Structural Separation Undertaking

given by Telstra Corporation Limited to the Australian Competition and Consumer Commission under section 577A of the Telecommunications Act 1997 dated 9 December 2011

Contents

			Page
Part A - Definitions and interpretation			
1	Defined terms and interpretation		3
	1.1	Definitions in the Dictionary	3
	1.2	Interpretation	3
	1.3	Order of precedence	3
	1.4	ACCC's powers under the CCA and the Act	3
Part B - Scope and application			
2	When this Undertaking comes into force		4
3	Withdrawal of this Undertaking		4
4	Application of this Undertaking		4
Part C – Structural separation			
5	Commitment to structural separation		5
Part D – Interim arrangements			
6	Objective		6
7	Operation of this Part D		6
	7.1	Commencement	6
	7.2	Part D ceases on Designated Day	6
	7.3	No application to NBN services, non-Regulated Services or Migration activities	6
	7.4	Part D cannot be directly enforced by Wholesale Customers	7
8	Telstra organisational structure		7
	8.1	Business Units for Wholesale, Retail and Network Services	7
	8.2	Staffing of Separated Business Units	9
	8.3	Wholesale Business Unit	10
	8.4	Work undertaken by a Separated Business Unit for another Separated Business Unit	11
	8.5	ACCC approval of further exempted services	12
	8.6	Incentives and employee benefits	12

8.7 Compliance processes 13

8.8 Consequences of a failure to comply 13

8.9 Customer excellence 13

8.10 Senior management 14

9 Overarching equivalence commitment 15

10 Information Security 17

10.1 Meaning of Protected Information 17

10.2 Examples of Protected Information 18

10.3 Telstra will not use or disclose Protected Information to give Retail Business Units an unfair advantage 19

10.4 Information security measures 19

10.5 Further restrictions on other information 20

11 Service quality and operational equivalence 20

11.1 Tickets of work for field staff 20

11.2 Basic Telephone Service 21

11.3 Wholesale ADSL Layer 2 Services 21

11.4 LSS and ULLS 21

11.5 Domestic Transmission Capacity Service 22

11.6 Wholesale billing 22

11.7 Non-compliance 22

11.8 Publication of processes 22

12 Access to Telstra Exchange Buildings and External Interconnect Facilities 23

12.1 Telstra reservations of Exchange Capacity 23

12.2 Management of order queues and common construction works at Exchange Building Facilities 23

12.3 On site audit prior to Capping an Exchange Building 24

12.4 Access to External Interconnect Facilities 24

12.5 Governance arrangements for Exchange Building Facilities and External Interconnect Facilities 24

12.6 TEBA requests for future anticipated requirements 25

13 Wholesale Customer Facing Systems 25

13.1 LOLO and Wholesale B2B Interface 25

13.2 Wholesale Customer Portal 26

13.3 Application assurance 26

13.4 Availability of LOLO 26

13.5 Service Qualification 26

14 Information Equivalence 27

14.1 Objective of Information Equivalence 27

14.2 Wholesale Customer Engagement 28

14.3 Network Notifications 29

15 DSL upgrades 29

16 Equivalence and Transparency Metrics 30

16.1 Equivalence and Transparency Metrics 30

16.2 Operational Equivalence Report 31

16.3 Telstra will report on Equivalence and Transparency Metrics to the ACCC and ITA Adjudicator 32

16.4 Calculation of Variances 33

16.5 Comparison of Common “Ticket of Work” Tasks 33

17 Service Level Rebates 33

17.1 Objective 33

17.2 Telstra will enter into a Regulated Services SLA Agreement on request 34

18 Price Equivalence and Transparency 34

18.1 Telstra to supply Wholesale ADSL Layer 2 Service on request 34

18.2 Price Equivalence and Transparency Measures 35

18.3 Wholesale Rate Card with Reference Prices 35

18.4 TEM Reporting and Wholesale Price Equivalence 36

18.5 TEM Reports and Substantiation Reports are not determinative 37

18.6 Operation of Price Equivalence and Transparency Framework 37

18.7 Price Equivalence Disputes 37

18.8 Price Transparency for Wholesale ADSL Layer 2 Service pricing 37

19 Telstra Accelerated Investigation Process 39

19.1 Establishment and object 39

19.2 Equivalence Complaints 39

19.3 The Accelerated Investigation Processes 40

19.4 Relationship with Alternative Processes 41

20 ITA Process 42

20.1 The establishment of the Independent Telecommunications Adjudicator 42

20.2 Referral of Equivalence Complaints to the ITA Process 42

20.3 Referral to the ITA Process of disputes under the Plan 43

20.4 Telstra to enter into ITA Agreements and cooperate with ITA Adjudicator 43

20.5 Telstra to comply with ITA process and orders of the Adjudicator 43

21 Implementation 43

21.1 Implementation Periods 43

21.2 Obligations in respect of an Implementation Period 45

21.3 ACCC may approve extensions 45

Part E – Monitoring of compliance

22 Operation of this Part E 46

23 Compliance processes and management 46

23.1 Telstra Audit Committee and Director of Equivalence 46

23.2 Equivalence Compliance Statement 47

23.3 Monthly compliance report in relation to the overarching equivalence commitment 47

23.4 Compliance Training 48

23.5 Supply of Equivalence Compliance Program to the ACCC 48

23.6 Director of Equivalence to prepare Annual Equivalence Report for Audit Committee 49

23.7 Disclosure of equivalence performance in annual reports 49

23.8 Separation Compliance Program 49

23.9 Disclosure to the ACCC of the Definitive Agreements and all contracts, arrangements and understandings 50

24 Compliance Reporting 50

24.1 Reporting to the ACCC 50

24.2 Annual Compliance Report 51

24.3 ACCC consultation 52

24.4 ACCC information requests 52

Schedule 1 — Dictionary 53

Schedule 2 — Organisational structure, information security and related measures 76

Schedule 3 — Equivalence and Transparency Metrics 79

Schedule 4 — Network Notifications 89

Schedule 5 — Independent Telecommunications Adjudicator 98

Schedule 6 — ITA Agreement 118

Schedule 7 — Regulated Services SLA Agreement 122

Schedule 8 — Telstra Reference Prices 129

Schedule 9 — TEM Reporting and Internal Wholesale Prices 142

Schedule 10 — Dispute Resolution Process for Price Equivalence Disputes 150

Schedule 11 — Equivalence Enforcement Terms 156

Schedule 12 — TEBA requests for future anticipated requirements 164

Schedule 13 — TEBA Queue Management 165

Attachment A - Conditions Precedent

This Undertaking is given by Telstra Corporation Limited (ABN 33 051 775 556) to the Australian Competition and Consumer Commission under section 577A of the *Telecommunications Act 1997* (Cth) and is dated 9 December 2011.

Background

A The Commonwealth Government is proposing to deploy the NBN Co Fibre Network to pass 93% of Australian premises. The Commonwealth Government established NBN Co to construct, own and operate the NBN Co Fibre Network.

B Under section 577A of the Act, Telstra may give an undertaking to the ACCC that:

(i) at all times after the Designated Day:

(A) it will cease supplying fixed line carriage services to retail customers in Australia using telecommunications networks over which Telstra is in a position to exercise control; and

(B) it will not be in a position to exercise control of a company that supplies fixed line carriage services to retail customers in Australia using telecommunications networks over which Telstra is in a position to control;

(ii) establishes and maintains appropriate and effective measures to provide transparency and equivalence in the supply of Regulated Services during the period up to the start of the Designated Day; and

(iii) provides for appropriate and effective systems, procedures and processes to facilitate monitoring of Telstra's compliance with this Undertaking by the ACCC.

C On 23 June 2011, the Minister made an instrument under sections 577A(20) and (21) of the Act exempting from the scope of section 577A(1) and the associated provisions certain networks and services.

D On 23 June 2011, the Minister made an instrument under section 577A(7) of the Act setting out certain matters that the ACCC is required to have regard to in deciding whether to accept this Undertaking.

E On 23 June 2011, the Minister made a determination under subclause 71(4) of Schedule 1 of the Act specifying certain eligible services to be Regulated Services.

F Telstra gives this Undertaking to the ACCC in accordance with section 577A(1) of the Act in respect of those fixed line carriage services supplied over those telecommunications networks it controls which are not the subject of the Networks and Services Exemption Instrument.

G On 23 June 2011, Telstra entered into the Definitive Agreements with NBN Co in which Telstra agreed that, as the NBN Co Fibre Network is progressively rolled out in areas, Telstra will disconnect its Copper Network in those areas and disconnect and deactivate the HFC Network, other than in respect of pay TV services, in those areas. These commercial arrangements will allow Telstra to achieve its commitment in this Undertaking to structural separation by the Designated Day.

H As part of this Undertaking, in accordance with section 577BC of the Act Telstra has also given a draft migration plan to the ACCC.

I The document attached to this Undertaking as Attachment A (**Conditions Precedent**) nominates events under subsection 577AA(1) of the Act which must occur before this Undertaking comes into force and is the document which accompanies this Undertaking for the purposes of that subsection.

J This Undertaking comes into force at the time specified in clause 2.

Part A Definitions and interpretation

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

(a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;

(b) which is defined in the Plan, but is not defined in the Dictionary, has the meaning given to it in the Plan; and

(c) which is defined in the Act, but is not defined in the Dictionary or the Plan, has the meaning given to it in the Act.

1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Undertaking.

1.3 Order of precedence

(a) If there is any conflict or inconsistency between any of the provisions of the Plan and this Undertaking, the provisions of this Undertaking prevail to the extent of the conflict or inconsistency.

(b) If there is any conflict or inconsistency between any of the provisions of Part C of this Undertaking and any other part of this Undertaking, the provisions of Part C prevail to the extent of the conflict or inconsistency.

(c) If there is any conflict between the provisions of a Part of this Undertaking and the provisions of a Schedule to this Undertaking, the provisions of the Part prevail to the extent of the conflict or inconsistency.

1.4 ACCC's powers and functions under the CCA and the Act

For clarification, nothing in this Undertaking constrains the ACCC's powers or functions under the CCA or the Act to any greater extent than expressly provided in the CCA or the Act respectively.

Part B Scope and application

2 When this Undertaking comes into force

In accordance with section 577AB of the Act, this Undertaking comes into force if and when:

(a) the ACCC has accepted this Undertaking; and

(b) each of the events specified in Attachment A (**Conditions Precedent**) has occurred within the period specified by the ACCC in its decision to accept this Undertaking in accordance with section 577AA of the Act.

3 Withdrawal of this Undertaking

(a) Telstra may withdraw this Undertaking at any time prior to the time that it is accepted by the ACCC.

(b) The following events are non-exhaustive examples of when Telstra may elect to withdraw this Undertaking prior to the time that it is accepted by the ACCC:

(i) if the Minister varies or revokes an instrument made under section 577A(7) of the Act which is in force at the time this Undertaking is given to the ACCC;

(ii) if the Minister varies or revokes the Networks and Services Exemption Instrument;

(iii) if the Minister varies or revokes an instrument made under section 577BB(1) of the Act which is in force at the time this Undertaking is given to the ACCC;

(iv) if the ACCC rejects a draft migration plan given by Telstra under section 577BC of the Act;

(v) if Telstra withdraws a draft migration plan given under section 577BC of the Act prior to the time that it is approved by the ACCC; or

(vi) the Minister makes a determination under section 577GA of the Act.

4 Application of this Undertaking

Except and to the extent otherwise stated, the provisions of this Undertaking apply only to Non-Exempt Networks and Non-Exempt Services in Australia.

Part C Structural separation

5 Commitment to structural separation

(a) Telstra undertakes that, at all times after the Designated Day:

(i) Telstra will not supply Non-Exempt Services to retail customers in Australia using a Non-Exempt Network over which Telstra is in a position to exercise control; and

(ii) Telstra will not be in a position to exercise control of a company that supplies Non-Exempt Services to retail customers in Australia using a Non-Exempt Network over which Telstra is in a position to exercise control.

(b) Telstra undertakes that, in connection with clause 5(a), it will:

(i) take the actions and/or refrain from taking the actions specified in this Undertaking in accordance with, and on the terms specified in, this Undertaking; and

(ii) give the ACCC a draft migration plan.

(c) For the purposes of this Undertaking (including the Plan):

(i) the question of whether Telstra is in a position to exercise control of a telecommunications network is to be determined in accordance with section 577Q of the Act; and

(ii) the question of whether Telstra is in a position to exercise control of a company is to be determined in accordance with section 577P of the Act.

Part D Interim Equivalence and Transparency

6 Objective

(a) The objective of this Part D is to establish appropriate and effective measures to ensure that there is equivalence and transparency in the supply by Telstra of Regulated Services supplied to Wholesale Customers and Comparable Retail Services supplied to Telstra's Retail Business Units.

(b) Telstra will satisfy the objective of this Part D by means of:

(i) complying with the organisational structure, information security, operational and service quality and information equivalence commitments set out in this Part D;

(ii) complying with the commitments regarding wholesale customer facing systems set out in this Part D;

(iii) complying with the commitments regarding price equivalence and transparency set out in this Part D;

(iv) reporting on service activation, fault rectification and other service quality measures, in the form of Equivalence and Transparency Metrics;

(v) committing to the enforcement measures in this Part D in relation to the Equivalence and Transparency Metrics, including in the form of offering Service Level Rebates;

(vi) establishing the Accelerated Investigation Process and responding to Equivalence Complaints; and

(vii) establishing and participating in the ITA Process as an independent, fast track mechanism for resolving equivalence issues and complaints,

in accordance with, and subject to, the terms of this Undertaking.

7 Operation of this Part D

7.1 Commencement

(a) This Part D commences on the Commencement Date.

(b) However, the implementation schedule in clause 21 may specify a period of time following the Commencement Date by which Telstra is to implement a provision of this Part D, or a Schedule that is associated with the provisions of this Part D.

7.2 Part D ceases on Designated Day

This Part D and the Schedules referred to in clause 21 will cease to have effect at the start of the Designated Day.

7.3 No application to NBN services, non-Regulated Services or Migration activities

Without limitation to clause 4, the provisions of this Part D do not apply to:

(a) any supply of services or facilities by Telstra to an NBN Corporation;

(b) any supply of services by Telstra over the HFC Network, international networks or wireless networks;

(c) except as expressly provided in this Undertaking (or the Plan), any activities undertaken by Telstra in connection with Migration, including any processes or activities associated with disconnection of Copper Services or HFC Services in Rollout Regions;

(d) the supply of services, including any Regulated Services or Comparable Retail Services, by Telstra to Wholesale Customers or Retail Customers, respectively, using the NBN; or

(e) any supply of services or facilities by Telstra which are not Regulated Services or Comparable Retail Services.

7.4 Part D cannot be directly enforced by Wholesale Customers

Without limitation, the provisions of this Part D cannot be directly enforced against Telstra by Wholesale Customers.

8 Telstra organisational structure

8.1 Business Units for Wholesale, Retail and Network Services

(a) Telstra will maintain the following Separated Business Units:

(i) one or more Wholesale Business Units;

(ii) one or more Retail Business Units; and

(iii) one or more Network Services Business Units.

(b) Telstra will maintain:

(i) one or more Retail Business Units that are separate from the Wholesale Business Units and Network Services Business Units;

(ii) one or more Wholesale Business Units that are separate from the Retail Business Units; and

(iii) one or more Network Services Business Units that are separate from the Retail Business Units,

including through complying with clauses 8.2 and 8.3.

(c) The Required Functions of the Separated Business Units are as follows:

(i) the Wholesale Business Units will have principal control over and responsibility for the following in relation to the supply of Regulated Services:

(A) sales to Wholesale Customers;

(B) managing Service Delivery for Wholesale Customers; and

(C) negotiating access agreements with Wholesale Customers;

(ii) the Retail Business Units will have principal control over and responsibility for the following in relation to the supply of Comparable Retail Services:

(A) sales to Retail Customers; and

(B) negotiating supply contracts with Retail Customers;

(iii) the Network Services Business Units will have principal control over and responsibility for the following in relation to the supply of Regulated Services and Comparable Retail Services:

(A) Fault Detection, Handling and Rectification; and

(B) Service Activation and Provisioning.

(d) Except as expressly provided in clauses 8.2, 8.4 and 8.5:

(i) a Retail Business Unit cannot perform a Required Function of a Wholesale Business Unit or a Network Services Business Unit;

(ii) a Wholesale Business Unit cannot perform a Required Function of a Retail Business Unit; and

(iii) a Network Services Business Unit cannot perform a Required Function of a Retail Business Unit.

(e) Subject to clause 8.1(f), nothing in this Undertaking:

(i) requires a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit (as the case may be) to perform a function which is not a Required Function of that kind of Business Unit under clause 8.1(c);

(ii) prevents a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit (as the case may be) undertaking any function or responsibility which is not a Required Function of another kind of Separated Business Unit; or

(iii) restricts or prevents a Wholesale Customer from choosing to be, with the agreement of a Retail Business Unit, a Retail Customer in respect of a retail service (including a Comparable Retail Service) and, in that event, the Retail Business Unit dealing with that Wholesale Customer as a Retail Customer in relation to the supply of the relevant service.

(f) Except as expressly provided in clause 8.4, a Retail Business Unit will not perform any of the following functions:

(i) network planning functions;

(ii) pricing functions for pricing of wholesale products;

(iii) processing and implementing requests to churn or for local number portability in accordance with industry codes, except where the function relates to account validation for inbound numbers to be ported and is already performed by a Retail Business Unit as at the date this Undertaking comes into force;

(iv) functions which Telstra currently performs for and on behalf of industry under any legislative instrument, industry standard or industry code as at the date this Undertaking comes into force, except where a Retail Business Unit already performs that industry function as at that date or where otherwise approved by the ACCC in accordance with clause 8.5; and

(v) functions to be performed by Telstra for and on behalf of industry under any legislative instrument, industry standard or industry code that takes effect after the date this Undertaking comes into force, except where approved by the ACCC in accordance with clause 8.5.

(g) For clarity, any Employee involved in performing functions or activities set out in clause 8.1(f), while not working for a Retail Business Unit, will nonetheless also remain subject to the information security requirements set out in clause 10.

8.2 Staffing of Separated Business Units

(a) Subject to the remaining provisions of this clause 8.2 and clauses 8.4 and 8.5, Telstra will ensure that:

(i) an Employee who is engaged to work for a Wholesale Business Unit:

(A) works principally for a Wholesale Business Unit; and

(B) is prohibited from undertaking any work for a Retail Business Unit;

(ii) an Employee who is engaged to work for a Retail Business Unit:

(A) works principally for a Retail Business Unit;

(B) is prohibited from undertaking any work for a Wholesale Business Unit; and

(C) is prohibited from undertaking any work for a Network Services Business Unit; and

(iii) an Employee who is engaged to work for a Network Services Business Unit:

(A) works principally for a Network Services Business Unit; and

(B) is prohibited from undertaking any work for a Retail Business Unit.

(b) Where a Network Services Business Unit has been requested by a Retail Business Unit to undertake any of the following kinds of work:

(i) Fault Detection, Handling and Rectification;

(ii) Service Activation and Provisioning; and

(iii) work of a kind, and conducted in the circumstances, described in paragraph 2 of Schedule 2,

nothing in clauses 8.1 or 8.2 restricts or prevents an Employee of a Network Services Business Unit from, in the course of that Employee's work, undertaking such work.

(c) Nothing in this Undertaking restricts or prevents:

(i) short-term secondments or transfers of Employees, as required from time to time;

(ii) an Employee undertaking any function or activity:

(A) in the course of responding to a natural disaster, an emergency or a mass service disruption;

(B) to meet the requirements of a national security or law enforcement agency;

(C) to fulfil requirements under employment or workplace safety legislation;

(D) to fulfil requirements under a legislative instrument, industry standard or industry code; or

(E) which relates to Telstra's participation in industry forums, including in relation to the consultation, development, maintenance and implementation of industry codes or standards;

(iii) an Employee who works for a Separated Business Unit from ceasing to work for that Separated Business Unit and commencing to work for another Separated Business Unit; or

(iv) an Employee who works for a Separated Business Unit undertaking any function or activity which cannot reasonably be considered to be work that has been undertaken for another Separated Business Unit, including for the avoidance of doubt, and without limitation, the functions and activities described in paragraph 1 of Schedule 2.

(d) Telstra will ensure that if an Employee who works for a Separated Business Unit has previously worked for another Separated Business Unit (including as part of a secondment to that other Separated Business Unit), that Employee complies with the information security requirements in clause 10 of this Undertaking in relation to any Protected Information which is known to that Employee because he or she previously worked for that other Separated Business Unit.

8.3 Wholesale Business Unit

Without limitation to clause 10, Telstra will ensure that:

(a) the Wholesale Business Unit(s) are adequately resourced for Telstra to meet the requirements of this Part D;

(b) the position of the person who has direct responsibility for the management of a Wholesale Business Unit is of the same level of seniority in Telstra's management structure as the position of the person who has direct responsibility for the management of a Retail Business Unit (or where there is more than one Retail Business Unit, is of the same level of seniority in Telstra's management structure as that of the most senior position having direct responsibility for the management of a Retail Business Unit);

(c) the Employees engaged to work for a Wholesale Business Unit are located in premises that:

(i) are physically separate from any premises occupied by Employees engaged to work for a Retail Business Unit (although this does not mean that the Employees need to be located in a separate building);

(ii) have security measures in place that prevent an Employee who is engaged to work for a Retail Business Unit from gaining access to the premises where the Employees working for that Wholesale Business Unit are located unless:

(A) the Employee who is engaged to work for a Retail Business Unit enters the premises for the purposes of meeting with an Employee who is engaged to work for that Wholesale Business Unit; and

(B) the entry to the premises by the Employee who is engaged to work for a Retail Business Unit is authorised by an Employee who is engaged to work for that Wholesale Business Unit; and

(C) the Employee who is engaged to work for a Retail Business Unit is accompanied, to the extent practicable, while in the premises by an Employee who is engaged to work for that Wholesale Business Unit.

8.4 Work undertaken by a Separated Business Unit for another Separated Business Unit

Nothing in this clause 8 restricts or prevents Employees engaged to work for:

(a) Telstra's Wholesale Business Units undertaking work for, or with Employees who are engaged to work for, a Retail Business Unit or Network Services Business Unit;

(b) Telstra's Retail Business Units undertaking work for, or with Employees who are engaged to work for, a Wholesale Business Unit or Network Services Business Unit; or

(c) Telstra's Network Services Business Units undertaking work for, or with Employees who are engaged to work for, a Wholesale Business Unit or Retail Business Unit,

in relation to the supply of the following types of services:

(d) services supplied outside of Australia;

(e) services supplied in Australia to customers outside of Australia;

(f) the integration of the supply of and provision of associated services in relation to disability products;

(g) the provision of emergency call services;

(h) payphones and payphone carriage services;

(i) any other services of the kind described in paragraph 3 of Schedule 2 as services that are not technically or operationally efficient to supply across separate Business Units (and which Telstra will therefore perform as a single shared function), provided that Telstra will ensure that the corresponding safeguards set out in paragraph 3 of Schedule 2, or those approved by the ACCC, are adopted in relation to those services; and

(j) any other services approved by the ACCC in accordance with clause 8.5.

8.5 ACCC approval of further exempted services

(a) Telstra may, from time to time, request the ACCC to approve, in addition to the functions specified in Schedule 2, other functions which are not technically or operationally efficient for Telstra to perform across separate Business Units (and which Telstra will therefore perform as a single shared function). In doing so Telstra must identify:

(i) the function being performed;

(ii) the Separated Business Unit performing the function (the ***first Separated Business Unit***);

(iii) the Separated Business Unit for which the function is being performed (the ***second Separated Business Unit***);

(iv) the reasons why it is technically or operationally efficient for the service to be supplied by the first Separated Business Unit for the second Separated Business Unit; and

(v) the corresponding safeguards that will apply to ensure that Telstra does not gain an unfair competitive advantage from the service being supplied by the first Separated Business Unit for the second Separated Business Unit.

(b) Within 30 Business Days after the date Telstra provided the information referred to in clause 8.5(a), the ACCC may:

(i) approve the request;

(ii) reject the request; or

(iii) notify Telstra of the ACCC's concerns, in which case the period under this clause 8.5(b) will be extended by a further 30 Business Days from the date of Telstra's response to the ACCC's concerns.

(c) If the ACCC does not accept or reject a request within the time prescribed by clause 8.5(b) the ACCC will be deemed to have rejected the specific service identified in the request for the purposes of clause 8.4(j), provided that nothing in this clause prevents Telstra submitting another request in relation to that specific service.

8.6 Incentives and employee benefits

(a) All incentive remuneration for Employees working principally for:

(i) a Wholesale Business Unit will reflect solely the objectives and performance of the Wholesale Business Unit and, if Telstra wishes, any other Business Unit which is not a Separated Business Unit of a different kind; and

(ii) a Network Services Business Unit will reflect solely the objectives and performance of the Network Services Business Unit and, if Telstra wishes, any other Business Unit which is not a Separated Business Unit of a different kind.

(b) Notwithstanding clause 8.6(a), the reward, incentive or payment associated with any incentive or remuneration scheme for Employees working for a Network Services Business Unit or a Wholesale Business Unit may include giving Telstra

shares to an Employee provided the Employee's entitlement to receive the shares is not subject to a pre-condition that attaches to the performance of Telstra's share price.

(c) Nothing in this Undertaking prevents:

(i) Employees working for a Wholesale Business Unit or a Network Services Business Unit from participating in Telstra's group-wide Employee benefit arrangements that are not directly or indirectly linked to Telstra's overall performance;

(ii) Employees working for a Wholesale Business Unit or a Network Services Business Unit who have previously worked for another part of Telstra (including a Separated Business Unit of another kind) from retaining any incentive remuneration or entitlement received as a result of his or her work for the other part of Telstra; or

(iii) an Employee incentive remuneration scheme that exists as at the date this Undertaking comes into force from continuing to operate on its terms until its expiry (including in respect of Employees who commence work with Telstra prior to the expiry of the relevant scheme).

8.7 Compliance processes

In order to ensure compliance with this clause 8, and without limitation to clause 10, Telstra will:

(a) maintain systems and processes to record functional movements of Employees from one Separated Business Unit to another Separated Business Unit of a different kind;

(b) maintain systems and processes to record and track the incentive remuneration provided to Employees who work for Wholesale Business Units and Network Services Business Units, and engage a consultant with remuneration expertise annually to verify that the incentive remuneration complies with the requirements of clause 8.6; and

(c) pursuant to its obligations in clause 23.4, undertake mandatory training for Employees engaged to work for each Retail Business Unit, Wholesale Business Unit and Network Services Business Unit in relation to Telstra's obligations set out in this clause 8 (including that Employees must continue to comply with the information security requirements in clause 10 if they have previously worked for another Separated Business Unit). This training will be provided both as part of the induction of new Employees and regularly for all other affected Employees.

8.8 Consequences of a failure to comply

(a) Telstra will not be in breach of this clause 8 in circumstances where Telstra fails to comply with a requirement of this clause 8 and the failure to do so is trivial.

(b) The ACCC shall not take any action in respect of any complaint about a failure to comply with a requirement of this clause 8 which is a vexatious or frivolous complaint.

8.9 Customer excellence

(a) Nothing in Part D of this Undertaking:

(i) is intended to be a disincentive to Telstra management's efforts to encourage the growth of a customer-orientated, problem solving service culture within Telstra to the benefit of Retail Customers and Wholesale Customers alike; and

(ii) should be applied in a manner which unreasonably stifles or penalises initiative shown by individual Employees to resolve service issues faced by individual Retail Customers or Wholesale Customers whom the Employee deals with in the course of his or her work.

(b) Telstra will not be regarded as having breached this Undertaking if the bona fide efforts of an Employee to resolve a customer issue raised by a particular Retail Customer or Wholesale Customer (whether or not the issue was raised directly with that Employee) or which came to the attention of the Employee in the course of providing services to an end-user would otherwise be in breach of this Part D, provided that:

(i) no breach of the rules about use of and access to Protected Information was involved; and

(ii) any reward provided to the Employee for his or her conduct is provided as part of a Telstra policy of rewarding Employees who show similar initiative and excellence in customer service, whether for Retail Customers or Wholesale Customers.

(c) For clarity, if an Employee who works for a Network Services Business Unit attends the premises of an end-user that is a customer of a Wholesale Customer or another CSP:

(i) if the end-user is not also a Retail Customer, the Employee must not undertake any Marketing Activity to the end-user; and

(ii) if the end-user is also a Retail Customer, the Employee must not undertake any "win back" or other Marketing Activity related to alternative Telstra products to the product or products supplied by that Wholesale Customer or other CSP to the end-user.

8.10 Senior management

(a) An Employee that has Line Management Responsibilities in relation to a Separated Business Unit:

(i) must not:

(A) if the Employee has Line Management Responsibilities for a Retail Business Unit, at the same time have Line Management Responsibilities for a Wholesale Business Unit or a Network Services Business Unit;

(B) if the Employee has Line Management Responsibilities for a Wholesale Business Unit, at the same time have Line Management Responsibilities for a Retail Business Unit; but

(ii) may have management responsibilities in relation to a Business Unit which is a Separated Business Unit of the same kind or a Business Unit which is not a Separated Business Unit.

(b) Clauses 8.6 and 8.10(a) do not apply to an Employee who performs any of the following roles:

(i) Chief Executive Officer;

(ii) Chief Operating Officer; or

(iii) any other role that is approved by the ACCC.

(c) For the purposes of this clause 8.10:

(i) an Employee has Line Management Responsibilities for a Separated Business Unit if that Employee has accountability for that Separated Business Unit meeting its business objectives and the associated authority to make decisions about its management and operation; and

(ii) an Employee does not have Line Management Responsibilities for a Separated Business Unit merely because the Employee undertakes functions for, or makes decisions relating to, a Separated Business Unit as part of his or her group-wide responsibilities.

9 Overarching equivalence commitment

(a) Telstra undertakes that, subject to clauses 9(b) and 9(c), the supply of Regulated Services to Wholesale Customers will be equivalent in respect of:

(i) the technical and operational quality of the relevant Regulated Service;

(ii) the operational systems, procedures and processes used in the supply of the relevant Regulated Service;

(iii) information about the matters specified in clause 9(a)(i) and clause 9(a)(ii); and

(iv) the price that is charged for supplying the Regulated Service,

to the Comparable Retail Services Telstra itself provides.

(b) The undertaking in clause 9(a) does not apply to the extent (if any) that it would have any of the following effects or require any of the following:

(i) Telstra to implement functional separation in the form of any of the following (either alone, in combination with each other, or in combination with another requirement):

(A) Telstra to implement Transfer Pricing;

(B) a Retail Business Unit to acquire or utilise services in the supply of services to Retail Customers that are the same (or substantially the same) as the services Telstra uses in supplying services to Wholesale Customers, or the services Telstra supplies directly to Wholesale Customers;

(C) Telstra to use systems and/or processes in the supply of services to Retail Customers that are the same (or substantially the same) as the

systems and/or processes it uses, or that are used by Wholesale Customers, in the supply of services to Wholesale Customers;

(D) a Network Services Business Unit to deal directly with Wholesale Customers in relation to the supply of services (for example, so that Wholesale Customers can acquire services directly from a Network Services Business Unit instead of through a Wholesale Business Unit), or a Retail Business Unit to acquire services from, or source services through, a Wholesale Business Unit;

(E) a Wholesale Business Unit or a Network Services Business Unit to trade under a separate name from the Retail Business Units;

(F) Telstra to engage in conduct, or refrain from engaging in conduct, which relates to its organisational structure or any of the other matters covered by clause 8 or Schedule 2;

(ii) Telstra to change any retail price (including by requiring a change in the structure or composition of retail services or of bundles of retail services);

(iii) Telstra to supply any service which is not a Regulated Service, or to supply a Regulated Service with any feature, functionality, application or content that is not included in the declared service description for that Regulated Service, or if the Wholesale ADSL Layer 2 Service is not a declared service, Telstra would not otherwise be required to supply by virtue of the undertakings given in clause 15;

(iv) if a price for a Regulated Service which is a declared service is specified in an access determination or a binding rule of conduct, Telstra to supply that declared service at a different price;

(v) in the case of a Non-Regulated Price Equivalence Issue, Telstra to do more than change the relevant price of the Regulated Service with effect from the date that Telstra notified the ACCC or the ACCC notified Telstra (as the case may be) of the possible breach in accordance with Schedule 11;

(vi) if the ACCC has not specified a price for the Wholesale ADSL Layer 2 Service in an access determination or binding rule of conduct, Telstra to change the price-related terms for that service other than to the extent that the RMRC methodology used by Telstra to set those price related terms does not comply with the Fixed RMRC Principles;

(vii) Telstra to modify the TEM or any TEM Report other than as permitted by Schedule 9;

(viii) requiring Telstra to supply a Wholesale Customer with a Regulated Service on price related terms which are inconsistent with any wholesale contract between Telstra and that Wholesale Customer in force as at the Commencement Date, provided that this does not limit the requirement for Telstra to comply with clause 18.3(c) if a Wholesale Customer supplied with the Wholesale ADSL Layer 2 Service under a contract in force at the Commencement Date has elected to acquire the Wholesale ADSL Layer 2 service at the Reference Price;

(ix) requiring any increase to the monetary caps which apply to directions or orders of the Adjudicator as set out in paragraph 11.5 of Schedule 5;

(x) preventing Telstra from obtaining a sufficient amount of a Regulated Service to be able to meet the following statutory and regulatory obligations:

(A) supplying services in satisfaction of any universal service obligations of Telstra or on behalf of TUSMA;

(B) supplying services in accordance with Telstra's Priority Assistance Policy; and

(C) such other statutory and regulatory obligations as are notified to, and approved by, the ACCC from time to time;

(xi) requiring Telstra to provide access to a Regulated Service where it has reasonable grounds to believe that a Wholesale Customer would fail, to a material extent, to comply with the terms and conditions on which access is to be provided (for example, where there is evidence that the Wholesale Customer is not creditworthy or has committed repeated breaches of the terms and conditions on which the same or similar access has been provided);

(xii) preventing Telstra from denying access to a Regulated Service where it has reasonable grounds to believe that a Wholesale Customer would fail to protect:

(A) the integrity of a telecommunications network; or

(B) the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility; or

(xiii) requiring Telstra to engage in conduct, or refrain from engaging in conduct, in connection with matters covered by the Plan.

(c) The ACCC must enforce this clause 9 only in accordance with the Equivalence Enforcement Terms contained in Schedule 11.

10 Information Security

10.1 Meaning of Protected Information

In this Undertaking, "**Protected Information**" means:

(a) confidential information identifying a Wholesale Customer or a customer of that Wholesale Customer, which was supplied by that Wholesale Customer and obtained by Telstra for the purpose of, or in the course of, supplying Regulated Services to that Wholesale Customer;

(b) information that is commercially sensitive to a Wholesale Customer which was supplied by that Wholesale Customer and obtained by Telstra for the purpose of, or in the course of, supplying Regulated Services to that Wholesale Customer;

(c) confidential information and commercially sensitive information which is derived from information of the kind described in clauses 10.1(a) and 10.1(b), whether or not in an aggregate form, that:

(i) would enable the identity of that Wholesale Customer to be ascertained; or

(ii) would enable the identity of a customer of that Wholesale Customer to be ascertained; and

(d) confidential information and commercially sensitive information of the kind described in clauses 10.1(a) and 10.1(b) which relates to a Wholesale Customer but which does not enable the identity of the Wholesale Customer to be ascertained only by reason of the name of the Wholesale Customer not being identified;

but does not include:

(e) information of the kind described in clause 10.1(c)(i) where the information is aggregated on a national basis; or

(f) information which is already public.

10.2 Examples of Protected Information

(a) The following are examples of information which, if provided to Telstra by a Wholesale Customer in the circumstances set out in clause 10.1, would constitute Protected Information related to that Wholesale Customer:

(i) forecasts about that Wholesale Customer's likely future requirements for Regulated Services;

(ii) the Wholesale Customer's ordering and provisioning details (including details of when and where orders are submitted);

(iii) information regarding confirmed plans to purchase a Regulated Service in particular geographical areas;

(iv) details of customers of the Wholesale Customer, such as name, address, contact details, account and service numbers;

(v) contractual terms which are specific to that Wholesale Customer (including price terms) related to the supply and acquisition of Regulated Services;

(vi) any "service assurance" arrangements between Telstra and that Wholesale Customer in respect of Regulated Services;

(vii) information about that Wholesale Customer's network or facilities; and

(viii) information disclosed about that Wholesale Customer's business pricing, product development or other commercial strategies.

(b) Without limitation to clause 10.1, information will not be Protected Information if it is information that is:

(i) obtained by, or disclosed to, Telstra other than by the relevant Wholesale Customer;

(ii) provided by a customer of the relevant Wholesale Customer directly to Telstra (for example, where an end-user is also a Retail Customer or enquires about services provided by a Retail Business Unit); or

(iii) any information provided by the relevant Wholesale Customer directly to a Business Unit other than the Wholesale Business Unit or other than in

connection with the supply of Regulated Services (for example, product orders where the Wholesale Customer is also a customer of the Retail Business Unit and is therefore a Retail Customer).

10.3 Telstra will not use or disclose Protected Information to give Retail Business Units an unfair advantage

Subject to clause 10.4, Telstra will not use or disclose Protected Information relating to a Wholesale Customer in a manner which would be likely to enable a Retail Business Unit to gain or exploit an unfair commercial advantage over that Wholesale Customer in any market.

10.4 Information security measures

(a) Telstra will ensure that, subject to clause 10.4(c):

(i) Wholesale Business Units do not disclose Protected Information relating to a Wholesale Customer to:

(A) any Retail Business Unit unless authorised to do so by that Wholesale Customer;

(B) any Network Services Business Unit otherwise than on a "need-to-know" basis or where authorised to do so by that Wholesale Customer; or

(C) an Employee (not working for a Retail Business Unit) performing any of the functions specified in clause 8.1(f) otherwise than on a "need-to-know" basis or where authorised to do so by that Wholesale Customer; and

(ii) Network Services Business Units do not disclose Protected Information relating to a Wholesale Customer to any Retail Business Unit unless authorised to do so by that Wholesale Customer.

(b) The default position under Telstra's processes and systems will be that an Employee who is engaged to work for a Network Services Business Unit has "no access" and accordingly must establish that they "need-to-know" Protected Information relating to a Wholesale Customer either for the purposes of performing an agreement with that Wholesale Customer or otherwise as is necessary for that Employee to perform his or her duties effectively, before such Protected Information will be disclosed to that Employee and can be used by that Employee.

(c) Nothing in this clause 10 prevents:

(i) the use or disclosure of Protected Information in the course of undertaking work of the kind referred to in clauses 8.2(c) and 8.4, provided that work is undertaken in accordance with the terms of clauses 8.2(c) and 8.4;

(ii) subject to clause 10.5(e), the disclosure of Protected Information to, and its use by an Employee to whom clause 10.5(c) applies, in the course of that Employee undertaking responsibilities related to company-wide pricing; or

(iii) disclosure of Protected Information to and its use by the Adjudicator where Telstra is required to provide that information under the ITA Process.

(d) Telstra will comply with its obligations under this clause 10.4 in respect of Protected Information, including by establishing, and complying with, the information security measures set out in paragraph 4 of Schedule 2.

10.5 Further restrictions on other information

(a) Telstra undertakes that where a Retail Business Unit requests access to information that:

(i) is derived from information of the kind described in clause 10.1(a) and 10.1(b); but

(ii) is not Protected Information because, either:

(A) it has been aggregated (other than on a national basis) and the identity of Wholesale Customers or their customers cannot be ascertained; or

(B) it is information of the kind described in clause 10.1(e),

Telstra will not disclose that information to the Retail Business Unit unless, with the approval of the ACCC, it makes the information available to Wholesale Customers at the same time.

(b) For the avoidance of doubt, information of the kind described in clause 10.1(f) or 10.2(b) is not subject to clause 10.5(a).

(c) If an Employee who works for a Business Unit which is not a Separated Business Unit has responsibility for decisions about pricing of retail services, Telstra will ensure that Protected Information is not disclosed to that Employee.

(d) The requirement in clause 10.5(c) does not apply to:

(i) the Group Managing Director (or equivalent position) who has responsibilities for company-wide pricing decisions (who must not be head of a Retail Business Unit);

(ii) an Employee who directly reports to that Group Managing Director who has responsibilities for company-wide pricing decisions (provided that Employee also does not work for a Retail Business Unit); or

(iii) other persons approved by the ACCC.

(e) For clarification, clause 10.3 continues to apply in respect of the use of Protected Information disclosed to an Employee to whom clause 10.5(c) applies.

11 Service quality and operational equivalence

11.1 Tickets of work for field staff

As provided in this clause 11, Telstra will maintain systems and processes for issuing tickets of work to field staff so that tickets of work in relation to Regulated Services supplied to a Wholesale Customer and Comparable Retail Services supplied to a Retail Customer are:

(a) issued and processed within Telstra's systems using equivalent order management; and

(b) managed and performed by Telstra field staff in an equivalent manner.

11.2 Basic Telephone Service

(a) Telstra will use equivalent order management to process BTS service activation orders received from:

(i) a Retail Business Unit; and

(ii) Wholesale Customers,

so that Service Activation and Provisioning of BTS can occur in an equivalent manner, regardless of whether the BTS service activation order was received from a Retail Business Unit or a Wholesale Customer.

(b) Telstra will rectify Faults relating to BTS which are reported to Telstra by Wholesale Customers and Retail Customers using equivalent order management and otherwise in an equivalent manner.

(c) Clause 11.2 does not prevent Telstra using separate business support systems or customer interfaces or processes appropriate to the different requirements of Wholesale Customers and Retail Customers to receive orders from them or to log Faults relating to BTS, which are then to be passed into and processed within Telstra's operational support systems in accordance with clause 11.2(a).

11.3 Wholesale ADSL Layer 2 Services

(a) Telstra will use equivalent order management to process all ADSL service activation orders received from:

(i) a Retail Business Unit; and

(ii) Wholesale Customers,

so that Service Activation and Provisioning of all ADSL services can occur in an equivalent manner, regardless of whether the ADSL service activation order was received from a Retail Business Unit or a Wholesale Customer.

(b) Telstra will rectify Faults which are reported to Telstra by Wholesale Customers or Retail Customers in relation to ADSL services using equivalent order management and otherwise in an equivalent manner.

(c) Clause 11.3(a) does not prevent Telstra using separate business support system or customer interfaces or processes appropriate to the different requirements of Wholesale Customers and Retail Customers to receive orders from them or to log Faults relating to ADSL services, which are then to be passed into and processed within Telstra's operational support systems in accordance with clause 11.3(a).

11.4 LSS and ULLS

Telstra will establish order management systems and other measures in relation to:

(a) completing activations of LSS;

(b) completing ULL Individual Cutovers; and

(c) rectifying Faults relating to the LSS and the ULL service,

in order for Telstra to meet the Equivalence and Transparency Metrics applicable to those services.

11.5 Domestic Transmission Capacity Service

Telstra will establish order management and other measures in relation to Service Activation and Provisioning of orders for, and rectifying Faults relating to, the Domestic Transmission Capacity Service in order for Telstra to meet the Equivalence and Transparency Metrics applicable to that service.

11.6 Wholesale billing

Telstra will establish billing systems and other measures to provide for wholesale charges for Regulated Services to be generated and billed to Wholesale Customers accurately and in accordance with the timeframes set out in paragraph 7 of Schedule 3.

11.7 Non-compliance

(a) A failure to comply with any of the requirements in clauses 11.1 to 11.6 (inclusive) will be addressed through:

(i) payment to Wholesale Customers of a Service Level Rebate in accordance with clause 17 and Schedule 7;

(ii) Telstra's obligations in clause 16 to report on its performance against the Equivalence and Transparency Metrics and to explain, investigate and/or rectify any Reporting Variance that has been identified;

(iii) the handling of Equivalence Complaints through the Accelerated Investigation Process under clause 19 and, where applicable, the Adjudicator under clause 20; and/or

(iv) referrals by the ACCC to the ITA Adjudicator under clause 13 of Schedule 5.

(b) Telstra will not be in breach of this clause 11 in circumstances where Telstra fails to comply with a requirement of this clause 11 and the failure to do so is trivial.

(c) The ACCC must not take any action in respect of any complaint of a failure to comply with a requirement of this clause 11 which is a vexatious or frivolous complaint.

11.8 Publication of processes

(a) Telstra must within 6 months of the Commencement Date publish on its wholesale website a detailed description of the following:

(i) the processes and systems used for Service Qualification;

(ii) the processes and systems used for Service Activation and Provision;

(iii) the processes and systems used for rectification of Faults,

for each Regulated Service and its Comparable Retail Service (**Comparable Retail/Wholesale Process Descriptions**).

(b) Telstra must update the Comparable Retail/Wholesale Process Descriptions published on its wholesale website within 30 days of any material changes in the relevant systems or processes.

12 Access to Telstra Exchange Buildings and External Interconnect Facilities

12.1 Telstra reservations of Exchange Capacity

(a) Telstra may reserve Exchange Capacity in Telstra Exchange Buildings for the purposes of supplying its own retail and wholesale services (other than TEBA) where it has bona fide documented plans to use the Exchange Capacity within 36 months from the date of the reservation.

(b) Telstra will, within 3 months of the Commencement Date, provide the ACCC on a confidential basis with details of any floor space or block positions on an MDF that Telstra has reserved under clause 12.1(a) at the following Exchange Building Facilities:

(i) Capped Exchanges;

(ii) Potentially Capped Exchanges; and

(iii) any Exchange Building Facility which is a POI for interconnection with the NBN.

(c) The ACCC may request in writing that Telstra provide the ACCC on a confidential basis with the details of any floor space or block positions on an MDF which Telstra has reserved in any Exchange Building Facility other than those listed in clause 12.1(b) which is specified in the ACCC's request. Telstra will provide the information within 6 weeks of the ACCC request.

(d) Telstra will provide the ACCC with updated details of floor space or block position reservations within 10 Business Days of any change in status of an Exchange Building Facility (being its status as a Capped Exchange or Potentially Capped Exchange) in respect of which Telstra has provided information under clause 12.1(b) or (c).

12.2 Management of order queues and common construction works at Exchange Building Facilities

(a) Telstra undertakes that it will process External Applications and Internal Applications and otherwise manage ordering queues of Applications for access to Exchange Building Facilities in accordance with the queue management process set out in Schedule 13.

(b) It is acknowledged that Wholesale Customers submit External Applications using different ordering processes to that which Telstra uses to submit Internal Applications for access to Exchange Building Facilities. Nothing in this clause 12.2 or Schedule 13 requires Telstra to establish a common ordering process to apply to TEBA requests and such internal retail or wholesale requests.

12.3 On site audit prior to Capping an Exchange Building

Telstra will not regard an Exchange Building Facility as a Capped Exchange or reject an External Application submitted by a Wholesale Customer to Telstra on the basis of a lack of Exchange Capacity unless:

(a) Telstra has undertaken an on-site audit of the relevant Exchange Building Facility within 30 days prior to the rejection or the Exchange Building Facility becoming a Capped Exchange; and

(b) the capping of an Exchange Building Facility or rejection of an External Application on the basis of a lack of Exchange Capacity has been approved by the TEBA Governance Committee.

12.4 Access to External Interconnect Facilities

(a) Telstra may reserve space for supply of its own retail or wholesale services (other than supply of External Interconnect Facilities) in respect of particular External Interconnect Facilities where it has bona fide documented plans to use the External Interconnect Facilities within 36 months from the date of the reservation (**Telstra reserved capacity**).

(b) All requests for access to External Interconnect Facilities and Telstra reserved capacity will be placed in a single queue, such that Telstra will:

(i) process requests for access to External Interconnect Facilities received from Wholesale Customers in an equivalent manner to internal requests for access to the same External Interconnect Facilities for the purposes of supply of Telstra's own retail or wholesale services (other than supply of External Interconnect Facilities);

(ii) where there are already requests in place from one or more Wholesale Customers for access to an External Interconnect Facility, any Telstra reservation in respect of the same External Interconnect Facility will be placed in the queue behind those existing requests; and

(iii) otherwise manage queues for requests for access to External Interconnect Facilities on a non-discriminatory basis and applying the same queue management principles to requests received from Wholesale Customers and internal requests for the purposes of supply of Telstra's own retail or wholesale services (other than supply of External Interconnect Facilities).

(c) If a request from a Wholesale Customer is withdrawn, or rejected in accordance with a Wholesale Customer's supply terms, and resubmitted by a Wholesale Customer, then the request will be placed at the end of the queue as if it were a new request.

(d) Telstra is entitled to reject an order from a Wholesale Customer where capacity of an External Interconnect Facility has been reserved.

12.5 Governance arrangements for Exchange Building Facilities and External Interconnect Facilities

Telstra will maintain a TEBA Governance Committee comprising not less than 5 senior managers with appropriate experience in facilities access issues and processes within Telstra to oversee and manage:

(a) compliance by Telstra with its standard TEBA processes, including the ordering and queue management requirements set out in Schedule 12 and Schedule 13;

(b) the provision of any information requested from time to time by the ACCC or the Adjudicator in relation to TEBA;

(c) any proposal or request to declare an Exchange Building Facility to be a Capped Exchange;

(d) material amendments which may be required from time to time to Telstra Technical Specifications and Procedures related to TEBA; and

(e) any complex decisions related to External Applications which require escalation, including any proposal by an individual planner to reject an External Application on the basis of a lack of Exchange Capacity.

12.6 TEBA requests for future anticipated requirements

Telstra undertakes that External Applications which are made for the purpose of meeting a Wholesale Customer's future anticipated requirements at an Exchange Building Facility will be processed and managed in accordance with the principles contained in Schedule 12.

13 Wholesale Customer Facing Systems

13.1 LOLO and Wholesale B2B Interface

Telstra will establish and maintain LinxOnline Ordering web services (**LOLO**) and a business to business interface (**Wholesale B2B Interface**), which will be an online interface fit for the purpose of allowing Wholesale Customers to undertake the following interactions with the relevant Telstra systems in respect of Regulated Services (other than TEBA):

(a) lodging new orders for Regulated Services including, where relevant, requesting an appointment time for service activation;

(b) modifying or cancelling an existing order;

(c) monitoring and tracking an existing order;

(d) where a Regulated Service relates to a DSL service:

(i) placing transfer orders to transfer a DSL service; and

(ii) undertaking line testing to monitor and manage Faults (subject to daily quotas);

(e) viewing and downloading wholesale invoices; and

(f) performing Service Qualification (subject to daily quotas, if any, which are reasonable).

13.2 Wholesale Customer Portal

Telstra will establish and maintain an online portal for Wholesale Customers (**Wholesale Customer Portal**) which will be fit for the purpose of allowing Wholesale Customers to undertake the following functions:

(a) viewing planned and unplanned outage notifications in relation to Regulated Services;

(b) where a Regulated Service relates to a DSL service, undertaking line testing to monitor and manage Faults (subject to daily quotas);

(c) referring queries, complaints or disputes to Telstra related to the standard of Service Delivery of Regulated Services;

(d) accessing transactional reporting functionality and metrics; and

(e) accessing LOLO.

13.3 Application assurance

(a) Telstra will establish and maintain an automated system to monitor the availability and reliability of applications used to support LOLO, the Wholesale B2B Interface and the Wholesale Customer Portal (**Application Monitoring System**).

(b) Telstra will use the Application Monitoring System to identify, to the extent practicable, a potential fault in applications used to support LOLO, the Wholesale B2B Interface and the Wholesale Customer Portal before the fault occurs or before it has a material impact on Wholesale Customers and to promptly take preventative or corrective action so as to maximise the availability and reliability of such applications.

13.4 Availability of LOLO

A Service Level will apply to the availability of LOLO as set out in Schedule 3.

13.5 Service Qualification

Telstra undertakes that:

(a) the systems used to process Service Qualification requests received from Wholesale Customers for Regulated Services provided over a Copper Path (except ULLS) will provide an overall standard of system reliability and response accuracy which is equivalent to the overall standard of system reliability and response accuracy provided by those systems which Telstra uses to process service qualification requests received for Copper Services from a Retail Business Unit;

(b) unless or until a common service qualification system is introduced for ULLS and other Regulated Services, Telstra will continue to permit Wholesale Customers to use both:

(i) ULLCIS; and

(ii) the same Service Qualification tool used for LSS (where it is technically feasible to do so),

as alternative means of performing Service Qualification for ULLS; and

(c) when Telstra deploys a new service qualification system for use in respect of Copper Services, it will:

(i) use the same system to process Service Qualification requests received from Wholesale Customers for Regulated Services provided over a Copper Path (except ULLS) as it uses to process service qualification requests received for Copper Services from Retail Business Units; and

(ii) commence using the new system for both Wholesale Customers within not more than 3 months of commencing to use the system for Retail Customers (to allow for contractual notices which apply to the introduction of new systems for Wholesale Customers).

14 Information Equivalence

14.1 Objective of Information Equivalence

(a) The objective of this clause 14.1 is to establish measures which demonstrate that the quality and timeliness of information provided by Telstra to Wholesale Customers in respect of network activities, circumstances or events that are likely to affect the delivery or operational quality of Regulated Services, is equivalent to the quality and timeliness of information provided by Telstra to Retail Business Units in respect of Comparable Retail Services (**information equivalence objective**).

(b) Without limitation, the following activities, circumstances or events would be likely to affect the delivery or operational quality of Regulated Services for the purpose of clause 14.1(a):

(i) a relevant network or system upgrade or enhancement, including any upgrade to operational support systems (such as a billing or ordering system);

(ii) a relevant network closure or withdrawal of system functionality;

(iii) a planned outage to relevant networks or systems, including where required in order for Telstra to undertake planned maintenance or repair work; and

(iv) information about unplanned network events, such as information relating to disaster recovery planning.

(c) Telstra will satisfy the information equivalence objective by establishing and maintaining customer engagement arrangements with Wholesale Customers, under clause 14.2, that enable Telstra to:

(i) keep each Wholesale Customer informed on a regular periodic basis about the matters set out in clause 14.1(b) to the extent relevant to that customer;

(ii) provide a forum for Telstra to consult in good faith about the likely impacts of those matters on Wholesale Customers, including answering questions or responding to reasonable concerns; and

(iii) issue a series of network notifications as set out in clause 14.3, which provide Wholesale Customers with periodic information and updates about the matters set out in clause 14.1(b) relevant to the Regulated Services they are acquiring.

14.2 Wholesale Customer Engagement

(a) Telstra will appoint a manager or customer team, as applicable, in respect of each Wholesale Customer, which is appropriately resourced to enable Telstra to deal with and respond to that Wholesale Customer in a timely and effective manner about the matters set out in clause 14.1(b).

(b) Telstra will determine whether it will conduct a monthly customer review with a Wholesale Customer having regard to:

(i) the volume of Regulated Services acquired by the Wholesale Customer;

(ii) the nature of the Regulated Services acquired by the Wholesale Customer;

(iii) the complexity of the Regulated Services acquired by the Wholesale Customer; and

(iv) any other factor that Telstra reasonably considers relevant.

(c) Without limitation, and subject to agreement between Telstra and a Wholesale Customer, each monthly customer review conducted under this clause 14.2 with that Wholesale Customer will address the following matters (to the extent applicable):

(i) any of the matters set out in clause 14.1(b);

(ii) relevant product, pricing or other commercial information or updates of relevance to that Wholesale Customer;

(iii) complaints or concerns raised by that Wholesale Customer in respect of Telstra's wholesale performance;

(iv) the outcome of any accelerated investigations undertaken by Telstra under clause 19 in response to Equivalence Complaints made by that Wholesale Customer, including any update on rectification activities associated with such complaints;

(v) any construction activities being undertaken by that Wholesale Customer in Exchange Buildings, including any Extensions of Time granted in respect of Applications lodged by the Wholesale Customer;

(vi) any billing or credit management issues; and

(vii) the progress of any Exchange Building Facility or External Interconnect Facility queues which affect that Wholesale Customer.

(d) Telstra will use monthly customer reviews as a vehicle for consulting in good faith with Wholesale Customers in relation to the supply of Regulated Services, including as a means of:

(i) updating those Wholesale Customers in relation to relevant network, system or product upgrades or developments;

(ii) proactively responding to issues or concerns, without the need for the parties to refer issues to formal complaint or dispute processes; and

(iii) reviewing Telstra's compliance with obligations of equivalence and transparency under this Part D.

14.3 Network Notifications

(a) Without limitation to the information provided to Wholesale Customers through the processes required by clause 14.2, Telstra will keep Wholesale Customers informed of the matters set out in paragraph 14.1(b) by means of:

(i) publishing Copper Network Notifications, in accordance with Schedule 4; and

(ii) providing notice of any Major Network Modernisation or Upgrade, in accordance with Schedule 4.

(b) Any notification published by Telstra under this clause 14.3 is for information purposes only and represents Telstra's reasonably anticipated view of upcoming operational developments. For the avoidance of doubt, a notification under this clause 14.3 and Schedule 4:

(i) does not confer any enforceable rights on any person, including any Wholesale Customer; and

(ii) does not constitute a representation that Telstra will act or refrain from acting in any particular way.

15 DSL upgrades

(a) Telstra undertakes that if it develops a DSL Upgrade it will make an equivalent upgrade to the relevant comparable wholesale DSL service (**Wholesale DSL Upgrade**).

(b) Telstra undertakes that if it develops a mass market consumer product that allows end-users to acquire a retail DSL service without having to also acquire a PSTN voice service supplied by Telstra over the same line (**Naked DSL Product**) it will offer the relevant comparable wholesale DSL service to Wholesale Customers on the basis that the end-user of the wholesale DSL service is not required to acquire a PSTN voice service over the same line (**Wholesale Naked DSL Product**).

(c) Telstra undertakes that:

(i) it will provide simultaneous commercial launch dates for:

(A) the DSL Upgrade and the Wholesale DSL Upgrade; and

(B) the Naked DSL Product and the Wholesale Naked DSL Product;

(ii) no less than 28 days prior to the launch date for the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable), Telstra will provide Wholesale Customers with information about the following matters in relation to the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable):

(A) the scheduled product launch date;

(B) technical specifications;

(C) price and non-price terms;

(D) geographic availability; and

(iii) if requested by a Wholesale Customer after the time that notice is given under clause 15(c)(ii), it will negotiate the terms of the commercial supply of the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) in good faith.

(d) Nothing in this Undertaking prevents Telstra undertaking bona fide product testing which:

(i) makes the DSL Upgrade or Naked DSL Product (as applicable) available to Retail Business Units for the purpose of product trials before the comparable Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) is made available to Wholesale Customers on a commercial basis;

(ii) makes a Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) available to one or more Wholesale Customers for the purpose of product trials before the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) is made available to Wholesale Customers on a commercial basis;

(iii) conducting separate and differently designed product trials for the DSL Upgrade and Wholesale DSL Upgrade with Wholesale Customers to reflect the differences between retail and wholesale supply; or

(iv) conducting separate and differently designed product trials for the Naked DSL Product and Wholesale Naked DSL Product with Wholesale Customers to reflect the differences between retail and wholesale supply.

(e) This clause 15 ceases to apply if the Wholesale ADSL Layer 2 Service becomes a declared service.

16 Equivalence and Transparency Metrics

16.1 Equivalence and Transparency Metrics

(a) Telstra has identified Equivalence and Transparency Metrics relevant to:

(i) the operational quality and delivery standard of relevant Regulated Services and Comparable Retail Services; and

(ii) the standard of delivery, in relation to Regulated Services, of:

(A) Fault Detection, Handling and Rectification;

(B) Service Activation and Provisioning; and

(C) availability of LOLO,

which are set out in Schedule 3.

(b) The Equivalence and Transparency Metrics:

(i) provide a basis for Telstra to identify system or process issues that may cause non-compliance with the requirements of this Part D and, if necessary, remediate any such system or process issues, in accordance with clause 16.3; and

(ii) provide a basis for the payment of Service Level Rebates in accordance with, and subject to the terms set out in, clause 17 and Schedule 7.

(c) Subject to the conditions set out in paragraph 10 of Schedule 3, on a Quarterly basis Telstra will measure the Variance (if any) between:

(i) its performance against the Equivalence and Transparency Metrics in relation to Wholesale Customers; and

(ii) its performance against the Equivalence and Transparency Metrics in relation to the Retail Business Units,

in relation to Metrics 1–11 (inclusive), 17, 18 and 19.

(d) Subject to the conditions set out in paragraph 10 of Schedule 3, on a Quarterly basis Telstra will measure the Variance in its performance in relation to Metrics 12, 13, 14, 15, 16, 20 and 21 against specified service targets set out in Schedule 3.

(e) For clarity:

(i) Metrics 1 to 11 (inclusive), 17, 18 and 19 compare the performance of Comparable Retail Services to Retail Customers with the performance of Regulated Services to Wholesale Customers; and

(ii) the other Metrics are measures of the performance of Regulated Services to Wholesale Customers and the availability of LOLO against the minimum percentage performance thresholds for achievement of specified Service Level, as provided for in Schedule 3.

16.2 Operational Equivalence Report

(a) Telstra will provide the ACCC and ITA Adjudicator with a report (**Operational Equivalence Report**) for each Quarter that sets out:

(i) the E&T Performance Result for each Metric for that Quarter;

(ii) the result that would have been the E&T Performance Result for each Metric for that Quarter if the conditions set out in paragraph 10 of Schedule 3 were not applied; and

(iii) an explanation of how Telstra has applied the conditions set out in paragraph 10 of Schedule 3 when calculating the E&T Performance Result for each Metric for that Quarter.

(b) The Operational Equivalence Report will be provided to the ACCC and ITA Adjudicator by no later than two months after the end of the Quarter to which it relates.

(c) Telstra will also publish a copy of each Operational Equivalence Report on its website within 5 Business Days after the date that the report was provided to the ACCC and the ITA Adjudicator in accordance with clause 16.2(b).

(d) Telstra will, for each Quarter which commences after 1 July 2012, provide in the Operational Equivalence Report in relation to Metrics 1 to 11 (inclusive) and Metrics 17 and 18 Telstra's average cycle time to perform against each of these Metrics for:

(i) each relevant Regulated Service; and

(ii) its Comparable Retail Service,

(**Average Performance Results**).

(e) If Telstra makes any corrections or adjustments to the data used to calculate the Average Performance Results:

(i) those corrections or adjustments must be reasonable; and

(ii) Telstra must include in the relevant Operational Equivalence Report a brief explanation of:

(A) those corrections or adjustments, including to adjust for any statistical outliers or that would have otherwise been likely to distort the reported results; and

(B) why the data as adjusted or corrected more accurately reflects performance in respect of the relevant Metric during the Quarter; and

(f) If Telstra does not make any corrections or adjustments to the data used to calculate the Average Performance Results, Telstra must include in the relevant Operational Equivalence Report a statement of any qualifications as to the accuracy, quality or representative nature of the data, which the ACCC must take into account in using the Average Performance Results.

(g) If requested by the ACCC pursuant to clause 24.4, Telstra will provide the ACCC with the full data set used to calculate Average Performance Results.

16.3 Telstra will report on Equivalence and Transparency Metrics to the ACCC and ITA Adjudicator

(a) Subject to the conditions set out in paragraph 10 of Schedule 3, if the E&T Performance Result calculated under clause 16.1(c) in respect of a Metric demonstrates a Reporting Variance, Telstra will:

(i) promptly investigate the cause or causes of the non-compliant result;

(ii) at the same time as Telstra provides an Operational Equivalence Report for the Quarter under clause 16.2, it will separately provide to the ITA Adjudicator and the ACCC an accompanying confidential report setting out for each non-compliant result:

(A) a reasonably detailed explanation of the reason(s) for the Reporting Variance; and

(B) if Telstra determines that the result is due, in whole or in part, to any non-compliance by Telstra with this Part D, it will set out any steps being taken to further investigate and/or rectify the non-compliance, including an estimated timeframe for rectification; and

(iii) if a notice is given by Telstra under clause 16.3(a)(ii)(B), take the steps identified in that notice as the steps that Telstra will take to further investigate and/or rectify the non-compliance.

16.4 Calculation of Variances

For the purposes of clauses 16.2 and 16.3:

(a) in respect of Metrics 1 to 11 (inclusive), the Variance threshold is applied to business and residential data separately;

(b) in respect of Metrics 19, 20 and 21, the Variance threshold is applied to combined business and residential data; and

(c) in respect of Metrics 17 and 18, the Variance threshold is applicable to business data only.

16.5 Comparison of Common "Ticket of Work" Tasks

(a) No later than 6 months after the Commencement Date, Telstra will provide the ACCC with a report which:

(i) identifies those Common Retail/Wholesale Job Tasks for which Telstra considers it is reasonably practicable (including weighing anticipated costs and benefits) to separately measure and compare its retail and wholesale performance; and

(ii) sets out Telstra's proposed changes (if any) to existing Equivalence and Transparency Metrics or any new Equivalence and Transparency Measures in respect of those Common Retail/Wholesale Job Tasks.

(b) The ACCC may publish any report provided by Telstra under clause 16.5(a) excepting any part which has been identified by Telstra as confidential or commercially sensitive.

(c) Within 30 days of providing the ACCC with the report under clause 16.5(a), Telstra will provide the ACCC with a variation to this Undertaking to incorporate any proposals for new or amended Equivalence Transparency Metrics made in that report.

17 Service Level Rebates

17.1 Objective

(a) The objective of this clause 17 is to establish a scheme for the payment of Service Level Rebates to Wholesale Customers in the event that Telstra does not meet a Service Level for an Equivalence and Transparency Metric as set out in Schedule 3.

(b) Wholesale Customers are not required to participate in the scheme and may:

(i) continue with any existing Service Level arrangements agreed with Telstra;

(ii) seek to agree alternative Service Level arrangements with Telstra; or

(iii) continue to rely on other entitlements that may be available to the Wholesale Customer, such as under section 118A of the Consumer Protection Act (or its equivalent from time to time).

17.2 Telstra will enter into a Regulated Services SLA Agreement on request

As soon as reasonably practicable after receiving a request to do so by a Wholesale Customer, Telstra will enter into a Regulated Services SLA Agreement with that Wholesale Customer on the terms set out in Schedule 7, so that the Wholesale Customer can participate in the Service Level Rebate scheme.

18 Price Equivalence and Transparency

18.1 Telstra to supply Wholesale ADSL Layer 2 Service on request

(a) During any period in which the Wholesale ADSL Layer 2 Service (or any substantially similar wholesale ADSL service) is not an active declared service, Telstra undertakes that it will, if requested to do so by a Wholesale Customer, supply a Wholesale ADSL Layer 2 Service to a Wholesale Customer in order that it can provide carriage services and/or content services.

(b) Clause 18.1(a) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects:

(i) preventing another Wholesale Customer who already has access to the Wholesale ADSL Layer 2 Service from obtaining a sufficient amount of the service to be able to meet the Wholesale Customer's reasonably anticipated requirements, measured at the time when the request was made;

(ii) preventing Telstra from obtaining a sufficient amount of the comparable retail ADSL service to be able to meet Telstra's reasonably anticipated requirements, measured at the time when the request was made;

(iii) requiring Telstra to extend or enhance the capability of a facility by means of which the Wholesale ADSL Layer 2 Service is supplied; or

(iv) requiring Telstra to engage in conduct in connection with matters covered by the Plan.

(c) This clause 18.1 does not impose an obligation on Telstra if there are reasonable grounds to believe that:

(i) the Wholesale Customer would fail, to a material extent, to comply with the terms and conditions on which Telstra complies, or on which Telstra is reasonably likely to comply, with that obligation; or

(ii) the Wholesale Customer would fail, in connection with that obligation, to protect:

(A) the integrity of a telecommunications network; or

(B) the safety of individuals working on, or using services supplied by means of, a telecommunications network or a facility.

(d) Examples of grounds for believing as mentioned in clause 18.1(c) include:

(i) evidence that the Wholesale Customer is not creditworthy; and

(ii) repeated failures by the Wholesale Customer to comply with the terms and conditions on which the same or similar access has been provided (whether or not by Telstra).

18.2 Price Equivalence and Transparency Measures

Telstra undertakes to maintain equivalence and transparency in relation to the supply of Regulated Services by means of:

(a) making available a Rate Card with Reference Prices for:

(i) each of ULLS, LSS, WLR, LCS, PSTN OA, PSTN TA, DTCS, MTAS and the Wholesale ADSL Layer 2 Service;

(ii) the TEBA services and activities specified in paragraph 2 of Schedule 8; and

(iii) any other Regulated Service which is declared after the Commencement Date, as provided in paragraphs 1.2(d) and (e) of Schedule 8,

(the **Reference Services**);

(b) establishing and updating the reference offer for the Wholesale ADSL Layer 2 Service, from time to time, in accordance with Schedule 8; and

(c) providing for transparency of Internal Wholesale Prices and External Wholesale Prices for Reportable Wholesale Products and Reportable Product Bundles based on fully-allocated internal costs and revenues for those services in accordance with clause 18.4.

18.3 Wholesale Rate Card with Reference Prices

(a) Telstra will publish and maintain a Rate Card with Reference Prices for each of the Reference Services.

(b) A Reference Price for each Reference Service will be calculated and updated from time to time in accordance with Schedule 8.

(c) Telstra undertakes that it will supply each of the Reference Services on the price terms:

(i) set out in a Reference Price; or

(ii) as otherwise agreed with a Wholesale Customer.

(d) If a Wholesale Customer acquires from Telstra a Wholesale ADSL Layer 2 Service under a wholesale contract which exists as at the Commencement Date, that Wholesale Customer may elect to acquire the Wholesale ADSL Layer 2 Service under that contract at the Reference Price by giving Telstra written notice within 3 months of the date of Telstra first publishing the Reference Price for the Wholesale ADSL Layer 2 Service following the Commencement Date. If a Wholesale Customer does give such notice to Telstra, Telstra will agree to amend the relevant wholesale contract to provide that the Reference Price will take effect from commencement of the next billing cycle under that wholesale contract following the Wholesale Customer's notice. Telstra is not required to agree to vary any non-

price terms of the contract, but will offer the Reference Price for the Wholesale ADSL Layer 2 Service free of any additional price-related conditions.

(e) For clarity, nothing in this clause 18:

(i) subject only to clause 18.3(d), amends or overrides any existing contracts, including any agreed pricing, which exists as at the Commencement Date; or

(ii) prevents Telstra and a Wholesale Customer from agreeing a price (or price structure) for any Reference Service that is different from the current Reference Price for that Reference Service.

(f) Telstra undertakes to include in the standard form of its wholesale contracts for Reference Services offered to Wholesale Customers that, if alternative prices for a Reference Service are not able to be agreed, the Reference Prices published under this Undertaking (as amended from time to time) will apply.

18.4 TEM Reporting and Wholesale Price Equivalence

(a) Telstra will provide to the ACCC for each Reporting Period a TEM Report that sets out in respect of each Reporting Period, the fully-allocated costs, revenues and economic return associated with Reportable Wholesale Products and Reportable Retail Products.

(b) Telstra will:

(i) prepare the TEM Report;

(ii) calculate as part of each TEM Report a separate per service External Wholesale Price and Internal Wholesale Price for each of the Reportable Wholesale Products and Reportable Product Bundles; and

(iii) provide Substantiation Reports to the ACCC from time to time in order to explain any differences between the Internal Wholesale Prices and External Wholesale Prices for a Reportable Product Bundle,

applying the methodology and otherwise on the terms specified in Schedule 9.

(c) Telstra undertakes that the TEM financial management reporting system, from which the TEM Reports will be derived:

(i) is and will remain the internal accounting system that Telstra uses for business management purposes, including in respect of non-regulated products and services;

(ii) relies and will continue to rely on the same financial accounts as are used for public reporting purposes, which are prepared in accordance with generally accepted accounting principles and standards as are applicable in Australia;

(iii) transfers and will continue to transfer costs to retail and wholesale products using equivalent allocation methodology, as defined in paragraph 5.2 of Schedule 9; and

(iv) is and will remain a primary source of cost, revenue and profitability information used by Telstra as an input for business managed decisions.

(d) Telstra undertakes to develop and maintain the TEM financial management reporting system so that it is a reliable and fit for purpose management accounting system, including for the purpose of:

(i) producing TEM Reports; and

(ii) determining the Internal Wholesale Prices,

by no later than the date on which the first TEM Report is submitted to the ACCC under Schedule 9.

18.5 TEM Reports and Substantiation Reports are not determinative

The information set out in TEM Reports and any Substantiation Reports or other information provided to the ACCC under Schedule 8 or Schedule 9 are to assist Telstra and the ACCC to assess and anticipate the competitive implications of Telstra's pricing conduct and will not:

(a) be determinative of whether Telstra has or has not acted inconsistently with the CCA in respect of its pricing of any wholesale or retail product; or

(b) restrict the ACCC in any way in its exercise of its functions under the CCA (including Parts IV, XIB and XIC).

18.6 Operation of Price Equivalence and Transparency Framework

Each of the price equivalence and transparency measures set out in this clause 18, Schedule 8 and Schedule 9 will cease to operate as at the Designated Day.

18.7 Price Equivalence Disputes

If a Wholesale Customer requests, Telstra will agree with the Wholesale Customer (by varying the relevant wholesale contract) that the dispute resolution process set out in Schedule 10 will apply to Price Equivalence Disputes between the parties which arise on or after the time that variation to the wholesale contract is made.

18.8 Price Transparency for Wholesale ADSL Layer 2 Service pricing

(a) If, after the Commencement Date, Telstra enters into a wholesale DSL agreement, Telstra must, within 28 days after the day on which the agreement was entered into, give the ACCC:

(i) a copy of the agreement; and

(ii) a written statement setting out such information (if any) about the agreement as is specified by a notice given by the ACCC under clause 18.8(d).

(b) If Telstra enters into a variation of a wholesale DSL agreement lodged with the ACCC under clause 18.8(a), Telstra must, within 28 days after the day on which the variation agreement was entered into, give the ACCC:

(i) a copy of the variation agreement; and

(ii) a written statement setting out such information (if any) about the variation agreement as is specified by a notice given by the ACCC under clause 18.8(d).

(c) If, after the Commencement Date, Telstra enters into a variation of a wholesale DSL agreement which was entered into prior to the Commencement Date, Telstra must, within 28 days after the day on which the variation agreement was entered into, give the ACCC:

(i) a copy of the variation agreement; and

(ii) a written statement setting out such information (if any) about the variation agreement as is specified by a notice given by the ACCC under clause18.8(d).

(d) The ACCC may, by notice in writing to Telstra, specify information for the purposes of clauses 18.8(a)(ii), (b)(ii) and (c)(ii). To facilitate consistency in reporting and efficiency of contract administration for Telstra, any such notice should, to the extent relevant, replicate the information requirements and reporting format of instruments (if any) made under section 152BEB of the CCA.

(e) If:

(i) a copy of a wholesale DSL agreement has been given to the ACCC under clause 18.8(a); and

(ii) the agreement is terminated, rescinded or cancelled before the expiry of the agreement,

Telstra must, within 28 days after the termination, rescission or cancellation, as the case may be, notify the ACCC, in writing, of the termination, rescission or cancellation.

(f) The ACCC may, before the end of the 28 day period referred to in clauses 18.8(a), (b) or (c) extend that period.

(g) For the purposes of this clause 18.8, a wholesale DSL agreement is an agreement where:

(i) the agreement is in writing; and

(ii) the agreement is legally enforceable; and

(iii) the agreement relates to supply or proposed supply of the Wholesale ADSL Layer 2 Service; and

(iv) the parties to the agreement are a Wholesale Customer and Telstra; and

(v) any of the following sub-clauses apply:

(A) the agreement embodies any or all of the terms and conditions on which Telstra is to supply the Wholesale ADSL Layer 2 Service;

(B) the agreement imposes other requirements on Telstra in relation to supply or proposed supply of the Wholesale ADSL Layer 2 Service;

(C) the agreement requires the Wholesale Customer to accept, and pay for, access to the Wholesale ADSL Layer 2 Service;

(D) the agreement embodies any other terms and conditions of the Wholesale Customer's access to the Wholesale ADSL Layer 2 Service;

(E) the agreement restricts or limits the application to Telstra of the obligation referred to in clause 18.1; or

(F) the agreement deals with any other matter relating to access to the Wholesale ADSL Layer 2 Service.

(h) This clause 18.8 ceases to apply if the Wholesale ADSL Layer 2 Service becomes a declared service.

19 Telstra Accelerated Investigation Process

19.1 Establishment and object

(a) Telstra will establish and maintain an Accelerated Investigation Process to expeditiously investigate any Equivalence Complaints received from Wholesale Customers.

(b) The object of the Accelerated Investigation Process is to provide an internal process by which Telstra can quickly and flexibly respond to, and resolve, Equivalence Complaints to the reasonable satisfaction of the Wholesale Customer.

19.2 Equivalence Complaints

(a) For the purposes of this Undertaking, an Equivalence Complaint is:

(i) a non-price complaint or issue that relates to or is likely to have been caused by a system or process issue affecting Telstra's compliance with obligations set out in Part D of this Undertaking;

(ii) a non-price complaint in connection with a TEBA order or process,

(each an **Equivalence Complaint**).

(b) For clarification:

(i) a single event can be the basis of an Equivalence Complaint;

(ii) the following are not Equivalence Complaints:

(A) a dispute referred to the Adjudicator under clause 31 of the Plan;

(B) any reference of a matter to the ITA Adjudicator by the ACCC under the Plan; and

(C) a complaint or dispute which arises under or in relation to the terms of supply of Regulated Services and which does not relate to system or process issues (for example, a complaint related to the late payment of an amount due).

19.3 The Accelerated Investigation Processes

(a) As soon as reasonably practicable after receiving an Equivalence Complaint in writing from a Wholesale Customer (**Equivalence Complaint Notice**), Telstra will:

(i) determine (acting reasonably) if that matter is an Equivalence Complaint or whether it would be more appropriately dealt with using an alternative complaint or dispute process, and notify that Wholesale Customer accordingly;

(ii) if the matter is to be dealt with using the Accelerated Investigation Process, investigate the matters raised in the Equivalence Complaint Notice with a view to resolving the Equivalence Complaint as soon as reasonably practicable;

(iii) if Telstra reasonably requires additional information in order to investigate the matters raised in the Equivalence Complaint Notice, provide written notice to the Wholesale Customer requesting the additional information;

(iv) subject to clause 19.3(b), within 5 Business Days of the date of receipt by Telstra of an Equivalence Complaint Notice, issue a report (**Rectification Plan**) to the relevant Wholesale Customer setting out:

(A) the steps that Telstra has taken to investigate and/or resolve the Equivalence Complaint;

(B) any explanation or justification for the circumstances giving rise to the Equivalence Complaint;

(C) if Telstra has been unable to complete its investigation by the time it issues the Rectification Plan, an estimate of the likely timeframe within which it will have completed its investigation and be in a position to issue its Rectification Plan to that Wholesale Customer; and

(D) if applicable, the steps that Telstra will take to resolve the issues giving rise to the Equivalence Complaint, including the timeframe in which those steps will be taken.

(b) If Telstra has provided a written notice to a Wholesale Customer under clause 19.3(a)(iii), the time referred to in clause 19.3(a)(iv) will be extended by a period equal to the number of days from the date on which the written notice was provided by Telstra and the date on which the information requested in the written notice was received by Telstra.

(c) The relevant Wholesale Customer may propose amendments to the Rectification Plan in writing to Telstra within 5 Business Days of the date the Wholesale Customer is provided with the Rectification Plan by Telstra under clause 19.3(a)(iv). If Telstra receives any proposed amendments from the Wholesale Customer within the required time it will give reasonable consideration to them, and:

(i) if it accepts any or all of the proposed amendments, Telstra will then revise and re-issue the Rectification Plan to that Wholesale Customer as soon as reasonably practicable, but in any event within 5 Business Days of receiving the proposed amendments; and

(ii) if it rejects any or all of the proposed amendments, promptly notify that Wholesale Customer of the proposed amendments which it rejects and provide an explanation.

(d) The relevant Wholesale Customer must notify Telstra within 5 Business Days of the date it receives a Rectification Plan under clause 19.3(a)(iv) or an amended Rectification Plan under clause 19.3(c), whether the Wholesale Customer accepts or rejects the Rectification Plan.

(e) If the relevant Wholesale Customer does not notify Telstra that it accepts or rejects a Rectification Plan (or, if applicable, amended Rectification Plan) within 5 Business Days under clause 19.3(d), the Wholesale Customer will be deemed to have accepted it.

(f) Telstra will carry out each of the tasks identified in an accepted Rectification Plan in accordance with the terms of that Rectification Plan.

(g) If Telstra reasonably determines that it is necessary to vary or amend an accepted Rectification Plan, it will as soon as reasonably practicable:

(i) notify the relevant Wholesale Customer of the proposed amendments, including explaining the reasons for the proposed amendment and the date on which such amendments will take effect; and

(ii) consult in good faith with that Wholesale Customer, including giving reasonable consideration to any suggestions received from the Wholesale Customer in relation to the proposed amendment.

(h) If the relevant Wholesale Customer does not notify Telstra that it accepts or rejects any proposed amendment(s) to an accepted Rectification Plan suggested by Telstra under clause 19.3(g), within 5 Business Days of the date the Wholesale Customer received notice of the proposed amendment(s), it will be deemed to have accepted those proposed amendments.

(i) The relevant Wholesale Customer may not refer to the ITA Process an Equivalence Complaint that is the subject of an accepted Rectification Plan, unless:

(i) there has been a material failure by Telstra to comply with the Rectification Plan; or

(ii) Telstra has notified that Wholesale Customer of proposed amendments to the Rectification Plan in accordance with clause 19.3(g), which proposed amendments that Wholesale Customer does not accept.

(j) A Wholesale Customer's right to refer any failure by Telstra to comply with a Rectification Plan to the ITA Process is that Wholesale Customer's sole and exclusive remedy for such failure.

(k) Nothing in this clause 19 restricts or prevents a Wholesale Customer and Telstra from agreeing, on a case by case basis, to deal with or attempt to resolve any matter, dispute or complaint which would otherwise be an Equivalence Complaint without referring it to the Accelerated Investigation Process or the ITA Process.

19.4 Relationship with Alternative Processes

(a) Subject to clause 19.4(c), the Accelerated Investigation Process will be treated as completed in respect of an Equivalence Complaint if:

(i) a Rectification Plan is in place under this clause 19;

(ii) the Wholesale Customer has rejected the Rectification Plan under this clause 19; or

(iii) the Wholesale Customer has notified Telstra that it withdraws the Equivalence Complaint.

(b) Telstra may terminate the Accelerated Investigation Process in respect of an Equivalence Complaint by giving notice to the relevant Wholesale Customer if:

(i) a Rectification Proposal has been accepted by the ACCC under Schedule 11 in respect of the subject matter of the Equivalence Complaint; or

(ii) a Rectification Direction has been made by the ACCC in respect of the subject matter of the Equivalence Complaint.

(c) Clauses 19.1, 19.2 and 19.3 have effect subject to this clause 19.4.

20 ITA Process

20.1 The establishment of the Independent Telecommunications Adjudicator

(a) Telstra will establish the Independent Telecommunications Adjudicator as a company limited by guarantee in accordance with Schedule 5 and for the purposes of section 152EQ of the CCA.

(b) Telstra will establish the ITA Process in accordance with, and subject to, the terms specified in Schedule 5.

(c) The ITA Process will not apply until the ITA Adjudicator is appointed in accordance with Schedule 5 and agrees to be bound by the ITA Process and the terms set out in Schedule 5.

20.2 Referral of Equivalence Complaints to the ITA Process

A Wholesale Customer may only refer an Equivalence Complaint to the ITA Process if one of the following applies:

(a) the Equivalence Complaint has previously been referred to Telstra for investigation under the Accelerated Investigation Process and Telstra did not accept the Equivalence Complaint under the Accelerated Investigation Process;

(b) the Equivalence Complaint was referred to Telstra for investigation under the Accelerated Investigation Process and:

(i) in relation to that Equivalence Complaint, the Wholesale Customer receives a Rectification Plan under clause 19.3(a)(iv) or an amended Rectification Plan under clause 19.3(c); and

(ii) the Wholesale Customer has notified Telstra under clause 19.3(d) that it rejects the Rectification Plan or an amended Rectification Plan within 5 Business Days after its receipt;

(c) there has been a material failure by Telstra to comply with an accepted Rectification Plan, including any material failure to meet a timeframe set out in that Rectification Plan; or

(d) Telstra has notified that Wholesale Customer of proposed amendment(s) to an accepted Rectification Plan in accordance with clause 19.3(g) and the Wholesale Customer rejects those proposed amendment(s) within 5 Business Days of the date it received the proposed amendment(s).

20.3 Referral to the ITA Process of disputes under the Plan

A Wholesale Customer may refer a dispute to the ITA Process in accordance with clause 31 of the Plan.

20.4 Telstra to enter into ITA Agreements and cooperate with ITA Adjudicator

(a) As soon as reasonably practicable after receiving a request to do so by a Wholesale Customer, Telstra will enter into, and will procure that the ITA enters into, an ITA Agreement with that Wholesale Customer on the terms set out in Schedule 6, so that the Wholesale Customer can participate in the ITA Process.

(b) Telstra will:

(i) not act in an manner which is inconsistent with the Charter of Independence; and

(ii) cooperate with and assist the ITA Adjudicator in good faith with each investigation, in accordance with Schedule 5.

20.5 Telstra to comply with ITA process and orders of the Adjudicator

(a) Telstra undertakes to be bound by and comply with the processes set out in Schedule 5.

(b) Telstra undertakes to comply with any binding determination issued by the Adjudicator in accordance with the provisions of Schedule 5, including any determination made in respect of:

(i) payment of the Adjudicator's costs; or

(ii) repayment of the ITA Referral Fee to a Wholesale Customer, in the event that the relevant ITA Dispute is upheld.

21 Implementation

21.1 Implementation Periods

Unless otherwise approved by the ACCC in accordance with clause 21.2, the following table sets out the implementation periods which will apply to specified provisions of Part D of this Undertaking and the associated Schedules (**Implementation Periods**):

Provision	End of Implementation Period
Organisational Structure (clause 8 and Schedule	For all provisions other than clause 8.6,

Provision	End of Implementation Period
2)	the Commencement Date. For clause 8.6, 2 months after the Commencement Date.
Overarching Equivalence (clause 9 and Schedule 11)	2 months after the Commencement Date
Information Security (clause 10)	Commencement Date
Service quality and operational equivalence (clause 11)	Commencement Date
Telstra Exchange and Building Access (clause 12.6 and Schedule 12)	2 months after the Commencement Date
Wholesale Customer Facing Systems (clause 13)	2 months after the Commencement Date
Information Equivalence (clause 14 and Schedule 4)	Commencement Date
Equivalence and Transparency Metrics (clause 16 and Schedule 3)	The start of the first Quarter which commences after the Commencement Date
Service Level Rebates (clause 17 and Schedule 7)	The start of the first Quarter which commences after the Commencement Date
Price Equivalence and Transparency (clause 18, Schedule 8, Schedule 9, Schedule 10 and Schedule 11)	2 months after the Commencement Date
Telstra Accelerated Investigation Process (clause 19)	2 months after the Commencement Date
Independent Telecommunications Adjudicator Process (clause 20, Schedule 5 and Schedule 6)	2 months after the Commencement Date
All other provisions of Part D	Commencement Date

21.2 Obligations in respect of an Implementation Period

(a) Telstra must take the action necessary to complete implementation of the relevant provision of Part D or the Schedule associated with Part D by the end of the Implementation Period.

(b) Telstra must notify the ACCC as soon as reasonably practicable after the expiry of an Implementation Period whether the relevant provision of Part D has been implemented in full.

(c) If an Implementation Period applies to a provision of this Part D or a Schedule that is associated with the provisions of Part D, Telstra will not be treated during the Implementation Period as being in breach of that provision or that Schedule or of clause 9(a) in respect of the matters covered by that provision or Schedule.

21.3 ACCC may approve extensions

(a) If the ACCC receives a request from Telstra to vary a date that is specified in clause 21.1 as the date on which one or more provisions of Part D of this Undertaking and their associated Schedules will take effect the ACCC may:

(i) approve that request; or

(ii) reject the request.

(b) In deciding whether to approve or reject a request given under clause 21.3(a) the ACCC must have regard to:

(i) whether Telstra has acted in an effective, timely and reasonable manner to implement changes to its organisational structures, processes and/or systems which are necessary to ensure compliance with the applicable provisions;

(ii) whether any event or circumstance which is beyond Telstra's reasonable control has delayed the implementation of any such changes;

(iii) the other changes that Telstra is making to its organisational structures, processes and systems in order to comply with its obligations under the Definitive Agreements, the Plan and this Undertaking;

(iv) reasonable timeframes for implementing changes to organisational structures, processes and systems;

(v) the principle that Telstra should not have to incur costs which are unreasonable or disproportionate; and

(vi) the matters set out in subsection 577A(6) of the Act.

Part E Compliance and Reporting

22 Operation of this Part E

This Part E applies before and after the Designated Day and sets out the measures to be taken by Telstra to promote and facilitate:

(a) compliance by Telstra with this Undertaking; and

(b) the monitoring of Telstra's compliance with this Undertaking by the ACCC.

23 Compliance processes and management

23.1 Telstra Audit Committee and Director of Equivalence

(a) The Audit Committee of the Telstra Board (**Audit Committee**) will be responsible for overseeing compliance by Telstra with this Undertaking.

(b) The Audit Committee will appoint and oversee the activities of the Director of Equivalence.

(c) As soon as practicable after this Undertaking comes into force, the Audit Committee will appoint a Director of Equivalence who will:

(i) be an executive with responsibilities and duties of the Director of Equivalence as set out in this Undertaking;

(ii) be in a role which is independent, in relation to day to day operational management and reporting, from those parts of Telstra's business and relevant activities which are subject to the obligations set out in Part C or Part D of this Undertaking, and which the Director of Equivalence is required to oversee; and

(iii) be sufficiently senior in Telstra's management structure to permit the person occupying that position to perform the duties of the Director of Equivalence as set out in this Undertaking.

(d) Without limitation to the other responsibilities of the Director of Equivalence set out in this Undertaking or as otherwise directed by the Audit Committee, he or she will have responsibility for:

(i) putting in place effective and appropriate mechanisms for monitoring compliance with Part C, Part D and Part E of this Undertaking, including ensuring timely reporting to the ACCC in accordance with clause 24.1;

(ii) reporting to the CEO and the Audit Committee from time to time;

(iii) increasing awareness within Telstra of the requirements of Part C and Part D of this Undertaking;

(iv) accepting, facilitating and responding to any requests for information received from the ACCC in relation to this Undertaking;

(v) developing and overseeing an ongoing internal education and compliance training program directed towards ensuring Telstra's compliance with Part D of this Undertaking;

(vi) monitoring implementation of measures to respond to any identified non-compliance by Telstra with Part C or Part D of this Undertaking;

(vii) overseeing the operation of the Accelerated Investigation Process, including assessing all Equivalence Complaints received by Wholesale Customers in accordance with clause 19.3; and

(viii) monitoring implementation of measures to respond to, and comply with, any order of the Adjudicator.

23.2 Equivalence Compliance Statement

(a) Telstra will, within 90 days of this Undertaking coming into force, issue a policy statement outlining Telstra's commitment to compliance with the requirements of Part D of this Undertaking (the **Equivalence Compliance Statement**).

(b) Telstra will ensure that the Equivalence Compliance Statement:

(i) is written in plain language;

(ii) contains a statement of commitment to compliance with Part D of this Undertaking;

(iii) contains a strategic outline of how commitment to compliance with Part D of this Undertaking will be realised within Telstra;

(iv) contains a process that whistleblowers must follow in respect of whistle blowing activities and a guarantee that their reports will be kept confidential and secure; and

(v) contains a clear statement that Telstra will take action internally against any persons who are knowingly or recklessly concerned in a contravention of Part D of this Undertaking and will not indemnify them.

23.3 Monthly compliance report in relation to equivalence issues

(a) Within 10 Business Days after the end of each calendar month Telstra will provide to the ACCC, on a confidential basis, a report specifying:

(i) details of any equivalence issues received from Wholesale Customers or from the ACCC or identified by Telstra in that month;

(ii) Telstra's assessment of each such equivalence issue and whether it considers a breach of clause 9(a) (taking into account the provisions in clause 9(b) and paragraphs 1(b) and 1(c) of Schedule 11) or a specific commitment in clause 8, 10, 11, 12, 13, 14, 15, 16 or 18 has occurred; and

(iii) where Telstra does not consider that such a breach has occurred:

(A) reasons why Telstra has formed this view; and

(B) details of the action that Telstra proposes to take to respond to and address the relevant complaint or issue (if any);

(iv) whether Telstra has self reported or, by means of the monthly compliance report, is self reporting a possible breach of clause 9(a) in accordance with the requirements of paragraph 2.1 of Schedule 11;

(v) certification that Telstra has not identified any equivalence issues in that month which it has not disclosed in the report; and

(vi) details of the steps that Telstra has taken to be satisfied that it is able to give the certification referred to in clause 23.3(a)(v) (which may include requesting relevant staff to confirm if they are aware of any equivalence issues).

(b) For the purposes of this clause 23.3 and clause 24.2(b)(i), an **equivalence issue** means a possible breach of clause 9(a) or a breach of a specific commitment in clauses 8, 10, 11, 12, 13, 14, 15, 16, 18, or the associated Schedules.

(c) For clarification, Telstra is not required to report under this clause 23.3 in respect of any provision of Part D or an associated Schedule during any Implementation Period applicable to that provision or Schedule.

23.4 Compliance Training

(a) Telstra will ensure that regular (at least once a year) and practical training is undertaken for all relevant Telstra Employees, whose duties could result in them being concerned with conduct that may contravene Part D of this Undertaking.

(b) Telstra must ensure that the training is conducted:

(i) through online training courses; and/or

(ii) by a suitably qualified compliance professional or legal practitioner.

(c) Telstra will ensure that the Equivalence Compliance Statement includes a requirement that awareness of issues relating to compliance with Part D of this Undertaking forms part of the induction of all new Telstra directors and Employees whose duties could result in them being concerned with conduct that may contravene Part D of this Undertaking.

23.5 Supply of Equivalence Compliance Program to the ACCC

(a) Within 6 months after the date that this Undertaking comes into force, Telstra will:

(i) develop the Equivalence Compliance Statement, compliance training materials to be used under clause 23.4 and any other documents constituting its compliance program with Part D of this Undertaking (**Equivalence Compliance Program**); and

(ii) provide a briefing to the ACCC in relation to the Equivalence Compliance Program.

(b) Telstra will consult with the ACCC on any recommendations of the ACCC about the Equivalence Compliance Program.

(c) Telstra will provide the ACCC annually with any updated documents forming part of its Equivalence Compliance Program and consult with the ACCC on any recommendations of the ACCC about changes in its Equivalence Compliance Program.

23.6 Director of Equivalence to prepare Annual Equivalence Report for Audit Committee

(a) The Director of Equivalence will coordinate and oversee the preparation of an annual report (**Annual Equivalence Report**), which will be submitted to the Audit Committee not more than 90 Business Days after the last Business Day of each Financial Year, in respect of that Financial Year.

(b) The Annual Equivalence Report will include for the relevant Financial Year, a summary of (to the extent applicable):

(i) any steps taken by Telstra to rectify any non-compliance with Part D of this Undertaking identified in the course of investigating non-compliance with Part D of this Undertaking;

(ii) Equivalence Complaint(s) referred to the Accelerated Investigation Process and/or the Adjudicator during that Financial Year;

(iii) compliance by Telstra with any directions or orders made by the Adjudicator during that Financial Year;

(iv) compliance by Telstra with its price equivalence obligations under clause 18 during that Financial Year;

(v) the findings of the remuneration consultant's review of whether Telstra's Employee incentive remuneration schemes comply with the requirements of clause 8.6;

(vi) compliance training undertaken by Telstra in accordance with clause 23.4;

(vii) any investigation or enforcement action by the ACCC undertaken during that Financial Year in respect of Telstra's compliance with Part D of this Undertaking;

(viii) any areas where the Director of Equivalence has concerns with regard to future breaches of Part D of this Undertaking, and whether the Director of Equivalence considers such concerns have not been adequately addressed by Telstra; and

(ix) any new steps taken during that Financial Year to promote or facilitate Telstra's compliance with Part D of this Undertaking. For example, the Annual Equivalence Report may report on compliance training initiatives undertaken during that Financial Year.

23.7 Disclosure of equivalence performance in annual reports

Telstra will include in Telstra's annual report a summary of the findings of the relevant Annual Equivalence Report(s) which cover the period of the annual report where those findings have been finalised in time for inclusion in the annual report.

23.8 Separation Compliance Program

(a) No later than 6 months prior to the Designated Day, Telstra will:

(i) develop a compliance program regarding its compliance with Part C of this Undertaking (**Separation Compliance Program**); and

(ii) provide a briefing to the ACCC in relation to the Separation Compliance Program.

(b) Telstra will ensure that the Separation Compliance Program includes a statement which:

(i) is written in plain language;

(ii) contains a statement of commitment to compliance with Part C of this Undertaking;

(iii) contains a strategic outline of how the commitment to compliance with Part C of this Undertaking will be realised within Telstra;

(iv) acknowledges that Telstra's compliance reporting obligations in clause 24 apply to its compliance with the commitments in Part C of this Undertaking;

(v) contains a process that whistleblowers must follow in respect of whistle blowing activities and a guarantee that their reports will be kept confidential and secure; and

(vi) contains a clear statement that Telstra will take action internally against any persons who are knowingly or recklessly concerned in a contravention of Part C of this Undertaking and will not indemnify them.

(c) Telstra will consult with the ACCC on any recommendations of the ACCC about the Separation Compliance Program.

(d) Telstra will provide the ACCC annually with any updated documents forming part of its Separation Compliance Program and consult with the ACCC on any recommendations of the ACCC about changes in its Separation Compliance Program.

23.9 Disclosure to the ACCC of the Definitive Agreements and all contracts, arrangements and understandings

(a) Telstra has provided the ACCC with a copy of each of the Definitive Agreements for the purpose of the application of section 577BA(3) prior to the date on which it gave this Undertaking to the ACCC under section 577A.

(b) Telstra will give to the ACCC written copies of all contracts, arrangements or understandings entered into by Telstra after the Commencement Date in order to comply with this Undertaking.

24 Compliance Reporting

24.1 Reporting to the ACCC

Telstra will promote and facilitate the ACCC's monitoring of Telstra's compliance with this Undertaking by, amongst other things, providing the following periodic reporting to the ACCC:

(a) the Operational Equivalence Report to be prepared in accordance with clause 16.2;

(b) the Annual Compliance Report to be prepared in accordance with clause 24.2; and

(c) the TEM Report in accordance with the requirements of Schedule 9.

24.2 Annual Compliance Report

(a) Telstra will prepare an annual report (**Annual Compliance Report**) not more than 90 Business Days after the last Business Day of each Financial Year, in respect of that Financial Year.

(b) The Annual Compliance Report will include for the relevant Financial Year, a summary of (to the extent applicable):

(i) details of any equivalence issues received from Wholesale Customers or from the ACCC or identified by Telstra in that Financial Year and in respect of each such equivalence issue, information of the kind described in clauses 23.3(a)(ii), 23.3(a)(iii)(A), 23.3(a)(iii)(B) and 23.3(a)(iv);

(ii) the results of the findings of the remuneration consultant that has been engaged for that Financial Year under clause 8.7(b);

(iii) compliance by Telstra with the provisions of this Undertaking during that Financial Year, including:

(A) details about any identified breach by Telstra of the provisions of this Undertaking, including an explanation of the identified cause of the breach;

(B) in respect to Part C, details about any Exempt Services supplied during that Financial Year using Non-Exempt Networks;

(C) in respect of Part D:

(1) details about the compliance training undertaken by Telstra in accordance with clause 23.4;

(2) details about any new or additional measures that have been implemented during that Financial Year to ensure compliance with the provisions of this Undertaking;

(iv) compliance by Telstra with any Rectification Proposals accepted by, or Rectification Directions made by, the ACCC in accordance with Schedule 11 and any other steps Telstra has taken to rectify any identified non-compliance issues in that Financial Year;

(v) Equivalence Complaint(s) referred to the Accelerated Investigation Process and/or the Adjudicator during that Financial Year;

(vi) Service Level Rebates paid by Telstra during that Financial Year; and

(vii) compliance by Telstra with any directions or orders made by the Adjudicator during that Financial Year.

(c) Telstra will provide a copy of each Annual Compliance Report to the ACCC on a confidential basis as soon as reasonably practicable after the relevant report has been finalised.

24.3 ACCC consultation

(a) The ACCC may consult with Wholesale Customers and other stakeholders on Telstra's compliance with this Undertaking.

(b) For the purposes of consultation, the ACCC may disclose the content of reports that it receives under clause 24.1, except where that content has been identified by Telstra as confidential or commercially sensitive.

24.4 ACCC information requests

(a) The ACCC may by written notice direct Telstra to provide any information it reasonably requires for the purpose of:

(i) monitoring compliance by Telstra with this Undertaking; or

(ii) performing any other function or exercising any other power under this Undertaking (other than this clause 24.4).

(b) If the ACCC gives a notice to Telstra under clause 24.4(a), Telstra will:

(i) provide the requested information;

(ii) in the requested format; and

(iii) by the requested date.

Schedule 1 — Dictionary

1 Dictionary

In this Undertaking:

ACCC	means the Australian Competition and Consumer Commission.
ACMA	means the Australian Communications and Media Authority.
Accelerated Investigation Process	means the investigation process described in clause 19.3.
Act	means the *Telecommunications Act 1997* (Cth).
ADSL	means an Asymmetric Digital Subscriber Line.
ADSL Availability Notification	has the meaning given in paragraph 3 of Schedule 4.
Adjudicator	means: (a) the ITA Adjudicator; or (b) the ACCC, as the case permits or requires.
AGVC	means aggregated virtual circuit.
Annual Compliance Report	has the meaning given in clause 24.2(a).
Annual Equivalence Report	has the meaning given in clause 23.6(a).
Annual TEM Compliance Report	has the meaning given in paragraph 6.2(a) of Schedule 9.
Application or **Apply**	means an Internal Application or an External Application.
Appointer	has the meaning given in paragraphs 5.1(d) and 5.2(d) of Schedule 8 (as applicable).

Application Monitoring System	has the meaning given in clause 13.3(a).
Audit Committee	has the meaning given in clause 23.1.
Available	in relation to LOLO, is to be determined in accordance with paragraph 9(c)(iv) of Schedule 3.
Average Performance Results	has the meaning given in clause 16.2(d).
Band 1	means each of the following central business districts: (a) NSW (City South, Dalley, Haymarket, Pitt, Kent); (b) QLD (Charlotte, Edison, Roma Street, Spring Hill); (c) South Australia (Flinders, Waymouth); (d) Victoria (Batman, Exhibition, Lonsdale); and (e) WA (Bulwer, Pier, Wellington).
Band 2	means an area with 108.4 or more services in operation in a square kilometre area, which is not a Band 1 area.
Band 3	means an area with 6.56 or more services, but less than 108.4 services, in operation in a square kilometre area, which is not a Band 1 area.
Band 4	means an area with 6.55 or less services in operation in a square kilometre area, which is not a Band 1 area.
Basic Telephone Service or **BTS**	means the basic telephone service as described in Telstra's standard forms of agreement formulated by Telstra for the purposes of Part 23 of the Act as varied by Telstra from time to time.
Bill	means a bill for charges which meets the requirements for a tax invoice.
Built-up area	means an area, not including a CBD area, located within: (a) a 60 kilometre radius of Brisbane, Sydney or Melbourne; (b) a 40 kilometre radius of Darwin, Perth, Adelaide, Canberra or Hobart; and (c) a 20 kilometre radius from the central post offices of the

following population centres:

NSW	Albury, Bathurst, Coffs Harbour, Dubbo, Lismore, Orange, Tamworth, Taree, Tweed Heads and Wagga Wagga. Newcastle, Cessnock, Wyong and Maitland. Wollongong, Port Kembla and Shellharbour.
Queensland	Bundaberg, Cairns, Gladstone, Mackay, Rockhampton, Toowoomba and Townsville. Southport, Burleigh Heads and Coolangatta. Noosa Heads, Coolum Beach, Nambour and Caloundra.
Victoria	Geelong, Ballarat, Bendigo, Mildura, Shepparton and Wodonga. Yallourn, Morwell and Traralgon.
Tasmania	Launceston, Burnie and Devonport.
Western Australia	Kalgoorlie and Boulder.

Business Day means a day other than a Saturday, a Sunday or a public holiday in New South Wales or Victoria.

Business Unit means a part of Telstra.

Capped Exchange or **Capped Exchange Building** means an Exchange Building (excluding the Pitt Street Exchange Building) which the TEBA Governance Committee has determined unavailable for Wholesale Customers, including but not limited to, the list that Telstra publishes from time to time for the purposes of informing Wholesale Customers and/or other parties about those Exchange Buildings that Telstra regards as Capped Exchanges.

Carriage Service Provider or **CSP** has the same meaning as in the Act.

Carrier has the same meaning as in section 7 of the Act.

Category 1 Order means an order to provision DTCS which includes minor work at the customer side of the network or Exchange Building that can be done at the same time as the visit to install jumpers. Minor work includes installation of network terminating equipment and the installation of new cards in existing racks.

Category 2 Order means an order to provision DTCS which requires external transmission plant or substantial internal plant or substantial

fee for service work.

Category 3 Order means an order to provision DTCS, which requires external transmission plant or substantial internal plant or substantial fee for service work but can only occur with the approval of a statutory or local government authority or a building owner or manager.

CBD area means the following ESAs in each capital city:

City	CBD Area
Sydney	Kent, Pitt, Dalley, City South, Haymarket
Canberra	Civic, Deakin
Adelaide	Flinders, Waymouth
Melbourne	Lonsdale, Exhibition, Batman
Perth	Bulwer, Pier, Wellington
Brisbane	Charlotte, Edison, Spring Hill

CCA means the *Competition and Consumer Act 2010* (Cth).

CEO means the person holding the title "Chief Executive Officer" in Telstra from time to time.

Charter of Independence means the document prepared by the ITA in accordance with paragraph 4.2 of Schedule 5.

Chief Executive Officer or **CEO** means the person holding the title "Chief Executive Officer" in Telstra from time to time.

Chief Financial Officer or **CFO** means the person holding the title "Chief Financial Officer" in Telstra from time to time.

Chief Operating Officer or **COO** means the person holding the title "Chief Operating Officer" in Telstra from time to time.

Clear Working Day means a Working Day commencing on 8am on the next or preceding Working Day.

CMUX means customer multiplexer.

Commencement Date means the date on which this Undertaking comes into force in accordance with clause 2.

Common Retail/ Wholesale Job means job tasks undertaken by Employees working for the Network and Services Business Unit (i.e. "Ticket of Work"

Tasks	level) which are common between Service Activation and Provisioning for each ULLS, DCTS and LSS and the relevant Comparable Retail Service.
Comparable Retail Services	means, in respect of a Regulated Service, a retail service supplied by Telstra that is comparable to that Regulated Service, including for each of the following wholesale services the retail service identified below as comparable: (a) Wholesale Line Rental – the Comparable Retail Service is retail line rental; (b) Domestic PSTN Originating Access Service – the Comparable Retail Service is the local exchange access component of the Basic Telephone Service; (c) Domestic PSTN Terminating Access Service – the Comparable Retail Service is the local exchange access component of the Basic Telephone Service; (d) Local Carriage Service – the Comparable Retail Service is the local calls component of the Basic Telephone Service; (e) Domestic Transmission Capacity Service – the Comparable Retail Service is the Megalink 2 Mbit/s service; (f) Line Sharing Service – the Comparable Retail Service is Bigpond ADSL Layer 2 Service; (g) Wholesale ADSL Layer 2 Service – the Comparable Retail Service is Bigpond ADSL Layer 2 Service; and (h) ULLS – for the purpose of Fault Detection, Handling and Rectification only, the comparable retail service is the component of the Basic Telephone Service comprising a continuous metallic twisted pair between a Telstra local exchange MDF and the network boundary point at an end-user premises.
Comparable Retail/ Wholesale Process Descriptions	has the meaning given in clause 11.8(a).
Consumer Protection Act	means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).
Coordinated Capital Works Program	means a planned Major Network Modernisation and Upgrade with respect to the Wholesale ADSL Layer 2 Service that extends across more than one exchange service area but does not include an Emergency Network Modernisation and Upgrade.

Coordinated Capital Works Program Forecast	has the meaning given in paragraph 11.1(a) of Schedule 4.
Coordinated Capital Works Program Schedule	has the meaning given in paragraph 11.2(a) of Schedule 4.
Copper Network	means a network in Australia over which Telstra is in a position to exercise control comprising copper or aluminium wire based lines: (a) from the network boundary point at each Premises up to and including the first electronic remote access multiplexer (e.g. a CMUX or RIM) immediately upstream of each such Premises; or (b) from the network boundary point at each Premises up to and including the MDF in a Telstra exchange (or similar location) immediately upstream of each such Premises; or (c) from the first electronic remote access multiplexer immediately upstream of each Premises up to and including the MDF in a Telstra exchange (or similar location) immediately upstream of each such electronic remote access multiplexer, which is, or has been at any time, used to provide fixed-line carriage services, and includes each such electronic remote access multiplexer and MDF.
Copper Network Notification	has the meaning given in paragraph 3 of Schedule 4.
Copper Path	means a logical path built over a line or series of lines connected to the Copper Network to provide fixed network carriage services. Where a fixed network carriage service is provided over multiple copper lines, all copper lines over which that carriage service is provided are taken to form part of the same Copper Path. Where a copper line is used to provide a fixed network carriage service to more than one service address, the Copper Path is the copper line to the extent that it is used to provide fixed network carriage service to each service address.
Copper Service	means a carriage service provided using a Copper Path.
Corporations Act	means the *Corporations Act 2001* (Cth).
Country area	any area which is not a CBD area or a Built-up area.

Customer Requested Date or **CRD**	means: (a) in respect of a Metric (other than Metric 14), the date on which the relevant customer requests Telstra to perform the tasks that are to be measured by that Metric; and (b) in respect of Metric 14, has the meaning given in paragraphs 5(b)(i) and 5(b)(ii) (as applicable) of Schedule 3.
Definitive Agreements	has the meaning given in the Plan.
Dependent Applications	has the meaning given in paragraph 2(b) of Schedule 13.
Design and Construction Proposal	means a proposal by a Wholesale Customer submitted to Telstra setting out those works which it intends to undertake in order to: (a) clear, construct or modify any part of an Exchange Building Facility, in order to facilitate TEBA (including any upgrade or augmentation of common facilities within the Exchange Building Facility, such as power, air conditioning or the MDF); (b) install the Wholesale Customer's equipment; or (c) remove, replace, modify or rearrange equipment that is installed in the Exchange Building Facility in order to facilitate TEBA.
Designated Day	has the same meaning as in section 577A of the Act.
Director of Equivalence	means the person appointed by the Audit Committee for the purposes of clause 23.1(c).
Distribution Area or **DA**	has the same meaning as in the Network Deployment Rules.
DISPLAN	means disaster recovery plan.
DISPLAN Notification	has the meaning given in paragraph 3 of Schedule 4.
Domestic PSTN Originating Access Service	means the Regulated Service, Domestic PSTN Originating Access Service.
Domestic PSTN Terminating Access Service	means the Regulated Service, Domestic PSTN Terminating Access Service.

Domestic Transmission Capacity Service or **DTCS**	means the Regulated Service, Domestic Transmission Capacity Service.
DSL	means Digital Subscriber Line.
DSL Upgrade	means new network capability within the Copper Network which is delivered as a Layer 2 connection service and is used to support new or enhanced product features and/or functionality of a Telstra retail DSL service, but for clarification does not include those new or enhanced product features or functionality.
DSLAM	means a digital subscriber line access multiplexer used to provide broadband services (including for wholesale line rental services as described in the ACCC's Wholesale Line Rental Service – Extension of Declaration (2009)).
E&T Performance Result	means, in respect of each Metric, the relevant Variance (if any) measured in accordance with clause 16.1(c) or (d).
Eligible Service	has the same meaning as in section 152AL of the CCA.
Emergency	means a national security alert or an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic, vandalism, theft or war-like action) which: (a) endangers or threatens to endanger the safety or health of persons; or (b) destroys or damages, or threatens to destroy or damage property; and (c) for the purposes of Schedule 4, being an emergency which requires a significant and coordinated response.
Emergency Network Modernisation and Upgrade	means a Major Network Modernisation and Upgrade that is required and is reasonably necessary and a proportionate response to address an Emergency.
Employee	includes a natural person who is acting as Telstra's agent, or is engaged by Telstra as a consultant or contractor acting in an equivalent role to an employee or carrying out the role of an employee.
Equivalence and Transparency Metrics	means the metrics for: (a) Domestic PSTN Originating Access Service, Domestic PSTN Terminating Service and Local Carriage Service,

as set out in paragraph 2 of Schedule 3;

(b) Wholesale ADSL Layer 2 Service, as set out in paragraph 3 of Schedule 3;

(c) LSS, as set out in paragraph 4 of Schedule 3;

(d) ULLS, as set out in paragraph 5 of Schedule 3;

(e) Domestic Transmission Capacity Service, as set out in paragraph 6 of Schedule 3;

(f) Bills, as set out in paragraph 7 of Schedule 3;

(g) TEBA, as set out in paragraph 8 of Schedule 3; and

(h) the availability of LOLO, as set out in paragraph 9 of Schedule 3.

Equivalence Complaint has the meaning given in clause 19.2(a).

Equivalence Complaint Notice has the meaning given in clause 19.3(a).

Equivalence Compliance Program has the meaning given in clause 23.5(a).

Equivalence Compliance Statement has the meaning given in clause 23.2(a).

Equivalent Period of Notice means a period of notice commencing at the time that Telstra has approved and allocated the capital expenditure or otherwise approved and made a decision to commit to a Major Network Modernisation and Upgrade.

ESA Information Notification has the meaning given in paragraph 3 of Schedule 4.

Exchange Building means:

(a) an Exchange Building Facility; and

(b) any External Interconnect Facility associated with the same Exchange Building Facility.

Exchange Building Facility an Exchange Building operated by or on behalf of Telstra and any facility which is physically located in an exchange building operated by or on behalf of Telstra, including:

(a) internal floor space;

(b) a main distribution space;

(c) a security system;

(d) a power system;

(e) an air conditioning system;

(f) a rack;

(g) a cable tray; and

(h) an interconnection cable.

Exchange Capacity in relation to an Exchange Building Facility means:

(a) floor space at that Exchange Building for installation of equipment; and

(b) block position on the main distribution frame in that Exchange Building.

Exchange Serving Area or **ESA** means the area served by an Exchange Building.

Exempt Network means a network which is exempt from section 577A(1) and the associated provisions of the Act by the Networks and Services Exemption Instrument.

Exempt Service means a fixed-line carriage service which is exempt from section 577A(1) and the associated provisions of the Act by the Networks and Services Exemption Instrument.

Extension of Time means an extension of the time allowed for the completion of construction works at an Exchange Building Facility, as contemplated under paragraph 2(f) of Schedule 13.

External Application means a request for access to and use or reservation of space in an Exchange Building Facility (including floor space and/or block positions on the MDF) in the form of:

(a) a Preliminary Study request; and

(b) if approved, any associated Design and Construction Proposal.

External Interconnect Duct means a duct that is used, or for use, in connection with an External Interconnection Cable.

External Interconnect Facilities means the following, to the extent operated by or on behalf of Telstra:

(a) an External Interconnection Cable; and

(b) an External Interconnect Duct; and

(c) a pit that is associated with an External Interconnect Duct.

External Interconnection Cable means an Interconnection Cable that runs from a point within an Exchange Building to a point external to that Exchange Building.

External Wholesale Price or **EWP** means a metric for a Reportable Wholesale Product or Reportable Product Bundle calculated in accordance with paragraph 4.2 of Schedule 9 and included in a TEM Report.

Facilities Tracking Database or **FTDB** means the database that Telstra uses to capture, manage (including through reservations) and confirm Applications for and use of space in Exchange Building Facilities.

Fault means any service difficulty reported to Telstra by a Wholesale Customer or Retail Customer and accepted by the Network Services Business Unit as being Telstra's responsibility to resolve.

The following are some example of things which do not constitute a Fault:

(a) a customer caused fault;

(b) faults associated with equipment or wiring on the end user side of the network boundary point (and therefore not associated with the network);

(c) consultant or tester clears (i.e. faults fixed by front of house operators);

(d) tickets of work where no fault is found to exist.

Fault Detection, Handling and Rectification means the process taken by the Network Services Business Unit to resolve Faults (and does not include any commercial terms, rebates, compensation or other commercial arrangements which may be offered by a Business Unit in relation to any Fault or delay). This process commences with the Fault being recorded by the Network Services Business Unit and will involve fault sectionalisation (where facilities of another Carrier's or Carriage Service Provider's network is involved), testing and fault rectification and clearance.

Fault Rectification in relation to a Fault means the rectification of that Fault.

Financial Year means a one-year period commencing on 1 July of any year and ending on 30 June of the following year.

First Application has the meaning given in paragraph 2(b) of Schedule 13.

Fixed RMRC Principles	means those principles set out in paragraph 3.1 of Schedule 8.
Fixed TRC	means the total averaged fixed component of Total Retail Costs incurred in supplying Telstra's retail ADSL products determined in accordance with paragraph 3.6 of Schedule 8.
General Notification	has the meaning given in paragraph 10.1(a)(i) of Schedule 4.
HFC Network	has the same meaning as in the *Telecommunications (Migration Plan Principles) Determination 2011*.
Implementation Period	has the meaning given in clause 21.1.
Independence Direction	has the meaning given in paragraph 4.2(c)(xiii) of Schedule 5.
Individual Notification	has the meaning given in paragraph 10.1(a)(i) of Schedule 4.
In-place Connection	means a connection of a Basic Telephone Service at a site where a previous working service has been cancelled by the previous account holder and is available for automatic reconnection or reactivation without the need for Telstra to do any other connection work at the customer premises, the Exchange Building, or any places in between.
Intact	means a metallic path connected to the network boundary point at a premises where, according to Telstra records at the time Telstra receives a ULL Individual Cutover request in respect of that premises: (a) the path is being used to supply a BTS or ULLS; or (b) the path has recently been used to supply a BTS or ULLS and remains a complete circuit to the exchange but is currently vacant.
Interim Order	means a request by a customer for the installation of a non-permanent working solution.
Interconnection Cable	means a cable connecting one or more twisted metallic pairs between a main distribution frame at an Exchange Building and a Wholesale Customer's equipment installed in, or in close proximity to, that Exchange Building.
Internal Application	means a request received by a Network Services Business Unit from Telstra for access to and use or reservation of space in an Exchange Building Facility (including floor space and/or

	block positions on the MDF) for Telstra's commercial purposes.
Internal Wholesale Price or **IWP**	means a metric for a Reportable Wholesale Product or Reportable Product Bundle calculated in accordance with paragraph 4.1 of Schedule 9 and included in a TEM Report.
ITA	means the limited by guarantee company to be established under clause 20.1(a).
ITA Adjudicator	means the person appointed from time to time by the ITA to exercise the functions of the independent telecommunications adjudicator.
ITA Agreement	means the agreement entitled "ITA Agreement", the form of which is set out in Schedule 6.
ITA Director	means a person who is a director of the ITA.
ITA Dispute	has the meaning given in paragraph 7.1 of Schedule 5.
ITA Process	means the independent adjudication process described in Schedule 5.
ITA Process Fee	means the annual administration fee set by the ITA Adjudicator on an annual basis in respect of its administrative and incidental costs, and which is to be levied equally on all participants that have entered into an ITA Agreement.
ITA Referral Fee	means the fee set by the ITA Adjudicator from time to time in respect of the relevant Equivalence Complaint referred to the ITA Process.
Joint Completion Inspection or **JCI**	a joint completion inspection undertaken by Telstra and a Wholesale Customer in accordance with Telstra's standard TEBA processes to approve the completion of construction works undertaken at an Exchange Building Facility.
Layer 2	means Layer 2 in the Open Systems Interconnection reference model.
Line Management Responsibilities	in respect of an Employee, is to be determined in accordance with clause 8.10(c).
Local Carriage Service or **LCS**	means the Regulated Service, local carriage service.
LOLO	means LinxOnline Ordering.

Line Sharing Service or **LSS**	means the Regulated Service, Line Sharing Service.
Major Network Incident Notification	has the meaning given in paragraph 3 of Schedule 4.
Major Network Modernisation and Upgrades	means a modernisation or upgrade that: (a) involves the installation of Telstra customer access modules closer to end-users than an Exchange Building; (b) requires the removal/relocation of the Wholesale ADSL Layer 2 Service provided from Exchange Buildings and the establishment of a new POI (or relocation of an existing POI) for the Wholesale ADSL Layer 2 Service, or alteration of deployment classes of equipment used on the Wholesale ADSL Layer 2 Service; or (c) results in a Wholesale ADSL Layer 2 Service no longer being supplied or adversely affects the quality of that Wholesale ADSL Layer 2 Service (or any services supplied by a Wholesale Customer to their end-users using the Wholesale ADSL Layer 2 Service), but does not mean, or include, an Emergency Network Modernisation Upgrade or a national broadband network (NBN) related upgrade.
Major Rural	means a township or community group of more than 2,500 people but less than 10,000 people.
Marketing Activity	has the same meaning as in the Plan.
MapInfo	means Pitney Bowes Software Pty Limited (ABN 93 070 492 410).
MDF	means main distribution frame.
Metric	means an Equivalence and Transparency Metric.
Migration	has the same meaning as in the Plan.
Minister	means the minister responsible for administering the relevant legislative provision or legislation.
Minor Rural	means a township or community group of 201 people or more but not more than 2,500 people within a “standard zone” (as defined under the Consumer Protection Act).
Mobile Terminating Access Service or	means the Regulated Service, Mobile Terminating Access

MTAS	Service.
Naked DSL Product	has the meaning given in clause 15(b).
National Broadband Network or **NBN**	has the same meaning as in section 5 of the National Broadband Network Companies Act.
National Broadband Network Companies Act	means the *National Broadband Network Companies Act 2011* (Cth).
NBN Co	has the same meaning as in section 5 of the National Broadband Network Companies Act.
NBN Corporation	has the meaning as in section 5 of the National Broadband Network Companies Act.
NBN Co Fibre Network	has the same meaning as in the Plan.
Network Deployment Rules	means the industry code entitled "ACIF C559:2005 Unconditioned Local Loop Service – Network Deployment Rules" registered by the Australian Communications and Media Authority under section 117 of the Act and as amended from time to time.
Network Services Business Unit	means a Business Unit that has principal control over and responsibility for the Required Functions specified in clause 8.1(c)(iii).
Networks and Services Exemption Instrument	means the *Telecommunications (Structural Separation – Networks and Services Exemption) Instrument (No. 1) 2011* in the form as at the date this Undertaking is given to the ACCC under section 577A of the Act.
Non-Exempt Network	means a telecommunications network other than an Exempt Network over which Telstra is in a position to exercise control.
Non-Exempt Service	means a fixed-line carriage service other than an Exempt Service which is supplied by Telstra to retail customers in Australia.
Non-Regulated Price Equivalence Issue	means a possible breach of clause 9(a)(iv) concerning the price-related terms on which Telstra supplies a Regulated Service (other than the Wholesale ADSL Layer 2 Service) where: (a) the Regulated Service is not a declared service; or (b) if the Regulated Service is a declared service, to the

	extent the ACCC has not specified the price-related terms for supply of that Regulated Service in an access determination or a binding rule of conduct.
Notification Process	means the notification process set out in Schedule 4, as described in paragraph 3.1(a) of Schedule 4.
On Hold	means an Application being given the status of "on hold" in Telstra's order queuing systems and processes pending the completion of common construction works in accordance with paragraph 2 of Schedule 13.
Operational Equivalence Report	means the Quarterly report referred to in clause 16.2(a).
OSS Announcements	has the meaning given in paragraph 3 of Schedule 4.
Outage Time	has the meaning given in paragraph 9(c)(ii) of Schedule 3.
Part	means a part to this Agreement, being Part A, Part B, Part C. Part D or Part E (as applicable).
Plan	means a final migration plan as defined in section 577BE of the Act.
Planned Event Notification	has the meaning given in paragraph 3 of Schedule 4.
POI	means point of interconnection, being a physical point of interconnection in Australia between a network operated by a carrier or service provider and another network operated by another carrier or service provider.
Potentially Capped Exchange or **Potentially Capped Exchange Building**	means an Exchange Building in which the TEBA Governance Committee has determined that Access Seekers may be granted access after out-of-the-ordinary works have been completed.
Pre-determination Conference	has the meaning given in paragraph 8.4 of Schedule 5.
Pre-tax WACC	means a reasonable pre-tax weighted average cost of capital, as determined and applied by Telstra from time to time.
Preliminary Conference	has the meaning given in paragraph 8.3 of Schedule 5.
Preliminary Study	a study of Telstra's plans and records undertaken in response to a request by a Wholesale Customer for access to an Equipment Building Facility that assesses:

(a) the technical feasibility of providing the requested space, including whether there is existing space available to satisfy the request;

(b) if space is unavailable, an indication of whether an area is available to be developed for the required purpose;

(c) any special conditions to which a grant of the requested access will be subject; and

(d) whether the access requested is likely to be granted and if not, any reasonable alternative access which may be suitable.

Premises has the same meaning as in the Plan.

Price Equivalence Dispute means, in relation to the supply of a Reference Service:

(a) where the parties have agreed that the charges for the supply of that Reference Service are to be determined by applying the Reference Price for that service, a dispute about any alleged inaccuracy, omission or error with the charges contained in a Bill from Telstra to the Wholesale Customer concerning the Reference Price for that Reference Service (a **PE Billing Dispute**); and

(b) any dispute about whether the Reference Price for a Reference Service should apply in calculating the amounts to be paid by the Wholesale Customer for the supply of that Reference Service, which is not a PE Billing Dispute (a **PE General Dispute**),

but, for the avoidance of doubt, does not include any dispute about Telstra's determination of the Reference Price in accordance with this Undertaking or its compliance with clause 18, Schedule 8 or Schedule 9.

Priority Assistance Policy means the policy approved by the Minister under Telstra's carrier licence for the supply of priority assistance services to end users.

Protected Information has the meaning given in clause 10.1.

PSTN means a public switched telephone network.

PSTN OA means the Regulated Service, Domestic PSTN Originating Access Service.

PSTN TA means the Regulated Service, Domestic PSTN Terminating Access Service.

Quarter	means the each 3 month period starting from 1 January, 1 April, 1 July or 1 October of any year.
Rate Card	has the same meaning as in paragraph 1.1 of Schedule 8.
Rectification Direction	has the meaning given in paragraphs 2.2(b)(ii)(B) and 3.3(b)(ii) (as the case requires) of Schedule 11.
Rectification Plan	has the meaning given in clause 19.3(a)(iv).
Rectification Proposal	has the meaning given in paragraphs 2.2(a) and 3.2(a) (as the case requires) of Schedule 11.
Reference Service	means a service listed in paragraph 1.1 of Schedule 8.
Reference Price	means a price for a Reference Service determined in accordance with paragraph 1.2 of Schedule 8.
Regulated Service	has the same meaning as in clause 71 of Schedule 1 to the Act.
Regulated Services SLA Agreement	means an agreement between Telstra and a Wholesale Customer in the form set out in Schedule 7.
Remote	means a township or community group of less than or equal to 200 people or township or community group located outside a "standard zone" (as defined under the Consumer Protection Act.
Reportable Product Bundle	means a bundle of Reportable Wholesale Products listed in paragraph 4.1(a)(viii) of Schedule 9.
Reportable Retail Product	means a product listed in paragraph 3.1(b) of Schedule 9.
Reportable Wholesale Product	means a product listed in paragraph 3.1(a) of Schedule 9.
Reporting Period	has the meaning given in paragraph 2.1(a) of Schedule 9.
Reporting Variance	means, in respect of a relevant Metric, when the E&T Performance Result that is reported in the relevant Operational Equivalence Report shows a Variance of 2% or more (in negative terms): (a) in the case of Metrics 1–11 (inclusive), 17, 18 and 19 between performance levels for Wholesale Customers and for a Retail Business Unit; and

(b) in the case of Metrics 12, 13, 14, 15, 16, 20 and 21, against the minimum percentage performance thresholds of the target Service Level which is specified in Schedule 3 for that Metric or if no minimum percentage performance threshold is specified for a Metric, it will be 90%.

Required Function	means a function or responsibility for which a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit is to have responsibility as provided in clause 8.1(c).
Retail Customer	means a retail customer of Telstra.
Retail Business Unit	means a Business Unit that has principal control over and responsibility for the Required Functions specified in clause 8.1(c)(ii).
Revised Customer Required Date or **RCRD**	means, where a CRD already applies but the relevant customer requests Telstra to perform the tasks to be measured by the relevant Metric on a later date, that later date.
RIM	means remote integrated multiplexer.
RMRC	means a retail-minus-retail-costs methodology.
Rollout Region	has the same meaning as in the Plan.
Separated Business Unit	means a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit.
Separation Compliance Program	has the meaning given in clause 23.8(a).
Service Activation and Provision	means the process to provision a service undertaken by the Network Services Business Unit (and does not include any commercial terms, rebates, compensation or other commercial arrangements which may be offered by a Business Unit in relation to any service activation or provisioning). This process commences on acceptance or verification of an order by the Network Services Business Unit, may involve the making of appointments and ends on service activation.
Service Delivery	means undertaking the first contact points and other interactions between the Wholesale Business Unit and a Wholesale Customer in relation to service delivery of Regulated Services which the Wholesale Customer acquires from Telstra, but does not include Service Activation and Provisioning or Fault Detection, Handling and Rectification.

Service Level	has the meaning given in paragraph 10 of Schedule 7.
Service Level Rebate	has the meaning given in paragraph 10 of Schedule 7.
Service Qualification	means the analysis carried out by Telstra in accordance with, and subject to, the service terms applicable to a Regulated Service to confirm whether the Regulated Service can be provided on a particular copper line or to a particular service address.
SSU Guidance	means the instrument made by the Minister on 23 June 2011 under section 577A(7) of the Act setting out certain matters that the ACCC is required to have regard to in deciding whether to accept this Undertaking.
Substantiation Report	means a report prepared by Telstra and submitted to the ACCC in accordance with paragraph 4.4 of Schedule 9.
TCD	means the Telstra committed date as determined in accordance with paragraph 8(b)(i) of Schedule 3.
TEBA	means access to floor space and other facilities such as security, electricity, cable trays and interconnection cables in Exchange Buildings.
TEBA Governance Committee	means the TEBA Governance Committee to be maintained by Telstra in accordance with clause 12.5.
TEM Guidelines	means a set of guidelines for preparing TEM Reports, prepared in accordance with paragraph 5 of Schedule 9.
TEM Report	means the report that is to be prepared by Telstra and submitted to the ACCC in accordance with clause 18.4 and paragraph 2.1 of Schedule 9.
Telstra	means Telstra Corporation Limited (ABN 33 051 775 556).
Telstra Economic Model or **TEM**	means the internal managerial accounting system described in paragraph 1 of Schedule 9 in which Telstra prepares management reports and information in respect of fully-allocated business costs and revenues, and which is used from time to time as an input for business management decisions.
Total Retail Costs	has the meaning given in paragraph 3.6 of Schedule 8.
Total Time	has the meaning given in paragraph 9(c)(i) of Schedule 3.

Transfer Pricing	means any mechanism that has the effect, or is likely to have the effect, of requiring: (a) any Business Unit to pay a price to another Business Unit for any inputs, resources, services or facilities; or (b) the preparation of accounts that imply a Business Unit pays a price to another Business Unit for any inputs, resources, services or facilities; or (c) any performance measure, remuneration, or incentive to be based on any mechanism of a type described in (a) or (b). For the avoidance of doubt, attributing or allocating a cost to a Business Unit relating to an input, resource, service or facility (in accordance with TEM as provided in Schedule 9) does not amount to that Business Unit "paying a price".
TUSMA	means the Telecommunications Universal Service Management Agency or its successor.
Uncapped Exchange	means an Exchange Building that was a Capped Exchange or Potentially Capped Exchange which the TEBA Governance Committee has determined is no longer a Capped Exchange or Potentially Capped Exchange.
Undertaking or **SSU**	means this Undertaking.
ULL Individual Cutover	means the action taken by Telstra to complete a firm request for the provision of ULLS.
ULL service or **ULLS**	means the Regulated Service, Unconditional Local Loop Service.
Urban	means a township or community group of 10,000 people or more.
Variance	means, when comparing one numerical value with another numerical value, the extent to which there is a difference between them, expressed as a percentage.
Wholesale ADSL Layer 2 Service	means the Regulated Service, wholesale ADSL layer 2 service.
Wholesale ADSL Reference Price	means a Reference Price for the Wholesale ADSL Layer 2 Service.
Wholesale B2B Interface	has the meaning given in clause 13.1.

Wholesale Business Unit	means a Business Unit that has principal control over and responsibility for the Required Functions specified in clause 8.1(c)(i).
Wholesale Customer	a person that receives a Regulated Service from: (a) Telstra; or (b) a Related Entity of Telstra, and which Regulated Service the person uses to provide a Carriage Service to a third party.
Wholesale Customer Portal	has the meaning given in clause 13.2.
Wholesale DSL Upgrade	has the meaning given in clause 15(a).
Wholesale Naked DSL Product	has the meaning given in clause 15(b).
Withdrawn Order	means an order that has been withdrawn by the customer.
WLR	means the Regulated Service, Wholesale Line Rental.
Working Day	means a day other than: (a) a Saturday or Sunday; or (b) a day which is a public holiday in the place where the relevant transaction or work is to be performed.
Zone 1	has the meaning given in paragraph 3.2(a)(i) of Schedule 8.
Zone 2	has the meaning given in paragraph 3.2(a)(ii) of Schedule 8.

2 Interpretation

In this Undertaking the following rules of interpretation apply unless the contrary intention appears:

(a) headings are for convenience only and do not affect the interpretation of this Undertaking;

(b) the singular includes the plural and vice versa;

(c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(d) the words “such as”, “including”, “particularly” and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

(e) a reference to:

(i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;

(ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;

(iii) a party includes its successors and permitted assigns;

(iv) a document includes all amendments or supplements to that document;

(v) a clause, paragraph, term, party, schedule or attachment is a reference to a clause, paragraph or term of, or party, schedule or attachment to this Undertaking;

(vi) this Undertaking includes all schedules and attachments to it;

(vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;

(viii) a day is a reference to the 24 hour period commencing at 12:00am on that day;

(ix) an agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and

(x) a monetary amount is in Australian dollars;

(f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and

(g) in determining the time of day where relevant to this Undertaking, the relevant time of day is:

(i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or

(ii) for any other purpose under this Undertaking, the time of day in the place where the party required to perform an obligation is located.

Schedule 2 — Organisational structure, information security and related measures

1 Examples of functions and activities which do not constitute "work for" another Separated Business Unit

(a) Functions and activities undertaken by an Employee who works for a Network Services Business Unit which relate to:

(i) network construction, rehabilitation, asset management, maintenance or repair; or

(ii) network repair where there is a cable cut or cable damage, including any action that is taken to recover the cost of the repair work from the party responsible for the cable cut or damage,

regardless of whether such work will directly or indirectly benefit another Separated Business Unit or its customers.

(b) Dealings between an Employee who works for a Separated Business Unit and an Employee who works for another Separated Business Unit to the extent necessary to:

(i) ensure that an end-user's issue or complaint is properly identified and referred to the appropriate Business Unit to resolve the issue or complaint;

(ii) handover work to the appropriate Separated Business Unit to perform its appropriate functions;

(iii) process and implement requests to churn or for local number portability in accordance with industry codes; or

(iv) enable the proper planning, construction, management and operation of Telstra's networks, systems and resources.

2 Description of work performed by a Network Services Business Unit for a Retail Business Unit

(a) The following functions and activities undertaken in circumstances where an Employee who works for a Network Services Business Unit attends a premises of an end-user:

(i) any function or activity on the customer side of the network boundary that is undertaken in response to any work order issued prior to the Employee arriving at the premises;

(ii) any function or activity which is permitted to be undertaken under clause 8.9 of this Undertaking; and

(iii) Marketing Activity and sales of Telstra products and/or services if the end-user is a Retail Customer.

(b) For clarity, if an Employee who works for a Network Services Business Unit attends the premises of an end-user that is a customer of a Wholesale Customer or another CSP:

(i) if the end-user is not also a Retail Customer, the Employee must not undertake any Marketing Activity to the end-user; and

(ii) if the end-user is also a Retail Customer, the Employee must not undertake any "win back" or other Marketing Activity related to alternative Telstra products to the product or products supplied by that Wholesale Customer or other CSP to the end-user.

(c) In circumstances where an Employee who works for a Network Services Business Unit is responding to a request from a Retail Customer (whether or not the request was directly received by the Employee), functions and activities which relate to the installation, configuration, testing and troubleshooting of customer premises equipment and cabling or which relate to other ancillary services that may be requested by the Retail Customer or offered by Telstra from time to time in relation to the installation, configuration, operation and maintenance of customer premises equipment and cabling.

(d) The following functions and activities in circumstances where Telstra is considering a complex or sophisticated request of a Retail Customer or is otherwise supplying, or proposes to supply, services to a person as a Retail Customer which involve complex or sophisticated requirements:

(i) network design, planning and provisioning; and

(ii) technical assistance.

(e) In all circumstances, functions and activities which relate to IT systems procurement, management and maintenance including provisions of IT support services.

3 Description of work that is not technically and operationally efficient to perform across separate Business Units

3.1 Work performed by a Wholesale Business Unit

To the extent that any of the following functions or activities constitute work that is undertaken by an Employee of a Wholesale Business Unit for a Retail Business Unit, the Employee of the Wholesale Business Unit may perform that function or activity:

(a) IPND uploads and error management in accordance with applicable industry codes;

(b) carrier verification requests for end-users who may be Retail Customers or customers of Wholesale Customers or of another CSP;

(c) supplying billing name and address information to Retail Business Units where an end-user has used an override code to access retail services and the Retail Business Unit requires this information to bill the end-user for those retail services; and

(d) processes associated with processing and implementing requests to churn or for local number portability including by:

(i) identifying delays or actions by the Retail Business Unit which may be hindering the completion of the churn and requesting that the Retail Business Unit rectify the delay;

(ii) removing or changing diversion fault codes associated with customer lines as appropriate to facilitate customer churn; and

(iii) correcting groups of auxiliary services or service extensions which may cause errors in the churn process.

3.2 Clerical functions and activities

If an Employee of a Separated Business Unit (other than a Retail Business Unit) performs a function or activity which:

(a) is predominately of a process-orientated, functional or clerical nature;

(b) does not require the Employee to exercise discretion which would have a material impact on the relative treatment of Regulated Services and Comparable Retail Services; and

(c) can reasonably be considered to be work that is undertaken by the Employee for another Separated Business Unit of a different kind,

the Employee may perform that function or activity.

3.3 Applicable safeguards

If an Employee who works for a Separated Business Unit performs work of the kind described in this paragraph 3 of Schedule 2 for another Separated Business Unit of a different kind, Telstra will ensure that the Employee complies with the information security requirements in clause 10 of this Undertaking at all times, including the compliance measures set out in paragraph 4 of this Schedule 2.

4 Information security compliance measures

(a) Telstra will establish and maintain effective measures to be used to monitor compliance with the information security requirements in clause 10 of this Undertaking, including the means by which Telstra logs requests made by Employees to be authorised for access to Protected Information.

(b) These measures will specify the programs and policies that Telstra will use to:

(i) educate relevant Employees about the information security requirements in clause 10 of this Undertaking; and

(ii) ensure compliance by Employees with the information security requirements in clause 10 of this Undertaking.

(c) For clarity, these measures, and associated training policies and practices, will reflect that any breaches by Employees of the information security arrangements in clause 10 of this Undertaking will be regarded as a serious matter, with the possibility of performance management in appropriate cases.

Schedule 3 — Equivalence and Transparency Metrics

1 Background

(a) The object of the Equivalence and Transparency Metrics set out in this Schedule 3 is to assist Telstra and Wholesale Customers to assess over time:

(i) the operational quality of relevant Regulated Services;

(ii) the standard of delivery, in relation to relevant Regulated Services, of:

(A) Service Activation and Provisioning;

(B) Fault Detection, Handling and Rectification; and

(C) availability of LOLO; and

(iii) the adequacy and timeliness of wholesale processes, including billing accuracy.

(b) Telstra's reported performance in respect of the Equivalence and Transparency Metrics set out in this Schedule 3 is not, and is not intended to be, determinative of any failure by Telstra to comply with the provisions of this Undertaking or the CCA. However, for the purposes of clause 11.7, paragraph 7.2(b) of Schedule 5 and paragraph 1(b) of Schedule 11, a Variance in Telstra's reported performance against an Equivalence and Transparency Metric which is not a Reporting Variance will be treated as trivial.

2 Basic Telephone Service

(a) The metrics in Table 1 are applicable to the PSTN OA, PSTN TA and Local Carriage Service.

Table 1: Basic Telephone Service – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
1	The percentage of Basic Telephone Service customer installation orders provisioned in the relevant Quarter on or by the Service Level - previous service available for automatic connection (i.e. an In-place Connection).	Urban – 2 Clear Working Days Major Rural – 2 Clear Working Days Minor Rural – 2 Clear Working Days Remote – 2 Clear Working Days, each from the relevant order date.
2	The percentage of Basic Telephone Service customer installation orders provisioned in the relevant Quarter on or by the Service Level - new service with available cabling and capacity where pre-provisioning work is not required.	Urban – 5 Clear Working Days Major Rural – 10 Clear Working Days Minor Rural – 10 Clear Working Days Remote – 15 Clear Working Days, each from the relevant order date.
3	The percentage of Basic Telephone Service orders provisioned in the relevant Quarter, on or by the Service Level - new service	Urban – 20 Clear Working Days Major Rural – 20 Clear Working Days Minor Rural – 20 Clear Working Days

Metric	Measure	Service level (where applicable)
	which requires additional cable or network capacity.	Remote – 20 Clear Working Days, each from the relevant order date.
4	The percentage of Basic Telephone Service order appointments that are met in the relevant Quarter.	All locations – appointment between two particular times less than or equal to a 4 hour period – must be at the customer's premises no later than 15 minutes after the end time of the appointment. Urban/Major Rural – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer's premises no later than the end time of the appointment. Minor Rural/Remote – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance – must be at the customer's premises no later than 45 minutes after the end time of the appointment. Note – Response time is the end time of the calculation. It represents the time that the technician arrived for the appointment and is dependent on Telstra workforce or contractors making a record of their arrival time.
5	The percentage of Basic Telephone Service Faults that are rectified in the relevant Quarter, and copied to Telstra's data warehouse by the relevant data extraction date, on or by the Service Level.	Urban – 1 Clear Working Day after the Fault report is logged by Telstra. Major Rural and Minor Rural – 2 Clear Working Days after the Fault report is logged by Telstra. Remote – 3 Clear Working Days after the Fault report is logged by Telstra.
6	The percentage of Basic Telephone Service Fault appointments that are met in the relevant Quarter.	All locations – appointment between two particular times less than or equal to a 4 hour period – must be at the customer's premises no later than 15 minutes after the end time of the appointment. Urban/Major Rural – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer's premises no later than the end time of the appointment. Minor Rural/Remote – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance – must be at the customer's premises no later than 45 minutes after the end time of the appointment. Note – Response time is the end time of the

Metric	Measure	Service level (where applicable)
		calculation. It represents the time that the technician arrived for the appointment and is dependent on Telstra workforce or contractors making a record of their arrival time.
7	The percentage difference in non-recurring Fault ratio.	Percentage of basic telephone service Faults that are not re-reported within 60 calendar days.

(b) The Equivalence and Transparency Metrics for business and residential customers are to be reported separately.

(c) The measurements and Metrics in Table 1 will be applied as follows:

(i) Interim Orders and Withdrawn Orders are excluded from the Metrics;

(ii) Metrics 1, 2, 3 and 5 are measured from the date which Telstra receives a correct and valid application from the customer to the date recorded in Telstra's relevant provisioning system as the date when all of the relevant stages for that service through which an order can pass are completed or the clearance date if there was a Fault on the connected service;

(iii) for Metrics 1, 2, 3 and 5, where the CRD or RCRD is longer than the Service Level, then the CRD or RCRD will be the Service Level (or Telstra commitment date); and

(iv) Metric 5 will not apply where a site visit to the customer's premises is required to determine whether a Fault is the cause of the service difficulty.

3 Wholesale ADSL Layer 2 Service

(a) The metrics in Table 2 are applicable to the Wholesale ADSL Layer 2 Service.

Table 2: Wholesale ADSL Layer 2 Service – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
8	The percentage of services provisioned within Service Level – where the customer or end-user has an existing and functioning basic telephone service capable of supporting ADSL services.	3 Clear Working Days from date entered into Telstra's provisioning system.
9	The percentage of services provisioned within Service Level – held orders.	20 Clear Working Days from date entered into Telstra's provisioning system.
10	The percentage of Faults rectified within Service Level.	Urban – by the end of the first Clear Working Day after the Fault report is logged by Telstra. Major Rural and Minor Rural – by the end of 2 Clear Working Days after the Fault report is logged by Telstra. Remote – by the end of 3 Clear Working Days after the Fault report is logged by Telstra.
11	The percentage of appointments kept.	Appointment between two particular times less than or equal to a 4 hour period – must be at the

Metric	Measure	Service level (where applicable)
		customer's premises no later than 15 minutes after the end time of the appointment. Appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer's premises no later than the end time of the appointment. Appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance - must be at the customer's premises no later than 45 minutes after the end time of the appointment. Note – Response time is the end time of the calculation. It represents the time that the technician arrived for the appointment and is dependent on Telstra workforce or contractors making a record of their arrival time.

(b) The Equivalence and Transparency Metrics for business and residential customers are to be reported separately.

(c) The measurements and Metrics in Table 2 will be applied as follows:

(i) for Metrics 8 and 9, where the CRD or RCRD is longer than the Service Level, then the CRD or RCRD will be the Service Level (or Telstra commitment date);

(ii) Metric 10 will be measured from the date the Fault call is received to the earlier of:

(A) the date and time that the tester enters an actual restore against the order; or

(B) the date and time the field technician enters as the restore time; and

(iii) Metric 10 will not apply where a site visit to the customer's premises is required to determine whether a Fault is the cause of the service difficulty.

4 Line Sharing Service

(a) The measurement and metrics in Table 3 are applicable to the Line Sharing Service.

Table 3: Line Sharing Service – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
12	The percentage of LSS completed within Service Level.	3 Clear Working Days
13	The percentage of Faults rectified within Service Level.	Urban – by the end of the first Clear Working Day after the Fault report is logged by Telstra.

Metric	Measure	Service level (where applicable)
		Major Rural and Minor Rural - by the end of 2 Clear Working Days after the Fault report is logged by Telstra. Remote – by the end of 3 Clear Working Days after the Fault report is logged by Telstra.

(b) Equivalence and Transparency Metric 12 is to be reported separately for business and residential customers.

(c) The measurements and Metrics in Table 3 will be applied as follows:

(i) for Metric 12, where the CRD or RCRD is longer than the Service Level, then the CRD or RCRD will be the Service Level (or Telstra commitment date);

(ii) Metric 12 will be measured from the date Telstra enters the order into the relevant provisioning system to the last date recorded against the following stages (where applicable) through which an order can pass:

(A) Plant assignment;

(B) Exchange Building activation;

(iii) Metric 13 will be measured from the date and time the Fault call was logged by Telstra (in Telstra's information technology systems) to the date and time the technician records that the Fault is repaired. If the call date and time is after 5pm, the baseline for calculating the Service Level moves to 9am the next Working Day. For example, if a Band 1 Fault is lodged at 5:30 pm on Monday to meet the Service Level the Fault must be resolved by the end of the Working Day on Wednesday;

(iv) Metric 13 will not apply where a site visit to the customer's premises is required to determine whether a Fault is the cause of the service difficulty; and

(v) Metric 12 will not apply where any field work or exchange work required to fulfil the activation is not part of a standard LSS activation order.

5 Unconditioned Local Loop Service

(a) The metrics in Table 4 are applicable to the Unconditioned Local Loop Service.

Table 4: Unconditioned Local Loop Service – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
14	The percentage of ULL Individual Cutovers completed on the Customer Requested Date (as defined below).	95%
15	The percentage of appointments for ULL Individual Cutovers offered according to the Service Level - where there is an Intact metallic	For Band 1 and 2 exchanges only, if the Wholesale Customer requests, Telstra will offer an appointment that

Metric	Measure	Service level (where applicable)
	path at the relevant premises.	occurs 3 Clear Working Days after the date the request for the ULL Individual Cutover is received. If the Customer Requested Date is greater than 3 Clear Working Days, that date becomes the applicable Service Level.
16	The percentage of Faults rectified within the Service Level.	Band 1 and 2 – by the end of the first Clear Working Day after the Fault report is logged by Telstra. Band 3 – by the end of 2 Clear Working Days after the Fault report is logged by Telstra. Band 4 – by the end of 3 Clear Working Days after the Fault report is logged by Telstra.

(b) The measurements and Metrics in Table 4 will be applied as follows:

(i) where the Service Level in Metric 15 applies, the Customer Requested Date for the purpose of Metric 14 is the date that is to be offered according to the Service Level in Metric 15;

(ii) where the Service Level in Metric 15 does not apply, the Customer Requested Date for the purpose of Metric 14 is:

(A) the first date requested by the Wholesale Customer for completion of the ULL Individual Cutover; or

(B) if the Customer Requested Date for an Individual Cutover is rescheduled or is missed due to an act or omission of the Wholesale Customer or its end user, the later date which is the rescheduled Customer Requested Date for that ULL Individual Cutover,

provided that the Customer Requested Date is no earlier than the earliest date for ULL Individual Cutovers applicable in the relevant geographic area specified in the Unconditional Local Loop Service – Ordering Provisioning and Customer Transfer Code (CS69: 2005), as amended from time to time;

(iii) Metric 16 will be measured from the date and time the Fault call was logged by Telstra (in Telstra's information technology systems) to the date and time the technician records that the Fault is repaired. If the call date and time is after 5pm, the baseline for calculating the Service Level moves to 9am the next Working Day;

(iv) Metric 16 will not apply where a site visit to the customer's premises is required to determine whether a Fault is the cause of the service difficulty;

(v) Metric 14 will not apply where any field work or exchange work required to fulfil the activation is not part of a standard ULLS activation order; and

(vi) Metrics 14 and 15 in Table 4 will be measured based on the Customer Requested Dates recorded in the relevant Telstra systems.

6 Domestic Transmission Capacity Service

(a) The measurement and metrics in Table 5 are applicable to the Domestic Transmission Capacity Service.

Table 5: Domestic Transmission Capacity Service – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
17	The percentage of Domestic Transmission Capacity Service orders provisioned on or by the Service Level.	Category 1 Order: Metro – 9 Clear Working Days Country – 19 Clear Working Days Category 2 Order: Metro – 19 Clear Working Days Country – 39 Clear Working Days Category 3 Order: Metro only – 24 Clear Working Days
18	The percentage of Faults rectified within the Service Level.	Urban – 1 Clear Working Day Rural – 2 Clear Working Days Remote – 3 Clear Working Days, of the Fault report being logged by Telstra

(b) The measurements and Metrics in Table 5 will be applied as follows:

(i) Metric 17 will be measured from the date that Telstra received a correct and valid application from the customer to the date recorded in Telstra's IT systems that identifies the date when all of the relevant stages though which the order can pass are completed;

(ii) for Metric 17, where the CRD or RCRD is longer than the Service Level, then the CRD or RCRD will be the Service Level (or Telstra commitment date);

(iii) Metric 18 will be measured from the "call date and time" which is the date and time the Fault call is logged by Telstra (in Telstra's IT Systems) to the earlier of:

(A) the date and time that the tester enters an actual restore against the order; or

(B) the date and time the field technician enters as the restore time.

If the call date and time is after 5pm, the baseline for calculating the Service Level moves to 9am the next Working Day; and

(iv) the Service Level for Metric 18 is dependent on the location of the Fault, and not the location of the terminating points of the service.

7 Billing Timeliness

The metrics in Table 6 are applicable to the provision of Bills by Telstra.

Table 6: Billing Timeliness – Equivalence and Transparency Metric

Metric	Measure	Service level (where applicable)
19	Billing Timeliness - Current charges generated in Telstra's systems presented on bill.	Wholesale charges – not older than 95 days. Retail charges – not older than 190 days.

8 Access to Exchange Building Facilities

(a) The measurement and metrics in Table 7 are applicable to access by Wholesale Customers to Telstra Exchange Building Facilities.

Table 7: TEBA – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
20	The percentage of Joint Completion Inspections (JCIs) completed on the Telstra Committed Date (TCD).	90%

(b) The measurements and Metrics in Table 7 will be applied as follows:

(i) the TCD for each JCI is the date agreed by Telstra and the Wholesale Customer, at which time representatives of both Telstra and the Wholesale Customer (or its agent or contractor) are able to attend at the Exchange Building. Telstra will offer each Wholesale Customer a JCI appointment time which is not more than 15 Business Days after the date Telstra receives the JCI request. Where this date is not suitable for the Wholesale Customer, the TCD will be the next mutually suitable and agreed date (which date may also subsequently be varied by agreement); and

(ii) a JCI will be completed on a date, irrespective of whether the works which are the subject of the JCI are approved, rejected or made subject to conditional approval (i.e. where final JCI approval is conditional on further minor works being completed by the Wholesale Customer during the period immediately following the inspection).

9 Wholesale systems availability

(a) The measurement and metrics in Table 8 are applicable to the availability of LOLO.

Table 8: Wholesale systems availability – Equivalence and Transparency Metrics

Metric	Measure	Service level (where applicable)
21	Availability of LOLO (as determined below)	98% (as determined below)

(b) Telstra will ensure that the availability of LOLO during a Quarter, as calculated in accordance with the formula set out in paragraph 9(c) of this Schedule 3, is not less than 0.98.

(c) For the purposes of paragraph 9(b) of this Schedule 3, the formula is:

(Total Time – Outage Time) / Total Time

where:

(i) **Total Time** means the total time in minutes in a Quarter during which LOLO is required to be Available (as determined in accordance with paragraph 9(c)(iii)).

(ii) **Outage Time** means the total time in minutes in a Quarter during which LOLO is not Available, but does not include:

(A) any time that LOLO cannot be accessed because the Wholesale B2B Interface is not Available if LOLO can be accessed in that time using the Wholesale Customer Portal or if LOLO is Available in that time to receive orders directly;

(B) any time that LOLO cannot be accessed because the Wholesale Customer Portal is not Available if LOLO can be accessed in that time using the Wholesale B2B Interface or if LOLO is Available in that time to receive orders directly;

(C) any time that LOLO is not Available as a result of any unlawful, fraudulent or negligent act or omission of a Wholesale Customer or its employees, agents or contractors;

(D) planned outages, being any outage for a reasonable period of time where Telstra has given at least 24 hours notice of the outage;

(E) outages that occur due to an event or circumstance which is beyond Telstra's reasonable control and which Telstra could not reasonably have avoided or overcome; and

(F) where the Wholesale Customer agrees for orders to be processed manually.

(iii) The Total Time and Outage Time will be calculated to only include the time in which Telstra is contractually obliged to make LOLO Available. For illustration only, at the time of this Undertaking, Telstra is contractually obliged to make LOLO available between 6:00am and 10:00pm Monday to Saturday for a total of 1248 hours per Quarter and this figure may change in accordance with operational needs.

(iv) LOLO, the Wholesale B2B Interface and the Wholesale Customer Portal are "Available" when an order requesting the provisioning of a new Regulated Service is capable of being received.

10 Conditions

When calculating the performance of Telstra in relation to Equivalence and Transparency Metrics during a Quarter, Telstra is not required to take into account:

(a) for Metrics 12, 13, 14, 15, 16, 20 and 21 (being Metrics for which Telstra's performance is measured against a fixed Service Level rather than measuring Telstra's comparative performance for Retail Business Units and Wholesale Customers), a ticket of work which is directly affected by NBN-related activities

being undertaken by NBN Co or Telstra in any Rollout Region or which is in the course of being Migrated to the NBN at any time during the Quarter;

(b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the Plan;

(c) a failure to meet a Service Level due to circumstances outside of Telstra's control, including:

(i) damage to a Telstra facility by a third party;

(ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services, or restricts connection or rectification of the specified service or any other form of mass service disruption (any services affected by a mass service disruption will still be included in the calculation of the performance against the Equivalence and Transparency Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra's ability to perform the Metric);

(iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or

(iv) where Telstra is unable to obtain lawful access to an end user's premises, or to any land or facility, which is necessary to be able to perform the relevant work;

(d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster;

(e) circumstances where the Retail Customer or end-user of a Wholesale Customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours notice;

(f) a failure to meet a Service Level which the Retail Customer or Wholesale Customer (as applicable) has waived in writing; or

(g) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Retail Customer or Wholesale Customer (as applicable) of the temporary planned outage or withdrawal.

To avoid doubt, nothing in this paragraph 10 of Schedule 3 is intended to operate as an exclusion from Telstra's operational equivalence commitments in clause 11 of this Undertaking, including the commitments in clauses 11.4, 11.5 and 11.6 of this Undertaking to establish systems and other measures in relation to the matters specified in those clauses in order for Telstra to meet the relevant Equivalence and Transparency Metrics.

Schedule 4 — Network Notifications

1 Confidentiality

Any information provided by Telstra under this Schedule 4 is information that is of a confidential nature and that is subject to obligations of confidentiality.

2 Network Notifications do not apply to NBN activities

(a) The Copper Network Notifications set out in this Schedule 4 do not apply to require Telstra to notify events, incidents (including any outages), information or activities caused by, or associated with, the Migration.

(b) Telstra's requirement to provide notifications related to events, incidents (including any outages), information or activities caused by, or associated with, the Migration are set out in the Plan.

3 Copper Network Notifications

3.1 Types of Notifications

(a) The Notification Process set out in this Schedule 4 consists of a series of short term operational notifications that will be made to Wholesale Customers in relation to:

(i) planned events (**Planned Event Notification**);

(ii) availability of ADSL capability (**ADSL Availability Notification**);

(iii) exchange service area information (**ESA Information Notification**);

(iv) major service impacting network incidents (**Major Network Incident Notification**);

(v) other general service or provisioning impacting matters relating to operational support systems (**OSS Announcements**); and

(vi) disaster recovery plan information (**DISPLAN Notification**),

in each case related only to the Copper Network as more fully described below (together, the **Copper Network Notifications**).

(b) In addition to the Copper Network Notifications described in paragraph 3.1(a) of this Schedule 4, Telstra will, on reasonable request from a Wholesale Customer, provide information on the geographic availability of certain Eligible Services that are provided to that Wholesale Customer.

4 Planned Event Notifications

(a) Telstra will provide a Wholesale Customer with a Planned Event Notification in relation to any planned maintenance or repair work that Telstra is intending to

undertake in relation to the Copper Network and that will affect any Regulated Service being supplied by Telstra to that Wholesale Customer.

(b) To determine when a Planned Event Notification is to be provided to a Wholesale Customer, Telstra will compare the Wholesale Customer's service details with Telstra's maintenance schedule to determine which Wholesale Customers (if any) will be impacted by any planned maintenance or repair work that Telstra is intending to undertake in relation to the Copper Network.

(c) The terms and conditions that govern the supply of Regulated Services by Telstra to Wholesale Customers will include specific provisions governing the Planned Event Notifications that Telstra will provide for any maintenance or repair work that affects those Regulated Services. The factors taken into account in establishing the appropriate notice periods and other elements of Planned Event Notifications for a Regulated Service will include:

(i) whether the planned outage will affect individual wholesale customer services (such as a public switched telephone service (PSTS) or a DSL service) or an underlying carriage service (such as a transmission service), with the latter generally requiring longer notice and more detailed information about the outage;

(ii) whether the work is being done during business hours only, or also after hours and on weekends;

(iii) the most practical method of informing customers of outages, e.g. electronic mail, letterbox drops or mobile SMS; and

(iv) the anticipated length of the planned outage.

5 ADSL Availability Notification

(a) Telstra will provide information to Wholesale Customers on the availability of ADSL network functionality via the www.telstrawholesale.com.au website or replacement website (**ADSL Availability Notification**).

(b) Telstra will inform Wholesale Customers from time to time as to what information is to be included in the ADSL Availability Notification. The ADSL Availability Notification currently includes information on the following (to the extent applicable):

(i) ADSL-enabled ESAs;

(ii) proposed ADSL-enabled ESAs;

(iii) DAs that are the subject of an ADSL-enablement project that involves installing a DSLAM in remote housing;

(iv) DAs that are the subject of a proposed ADSL-enablement project that involves installing a DSLAM in remote housing; and

(v) wholesale business DSL-enabled ESAs.

6 Exchange Service Area (ESA) Information Notifications

(a) Telstra will provide updated ESA and DA boundary information to MapInfo.

(b) Telstra provides the following information to MapInfo:

(i) details of ESA and DA boundaries;

(ii) number ranges within the ESA;

(iii) ADSL-enabled ESAs;

(iv) an indication of which DAs are served by large pair-gain systems and the type of large pair-gain system in those DAs; and

(v) the location of Exchange Buildings.

(c) Telstra notes that ESA Information Notifications provided under paragraph 6 of this Schedule 4:

(i) only cover historic information and do not provide future planning details; and

(ii) are provided to MapInfo on a Quarterly basis on www.mapinfo.com and are available to Wholesale Customers who are paid subscribers of MapInfo.

7 Major Network Incident Notifications

(a) Telstra will provide reasonable information to affected Wholesale Customers in circumstances where the provision of an Eligible Service is affected by major service impacting network incidents, such as emergencies, acts of nature, unexpected or inappropriate use of, or damage to, the network by other customers or other parties.

(b) Without limitation to paragraph 7(a) of this Schedule 4, Telstra undertakes that:

(i) a suitably senior and qualified representative of the Wholesale Business Unit will participate as part of any crisis management team which is formed to coordinate Telstra's response to an emergency or network incident;

(ii) any communications strategy which is developed by the crisis management team will include appropriate communications to affected Wholesale Customers; and

(iii) the crisis management team will ensure that communications to Wholesale Customers and Retail Customers in relation to the emergency or network incident are consistent and that the timeliness of those communications is equivalent as between Wholesale Customers and Retail Customers, except for any differences in the timeliness of communications which results only from technical differences in the methods used to communicate with Wholesale Customers and Retail Customers, respectively).

8 Operational Support System (OSS) Announcements

Where Telstra makes a relevant change to an operational support system (such as a billing or ordering system), Telstra will notify affected Wholesale Customers in accordance with its procedures for making OSS Announcements that exist from time to time.

9 Disaster Recovery Plan Information (DISPLAN Notification)

(a) Telstra will provide information upon request to Wholesale Customers on its disaster recovery plan principles. These principles are to guide how and under what circumstances Telstra and the Wholesale Customer will assist each other to recover or provide communications services in the event of an emergency or crisis, including:

(i) the sharing of access to generator sets for the provision of power;

(ii) the sharing of “cell on wheels” and other resources and facilities;

(iii) the sharing of transmission bandwidth; and

(iv) the building of temporary infrastructure.

(b) In addition to arrangements with Wholesale Customers, Telstra will have in place internal policies that will be applied (as far as practicable given the nature of the emergency) and communicated to Wholesale Customers as required in the event of an emergency or crisis, governing the following:

(i) participation in emergency management planning for the provision of communications facilities and services in emergency situations;

(ii) provision of consultancy and/or fast track facilitation of requests from designated emergency service organisations;

(iii) maintenance of a website providing access to Telstra documents regarding DISPLAN support and access to national contact information;

(iv) nomination and provision of appropriate personnel at national, State/Territory and police region/district levels to manage the urgent provision or facilitation of Telstra products and services during emergency situations;

(v) provision of a single national point of backup contact; and

(vi) provision during emergency situations of certain services.

10 Notice to be provided where Telstra undertakes a Major Network Modernisation and Upgrade

10.1 Major Network Modernisation and Upgrade notices

(a) Except were the parties agree otherwise, Telstra undertakes that it will make a Major Network Modernisation and Upgrade by:

(i) providing the Wholesale Customer with notices in writing in accordance with paragraphs 10.1(b) and 10.2(a) of this Schedule 4 (**General Notification**) and paragraphs 10.1(c) and 10.2(b) of this Schedule 4 (**Individual Notification**); and

(ii) consulting with the Wholesale Customer, and negotiating in good faith, any reasonable concerns of the Wholesale Customer, in relation to the Major Network Modernisation and Upgrade.

Paragraph 10.1(a) of this Schedule 4 does not apply to an Emergency Network Modernisation and Upgrade.

(b) The period of notices given under a General Notification provided by Telstra to the Wholesale Customer:

(i) must be an Equivalent Period of Notice; and

(ii) in any event, must not be less than 30 weeks before the Major Network Modernisation and Upgrade is scheduled to take effect.

(c) An Individual Notification must be provided by Telstra to the Wholesale Customer as soon as practicable after the General Notification, but, in any event, not less than 26 weeks prior to the anticipated commencement date of the Major Network Modernisation and Upgrade.

10.2 Information to be provided in the notices

(a) A General Notification must include information on:

(i) the ESA affected by the proposed Major Network Modernisation and Upgrade;

(ii) the Distribution Area affected by the proposed Major Network Modernisation and Upgrade; and

(iii) a general description of the proposed Major Network Modernisation and Upgrade, including the indicative timing for the implementation of the Major Network Modernisation and Upgrade.

(b) An Individual Notification must include the following information in addition to the information provided in the relevant General Notification:

(i) the anticipated commencement date for implementing the Major Network Modernisation and Upgrade;

(ii) details of the Wholesale Customer's activated Wholesale ADSL Layer 2 Services, or Wholesale ADSL Layer 2 Services in the process of being activated at the date of the notice, that are likely to be affected by the Major Network Modernisation and Upgrade;

(iii) the likely action required by the Wholesale Customer as a result of the Major Network Modernisation and Upgrade (including the possible impact of the Major Network Modernisation and Upgrade upon the Wholesale Customer's Wholesale ADSL Layer 2 Services); and

(iv) details of who the Wholesale Customer may contact to obtain further information about the Major Network Modernisation and Upgrade.

(c) An Individual Notification only needs to be given where a Wholesale ADSL Layer 2 Service has been activated or Telstra is in the process of activating that service as at the date of the Individual Notification, and:

(i) the Major Network Modernisation and Upgrade will require the Wholesale Customer to take particular action in order to continue to use the Wholesale ADSL Layer 2 Service; or

(ii) the Major Network Modernisation and Upgrade will result in the Wholesale ADSL Layer 2 Service no longer being supplied.

(d) Where Telstra has provided the Wholesale Customer with an Individual Notification, Telstra must provide the Wholesale Customer with:

(i) updates about the Major Network Modernisation and Upgrade covered by the notice, including:

(A) any update or change to the information provided in the Individual Notification;

(B) any new information available at the time of the update about:

1. the Wholesale ADSL Layer 2 Service provided by Telstra in the relevant ESA that may be available to the Wholesale Customer;

2. how the Wholesale Customer may be impacted by the Major Network Modernisation and Upgrade; and

3. what steps the Wholesale Customer will be required to take to facilitate the Major Network Modernisation and Upgrade; and

(ii) weekly reports about the anticipated cutover dates for the Wholesale Customer's affected Wholesale ADSL Layer 2 Service, beginning no less than five weeks prior to the anticipated commencement date for the Major Network Modernisation and Upgrade.

(e) The updates referred to in paragraph 10.2(d)(i) of this Schedule 4 are to be provided regularly (which is not required to be any more frequently than monthly) after the Individual Notification.

10.3 Emergency Network Modernisation and Upgrade

In the event of an Emergency, Telstra may conduct an Emergency Network Modernisation and Upgrade, and

(a) will use its best endeavours to provide the Wholesale Customer with an Individual Notification prior to the Emergency Network Modernisation and Upgrade being implemented; or

(b) where it is not practicable for prior notice to be given, Telstra will provide the Wholesale Customer with an Individual Notification as soon as reasonably practicable after the Emergency Network Modernisation and Upgrade is implemented.

11 Coordinated Capital Works Program

11.1 Coordinated Capital Works Program Forecast

(a) Telstra must provide the Wholesale Customer with a written three year Coordinated Capital Works Program forecast in accordance with paragraph 11.1(b) of this Schedule 4 14 calendar days from the date this Schedule 4 takes effect (**Coordinated Capital Works Program Forecast**).

(b) The Coordinated Capital Works Program Forecast will:

(i) be for the three year period commencing on the date the forecast is provided;

(ii) describe generally Telstra's indicative investment plans (as at the date of the forecast) for its Coordinated Capital Works Program over the next three years;

(iii) include an evaluation of the impact that Telstra's indicative investment plans may have on individual ESAs and Distribution Areas; and

(iv) specify anticipated timeframes for implementation.

(c) Telstra must update the Coordinated Capital Works Program Forecast (and provide the update forecasts in writing to the Wholesale Customer) regularly, at not less than six month intervals.

(d) At the same time as Telstra provides a Coordinated Capital Works Program Forecast under paragraph 11.1(a) of this Schedule 4, Telstra must provide a copy of the Coordinated Capital Works Program Forecast to the ACCC.

11.2 Coordinated Capital Works Program Schedule

(a) Telstra must provide a written Coordinated Capital Works Program schedule to the Wholesale Customer by giving notice not less than 12 months before the anticipated commencement date of the Coordinated Capital Works Program in accordance with paragraph 11.2(b) of this Schedule 4 (**Coordinated Capital Works Program Schedule**).

(b) Telstra must provide the Coordinated Capital Works Program Schedule and make its best endeavours to identify:

(i) the ESAs and Distribution Areas affected;

(ii) Telstra's plan for the Coordinated Capital Works Program for each ESA;

(iii) the Wholesale Customer's Wholesale ADSL Layer 2 Service(s) in that Exchange that will be affected and the expected impact of the Coordinated Capital Works Program on the Wholesale Customer's Wholesale ADSL Layer 2 Service(s); and

(iv) the anticipated timeframe for the implementation of the Coordinated Capital Works Program.

(c) At the same time as Telstra provides a Coordinated Capital Works Program Schedule under paragraph 11.2(a) of this Schedule 4 , Telstra must provide a copy of the Coordinated Capital Works Program Schedule to the ACCC.

(d) For the avoidance of doubt, Telstra must also comply with paragraphs 10.1 and 10.2 of this Schedule 4 when complying with paragraphs 11.1 to 11.2(c) of this Schedule 4.

12 Negotiations in good faith

(a) Except where the parties agree otherwise, Telstra must not commence implementation of a Major Network Modernisation and Upgrade unless:

(i) it complies with paragraphs 10.1 and 10.2 of this Schedule 4; and

(ii) it has consulted with the Wholesale Customer and has negotiated in good faith, and addressed the reasonable concerns of the Wholesale Customer in relation to the Major Network Modernisation and Upgrade.

(b) Except where the parties agree otherwise, Telstra must not commence the implementation of a Coordinated Capital Works Program unless:

(i) it complies with paragraphs 11.2(a) to 11.2(c) of this Schedule 4; and

(ii) it has consulted with the Wholesale Customer and has negotiated in good faith, and addressed the reasonable concerns of the Wholesale Customer in relation to the Major Network Modernisation and Upgrade.

(c) Notwithstanding any continuing negotiations between Telstra and the Wholesale Customer pursuant to paragraphs 10.1(a), 12(a) and 12(b) of this Schedule 4, if Telstra has complied with paragraphs 10 to 12 (inclusive) of this Schedule 4, a Major Network Modernisation and Upgrade may proceed 26 weeks after an Individual Notification has been issued, unless both parties agree otherwise.

(d) In attempting to reach a mutually acceptable resolution in relation to a variation under paragraphs 10.1(a), 12(a) and 12(b) of this Schedule 4, the parties must recognise any need that Telstra may have to ensure that the specifications for the Wholesale ADSL Layer 2 Services which Telstra supplies to more than one of its Wholesale Customers need to be consistent (including, without limitation having regard to the incorporation by Telstra of any relevant international standards).

13 Dispute Resolution

(a) If a dispute arises in relation to a Major Network Modernisation and Upgrade, or otherwise in relation to any matter under paragraphs 10, 11 or 12 of this Schedule 4, then the dispute must be referred to the same dispute resolution process as is used to resolve similar disputes under the Major Network Modernisation and Upgrade provisions, if any, included in a final access determination made by the ACCC.

(b) For clarity, a dispute in relation to a Major Network Modernisation and Upgrade, or otherwise in relation to any matter under paragraphs 10, 11 or 12 of this Schedule 4, is not an Equivalence Complaint and may not be referred to the Adjudicator.

14 Miscellaneous

(a) A requirement under paragraphs 10 to 13 of this Schedule 4 for Telstra to provide information in written form includes provision of that information in electronic form.

(b) Any information provided by Telstra in electronic form under paragraphs 10 to 13 of this Schedule 4 must be in text-searchable and readable form.

Schedule 5 — Independent Telecommunications Adjudicator

1 Background

(a) This Schedule 5 establishes a 'fast track' dispute resolution process under which an independent adjudicator approved by the ACCC, or the ACCC itself (at the referring party's election), will investigate and resolve ITA Disputes.

(b) This Undertaking intentionally provides that the ITA Process is only one of several mechanisms under this Undertaking through which equivalence issues can be addressed. In addition, an equivalence issue may potentially fall within one or more processes of this Undertaking as well as being a matter which the ACCC could address under Parts IV, XIB and XIC of the CCA or under the Act. Accordingly:

(i) nothing in this Schedule 5 constrains the ACCC's powers under the CCA or the Act to a greater extent than the CCA or the Act expressly provide respectively;

(ii) nothing in this Schedule 5 constrains the ACCC's powers to enforce clause 9(a) in accordance with Schedule 11;

(iii) in considering whether to accept an ITA Dispute, the Adjudicator should consider any guidance provided by the ACCC (including in its decision to accept this Undertaking) on the kinds of Equivalence Complaints which are appropriately addressed through the ITA Process; and

(iv) although the Adjudicator's power to make a binding direction or order in a particular ITA Dispute cannot exceed the monetary caps applicable under paragraph 11.5 of this Schedule 5, the ACCC is not similarly constrained in dealing with the equivalence-related issue which is the subject matter of that ITA Dispute under clause 9(a) or its statutory powers and functions under Parts IV, XIB or XIC of the CCA or under the Act.

2 Independence of the ITA Adjudicator

(a) The individual that is appointed as the ITA Adjudicator will be independent from Telstra, the ITA Directors and Wholesale Customers.

(b) The following measures will ensure that the independence of the ITA Adjudicator, as required by paragraph 2(a) of this Schedule 5, is complied with:

(i) the individual to be appointed as the ITA Adjudicator must be approved by the ACCC in accordance with the appointment process set out in paragraph 5 of this Schedule 5;

(ii) the independence of the ITA Adjudicator will be enshrined in a Charter of Independence that must be approved by the ACCC in accordance with paragraph 4.2 of this Schedule 5;

(iii) the ITA Adjudicator will have the powers conferred by this Schedule 5, the Charter of Independence and the constitution of the ITA;

(iv) the constitution of the ITA must be approved by the ACCC in accordance with paragraph 4.1 of this Schedule 5; and

(v) funding for the office of the ITA Adjudicator will be provided in accordance with the arrangements set out in paragraph 5.2 of this Schedule 5.

3 ITA Objectives

(a) The objective of the ITA Process is to:

(i) provide a 'fast track' dispute resolution process that will investigate and resolve ITA Disputes involving Wholesale Customers in a manner that:

(A) is independent, fast, flexible, pragmatic, efficient and cost effective for all parties;

(B) ensures ITA Disputes are managed by, either:

(1) an independent expert with extensive relevant practical and technical experience as described in paragraph 5.1(b)(i) of this Schedule 5; or

(2) the ACCC;

(C) is directed at undertaking a root cause analysis of each ITA Dispute as a means of achieving, wherever possible, permanent resolution through improvements in relevant processes and arrangements of or between Telstra and the Wholesale Customer; and

(D) where possible, achieves an agreed or mediated outcome to any ITA Dispute; and

(ii) where the Adjudicator is not the ACCC, provide independent expert technical advice to the ACCC, including by responding to matters referred to the ITA Adjudicator by the ACCC under the Plan.

(b) To ensure that the process is a 'fast track' dispute resolution process, for most disputes, the ITA Process should not ordinarily take longer than five weeks to complete. However, for more complex ITA Disputes, or those which involve a number of parties or the ACCC as Adjudicator, the timeline may be longer than five weeks.

(c) For the avoidance of doubt, the ITA Process does not investigate or resolve price-related disputes.

4 The establishment of the Independent Telecommunications Adjudicator

4.1 Establishment of the ITA

(a) Telstra will establish the ITA in accordance with clause 20 of this Undertaking as soon as reasonably practicable following approval of the ITA's constitution by the ACCC in accordance with this paragraph 4.1 of this Schedule 5.

(b) The directors of the ITA will be appointed by Telstra and Telstra will be the sole member of the ITA, unless otherwise decided by Telstra.

(c) Within 90 Business Days after this Undertaking comes into force Telstra will provide the ACCC with a copy of the ITA's draft constitution for approval by the ACCC.

(d) Before any amendment to the constitution of the ITA is made (other than an amendment which is made solely to reflect legislative changes or requirements) Telstra must provide the ACCC with a copy of the proposed amendment for approval by the ACCC.

(e) If the ACCC receives from Telstra a draft constitution of the ITA, or a proposed amendment to the constitution of the ITA, the ACCC may:

(i) approve the draft constitution, or the proposed amendment; or

(ii) otherwise:

(A) refuse to approve the draft constitution, or the proposed amendment; and

(B) by written notice given to Telstra, give reasons for its refusal and direct Telstra to give to the ACCC, no less than 30 days after the notice is given, a replacement draft constitution or proposed amendment (as the case may be) which complies with the principles in paragraph 4.1(f) of this Schedule 5 and is otherwise consistent with clause 20 and this Schedule 5.

(f) The ACCC must approve a draft constitution of the ITA, or any amendment to the constitution of the ITA, if the constitution, after any proposed amendment is made:

(i) provides for the appointment process of the ITA Adjudicator set out in paragraph 5.1 of this Schedule 5;

(ii) vests in the ITA Adjudicator the power to resolve ITA Disputes;

(iii) provides for the ITA Adjudicator to receive, investigate, and facilitate the resolution of ITA Disputes;

(iv) requires the ITA Adjudicator to have regard to the law, good industry practice and what is fair and reasonable in the circumstances;

(v) requires the ITA Adjudicator to pursue the objective of fair, just, economical and expeditious resolution of ITA Disputes;

(vi) requires Telstra to provide full access to the ITA Adjudicator to its records, systems and personnel to facilitate expeditious resolution of ITA Disputes, including confidential information of Telstra;

(vii) provides for the ITA Adjudicator to report to the ACCC in relation to any matter relevant to an ITA Dispute or the ITA Process;

(viii) provides for the ITA Adjudicator to perform functions given to it under the Plan, including vesting in the ITA Adjudicator the power to investigate, consult and provide expert advice in respect of matters referred by the ACCC to the ITA Adjudicator under the Plan;

(ix) provides for the ITA Adjudicator to prepare and propose an annual budget to the ITA Directors setting out the resources and funding the ITA Adjudicator considers necessary to meet his or her functions;

(x) to the extent permitted by law, limits the functions, powers, responsibilities and role of the ITA Directors and ITA members to matters relating to the establishment, maintenance and administration of the ITA as a corporate entity;

(xi) to the extent permitted by law, provides that to the extent of any inconsistency between a provision of the Charter of Independence and a provision of the constitution, that the Charter of Independence prevails to the extent of the inconsistency;

(xii) provides for a Charter of Independence approved by the ACCC in accordance with paragraph 4.2 of this Schedule 5 to be adopted by the ITA Directors as the Charter of Independence;

(xiii) requires the ITA Directors to deal with the ITA Adjudicator strictly in accordance with the Charter of Independence approved by the ACCC;

(xiv) requires that any amendment to the Charter of Independence be approved by the ACCC before that amendment is made;

(xv) requires the ITA Directors to engage a suitably qualified probity adviser approved by the ACCC who is to provide the ITA Directors with advice on matters relating to the independence of the ITA Adjudicator, the responsibilities of the ITA Directors, the operation and administration of the ITA Process in accordance with its objectives, the constitution of the ITA and the Charter of Independence and other matters the ITA Directors consider appropriate;

(xvi) requires the ITA Directors to publish an annual report signed by the ITA Directors:

(A) confirming that the ITA Directors have sought and obtained advice from a probity adviser under paragraph 4.1(f)(xv) of this Schedule 5 as to whether the ITA Process is operating in accordance with the Charter of Independence;

(B) stating whether, in the ITA Directors' opinion (based on the probity adviser's advice), the ITA Process is operating in accordance with the Charter of Independence; and

(C) including a copy of the report prepared by the ITA Adjudicator referred to in paragraph 4.2(c)(xiv) of this Schedule 5 only with redactions of information by the ITA Adjudicator as permitted by paragraph 4.2(c)(xv) of this Schedule 5;

(xvii) provides for the ITA Adjudicator to provide information and reports to the ACCC in respect of:

(A) the general operation and effectiveness of the ITA Process; and

(B) general or specific information about those ITA Disputes it has received; and

(xviii) does not require a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

(g) Before deciding to approve or reject a draft constitution of the ITA or a proposed amendment to the constitution of the ITA (as the case may be) the ACCC may:

(i) undertake public or other consultation which it reasonably considers is necessary or expedient in relation to the constitution of the ITA; and

(ii) if an individual has already been appointed as the ITA Adjudicator, seek his or her views about whether the draft constitution or any proposed amendment to the constitution will impact his or her independence.

(h) If the ACCC rejects the draft constitution of the ITA, or a proposed amendment to the constitution of the ITA, Telstra may submit another constitution or proposed amendment to the constitution (as the case may be) to the ACCC.

4.2 Charter of Independence

(a) Telstra will request the ITA to provide a Charter of Independence to the ACCC as soon as reasonably practicable after the ITA is established and its constitution has been approved by the ACCC.

(b) If the ACCC receives from the ITA a draft Charter of Independence, or a proposed amendment to the Charter of Independence, the ACCC may:

(i) approve the draft Charter of Independence, or the proposed amendment; or

(ii) otherwise:

(A) refuse to approve the draft Charter of Independence, or the proposed amendment; and

(B) by written notice given to Telstra, give reasons for its refusal and direct Telstra to procure the ITA to give to the ACCC, within no less than 30 days after the notice is given, a replacement draft Charter of Independence or proposed amendment (as the case may be) which complies with the principles in paragraph 4.2(c) of this Schedule 5 and is otherwise consistent with clause 20 and this Schedule 5.

(c) The ACCC must approve a draft Charter of Independence, or any amendment to the Charter of Independence if the Charter of Independence, after any proposed amendment is made:

(i) provides for the ITA Adjudicator to act independently from Telstra, Wholesale Customers, NBN Co, the ACCC and government (whether federal, state or territory);

(ii) provides for the ITA Adjudicator to serve a term of two years from the date of appointment, at which point his or her appointment will expire, unless Telstra and the ACCC agree to extend or otherwise vary the term of appointment;

(iii) requires that the ITA Adjudicator is not employed by or does not act as consultant to Telstra or a Carriage Service Provider within the period of at

least six months immediately after ceasing for any reason to hold office as the ITA Adjudicator, without the ACCC's prior written consent;

(iv) requires that the ITA Adjudicator:

(A) not disclose any information to the ITA Directors about a dispute being handled by the ITA Adjudicator other than to the extent strictly necessary for the ITA Directors to fulfil their responsibilities under the constitution or any laws (including the Corporations Act) or in relation to the Charter of Independence;

(B) disclose to the probity adviser appointed under paragraph 4.1(f)(xv) of this Schedule 5 all information necessary for the probity adviser to perform its functions;

(v) except with the consent of the relevant parties, requires that the ITA Adjudicator not formally or informally consult with or seek guidance from any of the ITA Directors about a dispute being handled by the ITA Adjudicator;

(vi) provides that the ITA Adjudicator will cease to hold office as the ITA Adjudicator only in the following circumstances:

(A) death or expiry of the term of engagement or employment;

(B) performance of any act of fraud, dishonesty or gross misconduct;

(C) extended absence without leave of the ITA Directors, illness or other failure which substantially impairs the ITA Adjudicator's capacity to fulfil the function of the ITA Adjudicator;

(D) breach of the Charter of Independence or of an Independence Direction (as defined in paragraph 4.2(c)(xiii) of this Schedule 5);

(E) misuse of confidential information of a person received in the course of the performance of the function of ITA Adjudicator;

(F) cessation of the ITA Process;

(G) with the prior approval of the ACCC; or

(H) on any other grounds specified in the Charter of Independence approved by the ACCC;

(vii) provides a methodology in accordance with which the ITA Directors are to determine the remuneration and other benefits provided to the ITA Adjudicator;

(viii) provides a right for the ITA Adjudicator to report to and deal with the ACCC independently of the ITA Directors, including to notify the ACCC of any matter relating to the operation of the ITA Process which in the ITA Adjudicator's opinion threatens or may threaten the independence of the role of ITA Adjudicator;

(ix) gives the ITA Adjudicator the ability to seek independent legal or other advice when necessary or appropriate at reasonable cost and without prior approval of the ITA Directors (a maximum cap may be specified in the Charter of Independence);

(x) provides a process to identify and resolve conflicts of interest on the part of the ITA Adjudicator and for the ACCC to resolve any dispute about whether there is a conflict of interest involving the ITA Adjudicator in relation to a particular dispute being handled by the ITA Process;

(xi) requires the ITA Adjudicator to inform the ACCC of any complaint made to the ITA Adjudicator by a party to a dispute about the independence of the ITA Adjudicator as soon as practicable after that complaint is made;

(xii) requires the ITA Adjudicator to provide any information requested by the ACCC for the purposes of investigating a complaint about the independence of the Adjudicator, without a requirement to seek consent from the ITA Directors to provide the information;

(xiii) requires the ITA Adjudicator to comply with a direction from the ACCC to take or not take specified action in relation to the ITA Adjudicator's performance of his or her functions in accordance with the Charter of Independence which the ACCC considers is reasonably necessary to ensure the independence of the ITA Adjudicator (**Independence Direction**);

(xiv) requires the ITA Adjudicator to report annually to the ITA Directors and the ACCC on the operation of the ITA Process, including the administration and operation of the ITA Process in compliance with the Charter of Independence; and

(xv) does not require a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

(d) Before deciding to approve or reject a draft Charter of Independence or a proposed amendment to the Charter of Independence (as the case may be) the ACCC may:

(i) undertake public or other consultation which it reasonably considers is necessary or expedient in relation to the Charter of Independence; and

(ii) if an individual has already been appointed as the ITA Adjudicator, seek his or her views about whether a draft Charter of Independence or any proposed amendment to the Charter of Independence will impact his or her independence.

(e) If the ACCC rejects the draft Charter of Independence, or a proposed amendment to the Charter of Independence, the ITA may submit another Charter of Independence or proposed amendment to the Charter of Independence (as the case may be) to the ACCC.

5 Appointment process for the ITA Adjudicator

5.1 Nomination and appointment of the ITA Adjudicator

(a) Telstra will request the ITA to nominate an individual to the ACCC as the ITA Adjudicator as soon as reasonably practicable after the ITA is established and its constitution has been approved by the ACCC.

(b) The ITA will not nominate an individual as the ITA Adjudicator unless it is satisfied that the individual:

(i) has extensive practical and technical experience in telecommunications services, systems and processes and appropriate experience, knowledge and skills to act as the ITA Adjudicator in accordance with the ITA Process in this Schedule 5;

(ii) has not been employed by or provided consultancy services to Telstra within two years prior to being appointed as the ITA Adjudicator;

(iii) does not have any direct financial interest in Telstra;

(iv) declares to the ACCC, Telstra and the ITA Directors any indirect or other interest in Telstra of which the Adjudicator is aware; and

(v) will not be employed by or will not act as consultant to Telstra or a Carriage Service Provider within the period of at least six months immediately after ceasing for any reason to hold office as the ITA Adjudicator, without the ACCC's prior written consent.

(c) If the ACCC receives a nomination from the ITA the ACCC may:

(i) approve the nominated individual as the ITA Adjudicator; or

(ii) reject the nominated individual as the ITA Adjudicator.

(d) Before deciding to approve or reject a nominated individual as the ITA Adjudicator the ACCC must undertake public or other consultation which it reasonably considers is necessary or expedient in relation to the appointment of the ITA Adjudicator, taking into account the need for the relevant individual to:

(i) be accepted by Wholesale Customers as genuinely independent of Telstra; and

(ii) hold sufficient practical and technical experience to perform the role as a technical expert.

(e) If the ACCC rejects the appointment of the nominated individual as the ITA Adjudicator the ITA may nominate another individual to the ACCC.

(f) If the ITA Adjudicator has not been appointed within 90 Business Days after the ITA is established and its constitution has been approved by the ACCC, the ITA or the ACCC may request the Chairman of the ACMA to appoint an individual as the ITA Adjudicator.

5.2 Establishment and operating costs of the ITA Adjudicator

(a) Pursuant to section 152EQ of the CCA, the ACCC may provide administrative and secretariat support for the ITA.

(b) During the first year of the ITA Process, Telstra will contribute up to a maximum of $1,000,000 (inclusive of GST) towards the reasonable establishment costs of the ITA.

(c) The ongoing costs of the ITA will be borne by:

(i) an annual ITA Process Fee levied on all participants which have entered into an ITA Agreement;

(ii) ITA Referral Fees; and

(iii) costs orders issued by the ITA Adjudicator from time to time.

5.3 Public information document

Telstra may publish a document, which is approved by the ACCC, to assist Wholesale Customers setting out the objectives and explaining the general operation of the ITA Process.

6 ITA Process

6.1 The ITA Adjudicator

When an ITA Dispute is referred to the ITA Process, the referring party may elect whether the Adjudicator responsible for hearing the ITA Dispute is:

(a) the ITA Adjudicator; or

(b) the ACCC.

6.2 ACCC as Adjudicator

Where an ITA Dispute is referred to the ACCC as the Adjudicator, the ACCC will have the power to perform the role and exercise the functions of the Adjudicator in relation to that ITA Dispute in accordance with, and subject to, the provisions of this Schedule 5.

6.3 Exercise of the Adjudicator's powers and functions

(a) The Adjudicator must undertake investigations and exercise its functions and powers in a manner that is independent, fast, flexible, pragmatic, efficient and cost effective for all parties to the relevant ITA Dispute.

(b) Without limitation to paragraph 6.3(a) of this Schedule 5, in undertaking functions and exercising powers under this Schedule 5, the Adjudicator must ensure that:

(i) the requirements of procedural fairness are met. This includes but is not limited to making decisions on the basis of the information before it and by having specific criteria upon which its decisions are based, having regard to law, good industry practice and what is fair and reasonable in all the circumstances;

(ii) the ITA Process and any decisions of the Adjudicator are objective and unbiased and are seen to be objective and unbiased; and

(iii) confidential information of a party (the **disclosing party**) will not be disclosed:

(A) to any other party involved in an ITA Dispute; or

(B) to any third party,

unless the Adjudicator obtains prior written consent from the disclosing party or where disclosure is otherwise required by law.

(c) The Adjudicator may, at its discretion, join more than one application or investigation referred to it where the Adjudicator reasonably considers that the ITA Disputes which are the subject of such applications or investigations are able to be more efficiently and expeditiously dealt with together.

6.4 The Adjudicator acts as an expert and not an arbitrator

In exercising its functions and powers under this Schedule 5, the Adjudicator is acting as an expert and not as an arbitrator.

6.5 Limitation of liability

The Adjudicator is not liable to any party for, or in respect of, any act or omission in the discharge or purported discharge of its functions or powers under this Schedule 5 unless such act or omission is shown to have been fraudulent.

7 Application to the ITA Process

7.1 ITA Disputes

(a) Telstra or a Wholesale Customer may apply in writing to the Adjudicator to investigate and resolve:

(i) an Equivalence Complaint; or

(ii) any dispute referred to the Adjudicator by a Wholesale Customer under clause 31 of the Plan,

(**ITA Dispute**).

(b) Any application to the Adjudicator under paragraph 7.1(a) of this Schedule 5 must be in writing and include:

(i) details of the applicant;

(ii) a description of the subject matter of the ITA Dispute; and

(iii) any other evidence or material in support of the application.

(c) For clarity, the Adjudicator must only accept an application under paragraph 7.1(a) of this Schedule 5 if it is satisfied that the complaint relates to an ITA Dispute.

7.2 Requirements for applications to the ITA Process

(a) Before accepting an application in respect of an ITA Dispute under paragraph 7.1(a) of this Schedule 5, the Adjudicator must be satisfied that:

(i) the ITA Dispute is either:

(A) an Equivalence Complaint in relation to which one of the circumstances set out in clause 20.2 of this Undertaking applies; or

(B) a dispute referred to the Adjudicator by a Wholesale Customer under clause 31 of the Plan;

(ii) there is in force an ITA Agreement between the relevant Wholesale Customer and Telstra;

(iii) where the Adjudicator is the ITA Adjudicator:

(A) Telstra and the Wholesale Customer have each paid the annual ITA Process Fee;

(B) Telstra or the relevant Wholesale Customer has paid the ITA Referral Fee (whichever is the referring party);

(iv) the ACCC, Telstra or the relevant Wholesale Customer has not already taken action in relation to the relevant event or matter to which the ITA Dispute relates, including any action to notify the event or matter as a complaint or dispute under another dispute resolution process other than the Accelerated Investigation Process;

(v) the relevant event or matter to which the ITA Dispute relates is not the subject of a dispute or difference of any kind between Telstra and NBN Co; and

(vi) the Adjudicator will not be required to make an assessment of a third party's involvement in the events or matters to which the ITA Dispute relates or any conduct, systems or processes of a third party, unless the third party has agreed to be joined as a party to the proceedings to be conducted by the Adjudicator in relation to that ITA Dispute and, where the Adjudicator is the ITA Adjudicator, has agreed with Telstra to be bound by the ITA Process on terms which are substantially in the form of the ITA Agreement in Schedule 6.

(b) The Adjudicator must not accept an Equivalence Complaint which:

(i) relates to a trivial matter;

(ii) is vexatious or frivolous;

(iii) is currently being addressed under Schedule 11 or is the subject matter of a Rectification Proposal accepted by, or Rectification Direction made by, the ACCC; or

(iv) is the subject of enforcement proceedings under section 577G of the Act.

(c) The Adjudicator must notify the parties in writing whether it accepts the application and whether it will investigate the ITA Dispute under the ITA Process.

(d) Where the Adjudicator is the ITA Adjudicator, the Adjudicator must give notice under paragraph 7.2(a) of this Schedule 5 within 2 Business Days of receiving an application under paragraph 7.1(a) of this Schedule 5.

(e) The Adjudicator's decision whether to accept an application is final and binding upon the parties.

7.3 Wholesale Customer may withdraw from the ITA Process at any time

(a) Subject only to a determination of the Adjudicator having already become binding under paragraph 14(a)(v) of this Schedule 5, a Wholesale Customer which is a

party to an ITA Dispute accepted by the Adjudicator may withdraw from the ITA Process at any time by giving written notice to:

(i) Telstra;

(ii) any other parties to that ITA Dispute; and

(iii) the Adjudicator of that ITA Dispute.

(b) If a Wholesale Customer has given a valid notice pursuant to paragraph 7.3(a) of this Schedule 5:

(i) the provisions of this Schedule 5 will cease to apply to that ITA Dispute;

(ii) Telstra is not bound by any directions or determination of the Adjudicator; and

(iii) the Adjudicator's costs must be paid by the withdrawing party.

7.4 Parties to meet their own costs

The parties to an ITA Dispute which has been accepted by the Adjudicator will meet their own costs of, associated with and incidental to the ITA Dispute and their participation in the ITA Process.

8 Investigation process and timeframe – ITA Adjudicator

8.1 Application of this paragraph

(a) This paragraph 8 of Schedule 5 applies only where the Adjudicator is the ITA Adjudicator.

(b) Nothing in this paragraph 8 of Schedule 5 requires a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

8.2 Telstra to cooperate in good faith and provide reasonable assistance

(a) Telstra will cooperate in good faith with the Adjudicator, including by providing any information or assistance reasonably requested by the Adjudicator in the course of undertaking an investigation under this Schedule 5.

(b) Without limitation to paragraph 8.2(a) of this Schedule 5, Telstra will as soon as practicable after receiving notification under paragraph 7.2(c) of this Schedule 5 provide to the Adjudicator:

(i) where relevant, the file prepared in the course of reviewing the relevant ITA Dispute under the Accelerated Investigation Process;

(ii) a copy of any correspondence related to the relevant ITA Dispute between Telstra and the relevant Wholesale Customer; and

(iii) a copy of any decision reached by Telstra following the Accelerated Investigation Process, such as any explanation provided or Rectification Plan offered to the Wholesale Customer.

(c) If Telstra informs the Adjudicator that it has provided, for the purposes of the ITA Process, any confidential information that cannot be provided to any other parties to the investigation, the Adjudicator must not disclose the information to any other person without the consent of Telstra.

8.3 Preliminary Conference

(a) Not more than two Business Days after the Adjudicator gives notice to the parties under paragraph 7.2(c) of this Schedule 5, the Adjudicator and representatives of each of Telstra and the relevant Wholesale Customer will meet to:

(i) clarify the scope of the ITA Dispute and any other matters in the application;

(ii) provide feedback to both parties following the Adjudicator's preliminary review of the application;

(iii) identify and request from the parties any further material or information which the Adjudicator considers is necessary or expedient to help to resolve the ITA Dispute; and

(iv) agree a timetable and process for managing the application,

(the **Preliminary Conference**).

(b) The parties must provide any further material requested by the Adjudicator at the Preliminary Conference within 5 Business Days after the date of the Preliminary Conference or such other reasonable time as the Adjudicator may direct.

(c) The Adjudicator may request further information or assistance from Telstra or the relevant Wholesale Customer during the course of the investigation, in accordance with paragraph 9 of this Schedule 5.

8.4 Draft determination and Pre-determination conference

(a) The Adjudicator will use all reasonable endeavours to complete its investigation within 15 Business Days after the date of the Preliminary Conference.

(b) Upon completing its investigation, the Adjudicator will promptly provide all parties with a draft determination setting out:

(i) the Adjudicator's findings of fact;

(ii) any process or systemic issues identified by the Adjudicator in respect of either Telstra or the relevant Wholesale Customer; and

(iii) the Adjudicator's proposed directions, including as to costs.

(c) Not more than two Business Days after the Adjudicator has provided its draft determination to the parties under paragraph 8.4(b) of this Schedule 5, the Adjudicator will convene a conference between the parties for the purpose of:

(i) explaining the draft determination to the parties and allowing the parties an opportunity to discuss the draft determination; and

(ii) providing the parties with a reasonable opportunity to agree in good faith a mediated outcome to the ITA Dispute without the need for the Adjudicator to issue any final determination,

(the **Pre-determination Conference**).

8.5 Final Determination

(a) In the event that the parties do not reach an agreed or mediated outcome at the Pre-determination Conference, the parties must within three Business Days following the Pre-determination Conference provide written submissions of no more than 10 pages to the Adjudicator responding to the Adjudicator's draft determination.

(b) As soon as reasonably practicable after the parties have provided their written submissions under paragraph 8.5(a) of this Schedule 5 or, in any event, no later than five Business Days after the Pre-determination Conference, the Adjudicator will issue its final determination.

9 Investigation process and timeframe – ACCC as Adjudicator

9.1 Application of this paragraph

This paragraph 9 of Schedule 5 applies only where the Adjudicator is the ACCC.

9.2 Process for hearing ITA Disputes

(a) The Adjudicator may, by writing published on its website, make rules which provide for the practice and procedure that is to be followed by the parties to ITA Disputes, and by the Adjudicator, in hearing an ITA Dispute.

(b) The Adjudicator must adhere to all other provisions of this Schedule 5 (other than paragraph 8) when exercising its power to make rules under paragraph 9.2(a) of this Schedule 5, including that the Adjudicator must not make rules which have the effect of exceeding or extending the Adjudicator's investigatory or direction making powers as set out in paragraphs 10 and 11 of this Schedule 5.

(c) The Adjudicator must not make rules which require a person to disclose information to another person (including the ACCC) where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

(d) The ACCC may specify fees payable by a party to an ITA Dispute in respect of the ACCC's performance of the function of Adjudicator for an ITA Dispute.

10 The Adjudicator's investigatory powers

10.1 Adjudicator may request information and other assistance from the parties

(a) Subject to paragraph 10.1(b) of this Schedule 5, at any time during the ITA Process, the Adjudicator may direct a party to an ITA Dispute to provide the Adjudicator with:

(i) copies of relevant documents;

(ii) information about, or an explanation of, Telstra's operational support systems or business support systems;

(iii) reasonable access to employees or contractors involved in processing an order or orders or who may otherwise be able to assist the Adjudicator with the investigation;

(iv) copies of any relevant internal process manuals, system design documentation, staff procedures, performance data or compliance monitoring and reports; and

(v) physical access to Exchange Buildings and other facilities in which collocation occurs (for inspection purposes).

(b) The Adjudicator cannot compel a party to disclose information where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

10.2 Appoint an independent engineer or auditor

(a) The Adjudicator may appoint an independent engineer to assess technical issues at any point during the ITA Process provided, where the Adjudicator is the ITA Adjudicator, the appointment is made in accordance with the Charter of Independence.

(b) Without limitation, an independent auditor may audit a Capped Exchange or Potentially Capped Exchange, including to review:

(i) whether there is any currently unused and unreserved capacity;

(ii) the reasonableness of any forecasts or reservations made by Telstra; and

(iii) any options for making available new or additional capacity.

(c) If an independent auditor or independent engineer is appointed:

(i) the Adjudicator has the power to order Telstra or the relevant Wholesale Customer to pay the costs of the independent auditor or independent engineer (as applicable); and

(ii) any report that is prepared by the independent auditor or independent engineer will also be made available to Telstra and the relevant Wholesale Customer, subject to the protection of any confidential or privileged information.

11 The Adjudicator's power to make directions

11.1 Adjudicator's power to make final determinations

(a) A final determination of the Adjudicator may include any direction that the Adjudicator considers necessary or expedient in order to achieve a permanent resolution of the relevant ITA Dispute, subject to the provisions of this paragraph 11 of Schedule 5.

(b) Some examples of the directions that may be given by the Adjudicator include:

(i) for an Equivalence Complaint arising out of a 'one off' failure by Telstra to comply with systems or processes with which it is otherwise generally

compliant – direct Telstra to perform a service request by a particular deadline;

(ii) for an Equivalence Complaint arising from a pattern of failure by Telstra staff to comply with systems and processes with which they are otherwise generally compliant – require Telstra to undertake a compliance program or other compliance activities, such as specified employee training;

(iii) for an Equivalence Complaint arising from a systemic failure in Telstra's systems and processes – direct Telstra to provide the Adjudicator with a proposal for the modification of the non-compliant processes or systems to ensure future compliance and the required timeframe, estimated cost and process for implementing such proposal;

(iv) for an Equivalence Complaint arising from a failure of any kind by a Wholesale Customer – direct the relevant Wholesale Customer to take action, including without limitation, requiring it to:

(A) undertake a compliance program or other compliance activities, such as specified employee training; and/or

(B) provide the Adjudicator with a proposal for modification to that Wholesale Customer's processes or systems to avoid future failures of the same kind and the required timeframe, estimated cost and process for implementing such proposal; and

(v) for a dispute referred to the Adjudicator under clause 31 of the Plan:

(A) direct Telstra to modify its Order Stability Period or to consult in good faith with Wholesale Customers in respect of a modification to the Order Stability Period; and

(B) direct Telstra to implement a Modification Proposal under clause 28.3 of the Plan.

(c) For the avoidance of doubt, the Adjudicator may make a final determination which does not require any action to be taken by the parties, including without limitation where:

(i) the Adjudicator's investigation does not identify a system or process failure;

(ii) any issue has already been corrected; or

(iii) the costs associated with taking action (or further action) would be likely to outweigh any associated benefit(s).

(d) A final determination may include a direction in relation to the payment of the Adjudicator's costs.

11.2 Directions to change systems or processes

(a) Where the Adjudicator determines that a modification of a party's processes or systems is required to resolve an identified problem, the Adjudicator may direct that party to provide the Adjudicator with a proposal for the modification of that party's processes or systems which resolves that problem.

(b) Where the Adjudicator's direction is binding (determined in accordance with paragraph 14 of this Schedule 5), that party must provide the Adjudicator with a proposal that complies with the direction within the time specified by the direction, or if no time is specified, within a reasonable period after receiving the direction.

(c) If the Adjudicator notifies that party that it is satisfied the proposal complies with the direction, that party must implement the proposal in accordance with its terms.

(d) If the Adjudicator is not satisfied that the proposal complies with the direction, the Adjudicator may give a further binding direction to that party which:

(i) prescribes or proscribes a specific system, process design or technology to be implemented by that party;

(ii) requires that system or process to have particular design features; and/or

(iii) specifies the timeframe in which that system or process is to be implemented.

11.3 Parties may agree to amend the directions of the Adjudicator

The parties may agree with each other and the Adjudicator to amend the terms of any directions or orders proposed by the Adjudicator, in order to give effect to the final determination.

11.4 Limitations on Adjudicator's power to make directions

(a) A direction or final determination issued by the Adjudicator under this Schedule 5 has no effect to the extent (if any) to which compliance with the direction or final determination is likely to have the effect, whether direct or indirect, of:

(i) requiring Telstra to develop or supply any product or service which is not a Regulated Service;

(ii) requiring a party to act inconsistently with any legal or regulatory requirement, including this Undertaking, the Plan or any relevant industry standard or code (whether or not registered), except where the applicable legal or regulatory requirement, standard or code expressly permits this;

(iii) imposing a penalty or an award of compensation, or requiring the giving of financial assistance;

(iv) requiring a party to change its systems or processes in order to compensate for inadequacies in, or consequences caused by:

(A) the systems and/or processes of NBN Co;

(B) the process of connecting to the NBN; or

(C) Pull Through Activities; or

(v) exceeding any of the monetary caps in paragraph 11.5 of this Schedule 5.

(b) A direction or final determination issued by the Adjudicator under this Schedule 5 may only:

(i) prescribe or proscribe that Telstra or a Wholesale Customer implement a specific system or process design or technology; and/or

(ii) require a system or process of Telstra or a Wholesale Customer to have particular design features,

in accordance with paragraph 11.2 of this Schedule 5.

11.5 Monetary caps

(a) Any directions or orders made by the Adjudicator are subject to monetary caps as follows:

(i) for one or more ITA Disputes arising from the same conduct by a party (such as failures resulting from substantially the same or related processes or systems) – that party is not required to incur total costs of more than $1,000,000 in implementing any modification to the relevant systems or processes or otherwise in complying with any other direction of the Adjudicator unless the Adjudicator demonstrates in writing that:

(A) the modification, and any other matter which must be undertaken to comply with the direction, is necessary to resolve the cause of the ITA Dispute; and

(B) the modification, and any other matter which must be undertaken to comply with the direction, will be effective in resolving the cause of the ITA Dispute; and

(C) the modification, and any other matter which must be undertaken to comply with the direction, is the least cost solution to resolve the cause of the ITA Dispute; and

(D) the cost of implementing the modification, and any other matter which must be undertaken to comply with the direction, is outweighed by the relative benefits, including the materiality of the consequences of continuing to rely on existing processes or systems; and

(ii) any party to the ITA Process is not required to incur total costs of more than $10,000,000 in any calendar year in implementing modifications to relevant systems or processes or otherwise in complying with directions or orders issued by the Adjudicator.

(b) For clarity:

(i) the capacity for the Adjudicator to exceed the monetary cap in paragraph 11.5(a)(i) of this Schedule 5 in relation to one or more ITA Disputes arising from the same conduct by a party remains subject to the annual monetary cap that applies in paragraph 11.5(a)(ii) of this Schedule 5; and

(ii) the annual monetary cap in paragraph 11.5(a)(ii) of this Schedule 5 is a single aggregate monetary cap that applies to the costs incurred in complying with directions and orders of both:

(A) the ITA Adjudicator; and

(B) the ACCC as the Adjudicator.

(c) If a party determines that it will not implement a process or system modification because to do so would exceed the monetary caps in paragraph 11.5(a) of this Schedule 5, the other party to the relevant ITA Dispute, or the Adjudicator, may refer the ITA Dispute to the ACCC for consideration as to whether there is a possible breach of clause 9(a) or to be dealt with under Parts IV, XIB or XIC of the CCA or under the Act. In accordance with paragraph 1(b)(iv) of this Schedule 5, nothing in this Schedule 5 constrains the ACCC in dealing with an equivalence-related issue using its powers and functions in respect of clause 9(a), under Parts IV, XIB or XIC of the CCA or under the Act.

11.6 Determinations which affect contractual terms

(a) Subject to paragraph 11.6(b) of this Schedule 5, a direction or final determination issued by the Adjudicator under this Schedule 5 may not impose or vary any contractual terms or conditions.

(b) A direction or final determination may require that Telstra offers to vary the non-price terms of the wholesale contract under which it supplies Regulated Services to one or more Wholesale Customers, but only to the extent the Adjudicator considers the variation is necessary to achieve a permanent resolution of the relevant ITA Dispute. For clarity, the power to make a direction or final determination of this kind is subject to paragraphs 11.4 and 11.5 of this Schedule 5.

12 Referral of an ITA Dispute to the ACCC

(a) Where the ITA Adjudicator considers that an ITA Dispute would be more appropriately dealt with by the ACCC (other than in its capacity as Adjudicator), it may at any time prior to the release of the final determination refer the matter to the ACCC.

(b) The ITA Adjudicator must immediately close any investigation in respect of a matter which has been referred to the ACCC under paragraph 12(a) of this Schedule 5 and must promptly notify in writing the parties to an investigation that the matter has been referred to the ACCC.

(c) The ITA Adjudicator may not refer a matter to the ACCC which is the subject of a final determination.

13 Referral of an ITA Dispute to the Adjudicator

Where the ACCC considers that a complaint which would be an ITA Dispute would be more appropriately dealt with by the ITA Adjudicator, it may at any time refer the matter to the ITA Adjudicator.

14 Status of the final determination

(a) A final determination of the Adjudicator:

(i) is final and binding on the parties; and

(ii) no party is entitled to appeal from or seek or obtain a review of the Adjudicator's final binding determination in any court,

except where:

(iii) there is a manifest error on the face of the document;

(iv) the final determination is inconsistent with the provisions of this Undertaking; or

(v) a Wholesale Customer which is a party, within 10 Business Days after receiving the final determination, gives notice to the Adjudicator, Telstra and all other parties that it does not wish to be bound by the final determination.

(b) Nothing in this Schedule 5 prevents any party from seeking an interlocutory injunction from a court.

(c) Any finding of fact made by the Adjudicator in or for the purpose of a final determination (whether binding or non-binding) must not be tendered or relied upon by the ACCC or any other party in any court proceedings or other dispute resolution process as evidence of those facts.

15 Inconsistency with the Plan

A direction issued by the Adjudicator has no effect to the extent to which it would have the effect of:

(a) requiring Telstra to seek a variation to the Plan; or

(b) preventing Telstra from complying with the Plan.

Schedule 6 — ITA Agreement

Parties

Telstra Corporation Limited of 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)

[Office of the Independent Telecommunications Adjudicator Limited] of [insert address] (**ITA**)

[insert name] of [insert address] (**Wholesale Customer**)

Background

(a) Telstra gave to the ACCC an Undertaking dated 9 December 2011 pursuant to section 577A of the *Telecommunications Act 1997* (Cth) (**Undertaking** or **SSU**) and the ACCC accepted the Undertaking on [date].

(b) Telstra established the ITA and the Independent Telecommunications Adjudicator Process (**ITA Process**) in accordance with the Undertaking for the independent and expedited resolution of ITA Disputes.

(c) Telstra and the Wholesale Customer agree that either party may refer an ITA Dispute to the Adjudicator for resolution on the terms set out in this deed and the Undertaking.

The parties agree

1 Defined terms and interpretation

Capitalised terms which are not defined in this deed have the same meaning as in the Undertaking.

2 ITA Process

2.1 Reference to the ITA Process

(a) Telstra and the Wholesale Customer agree that either party to this deed may refer an Equivalence Complaint for resolution in accordance with:

(i) the Accelerated Investigation Process set out in clause 19 of the Undertaking; and

(ii) if the Equivalence Complaint is not resolved by Telstra using the Accelerated Investigation Process, then the ITA Process in accordance with clause 20 and Schedule 5 of the Undertaking.

(b) Telstra and the Wholesale Customer agree that either party to this deed may refer a dispute of the kind referred to in clause 31 of the Plan for resolution in accordance with the ITA Process.

(c) Each party agrees that it will comply with, and be bound by, the terms of the ITA Process set out in Schedule 5 of the Undertaking, in respect of any ITA Dispute referred to the ITA Process.

(d) Without limiting the power of the Adjudicator to refer any ITA Dispute or investigation to the ACCC prior to it making a final determination, a party to this deed must not:

(i) commence any arbitration or court proceedings or any other dispute resolution process (including but not limited to any process of the Telecommunications Industry Ombudsman); or

(ii) lodge a complaint with the ACCC under Part IV, XIB or XIC of the *Competition and Consumer Act 2010* (Cth) (**CCA**) or under the *Telecommunications Act* (Cth) (the **Telco Act**),

in relation to an event or matter if that event or matter is the subject of an ITA Dispute that has been referred to the Accelerated Investigation Process or the ITA Process, except where:

(iii) a party seeks urgent interlocutory or injunctive relief; or

(iv) the dispute relates to compliance with this deed.

(e) If a party to this deed has:

(i) commenced any arbitration or court proceedings or any other dispute resolution process (including but not limited to any process of the Telecommunications Industry Ombudsman); or

(ii) lodged a complaint with the ACCC under Part IV, XIB or XIC of the CCA or Schedule 1 of the Telco Act,

in relation to a particular event or matter, each party must not refer an ITA Dispute to the Accelerated Investigation Process or the ITA Process in relation to that event or matter.

2.2 Both parties to cooperate in good faith and provide reasonable assistance

(a) Each party will cooperate in good faith with the ITA Adjudicator, including by providing any information or assistance reasonably requested by the Adjudicator in the course of undertaking an investigation.

(b) The Wholesale Customer consents to Telstra disclosing to the Adjudicator information that is confidential to the Wholesale Customer, where such disclosure is for the purpose of facilitating:

(i) Telstra's compliance with its obligations in respect of the ITA Process; or

(ii) the Adjudicator to otherwise undertake a timely investigation and resolution of the ITA Dispute.

(c) Telstra and the Wholesale Customer agree that they will engage in the ITA Process in good faith and that they will provide all reasonable assistance and information to the Adjudicator.

(d) Nothing in this deed requires a person to disclose information to another person where such disclosure would constitute a breach of law or an obligation of confidence owed to another person, or where the information is privileged.

2.3 Decision of the Adjudicator is final and binding

(a) Telstra and the Wholesale Customer agree that, where a final determination of the Adjudicator is final and binding as specified in paragraph 14 of Schedule 5 of the SSU, each of them will be bound by, and must comply with, the final determination.

(b) Any finding of fact made by the Adjudicator in or for the purpose of a final determination must not be tendered or relied upon by either party in any court proceedings or other dispute resolution process as evidence of those facts.

2.4 Confidentiality of ITA Process

Telstra and the Wholesale Customer agree that:

(a) their participation in the ITA Process; and

(b) all information in connection with the ITA Process, including but not limited to a determination or direction of the Adjudicator,

is confidential and must not be disclosed without the written consent of the other party unless disclosure is required by law or the rules of any exchange on which the disclosing party's securities are listed or quoted.

2.5 ITA Referral Fee

The referring party agrees to pay to the ITA the ITA Referral Fee set by the ITA Adjudicator from time to time in respect of any ITA Dispute referred to the ITA Process.

2.6 Annual ITA Process Fee

(a) Telstra and the Wholesale Customer agree to pay to the ITA an annual administration fee to the Adjudicator (**ITA Process Fee**), in an amount notified by the ITA Adjudicator on an annual basis, in respect of its administrative and incidental costs.

(b) The ITA Process Fee must be paid to the ITA within 20 Business Days after the amount of the ITA Process Fee is notified by the Adjudicator.

2.7 Costs

(a) In the event the Adjudicator makes a direction in a final determination (whether or not that final determination is binding) in relation to the payment of the costs of the ITA Process, including the Adjudicator's costs and any repayment by Telstra of the ITA Referral Fee to the Wholesale Customer, Telstra and the Wholesale Customer agree that they will pay to the ITA any costs they are directed to pay under such final determination.

(b) If Telstra or the Wholesale Customer withdraws from an ITA Dispute by giving notice under paragraph 7.3(a) of Schedule 5 of the Undertaking, the withdrawing party must pay the costs of the ITA Process (including the Adjudicator's costs) as directed by the Adjudicator.

(c) An amount to be paid by a party under clause 2.7(a) or clause 2.7(b) must be paid to the ITA within 20 Business Days after receipt of the relevant final determination.

2.8 Limitation of liability

(a) Each of Telstra and the Wholesale Customer (severally) agree with the ITA that:

(i) neither the ITA or the ITA Adjudicator are liable to pay any compensation or other amount for, or in respect of, any losses caused or contributed to by any act or omission undertaken by or on behalf of the ITA or the ITA Adjudicator in connection with an ITA Dispute, unless such act or omission is shown to have been fraudulent;

(ii) it must not make any claim against the ITA or the ITA Adjudicator to recover any such losses; and

(iii) the ITA and the ITA Adjudicator are each released from all claims it may have in relation to such losses.

(b) For the purpose of this clause 2.8:

(i) **losses** includes all losses, liabilities, damages and claims, and all related costs and expenses (including any and all reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties); and

(ii) **claim** includes any claim, assertion of rights, action, demand or proceeding whether arising in contract, equity, statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.

3 General

(a) Other than clauses 2.5, 2.6, 2.7, 2.8 and this clause 3, the provisions of this deed do not apply to the ITA and any reference to “the parties” or “a party” to this deed should be interpreted as a reference to Telstra and/or the Wholesale Customer (as the context requires) only.

(b) This deed is governed by the laws of Victoria.

(c) Each party to this deed submits to the non-exclusive jurisdiction of the courts of Victoria.

(d) This deed may be executed in any number of counterparts.

(e) This deed will terminate automatically on the earlier of:

(i) the start of the Designated Day; or

(ii) the date on which Part D of the Undertaking otherwise ceases to apply to Telstra for any reason.

Schedule 7 — Regulated Services SLA Agreement

Parties

Telstra Corporation Limited of 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)

[insert name] of [insert address] (**Wholesale Customer**)

Background

(a) Telstra gave to the ACCC an Undertaking dated 9 December 2011 pursuant to section 577A of the *Telecommunications Act 1997* (Cth) (**Undertaking** or **SSU**) and the ACCC accepted the Undertaking on [date].

(b) As part of the Undertaking, Telstra undertook to enter into this deed with the Wholesale Customer on request.

The parties agree

1 Defined terms and interpretation

1.1 Dictionary

(a) Capitalised terms used in this deed have the meaning given in clause 10.

(b) Capitalised terms used in this deed which are not defined in clause 10 have the same meaning as in the Undertaking.

1.2 Interpretation

(a) The rules of interpretation contained in the Undertaking are incorporated into and apply to the terms of this deed.

(b) For the purposes of this deed a reference to a **claim** includes any claim, assertion of rights, action, demand or proceeding whether arising in contract, equity, statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.

1.3 Operation of this deed

The provisions of this deed do not apply to any supply of services or facilities by Telstra to the Wholesale Customer which are not Regulated Services.

2 Telstra will pay Service Level Rebates

(a) Service Level Rebates will apply in relation to all Equivalence and Transparency Metrics other than Metrics 7 and 19.

(b) Subject to clause 5, if Telstra does not meet a Service Level for an applicable Equivalence and Transparency Metric as set out in Schedule 3 of the Undertaking

it will provide the Wholesale Customer with a Service Level Rebate in accordance with, and subject to, the terms of this deed.

3 Service Level Rebates do not apply if there is no Reporting Variance

If there is no Reporting Variance in an Equivalence and Transparency Metric for a Quarter then Service Level Rebates will not apply in relation to that Metric for that Quarter.

4 Payment of Service Level Rebates

(a) Service Level Rebates will be paid by applying a credit against the amount that is to be paid by the Wholesale Customer for the supply of the applicable Regulated Service.

(b) Telstra will determine the Service Level Rebates that are payable to the Wholesale Customer for each Quarter within 10 Business Days after the Operational Equivalence Report for that Quarter has been published by Telstra.

(c) If Telstra determines that Service Level Rebates are payable for a Quarter they will be credited to the Wholesale Customer as part of the next Available Billing Cycle for that Wholesale Customer without the need for the Wholesale Customer to submit a claim.

(d) A Service Level Rebate will not apply, and is not payable by Telstra, in relation to a failure to meet a Service Level if:

(i) the failure to meet the Service Level was due to:

(A) any of the matters or events set out in paragraph 10 of Schedule 3 of the Undertaking;

(B) an act or omission of the Wholesale Customer; or

(C) an event or circumstance which is beyond Telstra's reasonable control and which Telstra could not reasonably have avoided or overcome;

(ii) the applicable Regulated Service to which the Service Level relates is used by the Wholesale Customer to supply a service to another service provider that is entitled to make a claim against Telstra in relation to the same set of events, such as a right of contribution under the provisions of section 118A of the Consumer Protection Act (or its equivalent from time to time); or

(iii) the Wholesale Customer has elected in writing to opt out of the payment of that Service Level Rebate (which may include an election to opt out of payment of all Service Level Rebates of a particular class or kind).

(e) Where the Wholesale Customer is in breach of the terms of a wholesale contract under which Telstra supplies a Regulated Service to the Wholesale Customer or the terms on which the Wholesale Customer accesses or uses LOLO, Telstra may withhold payment of all Service Level Rebates to the Wholesale Customer until that breach has been rectified in accordance the applicable terms.

(f) If a Service Level Rebate is paid to a Wholesale Customer in error, Telstra may recover the amount of that Service Level Rebate from the Wholesale Customer (including by applying a set-off against other Service Level Rebates to be paid to that Wholesale Customer).

(g) For the avoidance of doubt:

(i) Service Level Rebates will not be paid where an order is unable to be processed after it has been received due to the unavailability of LOLO (which will be assessed under Metric 21);

(ii) a Service Level Rebate that applies in respect of the supply of a Regulated Service will only be credited against the amount that is to be paid by the Wholesale Customer in respect of that Regulated Service and will not be credited against any other amount that is to be paid by the Wholesale Customer to Telstra, including in respect of other services (including other Regulated Services) that are supplied to that Wholesale Customer;

(iii) Service Level Rebates constitute a liability to apply a credit against amounts owing by the Wholesale Customer only and do not constitute a liability to pay cash amounts to the Wholesale Customer; and

(iv) the Wholesale Customer must not set-off the amount of any Service Level Rebate it has claimed against amounts that it owes to Telstra.

5 Wholesale Customer's other remedies

(a) The Wholesale Customer waives any right to a Service Level Rebate under its wholesale contract in connection with the same event or series of events which gave rise to the entitlement of that Wholesale Customer to a Service Level Rebate under this deed. For clarification, the Wholesale Customer waives no other entitlements in respect of compensation for, or in relation to, the matters to be measured by the Equivalence and Transparency Metrics.

(b) Telstra may at its election set off the amount of any Service Level Rebate against any other amount payable by Telstra to the Wholesale Customer where the obligation to pay that amount arises in connection with the same event or series of events the subject of the relevant Equivalence and Transparency Metric which gave rise to the entitlement of the Wholesale Customer to receive the Service Level Rebate.

(c) Nothing in this clause 5 prevents the Wholesale Customer making an Equivalence Complaint in accordance with clause 19 of the Undertaking or otherwise making a complaint to the ACCC which relates to the supply by Telstra of Regulated Services in accordance with the Undertaking or with Part IV, XIB or XIC of the *Competition and Consumer Act* (Cth) (**CCA**) or under the *Telecommunications Act* (Cth).

6 Term and termination

(a) This deed commences at the beginning of the first Quarter after this deed is executed by the parties.

(b) This deed will terminate automatically on the earlier of:

(i) the date that the wholesale contract under which Telstra supplies the relevant Regulated Services(s) to the Wholesale Customer terminates, expires or otherwise ceases to have effect;

(ii) the start of the Designated Day; and

(iii) the date on which Part D of the Undertaking otherwise ceases to apply to Telstra for any reason.

(c) Telstra may terminate this deed by giving written notice to the Wholesale Customer if:

(i) the Undertaking is amended such that:

(A) Telstra is no longer required to offer to enter into a Regulated Services SLA Agreement with Wholesale Customers which are substantially in the form of the terms of this deed; or

(B) the Undertaking permits Telstra to terminate this deed; or

(ii) the Wholesale Customer commits a breach of clause 5.

7 Dispute resolution

The dispute resolution provisions of the wholesale contract under which Telstra supplies the relevant Regulated Service(s) to the Wholesale Customer are incorporated into, and form part of, this deed as if those provisions were set out in full in this deed (with such changes as are necessary to give those provisions effect in this deed) and will apply in relation to any dispute or difference of any kind between the parties which relates to the subject matter of this deed.

8 Schedule of rebates

The amount of the Service Level Rebates that are to be paid by Telstra under this deed will be determined in accordance with the following table:

Metric	Service Level Rebate
1	1 x List Price
2	1 x List Price
3	1 x List Price
4	1 x List Price
5	1 x List Price
6	1 x List Price
8	1 x List Price

Metric	Service Level Rebate
9	1 x List Price
10	1 x List Price
11	1 x List Price
12	1 x List Price
13	1 x List Price
14	1 x List Price
15	1 x List Price
16	1 x List Price
17	1 x List Price
18	1 x List Price
20	1 x List Price
21	List Price x (Average Hourly Order Rate x Total Number of Hours Outage)

9 General

(a) The GST and other tax related provisions of the wholesale contract under which Telstra supplies the relevant Regulated Service(s) to the Wholesale Customer are incorporated into, and form part of, this deed as if those provisions were set out in full in this deed (with such changes as are necessary to give those provisions effect in this deed).

(b) The confidentiality provisions of the wholesale contract under which Telstra supplies the relevant Regulated Service(s) to the Wholesale Customer are incorporated into, and form part of, this deed as if those provisions were set out in full in this deed (with such changes as are necessary to give those provisions effect in this deed). For this purpose, the amount of any Service Level Rebates paid to the Wholesale Customer and any information that is disclosed to the Wholesale Customer under or relating to the subject matter of this deed will be deemed to be confidential.

(c) This deed is governed by the laws of Victoria.

(d) Each party to this deed submits to the non-exclusive jurisdiction of the courts of Victoria.

(e) This deed may be executed in any number of counterparts.

(f) If:

(i) the terms of the Regulated Services SLA Agreement set out in this Schedule 7 of the Undertaking are varied; and

(ii) Telstra notifies the Wholesale Customer that the variation is to be incorporated into the terms of this deed,

the terms of this deed will be automatically amended to incorporate that variation.

10 Dictionary

For the purpose of this deed:

(a) **Available Billing Cycle** means the billing cycle which next commences immediately after Telstra makes the determination required by clause 4(b) above;

(b) **Average Hourly Order Rate** means, in respect of a Quarter, the average number of firm orders to provision a Regulated Service placed by the Wholesale Customer per hour during the previous Quarter (other than where the order relates to the relocation of a Wholesale ADSL Layer 2 Service, LSS or ULLS);

(c) **List Price** means:

(i) in respect of Metrics 1 to 6 (inclusive), an amount equal to the monthly access price for the supply of the WLR service in the relevant area that is prescribed by the ACCC in an access determination under Division 4 of Part XIC of the CCA from time to time. Where there is no access determination in force the monthly access price for the supply of the WLR service in the relevant area in the previous access determination will prevail until a new interim or final access determination is published by the ACCC;

(ii) in respect of Metrics 12 and 13, an amount equal to the monthly access price for the supply of LSS in the relevant area prescribed by the ACCC in an access determination under Division 4 of Part XIC of the CCA from time to time. Where there is no access determination in force the monthly access price for the supply of LSS in the relevant area in the previous access determination will prevail until a new interim or final access determination is published by the ACCC;

(iii) in respect of Metrics 14, 15 and 16, an amount equal to the monthly access price for the supply of ULLS in the relevant area prescribed by the ACCC in an access determination under Division 4 of Part XIC of the CCA from time to time. Where there is no access determination in force the monthly access price for the supply of ULLS in the relevant area in the previous access determination will prevail until a new interim or final access determination is published by the ACCC;

(iv) in respect of Metrics 8 to 11 (inclusive), an amount equal to the monthly Wholesale ADSL Reference Price in the relevant area as determined in accordance with Schedule 8;

(v) in respect of Metrics 17 and 18, an amount equal to $100;

(vi) in respect of Metric 20, an amount equal to the annual charge payable by the Wholesale Customer for a single rack space in the relevant exchange, divided by 12; and

(vii) in respect of Metric 21, an amount equal to $5.00;

(d) **Outage Time** has the same mean as in paragraph 9(c)(ii) of Schedule 3 of the Undertaking;

(e) **Service Level** means, in respect of a Metric, the applicable Service Level for that Metric as set out in Schedule 3 of the Undertaking;

(f) **Service Level Rebate** means a rebate payable by Telstra to the Wholesale Customer in accordance with, and subject to, the terms of this deed for a failure to meet a Service Level; and

(g) **Total Number of Hours Outage** means, in respect of a Quarter, the lesser of:

(i) an amount equal to the Outage Time for that Quarter, divided by 60; and

(ii) 100.

Schedule 8 — Telstra Reference Prices

1 Telstra to publish a Rate Card with Reference Prices

1.1 Rate Cards

Telstra will publish and maintain a Rate Card with Reference Prices for each of the following Reference Services:

(a) ULLS;

(b) LSS;

(c) PSTN OA

(d) PSTN TA

(e) LCS

(f) WLR

(g) DTCS

(h) MTAS;

(i) Wholesale ADSL Layer 2 Service (including the standard early termination charge(s));

(j) TEBA; and

(k) any future declared service.

1.2 Determination of Reference Prices

(a) The Reference Prices for each of ULLS, LSS, PSTN OA, PSTN TA, LCS, WLR, MTAS and DTCS will be those prices specified for each Reference Service from time to time in any of the following (in order of precedence specified by the CCA):

(i) a binding rule of conduct made by the ACCC and in force under section 152BD of the CCA;

(ii) a final access determination made by the ACCC and in force under section 152BC of the CCA; or

(iii) an interim access determination made by the ACCC and in force under section 152BCG of the CCA.

(b) Telstra is not required to publish a Reference Price in respect of any of ULLS, LSS, PSTN OA, PSTN TA, LCS, WLR, MTAS, DTCS or other declared service if and for the period that there is no final access determination, interim access determination or binding rule of conduct in force specifying price terms for the relevant service.

(c) Where pricing in an access determination or binding rule of conduct exists but does not apply in respect of any of the services listed in paragraph 1.1 supplied by

Telstra by virtue of any exemption or exclusion provided for by the access determination or binding rule of conduct, the Reference Price for the relevant service will be equal to the charge as specified in the Wholesale Section of the Our Customer Terms or other price list published by Telstra on its website from time to time which Telstra makes available to Wholesale Customers as the commercial "list price" for that service.

(d) Where the ACCC:

(i) declares a service under Part XIC which has not previously been declared and specifies a price for that declared service in an access declaration or a binding rule of conduct; or

(ii) specifies for the first time a price for an existing declared service in an access determination or a binding rule of conduct which was previously a commercially negotiated charge,

Telstra must:

(iii) within 5 business days of the ACCC's decision, publish a new Rate Card which includes the new Reference Price equal to the price specified by the ACCC; and

(iv) within 3 months of the ACCC decision or such further period allowed by the ACCC, provide the ACCC with an explanation of how the Internal Wholesale Price(s) and External Wholesale Price(s) will be calculated and included in the TEM Reports to take account of the new Reference Prices; and

(v) include the new Internal Wholesale Price(s) and External Wholesale Price(s) in the TEM Report for each subsequent Reporting Period, commencing with the period immediately following the Reporting Period during which Telstra provided the explanation under paragraph (d)(iv).

(e) Telstra's obligations to:

(i) include a Reference Price for a declared service in the Rate Card (and to supply that service at that Reference Price in accordance with this Undertaking); and

(ii) report on an Internal Wholesale Price and an External Wholesale Price relating to that service in the TEM Reports for that service,

will cease to apply:

(iii) if the declaration of the relevant service is determined by a court to be invalid, unlawful or otherwise of no effect; or

(iv) to the extent that the provision of the access determination or binding rule of conduct specifying the relevant price which is the Reference Price is determined by a court to be invalid, unlawful or otherwise of no effect.

(f) Subject to paragraph 1.2(d), the Reference Prices which will apply from time to time for the Wholesale ADSL Layer 2 Service (**Wholesale ADSL Reference Price**) will be determined in accordance with paragraphs 3, 4 and 5 of this Schedule 8.

(g) For clarity, paragraphs 3, 4 and 5 of this Schedule 8 cease to apply if:

(i) the Wholesale ADSL Layer 2 Service becomes a declared service; and

(ii) the ACCC has specified in an access determination or a binding rule of conduct any price in respect of the Wholesale ADSL Layer 2 Service,

in which case the relevant Reference Price will be set in accordance with paragraph 1.2(d) of this Schedule 8.

(h) Except as otherwise specified in an access determination or binding rule of conduct, each Reference Price is intended to reflect the main "list" price (or prices) for the applicable Reference Service. Telstra may levy charges, in addition to the Reference Price, which relate to one off requirements or additional elements of the service or other circumstances (for example, without limitation, to make changes requested by the Wholesale Customer to the service or as a result of any failure by the Wholesale Customer under its wholesale agreement with Telstra).

2 TEBA

(a) Telstra will publish a Reference Price for TEBA that specifies separate prices (being Telstra's standard charges from time to time, as applicable to Carriers and non-Carriers) for each of the following activities or services:

(i) a charge per double sided rack position (for CBD areas, Built-up areas and Country areas) for the first rack and additional racks in each location;

(ii) a charge per single sided rack position (for CBD areas, Built-up areas and Country areas) for the first rack and additional racks in each location;

(iii) DC power annual charge;

(iv) Interconnection Cable annual charge; and

(v) acquirer's cable annual charge.

(b) Without limitation to paragraph 1.2(g), there are a number of additional charges which may be incurred in supplying TEBA which are not included in the Reference Price, including:

(i) charges for administering or undertaking individual construction projects or otherwise assisting Wholesale Customers with TEBA activities, which charges are calculated based on the labour, materials and incidentals expended by Telstra; and

(ii) charges associated with the administration and coordination of TEBA activities, including accepting and processing External Applications, undertaking Preliminary Studies, approving Design and Construction Proposals and participating in on site inspections.

(c) For clarification, while TEBA Reference Prices will be included in the Rate Card, IWPs and EWPs are not required to be established or reported in the TEM Reports unless and until TEBA price-related terms are specified in a binding rule of conduct or access determination in accordance with paragraph 1.2(d).

3 Wholesale ADSL Reference Price

3.1 Fixed RMRC Principles

Notwithstanding any other provision of this Undertaking, during the period that the Wholesale ADSL Layer 2 Service is not a declared service, the calculation of the Reference Price must comply with the following principles:

(a) **Pricing Methodology**: Any price for a Wholesale ADSL Layer 2 Service under this Undertaking will be based on an RMRC;

(b) **Retail Price**: The retail price used to calculate RMRC will reflect the weighted average of the after discount prices Telstra charges for retail ADSL2+ services excluding enterprise and government services, customised services, and customer equipment, and, including a reasonable proportion of prices charged for bundles of retail ADSL2+ services and other services;

(c) **Retail Cost**: The retail cost used to determine RMRC will reflect all retail costs allocated to retail ADSL2+ services associated with the prices included in the calculation of the Retail Price;

(d) **Marginal/Fixed**: The Retail Cost will be divided into fixed and marginal costs, and a proportion of fixed costs will be attributed to Zone 1 customers; and

(e) **Wholesale ADSL price components**: The RMRC will be divided into individual wholesale price components, having regard to reasonable forecasts of the retail equivalent occurrence of those charges (e.g. the retail equivalent of AGVC usage).

3.2 Structure of the Wholesale ADSL Reference Price

(a) Telstra will publish a separate Wholesale ADSL Reference Price in respect of each of Zone 1 and Zone 2, where:

(i) **Zone 1** refers to those geographic areas designated ‘Metropolitan’ from time to time for the purpose of Telstra’s standard pricing of wholesale products and services; and

(ii) **Zone 2** refers to those geographic areas designated ‘Rural’ or ‘Regional’ from time to time for the purpose of Telstra’s standard pricing of other wholesale products and services.

(b) Telstra will notify the ACCC of any change which is made by Telstra to the boundaries of Zone 1 or Zone 2, including by virtue of any change in the defined geographic scope of any of the ‘Metropolitan’, ‘Rural’ or ‘Regional’ regions, within 5 Business Days of the date of any such change.

(c) The Wholesale ADSL Reference Price will take the form of a multi-part tariff which, subject to paragraph 3.8 of this Schedule 8, separately identifies that part of the Wholesale ADSL Reference Price referable to the following elements of the service:

(i) connection charge;

(ii) AGVC charge (per Mbps per month);

(iii) port charge (per SIO per month); and

(iv) any early termination charge (per instance of early termination).

(d) Notwithstanding that Telstra will separately identify the component parts of the Wholesale ADSL Reference Price, it will operate as a fixed bundle. For clarity, Telstra is not required to supply individual elements of the bundle at the price specified in the Rate Card for that element unless all of the service elements are supplied to the Wholesale Customer in accordance with the Wholesale ADSL Reference Price.

(e) The Wholesale ADSL Reference Price will be determined on the basis of a Wholesale ADSL Layer 2 Service that reflects from time to time the average speed and data usage characteristics of Telstra's retail ADSL Layer 2 products, being (as at the Commencement Date):

(i) an ADSL Layer 2 service with a download speed of up to a maximum of 20 Mbps; and

(ii) average AGVC usage as determined in accordance with paragraph 3.3.

3.3 Determination of average AGVC usage

(a) Telstra will, as soon as reasonably practicable after it lodges this Undertaking, and in any event prior to the acceptance of this Undertaking, notify the ACCC of the average AGVC usage amount used by Telstra in the determination of the Wholesale ADSL Reference Price applicable following the Commencement Date in accordance with paragraph 4.1(b).

(b) In determining and updating the average AGVC usage amount used from time to time Telstra will ensure that any amount:

(i) is calculated such that it provides a bona fide and reasonable forecast of retail ADSL data usage for the applicable year; and

(ii) does not include any retail ADSL data usage the cost of which is fully recovered by Telstra through charges or fees other than the retail broadband charge (for example, data usage associated with applications or content the cost of which is fully recovered by Telstra through pay per view charges or content subscriptions).

3.4 The Wholesale ADSL Reference Price calculation

(a) The Zone 1 Wholesale ADSL Reference Price for the Wholesale ADSL Layer 2 Service will be determined as follows:

Wholesale ADSL Reference Price = Retail Price – SRMTRC – Fixed TRC_1

Where:

Retail Price is the retail yield per SIO for Telstra's retail ADSL2+ products, determined in accordance with paragraph 3.5;

SRMTRC is the short run marginal component of Total Retail Costs incurred in supplying Telstra's retail ADSL products, determined in accordance with paragraph 3.7;

Fixed TRC_1 is the averaged fixed component of Total Retail Costs incurred in supplying Telstra's retail ADSL products determined in accordance with paragraph

3.7 and that Telstra in its discretion elects to include in the calculation of the Zone 1 Wholesale ADSL Reference Price.

(b) The Zone 2 Wholesale ADSL Reference Price for the Wholesale ADSL Layer 2 Service will be determined as follows:

Wholesale ADSL Reference Price = Retail Price – SRMTRC – Fixed TRC_2

Where:

Retail Price is the retail yield per SIO for Telstra's retail ADSL2+ products, determined in accordance with paragraph 3.5;

SRMTRC is the averaged short run marginal component of Total Retail Costs incurred in supplying Telstra's retail ADSL products, determined in accordance with paragraph 3.7;

Fixed TRC_2 is the averaged fixed component of Total Retail Costs incurred in supplying Telstra's retail ADSL products determined in accordance with paragraph 3.7 and that Telstra in its discretion elects to include in the calculation of the Zone 2 Wholesale ADSL Reference Price.

(c) Telstra may choose to allocate any proportion of Fixed TRC to either of the Zone 1 or Zone 2 Wholesale ADSL Reference Prices, provided that:

(i) the entire Fixed TRC is allocated across the Wholesale ADSL Reference Prices for both Zone 1 and Zone 2; and

(ii) there is no double allocation of Fixed TRC.

(d) Unless otherwise impractical, all cost information used in the calculation will be taken directly from the TEM.

3.5 Determination of the Retail Price

(a) When applying the Wholesale ADSL Reference Price calculation, Telstra will adopt a Retail Price which, subject to paragraph 4.2(d) of this Schedule 8 reflects a reasonable and appropriate forward looking view of the likely impact of any current or proposed price changes on the retail yield, taking into account forecast demand for Telstra's retail high speed ADSL2+ products.

(b) In accordance with paragraph 3.3(b), Telstra will remove from the retail yield any revenues derived from applications or content which Telstra charges for separately to the connection, rental or usage charge for the broadband connection.

3.6 Determination of Total Retail Costs

Total Retail Costs are the retail costs incurred in the supply of ADSL. They do not include costs would that would similarly be incurred in the supply of wholesale ADSL.

(a) Total Retail Costs are to be derived from the "Retail ADSL" product item in TEM.

(b) The "Retail ADSL" product item in TEM includes costs, for example DSLAMs and transmission, applicable to the supply of both retail ADSL products and Wholesale ADSL Layer 2 products. In determining Total Retail Costs, Telstra will determine the proportion of the "Retail ADSL" product item in TEM which relates to the retail costs incurred by Telstra in the supply of retail ADSL services, and the remaining

proportion that is similarly incurred in the supply of the Wholesale ADSL Layer 2 Service. Total Retail Costs will include the total of the proportion of costs determined to relate to the retail costs incurred by Telstra in the supply of retail ADSL services and none of the proportion of costs determined to be similarly incurred in the supply of the Wholesale ADSL Layer 2 Service.

(c) Telstra will specify the proportion of the Retail ADSL product item which constitutes Total Retail Costs in the TEM Guidelines published in accordance with paragraph 5 in Schedule 9.

(d) The allocation of cost items under paragraph 3.6(b) of this Schedule 8 may be varied:

(i) at any time by agreement between Telstra and the ACCC; and

(ii) otherwise in the course of any review of the operation of this Schedule 8, as contemplated by paragraph 5 of this Schedule 8.

3.7 Determination of SRMTRC and Fixed TRC

(a) SRMTRC will be calculated as the incremental retail costs that Telstra incurs for each incremental unit of demand.

(b) Fixed TRC will be calculated as that amount of Total Retail Costs that are not SRMTRC.

(c) Telstra will specify in the TEM Guidelines published in accordance with paragraph 5 in Schedule 9:

(i) those individual cost items (or the relevant proportion of cost items) in the TEM Report, which will constitute SRMTRC; and

(ii) the proportion of total Fixed TRC, which will be allocated by Telstra to each of Zone 1 and Zone 2,

for the purpose of calculating the Wholesale ADSL Reference Price.

(d) The allocation of line items constituting SRMTRC and the proportion of Fixed TRC allocated between Zones, under paragraph 3.7(c) may be varied:

(i) at any time by agreement between Telstra and the ACCC; and

(ii) otherwise in the course of any review of the operation of this Schedule 8, as contemplated by paragraph 5 of this Schedule 8.

3.8 Principles for allocation of the Wholesale ADSL Reference Price between individual service elements

The Wholesale ADSL Reference Price will be allocated between port, AGVC, connection and early termination charges in the following manner:

(a) the monthly port charge will be calculated as the Wholesale ADSL Reference Price:

(i) less the connection charge amortised over 24 months; and

(ii) less the AGVC charge multiplied by the average AGVC usage referred to in paragraph 3.2(e) and as updated from time to time in accordance with paragraph 3.3; and

(iii) less the wholesale revenue from early termination charges earned over the relevant period, divided by the total number of ADSL services and divided by the number of months in the relevant period;

(b) the connection charge will be the standard connection charge applied, from time to time;

(c) the AGVC charge will be the standard AGVC charge applied by Telstra from time to time; and

(d) the early termination charge will be the early termination charge for terminating each Wholesale ADSL Layer 2 Service actually applied by Telstra and does not include an early termination charge payable because a Wholesale Customer which contracted to migrate a Wholesale ADSL Layer 2 Service to a Telstra NBN service decides not to proceed to do so.

3.9 Retail pricing for Government and Enterprise products excluded

This paragraph 3 of Schedule 8 will not apply in respect of any retail ADSL pricing or costs which relate to products or plans targeted at Government and Enterprise customers.

4 Updating the Wholesale ADSL Reference Price

4.1 Initial Wholesale ADSL Reference Price

(a) The initial Wholesale ADSL Reference Price will be published by Telstra within 3 months of the Commencement Date, and will have effect from the date of publication until varied in accordance with this paragraph 4 of Schedule 8.

(b) The Wholesale ADSL Reference Price will be published in the following form:

Element	Zone 1	Zone 2
Connection charge		
AGVC		
Port charge (per month)		
Early termination charge		

4.2 Updating the Wholesale ADSL Reference Price

(a) Subject to paragraph 4.4, Telstra undertakes to perform the calculation set out in paragraph 3.4 to determine whether a change is required to the Wholesale ADSL Reference Price:

(i) as soon as reasonably practicable after a TEM Report is submitted to the ACCC for a Reporting Period ending on either 31 December or 30 June of any year in accordance with Schedule 9, provided that this would lead to a change in the Wholesale ADSL Reference Price of more than +/-3%; and

(ii) before Telstra introduces any price change for a retail ADSL Layer 2 service which would have a material effect upon the Retail Price.

(b) If, having undertaken the Wholesale ADSL Reference Price calculation for a half financial year under paragraph 4.2(a)(i), Telstra determines that a change in the Wholesale ADSL Reference Price is required to be implemented, it will as soon as reasonably practicable and in any event within 10 Business Days:

(i) update the published Rate Card to include any necessary change to the Wholesale ADSL Reference Price for the Wholesale ADSL Layer 2 Service;

(ii) notify Wholesale Customers of the Wholesale ADSL Reference Price change, including for example by including a general notice on the Wholesale Customer Portal; and

(iii) notify the ACCC of the change in the Wholesale ADSL Reference Price.

(c) If Telstra determines that a proposed retail ADSL price change under paragraph 4.2(a)(ii) would require a change in the Wholesale ADSL Reference Price, Telstra will not make available the service at the new retail price unless and until it has:

(i) updated the published Rate Card to include any necessary change to the Wholesale ADSL Reference Price;

(ii) notified Wholesale Customers of the Wholesale ADSL Reference Price change, including for example by including a general notice on the Wholesale Customer Portal; and

(iii) notified the ACCC of the change in the Wholesale ADSL Reference Price and the material retail price change to which it relates.

(d) The following retail price changes will not be subject to paragraph 4.2(a)(ii):

(i) a price change to retail ADSL Layer 2 service(s) which is immaterial, in that it would give rise to a change in the Retail Price of 5% or less;

(ii) any customised or other specialised pricing which is not promoted to the mass market, including any trial pricing which is only made available to a small group of customers;

(iii) any bona fide short term discount or promotional offer and provided that:

(A) from the date of the first release of the discount or promotional offer into the market, it does not continue for more than 6 months; and

(B) Telstra has not previously had any substantially similar discount or promotional offer in the market in respect of a retail ADSL broadband plan at any time within 6 months prior to the date of the first release of the discount or promotional offer into the market.

(e) This paragraph 4.2 will not apply in respect of any retail ADSL pricing or costs which relate to products or plans targeted at Government and Enterprise customers.

4.3 Telstra to provide copies of all Wholesale ADSL Reference Price calculations and respond to ACCC requests for information about an updated Wholesale ADSL Reference Price

(a) At the same time as Telstra notifies the ACCC of any change to the Wholesale ADSL Reference Price, it will provide the ACCC with a full confidential version of the calculations used to determine the new Wholesale ADSL Reference Price.

(b) Without limitation to paragraph 4.3(a), Telstra will promptly respond to any request received from the ACCC for more information in relation to a Wholesale ADSL Reference Price change made under this paragraph 4, including providing information to the ACCC in respect of:

(i) a material retail ADSL price change; and

(ii) the Wholesale ADSL Reference Price calculation that was undertaken as the basis for the Wholesale ADSL Reference Price change.

4.4 Wholesale ADSL Reference Price may be suspended if it would lead to sustained below cost prices

(a) Where Telstra determines that the relationship between Telstra's retail ADSL pricing and the Wholesale ADSL Reference Price set out in this Schedule 8 is being manipulated by one or more Wholesale Customers such that Telstra is not able to lower its retail ADSL prices in order to compete with lower competitive offers already widely available in the market, without leading to a Wholesale ADSL Reference Price being set which:

(i) is inconsistent with pricing which would be made available by an efficient supplier in a workably competitive market; or

(ii) would be likely to require Telstra to set the Wholesale ADSL Reference Price for a sustained period at a level below a relevant measure of Telstra's cost of supply,

then Telstra may, prior to undertaking the Wholesale ADSL Reference Price calculation, refer the matter to the ACCC and request that the Wholesale ADSL Reference Price be suspended.

(b) If the ACCC accepts that the circumstances contemplated in paragraph 4.4(a) have occurred, or would be likely to occur if Telstra was required to undertake the Wholesale ADSL Reference Price calculation, it must permit Telstra to lower retail ADSL prices in order to meet the competitive pricing without being required to undertake the Wholesale ADSL Reference Price calculation or to update the Wholesale ADSL Reference Price. For clarity, nothing in this paragraph 4.4 restricts or prevents any of the ACCC's powers under Part IV or XIB of the CCA in respect of any such retail pricing offer.

(c) If the ACCC does not accept that the circumstances contemplated in paragraph 4.4(a) have occurred, or would be likely to occur if Telstra was required to undertake the Wholesale ADSL Reference Price calculation, Telstra will not be permitted to lower retail ADSL prices without being required to undertake the

Wholesale ADSL Reference Price calculation and to update the Wholesale ADSL Reference Price as appropriate, in accordance with this paragraph 4.

(d) Telstra will not make the Wholesale ADSL Reference Price available to, and will not respond to any competitive pricing of, any Related Entity.

5 Review of Wholesale ADSL Reference Price calculation

5.1 ACCC review

(a) At any time after the third anniversary of the Commencement Date, where the ACCC reasonably considers that the Wholesale ADSL Reference Price calculation, or the manner of its operation, no longer complies with:

(i) the SSU Guidance; and

(ii) generally accepted economic principles or practice,

it may notify Telstra that it is commencing a review of the operation of this Schedule 8.

(b) A notification under paragraph 5.1(a) must specify either:

(i) amendments which the ACCC considers may be required to be made to the Wholesale ADSL Reference Price calculation or the manner of its operation; or

(ii) that the ACCC considers the operation of the Wholesale ADSL Reference Price should be suspended due to a fundamental change in the operation or competitive dynamics of the market which makes it inappropriate to link the retail and wholesale prices of ADSL as a standalone product, in the manner contemplated by the Wholesale ADSL Reference Price calculation. For example, where a significant proportion of ADSL services supplied in the market are promoted at below cost prices or are no longer sold as a standalone service but form part of bundled “triple play” content or other offers.

(c) As soon as reasonably practicable after the ACCC gives notice to Telstra under paragraph 5.1(a), both parties must meet to seek to agree any amendments to, or suspension of, the Wholesale ADSL Reference Price calculation, in order to ensure it complies with the SSU Guidance and generally accepted economic principles or practice.

(d) If Telstra and the ACCC are not able to agree on the steps to take in response to the notice, the parties must within 20 Business Days of the ACCC giving notice to Telstra under paragraph 5.1(a), each notify the other party of a person (the **Appointer**) that will be its representative in jointly appointing an independent economic expert to review the operation of the Wholesale ADSL Reference Price calculation.

(e) As soon as reasonably practicable, the Appointers must consult in good faith and agree a suitably skilled and experienced economist to undertake the review, being an economist who is:

(i) independent of both parties;

(ii) has suitable experience dealing with economic and market issues in the telecommunications sector; and

(iii) reasonably available to review the request and respond within a reasonable period.

(f) Telstra will pay the reasonable costs of the independent economic expert, provided that the ACCC does not commence any more than one review in any consecutive 18 month period (if more than one review is commenced within an 18 month period the ACCC will bear the costs of any such additional reviews).

(g) The independent economic expert must review the notice issued by the ACCC, including taking into account any further or additional information provided by Telstra or Wholesale Customers.

(h) As soon as reasonably practicable, and in any event within 60 Business Days of being appointed, the independent economic expert must submit a report to the ACCC and Telstra which sets out the expert's view of whether:

(i) the Wholesale ADSL Reference Price calculation or the manner of its operation continues to be consistent with the SSU Guidance and generally accepted economic principles or practice; and

(ii) any amendments or changes which the independent economic experts recommends be made to the Wholesale ADSL Reference Price calculation.

(i) The ACCC may publish the independent economic expert's report (subject to any confidential information identified by Telstra) and seek views on the expert's findings and recommended response.

(j) As soon as reasonably practicable after the ACCC has completed any consultation under paragraph 5.1(i), Telstra and the ACCC will meet to seek to agree any changes to the Wholesale ADSL Reference Price calculation, or the manner of its operation, that they agree would improve its consistency with the SSU Guidance or with generally accepted economic principles or practice.

5.2 Telstra request for review

(a) At any time after the third anniversary of the Commencement Date, where Telstra reasonably considers that the Wholesale ADSL Reference Price calculation, or the manner of its operation, no longer complies with:

(i) the SSU Guidance; or

(ii) generally accepted economic principles or practice,

it may submit a request to the ACCC for a review of the operation of this Schedule 8.

(b) A request under paragraph 5.2(a) must specify either:

(i) amendments which Telstra considers may be required to be made to the Wholesale ADSL Reference Price calculation or the manner of its operation; or

(ii) that Telstra considers the Wholesale ADSL Reference Price for the Wholesale ADSL Layer 2 Service should be suspended entirely due to a

fundamental change in the operation or competitive dynamics of the market which makes it inappropriate to link the retail and wholesale prices of ADSL as a standalone product, in the manner contemplated by the Wholesale ADSL Reference Price calculation. For example, where a significant proportion of ADSL services supplied in the market are promoted at below cost prices or are no longer sold as a standalone service but form part of bundled content or other offers.

(c) As soon as reasonably practicable after Telstra submits a request under paragraph 5.2(a), both parties must meet to seek to agree any amendments to, or suspension of, the Wholesale ADSL Reference Price calculation, in order to ensure it complies with the SSU Guidance and generally accepted economic principles or practice.

(d) If Telstra and the ACCC are not able to agree on the steps to take in response to a request by Telstra, the parties must within 20 Business Days of Telstra lodging a request under this paragraph 5.2, each notify the other party of a person (the **Appointer**) that will be its representative in jointly appointing an independent economic expert to assess Telstra's request.

(e) As soon as reasonably practicable, the Appointers must consult in good faith and agree a suitably skilled and experienced economist to assess Telstra's request, being an economist who is:

(i) independent of both parties;

(ii) has suitable experience dealing with economic and market issues in the telecommunications sector; and

(iii) reasonably available to review the request and respond within a reasonable period.

(f) Telstra will pay the reasonable costs of the independent economic expert.

(g) The independent economic expert must review the request lodged by Telstra, including taking into account any further or additional information provided by Telstra, the ACCC or Wholesale Customers.

(h) As soon as reasonably practicable, and in any event within 60 Business Days of being appointed, the independent economic expert must submit a report to the ACCC and Telstra which sets out the expert's view of whether the Wholesale ADSL Reference Price calculation or the manner of its operation would be likely to be more consistent with the SSU Guidance and generally accepted economic principles or practice, if Telstra's request was accepted than if it was rejected.

(i) The ACCC may publish the independent economic expert's report (subject to any confidential information identified by Telstra) and seek views on the expert's findings and recommended response.

(j) Within 60 Business Days of receiving a report from the independent economic expert, the ACCC must issue a final determination supported by reasons, which states whether it accepts or rejects Telstra's request, and having regard to the report and recommendation of the independent economic expert.

Schedule 9 — TEM Reporting and Internal Wholesale Prices

1 Background

(a) The TEM financial management reporting system is the internal accounting system that Telstra uses for business management purposes. It is derived independently from, and may deliver different outputs to other accounting systems used by Telstra for regulatory purposes.

(b) The TEM financial management reporting system relies on the same financial accounts as are used for public reporting purposes, which are prepared in accordance with generally accepted accounting principles and standards as are applicable in Australia. Without limitation, revenue, expense, depreciation and capital will be attributed to products and may be attributed to segments in accordance with the same standard attribution methods and practices used in the TEM when applied for internal business purposes, and as varied from time to time.

(c) The TEM financial management reporting system is and will remain a primary source of cost, revenue and profitability information used by Telstra as an input for business management decisions, including:

(i) product management and pricing decisions; and

(ii) remuneration and other management incentives, to the extent that the determination of those incentives relates to profitability levels.

(d) Telstra will keep the ACCC informed of any changes or developments in the TEM financial management reporting system that affects the TEM Report by preparing and maintaining a set of reporting guidelines in accordance with paragraph 5.

2 Reporting Period

2.1 TEM Reports

(a) A confidential TEM Report will be prepared for:

(i) the period commencing 1 January 2012 and ending 31 March 2012; and

(ii) subsequently, for each three month period commencing on 1 April 2012,

(each, a **Reporting Period**).

(b) The TEM Report for the first Reporting Period will be provided to the ACCC by no later than 31 August 2012.

(c) The TEM Report for each subsequent Reporting Period will be provided to the ACCC within 60 days after the end of the Reporting Period to which it relates.

2.2 Public TEM Reporting

Telstra will provide the following non-confidential information and reports to the ACCC under this Schedule 9 for publication:

(a) the list of Internal Wholesale Prices and External Wholesale Prices specified in paragraph 4;

(b) a non-confidential version of the TEM Report, which will be provided to the ACCC every 6-months (on the half year and the full year periods), at the same time as the primary and confidential TEM Report is submitted.

3 Reporting Requirements

3.1 Reportable Products

(a) Subject to paragraph (d), the TEM Report will cover the following wholesale products (together, the **Reportable Wholesale Products**):

(i) ULLS;

(ii) LSS;

(iii) WLR;

(iv) LCS;

(v) PSTN Originating and Terminating Access (**PSTN OTA**); and

(vi) Wholesale ADSL products.

(b) The TEM Report will also cover the following retail products supplied by Telstra over the Copper Network (together, the **Reportable Retail Products**):

(i) line rental and subscription;

(ii) local calls;

(iii) national long distance calls;

(iv) international direct calls;

(v) fixed to mobile calls;

(vi) 13 and 18 calls; and

(vii) retail ADSL products.

(c) The TEM Report will also separately include as a cost item for applicable Reportable Retail Products:

(i) MTAS (fixed to mobile); and

(ii) transmission,

but only to the extent that these costs can be identified.

(d) Telstra will modify the TEM Report, from time to time, as provided in paragraph 1.2(d) of Schedule 8.

3.2 Elements for TEM Reports

(a) The TEM Report will include, for the relevant Reporting Period to which it relates and for each of the Reportable Products:

(i) demand measure;

(ii) revenue;

(iii) expenses;

(iv) depreciation and amortisation;

(v) average of opening and closing book value based on historic cost; and

(vi) pre-tax WACC.

(b) The TEM Report will also include, for the relevant Reporting Period to which it relates and for each of the Reportable Products:

(i) Earnings before interest, taxation, depreciation and amortisation (**EBITDA**), calculated in accordance with the following formula:

EBITDA = revenue – expenses;

(ii) EBITDA as a percentage of sales revenue;

(iii) Earnings before interest and taxation (**EBIT**), calculated in accordance with the following formula:

EBIT = EBITDA – Depreciation and amortisation;

(iv) EBIT as a percentage of sales revenue;

(v) Economic return, calculated in accordance with the following formula:

Economic return = EBIT – (pre-tax WACC x Average book value); and

(vi) Economic return as a percentage of average book value.

4 Internal and External Wholesale Prices

4.1 Internal Wholesale Prices

(a) Each TEM Report will include the Internal Wholesale Price (**IWP**) for each of the following Reportable Wholesale Products and Reportable Product Bundles for the Reporting Period:

(i) WLR – specifying an IWP for in-place and new connection;

(ii) ADSL – specifying an IWP for:

(A) in-place and new connection; and

(B) Zone 1 and Zone 2.

(iii) ULLS;

(iv) LSS;

(v) LCS;

(vi) PSTN OTA;

(vii) MTAS;

(viii) the following Reportable Product Bundles:

(A) a voice bundle (comprising WLR, LCS, and PSTN OTA);

(B) a voice and ADSL bundle (comprising WLR, LCS, PSTN OTA and ADSL); and

(C) all of the Reportable Wholesale Products in paragraphs 4.1(a)(i) to 4.1(a)(vi) .

(b) The IWP for each Reportable Wholesale Product (except MTAS) and Reportable Product Bundle will be calculated as:

IWP = (expenses + depreciation and amortisation + (pre-tax WACC x average book value)) / demand

(c) The IWP and EWP for MTAS will both be the current regulated price for MTAS specified from time to time in an applicable final access determination, interim access determination or binding rule of conduct.

4.2 External Wholesale Prices

(a) Each TEM Report will include the External Wholesale Price (**EWP**) for each of the Reportable Wholesale Products and Reportable Product Bundles set out in paragraph 4.1 for the Reporting Period.

(b) The EWP for each Reportable Wholesale Product and Reportable Product Bundle will be calculated as:

EWP = revenue / demand

4.3 Further reporting on charge types and product variants

(a) In addition to the Internal Wholesale Price, for each Reportable Wholesale Product listed in column 1 of Table 1, Telstra will also separately specify the individual charge types listed in column 2.

Table 1

Reportable Wholesale Product	Charge types to be specified
WLR	Connection charge Rental charges

Reportable Wholesale Product	Charge types to be specified
ADSL	Connection charge
	AGVC charge
	Rental charges
ULLS	Connection charge
	Rental charges
LSS	Connection charge
	Rental charges
Local calls	Usage charges
PSTN OTA	Usage charges
MTAS	Usage charges

(b) Telstra will include in the TEM Guidelines information about the allocation methodology used by Telstra to allocate reported costs as set out in Table 1:

(i) to individual charge types; and

(ii) between the relevant Reportable Wholesale Products.

4.4 Substantiation Reports

(a) Where the TEM Report shows that the EWP for a Reportable Product Bundle is not within +/- 5% of the IWP for that Reportable Product Bundle over the Reporting Period, Telstra will submit a Substantiation Report to the ACCC at the same time as it provides the TEM Report for that Reporting Period.

(b) A Substantiation Report will include an explanation for the difference between the IWP and the EWP for the Reportable Product Bundle.

(c) Where a Substantiation Report has been submitted for any Reportable Product Bundle, Telstra will have regard to the reasons set out in that Substantiation Report and the underlying TEM Report when contributing to any subsequent ACCC regulated pricing process, where a decision by the ACCC in that process could be used to align the IWP and EWP for that bundle.

5 TEM Guidelines

5.1 Telstra to maintain TEM Guidelines

(a) Telstra will prepare and maintain a set of guidelines for preparing TEM Reports (**TEM Guidelines**).

(b) The TEM Guidelines will include:

(i) a description of the form in which TEM Reports will be provided;

(ii) the process for deriving each of the items listed in paragraph 3.2 of this Schedule 9 from the Telstra Economic Model; and

(iii) the process and methodology used for allocating revenue and cost amounts to the reportable products in the Telstra Economic Model;

(iv) the cost items forming part of the Total Retail Cost of the Reference Wholesale ADSL Layer 2 Service under paragraph 3.6 of Schedule 8;

(v) those agreed cost items (or relevant proportion of cost items) that constitute SRMTRC in respect of the Reference Wholesale ADSL Layer 2 Service under paragraph 3.7 of Schedule 8;

(vi) the proportion of total Fixed TRC which is allocated by Telstra to each of Zone 1 and Zone 2 under paragraph 3.7 of Schedule 8; and

(vii) information in respect of the allocation of reported costs to individual charge types and between Reportable Wholesale Products under paragraph 4.3 of this Schedule 9.

5.2 Allocation methodology in TEM Guidelines

Telstra will ensure that the process and methodology used for allocating revenue and cost amounts (including expenses and cost of capital) to the reportable products in TEM, as set out in the TEM Guidelines from time to time, will ensure that:

(a) it applies allocation factors to allocate the value of each revenue or cost to products and segments, such that:

(i) each revenue or cost is allocated to only the products or segments that the revenue or cost (or any proportion of the revenue or cost) relate to;

(ii) any revenue or cost is not allocated more than once to any product or segment;

(iii) with respect to each revenue or cost, the sum of the amounts allocated to all products and services is equal to the total value of that revenue or cost; and

(iv) with respect to costs, the total amount, regardless of excess capacity, will be allocated to products and segments based on the applicable allocation factor.

(b) to the extent that it is reasonable and practicable to do so, the allocation factors must:

(i) reflect causal relationships between the revenue or cost and the products or segments using the revenue or cost; and

(ii) be based on a common measure of usage by the products or segments being allocated to.

(c) to the extent that it is not reasonable or practicable to determine allocation factors consistent with paragraph 5.2(b):

(i) revenue or cost amounts should be divided into sub revenue and cost pools, which should then be allocated to products and segments using allocation factors consistent with paragraph 5.2(b); otherwise,

(ii) the allocation factors must reflect a common measure that reflects a general proxy for usage between the revenue or cost and products or segments using the revenue or cost.

5.3 Provision of TEM Guidelines to ACCC

(a) The first version of the TEM Reporting Guidelines will be provided to the ACCC no later than 31 March 2012 and will apply to TEM Reports prepared for the 2011/12 Financial Year and for each subsequent Financial Year until the TEM Reporting Guidelines are updated in accordance with paragraph 5.3(b) of this Schedule 9.

(b) The TEM Guidelines will be reviewed annually by Telstra and where material amendments are made an updated version will be provided to the ACCC no later than 31 January of each year after 2012, during the operation of Part D of this Undertaking.

6 Certification and compliance reporting

6.1 Certification by Chief Financial Officer

Each TEM Report must include certification by the Chief Financial Officer or delegate that the TEM Report has been prepared in compliance with this Schedule 9.

6.2 Annual TEM Compliance Report

(a) Telstra will submit to the ACCC an internal report under this paragraph 6 for each Financial Year during the operation of Part D of this Undertaking commencing from the 2011-12 Financial Year (**Annual TEM Compliance Report**).

(b) The Annual TEM Compliance Report submitted under paragraph 6.2(a) will report on the extent to which Telstra has complied with this Schedule 9 in preparing the TEM Reports prepared and submitted in respect of the previous Financial Year.

(c) Telstra will submit each Annual TEM Compliance Report to the ACCC within 120 days after the end of the Financial Year to which it relates.

6.3 Engagement of independent auditor in relation to TEM Reports and the Annual TEM Compliance Report

(a) Telstra will engage an independent auditor in relation to its preparation of:

(i) the TEM Reports; and

(ii) the Annual TEM Compliance Report,

for the relevant reporting year.

(b) The independent auditor's report will be provided to the ACCC at the same time as the Annual TEM Compliance Report.

(c) For the purpose of paragraph 6.3(a) of this Schedule 9, the engagement means "Agreed Upon Procedures" of the kind covered by Australian Auditing Standards AUS 904 (as amended, updated or replaced from time to time).

6.4 Confidentiality

Except where otherwise specified, each TEM Report, Substantiation Report, Annual TEM Compliance Report and independent auditor's report will be provided to the ACCC on a confidential basis.

Schedule 10 — Dispute Resolution Process for Price Equivalence Disputes

1 Price Equivalence Disputes

1.1 Application of this paragraph

If the relevant Price Equivalence Dispute is a PE Billing Dispute, the provisions of this paragraph 1 will apply.

1.2 Injunctive or interim relief

(a) Except where a party seeks urgent injunctive or similar interim relief, the procedures contained in paragraph 1 must be invoked before it begins legal or regulatory proceedings (**Litigation**) in relation to any PE Billing Dispute.

1.3 PE Billing Dispute Notice

(a) In the event of a PE Billing Dispute Customer must submit by e-mail a PE Billing Dispute Notice within:

(i) 65 Business Days after the Bill Issue Date, if the PE Billing Dispute relates to a Rebill Reference Service; or

(ii) 6 months of the Bill Issue Date, if the PE Billing Dispute relates to any other Reference Service.

(b) If a PE Billing Dispute Notice is lodged prior to the Due Date for payment of the disputed Bill, Customer may withhold payment of the amount which is disputed until such time as the PE Billing Dispute has been resolved. A PE Billing Dispute Notice cannot be lodged on or after the Due Date for payment unless the Bill has been paid in full.

(c) A PE Billing Dispute must be initiated in good faith by Customer and must comply with the provisions of this section.

(d) Within 3 Business Days of service of a PE Billing Dispute Notice, Telstra must either acknowledge receipt of the PE Billing Dispute Notice and provide Customer with a reference number, or reject the PE Billing Dispute Notice.

(e) Telstra is entitled to reject any PE Billing Dispute Notice that is incomplete, contains inaccurate information, is not submitted in good faith or is not submitted in accordance with the requirements set out in paragraph 1.3(a). Customer must contact the billing dispute contact point notified by Telstra from time to time if it does not receive an acknowledgement or reject advice to its PE Billing Dispute Notification within 3 Business Days.

(f) If Telstra rejects a PE Billing Dispute Notice, Customer may, subject to paragraph 1.3(a) above, amend and re-submit the PE Billing Dispute Notice within 5 Business Days of being notified of the rejection. Telstra is entitled to reject any resubmitted PE Billing Dispute Notice that is incomplete, contains inaccurate information, or is not submitted in accordance with the requirements set out under paragraph 1.3(a).

(g) If Customer does not re-submit the PE Billing Dispute Notice within 5 Business Days or Telstra rejects the resubmitted PE Billing Dispute Notice, the PE Billing Dispute is terminated and Customer must pay in full any amount withheld in relation to the disputed Bill.

(h) Telstra may request additional information from Customer before acknowledging or determining a PE Billing Dispute, in which case Customer must provide the requested information within 5 Business Days failing which Telstra may reject the PE Billing Dispute. The time within which Telstra must acknowledge or determine the PE Billing Dispute is extended by the number of Business Days Customer takes to provide that information.

1.4 PE Billing Dispute Determination

(a) If Telstra acknowledges receipt of the PE Billing Dispute Notice, it must investigate the matters raised by the PE Billing Dispute Notice and notify Customer of its decision (**PE Billing Dispute Determination**) with respect to the PE Billing Dispute Notice within 30 Business Days.

(b) The PE Billing Dispute Determination must state the reasons for Telstra's decision and any action to be taken by Telstra or Customer.

(c) Where Customer has lodged a number of PE Billing Disputes concerning a similar issue, Telstra may apply a 'sampling' technique which involves a random selection of the Reference Services or Accounts disputed for the purpose of a detailed analysis. The result of the investigation will be applied across the remaining items disputed.

(d) If Customer does not agree with the PE Billing Dispute Determination, it must object to the PE Billing Dispute Determination within 5 Business Days (unless a longer time, not exceeding 10 Business Days, is agreed) of notification of the PE Billing Dispute Determination. Any objection lodged by Customer must be submitted by e-mail to the Telstra billing dispute contact notified by Telstra from time to time, must be in the standard file format and must state:

(i) what part(s) of the PE Billing Dispute Determination it objects to;

(ii) the reasons for the objection;

(iii) what amount it will continue to withhold payment of; and

(iv) any additional information to support its objection.

(e) If Customer lodges an objection to the PE Billing Dispute Determination, Telstra must review the objection and provide any revised PE Billing Dispute Determination within 5 Business Days of receipt of the objection.

(f) If Customer does not lodge an objection within 5 Business Days, the PE Billing Dispute will be terminated and both parties must comply with the PE Billing Dispute Determination.

1.5 Escalation

(a) If the PE Billing Dispute is not resolved in accordance with paragraph 1.4 above, Customer must provide a written notice (**Escalation Notice**) within 5 Business Days to the Telstra billing dispute contact point notified by Telstra from time to time:

(i) stating why it does not agree with the PE Billing Dispute Determination; and

(ii) seeking escalation of the PE Billing Dispute.

(b) If an Escalation Notice is given, the Telstra representative nominated by Telstra from time to time and a representative of Customer with authority to settle the PE Billing Dispute must meet within 5 Business Days in an effort to resolve the PE Billing Dispute.

(c) If the parties are unable to resolve the PE Billing Dispute in accordance with paragraph 1.5(b), Telstra's nominated commercial manager and a representative of Customer with authority to settle the PE Billing Dispute must meet within 5 Business Days of the meeting referred to in paragraph 1.5(b) in an effort to resolve the PE Billing Dispute.

(d) If the persons identified in paragraph 1.5(b) or 1.5(c) agree on a resolution of the PE Billing Dispute, the PE Billing Dispute is terminated and the parties must comply with the outcome agreed by those persons.

(e) If the PE Billing Dispute cannot be resolved in accordance with this paragraph 1 either party may commence Litigation concerning the subject matter of the PE Billing Dispute.

1.6 Interest

(a) Both parties may charge Interest in respect of any payment outstanding. Interest will accrue daily from the date on which the amount was due to be paid.

1.7 Termination of PE Billing Dispute resolution process

(a) Notwithstanding the provisions of this paragraph 1, after a period of 90 days has elapsed since a PE Billing Dispute Notice has been submitted pursuant to paragraph 1.3(a), either party may terminate the PE Billing Dispute resolution process on 10 Business Days written notice.

1.8 Communications

(a) All discussions and information relating to a PE Billing Dispute must be communicated or exchanged between the parties through the representatives of the parties set out in paragraphs 1.5(b) and 1.5(c) (or their nominees). A party will not be entitled to rely on a statement which has been made, or information which has been provided, in relation to a PE Billing Dispute by any other person.

2 PE General Disputes

2.1 Application of this paragraph

If the relevant Price Equivalence Dispute is not a PE Billing Dispute, the provisions of this paragraph 2 will apply.

2.2 Injunctive or interim relief

(a) Except where a party seeks urgent injunctive or similar interim relief, the procedures contained in this paragraph 2 must be invoked before it begins Litigation in relation to any PE General Dispute.

2.3 Negotiation

(a) In the event of a PE General Dispute, the party claiming that the PE General Dispute has arisen (**Initiating Party**) must provide a written notice (**PE General Dispute Notice**) to the other party (**Recipient Party**) setting out brief details of the PE General Dispute.

(b) If a PE General Dispute Notice is given, the parties must make their nominated Dispute Officers available for the purpose of meeting in an effort to resolve the PE General Dispute. At least one meeting of the Dispute Officers must take place within 10 Business Days of service of the PE General Dispute Notice.

(c) In the event the Recipient Party does not make its Dispute Officer available for a meeting within the time period set out in paragraph 2.3(b), the Initiating Party is entitled to proceed immediately with resolving the PE General Dispute as provided in paragraphs 2.4(a) to 2.4(c) below.

2.4 Alternative Dispute Resolution

(a) If the PE General Dispute is not resolved in accordance with paragraphs 2.3(a) to 2.3(b) above or 2.3(c) applies, either party is entitled to request that the PE General Dispute be referred to one of the processes of alternative dispute resolution identified in the Telstra Wholesale Alternative Dispute Resolution Policy. Any request to refer a PE General Dispute to one of those processes must be made within 2 Business Days of the conclusion of the time period referred to in paragraph 2.3(b).

(b) If a party requests (**Requesting Party**) that a PE General Dispute be referred to one of the processes of alternative dispute resolution identified in the Telstra Wholesale Alternative Dispute Resolution Policy, the other party must notify the Requesting Party within 2 Business Days of receiving the request whether it agrees to participate in the process identified in the request.

(c) If the parties agree to participate in one of the processes of alternative dispute resolution identified in the Telstra Wholesale Alternative Dispute Resolution Policy, the process must be conducted in accordance with the Telstra Wholesale Alternative Dispute Resolution Policy.

2.5 Litigation

(a) If the parties do not agree to participate in any of the processes of alternative dispute resolution identified in the Telstra Wholesale Alternative Dispute Resolution Policy, either party may commence Litigation concerning the subject matter of the PE General Dispute.

2.6 Communications

(a) All discussions and information relating to a PE General Dispute must be communicated or exchanged between the parties through each party's nominated Dispute Officer. A party will not be entitled to rely on a statement which has been made, or information which has been provided, in relation to a PE General Dispute by a representative of the other party who is not a Dispute Officer.

2.7 PE Billing Disputes

(a) The process for resolving disputes as set out in this paragraph 2 cannot be used for the resolution of PE Billing Disputes.

2.8 Deemed PE General Dispute

(a) If Telstra notifies Customer, in writing, that a dispute initiated by Customer (**Dispute**) as a PE Billing Dispute is, in Telstra's reasonable opinion, a PE General Dispute:

(i) the Dispute will be deemed to be a PE General Dispute; and

(ii) Customer must pay to Telstra any amounts withheld in relation to the Dispute:

(A) on the Due Date for the disputed Bill; or

(B) where the Due Date for the disputed Bill has passed at the time Telstra gives notification under this paragraph 2.8, immediately on that notification being given.

(b) Nothing in this paragraph 2.8 extends the time for payment of any Bill or relieves Customer from its obligations to pay Interest on any amounts withheld under the Agreement.

3 Dictionary

3.1 For the purposes of this Schedule 10:

(a) **Accounts** means a billing account held with Telstra which is identifiable by an Account Number;

(b) **Account Number** means the account numbers in Telstra's billing systems against which amounts payable under the Agreement are billed;

(c) **Agreement** means the agreement between Telstra and Customer for the supply of the relevant Reference Service(s);

(d) **Bill** means a bill for amounts payable under the Agreement which meets the requirement for a Tax Invoice;

(e) **Bill Issue Date** means the date specified on a Bill, which will be a date no earlier than the date of despatch of the Bill to Customer;

(f) **Business Days** means a day on which banks are open for general banking business in Melbourne and Sydney (not being a Saturday, Sunday or public holiday in that place);

(g) **Customer** means any party to the Agreement other than Telstra;

(h) **Dispute Officer** (of a party) means a nominated representative responsible for negotiating resolutions to PE General Disputes under the Agreement;

(i) **Due Date** means the date specified on a Bill being the day at least 30 days after the Bill Issue Date as specified on the Bill;

(j) **Escalation Notice** means a notice issued under paragraph 1.5(a) of this Schedule 10;

(k) **Initiating Party** has the meaning given in paragraph 2.3(a) of this Schedule 10;

(l) **Interest** means the interest at the National Australia Bank Limited Indicator Base Rate from time to time as published weekly in the *Australian Financial Review* (or, if it ceases to be published an equivalent rate nominated by Telstra) plus 2.5%;

(m) **LCS** has the meaning given in Schedule 1;

(n) **Litigation** has the meaning given in paragraph 1.2(a) of this Schedule 10;

(o) **PE Billing Dispute** has the meaning given in paragraph (a) of the definition of Price Equivalence Dispute as set out in Schedule 1;

(p) **PE Billing Dispute Determination** means a determination issued by Telstra under paragraph 1.4(a) of this Schedule 10

(q) **PE Billing Dispute Notice** means a notice lodged under paragraph 1.3(a) of this Schedule 10 relating to a PE Billing Dispute and in the form specified by Telstra and available from Telstra on request;

(r) **PE General Dispute** has the meaning given in paragraph (b) of the definition of Price Equivalence Dispute as set out in Schedule 1;

(s) **PE General Dispute Notice** means a notice given under paragraph 2.3(a) of this Schedule 10;

(t) **Price Equivalence Dispute** has the same meaning as in Schedule 1;

(u) **Rebill Reference Service** means WLR or LCS supplied by Telstra to Customer under this Agreement that Customer resupplies to Customer's Customer;

(v) **Recipient Party** means the party on whom a PE General Dispute Notice is issued under paragraph 2.3(a) of this Schedule 10;

(w) **Requesting Party** means a party who requests referral of a PE General Dispute to alternative dispute resolution under paragraph 2.4(b) of this Schedule 10;

(x) **Reference Service** has the same meaning as in Schedule 1;

(y) **Structural Separation Undertaking** means this Undertaking;

(z) **Tax Invoice** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

(aa) **Telstra Wholesale Alternative Dispute Resolution Policy** means the policy that sets out the alternative dispute resolution processes which may be used to resolve PE General Disputes, as amended from time to time and made available on the Telstra Wholesale internet site; and

(bb) **WLR** has the same meaning as in Schedule 1.

Schedule 11 — Equivalence Enforcement Terms

1 Operation of this Schedule

(a) This Schedule 11 sets out the manner in which the ACCC may enforce clause 9 of this Undertaking.

(b) Telstra will not be in breach of clause 9(a) in circumstances where Telstra fails to comply with a requirement of clause 9(a) and the failure to do so is trivial.

(c) The ACCC must not take action in respect of a complaint about an alleged breach of clause 9(a) which is a vexatious or frivolous complaint.

(d) For clarification, a Rectification Proposal or Rectification Direction made under this Schedule 11 does not need to provide that Telstra must engage in or cease to engage in any specific conduct in respect of the relevant possible breach of clause 9(a): for example, if the possible breach is likely to be a one off incident, it may be appropriate for a Rectification Proposal or Rectification Direction to only require continued monitoring in accordance with Part E.

(e) For the avoidance of doubt, nothing in this Schedule 11 limits the ACCC's powers to take enforcement action under section 577G of the Act in relation to a possible breach by Telstra of any provision of this Undertaking other than a possible breach of clause 9(a) of this Undertaking.

2 Possible breaches reported by Telstra

2.1 Telstra may report possible breaches

(a) If Telstra considers that it may have committed a possible breach of clause 9(a) of this Undertaking, Telstra may report the possible breach to the ACCC by giving notice to the ACCC:

(i) specifying the matters which Telstra considers may give rise to the possible breach;

(ii) confirming that Telstra will lodge a Rectification Proposal in accordance with paragraph 2.2 of this Schedule 11; and

(iii) if Telstra anticipates that it will not be able to lodge the Rectification Proposal within 30 days of the notice, specifying the longer period for lodgement which Telstra requests the ACCC to approve.

(b) Telstra may report a possible breach of clause 9(a) by means of a Monthly Compliance Report provided under clause 23.3, in which case the Monthly Compliance Report will set out the matters required by paragraph 2.1(a) of this Schedule 11.

2.2 Rectification of the possible breach

(a) No later than 30 days after reporting a possible breach of clause 9(a) of this Undertaking to the ACCC (or such longer period approved by the ACCC), Telstra

must submit a proposal to the ACCC which sets out the steps that Telstra proposes to take to remedy the possible breach (**Rectification Proposal**).

(b) The ACCC may:

(i) accept the Rectification Proposal; or

(ii) if satisfied that the Rectification Proposal does not provide an effective remedy for the possible breach:

(A) reject the Rectification Proposal; and

(B) subject to paragraphs 5(a) and 6(a) of this Schedule 11, by written notice given to Telstra, direct Telstra to take alternative steps to remedy the possible breach (**Rectification Direction**).

(c) If the ACCC accepts a Rectification Proposal given under paragraph 2.2(a) of this Schedule 11, Telstra must implement the Rectification Proposal in accordance with its terms.

(d) If the ACCC gives a Rectification Direction to Telstra under paragraph 2.2(b)(ii) of this Schedule 11, Telstra must, subject to paragraph 2.2(e) of this Schedule 11, comply with the Rectification Direction in accordance with its terms.

(e) If, no later than 28 days after receiving a Rectification Direction given under paragraph 2.2(b)(ii) of this Schedule 11, Telstra makes an application to a Court in respect of the Rectification Direction then, until final determination of that application by a Court (and any appeal) Telstra will comply with the Rectification Direction (other than to the extent that the Rectification Direction is stayed by the Court).

(f) For the avoidance of doubt, Telstra is not required to comply with the Rectification Direction given under paragraph 2.2(b)(ii) of this Schedule 11 to the extent the Rectification Direction is determined by a Court to be invalid, unlawful or otherwise of no effect.

2.3 Variation of a Rectification Proposal

(a) Telstra may give the ACCC a variation of a Rectification Proposal that has been accepted by the ACCC pursuant to paragraph 2.2(b)(i) of this Schedule 11.

(b) The ACCC may:

(i) accept the variation; or

(ii) if satisfied that, by accepting the variation, the Rectification Proposal would no longer provide an effective remedy for the possible breach that it relates to, reject the variation.

(c) The variation takes effect when it is accepted by the ACCC.

2.4 ACCC will not take other action in relation to the possible breach

(a) The ACCC must not take any action in relation to the matters the subject of a possible breach of clause 9(a) of this Undertaking that is reported by Telstra under paragraph 2.1 of this Schedule 11, other than:

(i) in accordance with this paragraph 2 of Schedule 11;

(ii) to enforce a Rectification Proposal accepted by, or a Rectification Direction made by, the ACCC in accordance with this paragraph 2 of Schedule 11; or

(iii) subject to paragraph 2.4(b) of this Schedule 11, to make an application to a Court for orders in relation to the possible breach of clause 9(a) requiring Telstra to compensate for loss or damage suffered by any person by the conduct which gave rise to the possible breach.

(b) To the extent that a possible breach of clause 9(a) reported by Telstra under paragraph 2.1 of this Schedule 11 involves a Non-Regulated Price Equivalence Issue, the ACCC must not apply to a Court for orders requiring Telstra to compensate for loss or damage suffered by any person arising from conduct which occurred prior to the date on which the ACCC was notified of the possible breach by Telstra.

3 Possible breaches notified by the ACCC

3.1 ACCC may notify possible breaches

If the ACCC considers that Telstra has committed a possible breach of clause 9(a) of this Undertaking, and if the possible breach has not been reported by Telstra under paragraph 2.1 of this Schedule 11, the ACCC may give notice of the possible breach to Telstra:

(a) specifying the matters which the ACCC considers gives rise to the possible breach; and

(b) inviting Telstra to submit a Rectification Proposal in relation to the possible breach.

3.2 Rectification of the notified possible breach

(a) No later than 30 days after receiving notice from the ACCC under paragraph 3.1 of this Schedule 11 (or such longer period approved by the ACCC), Telstra may submit a proposal to the ACCC which sets out the steps that Telstra proposes to take to rectify the possible breach specified in the notice (**Rectification Proposal**).

(b) If Telstra has submitted a Rectification Proposal under paragraph 3.2(a) of this Schedule 11, the ACCC may:

(i) accept the Rectification Proposal; or

(ii) if satisfied that the Rectification Proposal does not provide an effective remedy for the possible breach:

(A) reject the Rectification Proposal; and

(B) subject to paragraphs 5(a) and 6(a) of this Schedule 11, by written notice given to Telstra, direct Telstra to take alternative steps to remedy the possible breach (**Rectification Direction**).

(c) If the ACCC accepts a Rectification Proposal given under paragraph 3.3(a) of this Schedule 11, Telstra must implement the Rectification Proposal in accordance with its terms.

(d) If the ACCC gives a Rectification Direction under paragraph 3.2(b)(ii) of this Schedule 11, Telstra must, subject to paragraph 3.2(e) of this Schedule 11, comply with the Rectification Direction in accordance with its terms.

(e) If, no later than 28 days after receiving a Rectification Direction given under paragraph 3.2(b)(ii) of this Schedule 11, Telstra makes an application to a Court in respect of the Rectification Direction then, until final determination of that application by a Court (and any appeal), Telstra will comply with the Rectification Direction (other than to the extent that the Rectification Direction is stayed by the Court).

(f) For the avoidance of doubt, Telstra is not required to comply with a Rectification Direction given under paragraph 3.2(b)(ii) of this Schedule 11 to the extent it is determined by a Court to be invalid, unlawful or otherwise of no effect.

(g) If Telstra does not submit a Rectification Proposal under paragraph 3.2(a) of this Schedule 11, the ACCC may commence enforcement proceedings in respect of the possible breach under section 577G of the Act in accordance with paragraph 4 of this Schedule 11.

3.3 Variation of a Rectification Proposal

(a) Telstra may give the ACCC a variation of a Rectification Proposal that has been accepted by the ACCC pursuant to paragraph 3.2(b)(i) of this Schedule 11.

(b) The ACCC may:

(i) accept the variation; or

(ii) if satisfied that, by accepting the variation, the Rectification Proposal would no longer provide an effective remedy for the possible breach that it relates to reject the variation.

(c) The variation takes effect when it is accepted by the ACCC.

3.4 ACCC will not take other action in relation to the possible breach

(a) The ACCC must not:

(i) exercise the power to give notice under paragraph 3.1 of this Schedule 11 in circumstances where the possible breach relates to a complaint of a Wholesale Customer, unless the ACCC is satisfied that the Wholesale Customer has raised the complaint with Telstra and Telstra has been given a reasonable opportunity to investigate and take action in relation to the matters that are the subject of the complaint;

(ii) take any action in relation to the matters the subject of a possible breach of clause 9(a) of this Undertaking that has not been reported by Telstra under paragraph 2.1 of this Schedule 11 without giving notice of that possible breach to Telstra pursuant to paragraph 3.1 of this Schedule 11; and

(iii) if Telstra gives a Rectification Proposal to the ACCC under paragraph 3.2(a) in relation to that possible breach, take any action in relation to the matters the subject of the possible breach, other than:

(A) in accordance with this paragraph 3 of Schedule 11; or

(B) to enforce a Rectification Proposal accepted by, or a Rectification Direction made by, the ACCC in accordance with this paragraph 3 of Schedule 11;

(C) subject to paragraphs 3.4(b), 6(b) and 6(c) of this Schedule 11, to make an application to a Court for orders in relation to the possible breach of clause 9(a) for relief or other matters which could not be subject of a Rectification Direction in accordance with paragraph 6(a) of this Schedule 11.

(b) To the extent that a possible breach of clause 9(a) involves a Non-Regulated Price Equivalence Issue and Telstra gives a Rectification Proposal to the ACCC under paragraph 3.2(a) of this Schedule 11, the ACCC must not make an application to a Court for orders of the kind described in paragraph 3.4(a)(iii)(B) of this Schedule 11 in respect of conduct which occurred before the date on which the ACCC notified Telstra of the possible breach under paragraph 3.1 of this Schedule 11.

4 Enforcement by the ACCC

4.1 Orders which can be sought by the ACCC

(a) If:

(i) the ACCC has notified Telstra of a possible breach of clause 9(a) under paragraph 3.1 of this Schedule 11;

(ii) Telstra has failed to provide a Rectification Proposal in respect of that possible breach under paragraph 3.2 of this Schedule 11; and

(iii) the ACCC brings enforcement proceedings under section 577G of the Act in respect of that possible breach:

the ACCC must apply to the Court only for the following kinds of orders:

(iv) a declaration from the Court that Telstra has breached clause 9(a); and

(v) subject to paragraphs 4.1(b), 4.1(c), 6(b) and 6(c) of this Schedule 11, orders for relief or other requirements which could not be the subject of a Rectification Direction in accordance with paragraph 6(a) of this Schedule 11.

(b) If the ACCC proposes to seek an order of the kind described in paragraph 4.1(a)(v) of this Schedule 11, the ACCC must not apply to a Court for the Court to make any such order before the ACCC has either accepted a Rectification Proposal or made a Rectification Direction under this paragraph 4 of Schedule 11, with the exception of seeking an order requiring Telstra to compensate for loss or damage suffered by any person by conduct which gave rise to the breach of clause 9(a).

(c) To the extent that a possible breach of clause 9(a) to which paragraph 4.1(a) of this Schedule 11 applies involves a Non-Regulated Price Equivalence Issue, the ACCC must not apply to a Court for orders of the kind described in paragraph 4.1(a)(v) in respect of conduct which occurred prior to the ACCC notifying Telstra of the possible breach under paragraph 3.1 of this Schedule 11.

4.2 Rectification of a court-determined breach

(a) No later than 30 days after a declaration by a Court under section 577G of the Act that Telstra has breached clause 9(a), Telstra must submit a Rectification Proposal to the ACCC which sets out the steps that Telstra proposes to take to rectify the breach.

(b) The ACCC may:

(i) accept the Rectification Proposal; or

(ii) if satisfied that the Rectification Proposal does not provide an effective remedy for the breach:

(A) reject the Rectification Proposal; and

(B) subject to paragraphs 5(a) and 6(a) of this Schedule 11, give Telstra a Rectification Direction setting out the alternative steps Telstra should take to remedy the breach.

(c) If the ACCC accepts a Rectification Proposal given under paragraph 4.2(a) of this Schedule 11, Telstra must implement the Rectification Proposal in accordance with its terms.

(d) If the ACCC gives a Rectification Direction under paragraph 4.2(b)(ii) of this Schedule 11, Telstra must, subject to paragraph 4.2(e) of this Schedule 11, comply with the Rectification Direction in accordance with its terms.

(e) If, no later than 28 days after receiving a Rectification Direction given under paragraph 4.2(b)(ii) of this Schedule 11, Telstra makes an application to a Court in respect of the Rectification Direction then, until final determination of that application by a Court (and any appeal), Telstra will comply with the Rectification Direction (other than to the extent that the Rectification Direction is stayed by the Court).

(f) For the avoidance of doubt, Telstra is not required to comply with a Rectification Direction given under paragraph 4.2(b)(ii) of this Schedule 11 to the extent it is determined by a Court to be invalid, unlawful or otherwise of no effect.

4.3 Variation of a Rectification Proposal

(a) Telstra may give the ACCC a variation of a Rectification Proposal that has been accepted by the ACCC pursuant to paragraph 4.2(b)(i) of this Schedule 11.

(b) The ACCC may:

(i) accept the variation ; or

(ii) if satisfied that, by accepting the variation, the Rectification Proposal would no longer provide an effective remedy for the possible breach that it relates to, reject the variation.

(c) The variation takes effect when it is accepted by the ACCC.

4.4 ACCC will not take other action in relation to a breach

The ACCC must not take any action under section 577G of the Act in relation to the matters the subject of a possible breach of clause 9(a) of this Undertaking to which neither paragraphs 2 or 3 of this Schedule 11 apply other than in accordance with this paragraph 4 of Schedule 11.

5 Matters the ACCC must take into account

(a) The ACCC must not give a Rectification Direction to Telstra under this Schedule 11 unless it is reasonably satisfied that the matters imposed by the Rectification Direction are a proportionate and justified remedy for the relevant breach of clause 9(a) of this Undertaking having regard to the following principles:

(i) that the benefits of the matters imposed by the Rectification Direction should outweigh the costs of complying with the Rectification Direction; and

(ii) that the matters imposed by the Rectification Direction should be the least cost solution.

(b) The ACCC must not make an application to a Court for orders in relation to a breach of clause 9(a) of this Undertaking, and must not support such an application made by any other person, unless it is reasonably satisfied that the matters imposed by the orders are a proportionate and justified remedy for the relevant breach of clause 9(a) of this Undertaking, having regard to the following principles:

(i) that the benefits of the matters imposed by the orders should outweigh the costs of complying with the orders; and

(ii) that the matters imposed by the orders should be the least cost solution.

6 Matters that cannot be imposed by the ACCC

(a) A Rectification Direction given by the ACCC under this Schedule 11 has no effect if it has any of the following effects:

(i) imposing any requirement that has retrospective effect or retrospective consequences;

(ii) requiring Telstra to take action, or refrain from taking action, which operates (or is intended to operate):

(A) as compensation (whether in the form of financial compensation or otherwise), either wholly or partially, for loss or damage suffered by any person by the conduct which gave rise to the possible breach; or

(B) as a penalty (whether in form of a financial penalty or otherwise) for the conduct which gave rise to the possible breach; or

(iii) requiring any of the effects specified in clause 9(b) of this Undertaking.

(b) The ACCC must not apply to a Court for orders in relation to a possible breach of clause 9(a) of this Undertaking which would have any of the effects specified in clause 9(b) of this Undertaking and must not support such an application made by any other person.

(c) The ACCC must not support an application to a Court for any other orders by any other person in relation to a possible breach of clause 9(a) of this Undertaking which the ACCC could not itself seek under this Schedule 11.

Schedule 12 — TEBA requests for future anticipated requirements

(a) This Schedule 12 applies where a Wholesale Customer submits an External Application for the purpose of meeting the Wholesale Customer's future anticipated requirements at an Exchange Building Facility.

(b) The Wholesale Customer's Application will be processed using ordinary TEBA processes and practices, including the queue management processes set out in Schedule 13. Consistent with these processes, Telstra will undertake a Preliminary Study Review to determine whether sufficient floor space is available at the applicable Exchange Building Facility to meet the Wholesale Customer's Application (and this will incur the associated fee to the Wholesale Customer).

(c) If there is insufficient floor space at the Exchange Building Facility, the ordinary governance processes referred to in clause 12.5 of this Undertaking which relate to expansion or capping of the Exchange Building Facility will apply.

(d) Where, using ordinary TEBA processes and practices, it is determined that sufficient floor space is available in the relevant Exchange Building Facility to meet the Wholesale Customer's request:

(i) Telstra will allocate floor space in the Exchange Building Facility to the Wholesale Customer using ordinary TEBA processes and practices;

(ii) Telstra will not undertake activities such as power or air conditioning viability audits until the Wholesale Customer is ready to use the floor space;

(iii) the Wholesale Customer will have 36 months (commencing at the time of allocation) to use the allocated floor space; and

(iv) the Wholesale Customer will be required to pay for the allocated floor space according to ordinary rates, whether or not it is used.

(e) To use the allocated floor space, the Wholesale Customer will be required to use ordinary TEBA processes, including lodging an Application in accordance with the processes set out in Schedule 13 and which may include, for example, Telstra undertaking activities such as power and air conditioning viability audits.

(f) Where the Wholesale Customer has not used any part of the allocated floor space at the expiry of the 36 month period, the allocation will roll over on a month to month basis, but Telstra will be entitled to terminate the allocation at any time by giving one month's prior notice to the Wholesale Customer.

(g) The Wholesale Customer will be entitled to withdraw its allocation at any time without penalty by submitting a request to Telstra using ordinary TEBA processes. However, Telstra will be entitled to charge the Wholesale Customer for the period up to the time that the Wholesale Customer submits its withdrawal request.

(h) The Wholesale Customer will not be entitled to transfer its allocation to another person. If the Wholesale Customer no longer requires the allocated space, it must withdraw its allocation as described in paragraph (g).

Schedule 13 — TEBA Queue Management

1 Queue management for access to Exchange Building Facilities

(a) Telstra will maintain a single ordering queue for all Applications received requesting access to an Exchange Building Facility, which queue will be managed using a Facilities Tracking Database (**FTDB**) (or any subsequent or replacement database).

(b) Without limitation to clause 12.2 of the Undertaking, in managing Applications, Telstra will apply the following principles:

(i) Telstra will manage queues on a non-discriminatory basis by processing each Application in the queue in the FTDB on a "first in, first served" basis regardless of whether the Application is an External Application or an Internal Application;

(ii) any Application that is queued in the FTDB can be varied in accordance with Telstra's standard policies, without affecting its position in the queue;

(iii) unless a Preliminary Study request is:

(A) put On Hold by Telstra as contemplated by paragraph 2; or

(B) the Wholesale Customer has been granted an Extension of Time by Telstra to complete design activities,

a Preliminary Study response by Telstra remains valid for 20 Business Days;

(iv) during the period a Preliminary Study is valid, the Wholesale Customer may prepare and submit to Telstra a Design and Construction Proposal in respect of the Application; and

(v) if an Application expires, is withdrawn or is rejected by Telstra (for example, in accordance with a Wholesale Customer's supply terms or due to technical or other issues) and a further Application is subsequently resubmitted by Telstra or the Wholesale Customer, as the case may be, the resubmitted Application will be processed and queued as a new Application.

2 Queue management during common construction works

(a) This paragraph 2 applies where Telstra has received multiple Applications in respect of access to the same Exchange Building Facility, where common construction works are required in order to create sufficient space to satisfy those Applications, such that the processing of one Application is dependent on the completion of works associated with an earlier Application in the queue.

(b) If at the time that Telstra approves an Application (**First Application**) that involves construction works being undertaken to expand or augment any part of an Exchange Building Facility, there are other Applications (**Dependent Applications**) later in the ordering queue requesting access to or use of the same part(s) of the Exchange Building Facility, Telstra undertakes that its approval of the first Application will be subject to sufficient construction works being undertaken by

Telstra or the Wholesale Customer, as applicable, to satisfy the requirements of all such dependent Applications.

(c) For clarity, an Application will only be a dependent Application under paragraph 2(b) if it is received by Telstra prior to the date on which Telstra approves the Application which involves the common construction works being undertaken.

(d) Where common construction works are being undertaken by either Telstra or a Wholesale Customer, Telstra may place On Hold any later Applications in the ordering queue which:

(i) are dependent on those works being completed; or

(ii) could not otherwise be undertaken safely by a Wholesale Customer at the same time as any such construction works.

(e) For clarity, an Application will not be subject to this paragraph 2 where an Application involves construction or other works which are not dependent on works the subject of an earlier Application and so could safely be progressed at the same time (i.e. parallel Applications).

Example: Telstra undertakes a power augmentation at an Exchange Building Facility before installing further racks for its own use. Applications from Wholesale Customers B and C are queued, waiting for this augmentation to be completed. Wholesale Customer D submits an Application seeking allocation of several blocks on the MDF to run further interconnect cables from a DSLAM already installed at the site.

Wholesale Customer D's Application would join the ordering queue behind Wholesale Customers B and C, but it would not be placed on hold as the works are not dependent on the works being undertaken by Wholesale Customer A and so would be permitted to be undertaken in parallel with Wholesale Customer A. That is, any power requirements associated with Wholesale Customer D's existing DSLAM at the site have already been assessed and therefore allocation of MDF blocks and interconnect cables is not dependent on power augmentation works being completed at the site.

(f) Where a Wholesale Customer's Application is placed On Hold by Telstra on the basis of common construction works being undertaken at the Exchange Building Facility, Telstra will promptly notify the Wholesale Customer of:

(i) the fact that its Application has been placed On Hold due to common construction works being undertaken, including a brief description of those works;

(ii) the position of the Wholesale Customer in the queue;

(iii) whether the common construction works are being undertaken by Telstra or a Wholesale Customer;

(iv) the currently anticipated timeframe for completion of the common construction works, based on:

(A) Telstra's current construction plan, where works are being undertaken by Telstra; or

(B) the design and construction proposal lodged by the Wholesale Customer, where the works are being undertaken by a Wholesale Customer.

(g) A Wholesale Customer that is undertaking common construction works at an Exchange Building Facility may request an Extension of Time for completion of those construction works. Where an Extension of Time is requested that will affect other queued Applications, Telstra will:

(i) request that the Wholesale Customer provide detailed reasons to substantiate the need for the Extension of Time; and

(ii) promptly notify all other queued Applications of the Extension of Time and the new anticipated timeframe for completion of the common construction works.

(h) Telstra will promptly:

(i) notify all Wholesale Customers in a queue that have been placed On Hold due to common construction works; and

(ii) update the status of Wholesale Customers in the queue,

following successful completion of those works. In the case of works undertaken by a Wholesale Customer, this will occur once a successful Joint Completion Inspection has been undertaken.

(i) For clarity, nothing in this paragraph 2 makes Telstra responsible for the project management of construction activities being undertaken by Wholesale Customers. In dealing with Extension of Time requests, and managing queued Applications, Telstra will act on the basis that all reasons and evidence provided by Wholesale Customers in support of Extension of Time requests are correct and provided in good faith.

Attachment A — Conditions Precedent

(a) This Attachment A is a document which accompanies the Undertaking given by Telstra under section 577A of the *Telecommunications Act 1997* (Cth) (**Act**) and is given under section 577AA of the Act.

(b) Each of the events specified in clause (c) are events which are nominated by Telstra under subsection 577AA(1) of the Act.

(c) The events specified in this clause (c) are:

(i) the approval of the draft migration plan by the Commission under section 577BDA or 577BDC of the Act;

(ii) the making of a declaration under section 577J(3) of the Act;

(iii) the making of a declaration under section 577J(5) of the Act.