

Murray Findlay
Network Tasman Limited
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Nelson

Via email: murray.findlay@networktasman.co.nz

1 May 2012

Dear Murray

RBI Services
Introduction

1. Chorus and Network Tasman intend to enter into the UFB Services Agreement. Network Tasman also wishes to purchase Rural Telecommunications Services (RBI Services) from Chorus. Chorus is currently finalising its contracts for RBI Services. This letter covers:
 - a. Variations to the UFB Services Agreement; and
 - b. The terms on which Network Tasman may purchase certain RBI Services from Chorus until the parties sign RBI Terms.
2. The parties acknowledge that this letter constitutes a variation to a Reference Offer for the purpose of clause 8 of the Chorus Limited Deed of Open Access Undertakings for Fibre Services and this letter will accordingly be published on Chorus' website.

UFB Services Agreement
Migration

3. Chorus' Reference Offer (**Reference Offer 1**) for the provision of fibre based services, developed as part of the Network Infrastructure Project Agreement with Crown Fibre Holdings, is published at www.chorus.co.nz/ufbervices. Prior to the publication of Reference Offer 1 there was a significant amount of industry consultation on the content of the documents but we agreed that we would continue to consult in good faith on any outstanding issues. This consultation is continuing at present and we acknowledge that Network Tasman will need to migrate from Reference Offer 1 to any new Reference Offer that contains different terms.
4. Consistent with our non-discrimination obligations we commit to ensuring a seamless migration to any new Reference Offer if Network Tasman requests to take up any new offer. This would include transferring all services from any existing terms to the new Reference Offer. Chorus will for example continue any minimum service terms for services from the old agreement to the new agreement to avoid the Service Provider incurring early termination charges as a result of the migration to the new Reference Offer.

End User Terms Requirements

5. The UFB Services Agreement contains clauses requiring Service Providers to ensure that End Users agree to be bound to Chorus' End User Terms. Chorus has developed these clauses and the End User Terms themselves with industry involvement through the Telecommunications Carrier Forum. The terms and the EUTs have largely been agreed however there are still some matters outstanding. Consistent with our non-discrimination obligations Chorus will ensure that:
- a. The final version of the operative End User clauses in the Chorus Agreements as agreed between Chorus and the industry shall be the version that is deemed to apply as between Network Tasman and Chorus;
 - b. The final wording of the Business and Residential End User Terms resulting from the current industry discussions in the TCF between Chorus and the industry shall be the wording that is deemed to apply as between Network Tasman and Chorus;
 - c. Chorus will allow Network Tasman a reasonable period of time (approx 4- 6 weeks) following the finalisation of the wording referred to in (a) and (b) above to comply with its obligations in the Chorus Agreements in relation to End User Terms.

Indemnity

6. Clause 17.3 of the General Terms of Reference Offer 1 provides:

17.3 Service Provider indemnity:

(a) The Service Provider will, subject to clause 17.3(b), indemnify the LFC (including its personnel, contractors, agents and representatives) against:

(i) any loss of, or damage to, tangible property (to the extent only of the LFC's loss, including arising from any third party claims) arising as a direct result of any wilful or negligent act or omission of the Service Provider or any contractor or agent of the Service Provider; or

(ii) any claim by any Reseller or End User relating to any services dependent on a Service, except where that claim is a direct result of any wilful or negligent act or omission of the LFC or any contractor or agent of the LFC.

(b) The aggregate liability of the Service Provider for all costs, damages and losses arising under or in connection with clause 17.3(a) is limited to \$50,000,000.

7. This clause has been the subject of negotiation with the industry. Subject to paragraph 8, Chorus agrees that for the purposes of this letter, clause 17.3(b) should be deleted and replaced with the following:

- b. The aggregate liability of the Service Provider during the Term for all costs, damages and losses arising under or in connection with clause 17.3(a)(i) and

(ii) is limited to for acts or omissions giving rise to loss or damage relating to any Service (or any addition to or replacement of that Service), a maximum of \$2,000,000 per Service.

8. Network Tasman does not currently intend to take the Central Office and POI Co-location service. In the event that Network Tasman wishes to take these services, the parties will apply the then prevailing aggregate liability cap for those services under clause 17.3 of the General Terms for Reference Offer 1 (or its equivalent).

General

9. Except to the extent expressly modified by this letter, the terms of Reference Offer 1 will apply in full to the supply of the services to Network Tasman under those agreements. Please countersign this letter to signify your agreement to the terms outlined in this letter.

RBI Services

10. The RBI Services are based on Chorus services delivered under a number of different contracts or STDs, for example the fibre services are based on UFB Services, which are sold under the UFB Services Agreement, the co-location services are based on the UCLL Co-location and Sub-loop Co-location, which are provided under Standard Terms Determinations and the Rural Wholesale VDSL2 service is based on Chorus' VDSL2 Service offered in urban areas, which is sold under Chorus' WCSA. In order to take RBI Services, a Service Provider will need to sign these contracts (or become an Access Seeker under the relevant Standard Terms Determinations) *and* sign RBI Terms, which will detail any differences.

11. Network Tasman wishes to take the following services for provision to services to schools at this time:

- a. UFB Handover Connection (which is provided under the UFB Services Agreement); and
- b. RBI Fibre Bitstream Service for Priority Users (Specified Layer 2 Service), which is the RBI Services variant of Bitstream 3a (**Education 3**).

12. Chorus is not obliged to make Education 3 available until it makes UFB Bitstream 3a available, or 1 July 2012 (whichever is the earlier) (**General Availability Date**). In the interim, Chorus will provide the Premium RBI Fibre Bitstream Service for Priority Users as a substitute (**Substitute Service**). The price for the Substitute Service will be the same as Education 3, namely:

- a. the Basic Monthly Price will be \$150.00 (plus GST) per month; and
- b. the Installation Price will be \$150.00 (plus GST); and
- c. the Ancillary Charges will be determined by Chorus from time to time.

13. With effect from the General Availability Date Chorus will be entitled to migrate customers from the Substitute Service to Education 3, provided Chorus does so at no cost to Network Tasman.

14. The pricing in paragraph 11 applies only in respect of services to schools.

15. The terms applying to the Substitute Service are as follows:

- a. Service Description for UFB Bitstream 4, except that the handover point will be the parent RPOP at Nelson.
- b. Operations Manual for UFB Bitstream Services.
- c. Service Levels: Appendix A of this letter.
- d. Availability: Chorus is only required to make the Substitute Service available to support the delivery of services to Priority Users over School Connections, Wireless CBDP Backhaul Connections, and/ or Hospital Connections (as the case may be) that have been Deployed under the Rural Broadband Agreement between the Crown and Chorus dated 20 April 2011 (**RBA**). Chorus will provide information to Network Tasman on request about whether the Substitute Service is available at a particular school.


General

16. The parts of this letter dealing with the UFB Services Agreement will terminate when Network Tasman is migrated to the next version of the Reference Offer.

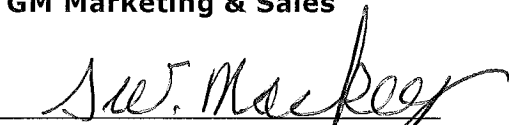
17. The parts of this letter dealing with the RBI Services will terminate when the parties execute the RBI Terms.

18. Please countersign this letter to signify your agreement to the terms outlined in this letter.

Yours sincerely



Victoria Crone
GM Marketing & Sales



Name:
Authorised Representative,
Network Tasman

Appendix A

Service Level Terms for layer 2 RBI Fibre Services

Part 1: Availability and Traffic

1 Layer 2 Service Availability

The Applicable Layer 2 Service between the ONT port and the 1st Data Switch (including the Hand-over port, but excluding any Layer 1 Service) must meet the following minimum Service Level (excluding Downtime directly caused by Force Majeure Events):

- **Service Level**

Maximum Downtime for any End User in each Availability Period that is caused by a fault in the Applicable Layer 2 Service must be less than or equal to 12 hours (excluding Downtime caused by an ONT failure).

- **Definition**

Maximum Downtime means the sum of the Downtime experienced by the End User in the Availability Period that is caused by a fault in the Applicable Layer 2 Service.

- **Exclusion**

This Layer 2 Service Availability Service Level measures Layer 2 Service availability only. Downtime caused directly by the failure of an underlying Layer 1 Service will not be included in the measurement of this Layer 2 Service Availability Service Level.

2 Layer 2 Traffic

2.1 For each Applicable Layer 2 Service, the End User's traffic must be delivered to the 1st Data Switch within the following Service Levels, measured over each Measurement Interval (as defined below):

Applicable Layer 2 Service	Frame Delay	Frame Delay Variation	Frame Loss
Specified Layer 2 Services (cl. 5(a) and 5(b) of Sch.1)	<p>Fibre-only links High Priority: < 10 ms Low Priority: < 1 s</p> <p>Links with radio bearer High Priority: < 30 ms Low Priority: < 1 s</p>	<p>Fibre-only links High Priority: ≤ 8 ms Low Priority: n/a</p> <p>Links with radio bearer High Priority: < 20 ms Low Priority: n/a</p>	<p>Fibre-only links High Priority: ≤ 0.1% Low Priority: n/a</p> <p>Links with radio bearer High Priority: < 0.1% for 99.8% of each rolling 12 months, and in any case < 1% at all times Low Priority: n/a</p>
RBI Community Fibre Bitstream Service	< 1 s	n/a	n/a

At least 99% of the frames within the Measurement Interval (as defined below) must be within the above Service Levels, otherwise the service is to be considered unavailable for that Measurement Interval.

2.2 In the context of each Applicable Layer 2 Service, the "**Measurement Interval**" referred to in clause 3.1 will be every 15 minutes (24/7), unless and until Chorus makes available a service substantially similar to that Applicable Layer 2 Service pursuant to a UFB Contract, in which case the Measurement Interval for that Applicable Layer 2 Service will be the same as the equivalent measurement interval for the frame loss, jitter and frame delay service levels for that substantially similar service.

3 **Service Level Exclusions**

3.1 Subject to clause 4.2, the impact of the following events and circumstances will be excluded from the calculation of the Service Levels under this Part 1:

- (a) an Service Provider failing to comply with an express obligation under the Terms and Conditions;
- (b) events or circumstances expressly stated in the Operations Manual;
- (c) an Service Provider failing to provide accurate BAU Forecasts in accordance with the Operations Manual;
- (d) of a serious health and safety issue outside of Chorus's control;
- (e) a delay in the provision of materials or information to be supplied by the Service Provider, required to complete the service;
- (f) deliberate or malicious actions of Service Providers which are intended to cause Chorus to be in default of a Service Level;
- (g) acts or omissions of End Users (e.g. delay in the provision of information or materials, hacking or viruses) that prevent Chorus from meeting a Service Level, unless the End User has received Chorus's prior approval for such act or omission.

each a "**Service Impairment**".

3.2 Any Service Level extension under clause 4.1:

- (a) will be limited to the time that the Service Impairment continues to prevent or make illegal Chorus's performance of the applicable Service Level; and
- (b) is subject to Chorus promptly taking all reasonable steps, in accordance with best industry practice, to eliminate or avoid the Service Impairment and mitigate its effect; and
- (c) will not be given to the extent the Service Impairment is caused or contributed to by Chorus or its Subcontractors acts or omissions, the acts or omissions of any supplier of Chorus, or any person within the control or under the responsibility of Chorus.

Part 2: Provisioning and Operational Support

1 Service Levels

The Service Levels in relation to the provisioning and operational support of the RBI Fibre Services are set out in Table 1 below.

2 Standard Lead-Times

The Standard Lead-Times for Orders in relation to the provisioning and operational support of RBI Fibre Services are set out in Table 2 below.

3 Exclusions

3.1 The Service Levels will not apply where:

- (a) a Service Level Default is due to a Force Majeure Event;
- (b) a Service Level Default is a direct result of an Service Provider failing to comply with an express obligation under the Terms and Conditions;
- (c) a Service Level Default is due to an Service Provider failing to provide accurate BAU Forecasts in accordance with the Operations Manual;
- (d) expressly stated in the Operations Manual;
- (e) a Service Level Default is a direct result of:
 - (i) a fault that is the Service Provider's responsibility under the Terms and Conditions; or
 - (ii) anything (including any fault) caused by the telecommunications network or equipment of any third party or the Service Provider's Network or the Service Provider's Equipment;
- (f) a fault is reported and no fault for which Chorus is responsible is detected when the service is tested from end to end;
- (g) a Service Level Default is due to a failure by the Service Provider or its End User to allow access to the premises or equipment when reasonably requested;
- (h) remedying a Service Level Default would result in a material health and safety risk for a Chorus employee or agent, the avoidance of which could not have been realistically predicted by Chorus; or
- (i) agreed between Chorus and the Service Provider.

3.2 Further exclusions or limitations to Chorus's liability in respect of specific Service Levels are set out in Table 1 below. The exclusions and limitations provided in Table 1 are in addition to the general exclusions set out in this section 2 and in no way limit the exclusions set out in this section 2.

3.3 Where Chorus makes a decision that a Service Level Default has not occurred because one or more of the exclusions apply, the details of the exclusion are to be recorded and reported in Chorus's monthly performance report provided in accordance with this Agreement.

4 **Service Provider Forecasts**

Each Service Provider must provide reasonably accurate BAU Forecasts to Chorus in accordance with the procedures and time frames set out in the Operations Manual. The consequences of the Service Provider failing to provide BAU Forecasts or failing to provide reasonably accurate BAU Forecasts will be as set out in the Operations Manual.

5 **Review**

This Part 2 may be changed in accordance with the change mechanism set out in the Terms and Conditions.

6 **Defined Terms**

In this Part 2, words and phrases defined in the Terms and Conditions have the meanings given in the Terms and Conditions, and unless the context requires otherwise:

<i>Business Hours</i>	means 8.00am to 5.00pm on any Working Day.
<i>Consecutive Business Hours</i>	means a number of consecutive hours (including fractions of hours) within Business Hours (where the first Consecutive Business Hour in a Working Day is consecutive to the last Consecutive Business Hour in the preceding Working Day).
<i>Deemed Acceptance Time</i>	means the time which is four Consecutive Business Hours after the Receipt Time of a valid Order. To avoid doubt, an Order may still be rejected notwithstanding a deemed acceptance.
<i>Deliverable</i>	means a "Deliverable" specified in Table 1 below.
<i>Fault Restoration Hours</i>	means 7:00am to 7:00pm, seven days a week and <i>Fault Restoration Hour</i> means one hour within this period.
<i>Receipt Time</i>	means: (a) for Orders that are made using OO&T, the time that the electronic communication containing the Order enters OO&T; or (b) for Orders that are made by email, the time that an Order is received in the Chorus designated inbox for receipt of such Orders, provided that where an Order is received outside Business Hours, the Receipt Time will be the start of the first Business Hour of the following Working Day.
<i>RFS Date</i>	means the date that Chorus completes the provisioning of a service to which a Service Level relates.
<i>Service Level</i>	means a "Service Level" specified in Table 1 below.
<i>Service Level Default</i>	means a failure by Chorus to meet the a Service Level.
<i>Standard Lead-Time</i>	means the time period that it will take Chorus to provision a service supporting an RBI Fibre Service as set out in Table 2 below.
<i>Tolerance Level</i>	means minimum levels of performance of a Service Level for a Deliverable each month, expressed as a percentage in Appendix 1 and Appendix 2.

Truck Roll

means each occurrence on which Chorus physically despatches a field services person to go out and perform exchange or field work in connection with the provisioning of a service supporting the RBI Fibre Service.

Waiter

means an accepted Order which has become a waiter under the applicable Operations Manual.

Part 2, Table 1: Service Levels for Provisioning and Operational Support of RBI Fibre Services

Item No.	Function to which Service Level Relates	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
1	New Connection Relinquishment Handover Connection	Order acknowledgement	Chorus will acknowledge receipt of each Order	Provide acknowledgment of receipt of each Order to the Service Provider within 4 Consecutive Business Hours following the Receipt Time	99%	
2	New Connection Relinquishment Handover Connection	Notification of rejection	Chorus will reject invalid Orders by returning the appropriate code to the Service Provider	Provide notification of the rejection to the Service Provider within 4 Consecutive Business Hours following the Receipt Time	90%	This Service Level will not apply where prequalification for an Order requires an action to be undertaken manually.
3	New Connection Relinquishment	Notification of expected RFS Date	Chorus will notify the Service Provider of expected RFS Date of the Order ¹	Provide notification of the expected RFS Date to the Service Provider within 4 Consecutive Business Hours of the Deemed Acceptance Time	90%	This Service Level will not apply where an Order is a Waiter

¹ The notified expected RFS Date must be within the Standard Lead-Time, except where otherwise agreed between Chorus and the Service Provider.

Item No.	Function to which Service Level Relates	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
4	Handover Connection	Notification of expected RFS Date ²	Chorus will notify Service Provider of expected RFS Date of the Order or confirmation of when Chorus will provide notification of expected RFS Date	Provide notification of the expected RFS Date, or provide confirmation of when Chorus will be in a position to provide notification of the expected RFS Date, to the Service Provider within 4 Consecutive Business Hours of the Deemed Acceptance Time	90%	
5	New Connection Relinquishment Handover Connection	Order is completed right first time	Chorus will complete the Order without fault	No faults in work carried out to provision the Order to occur within 5 Working Days of confirmation by Chorus of completion	90% (for each function)	The fault must be a fault: <ul style="list-style-type: none"> • for which Chorus is responsible; • that has been reported to Chorus within 5 Working Days of confirmation by Chorus of completion of the Order; and • that is found and required to be fixed (it is not a "No Fault Found")

² The notified expected RFS Date must be within the Standard Lead-Time, except where otherwise agreed between Chorus and the Access Seeker.

Item No.	Function to which Service Level Relates	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
6	New Connection	Meet notified expected RFS Date for the relevant RBI Fibre Service	Chorus will complete the Order by the notified expected RFS Date	Complete the Order by the notified expected RFS Date	90% (for each function)	Where Chorus extends a previously notified RFS Date (other than as a result of an Service Provider's or an Service Provider's Customer's request to do so), this is considered a failure of this Service Level
7	Relinquishment Handover Connection	Meet notified expected RFS Date ³	Chorus will complete the Order by the notified expected RFS Date	Complete the Order by the notified expected RFS Date	90%	Where Chorus extends a previously notified RFS Date (other than as a result of an Service Provider's or an Service Provider's Customer's request to do so), this is considered a failure of this Service Level
8	New Connection Relinquishment Handover Connection	Pre-qualification Acknowledgement	Chorus will acknowledge receipt of Pre-qualification Order	Complete the acknowledgement of receipt within 4 consecutive Business Hours following the receipt of the Order	90%	

³ The notified expected RFS Date must be within the Standard Lead-Time, except where otherwise agreed between Chorus and the Service Provider.

Item No.	Function to which Service Level Relates	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
9	New Connection Relinquishment Handover Connection	Pre-qualification Order Completion	Chorus will complete the Pre-qualification Order and return the required information to the Service Provider	Complete the Pre-qualification Order and return the required information to the Service Provider within: <ul style="list-style-type: none"> for automated Pre-qualification, 4 consecutive Business Hours following receipt of the Order for a special manual Pre-qualification investigation, 6 Working Days following receipt of the Order. 	90%	
10	New Connection Relinquishment Handover Connection	Change to RFS Date	Chorus will provide notification of RFS Date change	Provide notification of the change of RFS Date to the Service Provider within 4 Consecutive Business Hours of receipt of the request to change an existing Order (provided that the request is received at least 1 Working Day prior to the notified RFS Date)	90%	
11	New Connection Relinquishment Handover Connection	Confirmation of completion	Chorus will provide the Service Provider with confirmation of completion of the Order	Provide confirmation of completion of the Order to the Service Provider within 4 Consecutive Business Hours after the Order has been completed	90%	

Item No.	Function to which Service Level Relates	Service Attribute	Deliverable	Service Level	Tolerance Level	Exclusions
12	RBI Fibre Service	Notification of Planned Outages	Chorus will advise of Planned Outages	Advise at least 5 Working Days before Planned Outage occurs	90%	Chorus will use all reasonable endeavours to schedule Planned Outages between the hours of 11:00pm and 6:00am
13	RBI Fibre Service	Notification of Unplanned Outages	Chorus will advise of Unplanned Outages	Advise within 2 hours, 24 hours a day, seven days a week, of Chorus discovering or receiving notification of the Unplanned Outage	90%	
14	RBI Fibre Service	Fault report receipt acknowledgement	Chorus will acknowledge receipt of each fault report	Provide report receipt acknowledgement within half a Fault Restoration Hour of the fault being reported ⁴	90%	This Service level does not apply where an invalid fault report has been submitted.

⁴ If a fault is logged outside Fault Restoration Hours, for the purposes of this Service Level, the report will be deemed to have been received at 7.00am the following day.