

Chorus Limited
Deed of Open Access
Undertakings for Copper Services

**Amended deed submitted by Chorus in accordance
with section 42(4) of the Telecommunications (TSO
Broadband and other Matters) Amendment Act 2011
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 2A 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, Relevant Services or EOI Input Services from Chorus.

Access Seeker Confidential Information has the meaning in clause 12.2

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.

Cellular Mobile Systems means those systems that are:

- (a) used to provide, support and maintain a mobile radio system in which assigned radio spectrum can be re-used simultaneously in nearby geographic areas without interference between users; and
- (b) capable of supporting hand-off, of sessions or calls, between wireless transmitters;

Such systems include radio transmission systems, and any supporting infrastructure such as buildings, cabinets, poles, transmission systems and associated operational support systems.

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 sections 42 to 44 of the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011; and
- (b) Separation Day.

Commercial Information means information that is:

- (a) confidential; and
- (b) that is in respect of a Relevant Service, and is information regarding:
 - (i) service development;
 - (ii) pricing;
 - (iii) marketing strategy and intelligence;
 - (iv) service launch dates;
 - (v) costs;
 - (vi) projected sales volumes; and
 - (vii) network coverage and capabilities;

but does not include:

- (c) any information that is not current and which has been superseded by identifiable new information or is more than 18 months old; or
- (d) any information, or types of information, that Chorus and the Commission agree in writing is not Commercial Information;

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

Deemed TSO Instrument 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 Relevant Service that is a layer 3 or above service by reference to the OSI Model. For the avoidance of doubt, a Relevant 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.

Example

- (a) Chorus offers the Basic UBA service today over its copper network. This service uses a "Layer 2 Tunnelling Protocol" (L2TP) to connect the End User to the Access Seeker. The L2TP is carried over a TCP/UDP session between Chorus' LAC and the Service Provider's LNS (LAC and LNS are the two endpoints of a L2TP tunnel). The TCP/UDP session Chorus uses to connect the End User to the Access Seeker is considered a layer 3/4 protocol. Notwithstanding this the Basic UBA service is considered a Layer 2 service.
- (b) Chorus will offer a Layer 2 bitstream access service that reflects the requirements of the TCF Mass Market Fibre Service description. In order to connect with this service in a manner that enables the Access Seeker to easily manage end user identity, Chorus will provide the option to supply the Access Seeker with TR101 information embedded in DHCP or PPPoE traffic. To provide this function it is necessary for the Chorus Layer 2 service to be "layer 3 aware" and to interact with the layer 3 protocols, but Chorus is not actually providing the layer 3 service. If Chorus did not supply this option then some Access Seekers may have issues managing end user authentication and service management when taking the Layer 2 bitstream access service.
- (c) Another example is that the TCF Mass Market Fibre Service description requires for multicast that the Layer 2 service provided by Chorus is layer 3 aware. The layer 3 service is provided by the Access Seeker, not Chorus, but both services need to work together seamlessly to provide the TCF Multicast service (to support video services).
- (d) For an ATA based voice service it is necessary for the Chorus service to be application aware. However, it still acts as a sub-layer 3 service in that it does not provide end to end client to server or client to client services as specified in the OSI model. These layer 3 functions would be provided by the Access Seeker.

Employee means a Chorus employee other than the CEO.

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

EOI Input Services means the following Designated Access Services being the services defined in section 69XA of the Act as "Relevant Regulated Services":

- (a) the UCLL Service;
- (b) the UCLL Co-location Service;
- (c) the UCLL Backhaul Service;
- (d) the Sub-loop UCLL Service;
- (e) the Sub-loop Co-location Service; and

(f) the Sub-loop Backhaul Service.

Equivalence has the meaning in clause 6.2.

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

Government Initiative Agreements means:

- (a) the RBI Contract;
- (b) the UFB Contract as executed on 24 May 2011.

Government Initiative Service means any service that Chorus is required to make available under a Government Initiative Agreement.

Grandfathered Service means:

- (a) any Mobile Service;
- (b) any service principally involving provision of space in any exchange, central office, cabinet, building or other facility except for:
 - (i) the UCLL Co-location Service;
 - (ii) Sub-loop Co-location Services; or
 - (iii) any such service that is a Designated Access Service or Specified Service,

that is provided by Chorus to an Access Seeker prior to the Commencement Date for the term of the relevant contract.

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

Layer 1 means layer 1 of the OSI Model, which is normally associated with passive network infrastructure.

Layer 2 means layer 2 of the OSI Model, which is normally associated with active network infrastructure.

Legacy Access Network means the network comprising:

- (a) Chorus' local loop network as defined in clause 1 of Part 1 of Schedule 1 of the Act (including any relevant line in Chorus's local telephone exchange or distribution cabinet);
- (b) Chorus' local telephone exchange, as defined in clause 1 of Part 1 of Schedule 1 of the Act, and Chorus' distribution cabinet (or equivalent facility);
- (c) Chorus' backhaul network (whether copper, fibre, or anything else) between the local loop network handover point in Chorus' distribution cabinet (or equivalent facility) or Chorus's local telephone exchange and the first data switch (including the first data switch); and
- (d) Chorus' digital subscriber line access multiplexer (or equivalent facility).

Legacy Input Service means the services listed in Schedule 1 and any other service agreed by the Commission in writing to be a Legacy Input Service, being an input to another service or services that are no longer offered to End Users other than customers who were End Users before separation day.

Local Access and Calling Service means the designated access service described in subpart 1 of Part 2 of Schedule 1 of the Act as local access and calling service offered by means of a fixed telecommunications network.

Mobile Service means:

- (a) services delivered predominantly by means of Cellular Mobile Systems, and which enable calls or communication sessions to be maintained when an End-User moves location, including moving between areas served by different wireless transmitters; and
- (b) services provided for the purpose of enabling a service described in (a) above such as site co-location, roaming, cell-site linking and backhaul.

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

OSI Model means the seven-layer model of network architecture known as the Open Systems Interconnection Model.

PSTN has the meaning given to that term in 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 Deed means the deed containing undertakings given by Chorus in accordance with section 156AY of the Act.

Registered Undertaking has the meaning given to that term in the Act.

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; and
- (b) any partner or joint venturer of that person.

Relevant Services means:

- (a) the UBA Backhaul Service; and
- (b) wholesale Telecommunications Services that are provided using, or that provide access to the unbundled elements of, the Legacy Access Network,

but does not include any Legacy Input Services.

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.

ServiceTel means Telecom Corporation of New Zealand Limited.

Sharing Arrangement has the meaning given in subpart 2 of Part 2A of the Act.

Sharing Arrangements Transition Plan means the plan developed by Chorus in accordance with clause 17 of these Undertakings.

Specified Service has the meaning given to that term in the Act.

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 subpart 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network backhaul (distribution cabinet to telephone exchange).

Sub-loop Co-location Service means the service described in the Standard Terms Determination dated 18 June 2009 for the Designated Access Service included in subpart 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network co-location service (sub-loop co-location).

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

Telecommunications Service has the meaning given to that term in the Act.

TSO Input Service means any service that is:

- (a) required to be supplied by Chorus pursuant to a Deemed TSO Instrument; or
- (b) reasonably necessary for ServiceTel to meet any obligation under a Deemed TSO Instrument.

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

UBA Service means the service described in the Standard Terms Determination dated 12 December 2007 for the Designated Access Service included in subpart 1 of Part 2 of Schedule 1 to the Act as unbundled bitstream access service.

UBA with POTS means UBA where there is an active analogue telephone service on the same copper pair as the UBA Service (but does not include that analogue telephone service).

UBA without POTS means UBA where there is not an active analogue telephone service on the same copper pair as the UBA Service.

UCLF Service means the service described in the Standard Terms Determination for the Designated Access Service included in subpart 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 subpart 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network backhaul (telephone exchange to interconnect point).

UCLL Co-location Service means the service described in the Standard Terms Determination dated 7 November 2007 for the Designated Access Service included in subpart 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network co-location service.

UCLL Service means the service described in the Standard Terms Determination dated 7 November 2007 for the Designated Access Service included in subpart 1 of Part 2 of Schedule 1 to the Act as unbundled copper local loop network service.

UFB Contract means the Network Infrastructure Procurement Agreement between CFH and Telecom Corporation of New Zealand Ltd dated 24 May 2011, as replaced, novated or amended from time to time.

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.

2.4 References in clauses 6.1 and 6.2 of these Undertakings to Chorus being *required to provide* a Relevant Service means a requirement to provide a Relevant Service under clause 7.1(b), a determination made under Part 2 of the Act or a registered undertaking given by Chorus under the Act. For the avoidance of doubt this clause 2.4 does not require Chorus to provide Access Seekers with a Relevant Service or in any way limit clause 8.1.

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:

- (a) maintain separate business units. Accordingly (without limitation):
 - (i) 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, as more particularly provided in clauses 6.1, 6.2 and 6.3, 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)(i) (including inventory maintenance, scheduling and managing workforce, workforce orchestration, physical path allocation, logical resource allocation and network provisioning); and
 - (ii) because Chorus is a single integrated business, Chorus is not required to implement separate management and reporting lines;
or
- (b) implement substantial upgrade or redesign of existing systems operated or used by Chorus. This clause 3.4(b) does not limit Chorus' obligation to comply with the information use and disclosure requirements set out in clauses 5.6, 6.2(d), 11 and 12. Chorus may comply with these requirements by, for instance, the implementation and enforcement of an employee code of conduct and information control policy as required by clauses 14.1 and 14.2 of these Undertakings.

These Undertakings are intended to ensure that commercial and confidential information about Relevant Services remains appropriately protected but are not intended to drive further investment into legacy copper systems. Accordingly, clause 3.4(b) clarifies that, while Chorus is required to comply with its information use and disclosure obligations, it can do so in a way that does not require further substantial upgrade or redesign of copper systems. Substantial upgrade and redesign of copper systems was carried out by Telecom prior to structural separation in order to comply with the information use and disclosure obligations under previous operational separation requirements. This recent investment will provide a starting point for Chorus to manage its obligations in relation to the information shared, or not shared with ServiceTel.

3.5 Subject to clause 3.6, 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 RBI Deed,

are such that both deeds could give rise to obligations in respect of that matter, then the terms of the Open Access Deed of Undertaking for Fibre Services or RBI Deed (as applicable) shall apply and the terms of these Undertakings shall not apply to the matter.

3.6 Notwithstanding clause 3.5, in all cases these Undertakings shall apply to the following services (even though they may fall outside the definition of Relevant Service):

- (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 Relevant Service.

3.7 For the avoidance of doubt, the UCLL Service and UBA Service are Relevant Services for the purposes of these Undertakings and (except in cases where the RBI Deed applies in accordance with clause 3.5) these Undertakings apply to those 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 69XE of the Act.

5 **Non-discrimination**

5.1 When doing or omitting to do anything in respect of a Relevant Service Chorus will not discriminate:

- (a) between Access Seekers;
- (b) in favour of any Chorus Related Party; or

- (c) where Chorus supplies a Relevant Service to itself, in favour of Chorus itself.

As of separation day, except for the EOI Input Services that Chorus will use in accordance with clause 7.1, Chorus does not supply any Relevant 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 avoidance of doubt the following differences in treatment are objectively justifiable and do not harm, and are unlikely to harm, competition in any telecommunications market consistent with clause 5.2:

- (a) In relation to any Government Initiative Service:
 - (i) Chorus providing a service that is technically or functionally the same as a Government Initiative Service (but that Chorus is not required to provide under the Government Initiative Agreement) on terms and conditions (including price) that are different to those on which a Government Initiative Service is provided in accordance with the terms of the Government Initiative Agreement; or
 - (ii) Chorus not making Government Initiative Services available (for whatever reason) more widely than is required by the terms of the Government Initiative Agreement.

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(a) 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.

- (b) In relation to Grandfathered Services:
 - (i) Chorus providing a service on terms and conditions (including price) that are different to those on which a Grandfathered Service is provided; or
 - (ii) Chorus not making Grandfathered Services more widely available (for whatever reason) than they are at the Commencement Date.
- (c) In relation to TSO Input Services:

- (i) Chorus providing a service that is technically or functionally the same as a TSO Input Service (but is not a TSO Input Service) on terms and conditions (including price) that are different to those on which a TSO Input Service is provided; or
 - (ii) Chorus not making TSO Input Services more widely available (for whatever reason) than is required by the relevant Deemed TSO Instrument.
- (d) Differences between the UBA with POTS and UBA without POTS services that result from the fact the UBA with POTS service is associated with an analogue Local Access and Calling Service.
- (e) Differences between instances of Baseband that result from the fact those instances are delivered using different technologies.
- 5.4 Provided that Chorus is complying with clause 5.5, for a period of 9 months from the day on which either the UCLF or Baseband over copper service was first made available (whichever is the earlier), any differences between:
- (a) the manner in which Baseband or the UCLF Service is provided to ServiceTel over copper access (excluding price); and
 - (b) the manner in which Baseband or the UCLF Service is provided to other Access Seekers over copper access,

that result from the fact that ServiceTel's analogue Local Access and Calling Service is built on a legacy system, will not affect Chorus' compliance with the requirements of clause 5.1.

5.5 Chorus will:

- (a) For a period of 9 months from the day on which either the UCLF or Baseband over copper service was first made available (whichever is the earlier), monitor any differences between:
 - (i) the manner in which Baseband or the UCLF Service is provided to ServiceTel over copper access (excluding price); and
 - (ii) the manner in which Baseband or the UCLF Service is provided to other Access Seekers over copper access,

that result from the fact that ServiceTel's analogue Local Access and Calling Service is built on a legacy system; and

- (b) No later than the day that is 9 months from the day on which either the UCLF or Baseband over copper service was first made available

(whichever is the earlier), Chorus will provide information to the Commission on the differences described in paragraph (a) above and the effects of those differences.

The Baseband service was designed as a voice input service that could be delivered over a range of access technologies. In many instances Baseband is priced at the same level regardless of underlying technology in order to allow for the transfer of the TSO construct that existed prior to the structural separation of Telecom to a structurally separated environment. There are two consequences of this:

First, Baseband may have different service characteristics and be delivered in a different manner depending on the underlying access technology. This should not of itself result in a breach of non-discrimination and clause 5.3(e) reflects this.

Second, ServiceTel will take Baseband over copper (or UCLF which will be similar to Baseband over copper) using different systems from those which will be used to deliver Baseband over copper or UCLF to other Access Seekers. This is because the systems underlying provision of copper paths for ServiceTel's PSTN were designed for a vertically integrated environment and are not compatible with structural separation. Upgrade or replacement of these systems to allow ServiceTel to take Baseband over copper or UCLF using the same systems as other Access Seekers would require substantial capital investment in order to support legacy services which is not consistent with the purpose of these Undertakings. However, Chorus is committed to ensuring these differences do not harm competition. Accordingly, clauses 5.4 and 5.5 allow Chorus a 9 month period to transparently monitor the effects of these differences and act to ensure they do not harm competition.

5.6 Chorus will provide Commercial Information to Access Seekers on a non-discriminatory basis.

6 **Equivalence**

6.1 From the later of the Commencement Date or 31 December 2011, where Chorus is required to provide the EOI Input Services, Chorus will provide the EOI Input Services to the Equivalence standard.

6.2 *Equivalence or Equivalence standard* means that, if Chorus is required to provide Access Seekers with a EOI Input Service under clause 6.1, it must do so on an equivalence of inputs basis, meaning:

- (a) Chorus must provide itself and the Access Seekers with the same service;
- (b) Chorus must deliver that service to itself and the Access Seekers on the same timescales and on the same terms and conditions (including price and service levels);
- (c) Chorus must deliver that service to itself and the Access Seekers by means of the same systems and processes (including operational support processes);
- (d) Chorus must provide its own business operations and the Access Seekers with the same Commercial Information about that service and those same systems and processes; and

- (e) when providing that service to itself, Chorus must use systems and processes that Access Seekers are able to use in the same way, and with the same degree of reliability and performance.
- 6.3 In subclause (a) of clause 6.2, *the same* means exactly the same, subject to:
- (a) trivial differences;
 - (b) differences that reflect the fact Chorus is a single business and is not required to maintain separate business units as more particularly set out in clause 3.4, including relating to:
 - (i) credit requirements and vetting;
 - (ii) payment;
 - (iii) provisions relating to the termination of supply;
 - (iv) provisions relating to dispute resolution (to the extent necessary because Chorus is one company);
 - (c) differences relating to:
 - (i) requirements for a safe working environment; and
 - (ii) matters of national and crime-related security, physical security, security required to protect the operational integrity of the network, or any other security requirements agreed by Chorus and the Commission;
 - (d) differences that are identified after the Commencement Date and that are agreed by Chorus and the Commission in writing where those differences are not inconsistent with "equivalence" (as that term is defined in subpart 4 of Part 2A of the Act) having regard to the purpose statement in section 69W of the Act; and
 - (e) differences relating to terms required by a residual terms determination under subpart 2A of Part 2 of the Act.
- 6.4 In this clause 6, "Chorus itself" includes any Chorus Related Parties which acquire an EOI Input Service from Chorus.

7 **Consumption of EOI Input Services for UBA services**

- 7.1 While Chorus is required to make available the UBA Service, Chorus:

- (a) will build its UBA without POTS service using the following EOI Input Services as inputs:
 - (i) the UCLL Service;
 - (ii) the UCLL Backhaul Service;
 - (iii) the UCLL Co-location Service;
 - (iv) the Sub-loop UCLL Service;
 - (v) the Sub-loop Co-location Service; and
 - (vi) the Sub-loop Backhaul Service;
- (b) will supply the UBA Service in a bundle with an analogue Local Access and Calling Service; and
- (c) may evidence compliance or non-compliance with the Equivalence requirement in clause 6.1 in relation to the price of UBA without POTS by the standards set out in Schedule 2.

7.2 For the avoidance of doubt, Chorus is not required to use any of the services set out in clause 7.1(a) as an input to UBA with POTS.

8 **Supply of service**

8.1 Subject to clause 7.1(b), nothing in these Undertakings requires Chorus to provide Access Seekers with a service.

Chorus may be required to provide a Relevant Service under a determination made under Part 2 of the Act or a registered undertaking given by Chorus under the Act. This Undertaking regulates certain aspects of how those services are supplied but does not impose the obligation to supply. The one exception is clause 7.1(b), where this Undertaking imposes the obligation on Chorus to supply the UBA Service in a bundle with an analogue Local Access and Calling Service.

8.2 On and from the Commencement Date, where Chorus offers and provides EOI Input Services or Relevant Services to Access Seekers, it must do so in accordance with these Undertakings.

8.3 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.

8.4 Chorus will comply with the line of business restrictions set out in sections 69O and 69S of the Act.

- 8.5 Without limiting clause 8.4, 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 8.5 does not prevent Chorus from supplying PSTN-based services in that manner.

9 Self reporting, complaints and investigation

- 9.1 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.
- 9.2 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.
- 9.3 Where the Commission requests information under clause 9.2, 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.

10 Certification

- 10.1 No later than 20 Working Days following the end of each Chorus financial year the Board of Chorus must certify to the Commission annually on behalf of Chorus that, to the best of the directors' knowledge after making reasonable inquiry, Chorus has complied with these Undertakings (except for any breaches that have been reported to the Commission or are reported with the certificate).

11 Commercial Information

- 11.1 Chorus will disclose Commercial Information relating to EOI Input Services to Access Seekers in accordance with Equivalence.
- 11.2 For the purposes of these Undertakings, information is not “provided” or “disclosed” by Chorus to ServiceTel where the information is provided to ServiceTel in accordance with an arm’s length Sharing Arrangement.

Immediately following structural separation Chorus and ServiceTel will be sharing some systems subject to arm’s length sharing arrangements supervised by the Commission. Systems sharing may necessitate certain ServiceTel personnel having access to Commercial Information or Access Seeker Confidential Information. Where this is the case such access will be subject to strict controls and confidentiality obligations as set out in the applicable Sharing Arrangement.

12 Confidentiality

- 12.1 Where the Commission has accepted an application from an Access Seeker in accordance with clause 12.3, at any time when Relevant Services are supplied to an Access Seeker the following provisions shall apply to the supply of those Relevant Services:
- (a) Chorus will keep all Access Seeker Confidential Information in confidence and will not disclose Access Seeker Confidential Information to any third party other than as necessary for the provision of the Relevant Services to that Access Seeker.
 - (b) Chorus will not use the Access Seeker Confidential Information for sales or marketing purposes.
 - (c) Chorus will make and enforce internal rules and policies to ensure compliance with the obligation in this clause 12.1.
 - (d) a disclosure of Access Seeker Confidential Information will not constitute a breach of these Undertakings where it is:
 - (i) in confidence, to an emergency organisation that reasonably needs that information;
 - (ii) properly made pursuant to a relevant legal or regulatory obligation;
 - (iii) to the Commission;
 - (iv) in confidence to CFH as required by a written agreement between Chorus and CFH that has been disclosed to the Commission;
 - (v) properly and reasonably made to a court.

- (e) A disclosure or use of Access Seeker Confidential Information will not constitute a breach of these Undertakings where and to the extent that such disclosure or use is authorised by the Access Seeker.

12.2 In these Undertakings *Access Seeker Confidential Information* means any information that:

- (a) an Access Seeker provides to Chorus in relation to the provision of a Relevant Service; or
- (b) Chorus otherwise holds or obtains in relation to the provision of a Relevant Service to an Access Seeker,

that is by its nature confidential or proprietary, is disclosed in confidence or which Chorus knows or ought reasonably to know is confidential to that Access Seeker, or that concerns a person that is, or intends to become, a customer or End User of that Access Seeker; but does not include:

- (c) information that was publicly available or known to Chorus at the time of receipt, or that becomes publicly available other than as a result of a breach of confidentiality;
- (d) information that was obtained by Chorus from sources that are independent of the Access Seeker;
- (e) information that is required to be disclosed by Chorus by law;
- (f) information, or types of information, that Chorus and the Commission agree is not Access Seeker Confidential Information; and
- (g) information, or types of information, that an Access Seeker agrees is not Access Seeker Confidential Information.

12.3 Clause 12.1 does not apply to the supply of Relevant Services:

- (a) pursuant to a Standard Terms Determination;
- (b) under a commercial arrangement with an Access Seeker for the supply of Relevant Services that contains appropriate protections for confidential information belonging to Access Seekers which are consistent with standard industry practice, unless:
 - (i) the Access Seeker applies to the Commission in writing for the application of clause 12.1 and
 - (ii) the Commission agrees that it is appropriate that clause 12.1 apply instead of the commercial arrangement

in which case the provisions of clause 12.1 will apply in substitution for the confidential information protections in the commercial agreement and those terms are of no effect.

13 Breach of these Undertakings

13.1 These Undertakings will be enforced in accordance with section 69XG of the Act.

14 Internal compliance and audit

14.1 Chorus will not later than 2 months after the Commencement Date:

- (a) prepare a code of conduct for Employees in relation to these Undertakings (or include matters relating to these Undertakings in a wider Employee code of conduct);
- (b) ensure that a copy of the code of conduct is available on Chorus' intranet and internet sites;
- (c) provide annual training on these Undertakings for all Employees; and
- (d) conduct an annual survey to assess Employee awareness of these Undertakings.

14.2 Chorus will not later than 3 months after the Commencement Date provide to the Commission a draft information control policy, and following consultation with the Commission implement an agreed information control policy that sets out what is required of Employees in order to comply with:

- (a) the relevant confidentiality obligations contained in commercial arrangements in place with Access Seekers for the supply of Relevant Services; and
- (b) the restrictions on the use of Commercial Information relating to EOI Input Services set out in clause 11.

14.3 The information control policy required by clause 14.2 will include:

- (a) a description of the purpose of the policy;
- (b) a description of consequences of breach of these Undertakings;
- (c) the training and communication that will occur within Chorus;
- (d) rules on disclosure, use and access to Commercial Information relating to EOI Input Services;

- (e) specific rules on information disclosure, use and access for persons in roles that have multiple functions; and
 - (f) handling and storage of confidential information belonging to Access Seekers.
- 14.4 Chorus will develop within 6 months of the Commencement Date, in consultation with the Commission and Access Seekers, key performance indicators by which it may be judged whether Chorus is complying with clauses 5 to 8 (inclusive) of these Undertakings.
- 14.5 Every 3 months after the Commencement Date, Chorus will:
- (a) publish a report on the key performance indicators developed in accordance with clause 14.4; and
 - (b) survey Access Seekers on whether they are aware of any non-compliance with clauses 5 to 12 (inclusive).
- 14.6 For the avoidance of doubt, Chorus can publish additional key performance indicators at any time.
- 14.7 Chorus will conduct internal audits of:
- (a) the effectiveness of the information control policy required under clause 14.2 to address Chorus' confidentiality and Commercial Information obligations and this may include controls or methodologies, where appropriate, to measure the effectiveness of the policy; and
 - (b) the controls and methodology used to measure and report on the key performance indicators required under clause 14.5(a),
- every six months in the first year after the Commencement Date and annually thereafter.
- 14.8 The Commission may request a copy of any audit report prepared under clause 14.7. The Commission will treat the audit report as commercially confidential, and will not disclose the audit report.
- 14.9 Chorus and the Commission will hold quarterly meetings for the purpose of discussing Chorus' compliance with these Undertakings.

15 **Force Majeure**

- 15.1 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.

15.2 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.

15.3 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.

16 **Miscellaneous**

- 16.1 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.
- 16.2 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.

17 **Sharing Arrangements Transition Plan**

- 17.1 No later than 12 months following the Commencement Date, Chorus will prepare a Sharing Arrangements Transition Plan and provide a copy of that Sharing Arrangements Transition Plan to the Minister.
- 17.2 The Sharing Arrangements Transition Plan will identify key Sharing Arrangements and will set out for each key Sharing Arrangement:
- (a) a description of the actions required to move to ending the Sharing Arrangement without imposing significant and unreasonable costs on Chorus;
 - (b) time frames for the actions described in paragraph (a);
 - (c) the trigger points and dependencies (commercial, technological or otherwise) for meeting the time frames described in paragraph (b); and
 - (d) the actions described in paragraph (a) that are currently underway and/or planned for the next 12 months, if any.
- 17.3 The Minister may, at any time within 60 Working Days of the date on which the Sharing Arrangements Transition Plan is provided to the Minister in accordance with clause 17.1, give notice to Chorus setting out that, in the Minister's view, the Sharing Arrangements Transition Plan:
- (a) does not contain all the information set out in clause 17.2; and/or
 - (b) is not reasonable in light of the information provided in clause 17.2; and/or
 - (c) does not appropriately prioritise Sharing Arrangements relating to next generation services,
- and giving detailed reasons for that view.

17.4 If the Minister gives notice to Chorus under clause 17.3, then Chorus must produce a revised Sharing Arrangements Transition Plan and provide a copy of that Sharing Arrangements Transition Plan to the Minister not later than 40 Working Days after the Minister notifies Chorus of the Minister's view. Clauses 17.2 – 17.4 apply with all necessary modifications to a revised Sharing Arrangements Transition Plan.

17.5 Each year within 1 month of the anniversary date of (as applicable) either:

- (a) if Chorus has not received notice under clause 17.3, the date on which the Sharing Arrangements Transition Plan was provided to the Minister under clause 17.1; or
- (b) if Chorus has received notice under clause 17.3, the date on which Chorus last submitted a revised Sharing Arrangements Transition Plan under clause 17.4,

Chorus will update the Sharing Arrangements Transition Plan and provide a copy of the updated Sharing Arrangements Transition Plan to the Minister. Clauses 17.2 – 17.4 apply with all necessary modifications to an updated Sharing Arrangements Transition Plan.

17.6 Nothing in this clause 17 requires Chorus to put in place fixed milestones or deadlines for transition and the time frames included in the Sharing Arrangements Transition Plan should be flexible and allow for revision by Chorus under clause 17.5 as necessary to avoid imposing significant and unreasonable costs on Chorus.

SCHEDULE 1 – LEGACY INPUT SERVICES

Legacy Input Services

Legacy Input Service	Description
Copper Legacy Bitstream Service	These are legacy copper Layer 2 access and aggregation services to support services such as One Office. They have been superseded by UPC, UPC Lite and HSNS Lite.
Legacy ADSL Service	This is a legacy ADSL service that is similar to UBS but is not consumed in the same manner.
TDM Legacy Service	These are time division multiplexing inputs used in legacy services such as Digital Data Service.

SCHEDULE 2 – ADDITIONAL REQUIREMENTS IN RELATION TO EOI INPUT SERVICES

Clause 6.1 of these Undertakings requires that Chorus deliver the EOI Input Services to the Equivalence standard. Clause 7.1(a) requires that Chorus use certain EOI Input Services as inputs to UBA without POTS. Clause 7.1(c) provides that compliance with the Equivalence requirement in clause 6.1 in relation to the price of UBA without POTS may be evidenced by the matters set out in this Schedule.

- 1.1 Where the UCLL Service or Sub-loop UCLL Service (as applicable) is used as an input to the UBA Service and is subject to the Equivalence standard, Chorus will satisfy its Equivalence obligation in relation to price if Chorus provides the UBA Service at a price equal to the price set out in the Standard Terms Determination for the UBA Service.
- 1.2 If Chorus does not price the UBA Service in accordance with clause 1.1 above, for the purposes of assessing whether the pricing of the UCLL Service or Sub-loop UCLL Service (as applicable) meets the Equivalence standard:
 - (a) it must be assumed that the UBA Service price is built up from the price of the UCLL Service or Sub-loop UCLL Service (as applicable); and
 - (b) Chorus will keep a record of the costs incurred over and above the price of the UCLL Service or Sub-loop UCLL Service (as applicable) when providing the UBA Service, including the costs of individual components.
- 1.3 For the avoidance of doubt the records required to be kept by Chorus under clause 1.2(b) of this Schedule 2 do not constitute a “written arrangement” for the purposes of clause 3.4(a)(i).