



Interim Access Determination No. 1 of 2012 (WDSL)

Competition and Consumer Act 2010

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this interim access determination under section 152BCG of the *Competition and Consumer Act 2010*.

Date of determination: 14 February 2012

1. Application

- 1.1 This instrument sets out an interim access determination in respect of the declared service ('the Service') specified in the table:

Declared service	Expiry of declaration	Title of interim access determination	Applicable schedules
Wholesale ADSL	13 February 2017	Interim Access Determination No. 1 of 2012 (WADSL)	1-10

Note:

- From 1 January 2011:
 - a carrier licence held by a carrier is subject to a condition that the carrier must comply with any access determinations that are applicable to the carrier; and
 - a carriage service provider must comply with any access determinations that are applicable to the provider.
- An Access Provider and Access Seeker may enter into an Access Agreement relating to a declared service. Access Agreements prevail over inconsistent access determinations: section 152BCC of the *Competition and Consumer Act 2010*.
- The declared service that is subject to this interim access determination is commonly referred to as a wholesale ADSL service or WADSL.

2. Definitions and interpretation

- 2.1 Schedule 1 applies to the interpretation of this instrument. The Schedules form part of this instrument.

3. Commencement and duration

- 3.1 This interim access determination commences on 15 February 2012.
- 3.2 Unless sooner revoked, this interim access determination remains in force up until and including 14 February 2013.

Note:

- An access determination may come into force on a day which is earlier than the day the determination is made: subsections 152BCF(1) and 152BCF(2) of the *Competition and Consumer Act 2010*.
- An interim access determination is revoked when the final access determination comes into force: subsection 152BCF(9A) of the *Competition and Consumer Act 2010*.

4. Terms and conditions of access

- 4.1 If a carrier or carriage service provider is required to comply with any or all of the standard access obligations as defined in the *Competition and Consumer Act 2010* in respect of the declared service, the carrier or carriage service provider must comply with those obligations on the terms and conditions set out in this clause 4.

Note: The terms and conditions in an interim access determination apply only to those terms and conditions where terms and conditions on that matter in an Access Agreement cannot be reached, no special access undertaking is in operation setting out terms and conditions on that matter and no binding rules of conduct have been made setting out terms and conditions on that matter: section 152AY of the *Competition and Consumer Act 2010*.

4.2 If the carrier or carriage service provider is required to supply the declared service to a service provider, the carrier or carriage service provider must supply the service:

- (a) at the price specified in Schedule 2; and
- (b) on the non-price terms and conditions specified in schedules 3-10.

4.3 This clause 4 is subject to clause 5.

5. Application of Standard Access Obligations to operators of non-dominant networks

5.1 A carrier or carriage service provider other than Telstra Corporation Limited is not required to comply with any or all of the standard access obligations as defined in the *Competition and Consumer Act 2010* in respect of the Service.

Note:

1. An access determination may:
 - provide that any or all of the standard access obligations are not applicable to a carrier or carriage service provider (either unconditionally or subject to conditions or limitations); or
 - restrict or limit the application to a carrier or carriage service provider of any or all of the standard access obligations: section s 152BC(3)(h) and (i) of the *Competition and Consumer Act 2010*.

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Schedule 1 – Interpretation & Definitions

Interpretation

In this Interim Access Determination (IAD), unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) the words “including” and “include” mean “including, but not limited to”; and
- (c) terms defined in the CCA or the *Telecommunications Act 1997* have the same meaning.

Definitions

ACCC means the Australian Competition and Consumer Commission

Access Agreement has the same meaning as given to that term in section 152BE of the CCA

Access Provider has the same meaning as given to that term in subsection 152AR(2) of the CCA

Access Seeker has the same meaning as given to that term in section 152AG of the CCA

ACDC means the Australian Commercial Disputes Centre Limited

ACDC Guidelines means the mediation guidelines of the ACDC as specified in clause 5.10 of Schedule 5

ACMA means the Australian Communications and Media Authority

ADSL enabled exchange list means the ADSL enabled exchange list available on the Telstra wholesale website¹ as at the date of this IAD.

Billing Dispute means a dispute relating to a Charge or an invoice issued by the Access Provider

Billing Dispute Notice means a notice given pursuant to clause 3.11 in Schedule 3

Billing Dispute Procedures means the procedures set out in clauses 3.11 to 3.29 in Schedule 3

Breach Notice has the meaning set out in clause 9.5 of Schedule 9

¹ <http://www.telstrawholesale.com.au/download/document/access-broadband-adsl-en-ex.xls>.

Business Hours means 8.00 am to 5.00 pm Monday to Friday, excluding a day which is a gazetted public holiday in the place where the relevant transaction or work is to be performed

Business Day means any day other than Saturday or Sunday or a day which is a gazetted public holiday in the place concerned

Calendar Day means a day reckoned from midnight to midnight

Carriage Service has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

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

Charge means a charge for the supply of a Service

Common Infrastructure Works means where an Access Seeker increases the capacity of existing Facilities at an Exchange that could be used by itself and other service providers.

Confidential Information means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form and whether coming into existence before or after the commencement of this IAD) relating to or developed in connection with or in support of the business of a party (the **first mentioned party**) but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of this IAD or a breach of any other obligation of confidence in favour of the provider of the Confidential Information or by any other unlawful means of which the acquirer of the confidential information is aware);
- (b) information rightfully received by the other party from a third person without a duty of confidentiality being owed by the other party to the third person, except where the other party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned party; or
- (c) information which has been independently developed or obtained by the other party

End-user network boundary means the boundary point of the telecommunications network that is

- (i) associated with the end-user premise; and
- (ii) ascertained in accordance with section 22 of the *Telecommunications Act*

Exchange means a building in which telephone switching or other equipment of an Access Provider or Access Seeker has been installed for use in connection with a telecommunications network

Expert Committee means a committee established under clause 5.11 in Schedule 5

Fault means:

- (a) a failure in the normal operation of a Network or in the delivery of a Service; or
- (b) any issue as to the availability or quality of a Service supplied to an end-user via the Access Seeker, notified by the end-user to the Access Seeker's help desk,

that has been reasonably assessed by the Access Provider as being the Access Provider's responsibility to repair

IAD means Interim Access Determination

Independent Auditor means a person appointed as an independent auditor in accordance with clause 6.11 of Schedule 6

Initiating Notice has the meaning as set out in clause 5.11 of Schedule 5

Listed Carriage Service has the same meaning given to that term in section 7 of the *Telecommunications Act 1997* (Cth)

Month means a period commencing at the beginning of any day of a named month and ending:

- (a) at the end of the day before the corresponding day of the next named month; or
- (b) if there is no such corresponding day – at the end of the next named month

Network of a party, means that party's system, or series of systems, that carries, or is capable of carrying communications by means of guided or unguided electromagnetic energy

Non-Billing Dispute means a dispute other than a Billing Dispute

Ongoing Creditworthiness Information has the meaning as set out in clause 4.8 of Schedule 4 of this IAD

POI means point of interconnection. A point of interconnection is a physical point of interconnection in Australia between a network operated by a carrier or carriage service provider and another network operated by a service provider.

Prohibited Traffic means traffic offered across a POI for which there is no agreement between the Access Provider and the Access Seeker that the Access Provider will carry such traffic or provide a related service to the Access Seeker

Reseller means a person that acquires the Service, or a service derived from the Service, from an Access Seeker, for the purpose of reselling, or transforming and then selling, a service to end users

Security means the amount and type of security provided, or required to be provided, to the Access Provider in respect of the provision by the Access Provider of Services, as set out in Schedule 4

Service means the wholesale ADSL service declared under section 152AL of the CCA

Standard Access Obligations has the meaning given by section 152AR of the CCA

Suspension Event has the meaning set out in clause 9.2 of Schedule 9

Suspension Notice has the meaning set out in clause 9.2 of Schedule 9

Zone 1 means the Zone of that name (as it stands at the date on which this IAD is made on the **ADSL enabled exchange list**) that Telstra maintains for the purpose of calculating monthly end user access charges for a Service, and for the avoidance of doubt includes Zone 1(a).

Zone 2+3 means the amalgam of the zones named Zone 2 and Zone 3 (as they stand at the date on which this IAD is made on the **ADSL enabled exchange list**) that Telstra maintains for the purpose of calculating monthly end user access charges for a Service.

Schedule 2 – Price terms

2.1 The connection charge for a Service is:

Connection type	Charge per connection
Completed Type A Transfer standard Transfer Request via LOLO/LOLIG	\$22.50
Completed Type B Transfer standard Transfer Request via LOLO/LOLIG	\$80.00
All other completed installation or transfer requests	\$80.00

2.2 The monthly charge per end user access for a Service is:

Applicable Geographic Area	Charge per port per month
Zone 1	\$25.40
Zone 2+3	\$30.80

2.3 The monthly charge per Aggregating Virtual Circuit (where the IGR and ATM charging POP is in the same state) is to be calculated by multiplying the AGVC size and the following rate:

Period	Rate per Mbps per month
Up to 30 June 2012	\$45.50
From 1 July 2012	\$33.65

2.4 The monthly charge per DSL Virtual LAN is to be calculated by multiplying the Subscribed Data Speed and the following rate:

Period	Rate per Mbps per month
Up to 30 June 2012	\$45.50
From 1 July 2012	\$33.65

2.5 The charge for early termination of a Service is:

Circumstance	Charge per termination
Where the Service is connected for 6 months or longer	\$0
Where the service is connected for less than 6 months	\$50

- 2.6 The charges specified in this Schedule are exclusive of GST.
- 2.7 For the avoidance of doubt, this Schedule applies only to the Service and does not specify prices for Aggregating Virtual Circuit or DSL Virtual LAN that is supplied other than in the supply of the Service.

Schedule 3 – Billing and Notifications

- 3.1. The Access Seeker's liability to pay Charges for a Service to the Access Provider arises at the time the Service is supplied by the Access Provider to the Access Seeker, unless the parties agree otherwise.
- 3.2. The Access Seeker must pay Charges in accordance with this IAD, including but not limited to this Schedule 3.
- 3.3. Subject to clause 3.4, the Access Provider shall provide the Access Seeker with an invoice in respect of Charges payable for Services and associated work supplied in each billing period. A billing period shall be a period of one Month, unless the parties agree otherwise. Other charges shall be invoiced by the Access Provider at the following times:
 - (a) as stated in an applicable price list;
 - (b) as stated in any applicable billing and settlement procedures;
 - (c) as stated in or incurred under this IAD; or
 - (d) as otherwise agreed by the Access Provider and the Access Seeker or, failing agreement, at the option of the Access Provider, on completion of the relevant work or when the outstanding amount reaches \$50,000 (as the case requires).
- 3.4. As a statement of general principle, the Access Provider may invoice the Access Seeker more frequently than once a Month, where there has been a decline in the Access Seeker's creditworthiness as assessed in accordance with Schedule 4.
- 3.5. The Access Provider shall be entitled to invoice the Access Seeker for previously uninvoiced Charges or Charges which were understated in a previous invoice, provided that:
 - (a) the Charges to be retrospectively invoiced can be reasonably substantiated to the Access Seeker by the Access Provider; and
 - (b) subject to clause 3.6, no more than six Months have elapsed since the date the relevant amount was incurred by the Access Seeker's customer, except:
 - (i) where the Access Seeker gives written consent to a longer period (such consent not to be unreasonably withheld); or
 - (ii) to the extent that the Charges relate to a new Service being billed for the first time, in which case such Charges may be invoiced up to eight Months after the relevant amount was incurred by the Access Seeker's customer, subject to agreement with the Access Seeker (such agreement not to be unreasonably withheld); or

- (iii) to the extent that the Charges relate to services supplied by an overseas carrier and the Access Provider has no control over the settlement arrangements as between it and the overseas carrier, in which case the Access Provider shall invoice such amounts as soon as is reasonably practicable.
- 3.6. The parties must comply with the provisions of any applicable industry standard made by the ACMA pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) and the provisions of any applicable industry code registered pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) in relation to billing.
- 3.7. Subject to any Billing Dispute notified in accordance with this IAD, an invoice is payable in full 30 Calendar Days after the date the invoice was issued or such other date as agreed between the parties. The Access Seeker may not deduct, withhold, or set-off any amounts for accounts in credit, for counter-claims or for any other reason or attach any condition to the payment, unless otherwise agreed by the Access Provider. All amounts owing and unpaid after the due date shall incur a liability for interest at the rate per annum of the 90 day authorised dealers bank bill rate published in the *Australian Financial Review* on the first Business Day following the due date for payment, plus 2.5%.
- 3.8. In addition to charging interest in accordance with clause 3.7 or exercising any other rights the Access Provider has at law or under this IAD, where an amount is outstanding and remains unpaid for more than 20 Business Days after it is due for payment, and is not an amount subject to any Billing Dispute, the Access Provider may take action, without further notice to the Access Seeker, to recover any such amount as a debt due to the Access Provider. For the avoidance of doubt, this clause 3.8 shall be subject to the Billing Dispute Procedures.
- 3.9. Unless the parties otherwise agree, there shall be no setting-off (i.e. netting) of invoices except where a party goes into liquidation, in which case the other party may set-off. However, in order to minimise administration and financial costs, the parties shall consider in good faith set-off procedures for inter-party invoices which may require the alignment of the parties' respective invoice dates and other procedures to allow set-off to occur efficiently.
- 3.10. The Access Provider must, at the time of issuing an invoice, provide to the Access Seeker all information reasonably required by the Access Seeker to identify and understand the nature and amount of each component of the invoice. Nothing in this clause 3.10 is intended to limit subsections 152AR(6) and 152AR(7) of the CCA.
- 3.11. If the Access Seeker believes a Billing Dispute exists, it may, by written notice to the Access Provider, invoke the Billing Dispute Procedures (**Billing Dispute Notice**). A Billing Dispute must be initiated only in good faith.

- 3.12. Except where a party seeks urgent injunctive relief, the Billing Dispute Procedures must be invoked before either party may begin legal or regulatory proceedings in relation to any Billing Dispute.
- 3.13. If a Billing Dispute Notice is given to the Access Provider by the due date for payment of the invoice containing the Charge which is being disputed, the Access Seeker may withhold payment of the disputed Charge until such time as the Billing Dispute has been resolved. Otherwise, the Access Seeker must pay the invoice in full in accordance with this IAD (but subject to the outcome of the Billing Dispute Procedures).
- 3.14. Except where payment is withheld in accordance with clause 3.13, the Access Provider is not obliged to accept a Billing Dispute Notice in relation to an invoice unless the invoice has been paid in full.
- 3.15. A Billing Dispute Notice may not be given to the Access Provider in relation to a Charge later than six Months after the Charge is due to be paid.
- 3.16. The Access Provider shall acknowledge receipt of a Billing Dispute Notice within two Business Days by providing the Access Seeker with a reference number.
- 3.17. Each party shall, as early as practicable after a Billing Dispute Notice, provide to the other party any relevant materials on which it intends to rely (provided that this obligation is not intended to be the same as the obligation to make discovery in litigation).
- 3.18. The Access Provider shall try to resolve any Billing Dispute as soon as practicable and in any event within 30 Business Days of receipt of a Billing Dispute Notice (or longer period if agreed by the parties), by notifying the Access Seeker in writing of its proposed resolution of a Billing Dispute. That notice shall explain the Access Provider's proposed resolution and any action to be taken by:
- (a) the Access Provider (e.g. withdrawal, adjustment or refund of the disputed Charge); or
 - (b) the Access Seeker (e.g. payment of the disputed Charge).
- 3.19. Any withdrawal, adjustment or refund of the disputed Charge by the Access Provider or payment of the disputed Charge by the Access Seeker (as the case may be) must occur within as soon as practicable and in any event within one Month of the Access Provider's notice, unless the Access Seeker escalates the Billing Dispute under clause 3.23.
- 3.20. Where the Access Provider is to refund a disputed Charge, the Access Provider shall pay interest (at the rate set out in clause 3.7) on any refund. Interest shall accrue daily from the date on which each relevant amount to be refunded was paid to the Access Provider, until the date the refund is paid.
- 3.21. Where the Access Seeker is to pay a disputed Charge, the Access Seeker shall pay interest (at the rate set out in clause 3.7) on the amount to be paid. Interest

shall accrue daily from the date on which each relevant amount was originally due to be paid to the Access Provider, until the date the amount is paid.

- 3.22. If the Access Seeker is not satisfied with the Access Provider's proposed resolution in relation to a Billing Dispute, or if the Access Provider has not provided the Access Seeker with a proposed resolution to the Billing Dispute within the timeframe set out in clause 3.18, the Access Seeker may escalate the matter under clause 3.23. If the Access Seeker does not do so within 30 Business Days of being notified of the Access Provider's proposed resolution (or a longer period if agreed by the parties), the Access Seeker shall be deemed to have accepted the Access Provider's proposed resolution and clauses 3.20 and 3.21 shall apply.
- 3.23. If the Access Seeker wishes to escalate a Billing Dispute, the Access Seeker must give the Access Provider a written notice:
- (a) stating why it does not agree with the Access Provider's proposed resolution; and
 - (b) seeking escalation of the Billing Dispute.
- 3.24. A notice under clause 3.23 must be submitted to the nominated billing manager for the Access Provider, who shall discuss how best to resolve the Billing Dispute with the Access Seeker's nominated counterpart.
- 3.25. If the escalated matter cannot be resolved under clause 3.24 within five Business Days of notice being given under clause 3.23:
- (a) either party may provide a written proposal to the other party for the appointment of a mediator to assist in resolving the dispute. Mediation shall be conducted in accordance with the mediation guidelines of the ACDC and concluded within three Months of the proposal (unless the parties agree to extend this timeframe); or
 - (b) if the parties either do not agree to proceed to mediation or are unable to resolve the entire Billing Dispute by mediation, either party may commence legal or regulatory proceedings to resolve the matter.
- 3.26. The parties shall ensure that any person appointed or required to resolve a Billing Dispute shall take into account the principle that the Access Seeker shall be entitled to be recompensed in circumstances where the Access Seeker is prevented (due to regulatory restrictions on retrospective invoicing) from recovering from its end-user an amount which is the subject of a Billing Dispute (a **Backbilling Loss**), provided that:
- (a) such principle shall apply only to the extent to which the Billing Dispute is resolved against the Access Provider; and
 - (b) such principle shall apply only to the extent to which it is determined that the Backbilling Loss was due to the Access Provider unnecessarily delaying resolution of the Billing Dispute.

- 3.27. Each party must continue to fulfill its obligations under this IAD while a Billing Dispute and the Billing Dispute Procedures are pending.
- 3.28. All discussions and information relating to a Billing Dispute must be communicated or exchanged between the parties through the representatives of the parties set out in clause 3.24 (or their respective nominees).
- 3.29. There shall be a presumption that all communications between the parties during the course of a Billing Dispute are made on a without prejudice and confidential basis.
- 3.30. If it is determined by the Billing Dispute Procedures, any other dispute resolution procedure, or by agreement between the parties, that three or more out of any five consecutive invoices for a given Service are incorrect by 5% or more, then, for the purposes of clause 3.20, the interest payable by the Access Provider in respect of the overpaid amount of the invoices in question shall be the rate set out in clause 3.7, plus 2%. The remedy set out in this clause 3.30 shall be without prejudice to any other right or remedy available to the Access Seeker.
- 3.31. If three or more out of any five consecutive invoices for a given Service are incorrect by 5% or more, then without prejudice to any other right or remedy available to the Access Seeker, the Access Provider shall be deemed to have breached this IAD and the Access Seeker shall have a right to damages for such a breach.

Schedule 4 – Creditworthiness and Security

- 4.1. Unless otherwise agreed by the Access Provider, the Access Seeker must (at the Access Seeker's sole cost and expense) provide to the Access Provider and maintain, on terms and conditions reasonably required by the Access Provider and subject to clause 4.2, the Security (as shall be determined having regard to clause 4.3 and as may be varied pursuant to clause 4.5 and 4.6) in respect of amounts owing by the Access Seeker to the Access Provider under this IAD.
- 4.2. The Access Seeker acknowledges that unless otherwise agreed by the Access Provider, it must maintain (and the Access Provider need not release) the Security specified in clause 4.1 for a period of six Months following the last to occur of: cessation of supply of a Service or Services under this IAD, and payment of all outstanding amounts under this IAD.
- 4.3. The Security (including any varied Security) shall only be requested when it is reasonably necessary to protect the legitimate business interests of the Access Provider and shall be of an amount and in a form which is reasonable in all the circumstances. As a statement of general principle the amount of any Security shall be calculated by reference to:
- (a) the aggregate value of all Services likely to be provided to the Access Seeker under this IAD over a reasonable period; or
 - (b) the value of amounts invoiced under this IAD but unpaid (excluding any amounts in respect of which there is a current Billing Dispute).

For the avoidance of doubt, any estimates, forecasts or other statements made or provided by the Access Seeker may be used by the Access Provider in determining the amount of a Security.

- 4.4. Examples of appropriate forms of security, having regard to the factors referred to in clause 4.3, may include without limitation:
- (a) fixed and floating charges;
 - (b) personal guarantees from directors;
 - (c) bank guarantees;
 - (d) letters of comfort;
 - (e) mortgages;
 - (f) a right of set-off; or
 - (g) a combination of the forms of security referred to in paragraphs (a) to (f) above.

- 4.5. The Access Provider may from time to time where the circumstances reasonably require, request Ongoing Creditworthiness Information from the Access Seeker to determine the ongoing creditworthiness of the Access

Seeker. The Access Seeker must supply Ongoing Creditworthiness Information to the Access Provider within 15 Business Days of receipt of a request from the Access Provider for such information. The Access Provider may, as a result of such Ongoing Creditworthiness Information, having regard to the factors referred to in clause 4.3 and subject to clause 4.7, reasonably require the Access Seeker to alter the Security, and the Access Seeker must provide that altered Security within 20 Business Days of being notified by the Access Provider in writing of that requirement.

- 4.6. The Access Seeker may from time to time request the Access Provider to consent (in writing) to a decrease in the required Security and/or alteration of the form of the Security. The Access Provider must, within 15 Business Days of the Access Seeker's request, comply with that request if, and to the extent, it is reasonable to do so (having regard to the factors referred to in clause 4.3). The Access Provider may request, and the Access Seeker shall promptly provide, Ongoing Creditworthiness Information, for the purposes of this clause 4.6.
- 4.7. In the event that the Access Seeker provides Ongoing Creditworthiness Information to the Access Provider as required by this Schedule 4, the Access Seeker must warrant that such information is true, fair, accurate and complete as at the date on which it is received by the Access Provider.
- 4.8. For the purposes of this Schedule 4, **Ongoing Creditworthiness Information** means:
 - (a) a copy of the Access Seeker's most recent published audited balance sheet and published audited profit and loss statement (together with any notes attached to or intended to be read with such balance sheet or profit and loss statement);
 - (b) a credit report in respect of the Access Seeker or, where reasonably necessary in the circumstances, any of its owners or directors (Principals) from any credit reporting agency, credit provider or other independent party. The Access Seeker shall co-operate and provide any information necessary for that credit reporting agency, credit provider or other independent party to enable it to form an accurate opinion of the Access Seeker's creditworthiness. To that end, the Access Seeker agrees to procure written consents (as required under the *Privacy Act 1988* (Cth)) from such of its Principals as is reasonably necessary in the circumstances to enable the Access Provider to:
 - (i) obtain from a credit reporting agency, credit provider or other independent party, information contained in a credit report;
 - (ii) disclose to a credit reporting agency, credit provider or other independent party, personal information about each Principal; and
 - (iii) obtain and use a consumer credit report;

- (c) a letter, signed by the company secretary or duly authorised officer of the Access Seeker, stating that the Access Seeker is not insolvent and not under any external administration (as defined in the *Corporations Act 2001* (Cth)) or under any similar form of administration under any laws applicable to it in any jurisdiction; and
 - (d) the Access Seeker's credit rating, if any has been assigned to it.
- 4.9. The Access Seeker may require a confidentiality undertaking to be given by any person having access to confidential information contained in its Ongoing Creditworthiness Information prior to such information being provided to that person.
- 4.10. Subject to this Schedule 4, the Access Provider may, in its absolute discretion, deem a failure by the Access Seeker to provide Ongoing Creditworthiness Information or an altered Security in accordance with clause 4.5 as:
 - (a) an event entitling the Access Provider to alter the Security of the Access Seeker; or
 - (b) a breach of a material term or condition of this IAD.
- 4.11. Any disputes arising out of or in connection with Schedule 4 shall be dealt with in accordance with the procedures in Schedule 5.

Schedule 5 – General dispute resolution procedures

- 5.1. If a dispute arises between the parties in connection with or arising from the supply of the Service under this IAD, the dispute shall be managed as follows:
- (a) in the case of a Billing Dispute, the dispute shall be managed in accordance with the Billing Dispute Procedures; or
 - (b) subject to clause 5.2, in the case of a Non-Billing Dispute, the dispute shall be managed in accordance with the procedures set out in this Schedule 5.
- 5.2. To the extent that a Non-Billing Dispute is raised or arises in connection with, or otherwise relates to, a Billing Dispute, then unless the Access Provider otherwise determines, that Non-Billing Dispute shall be resolved in accordance with the Billing Dispute Procedures.
- 5.3. If a Non-Billing Dispute arises, either party may, by written notice to the other, refer the Non-Billing Dispute for resolution under this Schedule 5. A Non-Billing Dispute must be initiated only in good faith.
- 5.4. Any Non-Billing Dispute notified under clause 5.3 shall be referred:
- (a) initially to the nominated manager (or managers) for each party, who shall endeavour to resolve the dispute within 10 Business Days of the giving of the notice referred to in clause 5.3 or such other time agreed by the parties; and
 - (b) if the persons referred to in paragraph (a) above do not resolve the Non-Billing Dispute within the time specified under paragraph (a), then the parties may agree in writing within a further five Business Days to refer the Non-Billing Dispute to an Expert Committee under clause 5.11, or by written agreement submit it to mediation in accordance with clause 5.10.
- 5.5. If:
- (a) under clause 5.4 the Non-Billing Dispute is not resolved and a written agreement is not made to refer the Non-Billing Dispute to an Expert Committee or submit it to mediation; or,
 - (b) under clause 5.10(f), the mediation is terminated; and
 - (c) after a period of five Business Days after the mediation is terminated as referred to in paragraph (b), the parties do not resolve the Non-Billing Dispute or agree in writing on an alternative procedure to resolve the Non-Billing Dispute (whether by further mediation, written notice to the Expert Committee, arbitration or otherwise) either party may terminate the operation of this dispute resolution procedure in relation to the Non-Billing Dispute by giving written notice of termination to the other party.

- 5.6. A party may not commence legal proceedings in any court or commence any arbitration (except proceedings seeking urgent interlocutory relief) in respect of a Non-Billing Dispute unless:
- (a) the Non-Billing Dispute has first been referred for resolution in accordance with the dispute resolution procedure set out in this Schedule 5 or clause 5.2 (if applicable) and a notice terminating the operation of the dispute resolution procedure has been issued under clause 5.5; or
 - (b) the other party has failed to substantially comply with the dispute resolution procedure set out in this Schedule 5 or clause 5.2 (if applicable).
- 5.7. Each party must continue to fulfill its obligations under this IAD while a Non-Billing Dispute and any dispute resolution procedure under this Schedule 5 are pending.
- 5.8. There shall be a presumption that all communications between the parties during the course of a Non-Billing Dispute are made on a without prejudice and confidential basis.
- 5.9. Each party shall, as early as practicable after the notification of a Non-Billing Dispute pursuant to clause 5.3, provide to the other party any relevant materials on which it intends to rely (provided that this obligation is not intended to be the same as the obligation to make discovery in litigation).
- 5.10. Where a Non-Billing Dispute is referred to mediation by way of written agreement between the parties, pursuant to clause 5.4(b):
- (a) any agreement shall include a statement of the disputed matters in the Non-Billing Dispute and must take place within 15 Business Days upon the receipt by the mediator of such agreement;
 - (b) it must be conducted in accordance with the mediation guidelines of the ACDC in force from time to time (**ACDC Guidelines**) and the provisions of this clause 5.10. In the event of any inconsistency between them, the provisions of this clause 5.10 shall prevail;
 - (c) it is to be conducted in private;
 - (d) in addition to the qualifications of the mediator contemplated by the ACDC Guidelines, the mediator should:
 - (i) have an understanding of the relevant aspects of the telecommunications industry (or have the capacity to quickly come to such an understanding);
 - (ii) have an appreciation of the competition law implications of his/her decisions; and
 - (iii) not be an officer, director or employee of a telecommunications company or otherwise have a potential for a conflict of interest;

- (e) the parties must notify each other no later than 48 hours prior to mediation of the names of their representatives who shall attend the mediation. Nothing in this subclause is intended to suggest that the parties are able to refuse the other's chosen representatives or to limit other representatives from the parties attending during the mediation;
- (f) it shall terminate in accordance with the ACDC Guidelines;
- (g) the parties shall bear their own costs of the mediation including the costs of any representatives and shall each bear half the costs of the mediator; and
- (h) any agreement resulting from mediation shall bind the parties on its terms.

5.11. The parties may by written agreement in accordance with clause 5.4(b), submit a Non-Billing Dispute for resolution by an Expert Committee (**Initiating Notice**), in which case the provisions of this clause 5.11 shall apply as follows:

- (a) The terms of reference of the Expert Committee shall be as agreed by the parties. If the terms of reference are not agreed within five Business Days after the date of submitting the Initiating Notice (or such longer period as agreed between the parties), the referral to the Expert Committee shall be deemed to be terminated.
- (b) An Expert Committee shall act as an expert and not as an arbitrator.
- (c) The parties shall each be represented on the Expert Committee by one appointee.
- (d) The Expert Committee must include an independent chairperson agreed by the parties or, if not agreed, a nominee of the ACDC. The chairperson must have the qualifications listed in paragraphs 5.10(d)(i), (ii) and (iii).
- (e) Each party shall be given an equal opportunity to present its submissions and make representations to the Expert Committee.
- (f) The Expert Committee may determine the dispute (including any procedural matters arising during the course of the dispute) by unanimous or majority decision.
- (g) The parties shall ensure that the Expert Committee uses all reasonable endeavours to reach a decision within 20 Business Days after the date on which the terms of reference are agreed or the final member of the Expert Committee is appointed (whichever is the later) and undertake to co-operate reasonably with the Expert Committee to achieve that timetable.

- (h) If the dispute is not resolved within the timeframe referred to in clause 5.11(g), either party may by written notice to the other party terminate the appointment of the Expert Committee.
- (i) The Expert Committee shall have the right to conduct any enquiry as it thinks fit, including the right to require and retain relevant evidence during the course of the appointment of the Expert Committee or the resolution of the dispute.
- (j) The Expert Committee must give written reasons for its decision.
- (k) A decision of the Expert Committee is final and binding on the parties except in the case of manifest error or a mistake of law.
- (l) Each party shall bear its own costs of the enquiry by the Expert Committee including the costs of its representatives, any legal counsel and its nominee on the Expert Committee and the parties shall each bear half the costs of the independent member of the Expert Committee.

Schedule 6 – Confidentiality provisions

- 6.1. Subject to clause 6.4 and any applicable statutory duty, each party must keep confidential all Confidential Information of the other party and must not:
- (a) use or copy such Confidential Information except for the purposes of this IAD; or
 - (b) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any third person.
- 6.2. For the avoidance of doubt, information generated within the Access Provider's Network as a result of or in connection with the supply of the relevant Service to the Access Seeker or the interconnection of the Access Provider's Network with the Access Seeker's Network (other than the aggregate Network information of the Access Provider and all Access Seekers to whom the relevant Service is supplied) is the Confidential Information of the Access Seeker.
- 6.3. The Access Provider shall upon request from the Access Seeker, disclose to the Access Seeker quarterly aggregate traffic flow information generated within the Access Provider's Network in respect of a particular Service provided to the Access Seeker, if the Access Provider measures and provides this information to itself. The Access Seeker must pay the reasonable costs of the Access Provider providing that information.
- 6.4. Subject to clause 6.5, Confidential Information of the Access Seeker:
- (a) referred to in clause 6.2; or
 - (b) relating to or concerning the Access Seeker's end-users,
- may be:
- (c) used by the Access Provider:
 - (i) for the purposes of undertaking planning, maintenance, provisioning, operations or reconfiguration of its Network;
 - (ii) for the purposes of this IAD;
 - (iii) for the purpose of billing; or
 - (iv) for another purpose agreed to by the Access Seeker; and
 - (d) disclosed only to personnel directly involved in the purposes referred to in paragraph (c) above.
- 6.5. A party (**Disclosing Party**) may to the extent necessary disclose the Confidential Information of the other party:

- (a) to those of its directors, officers, employees, agents and representatives to whom the Confidential Information is reasonably required to be disclosed for the purposes of this IAD;
- (b) to any professional person acting for the Disclosing Party to permit that person to protect or advise on the rights of the Disclosing Party in respect of the obligations of the Disclosing Party under this IAD;
- (c) to an auditor acting for the Disclosing Party to the extent necessary to permit that auditor to perform its audit functions;
- (d) in connection with legal proceedings, arbitration, expert determination and other dispute resolution mechanisms set out in this IAD or for the purpose of seeking advice from a professional person in relation thereto;
- (e) as required by law provided that the Disclosing Party has first given as much notice (in writing) as is reasonably practicable to the other party, that it is required to disclose the Confidential Information so that the other party has an opportunity to protect the confidentiality of its Confidential Information;
- (f) with the written consent of the other party provided that if required by the other party as a condition of giving its consent, the Disclosing Party must comply with clause 6.6;
- (g) in accordance with a lawful and binding directive issued by a regulatory authority which is duly authorised to do so;
- (h) if reasonably required to protect the safety of personnel or property;
- (i) as required by the listing rules of any stock exchange where that party's securities are listed or quoted; or
- (j) as reasonably required to facilitate an Access Seeker gaining access to Services (including by undertaking Common Infrastructure Works) at a particular Exchange, provided that the Disclosing Party must comply with clause 6.6.

6.6. If required by another party as a condition of giving its consent to the disclosure of the Confidential Information of that other party, or where the information is reasonably required to facilitate an Access Seeker gaining access to Services (including by undertaking Common Infrastructure Works) at a particular Exchange, the Disclosing Party, before disclosing Confidential Information to a third person, must:

- (a) impose an obligation upon the disclosee by way of a confidentiality undertaking in the form set out in Annexure 1 of this Schedule 6:
 - (i) to use the Confidential Information disclosed solely for the purposes for which the disclosure is made and to observe appropriate confidentiality requirements in relation to such information; and

- (ii) not to disclose the Confidential Information without the prior written consent of the other party;
 - (b) obtain an acknowledgment by way of a confidentiality undertaking in the form set out in Annexure 1 of this Schedule 6 from such a disclosee that:
 - (i) the Confidential Information is and at all times remains proprietary to the other party; and
 - (ii) that misuse or unauthorised disclosure of the Confidential Information may cause serious harm to the other party.
- 6.7. Each party must co-operate in any action taken by the other party to:
- (a) protect the confidentiality of the other party's Confidential Information; or
 - (b) enforce its rights in relation to its Confidential Information.
- 6.8. Each party must establish and maintain security measures to safeguard the other party's Confidential Information from unauthorised access, use, copying, reproduction or disclosure.
- 6.9. Confidential Information provided by one party to the other party is provided for the benefit of that other party only. Each party acknowledges that no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.
- 6.10. Each party acknowledges that a breach of this Schedule by one party may cause another party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a party may seek injunctive relief against such a breach or threatened breach of this Schedule 6.
- 6.11. If the Access Seeker believes there is *prima facie* evidence which tends to show that the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 6.4, the Access Seeker may invoke the audit procedures set out in this clause 6.11 as follows:
- (a) The audit procedures in this clause 6.11 must be initiated only in good faith.
 - (b) The Access Seeker shall give the Access Provider a written notice that it intends to initiate an audit in accordance with this clause 6.11.
 - (c) The Access Seeker shall nominate an Independent Auditor to conduct an audit of the Access Provider's systems for the purpose of determining whether the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 6.4.

- (d) If the Access Provider objects to the person nominated by the Access Seeker or the parties have not agreed on an Independent Auditor within five Business Days of the notice given under clause 6.11(b), then the Independent Auditor shall be a person nominated by the President for the time being of the Institute of Chartered Accountants in the state in which the Access Provider holds its registered office.
- (e) The Access Seeker shall bear all reasonable costs of the Access Provider relating to the audit, as well as the costs of the Independent Auditor.
- (f) The Independent Auditor shall be required to give a confidentiality undertaking to the Access Provider in terms as set out in Annexure 1 of this Schedule 6.
- (g) The Independent Auditor's first task shall be to determine whether there is *prima facie* evidence which tends to show that the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 6.4. The Independent Auditor may obtain advice from a barrister or solicitor (who does not act for and has not acted for either of the parties in relation to any matter in question) in determining whether such *prima facie* evidence exists.
- (h) If the Independent Auditor so determines, then he/she shall be required to proceed with the audit.
- (i) If the Independent Auditor is required to proceed with the audit in accordance with clause 6.11(h), he/she shall be required to consult the Access Provider over the most expeditious means by which to conduct an audit of the Access Provider's systems (including but not limited to its computer systems, databases, records and processes) for the purpose specified in clause 6.11(c), and to thereafter conduct the audit as he/she considers appropriate.
- (j) The audit shall be conducted expeditiously and in any event for no longer than 20 Business Days (excluding any delays caused by the Access Provider).
- (k) The Access Provider must permit the Independent Auditor to audit and inspect its systems (including but not limited to its computer systems, databases, records and processes) and the Access Provider must provide the Independent Auditor with such assistance as he/she reasonably requires in order to conduct the audit.
- (l) At the conclusion of the audit, the Independent Auditor shall be required to provide a report to both parties setting out his/her findings and conclusions as to whether the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 6.4.

- (m) If the Independent Auditor's report contains Confidential Information of the Access Provider, then he/she will mask such information in the version of the report provided to the Access Seeker, provided that the Access Seeker's solicitors are given an unmasked copy of the report (subject to them first giving a confidentiality undertaking to the Access Provider in terms as set out in Annexure 1 of this Schedule 6 to the IAD).
- (n) The parties acknowledge that the Independent Auditor's report shall be prima facie evidence of the matters contained in the report and (subject to any obligation of confidence attaching to the report or the information contained therein) may be used in connection with any dispute concerning whether the Access Provider has used, is using or is likely to use Confidential Information relating to the Access Seeker's end-users for a purpose other than as permitted under clause 6.4.

Confidentiality undertaking form

[Amend where necessary]

CONFIDENTIALITY UNDERTAKING

I, _____ of [employer's company name] ([**undertaking company**]) undertake to [full name of party who owns or is providing the confidential information as the case requires] ([**Provider**]) that:

- 1 Subject to the terms of this Undertaking, I will keep confidential at all times the information listed in Attachment 1 to this Undertaking (**Confidential Information**) that is in my possession, custody, power or control.
- 2 I acknowledge that:
 - (a) this Undertaking is given by me to [Provider] in consideration for [Provider] making the Confidential Information available to me for the Approved Purposes (as defined below);
 - (b) all intellectual property in or to any part of the Confidential Information is and will remain the property of [Provider]; and
 - (c) by reason of this Undertaking, no licence or right is granted to me, or any other employee, agent or representative of [undertaking company] in relation to the Confidential Information except as expressly provided in this Undertaking.
- 3 I will:
 - (a) only use the Confidential Information for:
 - (i) the purposes listed in Attachment 2 to this Undertaking; or
 - (ii) any other purpose approved by [Provider] in writing;
(the Approved Purposes);
 - (b) comply with any reasonable request or direction from [provider] regarding the Confidential Information.
- 4 Subject to clause 5, I will not disclose any of the Confidential Information to any other person without the prior written consent of [Provider].
- 5 I acknowledge that I may disclose the Confidential Information to which I have access to:

- (a) any employee, external legal advisors, independent experts, internal legal or regulatory staff of [undertaking company], for the Approved Purposes provided that:
 - (i) the person to whom disclosure is proposed to be made (**the person**) is notified in writing to [Provider] and [Provider] has approved the person as a person who may receive the Confidential Information, which approval shall not be unreasonably withheld;
 - (ii) the person has signed a confidentiality undertaking in the form of this Undertaking or in a form otherwise acceptable to [Provider]; and
 - (iii) a signed undertaking of the person has already been served on [Provider];
 - (b) if required to do so by law; and
 - (c) any secretarial, administrative and support staff, who perform purely administrative tasks, and who assist me or any person referred to in paragraph 5(a) for the Approved Purpose.
- 6 I will establish and maintain security measures to safeguard the Confidential Information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and use the same degree of care as a prudent person in my position would use to protect that person's confidential information.
- 7 Except as required by law and subject to paragraph 10 below, within a reasonable time after whichever of the following first occurs:
- (a) termination of this Undertaking;
 - (b) my ceasing to be employed or retained by [undertaking company] (provided that I continue to have access to the Confidential Information at that time); or
 - (c) my ceasing to be working for [undertaking company] in respect of the Approved Purposes (other than as a result of ceasing to be employed by [undertaking company]);
- I will destroy or deliver to [Provider] the Confidential Information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Confidential Information in my possession, custody, power or control.
- 8 Nothing in this Undertaking shall impose an obligation upon me in respect of information:
- (a) which is in the public domain; or
 - (b) which has been obtained by me otherwise than from [Provider] in relation to this Undertaking;

provided that the information is in the public domain and/or has been obtained by me by reason of, or in circumstances which do not involve any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of [Provider] or by any other unlawful means, of which I am aware.

- 9 I acknowledge that damages may not be a sufficient remedy for any breach of this Undertaking and that [Provider] may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of this Undertaking, in addition to any other remedies available to [Provider] at law or in equity.
- 10 The obligations of confidentiality imposed by this Undertaking survive the destruction or delivery to [Provider] of the Confidential Information pursuant to paragraph 7 above.

Signed: _____ Dated: _____

Print name: _____

ATTACHMENT 1

Any document, or information in any document provided by [provider] to [undertaking company] which [provider] claims is confidential information for the purposes of this Undertaking.

ATTACHMENT 2

[Approved purpose(s)]

Schedule 7 – Communications with end users

- 7.1. The Access Provider may communicate and deal with an Access Seeker's end-users as expressly provided in clauses 7.2 to 7.4 and as otherwise permitted by law.
- 7.2. Subject to clause 7.3, the Access Provider may communicate and deal with the Access Seeker's end-users:
- (a) in relation to goods and services which the Access Provider currently supplies or previously supplied to the end-user;
 - (b) as members of the general public or a part of the general public or members of a particular class of recipients of carriage or other services;
 - (c) where the Access Provider performs wholesale operations which require communications or dealings with such end-users, to the extent necessary to carry out such operations;
 - (d) in a manner or in circumstances agreed by the parties; or
 - (e) in an Emergency, to the extent it reasonably believes necessary to protect the safety of persons or property.
- 7.3. If:
- (a) an end-user of the Access Seeker initiates a communication with the Access Provider in relation to goods and/or services supplied to that end-user by the Access Seeker, the Access Provider must:
 - (i) advise the end-user that they should discuss any matter concerning the Access Seeker's goods and/or services with the Access Seeker; and
 - (ii) not engage in any form of marketing or discussion of the Access Provider's goods and/or services;
 - (b) an end-user of the Access Seeker initiates a communication with the Access Provider in relation to goods and/or services supplied to that end-user by the Access Provider, the Access Provider may engage in any form of marketing or discussion of the Access Provider's goods and/or services; and
 - (c) an end-user of the Access Seeker initiates a communication with the Access Provider in relation to goods and/or services supplied to that end-user by the Access Provider and the Access Seeker, the Access Provider must advise the end-user that they should discuss any matter concerning the Access Seeker's goods and/or services with the Access Seeker, but may otherwise engage in any form of marketing or discussion of the Access Provider's goods and/or services.

- 7.4. Where a party communicates with the end-user of the other party, that first mentioned party must, where practicable, make and maintain records of that communication with the other party's end-user in circumstances where that communication discusses anything concerning the other party's goods or services with the end-user. For the avoidance of doubt, the obligation in this paragraph does not include a requirement to provide such records to the other party (however such a requirement may arise pursuant to any dispute resolution procedure).
- 7.5. For the purposes of clauses 7.2 to 7.4, a "communication" shall include any form of communication, including without limitation telephone discussions and correspondence.
- 7.6. Neither party may represent that:
- (a) it has any special relationship with or special arrangements with the other party;
 - (b) there are consequences for an end-user when an end-user signs an authority to transfer their accounts or services;
 - (c) a Service has any characteristics or functionality other than as specified in a relevant standard form of agreement or the service description for the Service or in any specifications, collateral or brochures published in relation to the Service; or
 - (d) the other party participates in the provision of the first mentioned party's services, provided that a party may, upon enquiry by an end-user, inform the end-user of the nature of its relationship with the other party.
- 7.7. Where a party communicates with an end-user of either party, the first mentioned party shall ensure that it does not attribute to the other party:
- (a) blame for a Fault or other circumstance; or
 - (b) the need for maintenance of a Network; or
 - (c) the suspension of a Service,
- provided that this requirement does not require a party to engage in unethical, misleading or deceptive conduct.
- 7.8. This Schedule 7 shall be subject to any applicable industry standard made by the ACMA pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) and any applicable industry code registered pursuant to Part 6 of the *Telecommunications Act 1997* (Cth) in relation to communications or dealings with end-users.

Schedule 8 – [Blank]

Schedule 9 – Suspension and termination

9.1. The Access Provider may immediately suspend the supply of a Service or access to the Access Provider's Network, provided it notifies the Access Seeker where practicable and provides the Access Seeker with as much notice as is reasonably practicable:

- (a) during an Emergency; or
- (b) where in the reasonable opinion of the Access Provider, the supply of that Service or access to the Access Provider's Network may pose a threat to safety of persons, hazard to equipment, threat to Network security or is likely to impede the activities of authorised persons responding to an Emergency; or
- (c) where, in the reasonable opinion of the Access Provider, the Access Seeker's Network or equipment adversely affects or threatens to affect the normal operation of the Access Provider's Network or access to the Access Provider's Network or equipment (including for the avoidance of doubt, where the Access Seeker has delivered Prohibited Traffic onto the Access Provider's Network),

and is entitled to continue such suspension until (as the case requires) the relevant Emergency or threat has passed or until the normal operation of the Access Provider's Network or access to the Access Provider's Network or equipment is no longer adversely affected or threatened.

9.2. If:

- (a) the Access Seeker has failed to pay monies owing under this IAD;
- (b) the Access Seeker's use either of its Facilities or the Access Provider's Facilities is in contravention of any law;
- (c) the Access Seeker breaches a material obligation under this IAD; or
- (d) any of the events described in clause 9.8 occurs in respect of the Access Seeker,

(Suspension Event) and:

- (e) within 20 Business Days after becoming aware of the Suspension Event, the Access Provider gives a written notice to the Access Seeker:
 - (i) citing this clause;
 - (ii) specifying the Suspension Event and the Service in respect of which the event has occurred;
 - (iii) requiring the Access Seeker to institute remedial action (if any) in respect of that event; and

- (iv) specifying the action which may follow due to a failure to comply with the notice,

(Suspension Notice) and:

- (f) the Access Seeker fails to institute remedial action as specified in the Suspension Notice within 20 Business Days after receiving the Suspension Notice (in this clause 9.2, the **Remedy Period**),

the Access Provider may, by written notice given to the Access Seeker within 20 Business Days after the expiry of the Remedy Period:

- (g) refuse to provide the Access Seeker with the Service:
 - (i) of the kind in respect of which the Suspension Event has occurred; and
 - (ii) a request for which is made by the Access Seeker after the date of the breach,

until the remedial action specified in the Suspension Notice is completed or the Suspension Event otherwise ceases to exist; and

- (h) suspend the provision of any Service of the kind in respect of which the Suspension Event has occurred, until the remedial action specified in the Suspension Notice is completed.

9.3. For the avoidance of doubt, subclause 9.2(a) does not apply to a Billing Dispute that has been notified by the Access Seeker.

9.4. In the case of a suspension pursuant to clause 9.2, the Access Provider shall reconnect the Access Seeker to the Access Provider's Network and recommence the supply of any suspended Services as soon as practicable after there no longer exists a reason for suspension and the Access Provider shall do so subject to payment by the Access Seeker of the Access Provider's reasonable costs of suspension and reconnection.

9.5. If:

- (a) a party ceases to be a carrier or carriage service provider; or
- (b) a party ceases to carry on business for a period of more than 10 consecutive Business Days without the prior written consent of the other party (such consent not to be unreasonably withheld); or
- (c) in the case of the Access Seeker, any of the reasonable grounds specified in subsection 152AR(9) of the CCA apply; or
- (d) a party breaches a material obligation under this IAD, and:

- (i) that breach materially impairs or is likely to materially impair the ability of the other party to deliver Listed Carriage Services to its customers; and
- (ii) the other party has given a written notice to the first-mentioned party within 20 Business Days of becoming aware of the breach (**Breach Notice**); and
- (iii) the other party fails to institute remedial action as specified in the Breach Notice within 20 Business Days after receiving the Breach Notice (in this clause 9.5, the **Remedy Period**),

the other party may cease supply of the Service(s) under this IAD by written notice given to the first-mentioned party within 20 Business Days after becoming aware of the cessation, reasonable grounds or expiry of the Remedy Period specified in the Breach Notice (as the case may be).

9.6. A party must not give the other party both a Suspension Notice under clause 9.2 and a Breach Notice under clause 9.5 in respect of:

- (a) the same breach; or
- (b) different breaches that relate to or arise from the same act, omission or event or related acts, omissions or events,

except where a Suspension Notice has previously been given to the Access Seeker by the Access Provider in accordance with clause 9.2 in respect of a Suspension Event and the Suspension Event has not been rectified by the Access Seeker within the relevant Remedy Period specified in clause 9.2.

9.7. For the avoidance of doubt, a party shall not be required to provide a Suspension Notice under clause 9.2 in respect of a breach before giving a Breach Notice in respect of that breach under clause 9.5.

9.8. Notwithstanding any other provision of this IAD, either party may at any time immediately cease the supply of one or more Services under this IAD by giving written notice of termination to the other party if:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) of the other party and the order or resolution remains in effect for a continuous period of five Business Days; or
- (b) a receiver, receiver and manager, official manager, controller, administrator (whether voluntary or otherwise), provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the other party and the appointment remains in effect for a continuous period of five Business Days; or

- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the other party, or the other party enters or proposes to enter into any scheme of arrangement or any composition for the benefit of its creditors; or
- (d) the other party is or likely to be unable to pay its debts as and when they fall due or is deemed to be unable to pay its debts pursuant to section 585 or any other section of the *Corporations Act 2001* (Cth); or
- (e) as a result of the operation of section 459F or any other section of the *Corporations Act 2001* (Cth), the other party is taken to have failed to comply with a statutory demand; or
- (f) a force majeure event substantially and adversely affecting the ability of a party to perform its obligations to the other party, continues for a period of three Months; or
- (g) the other party breaches any of the terms of any of its loans, security or like agreements or any lease or agreement relating to significant equipment used in conjunction with the business of that other party related to the supply of a Service under this IAD; or
- (h) the other party seeks or is granted protection from its creditors under any applicable legislation; or
- (i) anything analogous or having a substantially similar effect to any of the events specified above occurs in relation to the other party.

9.9. The cessation of the operation of this IAD:

- (a) shall not operate as a waiver of any breach by a party of any of the provisions of the IAD; and
- (b) is without prejudice to any rights, liabilities or obligations of any party which have accrued up to the date of cessation.

9.10. Without prejudice to the parties' rights upon termination of the supply of a Service under this IAD, or expiry or revocation of this IAD, the Access Provider must refund to the Access Seeker a fair and equitable proportion of those sums paid under this IAD by the Access Seeker which are periodic in nature and have been paid for a Service for a period extending beyond the date on which the supply of a Service under this IAD terminates, or this IAD ceases to have effect, subject to any invoices or other amounts outstanding from the Access Seeker to the Access Provider. In the event of a dispute in relation to the calculation or quantum of a fair and equitable proportion, either party may refer the matter for dispute resolution in accordance with the dispute resolution procedures set out in Schedule 9 of this IAD.

Schedule 10 – Resale Services

- 10.1 The Access Seeker can acquire a Service for the purpose of supplying to a Reseller.
- 10.2 The Access Seeker is not required to:
 - (a) notify the Access Provider when the Access Seeker acquires, or seeks to acquire, a Service for the purpose of supplying a Reseller; and/or
 - (b) obtain the Access Provider's consent to that supply.