

Shareholders' Agreement

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

relating to

Whangarei Local Fibre Company Limited

Crown Fibre Holdings Limited

CFH

and

Whangarei Local Fibre Company Limited

Company

and

Northpower Limited

Partner

Date 13 December 2010

BELL GULLY

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This **Shareholders' Agreement** is made on 13 December 2010

- between** (1) **Crown Fibre Holdings Limited (CFH)**
- and** (2) **Whangarei Local Fibre Company Limited (Company)**
- and** (3) **Northpower Limited (Partner)**

Introduction

- A. The Company has been established to assist with the achievement of the UFB Objective and in particular, deploying, owning and operating the Network in the Coverage Area.
- B. The Shareholders have entered into this Agreement for the purposes of regulating the management of the Company, their relationships with each other and certain aspects of, and their dealings with, the Company.

It is agreed

1. Interpretation

1.1 Definitions

In this Agreement, unless specified otherwise:

A Shares means A shares in the capital of the Company having the rights and restrictions set out in the Constitution;

Access Seeker means a person who is obtaining, or has indicated to the Company a desire to contract for, the Services from the Company (and may include a Service Provider);

Accession Deed means a deed of accession in the form set out in Schedule 4 to this Agreement, or such other form as the parties may agree;

Accounting Date means initially the date of incorporation of the Company and then 30 June in each following year or in the case of the final Financial Year the date when the Company is liquidated in accordance with the Act;

Agreement means this agreement;

Agreement Date means the date of this Agreement;

Alternate Director has the meaning set out in clause 3.9;

Associated Person has the meaning given to that term in clause 1.3 of the Constitution;

B Shares means B shares in the capital of the Company having the rights and restrictions set out in the Constitution;

Board means the board of directors of the Company;

Book Value has the meaning given to that term in Schedule 6 of the Network Infrastructure Project Agreement;

Business Day means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Whangarei;

Business Plan means the business plan for the Company prepared in accordance with clause 5.3 from time to time and approved by the Shareholders in accordance with clause 5.3(e) (including as varied or modified from time to time in accordance with 5.3(g));

CFH Put Option has the meaning set out in clause 15.2(a);

CFH Director means a director of the Company appointed (or deemed to have been appointed) by CFH under clause 3.7(a)(i) and, unless otherwise stated, includes a duly appointed alternate of such a director;

Change of Control Event means, where a Shareholder is a company or body corporate, any one or more of the following events occurs in relation to it (whether by any one transaction or by a series of related transactions completed after the date on which that Shareholder acquired the legal or beneficial interest in any Share):

- (a) the transfer of the legal or beneficial ownership of, or of any interest in, any shares in the Shareholder, or any holding company of the Shareholder, which:
- (i) alters the legal or beneficial ownership of 50% or more of the number of shares in the capital of the Shareholder or such holding company; or
 - (ii) alters the legal or beneficial ownership of shares in the Shareholder or such holding company carrying 50% or more of the voting rights at any general meeting of the Shareholder or such holding company respectively; or
 - (iii) alters the legal or beneficial ownership of shares in the Shareholder or such holding company allowing the holder of those shares to appoint a director or directors having (in aggregate) 50% or more of the voting rights at any directors' meeting of the Shareholder or such holding company respectively; or
 - (iv) alters the legal or beneficial ownership of shares in the Shareholder or such holding company carrying an entitlement to receive 50% or more of any dividend or distribution declared by the Shareholder or such holding company; or
- (b) where the Shareholder is a company that is publicly listed on a stock exchange, if a person and/or its Associated Persons becomes a holder of a relevant interest (as defined in the Constitution) in 40% or more of the voting securities of that Shareholder; or
- (c) the happening of any other event which results in or causes a change in the effective control of the Shareholder or any holding company of the Shareholder, directly or indirectly;

Change of Control Shareholder has the meaning set out in clause 13.1(a)(ii);

Companies Act means the Companies Act 1993;

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;

Concession Period means the period commencing on the date the Company is incorporated and ending on the tenth anniversary of the date of the Company's incorporation;

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

Constitution means the constitution of the Company in the form attached to this Agreement as Annexure D, as amended from time to time in accordance with the Companies Act, the Constitution and this Agreement;

Coverage Area means the Whangarei area as identified in the map set out in Annexure E plus any greenfield areas that arise in, or are adjoining, that area and such other areas as agreed by CFH and the Partner;

Crown means Her Majesty the Queen acting in right of New Zealand;

Crown Ownership Monitoring Unit means the Crown Ownership Monitoring Unit established by New Zealand Treasury;

Deadlock means:

- (a) a failure of the relevant Shareholders to give unanimous consent in relation to a Reserved Matter; or
- (b) where the Board cannot pass a resolution because the votes are deadlocked, including as a result of the chairperson of the Board not exercising his or her vote;

Deed of Undertaking means the deed poll made by the Company in favour of the Crown, substantially in the form set out in Annexure F;

Depreciated Replacement Cost has the meaning given to that term in Schedule 6 of the Network Infrastructure Project Agreement;

Directors mean the directors of the Company from time to time;

Dispute means any dispute between any of the Shareholders in relation to this Agreement (including a claim or a difference in interpretation);

Drag Along Rights means the drag along rights set out in clause 16.1;

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

EBITDA means earnings before interest, tax, depreciation and amortisation as those terms are defined or given meaning under NZ IFRS;

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 Personal Property Securities Act 1999), 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;

End User has the meaning given to that term in the Telecommunications Act 2001;

End User-Specific Infrastructure means New End User-Specific Infrastructure and Existing End User-Specific Infrastructure;

Establishment Costs means the establishment costs as set out in the first Business Plan approved by the Shareholders as a Reserved Matter in accordance with clause 5.4 (which may include, for example, costs in respect of premises and furnishings, IT systems, working capital and plant, such as vehicles and other mobile equipment);

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

Fair Value means, in relation to Shares, the Fair Value of the relevant Shares determined under clause 17;

Financial Year means a period ending on and including an Accounting Date and, in the case of the first Financial Year, beginning on the Agreement Date and in all other cases, beginning on the day following the preceding Accounting Date;

Free Cash Flow means, in respect of the Company for any Financial Year, EBITDA for that Financial Year less an amount equal to the aggregate of the renewals and maintenance capital expenditure of the Company for that Financial Year;

Government means the Government of New Zealand;

Government Authority includes every Minister, department of state, government authority or other statutory, municipal, local or regulatory authority having jurisdiction or authority to perform or exercise functions or powers;

Government Share means the Government Share in the capital of the Company having the rights and restrictions set out in the Constitution;

Government Shareholder has the meaning given to it in Constitution;

Independent Director means a person appointed as a Director in accordance with clause 3.7(a)(iii);

Insolvency Event means, in relation to a Shareholder (other than CFH), the happening of any of the following events:

- (a) the presentation of an application for the liquidation of the Shareholder 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 the Shareholder's creditors;

- (c) the appointment of a liquidator, receiver, voluntary administrator, statutory manager, or similar official, to that Shareholder;
- (d) the suspension or threatened suspension by that Shareholder of the payment of the Shareholder's debts;
- (e) cessation by that Shareholder of its business in New Zealand;
- (f) the enforcement of any security against the whole or a substantial part of the Shareholder's assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;

Insolvent Shareholder has the meaning set out in clause 14.4(a);

Intending Seller has the meaning set out in clause 18.1;

Local Fibre Company means any company (other than the Company) in which CFH is, or has previously been, a Shareholder which provides services similar to the Services in a specific geographical area;

Management Agreement has the meaning set out in clause 5.6(a);

Material Adverse Event means the happening of any of the following events:

- (a) if the Partner is in material breach of any of its obligations under this Agreement or is in Material Breach (as defined in the Network Infrastructure Project Agreement) of any of its obligations under the Network Infrastructure Project Agreement relating to provision of the Design and Build (as defined in the Network Infrastructure Project Agreement) and:
 - (i) the Company has issued a Performance Notice, either:
 - (A) the Partner has not prepared a Remedial Plan in accordance with clauses 19.3 and 19.4 of the Network Infrastructure Project Agreement; or
 - (B) the Partner has failed to implement the relevant Remedial Plan in accordance with clause 19.5 of the Network Infrastructure Project Agreement,and that Material Breach of the Network Infrastructure Project Agreement is incapable of remedy or, if capable of remedy, is not remedied within ten Business Days after the Company or CFH has given notice to the Partner requiring remedy of that breach; and
 - (ii) in all other cases that material breach is incapable of remedy or, if capable of remedy, is not remedied within ten Business Days after the Company or CFH has given notice to the Partner requiring remedy of that breach; or
- (b) if the Company or CFH has exercised its step-in rights pursuant to clause 22 of the Network Infrastructure Project Agreement in relation to the provision of the Design and Build (as defined in the Network Infrastructure Project Agreement); or
- (c) if the Premises Connection Percentage:

- (i) at the expiry of the [REDACTED] period following the Agreement Date [REDACTED] and [REDACTED]
- (ii) at each of the first [REDACTED] (each [REDACTED])

falls below the relevant target premises connection percentage set out below:

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

- (iii) at any time during the period commencing immediately after the [REDACTED] and ending on the [REDACTED] falls below [REDACTED]
- (d) if the Company or CFH has terminated the Network Infrastructure Project Agreement for a Material Breach (as defined in the Network Infrastructure Project Agreement) or a Force Majeure Event (as defined in the Network Infrastructure Project Agreement), provided that such Material Breach or Force Majeure Event did not relate to the Services (as defined in the Network Infrastructure Project Agreement); or
- (e) if the Partner has, in the good faith opinion of CFH, been subject to, or is likely to be subject to, a material adverse change resulting in the Partner being unable to, or likely in the future to be unable to, satisfy its obligations under this Agreement or its obligations under the Network Infrastructure Project Agreement relating to provision of the Design and Build (as defined in the Network Infrastructure Project Agreement), and CFH has notified the Partner of its specific concerns and determined in good faith that those concerns have not been addressed by any response in relation to those concerns which is received from the Partner within five Business Days after CFH notifies the Partner;

Multi-Business Unit means Premises which comprise a multiple number of individual business units or premises;

Multi-Business Unit Infrastructure has the meaning given to that term in the Network Infrastructure Project Agreement;

Multi-Dwelling Unit means Premises which comprise a multiple number of individual residential dwellings;

Multi-Dwelling Unit Infrastructure has the meaning given to that term in the Network Infrastructure Project Agreement;

Passed for a Network Stage or for all Network Stages (as the context requires) has the meaning set out in the Network Deployment Plan and clause 1 of Annexure 1 of Schedule 6 of the Network Infrastructure Project Agreement (as relevant);

Network means the fibre-optic communications network which is, or will be, owned and/or operated by the Company from time to time;

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

Network Infrastructure Assets Transfer Agreement means the network infrastructure assets transfer agreement between the Company, the Partner and CFH to be entered into on or about the Agreement Date as amended from time to date;

Network Infrastructure Project Agreement means the network infrastructure project agreement between the Company, the Partner and CFH to be entered into on or about the Agreement Date;

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

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

New Partner means a third party who has existing infrastructure assets in New Zealand and is rolling-out ultra-fast broadband networks in multiple coverage areas;

NZ IFRS means the New Zealand equivalents to the International Financial Reporting Standards as adopted by the New Zealand Accounting Standards Review Board;

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

Ordinary Resolution means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;

Partner Call Option has the meaning set out in clause 15.1(a);

Partner Director means a director of the Company appointed (or deemed to have been appointed) by the Partner under clause 3.7(a)(ii) and, unless otherwise stated, includes a duly appointed alternate of such a director;

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

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

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

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

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

Premises Connection Percentage means = A/B

Where:

B = Number of Premises Passed in Network Stages that have been Accepted for a period of [REDACTED] prior to relevant calculation date; and

A = Number of Premises in B that:

- (i) are Connected to the Network; and
- (ii) have one or more End Users currently receiving Services;

Priority Users means businesses (of any size, including private sector health providers), schools (including state, state integrated and independent schools) and health service providers (hospitals and significant health care provider sites, for example emergency and medical centres, and radiologists);

Producer Price Index or **PPI** means Group J Communication Services (PPIQ.SNJ) of the producer price index for the New Zealand dollar published by Statistics New Zealand;

Related Company has the meaning given to it in section 2(3) of the Companies Act 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;

Related Party means, in relation to a particular person, any of the following persons:

- (a) in relation to a Company means, a Related Company of that person; and
- (b) in relation to an individual means, any person which controls that first person, is controlled by that first person, or is controlled by the same person which controls that first person;

Related Party Proposal means a proposal for the Company to:

- (a) enter into or vary any agreement, arrangement or understanding with a Shareholder or a Related Party of a Shareholder; or
- (b) exercise, enforce, waive rights in relation to, or not comply with, any such agreement, arrangement or understanding;

Relevant Premises Connection Percentage means if the Payment Milestone is satisfied:

- (a) during the first [REDACTED] following the Agreement Date, [REDACTED];
- (b) during the period commencing immediately after the [REDACTED] and ending on the [REDACTED];
- (c) during the period commencing immediately after the [REDACTED] and ending on the [REDACTED];
- (d) during the period commencing immediately after the [REDACTED] and ending on the [REDACTED];

(e) during the period commencing immediately after the [REDACTED] and ending on the [REDACTED] and

(f) during the period commencing immediately after the [REDACTED] and ending on the [REDACTED]

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

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

Reserved Matter means a matter specified in Schedule 3;

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

Services means the services to be provided by the Company in accordance with Schedule 1;

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

Share means an A Share, B Share, ordinary share, the Government Share and any other share in the Company from time to time (as the context requires) on issue;

Shareholder means a person that is from time to time a registered holder of Shares who is a party to this Agreement whether as an original party or by acquiring Shares and executing and delivering an Accession Deed in accordance with this Agreement but at all times excludes the Government Shareholder;

Tag Along Rights means the tag along rights set out in clause 16.2;

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

Third Party Buyer means a bona fide third party purchaser who is unrelated and not an Associated Person of the Shareholder proposing to dispose of their Shares;

Total Voting Shares means the total number of Shares entitled to vote at a general meeting of Shareholders of the Company;

UFB Objective means the Government's objective 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;

Warranties means the warranties set out in Schedule 5; and

Wholesale Services Agreement means a wholesale services agreement between the Company and an Access Seeker.

1.2 Interpretation

(a) Network Infrastructure Project Agreement

- (i) Capitalised terms used in this Agreement but not defined in clause 1.1 shall, unless the context otherwise requires, have the meaning given to those terms in the Network Infrastructure Project Agreement.
- (ii) In particular, the terms: CPPP, CPPP_C, CPPP_P, CPPP_{L2}, CPPC_{CAP}, CPPC_{AVG}, CPPC_{L2}, CPPC_{MD} and N_{passed} shall for the purposes of this Agreement have the values set out in clause 1 of Annexure 1 of Schedule 6 of the Network Infrastructure Project Agreement, as adjusted from time to time in accordance with clauses 2 and 3 of Annexure 1 of Schedule 6 of the Network Infrastructure Project Agreement.

(b) General

In this Agreement, unless the context otherwise requires:

- (i) a **material adverse change** in a person (or group of persons) is a reference to a material adverse change or prospective material adverse change or any development which is reasonably likely to involve a material adverse change or a prospective material adverse change:
 - (A) in that person's (or group of persons') condition (financial, operation, legal or otherwise), earnings, business affairs, solvency, credit rating, management, prospects, operations or in the consolidated financial condition or operations of it or any of its related companies; or
 - (B) in that person's (or group of persons') ability or willingness to perform its material operations under any material agreement to which it is a party, whether or not arising in the ordinary course of business;
- (ii) any **legislation** includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (iii) a **party** to this Agreement or another agreement includes its successors and its permitted assignees and transferees;
- (iv) a **quarter** means each three calendar month period ending on 31 March, 30 June, 30 September and 31 December and **quarterly** has a corresponding meaning;
- (v) a reference to a **clause, schedule or annexure** is a reference to a clause in, or schedule or annexure to, this Agreement;
- (vi) the **singular** includes the plural and vice versa, and a gender includes each other gender;
- (vii) the words **including, includes or for example** when introducing an example do not limit the meaning of the words to which the example relates;
- (viii) the words **arm's length** mean that the contractual relationships between the parties do not include elements that the parties would usually omit, and do not

omit elements that the parties would usually include, if the parties were acting independently;

- (ix) **headings** are to be ignored in construing this Agreement;
- (x) references to **currency** are to New Zealand currency; and
- (xi) references to **dates** and **times** are to dates and times in New Zealand.

1.3 **No contra proferentem**

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

1.4 **Government Share**

For the avoidance of doubt, unless expressly provided in this Agreement, none of the terms and conditions set out in this Agreement relating to Shares shall apply to or in respect of the Government Share.

2. **Objectives and activities**

2.1 **Objectives**

The overriding objectives of the Company are as set out in clause 4.1 of the Constitution.

2.2 **Permitted scope of activities**

The Company's only business operations will be to conduct the activities set out in clause 4.2(a) of the Constitution. In undertaking such business operations, the Company must comply with the terms of the Constitution, including clause 4.3 of the Constitution.

2.3 **Shareholders responsibility**

The Shareholders acknowledge and agree that they will procure that the Company complies with the terms of the following (provided that any failure by the Company to comply will not be deemed to be a breach by any Shareholder of this obligation):

- (a) this Agreement;
- (b) the Deed of Undertaking; and
- (c) any Wholesale Services Agreement to which the Company is a party.

2.4 **Restricted activities**

The Company must not provide any services including any Retail Services (using the Network or otherwise) other than the Services.

2.5 **Services and pricing**

- (a) The Company undertakes and agrees that it is bound by the provisions of Schedule 1, and, notwithstanding that CFH may cease to be a Shareholder, it will continue to be bound by the terms of Schedule 1 in accordance with clause 5.10 of the Constitution.
- (b) On the Agreement Date, the Company will deliver to the Crown a duly executed original of the Deed of Undertaking.

2.6 **Pilot Project Assets**

Subject to obtaining the prior written consent of CFH and the Partner, which must not be unreasonably withheld, the Company will acquire some or all of the Pilot Project Assets. The terms of any purchase of Pilot Project Assets by the Company must be approved by CFH and the Partner (both acting reasonably) and it is anticipated by the parties that such acquisition will be funded in a manner consistent with Schedule 2.

3. **Governance**

3.1 **Management of the Company**

(a) **Responsibility for direction and management**

The Board is responsible for the overall direction and management, and formulation of policies, of the Company.

(b) **Shareholders not to exercise Board's rights**

Except as specifically set out in this Agreement, the Constitution and the Companies Act, the Shareholders may not exercise rights that are properly within the Board's authority.

3.2 **Maximum number of Directors**

The number of Directors must not at any time exceed five.

3.3 **Concession Period Board composition**

During the Concession Period, the Board shall comprise:

- (a) up to two Directors appointed by CFH; and
- (b) up to two Directors appointed by the Partner, one of whom must have relevant telecommunications industry experience; and
- (c) up to one Independent Director appointed by mutual agreement of CFH and the Partner.

3.4 **Initial Directors**

- (a) The initial Directors shall be:
 - (i) Graham Mitchell and Michael Sean Wynne, who will each be deemed to be a CFH Director; and

- (ii) Mark Gatland and Nicole Davies-Colley, who will each be deemed to be a Partner Director.
- (b) The first Independent Director will be appointed within 40 Business Days of the Agreement Date in accordance with clause 3.7(a)(iii).

3.5 Post Concession Period Board composition

After the Concession Period the Shareholders will change the composition of the Board so that each Shareholder will be able to appoint, as closely as possible, the same proportion of the Board as the Shares that such Shareholder owns bears to the total Shares on issue at that time and agree to amend this Agreement and the Constitution to reflect that change subject to the following restrictions:

- (a) for such time as CFH holds at least one Share, it will continue to have Director appointment rights for an appropriate proportion of the Board, which at a minimum shall entitle CFH to appoint one Director so long as it holds at least one Share;
- (b) at all times at least one of the Partner Directors must have relevant telecommunications industry experience; and
- (c) if and for so long as a Shareholder or a related party or Associated Person of a Shareholder owns or controls a business which provides Telecommunications Services other than the Services, then the requirements for the composition of the Board (including the chairperson) during the Concession Period under clauses 3.7 and 3.8 will continue to apply.

3.6 Directors ability to act

The Shareholders must procure that any Director appointed to the Board is of good character and has not been convicted of any indictable offence, including any crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961). If the Shareholders become aware that a Director, already appointed to the Board, has been convicted of any indictable offence, the Shareholders will procure that that Director is removed or resigns from his or her position as a Director.

3.7 Method for appointment and removal of Directors

- (a) Subject to the limitations in clauses 3.2 and 3.3:
 - (i) CFH may at any time by written notice to the Company appoint a person as a Director and may similarly remove from office any Director that it has previously appointed under this clause 3.7(a)(i) or who is deemed to be a CFH Director under clause 3.4(a)(i);
 - (ii) the Partner may at any time by written notice to the Company appoint a person as a Director and may similarly remove from office any Director that it has previously appointed under this clause 3.7(a)(ii) or who is deemed to be a Partner Director under clause 3.4(a)(ii); and
 - (iii) subject to clause 3.7(b) and clause 3.7(c), CFH and the Partner may at any time by written notice to the Company signed by both of them appoint a person as the Independent Director and may similarly remove from office any Director that they have previously appointed under this clause 3.7(a)(iii) or who is deemed to be an Independent Director under clause 3.4(b). A person will be independent if the person:

- (A) is not an executive officer of the Company;
- (B) is not an Associated Person of either CFH or the Partner; and
- (C) does not have any direct or indirect interest or relationship either with CFH, the Partner or any other person that could reasonably influence, in a material way, that person's decisions in relation to the Company.

- (b) If any person ceases to satisfy the requirements of being independent as set out in clause 3.7(a)(iii), CFH and the Partner will immediately issue a written notice to the Company removing such person as the Independent Director.
- (c) If any person holding the office of Independent Director resigns or ceases to satisfy the requirements of being independent as set out in clause 3.7(a)(iii) and has been removed in accordance with clause 3.7(b), CFH and the Partner will agree a new person to be appointed as the Independent Director in accordance with clause 3.7(a)(iii). If CFH and the Partner can not agree on the person to be appointed as the Independent Director (i) within ten Business Days of the date on which the prior Independent Director ceased to hold office or (ii) by the date on which the Independent Director was required to be appointed pursuant to clause 3.4(b), each of CFH and the Partner will nominate (by notice in writing to the other) one person to be the Independent Director and, on application by either CFH or the Partner, the President (or in the President's absence his or her deputy) for the time being of the New Zealand Institute of Directors will determine whether the nominee of CFH or the nominee of the Partner shall be the Independent Director. In making such determination, the President (or in the President's absence his or her deputy) for the time being of the New Zealand Institute of Directors shall take into account the relevant experience and skills of potential candidates including their knowledge of the telecommunications industry.
- (d) Section 156 of the Companies Act shall not apply to the Company.

3.8 Chairperson

- (a) During the Concession Period, the chairperson will be the person from time to time holding office as the Independent Director. If at any time there is no Independent Director, the chairperson shall be appointed by a resolution of the Board.
- (b) After the Concession Period has ended, the chairperson will be the person appointed as such by the Board from time to time.

3.9 Alternate Directors

Each Director shall be entitled, by notice in writing to the Company, to appoint any person who is not already a Director as an alternate director (an **Alternate Director**) for any one or more meetings of the Directors and may revoke any such appointment at any time in the same manner. An Alternate Director will also cease to be an Alternate Director on the occurrence of an event or circumstances relating to that Alternate Director which, if the Alternate Director were a Director, would under the Constitution require the Alternate Director to cease holding office as a Director. Any Alternate Director appointed by the Independent Director must also satisfy the requirements for independence set out in clause 3.7(a)(iii).

3.10 Board meetings

(a) Frequency

Meetings of the Board are to be convened and held monthly on an agreed schedule (unless the Board determines otherwise).

(b) Notice

Wherever practicable, at least five Business Days' notice of each meeting of the Directors shall be given to each Director (and any Alternate Director) entitled to attend and the notice shall (where practicable and appropriate) be accompanied by an agenda and relevant papers setting out in such reasonable detail as may be practicable in the circumstances the matters to be considered at the meeting.

3.11 Quorum for Board meetings

- (a) Subject to clause 25.4(b) of the Constitution, a quorum for any Board meeting is a majority of the Directors being present or represented by an Alternate Director, provided that at least one CFH Director and at least one Partner Director is present or represented by an Alternate Director.
- (b) Where clause 26.4(b) of the Constitution prevents Partner Directors from attending a Board Meeting, or part of a Board meeting, the quorum for such a Board meeting, or part of a Board meeting, is a majority of the Directors who are not Partner Directors.
- (c) If a quorum is not present at a meeting of the Board at the time when any business is considered, the meeting shall be reconvened for another date and time, provided that at least two Business Days' notice of the reconvened meeting is given (unless all the Directors agree otherwise). At the reconvened meeting, the Director or Directors present or represented by an alternate will constitute the quorum.
- (d) A Director is regarded as present for the purposes of a Board quorum if he (or his Alternate Director) attends by telephone or by video conference or similar telecommunication device allowing persons participating in the meeting to simultaneously hear each other.

3.12 Directors' voting rights

(a) Directors' votes

- (i) Subject to paragraph (ii) below, each Director is entitled to one vote on a Board resolution.
- (ii) If:
 - (A) a CFH Director is not present or represented by an Alternate Director at a Board meeting, another CFH Director or his or her Alternate Director who is present may exercise the vote of that absent CFH Director in addition to that other Director's own vote (so that at all times the Directors (or Alternate Directors) representing CFH who are present at the meeting can cast all votes that could be cast by all CFH Directors); or
 - (B) a Partner Director is not present or represented by an Alternate Director at a Board meeting, another Partner Director or his or her Alternate Director who is present may exercise the vote of that absent Partner Director in addition to that other Director's own vote (so that at all times

the Directors (or Alternate Directors) representing the Partner who are present at the meeting can cast all votes that could be cast by all Partner Directors).

(b) Chairperson has no casting vote

The chairperson is not entitled to a casting vote at any meeting of the Board.

3.13 Board resolutions

A resolution of the Board is passed if a majority of the votes cast are in favour of it.

3.14 Written Board resolutions

A resolution in writing signed by all of the Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

3.15 Directors' remuneration and other benefits

(a) Remuneration to be approved

No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration:

- (i) has been authorised by an Ordinary Resolution; and
- (ii) complies with the Crown Ownership Monitoring Unit's guidelines from time to time.

(b) Expenses

Subject to the Crown Ownership Monitoring Unit's guidelines from time to time and any applicable Board policy concerning expenses, each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by that Director in connection with the Director's attendances at Board or Shareholder meetings or otherwise in connection with the Company's business.

3.16 Indemnity and insurance for Directors and employees

(a) Full Indemnification

The Company shall enter into appropriate arrangements as soon as practicable to indemnify Directors and senior executives of the Company to the fullest extent permitted by the Companies Act.

(b) Insurance

The Company shall take out and, at all times maintain, appropriate directors' and officers' liability insurance for its Directors and senior executives as permitted by the Companies Act.

3.17 Transactions with the Company

(a) Related Party Proposals

Subject to the Companies Act, if a Shareholder or a Related Party of a Shareholder proposes to implement a Related Party Proposal, that Related Party Proposal:

(i) At arm's length

must be on arm's length terms;

(ii) Interested Director may not vote

subject to paragraph (b) below, is not to be voted on by any Director appointed by that Shareholder or a Related Party of that Shareholder; and

(iii) Approval by Directors

is to be approved by all Directors, other than each Director who is disqualified from voting under clause 3.17(a)(ii) above.

(b) If all Directors disqualified from voting

If all of the Directors would, but for this clause 3.17(b), be disqualified from voting under paragraph (a)(ii) above on a particular agreement or decision, then all Directors may vote on that agreement or decision.

3.18 Employees, independent contractors and agents

- (a) The Company acknowledges and agrees that prior to entering into any form of arrangement relating to the employment of an employee or contracting with an independent contractor or agent to provide services to the Company, the Company will conduct an independent criminal history check of that person with the Ministry of Justice or any other associated body.
- (b) The Company must not employ, in any way, a person who has previously been convicted of an indictable offence, including a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961).
- (c) If an employee of the Company or an independent contractor or agent providing services to the Company is convicted of such an indictable offence the Company will, to the extent permitted by law, use its reasonable endeavours to remove that person from the employment of, or as an independent contractor or agent providing services to, the Company and to limit any reputational risk to the Company arising from such employment.

4. Partner's undertakings

The Partner undertakes to both the Company and CFH that it will use all reasonable endeavours to:

- (a) assist the Company to maximise Connections to the Network at all times;
- (b) in accordance with, and as contemplated by, the Network Infrastructure Project Agreement and Network Deployment Plan:

- (i) ensure that the Company is able to prioritise access to, and Connections by, Priority Users to the Network;
 - (ii) ensure that the Company is able to meet the [REDACTED] minimum target of number of Premises Passed and able to be Connected to the Network set out in the Network Deployment Plan;
 - (iii) ensure that the Network milestones set out in the Network Deployment Plan relating to numbers of Premises Passed, and capable of being Connected, are met in accordance with the requirements of the Network Deployment Plan and the Network Infrastructure Project Agreement;
- (c) assist the Company to attract to the Network and establish relationships with Service Providers;
 - (d) seek to agree with all Service Providers that they migrate their End Users across to the Network by entering into arrangements with the Company;
 - (e) recommend to all Service Providers that the Network is the preferred Network; and
 - (f) assist the Company to make available wholesale products and services that Service Providers reasonably demand from time to time including, higher bandwidth products and next generation products,

in each case, without requiring the Partner to do anything inconsistent with its obligations under this Agreement, the Constitution, the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement.

5. Operation of the Company

5.1 Financial Year

The Company's balance date will be the Accounting Date or such other date agreed in writing by the Shareholders.

5.2 Auditors

The first auditors of the Company will be the Auditor-General.

5.3 Business Plan

(a) General

The Company must conduct its business in accordance with the then current Business Plan. The Business Plan will reflect the objectives and activities of the Company as set out in clause 2 and the requirements of the relevant Network Stages contained in the Network Deployment Plan.

(b) Form of Business Plan

Each Business Plan will be prepared on a rolling [REDACTED] basis and shall include:

- (i) a detailed annual budget and forecasts for the [REDACTED] covered by that Business Plan;

- (ii) a summary annual budget and forecasts for each of the [REDACTED] covered by that Business Plan; and
 - (iii) a marketing plan for the [REDACTED] covered by the Business Plan.
- (c) **Initial Business Plan**
- The initial Business Plan for the period from the Agreement Date to [REDACTED] is set out in Annexure A.
- (d) **Preparation of Business Plans**
- At least [REDACTED] prior to the end of each Financial Year, the Board shall submit to the Shareholders a draft Business Plan, substantially in the form set out in Annexure B of this Agreement, covering the next [REDACTED] commencing at the beginning of the next Financial Year.
- (e) **Approval of Business Plans**
- The Shareholders shall use all reasonable endeavours to agree and approve any draft Business Plan (being a Reserved Matter for the purposes of this Agreement) submitted in accordance with clause 5.3(d), with such amendments as they consider appropriate, in accordance with this clause 5.3 prior to the beginning of the first Financial Year covered by that Business Plan.
- (f) **Failure to agree Business Plan**
- If a draft Business Plan is not approved by the Shareholders by the commencement of the first Financial Year covered by that Business Plan, then pending such approval or, as the case may be, resolution of any matter in Dispute, the Business Plan for that Financial Year will comprise:
- (i) the undisputed items of the draft Business Plan (all of which will be deemed to be approved in accordance with clause 5.3(e)); and
 - (ii) in respect of the disputed items, the corresponding items (if any) contained in the approved Business Plan covering the preceding Financial Year will be substituted for those disputed items until they have been approved (and will be deemed to have been approved for the purposes of clause 5.3(e)).
- (g) **Variations**
- A Business Plan which has previously been approved by Shareholders may be modified or amended at any time in accordance with clause 5.3.

5.4 Reserved Matters

Each Reserved Matter must be determined only by the unanimous consent in writing of all the Shareholders, and the Company must not undertake any Reserved Matter unless such consent has first been obtained.

5.5 Dividend policy

- (a) Subject to the other provisions of this clause 5.5, the Company's dividend policy will be as follows:

- (i) [REDACTED]
 - (ii) payment of any dividend is subject to the Company continuing to meet the solvency test as defined in the Companies Act;
 - (iii) the level of dividend paid must take into account:
 - (A) the forecasted funding needs of the Company as set out in the then current Business Plan and the Business Plan for the next Financial Year;
 - (B) the Company's forecast and actual debt repayments and future capital requirements (taking into account the funding commitments of each of CFH and the Partner set out in this Agreement and the Network Infrastructure Project Agreement); and
 - (C) the potential impact of the dividend on the Company's credit rating (if any); and
 - (iv) interim dividends consistent with clause 5.5(a)(i) to (iii) may be authorised by the Board.
- (b) The payment of dividends (including any acquisition, cancellation or redemption of Shares by way of a share buy back or otherwise) by the Company must not be specifically funded out of any borrowing or other debt facilities available to the Company.
- (c) The Board may resolve that the Company pay a special dividend:
- (i) on the A Shares in accordance with the rights attaching to the A Shares set out in the Constitution; and
 - (ii) at the end of the Concession Period on the B Shares immediately before their conversion to Ordinary Shares to the extent that the Company then holds retained earnings in excess of those required to fund the Company's expected future financial commitments (such as any committed capital expenditure), working capital requirements and debt repayments.
- (d) The Board must, subject to the requirements of the Companies Act, resolve that in the circumstances described in clause 29.3(b)(i) of the Constitution the Company pay a special dividend on the A Shares in accordance with that clause and the Shareholders will procure that the Directors who they have appointed will, to the extent permitted by law, pass all resolutions and sign all certificates required to authorise the payment of such dividend.
- (e) The Partner acknowledges and agrees that it irrevocably waives its entitlement to receive any dividend of the kind referred to in clause 5.5(d) in respect of its A Shares and that the waiver set out in this clause 5.5(e) is, and is to be deemed to be, a notice of waiver for the purposes of section 53(3) of the Companies Act.

5.6 Management Agreement

- (a) Subject to the other provisions in this clause 5.6, the Company will enter into a management service agreement with the Partner for the provision of management and back office services (the **Management Agreement**) in accordance with the provisions of this clause 5.6.

- (b) Subject to clause 5.3(d), the Management Agreement must be on arm's length industry terms (in particular, in relation to pricing) and must include provisions dealing with:
- (i) the term of the Management Agreement, which shall initially be [REDACTED] with agreed renewal rights;
 - (ii) the pricing mechanism for all services to be provided by the Partner to the Company, including mechanisms for the review of such pricing;
 - (iii) the right of CFH and the Company to review the Partner's performance under the Management Agreement on a [REDACTED] basis;
 - (iv) CFH and the Company having audit rights in relation to the Partner for the purposes of verifying fees and other amounts paid or payable by the Company under the Management Agreement;
 - (v) the right for CFH and the Company to claim a refund to the Company of any fees and other amounts paid under the Management Agreement which are shown to be in excess of the agreed pricing mechanism;
 - (vi) the right for the Company to offset any refund to the Company, claimed under clause 5.6(b)(v), against any payments due to be paid by the Company to the Partner under the Network Infrastructure Project Agreement;
 - (vii) the termination of the Management Agreement if the Partner ceases to be a Shareholder;
 - (viii) that the Management Agreement is for the benefit of, and is directly enforceable by, CFH under the Contracts (Privity) Act 1982; and
 - (ix) while CFH is a Shareholder, CFH having the right to enforce the Company's rights under the Management Agreement if the Company does not take action to enforce such rights for any reason.
- (c) The terms of the Management Agreement (and any subsequent amendments) must be approved by CFH prior to the Company entering into the Management Agreement (or any subsequent amendments).
- (d) A list of the services to be provided by the Partner pursuant to the Management Agreement and the charges to be paid by the Company to the Partner for such services, is set out in Annexure G and must be reflected in the Management Agreement.

6. Funding

6.1 Partner's funding obligations

- (a) Subject to clause 6.1(b), the Partner will be responsible for funding those costs and expenses of the Company as set out in Schedule 2.
- (b) For the avoidance of doubt, the Partner will be responsible for any cost over-runs in relation to the acquisition by the Company of the Communal Infrastructure under the terms of the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement, such cost over-runs being equal to the actual cost of

building or acquiring the Communal Infrastructure less the product of N_{passed} and CPPP.

6.2 CFH's funding obligations

(a) Communal Infrastructure

Subject to clauses 6.2(b), 6.2(c), 6.2(d), 6.2(e) and 6.2(f), CFH will be responsible for funding the Communal Infrastructure costs and expenses of the Company as set out in Item 1 of Schedule 2.

(b) Minimum Connections Condition

Notwithstanding any other provision of this Agreement, if at the time of delivery of a Network Stage (excluding the first Network Stage) (the **Current Network Stage**), the Relevant Premises Connection Percentage has not been satisfied, CFH's obligations under clause 6.2(a) to provide funding to the Company for the acquisition of Communal Infrastructure in that Network Stage will be altered as follows:

- (i) subject to clause 6.2(b)(iii), at the time the relevant Payment Milestone for the Current Network Stage is satisfied, CFH will provide the following funding to the Company:

$(CPPP_C \times \text{the number of Premises actually Passed in the Current Network Stage}) \times (1 - \text{the Relevant Premises Connection Percentage (expressed as a decimal)})$;

(together the **Initial Cash Funding**); and

- (ii) subject to clause 6.2(b)(iii), at the time that the Relevant Premises Connection Percentage is satisfied, CFH must provide the following additional aggregate funding to the Company:

$(CPPP_C \text{ or } x \text{ the number of Premises actually Passed in that Current Network Stage}) - \text{the Initial Cash Funding}$; and

- (iii) except that no payment will be due under this clause 6.2(b), to the extent that the total number of Premises actually Passed for all Network Stages to date exceeds N_{passed} .

(c) Funding cap

- (i) Notwithstanding any other provision of this Agreement, the Network Infrastructure Project Agreement, the Network Infrastructure Assets Transfer Agreement or the Deed of Undertaking, the maximum amount of funding that CFH will be required to provide to the Company under this Agreement will not at any time exceed, in aggregate, the amount determined as follows:

$CPPP_C \times N_{Passed}$

- (ii) If the actual total costs incurred by the Company acquiring the Communal Infrastructure exceed the funding cap referred to in clause 6.2(c)(i) above, then any such additional funding must be provided solely by the Partner in accordance with the terms of the Network Infrastructure Project Agreement and CFH shall have no obligation whatsoever to provide any such funding (including under the Network Infrastructure Project Agreement or the Network Infrastructure Assets Transfer Agreement).

(d) **Timing restriction**

Notwithstanding any other provision of this Agreement, the Network Infrastructure Project Agreement, the Network Infrastructure Assets Transfer Agreement or the Deed of Undertaking, CFH will not be required to provide to the Company any funding relating to the build or acquisition of any Communal Infrastructure which occurs after 31 December 2019.

(e) **Suspension circumstances**

CFH's funding obligations under this Agreement shall automatically be suspended for such period as:

- (i) CFH is unable to fulfil any of its funding obligations under this Agreement as a result of CFH not receiving sufficient funding from the Government; or
- (ii) as the Partner or the Company is in material breach of this Agreement, the Network Infrastructure Project Agreement, the Network Infrastructure Assets Transfer Agreement or (in the case of the Company only) the Deed of Undertaking.

CFH will notify the Partner and the Company as soon as reasonably practicable after it becomes aware that this clause will apply.

(f) **Consequences of suspension**

(i) The obligations of CFH, the Partner and the Company under this Agreement (other than this clause 6.2(f)), the Network Infrastructure Project Agreement, the Network Infrastructure Assets Transfer Agreement and the Management Agreement shall automatically be suspended for the period of any suspension under clause 6.2(e)(i) and until the matters set out in clause 6.2(f)(ii) are agreed by the parties or clause 6.2(f)(iii) applies.

(ii) Where clause 6.2(f)(i) applies, the Shareholders will work together in good faith to determine an appropriate revised strategy for the Company and any amendments which may be necessary or desirable as a result of that revised strategy to this Agreement, the Constitution, the Network Infrastructure Project Agreement or the Network Infrastructure Assets Transfer Agreement. As part of such discussions, the Shareholders will consider:

- (A) whether the Network Deployment Plan should be amended to reflect:
 - a. the cashflow of the Company going forward, and in particular no funding of the Company by CFH;
 - b. the ability of the Company to fund payments required to be made under the Network Infrastructure Project Agreement; and
 - c. the Partner's model for the build of the Network in accordance with the Network Infrastructure Project Agreement and in particular, the returns to be derived by the Partner; and
- (B) whether adjustments should be made to the Charges (as that term is defined in the Network Infrastructure Project Agreement) to reflect any new Network Deployment Plan agreed by the parties.

For the avoidance of doubt, no Shareholder is under any obligation to agree any of the matters set out in this clause 6.2(f)(ii).

(iii) If the Shareholders are unable to reach agreement on an appropriate revised strategy for the Company under clause 6.2(f)(ii) within three months of the date on which the parties' obligations under this Agreement were suspended in accordance with clause 6.2(e)(i), and:

- (A) if CFH has provided less than █% of its maximum amount of funding under this Agreement as determined in accordance with clause 6.2(c), then the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement will, unless otherwise agreed by the parties to those agreements, be deemed to be terminated with immediate effect and the obligations of the parties under clause 6, 7, 8 and 9 will cease and the provisions of clauses 11 and 18 shall apply on the basis that the Concession Period has been completed; and
- (B) if CFH has provided █% or more of its maximum amount of funding under this Agreement as determined in accordance with clause 6.2(c), the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement will, unless otherwise agreed by the parties to those agreements, will continue in full force and effect, except that:

a. the Partner will assume CFH's funding obligations, subject to a maximum liability equal to █

b. the Partner will be issued A Shares in respect of any funding provided by the Partner in accordance with clause 6.2(f)(iii)(B)(a), with the number of A Shares to be issued calculated in the same manner as set out in item 1 of Schedule 2 in relation to CFH funding; and

c. the Network Deployment Plan (and if required, the Network Infrastructure Project Agreement) will be amended to reflect the decreased funding available to the Company.

6.3 **Timing of funding**

(a) **Network Infrastructure Project Agreement and Network Infrastructure Assets Transfer Agreement**

The Partner's funding obligations under items 1, 2, 3, 4 and 5 of Schedule 2 will be satisfied by the Partner delivering the New Communal Infrastructure, New Communal Layer 2 Infrastructure, the New End User-Specific Infrastructure, the Multi-Business Unit Infrastructure and the Multi-Dwelling Infrastructure to the Company in accordance with the terms of the Infrastructure Project Agreement and any Existing Communal Infrastructure, Existing Communal Layer 2 Infrastructure and Existing End User-Specific Infrastructure in accordance with the terms of the Network Infrastructure Assets Transfer Agreement. The A Shares and B Shares to be issued in respect of such funding will be issued in accordance with clause 7.4.

(b) **Other Funding**

In respect of all other funding set out in Schedule 2, the funding will be required to be provided in accordance with the timing set out in Schedule 2. The Company must provide the Partner or CFH (as applicable) with ten Business Days written notice detailing the amount of any cash funding to be provided by the Partner or CFH (as applicable) to the Company in accordance with Schedule 2, an explanation of why such funding is required and setting out the date on which the Partner or CFH (as applicable) must provide such cash funding (which must not be less than ten Business Days after the date of such notice). The A Shares or B Shares to be issued in respect of such funding will be issued in accordance with clause 7.4.

6.4 Concession Period

Clauses 6.1, 6.2 and 6.3 apply only during the Concession Period.

7. Issue of Shares in relation to funding obligations

7.1 A Shares and B Shares

A Shares and B Shares will be issued to CFH and the Partner (respectively) in consideration for CFH and the Partner satisfying their funding obligations in accordance with and as specified in Schedule 2. The number of A Shares and B Shares to be issued to CFH and the Partner (respectively) will be determined in accordance with Schedule 2.

7.2 Limitation on Share issues

Notwithstanding any other provision of this Agreement, no Shares will be issued to the Partner in relation to any funding the Partner provides in relation to cost over-runs where the actual total cost of acquiring the Company's:

- (a) Communal Infrastructure exceeds the aggregate of CPPP multiplied by N_{passed} ; and
- (b) Communal Layer 2 Infrastructure exceeds the aggregate of CPPP_{L2} multiplied by N_{passed} .

7.3 Issue Price of A Shares and B Shares

All A Shares and B Shares issued to CFH and the Partner in accordance with clause 7.1 will, subject to the requirements of the Companies Act, have an issue price of \$1.00 subject to any adjustment in accordance with clause 9.

7.4 Timing of issue

(a) Timing of issue

Subject to clause 7.4(b), A Shares and B Shares will be issued to CFH and the Partner immediately upon payment (or deemed payment in respect of funding described in clause 6.3(a)) of the relevant funding in accordance with clause 6.3.

(b) Timing for issue of B Shares

In relation to the issue of B Shares to the Partner in respect of funding provided in accordance with items 3 and 4 of Schedule 2, notwithstanding that such funding may already have been provided by the Partner through the delivery of End User-Specific Infrastructure, Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure in accordance with the Network Deployment Plan, the relevant B Shares will be issued

to the Partner on the first Business Day after the end of each quarter of the Financial Year.

7.5 Concession Period

This clause 7 applies only during the Concession Period.

8. Transfer of A Shares

8.1 Obligation to transfer

- (a) Subject to clause 8.1(b), when an Access Seeker requests the Company to provide services to a new End User and the relevant End User-Specific Infrastructure has been installed and acquired by the Company in accordance with the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement (if relevant) and the relevant End User is Connected and receiving Services, CFH will sell and the Partner will acquire that number of A Shares equal to CPPP_C multiplied by the relevant number of Premises Connected divided by the current purchase price for the A Shares as determined in accordance with clause 8.2, in accordance with this clause 8.
- (b) In the event that clause 6.2(f)(iii)(B) applies, all transfers of A Shares in accordance with clause 8.1(a) shall be suspended until such time as CFH is again able to fulfil its funding obligations under this Agreement.

8.2 Purchase price

The purchase price for each A Share to be transferred by CFH to the Partner pursuant to clause 8.1 will be \$1.00 per A Share, subject to any adjustment pursuant to clause 9.2.

8.3 Lowest price

For the purposes of section EW 32(3) of the Income Tax Act 2007, the parties agree that:

- (a) the purchase price in clause 8.2 (as adjusted, if applicable, in accordance with clause 9) 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 of the A Shares under clause 8.1, on the Agreement Date, if payment for the A Shares had been required in full at the time the first right in the contracted property (being the A Shares) was transferred;
- (b) the purchase price (as adjusted, if applicable, in accordance with clause 9) is the value of the A Shares; and
- (c) they will compute their taxable income for the relevant period on the basis that the purchase price under clause 8.2 (as adjusted, if applicable, in accordance with clause 9) includes no capitalised interest and they will file their tax returns accordingly.

8.4 Timing of transfer

Completion of the transfer of and payment for the A Shares pursuant to this clause 8 will take place contemporaneously on the first Business Day after the end of each quarter of the Financial Year.

8.5 Concession Period

This clause 8 applies only during the Concession Period.

9. Adjustments to values

9.1 Interpretation

References to an index number for a quarter is a reference to the final index number published for that quarter.

9.2 Adjustment principles

- (a) The following values 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 information is available:
 - (i) the purchase price for A Shares set out in clause 8.2; and
 - (ii) the issue price of A Shares and the B Shares in accordance with clause 7.
- (b) The adjustments to the values set out in clause 9.2(a) will be calculated by the Company and notified to the Shareholders in writing within 15 Business Days prior to the beginning of the relevant Financial Year.
- (c) The values adjusted pursuant to clause 9.2(a) will not be further adjusted if revisions to PPI for such quarters are subsequently made by Statistics New Zealand, but such revisions will be taken into account in the next adjustment pursuant to clause 9.2(a).
- (d) The parties acknowledge that adjustments under this clause 9 could result in an increase or decrease of the values referred to in clause 9.2(a).

9.3 Concession Period

This clause 9 applies only during the Concession Period.

10. Debt financing

- (a) The Company may obtain prudent levels of debt financing, as set out in the Business Plan and otherwise as determined appropriate from time to time by the Board. In determining the level of debt financing to be obtained by the Company, the Company will use all reasonable endeavours to ensure that the level of debt is commensurate with at least a Standard & Poor's "BBB" credit rating for the Company.
- (b) The Company may not use any debt funding for the purpose of funding any part of the Partner's funding obligations under clauses 6, 7 and 8 of this Agreement, provided that the Company's obligation to pay the cash component of payments to the Partner for delivering the End User-Specific Infrastructure, Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure to the Company contemplated by Schedule 2 may be funded by debt incurred by the Company.
- (c) The prior written consent of the Partner will be required to the terms and conditions of any debt facility agreements (including any required guarantees) and the Partner agrees that it will guarantee the obligations of the Company under any debt funding

arrangements from time to time, if required by the lender and on terms to be agreed between the Company, the lender and the Partner. For the avoidance of doubt, CFH will not be required in any way to guarantee the obligations of the Company under any debt funding arrangements.

11. Issue of further securities

11.1 Concession Period restrictions

During the Concession Period, the Board may not issue any Shares or other securities other than:

- (a) A Shares, B Shares or the Government Share; and
- (b) in the case of A Shares and B Shares, in accordance with clause 7 of this Agreement.

11.2 Pre-emptive rights for issues of Shares after the Concession Period

(a) First offer to existing Shareholders

Subject to clauses 11.2(a)(i) and 11.2(a)(ii), if the Company wishes to issue or allot any new Shares (**New Shares**) in the Company after the end of the Concession Period, the Company must, by prior notice in writing, offer to each Shareholder its pro rata entitlement of the total number of New Shares to be issued (the **New Share Offer**) provided that:

- (i) if any existing Shares do not have rights to receive an offer to acquire New Shares or have disproportionate rights to receive an offer to acquire New Shares, the offer to acquire New Shares must be made in accordance with the relative proportionate entitlements of all Shareholders; and
- (ii) fractional entitlements to New Shares must be disregarded.

(b) New Share offer

The notice containing the New Share Offer must specify:

- (i) the number, class and terms of the New Shares offered, including the number of New Shares to which the relevant offeree is entitled;
- (ii) the subscription price and payment terms (including the date on which the offeree must pay the subscription amount to the Company (**Subscription Date**)); and
- (iii) the date (being not less than 15 Business Days and not more than 30 Business Days or such longer period as may reasonably be required to obtain any necessary approvals or consents of any Government Authority) (the **Closing Date**) by which the offeree must give a notice to the Company containing the details set out in clause 11.2(c) (**Acceptance Notice**).

(c) **Acceptance Notice**

Each Acceptance Notice must state:

- (i) whether or not the offeree wishes to purchase the offeree's entitlement or some lesser number of New Shares; and
- (ii) if the offeree wishes to purchase all of the offeree's entitlement, whether or not the offeree also wishes to purchase any New Shares offered to, but declined by, other offerees (the **Declined New Shares**), and if so, the number of Declined New Shares the offeree wishes to acquire.

(d) **Allocation of Declined New Shares**

If, and to the extent that, an offeree does not accept their entitlement to New Shares under the New Share Offer their entitlement to New Shares will be used for satisfying requests for Declined New Shares received from other offerees upon the basis that the New Shares not claimed will be allocated to such offerees who have requested Declined New Shares in proportion to their existing shareholding, but no offeree will be allocated more Declined New Shares than the number requested by that offeree.

(e) **Notification of Allocation**

Within five Business Days of the Closing Date, the Company will send a notice to each Shareholder advising them of:

- (i) the allocation of New Shares amongst the Shareholders; and
- (ii) if that Shareholder has accepted the New Share Offer, the number of New Shares which the Shareholder has been allocated, the total subscription amount payable by that Shareholder to the Company and the Subscription Date.

(f) **Subscription**

On the Subscription Date:

- (i) each offeree who has been allocated Shares under the New Share Offer must pay the relevant subscription price for the New Shares allocated to it by the Company and any third party subscribing for New Shares in accordance with clause 11.2(g) must deliver to the Company an Accession Deed duly executed by that third party; and
- (ii) the Company must take all actions required to issue the New Shares to the relevant Shareholders.

(g) **CFH substitution right**

If CFH decides not to take up its pro rata entitlement to the New Shares, it will offer that entitlement to the Partner (and this clause 11.2 will apply to that offer to the Partner as if it were the Partner's pro-rata entitlement). If the Partner decides not to take up that offer, CFH may (subject to the requirements in clause 11.4 being complied with) arrange for a third party to subscribe for some or all those New Shares not taken up on the same terms and conditions. In those circumstances, CFH must provide a notice to the Company advising the details of the third party to whom the relevant New Shares are to be issued and CFH must procure that the third party delivers to the Company an Acceptance Notice in accordance with clause 11.2(c). Upon delivery of that Acceptance Notice to the Company, the relevant third party

(rather than CFH) will be deemed to be the accepting Shareholder for the purposes of this clause 11.2.

11.3 **Issues of New Shares to third parties after the Concession Period**

(a) **Offer to a third party**

If the offer for all of the New Shares is not accepted pursuant to clauses 11.2(a), 11.2(b) and 11.2(g), the Board may (but is not obliged to) offer any remaining New Shares to a third party provided that, while CFH is a Shareholder, such third party must first be approved in writing by CFH.

(b) **Conditions of offer**

Any offer made under clause 11.3(a), must be made:

- (i) on substantially the same terms as those offered to existing Shareholders under the New Share Offer and within the period ending 60 Business Days after the date that the last offer under clause 11.2(b) was rejected; and
- (ii) on the condition that the third party duly executes and delivers to the Company an Accession Deed.

11.4 **Accession Deed and approval**

The Board must not allot, issue or transfer any Shares to any person that is not already a Shareholder unless and until:

- (a) the Board has passed a resolution approving the proposed allottee or transferee (as relevant);
- (b) if at the time of such allotment, issue or transfer, CFH is a Shareholder, CFH has approved in writing the proposed allottee or transferee; and
- (c) the proposed allottee or transferee (as relevant) has executed, and delivered to the Company, an Accession Deed binding it to the terms and conditions of this Agreement (as may be modified by that Accession Deed).

11.5 **Existing rights of Shareholders**

- (a) The Shareholders acknowledge that any issue by the Company of further Shares ranking equally with, or in priority to, existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares provided the issue is made in accordance with this Agreement.
- (b) Each Shareholder acknowledges that if it does not participate in full in respect of any offer of Securities in accordance with clause 11.2, its interest in the Company may be diluted.

11.6 **Application to other securities issues and amended issue terms**

This clause 11 applies with the necessary changes:

- (a) if the terms upon which any New Shares are to be issued are changed after they are first offered to existing Shareholders under clause 11.2(a); and

- (b) to any proposed issue or allotment of securities by the Company (other than Shares).

12. Dealing with Shares

12.1 General restrictions

During the term of this Agreement:

- (a) no Shareholder may transfer any legal or beneficial interest in any of its Shares, or agree to do so (whether conditionally or otherwise), unless the transfer complies with this Agreement, the Constitution, the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement;
- (b) no Shareholder may create or permit to subsist an Encumbrance over any of its Shares without the prior consent of the other Shareholders;
- (c) no Shareholder may transfer any legal or beneficial interest in, and no person other than CFH or the Partner may acquire any legal or beneficial interest in, any Shares unless and until that proposed acquirer of a legal or beneficial interest in Shares has:
- (i) been approved by a resolution of the Board; and
 - (ii) if at the relevant time CFH is the holder of at least one Share, been approved in writing by CFH (such approval may be withheld by CFH in its absolute discretion); and
 - (iii) has signed and irrevocably delivered to the Company an Accession Deed binding it to the terms and conditions of this Agreement (as may be modified by that Accession Deed); and
- (d) notwithstanding any other provision of this Agreement, no Shareholder may transfer any legal or beneficial interest in any Shares to any person in contravention of clause 5.8 of the Constitution.

12.2 Permitted transfers

Notwithstanding any other provision in this Agreement but subject to clause 5.8 of the Constitution:

(a) **Unanimous approval**

except as otherwise set out in this clause 12.2, each Shareholder may, either during or after the Concession Period, transfer legal or beneficial ownership of its Shares with the unanimous prior written consent of each of the other Shareholders (which consent may be withheld at each other Shareholder's absolute discretion);

(b) **Transfer of A Shares to the Partner for End User Connections**

CFH may during the Concession Period, transfer A Shares to the Partner in accordance with clause 8;

(c) **Change of Control Event**

either during or after the Concession Period, CFH may sell any of its Shares to a third party under clause 13 and, if applicable, any of the Change of Control Shareholder's Shares may also be sold to the same third party under that clause;

(d) **Material Adverse Event**

either during or after the Concession Period, any of the Partner's Shares and, if applicable, CFH's Shares may be sold under clause 14.2;

(e) **Insolvency Event**

either during or after the Concession Period, CFH or, if applicable, a third party may acquire in accordance with clause 14.4 the Shares of the Insolvent Shareholder;

(f) **Exercise of Partner Call Option or CFH Put Option**

the Partner may, either during or after the Concession Period, acquire any of CFH's Shares under the exercise of either the Partner Call Option or the CFH Put Option;

(g) **Tag Along Rights and Drag Along Rights**

each Shareholder may, after the Concession Period, transfer Shares in accordance with the Tag Along Rights or the Drag Along Rights; and

(h) **Compliance with pre-emptive rights**

each Shareholder may, after the Concession Period, transfer Shares in accordance with the procedure set out in clause 18.

12.3 Security interest and power of attorney

(a) **Grant of security interest**

The Partner hereby grants CFH a security interest (as defined in the Personal Property Securities Act 1999) in all Shares held by it at any time. CFH may exercise its rights under the security interest created by this clause where a Change of Control Event, a Material Adverse Event or an Insolvency Event occurs and is continuing and in such circumstances:

- (i) may take possession of and sell those Shares;
- (ii) may, in the name of the Partner or otherwise, at any time, do anything that the Partner could do in relation to those Shares;
- (iii) has all the rights of a natural person in relation to those Shares for the purposes of exercising rights under this Agreement; and
- (iv) has all other rights conferred by law (including under Part 9 of the Personal Property Securities Act 1999) in relation to those Shares,

in each case, for the purposes of and in accordance with clause 12.2.

(b) **Share transfer form**

The Partner must, no later than five Business Days after the date of this Agreement, provide to CFH a duly executed share transfer form in respect of the Partner's Shares issued or to be issued under this Agreement, with the transferee and number of shares left blank. CFH will only use that share transfer form for the purposes of and in accordance with clause 12.2.

(c) **Further Assurance**

The Partner must do all such things and execute all such documents as are required by CFH to perfect or preserve its rights under the security interest created under this Agreement.

(d) **Appointment of CFH**

As additional security for the performance of its obligations under this Agreement, each other Shareholder irrevocably and unconditionally appoints CFH as its attorney to complete and execute such instruments for and on its behalf as the attorney in its absolute discretion considers necessary or desirable in order to implement any transfer of Shares undertaken in accordance with clause 12.2.

(e) **Ratification of acts**

Each other Shareholder agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment.

(f) **Indemnity**

Each other Shareholder agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under this appointment.

(g) **Termination**

This power of attorney shall remain in force until this Agreement is terminated in respect of the rights and obligations of the relevant Shareholder.

12.4 **Government Share**

- (a) For the avoidance of doubt, none of the arrangements set out in this clause 12 shall apply to or in respect of the Government Share.
- (b) The parties each acknowledge that the Government Share will be retained by the Government Shareholder even after CFH has ceased to be a Shareholder.
- (c) The Government Share will not convert into another class of Share or other security at any time.

12.5 **Initial public offering**

The Shareholders acknowledge and agree that if a Shareholder wishes to seek to conduct an initial public offering in respect of the Company after the Concession Period, the Shareholders will work together to appraise the merits of the terms of the proposed initial

public offering and determine whether it is appropriate for the Company and the Shareholders.

13. **Change of Control Event**

13.1 **CFH disposal and drag rights**

If a Change of Control Event occurs in relation to a Shareholder other than CFH (whether during or after the Concession Period) without the prior written consent of CFH (which CFH may withhold in its sole discretion), CFH will be entitled to:

(a) **CFH disposal and drag rights**

- (i) sell some or all of its Shares (at its absolute discretion) to a Third Party Buyer without having to comply with the restrictions in clause 18, but subject to the requirements of clause 13; and
- (ii) in connection with any sale of its Shares under clause 13.1(a), require the Shareholder subject to such Change of Control Event (the **Change of Control Shareholder**) to sell the same proportion of its Shares as CFH is selling (at CFH's absolute discretion) as part of that transaction (without having to comply with the restrictions in clause 18 but subject to the requirements of clause 13); or

(b) **CFH acquisition rights**

require the Change of Control Shareholder to sell all of its Shares to CFH (or a Related Party) at Fair Value (to be determined in accordance with clause 17) [REDACTED]

13.2 **Disposal Notice**

If CFH wishes to exercise all or any of its rights under clause 13.1(a), it must give a written notice (**Disposal Notice**) to the Change of Control Shareholder within 40 Business Days of CFH becoming aware of the Change of Control Event stating its intention to sell some or all of its Shares as a result of the Change of Control Event and specifying:

- (a) the proportion of its Shares that it proposes to sell (the **Relevant Shares**);
- (b) the sale price for the Relevant Shares;
- (c) the settlement date for the sale;
- (d) the other material terms and conditions of the proposed sale; and
- (e) the name of the Third Party Buyer,

and requiring the Change of Control Shareholder to sell the same proportion of its shares (the **Disposal Shares**) to the Third Party Buyer on the terms and conditions set out in the Disposal Notice (subject to clause 13.3) at the same time as CFH sells the Relevant Shares to the Third Party Buyer.

13.3 Same terms and conditions

The terms and conditions applying to the sale of the Disposal Shares must be no less favourable to the Change of Control Shareholder than the terms and conditions applicable to the sale of the Relevant Shares, including in respect of price per Share, the extent of any warranties and indemnities and the liability limitations to apply.

13.4 Execution of documents

The Change of Control Shareholder must sign all such documents necessary to sell its Disposal Shares to the Third Party Buyer.

13.5 Completion

Completion of the sale of the Disposal Shares must take place on the date specified by CFH in the Disposal Notice to the Change of Control Shareholder or on such later date as is necessary for any regulatory approvals for the implementation of the sale to be obtained, except that:

- (a) CFH may not specify a date that is less than 15 Business Days nor more than 100 Business Days after the date of the Disposal Notice; and
- (b) the date so specified by CFH shall be the same date as the date proposed for completion of the sale of the Relevant Shares, unless, in the case of the sale by the Change of Control Shareholder, that Shareholder, the Third Party Buyer and CFH agree otherwise.

13.6 Pre-emptive rights do not apply

If CFH issues a Disposal Notice, the pre-emptive rights under clause 18 shall not apply to any transfer of Shares by CFH or the Change of Control Shareholder to the Third Party Buyer under this clause 13.

13.7 No revocation

A Disposal Notice once given cannot be revoked or withdrawn except that the notice and all obligations under it shall lapse if for any reason CFH does not sell the Relevant Shares to the Third Party Buyer under the proposed transaction.

13.8 CFH acquisition rights

(a) Change of control notice

If CFH wishes to exercise its rights under clause 13.1(b), it must give a written notice (**Change of Control Acquisition Notice**) to the Change of Control Shareholder within 40 Business Days of CFH becoming aware of the Change of Control Event stating its intention to require the Change of Control Shareholder to sell some or all of its Shares under clause 13.1(b) and specifying:

- (i) the number of Shares the Change of Control Shareholder must sell; and
- (ii) the person who will acquire those Shares, being CFH (or a Related Party) or another Shareholder.

(b) Completion

Completion of the transfer of the Change of Control Shareholder's Shares the subject of the Change of Control Acquisition Notice must take place on the date 20 Business Days after the Fair Value is determined in accordance with clause 17.

14. Material Adverse Event or Insolvency Event

14.1 Suspension of certain rights

If a Material Adverse Event occurs and has not been remedied in full, then notwithstanding any other provision of this Agreement:

- (a) all rights attached to all of the Partner's Shares will be suspended (including the right to receive dividends and the ability to exercise any votes attaching to such Shares);
- (b) the Partner will not be entitled to transfer any of its Shares;
- (c) the Partner will have no right to appoint any Directors and all Partner Directors holding office will cease to have any voting rights and the Partner must procure the immediate resignation of all Partner Directors; and
- (d) CFH and any Shareholders, other than the Partner and Government Shareholder will solely be entitled to manage and operate the Company in order to achieve the UFB Objective as it applies to the Company and the Coverage Area.

14.2 Material Adverse Event

Notwithstanding any other provision in this Agreement, if a Material Adverse Event occurs, CFH may (without prejudice to any other rights it may have):

- (a) dispose of all (at CFH's absolute discretion) of its Shares to a Third Party Buyer without having to comply with the requirements under clause 18 and CFH will also have the right to require the Partner to dispose of the same proportion of its Shares as part of that same transaction and the provisions of clauses 13.2 to 13.8 shall apply with any necessary changes. For the avoidance of doubt, the Partner's Shares must be sold on the same terms and conditions as CFH's Shares (including as to price); or
- (b) require the Partner to transfer some or all of the Partner's Shares to CFH (or a Related Party) for a purchase price equal to the Fair Value of those Shares (as determined in accordance with clause 17) [REDACTED] to that Fair Value (or where the Material Adverse Event occurred due to a Force Majeure Event under the Network Infrastructure Project Agreement, without any discount to Fair Value), and clause 18 will not apply to that transfer.

14.3 Compulsory transfer

(a) Compulsory Transfer Notice

If CFH wishes to exercise its rights under clause 14.2(b), it must give a written notice (**Compulsory Transfer Notice**) to the Partner within 40 Business Days of CFH becoming aware of the occurrence of the Material Adverse Event stating its intention to require the Partner to transfer some or all of its Shares under clause 14.2(b) and specifying:

- (i) the number of Shares the Partner must transfer; and
- (ii) the person who will acquire those Shares, being CFH (or a Related Party).

(b) **Completion**

Completion of the transfer of the Partner's Shares the subject of the Compulsory Transfer Notice must take place on the date 20 Business Days after the Fair Value is determined in accordance with clause 17.

14.4 **Insolvency Event**

(a) **Right to acquire**

Notwithstanding any other provision of this Agreement, if any Insolvency Event occurs in relation to a Shareholder (the **Insolvent Shareholder**) other than CFH, CFH will be entitled to acquire some or all of the Insolvent Shareholder's Shares (or nominate a Related Company or Third Party Buyer to acquire those Shares) for a purchase price equal to Fair Value (as determined in accordance with clause 17) [REDACTED] of the Fair Value and clause 18 will not apply to that transfer.

(b) **Insolvency Acquisition Notice**

If CFH wishes to exercise its rights under clause 14.4(a), it must give a written notice (**Insolvency Acquisition Notice**) to the Insolvent Shareholder within 40 Business Days of CFH becoming aware of the Insolvency Event stating its intention to require the Insolvent Shareholder to sell some or all of its Shares under clause 14.4(a) and specifying:

- (i) the number of Shares the Insolvent Shareholder must sell; and
- (ii) the person who will acquire those Shares, being CFH (or a Related Party).

(c) **Completion**

Completion of the transfer of the Insolvent Shareholders' Shares the subject of the Insolvency Acquisition Notice must take place on the date 20 Business Days after the Fair Value is determined in accordance with clause 17.

15. **Call and put options**

15.1 **Partner Call Option**

(a) **Grant of option**

In consideration for the payment of \$1.00 by the Partner to CFH, receipt of which is hereby acknowledged by CFH, CFH grants the Partner the call option set out in this clause 15.1 (the **Partner Call Option**).

(b) **Term of option**

The Partner Call Option will become exercisable by the Partner if CFH ceases to have a beneficial interest in 25% or more of the Total Voting Shares.

(c) **Exercise Notice**

If the Partner Call Option becomes exercisable, the Partner may exercise the Partner Call Option by giving a written notice to CFH at any time requiring CFH to sell or procure the sale of all of the Shares in which CFH has a beneficial interest, free from all Encumbrances and together with all rights attaching to them, at the Fair Value determined as at the date of such notice.

(d) **Fair Value**

CFH and the Partner will use all reasonable endeavours to agree the Fair Value for the relevant Shares for the purposes of clause 15.1(c) as soon as practicable and on the basis of the principles set out in clause 17(c). If they are unable to agree on that Fair Value within ten Business Days of the date the notice is given under clause 15.1(c) above, then either CFH or the Partner may refer the matter for determination under clause 17 (with the Fair Value determined under that clause being deemed to be the purchase price for the relevant Shares).

(e) **Completion of sale**

The sale of all of CFH's Shares must be completed within five Business Days of the date that the Fair Value for those Shares is agreed by CFH and the Partner or determined under clause 17.

This clause 15.1 will be deemed to apply to each other Shareholder (except the Partner) in addition to CFH, where that other Shareholder holds less than 10% of the Total Voting Shares.

15.2 **CFH Put Option**

(a) **Grant of option**

In consideration for the payment of \$1.00 by CFH to the Partner, receipt of which is hereby acknowledged by the Partner, the Partner grants CFH the put option set out in this clause 15.2 (the **CFH Put Option**).

(b) **Term of option**

The CFH Put Option will become exercisable by CFH if CFH ceases to have a beneficial interest in 10% or more of the Total Voting Shares.

(c) **Exercise notice**

If the CFH Put Option becomes exercisable, CFH may exercise the CFH Put Option by giving written notice to the Partner at any time requiring the Partner to purchase all of the Shares in which CFH has a beneficial interest, free from all Encumbrances and together with all rights attaching to them, at the Fair Value determined as at the date of such notice.

(d) **Fair Value**

CFH and the Partner will use all reasonable endeavours to agree the Fair Value for the relevant Shares for the purposes of clause 15.2(c) as soon as practicable. If they are unable to agree on that Fair Value within ten Business Days of the date the notice is given under clause 15.2(c), then either CFH or the Partner may refer the matter for determination under clause 17 (with the Fair Value determined under that clause being deemed to be the purchase price for the relevant Shares).

(e) **Completion of sale**

The sale of the relevant Shares must be completed within five Business Days of the date that the Fair Value for those Shares is agreed or determined under clause 17.

This clause 15.2 will be deemed to apply to each other Shareholder (except the Partner) in addition to CFH, where that other Shareholder holds less than 10% of the Total Voting Shares.

16. Tag and drag along rights

16.1 Drag Along Rights

(a) **Drag Along Notice**

If after the Concession Period has ended a Shareholder (the **Drag Shareholder**) is proposing to sell the legal and beneficial interest in all of its Shares (the **Offered Shares**) on arm's length terms to a Third Party Buyer, then subject to the Drag Shareholder first complying with clause 18, the Drag Shareholder may give a notice (**Drag Along Notice**) to each other Shareholder who holds [REDACTED] of the total Shares (the **Dragged Shareholders**) stating its intention to sell all of its Shares to the Third Party Buyer and:

- (i) specifying the price (**Sale Price**) for the Dragged Shares (as defined below);
- (ii) specifying the proposed settlement date (**Settlement Date**);
- (iii) specifying the other material terms and conditions of the proposed sale of the Dragged Shares (as defined below);
- (iv) specifying the name of the Third Party Buyer; and
- (v) attaching a copy of the offer by the Third Party Buyer,

and requiring each Dragged Shareholder to sell all of its Shares (**Dragged Shares**) to the Third Party Buyer on the terms and conditions set out in the Drag Along Notice (but subject to clause 16.1(b)) at the same time as the Drag Shareholder sells its Shares to the Third Party Buyer.

(b) **Same terms and conditions**

The terms and conditions applying to the sale of the Dragged Shares must be no less favourable to the Dragged Shareholders than the terms and conditions applicable to the sale of the Offered Shares, including in respect of price per Share, the extent of any warranties and indemnities and the liability limitations to apply.

(c) **Execution of documents**

Each Dragged Shareholder must sign all such documents necessary to sell its Dragged Shares to the Third Party Buyer in accordance with the terms of the Drag Along Notice.

(d) **Completion**

(i) Completion of the sale of the Dragged Shares must take place on the Settlement Date or such later date as is necessary for any regulatory approvals that are required for the implementation of the sale to be obtained, except that:

- (A) the Drag Shareholder may not specify a date that is less than 15 Business Days nor more than 100 Business Days after the date of the Drag Along Notice; and
- (B) the date so specified by the Drag Shareholder shall be the same date as the date proposed for completion of the sale of the Offered Shares, unless, in the case of the sale by any particular Dragged Shareholder, that Dragged Shareholder, the Third Party Buyer and the Drag Shareholder agree otherwise.

(ii) On the settlement date specified in the Sale Notice:

- (A) each Dragged Shareholder must deliver to the Third Party Buyer title to the Dragged Shares free of all Encumbrances; and
- (B) the Drag Shareholder will procure that each of the Dragged Shareholders receives the amount calculated as the Sale Price per Share, multiplied by the number of Shares sold by that Dragged Shareholder.

(e) **Pre-emptive rights do not reapply**

If the Drag Shareholder has complied with the pre-emptive rights in clause 18 before issuing a Drag Along Notice, the pre-emptive rights under clause 18 shall not then reapply to any transfer of Shares by the Drag Shareholder or the Dragged Shareholders to the Third Party Buyer under this clause 16.1.

(f) **No revocation**

A Drag Along Notice once given cannot be revoked or withdrawn except that the notice and all obligations under it shall lapse if for any reason the Drag Shareholder does not sell its Shares to the Third Party Buyer under the proposed transaction.

16.2 Tag Along Rights

(a) **Sale Notice**

If after the Concession Period has ended a Shareholder (the **Tag Shareholder**) intends to sell some or all of its Shares to a Third Party Buyer and:

- (i) the Tag Shareholder has first complied with the terms of clause 18 and the other Shareholders have duly elected not to acquire the relevant Shares in accordance with their rights under clause 18; and
- (ii) provided that the Tag Shareholder has not served a Drag Along Notice in accordance with clause 16.1,

then the Tag Shareholder must give a notice in writing (**Sale Notice**) to each other Shareholder (the **Offerees**) stating its intention to sell some or all of its Shares to the Third Party Buyer and specifying:

- (iii) the proportion of its Shares that it wishes to sell to the Third Party Buyer (**Sale Proportion**);
- (iv) the sale price for the Shares;
- (v) the settlement date;
- (vi) the other material terms and conditions of the proposed sale; and
- (vii) the name of the Third Party Buyer.

(b) **Tag Along Notice**

Each Offeree may within ten Business Days of receipt of the Sale Notice give notice (**Tag Along Notice**) to the Tag Shareholder of its wish to sell the Sale Proportion of the Shares held by or on behalf of the Offeree at the date of the Sale Notice at the Sale Price per Share and otherwise on the terms contained in the Sale Notice.

(c) **No Tag Along Notice provided**

If no Tag Along Notice is received by the Tag Shareholder from any Offeree within ten Business Days of receipt of the Sale Notice, then the Tag Shareholder may proceed on the terms set out in the Sale Notice to sell the Sale Proportion of its Shares to the Third Party Buyer.

(d) **If a Tag Along Notice is received**

If one or more Offerees gives a Tag Along Notice to the Tag Shareholder, then, subject to clause 16.2(e), the Tag Shareholder must not sell any of its Shares in accordance with the Sale Notice, unless contemporaneously with that sale, all Shares specified in each Tag Along Notice (**Tag Along Shares**) are sold at the same price per Share and on the same terms and conditions as specified in the Sale Notice.

(e) **Purchase of Tag Along Shares by Tag Shareholder**

If the Third Party Buyer is unwilling or unable to purchase any of the Tag Along Shares, the Tag Shareholder may, contemporaneously with the sale of its Shares to the Third Party Buyer, itself purchase those Tag Along Shares at the same price per Share and on the same terms and conditions specified in the Sale Notice except that no Offeree will be required to provide the Tag Shareholder with any warranties or indemnities in relation to that sale other than market standard warranties relating to the title and ownership of the relevant Shares.

(f) **Execution of documents**

Each Offeree who has given a Tag Along Notice must sign all such documents necessary to sell its Tag Along Shares to the Third Party Buyer in accordance with the terms specified in the Sale Notice.

(g) **Settlement date**

- (i) Completion of the sale of the Tag Along Shares must take place on the settlement date specified in the Sale Notice or on such later date as is necessary for any regulatory approvals that are required for the implementation of the sale to be obtained except that:

- (A) the Tag Shareholder may not specify a date that is less than 15 Business Days nor more than 100 Business Days after the date of the Sale Notice; and
- (B) the date so specified by the Tag Shareholder shall be the same date as the date proposed for completion of the sale of the Tag Along Shares, unless, in the case of the sale by any particular Offeree, that Offeree, the Third Party Buyer and the Tag Shareholder agree otherwise.

(ii) On the settlement date specified in the Sale Notice:

- (A) each Offeree who has given a Tag Along Notice must deliver to the Third Party Buyer or the Tag Shareholder (as applicable) title to the Sale Proportion of its Shares free from all Encumbrances; and
- (B) the Tag Shareholder will procure that each Offeree who has given a Tag Along Notice receives the amount calculated as the amount paid per Share on the sale multiplied by the number of Shares sold by that Offeree.

16.3 **Revocation**

A Tag Along Notice once given cannot be revoked or withdrawn except that the notice and all obligations under it shall lapse if for any reason the Tag Shareholder does not sell its Shares to the Third Party Buyer under the proposed transaction.

17. **Fair Value of Sale Shares**

If the Fair Value of Shares is required to be determined under clause 13, 14, 15 or 18 the following provisions will apply:

(a) **Identity of valuer**

The valuer shall be an independent suitably qualified person appointed jointly by the Shareholders or, if the Shareholders cannot agree on the person to be appointed within five Business Days of the date on which the need for the Fair Value determination arises, an independent suitably qualified person appointed by the Chairperson of the Auckland branch of the New Zealand Institute of Chartered Accountants (or the nominee of the Chairperson) after receiving a request in writing from a Shareholder to appoint such a valuer.

(b) **Determination of Fair Value**

The valuer appointed under clause 17(a) shall be instructed to issue a decision to each Shareholder specifying its determination of the relevant Fair Value as soon as practicable and in any event within 20 Business Days after its appointment.

(c) **Principles for valuation**

In determining Fair Value of the relevant Shares, the valuer is to conduct the valuation:

- (i) in accordance with valuation standards, practices and principles generally accepted in New Zealand;

- (ii) on the basis of an arm's length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively;
- (iii) on the basis that the Company is a going concern and using an appropriate valuation methodology;
- (iv) with regard to the financial performance, financial position, strategic positioning, future prospects, financial projections and projections of the Company's market penetration based on comparable international experience and the undertakings of the Company;

[REDACTED]

[REDACTED]

[REDACTED]

(d) **Valuation binding**

The valuer is to act as an expert and not as an arbitrator in conducting the valuation. The Shareholders agree that the Fair Value determined by the valuer, as detailed in the decision provided under clause 17(b), will be final and binding on each of them in the absence of manifest error.

(e) **Provision of information**

The Company and each Shareholder will provide the valuer with all information reasonably requested by the valuer in connection with any valuation under this clause 17.

(f) **Costs of valuer**

The costs of the valuer in connection with the valuation are to be borne:

- (i) equally by the Intending Seller (as to 50%) and the offerees who wish the sale price to be Fair Value (as to 50%) in the case of a valuation required by clause 18; and
- (ii) equally by CFH (as to 50%) and the Change of Control Shareholder, Insolvent Shareholder or the Partner (as applicable) (as to 50%) in the case of a valuation required under clause 13, 14 or 15.

18. Pre-emptive rights for transfers after the Concession Period

18.1 Transfer Notices

Subject to clause 12.2, every Shareholder who desires to sell or transfer any legal or beneficial interest in Shares in the Company (the **Intending Seller**) after the Concession Period must give notice in writing (a **Transfer Notice**) to the Board that the Intending Seller desires to sell or transfer those Shares.

18.2 Contents of Transfer Notice

The Transfer Notice must specify:

- (a) the number of Shares the Intending Seller intends to sell or transfer (the **Specified Shares**); and
- (b) the sum which the Intending Seller proposes as the sale price of the Specified Shares which must be the Fair Value as determined by the Intending Seller using the principles set out in clause 17(c) (the **Proposed Sale Price**).

18.3 Board appointed agent

A Transfer Notice constitutes the Board as the agent of the Intending Seller for the sale of the Specified Shares in accordance with the provisions of this clause 18. A Transfer Notice is not revocable by the Intending Seller except as provided in clause 18.7 and clause 18.11.

18.4 Offer to Shareholders

Immediately upon receipt of a Transfer Notice, the Board must promptly give written notice to Shareholders offering the Specified Shares in accordance with the provisions of this clause 18.4:

- (a) An offer to acquire must be made by written notice to each of the relevant Shareholders, in proportion to their existing Shareholdings. The notice must state:
 - (i) the number of Specified Shares to which the offeree is entitled;
 - (ii) the Proposed Sale Price; and
 - (iii) the date (being not less than 21 days nor more than 28 days after the receipt by the Company of the Transfer Notice) by which the offeree must give notice in writing to the Company (**Offer Acceptance Notice**) containing the details set out in clause 18.5.
- (b) If all the offerees do not claim their full entitlements, the unclaimed Shares (**Declined Shares**) must be used to satisfy the requests for Declined Shares. If there are insufficient Declined Shares to satisfy such requests, the Declined Shares must be divided among those offerees who requested Declined Shares, in proportion to their existing Shareholdings but no Shareholder shall be allocated more Declined Shares than the number which that Shareholder has requested.
- (c) If any Specified Shares have not been sold after the procedure set out in the clauses 18.4(a) and 18.4(b) has been followed, the Company may offer those Shares to any Third Party Buyer.

18.5 Offer Acceptance Notices

Each Offer Acceptance Notice must state whether or not the offeree:

- (a) wishes to purchase the offeree's entitlement or some lesser number of Specified Shares;
- (b) wishes to purchase any Declined Shares and if so what number; and

- (c) accepts the Proposed Sale Price or wishes the sale price to be the Fair Value determined by an independent expert in accordance with clause 17.

18.6 Notice to Intending Seller

After receipt of Offer Acceptance Notices from all offerees or the expiry of the date specified in clause 18.4(a)(iii) (whichever is the earlier) the Board must within five Business Days either send to the Intending Seller copies of all Offer Acceptance Notices received or notify the Intending Seller that no Offer Acceptance Notices have been received.

18.7 Intending Seller's right to withdraw

If Offer Acceptance Notices are received which do not contain acceptances for all of the Specified Shares the Intending Seller may within five Business Days of being given notice under clause 18.6, revoke the Transfer Notice by giving a notice in writing to the Board (**Withdrawal Notice**). If the Intending Seller gives a Withdrawal Notice, the Transfer Notice will be revoked and the Intending Seller may, within three months after the Withdrawal Notice is given, sell or transfer all of the Specified Shares (but not part only) at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to a Third Party Buyer than the terms offered to the existing Shareholders.

18.8 Sale and purchase

Subject to clause 18.11, the Intending Seller will become bound to sell the Specified Shares in respect of which Offer Acceptance Notices have been received when:

- (a) Offer Acceptance Notices are given under clause 18.5 which relate to all of the Specified Shares in a Transfer Notice; or
- (b) Offer Acceptance Notices are given under clause 18.5 which relate only to some of the Shares specified in a Transfer Notice and the Intending Seller does not give a Withdrawal Notice under clause 18.7.

18.9 Purchasers

The purchasers of the Specified Shares will be determined as follows:

- (a) if all offerees have accepted their entitlements then each offeree will become bound to purchase that number of Specified Shares equivalent to that offeree's entitlement; and
- (b) in any other case:
 - (i) each offeree will become bound to purchase that number of Specified Shares equal to the lesser of the number of Specified Shares the offeree agreed to accept in the offeree's Offer Acceptance Notice and the number of Specified Shares equivalent to the offeree's entitlement; and
 - (ii) each offeree who has agreed to accept Declined Shares and, if more than one, pro rata according to their respective entitlements, will become bound to purchase that number of Declined Shares.

18.10 Price

If an offeree's Offer Acceptance Notice states that the offeree accepts the Proposed Sale Price that offeree will be bound to purchase the relevant Specified Shares at that price.

18.11 Fair Value determined by independent expert if no agreement

If an offeree's Offer Acceptance Notice states that the offeree does not accept the Proposed Sale Price the sale price will be the Fair Value determined in accordance with clause 17. If the valuer fixes the Fair Value at a price below the Proposed Sale Price, the Intending Seller may, within five Business Days of being given notice of the valuer's determination, revoke the Transfer Notice by giving a Withdrawal Notice in the same manner as under clause 18.7. The provisions of this clause 18 will nevertheless apply to any further attempt by the Intending Seller to sell or transfer any Shares.

18.12 Completion

Completion of the sale and purchase of the Specified Shares must take place:

- (a) within ten Business Days after the Intending Seller becomes bound to sell all of the Specified Shares pursuant to clause 18.8 (if at the Proposed Sale Price); or
- (b) in any other case within ten Business Days after the determination of the Fair Value in accordance with clause 17,

or such later date as is necessary for any regulatory approvals that are required for the implementation of the sale to be obtained.

18.13 Payment

On settlement:

- (a) the offeree must pay the price for the Shares to the Intending Seller in cleared funds; and
- (b) in return, the Intending Seller must deliver to the offeree the signed Share transfer and relevant Share certificate (if any).

18.14 Execution by Company

If the Intending Seller does not transfer the Shares in accordance with clause 18.13(b), the Company shall execute transfers of the Shares on behalf of the Intending Seller and receive the price for the Shares.

18.15 Actions by Company

Upon receipt of the price for the Shares, the Company must cause the name of the relevant offeree to be entered in the Share register as the holder of those Shares and hold the amount paid in trust for the Intending Seller.

18.16 Validity

The Board's receipt is a good discharge to the offeree for the purchase price. No question may be raised as to the title of the offeree to the Shares.

18.17 Seller's rights if no Offer Acceptance Notices received

If an Intending Seller has given a Transfer Notice and no Offer Acceptance Notices are received during the Acceptance Period, the Intending Seller may, within three months after the expiry of the Acceptance Period, sell or transfer all of the Specified Shares (but not part

only) to a Third Party Buyer at a price which is not less than the Proposed Sale Price and otherwise on terms no more favourable to a purchaser than the terms offered to the other Shareholders.

19. National Partnering

19.1 Potential Benefits

The Shareholders acknowledge and agree that there are potential benefits in undertaking a restructuring of the Company (whether by way of the sale of the assets and liabilities of the Company or the issue of new securities or transfer of existing securities to a New Partner) (a **National Partnering**), including some or all of the following:

- (a) the ability to access existing infrastructure (including Communal Infrastructure, Communal Layer 2 Infrastructure and End User-Specific Infrastructure) in the Coverage Area;
- (b) the ability of the Company to access additional equity funding;
- (c) the ability of the Company to access additional telecommunications expertise;
- (d) ensuring national consistency of the specifications of ultra-fast broadband networks;
- (e) ensuring national consistency in arrangements with retail Service Providers who operate largely on a national basis;
- (f) the possibility of reducing costs associated with the build and ongoing management and operation of the Network; and
- (g) a national vehicle through which CFH would invest in multiple individual Local Fibre Companies.

19.2 Objectives

The Shareholders acknowledge and agree that their objectives in undertaking any National Partnering are:

- (a) that the Partner maintains a greater degree of management influence over the Company or Network than the New Partner during the Concession Period;
- (b) to maintain a degree of benefits for the community in the Coverage Area;
- (c) to improve the financial performance of the Company and reduce the investment required to be made by both CFH and the Partner; and
- (d) to have a level of participation in the National Partnering which provides some form of recognition for the existing Shareholders committing prior to the New Partner to roll-out the Network,

provided that any New Partner under a National Partnering will:

- (e) not be entitled to acquire or otherwise have rights to more than █% of the total number of Shares on issue at any time;

- (f) not be entitled to any dividends on its Shares (except any B Shares issued to the Partner), except after the Concession Period;
- (g) be issued Shares on an equivalent basis as that set out in this Agreement and the Network Infrastructure Assets Transfer Agreement including, in particular, the methodologies to be used to calculate the number of Shares to be issued and the issue price for such Shares;
- (h) if the New Partner is to be issued B Shares, it will assume responsibility for a pro rata portion of the Partner's funding obligations under item 7 of Schedule 2;
- (i) not be entitled to appoint any Directors unless such appointment rights ensure that Northpower is entitled to appoint █% of all Directors (excluding the appointment of the Independent Director) from time to time;
- (j) not be able to transfer or dispose of any assets to the Company unless the Partner has approved such transfer or disposal (such approval not to be unreasonably withheld); and
- (k) only enter into arrangements with the Company on arm's length terms.

19.3 Negotiations

The Shareholders acknowledge and agree that CFH will facilitate negotiations in relation to any National Partnering with any New Partners.

19.4 Reasonable endeavours

If, and when, any New Partner becomes engaged in discussions with CFH regarding its involvement in a National Partnering, CFH will use its reasonable endeavours to achieve a National Partnering that achieves the benefits and objectives set out in clauses 19.1 and 19.2.

19.5 Good faith discussion

The Partner will enter into good faith discussions with CFH and any New Partner regarding undertaking a National Partnering. The Partner recognises and agrees that in consideration of CFH agreeing to the Partner becoming a Shareholder, it is open and willing to accept a New Partner being a Shareholder and will use all reasonable endeavours to ensure a National Partnering transaction is concluded successfully.

19.6 Acknowledgements

CFH and the Partner acknowledge and agree that, notwithstanding any other provision of this Agreement, as part of a National Partnering (but subject to the restrictions set out in clause 19.2):

- (a) the New Partner is likely to assume some or all responsibility for the design and operation of Communal Layer 2 Infrastructure and End User-Specific Layer 2 Infrastructure, provided that any increase in costs to the Partner of such design and operation will be borne by the New Partner;
- (b) the Company may issue Shares or securities to the New Partner in consideration for cash or the acquisition of assets owned (or right to use those assets on a no-cost basis or on concessionary terms) by the New Partner (with the value of any such contribution to be determined by the Partner, CFH and the New Partner in a manner

which is co-operative and recognises the reduction in the net cost of building the Network under the Network Infrastructure Project Agreement based on the Partner's Bill of Materials and the Network Deployment Plan) and such issue will not be subject to any of the restrictions or pre-emptive rights set out in clauses 12.1, 12.2 and otherwise in this Agreement;

- (c) the Partner's existing shareholding in the Company may be diluted, subject to the restriction that the Partner's proportionate shareholding after the dilution in the Company must be greater than that of the New Partner;
- (d) the New Partner may assume a portion of CFH's funding obligations under this Agreement; and
- (e) the Partner shall not be in the position where the Partner is financially materially worse off, both as a Shareholder and under the Network Infrastructure Project Agreement. When making such determination, factors such as the Partner's reduced funding obligations and associated costs, any additional payments received by the Partner as part of any National Partnering transaction, and any change to the dividends received by the Partner from the Company (except if B Shares are to be issued to the New Partner in respect of the matters set out in clauses 19.6(a) and 19.6(b)) will be taken into account. For the avoidance of doubt, the fact that the Partner's shareholding in the Company may be diluted shall not in itself mean that the returns expected to be derived by the Partner from its investment in the Company have been reduced.

19.7 Transfer of Shares

- (a) Notwithstanding any other provision of this Agreement, including this clause 19, but subject to the restrictions set out in clause 19.2, CFH may transfer some or all of its Shares (including A Shares) to the New Partner without having to:
 - (i) obtain the consent of the Partner (or any other Shareholder) to such transfer or the approval of the New Partner by the Partner (or any other Shareholder);
 - (ii) comply with any of the restrictions or pre-emptive rights set out in clauses 12.1, 12.2 or otherwise in this Agreement relating to the transfer of those Shares.
- (b) In the event of CFH undertaking a transfer of A Shares in accordance with clause 19.7(a), CFH will procure that the New Partner agrees to assume CFH's obligations under this Agreement in relation to the transfer of those A Shares to the Partner in accordance with clause 8, together with any other obligations CFH may have in respect of such A Shares.

19.8 No obligation

Notwithstanding the other provisions of this clause 19, no Shareholder is under any obligation to enter into any binding arrangements (contractual or otherwise) in relation to any National Restructure.

19.9 No Dispute or Deadlock

For the avoidance of doubt, neither a Dispute nor a Deadlock will arise if the Shareholders and the New Partner are unable to agree the terms of any National Partnering and the provisions of clause 23 will not apply. However, clause 23 will apply if the Partner does not enter into the negotiations on a good faith basis and does not use all reasonable endeavours to ensure such a National Partnering transaction is concluded successfully in accordance with the terms set out in this clause 19.

20. Reporting requirements

20.1 Annual financial reports

The Company must:

- (a) cause its financial affairs to be audited at the end of each Financial Year in accordance with applicable law;
- (b) cause its financial statements to reflect NZ IFRS as consistently applied by the Company and approved by the Board; and
- (c) make available to each Director and each Shareholder as soon as possible and in any event within 4 months after the end of each Financial Year, a copy of the Company's audited financial statements, directors' report and auditor's report of the Company, as at the end of that Financial Year (including all reasonable detail) prepared in accordance with applicable law and NZ IFRS.

20.2 Monthly and quarterly financial reports

- (a) The Company must provide to each Director within 15 Business Days after the end of each month:
 - (i) the Company's management financial statements for that month and the year to date as at the last day of that month (including a detailed consolidated profit and loss account, balance sheet and cash flow statement for that month); and
 - (ii) revised monthly forecast profit and loss accounts, balance sheets and cash flow statements for the remainder of the then current Financial Year,together with a management report as to the operational and strategic matters arising during that period.
- (b) The Company must provide to each Director within 30 Business Days after the end of each quarter of the Financial Year, unaudited quarterly management financial statements for the immediately preceding quarter, comprising at least:
 - (i) a profit and loss statement and cash flow statement for the immediately preceding quarter;
 - (ii) a balance sheet as at the end of the immediately preceding quarter;
 - (iii) commentary on the financial performance for the immediately preceding quarter; and
 - (iv) a quarterly management report regarding variations from the current Business Plan.
- (c) The statements and information referred to in clauses 20.2(a) and (b) are:
 - (i) to the extent practicable to be prepared in accordance with NZ IFRS as consistently applied by the Company and approved by the Board; and
 - (ii) in any event to be prepared in a manner which provides a true and fair view of the Company as at the date and for the period to which they relate.

20.3 Governmental reporting requirements

The Company must:

- (a) comply with all reporting obligations under applicable law (including under the Official Information Act 1982);
- (b) comply with all applicable Crown audit requirements imposed by law (including any additional audit requirements arising as a result of CFH's shareholding in the Company);
- (c) provide any assistance or information reasonably requested from time to time by CFH or the Government Shareholder for the purpose of enabling each or both of them to comply with any reporting, audit or other obligations under applicable law;
- (d) while CFH is a Shareholder, within 30 days of 30 June and 31 December of each Financial Year, provide CFH with the reporting information requested by CFH from time to time. That information will include pricing, cost and revenue information and the Company's asset register (including GIS mapping);
- (e) while CFH is a Shareholder, provide the Crown Ownership Monitoring Unit with any information which it requests in accordance with its guidelines from time to time; and
- (f) while CFH is a Shareholder, make a public announcement regarding any major transaction (as defined in section 129 of the Companies Act) which the Company enters into within two Business Days of entering into such transaction.

20.4 Information and maintenance of records

- (a) The Company must maintain books, records and reports in accordance with applicable law including, but not limited to, the Companies Act, the Income Tax Act 2007 and the Goods and Services Tax Act 1985.
- (b) Each Shareholder will have access at all reasonable times to the books and records of the Company.

21. Non-compete

21.1 Shareholders' undertaking

In consideration for the Company and CFH entering into this Agreement and discharging their relevant obligations, and for the protection of the goodwill of the business of the Company, each Shareholder (except CFH) agrees and undertakes for the benefit of the Company and CFH that while CFH is a Shareholder:

- (a) except with the prior written consent of CFH, it will not, and it will procure that no Related Company of, or company under the effective control of, that Shareholder will, directly or indirectly:
 - (i) carry on or be engaged in or be concerned with any business or activity which is the same as the business of the Company in the Coverage Area or the business of any other Local Fibre Company in that Local Fibre Company's coverage area; or

- (ii) induce or endeavour to induce any person to cease doing business with the Company or reduce the level of its business with the Company or any other Local Fibre Company; or
 - (iii) provide assistance to any person to carry on or be engaged in or be concerned with any business or activity which is the same as the business of the Company in the Coverage Area or any other Local Fibre Company in that local fibre company's coverage area; or
 - (iv) carry on or be engaged in the provision of Retail Services in New Zealand; and
- (b) it will not, and it will procure that no Related Company of, or company under the effective control of, that Shareholder will, employ or solicit the services of, or offer employment to, any person employed by the Company other than where that person responds to a bona fide public advertisement for a vacant position (provided that the advertisement is not targeted specifically at the person concerned).

21.2 Exceptions

The parties acknowledge and agree that the undertakings in clause 21.1 do not apply to the Partner in respect of the following activities (whether carried out prior to, during or after the Concession Period):

- (a) operation of any business relating to the assets which are to be transferred to the Company pursuant to the Network Infrastructure Assets Transfer Agreement (provided that this exception will not apply if the Network Infrastructure Assets Transfer Agreement is terminated for any reason, or to any such assets which are not transferred as contemplated by the Network Infrastructure Assets Transfer Agreement for any reason);
- (b) the provision of any supervisory control and data acquisition services or services relating to communication or remote monitoring of electricity distribution or electricity transmission networks and providing such service to itself or Transpower New Zealand Limited; and
- (c) the provision of maintenance and other services to other Local Fibre Companies on arm's length terms.

21.3 Restraints and undertakings reasonable

The parties consider the undertakings in clause 21.1 are reasonable in all the circumstances. However, if a Court of competent jurisdiction finds any of them to be unenforceable, the parties agree to accept any modification of area, extent or duration of the restraint concerned which the Court sees fit to impose, or if it does not see fit, which may be required to make the restraint enforceable.

22. Confidentiality

Each Shareholder shall at all times keep confidential and secure, and not directly or indirectly make, or allow to be made, any disclosure or use of any information which is of a confidential nature directly or indirectly obtained from any other Shareholder or the Company, or developed or held for the purposes of the Company, except to the extent:

- (a) required by law or for the purpose of any judicial proceedings;

- (b) necessary to obtain the benefit of, or to carry out any obligation under, this Agreement (including in connection with any arbitration process under clause 23);
- (c) disclosed to its directors, officers, employees, professional advisers, bankers, financiers or auditors on a need to know basis;
- (d) that the information is or becomes public without breach by a Shareholder of its confidentiality obligations under this clause or at law;
- (e) disclosed on a confidential basis to a bona fide potential purchaser of its Shares (or the potential purchaser's employees, officers, directors, professional advisers and potential providers of debt, equity or other financing); or
- (f) authorised in writing by the party who provided the information,

provided that the disclosing Shareholder will procure that each person to whom any confidential information is disclosed under paragraphs (c) or (e) above complies with the undertakings in this clause 22 as if named in place of that Shareholder.

23. Disputes and Deadlock

23.1 Initial process

If a Dispute or Deadlock arises or occurs, each Shareholder must use its reasonable endeavours to resolve that Dispute or Deadlock through good faith negotiations and informal dispute resolution techniques within 20 Business Days after the date on which the Dispute or Deadlock arose (the **Initial Negotiation Period**).

23.2 Escalation

If the Dispute or Deadlock is not resolved by the Shareholders by the end of the Initial Negotiation Period, then the unresolved Dispute or Deadlock shall be referred to the respective Chief Executive Officers of CFH and the Partner (and the Chief Executive Officers of any other Shareholders) who will use their best efforts to resolve the unresolved Dispute or Deadlock within 20 Business Days of the end of the Initial Negotiation Period (the **Second Negotiation Period**).

23.3 Binding arbitration for unresolved Disputes

(a) Matters referred to arbitration

If a Dispute is not resolved under clause 23.2 by the end of the Second Negotiation Period, then any Shareholder who is a party to the Dispute may give written notice to the other Shareholder(s) involved in the Dispute requiring that the unresolved Dispute be referred to arbitration for determination in accordance with this clause 23.3.

(b) Conduct of arbitration

In the event of a submission to arbitration under clause 23.3(a), a single arbitrator will conduct the arbitration pursuant to the Arbitration Act 1996 (and protocols of the Arbitrators' and Mediators' Institute of New Zealand, Inc.) (together the **Arbitration Act**), provided that:

- (i) the arbitrator will be such person as the Shareholders involved in the Dispute may agree upon in writing or, failing agreement being reached within three

Business Days of the date upon which the notice is given under clause 23.3(a), the person appointed as arbitrator by the President or Vice-President of the Arbitrators' and Mediators' Institute of New Zealand, Inc. (or his or her nominee) after receiving a request in writing from any Shareholder involved in the Dispute to appoint an arbitrator;

- (ii) the place of arbitration will be Auckland, New Zealand;
- (iii) the law applicable to the substance of the dispute will be New Zealand law;
- (iv) the arbitrator will decide the dispute in accordance with New Zealand law and conduct the arbitration in accordance with the Arbitration Act and the rules contained in the First and Second Schedules to the Arbitration Act will apply, subject to the following exceptions:

(A) to the extent that the notice provisions in this Agreement are inconsistent with article 3 of the First Schedule, the notice provisions of this Agreement apply;

(B) for the purposes of article 15(3) of the First Schedule, any order or ruling of an arbitrator made prior to the replacement of that arbitrator under article 13 of the First Schedule will be invalid;

(C) the relevant parties agree that either relevant party may request the arbitral tribunal under article 33(1)(b) of the First Schedule to give an interpretation of a specific point or part of an award;

(D) articles 1(4) and 1(5) of the Second Schedule will not apply to override the provisions in clause 23.3(b)(i) for the appointment of the arbitrator;

(E) the arbitration will not involve an inquisitorial process such as the arbitrator interviewing witnesses of his or her own choosing (so that article 3(1)(a) of the Second Schedule will not apply);

(F) the High Court may determine any question of law which arises from the arbitration if it is satisfied that the determination of the question of law concerned may either:

- a. produce a substantial savings in costs to the relevant parties; or
- b. having regard to all the circumstances, substantially affect the rights of one or more of the relevant parties,

(so that articles 4(2)(a) and 4(2)(b) of the Second Schedule will apply in the alternative, not cumulatively);

(v) the arbitrator's award will be an award with reasons (which will form part of the award) and will be final and binding on the relevant parties, provided that either relevant party may appeal to the High Court on any question of law arising out of the award;

(vi) the relevant parties' own costs and the costs of the award in relation to the arbitration will be borne in the manner determined by the arbitrator and, in the absence of such determination, each relevant party will bear its own costs and an equal share of the costs of the arbitration; and

- (vii) subject to clause 23.5, neither relevant party will bring any court proceedings relating to the dispute or any part of it.

23.4 Unresolved Deadlocks

(a) Processes

If a Deadlock is not resolved under clause 23.2 by the end of the Second Negotiation Period, then any Shareholder may:

- (i) in the case of a Deadlock arising during the Concession Period, with the prior written agreement of both CFH and the Partner refer the unresolved Deadlock to mediation in accordance with clause 23.4(b); or
- (ii) in the case of a Deadlock arising after the Concession Period has ended, give written notice to all other Shareholders requiring the process set out in clause 23.4(c) to be complied with.

(b) Mediation

- (i) If this clause 23.4(b) applies, the Shareholders will try to resolve the Deadlock by a mediation conducted by a single mediator, in accordance with the terms of the LEADR New Zealand Inc. Standard Mediation Agreement and at a fee to be agreed by the parties.
- (ii) The mediator will be such person as the Shareholders may agree upon in writing or, failing agreement being reached within three Business Days of the date upon which the notice is given under clause 23.4(a)(i), the mediator will be chosen and the mediator's fee determined by the chairperson for the time being of LEADR New Zealand Inc. (or his or her nominee).

(c) Acquisition Notice

If this clause 23.4(c) applies, any Shareholder (the **Server**) is entitled to give notice in writing (an **Acquisition Notice**) to the other Shareholders (the **Receiving Parties**) at any time while the Deadlock remains unresolved offering to purchase all (but not some only) of the Shares beneficially owned by the Receiving Parties at a price per Share nominated by the Server in the Acquisition Notice (the **Acquisition Price**).

(i) Response Notice

Within 20 Business Days of receiving an Acquisition Notice, each Receiving Party, by notice in writing to the Server (a **Response Notice**), is entitled to either:

- (A) elect to purchase that number of Shares beneficially owned by the Server equal to that Receiving Party's pro rata entitlement based on their existing shareholding at a price per Share equal to the Acquisition Price; or
- (B) elect to sell all (but not some only) of the Shares beneficially owned by that Receiving Party to the Server at a price per Share equal to the Acquisition Price.

(ii) Deemed Response

If a Receiving Party does not serve a Response Notice on the Server within the period referred to in clause 23.4(c)(i), that Receiving Party will be deemed to have elected to sell all (but not some only) of the Shares beneficially owned by that Receiving Party to the Server at a price per Share equal to the Acquisition Price.

(iii) Purchase and transfer obligations

On service of the Response Notice or on deemed response under clause 23.4(c)(ii) (as applicable), the parties are respectively bound to purchase or transfer accordingly and completion of the transfer and purchase will take place on the tenth Business Day after such event (or such later date as is necessary for any regulatory approvals for the implementation of the sale to be obtained).

(iv) No withdrawal of Acquisition Notice

An Acquisition Notice is not capable of being withdrawn without the consent in writing of all of the Receiving Parties.

23.5 No litigation

All Disputes and Deadlocks must be dealt with in accordance with this clause 23 and no Shareholder is entitled to bring legal proceedings in respect of a Deadlock or a Dispute in any court unless:

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

24. Termination

24.1 Termination events

This Agreement will terminate automatically:

- (a) upon completion of any transfer of Shares in accordance with this Agreement which results in all of the Shares (other than the Government Share) being held by one Shareholder;
- (b) if all Shareholders agree in writing to terminate this Agreement;
- (c) in respect of a Shareholder, upon that Shareholder ceasing to have a legal or beneficial interest in any Shares;
- (d) if the Company is placed in liquidation.

24.2 Survival of provisions

Upon termination of this Agreement for any reason, the provisions of clause 22, together with those other provisions of this Agreement which are incidental to and required in order to give effect to that clause, will remain in full force and effect.

24.3 Prior rights and remedies

Termination of this Agreement under clause 24.1 will be without prejudice to any rights and remedies arising as a consequence of any such termination or which have accrued or arisen prior to termination.

25. Warranties

In consideration of the other parties entering into this Agreement, each of CFH and the Partner gives to the other the Warranties, as at the Agreement Date, in the knowledge that the Partner and CFH (as relevant) is entitled to rely on the truth of the statements contained in the Warranties.

26. Notices

26.1 Addresses and references

Each notice under this Agreement is to be in writing and sent by personal delivery, post, facsimile or email to the addressee at the address, facsimile number or email address, and marked for the attention of the person or office holder, from time to time designated for this purpose by each party and notified to the other parties in accordance with this clause 26. The initial address, facsimile number, email address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

26.2 Timing of receipt

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

- (a) if delivered by hand, when left at the address of the recipient; or
- (b) if sent by pre-paid post, three Business Days (if posted within New Zealand to an address in New Zealand) or five Business Days (if posted by airmail from one country to another) after the date of posting; or
- (c) if sent by facsimile, on the date and time shown on the transmission report generated by the machine from which the facsimile was sent indicating that the whole facsimile was sent to the recipient's facsimile number; or
- (d) if sent by email, on the date and time at which it enters the addressee's information system unless a delivery failure notice has been received by the sender, in which case the notice will be deemed not to have been served,

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

27. Performance Bond

In respect of any liability which the Partner may have to the Company under or in respect of this Agreement, the Company 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.

28. Miscellaneous

28.1 Shareholders to ensure Board and the Company acts in manner required

To the extent that any provision of this Agreement, or the Constitution, requires the Board or the Company to operate in a particular manner or requires the Shareholders to ensure that the Company is operated in a particular manner, the Shareholders will procure that their respective representatives on the Board act accordingly (but subject always to their fiduciary duties) and will exercise their rights as Shareholders (including the right to vote their Shares) accordingly, in each case to the fullest extent permitted by law.

28.2 Relationship with Constitution

If any provision of this Agreement conflicts with any provision of the Constitution, the provision of the Constitution is to prevail.

28.3 No partnership

This Agreement does not constitute, and nothing contained in this Agreement will be deemed or construed to constitute, any Shareholder as a partner, agent or representative of the other Shareholder. This Agreement does not give, and is not to be construed as giving, to any party any of the liabilities arising from a partnership, agency or representative relationship.

28.4 Contractual relationship

Each Shareholder acknowledges that its rights and obligations under this Agreement are contractual in nature and that the other Shareholder does not have any fiduciary responsibility or duty to it in respect of the arrangements the subject of this Agreement.

28.5 Assignment

- (a) This Agreement is binding on, and continues for the benefit of, the parties and their respective successors and permitted assignees or transferees. Except as provided in this Agreement, a party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other parties (which consent may be withheld at each other party's absolute discretion);
- (b) Nothing in clause 28.5(a) will apply to assignment by CFH of its rights and obligations under this Agreement to another Government Authority or company wholly owned by a Government Authority.

28.6 Amendments

Except as otherwise provided for in this Agreement, this Agreement cannot be amended or varied except in writing signed by all the parties for the time being.

28.7 Entire agreement

This Agreement, the Network Infrastructure Project Agreement, the Network Infrastructure Assets Transfer Agreement and the Constitution constitute the entire agreement of the parties in respect of the matters covered by them and supersede all previous agreements in respect of those matters.

28.8 Exercise of rights and waivers

No failure to exercise, and no delay in exercising, a right of a party under this Agreement will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by a party of its rights under this Agreement is effective unless it is in writing signed by that party.

28.9 Costs

Each Shareholder must pay its own legal and other costs of and incidental to the preparation, negotiation, execution and completion of this Agreement.

28.10 Partial invalidity

If any provision of this Agreement offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from this Agreement, in which event the remaining provisions of this Agreement operate as if the severed provision had not been included.

28.11 Counterparts

This Agreement may be executed on the basis of an exchange of facsimile or scanned copies of this Agreement and execution of this Agreement by such means is to be a valid and sufficient execution. If this Agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

28.12 Governing law

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

Execution

Crown Fibre Holdings Limited by

Director / Authorised Signatory

Director / Authorised Signatory

Print Name

Print Name

Notices to:

Address: Level10 PricewaterhouseCoopers Tower
188 Quay Street
Auckland

Facsimile No.: +64 9 368 9201

Email Address: graham.mitchell@crowdfibre.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

Signed for and on behalf of
**Whangarei Local Fibre Company
Limited** in the presence of

Director

Director

Print Name

Print Name

Notices to:

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

Facsimile No.: 64 9 916 8800

Email Address: anna.buchly@bellgully.com

Contact person/position: The Board of Directors

Signed for and on behalf of
Northpower Limited in the
presence of

_____ Director	_____ Director
_____ Print Name	_____ Print Name

Notices to:

Address: 28 Mount Pleasant Road, Raumanga
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

Schedule 1: Services and Pricing

1. Purpose

- (a) This Schedule sets out CFH's supervisory role in relation to certain aspects of the UFB Initiative.
- (b) This Schedule provides a mechanism for addressing a number of policy and commercial matters which the Crown has determined are best agreed by CFH and the Company, with the backstop of regulation by the Commerce Commission, including matters relating to what services can be offered by the Company and to whom, as well as the pricing of such services. However, the Shareholders and the Company acknowledge that the UFB Initiative and the Company's operations are subject to other legal and regulatory oversight including, but not limited to, under the Telecommunications Act 2001.
- (c) For the avoidance of doubt, the requirements set out in this Schedule are in addition to the obligations on the Company contained in the Deed of Undertaking, this Agreement, the Constitution and under law generally. It is envisaged that the Reference Offer will be, in essence, a pro-forma Wholesale Services Agreement.
- (d) CFH's role set out in this Schedule shall apply until 31 December 2019 and clauses 3 to 8 (inclusive) of this Schedule shall cease to apply and the parties shall cease to be bound by this Schedule with effect from 1 January 2020. During the Subsequent Period, any changes to the services using the Specified Network (including Subsequent Services) and the pricing of those services will be solely subject to the relevant regulatory regime in place at such time.
- (e) If a Specified Service or a Subsequent Service (provided by the Company prior to 31 December 2019), or a service that is substantially the same as that service, has been regulated (whether by the Commerce Commission or any other Crown agency or branch of government) (each, a **Regulated Service**), then:
 - (i) this Schedule, and the Reference Offer established under this Schedule, will cease to apply to any such Regulated Service from the date that the regulation comes into effect if the regulation of that Regulated Service applies to:
 - (A) the prices which the Company may charge Access Seekers for that Regulated Service; or
 - (B) the technical specifications of that Regulated Service as set out in the Services and Pricing Annexure; or
 - (ii) if the regulation of any such Regulated Service does not apply to any of the matters specified in (e)(i) above, then:
 - (A) the parties will, on notice in writing by either of them to the other, negotiate in good faith to agree amendments to this Schedule, and the Reference Offer established under this Schedule, in relation to that Regulated Service to amend the price and non-price terms of that Regulated Service to which regulation does not apply (**Non Regulated Terms**) to appropriately reflect the effect of the matters to which regulation applies; and
 - (B) if the parties cannot agree within 30 Business Days of initiating such negotiation, the amendments to the Non Regulated Terms will be, upon written notice being given by one party to the other, subject to expert

determination under clause 20.4 of the Network Infrastructure Project Agreement.

(f) This Schedule shall at all times be read subject to clause 9.

2. Interpretation

2.1 Definitions

In this Schedule, unless the context otherwise requires:

Additional Service means any Telecommunications Service in addition to the Specified Services, and includes any Telecommunications Service above Layer 2 Services (for example, a Layer 1 Service or Layer 2 Service which is not a Specified Service, or a Layer 3 Service or Layer 4 Service);

CCPM means the maximum amount that the Company is entitled to charge an Access Seeker per month for providing the Specified Services to an End User, the initial values of which are set out in Table A;

Connection and MAC Charges means the maximum amount that the Company is entitled to charge an Access Seeker for providing Specified Services relating to Connections and moves and adds changes (**MACs**) to an Access Seeker, the initial values of which are set out in Table A;

IRU means an exclusive, unrestricted and indefeasible right granted by the Company to an Access Seeker to use a Specified Service or Subsequent Service for any legal purpose during the specified period;

Layer 1 Service means a Telecommunications Service which operates at layer 1 of the OSI Model, being passive fibre optic network infrastructure;

Layer 2 Service means a Telecommunications Service which operates at layer 2 of the OSI Model, being active fibre optic network infrastructure;

Layer 3 Service means a Telecommunications Service which operates at layer 3 of the OSI Model, being the network layer;

Layer 4 Service means a Telecommunications Service which operates at layer 4 of the OSI Model, being the transport layer;

Legislative or Regulatory Change means any legislative or regulatory change, whether by amendment, addition, deletion or replacement, including where the change follows a recommendation by the Commerce Commission to make that change;

NBAP means a non-building access point, being a location for a Connection that does not have a physical address (for example, a bus shelter or a lamp post);

Reference Offer means the Company's standard offer in respect of a service that contains sufficient terms to allow, without the need for an Access Seeker to enter another agreement with the Company, the provision of that service and must include the Wholesale Services Agreement and the relevant pricing set out in the Services and Pricing Annexure;

Regulated Service has the meaning given to it in clause 1(e) of this Schedule;

Related Party means in relation to another person:

- any company that is related within the meaning of section 2(3) of the Companies Act 1993 to that person;
- any partner or joint venturer of that person;
- any entity that is able, whether directly or indirectly, to exert control over the activities of the other person;

Relevant Breach means a series of breaches, or a substantial breach, that is either negligent, reckless or deliberate, of:

- (a) this Agreement, any Wholesale Services Agreement or the Network Infrastructure Project Agreement;
- (b) the Deed of Undertaking or any separate deed poll entered into in relation to the Deed of Undertaking; or
- (c) competition law, including the Commerce Act;

Relief Term means the period beginning on the date of this Agreement and ending on 31 December 2019;

Services and Pricing Annexure means Annexure C as amended from time to time in accordance with this Schedule;

Specific Regulatory Change means any Legislative or Regulatory Change during the Relief Term that directly, or indirectly through a resulting mechanism or instrument:

- (a) results in a reduction in any of the capped prices that the Company can charge Service Providers for any products and services on the Network below the capped prices contemplated in the Services and Pricing Annexure;
- (b) results in adjustments to the prices that the Company can charge Service Providers for, or the non-price terms and conditions that the Company can apply to, products and services on the Network, as compared to those prices, and terms and conditions, contemplated by this Schedule, that individually or in aggregate over the Relief Term are material to the Company (materiality for these purposes being measured as an amount equal to at least 1% of the Company's annual EBITDA from fibre access services);
- (c) requires delivery by the Company of any layer 1 services (including any point-to-multipoint layer 1 access services) or layer 2 access services on the Network or any other services over the Network additional to those specified in the Services and Pricing Annexure; or
- (d) imposes any form of separation on the Company that is not required by the Deed of Undertaking (in the form of that document as at the Agreement Date), including a requirement to maintain separate business units or accounting separation;

Specified Service means a service provided using a Specified Network and required to be offered by the Company, as described in Table A;

Specified Network means a network that is declared to be a specified network in accordance with section 156AY of the Telecommunications Act 2001;

Subsequent Period means the period commencing on 1 January 2020 and continuing thereafter indefinitely;

Subsequent Service means a service provided using a Specified Network and required to be offered by the Company from 1 January 2020, as described in Table B;

Table A means table A of the Services and Pricing Annexure setting out the Specified Services and the pricing of such services as amended from time to time in accordance with this Schedule;

Table B means table B of the Services and Pricing Annexure setting out the Subsequent Services and the pricing of such services as amended from time to time in accordance with this Schedule;

Telecommunications Service has the meaning given to that term in the Telecommunications Act 2001;

UFB Initiative means the Government's ultra-fast broadband investment initiative;

UNI to UNI Connections means a transmission path between End User ports; and

Wholesale Services Agreement means the standard wholesale services agreement of the Company approved by CFH from time to time.

2.2 Clause 1 of this Agreement

For the avoidance of doubt, if a capitalised term used in this Schedule is not defined in clause 2.1 of this Schedule, but it is defined in clause 1.1 of this Agreement, such term shall have the meaning given to that term in clause 1.1 of this Agreement.

3. CFH Approval

3.1 Specified Services, Subsequent Services and use of Reference Offer

- (a) Subject to clauses 3.1(d) and 3.1(e):
- (i) the Company must offer to provide to Access Seekers, and may not withdraw its offer to provide, the Specified Services on the terms set out in the Reference Offer.
 - (ii) from the commencement of the Subsequent Period, it is intended that the Company offer to provide Access Seekers, the Subsequent Services on the terms set out in the Reference Offer, including any pricing agreed under clause 5.4.
 - (iii) provided always that it has CFH's prior written approval, during the period prior to the commencement of the Subsequent Period, the Company may elect to, but is not required to, offer the Subsequent Services to Access Seekers.
- (b) Prior to CFH giving its approval to the provision of Subsequent Services to Access Seekers in accordance with clause 3.1(a)(iii) of this Schedule, the pricing for such services must be agreed between CFH and the Company and Table B amended to reflect such agreed pricing.
- (c) Other than to the extent expressly specified in clause 3.1(e), this Schedule neither:
- (i) prohibits the Company from discriminating; nor
 - (ii) permits the Company to discriminate,

between Access Seekers or End Users when offering to provide the Specified Services and Subsequent Services to Access Seekers.

- (d) Subject to clause 3.1(e):
- (i) whether the Company may or may not discriminate between Access Seekers or End Users when offering to provide the Specified Services and Subsequent Services to Access Seekers is determined by the terms of the Deed of Undertaking and the law (including, but not limited to, the Telecommunications Act 2001); and
 - (ii) the Company must comply with the terms of the Deed of Undertaking and the law when making a decision to discriminate or not discriminate between Access Seekers or End Users when offering to provide the Specified Services and Subsequent Services to Access Seekers.
- (e) The Company must offer to provide the Specified Services set out in:
- (i) rows 1.2, 1.3 and 1.5 (the three residential policy products) of the Agreed Pricing Table set out in Annexure C to Access Seekers for supply of those Specified Services to all residential End Users but is not obligated to offer them for supply to other End Users;
 - (ii) row 1.1 (the basic voice channel) of the Agreed Pricing Table set out in Annexure C to Access Seekers for supply of the those Specified Services to all End Users located in greenfield infill locations within the Coverage Area but is not obligated to offer them for supply to other End Users;
 - (iii) rows 8.1, 8.2, 8.3, 9.1 and 9.2 (the 5 education products) of the Agreed Pricing Table set out in Annexure C to Access Seekers for supply of those Specified Services to all primary, intermediate and secondary school End Users but is not obligated to offer them for supply to other End Users;
 - (iv) rows 6.1, 6.2, 6.3, 7.1 and 7.2 (the 3 Enhanced Layer 1 Service Levels and 2 Enhanced Layer 2 Service Levels) of the Agreed Pricing Table set out in Annexure C to Access Seekers for supply of those Specified Services to all business End Users (in relation to both Business Connections and NBAP Connections) but is not obligated to offer them for supply to other End Users;
 - (v) rows 6.4 and 6.5 (the 2 Layer 1 Diversity Products) of the Agreed Pricing Table set out in Annexure C to Access Seekers for supply of those Specified Services to all:
 - (A) priority End Users located in business areas that are receiving a point 2 point service;
 - (B) hospital End Users that are receiving a point 2 point service; and
 - (C) secondary schools and tertiary education provider End Users that are receiving a point 2 point service,
 but is not obligated to offer them for supply to other End Users.
- (f) A decision by the Company to discriminate or not discriminate between Access Seekers or End Users when offering to provide the Specified Services and Subsequent Services to Access Seekers is not a Variation under clause 3.2. If the Company decides to discriminate between Access Seekers or End Users when offering to provide the Specified Services and Subsequent Services to Access Seekers it must vary the Reference Offer (if required) to reflect the discrimination

decision within ten Business Days of the decision. The varied Reference Offer (where relevant) or the specific Wholesale Services Agreement (if an individual customer) must be publicly disclosed in accordance with requirements of the Deed of Undertaking.

3.2 Variation to Specified Services, Subsequent Services or the Reference Offer

- (a) If the Company wishes to vary any aspect of:
- (i) the Reference Offer (including pricing);
 - (ii) a Wholesale Services Agreement; or
 - (iii) a Specified Service or an Subsequent Service (including specifications or service levels),
- then the Company must request CFH's prior approval for such proposed variation or variations (**Variation**) by providing a notice (**Variation Notice**) to CFH. A Variation Notice must include a detailed explanation of the Variation.
- (b) For the avoidance of doubt, if CFH approves a Variation, the Company must vary the Reference Offer (as required) to reflect the Variation within [REDACTED] of the date that CFH approves the Variation and it must be publicly disclosed in accordance with requirements of the Deed of Undertaking.

3.3 Additional Services

If the Company wishes to offer an Additional Service or a Subsequent Service, then it must request CFH's prior approval for provision of that Additional Service or Subsequent Service by providing a notice (**Additional Services Notice**) to CFH including a detailed explanation of the proposed Additional Service or Subsequent Service.

3.4 CFH Approvals

- (a) CFH must respond promptly to any Variation Notices and Additional Services Notices.
- (b) The Company acknowledges and agrees that:
- (i) subject to clauses 3.4(b)(ii) and 3.4(b)(iii) of this Schedule, except in relation to proposed Variations for UNI to UNI Connections described in clause 4.1(a)(ii) of this Schedule or pricing that breaches the Maximum Prices restrictions below, CFH will not unreasonably withhold its approval to any Variations;
 - (ii) CFH may reject a proposed Variation on policy grounds, or where it considers, acting reasonably, that the proposed Variation may lead to an undesirable lack of consistency between ultra-fast broadband practices nationally; and
 - (iii) CFH will not approve any Additional Services above Layer 2 without first obtaining the written approval of the Minister of Communications and Information Technology.
- (c) Any Variation Notices or Additional Services Notices which CFH approves in writing will be deemed to be an amendment to this Schedule and the Services and Pricing Annexure.

4. End User Services

4.1 Prohibition

- (a) The Company must not and must procure that its Related Parties do not, without CFH's prior written approval, directly or indirectly offer:
- (i) services which Connect to End User end points or services where at least one point does not terminate at a Central Office, being the physical building used to house the Network's exchange equipment, or a point of interconnect; or
 - (ii) UNI to UNI Connections that do not connect through an Access Seeker's equipment at the point of interconnect.
- (b) For the avoidance of doubt, nothing in this clause prevents the Company from using a Specified Network for supervisory control and data acquisition (**SCADA**), communication or remote monitoring in the electricity distribution or electricity transmission networks and providing such service to itself or Transpower New Zealand Limited.

4.2 Amendments to this Schedule

Any written approval given by CFH for the purposes of clause 4.1(a) of this Schedule will be deemed to be an amendment to this Schedule and the Services and Pricing Annexure.

5. Company Pricing of services

5.1 Maximum Price

- (a) The CCPMs specified in Column A of Table A are the maximum prices (**Maximum Prices**) the Company may charge Access Seekers for the Specified Services. The Maximum Prices do not prevent the Company from offering Access Seekers:
- (i) prices for the Specified Services which are less than the Maximum Prices, subject to obtaining CFH approval; or
 - (ii) alternative pricing structures so long as the Company has obtained CFH's prior written approval to such alternative pricing structures (such as IRU pricing),
- provided that the Company will charge Access Seekers a price equal to CCPM for the Specified Services from the Agreement Date.
- (b) Any changes to the price the Company will charge Access Seekers for any Specified Service (which changed price cannot be more than CCPM) will be as agreed by CFH and the Partner.
- (c) Unless expressly agreed in writing by CFH or as set out in clause 5.1(d), the Company must not charge Access Seekers a connection fee for the Connection of End Users to the Network greater than the Connection and MAC Charge applicable to the relevant service.
- (d) CFH agrees that the Company may charge Access Seekers a connection fee greater than the Connection and MAC Charge applicable to the relevant service for the Connection of any End User where the Connection is an exceptionally long drop length, which is defined for:

- (i) underground Connections as being a Connection which is required to be greater than 15 metres underground; and
- (ii) overhead Connections as being a Connection which is required to be greater than 30 metres overhead.

The amount of such connection fees, or a mechanism for calculating such connections fees, must be as agreed between CFH and the Company from time to time.

5.2 Reference Offer and pricing

The Reference Offer will specify the actual prices to be charged in respect of that offer. Such prices must be equal to or lesser (in which case CFH approval is required) than the Maximum Prices or the terms of any applicable pricing structure approved by CFH in accordance with this Schedule.

5.3 Pricing review

- (a) At the [REDACTED] and at the completion of each [REDACTED] period, the CCPMs and pricing contained in Table A will, at CFH's discretion, be reviewed (**Pricing Review**). Any Pricing Review will exclude any pricing for any Specified Services, Subsequent Services or Additional Services which has been agreed by CFH in the [REDACTED] prior to the date of the relevant Review Notice.
- (b) The purpose of each Pricing Review is to ensure that the Company is moving to a pricing model based on financial capital maintenance (**FCM**) and Table A reflects such movement.
- (c) If CFH wishes to undertake a Pricing Review is must provide the Company and the Partner with a notice (a **Review Notice**) advising that a Pricing Review is to be undertaken.
- (d) If a Review Notice is delivered to the Company, the Company must enter into good faith discussions with CFH and the Partner and CFH, the Partner and the Company must use all reasonable endeavours to ensure that the Pricing Review is completed and the relevant price adjustments are agreed within [REDACTED] of the date of the Review Notice.
- (e) As part of a Pricing Review, the Company must within [REDACTED] of the date of the Review Notice, provide the information set out in clause 6.1 (b) of this Schedule current to the date of the Review Notice.
- (f) If CFH, the Partner and the Company cannot agree on any amendments to the pricing contained in the then current version of Table A within [REDACTED] of the date of the Review Notice, Table A will remain unchanged.

5.4 Pricing of Subsequent Services

- (a) [REDACTED] of the Subsequent Period, the Company, the Partner and CFH will commence negotiations regarding the pricing of Subsequent Services to apply in the Subsequent Period. For the avoidance of doubt such negotiations will include a review of any Subsequent Services pricing previously approved by CFH in accordance with clause 3.1 of this Schedule.
- (b) During negotiations, the Company, the Partner and CFH must use their best endeavours to reach an agreement on the pricing for the Subsequent Services based

on the Company's actual recorded Network costs, [REDACTED] the commencement of the Subsequent Period.

6. Reporting and Review

6.1 Monthly Reports

- (a) The Company will provide CFH with monthly reports in a form and containing certain prescribed matters as advised by CFH in writing from time to time.
- (b) Prescribed matters will include:
 - (i) actual and projected Network build costs during the relevant reporting period;
 - (ii) details of the Company's wholesale customers, including names, contact details, number and location of wholesale customers, volume of services purchased by individual or specific groups of wholesale customers;
 - (iii) the number of Wholesale Service Agreements executed by the Company in the period since the previous report;
 - (iv) any variations to any Wholesale Services Agreements during the relevant reporting period;
 - (v) the number of End Users for each Specified Service (and, as applicable, Subsequent Service) and each Access Seeker as at the date of the report;
 - (vi) Network performance metrics over the relevant reporting period;
 - (vii) key financial information (including, revenues, capex, return on invested capital);
 - (viii) compliance with network record keeping requirements; and
 - (ix) any other information reasonably requested by CFH.

6.2 Review

If requested to do so, the Company will meet with CFH [REDACTED] to review the Company's compliance with its obligations under this Schedule.

7. Technology Benchmarking

- (a) The Company must ensure that its services have kept up with the latest market and technological developments as benchmarked against comparable OECD countries with fibre to the premises operations, taking into account the size and scale of the Network and actual market demand for services.
- (b) Subject to clause 7(c) below, if CFH forms the view (acting reasonably) that the Company's services have not kept up with such market and technological developments and that there is demand from Access Seekers for such developments then CFH may issue a notice (a **Benchmarking Notice**) to the Company requiring the Company to undertake a benchmarking exercise and, if agreed as contemplated by clause 7(i) of this Schedule, upgrade appropriate Layer 2 services, equipment and infrastructure (which may include, 10G-PON, WDM-PON and Next Gen PON) (a

Services and Equipment Upgrade) to meet the required market and technological developments and Access Seeker demand on terms to be agreed by CFH, the Partner and the Company.

- (c) CFH will not issue a Benchmarking Notice before the completion of the [REDACTED]
- (d) If a Benchmarking Notice is delivered to the Company, the Company must enter into good faith discussions with CFH and the Partner, and CFH, the Partner and the Company must use all reasonable endeavours to agree the terms of reference for the benchmarking process within [REDACTED] of the date of the Benchmarking Notice, including:
- (i) the relevant countries to be used for benchmarking purposes;
 - (ii) the services to be benchmarked; and
 - (iii) the independent third party to undertake the benchmarking (the **Benchmarker**).

If CFH, the Partner and the Company are unable to agree who will act as the Benchmarker within [REDACTED] of the Benchmarking Notice, the Benchmarker will be an independent third party nominated by CFH and advised to the Company and the Partner in writing.

- (e) CFH, the Partner and the Company will procure that the Benchmarker is appointed within [REDACTED] of the Benchmarking Notice. CFH, the Partner and the Company will, in addition to any terms agreed by CFH, the Partner and the Company in accordance with clause 7(d) 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 clause 7 of this Schedule.
- (f) The Benchmarker will:
- (i) compare the services being offered by the Company with the services being offered by other network providers in the agreed countries and/or other network providers in comparable OECD countries with fibre to the premises operations; and
 - (ii) assess, in light of this comparison, whether the services being offered by the Company have kept up with the latest market and technological developments; and
 - (iii) present a written report (**Benchmarking Report**) to the Company, the Partner and CFH as soon as practicable but in any event no later than [REDACTED] following the appointment of the Benchmarker, setting out its conclusions and any recommendations to the Services and Equipment Upgrades which would, in its opinion, best serve to ensure that the Company is providing services which reflect the latest market and technological developments.
- (g) If CFH considers, following receipt of the Benchmarking Report, that there is a difference between the services being currently offered by the Company and the services that would ensure that the Company is providing services which reflect the latest market and technological developments, CFH:
- (i) will within one month of receipt of the Benchmarking Report notify the Company in writing (a **Deficit Notification**);
 - (ii) may propose a solution in the Deficit Notification in the form of a specific Services and Equipment Upgrade.

- (h) [REDACTED] of the Deficit Notification, the Company will provide CFH with a written proposal providing a solution to address the Competitive Deficit which may include a proposal by the Company to offer Subsequent Services to Access Seekers prior to the commencement of the Subsequent Period. The Company, the Partner and CFH will in good faith negotiate to agree the terms of the proposed solution and will in all events use their best efforts to agree the solution within [REDACTED] of the Deficit Notification.
- (i) If the proposed solution is agreed by the parties:
- (i) the proposed solution will be recorded by the Company, the Partner and CFH; and
 - (ii) the Company will implement the proposed solution as soon as possible and, unless otherwise agreed in the proposed solution, within six months of the date that the proposed solution is agreed in writing by the Company and CFH.
- (j) The Company, the Partner and CFH will each bear their own internal costs of the conduct of the benchmarking exercise and the Company and CFH will pay the Benchmarker's charges and costs as to 50% each.

8. Delivery of Services

- (a) The Company must cooperate with other Local Fibre Companies to ensure that the Specified Services are delivered to Access Seekers in a nationally consistent manner (including nationally consistent interfaces, Network monitoring, fault detection and fixing, provisioning, MACs (ie. moves, adds and changes), reporting regimes, and billing and delivery parameters), provided that nothing in this clause will require the Company to enter into any particular formal arrangements with any other Local Fibre Company. The Company must ensure that the services are delivered to Access Seekers in accordance with the relevant Reference Offer, including all product descriptions, specifications and service levels.
- (b) The Company must maintain adequate integration and test facilities and will provide sufficient access to those facilities to enable Access Seekers to test and modify their services in preparation for offering them on the Network.

9. Relief for Regulatory Change

- (a) Notwithstanding clause 9.11 of the Network Infrastructure Project Agreement, if a Specific Regulatory Change occurs CFH will grant the Company relief in accordance with this clause 9 for:
- (i) the actual cost to the Company; and/or
 - (ii) the actual loss of revenue to the Company,
- as a result of, or arising from, the Specific Regulatory Change, for the period from the date that the Specific Regulatory Change takes effect until the end of the Concession Period (**Value of the Specific Regulatory Change**), provided that:
- (iii) CFH's obligation to grant relief to the Company is:
 - (A) subject to the remainder of this clause 9; and

- (B) limited by the maximum value of the concessions and/or relief required to be granted to the Company by CFH, determined in accordance with clause 9(d) (**Relief Cap**);
- (iv) CFH will not in any circumstance be required to pay cash amounts to the Company; and
- (v) CFH will not grant relief to the Company if the Specific Regulatory Change is due to a Relevant Breach by the Company. Clause 23 (Disputes and Deadlock) of this Agreement will not apply to the resolution of any Dispute as to whether a breach as defined in clause (b) or (c) of the definition of Relevant Breach has occurred, but that any such Dispute shall be subject to the jurisdiction of the Courts of New Zealand, or as the parties may otherwise agree in writing. CFH undertakes that it will not contest or oppose, or support any person contesting or opposing, the jurisdiction of the Courts of New Zealand over such a Dispute.
- (b) CFH's obligation under clause 9(a) to grant relief to the Company will be satisfied by, and will be limited to (in each case at CFH's option as to the form of compensation):
- (i) amending the timing of the build of the Network and the related Payment Milestones under the Network Deployment Plan provided that the build of the Network is not extended beyond 31 December 2019;
- (ii) extending the Concession Period by up to five years; and/or
- (iii) adjustments to the purchase price as specified in clause 8.2 of this Agreement at which the Partner is to acquire each A share in the Company from CFH provided that such shares are acquired during the Concession Period; and/or
- (iv) delaying the time at which the Partner is obliged to acquire A Shares from CFH under clause 8.1 of this Agreement.
- (c) In calculating the Value of the Specific Regulatory Change, the actual costs and/or actual loss of revenue will be quantified on actual revenue that has not been received, and actual increased costs that have been incurred, by the Company as a result of the Specific Regulatory Change, supported by the Company's annual audited financial information. To avoid doubt, "actual revenue that has not been received" means actual revenue foregone.
- (d) The maximum value of the concessions and/or relief required to be granted to the Company by CFH under clause 9(a) (in respect of any and all Specified Regulatory Changes that take effect prior to 31 December 2019) must not in any circumstance exceed the aggregate amount of NZ [REDACTED]
- (e) Subject to clause 9(a)(v):
- (i) calculation of the Value of the Specific Regulatory Change under clause 9(a); and
- (ii) the amount or value of relief to be granted by CFH to the Company, including whether it sufficiently equates to the Value of the Specific Regulatory Change, under clause 9(b),
- (f) will be agreed in writing in good faith by the parties at any time (and from time to time) that the Company considers that it is entitled to relief following the occurrence of a Specific Regulatory Change, supported by annual audited financial information provided by the Company, and clause 9(b) applies, but if the parties cannot agree within 20 business days, each disputed matter will be, upon written notice being given by one party to the other, subject to expert determination under clause 20.4 of the

- Network Infrastructure Project Agreement. Such calculation or determination not to be undertaken more than once in any 12 month period. For the avoidance of doubt, such agreement in writing and/or determination will represent a written amendment to this Agreement for the purpose of clause 28.6 of this Agreement.
- (g) The Company acknowledges that the Company's rights under this clause 9 comprises the Company's sole and exclusive remedy against CFH and/or the Crown as a consequence of any Specific Regulatory Change.

Schedule 2: Funding Obligations and Issue of Shares

	Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
1.	<p>Communal Infrastructure</p> <p>Funding for the build and acquisition by the Company of Communal Infrastructure in accordance with the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement.</p>	CFH	<p>The maximum amount of funding to be provided by CFH in respect of the build or acquisition by the Company of Communal Infrastructure is $CPPP_C$ multiplied by N_{Passed} for the entire Coverage Area.</p> <p>This assumes that the Existing Communal Infrastructure has been valued at the lesser of the Book Value and the Depreciated Replacement Cost of such assets.</p> <p>A downward adjustment to the purchase price will be made if the Partner's Existing Communal Infrastructure does not meet the relevant requirements in accordance with the terms of the Network Infrastructure Project Agreement.</p> <p>Any such adjustments will be determined by</p>	A Shares	<p>\$1.00 per Share subject to an adjustment for movements in PPI in accordance with clause 9.</p>	<p>Unless otherwise stated in this Schedule, the number of A Shares to be issued to CFH upon delivery of the Communal Infrastructure for the relevant Network Stage in accordance with the Network Project Agreement and the Network Infrastructure Assets Transfer Agreement is that number of A Shares having an aggregate issue price equal to $CPPP_C$ multiplied by the actual number of Premises Passed in that Network Stage.</p> <p>For the avoidance of doubt, no A Shares will be issued, and no additional funding will be required to be provided by CFH, to the extent that the total number of Premises actually Passed for all Network Stages to date exceeds N_{Passed}.</p>	<p>(a) CFH's obligation to provide such funding in respect of a Network Stage other than the first Network Stage will be subject to the satisfaction of the Minimum Connections Condition as set out in clause 6.2(b) .</p> <p>(b) Subject to clauses 6.2(b) to 6.2(f) inclusive, CFH will be required to provide such funding to the Company two Business Days prior to the date on which the Company is required to pay for the relevant Communal Infrastructure in accordance with the Network Infrastructure Project Agreement and/or the Network Infrastructure Assets Transfer Agreement.</p>

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	Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
			CFH, the Partner and the Company as part of the Due Diligence Process.				
		Partner	The maximum amount of funding to be provided by the Partner in respect of the build or acquisition by the Company of Communal Infrastructure is the actual cost of such Communal Infrastructure less $CPPP_C$ multiplied by N_{Passed} for the entire Coverage Area.	A Shares	\$1.00 per Share subject to an adjustment for movements in PPI in accordance with clause 9.	<p>Unless otherwise stated in this Schedule, the number of A Shares to be issued to the Partner upon delivery of the Communal Infrastructure for the relevant Network Stage in accordance with the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement is that number of A Shares having an aggregate issue price equal to $CPPP_P$ multiplied by the actual number of Premises Passed in that Network Stage.</p> <p>For the avoidance of doubt:</p> <p>(a) no A Shares will be issued to the Partner, to the extent the total number of Premises actually Passed for all Network Stages to date exceeds N_{Passed}, notwithstanding that the Partner will be required to provide the additional funding.</p>	In accordance with the Network Deployment Plan (in particular, satisfaction of the relevant Payment Milestones) and the Network Infrastructure Project Agreement.

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Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
					(b) no A Shares will be issued to the Partner in relation to any funding the Partner provides in relation to cost overruns as provided for in clause 7.2.	
<p>2. Communal Layer 2 Infrastructure</p> <p>Funding for the build and acquisition by the Company of Communal Layer 2 Infrastructure in accordance with the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement.</p>	The Partner	<p>The maximum amount of funding to be provided by the Partner in respect of the build or acquisition by the Company of Communal Layer 2 Infrastructure is $CPPP_{L2}$ multiplied by N_{Passed} for the entire Coverage Area.</p> <p>This assumes that $CPPP_{L2}$ reflects the Partner's existing Communal Layer 2 Infrastructure has been valued at the lesser of the Book Value and the Depreciated Replacement Cost of such assets.</p> <p>A downward adjustment to $CPPP_{L2}$ will be required if the Partner's existing Communal Layer 2 Infrastructure does not meet the relevant</p>	B Shares	\$1.00 per Share subject to an adjustment for movements in PPI in accordance with clause 9.	<p>Unless otherwise stated in this Schedule, the maximum number of B Shares to be issued to the Partner upon delivery of the Communal Layer 2 Infrastructure for the relevant Network Stage in accordance with the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement is that number of B Shares having an aggregate issue price equal to $CPPP_{L2}$ multiplied by the actual number of Premises Passed in that Network Stage.</p> <p>No B Shares will be issued to the Partner to the extent that the total number of Premises actually Passed for all Network Stages to date exceeds N_{Passed} and the Partner will not be required to provide any additional funding to the Company.</p>	In accordance with the Network Deployment Plan (in particular, satisfaction of the relevant Payment Milestones) and the Network Infrastructure Project Agreement.

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Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
		Requirements. Any such adjustments will be determined by CFH, the Partner and the Company as part of the Due Diligence Process.				
<p>3. End User-Specific Infrastructure</p> <p>Funding the build or acquisition by the Company of End User-Specific Infrastructure (and relationships under all existing wholesale contracts with Service Providers and End User contracts in relation to Existing End User-Specific Infrastructure) in accordance with the Network Infrastructure Project Agreement and the Network Infrastructure Assets Transfer Agreement.</p>	The Partner	<p>Unless otherwise stated in this Schedule, the maximum amount of funding to be provided by the Partner in respect of Existing End User-Specific Infrastructure will be</p> <p>(a) $\frac{\text{Book Value and the Depreciated Replacement Cost of such assets; and}}{\text{the Book Value and the Depreciated Replacement Cost of such assets; and}}$</p> <p>(b) the sum of $CPPC_{CAP}$ and $CPPC_{L2}$ multiplied by the total number of Premises ultimately Connected on the Network using the Existing End User-Specific Infrastructure.</p>	B Shares	\$1.00 per Share subject to an adjustment for movements in PPI in accordance with clause 9.	<p>Unless otherwise stated in this Schedule, in respect of Existing End User-Specific Infrastructure and existing relationships under all existing wholesale contracts (including with Service Providers) and End User (customer) contracts relating to the Existing Infrastructure, that number of B Shares equal to</p> <p>(a) $\frac{\text{the Book Value and the Depreciated Replacement Cost of such assets; and}}{\text{the Book Value and the Depreciated Replacement Cost of such assets; and}}$</p> <p>(b) the sum of $CPPC_{CAP}$ and $CPPC_{L2}$ multiplied by the number of Premises Connected through the relevant End User-Specific Infrastructure,</p> <p>divided by the current issue price of the B Shares.</p>	In accordance with the Network Deployment Plan (in particular, satisfaction of the relevant Payment Milestones) and the Network Infrastructure Project Agreement.

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Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
		<p>A payment equal to the above amount will also be paid by the Company to the Partner in cash. If the Company has insufficient cash to make such a payment, the Partner will be issued additional B Shares determined in accordance with the above formula.</p> <p>A downward adjustment to the purchase price will be made if the Partner's Existing End User-Specific Infrastructure does not meet the relevant Requirements in accordance with the terms of the Network Infrastructure Project Agreement.</p> <p>Any such adjustment will be determined by CFH as part of the Due Diligence Process.</p> <p>The maximum amount of funding to be provided by the Partner in respect of New End User-Specific Infrastructure will be the lesser of:</p>			<p>A payment equal to the above amount will also be paid by the Company to the Partner in cash. If the Company has insufficient cash to make such a payment, the Partner will be issued additional B Shares determined in accordance with the above formula.</p> <p>A downward adjustment to the purchase price will be made if the Partner's Existing End User-Specific Infrastructure does not meet the relevant Requirements in accordance with the terms of the Network Infrastructure Project Agreement.</p> <p>Any such adjustment will be determined by CFH as part of the Due Diligence Process.</p> <p>In respect of New End User-Specific Infrastructure being acquired, that number of B Shares equal to the lesser of:</p> <p>(a) the actual cost to the Partner of building the relevant End User-Specific Infrastructure being acquired; and</p>	

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Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
		<p>(a) the actual cost to the Partner of building the relevant End User-Specific Infrastructure; and</p> <p>(b) the sum of CPPC_{Cap} and CPPC_{Cl2}, multiplied by the number of Premises ultimately Connected through the relevant End User-Specific Infrastructure.</p> <p>A payment equal to the above amount will also be paid by the Company to the Partner in cash. If the Company has insufficient cash to make such a payment, the Partner will be issued additional B Shares determined in accordance with the above formula.</p> <p>The maximum amount of funding for End User-Specific Infrastructure will be CPPC_{AVG} x N_{Passed}.</p>			<p>(b) the sum of CPPC_{Cap} and CPPC_{Cl2}, multiplied by the number of Premises Connected through the relevant End User-Specific Infrastructure being acquired,</p> <p>divided by the current issue price of the B Shares.</p> <p>A payment equal to the above amount will also be paid by the Company to the Partner in cash. If the Company has insufficient cash to make such a payment, the Partner will be issued additional B Shares determined in accordance with the above formula.</p> <p>The maximum total number of B Shares which may be issued to the Partner pursuant to this item 2, is that number of B Shares having an aggregate issue price equal to CPPC_{AVG} x N_{Passed} and in the event that the number of B Shares issued pursuant to this item 2, equals CPPC_{AVG} x N_{Passed}, the Company will have satisfied its obligation to issued shares under this item 2 in full and the Company will have no further obligation to</p>	

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	Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
						issue B Shares under this item 2.	
4.	Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure Funding the acquisition by the Company of Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure in accordance with the Network Infrastructure Project Agreement.	The Partner	Unless otherwise stated in this Schedule, the maximum amount of funding to be provided by the Partner in respect of Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure will be: (a) the actual cost to the Partner of building the relevant Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure; and (b) CPPC _{UB} , multiplied by the number of individual residences or commercial tenancies in all the Multi-Dwelling Units and Multi-Business Units ultimately Connected to the	B Shares	\$1.00 per Share subject to an adjustment for movements in PPI in accordance with clause 9.	The number of B Shares to be issued to the Partner in relation to the acquisition of the Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure will be that number of B Shares equal to: (a) the actual cost to the Partner of building the relevant Multi-Dwelling Unit Infrastructure and Multi-Business Unit Infrastructure being acquired; and (b) CPPC _{UB} , multiplied by the number of individual residences or commercial tenancies in the relevant Multi-Dwelling Units and Multi-Business Units Connected by the relevant Multi-Dwelling Unit Infrastructure and the Multi-Business Unit Infrastructure, divided by the current issue price of the B Shares.	In accordance with the Network Deployment Plan (in particular, satisfaction of the relevant Payment Milestones) and the Network Infrastructure Project Agreement.

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	Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
			Network by that infrastructure. A payment equal to the above amount will also be paid by the Company to the Partner in cash. If the Company has insufficient cash to make such a payment, the Partner will be issued additional B Shares determined in accordance with the above formula.				
5.	Existing Other Assets Funding the acquisition by the Company of existing premises, systems, and/or plant from the Partner in accordance with the Network Infrastructure Assets Transfer Agreement.	The Partner		B Shares	\$1.00 per Share subject to an adjustment for movements in PPI in accordance with clause 9.	The number of B Shares to be issued to the Partner in respect of the acquisition of such assets will be equal to the purchase price for relevant assets set out in the Network Infrastructure Assets Transfer Agreement divided by the current issue price for the B Shares.	Upon the completion of the acquisition of such assets in accordance with the Network Infrastructure Assets Transfer Agreement.
6.	Establishment Costs Funding the amount of any Establishment Costs set out in the relevant Business Plan.	The Partner	No maximum amount.	B Shares	\$1.00 per Share subject to an adjustment for movements in PPI in accordance	The number of B Shares to be issued to the Partner in relation to any Establishment Costs specified in the relevant Business Plan funded by the Partner to the Company, will be equal to the amount of	Except as set out below, such funding will be provided by the Partner in accordance with the relevant Business Plan. The Board will require the Partner to fund a specified

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	Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
					with clause 9.	such Establishment Costs divided by the current issue price for the B Shares. However, if in any Financial Year the amount of the Establishment Costs exceeds those specified in the relevant Business Plan, the Partner will only be issued one additional B Share in consideration for the aggregate amount of such funding.	portion of the Establishment Costs set out in the relevant Business Plan prior to such costs being incurred to ensure that Company has sufficient funding to pay all Establishment costs as and when such costs are due and payable. The relevant number of B Shares will be issued to the Partner at the time such funding is provided.
7.	Additional Capital Funding any required additional equity capital for working capital (including funding operations losses).	The Partner	No maximum amount.	B Shares	\$1.00 per Share subject to an adjustment for movements in IPI in accordance with clause 9.	The number of B Shares to be issued to the Partner in relation to any additional equity capital provided by the Partner to the Company in accordance with the Business Plan for the relevant Financial Year, will be equal to one B Share for each \$1.00 of additional equity capital provided by the Partner divided by the current issue price for the B Shares. However, if in any Financial Year the Partner is required to provide additional equity capital to cover any costs incurred by the Company which were not provided for in the Business Plan for that Financial Year, the Partner will only be issued one additional	Such funding will be provided by the Partner in accordance with the relevant Business Plan.

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	Nature of funding required	Shareholder(s) responsible for providing such funding	Maximum amount of funding to be provided by relevant Shareholder(s)	Class of Shares to be issued	Issue price for Shares	Number of Shares to be issued to those Shareholder(s)	Timing for provision of Funding
						B Shares in consideration for the aggregate amount of such funding.	

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Schedule 3: Reserved Matters

Securities	<p>Except where such action is expressly permitted or provided for under this Agreement, the Network Infrastructure Project Agreement or the Network Infrastructure Assets Transfer Agreement (in which case the relevant provisions of those agreements will prevail):</p> <p>(a) the issue, agreement to issue, grant or creation by the Company of any security;</p> <p>(b) the acquisition, disposal, repurchase, buy back, redemption, conversion or cancellation of any security of the Company;</p> <p>(c) any increase, reduction, consolidation, subdivision or cancellation of, or variation of the rights attaching to any class of shares in the Company; and</p> <p>(d) the cancellation of any uncalled amount of share capital of the Company.</p>
Constitution	The amendment, revocation or replacement of the Constitution.
Major Transactions	The Company's entry into any major transaction as defined in section 129 of the Companies Act 1993.
National Partnering	The entry into by the Company of, or amendment to, any contract, commitment or transaction with any New Partner or Local Fibre Company for the purpose of National Partnering.
Business Plan	Approval each year of the business plan of the Company and any material amendments to a previously approved Business Plan.
Business	<p>The entry into by the Company of, or amendment to, any contract, commitment or transaction:</p> <p>(a) Outside ordinary course which is outside the ordinary course of its business; or</p> <p>(b) Outside Business Plan which is not included in the Business Plan.</p>
Senior Management	The appointment, removal or replacement and remuneration (including an increase or decrease in remuneration) of the members of the senior management team of the Company, being the Chief Executive Officer and all persons who report to the Chief Executive Officer, including the Chief Financial Officer, Chief Technology Officer, Chief Marketing Officer and the Chief Operating Officer or persons holding equivalent positions.
Security Interests	<p>The entry into by the Company of, or amendment to, any:</p> <p>(a) contract, commitment or transaction creating any mortgage, charge, pledge or other security interest over any material asset or material undertaking of the Company; or</p>

	<p>(b) guarantee, letter of comfort or performance bond under which the maximum liability of the Company to any party or the value of which is more than a specified threshold, that is not included in the Business Plan.</p>
Financial Assistance	The provision of any loans or other financial assistance to any Shareholder or any related party of a Shareholder or any variation of the terms of any loans or other financial assistance previously provided to any Shareholder or any related party of a Shareholder.
Variation of Reserved Matters	Varying the list of Reserved Matters in this Schedule.

Schedule 4: Form of Accession Deed

This Deed is made on

- between (1) [] (the New Shareholder)
and (2) Crown Fibre Holdings Limited (CFH)
and (3) Whangarei Local Fibre Company Limited (the Company)
and (4) Northpower Limited (the Partner)

(Parties (2), (3) and (4), together the Existing Parties)

Introduction

- A. CFH, the Company and the Partner entered into a Shareholders' Agreement dated [] relating to the Company (the Shareholders' Agreement).
- B. The New Shareholder has become entitled to [a transfer] OR [the issue] of [number] Shares in the capital of the Company.
- C. It is a term of the Shareholders' Agreement that no [transfer] OR [issue] of Shares in the Company may be effected to a person who is not already a party to the Shareholders' Agreement unless the person has first entered into a deed in the form of this Deed.

It is agreed

- The New Shareholder covenants with each of the Existing Parties that, with effect from the date of this Deed, the New Shareholder is bound by and is to observe and perform every provision of the Shareholders' Agreement (as modified by the provisions of this Deed) [by which [outgoing party] was bound] in every way as if the New Shareholder was a party to the Shareholders' Agreement (as modified by the provisions of this Deed).
- [Note: Include any specific terms on which the New Shareholder has been permitted to acquire Shares and any resulting changes to the Shareholders' Agreement (e.g., as to the right of each party to appoint and remove directors) that the parties have agreed.]***
- Unless otherwise defined in this Deed, terms defined or construed in the Shareholders' Agreement will have the same meanings and constructions when used in this Deed.
- This Deed shall be governed by and construed in accordance with New Zealand law.

Execution

Executed and delivered as a deed

[Execution clauses to be included]

Schedule 5: Warranties

1. Due authorisation

The relevant party:

(a) **Authorisation**

has obtained all necessary authorisations for the execution, delivery and performance by that party of this Agreement in accordance with its terms;

(b) **Powers and capacity**

has full power to and capacity to own its own assets and enter into and perform its obligations under this Agreement, and when executed, this Agreement will constitute the legal and binding obligations of the party, enforceable against it in accordance with its terms except as such enforceability may be limited by equitable principles or by bankruptcy, insolvency, liquidation or other laws relating to creditors' rights; and

(c) **Incorporation**

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

2. Compliance

The execution, delivery and performance by the party of this Agreement:

(a) complies with the relevant party's constitution or other constituent documents; and

(b) does not constitute a breach of any law or obligation, or cause or result in default under any agreement or arrangement, by which the relevant party is bound and which would prevent the relevant party from entering into or performing its obligations under this Agreement.

3. Insolvency Event

None of the events referred to in any of paragraphs (a) to (e) inclusive of the definition of Insolvency Event has occurred in relation to the relevant party.

4. Government Authority

To the best of the relevant party's knowledge, no consent or approval by, notice to or registration with any Government Authority, is required on the part of that party in connection with the execution and delivery of this Agreement or the transactions contemplated by this Agreement.

Annexure A: Initial Business Plan

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

Annexure B: Business Plan Template Form

1. Executive Summary

Include a description of the ownership structure of the Company and the Company's role in relation to the New Zealand Government's UFB initiative.

2. Market

2.1. Customer Dynamics

Explain the environment of the target customers:

- 2.1.1. Income levels
- 2.1.2. Population and growth
- 2.1.3. Segments – residential/commercial/retail etc
- 2.1.4. Existing digital penetration and trends

2.2. Geographic Dynamics

- 2.2.1. Geographical layout of the area
- 2.2.2. Population density
- 2.2.3. Expected developments [REDACTED]

2.3. Competitor (Substitution) Position

- 2.3.1. Existing providers
- 2.3.2. Existing technology availability
- 2.3.3. Expected charges

2.4. Business Model/Market Entry

- 2.4.1. Pricing relative to substitutions
- 2.4.2. Positioning of the services relative to competitors
- 2.4.3. Promotional: how will people know/access the service; what's the launch plan?
- 2.4.4. Demand and Take up - Explain:
 - 2.4.4.1. Assumptions; and
 - 2.4.4.2. Forecasts.

3. **Partner Network**

Who will the provider partner with to deliver the product?

4. **People**

Outline key people involved in the venture:

- 4.1. Governance
- 4.2. Executive
- 4.3. Management
- 4.4. Operational

5. **SWOT**

Swot analysis of the venture based on the earlier sections with realistic gaps identified.

6. **Financials**

- 6.1. Detailed financial models with supporting assumptions, including all funding assumptions.
- 6.2. Valuation of Company:
 - 6.2.1. Discount rate;
 - 6.2.2. IRRs; and
 - 6.2.3. Sensitivity analysis.

7. **Project Plan**

Overview of the key activities and project plan.

8. **Risk Assessment & Mitigation**

Overview of the key risks and mitigation strategies (including contingency plans if take up is poor).

Annexure C: Services and Pricing Annexure

Note: a public version of Annexure C: Services and Pricing Annexure is available from the website of either:

- *the Company at:*
http://northpowerfibre.co.nz/downloads/documents/Northpower_UFB_Price_Book_Summary.pdf

or

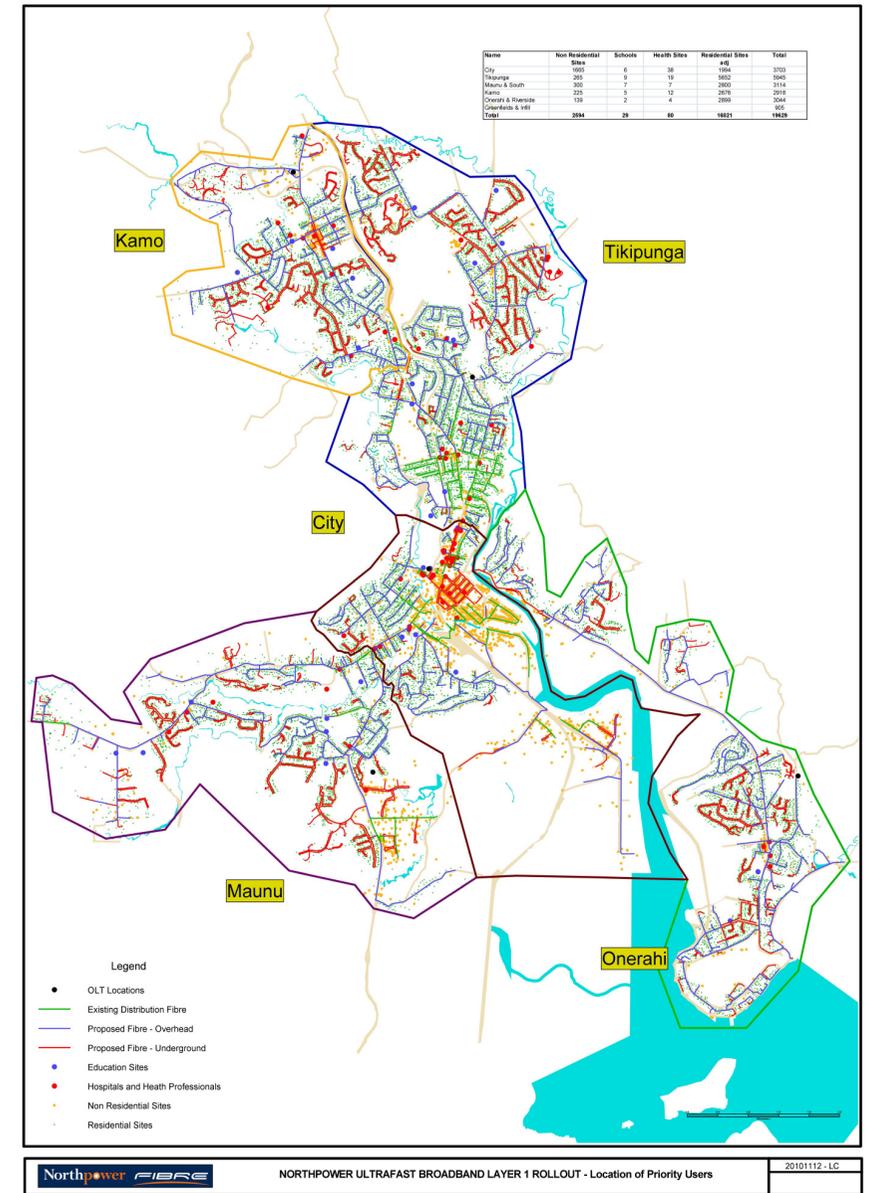
- *CFH at:*
<http://www.crownfibre.govt.nz/media/14214/northpower%20enable%20ufb%20price%20book%20summary%20%2815%20july%202011%29.pdf>

Annexure D: Constitution

Note: the Company's Constitution is available from the Companies Office website at:

<http://www.business.govt.nz/companies/app/ui/pages/companies/3223207/documents>

Annexure E: Coverage Area



Annexure F: Deed of Undertaking

Note: a copy of the final executed Deed of Undertaking is available from the website of the Company at:

http://northpowerfibre.co.nz/downloads/documents/WLFC_Deed_of_Open_Access_07102011.pdf

Annexure G: Management Agreement

Service	LFC Only	Northpower	Outsource	Per annum Estimate to LFC
Information Technology and Services: System support, hardware solutions, licences, telecommunications, back up services etc		✓		[REDACTED]
Billing – Performing and recording sales and debtor transactions, managing pricing tables, making all information available to finance provider - Reporting functions as required.		✓		[REDACTED]
Marketing – social media, media management, market profiles, encouraging and stimulating uptake, key communication tool etc.		✓		[REDACTED]
GIS Services – asset record management, full asset repository,		✓		[REDACTED]
Finance – Full suite of finance services including office administration and payments, treasury management, statutory compliance, audit liaison etc. Northpower can assistance with provider selection – [REDACTED] Assumed CFH wants independence here.			✓	[REDACTED]

Service	LFC Only	Northpower	Outsource	Per annum Estimate
Transition Services – Premise selection, Branding, Stationery, Legal costs	✓	✓		[REDACTED]
Reporting (non Financial) Services including Board requirements, partner performance, regulatory compliance, information disclosure etc	✓	✓		[REDACTED]
Compliance/Company Secretarial including minutes, agenda preparation including Board paper co-ordination, Director co-ordination and travel, Legislative Compliance support etc	✓	✓		[REDACTED]
Customer/Stakeholder Management, Wholesale providers such as Telstra Clear, Councils, major users, CFH, Regulators etc	✓			[REDACTED]
Human Resources – Recruitment, Training, Temporary worker Coverage, Payroll, Health and Safety		✓		[REDACTED]
TOTAL				[REDACTED]
				[REDACTED]