

Network Infrastructure Assets Transfer Agreement

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

Christchurch City Networks Limited

Vendor

and

Enable Networks Limited

Purchaser

and

Crown Fibre Holdings Limited

CFH

and

Christchurch City Holdings Limited

Vendor's Guarantor

Date 31 May 2011

BELL GULLY

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This **Assets Transfer Agreement** is made on 31 May 2011

between (1) **Christchurch City Networks Limited (Vendor)**

and (2) **Enable Networks Limited (Purchaser)**

and (3) **Crown Fibre Holdings Limited (CFH)**

and (4) **Christchurch City Holdings Limited (Vendor's Guarantor)**

Background

- A. On 21 October 2009 the New Zealand Government issued an invitation to participate, as varied (the **ITP**) to invite potential partners to submit proposals on how they would co-invest with the Government to achieve its Ultra-Fast Broadband objective (the **UFB Initiative**).
- B. The Government's objective of the UFB Initiative is to accelerate the roll-out of Ultra-Fast Broadband to 75% of the New Zealand population over ten years, concentrating in the first six years on priority broadband users such as businesses, schools and health services, plus greenfield developments and certain tranches of residential areas (the **UFB Objective**).
- C. The Government has established a Crown-owned investment company, CFH, to manage its investment in the UFB Initiative. The Vendor was the successful respondent under the ITP in relation to the Coverage Area and CFH and the Vendor have formed the Purchaser, as the Local Fibre Company.
- D. The overriding objectives of the Purchaser are to maximise availability of an industry's best practice fibre optic communications infrastructure network in the Coverage Area and generate widespread uptake of services (including Layer 1 Services and Layer 2 Services) in the Coverage Area.
- E. The Purchaser will own and control the Network in the Coverage Area. The Network will include the new network infrastructure designed and built under the Network Infrastructure Project Agreement and the Existing Infrastructure to be acquired under this Agreement.
- F. The Vendor owns the Existing Infrastructure in the Coverage Area, together with Ancillary Assets relating to this infrastructure, and has agreed to sell the Existing Infrastructure and the Ancillary Assets to the Purchaser for the consideration and on the terms and conditions set out in this Agreement.
- G. The Vendor's Guarantor has agreed to guarantee the Vendor's performance of its obligations under this Agreement and indemnify the Purchaser against any loss from any breach by the Vendor of such obligations.

It is agreed

1. Definitions and Construction

1.1 Definitions

In this Agreement, unless the context otherwise requires:

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

Agreement Date means the date of this Agreement;

Aggregate Guarantee Amount has the meaning given to that term in the Shareholders' Agreement;

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

Assets means the Existing Infrastructure and the Ancillary Assets;

B Shares has the meaning given to that term in the Constitution;

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

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

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

Conditions means the conditions set out in clause 3;

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

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

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

Constitution means constitution of the Purchaser from time to time;

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

Customer Contracts means all contracts between the Vendor and any customer of the Vendor (including End Users and Service Providers) relating to the use of, or access to, the Network as at the Transfer Date, a list of which as at the date of this Agreement is set out in Annexure C;

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

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

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

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

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

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

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

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

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

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

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

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

GST means tax charged under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

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

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

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

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

Other Contracts means the agreements, leases, deeds, arrangements or understandings (not including Customer Contracts) to which the Vendor is a party that relate exclusively or predominantly to the relevant Assets;

PPSA means the Personal Property Securities Act 1999;

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

Pre-Transfer Period means the period commencing on the Agreement Date and ending on the Transfer Date;

Purchase Price means the aggregate purchase price payable for the Assets as at the Transfer date, determined under clause 6.3;

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

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

Related Company has the same meaning as in section 2(3) of the Companies Act 1993 provided that, for the purpose of this Agreement, a reference to "company" in that subsection refers to any body corporate notwithstanding its jurisdiction of incorporation;

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

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

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

Subsidiary has the meaning in section 5 of the Companies Act 1993; **Transfer** means the sale and purchase and transfer of the Assets in accordance with this Agreement and, where the context requires, also means the time at which Transfer takes place or is to take place;

Transfer means a transfer of assets from the Vendor to the Purchaser in accordance with this Agreement;

Transfer Consents has the meaning as set out in clause 6.1(b);

Transfer Date means the date, following the satisfaction of the Conditions, for Transfer agreed in writing by the Purchaser and the Vendor;

Vendor's Guarantor's Warranties has the meaning set out in clause 14.7;

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

Warranty Claim means any Claim by the Purchaser against the Vendor or the Vendor's Guarantor under the Vendor Warranties; and

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

1.2 Construction

In this Agreement, unless the context otherwise requires:

- (a) a reference to a **clause** is a reference to a clause of this Agreement;
- (b) a reference to a **Schedule** or **Annexure** is a reference to a schedule to, or annexure of, this Agreement;
- (c) a reference to **payment** means the payment of, or mechanism of transferring, consideration from one party to another in the form of cash, equity securities or otherwise, in accordance with this Agreement, and references to paid, payable and pay will be construed accordingly;
- (d) a **gender** includes each other gender;
- (e) the **singular** includes the plural and vice versa;
- (f) a reference to **documentation** includes:
 - (i) a reference to that document as varied, supplemented, novated or substituted from time to time;
 - (ii) a reference to that documentation in any form, whether paper based or in electronic form encoded on or as part of any form of media; and
 - (iii) a reference to materials means a reference to materials of any kind whether in the form of documentation, software, hardware, network, componentary or otherwise;
- (g) a reference to the **Vendor** in this Agreement includes reference to its successors in title and permitted assigns;
- (h) a reference to the **Purchaser** in this Agreement includes reference to its successors in title and permitted assigns;
- (i) any **agreement** not to do a thing also constitutes an agreement not to suffer or permit or cause that thing to be done;
- (j) any reference to a **consent**, requires the prior written consent of the party required to give that consent;
- (k) whenever the words **includes** or including are used in this Agreement, they are deemed to be followed by the words without limitation";

- (l) a reference to any **legislation, policy** or **standard** includes a modification of that legislation, policy or standard or, in the case of legislation, legislation enacted in substitution for that legislation and a regulation, order-in-council and other instrument from time to time issued or made under that legislation;
- (m) **headings** to clauses in this Agreement and the table of contents are included for the purpose of ease of reference only and are not to have any effect on construction and interpretation;
- (n) a reference to a **person** includes a partnership and also a body of persons, whether corporate or unincorporated;
- (o) the **Background** forms part of this Agreement;
- (p) a reference to a **business day** is a reference to any day of the year other than a Saturday, a Sunday, a New Zealand public holiday or provincial anniversary day;
- (q) a reference to a **day**, other than a business day, is a reference to any calendar day of the year;
- (r) a reference to any **time** is a reference to New Zealand time;
- (s) a reference to **currency** is a reference to New Zealand currency, unless expressly provided otherwise;
- (t) if an obligation falls to be performed or a right is to be exercised, on or by a **day that is not a business day**, then unless otherwise specified, that obligation is due to be performed or that right may be exercised on the business day next following that day;
- (u) references to and expressions used in connection with **financial calculations**, valuations, accounting or financial reporting functions or their description in this Agreement bear the respective meanings ascribed to like expressions or expressions to similar intent in accordance with the New Zealand equivalents to the International Financial Reporting Standards as adopted by the New Zealand Accounting Standards Review Board (**NZ IFRS**); and
- (v) a reference to a **matter, information** or a **circumstance** being fairly disclosed (or similar expression) means full, clear and accurate written disclosure in sufficient detail to enable the Purchaser to identify the nature, scope and implications of the matter, information or circumstance disclosed.

1.3 No contra proferentem

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

1.4 Exercise of the Purchaser's rights

- (a) CFH may, at its discretion, direct the Purchaser to:
 - (i) exercise any right, discretion or remedy of the Purchaser; or
 - (ii) provide any approval or consent of the Purchaser,under or in connection with the Agreement.

- (b) If, for whatever reason, such directions are not followed then CFH may, at its discretion, act on behalf of the Purchaser in exercising such right, discretion or remedy or providing such approval or consent.

1.5 Construction of references to Vendor's knowledge

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

2. Sale and purchase

2.1 Sale and purchase

The Vendor agrees to sell, and the Purchaser agrees to purchase, legal and beneficial title to the Assets on the terms of this Agreement.

2.2 No Encumbrances

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

2.3 No assumption of liabilities

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

2.4 Title to and risk in the Assets

On Transfer:

- (a) the Vendor's title, rights and interest to and in the relevant Assets; and
- (b) the risk of loss of or damage to the relevant Assets,

passes from the Vendor to the Purchaser.

2.5 Preservation of rights

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

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

3. Conditions

3.1 Transfer conditional

The Transfer under this Agreement is conditional on:

- (a) the Purchaser and CFH conducting a due diligence review of the Assets and each being satisfied with the outcome of such due diligence review in the discretion of each of the Purchaser and CFH and, for the avoidance of doubt, such due diligence will include an investigation into whether the relevant Assets meet the Requirements, subject to the exceptions in Annexure A and, on making good the exceptions in Annexure A, will meet the Requirements.
- (b) the Purchaser, the Vendor and CFH agreeing a list of the written information provided by the Vendor to the Purchaser during the due diligence process which shall be the Disclosure Information for the purposes of this Agreement; and
- (c) the Purchaser, the Vendor and CFH agreeing a list of assets to be included in Schedule 1 and Schedule 2.

3.2 Benefit of the Conditions

The parties acknowledge that the Conditions set out in:

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

3.3 Satisfaction of the Conditions

(a) Obligations

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

(b) Mutual obligations

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

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

(c) Limitation on parties' obligations

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

3.4 Notification of fulfilment of Conditions

As soon as reasonably practicable after the Vendor or the Purchaser has become aware of the fulfilment of a Condition, it must notify the other (and CFH) in writing. Any notification

delivered in accordance with this clause 3.4 must be accompanied by a copy of any relevant consent.

3.5 Non-satisfaction of the Conditions

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

4. Purchase Price and other payments

4.1 Consideration for the Assets

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

4.2 Allocation of Purchase Price

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

4.3 Adjustment of Purchase Price

The Purchase Price may be adjusted in accordance with clause 6.4 and clause 6.5.

4.4 Lowest price

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

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

5. GST

5.1 GST date

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

5.2 GST gross up

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

5.3 Set-off arrangement

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

5.4 Satisfaction of obligation to pay GST

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

5.5 No confirmation from IRD

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

5.6 Partial confirmation from IRD

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

5.7 Withdrawal of confirmation of crediting of Vendor's GST account

If, notwithstanding the confirmation given by the IRD or a crediting of an amount to the Vendor's GST account, the IRD resiles from that confirmation and reverses such crediting or treats such crediting as not having occurred and seeks to recover GST from the Vendor in relation to a supply by the Vendor to the Purchaser under this agreement, the Purchaser will

immediately pay to the Vendor in cleared funds an amount equal to the GST owing to the IRD together with any associated interest and penalties.

5.8 Zero rating for supplies of land

The Purchaser warrants that at the time of settlement of any Transfer of Assets to it under this Agreement the Purchaser will be a registered person at that time and the goods supplied to the Purchaser will be used by the Purchaser to make taxable supplies, unless the Purchaser provides notice to the contrary to the Vendor prior to any such settlement.

On the basis of such warranties, to the extent that any supply made by the Vendor wholly or partly consist of land, the supply is, under the law as it applies at the date of this Agreement able to be zero rated for GST purposes and the Vendor agrees to proceed on this basis. Prior to any Transfer the parties will consult, to the extent necessary, to determine whether a particular supply made on Transfer consists wholly or partly of land.

5.9 Interpretation

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

5.10 GST group

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

5.11 Other Tax

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

6. Pre-Transfer Period

6.1 Conduct pending Transfer

(a) During the Pre-Transfer Period, the Vendor must:

- (i) ensure that the Assets are used in the ordinary course in compliance with all laws and regulations applicable to the Assets and in substantially the same manner as the Assets have been used before the Agreement Date;
- (ii) maintain the Assets in good working order and in accordance with manufacturers' guidelines;
- (iii) not dispose of any Assets;
- (iv) maintain all current insurance policies in relation to the Assets, including for loss, professional indemnity and public liability;
- (v) not amend the terms of any Customer Contracts or Other Contracts;
- (vi) not create any Encumbrance in any of the Assets;

- (vii) promptly notify the Purchaser of any events which may be material to the Assets (including any actual, intended or threatened litigation); and
- (viii) ensure that no action is taken, or omitted to be taken, by it or any other person which may adversely affect the Assets,

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

- (b) During the Pre-Transfer Period, the Vendor must use all reasonable endeavours to obtain any required consents of the counterparties to the assignment of the Other Contracts (the **Transfer Consents**) by the Transfer Date.

6.2 Pre-Transfer access and information

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

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

6.3 Establishment of Purchase Price

- (a) The Purchase Price shall be equal to the book value of the Assets (such value being determined on a GST exclusive basis) as shown in the Vendor's financial records as at the Transfer Date and determined in accordance with NZ IFRS.
- (b) Prior to Transfer, the Parties shall complete Schedule 3 to show the category of Asset, the agreed Book Value for that category of Asset and the aggregate Purchase Price.

6.4 Adjustment to Purchase Price

- (a) The Purchase Price has been agreed as the Purchase Price on the basis that it represents the market value of the Assets to be acquired by the Purchaser.
- (b) If at any time during the Pre Transfer Period, or the period of three months after the Transfer Date or, the Purchaser forms the opinion, based on reasonable evidence, that the agreed book value of the relevant Assets as set out in Schedule 3 is not the true book value of those Assets as at the date of this Agreement determined in accordance with NZ IFRS (Book Value) and is overstated, the Purchaser may issue a notice (a **Book Value Review Notice**) to the Vendor setting out:
 - (i) a description of the relevant Assets;
 - (ii) the agreed book value of those Assets as set out in Schedule 3;
 - (iii) the Purchaser's revised determination of the Book Value; and
 - (iv) evidence which establishes the Book Value referred to in clause 6.4(b)(iii).

- (c) Within 10 Business Days of the date of the Book Value Review Notice, the Vendor and the Purchaser must meet to agree any reduction required to be made to the Book Value (and therefore the Purchase Price) of the Assets referred to in the Book Value Review Notice. As part of agreeing such reductions, the Vendor and the Purchaser must also agree:

- (i) the amount by which the Purchase Price needs to be reduced to reflect the reduction in the book value of the relevant Assets; and
- (ii) if the Book Value Review Notice is issued on or after the Transfer Date, the number of B Shares which the Vendor was issued in relation to the portion of the Purchase Price determined in accordance with clause 6.4(c)(i) which need to be bought back by the Purchaser.

- (d) If the Vendor and the Purchaser agree the matters referred to in clause 6.4(c):

- (i) the parties will record the matters agreed in writing within five Business Days of such agreement being reached;
- (ii) if such agreement is reached on or prior to the Transfer Date, the Purchase Price payable by the Purchaser to the Vendor will be reduced by the amount agreed by the Purchaser and the Vendor; and
- (iii) if such agreement is reached after the Transfer Date, the parties will take all actions (including signing all resolutions and other required documentation) to effect a buy back by the Purchaser from the Vendor, for a total consideration of one dollar, of those B Shares determined under clause 6.4(c)(ii) within 20 Business Days of such agreement;

- (e) If the Vendor, and the Purchaser cannot agree the matters referred to in clause 6.4(c) within 30 Business Days of the date of the Book Value Review Notice, such dispute will, at the instigation of the Vendor or the Purchaser be determined by an independent person, to be agreed between the Vendor and the Purchaser, or, if the Vendor and the Purchaser do not agree on such appointment within five Business Days of the Vendor or the Purchaser giving notice of its suggested appointee to the other, then on application by either the Vendor or the Purchaser, by an independent person appointed by the Chair (or in the Chair's absence the Deputy-Chair) for the time being of the Auckland branch of the New Zealand Institute of Chartered Accountants. The independent person will determine each of the matters set out in clause 6.4(c). Upon the independent person issuing his or her determination:

- (i) if such determination is made prior to the Transfer Date the Purchase Price payable by the Purchaser to the Vendor will be adjusted in accordance with the independent person's determination; and
- (ii) if such determination is made after the Transfer Date, the parties will take all actions (including signing all resolutions and other required documentation) to effect a buy back of those B Shares determined by the independent expert for a total consideration of one dollar within 20 Business Days of the date of the independent experts determination.

For the avoidance of doubt, the independent person may not increase the Purchase Price payable by the Purchaser to the Vendor.

- (f) The independent person acting under clause 6.4(e) will act as an expert and the determination of the person will be binding (in the absence of a manifest error) on the Vendor and the Purchaser. The costs of the independent person will be borne equally

by the Vendor and the Purchaser unless determined otherwise by the independent person.

- (g) Where, in relation to a taxable supply, an amount on account of GST was payable by the Purchaser to the Vendor in addition to the Purchase Price in accordance with clause 4.2 and an adjustment of the Purchase Price is made in accordance with clause 6.4(c)(i) or 6.4(e)(i), such that the amount of GST shown in the tax invoice issued by the Vendor is more than the GST chargeable on that taxable supply (the difference being the **Excess GST**), the Vendor will, within 3 working days of such adjustment, issue a credit note to the Purchaser and make a payment to the Purchaser of the Excess GST.

6.5 Loss or damage

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

(a) Major loss or damage

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

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

(b) Minor loss or damage

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

If the Vendor and the Purchaser are unable to agree on the reduction in value of Affected Assets for the purposes of clause 6.5(a)(ii) or 6.5(b), that shall be determined by an independent person in accordance with the procedure recorded in clause 6.4(e) with the necessary modifications.

7. Transfers

7.1 Time and place

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

7.2 Vendor's obligations

On Transfer, the Vendor must:

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

7.3 Documents relating to the Assets

At Transfer the Vendor must deliver to the Purchaser:

(a) Documents

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

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

(b) Releases

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

(c) Wholesale Services Agreement

the Wholesale Services Agreement referred to in clause 9.1(b), duly executed by the Vendor;

(d) **Other Contracts**

an assignment of each relevant Other Contract in favour of the Purchaser duly executed by the Vendor, together with such Transfer Consents as have been obtained by the Transfer Date.

7.4 **Purchaser's obligations**

At Transfer the Purchaser must satisfy the payment of the Purchase Price in accordance with (the agreed) Schedule 3 and the Shareholders' Agreement.

7.5 **Transfer simultaneous**

(a) **Actions interdependent**

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

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

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

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

(b) **Waiver of actions required**

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

8. **Default and cancellation**

8.1 **Procedures on default**

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

(a) **Transfer Notice**

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

(b) **Ready, willing and able to proceed**

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

(c) **Time for compliance**

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

8.2 **Vendor's rights on default**

If the Defaulting Party is the Purchaser and the Purchaser does not comply with its obligations referred to in clause 7, the Vendor may, without prejudice to any of its other rights or remedies available under this Agreement or at law, sue the Purchaser for specific performance.

8.3 **Purchaser's rights on default**

(a) **Remedies**

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

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

(b) **Extent of damages**

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

8.4 Additional cancellation rights for Purchaser

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

- (a) either the Shareholders' Agreement or the Network Infrastructure Project Agreement is terminated;
- (b) an order is made or an effective resolution is passed for the winding up or dissolution without winding up (otherwise than for the purposes of reconstruction or amalgamation) of the Vendor;
- (c) a receiver, receiver and manager, judicial manager, liquidator, administrator or like official is appointed over the whole or a substantial part of the undertaking or property of the Vendor;
- (d) a holder of an Encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Vendor; or
- (e) there is a material breach of a Vendor Warranty that is, in the opinion of the Purchaser:
 - (i) not capable of remedy; or
 - (ii) capable of being remedied and the Vendor has not remedied such breach within 10 business days of written notice from the Purchaser to remedy such breach.

8.5 Effect of cancellation of this Agreement

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

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

9. Contracts

9.1 Customer Contracts

- (a) All Customer Contracts are to be retained by the Vendor unless otherwise agreed;

- (b) The Vendor will enter into a Wholesale Services Agreement in support of the Customer Contracts and shall comply with all applicable provisions of the Wholesale Services Agreement;
- (c) The Vendor will continue to provide services to its customers under the terms of each Customer Contract on and after the Transfer Date until each Customer Contract is terminated or expires in accordance with its terms;
- (d) The Vendor will purchase services from the Purchaser under the Wholesale Services Agreement and use those services to supply services under its Customer Contracts;
- (e) The Vendor will not:
 - (i) except on terms previously agreed in writing by CFH, enter into any Customer Contract on or after the Agreement Date;
 - (ii) vary the terms of its existing Customer Contract on or after the Agreement Date; and
 - (iii) exercise any options under those Customer Contracts to renew or extend the term of the Customer Contracts.

9.2 Pre-Transfer assignments

In respect of all Other Contracts, the Vendor must use best endeavours to:

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

9.3 Purchaser to assist

The Purchaser:

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

9.4 Post Transfer assignments

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

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

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

If, and to the extent that, any Other Contracts are not, or cannot be, assigned to the Purchaser on Transfer:

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

(c) **No breach of agreement**

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

(d) **Exclusion of Other Contracts**

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

9.5 Documentation

The Vendor must, at its own cost, prepare deeds of assignment and consents for the assignment of the Other Contracts and associated documents under this Agreement which are to be in a form approved by the Purchaser (acting reasonably).

9.6 Transfer of Liabilities

Nothing in this Agreement will:

(a) **Liabilities**

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

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

make the Purchaser liable for any losses or for any act, neglect, default or omission in respect of any of the Other Contracts committed by the Vendor, or occurring, prior to

Transfer, or for any losses arising from any failure to obtain any transfer or Transfer Consent in respect of any Other Contracts or from any breach of any Other Contracts by this Agreement or Transfer; and

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

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

9.7 Discharge of obligations

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

9.8 Indemnity

- (a) The **Vendor** will indemnify the Purchaser, CFH and the Crown against all liability or loss arising from, and any costs, damages, losses, charges or expenses incurred by the Purchaser, CFH and the Crown in connection with:

- (i) any liability or obligation of the Vendor in relation to the Assets; and
- (ii) any act, neglect, default or omission in respect of any of the Contracts committed by the Vendor, or occurring, prior to Transfer.

- (b) The provisions of this clause 9.8 are intended to confer a benefit on the Crown and to create in **respect** of such benefit an obligation enforceable at the suit of the Crown under the Contracts (Privity) Act 1982.

10. Requirements

10.1 Obligation to meet Requirements

- (a) As at the date of this Agreement, the Assets are to meet the Requirements, subject to the exceptions listed in Annexure A, and the Vendor has provided a Vendor Warranty to such effect. In addition, the Assets will be subject to user acceptance testing in accordance with Schedule 2 of the Network Infrastructure Project Agreement when the Assets are delivered in accordance with the Network Deployment Plan.

- (b) The Vendor agrees that, notwithstanding the Vendor Warranties or any other provision of this Agreement:

- (i) if the Assets do not meet the Requirements, subject to the exceptions listed in Annexure A, the Vendor will be required to remedy and make good such defect at the Vendor's cost;
- (ii) ultimately the exceptions to the Requirements listed in Annexure A must be remedied and made good by the Vendor and at the Vendor's cost for which the Vendor shall be issued the requisite number of B Shares; and
- (iii) for the purposes of sub-clause (b)(ii), the remedial work to be undertaken by the Vendor shall include any further work required to the Communal Infrastructure to ensure the Assets meet the Requirements in full.

10.2 Remedial work

- (a) If:
- (i) the Assets do not meet the Requirements, subject to the exceptions listed in Annexure A; or
 - (ii) given the demand for certain services on the Network, the exceptions to the Requirements listed in Annexure A should be remedied,
- the Purchaser may give the Vendor a notice (a **Remedial Notice**), requiring the Vendor to undertake the remedial work required.
- (b) Within 20 Business Days of the date of a Remedial Notice, the Purchaser and the Vendor must meet to agree:
- (i) the detailed remedial work required to be undertaken; and
 - (ii) the timetable for undertaking such remedial work,
- (together, the **Remedial Plan**).
- (c) The Vendor must complete the Remedial Plan in accordance with the details of such plan and the Vendor must keep the Purchaser updated in relation to the status of the relevant remedial work and completion of the Remedial Plan.
- (d) In the event that the Purchaser and the Vendor are unable to agree any of the matters set out in clause 10.2(b), such dispute will be determined in accordance with clause 20 of the Network Infrastructure Project Agreement.
- (e) Subject to clause 10.1(b)(ii) (issue of B Shares for the remedy of Annexure A exceptions), all remedial work undertaken by the Vendor in accordance with this clause 10 shall solely be for the Vendors account and in no circumstances shall the Purchaser be liable to fund or reimburse the Vendor for any cost, expenses or liabilities associated with such remedial work.

10.3 Relationship with Vendor Warranties

If the Purchaser makes a claim for a breach of the Vendor Warranty contained in clause 4.1(d) of Schedule 4 (a **Requirements Vendor Warranty Claim**), and prior to the date of that Requirements Vendor Warranty Claim the Vendor has undertaken any Remedial Work in accordance with clause 10.2 in respect of the Assets which are the subject of that Requirements Vendor Warranty Claim, any payment to be made by the Vendor in respect of such Requirements Vendor Warranty Claim shall take into account such Remedial Work.

11. Vendor Warranties

11.1 Warranties by the Vendor

Subject to the limitations in clause 12, the Vendor warrants to the Purchaser that each of the Vendor Warranties is true and accurate at the Agreement Date and will remain true and accurate until the Transfer Date and on the Transfer Date (except that a Vendor Warranty which refers to only one of those dates is given only as at that date).

11.2 Liquidated damage

- (a) **Amount**
- If any of the Vendor Warranties was untrue or inaccurate at the time the Vendor Warranty was given or deemed to be repeated, the Vendor will pay to the Purchaser on demand, by way of liquidated damages, a sum equal to the amount required to put the Purchaser into the position that it would have been in if the Vendor Warranty had been true and accurate.
- (b) **Other claims**
- Nothing in clause 11.2(a) will limit the rights of the Purchaser to claim for any loss or damage, in contract or otherwise, in respect of any of the Vendor Warranties or under the other provisions of this Agreement, in connection with the subject matter of this Agreement to the extent that this may exceed the amount the Purchaser is entitled to receive under clause 11.2(a).

11.3 Indemnity

- (a) The Vendor will indemnify the Purchaser, CFH and the Crown against all liability or loss arising from, and any costs, damages, losses, charges or expenses incurred by the Purchaser, CFH or the Crown in connection with:
- (i) the Assets arising on or before, or relating to the period before, Transfer; or
 - (ii) any tax relating to or connected with the Assets arising on or before, or relating to the period before, Transfer or otherwise relating to operations of, or liabilities incurred by, the Vendor.
- (b) The parties acknowledge and agree that the provisions of this clause 11.3 are also for the benefit of, and enforceable by, the Crown under the Contracts (Privity) Act 1982.

12. Limitations on Claims

12.1 Threshold limits for Warranty Claims

- (a) **Limits**
- The Purchaser must not make a Warranty Claim, and the Vendor is not liable to make any payment in respect of a Warranty Claim (whether by way of damages or otherwise):
- (i) unless the amount claimed is in excess of ████████ respect of any individual Warranty Claim or series of related Warranty Claims, in which case, the Vendor will be liable for the full amount of the Warranty Claim not just the excess. Regardless of whether the Vendor's liability for a Warranty Claim is excluded pursuant to this clause 12.1(a)(i), the full amount of the Warranty Claim will be treated as a Warranty Claim for the purposes of calculating whether the threshold in clause 12.1(a)(ii) has been reached;
 - (ii) unless the aggregate of the amount then claimed and of all other Warranty Claims made or which would but for the provisions of this clause 12.1 have previously been made exceeds ████████, upon the basis that, once such threshold has been exceeded, any claim so made may be for and in respect of

the total amount of the Warranty Claim and is not limited to the amount in excess of [REDACTED] and

- (iii) if the total aggregate amount paid by the Vendor for all and any Warranty Claims exceeds [REDACTED] of the Purchase Price.

(b) Interpretation

For the purposes of this clause 12.1:

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

12.2 Limits on types of Warranty Claims

The Purchaser must not make a Warranty Claim to the extent that the matter, information or circumstance giving rise to, or the subject of, the Warranty Claim is fully and fairly disclosed to the Purchaser in the Disclosure Information.

12.3 Reduction of Purchase Price

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

13. Purchaser's Warranties

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

14. Guarantee and Guarantor Warranties

14.1 Unconditional guarantee and indemnity

In consideration of the Purchaser agreeing to enter into this Agreement, the Vendor's Guarantor guarantees by way of continuing obligation to the Purchaser as primary obligor, and not merely as surety, the due performance by the Vendor of all of its obligations under this Agreement and indemnifies the Purchaser against any loss or damage which it may suffer or incur as a direct or indirect result of the breach by the Vendor of any of its obligations under this Agreement.

14.2 No discharge

The Vendor's Guarantor is not to be discharged, nor are the Vendor's Guarantor's obligations to be affected, by any matter or thing which, but for this clause 14.2, would or might have discharged the Vendor's Guarantor or affected its obligations, including:

- (a) the giving of time, credit or other indulgence or concession to the Vendor, the Vendor's Guarantor or any other person or any other dealings, transactions or arrangements between the Purchaser and the Vendor; or

- (b) anything done or omitted to be done by the Purchaser in the exercise or non-exercise of its right and powers; or
- (c) any variation in the terms of any contract between the Vendor and the Purchaser (whether or not this might increase the liability of the Vendor's Guarantor); or
- (d) the Vendor or the Vendor's Guarantor or other person being incompetent to enter this Agreement or failing to be legally bound in whole or in part by it or the validity, regularity and enforceability of any provisions of this Agreement; or
- (e) any release, discharge, compromise, or other arrangement given to or made with the Vendor, the Vendor's Guarantor or any other person; or
- (f) any clause in this Agreement or any other security, guarantee, indemnity or other agreement not having been provided, or being void, defective or informal, or being released or discharged (in whole or in part); or
- (g) the dissolution of the Vendor, any change in the status, function, control or ownership of the Vendor, or any consolidation, merger or conveyance of the Vendor; or
- (h) any other circumstances which might otherwise constitute a legal or equitable discharge of or defence to a surety and the Vendor's Guarantor remains liable irrespective of whether any present or other obligations would be enforceable against the Vendor,

it being the intention of the parties that the guarantee and obligations of the Vendor's Guarantor are to be absolute and unconditional in all circumstances, and the Purchaser is under no liability to the Vendor's Guarantor in respect of the items listed in this clause 14.2 even though the Vendor's Guarantor's rights in subrogation may be prejudiced as a result.

14.3 Void payment

If any payment made by or on behalf of the Vendor to the Purchaser is avoided by law, that payment will not be deemed to have discharged the liability of the Vendor or the Vendor's Guarantor in respect of it.

14.4 Rights cumulative

The rights of the Vendor under this clause 14 are cumulative and not exclusive of any rights provided by law and are to remain in full force until the discharge by the Purchaser of all of its obligations under this Agreement.

14.5 Cap on Guarantee amount

The liability of the Guarantor under the guarantee contained in this clause 14 (together with liability of the Guarantor under the Shareholders' Agreement and the Network Infrastructure Project Agreement) shall not in the aggregate exceed the Aggregate Guarantee Amount.

14.6 Aggregate Guarantee Amount

The Purchaser acknowledges that the aggregate amount that it may claim under the guarantee contained in this clause 14 (together with the guarantees contained in the Shareholders' Agreement and any Deed of Guarantee given in favour of CFH and/or the Purchaser by the Guarantor) and that they may call under the Performance Bond cannot exceed the Aggregate Guarantee Amount.

14.7 Vendor's Guarantor Warranties

The Vendor's Guarantor makes the representations and warranties set out in Schedule 6 (the **Vendor's Guarantor's Warranties**) to the Purchaser on the Agreement Date and as at each Transfer. The Vendor's Guarantor's Warranties are continuing warranties and do not merge on Transfer but remain in full force and effect notwithstanding any Transfer.

15. Confidentiality

15.1 Protection of Confidential Information

(a) **Non-disclosure**

Subject to clause 15.1(b) and clause 15.2, each party will treat as confidential and not disclose to any third party nor use for its own benefit (other than for the purposes of this Agreement), any Confidential Information that is the Confidential Information of any other party.

(b) **General exceptions**

Clause 15.1(a) does not preclude a party disclosing Confidential Information:

- (i) in the case of the Purchaser and CFH, following Transfer, where such Confidential Information was provided to the Purchaser as part of the Assets;
- (ii) to a Governmental Authority as required by law;
- (iii) if that information was known, or becomes known, to the public through no act or default of the recipient;
- (iv) that the recipient is required by law to disclose so long as the recipient provides written notice of the required disclosure promptly upon receipt of notice of the required disclosure (if it is permitted to do so by law);
- (v) that was lawfully known to the recipient prior to the date it was received;
- (vi) that becomes available to the recipient from a source other than a party to this Agreement provided that the recipient has no reason to believe such source is itself bound by an obligation of confidence to the person that disclosed that information or is otherwise prohibited under law from disclosing such information;
- (vii) that has been or is independently developed by the recipient;
- (viii) to any professional adviser for the purposes of rendering professional services to a party and in relation to this Agreement;
- (ix) to the extent that such disclosure is authorised by this Agreement; or
- (x) if such disclosure is approved for release with the prior written consent of the party from whom the Confidential Information is first received.

15.2 Limited disclosure

(a) **Vendor**

The Vendor may disclose the Confidential Information of the Purchaser to its subcontractors, personnel and professional advisers who need to know the same for the sole purpose of enabling the Vendor to perform its obligations and exercise its rights under this Agreement. The Vendor will ensure that its personnel, professional advisers and subcontractors are aware of and comply with the terms of this clause 15.

(b) **Purchaser**

Each of the Purchaser and CFH may disclose Confidential Information of the Vendor to its service providers (including potential service providers), personnel and professional advisers who need to know the same for the Purchaser's or CFH's business purposes and the Purchaser and CFH (as the case may be) will ensure that its service providers, personnel and professional advisers are aware of and comply with the terms of this clause 15.

16. General Provisions

16.1 Time of the essence

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

16.2 Entire Understanding

Subject to the Shareholders' Agreement and the Network Infrastructure Project Agreement, this Agreement constitutes the entire agreement of the parties with respect to its subject matter and supersedes all previous agreements, arrangements, understandings or representations relating to that subject matter.

16.3 Further assurances

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

16.4 Assignment

No party may assign, novate, transfer or otherwise dispose of the whole or any part of its rights and obligations under this Agreement without first obtaining the other parties' written consent (which consent may be withheld at that party's absolute discretion).

16.5 Public disclosures

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

16.6 Notices

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

Enable Networks Limited

Notices to:

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

Facsimile: +64 9 916 8801

Email: anna.buchly@bellgully.com

Contact person / position: The Board of Directors

Christchurch City Networks Limited

Attention: CEO

Address: 1 Show Place, Building 4, Tower Junction, Christchurch

Facsimile: +64 3 363 2961

Email: steve.fuller@enablenetworks.co.nz

Christchurch City Holdings Limited

Attention: CEO

Address: Civic Office, 53 Hereford Street, Christchurch 8011

Facsimile: +64 3 941 8572

Email: bob.lineham@cchl.co.nz

Crown Fibre Holdings Limited

Notices to:

Address: Level 10, PricewaterhouseCoopers Tower
188 Quay Street
Auckland

Facsimile: +64 9 368 9201

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

Contact person / position: Chief Executive Officer

With a copy to: Bell Gully
Level 22, Vero Centre
48 Shortland Street
Auckland 1010
Attention: Gavin Macdonald / Anna Buchly

Facsimile: +64 9 916 8801

Email: gavin.macdonald@bellgully.com;
anna.buchly@bellgully.com

- (a) This contact information may be amended by written notice to the other party.
- (b) A notice or other communication will be deemed to be received:
- (i) in the case of a letter sent to the addressee's postal address, on the second business day after posting;
 - (ii) in the case of a facsimile or email:
 - (A) if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the addressee's facsimile number;
 - (B) if sent by email, at the time the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the email at the time of sending or any "out of office" message or equivalent relating to the recipient,on the business day on which it is dispatched or, if dispatched after 5.00 p.m. (in the place of receipt) on the next business day after the date of dispatch; and
 - (iii) in the case of personal delivery, when delivered.

16.7 Severability

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

16.8 Waiver

Neither party will be deemed to have waived any right under this Agreement unless the waiver is in writing and signed by the parties. Any failure or delay by a party to exercise any right or power under this Agreement will not operate as a waiver of that right or power. Any waiver by a party of any breach, or failure to exercise any right, under this Agreement will not constitute a waiver of any subsequent breach or continuing right.

16.9 Remedies cumulative

Except as is expressly stated otherwise in this Agreement:

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

16.10 Amendment

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

16.11 Consents and approvals

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

16.12 Costs

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

16.13 Conflicting provisions

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

16.14 Non merger

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

16.15 Counterparts

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

16.16 Governing law and jurisdiction

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

Execution

Executed as an agreement.

Signed for and on behalf of
Christchurch City Networks
Limited by

Authorised signatory

Print Name

Signed for and on behalf of
Enable Networks Limited by

Authorised signatory

Print Name

Signed for and on behalf of
Crown Fibre Holdings Limited by

Authorised signatory

Print Name

Signed for and on behalf of
Christchurch City Holdings
Limited by

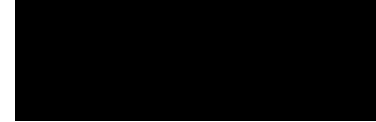
Authorised signatory

Print Name

Schedule 1: Existing Infrastructure

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

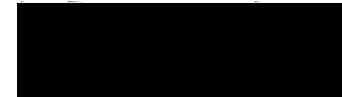
Part A: Existing Communal Infrastructure Assets



Part B: Existing Communal Layer 2 Infrastructure Assets



Part C: Existing End User-Specific Infrastructure Assets



Part D: Existing End User Connections (as of)



Schedule 2: Ancillary Assets

The final list of Ancillary Assets to be agreed in accordance with clause 3.1(c).

Schedule 3: Purchase Price (and Allocation)

Assets	Agreed Book Value and Purchase Price (to be completed prior to Transfer)	Satisfaction of Purchase Price
[Existing Communal Infrastructure Assets to be detailed]		By the issue of B Shares to the Purchaser in accordance with the Shareholders' Agreement
[Existing Communal Layer 2 Infrastructure Assets to be detailed]		By the issue of B Shares to the Purchaser in accordance with the Shareholders' Agreement
[Existing End User Specific Infrastructure Assets, to be detailed (including existing End User Connections)]		By the issue of B Shares to the Purchaser in accordance with the Shareholders' Agreement
[Ancillary Assets to be detailed]		By the issue of B Shares to the Purchaser in accordance with the Shareholders' Agreement

Schedule 4: Vendor's Warranties

1. Due authorisation

1.1 Authority

The Vendor:

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

1.2 Binding effect

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

1.3 Incorporation

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

2. Solvency

2.1 No liquidation

The Vendor has not:

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

2.2 No winding-up process

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

2.3 No receiver or manager

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

2.4 Arrangements with creditors

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

2.5 No writs

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

2.6 Payment of debts

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

3. Information

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

4. Assets

4.1 The Assets:

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

- 4.2 The Vendor has (and on Transfer the Purchaser will have) full, sole and exclusive rights of access to the Assets and no access rights to the Assets shall be shared with any third party, including any Related Company of the Vendor.

5. Intellectual Property

5.1 Sufficient rights

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

5.2 No breach of Intellectual Property

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

5.3 No breach of Third Party intellectual property rights

The use of the Intellectual Property Rights in connection with the Assets as at Transfer does not breach or infringe any Intellectual Property Rights of any third party.

6. Other Contracts

- (a) The Vendor is not in material breach of any Other Contract
- (b) There are no current material breaches of any Other Contract by the relevant counterparty.
- (c) The Vendor has observed and performed all the material terms and conditions on its part to be observed and performed under any Other Contract.

7. Legal proceedings

7.1 No outstanding proceedings

There are no:

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

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

7.2 Investigations

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

8. Government Agencies

8.1 Filings

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

8.2 Consents and licences

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

9. Employees

9.1 Compliance

The Vendor complies with all obligations under any employment agreements between it and any employees or under any awards or industrial agreements relevant to the relations between it and any of its employees.

9.2 No disputes with Employees

The Vendor is not involved in any material personal grievance, material dispute or any other material claim with any of the Employees or any person representing any Employee.

9.3 No disputes pending

There is no fact, matter or circumstance that is likely to give rise to a dispute or claim of the type referred to in paragraph 9.2.

9.4 No industrial relations

The Vendor is not involved in industrial or other negotiations or disputes relating to any bargaining agent body of the Employees.

Schedule 5: Purchaser's Warranties

1. Warranties

1.1 Due authorisation

The Purchaser:

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

1.2 Binding effect

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

1.3 Incorporation

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

Schedule 6: Vendor's Guarantor Warranties

1. Due authorisation

The Vendor's Guarantor:

(a) Authorisation

has obtained all necessary authorisations for the execution, delivery and performance by the Vendor's Guarantor 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 Vendor's Guarantor, 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 Vendor's Guarantor of this Agreement:

- (a) complies with its 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 Encumbrance, by which it is bound and which would prevent it from entering into or performing its obligations under this Agreement.

3. No trust

The Vendor's Guarantor enters into and performs this Agreement on its own account and not as trustee for or nominee of any other person.

4. No liquidation

The Vendor's Guarantor has not:

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

5. No winding-up process

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

6. No receiver or manager

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

7. Arrangements with creditors

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

8. No writs

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

9. Solvency

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

10. Government Agency

To the knowledge of the Vendor's Guarantor, no consent or approval by, notice to or registration with any Government Agency, is required on the part of the Vendor's Guarantor prior to Completion in connection with the execution and delivery of this Agreement or Completion.

11. Litigation

There are no:

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

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

Annexure A: Exceptions to Requirements

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

Annexure B: Customer Contracts

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

Annexure C: Other Contracts

Network Deployment and Maintenance Contracts;

