
Parties

TE RŪNANGA O NGĀI TAHU

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT
SECTION 4




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**SECTION 4: TRANSFER OF COMMERCIAL PROPERTIES - NOT
SUBJECT TO DEFERRED SELECTION**

4.1 DEFINITIONS

In this Section and its Attachments:

Adjustment means, in respect of certain Properties, the adjustment process to be carried out and completed in accordance with *paragraph 8* of the Valuation Methodology, commencing on the Adjustment Date;

Adjustment Date means the next Business Day after the expiration of the period of 41 Business Days commencing on the Legislation Date;

Business Day means a day (other than Saturday or Sunday) on which registered banks are open for normal banking business in Wellington and Christchurch but shall exclude any day in the period commencing 25 December in any year and ending on 5 January in the following year, inclusive, and shall be deemed to commence at 9.00 am and to terminate at 5.00 pm;

Completion Date means:

- (a) for each Property (other than the Telecom Properties) the later of:
 - (i) the next Business Day after the expiration of the period of 10 Business Days commencing on the date the Transfer Value is agreed or determined; and
 - (ii) the next Business Day after the expiration of the period of 62 Business Days commencing on the Legislation Date;
- (b) for each Telecom Property the later of:
 - (i) the next Business Day after the expiration of the period of 10 Business Days commencing on the date the Transfer Value is agreed or determined; and
 - (ii) the next Business Day after the expiration of the period of 124 Business Days commencing on the Legislation Date;

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

Legislation Date means the date on which this Deed becomes unconditional;

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Property means each property described in *Attachment 4.1* and, where relevant, in the *Deed Maps* referred to in *Attachment 4.1*;

Registered Valuer means a person registered under the Valuers Act 1948 and who holds a current annual practising certificate;

RFR means the right of first refusal provided by the Crown to Te Rūnanga and set out in *Attachment 9.1*;

Settlement Legislation means the bill to give effect to the Settlement referred to in *clause 17.3* and, when the bill has become law, means, if the context requires, the Act resulting from the passing of such bill;

Te Rūnanga's Valuer means any Registered Valuer appointed by Te Rūnanga to participate in Valuation in accordance with the Valuation Methodology;

Telecom Properties means the Properties where the vendor agency is described in the fourth column of *Attachment 4.1* as Telecom South Limited;

Terms of Transfer means the agreement for sale and purchase, in respect of each Property, set out in *Attachment 4.4*;

Transfer Value means, in respect of each Property and subject to the Terms of Transfer, the purchase price to be paid by Te Rūnanga to the Crown, as determined by the methodology and process, including Valuation and Adjustment, set out in the Valuation Methodology;

Valuation means, in respect of each Property, the valuation process to be carried out and completed in accordance with the Valuation Methodology;

Valuation Date means the date of this Deed;

Valuation Disclosure means delivery by the Crown or the Vendor Agency of the information and confirmations described in *Attachment 4.2*;

Valuation Methodology means the methodology and process set out in *Attachment 4.3*;

Vendor Agency means:

- (a) in respect of each Property (other than the Telecom Properties) the Crown Body listed in the fourth column of *Attachment 4.1*; and
- (b) in respect of each Telecom Property, Telecom South Limited;

Vendor Agency's Valuer means any Registered Valuer appointed by a Vendor Agency to participate in Valuation in accordance with the Valuation Methodology.

4.2 BACKGROUND

4.2.1 Properties to be acquired

Te Rūnanga and the Crown have, prior to the date of this Deed, identified certain properties which Te Rūnanga shall purchase from the Crown on the Completion Date (being the Properties).

4.2.2 How properties are valued

Te Rūnanga and the Crown have agreed on a five stage process for the determination of the Transfer Value of each Property, by which:

- (a) **Stage 1:** each Vendor Agency shall disclose to Te Rūnanga relevant information about each Property which it owns;
- (b) **Stage 2:** each Vendor Agency shall inspect (and allow Te Rūnanga's Valuer to join that inspection), and then provide to Te Rūnanga in accordance with the Valuation Methodology, a valuation report for each Property which it owns;
- (c) **Stage 3:** Te Rūnanga shall provide in accordance with the Valuation Methodology, each relevant Vendor Agency with a valuation report for each Property in respect of which it disagrees with the Vendor Agency's valuation report;
- (d) **Stage 4:** Properties in respect of which there is disagreement shall be valued in accordance with the Valuation Methodology; and
- (e) **Stage 5:** the value of Properties will be subject to Adjustment in accordance with the Valuation Methodology.

4.2.3 Terms of Transfer

Te Rūnanga and the Crown have agreed how Properties shall then be transferred from each relevant Vendor Agency to Te Rūnanga (which shall be done in accordance with the Terms of Transfer).

4.3 TRANSFER VALUE FOR PROPERTIES - THE PROCESS STAGE BY STAGE

4.3.1 Disclosure and Transfer Value

Disclosure shall be made to Te Rūnanga and then the Transfer Value of each Property shall be determined in accordance with the Valuation Methodology. *Clause 4.3.2* sets out the first stage of that process and *Clauses 4.3.3 to 4.3.5* are a summary of the other stages of that process.

4.3.2 Stage 1 - Disclosure

No later than the date of inspection notified under *paragraph 4.1 of Attachment 4.3* and in respect of all Properties, the Crown shall effect Valuation Disclosure. When providing the information the Crown shall, where relevant, specify the date as at which the information is current. Unless otherwise stated, the information shall be as at the date of this Deed.

4.3.3 Stage 2 - Valuation Reports for Properties

Each Vendor Agency's Valuer shall deliver to Te Rūnanga full valuation reports confirming its assessment of the current market value for each Property owned by the relevant Vendor Agency as at the Valuation Date. This valuation report shall comply with the requirements of *paragraph 4.3* of the Valuation Methodology and shall be delivered no later than the next Business Day after the expiration of the period of 21 Business Days commencing on the date of this Deed.

4.3.4 Stage 3 - Te Rūnanga Valuation Reports

No later than the next Business Day after the expiration of the period of 41 Business Days commencing on the date of this Deed, Te Rūnanga shall provide to each relevant Vendor Agency either:

- (a) confirmation that Te Rūnanga accepts the Vendor Agency's valuation report in respect of the relevant Property (in which case the current market value of the Property, as set out in that valuation report, shall, subject to Adjustment and the Terms of Transfer, be the Transfer Value of the Property); or
- (b) a notice rejecting the report which shall be accompanied by a full valuation report confirming its assessment of the current market value of each Property in respect of which Te Rūnanga disagrees with the Vendor Agency's valuation report. This valuation report shall comply with the requirements of *paragraph 4.3* of the Valuation Methodology.

4.3.5 Stage 4 - Valuation of Properties

As soon as possible following receipt by the Crown of Te Rūnanga's Valuer's Valuation Reports, but no later than the next Business Day after the expiration of the period of 100 Business Days commencing on the date of this Deed,

Te Rūnanga and the Crown shall carry out Valuation of Properties the subject of *clause 4.3.4(b)*, to determine the current market value of each Property as at Valuation Date.

4.3.6 Stage 5 - Adjustment

If this Deed becomes unconditional after the period of 124 Business Days commencing on the date of this Deed, Te Rūnanga and the Crown shall carry out Adjustment in respect of the Properties in accordance with *paragraph 8* of the Valuation Methodology to determine changes, if any, to the Transfer Value attributable to certain circumstances specified in that paragraph.

4.4 TRANSFER OF PROPERTIES

4.4.1 Transfer and payment

On Completion Date, the Crown shall transfer each Property to Te Rūnanga in return for and in consideration of payment by Te Rūnanga to the Crown of the Transfer Value determined for each such Property (which shall be the current market value of each such Property as at the Valuation Date as agreed or determined by Valuation and subject to Adjustment and the Terms of Transfer).

4.4.2 Terms of Transfer

The terms and conditions on which each Property shall be transferred by the Crown to Te Rūnanga shall be those specified in the Terms of Transfer, which are deemed to be a separate agreement in respect of each Property.

4.5 VARIATIONS

The provisions of this *Section 4* are varied in the manner set out in *Attachment 4.5* in respect of the Properties described in that Attachment.

4.6 MANAGEMENT OF THE PROPERTIES

4.6.1 Access to Properties

The Crown shall allow Te Rūnanga's representatives access to the Properties on reasonable notice and at reasonable times of the day to assist Te Rūnanga in its assessment of their Market Value and in its decision to notify whether a Property should, in Te Rūnanga's opinion, be subject to Adjustment.

4.6.2 Notification of material events

The Crown shall notify Te Rūnanga as soon as the Crown or the relevant Vendor Agency becomes aware of any event affecting the Properties which would be reasonably material to a prudent purchaser's decision to purchase a similar property.

4.6.3 Maintenance of Properties

The Crown shall maintain until Completion Date each Property (including buildings, improvements and other fixtures on each Property):

- (a) to a standard no worse than that which they were in at the Valuation Date; or
- (b) if some lesser standard is recognised in establishing a revised Transfer Value during Adjustment, to a standard no worse than that lesser standard,

fair wear and tear excepted.

4.6.4 Tenancy arrangements

During the period to the Completion Date, the Crown shall:

- (a) not approve any assignment or subletting, or renew, grant or vary any Lease (which in this clause has the meaning given to it in the Terms of Transfer) without the prior written consent of Te Rūnanga. Te Rūnanga shall not unreasonably or arbitrarily withhold or delay consent where the Vendor Agency is obliged to give approval or to renew, grant or vary any Lease under the provisions of any Lease;
- (b) negotiate any rent review or rent payable on any renewal of Lease to obtain the best rent reasonably obtainable under the Lease. The Crown shall not agree to the rent payable on a review or renewal of Lease without first obtaining the written consent of Te Rūnanga. Te Rūnanga shall not unreasonably or arbitrarily withhold or delay consent and shall not withhold consent where the rent proposed is supported by a report obtained by the Crown from an independent registered valuer; and
- (c) keep Te Rūnanga fully informed as to any legal proceeding or arbitration threatened or commenced by the Vendor Agency, or by any party against the Vendor Agency, in any matter relating to a Property, and shall take steps to commence or continue any such proceedings or arbitration in good faith.

4.6.5 Crown indemnity

The Crown shall indemnify Te Rūnanga against any costs, charges, expenses, damages and liability as a result of any action, claim or demand arising out of any breach by the Crown of its obligations under *clause 4.6.4*.

4.7 FURTHER PROVISIONS

4.7.1 Requests for further information

At any time before Completion Date (or later if the Crown has not complied with its obligations under *clause 4.4*), Te Rūnanga may require from the Crown or the relevant Vendor Agency any information concerning the Properties that is

additional to that already provided and not available to the public and which Te Rūnanga reasonably requires for it to make the decisions or selections contemplated by this Section. If the Crown or the relevant Vendor Agency possesses or can reasonably procure such additional information then the Crown shall provide to Te Rūnanga, or allow Te Rūnanga to inspect, such additional information in a timely manner.

4.7.2 Use of information

All information provided by the Crown or relevant Vendor Agency to Te Rūnanga at any time under this Section shall be used by Te Rūnanga and its advisers only for the purposes contemplated by this Deed and for no other purpose.

4.7.3 Confidentiality

Where the Crown or relevant Vendor Agency is unable to provide to Te Rūnanga information under this Section without any further reasonable assurances of confidentiality in favour of the Crown or the relevant Vendor Agency or any other third parties, then Te Rūnanga and its advisers shall provide the required reasonable assurances. Such assurances shall not preclude disclosure by Te Rūnanga of such information to any other person which has itself given assurances to the same effect as Te Rūnanga's assurances, unless the Crown reasonably objects to such person and the Crown has given notice to that effect to Te Rūnanga.

4.7.4 Crown's covenant regarding information

The Crown covenants and warrants to Te Rūnanga that all details, forecasts, projections, estimates, opinions and other information provided by the Crown to Te Rūnanga pursuant to *clause 4.3.2* or *clause 4.7.1* shall:

- (a) be the best information available to the Crown or the relevant Vendor Agency at the time of provision; and
- (b) genuinely represent the views of the Crown or the relevant Vendor Agency and be reasonably arrived at on the basis of the best information available to them at the relevant date.

4.7.5 Disclaimer

Te Rūnanga acknowledges and agrees that:

- (a) other than those set out in *clause 4.7.4*, no representation or warranty is given, whether expressed or implied, nor is any responsibility accepted by, the Crown or the relevant Vendor Agency with respect to the completeness or accuracy of the information provided by the Crown to Te Rūnanga pursuant to *clause 4.3.2* or *clause 4.7.1*; and

- (b) other than those set out in *clause 4.7.4*, no representation or warranty is given, whether expressed or implied, nor is any responsibility accepted by, the Crown or the relevant Vendor Agency with respect to Te Rūnanga's reliance upon or use of the details, forecasts, projections, estimates, opinions and other information.

4.7.6 Crown primarily liable

Where, in this Section or any of its Attachments, an obligation is imposed on, or an action may be taken by, the Crown, the Crown shall either satisfy that obligation itself or procure the relevant Vendor Agency to comply with that obligation or allow the relevant Vendor Agency to take that action. Conversely, where an obligation is expressed to be imposed on the Vendor Agency, or an action is to be taken by the Vendor Agency, the Crown shall also be liable for that obligation or may also take that action.

4.7.7 Unconditional obligations

Clause 17.1 (which provides that this Deed is conditional on the Settlement Legislation coming into force) does not apply to *clause 4.6* or to those parts of the Valuation Disclosure and the Valuation Methodology which require performance or action to be taken before the Legislation Date.

4.7.8 Errors and misdescriptions

The legal description of the Properties in *Attachment 4.1* is believed to be correct. If it is established that any error, misdescription or other inconsistency has occurred or exists, the Crown's obligation shall be limited to correcting the error, misdescription or other inconsistency.

4.8 NOTICES

4.8.1 Communications to be copied to OTS

Any correspondence, notice or other communication made or to be made under this Section and its Attachments to or from each Vendor Agency or to or from Te Rūnanga shall also be copied to OTS.

4.8.2 Application of Notice Clause

Clause 20.7 shall apply to this Section as if each Vendor Agency were a party.

4.8.3 Recipients and senders of communications

All notices, correspondence and communications under this section and its Attachments shall be validly given or received:

- (a) in the case of OTS, by any individual notified in writing to Te Rūnanga and the Vendor Agencies by the Director of OTS at the address or by facsimile to the facsimile number specified in that notification;

- (b) in the case of Te Rūnanga, by any individual notified in writing to OTS and the Vendor Agencies by the General Manager of Ngāi Tahu Property Group Limited and at the address or by facsimile to the facsimile number specified in that notification; and
- (c) in the case of each Vendor Agency, by any individual notified in writing to OTS and Te Rūnanga by the Chief Executive or Director at the address or by facsimile to the facsimile number specified on that notification,

and *clause 20.7* will apply accordingly.

PROPERTIES

ATTACHMENT 4.1
PROPERTIES
(Clause 4.1, Definition of Properties)

Certificate of Title	Street Address	Land District	Vendor Agency
32F/311, ¹ 32F/312, 32F/313, 32F/314	Old Post Building, Cathedral Square and site in Hereford Street	Christchurch	Telecom South Limited
15C/613 ²	Ballarat Street	Queenstown	Telecom South Limited
35B/797	245 Blenheim Rd	Christchurch	OTS

¹ The Property is only part of the land comprised in these certificates of title. It comprises the 2 lots shown as lots 1 and 2 and edged red on the proposed subdivision plan, being Deed Map C1.

² The Property is only part of the land comprised in this certificate of title. It comprises the lot shown as lot 2 and edged red on the proposed subdivision plan, being Deed Map C2.

VALUATION DISCLOSURE

**ATTACHMENT 4.2
VALUATION DISCLOSURE***(Clause 4.3.2)***1 RIGHTS OF OCCUPATION**

- 1.1 Copies of all leases, licences, agreements, correspondence and other documents giving rights of occupation or material to any rights of occupation granted by the Vendor Agency and, in respect of any undocumented rights, comprehensive and accurate details of any such rights granted by the Vendor Agency.
- 1.2 If applicable, confirmation (including where relevant, an adequate explanation) whether:
- 1.2.1 there are any current disputes between the Vendor Agency and any lessee or licensee, including, if relevant, detailing action taken or to be taken by the lessee or licensee in respect of such breach;
- 1.2.2 the Vendor Agency is in breach of any of its obligations to any lessee or licensee; or
- 1.2.3 any lessee or licensee is in breach of any of its obligations to the Vendor Agency, including, if relevant, details of action taken or to be taken by the Vendor Agency in respect of each breach.

2 OPERATING EXPENSES

- 2.1 Detailed schedule prepared by the Vendor Agency, or its property manager specifying operating expenses payable in respect of the relevant Property (whether or not passed on to any lessees or licensee for reimbursement) for the 2 years before the date of this Deed and the current year's operating expenditure budget and, to the extent known, details of all "actuals" for the year.

3 PROPERTY MANAGEMENT AND BUILDING MATTERS

- 3.1 If applicable, in respect of each Property:
- 3.1.1 copy of the code compliance schedule for each improvement;
- 3.1.2 copy of the warrant of fitness for each improvement;

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- 3.1.3 a schedule detailing all current service and maintenance contracts entered into by Vendor Agency in respect of each improvement and any extraordinary repair or replacement items, whether actual or forecast;
 - 3.1.4 details of all current guarantees and warranties to Vendor Agency in respect of each improvement and all fixtures, fittings, plant and machinery, together with confirmation as to their assignability;
 - 3.1.5 details of any defects to the improvements or want of repair within the reasonable knowledge of the Vendor Agency and which would be material to a prudent purchaser's assessment of the Property(s);
 - 3.1.6 details of any contaminants or other hazardous materials contained within or on the Property of which the Crown and the relevant Vendor Agency is aware, after inspecting its records but this does not require the relevant Vendor Agency to undertake a physical inspection of the Property or make inquiries beyond its own records; and
 - 3.1.7 details of any known encroachment in respect of any Property.
- 3.2 All relevant material and information relating to any of the matters referred to in *paragraph 6* of the Terms of Transfer.

VALUATION METHODOLOGY

ATTACHMENT 4.3
VALUATION METHODOLOGY
(Clause 4.3.1)

1 OBJECT

This Attachment sets out the process to be followed, the factors to be considered and the methodology to be adopted in determining the Transfer Value of the Properties. The procedures outlined in this Attachment shall apply in all cases unless this Deed provides otherwise or the parties agree otherwise in any particular case.

2 DEFINITIONS AND INTERPRETATION

2.1 In this Attachment, unless the context otherwise requires:

Adjustment Property means any Property specified in a notice given under *paragraph 8.1*;

Arbitrated Property means any Property to which *paragraph 6* applies;

Arbitration Commencement Date means, in respect of each Arbitrated Property, the date specified by OTS under *paragraph 6.1* or, as the case may be, determined in accordance with *paragraph 6.3*;

Arbitrator means a member of the panel constituted under *paragraph 7*;

Disputed Property means any Property to which *paragraph 5* applies;

Market Value is the estimated amount for which an asset should exchange, on the Valuation Date, between a willing buyer and a willing seller, in an arms length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.

In applying this definition to any Property, the following matters shall be taken into account:

- (a) the Terms of Transfer (*Attachment 4.5*) other than the effect of the delayed possession date;
- (b) any encumbrances or interests or other matters affecting or benefiting the Property appearing on the title to the Property as at Valuation Date or to

VALUATION METHODOLOGY

appear on such title on Completion Date or as disclosed in writing by the Crown or the Vendor Agency in accordance with *clause 4.3.2*; and

- (c) the value is to be on a plus GST (if any) basis;

Te Rūnanga's Response Date means the next Business Day after the expiration of the period of 41 Business Days commencing on the date of this Deed;

Te Rūnanga's Valuation Report means the valuation report prepared by Te Rūnanga's Valuer in accordance with this Attachment;

Te Rūnanga's Valuer means any Registered Valuer appointed by Te Rūnanga to take part in the process set out in this Attachment;

Valuation Presentation Date means the next Business Day after the expiration of the period of 21 Business Days commencing on the date of this Deed;

Valuation Date means the date of this Deed;

Vendor Agency's Valuation Report means the valuation report prepared by each Vendor Agency's Valuer in accordance with this Attachment;

Vendor Agency's Valuer means any Registered Valuer appointed by a Vendor Agency to take part in the process set out in this Attachment;

3 APPOINTMENT OF VALUERS

- 3.1 No later than the next Business Day after the expiration of the period of 5 Business Days commencing on the date of this Deed, each Vendor Agency and Te Rūnanga shall each:
- (a) appoint Registered Valuers and instruct them to assess the Market Value of each Property in accordance with this Attachment; and
 - (b) give notice to the other and to OTS of the identity of each Valuer appointed and specify each Property in respect of which he or she has been appointed.
- 3.2 Each Vendor Agency and Te Rūnanga shall ensure that the terms of appointment of their respective Valuers require them to participate in the process set out in this Attachment in accordance with the terms of this Attachment.

VALUATION METHODOLOGY

**4 PRESENTATION OF CROWN'S VALUATION REPORTS AND
TE RŪNANGA'S RESPONSE**

- 4.1 Each Vendor Agency's Valuer shall carry out an inspection of each Property owned by the relevant Vendor Agency in sufficient time to enable it to comply with *paragraph 4.2* by the Valuation Presentation Date. Each Vendor Agency's Valuer shall give at least 5 Business Days' notice of the date, time and location of each inspection to the relevant Te Rūnanga's Valuer and give that valuer an opportunity to attend the inspection.
- 4.2 Each Vendor Agency's Valuer shall, in respect of each Property, prepare a valuation report which includes the assessment of Market Value of the Property and deliver a copy of the report to OTS and Te Rūnanga by no later than the Valuation Presentation Date.
- 4.3 Each Vendor Agency's Valuation Report shall:
- 4.3.1 meet the minimum requirements set out in Section 5 of the New Zealand Institute of Valuers Valuation Standard 1 ("Market Value basis of Valuation") and other relevant standards insofar as those requirements are consistent with the express provisions of the Deed and this Attachment;
- 4.3.2 include an executive summary containing:
- (a) a summary of valuation along with key valuation parameters;
 - (b) a summary of key issues affecting value, if any;
 - (c) the name of the valuer and his or her firm; and
 - (d) the signature of the valuer and lead valuer if applicable;
- 4.3.3 include a property report based on the standard referred to in paragraph 4.3.1; and
- 4.3.4 attach appendices setting out:
- (a) a statement of valuation policies; and
 - (b) relevant market and sales information.

VALUATION METHODOLOGY

- 4.4 No later than Te Rūnanga's Response Date, Te Rūnanga shall give notice in writing to each relevant Vendor Agency and OTS that it either accepts or rejects the assessment of Market Value contained in the Vendor Agency's Valuation Report for each Property owned by that Vendor Agency.
- 4.5 If, in respect of any Property, Te Rūnanga gives notice that it accepts the assessment of the Market Value contained in the Vendor Agency's Valuation Report, that assessment shall (subject to Adjustment and the Terms of Transfer) be the Transfer Value for that Property for the purposes of this Deed.
- 4.6 If, in respect of any Property, Te Rūnanga gives notice by the date referred to in *paragraph 4.4* that it rejects the assessment of the Market Value contained in the Vendor Agency's Valuation Report, *paragraph 5* shall apply to the determination of the Transfer Value for that Property.

5 NEGOTIATIONS TO AGREE DISPUTED MARKET VALUES

- 5.1 Each notice rejecting the assessment of Market Value for a Property under *paragraph 4.4* shall be accompanied by a copy of a valuation report which contains Te Rūnanga's Valuer's assessment of the Market Value for every Property referred to in the notice. *Paragraph 4.3* applies to each Te Rūnanga's Valuation Report.
- 5.2 If, in respect of any Property, Te Rūnanga:
- 5.2.1 fails to give notice by Te Rūnanga's Response Date; or
- 5.2.2 gives such a notice by that date rejecting the assessment of the Market Value contained in the relevant Vendor Agency's Valuation Report but fails to give Te Rūnanga's Valuation Report in accordance with *paragraph 5.1*,
- then Te Rūnanga may give Te Rūnanga's Valuation Report no later than the next Business Day after the expiration of the period of 5 Business Days commencing on the Business Day immediately following the date referred to in *paragraph 4.4*. If Te Rūnanga gives Te Rūnanga's Valuation Report by that date *paragraph 4.6* will apply. If Te Rūnanga fails to give Te Rūnanga's Valuation Report by that date, *paragraph 4.5* will apply.
- 5.3 No later than Te Rūnanga's Response Date, the relevant Vendor Agencies and Te Rūnanga shall each appoint and notify the other and OTS of the appointment of a person or persons who shall have authority to act as their respective

VALUATION METHODOLOGY

representatives to negotiate an agreed value for each Disputed Property in respect of which Te Rūnanga has rejected the assessment of Market Value.

5.4 Each relevant Vendor Agency and Te Rūnanga, through their respective representatives appointed under *paragraph 5.3*, shall negotiate to attempt to agree the Transfer Value in respect of each Disputed Property. Where agreement is reached in respect of a Disputed Property both representatives shall sign a statement identifying the Disputed Property and the amount which the parties have agreed is the Transfer Value for that Disputed Property and shall give a copy of that statement to OTS. All such statements shall be received by OTS no later than the earlier of:

5.4.1 the next Business Day after the expiration of the period of 30 Business Days commencing on Te Rūnanga's Response Date or (if applicable) on such later date that Te Rūnanga gives all its reports under *paragraph 5.2*; and

5.4.2 the next Business Day after the expiration of the period of that number of Business Days which equals the number of Disputed Properties commencing on Te Rūnanga's Response Date or (if applicable) on such later date that Te Rūnanga gives all its reports under *paragraph 5.2*.

5.5 The amount agreed as the Transfer Value for each Disputed Property in respect of which OTS receives a statement under *paragraph 5.4* shall be, subject to Adjustment and the Terms of Transfer, the Transfer Value for that Disputed Property for the purposes of this Deed.

5.6 Where, in respect of any Disputed Property, OTS does not receive a statement under *paragraph 5.4*, the determination of the Transfer Value of that Disputed Property shall be referred to an Arbitrator in accordance with *paragraph 6*.

5.7 Each relevant Vendor Agency's Valuer and Te Rūnanga's Valuer may, as part of the negotiations, disclose to the other and OTS relevant comparable sales by no later than the earlier of:

5.7.1 the next Business Day after the expiration of the period of 5 Business Days commencing on Te Rūnanga's Response Date or (if applicable) on such later date that Te Rūnanga gives all its reports under *paragraph 5.2*; and

5.7.2 the date referred to in *paragraph 5.4.2*.

VALUATION METHODOLOGY

6 DETERMINATION OF DISPUTED VALUES

- 6.1 No later than the date of expiration of the period of 5 Business Days commencing on the relevant date referred to in *paragraph 5.4*, OTS shall give a notice to each relevant Vendor Agency and Te Rūnanga allocating, respectively, all the Arbitrated Properties to one or more specified Arbitrators and, in respect of each allocation, specifying a date on which the process set out in this *paragraph 6* shall commence (which, subject to *paragraph 6.3*, will be the Arbitration Commencement Date). In allocating Arbitrated Properties to the Arbitrator or Arbitrators and specifying the Arbitration Commencement Date in respect of each allocation, OTS shall first consult with each relevant Vendor Agency and Te Rūnanga and have regard to the following principles:
- 6.1.1 Arbitrated Properties in respect of which the dispute or market conditions are similar or which have similar characteristics or which are in reasonably close proximity to each other or which are owned by one Vendor Agency should be allocated to one Arbitrator;
 - 6.1.2 as few Arbitrators as possible should be used; and
 - 6.1.3 the Market Value for all Arbitrated Properties shall be determined by no later than the date of the expiration of the period of 100 Business Days commencing on the date of this Deed.
- 6.2 If Te Rūnanga does not object to the notice given by OTS under *paragraph 6.1* within 2 Business Days of receipt, OTS shall immediately give written notice to each Arbitrator concerned that he or she is to determine the Market Value for each Arbitrated Property allocated to him or her under *paragraph 6.1* in accordance with this *paragraph 6*.
- 6.3 If Te Rūnanga gives notice within that 2 Business Day period objecting to the notice given by OTS under *paragraph 6.1*, OTS shall immediately request the President for the time being of the Institute of Valuers (or its successor) or his or her nominee to allocate the Arbitrated Properties to the Arbitrators and, in respect of each allocation, to specify a date on which the process set out in this *paragraph 6* shall commence having regard to the matters set out in *paragraph 6.1* and the date so specified will become the Arbitration Commencement Date in place of the date specified under *paragraph 6.1*. OTS shall request the President to comply with the request within 5 Business Days of OTS's request.

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- 6.4 OTS shall serve a copy of the President's (or his or her nominee's) determination on each relevant Vendor Agency and Te Rūnanga immediately on receipt by OTS of it and shall also immediately give written notice to each Arbitrator concerned that he or she is to determine the Market Value for each Arbitrated Property allocated to him or her under that determination in accordance with this *paragraph 6*.
- 6.5 Not earlier than the date of expiration of the period of 5 Business Days commencing on the Arbitration Commencement Date, the Arbitrator shall give notice of a meeting to be attended by the relevant Vendor Agency, OTS and Te Rūnanga and their respective Registered Valuers, at a venue to be decided by the Arbitrator.
- 6.6 The Arbitrator's notice of the meeting shall include a request by the Arbitrator to OTS, the relevant Vendor Agency and Te Rūnanga that they forward to the Arbitrator all information relating to the assessment of the Market Value of the Arbitrated Properties allocated to him or her which is in their possession. The relevant Vendor Agency, OTS and Te Rūnanga shall ensure that this information is provided to the Arbitrator (and any submissions or expert evidence based on information already disclosed shall be copied to the other parties) no later than 5.00 pm on the day which is 2 Business Days prior to the date of the meeting.
- 6.7 The information sent to the Arbitrator by the Vendor Agency, OTS and Te Rūnanga (and to each other) shall constitute, in respect of each Arbitrated Property allocated to him or her, the Vendor Agency's Valuation Report, Te Rūnanga's Valuation Report, sales evidence disclosed under *paragraph 5.7* and any submission or expert evidence based on that information which the Vendor Agency or Te Rūnanga intend to present at the meeting.
- 6.8 At the meeting, the Arbitrator shall establish a procedure and give each party to the arbitration the right to examine, cross examine and re-examine the Registered Valuers and other experts appointed by the other parties in relation to the information provided to the Arbitrator and, subject to *paragraph 6.7*, otherwise have regard to the requirements of natural justice in the conduct of the meeting.
- 6.9 The Arbitrator shall hold the meeting and give his or her determination of the Market Value of each Arbitrated Property allocated to him or her no later than the next Business Day after the expiration of the period of 35 Business Days commencing on the Arbitration Commencement Date.
- 6.10 Once the Arbitrator has determined the Market Value he or she shall serve notice on the Vendor Agency, OTS and Te Rūnanga of his or her decision.



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- 6.11 The Transfer Value of each Arbitrated Property for the purposes of this Deed (subject to Adjustment and the Terms of Transfer) shall be the Arbitrator's determination of the Market Value. That determination shall be:
- 6.11.1 no higher than the higher of the assessment of Market Value contained in Te Rūnanga's Valuation Report and in the Vendor Agency's Valuation Report; and
 - 6.11.2 no lower than the lower of the assessment of Market Value contained in those reports.
- 6.12 The determination of the Arbitrator shall be final and binding on each Vendor Agency, OTS and Te Rūnanga and the persons claiming under them. No person shall have any right of appeal against, or review of the decision of the Arbitrator in relation to any matter of fact or law or procedural irregularity or any other grounds other than misconduct by the Arbitrator. If, however, the determination is appealed, Section 4, and its Attachments shall continue to apply as if the determination were final and binding but an adjusting payment will be made if necessary once the appeal is concluded.
- 6.13 The Arbitrator shall not make an interim decision.

7 ESTABLISHMENT OF ARBITRATORS PANEL

- 7.1 OTS and Te Rūnanga shall, in accordance with this paragraph, establish a panel of 10 persons who are independent, sufficiently qualified and experienced to be considered experts in the area of determination of values of the types of properties comprising the Properties and who are ready, willing and able to act as Arbitrators.
- 7.2 OTS may appoint five such persons in consultation with Te Rūnanga and Te Rūnanga may appoint five such persons in consultation with OTS. OTS and Te Rūnanga shall both have discharged their obligation to consult and appoint such persons by the expiration of the period of 41 Business Days commencing on the date of this Deed. If either of them fails to do so, the panel shall consist only of the persons appointed by the other party until the party which has failed to consult and appoint does so.
- 7.3 An appointment under this paragraph shall not be properly made until the Arbitrator has confirmed in writing to OTS and Te Rūnanga that he or she has read and understood Section 4 and its Attachments and that he or she shall

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conduct an arbitration in accordance with this Attachment on receipt of and in accordance with a notice received under *paragraph 6.2* or *paragraph 6.4*.

8 ADJUSTMENT OF MARKET VALUES

- 8.1 No later than the next Business Day after the expiration of the period of 5 Business Days commencing on the Adjustment Date, Te Rūnanga may give written notice to the relevant Vendor Agency and OTS specifying, by reference to the information set out in *Attachment 4.1*, any Property the agreed or determined Market Value of which should, in the opinion of Te Rūnanga, be adjusted in accordance with this *paragraph 8*.
- 8.2 Any notice given under *paragraph 8.1* may only be given if, and shall specify that, in respect of each Property, Te Rūnanga considers that the previously agreed or determined Transfer Value of the Property may have been reduced due to:
- 8.2.1 a breach by the relevant Vendor Agency of its obligations under *clause 4.6.3*;
- 8.2.2 damage or destruction;
- 8.2.3 any matter affecting title to the Property which was not known when the Transfer Value was agreed or determined and which does or will appear on the title on the Completion Date; or
- 8.2.4 any combination of any one or more of the above.
- 8.3 No later than the next Business Day after the expiration of the period of 10 Business Days commencing on the Adjustment Date each relevant Vendor Agency's Valuer and Te Rūnanga's Valuer shall jointly appoint a person of the kind described in *paragraph 7.1* to fulfil the role of expert under this *paragraph 8*.
- 8.4 If any relevant Vendor Agency's Valuer and Te Rūnanga's Valuer have been unable to appoint jointly such person as expert by the expiry of that period, the President of the New Zealand Institute of Valuers (or his or her nominee), on request by either party, shall appoint such person within a further 5 Business Days.
- 8.5 Each relevant Vendor Agency's Valuer and Te Rūnanga's Valuer shall, during the period of 15 Business Days commencing on the Adjustment Date, negotiate to attempt to agree the adjusted Market Value in respect of each Property. The "adjusted Market Value" will be less than the previously agreed or determined Market Value by an amount attributable to the relevant circumstance or

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circumstances set out in *paragraph 8.2* as if it or they had existed at the Valuation Date.

- 8.6 Where agreement under *paragraph 8.5* is reached in respect of any Adjustment Property, the relevant Vendor Agency's Valuer and Te Rūnanga's Valuer shall sign a written statement specifying the adjusted Market Value and shall give a copy of that statement to OTS by the date referred to in *paragraph 8.5*. The adjusted Market Value for any such Adjustment Property specified in that statement will be, subject to the Terms of Transfer, the Transfer Value of that Property for the purposes of this Deed.
- 8.7 OTS or (as the case may be) the President of the New Zealand Institute of Valuers (or his or her nominee) shall immediately request the independent person appointed under *paragraphs 8.3* or *8.4* to give his or her determination of the adjusted Market Value for each Adjustment Property in respect of which OTS did not receive a written statement under *paragraph 8.6* by the date referred to in *paragraph 8.5*. OTS (or the president or his or her nominee) shall request the person to make his or her determination within 10 Business Days of the request.
- 8.8 Both the Crown and Te Rūnanga may make submissions to the person during the period of 5 Business Days commencing on the date of the request to be made by OTS pursuant to *paragraph 8.7*.
- 8.9 Such person's determination of the adjusted Market Value for each Adjustment Property included in the request by OTS will be, subject to the Terms of Transfer, the Transfer Value of that Adjustment Property for the purposes of this Deed.
- 8.10 Such person shall only be properly appointed if his or her appointment is on the basis that he or she will abide by the requirements of this *paragraph 8*.
- 8.11 For the avoidance of doubt, such person will be acting as an expert and not as an arbitrator and his or her determination shall be final and binding on the parties.
- 8.12 This *paragraph 8* applies only if this Deed becomes unconditional later than the date of expiration of the period of 124 Business Days commencing on the date of this Deed.

9 GENERAL PROVISIONS

- 9.1 Subject to *clause 17.2.2*, each Vendor Agency, OTS and Te Rūnanga shall each bear their own costs in connection with the process set out in this Attachment. The costs of the Arbitrator and such person appointed under *paragraph 8.3* or *8.4*

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and the costs of the hire of a venue for the meeting referred to in *paragraph 6.5* (if any) shall be borne by OTS and Te Rūnanga equally. However, in appropriate cases, the Arbitrator or any such person may award costs against Te Rūnanga or OTS where the Arbitrator or any such person considers that it would be just to do so on account of unreasonable conduct.

- 9.2 Each Vendor Agency, OTS and Te Rūnanga acknowledge that they are required to use reasonable endeavours to ensure the process set out in this Attachment operates in the manner, and within the timeframes, specified in this Attachment.
- 9.3 If the procedure set out in this Attachment is delayed through any event (such as the death or incapacity of any Registered Valuer or Arbitrator or any such person), each Vendor Agency, OTS and Te Rūnanga will use reasonable endeavours and co-operate with each other to minimise the delay.
- 9.4 If at any time during the process set out in this Attachment, OTS gives written notice to Te Rūnanga that a Vendor Agency is no longer willingly participating in that process, this Attachment shall apply with all necessary modifications as if the process was between OTS and Te Rūnanga only and all references to the Vendor Agency will be references to OTS.

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ATTACHMENT 4.4
TERMS OF TRANSFER*(Clause 4.4.2)***1 DEFINITIONS AND NOTICES**

- 1.1 Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings as in section 2 of the Property Law Act 1952.
- 1.2 *interest rate for late settlement* means the FRA mid point 30 day bank bill rate as at 10.45 am on Reuter's page BKBM on the date on which the relevant payment becomes due and payable plus 500 basis points and compounded monthly.
- 1.3 *Lease* means any tenancy, lease or licence to occupy affecting the whole or part of the Properties at the date of this Deed together with any permitted amendment to all material documents or such rights of occupation.
- 1.4 *possession date* means, in respect of any Property, the Completion Date.
- 1.5 *property* means Property as defined in *clause 4.1*.
- 1.6 *purchase price* means, in respect of any property, the Transfer Value for that property.
- 1.7 *purchaser* means Te Rūnanga or Te Rūnanga's nominee.
- 1.8 *settlement date* means, in respect of each Property, the date upon which possession is actually given under this agreement.
- 1.9 *vendor* means the Crown.
- 1.10 References to "agreement" and "the agreement" (where appropriate) shall be deemed to be references to the terms of this Attachment.

2 OPERATIVE CLAUSES AND PURCHASE PRICE

- 2.1 It is agreed that the vendor shall transfer and the purchaser shall take on transfer the fee simple interest in the property upon the terms set out in the Deed and this Attachment subject to all matters noted on the register of title to the property at the date upon which this Deed is signed by both parties and all other matters disclosed to the purchaser in accordance with this Deed and this Attachment.

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- 2.2 The purchase price for each property will be the Transfer Value determined in accordance with the Valuation Methodology and will be paid in full by bank cheque on the possession date.

3 POSSESSION AND SETTLEMENT

- 3.1 Unless the particulars of a Lease are disclosed to the purchaser in accordance with Valuation Disclosure then the property is to be transferred with vacant possession and the vendor shall so yield the property on the possession date together with keys and security cards to all doors (if applicable) in the possession or control of the Vendor Agency or the vendor. Where particulars of a Lease or Leases are so disclosed the property shall be sold subject to and with the benefit of that Lease or Leases.

- 3.2 On the possession date:

3.2.1 the purchaser shall pay the vendor the purchase price; and

3.2.2 possession shall be given and taken.

- 3.3 If from any cause whatever save the default of the vendor any portion of the purchase price is not paid upon the due date for payment the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid from the due date for payment until payment; but nevertheless this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause a payment made on a day other than a Business Day or after the termination of a Business Day shall be deemed to be made on the next following working day and interest shall be computed accordingly.

- 3.4.1 If for any cause whatever save the default of the purchaser the vendor does not offer to give possession (and where the agreement calls for it, vacant possession) when the purchaser is entitled to possession the vendor shall pay to the purchaser a fair market rent for the property until possession is offered and the vendor shall also compensate the purchaser for any expenses incurred and damages suffered by the purchaser (including the purchaser's reasonable costs of temporary accommodation for persons and for chattels) resulting from the failure of the vendor to give possession on the date aforesaid to the extent that such expenses and damages are greater than the fair rental for the property.

- 3.4.2 (a) Where the purchaser or any person claiming through the purchaser elects to go into possession of the property prior to settlement the purchaser shall pay

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to the vendor on settlement a fair market rental for the property during the period of possession prior to settlement; provided that in respect of any period when the purchaser is obliged to pay interest under *paragraph 3.3* the purchaser shall not be required to pay both that interest and rental under this paragraph and the purchaser's obligation in respect of that period for payment of interest and rental shall be limited to payment of whichever amount of such interest or rental is the higher.

- (b) In respect of any period when delay in settlement is caused by the default of the vendor, rental payable under this *paragraph 3.4* shall be reduced to the extent necessary to ensure that the purchaser, by paying rental, will not be financially disadvantaged by taking possession, by comparison with the position applicable if possession had not been taken prior to settlement.

3.4.3 The provisions of this *paragraph 3.4* shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.

3.4.4 Where the parties are unable to agree upon any amount payable under *paragraphs 3.4.1* or *3.4.2* of this subclause an interim amount shall on settlement be paid to a stakeholder by the party against whom it is claimed until the amount payable is determined. The interim amount shall be the lower of:

- (a) the amount claimed by the purchaser or the vendor, as the case may be; or
- (b) an amount equivalent to interest at the interest rate for late settlement during the period to which the claim relates on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the possession date.

3.4.5 Any interest earned on the interim amount net of resident withholding tax and any handling charges shall follow the destination of the interim amount. The amount determined to be payable shall not be limited by the amount of the interim amount. If the parties cannot agree on a stakeholder the interim amount shall be paid to a stakeholder nominated on the application of either party by the president or vice-president for the time being of the Law Society for the district where the property is situated.

3.5 Upon the balance of the purchase price, interest and other moneys if any due hereunder being paid or satisfied as provided in this agreement (credit being given for any amount payable by the vendor under *paragraph 3.4*), the vendor shall concurrently hand to the purchaser a registrable memorandum of transfer of the

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property, to be prepared by and at the expense of the purchaser and tendered to the vendor or the vendor's solicitor a reasonable time prior to the possession date executed by the purchaser if necessary together with all other instruments in registrable form (including a memorandum of transfer from the relevant Vendor Agency to the Vendor) which may be required for the purpose of registering the memorandum of transfer together with all instruments of title and all contracts and other documents which create rights, interests and obligations affecting the registered proprietor's interest and which shall continue following settlement.

3.6 All outgoing and incoming insurance premiums shall be apportioned at the possession date.

3.7 Where:

3.7.1 the transfer of the property is to be registered against a new title document in the course of issuing (including a new or provisional title document following the loss of the outstanding copy of the title); and

3.7.2 a search copy, as defined in section 172A of the Land Transfer Act 1952, of that title document is not obtainable by the fifth Business Day prior to the possession date,

then the possession date shall be deferred to the 5th Business Day following the date on which the search copy is obtainable, and the vendor has so advised in writing, unless the purchaser shall elect that settlement shall still take place on the original possession date. This clause shall not apply where it is necessary to register a registrable memorandum of transfer referred to in *paragraph 3.5* to enable a plan to deposit and title to the property to issue.

4 RISK AND INSURANCE

4.1 The property shall remain at the sole risk of the vendor until possession is given and taken.

4.2 In the event that prior to the giving and taking of possession the property is destroyed or damaged and such destruction or damage has not been made good by the possession date then the following provisions shall apply:

4.2.1 if the destruction or damage has been sufficient to render the property untenable and it is untenable on the possession date the purchaser may:

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- (a) complete the purchase at the purchase price less a sum equal to the amount of diminution in value of the property as at the Completion Date; or
 - (b) cancel this agreement as it affects the property by serving the vendor notice in writing; or
- 4.2.2 if the property is still tenable on the possession date the purchaser shall complete the purchase at the Transfer Value less a sum equal to the amount of the diminution in value of the property as at the Completion Date.
- 4.3 Either party may serve on the other party notice in writing requiring that any dispute as to the application of this clause be determined by an arbitrator to be appointed by the president or vice-president for the time being of the Law Society for the district where the property is situated, and the party serving the notice may at any time thereafter refer the dispute for determination. If the dispute is not determined by the possession date then the possession date shall be deferred to the 5th Business Day following the date on which the dispute is determined. The arbitrator may determine that the possession date shall not be deferred or shall be deferred to another day or days.
- 4.4 The purchaser shall not be required to take over any insurance policies held by the vendor.

5 TITLE, BOUNDARIES, ETC

- 5.1 The vendor shall not be bound to point out the boundaries of the property save that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that the property is pegged at the possession date.
- 5.2 Subject to *paragraph 5.3* the purchaser is deemed to have accepted the vendor's title.
- 5.3 In respect of any property for which, at the date of this Deed, no certificate of title has been issued the purchaser is deemed to have accepted the title save as to objections or requisitions which the purchaser is entitled to make and delivers to the vendor or the vendor's solicitor on or before 5th Business Day after the date on which the purchaser or the purchaser's solicitor is notified in writing that the title has issued.

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- 5.4 If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title so delivered by the purchaser and the purchaser does not on or before the 5th Business Day after the date on which the purchaser is notified in writing of such inability or unwillingness notify the vendor in writing that the purchaser waives the objection or requisition the vendor may (notwithstanding any intermediate negotiations) by notice in writing to the purchaser cancel this agreement as it relates to the property.
- 5.5 In the event of a cancellation by the vendor under *paragraph 5.4*, the purchaser shall be entitled to the return of all moneys paid under this agreement but shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatever.
- 5.6 For the avoidance of doubt, no objection or requisition may be made on the grounds that the vendor is not the registered proprietor of the property.
- 5.7 Except as otherwise expressly set forth in this agreement, no error, omission or misdescription of the property or the title shall annul the sale but compensation, if demanded in writing before settlement but not otherwise, shall be made or given as the case may require.
- 5.8 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

6 VENDOR'S WARRANTIES AND UNDERTAKINGS

- 6.1 The vendor warrants and undertakes to the purchaser that except to the extent disclosure to the contrary is permitted to be and is made under the Deed:
- 6.1.1 the relevant Vendor Agency or the vendor has paid all general and water rates due by them as owner or occupier to the possession date. If the water charges are determined by meter the vendor will on or immediately after the possession date have the water meter read and shall pay the amount of the charge payable pursuant to that reading but if the territorial authority shall not make special readings the water charges shall be apportioned;

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- 6.1.2 any adjustments of outgoings are paid to the dates shown in the vendor's statement of apportionments to be supplied to the purchaser before the possession date or shall be so paid immediately after the possession date;
- 6.1.3 the vendor shall pay all charges for electric power and gas supplied to the property down to the possession date;
- 6.1.4 if the vendor or the relevant Vendor Agency receives any notice or demand from the Crown or any territorial authority or from any tenant after the possession date the vendor or the relevant Vendor Agency shall if not paying or complying with such notice or demand forthwith deliver it to the purchaser or the purchaser's solicitor and if the vendor fails to do so the vendor shall be liable for any penalty incurred;
- 6.1.5 immediately after the possession date the vendor shall give notice of sale to Valuation New Zealand and the territorial authority having jurisdiction and where the property comprises a stratum estate shall serve a copy of the notice of sale on the secretary of the body corporate;
- 6.1.6 where the vendor or the relevant Vendor Agency has done or caused or permitted to be done on the property any works for which a permit or building consent was required by law, such permit or consent was obtained for those works and where appropriate, a code compliance certificate was issued for those works;
- 6.1.7 all obligations imposed on the vendor and the relevant Vendor Agency under the Building Act 1991 ("Act") shall be fully complied with at the settlement date, and without limiting the generality of the foregoing:
- (a) the vendor or the relevant Vendor Agency has fully complied with the requirements specified in any compliance schedule issued by a territorial authority under section 44 of the Act in respect of any building on the property;
 - (b) any building on the property which is the subject of a compliance schedule issued by a territorial authority under section 44 of the Act has a current building warrant of fitness supplied under section 45 of the Act and the vendor and the relevant Vendor Agency is not aware of any reason, that has not been disclosed in writing to the purchaser, which would prevent a building warrant of fitness complying with section 45 of the Act from being supplied to the

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territorial authority when the building warrant of fitness is next due;
and

- (c) the territorial authority has not issued any notice under section 45 (4) of the Act to the vendor or to any agent of the vendor or to the relevant Vendor Agency which has not been disclosed in writing to the purchaser, which could entitle the territorial authority to issue such a notice;

- 6.1.8 as far as the vendor or the relevant Vendor Agency is aware the Leases are all the leases, licences or other occupancy rights affecting the property;
- 6.1.9 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, there is no amendment or variation to any Lease;
- 6.1.10 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, no right or easement exists in respect of the property in favour of any person, which has not been notified in writing to the purchaser or is not apparent on inspection of the title to the property;
- 6.1.11 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, there is no outstanding enforcement or other notice, requisition or proceeding issued under any Code by any relevant authority;
- 6.1.12 neither the vendor nor the relevant Vendor Agency has actual notice of any order or resolution for the compulsory acquisition of any part of the property or any proposal for road widening which affects the property;
- 6.1.13 in respect of any property for which, at the date of this agreement, no certificate of title has been issued, all easements, rights or other interest as may reasonably be required to ensure enjoyment of the property for its current use will be registered against the new certificate when it is issued. The location and terms of any agreement shall not be settled without the approval of the purchaser which may not be unreasonably withheld; and
- 6.1.14 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, no material information which relates to the property has not

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been disclosed by or on behalf of the relevant Vendor Agency and the vendor to the purchaser.

7. UNIT TITLE PROVISIONS

- 7.1 If the property includes a stratum estate under the Unit Titles Act 1972 ("the Act"), the vendor warrants and undertakes that:
- 7.1.1 as far as the vendor or the relevant Vendor Agency is aware, details of regular periodic contributions payable to the body corporate and of the vendor's portion of any fund held by the body corporate, are as disclosed to the purchaser in accordance with Valuation Disclosure;
- 7.1.2 not less than 5 Business Days before the possession date the vendor will provide:
- (a) a copy of all insurance policies or certificates effected by the body corporate under the provisions of section 15 of the Act; and
 - (b) a certificate from the body corporate under section 36 of the Act. Any periodic outgoings shown in that certificate (not being amounts referred in paragraph (d) of section 36) shall be apportioned, and the purchaser shall give credit for the vendor's portion of any fund held by the body corporate which is disclosed on the front page of this agreement.
- 7.1.3 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, there are no amounts owing by the vendor under section 14, 33 or 34 of the Act;
- 7.1.4 neither the vendor or the relevant Vendor Agency has any knowledge or notice of any fact which might give rise to or indicate the possibility of:
- (a) the vendor or the purchaser incurring any liability under sections 14, 33 or 34 of the Act;
 - (b) any proceedings being instituted by or against the body corporate in any Court; or
 - (c) any order or declaration being sought under sections 28, 37, 40, 42, 43, 46 or 51 of the Act;

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- 7.1.5 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, there are no amendments to the body corporate rules other than those recorded on the supplementary record sheet and neither the vendor nor the relevant Vendor Agency is aware of any proposals to pass any resolution of the body corporate relating to its rules; and
- 7.1.6 as far as the vendor or the relevant Vendor Agency is aware, to the best of their knowledge and without limiting the Crown's obligations under this Deed, no lease, licence, easement or special privilege has been granted by the body corporate in respect of any part of the common property.
- 7.2 If the purchaser is or shall be materially prejudiced by any breach of or inaccuracy in any warranty or undertaking contained in *paragraph 7.1* (the proof of which shall lie on the purchaser), the purchaser may cancel this agreement prior to settlement by giving notice in writing to the vendor and upon cancellation the purchaser shall be entitled to the return of any moneys paid by the purchaser and neither party shall have any right or claim against the other.
- 7.3 If the vendor does not provide the copy of all insurance policies or certificates and the certificate under section 36 in accordance with the requirements of *paragraph 7.1.2* then the possession date shall be deferred to the 5th Business Day following the date on which that copy and that certificate are provided to the purchaser, unless the purchaser shall elect that settlement shall take place on the original possession date. If the purchaser does elect that settlement shall still take place on the original possession date, such election shall not be deemed to be a waiver of any rights under *paragraph 7.1.2(b)* to a proper apportionment of outgoings.

8 NOTICE TO COMPLETE AND REMEDIES ON DEFAULT

- 8.1 If the sale is not settled on the possession date either party may at any time thereafter (unless the contract has first been cancelled or become void) serve on the other party notice in writing (hereinafter called a settlement notice) to settle in accordance with this clause; but the notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to settle in accordance with the notice or is not so ready able and willing to settle only by reason of the default or omission of the other party to the contract. If the purchaser is in possession a settlement notice may incorporate or be given with a notice under section 50 of the Property Law Act 1952.

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- 8.2 Upon service of a settlement notice the party on whom the notice is served shall settle within 12 Business Days after the date of service of the notice (excluding the day of service) and in respect of that period time shall be of the essence but without prejudice to any intermediate right of cancellation by either party. If the settlement notice is served between the 6th day of December and the 20th day of January next following then (unless the notice expires before the 24th day of December in that period) the party on whom the notice is served shall settle within 12 Business Days after the date of service of the notice (excluding the day of service) or on the 1st Business Day after the 20th day of January next following the date of service (whichever is the later) time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 8.3 If the purchaser does not comply with the terms of the settlement notice served by the vendor then:
- 8.3.1 without prejudice to any other rights or remedies available to the vendor at law or in equity the vendor may:
- (a) sue the purchaser for specific performance; or
 - (b) cancel the contract and sue the purchaser for damages;
- 8.3.2 where a vendor is entitled to cancel the contract the entry by the vendor into a conditional or unconditional contract for the resale of the property or any part thereof by the vendor shall take effect as a cancellation of the contract by the vendor if the contract has not previously been cancelled and such resale shall be deemed to have occurred after cancellation;
- 8.3.3 the damages claimable by the vendor under *paragraph 8.3.1(b)* shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within 1 year from the date by which the purchaser shall settle in compliance with the settlement notice. The amount of that loss may include:
- (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale;
 - (b) all costs and expenses reasonably incurred in any resale or attempted resale;

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- (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale; and
 - (d) all reasonable costs incurred in agreeing or having determined the purchase price under the Deed; and
- 8.3.4 any surplus money arising from a resale as aforesaid shall be retained by the vendor.
- 8.4 If the vendor does not comply with the terms of a settlement notice served by the purchaser then the purchaser without prejudice to any other rights or remedies available to the purchaser at law or in equity may:
- 8.4.1 sue the vendor for specific performance; or
 - 8.4.2 without prejudice to any right of the purchaser to damages give notice in writing to the vendor cancelling the contract and requiring the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment. Any claim for damages shall include all reasonable costs incurred by the purchaser in agreeing or having determined the purchase price under the Deed.
- 8.5 The party serving a settlement notice may at the request or with the consent of the other party extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence of the contract accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 8.6 Nothing in this clause shall preclude a party from suing for specific performance without giving a settlement notice.
- 8.7 A party who served a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

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9 NON-MERGER

- 9.1 The agreements, obligations and warranties of the parties in this agreement shall not merge with the transfer of title to the property.

10 GENERAL

- 10.1 If there is more than one purchaser or vendor, the liability of the purchasers or of the vendors, as the case may be, is joint and several.
- 10.2 The purchaser may, by giving written notice in writing to the vendor not later than 5 Business Days before the possession date, nominate another person to whom the property shall be transferred but the purchaser shall at all times remain liable for all obligations on the part of the purchaser under this agreement and shall be responsible for all stamp duty payable on any nomination agreement and on the transfer to the nominee.

11 TITLE

- 11.1 If a certificate or certificates of title for the property has or have not been issued under the Land Transfer Act 1952, then the vendor shall, prior to the possession date, procure the deposit with the relevant District Land Registrar of a survey plan and the vendor shall thereupon arrange for the issue of fee simple certificates of title for the property under the Land Transfer Act 1952.
- 11.2 The vendor shall use reasonable endeavours to ensure that all easements, rights or other interests as may be reasonably required to ensure enjoyment by the purchaser of the property for its current use are registered against the new certificate or certificates of titles to issue.
- 11.3 The vendor shall carry out or shall procure that the relevant Vendor Agency carries out all such work as may be required to satisfy any conditions of the local authority to the deposit of the relevant plan.

ATTACHMENT 4.5
VARIATIONS TO SECTION 4
IN RESPECT OF CERTAIN PROPERTIES
(*Clause 4.5*)

1 TELECOM CHRISTCHURCH PROPERTY

- 1.1 This *paragraph 1* applies to the Property described first in *Attachment 4.1*.
- 1.2 In this paragraph, "Retained Land" means the land comprised in Certificate of Title 32F/311, 32F/312, 32F/313 and 32F/314 which is not the Property.
- 1.3 The transfer of the Property to Te Rūnanga will be subject to, and have the benefit of, all easements required to give effect to services which exist at the date of this Deed and which benefit either the Property or the Retained Land.
- 1.4 The transfer of the Property shall:
- 1.4.1 be subject to an easement to give effect to the existing walkway on the Property the extent of which at ground level is shown edged green on Deed Map C1;
- 1.4.2 grant the benefit of a right of way easement on foot over the balance of that walkway which is situated on the Retained Land; and
- 1.4.3 grant the benefit of a vehicular right of way over that part of the Retained Land shown edged green on Deed Map C1.
- 1.5 No later than the next Business Day after the expiration of the period of 62 Business Days commencing on the date of the Deed the Crown shall give Te Rūnanga draft of the form of each easement referred to in *paragraph 1.1*.
- 1.6 Unless Te Rūnanga responds in writing to the Crown with any proposed amendments to those drafts within the period of 10 Business Days commencing on the Business Day following receipt by Te Rūnanga of those drafts, the easements referred to in *paragraph 1.4* shall be granted and reserved on the terms of those drafts.
- 1.7 If Te Rūnanga does respond in writing to the Crown with proposed amendments to those drafts within that 10 Business Day period, the Crown and Te Rūnanga

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shall attempt to agree any proposed amendments but, failing agreement within a further period of 15 Business Days, either party may request the President of the New Zealand Law Society to nominate an expert to determine the matters in dispute.

- 1.8 The expert's determination shall be a final form of the easements which:
- 1.8.1 incorporates all terms which were not in dispute; and
 - 1.8.2 gives effect (where relevant) to the actual use of the relevant areas as of the date of this Deed; and
 - 1.8.3 is on terms usually found in easements of a similar nature.
- 1.9 The expert's determination shall be final and binding on the parties and the easements referred to *paragraph 1.4* shall be granted and reserved on the terms of the determination.
- 1.10 The Property is sold subject to a lease to New Zealand Post Properties Limited the details of which shall be disclosed in accordance with Valuation Disclosure. That lease is also of part of the Retained Land.
- 1.11 Prior to the transfer of the Property to Te Rūnanga, the Crown and Te Rūnanga shall agree on the form of a binding document which shall ensure that, following the transfer of the property to Te Rūnanga, Te Rūnanga and the owner of the Retained Land shall enjoy the benefits of, and be subject to, the rights of that lease in proportionate shares based on the relative floor areas of that lease which are in the Retained Land and the Property.
- 1.12 *Paragraphs 1.6 to 1.9* shall apply, with all necessary modifications, to the agreement or determination of the form of that binding agreement.

2 TELECOM QUEENSTOWN PROPERTY

- 2.1 This *paragraph 2* applies to the Property described secondly in *Attachment 4.1*.
- 2.2 In this paragraph, "Retained Land" means the land comprised in Certificate of Title 15C/613 which is not the Property.
- 2.3 The transfer of the Property shall:



VARIATIONS TO SECTION 4 IN RESPECT OF CERTAIN PROPERTIES

- 2.3.1 be subject to and have the benefit of all easements necessary to give effect to existing services for the benefit of either the Property or the Retained Land which, if practical and where related to existing underground cables, shall allow construction over the cables provided the owner of them can inspect, install and replace them at no greater cost or inconvenience;
- 2.3.2 be subject to a vehicular right of way easement over that part of the Property marked A on Deed Map C2;
- 2.3.3 be subject to a telecommunication easement over that part of the Property marked C on Deed Map C2.
- 2.4 The easement referred to in *paragraph 2.3.2* shall contain a provision that it will be surrendered if the owner for the time being of the land comprised in Certificate of Title 13B/225 provides a suitable alternative physical and legal access to the Retained Land from Camp Street over the area marked E on Deed Map C2.
- 2.5 *Paragraphs 1.6 to 1.9* shall apply, with all necessary modifications, to the agreement or determination of the form of the easements.