

Terms of Use: beforeUdig Service

1. **Introduction:** You wish to use the beforeUdig Service. PelicanCorp agrees to provide You with use of the beforeUdig Service in accordance with the terms and conditions set out in these Terms of Use. Your use of the beforeUdig Service indicates Your acceptance of and agreement to be bound by these Terms of Use.
2. **Confirmation Sheet:** The Confirmation Sheet provides initial and useful general information about the proposed dig site. The Confirmation Sheet does not set out the detail of underground pipe, cable or other obstacle which might be present at a particular proposed dig site. The Confirmation Sheet is a guide only, is not intended to constitute professional advice or diagnosis, and no explanation or advice is offered in relation to the Content. The Confirmation Sheet provides a list of known Asset Owners who participate in the beforeUdig service as members.
3. **Limits to Confirmation Sheet:** PelicanCorp is not responsible for the results of any actions taken on the basis of the Confirmation Sheet or for any error or omission in the Content. No person, including qualified practitioners, should act solely on the basis of the Confirmation Sheet. Changes to knowledge and information may occur quickly. As a guide, site checking should occur and care be taken when digging near the proposed dig site. Occasionally, the available data may change without notice. The Confirmation Sheet identifies Asset Owners as either "Notified" or "Not Notified." "Not Notified" Asset Owners have chosen not to be directly contacted by the beforeUdig service. "Notified" Utilities will endeavour to provide information or contact within 48 hours of the request by the beforeUdig Service.
4. **User Responsibilities:** It is Your responsibility to:
 - (a) Check that the proposed dig site shown in the map on the Confirmation Sheet is correct.
 - (b) Contact the Asset Owners listed on the Confirmation Sheet as "Not Notified" directly to check their requirements including arranging for plans, information and/or locating your dig site.
 - (c) Contact the owners of any other underground assets who are not members of the beforeUdig Service to check their requirements. These will NOT be listed on the Confirmation Sheet
 - (d) Consult appropriate qualified practitioner(s) to provide advice, confirmation or explanation about the Content contained in the Confirmation Sheet.
 - (e) Contact PelicanCorp if You do not receive the Confirmation Sheet for a job within one Working Day.
 - (f) Make a request via the beforeUdig Service for an updated Confirmation Sheet as and when necessary in the circumstances including, but not limited to, where there has been any time delay between the date of an initial request and the date of the proposed excavation.
5. **On-Site Locator:** Some Asset Owners provide a service under which they organise a representative to visit Your proposed dig site and mark the location of their underground assets for You. Some Asset Owners require You to use this on-site locator service and charge a fee for the service. It is Your responsibility to discuss this directly with the relevant Asset Owner. Any on-site locator service provided by an Asset Owner is not under the control of PelicanCorp and PelicanCorp is not responsible for this.
6. **You are Allowed to:** You are allowed to view, print and store the Confirmation Sheet and Content in electronic or other forms for Your use only.
7. **You are Not Allowed to:** You are not allowed to, and must not permit any person to:
 - (a) Provide the Confirmation Sheet and Content to any third party other than those contemplated by these Terms of Use.
 - (b) Amend or adapt the Confirmation Sheet or any of the Content.
 - (c) Reverse assemble or decompile the whole or any part of the beforeUdig Service.
 - (d) Take any action that might undermine the integrity of the beforeUdig Service or use any device, software or instrument to interfere or attempt to interfere with the proper working of the Website.
8. **Website:** PelicanCorp may, at its sole discretion, determine when the Website is available and what information, data, features and functionality are made available to You via the Website. You must keep any username and password for the Website secure and are responsible for all use of the Website through Your username and password. If You breach any of these Terms of Use, PelicanCorp may disable Your username and password. If Your use of the Website results in the need for You to service or replace property, material, equipment or data, PelicanCorp is not responsible for any associated cost. PelicanCorp does not make any representations or warranties of any kind, whether express or implied, that your access to the Website or Third Party Websites will be continuous, uninterrupted, timely, secure, virus free or fault free, or that any information, whether personal or otherwise, you transmit to PelicanCorp via the Website or email will be secure and will not be intercepted by a third party.
9. **Advertising, Links and E-commerce Offers:** The Website contains hyperlinks and other pointers to Third Party Websites. These Third Party Websites are not under the control of PelicanCorp. PelicanCorp is not responsible for the contents of any linked Third Party Websites. PelicanCorp provides these hyperlinks and other pointers to You as a convenience only. Inclusion of any hyperlink or other pointer is not and does not imply an endorsement of a Third Party Website by PelicanCorp. You link to any Third Party Website entirely at Your own risk.
10. **Intellectual Property and Confidential Information:** All intellectual property in respect of the beforeUdig Service including, but not limited to, confidential information, Confirmation Sheet, Content and the Website is owned solely by PelicanCorp or the Asset Owner. You acknowledge and agree that the ownership of such intellectual property will remain with PelicanCorp or the Asset Owner and that you will not dispute such ownership, cause or permit anything that may damage PelicanCorp or the Asset Owner's title to such intellectual property or use such intellectual property otherwise than as permitted by these Terms of Use.
11. **Your Warranties to PelicanCorp:** You warrant to PelicanCorp that:
 - (a) You will not use the beforeUdig Service for any purpose that is unlawful or prohibited by these Terms of Use.
 - (b) All information provided by You to PelicanCorp:
 - (i) does not contain any material disclosing confidential information of a third party or breaching a third party's rights of privacy or intellectual property rights;
 - (ii) is true, complete, accurate and not misleading; and

(iii) does not violate any applicable law or regulation.

12. Liability:

- (a) Except as provided for in clause 7, neither PelicanCorp nor the User are liable to the other or to any third party for any loss, damage, injury or costs (including, without limitation, consequential or economic loss), which they are, or for which they may become liable, arising out of or in connection with the provision or use of the beforeUdig Service.
- (b) Neither PelicanCorp nor the User are responsible for any failure to perform or delay in performing their obligations under these Terms of Use.
- (c) You may have rights under the Consumer Guarantees Act 1993 and Fair Trading Act 1986, and nothing in these Terms of Use is intended to affect those rights.

13. Termination: PelicanCorp may terminate their provision of the beforeUdig Service to the User, and the User may terminate their use of the beforeUdig Service, at any time by written notice to the other.

14. General:

- (a) From time to time PelicanCorp may wish to amend these Terms of Use. If they wish to do so they will contact You to advise You of this and provide You with a copy of the amended Terms of Use and details of when they will take effect. If You use the beforeUdig Service after the date the amendments become effective, that will indicate Your acceptance of and agreement to be bound by the amended Terms of Use.
- (b) These Terms of Use (as they may be amended from time to time) constitute the entire agreement between You and PelicanCorp with respect to Your use of the beforeUdig Service. These Terms of Use supersede any prior agreements between You and PelicanCorp regarding Your use of the beforeUdig Service. In accepting and agreeing to be bound by these Terms of Use, You have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance other than as expressly set out in these Terms of Use.
- (c) A waiver, failure or delay to exercise a right arising from a breach of these Terms of Use does not waive the right to subsequently enforce the provisions of these Terms of Use.
- (d) If a provision of these Terms of Use is or becomes unenforceable, illegal or invalid for any reason, it shall be severed and shall not affect the enforceability, illegality, validity or application of any other provision which shall remain in full force and effect.
- (e) No agency, partnership, joint venture, independent contractor, employer – employee relationship is intended or created by these Terms of Use.
- (f) These Terms of Use are governed by and construed in accordance with the laws of New Zealand.

15. Defined Terms: In these terms, unless the context indicates otherwise:

Asset Owner means an owner of underground assets which is a member of the beforeUdig Service.

beforeUdig Service means the service owned and operated by PelicanCorp whereby PelicanCorp responds on behalf of Asset Owners to requests from Users proposing to excavate for information in respect of underground pipes and cables (such as water, gas, electricity and telecommunications).

Confirmation Sheet means the document containing Content provided by PelicanCorp to a User in response to a request for information via the beforeUdig Service including but not limited to a map of the proposed dig site and a list of beforeUdig members who are “Notified” and “Not Notified”.

Content means all data provided by PelicanCorp to the User via the beforeUdig Service. Owner names and contact details.

PelicanCorp means PelicanCorp (NZ) Limited and PelicanCorp Pty Limited.

Terms of Use means these terms and conditions (as they may be amended from time to time as set out in these Terms of Use).

Third Party Websites means internet websites operated by third parties other than PelicanCorp.

User and **You** and **Your** means any person who or entity which uses the beforeUdig Service and, where applicable, includes their employees, contractors, agents and subcontractors.

Website means the website www.beforeudig.co.nz operated by PelicanCorp and accessible by the User as part of the beforeUdig Service.

Working Day means between 9.00am to 5.00pm (NZST) on a day other than a Saturday, Sunday, or public holiday in Auckland, New Zealand.