



# Subcontractor Agreement

UCG-SA001-129

between

**Universal Communications Group  
NZ Ltd  
NZCN 5042400**

(the "Company")

And

**Fabril Solutions Ltd  
NZCN 6037726**

(the "Subcontractor")

A blue ink signature of the company name, appearing to read "Universal Communications Group NZ Ltd".

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# **Subcontractor Agreement**

## **Schedule 1 – Formal Agreement**

### **Parties**

Universal Communications Group NZ Ltd (NZCN 5042400) (UCG)  
274 Church Street, Onehunga, Auckland 1061  
(Company)

and:

Fabril Solutions Ltd (CN xxx)  
Flat 3, 1a Prangle Avenue, Mangere, Auckland, 2022 , New Zealand  
(Subcontractor)

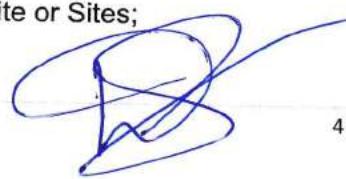
### **Introduction**

- A. This Subcontractor Agreement is a standing offer between the Subcontractor and the Company pursuant to which the parties may enter into individual Work Instructions for the performance of the Works.
- B. The Works under this Subcontractor Agreement are part of the works under the Head Contract between the Company and the Principal.
- C. The Company requires the Works to be undertaken.
- D. The Subcontractor is able to undertake the Works, which will satisfy the Company's requirements.
- E. The Company wishes to engage the Subcontractor who has agreed to complete the Works subject to the following terms and conditions.
- F. The Subcontractor acknowledges that the Company has entered into this Subcontract in reliance on the indemnities, representations, warranties and promises given in this Subcontractor Agreement.

### **Operative Clauses**

#### **1 The Works**

- 1.1 At any time during the Term, the Company may direct the Subcontractor to perform Works by issuing a Work Instruction. A Work Instruction may include one or more of the following:
  - (a) the start date;
  - (b) the Completion Date and any additional completion requirements;
  - (c) a brief description of a Site or Sites;



- (d) a brief description of the Works, including whether design is to be provided;
- (e) any other requirements of the Company.
- 1.2 If the Subcontractor is unable to complete the Works as directed, the Subcontractor must advise the Company in writing within 1 Business Day of receipt of the Work Instruction. Failure to do so will be deemed to be an acceptance by the Subcontractor of the Work Instruction.
- 1.3 Each Work Instruction constitutes a separate legally binding contract between the Company and the Subcontractor to perform and complete the relevant Works on the terms of the relevant Work Instruction and this Subcontractor Agreement.
- 1.4 The Subcontractor must not perform any work, or proceed to do anything, and is not entitled to any payment unless and until the Company issues a Work Instruction.
- 1.5 No Warranty, the Company makes no guarantee or commitment as to the duration, quantity or volume of Works to be given to the Subcontractor.

## 2 Term

This Subcontractor Agreement commences on the Commencement Date and, unless otherwise terminated in accordance with the Subcontractor Agreement, will continue for the Term.

## 3 Remuneration

In consideration for performing the Works in accordance with this Subcontractor Agreement, the Company shall pay the Subcontractor the Fee.

## 4 Contract Documents

4.1 Each Work Instruction constitutes a separate legally binding contract between the Company and the Subcontractor to perform the relevant Works on the terms of the relevant Work Instruction and this Subcontractor Agreement. The agreement between the parties comprises the following documents, which will be interpreted in the following descending order of precedence in the event of any inconsistency between the documents:

- (a) This section (Operative Clauses) of the Subcontractor Agreement
- (b) Schedule 1 – Formal Agreement;
- (c) Schedule 2 – General Conditions;
- (d) Schedule 3 – Special Conditions;
- (e) Schedule 4 – Reference Details;
- (f) Schedule 5 – Brand and Presentation Guidelines
- (g) Schedule 6 – KPI's
- (h) Schedule 7 – Schedule of Rates
- (i) Schedule 8 – Schedule of Rates Code Specifications

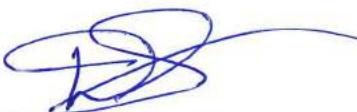


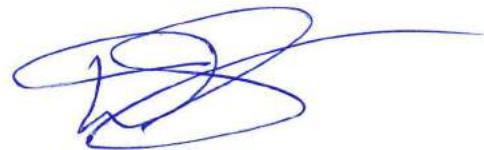
#### 4.2 Entire Agreement

- (a) This Subcontractor Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements, representations, warranties, understandings and communications between the parties in connection with the subject matter.
- (b) Any items or conditions that may have been included in the Subcontractor's tender or offer are deemed to have been withdrawn in favour of the terms and conditions incorporated in this Subcontractor Agreement.
- (c) The terms of this Subcontractor Agreement shall apply to the Works and all works performed by the Subcontractor for the Company now or in the future and unless otherwise agreed in writing.

#### Execution

Signed by the Company (Universal Communications Group NZ Ltd)
Authorised Representative
Dated: / /

Signed by the Subcontractor <i>in accordance with the Companies Act 1993:</i>	
SIDDHARTH DOMA 	
Sole Director / Director	Director / Witness (If Applicable)
Dated: 21/21 2018	Dated: 21/21 2018



## Schedule 2 – General Conditions

### 1 Definitions and Interpretations

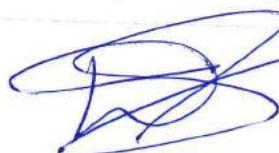
- 1.1 The following words and expressions will have the following meanings respectively:
- (a) **Activity Code(s)** means the relevant codes applicable to all or part of the Works as set out in the **Schedule of Rates**.
  - (b) **Address for Service of Notices** means the address of each Party specified in **Schedule 4 – Reference Details**.
  - (c) **Agreement or Subcontractor Agreement** means this agreement and any attached Schedules or Annexures.
  - (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday in New Zealand.
  - (e) **Claim(s)** means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
  - (f) **Commencement Date** means the date specified in **Schedule 4 – Reference Details**, but if no date is stated it means the day the Subcontractor is first directed by the Company in relation to commencing the Work.
  - (g) **Completion Date** means the date or dates for completion of the Works, or for the completion of a stage or stages of the Works.
  - (h) **Completion Documents** means correctly completed sign-off sheets, meter readings, site survey forms, as-built photographs, quality assurance forms, commissioning documents or any other properly completed documentation required by the Company from time-to-time upon completion of Works (or part thereof).
  - (i) **Confidential Information** of the Company means any information:
    - (i) relating to the business and affairs of the Company;
    - (ii) relating to the Works;
    - (iii) relating to the customers, Personnel or other persons doing business with the Company;
    - (iv) which is by its nature confidential;
    - (v) which is designated as confidential by the Company.
  - (j) **Contract Material** means Existing Contract Material and New Contract Material.
  - (k) **Costs** include costs, charges and expenses, including those incurred in connection with advisers.
  - (l) **Defect** means any defect, shrinkage, fault or omission in the Works, including any aspect of the Works which is not in accordance with the requirements of this Agreement.
  - (m) **Defect Liability Period** means the warranty period defined in **clause 4.1(b)**



- (n) **Drawings** means any drawings for the Works provided to the Subcontractor by the Company and any drawings for the Works approved in writing by the Company for use by the Subcontractor.
- (o) **Existing Contract Material** means any material (including but not limited to software, documentation or data) which is:
- (i) existing at the commencement date of this Agreement; or
  - (ii) produced after the commencement date of this Agreement, independently of this Agreement, and which is or forms part of a deliverable or Works under this Agreement
- (p) **Fee** means the remuneration calculated in accordance with clause 17.
- (q) **GST Act** means the Goods and Services Tax Act 1985
- (r) **Industry Best Practice** means any relevant standards (including Contractor's Quality AS9001: 2008 and OH&S 4801) and policies, procedures and manuals detailed in Schedule 2, practices, methods and procedures generally followed or approved by relevant industries and subcontractors in New Zealand with respect to the Works and that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced subcontractor engaged in similar works or services.
- (s) **Insolvency Act** means the Insolvency Act 2006
- (t) **Insolvency Event** means any of the following events occurring in relation to a Party:
- (i) an encumbrancer, liquidator, receiver, receiver and manager, administrator, official manager, trustee or other controller, or similar official is appointed over any of the property or undertaking of the Party;
  - (ii) the Party or the Party's property or undertaking becomes subject to a proposal, summary instalment order, or no asset procedure under part 5 of the Insolvency Act;
  - (iii) the Party is (or becomes) unable to pay its debts when they are due, or is (or becomes) unable to pay its debts under the law of any applicable jurisdiction in respect of that Party, or is presumed to be insolvent under the law of any applicable jurisdiction in respect of that Party;
  - (iv) the Party ceases or threatens to cease to carry on all or substantially all of its business or dies;
  - (v) an order is made for the liquidation of the Party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the Party, otherwise than for the purpose of an amalgamation or reconstruction previously approved by the other Party in writing (such approval not to be unreasonably withheld);
  - (vi) that Party makes or proposes to make an assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors; or
  - (vii) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (i) to (vi) above happens under the law of any applicable jurisdiction in respect of that Party.



- (u) **Intellectual Property** means all Intellectual Property Rights owned by the Company.
- (v) **Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.
- (w) **KPIs** means the key performance indicators for Services specified in Schedule 6 – KPI's
- (x) **Laws mean** means any law, including rules of common law, principles of equity, statutes, regulations, bylaws (including Local Authority bylaws), ordinances, subordinate legislation, proclamations, rules, regulatory principles and requirements, and statutory rules of any lawful authority in force from time to time; and includes any binding court order, judgment or decree; and includes any applicable industry code or standard enforceable by law (including, to avoid doubt, the NZUAG Code, the MUC Code, the Building Code or any amendment or replacement of those codes).
- (y) **New Contract Material** means any material (including software, documentation or data) created, written or otherwise brought into existence by or on behalf of the Subcontractor in the course of performing the Works, and which forms part of the Works or a deliverable under the Agreement, and in which subsists newly created Intellectual Property Rights, but specifically excludes:
  - (i) any software tools, object libraries or methodologies created or enhanced by the Subcontractor during the performance of the Agreement; and
  - (ii) Existing Contract Material.
- (z) **Non-Conformance** means any Defect arising from:
  - (i) Subcontractor's performance or non-performance of the Works or its obligations under or the requirements of this Agreement (including relating to workmanship, quality and reinstatement of any property); or
  - (ii) Any deviation from or failure to comply with, with the relevant Technical Specification documents in the course of the provision and performance of the Works.
- (aa) **Party or Parties** means the party or parties to this Agreement.
- (bb) **Personnel** means any officer, employee, agent, contractor or representative of a Party.
- (cc) **Principal** means the party identified in **Schedule 4 – Reference Details, Chorus New Zealand Limited (Chorus)**.
- (dd) **Rates** means the applicable rates referred to in Schedule of Rates.
- (ee) **Schedule or Schedules** means the schedule or schedules attached to and forming part of this Agreement.
- (ff) **Schedule of Rates** means the schedule of the Company's rates for remuneration that must be mutually agreed upon between the Parties prior to the commencement of Works under the Agreement. These Schedule of

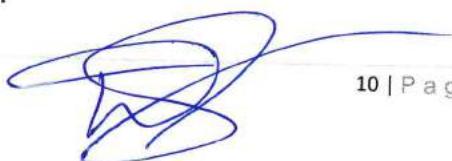


Rates include Labour, Material, Consumables, Equipment, Overheads and Profit. **Schedule 7 – Schedule of Rates**

- (gg) **Site** means the land and places described in a Work Instruction and any other land or places to which the Subcontractor requires access in order to perform its obligations under this Subcontract Agreement.
- (hh) **Subcontractor** means the party to this agreement referred to as the subcontractor and where not repugnant to the context includes the Subcontractor's Personnel or its agents.
- (ii) **Subcontractor's Personnel** means any employee or agent of the Subcontractor who undertakes the Works pursuant to an agreement with the Subcontractor.
- (jj) **Subcontractor Material** means any material provided by or to which access is given by the Subcontractor to the Company for the purposes of this Agreement, including documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.
- (kk) **Subcontractor's Activities** means all tasks or things which the Subcontractor is required to do to carry out and complete under this Subcontractor Agreement.
- (ll) **Supplied Materials** means any free issue material provided by the Principle or the Company which is intended for the purposes of the Works and is to be installed by the Subcontractor.
- (mm) **Tax Invoice** has the meaning given to that term in the GST Act.
- (nn) **Technician Information Pack** means the package of documentation provided to the Subcontractor on or about the Commencement Date.
- (oo) **Technical Specification** means any technical specification given by the Company to the Subcontractor for the Works.
- (pp) **Term** means, subject to earlier termination of this Agreement in accordance with clause 25, the period stated in **Schedule 4 – Reference Details** or if a period is not provided, then from the Commencement Date until termination in accordance with clause 25.
- (qq) **Termination Notice Period** means the notice period specified in clause 25 (if any).
- (rr) **UCG or Company** means Universal Communications Group NZ Ltd.
- (ss) **Work Instruction** means an order issued by UCG that refers to the Subcontract Agreement and, amongst other things, identifies the Works that the Subcontractor is required to complete, the Site on which it is to be undertaken, the Completion Date.
- (tt) **Works** mean the work and services to be performed by the Subcontractor pursuant to the Schedule of Rates and, if applicable, any subsequent varied or additional works to be performed by the Subcontractor set out and agreed to by the parties in the form of the Schedule of Rates or amended Schedule of Rates or otherwise agreed in writing.

**1.2 Unless the contrary intention appears or the context otherwise requires or admits:**

- (a) Words importing the singular will include the plural and words importing one gender will include the other genders.



- (b) A reference to a person includes a natural person, body corporate, association, governmental authority or other entity.
- (c) A reference to party or parties means the parties to this Agreement and includes the party's executors, administrators, successors and permitted assigns and substitutes.
- (d) Headings are for convenience of reference only and will not affect the construction or interpretation of the provisions of this Agreement.
- (e) A reference to a clause will be to the clauses of this Agreement.
- (f) Any agreement, representation, warranty or indemnity by two or more parties (including when two or more persons are included in the same defined term) binds them jointly and severally.
- (g) Any agreement, representation, warranty or indemnity in favour of two or more parties (including when two or more persons are included in the same defined term) is for the benefit of them jointly and severally.
- (h) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (i) A reference to NZ\$, \$NZ, dollar or \$ is to New Zealand currency.
- (j) In the event of any inconsistency between the provisions of this Agreement and the provisions of any other document executed pursuant to this Agreement, the provisions of this Agreement will prevail.
- (k) If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.
- (l) The use of the word "include" or its derivative forms shall not imply any limitation.
- (m) Any covenant (whether express or implied) by a party to this Agreement not to do or omit any act shall be deemed to extend to an obligation not to permit any third party to do or to omit the same.
- (n) A reference to a period of days is inclusive of public holidays and weekends and a period of months is a reference to calendar month.

## 2 The Subcontractor's Obligations

### 2.1 The Subcontractor must:

- (a) complete the Works:
  - (i) given to it from time-to-time by the Company;
  - (ii) exercising reasonable care, skill and diligence and to the best of its knowledge and expertise;
  - (iii) in a thorough and professional manner in accordance with:
    - A. all Laws including all applicable safety, health and environmental laws and Industry Best Practice;
    - B. any additional obligations or requirements imposed by the Principal;
    - C. the Company's local community relations requirements, which relate to the transport of things to and from the



- customer premises and the parking of vehicles on or adjacent to the property;
- D. all operations, health, safety and environment guidelines, rules and procedures, and management plans provided to the Subcontractor by the Company, including attendance at Company safety induction courses, ongoing Safety Meetings, supply and use of appropriate personal protective equipment and working in accordance with safe working procedures;
- (iv) by the Completion Date, unless otherwise agreed in writing by the Company;
- (b) ensure to the satisfaction of the Company that the Subcontractor's Personnel who perform the Works:
- (i) are experienced, competent and fit to perform the work and hold appropriate license's and certificates;
- (ii) have been verified as competent for all dangerous tasks that may be encountered whilst performing the Works;
- (iii) have completed and passed project specific safety inductions;
- (iv) are eligible to lawfully work in New Zealand by virtue of being an Australian or New Zealand citizen, or the holder of a valid visa that allows the person to lawfully work;
- (v) For the sake of clarity, illegal workers must not work for the Subcontractor when performing works for the Company. The Subcontractor must take reasonable steps to ensure they validate the work rights of all its workers at regular suitable intervals.
- (vi) where engaged by the Subcontractor as an employee, are remunerated and receive employment conditions which meet the minimum standards of the Laws, including any industrial awards where applicable;
- (vii) where engaged by the Subcontractor as a subcontractor, are remunerated in accordance to the relevant written agreement between the two parties (noting the Company must approve any subcontractor relationship the Subcontractor enters into in order to complete the Works);
- (viii) complete the Works in accordance with **clause 2.1**;
- (ix) the subcontractor agrees that no unpaid labour or volunteer schemes will be used to provide works or services in regard to this agreement, UCG Works or on the Chorus network/Works.
- (c) in compliance with any operating processes and procedures requested by the Company and the Company's directors;
- (d) not deal directly with or comply with the directions of any person other than an authorised representative of the Company, as advised by the Company, who shall not be liable to pay for any work directed by a person who is not an authorised representative of the Company;
- (e) provide to the Company a list, which must remain current at all times, of all the Subcontractor's Personnel and must immediately notify the Company once any Personnel ceases to work for the Subcontractor;

- (f) if required and notified by the Company in writing, cease to permit any Subcontractor's Personnel engaged by it to carry out any of the Works.
- (g) consult with the Company and provide to the Company such information as the Company may request including (without being limited to) refining the Works to reduce the cost, or forecasts (including for Supplied Material);
- (h) immediately notify the Company in writing on becoming aware of any material problem in relation to carrying out the Work or which will or is likely to affect the design, build, cost or quality of the project of which the Works form part;
- (i) comply with any head contract or any part disclosed by the Company to the Subcontractor, including (but without being limited to) any service levels, objectives, statement of works, record keeping, payment requirements, branding requirements and handling of Supplied Materials. Those terms will have priority over any other term in this Agreement with the event of a conflict or ambiguity;
- (j) Not commit an Insolvency Event.

### **3 Health and Safety**

- 3.1** The Subcontractor must maintain safe and healthy work practices and conditions. The Subcontractor must promptly comply with all reasonable health and safety requirements of the Company, and any safety-related instruction given by the Company. The Subcontractor must comply with all applicable health and safety statutes and regulations at all times. As a minimum, the Subcontractor must comply with:
  - (a) The Health and Safety at Work Act 2015;
  - (b) The Subcontractor's health and safety policy and procedures; and
  - (c) The Company's health and safety policy and procedures.
- 3.2** The Subcontractor will ensure the Subcontractor Personnel are aware of the Company's drug and alcohol requirements, and where reasonably requested by the Company, will at its own cost, require a member of its Subcontractor Personnel to undertake drug and/or alcohol testing and provide a copy of the results to the Company.
- 3.3** The Subcontractor will ensure its plant, equipment and tools are sufficiently available and in a condition which means the safety of the Subcontractors Personnel is not jeopardised. The Company may direct the Subcontractor to stop work if it has concerns that the plant, equipment or tools are insufficient or not in a suitable condition (or if the equipment is meant to be checked and tagged to indicate it is in good working order).
- 3.4** If any health and safety requirements of the Company are not complied with, the Company may take any necessary action to remedy the matter. The Subcontractor will be liable for all the Company's costs and losses resulting from the Subcontractor's non-compliance with health and safety requirements. Without prejudice to any other method of recovery, the amount may be deducted from any payments which would otherwise be payable to the Subcontractor under this Agreement.

### **4 Quality of Works**



#### **4.1 The Subcontractor's Warranties**

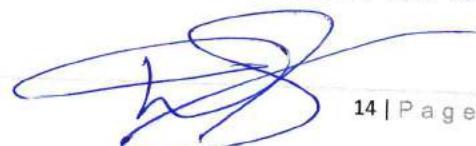
- (a) The Subcontractor warrants that the Works will:
  - (i) be performed to Industry Best Practice;
  - (ii) be performed in accordance with any applicable Laws;
  - (iii) subject to and without limiting the scope of **clause 17.3(c)** be performed according to any additional obligations or requirements reasonably imposed by the Principal;
  - (iv) be performed by appropriately qualified and trained Subcontractor Personnel;
  - (v) match the description of the Works specified in this Agreement;
  - (vi) be fit for the purpose or purposes described in this Agreement;
  - (vii) conform to the standards and specifications contained or identified in this Agreement.
- (b) The Subcontractor will provide a warranty on workmanship and Subcontractor supplied materials for all work completed for a period of twelve (12) months from the latter of the date of completion of the work and submission of Completion Documents for each Work Instruction (Defect Liability Period).
- (c) The Subcontractor will be responsible for either attending the Site to correct any non-conforming workmanship or damage without payment, or alternatively for compensating the Company for any other Costs incurred. The Company will decide in its absolute discretion which of these options is the most appropriate method of rectification.
- (d) The Subcontractor must rectify all Non-Conformance in accordance with the Non-Conformance rectification timeframes in **Schedule 6 – KPI's**.
- (e) In the event that a service call has been generated as a result of faulty equipment provided by the Company or as a result of misuse or damage by the customer, the Subcontractor will be paid in full using the relevant Activity Codes and Schedule of Rates for the subsequent work order.

#### **4.2 Supply of Items**

- (a) Any items that the Subcontractor uses or supplies in conjunction with the Works must comply with any applicable New Zealand Standards and any other standards specified in this Agreement and be fit for the purpose or purposes described in this Agreement.
- (b) The Subcontractor will be responsible for the care and installation of supplied materials, care and installation should be according to Company, vendor instructions, and New Zealand Standards. Loss or damage to such materials will become a debt due and will be offset against any amounts owed to the Subcontractor.

#### **4.3 Customer Complaints Process**

- (a) The Subcontractor is responsible to rectify all complaints and damages that are caused by the Subcontractor from or in connection with the performance of the Works.



- (b) The Subcontractor has five (5) Business Days from the date of notification of the damage or complaint by the Company to the Subcontractor to complete and rectify any outstanding complaints to the satisfaction of the customer and the Company.
- (c) After five (5) Business Days, the Company at its discretion may assume control of the complaint and rectify the matter directly with the customer, without further reference to the Subcontractor and at the Subcontractor's cost, and then deduct the full costs of rectification, including any associated travel and administration charges, as a debt due from any monies payable to the Subcontractor.

#### **4.4 Subcontractor not Subject to Direction and Control**

Unless otherwise expressed in this Agreement, the Subcontractor is not subject to the Company's direction and control as to the manner in which the Subcontractor undertakes the Works.

### **5 Personal Protective Equipment and Uniforms**

- (a) The Subcontractor may be supplied applicable uniforms by the Company. When uniforms are supplied, the Subcontractor must wear the uniforms whilst performing their duties.
- (b) Uniforms are the Subcontractor's cost, irrespective of how the uniforms are sourced, including if the uniforms are supplied from the Company. If the Company elects to supply uniforms at the Company's cost, at any time the Company can revert to the cost being borne by the Subcontractor.
- (c) The Subcontractor must wear appropriate personal protective equipment including uniforms at all times and comply with any minimum requirements of the Company.
- (d) At any time, the Company has not supplied appropriate uniforms, the Subcontractor at their own cost must ensure they provide and wear the appropriate uniforms themselves.
- (e) For uniforms which have the Company or Principal's logo/branding, the Subcontractor is required to return or discard the uniforms in accordance with the Company's instructions when they cease working for the Company or when the uniforms are no longer usable due to wear and tear.
- (f) The Subcontractor must not wear uniforms that identify the Company or Principal when performing any other works not associated with the Company or Principal.
- (g) Where the Company dictates that certain uniforms need to be supplied from the Company's nominated uniform provider, and in compliance with branding requirements, the Subcontractor shall comply with the request.

### **6 Branding**



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- (a) The Principal and Company have branding requirements, including but not limited to the branding of vehicles, uniforms and signage. Where the Company requires the Subcontractor to adhere to the branding requirements the Subcontractor and the Subcontractor Personnel must meet the requirements set out in **Schedule 5 – Brand and Presentation Guidelines**.
- (b) any branding requirements will be at the cost of the Subcontractor unless where the Company bears the cost, which it can do on a case-by-case basis. If the Company does bear the cost of any branding, it does not set a precedent which must be followed on future occasions.

## 7 Vehicles, Tools and Equipment

### 7.1 Availability of Vehicles, Tools and Equipment:

Subcontractor shall ensure its Subcontractors and Subcontractor Personnel have access to all vehicles, tools and equipment necessary for them to undertake the tasks and activities they are requested to perform under, or in connection with, this Agreement in a safe, productive and efficient manner.

### 7.2 Training in Use of Vehicles, Tools and Equipment:

Subcontractor shall ensure its Subcontractors and Subcontractor Personnel have received appropriate training in the use of vehicles, tools and equipment such that those persons are trained and competent in the correct, effective and safe use of the vehicles, tools and equipment.

### 7.3 Maintenance of Vehicles, Tools and Equipment:

Subcontractor shall implement and maintain systems, processes and procedures to ensure all vehicles, tools and equipment used in the performance of the Works are maintained in a safe and fully functional condition, and are regularly serviced and calibrated in accordance with manufacturer's specifications.

## 8 Documents, Drawing & Specifications

8.1 The Drawings and the Technical Specification (if any) represent the forms, dimensions and descriptions of the Works. Where any discrepancy exists between figured and scaled dimensions, the figured dimensions will take precedence. Drawings made to larger scales and those showing details of particular parts of any Works take precedence over those made to smaller scales or for more general purposes.

8.2 Irrespective of whether the documents have been provided, examined or approved by Company, the Subcontractor is responsible for and must bear the cost of any alteration to the Works arising from:

- (a) any ambiguity, discrepancy, inconsistency, conflict or error in or omission from any documents created or supplied by the Subcontractor; or

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- (b) its failure to immediately notify the Company of any ambiguity, discrepancy, inconsistency, error in or omission from any of the documents, that it has or in the Company's opinion should have discovered when complying with **clause 2**.

## 9 Inspection and Information

### 9.1 The Company to be kept fully informed

The Subcontractor must keep the Company fully informed on all aspects of the Works.

### 9.2 Provision of information

Without limiting the scope of **clause 9.1**, the Subcontractor will provide to the Company, as reasonably requested by the Company from time-to-time, copies of all plans, designs, drawings, specifications, reports, data and other information relating to the Works.

### 9.3 Inspection and Review

The Company will have the right to inspect and review the performance of the Works at the Site or premises at which the Works are performed.

## 10 Meetings and Reporting

### 10.1 Meeting

- (a) The Company and the Subcontractor shall meet monthly or as reasonably required by either Party to discuss:
- (i) the progress of the Works; and
  - (ii) any additional obligations or requirements imposed by the Principal; and
  - (iii) any other matters which either of the Parties may wish to raise at a meeting concerning the Works and this Agreement.

### 10.2 Progress Reports

The Subcontractor must, if requested by the Company, provide the Company with progress reports as to the provision of the Works in such detail as allows the Company to ascertain whether the Works are being performed in accordance with this Agreement. Such progress reports are to be provided prior to any meeting requested by the Company pursuant to **clause 10.1**, and at other intervals reasonably requested by the Company.

## 11 Keeping of Records

### 11.1 The Subcontractor should:

- (a) make and keep full and proper records in relation to the Subcontractor's performance of this Agreement, including showing clearly all transactions to which this Agreement relates; and
- (b) not destroy the records referred to in **clause 11.1(a)** without the prior approval of the Company, for a period of 7 years from the later of:

- (i) the date of the termination or expiry of this Contract; and the expiry of the last Defects Liability Period for the Works under this Contract

Should the Subcontractor choose not to make and keep full and proper records in relation to the Subcontractors performance of the Agreement, the Subcontractor accepts the Company's records to be true and accurate in connection with the Works under this Agreement.

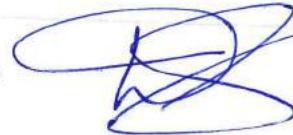
## 12 Performance

The Subcontractor must perform the Services so as, at minimum and without limiting its other obligations under the Agreement, to meet the applicable KPIs as set out in **Schedule 6 – KPI's**. The service fee will become a debt due by the Subcontractor if the KPI's are not met within the targeted calendar days specified and as such will be deducted as a cost from the monies due to the Subcontractor.

## 13 Insurance

### 13.1 The Subcontractor must:

- (a) at its own expense, hold and maintain the following insurances during the Term:
  - (i) public liability for minimum of \$10,000,000;
  - (ii) plant and equipment at market value; and
  - (iii) vehicle and goods in transit for market value and \$20,000 respectively
- (b) ensure that the public liability insurance policy:
  - (i) record Universal Communications Group NZ Ltd as an interested Party;
  - (ii) cover the respective rights and interests of the Parties and the Company;
  - (iii) cover the Parties' liability for loss or damage to property and the death of or injury to any person (other than liability covered under the Accident Compensation Act 2001);
  - (iv) be with an insurer and in terms, both approved in writing by the Company, which must not be unreasonably withheld;
- (c) ensure that the goods in transit insurance policy:
  - (i) covers loss of, or damage to, Company supplied equipment or materials or any other goods provided by the Company to the Subcontractor when in transit;
- (d) ensure that any insurance under **clause 13.1** shall not limit liabilities or obligations under other provisions of the Agreement;
- (e) if requested by the Company, provide evidence by way of a certificate of currency or something similar, that the insurances specified in **clause 13.1** are in place. If, after being so requested, the Subcontractor fails to promptly provide satisfactory evidence of compliance then, without prejudice to other rights or remedies, the Company may insure and the



cost thereof shall be certified by the Company as moneys due and payable from the Subcontractor to the Company, which may be deducted from monies payable to the Subcontractor

## 14 The Company's Obligations

### 14.1 The Company must:

- (a) notify the Subcontractor of any matter that may affect the scope of the Works immediately when it becomes aware of it; and
- (b) co-operate with the Subcontractor and not unreasonably interfere with or obstruct the proper performance of the Works; and
- (c) undertake all dealings with the Subcontractor under the Agreement honestly and in good faith.

## 15 Assignment and Subcontracting

### 15.1 Assignment by the Subcontractor

- (a) The Subcontractor must not subcontract, assign, sub-license, transfer or charge any part of this Agreement or its rights under this Agreement without the prior written approval of the Company, which must not be unreasonably withheld.
- (b) The subcontracting or assignment by the Subcontractor of any part of the Works shall not relieve the Subcontractor from its responsibility for the due performance of a Work Instruction or the Agreement generally. The Subcontractor shall be responsible for the acts, defaults or neglect or any omission of any subcontractor in all respects as if they were the acts and defaults or neglect or omission of the Subcontractor.

### 15.2 Subcontracting Insurances

The Subcontractor must ensure that all subcontractors engaged in connection with the performance of the Subcontractor's Works (and before commencing the work or services under their respective subcontracts):

- (a) Are covered by the Subcontractor Insurances; or
- (b) The subcontractor maintains policies of insurances or other cover of the same types, for the amounts and periods set out in this Subcontractor Agreement which apply to the Subcontractor or such other amounts and periods as the Company (acting reasonably) may determine.
  - (i) if requested by the Company, provide evidence by way of a certificate of currency or something similar, that the insurances specified in **clause 15.2** are in place. If, after being so requested, the Subcontractor fails to promptly provide satisfactory evidence of compliance then, without prejudice to other rights or remedies, the Company may insure and the cost thereof shall be certified by the Company as moneys due and payable from the Subcontractor to the Company, which may be deducted from monies payable to the Subcontractor.



## **16 Removal from Site**

- (a) The Company may direct the Subcontractor to be removed from a Site or from any activity in connection with the performance of the Subcontractor's Activities, within such time as the Company directs, any person employed, subcontracted or engaged on the Subcontractor's Activities who, in the Company's reasonable opinion, is negligent, guilty of misconduct or otherwise fails to comply with any of the requirements of this Contract.
- (b) Any person removed under **clause 16(a)** must not thereafter be employed on the Site or in the Subcontractor's Activities without the prior approval of the Company.

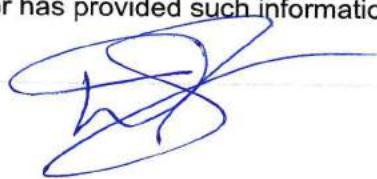
## **17 Remuneration**

### **17.1 Minimum volume:**

The Company is not required to obtain from the Subcontractor any minimum value or volume of Works, or to provide any minimum level of revenue or margin to the Subcontractor under this Agreement.

### **17.2 Payment and Claims**

- (a) Upon completion of the Works for each Work Instruction, the Subcontractor shall promptly notify the Company of completion and shall, within two (2) Business Days, submit the required Completion Documents including a detailed breakup of the Activity Codes and quantities and/or any approved variations completed for that Work Instruction.
- (b) Subject to **clause 17.2(c)**, within ten (10) Business Days of receiving the completion advice and the required Completion Documents, the Company shall complete the quality assurance checks and where they have passed those checks assess the value of the Works completed by the Subcontractor in accordance with the requirements of this Agreement by multiplying the Activity Codes necessary to perform the Works by the relevant Rates stated in the **Schedule of Rates** and/or the amount agreed in writing by way of a Work Instruction.
- (c) If the Company reasonably considers that the information submitted is insufficient to enable it to make a proper assessment of the value of the Works completed:
  - (i) the Company may request further information from the Subcontractor;
  - (ii) the Subcontractor must provide such further information within the time and in the form requested by the Company; and
  - (iii) the Company may delay the issue of the payment assessment and RCTI until the Subcontractor has provided such information.



- (d) Subject to compliance with any set-off available under **clause 19.1**, the Company shall then issue a recipient created Tax Invoice ("RCTI") to the Subcontractor in respect of the completed Works performed in accordance with this Agreement.
- (e) The Subcontractor must notify the Company in writing of any dispute regarding the Company's valuation for the Works for that Work Instruction. The notification must include a detailed breakdown of the **Schedule of Rates** and/or quantities and value of the work performed for the relevant Work Instruction and provide supporting documentation and other information to evidence of the amount claimed to be due to the Subcontractor. Failure to notify the Company in writing of any such dispute within ten (10) Business Days of the receipt of the relevant RCTI shall be deemed to be an acceptance by the Subcontractor of the Company's assessment of the Subcontractor's entitlement for payment and a waiver and release of the Company from any further Claim in respect of any fact, matter or thing arising out of or in connection with that Work Instruction and the performance of the Subcontractor's obligations under that Work Instruction.
- (f) The Subcontractor will be time barred from issuing a claim to the Company under this clause with respect to the Works, where more than seventy-five (75) days has passed since Completion Documentation has been accepted by the Company and a RCTI has not been raised by the Company.
- (g) Payment shall be made to the Subcontractor thirty (30) days from the date that the RCTI was created. If that due date is not a Business Day, then payment shall be made on the following Business Day.
- (h) Payments by the Company will be made by direct debit into the Subcontractor's nominated bank account and the Company will forward advice of payment by fax or email.
- (i) As a condition precedent to payment, the Subcontractor warrants, and shall provide evidence satisfactory to the Company, that the Subcontractor's Personnel and suppliers (including, without limitation, plant and equipment hirers) have been paid in full as required by the Laws and any agreements between those parties and that it has complied with its obligations pursuant to this Agreement.
- (j) Any payment by the Company to the Subcontractor will be a payment on account only and will not be:
  - (i) evidence of the value of any part of the Works under the Subcontract Agreement;
  - (ii) an admission by the Company that any part of the Works under the Subcontract Agreement has been executed satisfactorily;
  - (iii) an admission by the Company that the Subcontractor has complied with its obligations under the Subcontract Agreement; nor
  - (iv) a waiver of any of the Subcontractor's obligations or the Company's rights under the Subcontract Agreement.

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### **17.3 Rates and Variations**

- (a) The Rates stated in the **Schedule of Rates**:
  - (i) shall not be subject to adjustment for rise and fall in cost for any cause whatsoever; and
  - (ii) shall be deemed to compensate the Subcontractor for everything necessary (labour, plant, equipment, overheads, supervision, margin and other things), to perform the Works and otherwise to fulfil all of its obligations under the Agreement.
- (b) The Subcontractor acknowledges that no representations have been made regarding the extent or volume of the Works to be performed by the Subcontractor and the Rates set out in the **Schedule of Rates** shall apply no matter the extent or volume of the Works or time and resources required to complete the Works in accordance with this Agreement.
- (c) Any variation of the Works or any additional Works must be agreed to by the Parties prior to commencement and set out in the format of the **Schedule of Rates** and must specify how much the Subcontractor is entitled to charge the Company for the provision of any varied or additional Works or, alternatively, must specify in writing the basis on which the Subcontractor is to calculate the amounts that it may charge the Company for the provision of any varied or additional Works; any such varied or additional Works will be subject to the terms and conditions set out in this Agreement, unless otherwise varied in writing.
- (d) Where it has been agreed in writing that work is to be paid for on a time charge basis, the Subcontractor shall record and submit details of the resources deployed on such work on a daily basis to the Company for the Company's written approval; such details shall be submitted in duplicate in a form acceptable to the Company and the Subcontractor shall retain one copy approved by the Company.
- (e) If the Subcontractor fails to comply with the requirements of **clause 17.3(d)** then the Company shall determine the resources deployed and such determination shall be final and binding.

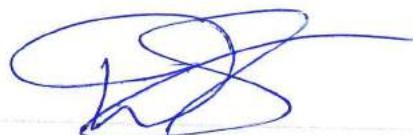
### **18 Reimbursement of Expenses**

- 18.1** The Company requires claims for expenses in writing and supported by Tax Invoices or other supporting documentation. Claims for expenses are to be agreed prior to incurring these costs and are to be in accordance with the Company's associated Policies.

### **19 Setting-Off**

- 19.1** Without limiting the Company's other rights under this Agreement, if the Subcontractor fails to:

- (a) promptly and properly make good any damage, loss or defect for which the Subcontractor is responsible;



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- (b) provide things necessary to perform the Works as directed by the Company;
- (c) remove rubbish or other things belonging to the Subcontractor;
- (d) properly maintain and/or repair plant and equipment and other things provided by the Subcontractor;
- (e) account for stock losses after a stock take of van stock by the Company;
- (f) prevent loss or damage to any Supplied Materials;
- (g) pay the Company as per the payment terms for material, tools or equipment bought from the Company;
- (h) be able to honour and fulfil its warranties and obligations in this Agreement by suffering an Insolvency Event;
- (i) provide sufficient and timely supporting evidence, including all Completion Documents, to justify and support a claim for payment;
- (j) promptly advise the company of any incorrect payment made by the Company;
- (k) comply with any other obligation it has under this Agreement;

then the Company may, at its sole discretion and without obligation, rectify such failure or non-payment at the Subcontractor's risk and expense and deduct such Costs or overpayments as a debt due from monies due to the Subcontractor

## **20 GST**

The Schedule of Rates payable by the Company in respect of the Works do not include any GST. In addition to the Schedule of Rates, the Company shall pay the Subcontractor the amount of all GST chargeable on any taxable supply by Subcontractor under this Agreement.

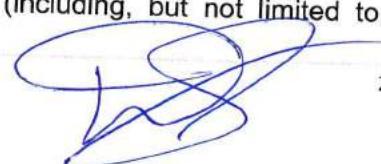
## **21 Nature of Relationship**

- 21.1** It is agreed and declared that the Subcontractor is independent of the Company and the Principal.
- 21.2** It is acknowledged and declared that nothing in this Agreement will be construed so as to create between the Company and the Subcontractor the relationship of employer and employee, principal and agent, or partnership.
- 21.3** The Subcontractor is not the agent of the Company or Principal and otherwise has no authority to bind the Company or Principal in any way.

## **22 Indemnity & Release**

### **22.1 Indemnity**

- (a)** The Subcontractor indemnifies the Company and its Personnel from and against all Claims and Costs of any nature whatsoever which the Company may suffer or incur (including, but not limited to, those in



respect of loss of life, personal injury, damage to property or nuisance to any third party (including any Personnel of a Party);

- (i) arising directly or indirectly from or in connection with the performance of the Works; or
- (ii) caused or contributed to by the unlawful or negligent act or omission of the Subcontractor or any of the Subcontractor's Personnel,

except to the extent that the Claim or Cost arises from the unlawful or negligent act or omission or breach of this Agreement by the Company

## 23 Intellectual Property

### 23.1 Ownership of New Contract Material

All Intellectual Property Rights in New Contract Material will vest in the Company immediately upon its creation.

### 23.2 Ownership of Existing Contract Material

This Agreement does not affect the Intellectual Property Rights in Existing Contract Material.

### 23.3 Licence to use Existing Contract Material

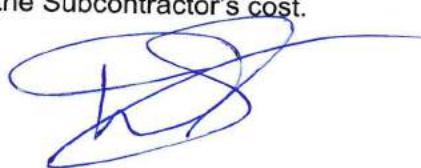
- (a) The Subcontractor grants and will ensure that relevant third parties grant to the Company, a non-exclusive, perpetual licence (including the right to sub-lisence) without additional cost to the Company to:
  - (i) use; and/or
  - (ii) otherwise exercise all Intellectual Property Rights in relation to, the Existing Contract Material, but only as part of the New Contract Material (and any future development of that material).

### 23.4 Moral Rights

- (a) The Subcontractor warrants and represents to the Company that it has received from each of its Personnel, that person's consent to all or any acts and omissions that infringe moral rights in existing and future copyright in any material created during and in the supply of the Works including but not limited to:
  - (i) failing to identify that person, or attributing another person, as author of the material; or
  - (ii) using, dealing with, altering, manipulating or reproducing the material in a derogatory manner.
- (b) The Subcontractor irrevocably extends the benefit of consent in this **clause 23.4** received by the Subcontractor to the Company.
- (c) The Subcontractor will on request provide the Company with access to those originals or a copy of each of them at the Subcontractor's cost.

## 24 Restraint

### 24.1 The parties acknowledge that:



- (a) in the Subcontractor providing the Works, the Subcontractor will have personal contact and may form relationships with the Company's Personnel and customers;
- (b) in order for the Subcontractor to provide the Works to the Company, the Company has made the Subcontractor privy to confidential and commercially sensitive information from the outset and throughout their engagement with the Company;
- (c) the Company's goodwill is established through their relationship with their Personnel and customers.

**24.2** Having regard to this, should the Subcontractor in any way interfere with these relationships, it will:

- (a) detrimentally affect the Company's relationships with its Personnel and customers;
- (b) diminish the goodwill of the Company's business;
- (c) may result in Confidential Information becoming available to the Company's competitors.

**24.3** In consideration of being contracted to do the Works, and to reasonably protect the Company's goodwill, the Subcontractor agrees that without the Company's prior written consent, during the period of engagement of the Subcontractor by the Company, and for a period of twelve (12) months after the engagement ceases;

- (a) the Subcontractor will not directly or indirectly in any capacity whatsoever including, but not limited to, in their own capacity or as a consultant, member, partner, director, financier, guarantor, investor, adviser, shareholder, agent, beneficiary, or trustee;

- (i) engage the Principal in relation to the works which are the subject of the Head Contract between the Company and the Principal; or
- (ii) induce or solicit the Company's Personnel to leave the other's employment, engagement or agency; or

- (b) the Parties agree that:

- (i) any combination of the acts referred to above would be unfair and will damage the Company's business;
- (ii) each separate covenant and restraint in this clause is reasonable;
- (iii) an obligation on the Subcontractor to do, or not to do, something is also an obligation to ensure no other party does, or does not do, something; and

each separate covenant is intended to have effect as a separate and severable restraint applying cumulatively.

## **25 Termination**

### **25.1 Termination by Company**

- (a) The Company may terminate this Agreement upon written notice for any reason or without cause in writing to the Subcontractor.



- (b) The Company may terminate this Agreement immediately upon written notice to the Subcontractor for a material breach of the Agreement by the Subcontractor.

## 25.2 Termination by Subcontractor

- (a) If the Company defaults in the performance of any of its obligations under this Agreement, then the Subcontractor may send a default notice to the Company ("Default Notice").
- (b) The Default Notice must set out the full particulars of the default relied upon and require the Company to take steps reasonably acceptable to the Subcontractor to remedy the default or mitigate its effects within fifteen (15) Business Days (or such longer period as may be specified in the Default Notice) from the Company's receipt of the Default Notice.
- (c) This Agreement may be terminated by the Subcontractor:
  - (i) immediately by giving the Company written notice, if the Subcontractor has delivered a Default Notice to the Company and the Company has failed to remedy the default within the period specified in the Default Notice;
  - (ii) on thirty (30) days written notice otherwise, provided all Works in progress by the Subcontractor are completed in accordance with this Agreement unless notified otherwise by the Company.

## 25.3 Termination if an Insolvency Event

Despite any other provisions of this Agreement, a party may terminate this Agreement immediately upon written notice to the other party, if the other party is subject to an Insolvency Event.

## 25.4 Payment of Tax Invoices

On termination the Company will pay to the Subcontractor (subject to clause 19) the amount of any outstanding monies owed in accordance with this Agreement for the Works or part of the Works performed up to the date of termination of this Agreement.

## 25.5 Suspension

The Company may suspend the Work and instruct the recommencement of the Work on notice to the Subcontractor.

# 26 Dispute Resolution

## 26.1 Non-Dispute culture

- (a) The parties acknowledge that this Agreement is a long term Agreement, and that because of the nature and complexity of its subject matter it is not possible to provide in detail for all possible contingencies that may arise during the relevant Term.
- (b) In recognition of this, the Company and Subcontractor jointly acknowledge that a key benefit of their relationship is open communication and the avoidance of formal dispute proceedings.



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- (c) The parties are committed to resolving real or perceived problems, conflicts of interest, disagreements, differences in points of view and disputes between them wherever possible, and to resolving them in such a way that best achieves the Objectives.
- (d) Nothing in this clause 26.1 is intended to derogate from any right expressly provided to any party under this Agreement.

#### **26.2 Dispute:**

If any disagreement, difference in point of view or dispute between the parties arises out of or in connection with this Agreement (Dispute), either party may submit, by written

notice to the other party, a notice of Dispute (Notice of Dispute). Where a Notice of Dispute has been submitted to a party under this **clause 26.2**, each party must immediately appoint a representative to the matter giving rise to the Dispute and that Representative must have all necessary experience and expertise to enable him or her to resolve the Dispute.

#### **26.3 Continuation of performance:**

To avoid doubt, the existence of a Dispute will not relieve either party from its obligation to observe and perform its obligations under, or any requirement of, this Agreement and, notwithstanding the Dispute, each party will continue to perform such obligations in accordance with this Agreement to the maximum extent possible (having regard to the nature of the Dispute).

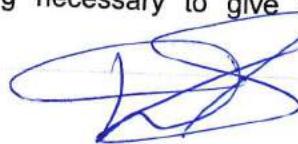
#### **26.4 Construction Contracts Act 2002:**

To avoid doubt nothing in this Agreement shall affect any right a party may have under the Construction Contracts Act 2002. Where Service Provider issues a Payment Claim to the Company under the Construction Contracts Act 2002, the timeframe for the Company to respond to that Payment Claim is the relevant timeframe specified in the Act and not the timeframe specified.

### **27 Trustee Party**

#### **1.1 When Party is a Trustee**

- (a) If a party enters into this Agreement as a trustee then they enter into this Agreement both as trustee of the trust and in their own personal capacity.
- (b) The trustee of the trust must not be changed without the written consent of the Company.
- (c) The Trustee:
  - (i) warrants it has power under the trust to enter into this Agreement;
  - (ii) warrants it has a right of indemnity under the trust;
  - (iii) assigns any right of indemnity it has under the trust to the other parties and must do anything necessary to give effect to the assignment;



- (iv) must not do anything to prejudice any right of indemnity it has under the trust;
- (v) must not breach the trust;
- (vi) warrants it enters into this Agreement in the due administration of the trust; and
- (vii) must do everything necessary to make available the assets of the trust to rectify a default of this Agreement and compensate the other parties for the default.

## 28 General

### 28.1 Confidential Information

- (a) The Subcontractor must not disclose the contents of this Agreement or any Confidential Information without the consent of the Company provided always that that obligation will not apply to:
  - (i) disclosures required by law or requirement of any regulatory body, court or tribunal;
  - (ii) information which is in or comes into the public domain other than as a result of a breach of this Agreement or other confidence;

and the Subcontractor will not use any such Confidential Information other than for the purpose for which it was provided to that party.
- (b) The Subcontractor acknowledges that:
  - (i) the Company may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information, and that monetary damages would be an insufficient remedy; and
  - (ii) in addition to any other remedy available at law or in equity, the Company is entitled to injunctive relief to prevent a breach of, and to compel specific performance of, this **clause 28.1**.
- (c) The Subcontractor will:
  - (i) give the Company a list of names of any party to whom the Subcontractor may wish to or need to disclose the Confidential Information;
  - (ii) obtain the Company's prior consent to the disclosure of the Confidential Information to that party before proceeding with the disclosure;
  - (iii) obtain covenants in similar terms to **clause 28.1** from all of its Personnel who will or may have access to the Confidential Information;
  - (iv) do all things necessary to ensure all parties comply with the Subcontractor's obligations under **clause 28.1**.

### 28.2 Governing Law

This Agreement will be governed and construed in all respects in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the Courts of New Zealand with respect to any legal proceedings in connection with or related to this Agreement.



### **28.3 Notices**

- (a) A notice, demand, consent or communication under this Agreement must be:
  - (i) in writing and in English directed to the recipient's address for service of notices specified in **Schedule 4 – Reference Details** or the last address of such party as shall have been notified in accordance with this **clause 28.3**; and
  - (ii) hand-delivered or sent by pre-paid post or facsimile to that address.
- (b) A notice takes effect when received (or at a later time specified in it) and is deemed to be received:
  - (i) If hand delivered, on delivery;
  - (ii) If sent by pre-paid post, two (2) Business Days after the date of posting (or seven (7) Business Days after the date of posting if posted to or from outside New Zealand);
  - (iii) If sent by facsimile, when the sender's facsimile generates a message confirming successful transmission of the notice in its entirety.
- (c) If the delivery, receipt or transmission of a notice is not on a Business Day or outside the hours of 9:00 am to 5:00 pm on a business day in the time zone of the recipient, the notice is taken to be received at 9:00 am on the next business day.

### **28.4 Severability**

Part or all of a provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining parts of the provision or provisions of this Agreement continue in force.

### **28.5 Bind all Signatories**

This Agreement shall bind each of the signatories to the full extent provided herein, notwithstanding that one or more of the parties has not executed or may never execute the document or that the execution of the Agreement by any party is or may become void or voidable.

### **28.6 Legal Costs**

Each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

### **28.7 Survival**

Any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement also survives termination of the Agreement.

### **28.8 No Merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **28.9 Further Action**



Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transactions contemplated by it.

#### **28.10 Waiver**

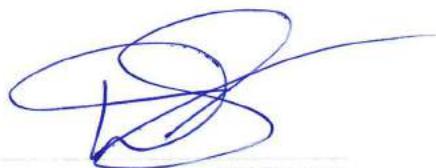
A party does not waive a right, power or remedy if it fails to exercise or delays in exercising a right, power or remedy given to it by this Agreement. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

#### **28.11 Variation**

This Agreement may only be varied, supplemented or replaced by the mutual written agreement executed by the parties.

#### **28.12 Counterparts**

This Agreement may be executed in any number of counterparts; all counterparts together make one instrument.

A handwritten signature in blue ink, appearing to read "RS".

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## Schedule 3 – Special Conditions

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### 29 Head Contract – Chorus NGA Service Agreement

#### 29.1 General Application

- (a) Without limiting the Operative Clauses, including all documents, drawings, specifications, schedules, annexures and attachments relate to or are applicable to the performance or administration of that part of the work that comprises the Works, such provisions are incorporated into this Agreement as if references to the Principal (Chorus) were references to the Company and references to the Service Provider were references to the Subcontractor.
- (b) The incorporation of such provisions into the Agreement only applies if they:
  - (i) require the Subcontractor to observe, perform and comply with an obligation or requirement imposed by the Principal; or
  - (ii) confer on the Company a right or power;and are not inconsistent with any provisions, or detract from the Company's rights or powers or the Subcontractor's obligations, in the Agreement.

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### 30 Specific Clauses

#### INFORMATION, COMMUNICATIONS AND TECHNOLOGY

**30.1 Systems access:** The parties acknowledge that they each require access to, and use of, the other's systems, and rely on these:

- (a) In the case of Service Provider, to provide and perform the Services under this Agreement; and
- (b) In the case of Chorus, to enable it to provide products and services to its Customers and End Customers, and to deliver services to End Customers at End Customer Sites.

**30.2 Right to access and use systems:** Subject to clause 25.3 (Restrictions on access), each party shall make available to and grants the other party a fully paid-up, royalty free, non-transferable, non-exclusive right to access and use its systems to the extent required:

- (a) In the case of Service Provider, for the sole purpose of, and only to the extent necessary for, providing and performing the Services and performing any of its obligations under this Agreement (in this clause 25, **Service Provider Permitted Use**). To avoid doubt, the right granted by Chorus to Service Provider under this clause 25.2 shall include the right for Service Provider's Personnel, Subcontractors and Technicians who have been approved by Chorus in writing

to access and use Chorus' systems for the Service Provider Permitted Use; and

(b) In the case of Chorus:

- (i) To enable Chorus to have visibility of the performance of the Services and keep its Customers and End Customers informed as to the progress of an Order;
- (ii) To enable Chorus to resolve any Customer or End Customer escalation arising out of, or in connection with, the provision and performance of the Services;
- (iii) To enable Chorus to provide products and services to its Customers and End Customers;
- (iv) To make use of the Chorus Data, Personal Information and other information held within the relevant system;
- (v) To maintain and update Chorus Data, Personal Information and other information held within the relevant system; and
- (vi) Otherwise, for any other purposes in order that Chorus may use and obtain the full intended benefit of the Services, and perform any of its obligations or exercise any of its rights under this Agreement,

(in this clause 25, **Chorus Permitted Use**). To avoid doubt, the right granted by Service Provider to Chorus under this clause 25.2 shall include the right for Chorus' Personnel and third party providers to access and use Service Provider's systems for the sole purpose of, and only to the extent necessary for, those third party providers to perform or discharge any of Chorus' rights or obligations under this Agreement or to provide services to Chorus in connection with this Agreement.

**30.3 Restrictions on access:** The right to access and use any system granted under clause 25.2 (Right to access and use systems) is subject to:

- (a) In the case of a Chorus system that is licensed to Chorus by a third party, any reasonable licence terms or restrictions imposed in the licence between Chorus and the third party, provided that Chorus must notify Service Provider of the relevant licence terms and restrictions;
- (b) In the case of a Service Provider system that is licensed to Service Provider by a third party, any reasonable licence terms or restrictions imposed in the licence between Service Provider and the third party, provided that:
  - (i) Service Provider must use all reasonable endeavours to ensure its third party licenses do not contain terms or restrictions that may, at any time, restrict or reduce Chorus' ability to access and use the Service Provider systems as contemplated under clause 25.2 (Right to access and use systems) or any other term of this Agreement or otherwise reduce the full intended benefit of this Agreement to Chorus;
  - (ii) Service Provider must notify Chorus of the relevant licence terms and restrictions; and
  - (iii) Notwithstanding any third party licence terms and restrictions, Service



Provider must still observe and perform its obligations under, and the requirements of, this Agreement, including making its systems available to Chorus as contemplated under this clause 25 (Information, Communications and Technology) and providing and performing the Services; and

- (c) Any reasonable restrictions notified in writing from time to time by Chorus to Service Provider (in the case of Chorus' systems) or by Service Provider to Chorus (in the case of Service Provider's systems). If a party notifies the other that it considers (acting reasonably) that a licence term or restriction notified to it under this clause 25.3(c) is unreasonable or unduly restricts it in the use of the system as contemplated under clause 25.2 (Right to access and use systems), the parties shall meet to discuss the matter (in good faith) and agree a way forward to ensure that each party has the necessary access to, and use of, the systems it relies on for the purposes that such access was granted (or was supposed to be granted) under this Agreement. If the parties cannot agree a way forward relating to the licence terms or restrictions within a reasonable timeframe, either party may escalate the matter to the Joint Advisory Board for consideration or refer the matter to Dispute resolution under the Dispute Resolution Process.

**30.4 Expiry of right to access and use:** The right to access and use any system granted under clause 25.2 (Right to access and use systems) will immediately expire on the earlier of:

- (a) Expiry of this Agreement (in its entirety) (or such later period as expressly agreed between the parties, provided that in the case of Service Provider's systems, Service Provider shall be entitled to charge Chorus a reasonable user licence fee (at market rates) for the duration of the right of access extension);
- (b) Earlier termination of this Agreement (in its entirety) provided that the right granted to Chorus under clause 25.2 (Right to access and use systems) shall, subject to clause 37 (Disengagement) and subject to Chorus continuing to comply with clause 25.6(b), continue for a period of 6 months following the date on which this Agreement terminates at no cost to Chorus and Service Provider shall continue to operate, support, integrate and maintain its systems as required by this clause 25 (Information, Communications, Technology) for the duration of that period.

**30.5 Systems security:** Each party acknowledges that the security of the other party's systems and any Material and data held within them (including, in the case of Chorus, the Chorus Data and Personal Information) is fundamental to the other party's business and operations and that, without limitation, any security breach may directly affect the other party's compliance with its obligations under relevant Law or to the other party's providers or customers (including, in the case of Chorus, its Customers and End Customers).

**30.6 Security requirements:**

- (a) Service Provider must:
- (i) Keep the existence of, and the composition and/or architecture of, Chorus' systems strictly confidential;

- (ii) Comply with Chorus' security requirements and policies relating to access to any Chorus system (as may be contained in Technical Documents or otherwise notified to Service Provider from time to time under the TAG Process);
- (iii) Establish and maintain internal security safeguards and controls to ensure the security of, and protect, Service Provider's systems (and the information therein) against destruction, corruption and loss, and any unauthorised access to, use of, or Modification to Service Provider's systems (including disaster recovery and continuity arrangements), such safeguards and controls to be consistent with Good Industry Practice;
- (iv) Establish and maintain an audit programme (including both internal and external audits) in relation to the implementation and effectiveness of its internal security safeguards and controls and the level of security and protection that they afford Service Provider's systems, and make any changes recommended by the audits (as soon as reasonably practicable) to ensure a high level of security and protection is afforded to Service Provider's systems (and the information therein) at all times. Service Provider shall provide Chorus with a copy of the most recent internal and external audit reports when requested;
- (v) Provide Chorus with copies of its security safeguards and controls and the most recent audit report on their effectiveness (when requested), and must consider (in good faith) making any reasonable changes recommended by Chorus from time to time to ensure a high level of security and protection is afforded to any Chorus Data or Personal Information held within Service Provider's systems;
- (vi) Prohibit and prevent any person who has no need to access the systems for the purposes specified in clause 25.2(a) from accessing those systems;
- (vii) Immediately notify Chorus if Service Provider becomes aware of any suspected or actual security incident, breach or failure, including any unauthorised access to, or use of, any system and:
  - (aa) Immediately do all things within its power and control to prevent or stop any suspected or actual unauthorised access to, or use of, any system, and to remedy the security incident, breach or failure and its consequences; and must comply with all reasonable directions of Chorus in this regard; and
  - (bb) Provide Chorus with a report detailing the cause of, and procedure for, correcting any security incident, breach or failure, and certify to Chorus that Service Provider has taken all steps within its power and control to prevent any reoccurrence of that type of security incident, breach or failure.

(b) Chorus must:

- (i) Keep the existence of, and the composition and/or architecture of, Service Provider's systems strictly confidential;
- (ii) Comply with Service Provider's reasonable security requirements and policies relating to access to any Service Provider system (as may be



notified to Chorus from time to time);

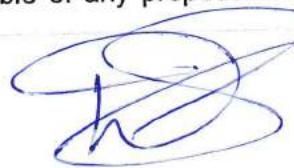
- (iii) Prohibit and prevent any person who has no need to access the systems for the purposes specified in clause 25.2(b) from accessing those systems;
- (iv) Immediately notify Service Provider if Chorus becomes aware of any suspected or actual security incident, breach or failure, including any unauthorised access to, or use of, any Service Provider system, and:
  - (aa) Immediately do all things within its power and control to prevent or stop any suspected or actual unauthorised access to, or use of, any Service Provider system, and to remedy the security incident, breach or failure and its consequences; and must comply with all reasonable directions of Service Provider in this regard; and
  - (bb) Provide Service Provider with a report detailing the cause of, and procedure for, correcting any security incident, breach or failure, and certify to Service Provider that Chorus has taken all steps within its power and control to prevent any reoccurrence of that type of security incident, breach or failure.

### 30.7 Integration of Service Provider systems:

- (a) Service Provider shall ensure (at its cost) that:
  - (i) Service Provider's systems which integrate or interface with a Chorus system are available and function as required under this Agreement (such that the parties are able to access Service Provider's systems for the purposes of this Agreement);
  - (ii) Service Provider's systems are able to:
    - (aa) Create requests in (as permitted), and receive requests from, Chorus' systems;
    - (bb) Receive information from Chorus' systems, including such information that Chorus is required to provide to Service Provider under this Agreement; and
    - (cc) Transmit information to Chorus' systems, including such information that Service Provider is required to provide to Chorus under this Agreement.
- (b) If Service Provider wishes to access a Chorus system from its systems, Service Provider must first ensure its systems environment will support such an integration or interface to Good Industry Practice (at its cost). Service Provider will be responsible for creating and implementing the integration or interface (as a Modification under clause 25.8 (Modifications)).

### 30.8 Modifications:

- (a) A party (in this clause 25.8, **Modifying Party**) may make Modifications to its systems (at its cost) provided that the Modifying Party:
  - (i) Notifies the other party as soon as possible of any proposed or planned



- Modification and provides the other party with a reasonable opportunity to notify any concerns under clause 25.8(b) and for those concerns to be addressed;
- (ii) Keeps the other party reasonably informed of the progress of such Modification to its systems; and
  - (iii) Ensures that any Modification to its systems will not detrimentally impact existing functionality, capacity, performance and features of its systems (including backward compatibility) on which the other party relies.
- (b) If the other party notifies the Modifying Party that it considers (acting reasonably) that a proposed or planned Modification to the Modifying Party's systems will materially affect it (including by impacting its integration or interface with, or use of the Modifying Party's systems), then the parties shall meet to discuss the matter (in good faith) and agree the scope, timing, implementation plan and any mitigations for such Modification with a view to addressing (to the extent reasonably possible) the other party's concerns. If the parties cannot agree on how best to address the concerns raised under this clause 25.8(b), then either party may escalate the matter to the Joint Advisory Board for consideration or refer the matter to Dispute resolution under the Dispute Resolution Process.
- (c) A party may make an urgent Modification to its systems provided that it uses its best endeavours to:
- (i) Notify the other party as soon as it becomes aware of the need for an urgent Modification; and
  - (ii) Comply with clause 25.8(a) and (b) to the extent reasonably practicable.

To avoid doubt, any replacement of a system will be a Modification for the purposes of this clause 25 (Information, Communications and Technology).

- 30.9 Use of APIs:** A party may, from time to time, provide application programming interfaces (**APIs**) to one or more of its systems, to enable the other party to access data, functionality and features stored on, or of, the relevant system for the purposes of this Agreement. Where an API is provided:
- (a) The API will comprise a set of standards for accessing a network based interface. The standards may include rules on security controls and usage rates;
  - (b) The details and specifications of the API must be recorded by way of a work service specification; and
  - (c) The introduction of an API after the Commencement Date will be governed as a Modification under clause 25.8 (Modifications).

- 30.10 Chorus may request Modifications:** Chorus may, from time to time, request Service Provider to investigate and/or make a Modification to its systems (at Chorus' cost, unless otherwise expressly agreed), including:
- (a) To improve or enhance the information flow between Service Provider's systems and Chorus' systems; and
  - (b) To best achieve and/or further the Objectives,

and in such case, Service Provider shall advise Chorus of:

- (c) Any likely impacts to existing functionality, capacity, performance and features of its systems as a result of the proposed Modification;
- (d) Any impacts the proposed Modification will have on the integration or interfacing of its systems with Chorus' systems;
- (e) The timeframe, process and activities required to make and implement the Modification and shall set this out in a draft project plan; and
- (f) Its estimate of the costs and expenses which would be incurred by Service Provider (acting reasonably) in making the proposed Modification, together with relevant supporting documentation.

If Chorus wishes to proceed with the Modification and subject to Chorus' prior written approval of Service Provider's estimate of costs submitted under clause 25.10(f), Chorus shall pay such reasonable costs and expenses incurred by Service Provider (as previously notified to Chorus or as otherwise expressly agreed) in making the Modification and Service Provider must make and implement the Modification in accordance with the project plan agreed between the parties (both acting reasonably).

**30.11 Continued integration in the case of system changes:** Service Provider shall, at its own cost, undertake all necessary actions to ensure, to the extent technically feasible, it can continue to comply with clause 25.7 (Integration of Service Provider systems) as a result of any Chorus Modification to Chorus' systems as notified under clause 25.8 (Modifications).

- (a) If Service Provider considers (acting reasonably) that such a Modification will cause Service Provider to incur material additional costs or expenses to comply with clause 25.7 (Integration of Service Provider systems) in relation to the Modification (that was not contemplated by the parties at the Commencement Date), then Service Provider shall, before incurring such additional cost or expense, give Chorus an estimate of the costs and expenses which will be incurred by Service Provider (acting reasonably) as a direct result of the Modification, together with relevant supporting documentation, for Chorus' written approval.
- (b) Subject to Chorus' prior written approval of Service Provider's estimate of costs, Chorus shall pay such reasonable costs and expenses incurred by Service Provider (as previously notified to Chorus) as a direct result of the Modification.

**30.12 Ownership of systems:** As between Chorus and Service Provider (and any Personnel, Subcontractor or Technician),

- (a) Chorus owns the Chorus systems and any Modification to the Chorus systems made in connection with this Agreement;
- (b) Service Provider owns the Service Provider systems and any Modification to the Service Provider systems made in connection with this Agreement,

provided that, in the case of a Modification that is an entirely separable and severable addition to and not a component of a system, the party who funds the Modification (including under clause 25.10 (Chorus may request Modifications)) will own



the Modification unless the parties expressly agree otherwise in writing, and in the case of a Modification which is jointly funded, the parties will jointly own the Modification. Subject to clause 25.3 (Restrictions on access), the party who owns the Modification grants the other party the applicable right set out in clause 25.2 (Right to access and use systems) in relation to such Modification, to the extent required to access and use the Modification.

**30.13 Operation and maintenance of systems:** Each party shall ensure (at its cost) that its systems:

- (a) Are properly operated, supported and maintained to a standard no lower than the standard to which the systems were supported and maintained at the Commencement Date (such that the parties are able to access and use the systems for the purposes of this Agreement) or pursuant to the applicable industry standard for the then current supported software (whichever is the higher standard);
- (b) Operate in the manner intended and are fit for the purpose for which they are intended to be used, and so that the parties are able to access and use the systems for the purposes of this Agreement; and
- (c) Subject to clause 25.14 (Planned and unplanned maintenance), are accessible to 99.9% availability,

and shall (at its cost):

- (d) Remedy any material issues with its systems that are restricting or reducing their functionality, capacity, performance and features to that available at the Commencement Date (or pursuant to the applicable industry standard for the then current supported software, as applicable) or impacting the provision and performance of the Services (including as such issues may be notified to that party from time to time);
- (e) Return the systems to a reasonable operating state as quickly as possible such that the systems are fully operational with no degradation of service and so that they operate in the manner intended and are fit for the purpose for which they are intended to be used; and so that the parties are able to access and use the systems for the purposes of this Agreement; and
- (f) Where any system is unable to be returned to a reasonable operating state within a reasonable time, formulate (in consultation with the other party) and implement a temporary workaround pending the sourcing and implementation of an alternative system that is fit for the purpose for which it will be used (such that the parties are able to access and use that system for the purposes of this Agreement).

**30.14 Planned and unplanned maintenance:**

- (a) In the event a party needs to undertake any maintenance of its systems, including to comply with their respective obligations under clause 25.13 (Operation and maintenance of systems), it shall:
  - (i) Provide the other party with as much advance notice as possible (and in any event, no less than 10 Business Days) of the proposed date and time of such maintenance, including any proposed outage window and



reasonable details of the proposed maintenance, including any expected outages and impacts;

- (ii) Submit to the other party such additional information reasonably required by that party regarding the proposed maintenance, and the possible impacts to the other party's systems (including any reduction of their functionality, capacity, performance or features) and the likely duration of those impacts;
  - (iii) In the case of Service Provider, promptly comply (at its cost) with any reasonable recommendations made by Chorus in relation to the proposed maintenance, including in relation to the proposed date and time and any reasonably practicable steps Service Provider must take to avoid any detrimental impact on Chorus' systems, Chorus' access to and use of Service Provider's systems (including any functionality, capacity, performance and features thereof), Chorus business operations and Chorus' Customers and End Customers;
  - (iv) Schedule the proposed maintenance for a window of time between 11pm and 6am (NZ time) to minimise any impact on the provision and performance of the Services and Chorus' business operations, Customers and End Customers;
  - (v) Undertake the necessary maintenance within the window of time under clause 25.14(a)(iv), complete the maintenance as soon as possible, and promptly notify the other party as soon as such maintenance is completed;
  - (vi) Keep the other party reasonably informed of the progress of the maintenance and any delays or unexpected outages or impacts, and the steps it is taking to reduce any delays, outage time and impacts; and
  - (vii) Ensure that its systems (including the functionality, capacity, performance and features thereof) are fully operational following the completion of the maintenance with no degradation of service and so that they operate in the manner intended and are fit for the purpose for which they are intended to be used; and so that the parties are able to access and use the systems for the purposes of this Agreement.
- (b) A party may undertake urgent maintenance to its systems provided that it uses its best endeavours to:
- (i) Notify the other party as soon as soon as it becomes aware of the need for urgent maintenance; and
  - (ii) Comply with clause 25.14 to the extent reasonably practicable.

**30.15 Change management support:** The parties must collaborate and work together and coordinate their activities in the case of any Modification or maintenance of a party's systems to ensure the Modification or maintenance is successfully made, implemented or completed (as applicable). This may require the parties to establish separate and/or joint project teams to facilitate and assist with the Modification or maintenance to be made, implemented or undertaken.

**30.16 ICT Systems and Process Governance:** The parties commit to implementing an ICT systems and process governance framework under this Agreement, to include:



- (a) Joint management and regular reporting on their respective BAU performance, availability, capacity and functionality metrics;
- (b) Consultation and collaboration on their respective ICT strategy, objectives and initiatives in connection with this Agreement to ensure alignment and coordination, and consolidation (where appropriate) of the objectives and initiatives;
- (c) Collaboration with each other's business to identify opportunities for systems or process changes or enhancements in connection with this Agreement to assist the parties to achieve the Objectives and/or to reduce business costs or operational performance improvement; and
- (d) Mechanisms to ensure each party has an understanding of the other's ICT strategy and programme for the next 12 months (including as part of the ICT disclosure under clause 25.18 (ICT Disclosure)), and accordingly has the chance to target upcoming ICT investment spend as effectively as possible, and avoid duplication.

**30.17 ICT manager:** Each party must appoint an ICT manager to be the other party's point of contact for ICT-related matters in connection with this Agreement. The respective ICT managers must coordinate their activities and collaborate to identify opportunities to consolidate, drive efficiencies and to leverage off each other's ICT-related frameworks, systems and processes, to ensure a consistent and high level of ICT-related support is provided across each party's business. The ICT manager shall be responsible for:

- (a) Presenting each Annual ICT Plan to the Joint Governance Board and updating the Joint Governance Board on progress against the Annual ICT Plan at each quarterly meeting;
- (b) Reporting to the Joint Governance Board on any ICT projects not captured in the Annual ICT Plan which Chorus or Service Provider intend to initiate and which may have a significant impact on a party (whether related to costs, benefits or risks), or require integration or an interface and/or training;
- (c) Acting as a principal counter-party for ICT service management-related queries and escalations;
- (d) Working collaboratively with each other's business to identify opportunities for systems or process changes or enhancements in connection with this Agreement to assist the parties achieve the Objectives and/or that may result in reduced business costs or operational performance improvement; and
- (e) Meeting promptly with each other to discuss (in good faith) and resolve any issues arising with the operation of any system or process which is impacting (or may impact) the provision and performance of the Services.

#### **30.18 ICT Disclosure**

- (a) No less than 30 Business Days prior to the Annual ICT Plan being due to be submitted to the Joint Governance Board in each Year under clause 4.28 (Annual Plans), the ICT managers for each party must meet (in good faith) to:
  - (i) Present their respective business' ICT strategic plans in connection with



this Agreement for the following 12 month period to the other, including:

- (aa) The ICT initiatives and projects planned for investigation, delivery, execution or implementation for the following 12 month period;
- (bb) The systems, processes, tools or functional business areas targeted for ICT investment during the following 12 month period; and
- (cc) The expected ICT budget for the following 12 month period (including for integration, training and change management),

provided that the parties need only present those aspects that are relevant to the Services and/or relate to a requirement of this Agreement;

- (ii) Provide feedback to each other on their respective ICT strategic plans; and
- (ii) Discuss any systems or process changes or enhancements they believe may assist in the achievement of the Objectives and/or may result in

reduced business costs or operational performance improvements (for either party).

- (b) The parties agree to identify:

- (i) Areas of commonality between the ICT strategic plans and the initiatives and projects therein;
- (ii) Areas of divergence, such as areas where only one party see benefit in investing;
- (iii) Areas where neither party is planning to invest but a business or ICT need has been identified;
- (iv) Any initiative/project dependencies; and
- (v) Opportunities to work together to achieve the outcomes sought in a more efficient manner or at a reduced cost.

- (c) The outputs from the meeting under this clause 25.18 (ICT Disclosure) should be captured in the Annual ICT Plan.

## INNOVATION AND CONTINUOUS IMPROVEMENT

- 30.19 Innovation and continuous improvement:** Service Provider acknowledges the benefits of innovation and continuous improvement and will use its reasonable endeavours to seek to continuously improve productivity, efficiency, quality and safety of the Services provided and performed, including through Technology Evolution, education and training. Service Provider will proactively access learnings from its Related Company's solution centre to assist it with its innovation and continuous improvement. To avoid doubt, any reduction of Service Provider's costs in connection with the Services and this Agreement that is realised through Service Provider's innovation and continuous improvement will be for Service Provider's benefit.



**30.20 Technology Evolution identification:** Each party will use its reasonable endeavours to identify and inform the other party of any Technology Evolution which may be relevant to the Services or the parties' performance of their respective obligations under this Agreement.

## INTELLECTUAL PROPERTY

**30.21 Pre-Existing Intellectual Property:** All Intellectual Property that is created by, or is owned by or proprietary to, a party before the Commencement Date, or that is developed by a party outside this Agreement (**Pre-Existing Intellectual Property**), is owned exclusively by that party and that party shall be free to use and deal with that Pre-Existing Intellectual Property as it sees fit.

**30.22 Chorus will own:** As between Chorus and Service Provider (and any Personnel, Subcontractor or Technician), Chorus owns (and to the extent not created at the Commencement Date, will own) all Intellectual Property in:

- (a) Any Chorus Material;
- (b) Any Chorus Data; and
- (c) Chorus' systems and, subject to clause 25.12 (Ownership of systems), any Modifications made to Chorus' systems,

and to the extent necessary (if at all), Service Provider assigns all such Intellectual Property to Chorus effective from the date of its creation. Service Provider must, upon request by Chorus, do all things necessary (including executing (or procuring the execution of) any documents) to give effect to this clause 27.2.

**30.23 Chorus licence to Service Provider:**

- (a) Subject to clause 27.3(b), Chorus grants to Service Provider:
  - (i) A fully paid-up, royalty free, non-transferable, non-exclusive licence to use, execute, perform and reproduce, merge with other Material, and Modify the Chorus Material and Chorus Data, for the sole purpose of, and only to the extent necessary for, providing and performing the Services and performing any of its obligations under this Agreement; and
  - (ii) The right to grant to Service Provider's Personnel, Subcontractors and Technicians who have been approved by Chorus in writing the right to use such Chorus Material and Chorus Data on the terms of clause 27.3(a)(i).
- (b) The licence granted to Service Provider in clause 27.3(a) in respect of Chorus Material or Chorus Data licensed to Chorus by a third party is subject to any reasonable licence terms or restrictions imposed in the licence between Chorus and the third party provided that Chorus must notify Service Provider of the relevant licence terms and restrictions.
- (c) The licence granted by Chorus to Service Provider under clause 27.3(a) will immediately expire:
  - (i) In respect of a particular item of Chorus Material or Chorus Data, if that



item ceases to be used in provision and performance of the Services, in which case Service Provider must promptly comply with clause 31 (Returning Material, Data and Information) in respect of that item; and

- (ii) In its entirety, on expiry or earlier termination of this Agreement (in its entirety).

**30.24 Service Provider will own:** As between Chorus and Service Provider (and any Personnel, Subcontractor or Technician), Service Provider owns (and to the extent not created at the Commencement Date, will own) all Intellectual Property in:

- (a) Any Service Provider Material;
- (b) Service Provider's systems and, subject to clause 25.12 (Ownership of systems), any Modifications made to Service Provider's systems in connection with this Agreement.

**30.25 Service Provider licence to Chorus:**

- (a) Subject to clause 27.5(b), Service Provider grants to Chorus:
  - (i) An irrevocable, perpetual, fully paid-up, royalty free, non-exclusive licence to use, execute, perform and reproduce, merge with other Material, and Modify the Service Provider Material for the purposes of receiving the full intended benefit of the Services and performing any of its obligations or exercising any of its rights under this Agreement; and
  - (ii) The right to grant to Chorus' Personnel the right to use such Service Provider Material on the terms of clause 27.5(a)(i); and
  - (iii) The right to sublicense the right to use such Service Provider Material on the terms of clause 27.5(a)(i) to third party providers for the sole purpose of, and only to the extent necessary for, those third party providers to perform or discharge any of Chorus' rights or obligations under this Agreement or to provide goods or services to Chorus.
- (b) The licence granted to Chorus in clause 27.5(a) in respect of Service Provider Material licensed to Service Provider by a third party is subject to any reasonable licence terms or restrictions imposed in the licence between Service Provider and the third party, provided that:
  - (i) Service Provider must use all reasonable endeavours to ensure its third party licenses do not contain terms that may, at any time, restrict or reduce Chorus' ability to use the Service Provider Material in accordance with the licence granted under clause 27.5(a) or any other term of this Agreement or otherwise reduce the full intended benefit of this Agreement to Chorus;
  - (ii) Service Provider must notify Chorus of the relevant licence terms and restrictions; and
  - (iii) Notwithstanding the third party licence terms or restrictions, Service Provider must still observe and perform its obligations under, and the requirements of, this Agreement.

**30.26 Joint Ownership:** The parties will jointly own any Intellectual Property in any new



Material jointly created, developed or produced by the parties in connection with, and for the purposes of, this Agreement to the extent that the new Material does not include any Chorus Material, Chorus Data, Personal Information, Service Provider Material or any Pre-Existing Intellectual Property (**New Material**), unless the parties expressly agree otherwise in writing. To avoid doubt, a Modification to a system is not New Material.

**30.27 Licence to use New Material:**

- (a) Each party grants to the other party an irrevocable, perpetual, fully paid-up, royalty free, non-exclusive licence to use, execute, perform and reproduce, merge with other Material, and Modify the New Material:
  - (i) In the case of Service Provider, for the sole purpose of, and only to the extent necessary for, providing and performing the Services and performing any of its obligations under this Agreement; and
  - (ii) In the case of Chorus, for the purposes of receiving the full intended benefit of the Services and performing any of its obligations or exercising any of its rights under this Agreement, and providing products and services to its Customers and End Customers; and
- (b) Chorus grants to Service Provider:
  - (i) The right to grant to Service Provider's Personnel, Subcontractors and Technicians who have been approved by Chorus in writing the right to use such New Material on the terms of clause 27.7(a)(i); and
- (c) Service Provider grants to Chorus:
  - (i) The right to grant to Chorus' Personnel the right to use such Service Provider Material on the terms of clause 27.7(a)(ii); and
  - (ii) The right to sublicense the right to use such New Material on the terms of clause 27.7(a)(ii) to third party providers for the sole purpose of, and only to the extent necessary for, those third party providers to perform or discharge any of Chorus' rights or obligations under this Agreement or to provide goods or services to Chorus.

**30.28 Restriction on use of Materials:** The licences granted to Service Provider under clause 27.3 (Chorus licence to Service Provider) and clause 27.7 (Licence to use New Material) shall not permit Service Provider to use, execute, perform and reproduce, merge with other Material or Modify any Chorus Material or any New Material in the provision or performance of Similar Services to, or for the benefit of, any of Chorus' competitors.

**30.29 Not act to prejudice:** Service Provider must not at any time:

- (a) Disclose any Chorus Material, Chorus Data or any New Material, or grant any right to any third party (except to the extent permitted under clause 27.3(a)(ii) or clause 27.7(b)(i)) to use or perform any copyright acts in respect of the Chorus Material, Chorus Data or the New Material, without Chorus' prior written consent; or
- (b) Do anything or cause anything to be done which would prejudice Chorus' right,



title or interest in any of Chorus' Intellectual Property.

**30.30 Intellectual Property Warranty:** Each party warrants to the other party that:

- (a) It is not aware of any existing or reasonably likely Claim or allegation that the exercise by the other party of any licence or rights granted to that party under this clause 27 will infringe the Intellectual Property of any person (**IP Infringement Claim**);
- (b) In the case of Service Provider, in providing and performing the Services and performing any of its obligations under this Agreement, it will not infringe the Intellectual Property of any person;
- (c) In the case of Chorus, in performing any of its obligations or exercising any of its rights under this Agreement, it will not infringe the Intellectual Property of any person;
- (d) In the case of Chorus, it has all rights necessary to grant the licenses and rights set out in clause 27.3 (Chorus licence to Service Provider), read in conjunction with the other terms of this clause 27 (Intellectual Property);
- (e) In the case of Service Provider, it has all rights necessary to grant the licences and rights set out in clause 27.4 (Service Provider licence to Chorus), read in conjunction with the other terms of this clause 27 (Intellectual Property); and
- (f) The exercise by the other party of any licence or rights granted to that party under clause 27.3 (Chorus licence to Service Provider) (where Service Provider is that other party) and clause 27.4 (Service Provider licence to Chorus) (where Chorus is that other party) and clause 27.7 (Licence to use New Material) will not infringe the Intellectual Property of any person.

**30.31 Remediation:** If any Material or New Material becomes, or in either party's reasonable opinion is likely to become, the subject of an IP Infringement Claim, the party who owns the Material will, promptly (at that party's cost):

- (a) Use its best efforts to secure the right to continue using the relevant Material or New Material;
- (b) Replace or Modify the Material or the New Material (as applicable) to make it non-infringing, provided that any such replacement or Modification will not degrade the performance or quality of the affected part of the Services; or
- (c) If, and only if, that party cannot achieve the outcomes described in either clause 27.11(a) or clause 27.11(b), the parties must cease using the Material or the New Material (as applicable). To the extent Chorus funded the development of the Material or the New Material, Service Provider shall reimburse any amounts paid by Chorus to Service Provider.

**30.32 Service Provider Intellectual Property indemnity:** Service Provider indemnifies Chorus and each of its Personnel (**Chorus Indemnified Person**) against any Damages that any Chorus Indemnified Person may suffer or incur in connection with any IP Infringement Claim arising out of, or in connection with:

- (a) The use and/or exercise by Chorus of any licence or rights granted to it under this Agreement in relation to any Service Provider Material or any New Material;



- (b) The provision and/or use of any Service Provider Material or any New Material by or on behalf of Service Provider in the provision and performance of the Services; or
- (c) Any Modification made to any Chorus Material by or on behalf of Service Provider (unless the Modification was commissioned by Chorus or made at the express request of Chorus),

and must satisfy any settlement of, or judgment given in, any IP Infringement Claim.

**30.33 Exclusions to indemnity:** The indemnity provided by Service Provider under clause 27.12 (Service Provider Intellectual Property indemnity) will be reduced to the extent that any Damages resulting from the IP Infringement Claim are caused by:

- (a) Any negligent act or omission of Chorus Indemnified Persons;
- (b) Any use of any Service Provider Material by Chorus Indemnified Persons which is in breach of this Agreement, or otherwise prohibited by Intellectual Property Law (and which was not authorised by Service Provider);
- (c) Any use of any Service Provider Material by Chorus Indemnified Persons in combination with any Material that is not compatible with Service Provider Material (as notified by Service Provider to Chorus in writing); or
- (d) Any Modifications made to any Service Provider Material that were not commissioned by Service Provider or made at the express request of Service Provider.

#### CHORUS DATA

**30.34 Ownership of Chorus Data:** As between Chorus and Service Provider (and any Personnel, Subcontractor or Technician), Chorus or its licensors owns (and to the extent not created at the Commencement Date, will own) the Chorus Data.

**30.35 Use of Chorus Data:** Except to the extent expressly permitted under, or required by, this Agreement, Service Provider must not:

- (a) Use Chorus Data for any purpose other than for the purposes of providing and performing the Services and performing any of its obligations under this Agreement;
- (b) Modify or make copies of any Chorus Data other than for the purposes of this Agreement;
- (c) Make any Chorus Data available to any person other than to those persons who have been approved by Chorus in writing, and only then to the extent strictly necessary to enable them to perform their part or parts of the Services;
- (d) Retain any Chorus Data for longer than is required for Service Provider to perform its obligations under this Agreement;
- (e) Purport to sell, let for hire, assert a lien over, assign or licence rights in or otherwise dispose of or release any Chorus Data; or



(f) Commercially exploit any Chorus Data.

**30.36 Security requirements:** Service Provider must:

- (a) Comply with Chorus' security requirements and policies relating to access to, and use of, any Chorus Data (as may be contained in Technical Documents or otherwise notified to Service Provider from time to time under the TAG Process);
- (b) Establish and maintain internal security safeguards and controls to ensure the security of, and protect, the Chorus Data against destruction, corruption and loss, and any unauthorised access to, use of, Modification to, or disclosure of Chorus Data (including disaster recovery and continuity arrangements), such safeguards and controls to be consistent with Good Industry Practice;
- (c) Prohibit and prevent any person who has no need to access Chorus Data for the purposes specified in clause 28.2 (Use of Chorus Data) from accessing Chorus Data;
- (d) Immediately notify Chorus if Service Provider becomes aware of any suspected or actual security incident, breach or failure, including any unauthorised access to, or use of, any Chorus Data; and
- (e) Immediately take all reasonable steps to prevent or stop any suspected or actual unauthorised access to, or use of, any Chorus Data and comply with all reasonable directions of Chorus in this regard.

**CONFIDENTIALITY AND PRIVACY**

**30.37 Acknowledgement:** The Recipient acknowledges that the Confidential Information of the Owner is valuable to the Owner. The Recipient undertakes to:

- (a) Not access, use or reproduce the Owner's Confidential Information except to the extent expressly permitted under clause 29.2 (Permitted use of Confidential Information); and
- (b) Keep the Owner's Confidential Information secret and to protect and preserve the confidential nature and secrecy of that Confidential Information except to the extent disclosure is expressly permitted under clause 29.3 (Permitted disclosure of Confidential Information).

**30.38 Permitted use of Confidential Information:** The Recipient may only access, use or reproduce the Owner's Confidential Information for the purposes of providing and performing the Services, performing its obligations or exercising its rights under this Agreement (as applicable).

**30.39 Permitted disclosure of Confidential Information:**

- (a) Chorus may disclose Confidential Information of Service Provider on a strict 'need to know' basis to:
  - (i) Its Personnel, professional advisors and third party providers to Chorus requiring access to the information in connection with this Agreement;

- (ii) Comply with relevant Law or any lawful requirement of any government agency, or request from CFH, but only to the extent required; or
  - (iii) The New Zealand Stock Exchange or any other stock exchange or trading market upon which Chorus or any of its Related Companies, or any securities of any of them, is listed or quoted, to the extent it is necessary to satisfy the requirements of any of those persons;
- (b) Service Provider may disclose Confidential Information of Chorus on a strict 'need to know' basis to:
- (i) Its Personnel, Subcontractors, Technicians and professional advisors requiring access to the information for the purposes of providing and performing their part or parts of the Services;
  - (ii) Comply with relevant Law or any lawful requirement of any government agency, but only to the extent required; or
  - (iii) The New Zealand Stock Exchange or any other stock exchange or trading market upon which Service Provider or any of its Related Companies, or any securities of any of them, is listed or quoted, to the extent it is necessary to satisfy the requirements of any of those persons;
- (c) Service Provider may disclose Chorus Data or Personal Information relating to a particular End Customer (or their End Customer Site) to that End Customer as necessary in the course of the provision and performance of the Services, but only to the extent that the Chorus Data or Personal Information relates to that End Customer's Order.

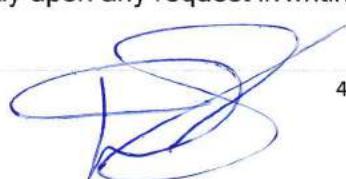
**30.40 Compelled disclosures:** If the Recipient is compelled to disclose any of the Owner's Confidential Information under relevant Law or any lawful requirement of any government agency, the Recipient shall:

- (a) Immediately notify the Owner in writing so that it may (if it considers appropriate) seek a protective order or other remedy;
- (b) Only disclose information to the extent legally required; and
- (c) Use its reasonable endeavours to obtain undertakings that confidential treatment will be accorded to the information by the person to whom it is disclosed.

To avoid doubt, this clause 29.4 (Compelled disclosures) does not apply to disclosure of the Service Provider's Confidential Information to CFH by Chorus pursuant to a request from CFH.

**30.41 Security and control of Confidential Information:** The Recipient must:

- (a) Procure that any person to whom the Owner's Confidential Information is disclosed under clause 29.3(a)(i) and clause 29.3(b)(i) (as applicable) is bound by an obligation of confidentiality in respect of that Confidential Information on terms consistent with this clause 29 (Confidentiality and Privacy) and must provide evidence of this to the Owner promptly upon any request in writing;



- (b) Keep the Owner's Confidential Information under its control;
- (c) Co-operate with the Owner in any action which that Owner may take to protect the confidentiality of its Confidential Information under this Agreement;
- (d) Immediately notify the Owner if the Recipient becomes aware of any suspected or actual unauthorised access to, use of, disclosure of or reproduction of, the Owner's Confidential Information; and
- (e) Immediately take all reasonable steps to prevent or stop any suspected or actual unauthorised access to, use of, disclosure of or reproduction of, the Owner's Confidential Information and comply with all reasonable directions of the Owner in this regard.

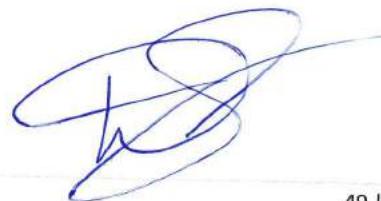
**30.42 Personal Information:** In addition to the requirements of clause 29.2 (Permitted use of Confidential Information), clause 29.3 (Permitted disclosure of Confidential Information), and clause 29.4 (Security and control of Confidential Information), Service Provider must, specifically in respect of any Personal Information:

- (a) Comply at all times with:
  - (i) Privacy Law;
  - (ii) Any privacy policy or code adopted by Chorus and notified to Service Provider (as may be contained in Technical Documents or otherwise notified to Service Provider from time to time under the TAG Process); and
- (b) Provide reasonable assistance and access to Chorus to any Personal Information sought in relation to a Privacy Law request, where Service Provider holds some or all of that Personal Information.

To avoid doubt, Service Provider will hold all Personal Information solely as agent for the purposes of the Privacy Act 1993.

**30.43 Public statements:** Service Provider must not make any public statements about this Agreement, the Services or its relationship with Chorus in any advertising, marketing activities, promotional material, publicity, press release, external presentation or proposal except as permitted or required by this Agreement or otherwise with Chorus' prior written approval. Chorus may grant or withhold such approval in its sole and absolute discretion.

**30.44 Notice of Media Release:** Chorus shall use its reasonable endeavours to provide advance notice to Service Provider (where practicable) of any proposed media release, public announcement or press statement that relates specifically to the Services provided and performed by Service Provider under this Agreement. To avoid doubt, Chorus is permitted to issue releases, make public announcements and issue any press statements regarding the transmission of UFB to End Customers and connection of End Customer Sites to the UFB Network.



## Schedule 4 – Reference Details

<b>Principal:</b>	Chorus New Zealand Limited
<b>Term:</b>	N/A
<b>Subcontractor:</b>	Fabril Solutions Ltd
<b>Subcontractor's Representative:</b>	Siddhartha (Sid)
<b>Position:</b>	Doma
<b>Address:</b>	Flat 3, 1a Prangley Avenue, Mangere, Auckland, 2022 , New Zealand
<b>Phone Number:</b>	020 405 77777
<b>Fax Number:</b>	
<b>Email:</b>	siddhu.doma@gmail.com

### Company Representatives

<b>Company:</b>	Universal Communications Group NZ Ltd (UCG)
<b>Company's Representative:</b>	Paul Trotman
<b>Position:</b>	General Manager New Zealand
<b>Address:</b>	274 Church Street, Onehunga, Auckland, NZ, 1061
<b>Phone Number:</b>	+64 9 6331 421
<b>Email:</b>	Paul.trotman@ucg.co.nz

<b>Company:</b>	Universal Communications Group Ltd (UCG)
<b>Company's Representative:</b>	Samantha Cox
<b>Position:</b>	Group Commercial Manager
<b>Address:</b>	2-4 Clunies Ross Court, Eight Mile Plains, QLD, 4113
<b>Phone Number:</b>	+61 4 3705 0365
<b>Email:</b>	samantha.cox@ucg.com.au



## Schedule 5 – Brand and Presentation Guidelines

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### 1. INTRODUCTION

UCG and its Subcontractors represent the face of Chorus to end customers and the community, and it is essential that we present ourselves in a way that supports both UCG's (The Company's) Values, and the Chorus brand. The following section reflects Chorus's brand requirements as a component of the contract. In this section, "The Companies" is to be read as both Chorus, and UCG.

- 1.1 This Schedule 5 sets out The Companies' desired brand experience – that is the impression that Subcontractor's Personnel, Subcontractors and Technicians leave behind when interacting with End Customers, Customers, and members of the public and other stakeholders. It is intended to shape the behaviour and performance of Subcontractor's Personnel, Subcontractors and Technicians to ensure that interactions contribute towards building a positive reputation for Chorus.
- 1.2 Subcontractor's Personnel, Subcontractors and Technicians become the public face of Chorus whenever they represent The Companies in their work and interact with others in relation to that work. This means they are at the front end of delivering the outstanding customer service we want New Zealanders to experience.
- 1.3 Chorus sometimes requires the delivery of approved communications or letters to residents as part of normal operations. Subcontractor must ensure that the right letters are used for this purpose, and that they are distributed at the right time and in the manner specified by The Company.
- 1.4 Subcontractor's Personnel, Subcontractors and Technicians are expected to behave and perform Services consistent with the guidelines set out in this Schedule 5, and in accordance with The Companies' requirements for brand and communications (as may be specified in this Agreement or any Technical Document).
- 1.5 The requirements set out in this Schedule 5 apply to all Personnel, Subcontractors and Technicians providing and performing the Works. Subcontractor must ensure implementation and adherence to the requirements set out in this Schedule 5, which must be integrated into Subcontractor's business as usual processes and practices, including processes to transition or replace old or incorrectly branded vehicles or wardrobes.
- 1.6 **Use of "Subcontractor's people":** Reference to "Subcontractor's people" in this Schedule 5 is to Subcontractor's Personnel, Subcontractors and Technicians who provide and perform Works under this Agreement.

### 2. THE CHORUS BRAND EXPERIENCE

- 2.1 The Chorus brand experience is all about a consistent track record of getting the job done as committed and done well. This means a few things:
  - (a) That New Zealanders can depend on The Company and its people (including Subcontractors) to take their role as guardians of the network seriously. This means being dedicated to doing absolutely everything possible to get End Customers connected and to keep End Customers online by maintaining high standards of



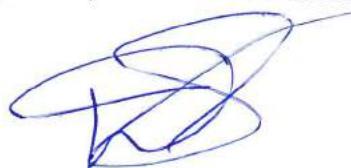
- network performance;
- (b) Delivering the professional presentation and expert performance that will result in customer satisfaction and trust;
  - (c) Providing a consistent customer experience when working within End Customer Sites and interacting with Customers and End Customers, including complying with the Customer Service Experience (CSE) as set out in Schedule 3 (Customer Service Experience); and
  - (d) Use of Chorus's brand and presentation in accordance with clause 3 and clause 4 of this Schedule 5.

### **3. CHORUS's BRAND POLICY & GUIDELINES**

**3.1 The Chorus Brand:** The Chorus Brand is more than just the logo. It is about the experience and impression that Customers and End Customers get when they interact with Chorus or someone representing Chorus. The image and presentation contributes to the way the Chorus brand is perceived. In this context, this clause 3 of this Schedule 5 broadly outlines Chorus's requirement of The Company and their Subcontractor to maintain appearances in line with The Company's brand values.

#### **3.2 Policy - Logo Placement for vehicles and wardrobe:**

- (a) The Chorus logo shall be the primary and dominant logo and design on Subcontractor vehicles, technical wardrobe and other information or collateral associated with the Services.
- (b) No other logos other than the The Companies logos (specifically, only Chorus and The Company) are to be displayed in relation to the Services unless otherwise specified or authorised by The Company.
- (c) Subcontractor logos on vehicles or technical wardrobe are subject to authorisation by The Company.
- (d) Any UCG logos on The Chorus vehicle must only appear on the lower right hand corner of the driver's front door and the lower left hand corner of the passenger's door. The logo must not exceed the height of the front wheel arch. The Company will provide specific design requirements.
- (e) The height of UCGs logos on the technical wardrobe cannot exceed the height of the The Chorus logo, and can only be applied on the existing wardrobe background. Subcontractor logos should not be applied on a blocked-out background. The Company will provide specific design requirements.
- (f) Subcontractor's people are required to have a The Chorus -branded vehicle and wardrobe (with the exception of Subcontractors working in a civil capacity). Exceptions for vehicle branding (should that vehicle not be 100% dedicated to Chorus services) will be considered by application to The Company's nominated Personnel and are subject to The Company's approval (in its sole and absolute discretion).





A handwritten blue signature, likely belonging to the person whose name is mentioned in the text below.

Branding examples are provided below:



### 3.3 Policy - Chorus Signage

- (a) From time to time The Company may provide branded equipment for use by Subcontractor's people in the field or require Subcontractor to install additional branded signage on a work site for the purposes of increasing awareness and public education about the work being carried out.
- (b) In these instances, Chorus will provide clear written instructions about how the signage is to be displayed and provide Subcontractor with the necessary tools to install signage appropriately.
- (c) Chorus will undertake to ensure that all signage and related instructions comply with all related policies (e.g. Traffic Management or Health & Safety) and will consult with The Company to help ensure this.
- (d) From time to time signage requirements may also apply to Subcontractors (including civil contractors). The Chorus field manager (as applicable) is expected to ensure compliance with these requirements.

## 4. CHORUS PRESENTATION POLICY & GUIDELINES

4.1 This clause 4 of this Schedule 5 broadly outlines The Company' requirement of Subcontractor to maintain presentation in line with Chorus brand values.

### 4.2 Policy – Technical Wardrobe:

- (a) The Company makes available an approved technical wardrobe for Technicians who are End Customer-facing and work in the field. Subcontractor's people in these roles must be dressed in the approved UCG technical clothing range.
- (b) Although the technical wardrobe is only provided for Subcontractor's people outlined in clause 4.2(a) of this Schedule 5, The Companies may from time to time provide approved wardrobe for other of Subcontractor's people. In these instances, The Companies will provide the wardrobe and clear instructions for its use.
- (c) All clothing must be kept clean and tidy at all times, and conform to best trade practices. All clothing items must comply with all relevant health and safety standards.

- (d) Technical clothing range will be designed by The Companies to achieve a consistent design that meets all required branding policies and relevant standards. The final design, including logo placements is subject to Chorus's approval (in its sole and absolute discretion).
- (e) The Companies reserves the right to change the design of the technical clothing in line with appropriate business requirements. To ensure no additional cost is borne by Subcontractor, The Company will provide advanced notice of a change in clothing and provide a reasonable contribution towards replacement technical clothing, taking into account the length of notice provided.
- (f) Subcontractor is responsible for ensuring that a process is in place to ensure their people have the approved clothing range as required. This includes replacement clothing as required due to normal business wear and tear, replacement to change incorrect clothing or to transition to a new clothing range.

#### **4.3 Policy - Clothing presentation:**

- (a) Jandals, sandals, tennis or running shoes are not acceptable. In all cases, footwear must comply with relevant health and safety requirements for the situation, taking into consideration the environment or any instances that specifically require foot protection. For example, when working on any part of the external UFB Network and within Network Sites, the use of steel toe cap protection is required.
- (b) Torn, ripped or dirty clothing and untidy jeans or t-shirts are not acceptable. Subcontractor's people must wear protective clothing appropriate to any situation, specifically considering any potential hazards. For example:
  - (i) Flame retardant overalls must be worn when soldering or working with or near naked flames; and
  - (ii) High-visibility jackets, hard hats, gloves and safety goggles must be worn as appropriate and in line with health and safety standards.
- (c) Clothing or any other merchandise (including hats) that feature logos or brand elements of companies other than The Companies or Subcontractor are not to be worn, unless expressly approved by The Company in writing.

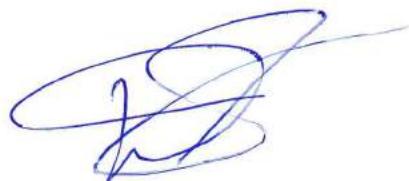
#### **4.4 Policy - Personal Appearance:**

- (a) At all times, Subcontractor's people must:
  - (i) Clearly display their Chorus and UCG identification card;
  - (ii) Maintain personal hygiene standards;
  - (iii) Ensure that their hands and nails are clean;
  - (iv) Keep hair, including beards or moustaches, clean, tidy and neatly groomed; and
  - (v) Keep footwear clean and tidy, especially when entering an End Customer Site.



compliant hands-free equipment; and

- (viii) Avoid driving when overly tired or under significant stress.



## Schedule 6 – KPI's

KPI	Description	Target (Calendar Days or Hours)	Service Fee (\$ NZ)
1	<b>Completion Documentation</b> - All Completion Documentation as defined in <b>Clause 1(i)</b> to be issued to the Company on Completion of the Works. Completions of the Works is all sites that have been pushed through to status "290 - Cabling Complete" through the Company's internal systems.	2 days	\$50.00
2	<b>Non-Conformance Rectification Timeframes - Critical Defect</b> - Immediate commercial/statutory impact, delays to other related outcomes, and / or has cost, customer or safety implications.	24 hrs	\$100.00
3	<b>Non-Conformance Rectification Timeframes - Major Defect</b> - Failure to meet standard, impacts future service or network robustness. E.g. milestones or records not delivered within agreed SLA.	7 days	\$100.00
4	<b>Non-Conformance Rectification Timeframes - Minor Defect</b> - Must be corrected to enable agreed technical or process outcomes.	14 days	\$100.00
5	<b>Met Commit Arrival Time</b> - Subcontractor must arrive on site, in the relevant AM or PM timeslot on the correct date and update the relevant systems with the time stamp of the arrival time and photo image of the location.	Arrive within the specified arrival time slot	\$50.00

**Note:** A Non-conformance remedied with temporary corrective action(s) will be counted as a fail under this KPI (regardless of how quickly it was completed). A Non- conformance remedied with permanent corrective action(s) (compliant with the requirements of this Agreement) within the applicable timeframe for its allocated severity/priority will be counted as a pass under this KPI.



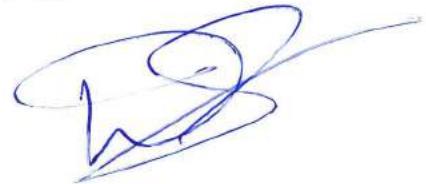
Workplace Health & Safety	Description	Target (per Month)	Implications
1	The sub-contractor must conduct work in a safe manner, including (without limitation) complying with all HSE Laws, Legislative Requirements, the Register of Codes and Company HSE standards, policies or procedures, project HSE plan as notified to the Sub-contractor by Company from time to time.	100%	Refer to below table Category 1
2	The sub-contractor must conduct work in a safe manner, including (without limitation) complying with all HSE Laws, Legislative Requirements, the Register of Codes and Company HSE standards, policies or procedures, project HSE plan as notified to the Sub-contractor by Company from time to time.	100%	Refer to below table Category 2
3	The sub-contractor must conduct work in a safe manner, including (without limitation) complying with all HSE Laws, Legislative Requirements, the Register of Codes and Company HSE standards, policies or procedures, project HSE plan as notified to the Sub-contractor by Company from time to time.	100%	Refer to below table Category 3
Category	Details		
1 - 48hrs Suspension from Works	<ul style="list-style-type: none"> <li>- Not reporting Incidents within timeframes as per the Contractor HSE Plan</li> <li>- Not working to HSE Plan</li> <li>- Not completing asset location prior to excavation</li> <li>- Not completing asset location in cavity walls or roof space prior to installation of equipment.</li> <li>- Remove ACM without relevant competency</li> <li>- Improper handling and storage of ACM</li> <li>- Undertaking or complete work without accreditations and/or training</li> <li>- Improper/ insufficient guarding/barricading of pits and manholes</li> <li>- Subcontractors engaging other workers worker on project who have not been registered on the Contractor Compliance Site</li> <li>- Non-compliance to safe work procedures which include but not limited to: <ul style="list-style-type: none"> <li>- Safe Work Method Statements</li> <li>- Work instructions</li> <li>- Contractor Instructions</li> </ul> </li> </ul>		
2 - 7 days Suspension from Works	Repeat of Category 1		
3 - Termination from Project	<ul style="list-style-type: none"> <li>- Working at Height without fall protection</li> <li>- Violence directed at other workers or members of the public, including verbal threats</li> <li>- Malicious damage of property or equipment</li> <li>- Theft of property or equipment</li> <li>- Bringing the Contractor brand into disrepute</li> <li>- Non-compliance to the Contractor fitness for work policy</li> </ul>		

## **Schedule 7 – Schedule of Rates**

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Please refer to attachment.

1. Delivery Partner Schedule of Rates – UFB1 Connect Areas ONLY
2. Delivery Partner Schedule of Rates – UFB2 Connect Areas ONLY



## **Schedule 8 – Schedule of Rate Code Specifications**

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Please refer to attachment.

