

Network Infrastructure Assets Transfer Agreement

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

Northpower Limited

and

Whangarei Local Fibre Company Limited

and

Crown Fibre Holdings Limited

Date 13 December 2010

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This **Assets Transfer Agreement** is made on 13 December 2010

- between** (1) **Northpower Limited (Vendor)**
- and** (2) **Whangarei Local Fibre Company Limited (Purchaser)**
- and** (3) **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 % 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 Vendor was the successful respondent under the ITP in relation to the Coverage Area and CFH and the Vendor have formed the Purchaser, as the Local Fibre Company.
- D. The overriding objectives of the Purchaser are to maximise availability of an industry's 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 Purchaser will own and control the Network in the Coverage Area. The Network will include the new network infrastructure designed and built under the Network Infrastructure Project Agreement and the Existing Infrastructure to be acquired under this Agreement.
- F. The Vendor owns the Existing Infrastructure in the Coverage Area, together with Ancillary Assets relating to this infrastructure, and has agreed to sell the Existing Infrastructure and the Ancillary Assets to the Purchaser for consideration and on the terms and conditions set out in this Agreement.

It is agreed

1. Definitions and Construction

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this agreement, including the Schedules, and includes any variation to this agreement executed by the parties;

Agreement Date means the date of this Agreement;

Ancillary Assets means the assets that are ancillary to the Existing Infrastructure, as set out in Schedule 2, and includes all Contracts, Consents, Intellectual Property Rights and Records;

Assets means the Existing Infrastructure and the Ancillary Assets;

Claim means any claim, demand, legal proceedings or cause of action under this Agreement or in any way relating to this Agreement or the Transfer, and includes a claim, demand, legal proceeding or cause of action arising from a breach of a Vendor Warranty or under an indemnity in this Agreement;

Communal Infrastructure has the meaning given to that term in the Network Infrastructure Project Agreement;

Communal Layer 2 Infrastructure has the meaning given to that term in the Network Infrastructure Project Agreement;

Conditions means the conditions set out in clause 3;

Confidential Information means the know-how, trade secrets, technical processes, information relating to products, finances, contractual arrangements with customers or suppliers and other information relating to the Assets which by its nature, or by the circumstances of its disclosure to the holder of the information, is or could reasonably be expected to be regarded as confidential;

Connection has the meaning given to that term in the Network Infrastructure Project Agreement and **Connected** will be construed accordingly;

Consents means all resource consents and other licences, permits, consents, authorisations and applications obtained by or issued to the Vendor relating exclusively or predominantly to the relevant Assets;

Contracts means the agreements, leases, deeds, arrangements or understandings to which the Vendor is a party that relate exclusively or predominantly to the relevant Assets;

Coverage Area has the meaning given in the Network Infrastructure Project Agreement;

Disclosure Information has the meaning set out in clause 3.1(b);

Encumbrance means an interest or power reserved in or over an interest in any asset created or otherwise arising:

(a) under a mortgage, debenture, charge, lien, pledge, hypothecation, security interest (as that term is defined in the PPSA), title retention, preferential right, right of pre-emption or other similar instrument, device or power; or

(b) by way of security for the payment of a debt or any monetary obligation,

and includes any agreement or arrangement to grant or create any of the above, in each case;

End User has the meaning given to that term in the Network Infrastructure Project Agreement;

End User-Specific Infrastructure has the meaning given to that term in the Network Infrastructure Project Agreement;

Existing Communal Infrastructure means the existing Communal Infrastructure set out in Schedule 1, and includes all Contracts, Consents, Intellectual Property Rights and Records relating to such existing Communal Infrastructure;

Existing Communal Layer 2 Infrastructure means the existing Communal Layer 2 Infrastructure set out in Schedule 1, and includes all Contracts, Consents, Intellectual Property Rights and Records relating to such Communal Layer 2 Infrastructure;

Existing End User-Specific Infrastructure means the existing End User-Specific Infrastructure set out in Schedule 1, and includes all Contracts, Consents, Intellectual Property Rights and Records relating to such End User-Specific Infrastructure (subject to clause 9.1), including the relationships under all existing wholesale contracts (including with Service Providers);

Existing Infrastructure means the Existing Communal Infrastructure, the Existing Communal Layer 2 Infrastructure and the Existing End User-Specific Infrastructure;

Government Agency means any government or any public, statutory, governmental (including a local authority), semi-governmental, local governmental or judicial body, entity, department or authority, any self-regulatory organisation established under statute, or any other body that has legal power to require another person to act or not act in a particular way or to authorise a particular act in any part of the world;

GST means tax charged under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

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, that subsist in or relate exclusively or predominantly to the relevant Assets;

Network has the meaning given to that term in the Network Infrastructure Project Agreement;

Network Deployment Plan has the meaning set out in the Network Infrastructure Project Agreement;

Network Infrastructure Project Agreement means the network infrastructure project agreement between the Vendor, the Purchaser and CFH dated on or about the date of this Agreement;

PPSA means the Personal Property Securities Act 1999;

Premises has the meaning given to that term in the Network Infrastructure Project Agreement;

Pre-Transfer Period means, in respect of an Asset, the period commencing on the Agreement Date and ending on the date such Asset is Transferred;

Purchase Price means the aggregate purchase price payable for the Assets agreed by the Vendor, the Purchaser and CFH in accordance with the principles set out in Schedule 3 during the due diligence process referred to in clause 3.1(a) and as may be subsequently adjusted under this Agreement;

Purchaser's Warranties means the warranties set out in Schedule 5;

Records means all records and information held by or that are under the control of the Vendor relating exclusively or predominantly to the relevant assets;

Requirements has the meaning given to that term in the Network Infrastructure Project Agreement;

Service Provider has the meaning given to that term in the Network Infrastructure Project Agreement;

Shareholders' Agreement means the shareholders' agreement relating to the Purchaser between the Purchaser, CFH and the Vendor dated on or about the date of this Agreement, as amended from time to time;

Transfer means the sale and purchase and transfer of the Assets in accordance with this Agreement and, where the context requires, also means the time at which Transfer takes place or is to take place;

Transfer Consents has the meaning as set out in clause 9.2(b);

Transfer Date means the date of Transfer, being the date set out in the Network Deployment Plan, which shall be no earlier than 15 business days following the satisfaction of the Conditions;

Vendor Warranties means the warranties given by the Vendor to the Purchaser in Schedule 4;

Warranty Claim means any Claim by the Purchaser against the Vendor under the Vendor Warranties; and

Wholesale Services Agreement means the mandated form of wholesale services agreement of the Purchaser approved by CFH in accordance with Schedule 1 of the Shareholders' Agreement.

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to a **clause** is a reference to a clause of this Agreement;
- (b) a reference to a **Schedule** is a reference to a schedule to this Agreement;
- (c) 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 will be construed accordingly;
- (d) a **gender** includes each other gender;
- (e) the **singular** includes the plural and vice versa;
- (f) a reference to **documentation** includes:
 - (i) a reference to that document as varied, supplemented, novated or substituted from time to time; and
 - (ii) 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; and

- (iii) a reference to materials means a reference to materials of any kind whether in the form of documentation, Software, hardware, network, componentary or otherwise;
- (g) a reference to the **Vendor** in this Agreement includes reference to its successors in title and permitted assigns;
- (h) a reference to the **Purchaser** in this Agreement includes reference to its successors in title and permitted assigns;
- (i) any **agreement** not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;
- (j) any reference to a **consent**, requires the prior written consent of the party required to give that consent;
- (k) whenever the words **includes** or including are used in this Agreement, they are deemed to be followed by the words without limitation";
- (l) 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;
- (m) **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;
- (n) a reference to a **person** includes a partnership and also a body of persons, whether corporate or unincorporated;
- (o) the **Background** forms part of this Agreement;
- (p) 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;
- (q) a reference to a **day**, other than a business day, is a reference to any calendar day of the year;
- (r) a reference to any **time** is a reference to New Zealand time;
- (s) a reference to **currency** is a reference to New Zealand currency, unless expressly provided otherwise;
- (t) 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;
- (u) references to and expressions used in connection with **financial calculations**, valuations, accounting or financial reporting functions or their description in this Agreement bear the respective meanings ascribed to like expressions or expressions to similar intent in accordance with the New Zealand equivalents to the International Financial Reporting Standards as adopted by the New Zealand Accounting Standards Review Board (**NZ IFRS**); and
- (v) a reference to a **matter, information** or a **circumstance** being fairly disclosed (or similar expression) means full, clear and accurate written disclosure in sufficient detail

to enable the Purchaser to identify the nature, scope and implications of the matter, information or circumstance disclosed.

1.3 **No contra proferentem**

None of the terms in this Agreement are to be construed against a party by reason of the fact that that term was first proposed or was drafted by that party.

1.4 **Exercise of the Purchaser's rights**

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

- (i) exercise any right, discretion or remedy of the Purchaser; or
- (ii) provide any approval or consent of the Purchaser,

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 Purchaser in exercising such right, discretion or remedy or providing such approval or consent.

1.5 **Construction of references to Vendor's knowledge**

A reference in this Agreement to the knowledge, information, belief or awareness (or similar expression) of the Vendor will be deemed to include an additional statement that it has been made after due, diligent and careful enquiry by the Vendor and that the Vendor has used its best endeavours to ensure that all information given in the Vendor Warranty is true, complete and accurate in all respects.

2. **Sale and purchase**

2.1 **Sale and purchase**

- (a) The Vendor agrees to sell, and the Purchaser agrees to purchase, legal and beneficial title to the Assets on the terms of this Agreement.
- (b) The Existing Infrastructure must meet the Requirements prior to the Transfer under this Agreement, except as expressly agreed otherwise by CFH in writing.

2.2 **No Encumbrances**

The Assets are to be bought and sold free from all Encumbrances of any kind, together with all rights and privileges attached to them.

2.3 **No assumption of liabilities**

The Purchaser does not assume any liabilities or obligations of the Vendor or any other person concerning the Assets.

2.4 **Title to and risk in the Assets**

On Transfer:

- (a) the Vendor's title, rights and interest to and in the relevant Assets; and

- (b) the risk of loss of or damage to the relevant Assets,
passes from the Vendor to the Purchaser.

2.5 Preservation of rights

Notwithstanding the acquisition of the Existing Infrastructure under this Agreement, the Vendor will be solely responsible for ensuring that the Network complies with the Requirements. Any approval, acceptance, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Purchaser or CFH or their personnel in respect of the Existing Infrastructure will not:

- (a) limit (whether by waiver, estoppel or otherwise) the Vendor's responsibility to provide the Network in accordance with the Network Infrastructure Project Agreement; or
- (b) prejudice any right or remedy that may be available to the Purchaser or CFH under this Agreement, the Network Infrastructure Project Agreement or at law.

3. Conditions

3.1 Transfer conditional

The Transfer under this Agreement is conditional on:

- (a) the Purchaser and CFH conducting a due diligence review of the relevant Assets and each being satisfied with the outcome of such due diligence review in the discretion of each of the Purchaser and CFH and, for the avoidance of doubt, such due diligence will include:
- (i) the Purchaser, the Vendor and CFH entering into discussions with existing service providers so that the parties can get commitments from such service providers to enter into the Wholesale Services Agreement (such commitments to be conditional on the Transfer under this Agreement);
- (ii) investigation into whether the relevant Assets meet the Requirements;
- (b) the Purchaser, the Vendor and CFH agreeing a list of the written information provided by the Vendor to the Purchaser during the due diligence process which shall be the Disclosure Information for the purposes of this Agreement; and
- (c) the Purchaser, the Vendor and CFH agreeing a list of assets to be included in Schedule 1 and Schedule 2; and
- (d) the Purchaser, the Vendor and CFH determining the Purchase Price using the principles set out in Schedule 3 and in particular, determining whether any adjustments are required to be made to the relevant components of the Purchase Price.

3.2 Benefit of the Conditions

The parties acknowledge that the Conditions set out in:

- (a) clause 3.1(a) has been inserted for the benefit of the Purchaser and CFH and may be waived in whole or in part only by the Purchaser and CFH; and
- (b) clauses 3.1(b) 3.1(c) and 3.1(d), have been inserted for the benefit of each of the parties and may be waived in whole or in part only by all of the parties in writing.

3.3 Satisfaction of the Conditions

(a) Obligations

Each party will use its reasonable endeavours to procure the satisfaction of the Conditions in clauses 3.1 by the date being [REDACTED] after the date of this Agreement.

(b) Mutual obligations

Each party will from time to time, upon request from the other parties:

- (i) provide all reasonable assistance to the other parties as is necessary to satisfy the Conditions; and
- (ii) keep the other parties informed as to progress in procuring satisfaction of its obligations under this clause 3.3.

(c) Limitation on parties' obligations

The obligations under this clause 3.3 do not require the Purchaser or CFH to pay any money, provide any other consideration or incur any liability, actual or contingent in order to satisfy the Conditions.

3.4 Notification of fulfilment of Conditions

As soon as reasonably practicable after the Vendor or the Purchaser has become aware of the fulfilment of a Condition, it must notify the other (and CFH) in writing. Any notification delivered in accordance with this clause 3.4 must be accompanied by a copy of any relevant consent.

3.5 Non-satisfaction of the Conditions

- (a) If any of the Conditions have not been satisfied (or to the extent that any Condition is capable of waiver, waived by the relevant party or parties in writing) by their relevant dates or in each case such later date as agreed in writing by the Vendor, the Purchaser and CFH, then this Agreement may be cancelled in whole or in part regarding the Transfer of the relevant Assets by any party giving not less than five business days' notice in writing of such cancellation to each other party.
- (b) On cancellation of part of this Agreement under clause 3.5(a), then clause 8.5 will apply.

4. Purchase Price and other payments

4.1 Consideration for the Assets

In consideration for the sale of the Assets to the Purchaser under clause 2.1, the Purchaser must pay the Purchase Price on Transfer.

4.2 Allocation of Purchase Price

The Purchase Price is allocated as set out in Schedule 3 and such allocations are the values at which the separate items are to be sold and the Vendor and Purchaser will use these allocations for income tax purposes as the market values of the items as at the Transfer Date.

4.3 Lowest price

For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

- (a) the Purchase Price is the lowest price (within the meaning of section EW 32(3) of the Income Tax Act 2007) that they would have agreed for the sale and purchase of the Assets, on the Agreement Date, if payment for the Assets had been required in full at the time the first right in the contracted property (being the Assets) was transferred;
- (b) the Purchase Price is the value of the Assets; and
- (c) they will compute their taxable income for the relevant period on the basis that the Purchase Price includes no capitalised interest and they will file their tax returns accordingly.

5. GST

5.1 GST date

In this clause 5, **GST Date** means the date which is two business days before the date on which the Vendor is required to account to the Inland Revenue Department (**IRD**) for the GST chargeable on the supply evidenced by this Agreement.

5.2 GST gross up

The parties agree that where GST is chargeable on a supply made by the Vendor to the Purchaser under or in accordance with this Agreement, the Vendor will issue a tax invoice to the Purchaser and the Purchaser will pay to the Vendor the GST chargeable on that supply (as shown in that tax invoice) in addition to the consideration otherwise payable for that supply.

5.3 Set-off arrangement

The Purchaser may ask the IRD to agree to a GST set-off arrangement in respect of the supply evidenced by this Agreement whereby the benefit of the Purchaser's input tax credit entitlement from the supply evidenced by this Agreement is transferred to the Vendor's GST account with IRD (**GST Offset Arrangement**). The Vendor will use its reasonable endeavours to assist the Purchaser to obtain and complete such a GST Offset Arrangement.

5.4 Satisfaction of obligation to pay GST

If IRD agrees to a GST Offset Arrangement and IRD issues a letter before the GST Date confirming that IRD has credited, or will credit with effect from a date no later than the GST Date the Vendor's GST account with IRD with an amount sufficient to satisfy the Vendor's output tax liability arising from the supply made under this Agreement (the **IRD Confirmation Letter**), that confirmation will, subject to clause 5.6, satisfy the Purchaser's obligation to pay GST on the supply made under this Agreement as contemplated in clause 5.2.

5.5 No confirmation from IRD

If by the GST Date the Purchaser has not obtained the IRD Confirmation Letter, the Purchaser must pay the GST to the Vendor in one sum, by bank cheque or in cleared funds, on the GST Date.

5.6 Partial confirmation from IRD

If by the GST Date the Purchaser has obtained from IRD a letter to the Purchaser confirming that IRD has credited, or will credit with effect from a date no later than the GST Date the Vendor's GST account with IRD with an amount that is less than the Vendor's output tax liability arising from the supply made under this Agreement, then the Purchaser must pay the Vendor the shortfall between the amount credited by IRD and the amount of the Vendor's GST liability on the supply evidenced by this Agreement, in one sum, by bank cheque or cleared funds, on the GST Date.

5.7 Interpretation

All words and phrases used in this clause 5 have the meaning giving in the GST Act unless the context requires otherwise.

5.8 GST group

If any party to this Agreement is a member of a group of companies registered for GST under section 55 of the GST Act (**GST Group**), any reference in this Agreement to that party shall also, where appropriate, be read as a reference to the representative member of that GST Group.

5.9 Other Tax

Any tax incurred on the Transfer of the Assets (other than any GST payable on the supply of the Assets to the Purchaser by the Vendor, but including any depreciation recovery income) will be borne by, and be the sole responsibility of, the Vendor.

6. Pre-Transfer Period

6.1 Conduct pending Transfer

During the Pre-Transfer Period, the Vendor must:

- (a) ensure that the Assets are used in the ordinary course in compliance with all laws and regulations applicable to the Assets and in substantially the same manner as the Assets have been used before the Agreement Date;
- (b) maintain the Assets in good working order and in accordance with manufacturers' guidelines;
- (c) ensure the relevant Existing Infrastructure complies with the Requirements and, if such Existing Infrastructure does not so comply, remedy such non-compliance prior to Transfer (unless agreed otherwise in writing by the Purchaser and CFH);
- (d) not dispose of any Assets;
- (e) not amend the terms of any Contracts;
- (f) not create any Encumbrance in any of the Assets;
- (g) promptly notify the Purchaser of any events which may be material to the Assets (including any actual, intended or threatened litigation);
- (h) ensure that no action is taken, or omitted to be taken, by it or any other person which may adversely affect the Assets; and

- (i) not terminate the employment of any Employees except for the termination of any Employee's employment for cause,

unless the Purchaser consents in writing for the Vendor to act otherwise.

6.2 Pre-Transfer access and information

During the Pre-Transfer Period, the Vendor will procure that the Purchaser and any person authorised by it:

- (a) is given full access to the Assets;
- (b) may visit any premises of the Vendor to discuss the matters relating to the Assets with its officers and employees; and
- (c) is otherwise assisted by the Vendor to ensure that the transfer of the Assets under this Agreement occurs with minimal disruption to the parties so as to facilitate the Purchaser's immediate use of the Assets following Transfer.

6.3 Loss or damage

The Assets will be at the sole risk of the Vendor until the Transfer of such Assets. If, on or before the Transfer, any of the Assets yet to be transferred are lost, destroyed or damaged (the **Affected Assets**) and such loss, destruction or damage has not been made good in all material respects to the satisfaction of the Purchaser (acting reasonably) by repair or replacement by the Transfer Date, then:

(a) Major loss or damage

if the loss, destruction or damage has or will have a material adverse effect on the Affected Assets following the Transfer Date, the Purchaser may:

- (i) cancel the Transfer of the Affected Assets and there will be no obligation on the Purchaser regarding such Affected Assets (including no obligation to pay the relevant Purchase Price for the Affected Assets), by serving on the Vendor notice in writing; or
- (ii) complete the Transfer of the Affected Assets at the agreed Purchase Price, less a sum equal to the amount of the reduction in value of the Affected Assets (as determined by the Purchaser acting reasonably); or

(b) Minor loss or damage

if the loss, destruction or damage is insufficient to have a material adverse effect on the Affected Assets following the Transfer Date, the Purchaser will complete the purchase of the Affected Assets at the agreed Purchase Price, less a sum equal to the reduction in value of the Affected Assets (as determined by the Purchaser acting reasonably).

7. Transfers

7.1 Time and place

Subject to clause 3, the Transfer must take place on the Transfer Date at the offices of the Purchaser or at such other time or place agreed to in writing by the Vendor and the Purchaser.

7.2 Vendor's obligations

At Transfer, the Vendor must:

- (a) give the Purchaser legal and beneficial title to the relevant Assets free from any Encumbrance; and
- (b) deliver and make available to the Purchaser, at a location in the Coverage Area nominated by the Purchaser (or if no location is specified, at such Assets' current location), possession and operational control of the relevant Assets.

7.3 Documents relating to the Assets

At Transfer the Vendor must deliver to the Purchaser:

(a) Documents

such documents as the Purchaser may reasonably require to complete the Transfer of the relevant Assets, including:

- (i) documents of title;
- (ii) documentation effecting the assignment or novation of all contractual arrangements forming part of the Assets, including all manufacturers warranties relating to the assets;
- (iii) documents for technical performance and certification evidencing compliance by relevant Existing Infrastructure with the Requirements;
- (iv) documents for all necessary consents from third parties (including local and territorial authorities) relating to the deployment and operation of the Assets;
- (v) executed documents which may be required to effect the transfer of the Assets;
- (vi) any third party consents required to effect or enable the transfer, and continued contractual operation, of the Assets;
- (vii) any code of compliance issued by a local or territorial authority regarding the Assets; and
- (viii) documents for any easement rights relating to the Assets;

(b) Releases

releases of any Encumbrances over or affecting any of the relevant Assets, or evidence satisfactory to the Purchaser that such Encumbrances have been released as at the Transfer Date;

(c) Contracts

- (i) a duly executed assignment of each relevant Contract in favour of the Purchaser; and
- (ii) other than any consents in relation to which the Purchaser has agreed in writing prior to Transfer that such consent may be obtained after Transfer, each Transfer Consent (that relate to the Contracts).

7.4 Purchaser's obligations

At Transfer the Purchaser must satisfy the payment of the Purchase Price in accordance with Schedule 3 and the Network Infrastructure Project Agreement.

7.5 Transfer simultaneous

(a) Actions interdependent

Subject to clause 7.5(b), the actions of:

- (i) the Vendor contemplated by clauses 7.2 and 7.3; and
- (ii) the Purchaser contemplated by clause 7.4,

are interdependent and must take place, as nearly as possible, simultaneously. If one action does not take place, then without prejudice to any rights available to any party as a consequence:

- (iii) there is no obligation on any party to undertake or perform any of the other actions;
- (iv) to the extent that such actions have already been undertaken, the parties must do everything reasonably required to reverse those actions; and
- (v) the Vendor and the Purchaser must each return to the other all Assets and documents delivered to it under this clause 7 and must each repay to the other all payments received by it or any assets received by the Vendor on account of the payment of the Purchase Price under this clause 7, without prejudice to any other rights any party may have in respect of that failure.

(b) Waiver of actions required

The Purchaser may, in its sole discretion, waive any or all of the actions that the Vendor is required to perform under clauses 7.2 or 7.3 and the Vendor may, in its sole discretion, waive any or all of the actions that the Purchaser is required to perform under clause 7.4.

8. Default and cancellation

8.1 Procedures on default

If, without the written agreement of the Vendor and the Purchaser, Transfer does not take place on the Transfer Date due to the Vendor not complying with clauses 7.2 or 7.3 or the Purchaser not complying with clause 7.4 (the non-complying party being the **Defaulting Party**), then the following provisions apply:

(a) Transfer Notice

that of the Vendor or the Purchaser which is not the Defaulting Party (**Non-Defaulting Party**) may give the Defaulting Party a notice (**Transfer Notice**) requiring the Defaulting Party to comply with its obligations under clause 7 within ten business days after the date the notice is given;

(b) Ready, willing and able to proceed

a Transfer Notice is effective only if the Non-Defaulting Party, at the time the Transfer Notice is given, is in all respects ready, able and willing to proceed to effect Transfer in accordance with the Transfer Notice and the Non-Defaulting Party states in the Transfer Notice that it is so ready, able and willing or it is not so ready, able and willing to effect Transfer only by reason of the default or omission of the Defaulting Party; and

(c) Time for compliance

the Defaulting Party must comply with all of its outstanding obligations under clause 7 within ten business days after the date the notice is given.

8.2 Vendor's rights on default

If the Defaulting Party is the Purchaser and the Purchaser does not comply with its obligations referred to in clause 8.1, the Vendor may, without prejudice to any of its other rights or remedies available under this Agreement or at law, sue the Purchaser for specific performance.

8.3 Purchaser's rights on default

(a) Remedies

If the Defaulting Party is the Vendor and it does not comply with its obligations referred to in clause 8.1, the Purchaser may, without prejudice to any of its other rights or remedies available under this Agreement or at law:

- (i) defer Transfer with respect to some or all of the Assets to a date selected by the Purchaser being no later than 20 business days after that date (in which case this clause will apply to Transfer as deferred);
- (ii) proceed to Transfer as far as practicable (including, at the Purchaser's option, Transfer of only some of the Assets);
- (iii) sue the Vendor for specific performance; or
- (iv) cancel this Agreement in whole or in part by giving notice in writing to the Vendor and sue the Vendor for damages.

(b) Extent of damages

The damages claimable by the Purchaser under clause 8.3(a) include all damages claimable at law and the Purchaser's legal costs (on a full indemnity basis) arising from the Vendor's non-compliance with its obligations referred to in clause 7.

8.4 Additional cancellation rights for Purchaser

The Purchaser may cancel this Agreement in whole or in part at any time before the final Transfer by notice in writing to the Vendor if:

- (a) either the Shareholders' Agreement or the Network Infrastructure Project Agreement is terminated;
- (b) an order is made or an effective resolution is passed for the winding up or dissolution without winding up (otherwise than for the purposes of reconstruction or amalgamation) of the Vendor;

- (c) a receiver, receiver and manager, judicial manager, liquidator, administrator or like official is appointed over the whole or a substantial part of the undertaking or property of the Vendor;
- (d) a holder of an Encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Vendor; or
- (e) there is a material breach of a Vendor Warranty that is, in the opinion of the Purchaser:
 - (i) not capable of remedy; or
 - (ii) capable of being remedied and the Vendor has not remedied such breach within ten business days of written notice from the Purchaser to remedy such breach.

8.5 Effect of cancellation of this Agreement

If this Agreement is cancelled in whole or in part under any provision in this Agreement, then:

- (a) each party is released from its obligations to further perform its obligations under this Agreement except for those that survive partial cancellation or otherwise survive cancellation;
- (b) each party retains the rights it has against the others in respect of any breach of this Agreement occurring before cancellation;
- (c) the Purchaser retains all rights under this Agreement or otherwise in respect of any Assets which have been transferred in accordance with this Agreement prior to cancellation; and
- (d) for the avoidance of doubt, such cancellation will not limit the Vendor's obligations to provide the Network in accordance with the Network Infrastructure Project Agreement.

9. Contracts

9.1 Transfer of Service Provider contracts

- (a) The Vendor will use its best endeavours to migrate each existing Service Provider relating to existing End User-Specific Infrastructure from its existing contract with the Vendor to the Wholesale Services Agreement, in accordance with the timing and other requirements in the Network Infrastructure Project Agreement, including the Deployment Plan under Schedule 2 (Design and Build) and Schedule 3 (Existing Infrastructure Acquisition) of the Network Infrastructure Project Agreement.
- (b) For the avoidance of doubt, such migration (and the value of the transfer of the Service Provider relationship and the consequent transfer of End User Connections) is included in the Purchase Price.
- (c) Subject to clause 9.1(d), the Purchaser may refuse to acquire any Existing Infrastructure where the relevant Service Provider does not agree to the Wholesale Services Agreement.
- (d) If a Service Provider does not agree to the Wholesale Services Agreement within the specified time frame set out in the Network Infrastructure Project Agreement, the Vendor may elect by notice in writing to the Purchaser to retain the relevant Existing Infrastructure (being the contract with the relevant Service Provider and any

associated Existing Infrastructure) and the Vendor will continue to maintain its relationship with such Service Provider. When each relevant Service Provider has entered into the Wholesale Services Agreement with the LFC, the relevant Existing Infrastructure will be transferred pursuant to this Agreement and otherwise as set out in the Network Infrastructure Project Agreement.

9.2 Pre-Transfer assignments

In respect of all Contracts, other than those with Service Providers (which are dealt with pursuant to clause 9.1), the Vendor must use best endeavours to:

- (a) assign its right and interest under the relevant Contracts to the Purchaser effective on the Transfer; and
- (b) obtain any required consents of the counterparties to that assignment (**Transfer Consents**) by the Transfer Date.

9.3 Purchaser to assist

The Purchaser:

- (a) must prior to or after Transfer, use reasonable endeavours to assist the Vendor to obtain any required Transfer Consent; and
- (b) prior to or after Transfer, is not required to pay any money, provide any other valuable consideration or covenants to or for the benefit of any person to obtain any required Transfer Consent.

9.4 Post Transfer assignments

- (a) **Vendor to continue using reasonable endeavours**

Following Transfer, the Vendor must use best endeavours to assist the Purchaser to obtain any required Transfer Consents not obtained by Transfer, or consent to the implementation of any other arrangement agreed under clause 9.4(b).

- (b) **Consequences of failure to obtain consent by Transfer**

If, and to the extent that, any Contracts (other than those with Service Providers which are dealt with pursuant to clause 9.1), are not, or cannot be, assigned to the Purchaser on Transfer:

- (i) from Transfer, legal ownership of that Contract will remain with the Vendor;
- (ii) from Transfer, the Vendor will be deemed to hold all of its right, title and interest in that Contract on trust for the benefit of the Purchaser, and the Purchaser will be entitled to the use and enjoyment of the Contract as against the Vendor and to receive any income from them, and the Vendor will account to the Purchaser in respect of any money or other benefits received by the Vendor, and the Vendor will act in accordance with the directions of the Purchaser, provided that the Vendor is not constrained by operation of law or any third party from granting such use or enjoyment or the right to receive any income; and
- (iii) if the counterparties to that Contract continue to withhold the relevant Transfer Consent, the Vendor and the Purchaser will negotiate with a view to agreeing an alternative mechanism to transfer the benefit of that Contract to the Purchaser (on terms acceptable to the Vendor and Purchaser, each acting reasonably), without causing a breach of that Contract, at the Vendor's cost.

(c) **No breach of agreement**

This Agreement does not constitute an agreement to assign or hold on trust a Contract if an attempted assignment or holding on trust without the consent of the counterparty to that Contract would constitute a breach of that Contract.

(d) **Exclusion of Contracts**

If any requisite transfer or Transfer Consent is refused or not obtained on or before the date being three months after Transfer (or such longer period as the Purchaser may, at its sole discretion, determine) in respect of any Contract (other than those with Service Providers which are dealt with pursuant to clause 9.1), the relevant Contract will, if so elected by the Purchaser by written notice to the Vendor, be deemed to have been excluded from the sale under this Agreement and the Vendor will indemnify the Purchaser against all losses relating to such exclusion including, without limitation, relating to any equivalent arrangements in replacement of the excluded Contract.

9.5 Documentation

The Vendor must, at its own cost, prepare deeds of assignment and consents for the assignment of the Contracts (other than those with Service Providers which are dealt with pursuant to clause 9.1), and associated documents under this Agreement which are to be in a form approved by the Purchaser (acting reasonably).

9.6 Transfer of Liabilities

Nothing in this Agreement will:

(a) **Liabilities**

transfer or be deemed to transfer to the Purchaser or constitute or be deemed to constitute an acceptance or assumption by the Purchaser of any liability or obligation of the Vendor in relation to the Assets or otherwise;

(b) **Liability for Pre-Transfer breach**

make the Purchaser liable for any losses or for any act, neglect, default or omission in respect of any of the Contracts committed by the Vendor, or occurring, prior to Transfer, or for any losses arising from any failure to obtain any transfer or Transfer Consent in respect of any Contracts or from any breach of any Contracts by this Agreement or Transfer; and

(c) **Pre-Completion goods and services responsibility**

impose any obligation on the Purchaser for or in respect of any goods sold or services provided by the Vendor prior to Transfer.

9.7 Discharge of obligations

The Vendor will continue to be responsible for and will promptly discharge all debts, liabilities and obligations in connection with the Assets (whether or not assumed by the Purchaser by operation of law).

10. Vendor Warranties

10.1 Warranties by the Vendor

Subject to the limitations in clause 11, the Vendor warrants to the Purchaser that each of the Vendor Warranties is true and accurate at the Agreement Date and will remain true and accurate until the Transfer Date and on the Transfer Date (except that a Vendor Warranty which refers to only one of those dates is given only as at that date).

10.2 Indemnity

- (a) The Vendor will indemnify the Purchaser, CFH and the Crown against all liability or loss arising from, and any costs, damages, losses, charges or expenses incurred by the Purchaser, CFH or the Crown in connection with:
- (i) the Assets arising on or before, or relating to the period before, Transfer; or
 - (ii) any tax relating to or connected with the Assets arising on or before, or relating to the period before, Transfer or otherwise relating to operations of, or liabilities incurred by, the Vendor.
- (b) The parties acknowledge and agree that the provisions of this clause 10.2 are also for the benefit of, and enforceable by, the Crown under the Contracts (Privacy) Act 1982.

11. Limitations on Claims

11.1 Threshold limits for Warranty Claims

(a) **Limits**

The Purchaser must not make a Warranty Claim, and the Vendor is not liable to make any payment in respect of a Warranty Claim (whether by way of damages or otherwise):

- (i) unless the amount claimed is in excess of ██████ in respect of any individual Warranty Claim or series of related Warranty Claims, in which case, the Vendor will be liable for the full amount of the Warranty Claim not just the excess. Regardless of whether the Vendor's liability for a Warranty Claim is excluded pursuant to this clause 11.1(a), the full amount of the Warranty Claim will be treated as a Warranty Claim for the purposes of calculating whether the threshold in clause 11.1(b) has been reached;
- (ii) unless the aggregate of the amount then claimed and of all other Warranty Claims made or which would but for the provisions of this clause 11.1 have previously been made exceeds ██████ upon the basis that, once such threshold has been exceeded, any claim so made may be for and in respect of the total amount of the Warranty Claim and is not limited to the amount in excess of ██████ and
- (iii) if the total aggregate amount paid by the Vendor for all and any Warranty Claims exceeds ██████ of the Purchase Price.

(b) **Interpretation**

For the purposes of this clause 11.1:

- (i) Warranty Claims arising out of separate sets of facts, matters or circumstances are not to be treated as one Warranty Claim, even if each set of facts, matters or circumstances are a breach of the same Vendor Warranty; and
- (ii) Warranty Claims of the same or similar nature arising out of the same or similar facts, matters and circumstances will be treated as one Warranty Claim.

11.2 Reduction of Purchase Price

Any monetary compensation received by the Purchaser as a result of any breach by the Vendor of any Vendor Warranty is deemed to be in reduction and partial refund of the Purchase Price.

12. Purchaser's Warranties

In consideration of the Vendor entering into this Agreement, the Purchaser gives to the Vendor the Purchaser's Warranties.

13. Confidentiality

13.1 Protection of Confidential Information

(a) **Non-disclosure**

Subject to clause 13.1(b) and clause 13.2, each party will treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement), any Confidential Information that is the Confidential Information of any other party.

(b) **General exceptions**

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

- (i) in the case of the Purchaser and CFH, following Transfer, where such Confidential Information was provided to the Purchaser as part of the Assets;
- (ii) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (iii) 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);
- (iv) that was lawfully known to the recipient prior to the date it was received;
- (v) 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;
- (vi) that has been or is independently developed by the recipient;

- (vii) to any professional adviser for the purposes of rendering professional services to a party and in relation to this Agreement;
- (viii) to the extent that such disclosure is authorised by this Agreement; or
- (ix) if such disclosure is approved for release with the prior written consent of the party from whom the Confidential Information is first received.

13.2 Limited disclosure

(a) **Vendor**

The Vendor may disclose the Confidential Information of the Purchaser to its subcontractors, personnel and professional advisers who need to know the same for the sole purpose of enabling the Vendor to perform its obligations and exercise its rights under this Agreement. The Vendor will ensure that its personnel, professional advisers and subcontractors are aware of and comply with the terms of this clause 13.

(b) **Purchaser**

Each of the Purchaser and CFH may disclose Confidential Information of the Vendor to its service providers (including potential service providers), personnel and professional advisers who need to know the same for the Purchaser's or CFH's business purposes and the Purchaser 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 13.

14. General Provisions

14.1 Time of the essence

Time is of the essence in relation to the parties' respective obligations under clause 7 and no extension of time for the making of any payment or the doing of any acts required by those clauses will be deemed to be a waiver, or modification, of or affect this provision.

14.2 Entire Understanding

Subject to the Shareholders' Agreement and the Network Infrastructure Project 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.

14.3 Further assurances

Each party will after the Transfer execute all such deeds and documents and do all such things as the other parties may require for perfecting the transactions intended to be effected under or pursuant to this Agreement and for vesting in the Purchaser the full benefit of the Assets.

14.4 Assignment

No 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 parties written consent (which consent may be withheld at that party's absolute discretion).

14.5 Public disclosures

Subject to clause 13, all public disclosures by the Vendor relating to this Agreement, including the fact of its existence (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 Purchaser prior to its release.

14.6 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.

Whangarei Local Fibre Company Limited

Notices to:

Address: c/- Bell Gully
Level 22 Vero Centre
48 Shortland Street
Auckland 1010

Facsimile No.: +64 9 916 8801

Email Address: anna.buchly@bellgully.com

Contact person/position: The Board of Directors

Northpower Limited

Notices to:

Address: 28 Mount Pleasant Road
Whangarei 0110

Facsimile No.: 64 9 430 1804

Email Address: mark.gatland@northpower.com

Contact person/position: Mark Gatland, Chief Executive Officer

With a copy to: Simpson Grierson
Lumley Centre
88 Shortland Street
Auckland 1141
Attention: Simon Vannini
Facsimile: +64 9 307 0331
Email: simon.vannini@simpsongrierson.com

Crown Fibre Holdings Limited

Notices to:

Address: Level10 PricewaterhouseCoopers Tower
188 Quay Street
Auckland

Facsimile No.: +64 9 368 9201

Email Address: graham.mitchell@crownfibre.govt.nz

Contact person/position: Chief Executive Officer

With a copy to: Bell Gully
Level 22 Vero Centre
48 Shortland Street
Auckland 1010
Attention: Gavin Macdonald/Anna Buchly
Facsimile: +64 9 916 8801
Email: gavin.macdonald@bellgully.com and
anna.buchly@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.

14.7 Performance Bond

In respect of any liability which the Vendor may have to the Purchaser under, or in respect of, this Agreement, the Purchaser shall be entitled to draw down on the Performance Bond (as that term is defined in the Network Infrastructure Project Agreement) in accordance with clause 25 of the Network Infrastructure Project Agreement.

14.8 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.

14.9 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.

14.10 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.

14.11 Amendment

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

14.12 Consents and approvals

Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

14.13 Costs

Except as otherwise specified in this Agreement, each party must pay its own legal and other costs of and incidental to the preparation, negotiation, execution and completion of this Agreement.

14.14 Conflicting provisions

If there is any conflict between the main body of this Agreement and any schedules to this Agreement, then the provisions of the main body of this Agreement prevail.

14.15 Non merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged.

14.16 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.

14.17 Governing law and jurisdiction

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

Executed as an agreement.

SIGNED on behalf of **Northpower Limited**
by:

Authorised Signatory

Print Name

SIGNED by **Whangarei Local Fibre
Company Limited** by:

Authorised Signatory

Print Name

SIGNED by **Crown Fibre Holdings Limited**
by:

Authorised Signatory

Print Name

Authorised Signatory

Print Name

Authorised Signatory

Print Name

Authorised Signatory

Print Name

Schedule 1: Existing Infrastructure

Indicative list attached. The final list of Existing Infrastructure to be agreed in accordance with clause 3.1(c).

Northpower Fibre _____

Item	Description	Supplier	Quantity

Item	Description	Supplier	Quantity Units	Quantity Meters				
[Redacted]								

Item	Description	Supplier	Quantity Units	Quantity meters				
[Redacted]								

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

Schedule 3: Purchase Price (and Allocation)

The Purchase Price for the Assets shall be the aggregate of the following amounts.

- (a) The Purchase Price for the Existing Communal Infrastructure forms part of CPPP and will be paid in accordance with the Project Agreement. This assumes that CPPP_P reflects that the Existing Communal Infrastructure has been valued at the lesser of the book value of such assets as shown in the Vendor's financial records at the time of transfer and the depreciated replacement cost (being the replacement cost depreciated at an applicable rate over the period from the date on which the Vendor acquired the relevant asset and the date on which the transfer to the Purchaser occurs). A downward adjustment to CPPP_P will be required if the Vendor's existing Communal Infrastructure does not meet the relevant Requirements.
- (b) The Purchase Price for the Existing Communal Layer 2 Infrastructure forms part of CPPP_{L2} and will be paid in accordance with the Project Agreement. This assumes that CPPP_{L2} reflects that the Vendor's Existing Communal Layer 2 Infrastructure has been valued at the lesser of the book value of such assets as shown in the Vendor's financial records at the time of transfer and the depreciated replacement cost (being the replacement cost depreciated at an applicable rate over the period from the date on which the Vendor acquired the relevant asset and the date on which the transfer to the Purchaser occurs). A downward adjustment to CPPP_{L2} will be required if the Vendor's Existing Communal Layer 2 Infrastructure does not meet the relevant Requirements.
- (c) The Purchase Price for the Existing End User-Specific Infrastructure (including relationships under all existing wholesale contracts (including with Service Providers) and End User (customer) contracts) will be the lesser of:
 - (i) the lesser of the book value of such assets as shown in the Vendor's financial records at the time of transfer and the depreciated replacement cost (being the replacement cost depreciated by an applicable rate over the period from the date on which the Vendor acquired the relevant asset and the date on which the transfer to the Purchaser occurs); and
 - (ii) the aggregate of CPPC_{CAP} and CPPC_{L2} multiplied by the number of Premises Connected through the Existing End User-Specific Infrastructure,and will be paid , and will be subject to further adjustment, in accordance with the Project Agreement. A downward adjustment to the Purchase Price will be required if the Vendor's Existing End User-Specific Infrastructure does not meet the relevant Requirements).
- (d) The Purchase Price for any Ancillary Assets (e.g. other systems and/or plant) will be the lesser of the book value of such assets as shown in the Vendor's financial records at the time of transfer and the depreciated replacement cost (being the replacement cost depreciated at an applicable rate over the period from the date on which the Vendor acquired the relevant asset and the date on which the transfer to the Purchaser occurs).
- (e) As part of the due diligence process referred to in clause 3.1, the Purchaser, CFH and the Vendor will determine an attribution of the relevant Purchase Prices to the different asset classes for tax depreciation purposes. For example, CPPP will need to be allocated between new Communal Infrastructure and Existing Communal Infrastructure (involving different asset categories of Existing Communal Infrastructure).

- (f) The Purchase Price for the Existing Communal Infrastructure assets for the relevant stage or segment will be satisfied by the Purchaser issuing "A" class shares in the Purchaser to the Vendor in accordance with the Project Agreement and the Shareholders' Agreement.
- (g) The Purchase Price for the Existing Communal Layer 2 Infrastructure assets will be satisfied by the Purchaser issuing "B" class shares in the Purchaser to the Vendor in accordance with the Shareholders' Agreement and the Network Infrastructure Project Agreement.
- (h) The Purchase Price for the:
 - (i) Existing End User-Specific Infrastructure (including relationships under all existing wholesale contracts (including with Service Providers) and End User (customer) contracts); and
 - (ii) Ancillary Assets,will be satisfied by the Purchaser issuing "B" class shares in the Purchaser to the Vendor in accordance with the Shareholders' Agreement and the Network Infrastructure Project Agreement.

Schedule 4: Vendor's Warranties

1. Due authorisation

1.1 Authority

The Vendor:

- (a) has obtained, or will obtain before each Transfer, all necessary authorisations for the execution, delivery and performance of its obligations under this Agreement in accordance with its terms;
- (b) has full power and capacity to enter into and perform its obligations under this Agreement; and
- (c) will not contravene any law by entering into or performing its obligations under this Agreement.

1.2 Binding effect

The Vendor's obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms, except as such enforceability may be limited by equitable principles, bankruptcy, insolvency, liquidation or other laws relating to creditors' rights and statutory limitations.

1.3 Incorporation

The Vendor is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.

2. Solvency

2.1 No liquidation

The Vendor has not:

- (a) gone, or is not proposing to go, into liquidation;
- (b) passed a winding-up or liquidation resolution or commenced steps for winding-up, liquidation or dissolution; or
- (c) received a notice of deregistration under applicable statute or any communication from a Government Agency that might lead to such a notice or applied for such a deregistration.

2.2 No winding-up process

No petition or other process for winding-up, liquidation or dissolution has been presented or threatened in writing against the Vendor and, so far as the Vendor is aware, there are no circumstances justifying a petition or other process.

2.3 No receiver or manager

No receiver, receiver and manager, statutory manager, judicial manager, liquidator, administrator or like official has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the Vendor, and, so far as the Vendor is aware, there are no circumstances justifying such an appointment.

2.4 Arrangements with creditors

The Vendor has not entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them.

2.5 No writs

No writ of execution has issued against the Vendor or any of the Vendor's assets and there are no circumstances justifying such a writ.

2.6 Payment of debts

The Vendor is able to pay its debts as and when they fall due. The Vendor is not taken under applicable laws to be unable to pay its debts and has not stopped or suspended, or threatened to stop or suspend, payment of all or a class of its debts.

3. Information

The Disclosure Information will be, or is, when taken as a whole so that all relevant information in the Disclosure Information is taken into account with respect to the particular subject matter, materially accurate and is not materially misleading in its context, in each case, as at the earlier of the Agreement Date or the date of the relevant information, and subject to any limitations or qualifications contained in the relevant information.

4. Assets

The Assets:

- (a) are legally and beneficially owned by the Vendor and will on Transfer be free of all Encumbrances;
- (b) are in good working order;
- (c) have been properly maintained in accordance with all manufacturers' requirements;
- (d) meet the Requirements;
- (e) are fit for the purpose they are used for as at Transfer; and
- (f) are appropriate for their current use.

5. Intellectual Property

5.1 Sufficient rights

To the Vendor's knowledge, the Assets includes all the Intellectual Property Rights which are material to the operation and use of the Assets as at Transfer.

5.2 No breach of Intellectual Property

- (a) To the Vendor's knowledge, there has not been any infringement of any Intellectual Property Rights due to any use of the Assets.
- (b) The Vendor has not received written notice of any claim by any third party relating to any Intellectual Property Rights in the Assets.

5.3 No breach of Third Party intellectual property rights

To the Vendor's knowledge, the use of the Intellectual Property Rights in connection with the Assets as at Transfer does not breach or infringe any Intellectual Property Rights of any third party.

6. Contracts

- (a) The Vendor is not in material breach of any Contract.
- (b) There are no current material breaches of any Contract by the relevant counterparty.

7. Legal proceedings

7.1 No outstanding proceedings

There are no:

- (a) proceedings that are pending or, to the knowledge of the Vendor, threatened, and, to the knowledge of the Vendor, claims or investigations; or
- (b) outstanding judgments,

in each case against or directly involving the Vendor or any of the Assets, as to which there is a reasonable possibility of adverse determination and, if so determined, would be reasonably expected to affect the ability of the Vendor to enter into and perform its obligations under this Agreement.

7.2 Investigations

As at the Agreement Date, to the Vendor's knowledge, no investigation or inquiry by any Government Agency concerning the Assets is in progress or pending.

8. Government Agencies

8.1 Filings

All filings and returns required to be made by the Vendor in respect of the Assets with any Government Agency in the three years prior to the Transfer Date have been duly filed or made where failure to do so would prejudice the use of the Assets carried on as at Transfer.

8.2 Consents and licences

The Consents are all the consents, licences, permits, authorisations and applications required for ownership and use of the Assets, including for health and safety matters, and the Vendor is not in breach of the terms or conditions of the Consents.

Schedule 5: Purchaser's Warranties

1. Warranties

1.1 Due authorisation

The Purchaser:

- (a) has obtained all necessary authorisations for the execution, delivery and performance of its obligations under this Agreement in accordance with its terms;
- (b) has full power and capacity to enter into and perform its obligations under this Agreement.

1.2 Binding effect

The Purchaser's obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms, except as such enforceability may be limited by equitable principles, bankruptcy, insolvency, liquidation or other laws relating to creditors' rights and statutory limitations.

1.3 Incorporation

The Purchaser is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.