



# Request for Proposals



## Expansion of Broadband and Mobile Coverage

- Rural Broadband Initiative (RBI2)
- Mobile Black Spots (MBS)

RFP released: 27 October 2016

Deadline for Questions: 5pm, 18 November 2016

Deadline for Proposals: 5pm, 2 February 2017

**Crown Fibre Holdings Limited**  
L10 PwC Tower, 188 Quay Street  
Auckland Central  
PO Box 105 321, Auckland 1143

Email: [RBI2.MBS@crowdfibre.govt.nz](mailto:RBI2.MBS@crowdfibre.govt.nz)  
[www.crowdfibre.govt.nz](http://www.crowdfibre.govt.nz)



# CONTENTS

SECTION 1: Executive Overview .....	4
SECTION 2: Key Information for Submitting a Proposal .....	12
SECTION 3: Our Requirements .....	18
SECTION 4: Our Evaluation Approach.....	24
SECTION 5: Grant Funding.....	30
SECTION 6: Key Terms.....	33
SECTION 7: RFP Process, Terms and Conditions.....	47
SECTION 8: Definitions .....	56

# SECTION 1: Executive Overview

---

## 1.1 Introduction

- 1.1.1 The New Zealand Government has announced two new Grant Programmes for improving rural connectivity – \$100 million to extend the Rural Broadband Initiative (**RBI2**) and \$50 million to cover mobile network ‘black spots’ (**Mobile Black Spots** or **MBS**) to improve safety on state highways and to enhance tourist experiences. The programmes will be funded as grants from the Telecommunications Development Levy (**TDL**), an industry levy designed to fund telecommunications capabilities which are not available commercially or at a price that is affordable to End Users.
- 1.1.2 The Government considers the expansion of broadband and mobile services to be a key enabler for economic growth, facilitating increased business productivity, employment creation and the attraction and retention of residents in the selected communities. It will also assist in improving both health and education outcomes in the selected communities.
- 1.1.3 Confidential Proposals are now invited from telecommunications operators (large and small) to partner with the Government through Crown Fibre Holdings Limited (**CFH**) to bring better broadband and mobile services to an increased number of rural areas, state highways, businesses, residents and tourists in New Zealand and to achieve the greatest coverage for the most economic cost.
- 1.1.4 Regional Operators including wireless ISPs (**WISPs**) can apply for grants of up to \$2 million to expand and enhance existing networks to address Eligible End Users. For such grants open access arrangements are not required due to the size of the operators, and a short-form contract process is envisaged.<sup>1</sup>

## 1.2 Overview of this RFP

- 1.2.1 This Request for Proposals (**RFP**) is requesting Proposals to cover under-served rural End Users and Mobile Black Spots on state highways and in tourism areas.
- 1.2.2 The RFP proposes the following areas for new coverage:
  - Rural Broadband Regions:** Underserved rural broadband Eligible End Users who today or after planned market upgrades are not able to access terrestrial broadband service greater than 5Mbps (Category 1 End Users) or are able to access services between 5Mbps and 20Mbps (Category 2 End Users). These Eligible End Users include businesses, farms and households grouped by Rural Broadband Regions, being the 16 Regional Council and Unitary Authority areas<sup>2</sup> throughout New Zealand; and
  - Mobile Black Spot Zones:** The Government has identified a list of Mobile Black Spots on state highways (**Highway Black Spot Zones**) and in key tourism locations (**Tourism Black Spot Zones**) where there is no mobile coverage to assist Respondents in developing Proposals. Mobile Black Spot Zones may also cover rural broadband Eligible End Users.
- 1.2.3 With regard to RBI2, the Government’s focus is to create new areas of high-speed broadband coverage for Category 1 End Users and Category 2 End Users. The Government is

---

<sup>1</sup> Note that Regional Operators may apply for more than \$2 million of Grant Funding, but would have to accept the Open Access Requirements.

<sup>2</sup> The Chatham Islands are included as part of the Canterbury Rural Broadband Region.

interested in knowing how Respondents propose to contribute towards the goal of 99% of the population having access to 50Mbps by 2025 and the remaining 1% having access to at least 10Mbps by 2025.

- 1.2.4 A Respondent can also be an infrastructure provider and not an existing telecommunications operator provided their proposal can demonstrate that Respondent has the necessary commitments from local telecommunications operators to provide RBI2 and/or MBS services.

#### **Rural Broadband Initiative Phase 2 (RBI2)**

- 1.2.5 For RBI2, Respondents can define the logical groupings of Eligible End Users within a Rural Broadband Region (such grouping being a Rural Respondent Area). Rural Respondent Area proposals should be defined to the smallest contiguous area of proposed coverage that cannot be further divided (e.g. the areas serviced by a Cabinet or a wireless Tower site).
- 1.2.6 CFH is not prescribing any one technology for RBI2; Grant Funding can be made towards the Build of certain telecommunications infrastructure as set out in this RFP (typically long life assets such as Towers, fibre, Cabinets), and the provision of retail and wholesale services to those Eligible End Users using such technologies as mobile radio services, fixed wireless services, copper xDSL, breakout of existing fibre networks, the construction of new fibre networks, other suitable technologies or any combination thereof.
- 1.2.7 Respondents are invited to demonstrate how their Proposal delivers certain User Stories<sup>3</sup> for rural End Users in both a residential and business context. Refer to Appendix A1 (Service Specifications) for more information on the User Stories. Fixed wireless and mobile operators are to offer retail services and are encouraged, but not required, to offer a wholesale service. Fixed wireline operators (xDSL and fibre) should offer wholesale services based on existing market and regulated offerings, and may offer retail services if permitted by regulation. Grant Funding is also available to fund open access backhaul which may be based on fibre optic, digital microwave or other suitable transmission technologies.
- 1.2.8 Successful Respondents (other than Regional Operators seeking Grant Funding up to \$2M) will be required to offer open access Wholesale Backhaul Services to other providers of rural broadband and mobile services. Tower operators (other than Regional Operators) are to offer “Co-location” services and will be funded where the Co-location Access Seeker nominates to co-locate in advance of Tower design. Where Co-location is sought after Tower construction and no prior nomination has been made, the Access Seeker will need to meet the costs of such Co-location). Where a mobile network operator proposes to provide mobile Cellular services from an RBI2 Tower, they should offer roaming to Access Seekers (they are not required to offer roaming to Vodafone or Spark but may at their discretion).
- 1.2.9 Key criteria for selection of Rural Respondent Areas and Respondents will include the Grant Funding sought per Eligible End User, the number and mix of Eligible End Users served, and the Respondent’s ability to deliver in accordance with the User Stories for throughput. Government will nominate areas of preference based on these matters, the balance between Category 1 and 2 End Users and may take into account regional equity considerations between Rural Broadband Regions.
- 1.2.10 Respondents will also be evaluated against a number of Non-price criteria, including meeting key Requirements, compliance with the Key Terms, the timing of completing the Build, technical and commercial capability and financial capacity. The full basis for the evaluation

---

<sup>3</sup> Typical rural broadband user stories include: general web browsing, online banking, cloud based services, online education coursework, telemedicine services, news and streamed video.

can be found in Section 4 of the Base RFP (Our Evaluation Approach) and that Section should be relied on for how Proposals will be evaluated.

### **Mobile Black Spots (MBS)**

- 1.2.11 For MBS, Respondents have the opportunity to provide Proposals for the **Highway Black Spot Zones** and/or **Tourism Black Spot Zones** that they are interested in Building (such Proposals will be **Highway Respondent Areas** and **Tourism Respondent Areas**, respectively).
- 1.2.12 The ideal minimum Service Level to be provided for MBS is 3G voice/text/data solutions with emergency calling access for all mobile carriers. Roaming should be offered to Access Seekers (roaming will not be required to be offered to Vodafone or Spark, but may be at the Respondent's discretion).
- 1.2.13 For Highway Black Spot Zones, the Government is seeking mobile network operators to cover Highway Black Spot Zones based on a number of factors including the lowest cost per kilometre of new coverage, the extent of coverage and regional spread. Highway Black Spot Zones have been identified to assist Respondents in developing Proposals; see Appendix A6 (Rural Broadband Regions and Mobile Black Spots) of this RFP. Subject to Section 3 (Our Requirements) of this Base RFP, paragraph 3.5.6, Respondents should not propose to provide MBS Services to any area that is not included in Schedule A6.2. Consideration of drive time to/from mobile coverage and traffic volumes for Highway Black Spot Zones on State Highways may be taken into account. For Tourism Black Spot Zones, the Government is seeking mobile network operators to cover Tourism Black Spot Zones based on a number of factors including the lowest cost per site, extent of coverage and regional spread. It is expected that services will be offered to allow the use of social media (e.g. Instagram, Snapchat, Facebook), and other digital services such as video calling and photo sharing. Tourism Black Spot Zones have been identified to assist Respondents in developing Proposals; see Schedule A6.2 (Rural Broadband Regions and Mobile Black Spots) of this RFP. Subject to Section 3 (Our Requirements) of this Base RFP, paragraph 3.5.6, Respondents should not propose to provide MBS Services to any area that is not included in Appendix A6. Tourist visitor volumes (where data is available) and importance to tourism may also be considered.
- 1.2.14 Coverage solutions proposed by Respondents that cover both Highway Black Spot Zones as well as Tourism Black Spot Zones may be more favourably considered.
- 1.2.15 Respondents are encouraged to also provide a fixed wireless rural broadband service to any Eligible End Users identified within a Mobile Black Spot Zone and where this is proposed, these Proposals may be more favourably considered.
- 1.2.16 Respondents (other than Regional Operators seeking Grant Funding up to \$2M) are required to provide Wholesale Tower Co-location Services to Access Seekers, and the additional structural costs of providing for Co-locators will be grant funded where a Co-locator nominates to co-locate in advance of Tower design.
- 1.2.17 Where Respondents require additional funding for economically challenging Mobile Black Spot Zones, evidence will have to be provided to substantiate the economic challenges. Respondents can then request Grant Funding for mobile 3G radio equipment and up-front contributions to vendor equipment licences. The Respondent can choose to provide 4G technology at their cost.
- 1.2.18 Grant Funding is also available to fund open access Backhaul which may be based on fibre optic or digital microwave transmission.
- 1.2.19 The key criteria for selection of Highway Respondent Areas, Tourism Respondent Areas and Respondents, will be Grant Funding requested per kilometre of new coverage for Highway

Respondent Areas and Grant Funding requested per site for Tourism Respondent Areas. The extent of new coverage, whether that new coverage includes both Highway Black Spot Zones and Tourism Black Spot Zones and any rural Eligible End Users that may be covered will also be considered. Government will nominate areas of preference based on these matters and may take into account tourism volumes/importance, traffic volumes, road safety and drive time to/from mobile coverage, as well as regional spread considerations. Respondents will be evaluated on the matters above and a number of non-price criteria such as meeting key requirements set out in this RFP, compliance with the Key Terms, deployment timing, technical and commercial capability and financial capacity. The full basis for the evaluation can be found in Section 4 of the Base RFP (Our Evaluation Approach) and that Section should be relied on for how Proposals will be evaluated.

- 1.2.20 Note that Grant Funding from either RBI2 or MBS cannot be used to fulfil an operator's implementation requirements to provide new coverage under the 700 MHz auction.
- 1.2.21 Following the release of this RFP, CFH will advise the Respondent (via GETS) of RFP information presentations, which will either be conducted by way of webinar, or held in selected venues. Respondents can register for these information presentations via email: [RBI2.MBS@crowdfibre.govt.nz](mailto:RBI2.MBS@crowdfibre.govt.nz)

### 1.3 What's important to us

- 1.3.1 CFH wishes to maximise the proportion of New Zealand's businesses, farms, residents and tourists that can access broadband and mobile services within the available Grant Funding budget.
- 1.3.2 CFH is looking to provide funding to credible infrastructure and/or telecommunications providers who have the requisite capability, experience and infrastructure to execute their Proposal to deliver RBI2 to the Rural Broadband Regions and MBS to the Mobile Black Spot Zones. CFH will consider both national and regional telecommunications providers. You will need to have a good track record in the management and implementation of telecommunications infrastructure projects, have or have access to proven telecommunications expertise, and strong relationships within the relevant local community or communities, to help efficiently complete the deployment and maximise End User uptake and coverage.

### 1.4 Why should you submit a Proposal?

- 1.4.1 This is a unique opportunity to be part of the development of mobile and broadband services in rural New Zealand which we believe will deliver beneficial outcomes in public safety, tourism experience, rural health, distance learning, social communication, agriculture and business productivity.
- 1.4.2 You will be submitting a Proposal to CFH to be considered for Grant Funding to assist the construction of new telecommunication sites and additional or upgraded rural broadband coverage. Invitations to submit Proposals are open to large telecommunications network operators and also to smaller regionally-focussed network operators.
- 1.4.3 Previous initiatives such as the first ultra-fast broadband rollout (**UFB1**) and the first Rural Broadband Initiative (**RBI1**) have delivered substantial and tangible benefits to New Zealand cities, towns and rural communities. This is your opportunity to be involved in an investment

that will bring those benefits to more New Zealand businesses, residents and visiting tourists.

## 1.5 About us

- 1.5.1 The Government has appointed CFH to manage the Government's RBI2 and MBS Grant Programmes. CFH is the Crown-owned entity established in 2009 to manage the Government's investment in Ultra-Fast Broadband (**UFB**).
- 1.5.2 CFH has considerable telecommunications infrastructure industry experience, including experience gained under UFB1 in the areas of network deployment, operations and sales/marketing and international relationships, which can assist successful Respondents in these new initiatives.
- 1.5.3 Further information about CFH can be found at [www.crownfibre.govt.nz](http://www.crownfibre.govt.nz)

# Overview of this RFP

The following high-level overview is intended to assist Respondents to navigate this RFP by briefly explaining the purpose of each of the Sections and Appendices.

Respondents should always refer to the relevant Section and/or Appendices for a full understanding of any issue.

## Sections 1 to 8 form the Base RFP

### Section 2: Key Information for Submitting a Proposal

This Section contains information key to producing and submitting a compliant Proposal, including:

- the timeline for the RFP process;
- the details of our Point of Contact;
- the preferred manner and form of Proposals; and
- the address for submitting Proposals.

### Section 3: Our Requirements

This Section is of prime importance in the development of Proposals, as it describes CFH's key Requirements.

Proposals should include all information requested by this Section. Many of the Requirements in this Section refer to the Appendices to this RFP. Where a Requirement refers to an Appendix, either to provide further detail as to CFH's Requirements, or to include further relevant documentation, the Appendix must also be closely considered by Respondents.

### Section 4: Our Evaluation Approach

This Section sets out the approach CFH will take to evaluating Proposals. In detailing CFH's Evaluation Approach, this Section includes:

- the extent of the involvement of Government in the decision-making for this RFP process in that they have the responsibility for determining which Respondent Areas will receive Grant Funding;
- the factors that the Government will have regard to in nominating areas of preference for Grant Funding;
- the Evaluation Criteria against which the Evaluation Panel will assess Proposals to determine which Respondent(s) to negotiate with;
- details of CFH's ability to conduct further due diligence of Respondents and Proposals at its discretion; and
- the process for electing Respondents to negotiate with through to the agreement of Contract(s).

### Section 5: Grant Funding

This Section (along with Section 6 (Key Terms) of this Base RFP) provides the detail on how the Grant Funding will be provided to any successful Respondent(s) following the conclusion of the RFP procurement process.

This Section also requests that Respondents include certain funding information in their Proposals, including a completed Proposal Data Template.

### Section 6: Key Terms

This Section sets out CFH's Key Terms that will form the basis of any Contract(s) that result from this procurement process. Respondents will ideally materially agree to these Key Terms.

**Section 7: RFP Process, Terms and Conditions**

This Section contains the RFP Terms and Conditions that every Respondent will be bound by.

**Section 8: Definitions**

This Section contains the definitions used in this RFP, including both the Base RFP and the Appendices.

**Appendices**

**Appendix A1: Service Specifications**

This Appendix sets out ideal outcomes for the Grant Funded Networks to be Built following this procurement process. This Appendix includes Service Specifications for both RBI2 and MBS.  
This Appendix also includes User Stories by way of example of the Service Specifications that a good Proposal would ideally meet.

**Appendix A2: Network Requirements**

One of CFH’s Requirements is that Proposals must materially meet or exceed the Network Requirements. This Appendix contains those requirements.

**Appendix A3: Regulatory Requirements**

One of CFH’s Requirements is that Proposals must materially meet or exceed the Regulatory Requirements. This Appendix contains those requirements.

**Appendix A4: Health and Safety Requirements**

One of CFH’s Requirements is that Proposals must meet the Health and Safety Requirements. This Appendix contains those requirements.  
Respondents must complete and submit the Health and Safety Questionnaire set out in this Appendix.

**Appendix A5: Reporting Requirements**

One of CFH’s Requirements is that Proposals must materially agree with the Reporting Requirements. This Appendix contains those requirements.

**Appendix A6: Rural Broadband Regions and Mobile Black Spot Zones**

This Appendix contains further details regarding the Rural Broadband Regions and Mobile Black Spot Zones that are within the scope of this RFP.  
Shapefiles of the land parcels that represent our best intelligence of the location of the Category 1 Eligible End Users in each Rural Broadband Region are available via GETS.  
The Schedule to this Appendix contains a list of the Rural Broadband Regions and a list of the Mobile Black Spot Zones, including where available, data on the traffic volumes and drive time to/from mobile coverage for Highway Black Spot Zones and the annual visitor volumes for Tourism Black Spot Zones. Shapefiles of the Rural Broadband Regions and Mobile Black Spot Zones will be provided via GETS.  
Respondents should use the information in this Appendix to propose certain Respondent Areas to which they will Build. Such Respondent Areas need to be proposed in accordance with the requirements in this Appendix.

### Appendix A7: Marketing and Promotion Requirements

One of CFH's Requirements is that Proposals must materially agree with the Marketing and Promotion Requirements. This Appendix contains those requirements.

Respondents must complete and submit the Marketing and Promotion Questionnaire set out in this Appendix.

### Appendix A8: Matters to be included in your Proposal

This Appendix provides a tabular checklist for Respondents to use in developing their Proposals. This is offered as a useful tool for Respondents and does not have to form part of the Proposal itself.

### Appendix A9: Response Form

This Appendix contains the Response Form that Respondents are required to populate and use as the covering document for their Proposals. The Response Form can be used regardless of whether the Respondent's Proposal includes requests for Grant Funding in respect of RBI2, MBS or both.

The Response Form requests that Respondents identify where in their Proposal they have provided information to address how they have complied with CFH's requirements. This will make the Evaluation Panel's task significantly easier.

The Response Form also includes a mandatory declaration that all Respondents must complete.

**You must complete this form in its entirety.**

### Interpretation

In this RFP, unless otherwise specified:

- (a) a reference to a *Section* in the Base RFP, Appendix, or Schedule, is a reference to a section of that Base RFP, Appendix or Schedule as specified;
- (b) a reference to a *paragraph* in a section, Appendix, or Schedule, is a reference to a paragraph of that section, Appendix or Schedule as specified;
- (c) a reference to an *Appendix* is a reference to an appendix of this RFP as specified;
- (d) a reference to a *Schedule* is a reference to a schedule to an Appendix of this RFP as specified;
- (e) specifying anything in this RFP after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (f) the singular includes the plural and vice versa; and
- (g) references to and expressions used in connection with financial calculations, valuations, accounting or financial reporting or their description in this RFP bear the respective meanings ascribed to like expressions or expressions to similar intent in accordance with NZ IFRS and NZ GAAP.

# SECTION 2: Key Information for Submitting a Proposal

---

## 2.1 Context

- 2.1.1 This RFP is an invitation to suitably qualified Respondents to submit a Proposal (or Proposals) for the opportunity to receive Grant Funding to assist in the deployment of infrastructure to provide Rural Broadband Services and/or Mobile Black Spot Services under the RBI2 and/or MBS programmes.
- 2.1.2 The Government has defined Rural Broadband Regions for RBI2 and Highway Black Spot Zones and Tourism Black Spot Zones for MBS.
- (a) Respondents may provide Proposals for all of the Rural Broadband Regions and Mobile Black Spot Zones or for a subset of these.
  - (b) Respondents are to submit Proposals in the form of Rural Respondent Areas, Highway Respondent Areas, Tourism Respondent Areas, or a combination of these.
- 2.1.3 Respondents may submit Proposals individually or jointly with other parties. In particular Respondents who are infrastructure providers and not existing telecommunications operators can apply for grants toward neutrally-owned or passive infrastructure such as towers and/or dark fibre etc. Such Respondents will need to demonstrate that they can attract or partner with local telecommunications operators in order to provide the RBI2/MBS services.
- 2.1.4 For background, Respondents should note that Government has sought input from Councils and potential suppliers on the RBI2 and MBS programmes through the following Registrations of Interest (**ROIs**):
- (a) **ROI – Support:** Government asked Councils to nominate areas of poor coverage that would benefit from inclusion under each Grant Programme and what commitments they could make, including co-investment, to make deployment in their district more viable.
  - (b) **ROI – Supply:** Government asked suppliers for their suggestions on the best technical approach to deploy for each Grant Programme.
- 2.1.5 Note that a party does not need to have registered an interest under the ROI-Support or the ROI-Supply in order to submit a Proposal in response to this RFP.
- 2.1.6 Government has determined the policy for the RBI2 and MBS programmes. The ROI submissions have been incorporated into this process.
- 2.1.7 Government received responses to the ROI-Support from most relevant Regional Councils, Territorial Authorities and Unitary Councils (Local Government Authorities) which have informed this RFP. Respondents are encouraged to contact relevant Authorities/Councils for information on support they may be prepared to offer to facilitate deployment of the Grant Funded Network in their areas.
- 2.1.8 Local Government Authorities will receive information on Rural Broadband Region Eligible End Users, Highway Black Spot Zones and Tourism Black Spot Zones in their district or region and hence will be kept informed of the initiatives. They can therefore be approached by Respondents for assistance. CFH will also be engaging with Local Government Authorities

further in respect of potential co-funding opportunities in parallel to this RFP process, with any co-funding arrangements expected to be finalised shortly after the Contracts with Respondents are executed. To the extent that Local Government Authorities may provide additional funding to CFH in order to extend the RBI2/MBS coverage CFH will request permission from the relevant Respondent to share information contained in their Proposals with the relevant Local Government Authorities under a non-disclosure agreement.

- 2.1.9 The establishment of infrastructure to facilitate service coverage for a Mobile Black Spot may need to involve placing infrastructure on Department of Conservation (DOC) land, depending on what site alternatives are available with land outside the DOC estate. DOC is supportive of the RBI2/MBS programmes and is willing to work with Respondents to progress applications for DOC land access through the appropriate concessions process.
- 2.1.10 Words and phrases that have a special meaning are shown by the use of capitals. Definitions are at contained in Section 8 (Definitions) of this Base RFP.

## 2.2 Our timeline

- 2.2.1 Here is our timeline for this RFP.

Steps in RFP process	Date
RFP released	<b>27 October 2016</b>
CFH presentations to prospective Respondents on the RFP.	<b>31 October 2016 – 11 November 2016</b>
Deadline for Respondents to register for interactive meetings with CFH.	<b>5pm Friday 11 November 2016</b>
Deadline for Questions from Respondents	<b>5pm Friday 18 November 2016</b>
Deadline for feedback from Respondents on Rural Broadband Regions and Mobile Black Spot Zones	<b>5pm Friday 25 November 2016</b>
Interactive meetings between CFH and Respondents.	<b>28 November 2016 – 9 December 2016</b>
Deadline for CFH to answer the questions submitted by Respondents and, if required, notify any changes to the Eligible End User Database, or Mobile Black Spot Zones.	<b>5pm Friday 9 December 2016</b>
<b>Deadline for Proposals to be submitted.</b>	<b>5pm Thursday 2 February 2017</b>
Evaluation and clarification completed.	<b>24 February 2017</b>
Respondents notified of status.	<b>From 7 April 2017</b>
<b>Anticipated first Contract executions.</b>	<b>30 June 2017</b>

- 2.2.2 All dates and times are dates and times in New Zealand.
- 2.2.3 CFH reserves the right to amend or alter the timeline (see Section 7 (RFP Process, Terms and Conditions), paragraph 7.23.1(b)) of this Base RFP.
- 2.2.4 CFH also reserves the right to re-tender part or all of the services/works to be procured under this RFP (i.e. for all or some of the Rural Broadband Regions, Mobile Black Spot Zones, Respondent Areas or other areas) in the event that CFH considers it unlikely that the

Proposals received by the Deadline for Proposals will adequately satisfy the RBI2/MBS Objective.

## 2.3 Communicating with CFH during the RFP

- 2.3.1 The timeline allows for Respondents to provide feedback on the Rural Broadband Regions and Mobile Black Spot Zones proposed by the Government. Where a Respondent can show that it has existing or planned coverage (in the medium-term) they can submit this to CFH in confidence. Subject to 3.5.5 and 3.5.6, CFH will consider any submission and may notify all Respondents of the intention to remove, add or modify any Rural Broadband Region or Mobile Black Spot Zone.
- 2.3.2 CFH has allowed time to meet with Respondents during the period after the RFP is issued and prior to the deadline for CFH to answer questions. The purpose of such a meeting will be to give Respondents an additional opportunity to ensure they fully understand CFH's requirements and to clarify any aspect of this RFP. A maximum of two hours will be set aside for each interactive meeting. CFH can provide the venue for the interactive meetings unless Respondents elect to host meetings at a venue agreed as suitable and acceptable to CFH. The Respondent will chair the interactive meetings.
- 2.3.3 A Respondent who wishes to meet with CFH for this purpose should email our Point of Contact prior to 5pm on 11 November 2016 in order to request a meeting. A Respondent will be required to provide its agenda 48 hours in advance of the meeting. Providing an agenda allows CFH to arrange appropriate representation to address the subjects each Respondent wishes to discuss. CFH will communicate with each Respondent who requests such a meeting regarding who may attend the meeting and what protocols will apply to ensure probity principles are adhered to.
- 2.3.4 Matters to be discussed at the interactive meetings may include, but are not limited to:
- (a) understanding the RFP process;
  - (b) the Respondent's Proposal regarding their network design and/or Service Offering;
  - (c) CFH's requirements for the Contract;
  - (d) work phasing, programming and Contract period;
  - (e) stakeholder issues;
  - (f) Section 6 (Key Terms) of this Base RFP; and
  - (g) the Respondent's Proposal generally.
- 2.3.5 Matters not to be discussed at the interactive meetings include, but are not limited to:
- (a) promotional material relating to the Respondent or the Respondent's sub-contractor(s); and
  - (b) pricing information relating to any aspect of the Respondent's Proposal.
- 2.3.6 All meetings will be confidential (and Section 7.17 (RFP Process, Terms and Conditions) of this Base RFP will apply to any information shared) and non-contractual. The aim of the interactive meetings is to resolve issues relating to the Respondent's network design and Service Offerings and their Proposal submission. The interactive meetings will also be used to address any anomalies, ambiguities, errors or omissions identified in the RFP.

- 2.3.7 All enquiries must be directed to our Point of Contact and CFH will manage all external communications through this Point of Contact.

**Our Point of Contact**

**Name:** Steve Inglis

**Title/role:** Project Manager, Crown Fibre Holdings Limited

**Email address:** RBI2.MBS@crowdfibre.govt.nz

## 2.4 Developing and submitting your Proposal

- 2.4.1 This is an open, competitive tender process. This RFP sets out the step-by-step process and the conditions that apply.
- 2.4.2 Take time to read and understand this RFP. In particular:
- (a) develop a strong understanding of our requirements, detailed in Section 3 (Our Requirements) of this Base RFP; and
  - (b) in structuring your Proposal, consider how it will be evaluated. Section 4 (Our Evaluation Approach) of this Base RFP describes our Evaluation Approach.
- 2.4.3 For helpful hints on tendering and access to a supplier resource centre go to:  
[www.procurement.govt.nz/for-suppliers](http://www.procurement.govt.nz/for-suppliers)
- 2.4.4 If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. Email our Point of Contact or use the electronic RFP management system that CFH is using for this process (**GETS**).
- 2.4.5 In submitting your Proposal, you must use the Response Form contained in Appendix A9 as the covering document. This is in the form of a Microsoft Word document that you can download.
- 2.4.6 You must also complete and sign the declaration at the end of the Response Form.
- 2.4.7 Your Proposal must contain all of the matters required to be submitted as set out in Appendix A8.
- 2.4.8 Hard copies of Proposals should be delivered in a package with the Respondent's name clearly printed on the outside of the package. Soft copies of Proposals submitted through **GETS** in accordance with this Section 2.5 must comply with the following specifications:
- (a) Proposals must be provided in either Microsoft Word (.doc) or Portable Document Format (.pdf) format. If files are .pdf, then they must be searchable (i.e. not a scanned image);
  - (b) geospatial data for all Respondent Areas must be provided in a zipped shape file; and
  - (c) any Excel templates included in the RFP (for example the Proposal Data Template) must be completed and provided in Microsoft Office Excel format (.XLSX, .XLSM).
- 2.4.9 Check you have provided all information requested, and in the format and order asked for.
- 2.4.10 Please ensure you get your Proposal to CFH before the Deadline for Proposals.
- 2.4.11 Please allow sufficient time to upload the electronic version of your Proposal through **GETS**. It is up to you to ensure that any delays, for whatever reason, do not result in your Proposal being received after the Deadline for Proposals.

## 2.5 Address for submitting your Proposal

2.5.1 A Proposal in response to this RFP must be delivered in both hard copy and soft copy formats.

2.5.2 We require that three (3) hard copies be sent or delivered to the following address:

**For Proposals sent by post:**

Tender Box – RBI2  
Attention: Steve Inglis, Project Manager  
Crown Fibre Holdings Limited  
PO Box 105 321  
Auckland 1143

**For Proposals delivered by hand or courier:**

Tender Box – RBI2  
Attention: Steve Inglis, Project Manager  
Crown Fibre Holdings Limited  
Level 10 PwC Tower, 188 Quay Street  
Auckland Central

2.5.3 The soft copy of the Proposal is to be submitted through **GETS**.

2.5.4 Proposals sent by fax or email will not be accepted.

2.5.5 Proposals (both the hard copies and the soft copy) must be received by CFH on or before the Deadline for Proposals. It is the Respondent's responsibility to ensure this occurs.

## 2.6 Our RFP Process, Terms and Conditions

2.6.1 **Offer Validity Period:** In submitting a Proposal the Respondent agrees that its offer will remain open for acceptance by CFH for six calendar months from the Deadline for Proposals.

2.6.2 The RFP is subject to the RFP-Terms described in Section 7 (RFP Process, Terms and Conditions) of this Base RFP.

## 2.7 Later changes to the RFP or RFP process

2.7.1 If, after publishing the RFP, we need to change the RFP (for example, as a result of the feedback process as referred to in paragraph 2.3.1 above), or RFP process, or want to provide Respondents with additional information, we will let all Respondents know by either placing a notice on **GETS** or, following the Deadline for Proposals, by emailing each Respondent's Point of Contact.

## 2.8 Probity

2.8.1 As a Public Finance Act 1989 Schedule 4A Company, CFH is subject to the Government Rules of Sourcing. Accordingly, CFH is committed to running a procurement process that aligns with the Government Rules of Sourcing, including with regard to:

- (a) following the Principles of Government Procurement;
- (b) the content of this RFP;
- (c) responding to queries from Respondents;

- (d) any changes which CFH may make to this RFP or to the procurement process generally;
- (e) the evaluation of responses;
- (f) awarding any Contract(s);
- (g) the provision of debriefs; and
- (h) dealing with any complaints.

2.8.2 As a further measure to ensure the implementation of CFH's management approach, CFH has designed a procurement process that maintains appropriate oversight from Government throughout the process.

2.8.3 CFH has also engaged a Probity Advisor (Bell Gully) and a Probity Auditor (Audit New Zealand) in order to provide on-going monitoring, advice and assurance that CFH is acting fairly and appropriately in its role as the decision-maker for this RFP. This on-going monitoring and input will have a focus on CFH's responsibilities in relation to the management of probity risks.

# SECTION 3: Our Requirements

---

## 3.1 Background<sup>4</sup>

- 3.1.1 Infrastructure deployment for RBI1 commenced in 2011. The deployment of upgraded fixed-line Cabinets and new mobile Towers was completed during June 2016. At the end of RBI1, 90% of households and businesses (outside of the areas covered by the Government's UFB initiative) now have access to broadband at peak speeds of at least 5Mbps. This is being delivered through fixed wireless and improved copper (xDSL) broadband services. RBI1 has also extended mobile coverage to rural areas across New Zealand with its fixed wireless network coverage. Additionally, more than 1000 rural schools have been connected to fibre optic cable or fixed wireless solutions.
- 3.1.1 In June 2016 the Crown-funded RBI1 Tower programme was completed. There are 154 new Towers which have been constructed and more than 355 rural cell Towers have been upgraded to 3G and 4G (a total of 387 will be upgraded by June 2017). Coverage of state highways has increased from 67% to 77%. In addition to this, over 110,000 copper lines have been upgraded to enable faster broadband services.

## 3.2 RBI2/MBS Objectives

- 3.2.1 **Aspirational target:** In October 2015 the Government announced an aspirational target that by 2025, 99% of New Zealanders will have access to broadband at peak download speeds of 50Mbps, and the remaining 1% will have access to 10Mbps<sup>5</sup>. This overall broadband goal is designed to guide the setting of specific objectives for Government programmes such as RBI2 and MBS. However, the aspirational target does not commit the Government to funding any future programmes or projects for reaching the target. The Government is interested in knowing how Respondents propose to contribute towards achieving this aspirational target.
- 3.2.2 **RBI2 Objectives:** Within available funding, to:
- (a) provide high-speed broadband to the greatest number of Eligible End Users in Rural Broadband Regions; and
  - (b) support the achievement of similar access to high-speed broadband by Eligible End Users across all Rural Broadband Regions.
- 3.2.3 **MBS Objective:** Within available funding, to improve the availability of mobile services in as many Mobile Black Spot Zones as possible, to support safety on state highways and to enhance visitor experience at key tourist destinations.

## 3.3 The RFP process

- 3.3.1 This RFP provides an opportunity for Respondents to submit Proposals to obtain Grant Funding to invest in the Build and operation of infrastructure to provide mobile and/or broadband services to rural New Zealand. Proposals from Respondents will be assessed by CFH in accordance with the Evaluation Approach.

---

<sup>4</sup> Figures sourced from: [Rural Broadband Initiative Phase 1, August 2016](#)

<sup>5</sup> Peak download speed

3.3.2 CFH is conducting the evaluation process, and the Government will nominate areas of preference. This is elaborated on further in Section 4 (our Evaluation Approach) of this Base RFP. It is expected that various factors, including information from the evaluation process and regional equity or spread considerations will be taken into account in the selection of Respondent Areas for RBI2 and MBS deployment. CFH will select Respondents to negotiate with to meet the Government's funding allocation priorities.

### **3.4 What we require**

3.4.1 Key CFH requirements are set out below in Sections 3.5 to 3.9 and in more detail in Appendices A1 to A7. Appendix A8 (Matters to be covered in your Proposal) works as a checklist for Respondents of all the matters that must be covered or included in Proposals.

3.4.2 Respondents should note that some concessions in the requirements set out in this RFP are available to Regional Operators seeking Grant Funding of not more than \$2m. Details of these concessions can be found in Section 6 (Key Terms) of this Base RFP.

### **3.5 Rural Broadband Regions and Mobile Black Spot Zones**

3.5.1 The Government is interested in improving the provision of broadband in rural areas and mobile coverage in black spots on main State Highways and in tourism destinations. The Government is also interested in providing broadband services to Eligible End Users that coincide with any Mobile Black Spots. To guide Respondents in developing Proposals, Appendix A6 (Rural Broadband Regions and Mobile Black Spot Zones) contains a list of the Rural Broadband Regions and details of the Highway Black Spot Zones and the Tourism Black Spot Zones that are in scope of this RFP. GIS files identifying the location of the Category 1 End Users within the Rural Broadband Regions and identifying the Mobile Black Spot Zones are available to download in shapefile form via GETS. All shapefiles are made available to Respondents on the terms set out in Section 7 (RFP Process, Terms and Conditions) of this Base RFP.

3.5.2 While the Government has identified Rural Broadband Regions and Mobile Black Spot Zones, it is intended that Respondents will provide Proposals based on their own Respondent Areas that make up all or part of a Rural Broadband Region or Mobile Black Spot Zone. Subject to 3.5.6, the list of Mobile Black Spot Zones (being Highway Black Spot Zones and Tourism Black Spot Zones) contained in Appendix A6 (Rural Broadband Regions and Mobile Black Spot Zones) is exhaustive and Respondents should not submit Proposals that propose to offer Mobile Black Spot Services to any other area.

3.5.3 A Respondent can submit a Proposal to Build and operate a Grant Funded Network within:

- (a) one or more of the Mobile Black Spot Zones (each being a Respondent Area); and/or
- (b) one or more of the Rural Broadband Regions (each being a Respondent Area),

as described in more detail in Section 6.2 (Key Terms) of this Base RFP and Appendix A6 (Rural Broadband Regions and Mobile Black Spot Zones).

3.5.4 It is the responsibility of the Respondent to provide Proposals for Respondent Areas which maximise the coverage of Eligible End Users.

3.5.5 Best efforts have been made to exclude areas in which there is already sufficient coverage, or where there is a medium-term plan for sufficient coverage, from the Rural Broadband Regions and Mobile Black Spot Zones. If a Respondent already provides coverage (or has already made a commitment to provide such coverage in the medium-term) within one or more of the Rural Broadband Regions or Mobile Black Spot Zones, it should provide CFH with

feedback to this effect by 18 November 2016 (as requested in paragraph 2.3.1 of this Base RFP). Such feedback should include evidence of the Eligible End Users (including Category 1 End Users) either covered or planned to be covered in the relevant Rural Broadband Region(s) or Mobile Black Spot Zone(s). CFH will consider whether the evidence provided meets the relevant CFH requirements, or will meet the relevant CFH requirements within a reasonable timeframe. CFH will then consider excluding or amending the relevant Rural Broadband Region(s) or Mobile Black Spot Zone(s) and, if it decides to make an amendment to this RFP, will notify all registered Respondents on GETS.

- 3.5.6 If a Respondent wishes to include in its Proposal a significant stretch of State Highway, or a tourism location on the 2012 International Visitor Survey (IVS)<sup>6</sup> that is not identified as a Mobile Black Spot Zone in Schedule A6.2, and the location does not have current or planned mobile coverage from any operator, it should provide CFH with evidence of the location and the lack of mobile coverage using the process described in 3.5.5. CFH will then consider amending the schedule of Mobile Black Spot Zone(s) and, if it decides to make an amendment to the list of Mobile Black Spot Zones to include this area, CFH will notify all registered Respondents via GETS. At this point the list of MBS Zones will become exhaustive and CFH will not evaluate proposals for Mobile Black Spot Respondent Areas outside of these Mobile Black Spot Zones.

### 3.6 General Requirements

- 3.6.1 The Respondent should materially agree with the Key Terms set out in Section 6 (Key Terms) of this Base RFP. The Respondent must clearly state any variations that it would require to be made to the Key Terms in order to agree to them. Further instructions on responding to the Key Terms are set out in Section 6 (Key Terms), paragraph 6.1.2.
- 3.6.2 Appendix A1 (Service Specifications) sets out CFH's expectations as to the Service Specifications for RBI2/MBS, including certain User Stories. Appendix A1 represents CFH's view of the minimum preferred approach to service delivery for RBI2/MBS. Where Respondents propose to offer the Services set out in Appendix A1, or similar services, they must record in their Proposal how their Service Offerings will compare to these User Stories and must ensure such Service Offerings comply with the Regulatory Requirements. Further instructions on responding to the Service Specifications are set out in Appendix A1, Section 1.1.
- 3.6.3 Respondents should also include in their Proposals sufficient detail of any further options they propose that would assist the Government in achieving its aspirational target of 50Mbps for 99% of the population by 2025.
- 3.6.4 Each Grant Funded Network that the Respondent proposes to Build should materially meet or exceed the requirements (including the provision of Backhaul) set out in Appendix A2 (**Network Requirements**).
- 3.6.5 Each Grant Funded Network that the Respondent proposes to Build must meet the telecommunications regulatory requirements set out in Appendix A3 (**Regulatory Requirements**).
- 3.6.6 The Respondent must demonstrate that it has appropriate health and safety capability and meets the specific requirements set out in Appendix A4 (**Health and Safety Requirements**).
- 3.6.7 The Respondent should materially agree with the reporting requirements set out in Appendix A5 (**Reporting Requirements**). CFH also requires that the Respondent clearly state

---

<sup>6</sup> Respondents can access the 2012 IVS list on GETS

any variations it requests to the Reporting Requirements. The Reporting Requirements are considered the minimum required to ensure that CFH can adequately monitor and manage the Contract(s) and accurately report to the Government on progress and performance.

- 3.6.8 The Respondent should describe their approaches to the marketing, promotional plans and public relations requirements set out in Appendix A7 (**Marketing and Promotion Requirements**).

### 3.7 Timeframe of Build

- 3.7.1 CFH requires Respondents to include in their Proposals details as to their proposed Build timeframes. Respondents can do this by completing the Proposal Data Template attached to Schedule A9.1 of Appendix A9 (Response Form).
- 3.7.2 CFH notes that (as per paragraph 3.10.1 below) the Build for both RBI2 and MBS must be completed by 20 December 2022 at the latest.

### 3.8 Required technical capabilities of the Respondent

- 3.8.1 Respondents should:

- (a) be a credible infrastructure and/or telecommunications provider who has the capability, experience and infrastructure to deliver a Grant Funded Network to the Respondent Areas included in the Respondent's Proposal;
- (b) have a good track record in the management and implementation of infrastructure projects;
- (c) have or have access to proven telecommunications expertise and industry relationships;
- (d) have effective networks and strong relationships within the relevant local community or communities to help efficiently complete the Build of the applicable Grant Funded Network(s) and maximise uptake on the Grant Funded Network; and
- (e) have relevant OSS/BSS in place to enable customer connections, monitor network performance, provide billing, identify and fix faults, and other Network Operator functions,

(together, the **Technical and Commercial Capacity Requirements**).

- 3.8.2 Respondents will need to include in their Proposals evidence to show their ability to meet the Technical and Commercial Capacity Requirements.
- 3.8.3 Note: where applicable, Respondents should make themselves familiar with the requirements of the Government Communications Security Bureau (**GCSB**) and the New Zealand Police. The GCSB has produced a document that provides guidance on the implementation of Part 3 of TICA ("TICA Telecommunications (Interception Capabilities and Security) Act 2013 Guidance for Network Operators"). The New Zealand Police have information for Network Operators on their website. Respondents should make themselves familiar with this information.

### 3.9 Financial capacity

- 3.9.1 The Respondent needs to demonstrate in its Proposal, to the satisfaction of CFH, that it has the financial capacity to execute its Proposal.

3.9.2 Without limiting the information that a Respondent can provide in responding to this requirement, to assist CFH in assessing the Respondent's financial capacity Respondents are expected to include the following information:

- (a) audited accounts of the Respondent for the last three completed Financial Years (unless the Respondent has been established for less than the last three completed Financial Years, in which case the Respondent should provide audited accounts for such lesser period), and the most recent interim financial accounts (as applicable);
- (b) credit rating reports of the Respondent (if available);
- (c) a schedule setting out the funding that the Respondent forecasts it will have to invest into RBI2 or MBS over and above any Grant Funding (including opex and capex) that:
  - (i) categorises the proposed sources of the Respondent's funding into internal and external funding; and
  - (ii) specifies any restrictions such as financial ratios, covenants, community dividend/pay-out ratios, which will apply in respect of such funding. Respondents should note the requirement in Section 6 (Key Terms) of this Base RFP regarding the granting of a first ranking (in priority) security interest (as defined in the Personal Property Securities Act 1999) in the Grant Funded Network in favour of CFH. Respondents should also note that CFH would prefer the Grant Funded Infrastructure to remain free from any security interest or other encumbrance in favour of a third party, and the Evaluation Panel will have regard to the existence of any such security interest or encumbrance proposed by Respondents in the course of evaluating Proposals; and
- (d) a summary of current or planned financial commitments the Respondent has to other projects and initiatives e.g. long term asset management plans, forecast dividend distributions and details of off balance sheet commitments.

### 3.10 Key outcomes

3.10.1 The following are the key outcomes that are to be delivered in each Contract.

Description	Date for delivery
Commencement of process to obtain the consents required for the Build of a Grant Funded Network in one or more of the awarded Respondent Areas.	Within 6 months of Contract execution.
Completion of the Build of all Grant Funded Networks in all awarded Respondent Areas.	20 December 2022, earlier is preferred.

### 3.11 Other information

3.11.1 CFH will not enter into Contracts that will result in:

- (a) the Grant Funding made available to CFH by the Government for RBI2/MBS being exceeded; or

- (b) the Build of a Grant Funded Network being completed after 20 December 2022. CFH expects an evenly-spread Build schedule over the preceding years where CFH has awarded multiple Respondent Areas to a Respondent.

# SECTION 4: Our Evaluation Approach

## 4.1 Evaluation Panel

- 4.1.1 CFH will establish an Evaluation Panel with the requisite expertise, knowledge and independence to be able to assess Proposals received in response to this RFP (the **Evaluation Panel**).
- 4.1.2 Following the Deadline for Proposals, the Evaluation Panel will assess the Proposals received in accordance with the Evaluation Approach as set out below.

## 4.2 Evaluation Approach and Evaluation Criteria

- 4.2.1 The anticipated timeline for the Evaluation Approach is set out in Section 2.2 (Key information for submitting a Proposal) of the Base RFP.
- 4.2.2 The evaluation of Proposals, or parts of Proposals, that relate to Rural Broadband Regions will be conducted separately to the evaluation of Proposals, or parts of Proposals, that relate to Mobile Black Spot Zones. Each programme has slightly different factors which will be considered in the evaluation. CFH will run the evaluation of Proposals for each programme in parallel taking into account synergies between the two. The following Evaluation Approach should be read as applying equally to each separate evaluation.

### *Government Process for Nominating Areas of Preference*

- 4.2.3 The evaluation of Proposals will be undertaken in two stages. Firstly, Government, based on information provided by CFH (see 4.2.6), will nominate areas of preference across Rural Respondent Areas or various geographical areas within Rural Broadband Regions and categories of Eligible End Users, and Highway Respondent Areas and Tourism Respondent Areas within Mobile Black Spot Zones having regard to:
  - (a) the factors set out in the table in paragraph 4.2.5;
  - (b) the evaluation information provided by CFH in accordance with paragraph 4.2.6; and
  - (c) advice from Government officials.

This process will include the prioritisation of Service Offerings and/or coverage in the case of areas with overlapping Proposals (i.e. the Government, when selecting areas which are included in more than one Proposal, may specify a Service Offering and/or coverage prioritisation for that area).

- 4.2.4 As part of this stage, Government will also decide whether any of the original \$100 million and \$50 million budgets allocated for RBI2 and MBS should be rebalanced, and if so, by how much (noting that up to \$25 million from each budget can be reallocated to the other).
- 4.2.5 The Government will consider some or all factors in the table and will not necessarily nominate areas of preference to the lowest cost Respondent Areas.

RBI2	MBS
The Government will consider any one or more of the following factors, in considering nominating areas of preference between Rural Broadband Regions and within Rural Broadband Regions:	The Government will consider any one or more of the following factors, in considering nominating areas of preference in respect of Tourism Respondent Areas and Highway

<ul style="list-style-type: none"> <li>• the Grant Funding per Eligible End User requested;</li> <li>• how many Eligible End Users are served, and the mix of Category 1 End Users and Category 2 End Users served;</li> <li>• regional equity considerations;</li> <li>• allocation of funding between particular geographic areas within a Rural Broadband Region;</li> <li>• the degree to which the User Stories are supported;</li> <li>• the allocation of funding between Category 1 and Category 2 End Users;</li> <li>• any Service Offering and/or coverage prioritisation for a particular area (in the case of areas with overlapping Proposals); and</li> <li>• any options proposed by the Respondent showing a pathway towards achieving the Government’s vision that 99% of New Zealanders are able to access broadband at peak speeds of at least 50Mbps, and the remaining 1% are able to access at least 10Mbps by 2025.</li> </ul>	<p>Respondent Areas:</p> <ul style="list-style-type: none"> <li>• the new coverage achieved for the Grant Funding requested by the relevant Proposal(s);</li> <li>• \$/km of new coverage for Highway Respondent Areas and \$/site for Tourism Respondent Areas;</li> <li>• tourism importance including visitor numbers;</li> <li>• traffic volumes, road safety and drive time to and from mobile coverage;</li> <li>• the extent to which a Respondent proposing Highway Respondent Areas and/or Tourism Respondent Areas also proposes to provide RBI2 Services to Eligible End Users;</li> <li>• the degree to which the User Stories are supported;</li> <li>• regional spread considerations; and</li> <li>• any Service Offering and/or coverage prioritisation for a particular area (in the case of areas with overlapping Proposals).</li> </ul>
--	---

4.2.6 The Government will not necessarily receive Respondents’ full Proposals. On receipt of Respondent Area Proposals, CFH will review and analyse Proposals for the purposes of presenting information to Government to enable Government to make area selection and such information will include at least the following:

- (a) for RBI2:
  - (i) the Grant Funding requested per Eligible End User (Category 1 End Users, Category 2 End Users, and in total) in each Rural Respondent Area and geographical area within each Rural Broadband Region;
  - (ii) the number of Eligible End Users proposed to be covered in each Rural Respondent Area and geographical area within each Rural Broadband Region; and the proportion of Category 1 End Users and Category 2 End Users;
  - (iii) the Respondent’s response to the User Stories (including the peak bandwidth to be made available to Eligible End Users after completion of the Build);
  - (iv) any additional Service Offerings and future options towards achieving the Government’s vision that 99% of New Zealanders are able to access broadband at peak speeds of at least 50Mbps, and the remaining 1% are able to access at least 10Mbps by 2025; and
  - (v) any overlapping Proposals for particular geographical areas, with data on the differentials in cost, Service Offering, and/or coverage for such areas, including relative trade-offs;
- (b) for MBS:
  - (i) the Grant Funding requested per kilometre of new coverage for each Highway Respondent Area;

- (ii) the number of kilometres of new coverage in each Highway Respondent Area;
  - (iii) the Grant Funding requested to cover each Tourism Respondent Area;
  - (iv) the extent of any coverage overlap between Highway Respondent Areas and Tourism Respondent Areas;
  - (v) the extent to which the Respondent proposes to also provide RBI2 Services to Eligible End Users located in Highway Respondent Areas and/or Tourism Respondent Areas;
  - (vi) including other relevant metrics such as traffic volumes, road safety, drive times to and from mobile coverage for highways and tourism visitor numbers for tourist sites;
  - (vii) any overlapping Proposals for particular Mobile Black Spot Zones, with data on the differentials in cost, Service Offering, and/or coverage for such areas, including relative trade-offs; and
- (c) for RBI2 and MBS, any initial concerns identified by CFH regarding any Respondent's response to the non-price criteria.

#### *CFH Evaluation Process*

- 4.2.7 Secondly, following the Government's nomination of areas of preference (including where relevant any Service Offering and/or coverage prioritisation), the Evaluation Panel will evaluate Proposals with the goal of identifying a Respondent or Respondents to negotiate with in respect of the Respondent Areas to best meet the Government's priorities, including (in the case of areas with overlapping Proposals) any prioritisation of Service Offering and/or coverage for a particular area. The Evaluation Panel will evaluate Proposals on their merits against the Evaluation Criteria set out in the table below at paragraph 4.2.12.
- 4.2.8 CFH may elect to meet with Respondents during the evaluation period to seek clarification on specific aspects of their Proposals. CFH will communicate with those Respondents whose Proposals need such clarification. CFH will advise what protocols will apply during any such meeting to ensure probity principles are adhered to.
- 4.2.9 Following evaluation, the Evaluation Panel will produce an evaluation report summarising its evaluation and findings. The evaluation report will be presented to the CFH Board and will be treated as recommendations by CFH when making its decisions as to which Respondent(s) to negotiate with.
- 4.2.10 In making its negotiation decisions, CFH will ensure that the Government's preferences and priorities (established in accordance with paragraph 4.2.3 above) are met and the RBI2/MBS Objectives (as applicable) are achieved within the total available Grant Funding.
- 4.2.11 In the case of a Respondent who is an infrastructure provider and is not a local telecommunication operator CFH's evaluation will take into account the extent to which the Respondent has commitments from local telecommunication operators to provide RBI and/or MBS services to Rural End Users and/or Mobile End Users.
- 4.2.12 CFH and Government reserve their right to retain a degree of flexibility in how they apply the Evaluation Approach outlined in this Section 4, including in response to any unanticipated complexities that arise when assessing Proposals, provided that CFH and Government give due consideration to principles of probity in doing so and do not materially change their Evaluation Approach except in accordance with Section 7 (RFP Process, Terms and Conditions), paragraph 7.23.1(b) of this Base RFP (which will apply to the Government in the same manner as CFH for this purpose).

4.2.13 The Evaluation Criteria contained in the following table are ranked in relative order of importance.

	<b>RB12 Evaluation Criteria</b>	<b>MBS Evaluation Criteria</b>
<b>Grant Funding (price) criterion</b>	<p>The amount of Grant Funding requested per Eligible End User, assessed on a Respondent Area and how many Eligible End Users are served basis.</p>	<p>The new coverage achieved for the amount of Grant Funding requested:</p> <ul style="list-style-type: none"> <li>per km of new coverage (Highway Respondent Areas); or</li> <li>per location (Tourism Respondent Areas),</li> </ul> <p>having regard to;</p> <ul style="list-style-type: none"> <li>the extent of any new coverage overlap between Highway Respondent Areas and Tourism Respondent Areas; and</li> <li>the extent to which the Respondent proposes to provide RB12 Services to Eligible End Users located in Highway Respondent Areas and/or Tourism Respondent Areas.</li> </ul>
<b>Non-price criteria<sup>7</sup></b>	<p><b>Service Specifications</b></p> <p>An assessment of the Respondent's Service Offering, including:</p> <ul style="list-style-type: none"> <li>how the Service Offering compares to the Service Specifications and the User Stories;</li> <li>consideration of any additional Services attributes including: <ul style="list-style-type: none"> <li>whether Wholesale Fixed Wireless Services and are offered and the terms and pricing of these Services;</li> <li>whether any alternative additional Services are offered over and above the Service Specifications;</li> <li>the level of retail pricing and product offering where relevant; and</li> <li>attributes relating to the pricing and capacity of the open access Wholesale Backhaul Service proposed;</li> </ul> </li> <li>any options proposed by the</li> </ul>	<p><b>Service Specifications</b></p> <p>An assessment of the Respondent's Service Offering, including:</p> <ul style="list-style-type: none"> <li>how the Service Offering compares to the Service Specifications and the User Stories;</li> <li>consideration of any additional Services offered over and above the Service Specifications such as: <ul style="list-style-type: none"> <li>4G (particular weight given to additional Services offered in Tourism Respondent Areas); and</li> <li>attributes relating to the pricing and capacity of the open access Wholesale Backhaul Service proposed.</li> </ul> </li> </ul>

<sup>7</sup> Note that there will be some leniency in terms of compliance with the Requirements set out in Section 3.6 (Our Requirements) of the Base RFP where the Respondent requests \$2m or less of Grant Funding.

	RBI2 Evaluation Criteria	MBS Evaluation Criteria
	Respondent towards achieving the Government’s vision that 99% of New Zealanders are able to access broadband at peak speeds of at least 50Mbps, and the remaining 1% are able to access at least 10Mbps by 2025.	
	<p>Compliance with requirements set out in Section 3 (Our Requirements) paragraphs 3.6.4 to 3.6.8 of this Base RFP, including:</p> <ul style="list-style-type: none"> <li>• Network Requirements;</li> <li>• Regulatory Requirements, including the Open Access Requirements where applicable;</li> <li>• Health and Safety Requirements;</li> <li>• Reporting Requirements; and</li> <li>• Marketing and Promotion Approach.</li> </ul> <p>(Note the above order follows Section 3 (Our Requirements) of this Base RFP and does not indicate relative weightings within this criterion.)</p>	<p>Compliance with requirements set out in Section 3 (Our Requirements) paragraphs 3.6.4 to 3.6.8 of this Base RFP, including:</p> <ul style="list-style-type: none"> <li>• Network Requirements;</li> <li>• Regulatory Requirements, including the Open Access Requirements where applicable;</li> <li>• Health and Safety Requirements;</li> <li>• Reporting Requirements; and</li> <li>• Marketing and Promotion Approach.</li> </ul> <p>(Note the above order follows Section 3 (Our Requirements) of this Base RFP and does not indicate relative weightings within this criterion.)</p>
	Compliance with the Key Terms.	Compliance with the Key Terms.
	Project completion timeframe (earlier favoured over later).	Project completion timeframe (earlier favoured over later).
	Assessment of Respondent’s financial capacity.	Assessment of Respondent’s financial capacity.
	Assessment of performance against the Technical and Commercial Capability Requirements.	Assessment of performance against the Technical and Commercial Capability Requirements.

### 4.3 Verifying Price and Respondent Funding

- 4.3.1 If a Respondent proposes a level of Grant Funding for a Respondent Area that is unusually low or is substantially lower than other Proposals for the same or similar Respondent Areas (an abnormally low bid), CFH may seek to verify with the Respondent that the Respondent is capable of fully delivering all of the requirements and meeting all of the conditions of this RFP for the level of Grant Funding submitted.

### 4.4 Due diligence

- 4.4.1 Respondents will be invited to present their Proposals to CFH.

- 4.4.2 In addition, CFH may undertake the following evaluation and due diligence in relation to a Respondent:
- (a) reference check the Respondent organisation and named personnel (CFH reserves the right to request nominated referees to contact and/or require the provision of written references);
  - (b) interview Respondents;
  - (c) conduct customer referrals (where relevant);
  - (d) other checks against the Respondent E.g. Companies Office;
  - (e) arrange site-visits;
  - (f) undertake a credit check; and/or
  - (g) undertake a police check for all named personnel.
- 4.4.3 The findings of our due diligence may be taken into account in the Evaluation Process. Should CFH decide to undertake any of these steps, CFH will give Respondents reasonable notice (to the extent the step requires that the Respondent undertake some work or preparation).

#### **4.5 Expected approval process**

- 4.5.1 Once CFH concludes negotiations with a Respondent (or Respondents), the CFH Board will need to approve any proposed transaction before a Contract can be entered into with the successful Respondent (or Respondents).
- 4.5.2 CFH will advise Government of any transactions approved by the CFH Board and obtain any Government approval where that is necessary.

# SECTION 5: Grant Funding

---

## 5.1 Grant Funding

- 5.1.1 Grant Funding sourced from the TDL may only be used for the purposes prescribed in section 90 of the Telecommunications Act 2001.
- 5.1.2 The MBS Fund and RBI2 Fund involve subsidising the deployment of network service capabilities, by upgrading existing infrastructure or establishing new infrastructure, to enable the supply of fixed and mobile broadband services in rural New Zealand. The extent of subsidisation through the Grant Funding or particular infrastructure development projects is set at a level necessary to make the on-going supply of services in relation to each infrastructure project commercially viable. To support the economics of supplying services under each programme, Grant Funding is applied to offset the capital costs for long life infrastructure, which can include costs for any of the following:
- (a) Site Acquisition (including costs of acquiring and negotiating leases and easements);
  - (b) obtaining consent under the Resource Management Act 1991;
  - (c) programme management and governance;
  - (d) Site design;
  - (e) construction of Cabinets, Towers, fences, antennas, masts, cabling and access roading;
  - (f) direct labour involved (capitalised) including: Site preparation, civil construction and landscaping;
  - (g) ducting/troughs;
  - (h) provision of AC and DC power;
  - (i) open access fibre optic cabling facilitating Backhaul connecting Cabinets or Towers;
  - (j) open access digital microwave radio, facilitating wireless Backhaul for connecting Cabinets or Towers;
  - (k) modifying operational support systems to be open access compatible;
  - (l) contributing to equipment or infrastructure to upgrade existing services to meet the Government's aspirational broadband targets;
  - (m) in certain cases, where a Highway Respondent Area or Tourism Respondent Area is not commercially viable, the Respondent can apply for funding to cover 3G Cellular radio equipment and up-front contributions to vendor equipment licenses (however, Respondents should note that it is not expected that any Grant Funding awarded for this purpose will be sufficient to make this Service Offering commercially viable); and
  - (n) any other capital costs for long life infrastructure approved by CFH.
- 5.1.3 Grant Funding is not available for recouping on-going operational expenditure, and the following (non-exhaustive) list of items are also excluded from receiving Grant Funding:
- (a) any recurring costs for business or operational support systems (as the functions performed by these systems are required as a matter of course by an operator);
  - (b) any customer premises equipment;
  - (c) Ethernet, switching equipment, routers or DWDM chassis;

- (d) costs associated with interconnection facilities at Points of Interconnection;
- (e) interest or other borrowing costs; or
- (f) overhead recoveries.

5.1.4 Grant Funding will be paid based on the achievement of agreed project milestones for each Respondent Area, as detailed in Section 6 (Key Terms) of this Base RFP.

## 5.2 Expectations of Respondents

5.2.1 CFH expects that Respondents will have taken all practicable steps to minimise the amount of Grant Funding requested from CFH. Such steps should include:

- (a) developing marketing programmes to maximise the uptake of retail and wholesale services facilitated by the Grant Funded Infrastructure, which can generate sales revenue for offsetting service cost;
- (b) self-funding where commercial revenues support this;
- (c) working with local government, local communities, local business entities and iwi to obtain either grants or other in-kind contributions;
- (d) working with Access Seekers to identify and aggregate wholesale demand; and
- (e) working with other infrastructure operators to minimise replicating of networks and infrastructure (including, but not limited to, any UFB1 or UFB2 Backhaul links and RBI1 Backhaul links).

## 5.3 Funding information to be provided by Respondents

5.3.1 Respondents are to include their Grant Funding requirements in their Proposal. In identifying their Grant Funding requirements, the Respondent must satisfy the following:

- (a) Respondents must complete and submit the Proposal Data Template (see Section 5.4 below);
- (b) where any amount of the Grant Funding sought is based on fee rates, all the relevant individual rates are to be specified (hourly, daily or otherwise) as required;
- (c) Respondents are to consider all risks, contingencies and other circumstances relating to the delivery of the Grant Funded Infrastructure in accordance with the requirements set out in this RFP; Respondents should include adequate provision in their Proposals to manage such risks and contingencies;
- (d) Respondents are to document in their Proposals all assumptions and qualifications made about the delivery of the Grant Funded Infrastructure in accordance with the requirements set out in this RFP, including in the financial funding information. Any assumption that CFH or a third party will incur any cost related to the delivery of the Grant Funded Infrastructure in accordance with the requirements set out in this RFP is to be stated, and the cost estimated if possible; and
- (e) Grant Funding requests should be tendered in NZ\$. CFH will arrange Grant Funding payments in NZ\$. If there are foreign exchange implications, then these will be for the Respondent to manage.

## **5.4 Proposal Data Template**

- 5.4.1 The Respondent must populate all the template sheets in the Proposal Data Template with the relevant details of their Proposal and provide the completed Proposal Data Template as part of its Proposal.
- 5.4.2 The Proposal Data Template must specify all material costs associated with the full delivery of the Grant Funded Infrastructure in accordance with the requirements set out in this RFP, and consequently the total Grant Funding being requested, exclusive of GST if any. Costs, fees, expenses or charges subsequently identified will not be considered for Grant Funding (other than GST, if any).
- 5.4.3 Where two or more Respondents intend to lodge a joint or consortium Proposal, the Proposal Data Template must include all costs referred to in paragraph 5.4.2 above for all Respondents who are party to the joint venture or consortium arrangement and the aggregate total Grant Funding being requested, exclusive of GST if any.
- 5.4.4 Respondents are urged to contact CFH to assist with any issues populating the templates in the Proposal Data Template. The Proposal Data Template is attached to Schedule A9.1 of Appendix A9 (Response Form) of this RFP. More information about completing the Proposal Data Template is set out in that Schedule A9.1.

# SECTION 6: Key Terms

---

## 6.1 Introduction to Key Terms

- 6.1.1 This Section 6 sets out the Key Terms that Respondents should take into account when responding to the RFP and that will be reflected in any resulting Contract.
- 6.1.2 The Response Form (refer to Appendix A9 of this RFP) requires Respondents to respond to the Key Terms set out in this Section 6. The following requirements apply:
- (a) the Respondent must respond in relation to each specified Key Term by stating whether it accepts, partially accepts or does not accept each Key Term. CFH expects proposed changes to be kept to a minimum;
  - (b) if the Respondent states that it does not accept, or only partially accepts a Key Term, then the Respondent must give reasons why and provide details of any proposed change to a Key Term;
  - (c) if the Respondent considers that any additional Key Terms should be reflected in a Contract, the Respondent must set out its proposed additional Key Terms in the Response Form; and
  - (d) if the Respondent does not state its position in respect of all or any of the Key Terms, the Respondent will be deemed to have accepted in full the relevant Key Terms.
- 6.1.3 The form and content of any Contract that will be discussed with a Respondent as part of any election to negotiate is intended to comprise:
- (a) a Network Infrastructure Project Agreement (NIPA) between the Respondent and CFH that will govern the design, Build, operation and maintenance of each Grant Funded Network, the Grant Funding terms and the provision of Services on each Grant Funded Network;
  - (b) a Deed of Guarantee (if required in accordance with Section 6.11 below) for the benefit of CFH from the Respondent's guarantor, with such guarantor to be of appropriate financial standing;
  - (c) a Deed of Open Access Undertakings (if required by CFH) given by the Respondent for the benefit of the Crown pursuant to the Telecommunications Act setting out the requirements for open access on the Respondent's Grant Funded Networks; and
  - (d) Wholesale Services Agreements (as applicable) in a form that has been approved by CFH, to the extent that one does not already exist in respect of the relevant wholesale Service Offerings.
- 6.1.4 A short-form NIPA will apply to Regional Operators.
- 6.1.5 Regional Operators will not be required to provide a Deed of Open Access Undertakings.
- 6.1.6 CFH will provide the NIPA, Deed of Guarantee (if applicable), Deed of Open Access Undertakings (if applicable) and other applicable documents, to each Respondent that CFH elects to negotiate with.

## 6.2 Proposals for Respondent Areas

- 6.2.1 The Respondent can submit a Proposal to receive Grant Funding to assist in the deployment of infrastructure to provide the applicable Services for any one or more:
- (a) Rural Respondent Area(s) proposed by the Respondent within a Rural Broadband Region;
  - (b) Tourism Black Spot Zone(s) proposed by the Respondent that covers a Tourism Black Spot Zone (in whole or part), each of which will be a Tourism Respondent Area; and/or
  - (c) Highway Black Spot Zone(s) proposed by the Respondent that covers a Highway Black Spot Zone (in whole or part), each of which will be a Highway Respondent Area.
- 6.2.2 Mobile Black Spot Zones may include RBI2 Eligible End Users which the Respondent can propose to cover in a Highway Respondent Area and/or Tourism Respondent Area.
- 6.2.3 The Respondent can submit a Proposal for any combination of the above and must submit a geospatial shapefile for each Respondent Area included in the Respondent's Proposal. The shapefiles submitted in respect of Rural Respondent Areas must be in accordance with paragraph 6.4.3. The Respondent must identify in the relevant geospatial shapefile where a Respondent Area covers both a Highway Black Spot Zone and a Tourism Black Spot Zone, and identify any RBI2 Eligible End Users proposed to be covered in a Highway Respondent Area and/or Tourism Respondent Area (including the location and number of Category 1 End Users and Category 2 End Users).
- 6.2.4 For clarity, Proposals must not request Grant Funding for infrastructure:
- (a) for RBI2 in Tourism Respondent Areas and/or Highway Respondent Areas, unless it relates to additional infrastructure; and/or
  - (b) that the Respondent is required to provide pursuant to any other regulatory obligations, including any terms and conditions applicable to the Respondent's radio spectrum licence.

## 6.3 Build of Grant Funded Network(s)

### Network Infrastructure Project Agreement

- 6.3.1 The Respondent will be required to enter into a NIPA with CFH pursuant to which:
- (a) the Respondent will be responsible for the design and Build of the applicable Grant Funded Network in each awarded Respondent Area;
  - (b) the Respondent will be responsible for the on-going operation and maintenance of the applicable Grant Funded Network in each awarded Respondent Area; and
  - (c) on and from the Build Commissioning Milestone for the relevant Grant Funded Network, the Grant Funded Network must be able to deliver:
    - (i) the Rural Broadband Retail Services to:
      - (A) the aggregate number of Eligible End Users identified in a Rural Respondent Area that are served by the Grant Funded Network, as agreed in accordance with paragraph 6.4.4 below; and
      - (B) Eligible End Users that are located in any Tourism Respondent Area and/or Highway Respondent Area that are served by the Grant Funded Network that the Respondent has agreed to cover; and

- (ii) the Mobile Black Spot Services to any Mobile End User located in or passing through a Tourism Respondent Area or Highway Respondent Area that is served by the Grant Funded Network, and the Mobile Black Spot Services must be available to Mobile End Users across the entire coverage area of that Highway Respondent Area or Tourism Respondent Area.
- 6.3.2 The Build of each Grant Funded Network for each Respondent Area must be completed by the relevant Respondent Area's agreed Build Completion Date. The completion of the Build of all of the Grant Funded Networks for all of the Respondent Areas awarded to the Respondent must be no later than 20 December 2022, with a strong preference for earlier completion.
- 6.3.3 The Respondent must, in performing its obligations under the Contract, comply with and observe all applicable laws and regulations, including the Telecommunications Act, the Commerce Act 1986, the Health and Safety at Work Act 2015 and those laws relating to resource management and the safe management of hazardous substances.
- 6.3.4 The Respondent will be responsible for obtaining all consents (including any necessary Site Consents and/or resource consents) that are necessary or advisable, to enable it to perform its obligations under the Contract (**Consent**). The Respondent must use its best endeavors to obtain all Consents and provide CFH will all information reasonably requested by CFH in connection with its Consent applications.

#### **Potential lease or IRUs in respect of certain infrastructure**

- 6.3.5 The Grant Funded Network for each Respondent Area may consist of new infrastructure (e.g. construction of a Tower, Cabinet upgrades, Backhaul, fibre cables, etc.,) and existing infrastructure that is leased or subject to an IRU from a third party (e.g. Backhaul).
- 6.3.6 CFH expects at a minimum that the following terms would be reflected in any IRU or leased infrastructure that forms part of a Grant Funded Network:
  - (a) any duct or fibre lease/IRU will be secured for a minimum of 10 years;
  - (b) any building/Site lease and/or pole access rights secured for the normal depreciated life of the asset, with appropriate renewal rights; and
  - (c) in the event that Backhaul is available to a new Site, any lease arrangements must be secured for a minimum of 10 years, with appropriate rights to carry reasonably forecast traffic.

## **6.4 Grant Funding – Rural Respondent Areas**

### **Grant Funding Limit based on number of Eligible End Users**

- 6.4.1 A set of geospatial shapefiles describing the location of each land parcel (**Property**) and the aggregate number of Category 1 End Users identified as being located on each Property in each Rural Broadband Region has been provided in this RFP in accordance with Section 1.2 of Appendix A6 (Rural Broadband Regions and Mobile Black Spot Zones) (**Category 1 End User Database**). The Category 1 End User Database does not show the exact location of the Category 1 End Users on each Property.
- 6.4.2 A Respondent may propose any additional Category 1 End Users that are not identified in the Category 1 End User Database. There is no database provided with this RFP on Category 2 End Users and instead Respondents are to propose Category 2 End Users for coverage in Respondent Areas.

- 6.4.3 Respondents must include in their Proposals, a geospatial shapefile for each Rural Respondent Area included in the Respondent's Proposal that specifies the aggregate number of Category 1 End Users (taken from the Category 1 End User Database and as identified by the Respondent) and the aggregate number of Category 2 End Users included in each Respondent Area (as identified by the Respondent), as well as the exact location of each Eligible End User in each Rural Respondent Area.
- 6.4.4 For the purpose of quantifying the Grant Funding Limit for each Grant Funded Network in each Rural Respondent Area awarded to the Respondent under the Contract, the Respondent and CFH will agree and record the aggregate number of Eligible End Users that must be able to receive the Rural Broadband Retail Services from the Grant Funded Network in each Rural Respondent Area in an Agreed Property Dataset (**APD**) attached to the Contract.
- 6.4.5 For the purpose of quantifying the Grant Funding Limit, it is the Respondent's responsibility and risk to ensure that the APD accurately:
- (a) identifies the location of the Eligible End Users on each Property; and
  - (b) records the number of Eligible End Users in each Rural Respondent Area that are able to receive the Rural Broadband Retail Services from the applicable Grant Funded Network.
- 6.4.6 Any adjustments to the APD are subject to CFH's approval (at CFH's discretion, taking into account the factors set out in paragraph 6.7.3 below).

#### **Grant Funding per Eligible End User**

- 6.4.7 Proposals requesting Grant Funding for RBI2 must include an average Grant Funding amount per Eligible End User to Build the Grant Funded Network, for each of the following categories of Eligible End Users, in each of the Respondent's proposed Rural Respondent Areas:
- (a) Category 1 End Users and Category 2 End Users (**GPEU**); and
  - (b) Category 1 End Users only (**GPEU(C1)**) and Category 2 End Users only (**GPEU(C2)**).
- 6.4.8 The Grant Funding awarded for each Rural Respondent Area will be based on an agreed GPEU, GPEU(C1) or GPEU(C2) (**Applicable GPEU**).
- 6.4.9 Each Applicable GPEU must:
- (a) only comprise the Grant Funding cost to the Respondent of the applicable Grant Funded Network; and
  - (b) not include any other costs or expenses including, any operational expenditure or costs of End User premises equipment, except as specified in Section 5 (Grant Funding) of the Base RFP.

#### **Calculation of Grant Funding Limit**

- 6.4.10 The Grant Funding Limit applicable to the Grant Funded Network in each Rural Respondent Area awarded under the Contract will be the amount equal to the product of the Applicable GPEU multiplied by the number of Eligible End Users agreed in the APD for the applicable Rural Respondent Area.
- 6.4.11 Where the Respondent is submitting a Proposal for (or that includes) two or more Rural Respondent Areas within a Rural Broadband Region that are contingent upon each other by virtue of shared infrastructure (**Contingent Rural Respondent Areas**), the Respondent can submit an average Applicable GPEU that applies to all of those Contingent Rural Respondent

Areas within that Rural Broadband Region (**Contingent Rural Respondent Area Proposal**). Respondents must make it clear in their Proposals when a Contingent Rural Respondent Area Proposal applies to two more Rural Respondent Areas within a Rural Broadband Region, and provide details of the contingency relied on. For the avoidance of doubt, each Rural Respondent Area must still be capable of being separately identified by the relevant geospatial shapefile, which must be submitted for each Rural Respondent Area in the Respondent's Proposal.

## 6.5 Grant Funding – Highway Respondent Areas

### Grant Funding Limit based on number of kilometres

- 6.5.1 The Grant Funding Limit applicable to the Grant Funded Network in each Highway Respondent Area awarded under the Contract, will be based on the number of kilometres of state highway from which Mobile End Users are able to receive the Mobile Black Spot Services from the Grant Funded Network where they couldn't before in that Highway Respondent Area.

### Grant Funding per kilometre

- 6.5.2 Proposals requesting Grant Funding for Highway Respondent Areas must include the Respondent's average Grant Funding requested per kilometre of new coverage (**GPKM**) to Build the Grant Funded Network required to provide the Mobile Black Spot Services to Mobile End Users along each of the Respondent's proposed Highway Respondent Areas.

- 6.5.3 The GPKM must:

- (a) only comprise the Grant Funding cost to the Respondent of the applicable Grant Funded Network; and
- (b) not include any other costs or expenses, including any operational expenditure or costs of End User premises equipment, except as specified in Section 5 (Grant Funding) of this Base RFP.

### Calculation of Grant Funding Limit

- 6.5.4 The Grant Funding Limit applicable to the Grant Funded Network in each Highway Respondent Area awarded under the Contract will be the amount equal to the GPKM multiplied by the number of kilometres of new coverage along the applicable HRA.
- 6.5.5 Where the Respondent is submitting a Proposal for (or that includes) two or more Highway Respondent Areas that are contingent upon each other by virtue of shared infrastructure (**Contingent Highway Respondent Areas**), the Respondent can submit an average GPKM that applies to all of those Contingent Highway Respondent Areas (**Contingent Highway Respondent Area Proposal**). Respondents must make it clear in their Proposals when a Contingent Highway Respondent Area Proposal applies to two or more Highway Respondent Areas, and provide details of the contingency relied on. For the avoidance of doubt, each Highway Respondent Area must still be capable of being separately identified by the relevant geospatial shapefile which must be submitted for each Highway Respondent Area in the Respondent's Proposal.
- 6.5.6 Where the Respondent is submitting a Proposal for (or one that includes) a Highway Respondent Area that overlaps with one or more Tourism Respondent Areas, the Respondent's Proposal should clearly outline:
- (a) the coverage area of the Tourism Respondent Area(s); and

- (b) whether the cost of the Tourism Respondent Area(s) is included in the GPKM for the relevant Highway Respondent Area or is separately identified in accordance with Section 6.6 below.
- 6.5.7 Respondents should identify where any RBI2 Eligible End Users are covered by a Highway Respondent Area in accordance with paragraph 6.2.3 above. The Respondent will not be entitled to any separate or additional Grant Funding to cover RBI2 Eligible End Users that the Respondent proposes to include in a Highway Respondent Area, and the Grant Funding for the Highway Respondent Area will be deemed to be sufficient to provide coverage to those RBI2 Eligible End Users.

## 6.6 Grant Funding - Tourism Respondent Areas

### Grant Funding based on Tourism Respondent Area Cost

- 6.6.1 Proposals requesting Grant Funding for Tourism Respondent Areas must include the Respondent's total Grant Funding cost to Build the Grant Funded Network in each of the Respondent's proposed Tourism Respondent Areas (**Tourism Respondent Area Cost**).
- 6.6.2 The Tourism Respondent Area Cost must:
- (a) only comprise the Grant Funding cost to the Respondent to Build the applicable Grant Funded Network; and
  - (b) not include any other costs or expenses, including any operational expenditure or costs of End User premises equipment, except as specified in Section 5 (Grant Funding) of this Base RFP.

### Calculation of Grant Funding Limit

- 6.6.3 The Grant Funding Limit applicable to the Grant Funded Network for each Tourism Respondent Area awarded under the Contract will be the amount equal to the Tourism Respondent Area Cost.
- 6.6.4 Where the Respondent is submitting a Proposal for (or that includes) two or more Tourism Respondent Areas that are contingent upon each other by virtue of shared infrastructure (**Contingent Tourism Respondent Areas**), the Respondent can submit a Proposal for the total cost of the combined Tourism Respondent Areas (**Contingent Tourism Respondent Area Proposal**). Respondents must make it clear in their Proposals when a Contingent Tourism Respondent Area Proposal applies to two or more Tourism Respondent Areas, and provide details of the contingency relied on. For the avoidance of doubt, each Tourism Respondent Area must still be capable of being separately identified by the relevant geospatial shapefile which must be submitted for each Tourism Respondent Area in the Respondent's Proposal.
- 6.6.5 If a Tourism Respondent Area is to be substantially covered by a Highway Respondent Area, it should be included in the Proposal for the applicable Highway Respondent Area.
- 6.6.6 Respondents should identify where any RBI2 Eligible End Users are covered by a Tourism Respondent Area in accordance with paragraph 6.2.3 above. The Respondent will not be entitled to any separate or additional Grant Funding to cover RBI2 Eligible End Users that the Respondent proposes to include in a Tourism Respondent Area, and the Grant Funding for the Tourism Respondent Area will be deemed to be sufficient to provide coverage to those RBI2 Eligible End Users.

## 6.7 Payments of Grant Funding

- 6.7.1 The Grant Funding Limit for each Respondent Area awarded under a Contract will be paid based on progress payments:
- (a) 25% of the Grant Funding Limit for the applicable Respondent Area on satisfaction of the relevant Build Start Milestone; and
  - (b) 50% of the Grant Funding Limit for the applicable Respondent Area on satisfaction of the relevant Build Completion Milestone; and
  - (c) in respect of each Rural Respondent Area:
    - i. 15% of the Grant Funding Limit for the applicable Rural Respondent Area (subject to any adjustment in accordance with paragraph 6.7.3 below) on satisfaction of the relevant Build Commissioning Milestone; and
    - ii. 10% of the Grant Funding Limit for the applicable Rural Respondent Area on satisfaction of the Market Uptake Milestone; and
  - (d) in respect of each Highway Respondent Area or Tourism Respondent Area, 25% of the Grant Funding Limit for the applicable Highway Respondent Area or Tourism Respondent Area on satisfaction of the relevant Build Commissioning Milestone.

The Market Uptake Milestone reflects the importance to CFH and Government of uptake being promoted on the Grant Funded Networks in Rural Respondent Areas, and has been set as an achievable target. Alternative mechanisms, which may not include a retention, for ensuring uptake is promoted on the Grant Funded Networks may be considered by CFH during negotiations.

- 6.7.2 Satisfaction of the Build Commissioning Milestone for each Respondent Area will be conditional on (among other things) the Respondent submitting to CFH a geospatial shapefile, and publishing on its website a geographical coverage map, for the relevant Respondent Area, which specifies the actual coverage area achieved for the delivery of the Rural Broadband Retail Services or Mobile Black Spot Services (as applicable) in that Respondent Area (including any RB12 Eligible End Users covered in a Mobile Black Spot Zone).
- 6.7.3 Subject to paragraph 6.7.4 below, the Respondent may request that CFH adjusts the APD, for the purpose of calculating the payment (if required) for each Build Commissioning Milestone in respect of a Rural Respondent Area, to account for any increase or decrease in the aggregate number of Eligible End Users that are actually able to receive the Rural Broadband Retail Services from the applicable Grant Funded Network. The purpose of any such adjustment is to account for any additional or reduced coverage of Rural Broadband Retail Services to Eligible End Users that could not be anticipated by the Respondent when preparing the APD.
- 6.7.4 Paragraph 6.7.3 above is subject to the following:
- (a) any decrease in the number of Eligible End Users that are actually able to receive the Rural Broadband Retail Services in the Rural Respondent Area must not, in CFH's opinion, represent a material portion of the aggregate number of Eligible End Users specified in the APD for the relevant Rural Respondent Area;
  - (b) any additional Eligible End Users are not included in a Rural Respondent Area that has been awarded to another Respondent; and

- (c) if the actual cost to the Respondent of delivering a Grant Funded Network exceeds the amount of Applicable Grant Funding Limit (a **Cost Overrun**), the Cost Overrun must be met by the Respondent.
- 6.7.5 CFH reserves a right to conduct a financial audit on the Respondent's costs that make up any Applicable Grant Funding Limit or payment claim.
- 6.7.6 In some cases, the Grant Funding Limit for each Respondent Area awarded to a Respondent under a Contract may be aggregated as follows:
- (a) where more than one Respondent Area in the same area category (i.e. Rural Respondent Areas, Highway Respondent Areas, Tourism Respondent Areas) (**Category**) has been awarded to the Respondent under a Contract, the Grant Funding Limit for each Respondent Area within the same Category may be aggregated, such that any Cost Overrun within a Category must be met by the Respondent if the actual cost to the Respondent of delivering all Grant Funded Networks for all Respondent Areas within a Category exceeds the aggregate amount of the Grant Funding Limit awarded to the Respondent for that Category; and
  - (b) where more than one Respondent Area in different Categories has been awarded to the Respondent under a Contract, on request from the Respondent, CFH may (at its discretion) approve the aggregation of Grant Funding Limits for each Respondent Area, such that paragraph 6.7.6(a) above will apply to any Cost Overrun whether or not the Respondent Areas are in the same Category.
- 6.7.7 For the avoidance of doubt, aggregation under the Contract does not remove the requirement for the Respondent to submit pricing for each distinct Respondent Area in its Proposal as set out in this RFP.
- 6.7.8 In no event can any Grant Funding be used for any other purpose than to fund the cost of agreed aspects of the Grant Funded Network, as described in Section 5 (Grant Funding) of this Base RFP.
- 6.7.9 The payment of Grand Funding by CFH will not constitute approval of any design or other documentation, or any other form of approval, by CFH.

## 6.8 Co-location on Towers

- 6.8.1 This Section 6.8 only applies if the Respondent's Proposal includes the construction of a Tower.
- 6.8.2 The Respondent must specify separately in its Proposal, the incremental cost of designing and constructing the Tower to accommodate Co-location on the Tower by one mobile Large Network Operator and one WISP, including any additional Backhaul capacity required in each case to meet the reasonably forecast Access Seekers' traffic as further described in paragraph 1.4.10 of Appendix A2 (Network Requirements) (**Co-location Cost**). The Co-location Cost for each awarded Respondent Area will be set aside by CFH into a Grant Co-location Fund.
- 6.8.3 Immediately following execution of a Contract, the Respondent must publish on its website, and make accessible to other operators, the Respondent Area shapefiles for all of the Respondent's awarded Respondent Areas in which a Tower will be constructed.

- 6.8.4 On Site Acquisition (assuming for the purpose of this paragraph that final settlement of the Site Acquisition is conditional on Site Consents being obtained) for each Tower (the **Co-location Notification Date**), the Respondent must immediately publish on its website, and provide to CFH:
- (a) details of the specific location of each Site on which a Tower will be constructed in each awarded Respondent Area (each Site being a **Co-location Site**);
  - (b) the terms of the Wholesale Tower Co-location Services that will apply at each Co-location Site (such terms to be agreed with CFH and included in a Co-location Wholesale Services Agreement in accordance with paragraph 6.8.6 below);
  - (c) a notice that requests registrations of interest from potential Co-locators to Co-locate at the notified Co-location Site, on the basis that the Tower will be constructed using Grant Funding to the specification required for Co-location (including Backhaul capacity, but excluding any Co-location equipment required to be attached to the Tower by the Co-locator, which will be at the Co-locators cost); and
  - (d) details of a bond (**Co-location Bond**) that will be required to be lodged by the Co-locator with CFH at the same as the Co-locator's registration of interest in respect of each Co-location Site, as security for Co-location at that Co-location Site. The Co-location Bond must be from an investment grade financial institution. The Co-location Bond must be equal to the Co-location Cost agreed with the Respondent for each Co-locator in each Respondent Area in the NIPA, and will be returned to the Co-locator on completion of Co-location by the Co-locator on the Tower, which must be within 12 months of the Tower being commissioned, otherwise CFH may draw on and retain the full amount of the Co-location Bond.
- 6.8.5 Potential Co-locators must be provided with a 30-day notification period from the Co-location Notification Date (**Co-location Notification Period**) to register an interest with the Respondent and CFH to Co-locate at a Co-location Site and to submit the Co-location Bond to CFH.
- 6.8.6 The price and non-price terms for the Wholesale Tower Co-location Services will be specified in an applicable Co-location Wholesale Services Agreement, with the price terms subject to the applicable Maximum Price.
- 6.8.7 CFH will be a party to the Co-location Wholesale Services Agreement between the Respondent and the Co-locator solely for the purpose of enabling CFH to receive the Co-locator's uptake performance reporting data, which the Co-locator will not be required to provide to the Respondent.
- 6.8.8 If there are no registrations of interest received to Co-locate at a Co-location Site, then CFH will not be required to provide Grant Funding for the Co-location Cost in respect of that Co-location Site and any amount allocated for Co-location Costs will be removed from the Grant Funding Limit for the Respondent Area in which the Co-location Site is located. Lack of interest in Co-location at this stage will not excuse the Respondent's obligation to make Co-Location available.
- 6.8.9 Where a registration of interest is received from a Co-locator within the Co-location Notification Period to Co-locate at a Co-location Site, together with lodgement of the necessary Co-location Bond:
- (a) the Respondent must design and construct the Tower including Backhaul capacity to the Tower (if applicable), or offer the Wholesale Backhaul Services, to accommodate Co-location on the Tower at that Co-location Site for the Co-locator(s); and

- (b) CFH will provide the agreed Grant Funding for the Co-location Cost as set out in the NIPA in respect of that Respondent Area.

- 6.8.10 Where more than one Co-locator submits a registration of interest to Co-locate at a Co-location Site, CFH may request a proposal from the Respondent for the additional Co-location Cost to the Respondent of accommodating the additional Co-locator(s) that have submitted a registration of interest, and CFH may fund the additional Grant Funding required for the additional Co-location Cost from the Grant Co-location Fund allocated to that Respondent from its awarded Respondent Areas. The Respondent is not required to Build the additional Co-location infrastructure unless CFH has agreed to fund that additional infrastructure.
- 6.8.11 The Respondent must provide the Co-locator with on-going access to the Co-location Site for the purpose of installing and maintaining its Co-location equipment at the Co-location Site, and must provide the Co-location Services to the Co-locator in accordance with the applicable Wholesale Services Agreement and in accordance with the applicable Open Access Deed of Undertakings.
- 6.8.12 An Access Seeker that has not Co-located on a Tower in accordance with the process set out in paragraphs 6.8.1 to 6.8.11 above can still co-locate on a Tower after the Tower has been constructed, but at the Access Seeker's cost.

## 6.9 User Acceptance Testing and Technical Audit

- 6.9.1 User Acceptance Testing (**UAT**) may be undertaken by CFH on the Grant Funded Network for each Respondent Area against a set of test criteria prepared by CFH and set out in the NIPA. CFH will conduct UAT within 30 Business Days from receipt of the Respondent's test readiness certificate after completion of the relevant Build Completion Milestone. Refer to Section 1.7 of Appendix A2 (Network Requirements) of the RFP.
- 6.9.2 Post commissioning and after End Users have connected to a Grant Funded Network, CFH may initiate a technical audit and require the Respondent to remedy any identified issue within a reasonable timeframe in accordance with paragraph 1.7.4 of Appendix A2 (Network Requirements) of the RFP.

## 6.10 Services and pricing

- 6.10.1 The Rural Broadband Retail Services and RBI2 Wholesale Services or Mobile Black Spot Services that are to be provided to Eligible End Users and/or Mobile End Users (as applicable) over the Grant Funded Network for each Respondent Area can be delivered by or through any one or more of the following applicable Services by the Respondent:
  - (a) Rural Broadband Retail Service;
  - (b) Wholesale Roaming Service;
  - (c) Mobile Black Spot Retail Service;
  - (d) Wholesale Fixed Wireless Service;
  - (e) Wholesale Fixed Service;
  - (f) Wholesale Backhaul Service; and/or
- 6.10.2 Wholesale Tower Co-location Service.

- 6.10.3 The requirements for each of the above Services, and any Price and Non-price terms that are to apply to any of the Services, are set out in Appendix A1 (Service Specifications) Appendix A3 (Regulatory Requirements) of the RFP.
- 6.10.4 Service Levels will apply to the provision of the applicable Service and will be set out in the NIPA and Wholesale Services Agreement or Retail End User Agreement, as applicable. A failure to meet any of the Service Levels for Rural Broadband Retail Services should result in Service Credits payable to Access Seekers, and Eligible End Users, as applicable. If MBS Service Levels are not met, CFH may impose Service Credits commensurate with the length of the service outage and the remoteness of the Site(s) concerned.
- 6.10.5 The NIPA term will be for a period of 10 years to ensure that the Services and associated Service Levels remain contractually binding on the Respondent for a minimum period of time, to the extent that they are not captured by legislation or regulation. CFH will perform a supervisory role to oversee compliance by the Respondent in respect of the contracted services and pricing requirements. Where service and pricing commitments are stated in a Deed of Open Access Undertakings, compliance with these is monitored and enforced by the Commerce Commission.
- 6.10.6 The service specifications and pricing requirements included in the NIPA will apply until 31 December 2025.

## 6.11 Security, guarantee or performance bond

### Regional Operators

- 6.11.1 It is essential to CFH to ensure continuity of service in the event of insolvency or liquidation of a Network Operator. Accordingly, to ensure that CFH's rights in the Grant Funded Network for each Respondent Area are secured by CFH in the event of insolvency or liquidation of a Regional Operator, and as security for the Grant Funding advanced to a Regional Operator by CFH (**Secured Obligations**), each Regional Operator must grant CFH a first ranking (in priority) security interest in each Grant Funded Network (**Security Interest**). The Security Interest created under the Contract will become immediately enforceable in the event of insolvency or liquidation of the Regional Operator. The Regional Operator must also consent to CFH lodging a caveat against any land that is acquired by a Regional Operator using Grant Funding, and that forms part of any Grant Funded Network and must obtain any third party consents required to enable the Security Interest to be granted to CFH.
- 6.11.2 In respect of Regional Operators, CFH may also require a third party guarantee from an appropriate guaranteeing party, irrevocably and unconditionally agreeing to guarantee in favour of CFH, the due and punctual observance and performance of the obligations and liabilities required to be observed and performed by the Regional Operator under the Contract.
- 6.11.3 The requirements set out in paragraphs 6.11.1 and 6.11.2 above, may also be required for any Respondent that would not be capable of achieving an investment grade credit rating.

### Large Network Operators

- 6.11.4 Subject also to paragraph 6.11.3, for Large Network Operators, CFH will require a performance bond to guarantee the due and punctual observance and performance by the Respondent of its obligations and liabilities required to be observed and performed by the Large Network Operator under the Contract.

## 6.12 Contractual remedies

- 6.12.1 It is essential to CFH to ensure continuity of service in the event of a breach of Contract and/or in the event of a termination event occurring. Accordingly, contractual remedies for breach of Contract and/or in the event of a termination event occurring, will include the right for CFH to:
- (a) issue a performance notice on the Respondent requiring a remedial plan to be prepared and implemented to remedy the breach;
  - (b) suspend payment of any Grant Funding that it has agreed to make until the breach or termination event (where remediable) has been remedied to the satisfaction of CFH;
  - (c) directly suspend of the Respondent's deployment of a Grant Funded Network(s);
  - (d) terminate the Contract where a termination event occurs (including for irremediable breach); and
  - (e) require the repayment of all Grant Funding paid to the Respondent, on a limited recourse basis, with recourse limited to the Grant Funded Infrastructure.
- 6.12.2 The Respondent must indemnify CFH for any losses and liabilities (including in respect of any third party claims suffered or incurred by CFH) as a direct or indirect result of a failure by the Respondent to comply with the Contract, including as a result of personal injury and death or loss or damage to property, Health and Safety breaches (to the extent permitted by law), breach of law, unlawful or malicious acts or omissions, and Intellectual Property infringement.
- 6.12.3 CFH's liability to the Respondent in relation to the Contract, will be limited to the payments as they fall due and payable under the Contract of the Applicable Grant Funding Limit for each applicable Respondent Area plus default interest at a rate set out in the Contract, if CFH fails to pay any genuine and undisputed Grant Funding payment claim that is due and payable and such default is not remedied within a period of time specified under the Contract.
- 6.12.4 CFH may terminate the Contract on 180 days' prior written notice to the Respondent as a result of any relevant change in Government policy necessitating the termination of the Contract.

## 6.13 Project Governance

- 6.13.1 The project governance regime that will apply in relation to deploying and operating each Grant Funded Network will be set out in the NIPA.
- 6.13.2 The Respondent and CFH will each appoint a Relationship Manager to act as a first point of contact for communications relating to the performance of the Respondent's obligations under the NIPA.
- 6.13.3 The Respondent and CFH will establish a Project Control Group (**PCG**) in accordance with the following:
- (a) CFH and the Respondent will each nominate two representatives to the PCG, each of whom must be suitably experienced and qualified, having regard to the functions, powers and duties of the PCG;

- (b) the functions and duties of the PCG will include:
  - (i) overseeing the provision of the design, Build and operations of the Grant Funded Network(s) by reference to reports received from the Relationship Managers (including performance against agreed Milestones and Service Levels);
  - (ii) discussing issues relating to the performance of the Respondent's obligations under the NIPA;
  - (iii) discussing and, to the extent practicable, resolving disputes that may arise under or in respect of the NIPA; and
  - (iv) monitoring and addressing Health and Safety obligations and issues.
- (c) the PCG must meet not less than once a month (or quarterly in respect of a Regional Operator) until the Build of the final Grant Funded Network is complete, and after completion of the final Grant Funded Network until the expiry or termination of the NIPA term, at least once every three months; and
- (d) the Respondent will be required to provide reporting on the project in accordance with the Reporting Requirements set out in Appendix A5 (Reporting Requirements) of the RFP.

6.13.4 In the event that the Respondent is a large organisation that has received a material portion on the Grant Funding under this RFP, CFH and that Respondent will also establish an Executive Group with two senior representatives from each party, that will meet quarterly to discuss the overall performance of the project, uptake and resolve any issues that have escalated from the PCG.

## 6.14 Other matters

6.14.1 The Key Terms set out in this Section 6 do not cover all of the matters that will need to be documented in any resulting Contract with a Respondent. Further detail on the matters set out in this Section 6 will be included in any Contract. Other matters that would generally be expected to be found in a contract of this type will also be included in any Contract, including without limitation, those relating to:

- (a) representations and warranties in respect of:
  - (i) the capacity, authority and entitlement of the Respondent to enter into the Contract;
  - (ii) the services and deliverables required from the Respondent under the Contract; and
  - (iii) the information provided by the Respondent in its response to the RFP being complete, accurate and not misleading;
- (b) the non-disclosure of Confidential Information;
- (c) management, review, reporting and audit rights;
- (d) the management of changes (i.e. change control);
- (e) the ownership and use of Intellectual Property and associated know how, concepts and ideas developed during the course of the project;
- (f) the assignment and transfer of rights and obligations;
- (g) the management of public announcements;

- (h) dispute resolution, which will involve an informal dispute resolution process, followed by arbitration or in certain cases expert determination;
- (i) force majeure; and
- (j) governing law and jurisdiction (New Zealand).

## **6.15 Deed of Open Access Undertakings**

- 6.15.1 A Large Network Operator will be required to enter into a Deed of Open Access Undertakings with, and for the benefit of, the Crown pursuant to the Telecommunications Act. The Open Access Requirements are set out in Appendix A3 (Regulatory Requirements) of the RFP.
- 6.15.2 The terms of the Deed of Open Access Undertakings will be provided to each Respondent as part of any election to negotiate. An existing Deed of Open Access Undertakings with a Respondent may be varied (in accordance with the relevant statutory process) to include the Open Access Requirements for Rural Broadband and/or Mobile Black Spots at the Government's sole discretion.

## **6.16 Wholesale Services Agreements**

- 6.16.1 This Section 6.16 is not applicable:
  - (a) to Regional Operators; and
  - (b) if a Large Network Operator already has a WSA in respect of the relevant wholesale Service Offering.
- 6.16.2 As detailed in Appendix A1 (Service Specifications) of the RFP, if the Respondent is a Large Network Operator, the Contract will include a form of a Wholesale Services Agreement, that has been approved by CFH, for each of the following wholesale Services, if they are awarded to the Respondent under the Contract:
  - (a) Wholesale Roaming Service;
  - (b) Wholesale Backhaul Service;
  - (c) Wholesale Fixed Wireless Service;
  - (d) Wholesale Fixed Line Service; and/or
  - (e) Wholesale Tower Co-location Service.
- 6.16.3 The WSA for Wholesale Backhaul Services may be based on Chorus RBI1 WSA.
- 6.16.4 The initial WSA and any subsequent changes to the WSA must be approved by CFH and published on the Respondent's website within 10 Business Days of CFH's approval.

# SECTION 7: RFP Process, Terms and Conditions

---

## Note to Respondents

- In managing this procurement, CFH will endeavour to act fairly and reasonably in all of its dealings with Respondents, and to follow due process which is open and transparent.
  - This Section 7 is based on the Government's standard RFP Process, Terms and Conditions.
- 

## Standard RFP process

### Preparing and submitting a Proposal

#### 7.1 Preparing a Proposal

- 7.1.1 Respondents are to use the Response Form contained in Appendix A9 (Response Form) as the covering document for Proposals and include all information requested by CFH in relation to the RFP.
- 7.1.2 By submitting a Proposal, the Respondent accepts that it is bound by the RFP-Terms contained in this Section 7.
- 7.1.3 Each Respondent will:
- (a) examine the RFP and any documents referenced in the RFP and any other information provided by CFH;
  - (b) consider all risks, contingencies and other circumstances relating to the delivery of the requirements set out in this RFP and include adequate provision in its Proposal to manage such risks and contingencies;
  - (c) document in its Proposal all assumptions and qualifications made about the delivery of the requirements set out in this RFP, including any assumption that CFH or a third party will deliver any aspect of the requirements or incur any cost related to the delivery of the requirements;
  - (d) ensure that Grant Funding information is quoted in NZ\$ exclusive of GST;
  - (e) if appropriate, obtain independent advice before submitting a Proposal; and
  - (f) satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed funding and the sustainability of the funding.

#### 7.2 Offer Validity Period

- 7.2.1 Proposals are to remain valid and open for acceptance by CFH for the Offer Validity Period.

### **7.3 Respondents' Deadline for Questions**

- 7.3.1 Each Respondent should satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP document(s) Respondents should seek clarification before the Deadline for Questions.
- 7.3.2 All requests for clarification must be made by email to CFH's Point of Contact. CFH will endeavour to respond to requests in a timely manner, but in any event no later than the deadline for CFH to answer Respondents' questions specified in Section 2 (Key Information for Submitting a Proposal) of this Base RFP, paragraph 2.2.1.
- 7.3.3 If CFH considers a request to be of sufficient importance to all Respondents, it may provide details of the question and answer to other Respondents. In doing so CFH may summarise the Respondent's question and will not disclose the Respondent's identity. The question and answer may be posted on GETS and/or emailed to participating Respondents. A Respondent may withdraw a request at any time.
- 7.3.4 In submitting a request for clarification, a Respondent is to indicate in its request, any information that is commercially sensitive. CFH will not publish such commercially sensitive information. However, CFH may modify a request to eliminate such commercially sensitive information, and publish this and the answer where CFH considers it of general significance to all Respondents. In this case however, the Respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information.

### **7.4 Submitting a Proposal**

- 7.4.1 Each Respondent is responsible for ensuring that its Proposal is received by CFH at the correct address on or before the Deadline for Proposals. CFH will acknowledge receipt of each Proposal.
- 7.4.2 CFH intends to rely on the Respondent's Proposal and all information provided by the Respondent (e.g. correspondence and negotiations). In submitting a Proposal and communicating with CFH, each Respondent should check that all information it provides to CFH:
  - (a) is true, accurate and complete, and not misleading in any material respect; and
  - (b) does not contain Intellectual Property that will breach a third party's rights.
- 7.4.3 Where CFH requires the Proposal to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.

## **Assessing Proposals**

### **7.5 Evaluation Panel**

- 7.5.1 CFH will convene an Evaluation Panel comprising members chosen for their relevant expertise and experience. In addition, CFH may invite independent advisors (including, without limitation, Government officials from MBIE, Treasury and Department of the Prime Minister and Cabinet) to evaluate any Proposal, or any aspect of any Proposal.

### **7.6 Third party information**

- 7.6.1 Each Respondent authorises CFH to collect additional information, except commercially sensitive pricing information, from any relevant third party (such as a referee or a previous

or existing client) and to use that information as part of its evaluation of the Respondent's Proposal.

- 7.6.2 Each Respondent is to ensure that all referees listed in support of its Proposal agree to provide a reference.
- 7.6.3 To facilitate discussions between CFH and third parties, each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.

## **7.7 CFH's clarification**

- 7.7.1 CFH may, at any time, request from any Respondent clarification of its Proposal as well as additional information about any aspect of its Proposal. CFH is not required to request the same clarification or information from each Respondent.
- 7.7.2 The Respondent must provide the clarification or additional information in the format requested. Respondents will endeavour to respond to requests in a timely manner. CFH may take such clarification or additional information into account in evaluating the Proposal.
- 7.7.3 Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, CFH may cease evaluating the Respondent's Proposal and may eliminate the Proposal from the RFP process.

## **7.8 Evaluation**

- 7.8.1 CFH will base its evaluation on the Proposals submitted in response to the RFP. CFH may adjust its evaluation of a Proposal following consideration of any clarification or additional information as described in Sections 7.6 and 7.7 above.
- 7.8.2 In deciding which Respondent(s) to negotiate with, CFH may take into account any of the following additional information:
  - (a) the results from reference checks, site visits, product testing and any other due diligence;
  - (b) the ease of contracting with a Respondent based on that Respondent's feedback on the Key Terms;
  - (c) any matter that materially impacts on CFH's trust and confidence in the Respondent; and/or
  - (d) any other relevant information that CFH may have in its possession.
- 7.8.3 CFH will inform a Respondent that its Proposal has been unsuccessful in the event that a Contract or Contracts have been signed with other Respondent(s) which cover(s) all of the Grant Funding available.

## **7.9 Negotiations**

- 7.9.1 CFH may invite a Respondent to enter into negotiations with a view to agreeing a Contract. Where the outcome is unsatisfactory, CFH may discontinue negotiations with a Respondent and may then initiate negotiations with another Respondent.

- 7.9.2 CFH may initiate concurrent negotiations with more than one Respondent. In concurrent negotiations CFH will treat each Respondent fairly, and:
- (a) advise each Respondent that it wishes to negotiate with, that concurrent negotiations will be carried out; and
  - (b) hold separate negotiation meetings with each Respondent.

## **7.10 Respondent's debrief**

- 7.10.1 CFH will offer all unsuccessful Respondents a debrief. When a Respondent requests a debrief, CFH will provide the debrief within 30 Business Days of the date of the request, or of the date the Contract or Contracts have been signed in relation to all the Grant Funding available, whichever is later.
- 7.10.2 The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
- (a) provide the reasons why the Proposal was or was not successful;
  - (b) explain how the Proposal performed against the Evaluation Criteria;
  - (c) indicate the Proposal's relative strengths and weaknesses;
  - (d) explain, in general terms, the relative advantage(s) of the successful Proposal(s);
  - (e) seek to address any concerns or questions from the Respondent; and
  - (f) seek feedback from the Respondent on the RFP and the RFP process.

## **7.11 Notification of outcome**

- 7.11.1 At any point after conclusion of negotiations in relation to a Rural Broadband Region or Mobile Black Spot Zone, but no later than 30 Business Days after the date the Contract is signed in relation to that Rural Broadband Region or Mobile Black Spot Zone, CFH will inform all unsuccessful Respondents of the name of the successful Respondent, if any. CFH may make public the name of the successful Respondent and any unsuccessful Respondent(s). Where applicable, CFH will publish a Contract Award Notice on GETS.

## **7.12 Issues and complaints**

- 7.12.1 A Respondent may, in good faith, raise with CFH any issue or complaint about the RFP, or the RFP process at any time.
- 7.12.2 CFH will consider and respond promptly and impartially to the Respondent's issue or complaint.
- 7.12.3 Both CFH and Respondent agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFP.
- 7.12.4 The fact that a Respondent has raised an issue or complaint is not to be used by CFH to unfairly prejudice the Respondent's on-going participation in the RFP process or future contract opportunities.
- 7.12.5 Audit New Zealand will be providing probity assurance to CFH over the conduct of the RFP selection process. This probity assurance is designed to assist CFH in ensuring that the procurement process is conducted in accordance with good procurement practice and the issue of probity is appropriately addressed to ensure the integrity and consistency of the process, so that no parties are unfairly treated. Should any queries in relation to probity

arise, Respondents may contact Audit New Zealand's representative directly to discuss their concerns. Contact details are as follows:

**Lyn Daken**

Associate Director Specialist Audit and Assurance Services

Audit New Zealand Mana Arotake Aotearoa

Level 6, 280 Queen Street, PO Box 1165, Auckland, 1140

Ph: 021 222 8602 Fax: 09 366 0215

Email: [lyn.daken@auditnz.govt.nz](mailto:lyn.daken@auditnz.govt.nz)

7.12.6 If a Respondent addresses a probity complaint to CFH directly then CFH will forward the complaint to the Probity Auditor.

7.12.7 All complaints will be handled in accordance with the Government Rules of Sourcing.

## Standard RFP conditions

### 7.13 CFH's Point of Contact

7.13.1 Subject to paragraph 7.12.5 above, all enquiries regarding the RFP must be directed by email to CFH's Point of Contact. Respondents must not directly or indirectly approach any representative of CFH, or any other person, to solicit information concerning any aspect of the RFP.

**Our Point of Contact**

**Name:** Steve Inglis

**Title/role:** Project Manager, Crown Fibre Holdings Limited

**Email address:** [RBI2.MBS@crowdfibre.govt.nz](mailto:RBI2.MBS@crowdfibre.govt.nz)

7.13.2 Subject to paragraph 7.12.5 above, only the Point of Contact, and any authorised person of CFH, are authorised to communicate with Respondents regarding any aspect of the RFP. CFH will not be bound by any statement made by any other person.

7.13.3 CFH may change the Point of Contact at any time. CFH will notify Respondents of any such change. This notification may be posted on GETS or CFH's FTP Site or sent by email.

7.13.4 Where a Respondent has an existing contract with CFH, business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents must not use business as usual contacts to lobby CFH, solicit information or discuss aspects of the RFP.

### 7.14 Conflict of Interest

7.14.1 Each Respondent must complete the Conflict of Interest declaration in the Response Form (contained in Appendix A9) and must immediately inform CFH should a Conflict of Interest arise during the RFP process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFP.

### 7.15 Ethics

7.15.1 Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of CFH in relation to the RFP.

- 7.15.2 A Respondent who attempts to do anything prohibited by paragraphs 7.13.1, 7.13.4 and 7.15.1 above, may be disqualified from participating further in the RFP process.
- 7.15.3 CFH reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFP process to ensure probity of the RFP process.

## **7.16 Anti-collusion and bid rigging**

- 7.16.1 Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their Proposals or other submissions or in any discussions or negotiations with CFH. Such behaviour will result in the Respondent being disqualified from participating further in the RFP process. In submitting a Proposal, the Respondent warrants that its Proposal has not been prepared in collusion with a competitor.
- 7.16.2 CFH reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondent's Proposal.

## **7.17 Confidential Information**

- 7.17.1 CFH and the Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraphs 7.17.2, 7.17.3 and 7.17.4 below, and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
- 7.17.2 CFH and the Respondent may each disclose Confidential Information to any person who is directly involved in the RFP process on its behalf, such as officers, employees, consultants, contractors, professional advisors, Evaluation Panel members, partners, principals or directors, but only for the purpose of participating in the RFP.
- 7.17.3 CFH may disclose the Respondent's Confidential Information to Government officials (including officials from MBIE, the Treasury and the Department of the Prime Minister and Cabinet) and Ministers of the Crown and/or Cabinet for purposes relating to the RFP, including making decisions relating to the RFP process.
- 7.17.4 Respondents acknowledge that CFH's obligations under paragraph 7.17.1 above, are subject to requirements imposed by the Official Information Act 1982 (**OIA**), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. CFH will not be in breach of its obligations if Confidential Information is disclosed by CFH to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour. Where CFH receives an OIA request that relates to a Respondent's Confidential Information, CFH will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.

## **7.18 Confidentiality of RFP information**

- 7.18.1 For the duration of the RFP, to the date of the announcement of all the successful Respondent(s), or the end of the RFP process, the Respondent agrees to keep the RFP strictly confidential and not make any public statement to any third party in relation to any aspect of the RFP, the RFP process or the award of any Contract without CFH's prior written consent.

7.18.2 A Respondent may disclose RFP information to any person described in paragraphs 7.17.2 and 7.17.3 above, for the purposes described in those paragraphs. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the RFP.

## **7.19 Costs of participating in the RFP process**

7.19.1 Each Respondent will meet its own costs associated with the preparation and presentation of its Proposal and any negotiations and no such costs will be included in or attributed to any aspect of the Grant Funding to be provided to the Respondent under a Contract, nor shall the Respondent recover, or attempt to recover, such costs from CFH or any other party in any other manner.

## **7.20 Ownership of documents**

7.20.1 The RFP and its contents remain the property of CFH. All Intellectual Property rights in the RFP remain the property of CFH or its licensors. CFH may request the immediate return or destruction of any or all RFP documents and any copies. Respondents must comply with any such request in a timely manner.

7.20.2 All documents forming the Proposal will, when delivered to CFH, become the property of CFH. Proposals will not be returned to Respondents at the end of the RFP process.

7.20.3 Ownership of Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors. However, the Respondent grants to CFH a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process.

## **7.21 No binding legal relations**

7.21.1 Neither the RFP, nor the RFP process, creates a process contract or any legal relationship between CFH and any Respondent, except in respect of:

- (a) the Respondent's declaration in its Proposal;
- (b) the Offer Validity Period;
- (c) the Respondent's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with CFH; and
- (d) the standard RFP conditions set out in Sections 7.13 to 7.26 of this Section 7.

7.21.2 Each exception in paragraph 7.21.1 above is subject only to CFH's reserved rights in paragraph 7.23 below.

7.21.3 Except for the legal obligations set out in paragraph 7.21.1 above, no legal relationship is formed between CFH and any Respondent unless and until a Contract is entered into between those parties.

## 7.22 Elimination

7.22.1 CFH may exclude a Respondent from participating in the RFP if CFH has evidence of any of the following, and this is considered by CFH to be material to the RFP:

- (a) the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFP;
- (b) the Proposal contains a material error, omission or inaccuracy;
- (c) the Respondent is in bankruptcy, receivership or liquidation;
- (d) the Respondent has made a false declaration;
- (e) there is a serious performance issue in a historic or current contract delivered by the Respondent;
- (f) the Respondent has been convicted of a serious crime or offence;
- (g) there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent;
- (h) the Respondent has failed to pay taxes, duties or other levies;
- (i) the Respondent represents a threat to national security or the confidentiality of sensitive Government information; and/or
- (j) the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

## 7.23 CFH's additional rights

7.23.1 Despite any other provision in the RFP, CFH may, on giving due notice to Respondents:

- (a) amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP; and/or
- (b) make any material change to the RFP (including any change to the timeline, Requirements or Evaluation Approach) on the condition that Respondents are given a reasonable time within which to respond to the change where the change would require a response.

7.23.2 Despite any other provision in the RFP, CFH may:

- (a) accept a late Proposal if it is CFH's fault that it is received late;
- (b) in exceptional circumstances, accept a late Proposal where it considers that there is no material prejudice to other Respondents. CFH will not accept a late Proposal if it considers that there is risk of collusion on the part of a Respondent, or the Respondent may have knowledge of the content of any other Proposal;
- (c) in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable;
- (d) accept or reject any Proposal, or part of a Proposal;
- (e) accept or reject any non-compliant, non-conforming or alternative Proposal;
- (f) decide not to accept the lowest priced conforming Proposal;
- (g) decide not to enter into a Contract with any Respondent;
- (h) liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent;

- (i) provide or withhold from any Respondent information in relation to any question arising in relation to the RFP. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons;
- (j) amend the Proposed Contract at any time, including during negotiations;
- (k) waive irregularities or Requirements in or during the RFP process where it considers it appropriate and reasonable to do so; and/or
- (l) otherwise run this RFP process as it sees fit, provided that CFH acts in accordance with probity principles and (as applicable) the Government Rules of Sourcing in doing so.

7.23.3 For the avoidance of doubt, CFH's additional rights in paragraphs 7.23.1 to 7.23.2 above do not override or derogate from any right of CFH otherwise reserved elsewhere in this RFP.

## **7.24 New Zealand law**

7.24.1 The laws of New Zealand shall govern the RFP and each Respondent agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the RFP or the RFP process.

## **7.25 Disclaimer**

7.25.1 CFH will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of the RFP process.

7.25.2 Nothing contained or implied in the RFP, or RFP process, or any other communication by CFH to any Respondent shall be construed as legal, financial or other advice. CFH has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.

7.25.3 To the extent that liability cannot be excluded, the maximum aggregate liability of CFH, its agents and advisors is \$1.

## **7.26 Precedence**

7.26.1 Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:

- (a) Section 7 (RFP Process, Terms and Conditions) of this Base RFP;
- (b) all other Sections and Appendices of this RFP document; and
- (c) any additional information or document provided by CFH to Respondents through CFH's Point of Contact, GETS or CFH's FTP Site.

7.26.2 If there is any conflict or inconsistency between information or documents having the same level of precedence, the later information or document will prevail.

# SECTION 8: Definitions

---

In relation to the RFP the following words and expressions have the meanings described below.

<b><u>Term</u></b>	<b><u>Definition</u></b>
<b>Access Seeker</b>	means a Retail Service Provider who seeks access to any Service Offering.
<b>Agreed Property Dataset or APD</b>	means the “agreed property dataset” described in Section 6 (Key Terms) of the Base RFP, paragraph 6.4.42.
<b>Applicable GPEU</b>	Has the meaning given to it in Section 6 (Key Terms) of the RFP, paragraph 6.4.8.
<b>Applicable Grant Funding Limit</b>	means the Grant Funding Limit that applies to the Grant Funded Network in the relevant Respondent Area.
<b>Backhaul</b>	means the telecommunications link between the POI and the Grant Funded Infrastructure.
<b>Base RFP</b>	means Sections 1 to 8 of the RFP.
<b>Build</b>	means all activities required to deliver each Grant Funded Network in accordance with the requirements of the Contract.
<b>Build Commissioning Milestone</b>	means the relevant Grant Funded Network has been Commissioned and successfully passed UAT, such that the Grant Funded Network and its components are connected, registered, and operational, and can deliver the Rural Broadband Services or Mobile Black Spot Services (as applicable) to the Eligible End Users or Mobile End Users (as applicable) in the relevant Respondent Area.
<b>Build Completion Date</b>	means the date that the Respondent has completed the Build of the Grant Funded Network in the relevant Respondent Area.
<b>Build Completion Milestone</b>	means the completion of the Build of the relevant Grant Funded Network, such that the Grant Funded Network is complete in all respects other than Commissioning.
<b>Build Start Milestone</b>	means: <ul style="list-style-type: none"><li>(a) completion of Site Acquisition; and</li><li>(b) receipt by the Respondent of any applicable Consent(s); and</li><li>(c) completion of the design of a Grant Funded Network and mobilization by the Respondent of the equipment and resources necessary to commence the Build of a Grant Funded Network.</li></ul>
<b>Business Day</b>	means any day in New Zealand, other than Saturday or Sunday, national public holidays or any day from Boxing Day up to and including the day after New Year’s Day (as those terms are defined in the Holidays Act 2003).
<b>Cabinet</b>	means a cabinet designed for telecommunications access and backhaul services.

<b>Category</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.7.6(a).
<b>Category 1 End User</b>	means in respect of a Rural Broadband Region, an End User who today or after planned market upgrades is not able to access a terrestrial broadband service greater than 5Mbps.
<b>Category 1 End User Database</b>	has the meaning given to it in Section 6.4.1 (Key Terms) of the Base RFP.
<b>Category 2 End User</b>	means an End User that today or after planned market upgrades is: <ul style="list-style-type: none"> <li>(a) not a Category 1 End User; and</li> <li>(b) has an existing broadband service between 5Mbps and 20Mbps; and</li> <li>(c) not within the footprint of the ultrafast broadband projects (UFB1 and UFB2).</li> </ul>
<b>Cellular</b>	means standards-based mobile network infrastructure and licensed radio resources used in the provision of network services.
<b>CFH</b>	means Crown Fibre Holdings Limited, a registered limited liability New Zealand company, with company number: 2346751 (or its nominees, assignees, or successors).
<b>Co-location</b>	has the meaning set out in the Telecommunications Act.
<b>Co-location Bond</b>	is defined in Section 6 (Key Terms) of the Base RFP, paragraph 6.8.4(d).
<b>Co-location Cost</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.8.2.
<b>Co-location Notification Date</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.8.4.
<b>Co-location Notification Period</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.8.5.
<b>Co-location Site</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.8.4(a).
<b>Co-locator</b>	means a mobile network operator and/or a WISP.
<b>Commerce Commission</b>	means the New Zealand Commerce Commission.
<b>Commission, Commissioning, or Commissioned</b>	means, in relation to the relevant Grant Funded Network, the successful completion of all commissioning testing processes such that the Grant Funded Network and its components are connected, registered and operational, with commissioning to be targeted for completion no later than 45 Business Days after the relevant Build Completion Milestone.
<b>Commission Date</b>	means the date the Grant Funded Infrastructure is Commissioned.

**Confidential Information**

includes information that:

- (a) is by its nature confidential;
- (b) is marked by either CFH or a Respondent as ‘confidential’ ‘commercially sensitive’, ‘sensitive’, ‘in confidence’, ‘top secret’, ‘secret’, ‘classified’ and/or ‘restricted’;
- (c) is provided by CFH, a Respondent, or a third party in confidence; and/or
- (d) CFH or a Respondent knows, or ought to know, is confidential,

but excludes information that is in the public domain through no fault of either CFH or a Respondent.

**Conflict of Interest**

arises where a Respondent’s personal or business interests or obligations do, could, or could be perceived to, conflict with its obligations to CFH under the RFP or in the provision of the Mobile Black Spot Services and/or Rural Broadband Services. It means that the Respondent’s independence, objectivity or impartiality can be called into question.

A Conflict of Interest may be:

- (a) actual: where the conflict currently exists;
- (b) potential: where the conflict is about to happen or could happen; or
- (c) perceived: where other people may reasonably think that a person is compromised.

**Consent**

means any resource consents and/or other permissions from the relevant local, territorial and/or regional authority or property owner, required to Build all or any part of a Grant Funded Network on any Site, and where applicable in the case of a lease, includes uninterrupted access to the Site by the Respondent.

**Consumer-Use**

means the User Stories, as set out in Schedule A1.1 of Appendix A1 (Service Specification) aimed at non-commercial End Users.

**Contingent Highway Respondent Areas**

has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.5.5.

**Contingent Highway Respondent Area Proposal**

has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.5.5.

**Contingent Rural Respondent Areas**

has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.4.11.

**Contingent Rural Respondent Area Proposal**

has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.4.11.

**Contingent Tourism Respondent Areas**

has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.6.4.

**Contingent Tourism Respondent Area Proposal**

has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.6.4.

**Contract**

means the written contract or contracts entered into by CFH and a successful Respondent(s) in respect of delivery of the RBI2/MBS Objective.

<b>Contract Award Notice</b>	means the notice CFH is required to publish on GETS pursuant to rule 45 of the Government Rules of Sourcing when it has awarded a contract that is subject to those rules.
<b>Contractor Testing</b>	means the tests conducted by the Respondent pursuant to the Contract in order to certify that each Grant Funded Network is compliant and delivers each Service Offering.
<b>Cost Overrun</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.7.4(c).
<b>CPE</b>	means the customer premises equipment which may include a broadband modem, outdoor antenna or other such equipment necessary for the provision of Service Offerings.
<b>Crown</b>	means Her Majesty the Queen acting in right of New Zealand.
<b>Deadline for Proposals</b>	means the deadline by which Proposals are to be delivered or submitted to CFH as stated in Section 2 (Key Information for Submitting a Proposal) of the Base RFP, paragraph 2.2.1.
<b>Deadline for Questions</b>	means the deadline by which Respondents are to submit questions to CFH as stated in Section 2 (Key Information for Submitting a Proposal) of the Base RFP, paragraph 2.2.1.
<b>Deed of Open Access Undertakings</b>	means a deed that the Respondent may be required to give in favour of the Crown under the Telecommunications Act or the Contract which will set out the requirements for open access on a Grant Funded Network.
<b>DMR</b>	means digital microwave radio.
<b>Downtime</b>	means the length of time that an End User is without a Rural Broadband Service or Mobile Black Spot Service (as applicable), measured from the time that a fault is detected (either RSP-reported or system-reported) to the time that the Rural Broadband Service or Mobile Black Spot Service (as applicable) is restored and excludes: <ul style="list-style-type: none"> <li>(a) user initiated service interruptions;</li> <li>(b) CPE outages due to power failures; and</li> <li>(c) the exclusions set out in the Service Levels.</li> </ul>
<b>Eligible End Users</b>	means Category 1 End Users and Category 2 End Users.
<b>Eligible Roaming Mobile Provider</b>	has the meaning given to it in the Telecommunications Act, and as of 7 July 2016, excludes Vodafone and Spark (who can enter into roaming agreements at their discretion).
<b>Emergency Services Voice Calling Code</b>	means the emergency services voice calling code, located at <a href="http://www.tcf.org.nz/content/a21f526e-5f82-41fa-9aa8-4dd8538b6b7d.html">http://www.tcf.org.nz/content/a21f526e-5f82-41fa-9aa8-4dd8538b6b7d.html</a> .
<b>End User</b>	means, in relation to a Telecommunications Service, a person that has a contractual relationship with a Retail Service Provider for the provision of a Telecommunications Service and who is the ultimate recipient of that service.
<b>Ethernet</b>	means Ethernet as that term is defined in IEEE Standard 802.3.

<b>Evaluation Approach</b>	means the approach used by CFH to evaluate Proposals as described in Section 4 (Our Evaluation Approach) of the Base RFP.
<b>Evaluation Criteria</b>	means the criteria against which Proposals will be evaluated by the Evaluation Panel, as set out in Section 4 (Our Evaluation Approach) of the Base RFP, paragraph 4.2.120.
<b>Evaluation Panel</b>	means the evaluation panel established by CFH in accordance with the Evaluation Approach.
<b>Executive Group</b>	means the senior governance group established in Section 6 (Key Terms) of the Base RFP, paragraph 6.13.4.
<b>Financial Year</b>	means the 12 month period ending 30 June each calendar year.
<b>Fixed Network</b>	means standards based copper, fibre or radio network infrastructure used in the provision of network services for connecting End User premises.
<b>GETS</b>	means the Government Electronic Tenders Service available at <a href="http://www.gets.govt.nz">www.gets.govt.nz</a>
<b>GIS</b>	means geographic information system.
<b>Government Rules of Sourcing</b>	means the Government's rules of sourcing available at <a href="http://www.business.govt.nz/procurement/for-agencies/key-guidance-for-agencies/the-new-government-rules-of-sourcing">http://www.business.govt.nz/procurement/for-agencies/key-guidance-for-agencies/the-new-government-rules-of-sourcing</a> .
<b>GPEU</b>	means the average Grant Funding requested by a Respondent per Eligible End User in a Respondent Area, as defined in Section 6 (Key Terms) of the Base RFP, paragraph 6.4.7.
<b>GPEU(C1)</b>	means the average Grant Funding requested by a Respondent per Category 1 End User in a Respondent Area, as defined in Section 6 (Key Terms) of the Base RFP, paragraph 6.4.7.
<b>GPEU(C2)</b>	means the average Grant Funding requested by a Respondent per Category 2 End User in a Respondent Area, as defined in Section 6 (Key Terms) of the Base RFP, paragraph 6.4.7.
<b>GPKM</b>	means the average Grant Funding requested by a Respondent per kilometer of new coverage in a Highway Respondent Area, as defined in Section 6 (Key Terms) of the Base RFP, paragraph 6.5.2.
<b>Grant Co-location Fund</b>	means the grant co-location fund referred to in Section 6 (Key Terms) of the Base RFP, paragraph 6.8.10.
<b>Grant Funded</b>	means is eligible for and, as the context requires, has been approved for Grant Funding.
<b>Grant Funded Infrastructure</b>	means any infrastructure that is eligible for and, as the context requires, has been approved for Grant Funding.
<b>Grant Funded Network</b>	means the Grant Funded Infrastructure, together with any other infrastructure proposed by the Respondent (that is not Grant Funded), that collectively forms a network that will deliver: <ul style="list-style-type: none"> <li>(a) the Rural Broadband Retail Services to: <ul style="list-style-type: none"> <li>(i) all of the Eligible End Users located in a Rural Respondent Area that is served by the network; and</li> <li>(ii) those Eligible End Users that the Respondent proposes</li> </ul> </li> </ul>

- to provide Rural Broadband Retail Services to, that are located within a Tourism Respondent Area or a Highway Respondent Area served by the network; and
- (b) the Mobile Black Spot Services to any Mobile End User located in or passing through a Tourism Respondent Area or Highway Respondent Area that is served by the network, such that uninterrupted Mobile Black Spot Services are provided to Mobile End Users across the entire coverage area of that Highway Respondent Area or Tourism Respondent Area.

<b>Grant Funding</b>	means grant funding that will be provided by CFH to the Respondent to fund all or part the Build by the Respondent of the relevant Grant Funded Network in each Respondent Area.
<b>Grant Funding Limit</b>	means the maximum amount of Grant Funding that will be provided by CFH for each Grant Funded Network in each Respondent Area, calculated in accordance with the Key Terms.
<b>Grant Programme</b>	means a central government policy initiative, and with respect to this RFP means either of the RBI2 or MBS initiatives.
<b>GST</b>	means the goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
<b>Health and Safety Management Plan</b>	means the Health and Safety management plan to be prepared by Respondents in accordance with Section 1.2 of Appendix A4 (Health and Safety Requirements).
<b>Health and Safety Questionnaire</b>	means the Health and Safety questionnaire set out in Section 1.4 of Appendix A4 (Health and Safety Requirements).
<b>Health and Safety Requirements</b>	means the Health and Safety requirements set out in Appendix A4.
<b>Highway Black Spot Zone</b>	means each of the state Highway Black Spot areas without mobile coverage listed in the table set out in Schedule A6.2 of Appendix A6 (Rural Broadband Regions and Black Spot Zones), the geospatial boundaries of which are defined in the relevant shapefile.
<b>Highway Respondent Area</b>	means that part of the Highway Black Spot Zone(s) included in a Respondent's Proposal, the geospatial boundaries within which it is intended a Mobile End User will be able to receive mobile coverage from the applicable Grant Funded Network.
<b>Indefeasible Right of Use or IRU</b>	means an exclusive, unrestricted, and indefeasible right to use, granted by a third party.
<b>Intellectual Property</b>	means all intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
<b>ITU-T</b>	means the ITU Telecommunication Standardisation Sector, being one of the three sectors (divisions or units) of the ITU, which coordinates standards for telecommunications.
<b>Key Terms</b>	means the key terms set out in Section 6 (Key Terms) of the Base RFP.
<b>KPI</b>	means key performance indicator.

<b>Large Network Operator</b>	means any wholesale or retail telecommunications service provider, whether operating a fixed line, mobile, microwave, satellite or other network, that is seeking Grant Funding from CFH under this RFP of an amount equal to or greater than \$2 million (excluding GST), or that otherwise does not satisfy the definition of a Small Network Operator.
<b>Market Uptake Milestone</b>	means the requirement for 20% or more of the Eligible End Users in the relevant Rural Respondent Area to receive Rural Broadband Services through the relevant Service Offerings from the applicable Grant Funded Network.
<b>Marketing and Promotion Requirements</b>	means the marketing, promotional plans and public relations requirements set out in Appendix A7.
<b>Maximum Price</b>	means the maximum price for a wholesale Service, as set out in the relevant Wholesale Services Agreement.
<b>MBIE</b>	means the Ministry of Business, Innovation and Employment.
<b>MBS or Mobile Black Spots</b>	means mobile network 'black spots'.
<b>Milestones</b>	means the milestones applying to the Build of each Grant Funded Network, including the Build Completion Milestone, the Build Commissioning Milestone, the Build Start Milestone and the Market Uptake Milestone.
<b>Mobile Black Spot Fund or MBS Fund</b>	means the \$50 million fund created for the purpose of the Mobile Black Spots Initiative (increased or decreased by up to \$25 million as a consequence of potential budget rebalancing between RB12 and MBS). The MBS Fund may be increased at any time with funding from the Crown or other funding sources to increment the total funding available for the MBS programme.
<b>Mobile Black Spot Services or MBS Services</b>	means the services consistent with existing mobile services offered in New Zealand.
<b>Mobile Black Spot Zones</b>	means the Highway Black Spot Zones and the Tourism Black Spot Zones.
<b>Mobile End User(s)</b>	means those mobile device users who are located in or passing through a Highway Respondent Area or Tourism Respondent Area and who are: <ul style="list-style-type: none"> <li>(a) customers of the Respondent or customers of a Co-locator on the Respondent's Tower or are roaming on the applicable Grant Funded Network, and</li> <li>(b) in respect of emergency 111 services extends to any mobile End User that accesses voice through a capable mobile handset.</li> </ul>
<b>NESTF</b>	means the National Environmental Standards for Telecommunications Facilities available at <a href="http://www.mfe.govt.nz/rma/rma-legislative-tools/national-environmental-standards/nes-telecommunication-facilities">http://www.mfe.govt.nz/rma/rma-legislative-tools/national-environmental-standards/nes-telecommunication-facilities</a>
<b>Network Deployment Plan or</b>	means the network deployment plan, prepared in accordance with

<b>NDP</b>	the NIPA.
<b>Network Infrastructure Project Agreement or NIPA</b>	means the network infrastructure project agreement to be entered into between the Respondent and CFH in relation to the Build of one or more Grant Funded Networks.
<b>Network Requirements</b>	means the network specifications and requirements described in Appendix A2.
<b>NPV</b>	means net present value calculated using an agreed discount rate.
<b>Offer Validity Period</b>	means the period of time when a Proposal (offer) is held open by the Respondent for acceptance by CFH in accordance with Section 2 (Key Information for Submitting a Proposal) of the Base RFP, paragraph 2.6.1.
<b>Open Access Requirements</b>	means:  (a) the requirements set out in Appendix A3 (Regulatory Requirements) and the RBI2/MBS Deed of Open Access Undertakings; or  (b) in respect of Chorus unbundled copper loop and bitstream access backhaul, has the meaning given to it in the Telecommunications Act.
<b>OSS/BSS</b>	means the operational support system and the business support system.
<b>PCBU</b>	means a person conducting a business or undertaking, as that term is defined in the Health and Safety at Work Act 2015.
<b>Point of Contact</b>	means the representative appointed by CFH and each Respondent respectively to be the point of contact for all communications during the RFP process. CFH's Point of Contact is set out in Section 2 (Key Information for Submitting a Proposal) of the Base RFP. The Respondent's Point of Contact is to be identified in its Proposal.
<b>Point of Interconnection or POI</b>	means the point of interconnection, and is the point at which an Access Seeker or RSP can gain access to a wholesale Service Offering.
<b>Project Control Group or PCG</b>	means the project control group specified in the NIPA and Section 6 (Key Terms) of the Base RFP, paragraph 6.13.3.
<b>Property</b>	has the meaning given to it in Section 6.4.1 (Key Terms) of the Base RFP.
<b>Proposal</b>	means the response a Respondent submits in reply to the RFP comprising the Response Form, the Respondent's bid, financial and pricing information and any other information submitted by a Respondent.
<b>Proposal Data Template</b>	means the proposal data template attached to Schedule A9.1 of Appendix A9 (Response Form).
<b>Prospective Retail End Users</b>	means End Users who can connect to Rural Broadband Retail Services but have yet to do so.
<b>Prospective Wholesale End Users</b>	means End Users who can connect via an RSP receiving a wholesale service and providing Rural Broadband Retail Services but have yet to do so.

<b>PTD</b>	means project to date.
<b>RBI</b>	means the Government's programme to develop enhanced broadband infrastructure in non-urban areas of New Zealand with the support of Crown grant funding.
<b>RBI1</b>	means the first stage of RBI.
<b>RBI1 Deeds of Open Access Undertaking</b>	has the meaning given to it in Appendix A3 (Regulatory Requirements) of the RFP, paragraph 1.2.3.
<b>RBI2 or RBI2 Initiative</b>	means the second stage RBI, as further explained in Section 1 (Executive Overview) of the Base RFP.
<b>RBI2 Fund</b>	means the \$100 million fund created for the purpose of the RBI2 Initiative (increased or decreased by up to \$25 million as a consequence of potential budget rebalancing between RBI2 and MBS). The RBI2 Fund may be increased at any time with funding from the Crown or other funding sources to increment the total funding available for the RBI2 programme.
<b>RBI2 Wholesale Services</b>	means the wholesale services that may be offered on Grant-Funded Infrastructure, including Wholesale Roaming Services, Wholesale Backhaul Services, Wholesale Fixed Wireless Services, Wholesale Fixed Line Services and Wholesale Tower Co-location Services, as described in Section 6 of the Base RFP and Appendix A1 (Service Specifications).
<b>RBI2/MBS Objective</b>	means both the RBI2 Objective and the MBS Objective as those terms are defined in Section 3.2 (Our Requirements) of the Base RFP.
<b>Regional Operator</b>	means an Internet Service Provider (including WISPs) seeking a total Grant Funding of less than \$2 million (excluding GST) from the RBI2 Fund and MBS Fund, and whose telecommunications revenue for the sale of services is less than \$10 million per annum as determined through the 2015/16 telecommunications development levy liability allocation process.
<b>Regulatory Requirements</b>	means the regulatory requirements set out in Appendix A3.
<b>Reporting Requirements</b>	means the reporting requirements set out in Appendix A5.
<b>Request for Proposals or RFP</b>	means Sections 1 to 8 of this request for proposals, including all appendices, any other document attached to this RFP, and any subsequent information provided by CFH to Respondents through CFH's Point of Contact or GETS.
<b>Respondent</b>	means a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its directors, officers, employees, contractors, consultants, agents and representatives and, in the case of a Proposal submitted by a consortium, includes each member of that consortium.
<b>Respondent Area</b>	means a Rural Respondent Area, Highway Respondent Area or Tourism Respondent Area, as applicable.
<b>Response Form</b>	means the form and declaration prescribed by CFH and used by a Respondent to respond to the RFP in the form set out in Appendix A9, duly completed and submitted by a Respondent as part of the Proposal.

<b>Retail End User Agreement</b>	means an agreement between a RSP and an End User governing the provision of Rural Broadband Retail Services.
<b>Retail Service Provider or RSP</b>	means any person who provides a Telecommunications Service to an End User.
<b>RFP-Terms</b>	means the RFP Process, Terms and Conditions set out in Section 7 of the Base RFP.
<b>Rural Broadband Region</b>	means each of the Regional or Unitary Council areas covering the North Island, South Island and Stewart Island as listed in the table set out in Appendix A6 (Rural Broadband Regions and Mobile Black Spot Zones), the geospatial boundaries of which are defined in the relevant shapefile, and includes the list of Eligible End Users set out in the APD for each Regional or Unitary Council area that have been identified for broadband access.
<b>Rural Broadband Retail Services</b>	means the rural broadband services described in Schedule A1.1 to Appendix A1 (Service Specifications).
<b>Rural Respondent Area</b>	means the smallest logical grouping of Category 1 End Users and/or Category 2 End Users within a Rural Broadband Region that is independent of other logical groupings of Category 1 End Users and/or Category 2 End Users, and that the Respondent proposes will receive the Rural Broadband Services from the relevant Grant Funded Network.
<b>Secured Obligations</b>	has the meaning given to it in Section 6 (Key Terms) of the Base RFP, paragraph 6.11.1.
<b>Security Interest</b>	has the meaning given to it in section 17 of the Personal Property Securities Act 1999.
<b>Service Credits</b>	means the credits payable for Service Level failures under the relevant Wholesale Services Agreement or Retail End User Agreement (as applicable).
<b>Service Levels</b>	means the service levels which the Respondent must meet in relation to each Grant Funded Network and the RBI2.
<b>Service Offering</b>	means a service or services included in the Respondent's Proposal.
<b>Service Specifications</b>	means the service specifications set out in Appendix A1 (Service Specifications).
<b>Services</b>	means the services that may be offered on Grant-Funded Infrastructure, including the services set out in Appendix A1 (Service Specifications).
<b>Site</b>	means the land or building on which any part of a Grant Funded Network will be located.
<b>Site Acquisition</b>	Means the acquisition or lease of any Site on which all or any part of a Grant Funded Network will be constructed, and in the case of a lease, includes concluding the lease on terms that satisfy the requirements of the Contract, where applicable.
<b>STD or Standard Terms Determination</b>	means the standard terms determinations published by the

	Commerce Commission.
<b>TCF</b>	means the New Zealand Telecommunications Forum.
<b>TCF Code</b>	means the TCF code for broadband product disclosure information available at <a href="http://www.tcf.org.nz/content/72e2572f-fd9e-49fc-b2de-05a73bb5701d.html">http://www.tcf.org.nz/content/72e2572f-fd9e-49fc-b2de-05a73bb5701d.html</a>
<b>TDL</b>	means the Telecommunications Development Levy.
<b>Technical and Commercial Capacity Requirements</b>	has the meaning given to that term in Section 3 (Our Requirements) of the Base RFP, paragraph 3.8.1.
<b>Telecommunications Act</b>	means the Telecommunications Act 2001 and any amendment or replacement of that Act.
<b>Telecommunications Services</b>	means the telecommunications service as defined in the Telecommunications Act.
<b>Tourism Black Spot Zone</b>	means each of the Tourism Black Spot Zones without mobile coverage, as listed in the table set out in Schedule A6.2 of Appendix A6 (Rural Broadband Regions), that have been identified as priority sites for new mobile coverage, the geospatial boundaries of which are defined in the relevant shapefile.
<b>Tourism Respondent Area</b>	means that part of a Tourism Black Spot Zone included in a Respondent's Proposal, the geospatial boundaries within which it is intended a Mobile End User will be able to receive the Mobile Blackspot Services from the applicable Grant Funded Network.
<b>Tourism Respondent Area Cost</b>	means the total Grant Funding cost to Build the Grant Funded Network in a Tourism Respondent Area as proposed by a Respondent, as defined in Section 6 (Key Terms) of the Base RFP, paragraph 6.6.1.
<b>Tower</b>	means a structure designed to support radio antennas for telecommunications access and backhaul services.
<b>UFB1</b>	means the first phase of the Government's UFB initiative.
<b>UFB2</b>	means the second phase of the Government's UFB initiative.
<b>User Acceptance Testing or UAT</b>	means the process conducted by CFH (in accordance with the test processes and procedures that will apply to the Grant Funded Network) within 30 Business Days of the relevant Build Completion Milestone, subject to receipt from the Respondent of a test readiness certificate.
<b>User Stories</b>	means the various user stories outlined in Appendix A1 (Service Specifications) by way of example of CFH's expectations as to ideal service provision.
<b>WDM</b>	means wavelength division multiplexing as defined by the ITU-T and includes dense wave division multiplexing (DWDM) and coarse wavelength division multiplexing (CWDM).
<b>Wholesale Backhaul Service</b>	means the service described in Schedule A1.3 to Appendix A1 (Service Specifications).
<b>Wholesale Fixed Line Service</b>	means the service described in Schedule A1.5 to Appendix A1 (Service Specifications).

<b>Wholesale Fixed Wireless Service</b>	means the service described in Schedule A1.4 to Appendix A1 (Service Specifications).
<b>Wholesale Roaming Service</b>	means the service described in Schedule A1.2 to Appendix A1 (Service Specifications).
<b>Wholesale Services Agreement or WSA</b>	means the standard wholesale services agreement general terms and conditions of the Respondent, together with any particular terms relating to a specific Service Offering which has been approved by CFH.
<b>Wholesale Tower Co-location Service</b>	means the services required to be provided to enable Co-location for Access Seekers.
<b>WISP</b>	means a wireless Internet Service Provider.