

## Terms and Conditions

This New Property Development Contract (**NPD Contract**) comprises of the cover page, these terms and conditions and the [Policies](#) and, other than those provisions expressed to survive expiry or termination, will expire 12 months after completion of the Services by Chorus. Terms used but not defined in this NPD Contract will have the meanings contained in the Policies.

### Ordering Portal

1. A quote will be generated based on the information you supply in the portal relating to your development (**Development Scope**). You are solely responsible for any errors or omissions relating to the Development Scope. Chorus accepts no liability for any additional activities or services outside of the Development Scope.
2. Chorus will provide a quote based on the Development Scope for all design work, installation work and record updates Chorus will provide to you (**Services**).

### Quote

3. Any quote will be valid for 90 days from the date it is issued (**Quotation Period**). Upon expiry of the Quotation Period without acceptance by you and payment of the Charges, the quote will expire and be incapable of acceptance.
4. Prior to your acceptance of the quote, Chorus may alter the quote at any time if circumstances change beyond Chorus' reasonable control or you change the Development Scope. If you wish to change the Development Scope after your acceptance of a quote, the amendment process described in clause 8 below will apply.

### Acceptance

5. If you wish to accept a quote you must communicate acceptance via the portal and pay the Charges within the Quotation Period. Once you have accepted the quote and paid the Charges within the Quotation Period, Chorus will proceed with your order (**Order**). If you do not pay the Charges within the Quotation Period your NPD Contract may be cancelled by us at our discretion. To restart the process you will need to begin the quotation process and accept the NPD Contract again.
6. Once created an Order can only be terminated in accordance with the terms of this NPD Contract.
7. If you are placing an Order on behalf of another party, you warrant that you are authorised to bind the relevant party to the terms of this NPD Contract and have all necessary authorities, powers and consents to act and contract with Chorus for the Services on behalf of that party.

### Amendment to Order

8. Once an Order has been created, if you wish to amend the Order you must submit a written request to Chorus. Chorus will consider your request and respond with any changes to the current Order and may put your current Order on hold. If you accept these changes and pay any required Charges within 30 days, the Order will be amended. If you do not accept the amendment and pay any required Charges within the 30-day period, then the Development Scope will remain unchanged, the amendment may be cancelled by us at our discretion, and/or you may exercise any agreed termination rights under clause 24.
9. Chorus may amend an Order if:
  - a. You have not started to install the materials within 12 months of acceptance of the quote;
  - b. There is a change in any plans you provide or the Development Scope or there is a change in legal ownership of the Site;
  - c. Any additional services or costs are incurred for the relocation of any Chorus network equipment or infrastructure;

- d. There are additional third-party requirements to complete the Services that were not known at the time the Order was processed; and/or
- e. There are any third-party objections which prevent or hinder the delivery of the Services or the withholding of third-party consents required to deliver the Services, that cannot be resolved within a reasonable time.

Alternatively, where Chorus has a right to exercise its amendment rights under this clause, it may instead terminate this NPD Contract on 30 days' notice provided Chorus is not in breach of this NPD Contract.

### Payment of Chorus charges

10. Payment of the Charges set out in a quote (and confirmed in the personalised cover page of your NPD Contract) in full is required before Chorus commences the Services.
11. All Charges are exclusive of GST and any other tax or levies.

### Policies

12. You will comply with all procedures and requirements contained in <https://www.chorus.co.nz/develop-with-chorus/docs/npd-policy> (**Policies**). The Policies protect Chorus' legitimate business interests and are a material term of this NPD Contract which you must follow. The Policies may be updated by Chorus from time to time, as follows:

- a. without further notice to you where Chorus considers, acting reasonably, the update(s) not to be to your detriment; and/or
- b. on at least 30 days' written notice to you where Chorus considers the update(s) to be to your detriment, unless an update to the Policies without such notice is reasonably necessary in order to protect Chorus' legitimate interests.

### Initial Activities

13. You agree to provide us with any plans and documents prescribed in the Policies prior to commencement of the Services.
14. After you have accepted the terms and Chorus has received both full payment of the Charges and the plans we require from you, Chorus will provide confirmation as to whether you will be required to install any infrastructure at the Site.
15. Where the Policies require you to undertake certain work and activities you warrant that you will attend to these promptly. You acknowledge that Chorus will be relieved of its obligations to provide the Services to the extent Chorus is reliant on you carrying out work and activities that you have not done.
16. You must let Chorus know immediately if you become aware of something which might give rise to a change in any of your plans and/or the Development Scope (such as changes in the number of Connections, changes to boundaries or changes to road layouts) or any potential non-compliance with the Network Specifications or any other procedures or requirements contained in the Policies.

### Materials

17. Chorus will supply some of the materials that are required for you to install related to any communal infrastructure. Chorus supplied materials (**Materials**) are as itemised and defined in the Policies. You will be responsible for supplying any additional materials not itemised in the Policies.
18. You will be responsible for any loss or damage to any Materials while they are in your possession. Title in the Materials will remain with Chorus at all times and you will ensure all Materials are clearly identified as Chorus property. You authorise us to enter onto any premises where the Materials are stored and collect any Materials that have not been installed.

## Installation

19. You are responsible for installing the Materials in accordance with the Policies. You will promptly remedy any non-compliant or defective installations in accordance with the Policies. You warrant you will carry out the installation using the degree of skill expected of a competent installer of telecommunications networks.
20. Chorus will:
- a. Build the network to the exterior boundary of the Site; and
  - b. Undertake any additional works so that the Site can be linked to the Chorus network including jointing, testing, and commissioning works as prescribed in the Policies; and
  - c. If you have ordered Pre-Built Fibre, Chorus will also install relevant End User Infrastructure to the relevant premises as defined in the Policies. You agree to grant to Chorus all access rights to the Site and the relevant premises that we require in order to install and maintain any End User Infrastructure.
21. Upon completion of installation, you will provide all required notices and documentation stated in the Policies. Any defects will be remedied in accordance with the Policies.
22. Chorus will issue a clearance letter and link the Site to our network when all the pre-requisites stated in the Policies have been met. Chorus may rescind any clearance letter if it becomes aware that your installation does not meet the Policies, applicable law or regulation and Chorus reserves the right to advise the relevant authority of any revocation or rescission of the clearance letter.

## Termination

23. Either party may on written notice terminate this NPD Contract if the other party:
- a. Has materially breached its obligations under this NPD Contract and if capable of remedy, has not remedied the breach within 30 days of being notified of the breach;
  - b. Purports to assign or otherwise goes into liquidation, has a receiver, administrator, statutory manager, or similar officer appointed; or
  - c. Becomes insolvent, ceases to carry on their business, makes any composition or arrangement with its creditors, or is deemed or perceived unable to pay its debts when they fall due.
24. You may terminate this NPD Contract at any time for any reason (including under clause 8) on 30 days' notice and you must return any Materials in your possession that have not been installed at the date of termination.
25. If this NPD Contract is terminated by Chorus under clauses 9 or 23, or by you under clause 24, we will retain a proportion of the Charges paid by you in order to reimburse Chorus for the following costs it incurs up to the date of termination (**Termination Costs**):
- a. Any costs paid or payable to third parties;
  - b. A fixed cost to recover Chorus' internal costs. The fixed costs will be calculated as follows:
    - i. \$250 if termination occurs prior to completion of the design plan (as defined in the Policies);
    - ii. \$350 if termination occurs after completion of the design plan but before commencement of any Chorus build work; or
    - iii. \$600 if termination occurs after commencement of any Chorus build work; and
  - c. The costs of any Materials that have not been installed at the date of termination and that are not returned to Chorus within 10 days of termination or are returned in a condition which does not allow for the Materials to be reused by Chorus.

26. Termination Costs will not exceed the Charges payable under this NPD Contract but are without prejudice to Chorus' right to recover from you any other amounts you may owe us under this NPD Contract.

### **Liability**

27. Other than liability arising under clause 30, each party's liability for any loss of income, profits, revenue or savings (whether direct or indirect), or any indirect or consequential loss or damages, is excluded.

28. Subject to clause 29, each party's total liability for all losses or damages arising out of or in connection with this NPD Contract, whether in contract, tort (including negligence), equity, or otherwise, will be limited to the greater of \$100,000 or the Charges paid under this NPD Contract.

29. The limitations in clause 28 will not apply to any liability of a party arising out of:

- a. a breach of confidentiality or a party's health and safety obligations;
- a. the fraud or wilful breach of this NPD Contract by a party;
- c. your indemnification obligations under clause 30; or
- d. a failure to pay any amount due and owing under this NPD Contract.

30. You will indemnify and hold harmless Chorus from any loss arising in relation to your failure to comply with clause 19 or 21 of this NPD Contract or any damage you cause to our network. We may put your Order on hold until payment is received for any network damage you cause and/or terminate this NPD Contract under clause 23 in the event of non-payment by you.

### **Force Majeure**

31. Non-performance by either party of its obligations due to an event beyond that party's reasonable control will be excused to the extent that performance is delayed or prevented by that force majeure event. If a force majeure event lasts for more than 60 days Chorus may terminate this NPD Contract.

### **Insurance**

32. You will maintain during the term of this NPD Contract public liability insurance for an amount of not less than \$1,000,000 and Chorus will maintain public liability insurance for an amount of not less than \$10,000,000.

### **Confidentiality**

33. Each party will keep confidential, secure, and not misuse any information received from the other in connection with this NPD Contract (including the contract itself). The disclosure and use of confidential information by either of us is permitted to the extent required by law or to comply with a party's obligations under this NPD Contract. Where required to disclose a party will where practical give prior written notice before disclosure. No written notice is required where confidential information is being disclosed by you to any contractor installing the Materials on your behalf or by Chorus to our service companies.

### **Disputes**

34. Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity, or termination, shall be referred to mediation in the first instance and if not resolved, referred to arbitration in accordance with the Arbitration Act 1996. This will not prevent either party from seeking urgent interlocutory or injunctive relief from a Court.

### **Assignment**

35. You may not assign or novate any of your rights or obligations under this NPD Contract without Chorus' prior written consent (not being unreasonably withheld).

**Precedence**

36. In the event of conflict or inconsistency between any plans you prepare and provide us and the Chorus design plan (as defined in the Policies), the Chorus design plan will take precedence.

**General**

37. Each notice or other communication will be made in writing and brought to the attention of the other party. No notice or communication will be effective until received.

38. In the event that any personal information (as that term is defined in the Privacy Act 2020) about you is disclosed to Chorus under or in relation to this NPD Contract, the use, disclosure and security of, and your access to, that information, will be as set out in our Privacy Policy, which can be found at <https://www.chorus.co.nz/terms-and-conditions/our-privacy-policy>.

39. You warrant you are acquiring the Services as a business in the course of trade and represent you are not a consumer.

40. Other than updates to the Policies as per clause 12 above, any amendment to this NPD Contract must be agreed by both parties and recorded in writing.

41. Clauses 7, 12, 18, 19, 22, 25 to 33 and 45 and the NPD Policies will survive termination or expiry of this NPD Contract.

42. No term or condition of the NPD Contract will be deemed to have been waived in part or in full and no delay, breach or default will be deemed to have been excused in part or in full unless the waiver or excuse is in writing and signed by an authorised representative of the relevant party.

43. Unless you have entered into a separate developer partnership agreement which refers to and incorporates the terms of this NPD Contract, this NPD Contract represents the entire agreement between the parties for the Services and supersedes all prior negotiations, representations, and agreements whether written or oral.

44. Each term in this NPD Contract is separately binding. If for any reason either of us cannot rely on any term then all the other terms remain binding.

45. This NPD Contract is governed by the laws of New Zealand. We both submit to the non-exclusive jurisdiction of the Courts of New Zealand.