purposes of section EW 32(3) of the Income Tax Act 2007.

(j) Specified contract apportionments

The parties will apportion payments made, and amounts received, by them under a Subcontract the subject of a transfer notice (where such payments and receipts related to the periods before and after the completion date in respect of the Subcontract) as follows:

- (i) the LFC must pay to the Contractor the amount of any payments made by the Contractor before the relevant completion date, provided that:
 - (A) such payments were made in the ordinary course of conducting its business;
 - (B) such payments were in respect of goods or services supplied to the Contractor pursuant to that Subcontract; and
 - (C) such goods or services have not been supplied as at the completion date for that Subcontract; and
- (ii) the Contractor must pay to the LFC the amount equal to any payments that:
 - (A) were made by the LFC after the completion date for that Subcontract; and
 - (B) were in respect of goods or services supplied to the Contractor prior to the completion date for that Subcontract pursuant to the terms of that contract.

(k) Apportionment statement

All payments required under clause 4.4(j) of this Schedule are to be calculated by the Contractor (with information provided by the LFC where applicable) and set out in an apportionment statement prepared by the Contractor which will be sent to the LFC within 20 days following the relevant completion date. If the parties cannot agree on the amount of the apportionment, the dispute resolution process set out in clause 20 of the Base Agreement will apply, including reference to expert determination if required. Neither party will be liable to pay any disputed amount set out in an apportionment statement until the amount of the apportionment has been agreed or resolved under the dispute resolution process.

4.5 Additional obligations to the Contractor on Disengagement

The Contractor will, in accordance with the Disengagement Plan or as otherwise reasonably directed by the LFC (and subject to the Contractor retaining one copy, where relevant, for its own records):

(a) LFC Materials

deliver all the LFC Materials to the LFC or as directed by the LFC and will ensure that all copies of that LFC Material retained by it or by any of its Personnel are securely stored or destroyed (at the direction of the LFC);

(b) Developed Materials

deliver all Developed Materials to the LFC or as directed by the LFC;

(c) Service records

deliver copies of all reports and records that the Contractor is required to maintain pursuant to this Agreement; and

(d) Data

effect transfer to the LFC and/or Successor Service Provider of all of the Data in accordance with the Disengagement Plan, by way of a data migration process that ensures that none of that Data is lost or corrupted.

5. Employment Offers

(a) Offers

The LFC (or the Successor Service Provider) may, at any time during the Disengagement Period by giving the Contractor at least 10 business days' notice in writing, make an offer of employment (an **Employment Offer**) to such of the Contractor's Personnel as it elects in its discretion, on the LFC's (or the Successor Service Provider's) terms and conditions except that the term of any employment agreement will only commence upon the expiry of the Disengagement Period to the extent that retention of that Personnel is necessary to enable the Contractor to meet its obligations during that period.

(b) Consultation and co-operation

- (i) The Contractor and the LFC must each:

- (A) consult and co-operate with the other during the course of negotiations with the Contractor's Personnel with respect to whom an Employment Offer has been made; and
 - (B) use all reasonable endeavours to persuade each of those Contractor Personnel to accept such Employment Offer.
- (ii) The Contractor must, subject to applicable Laws and terms of relevant employment agreements, release or obtain the written release of each of the Contractor's Personnel who accepts an Employment Offer from his or her employment with the Contractor, including confirmation from each such Contractor Personnel that he or she waives any potential claim for "technical redundancy" against the Contractor.

(c) **Other accrued entitlements**

Where any of the Contractor's Personnel accepts an Employment Offer then his or her entitlements to accrued annual leave, days in lieu not taken, long service leave accrued and other accrued entitlements not taken (based on the then current rates) (which are obligations of the Contractor) will be assumed by the LFC (or the Successor Service Provider), and the LFC will procure that the relevant Contractor's Personnel provide a written confirmation to the Contractor acknowledging that such obligations have been taken over and that the Contractor has no further liability for, and is released from, such obligations. Where any of the Contractor's Personnel does not accept an Employment Offer then his or her entitlements to accrued annual leave, days in lieu not taken, long service leave accrued and other accrued entitlements remain obligations of the Contractor.

6. Further Assurances

Each of the Contractor and the LFC must, whenever requested by the other party, execute, sign and deliver all documents and do all things reasonably necessary or appropriate to complete the transfer to the LFC (or Successor Service Provider) of the Disengagement Deliverables or otherwise to give effect to the provisions of this Schedule, whether before or after the Disengagement Period.

Annexure 1: Succession Package

The purpose of the Succession Package is to ensure that:

1. The LFC has sufficient information available to it at the relevant time (both before and after issuing a Disengagement Notice) to assess its Disengagement options; and
2. (where relevant) the LFC or a Successor Service Provider has access to information concerning the provision of the Design and Build, O&M Services or New Services for the purposes of this Schedule.

The Succession Package will be developed and agreed by the parties as part of the Disengagement Plan, and will include:

- (a) the Documentation, except to the extent already held by the LFC;
- (b) information regarding the Design and Build, O&M Services and New Services provided (including all reports and records provided under Schedule 8 (Governance)), details of all Contractor Materials, Developed Materials, LFC Materials, Third Party Software and any other documentation, processes or methodologies used (whether proprietary to the Contractor or otherwise) in the provision of the Design and Build, O&M Services and New Services;
- (c) without limiting paragraph (a) above, the current configuration of the Network, together with full details of the design and architecture of the same, and a complete inventory of the assets (hardware, software and network components) comprising the Network;
- (d) the Subcontracts, their terms and conditions together with a brief explanation of the nature of the goods and services supplied under that contract in relation to the provision of the Design and Build, O&M Services or New Services;
- (e) to the extent lawfully permitted, a list of all Contractor Personnel engaged, whether wholly or partly, in the provision of the Design and Build, O&M Services and New Services and, in respect of each of the Contractor's Personnel:
 - (i) a skills profile and brief job description;
 - (ii) a statement of remuneration and other benefits;
 - (iii) confirmation as to whether such person is a contractor or employee;
 - (iv) confirmation as to whether such person is wholly or partly engaged in the provision of the Design and Build, O&M Services or New Services; and
 - (v) copies of all related agreements (including collective and individual employment agreements); and
- (f) identification of Personnel occupying key positions who are essential to the provision of the Design and Build, O&M Services and New Services.

Annexure 2: Disengagement Deliverables' Price

The Disengagement Deliverables' Price in relation to Disengagement Deliverables the subject of a transfer notice will be calculated as follows:

Annexure 3: Form of Deed of Novation

This **Deed** is made on 200[]

between (1) **[Local Fibre Company]** (the LFC)
and (2) **[Contractor]** (the Service Provider)
and (3) **[insert name]** (the Contractor)

Introduction

- A. The Service Provider and the Contractor are parties to the Agreement.
- B. The LFC or its nominee will be providing certain services which were previously outsourced by LFC to the Service Provider.
- C. The Service Provider wishes to transfer to the LFC or its nominee and the LFC or its nominee wishes to acquire certain of the Service Provider's assets and contracts (including the Agreement) in order for the LFC or its nominee to provide the services referred to in B above.
- D. For the purposes of the transfer referred to in C above, the parties to this Deed have agreed that the Agreement should be novated to the LFC or its nominee in accordance with the provisions of this Deed.

It is agreed

1. Interpretation

In this Deed, including in the Introduction, unless the context otherwise requires:

Agreement means **[insert name]**;

Effective Date means the Disengagement Completion Date as defined in the Project Agreement;

Project Agreement means the Network Infrastructure Project Agreement between the LFC and the Service Provider dated **[insert name]**; and

rights includes any rights, powers, privileges, authorities, discretions or remedies.

2. Effective Date

The provisions of this Deed are to have, and take, effect on the Effective Date.

3. Assumption by LFC and the Contractor

3.1 Release and discharge

With effect from and including the Effective Date:

(a) as between:

- (i) the LFC and the Service Provider; and
- (ii) the Contractor and the Service Provider,

the Service Provider will cease to be entitled to its rights and will be released and discharged from its obligations and liabilities under the Agreement but will remain entitled to its rights and will be bound by its obligations which accrued (whether contingently or otherwise) up to or arose or were to be discharged prior to (but not including) the Effective Date;

- (b) the LFC will perform, discharge and observe all obligations and liabilities on the part of the Service Provider under the Agreement as are to be performed, discharged or observed after and including the Effective Date as if it were named in the Agreement in place of the Service Provider with effect from and including the Effective Date; and
- (c) as between the Contractor and the LFC, each will become liable to the other from and including the Effective Date in respect of those rights, obligations and liabilities under the Agreement accruing on or after that date.

3.2 Assumption by LFC

The LFC covenants with the Service Provider and in favour of the Contractor that, with effect from and including the Effective Date, the LFC will acquire all of the Service Provider's rights and will assume all of the Service Provider's obligations and liabilities which accrue, arise or are to be discharged under the Agreement from and including the Effective Date (and relate to the period from and including the Effective Date) as fully and effectively in all respects as if it had been named in the Agreement as the "*[insert relevant term]*" and it executed the Agreement in that capacity, provided that for the purposes of any provisions in the Agreement relating to service of notice and other communications, the address, facsimile number and relevant person or office holder (if any) of the LFC is set out after its name at the end of this Deed.

3.3 Confirmation by the Contractor

The Contractor confirms and covenants in favour of the LFC that it will perform and comply with its obligations and liabilities under the Agreement as fully and effectively in all respects as if the LFC had been named in the Agreement as the "*[insert relevant term]*" and had executed the Agreement in that capacity.

4. Miscellaneous

4.1 Severability

If any of the provisions of this Deed are invalid or unenforceable, the invalidity or unenforceability is not to affect the operation, construction or interpretation of any other

provision of this Deed, with the intent that the invalid or unenforceable provision is, to the extent required, to be treated for all purposes as severed from this Deed.

4.2 Entire agreement

Except as expressly provided in the Agreement, this Deed constitutes the entire agreement of the parties on the subject matter of this Deed and supersedes any and all prior negotiations, representations and agreements.

4.3 Exclusion of implied terms

All terms and conditions relating to this Deed that are implied by law or custom are excluded to the maximum extent permitted by law.

4.4 Successors

The parties acknowledge that this Deed will bind all successors of each party.

4.5 Privity of contract

For the purposes of section 4 of the Contracts (Privity) Act 1982, the parties acknowledge that this Deed constitutes benefits that may be conferred on the LFC's nominee (as defined in the Project Agreement).

4.6 Governing law

This Deed is governed by, and is to be construed in accordance with, New Zealand law.

4.7 Counterparts

This Deed may be executed in two or more counterparts (including facsimile copies) each of which will be deemed an original, but which together will constitute one and the same instrument. A party may enter into this Deed by signing any counterpart.

Execution

Executed and delivered as a deed

Signed by **[Local Fibre Company]**
by and in the presence of:

Director / Authorised Signatory

Director / Authorised Signatory

Print Name

Print Name

Address of LFC:

BELL GULLY
PUBLIC VERSION

Address: _____ Facsimile No: _____

Attention: _____ Telephone No: _____

Signed by [**Contractor**]
by and in the presence of:

Director / Authorised Signatory

Director / Authorised Signatory

Print Name

Print Name

Signed by [**insert name**] by and in
the presence of:

Director / Authorised Signatory

Director / Authorised Signatory

Print Name

Print Name

Schedule 11: Security

Annexure 1: Parent Company Guarantee

This **Deed of Guarantee** is made on 15 December 2010

between (1) **WEL Networks Limited (Guarantor)**

and (2) **UltraFast Broadband Limited (LFC)**

[Note: the entire terms of the Deed of Guarantee have been redacted]

Execution

Signed as a deed

SIGNED by **WEL Networks Limited** by

Director

Print Name

Director

Print Name

SIGNED by **UltraFast Broadband Limited** by

Director

Print Name

Director

Print Name

Annexure 2: Performance Bond

[NOTE: The entire contents of this Annexure have been redacted]