

Chorus Limited
Deed of Open Access
Undertakings for Rural Broadband
Initiative Services

**Deed submitted by Chorus in under section 156AH
(in accordance with section 156AZ) of the
Telecommunications Act 2001 on 6 October 2011**

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Background

These Undertakings are given by Chorus in accordance with, and are Undertakings for the purposes of Subpart 4 of Part 4AA of the Telecommunications Act 2001.

1 Definitions

1.1 In these Undertakings, unless the context requires otherwise:

Access Seeker means a person who is obtaining, or has indicated to Chorus a desire to contract for, RBI Services from Chorus.

Act means the Telecommunications Act 2001.

Baseband means a wholesale service supplied by Chorus that provides an analogue voice path from an End User premise to a handover point using any of a range of technologies.

Board means the Chorus board, and includes a committee of the Chorus board.

CEO means the chief executive of Chorus.

CFH means Crown Fibre Holdings Limited or any entity that inherits its legal rights and obligations.

Chorus means Chorus Limited.

Commencement Date means the later of:

- (a) the date on which the Minister's approval is notified in accordance with section 156AI(5) of the Act; and
- (b) Separation Day.

Commission has the meaning given to that term in the Act.

Designated Access Service has the meaning given to that term in the Act.

Downstream Service means any RBI Service that is a layer 3 or above service by reference to the Open Systems Interconnection (OSI) Reference Model. For the avoidance of doubt, a RBI Service is not a "layer 3 or above service" where

it has layer 3 or above capabilities for the purpose of supporting or interfacing with Access Seeker networks or services.

Employee means a Chorus employee other than the CEO.

End User has the meaning given to that term in the Act.

Equivalence in relation to a service regulated by either the Open Access Deed of Undertaking for Copper Services, or the Open Access Deed of Undertaking for Fibre Services, has the meaning given to that term in the applicable deed.

Fibre-to-the-Premises Access Network has the meaning given in Part 4AA of the Act.

Internal Ordering means order capture, order validation, order feasibility and order detailing.

Open Access Deed of Undertaking for Copper Services means the deed containing undertakings given by Chorus in accordance with section 69XB of the Act.

Open Access Deed of Undertaking for Fibre Services means the deed containing undertakings given by Chorus in accordance with section 156AD of the Act.

RBI Contract means the Rural Broadband Agreement between the Crown and Telecom Corporation of New Zealand Ltd dated on or about 20 April 2011, as replaced, novated or amended from time to time.

RBI Service means a Telecommunications Service that is provided using, or that provides access to the unbundled elements of, a network that was constructed with funding provided, in whole or in part, by the Crown as part of the Rural Broadband Initiative as set out in the RBI Contract.

Related Party means in relation to another person:

- (a) Any company that is related within the meaning of section 4A(2)(a) of the Financial Reporting Act 1993;
- (b) Any partner or joint venturer of that person.

Rural Broadband Initiative or RBI means the programme to develop enhanced broadband infrastructure in non-urban areas of New Zealand with the support of Crown grant funding.

Separation Day means the day on which Telecom Corporation of New Zealand Limited distributes 100% of the ordinary shares it holds in Chorus to the holders of ordinary shares in Telecom Corporation of New Zealand Limited.

Standard Terms Determination means a standard terms determination made by the Commission under section 30M of the Act.

Sub-loop Backhaul Service means the service described in the Standard Terms Determination dated 18 June 2009 for the Designated Access Service included in sub-part 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

UBA Backhaul Service means the service described in the Standard Terms Determination dated 27 June 2008 for the Designated Access Service included in sub-part 1 of Part 2 of Schedule 1 to the Act as unbundled bitstream access backhaul service.

UCLF Service means the service described in the Standard Terms Determination for the Designated Access Service included in sub-part 1 of Part 2 of Schedule 1 to the Act as unbundled copper low frequency service.

UCLL Backhaul Service means the service described in the Standard Terms Determination dated 27 June 2008 for the Designated Access Service included in sub-part 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network backhaul (telephone exchange to interconnect point).

Undertakings means this deed.

Working Day has the meaning given to that term in the Act.

2 Interpretation

- 2.1 Examples used in these Undertakings are only illustrative of the clauses to which they relate. They do not limit those clauses. If an example and a clause are inconsistent, the clause prevails.
- 2.2 In these Undertakings, unless the context requires otherwise:

- (a) clause headings are for convenience only, and are not part of these Undertakings;
 - (b) references to clauses are references to clauses in these Undertakings;
 - (c) the singular includes the plural and vice versa;
 - (d) words denoting natural persons include any legal entity or association of entities and vice versa;
 - (e) reference to a statute means that statute as amended and includes subordinate legislation;
 - (f) except where these Undertakings expressly provide otherwise, reference to a document means that document as amended;
 - (g) reference to the agreement of a party means written agreement;
 - (h) reference to approval, authorisation or consent means prior written approval authorisation or consent;
 - (i) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the Clause of the Undertakings to which that example relates.
- 2.3 Communications to and from a party may, if that party so agrees, be provided in electronic form.

3 Scope and application

- 3.1 These Undertakings are binding on Chorus, are given by Chorus in favour of the Crown and are enforceable by the Crown and the Commission.
- 3.2 If anything in these Undertakings and anything in any agreement or arrangement in respect of Chorus or between:
- (a) Chorus and CFH;
 - (b) Chorus and any Access Seeker;
 - (c) Chorus and any Chorus Related Party,
- are inconsistent, these Undertakings prevail in relation to the obligations of Chorus.
- 3.3 These Undertakings only apply to Chorus in New Zealand. For the avoidance of doubt, Chorus will not use this limitation to circumvent the intent of these Undertakings.

- 3.4 Nothing in these Undertakings requires Chorus to maintain separate business units. Accordingly (without limitation):
- (a) because Chorus will have no separate entities to place or receive internal orders or to issue or receive internal bills, Chorus is not required to put in place written arrangements or implement any Internal Ordering, charging or billing (creation of the billing record, sending a bill and making payment) related to the internal supply of any service. For the avoidance of doubt, where Equivalence is required by clause 6.1, Chorus will use the same procedures as Access Seekers for provisioning, support and all other procedures not otherwise identified in this clause 3.4(a) (including inventory maintenance, scheduling and managing workforce, workforce orchestration, physical path allocation, logical resource allocation and network provisioning); and
 - (b) because Chorus is a single integrated business, Chorus is not required to implement separate management and reporting lines; and
 - (c) because Chorus operates a set of systems that an integrated business does not artificially partition between sets of employees, Chorus is not required to implement substantial upgrade or redesign of Chorus systems for the purposes of restricting access to any information by certain Employees. This clause 3.4(c) does not limit Chorus' obligation to comply with any information use and disclosure requirements that apply by operation of clause 6 but clarifies that Chorus may choose to comply in a way that does not require any substantial upgrade or redesign.
- 3.5 Subject to clauses 3.6 and 6, if, in relation to any matter, the terms of these Undertakings and the terms of:
- (a) the Open Access Deed of Undertaking for Fibre Services; or
 - (b) the Open Access Deed or Undertaking for Copper Services,
- are such that both deeds could give rise to obligations in respect of that matter, then the terms of these Undertakings shall apply and the terms of the Open Access Deed of Undertaking for Fibre Services, or Open Access Deed or Undertaking for Copper Services shall not apply.
- 3.6 Notwithstanding clause 3.5, in all cases these Undertakings shall not apply to:
- (a) The UBA Backhaul Service;
 - (b) The UCLL Backhaul Service;
 - (c) The Sub-loop Backhaul Service;
 - (d) Baseband;

- (e) The UCLF Service; and
- (f) any service delivered over a Fibre-to-the-Premises Access Network which is owned or operated by Chorus that is only available in conjunction with a service regulated by the Open Access Deed of Undertaking for Copper Services.

4 **Commencement, Term and Variation**

- 4.1 These Undertakings commence on the Commencement Date.
- 4.2 These Undertakings may be only varied in accordance with the process set out in section 156AL and 156AM of the Act, in accordance with section 156AZ of the Act.

5 **Non-discrimination**

- 5.1 When doing or omitting to do anything in respect of a RBI Service Chorus will not discriminate:
 - (a) between Access Seekers;
 - (b) in favour of any Chorus Related Party; or
 - (c) where Chorus supplies a RBI Service to itself, in favour of Chorus itself.

As of separation day, Chorus does not supply any RBI Services to itself.

- 5.2 For the purpose of clause 5.1, "to discriminate" means to treat differently, except to the extent a particular difference in treatment is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market.
- 5.3 For the purposes of clause 5.2, Chorus providing a non-RBI Service on terms and conditions (including price) that are different to those on which a RBI Service is provided in accordance with the terms of the RBI Contract is objectively justifiable and does not harm, and is unlikely to harm, competition in any telecommunications market.

Example

Under both the RBI Contract and UFB Contract Chorus is required to make available certain services to Access Seekers supplying priority users (such as schools in certain areas) on preferential terms. Clause 5.3 ensures that Chorus is able to offer the preferential terms as agreed with the Crown to achieve the Crown's social policy objectives without compromising Chorus' compliance with its open access undertakings.

6 **Equivalence**

- 6.1 In the situations identified in clause 6.2, an RBI Service will be provided to an Equivalence standard (as described in clause 6.3).
- 6.2 An RBI Service is required to be delivered to the Equivalence standard where Chorus would be required under either the Open Access Deed of Undertaking for Copper Services, or Open Access Deed of Undertaking for Fibre Services to provide the same telecommunications service to an Equivalence standard when the service is delivered over network regulated by the relevant deed.
- 6.3 The Equivalence standard required by clause 6.1 is the same Equivalence standard (including any exceptions) required by the Open Access Deed of Undertaking for Copper Services, or Open Access Deed of Undertaking for Fibre Services (as applicable) subject to any differences that are required or permitted by the RBI Contract.

Example

The Direct Fibre Access Service is required to be delivered to the Equivalence standard from 1 January 2020 under the Open Access Deed of Undertaking for Fibre Services. Where the Direct Fibre Access Service is provided using network that was constructed with funding provided, in whole or in part, by the Crown as part of the Rural Broadband Initiative (i.e. where the Direct Fibre Access Service is an RBI Service), then clause 6 means that from 1 January 2020 it will need to be delivered to the Equivalence standard as set out in the Open Access Deed of Undertaking for Fibre Services. This obligation is subject to the RBI Contract because, under the terms of that contract, Chorus is required to give preferential treatment to priority users (e.g. Schools) that may be inconsistent with an Equivalence standard.

7 **Supply of service**

- 7.1 Nothing in these Undertakings requires Chorus to provide Access Seekers with a service.

Chorus may be required to provide a Service under a determination made under Part 2 of the Act, a registered undertaking given by Chorus under the Act, any other law or the RBI Contract. This Undertaking regulates certain aspects of how those services are supplied but does not impose the obligation to supply itself.

- 7.2 On and from the Commencement Date, where Chorus offers and provides RBI Services to Access Seekers, it must do so in accordance with these Undertakings.
- 7.3 For the avoidance of doubt, further terms and conditions of supply, including any eligibility requirements or other obligations of the Access Seeker, may be provided for in agreements between Chorus and CFH, and Chorus and each Access Seeker.

- 7.4 Chorus will comply with the line of business restrictions set out in sections 69O and 69S of the Act.
- 7.5 Without limiting clause 7.4, Chorus will not supply any Access Seeker with a Downstream Service except where Chorus is expressly permitted or required to supply a Downstream Service by any law or regulation.

Example

Under section 69S(3) of the Act, Chorus is expressly permitted to resell PSTN-based service for the purposes of acting as a channel to market for ServiceTel. Accordingly, even though some PSTN-based services may be Downstream Services, clause 7.5 does not prevent Chorus from supplying PSTN-based services in that manner.

8 Self reporting, complaints and investigation

- 8.1 Chorus will disclose any material breach of these Undertakings to the Commission as soon as is reasonably practicable (but in any event not later than 20 Working Days) after Chorus becomes aware of that breach. Within 10 Working Days of the end of the first quarter following the Commencement Date Chorus will disclose to the Commission any non-material breach of these Undertakings that occurred in that quarter and that Chorus is aware of, and thereafter within 10 Working Days of the end of each quarter any non-material breach of these Undertakings that Chorus has become aware of since the last report. All disclosures under this clause will be in sufficient detail to reasonably inform the Commission of the nature, cause and extent of the breach.
- 8.2 Where the Commission has reasonable grounds to believe that there has been a breach of these Undertakings, or where the Commission has received a complaint from any Access Seeker concerning Chorus' non-compliance with these Undertakings, the Commission may on request in writing (which will include details of the potential breach), and Chorus will supply to the Commission within a reasonable period of time, such information as is relevant to support its assessment of Chorus' compliance with these Undertakings. The Commission may request information under this clause without revealing the identity of any complainant.
- 8.3 Where the Commission requests information under clause 8.2, the Commission may require any information or report required pursuant to these Undertakings to be provided by Chorus by a time, in a form and manner as reasonably required by the Commission.

9 Breach of these Undertakings

- 9.1 These Undertakings will be enforced in accordance with sections 156AQ to 156AS of the Act, in accordance with section 156AZ.

10 Force Majeure

10.1 A "force majeure event" is any:

- (a) act of God, fire, earthquake, storm, tornado or flood;
- (b) strike, lockout, work stoppage or other labour hindrance;
- (c) explosion, collision or nuclear accident;
- (d) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not) or terrorism;
- (e) the failure of any equipment, materials, services or supplies provided to Chorus by any other person;
- (f) unavoidable accident; or
- (g) other event beyond the reasonable control of Chorus; but

does not include:

- (h) loss of supply of any essential services where such loss of supply is caused by Chorus' action or negligence;
- (i) any event which Chorus could have prevented or overcome by the exercise of reasonable diligence and at reasonable cost; or
- (j) any lack of funds for any reason.

10.2 If Chorus fails, or believes it might fail, to meet an obligation under these Undertakings because of a force majeure event, it will:

- (a) give notice to the Commission of the event and the likely effect of the event as soon as is reasonably practicable after it becomes aware of the event;
- (b) in the case of an anticipated failure, continue to meet the obligation for as long as possible; and
- (c) following the failure, do all it reasonably can to meet the obligation as soon as is practicable.

10.3 Chorus will not be in breach of these Undertakings if it fails to meet an obligation under these Undertakings to the extent that, and for as long as, such failure is the result of a force majeure event.

11 **Miscellaneous**

- 11.1 Chorus will not be in breach of these Undertakings if it fails to meet a requirement of these Undertakings and the failure to comply is trivial or de minimis.
- 11.2 Subject to clauses 3.2 and 3.5 nothing in these Undertakings limits any obligation of Chorus, the Board, the CEO, an Employee, a Chorus agent or a Chorus contractor to comply with any law that is binding on, or applies to, that person or Chorus, or prevents such compliance.