

NBN Co Special Access Undertaking in respect of the NBN Access Service

**given to the ACCC in accordance with Part XIC of the
Competition and Consumer Act 2010 (Cth)**



NBN Co Limited (ACN 136 533 741) and NBN Tasmania Limited (ACN 138 338 271)

NBN Co Special Access Undertaking

5 December 2011

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Environment

NBN Co asks that you consider the environment before printing this document.

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Special Access Undertaking

This is a Special Access Undertaking given by NBN Co Limited (ACN 136 533 741) and NBN Tasmania Limited (ACN 138 338 271) to the ACCC under section 152CBA(2) of the Competition and Consumer Act.

Background

- A NBN Co Limited is a Carrier.
 - B NBN Tasmania Limited is a Carrier.
 - C NBN Co will supply listed carriage services on the NBN Co Network and / or services that facilitate the supply of listed carriage services on the NBN Co Network.
 - D The NBN Access Service is a listed carriage service within the meaning of the Telecommunications Act.
 - E The NBN Access Service is not a declared service under section 152AL(8A) of the Competition and Consumer Act and there is no access determination that applies in respect of the NBN Access Service.
 - F NBN Co gives this Special Access Undertaking to the ACCC in accordance with section 152CBA(2) of the Competition and Consumer Act in respect of the NBN Access Service.
 - G This Special Access Undertaking provides for NBN Co to engage in specified conduct in relation to access to the NBN Access Service under section 152CBA(3B) and those matters referred to in section 152CBA(3C) of the Competition and Consumer Act.
 - H This Special Access Undertaking contains price related terms and conditions that are reasonably necessary for NBN Co to achieve uniform national wholesale pricing in accordance with the requirements of the Statement of Expectations.
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1 Compliance

1.1 Compliance with the standard access obligations

In the event that NBN Co supplies, or becomes capable of supplying, the NBN Access Service (whether to itself or to other persons), NBN Co agrees to be bound by the obligations referred to in section 152AXB of the Competition and Consumer Act, to the extent that those obligations would apply to NBN Co in relation to the NBN Access Service if the NBN Access Service was treated as a declared service.

1.2 Compliance with this Special Access Undertaking

In the event that NBN Co supplies, or becomes capable of supplying, the NBN Access Service (whether to itself or to other persons), NBN Co undertakes to comply with

the terms and conditions specified in this Special Access Undertaking in relation to obligations referred to in section 152AXB of the Competition and Consumer Act.

2 NBN Access Service and Product Components

2.1 Scope

This Special Access Undertaking is given in relation to the NBN Access Service.

2.2 Supply of NBN Access Service through the Product Components and associated Product Features

- (a) NBN Co will offer to supply the Product Components and associated Product Features on each NBN Co Network to Customers as the means of implementing its obligations under, and subject to, this Special Access Undertaking in respect of the NBN Access Service.
- (b) Nothing in this Special Access Undertaking requires NBN Co to offer to supply the NBN Access Service, except through the supply of the Product Components and the associated Product Features.

2.3 Product Components

- (a) The Product Components provide the means by which:
 - i NBN Co will fulfil its obligations under this Special Access Undertaking regarding the NBN Access Service;
 - ii NBN Co will fulfil any category B standard access obligations that apply to NBN Co under the Competition and Consumer Act regarding the NBN Access Service; and
 - iii NBN Co will offer to supply, and Customers may acquire, the Product Features in respect of those Product Components.
- (b) NBN Co will offer to supply the following Product Components to Customers:
 - i the User Network Interface;
 - ii the Access Virtual Circuit;
 - iii the Connectivity Virtual Circuit; and
 - iv the Network-Network Interface,as described in Schedule 3 (Product Components).

2.4 Ancillary Services

- (a) NBN Co will offer to supply the Ancillary Services to Customers subject to the terms of this Special Access Undertaking
- (b) The Ancillary Services do not form part of the NBN Access Service, but the assets that support the provision of the Ancillary Services form part of the Relevant Assets and the revenues earned by NBN Co in relation to the Ancillary Services form part of the Revenues.

2.5 Introduction, variation and withdrawal of Product Components and associated Product Features

NBN Co may introduce, vary and withdraw Product Components and Product Features subject to, and in accordance with, clause 5 of Schedule 6 (Product development and withdrawal).

2.6 Wholesale Broadband Agreement

- (a) The Wholesale Broadband Agreement will set out the agreement comprising the terms and conditions on which NBN Co will offer to supply, and an Access Seeker may acquire:
 - i the Product Components and associated Product Features; and
 - ii the Ancillary Services.
- (b) This Special Access Undertaking does not specify all of the terms and conditions on which NBN Co will offer to supply the Product Components, associated Product Features or the Ancillary Services. To the extent that an aspect of the supply of a Product Component, associated Product Features and/or Ancillary Services is not covered directly by this Special Access Undertaking, those aspects will be set out in the Wholesale Broadband Agreement.

2.7 Alignment of SAU with existing Access Agreements

Following the commencement of this Special Access Undertaking, NBN Co will provide each Customer with the option of aligning the terms of its Access Agreement with the terms of this Special Access Undertaking, subject to the operation of NBN Co's statutory non-discrimination obligations.

3 Pricing Requirements

3.1 General

NBN Co will price the Product Components, associated Product Features and Ancillary Services in accordance with this clause 3.

3.2 Price Controlled Offers for the First Period

During the First Period, NBN Co undertakes that the Price payable by a Customer for the following Price Controlled Offers:

- (a) the Basic Access Offer in respect of each NBN Co Network;
- (b) the Connectivity Virtual Circuit Offer; and
- (c) the NNI Offer,

will not exceed the Maximum Regulated Price applicable to that Price Controlled Offer, as set out in Schedule 5 (Price controls), except where permitted otherwise pursuant to Schedule 5 (Price controls) or by law.

3.3 Prices increases to be subject to Individual Price Increase Limit

NBN Co undertakes that any increase in the Price payable by a Customer in a Financial Year for each Product Component, associated Product Feature and Ancillary Service (including for an ancillary charge applicable to those Product Components, Product Features or Ancillary Services) will not exceed the Individual Price Increase Limit in respect of that Product Component, associated Product Feature or Ancillary Service, as determined in accordance with Schedule 5 (Price controls), except where otherwise permitted pursuant to Schedule 5 (Price controls) or by law.

3.4 NBN Co to determine initial prices on Product Components, associated Product Features and Ancillary Services

During the Term, NBN Co may set the initial Prices of the Product Components, associated Product Features and Ancillary Services (including for an ancillary charge applicable to those new Product Components, Product Features or Ancillary Services), subject to the following:

- (a) the Long Term Revenue Constraint Methodology, as described in Schedule 7 (Long Term Revenue Constraint Methodology); and
- (b) the Maximum Regulated Prices on the Price Controlled Offers, as described in Schedule 5 (Price controls).

4 Long Term Revenue Constraint Methodology

4.1 General

In addition to complying with the requirements in clause 3, NBN Co will price the Product Components, associated Product Features and Ancillary Services in a manner that is consistent with Schedule 7 (Long Term Revenue Constraint Methodology), determined by reference to the Annual Building Block Revenue Requirement that applies during the Building Block Revenue Period.

4.2 Initial Cost Recovery Period

During the Initial Cost Recovery Period:

- (a) NBN Co's Regulatory Asset Base will be determined by reference to Prudently incurred Capital Expenditure;
- (b) NBN Co will determine its Annual Building Block Revenue Requirement by reference to:
 - i the Regulatory Asset Base, which determines:
 - A a return on capital; and
 - B a return of capital;
 - ii Prudently incurred Operating Expenditure;
 - iii tax allowances; and
 - iv the Annual Construction in Progress Allowance,

in accordance with Schedule 7 (Long Term Revenue Constraint Methodology); and
- (c) any shortfall in NBN Co's Revenues relative to the Annual Building Block Revenue Requirement in any given Financial Year relative to the Annual Building Block Revenue Requirement will be capitalised in an Initial Cost Recovery Account and subsequently recovered in later Financial Years of the Initial Cost Recovery Period in accordance with Schedule 7 (Long Term Revenue Constraint Methodology).

4.3 Transition from Initial Cost Recovery Period to Building Block Revenue Period

- (a) When NBN Co's Initial Cost Recovery Account first becomes equal to or less than zero after the SAU Commencement Date (**Methodology Change Event**):
 - i the **Initial Cost Recovery Period** will cease at the end of the Financial Year in which the Methodology Change Event occurs; and
 - ii the **Building Block Revenue Period** will commence at the beginning of the Financial Year immediately following the Financial Year in which the Methodology Change Event occurs.
- (b) In the final Financial Year of the Initial Cost Recovery Period, any Revenues earned in excess of that required to recover the Initial Cost Recovery Account will be deducted from Revenues able to be earned in the first Financial Year of the Building Block Revenue Period.

4.4 Building Block Revenue Period

- (a) During the Building Block Revenue Period:
- i NBN Co's Regulatory Asset Base will be determined by reference to Prudently incurred Capital Expenditure;
 - ii NBN Co's Regulated Revenue will be set by reference to NBN Co's Annual Building Block Revenue Requirement attributable to that period in accordance with clause 6.1 of Schedule 7 (Long Term Revenue Constraint Methodology);
 - iii NBN Co will price its Product Components, associated Product Features and Ancillary Services having regard to the need for the forecast value of Nominal Revenue not to exceed the forecast value of Regulated Revenue for the relevant Financial Year, as calculated in accordance with clause 6 of Schedule 7 (Long Term Revenue Constraint Methodology); and
 - iv any variation between actual Revenues and Regulated Revenues in a Financial Year will be carried forward in the calculation of Regulated Revenue into subsequent Financial Years.
- (b) NBN Co will ensure that Revenues in the Final Financial Year will be no more than the amount permitted in accordance with clause 6.2(c) of Schedule 7 (Long Term Revenue Constraint Methodology).

4.5 Prudency

Schedule 8 (Prudency) sets out the basis on which Capital Expenditure and Operating Expenditure will be considered to have been Prudently incurred.

5 Non-price terms and conditions

5.1 Scope

NBN Co will comply with the requirements set out in Schedule 11 (Non-price terms and conditions) in respect of the following non-price related matters:

- (a) consultation;
- (b) relationship management;
- (c) rollout progress information;
- (d) POI rollout progress;
- (e) Major NBN Upgrades;
- (f) review of Points of Interconnect;

- (g) access to the NBN Co Platform;
- (h) billing and payment;
- (i) credit management;
- (j) access to Common Property;
- (k) confidential information;
- (l) default management;
- (m) risk management; and
- (n) contract lifecycle management.

5.2 Dispute resolution

NBN Co will comply with the dispute management rules in Schedule 12 (Dispute Management Rules) in the event that there is a Dispute arising out of or relating to an Access Agreement.

5.3 Reporting

NBN Co will provide the ACCC with annual reporting on specific aspects of this Special Access Undertaking in compliance with the reporting requirements in Schedule 10 (Reporting).

6 Regulatory recourse

6.1 ACCC resolution of disputes

- (a) NBN Co undertakes to comply with this clause when negotiating with an Access Seeker in relation to an Access Agreement. This clause applies only:
 - i before execution of an Access Agreement with that Access Seeker; and
 - ii in respect of non-price terms and conditions to the extent that they are not covered by this Special Access Undertaking; and
 - iii in respect of price-related terms and conditions that had not been announced by NBN Co prior to the SAU Commencement Date.
- (b) If, having acted reasonably in relation to their negotiations, NBN Co and the Access Seeker are unable to reach agreement in respect of one or more terms or conditions referred to in clause 6.1(a), either party can notify (the **notifying party**) the ACCC of a dispute (**Regulatory Recourse Dispute**).

- (c) This Special Access Undertaking confers on the ACCC the powers and functions in this clause 6.1 in connection with a Regulatory Recourse Dispute.
- (d) The ACCC will require that notification of a Regulatory Recourse Dispute is in writing and sets out the matters in respect of which NBN Co and the Access Seeker are unable to agree. The notification must not exceed 5 pages and must outline the notifying party's position and its recommended drafting of the relevant term(s) or condition(s) the subject of the Regulatory Recourse Dispute (the **notification**). The following persons must receive the notification:
- i Group General Manager, Communications Group, ACCC;
 - ii Principal, Regulatory Affairs, NBN Co; and
 - iii the general manager of regulatory affairs, or other relevant officer, of the Access Seeker.
- (e) The ACCC will require the other party to the Regulatory Recourse Dispute (the **responding party**) to respond within 10 Business Days from the date of notification under 6.1(d), by preparing a submission that must not exceed 5 pages which outlines the responding party's position and their recommended drafting of the term(s) or condition(s) the subject of the Regulatory Recourse Dispute (the **response**). The persons listed in clause 6.1(d) must receive a copy of the response.
- (f) The ACCC will require the notifying party to respond to the issues raised in the response by preparing a reply of no more than 5 pages (the **reply**) within 10 Business Days from the date of receipt of the response under clause 6.1(e). The persons listed in clause 6.1(d) must receive a copy of the reply.
- (g) The ACCC must make a decision (the **Decision**) within 25 Business Days of receiving the reply under clause 6.1(f) or, if the notifying party elects not to prepare a reply under clause 6.1(f), within 20 Business Days of receiving the response under clause 6.1(e). The ACCC must give reasons for its Decision and must either:
- i accept the term(s) or condition(s) as outlined in the notification or reply; or
 - ii accept the term(s) or condition(s) outlined in the response
- provided that the ACCC may make non-material refinements to the term(s) or condition(s) outlined in the notification, reply or response (as the case may be), but only if the ACCC:
- iii gives each party prior notice of the proposed refinement(s);

- iv gives each party the opportunity to reply in respect of the proposed refinement(s); and
 - v takes into account any reply provided within 5 Business Days of the ACCC notifying the party of the proposed refinement(s).
- (h) The Decision is final and binding on the notifying party and the responding party.
- (i) The approved drafting of the term(s) or condition(s) in the Decision must be adopted in the Access Agreement to be entered into between the responding party and the notifying party.
- (j) With the consent of each of NBN Co and the Access Seeker, the ACCC may vary the process required by clauses 6.1(d) to 6.1(g) where a price-related term or condition is involved and the ACCC, acting reasonably, considers that it will not be possible to make a Decision within the timeframes and utilising the information from the parties provided for in clauses 6.1(d) to 6.1(g). Any ACCC request to utilise a varied process must specify:
- i the steps that the ACCC proposes to take in reaching its Decision;
 - ii the information to which the ACCC will have regard; and
 - iii the timeframe for the resolution of the Regulatory Recourse Dispute.

6.2 Compliance with other obligations

- (a) In making the Decision under clause 6.1(g), the ACCC must be satisfied that the term(s) or condition(s):
- i is (or are) reasonable, including having regard to the number of Access Seekers who have executed Access Agreements containing the term(s) or condition(s) the subject of the Regulatory Recourse Dispute and the extent of any inconsistency between the term(s) or condition(s) as outlined in the notification, reply or response (as the case may be) and existing Access Agreements between NBN Co and other Access Seekers; and
 - ii will promote the long term interests of end-users of carriage services or of services supplied by means of carriage services.
- (b) In making the Decision under clause 6.1(g), the ACCC must not make a Decision that would result in:
- i the ACCC engaging in conduct that has the effect (whether direct or indirect) of discriminating between Access Seekers;
 - ii NBN Co engaging in conduct that contravenes sections 152AXC or 152AXD of the Competition and Consumer Act;

- iii NBN Co being unable to engage in conduct that is authorised under section 151DA of the Competition and Consumer Act for the purposes of subsection 51(1) of the Competition and Consumer Act; or
- iv NBN Co engaging in conduct that would breach an agreement it has in place with any other party.

6.3 Obligation to offer to other Access Seekers and Customers

- (a) If the ACCC makes a Decision under clause 6.1(g), NBN Co undertakes to publish the term(s) or condition(s) in the Decision on the NBN Co website.
- (b) NBN Co undertakes to incorporate the term or condition the subject of the Decision, should an Access Seeker or Customer elect to adopt the term(s) or condition(s):
 - i in its Wholesale Broadband Agreement so that it is available for inclusion in any prospective Access Agreement; and
 - ii subject to clause 6.3(c), any Access Agreement with a Customer that is in place at the time of the Decision.
- (c) NBN Co's undertaking in clause 6.3(b)ii only applies where a Customer notifies NBN Co, within 10 Business Days from the date NBN Co publishes the Decision on its website under clause 6.3(a), that it wishes to adopt the term(s) or condition(s) the subject of the Decision in the Access Agreement in place with the Customer. After this time, NBN Co is not obliged to vary an existing Access Agreement in accordance with clause 6.3(b).

7 Term, variations, withdrawal and extension

7.1 Commencement

This Special Access Undertaking comes into operation on the date that the ACCC provides NBN Co with written notice of acceptance of this undertaking in accordance with section 152CBC(3) of the Competition and Consumer Act (**SAU Commencement Date**).

7.2 Expiry

Subject to section 152CBI of the Competition and Consumer Act, this Special Access Undertaking expires on 30 June 2040 (**Term**).

7.3 Review and variations

- (a) Pursuant to section 152CBG of the Competition and Consumer Act, NBN Co may, at any time, request the ACCC to consider a variation to this Special Access Undertaking by providing the ACCC with such a variation.

- (b) NBN Co will conduct a review of the operation of aspects of this Special Access Undertaking as follows:
 - i every 5 years during the Term, NBN Co will review the operation of the customer engagement process and the PDF Processes and will comply with any outcome of such a review in accordance with clause 2 of Schedule 9 (Review and variation of aspects of SAU); and
 - ii during the SAU Review Period, NBN Co will review the SAU Review Matters, and NBN Co will submit a request for variation of this Special Access Undertaking to the ACCC, in accordance with clause 3 of Schedule 9 (Review and variation of aspects of SAU).

7.4 Withdrawal

Pursuant to section 152CBI(2)(b) of the Competition and Consumer Act, NBN Co may withdraw this Special Access Undertaking at any time by giving the ACCC no less than 12 months prior written notice.

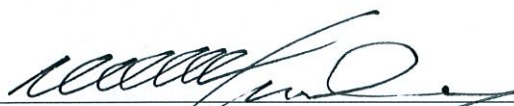
7.5 Extension of undertaking

- (a) NBN Co may, at any time within 12 months before the expiry of the Special Access Undertaking, request the extension (or further extension) of the Term of this Special Access Undertaking, subject to the approval of the ACCC.
- (b) In determining whether to approve the extension (or further extension) of this Special Access Undertaking, the ACCC must be satisfied that the extension (or further extension) satisfies the reasonableness criteria in section 152AH of the Competition and Consumer Act.

Execution page

Executed on 5 December 2011

For and on behalf of **NBN Co Limited** and **NBN Tasmania Limited**:



Mike Quigley
Chief Executive Officer and Director



Witness



Jim Hassell
Head of Product Development and Industry
Relations



Witness

Schedule 1 Dictionary and Interpretation

1 Defined terms

In this Special Access Undertaking:

ACCC means the Australian Competition and Consumer Commission.

ACCC Examinable Network Change has the meaning given to that term in clause 7.1 of Schedule 8 (Prudency).

Access Agreement means an “access agreement” for the purposes of section 152BE of the Competition and Consumer Act between NBN Co and a Customer in relation to the supply of the Product Components and associated Product Features and the Ancillary Services.

Access Seeker has the meaning given to that term in section 152AG of the Competition and Consumer Act.

Access Virtual Circuit means:

- (a) a Fibre Access Virtual Circuit;
- (b) a Wireless Access Virtual Circuit; or
- (c) a Satellite Access Virtual Circuit,

as the context requires.

Accessed NTD has the meaning given to that term in clause 2.2(b) of Schedule 4 (Price Controlled Offers).

Ancillary Services means a service that is ancillary to the supply of the Product Components and associated Product Features, including:

- (a) the Facilities Access Service;
- (b) the Systems Interfacing Service; and
- (c) any other product or service developed by NBN Co from time to time that is ancillary to the supply of the Product Components and associated Product Features.

Annual Building Block Revenue Requirement or **ABBRR** is to be calculated in accordance with clause 4 of Schedule 7 (Long Term Revenue Constraint Methodology).

Annual Construction in Progress Allowance or **ACIPA** has the meaning given to that term in clause 3.4(b) of Schedule 7 (Long Term Revenue Constraint Methodology).

Asset Type means each distinct type of asset in connection with the Relevant Assets, with the condition that all assets classified in a single Asset Type have the same economic life.

ATA means an analogue telephone adapter.

Average Price means the Price calculated in accordance with clause 3.1(c)i of Schedule 5 (Price controls).

Basic Access Offer or **BAO** means the offers described in clause 2 of Schedule 4 (Price Controlled Offers) in respect of each NBN Co Network.

Bilateral Disputes has the meaning given to that term in clause 2.1(b)iv of Schedule 12 (Dispute Management Rules).

Building Block Revenue Period means the period of time commencing on the first day of the Financial Year which occurs immediately after the end of the Initial Cost Recovery Period, until the end of the Term.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are generally open for business in Sydney.

Capital Expenditure means capital expenditure incurred in connection with the Relevant Assets.

Carrier has the meaning given to that term in section 7 of the Telecommunications Act.

Carrier Licence has the meaning given to that term in section 7 of the Telecommunications Act.

Carriage Service has the meaning given to that term in section 7 of the Telecommunications Act.

Carriage Service Provider has the meaning given to that term in section 87 of the Telecommunications Act.

Carry Forward Revenue Adjustment has the meaning given to that term in clause 5.4 of Schedule 7 (Long Term Revenue Constraint Methodology).

CIR means committed information rate.

Commonwealth Government Securities means all securities issued by the Australian Government comprising Treasury bonds, Treasury notes, Treasury indexed bonds and, previously, Treasury adjustable rate bonds.

Common Property means any real property or part thereof which is owned or managed by a third party strata body, managing corporation, body corporate or other similar entity, or which is otherwise common property under the relevant strata scheme, community titles or other similar legislation to which NBN Co may

require access in connection with the supply of a Product Component or associated Product Feature at a Premises.

Communications Minister has the meaning given to that term in the NBN Companies Act.

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

Connectivity Serving Area or **CSA** means a geographical region that is addressable using a single Connectivity Virtual Circuit.

Connectivity Virtual Circuit or **CVC** has the meaning given to that term in clause 4 of Schedule 3 (Product Components).

Connectivity Virtual Circuit Offer means the offer described in clause 3 of Schedule 4 (Price Controlled Offers).

Construction in Progress or **CIP** has the meaning given to that term in clause 3.4(a) of Schedule 7 (Long Term Revenue Constraint Methodology).

Consultation Period has the meaning given to that term in clause 6.2(a) of Schedule 8 (Prudency).

Content Services has the meaning given to that term in section 15 of the Telecommunications Act.

Content Service Provider has the meaning given to that term in section 97 of the Telecommunications Act.

Cost Commencement Date means the date that NBN Co and any Related Body Corporate of NBN Co first incurred costs in connection with the Relevant Assets, which is on or around 9 April 2009.

Cumulative Inflation Factor means the cumulative inflation factor determined in accordance with the methodology specified in clause 8.4(b) of Schedule 7 (Long Term Revenue Constraint Methodology).

Customer means an Access Seeker that has entered into, or is otherwise subject to, an Access Agreement.

Customer Engagement Information means the following information in relation to each period described in clause 2.1 of Schedule 9 (Review and variation of aspects of SAU):

- (a) a summary of each Network Change which had been the subject of customer engagement during that period;
- (b) a summary of each NBN Prudency Implementation Paper that was produced in respect of each Network Change;

- (c) a summary of the responses and submissions made in response to each NBN Prudency Implementation Paper;
- (d) a summary of whether each NBN Prudency Implementation Paper was endorsed by Customers or whether it was the subject of a Prudency Dispute;
- (e) a report on the outcomes of the Prudency Dispute in respect of each Network Change (if any), including:
 - i the number of Prudency Disputes arising within that period;
 - ii the parties to those Prudency Disputes;
 - iii the duration of those Prudency Disputes;
 - iv the subject matter of those Prudency Disputes and issues in contention; and
 - v the result of those Prudency Disputes;
- (f) a summary of the outcome of the customer engagement process, including whether the Network Change had commenced or whether regulatory endorsement had been sought;
- (g) a timeline in respect of the end-to-end process for each Network Change which had been the subject of customer engagement;
- (h) any information in relation to the trends relevant to the use of customer engagement processes and an assessment of the extent to which the current customer engagement process reflects or takes into account those trends; and
- (i) such other information that NBN Co considers relevant to the efficacy of the customer engagement process.

Customer POP means the point of presence established by a Customer for connection to a Point of Interconnect.

Data Transfer Rate means the average number of bits per second transferred from a data source to a data destination.

Disposal means the consideration received by NBN Co as a result of the divestiture of Relevant Assets.

Dispute means any dispute that arises between NBN Co and a Customer under or in relation to an Access Agreement, but excludes a Prudency Dispute and a Regulatory Recourse Dispute.

Emergency means an actual or potential state of danger requiring immediate action to avoid or mitigate any loss, damage or personal injury.

Endorsed ACCC Examinable Network Change has the meaning given to that term in clause 7.3(c) of Schedule 8 (Prudency).

Endorsed Product-Related Network Change has the meaning given to that term in clause 6.7(d) of Schedule 8 (Prudency).

End User means a person who is the ultimate recipient or user of a Product Component and associated Product Feature.

Established POI means:

- (a) an Initial POI; or
- (b) a Point of Interconnect established at a new location in accordance with clause 6.5 of Schedule 11 (Non-price terms and conditions),

as may be relocated from time to time in accordance with clause 6.4 of Schedule 11 (Non-price terms and conditions) but excluding any Temporary POI.

Facilities Access Service means a service that enables a Customer to install, operate and maintain its telecommunications equipment at or near a Point of Interconnect for the purpose of interconnecting their network with the NBN Co Network.

Facility has the meaning given to that term in the Telecommunications Act.

Fibre Access Virtual Circuit or **Fibre AVC** has the meaning given to it in clause 3.2 of Schedule 3 (Product Components).

Fibre Basic Access Offer means the offer described in clause 2.2 of Schedule 4 (Price Controlled Offers).

Final Financial Year means the earlier of the following:

- (a) the Financial Year ending 30 June in which this Special Access Undertaking is withdrawn pursuant to section 152CBI of the Competition and Consumer Act; and
- (b) the Financial Year ending 30 June 2040.

Finally Determined means a decision, determination or other direction which is final and in respect of which all appeals and avenues for review have been exhausted, or the timeframe for an appeal or review has expired.

Finance Minister has the meaning given to that term in the Telecommunications Act.

Financial Security means the financial security that NBN Co may require prior to supplying the Product Components, any associated Product Features or any Ancillary Services.

Financial Year means the period from 1 July to 30 June.

First Financial Year means the Financial Year in which the SAU Commencement Date occurs.

First Period means a period commencing on the SAU Commencement Date and ending on 30 June 2017.

First Release Trial Sites means those parts of:

- (a) Brunswick in Victoria;
- (b) Townsville in Queensland
- (c) Armidale in New South Wales;
- (d) Minnamurra and Kiama Downs in New South Wales; and
- (e) Willunga in South Australia,

identified as “NBN First Release Sites” on the NBN Co website and specifically defined by reference to the high resolution maps of the “NBN First Release Sites” posted on the NBN Co website.

Force Majeure Event means any event or circumstance that:

- (a) is not within the reasonable control of NBN Co or any of its Related Bodies Corporate or any of NBN Co’s Personnel;
- (b) NBN Co or any of its Related Bodies Corporate or any of their Personnel is not reasonably able to prevent or overcome by the exercise of reasonable care; and
- (c) causes NBN Co to fail to perform any of relevant obligations under the agreement to which the obligations relate,

but does not include:

- (d) any event or circumstance that arises as a result of any lack of funds for any reason or any other inability to pay; or
- (e) any event or circumstance that arises as a result of any negligent act or omission of NBN Co.

GPON means gigabit passive optical network.

Government Agency means any court or tribunal of competent jurisdiction or any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of any State or Territory of Australia, and any local or municipal government or governmental bodies.

GST means a goods and services tax or similar value added tax levied or imposed under the GST Law.

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Identified Need means the reason why NBN Co has proposed a Network Change (e.g. to deliver higher bandwidth services in response to Customer demand, to enable the delivery of new Product Features, etc).

Individual Price Increase Limit is to be calculated in accordance with clause 3.1(b) of Schedule 5 (Price controls).

Individual Pricing Item has the meaning given to that term in clause 3.1(a) of Schedule 5 (Price controls).

Indirect Loss means any and all Losses arising from or in connection with the Wholesale Broadband Agreement or its subject matter (regardless of whether that liability arises in contract, tort (including negligence), at common law, in equity, under statute, under an indemnity or otherwise) howsoever arising:

- (a) which does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) which constitutes or arises from or in connection with loss of profit, anticipated profit, opportunity or anticipated savings, loss of revenue, loss of income, loss of production, loss or impairment of credit rating, loss of data, loss of management time, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises naturally or in the usual course of things from that breach.

Industry Relevant Disputes has the meaning given to that term in clause 2.1(b)iii of Schedule 12 (Dispute Management Rules).

Initial Cost Recovery Account or **ICRA** means the account used to accumulate any initial unrecovered costs, calculated in accordance with clause 5.3 of Schedule 7 (Long Term Revenue Constraint Methodology).

Initial Cost Recovery Period means the period commencing on the Cost Commencement Date and continuing to the end of the Financial Year in which the Methodology Change Event occurs.

Initial Design Scope has the meaning given to it in clause 3.1 of Schedule 8 (Prudency).

Initial POI means a Point of Interconnect listed in the POI List as at the SAU Commencement Date.

Initial Product Roadmap means the following product releases, which NBN Co has planned to progressively launch between 2011 and 2015:

- (a) **Fibre Product Release: Broadband & Telephony:** This release allows Customers to provide core internet and telephony products for the NBN. The release includes five speed tiers, ranging from 12/1 Mbps (downstream/upstream) to 100/40 Mbps. This release includes NBN Co's best-efforts traffic class (TC-4), as well as NBN Co's traffic class designed to support telephony (TC-1);
- (b) **Fibre Product Release: Multicast:** This release will make the Multicast feature available for Customers. Multicast is a technology which allows Customers to inject data one time into an NBN Co Point-of-Interconnect, and have that data replicated at multiple End-User premises. This makes the technology ideal for Internet Protocol Television providers who can inject their channel line-up one-time only at a Point-of-Interconnect, and have those channels transmitted to End-Users who wish to watch them;
- (c) **Fibre Product Release: Business Services:** This release will allow Customers to provide high speed broadband and multi-line telephony capability to business End-Users. This release will feature an enhanced restoration service level which includes weekends and extended hours;
- (d) **Fibre Product Release: Service Enhancements:** This release supports a range of features aimed at enabling Customers to conduct advanced reporting and testing of the NBN Co elements of their network solution;
- (e) **Fibre Product Release: Medium Business Services:** This release will include features designed to support medium businesses. This release will include additional traffic classes with guaranteed bandwidth designed to support video conferencing and collaboration and data networking and 24x7 service levels;
- (f) **Fibre Product Release: Enterprise Ethernet Service:** This release will enable Customers to serve the mission critical sites of large enterprise customers (for example, hospitals and banks). This release will include very high bandwidth options, transparency features and access redundancy;
- (g) **Satellite Release – Broadband:** This initial release of the NBN Co satellite product allows Customers to service eligible End-Users with a 6/1 Mbps (downstream/upstream) offering. This foundational satellite release enables internet, as well as Voice Over Internet Protocol (VoIP) telephony;
- (h) **Satellite Release - Multicast & Enhancements:** This is the first product release that will feature services offered over an NBN Co-owned satellite. This release will include an 'open access' (that is, 4 UNI-D) 12/1 Mbps (downstream/upstream) internet and telephony service, and will include 4 traffic classes as per the fibre product;
- (i) **Wireless Release – Broadband:** The first wireless release will consist of the foundational internet and telephony capability, which will allow Customers

to serve this market with an open access 12/1 Mbps (downstream/upstream) offering. This release will also include TC-1 and TC-4, catering to voice and internet traffic respectively;

- (j) **Wireless Release - Business Enhancements & Multicast:** This release will include an additional, faster speed tier on the wireless access network, as well as the launch of the Multicast feature. Traffic classes 2 and 3 will become available on the wireless network as part of this release, to be used for video and premium data purposes respectively.

Intellectual Property Rights means any patent, copyright, design right, trade name, trade mark, service mark, domain name right, semiconductor or circuit layout right or any other form of protection of a similar nature to any of these, anywhere in the world (whether registered or not and including applications for any such right).

Interest Expense has the meaning given to that term in clause 8.3 of Schedule 7 (Long Term Revenue Constraint Methodology).

Interim Transit Arrangements means any interim or short term arrangements undertaken by NBN Co to enable it to supply the Product Components and associated Product Features on an interim basis, including:

- (a) Temporary POIs;
- (b) modularised FANS; and
- (c) any associated backhaul transmission.

June Quarter CPI means the percentage change in the Consumer Price Index value published for the June quarter. The Consumer Price Index used is the *All Groups - Weighted Average of Eight Capital Cities* value published by the Australian Bureau of Statistics (or successor organisation), showing the percentage change from one June quarter to the next.

Key Business Transactions has the meaning given to it in clause 7.2 of Schedule 11 (Non-price terms and conditions).

Kbps means kilobits per second.

Layer 0 means a Facility, but excludes any Lines.

Layer 1 means the 'physical layer' of the OSI Model.

Layer 2 means the 'data link' layer of the OSI Model.

Layer 3 means the network 'IP' layer of the OSI Model.

Line has the meaning given to it in section 7 of the Telecommunications Act.

Long Term Revenue Constraint Methodology means the methodology specified in Schedule 7 (Long Term Revenue Constraint Methodology).

Loss means losses, damages, liabilities, charges, expenses, compensation, fines, penalties, payment outgoings or costs and all related costs and expenses (including reasonable legal fees and reasonable costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) of any nature or kind, howsoever it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Major NBN Upgrade has the meaning given to that term in clause 5(a) of Schedule 11 (Non-price terms and conditions).

March Quarter CPI means the percentage change in the Consumer Price Index value published for the March quarter. The Consumer Price Index used is the *All Groups - Weighted Average of Eight Capital Cities* value published by the Australian Bureau of Statistics (or successor organisation), showing the percentage change from one March quarter to the next.

Maximum Data Transfer Rate means the maximum PIR or CIR that can be supplied to an NTD, determined by NBN Co, at a given point in time, by reference to:

- (a) the NBN Co Network to which that NTD is connected;
- (b) the Network Architecture of the NBN Co Network to which that NTD is connected;
- (c) the specific configuration of that Network Architecture (e.g. applicable splitter ratios for GPON);
- (d) the availability of Product Features at a given point in time in respect of that NTD; and
- (e) any other factors that may impact the maximum PIR and / or CIR that can be supplied to an NTD at a given point in time.

Maximum Regulated Price means the price ceiling applicable to each Price Controlled Offer during the First Period as specified in, or determined in accordance with, Schedule 5 (Price controls).

Mbps means megabits per second.

Methodology Change Event has the meaning given to that term in clause 4.3 of this Special Access Undertaking.

Minor Expenditure Limit means:

- (a) as at the SAU Commencement Date, an amount of \$100 million; and
- (b) thereafter, such amount calculated under clause 4.9(c) of Schedule 8 (Prudency).

Minor Product Variation has the meaning given to that term in clause 4(a) of Schedule 6 (Product development and withdrawal).

NBN Access Service means the service described in Schedule 2.

NBN Co means NBN Co Limited and NBN Tasmania Limited.

NBN Co Customer Engagement/PDF Review Proposal means the proposal that NBN Co provides to the ACCC under clause 2 of Schedule 9 (Review and variation of aspects of SAU) setting out the manner in which:

- (a) the customer engagement process is to operate in substitution for the process established under clause 6 of Schedule 8 (Prudency); and
- (b) the PDF process is to operate in substitution for the PDF Processes.

NBN Co Equipment means any equipment that is owned, operated or controlled by NBN Co (or any Related Body Corporate of NBN Co):

- (a) that is provided by NBN Co (or any Related Body Corporate of NBN Co) to Customer for use as part of, or in connection with, any Product Component or Product Feature; or
- (b) to which NBN Co (or any Related Body Corporate of NBN Co) permits a Customer to access (or on-grant such access to any downstream Customers or any End Users) as part of, or in connection with, any Product Component or Product Feature, including NTDs.

NBN Co Fibre Network means the fibre network that is owned or controlled by, or operated by or on behalf of, NBN Co or a Related Body Corporate of NBN Co.

NBN Co Network means:

- (a) the NBN Co Fibre Network;
- (b) the NBN Co Wireless Network;
- (c) the NBN Co Satellite Network; and
- (d) the NBN Co Equipment.

A reference in this Special Access Undertaking to the phrase 'NBN Co Network' in the singular and the phrase 'each NBN Co Network' refer collectively to all three of the networks in paragraphs (a)-(c) above and any NBN Co Equipment in respect of all three of those networks.

NBN Co Platform means NBN Co's operational support systems and billing support systems for the purpose of supporting the Key Business Transactions, but excludes access to NBN Co's core systems or any functionality within those core systems.

NBN Co Price Adjustment Proposal has the meaning given to that term in clause 4(a) of Schedule 5 (Price controls).

NBN Co Program of Works means any program of works issued by NBN Co and published on the NBN Co website from time to time.

NBN Co Procurement Rules means NBN Co's procurement rules that apply from time to time and which are required to contain a competitive tendering and procurement process in accordance with clause 9.3 of Schedule 8 (Prudency).

NBN Co Satellite Network means a satellite network:

- (a) that is owned or controlled by, or operated on behalf of, NBN Co or any Related Body Corporate of NBN Co; or
- (b) in respect of which NBN Co or any Related Body Corporate of NBN Co leases or utilises capacity, including as part of an interim solution for the delivery of Carriage Services or Content Services over satellite technology.

NBN Co Wireless Network means the wireless network that is owned or controlled by, or operated on behalf of, NBN Co or a Related Body Corporate of NBN Co.

NBN Companies Act means the *National Broadband Network Companies Act 2011* (Cth).

NBN Prudency Implementation Paper has the meaning given to that term in clause 5.8 of Schedule 8 (Prudency).

NBN Serviceable means a Premises that NBN Co has determined is serviceable by the NBN Co Network, as shown in the NBN Co Platform.

Negative CPI Event means a circumstance in which there is a negative annualised percentage change in the March Quarter CPI between one year and the next.

Net Economic Benefit means, in respect of a Network Change Option:

- (a) the market benefits associated with that option, determined by reference to the criteria in clause 5.6(c) of Schedule 8 (Prudency); less
- (b) the costs associated with that option, determined by reference to the criteria in clause 5.6(d) of Schedule 8 (Prudency).

Net Tax Allowance has the meaning given to that term in clause 8.3 of Schedule 7 (Long Term Revenue Constraint Methodology).

Network Architecture means network architecture of a relevant portion of the NBN Co Network, such as GPON.

Network Change has the meaning given to that term in clause 5.1 of Schedule 8 (Prudency).

Network Change Option means an option for a Network Change referred to in clause 5.5(b) of Schedule 8 (Prudency).

Network Design Rules means the documents in relation to the design of the Relevant Assets that NBN Co provides to the ACCC for the purposes of the ACCC's consideration of this Special Access Undertaking.

Network-Network Interface or **NNI** has the meaning given to it in clause 5 of Schedule 3 (Product Components).

Network Termination Device or **NTD** means a network termination device owned or operated by NBN Co.

NNI Offer means the offer described in clause 4 of Schedule 4 (Price Controlled Offers).

Nominal RAB has the meaning given to that term in clause 3.3 of Schedule 7 (Long Term Revenue Constraint Methodology).

Nominal Regulatory Depreciation has the meaning given to that term in clause 8.1(c) of Schedule 7 (Long Term Revenue Constraint Methodology).

Nominal Revenue is to be calculated in accordance with clause 6.2 of Schedule 7 (Long Term Revenue Constraint Methodology).

Nominal Straight Line Depreciation has the meaning given to that term in clause 8.1(b) of Schedule 7 (Long Term Revenue Constraint Methodology).

Nominal Tax Depreciation Expense is to be calculated in accordance with clause 8.2 of Schedule 7 (Long Term Revenue Constraint Methodology).

ODF means optical distribution frame.

Operating Expenditure means operating expenditure incurred by NBN Co or a Related Body Corporate of NBN Co, including labour, marketing, general administration and overheads, materials, licence fees, government charges, universal service obligation levies, insurance premiums and applicable taxes.

Optus Arrangements means the contracts entered into between SingTel Optus Pty Limited (ABN 90 052 833 208) and NBN Co Limited on or around 23 June 2011.

OSI means open system interconnection.

OSI Model means the open system interconnection model, which is the framework developed by the International Standards Organisation to provide worldwide standards for computer communications.

Other Network Change has the meaning given to that term in clause 5.2(b) of Schedule 8 (Prudency).

Panel Arbitration means an arbitration conducted by a panel of independent arbitrators in accordance with the conditions specified in clause 2.2 of Schedule 12 (Dispute Management Rules).

PDF Information means the following information in relation to each period described in clause 2.1 of Schedule 9 (Review and variation of aspects of SAU):

- (a) a summary of Product Ideas submitted and assessed during that period;
- (b) a summary of the Product Ideas which were the subject of consultations under the PDF Processes;
- (c) a summary of participation by Access Seekers in the PDF Processes;
- (d) a summary of the consultations under the PDF Processes including the contributions by members of the Product Development Forum;
- (e) a report on NBN Co's implementation, or planned implementation, of product components, or product features associated with product components, from Product Ideas developed by the Product Development Forum;
- (f) a timeline in respect of the end-to-end process for each Product Idea submitted to the Product Development Forum; and
- (g) such other information that NBN Co considers relevant to the Product Development Forum.

PDF Processes means the document set out in Annexure 1 (and which may be amended in accordance with clause 2.4 of Schedule 9 (Review and variation of aspects of SAU)), which will cover the following matters:

- (a) the processes that allow for NBN Co or a Customer to propose a Product Idea through the Product Development Forum;
- (b) the processes for the distribution of information about a Product Idea to enable assessment and consideration by NBN Co and Customers, subject to confidentiality restrictions as described in the PDF Processes;
- (c) the processes to develop a Product Idea in consultation with Customers, including:
 - i the processes that will govern the manner in which NBN Co consults with Customers about the Product Idea;
 - ii the processes that NBN Co will apply when it makes decisions to accept or reject a Product Idea, such as the giving of reasons and minimum information requirements;

- iii the processes by which NBN Co will inform Customers of NBN Co's implementation of a Product Idea.

Permitted Variation means:

- (a) a variation, change, augmentation or enhancement to the design, engineering and construction of the Relevant Assets as described in clause 3.2(a) of Schedule 8 (Prudency);
- (b) a variation, change, augmentation or enhancement to an Endorsed Product-Related Network Change or an Endorsed ACCC Examinable Network Change as described in clause 8.1(b)ii of Schedule 8 (Prudency); or
- (c) a variation, change, augmentation or enhancement to the design, engineering and construction of an Other Network Change as described in clause 8.2(c) of Schedule 8 (Prudency),

as the context requires.

Personnel means officers, employees, agents, subcontractors and consultants.

PIR means peak information rate.

Placed in Service means the date on which the relevant asset:

- (a) has reached practical completion;
- (b) is ready for commercial operation; and
- (c) the Capital Expenditure incurred in connection with the relevant asset is recognised in NBN Co's accounts.

Point of Interconnect or **POI** means a point of interconnection between the NBN Co Network and the Customer's network, and includes Established POIs and Temporary POIs.

POI List means the list of locations of Established POIs and Temporary POIs made by the ACCC for the purposes of section 151DB of the Competition and Consumer Act.

POI Review means a review of the location of Established POIs conducted by NBN Co in accordance with clause 6 of Schedule 11 (Non-price terms and conditions).

Premises means each of the following:

- (a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;
- (b) a school as defined by the Department of Education, Employment and Workplace Relations;

- (c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;
- (d) an addressable location for a standard telephone service which is activated in compliance with the USO;
- (e) a payphone which is activated in compliance with the USO or which is otherwise specified by NBN Co as a premises from time to time; and
- (f) a location which NBN Co is directed by the Shareholder Ministers to connect to, or to be connected by, the NBN Co Network.

Price means a charge excluding any Taxes, interest, late payment fees, discounts, rebates, waivers or any other additions or deductions that may be applicable.

Price Controlled Offers or **PCOs** means the offers comprising Product Components and Product Features which are subject to a price control as specified in Schedule 4 (Price Controlled Offers) in respect of the First Period.

Prior Financial Year means any Financial Year commencing on 1 July and ending on 30 June which is before the current Financial Year.

Product Components means:

- (a) the product components described in clause 1.1 of Schedule 3 (Product Components);
- (b) the product components offered for supply by NBN Co as at the SAU Commencement Date;
- (c) the product components identified within the Initial Product Roadmap; and
- (d) any new and varied products components introduced by NBN Co pursuant to Schedule 6 (Product development and withdrawal),

including any associated Product Features, but excluding the Ancillary Services.

Product Development Forum has the meaning given to that term in clause 3.1(a) of Schedule 6 (Product development and withdrawal).

Product Features means the features of a Product Component that are made available by NBN Co and which are selectable and configurable by the Customer in respect of that Product Component (e.g. Data Transfer Rate or traffic class associated with an Access Virtual Circuit or the UNI-D or UNI-V associated with an NTD).

Product Idea means a proposal for the development of a new product component or an associated product feature, or a variation or enhancement to an existing Product Component or associated Product Feature, including such details as may be required by the PDF Processes.

Product Implementation Information means such information as NBN Co is required to provide to Customers when seeking endorsement of a Product-Related Network Change in accordance with the PDF Processes and to be set out in an NBN Co Prudency Implementation Paper.

Product-Related Network Change has the meaning given to that term in clause 5.2(a) of Schedule 8 (Prudency).

Product Roadmap means a document that sets out key information and timelines in relation to the introduction, development, evolution and withdrawal of a Product Component and / or any associated Product Features, as made available by NBN Co from time to time in accordance with the PDF Processes.

Prudency Dispute means a dispute that may be initiated by NBN Co under clause 6.4(d) of Schedule 8 (Prudency).

Prudent and **Prudently** means:

- (a) in respect of Capital Expenditure, such expenditure which is incurred in connection with the design, engineering and construction of the Relevant Assets which satisfies or is deemed to satisfy the Prudent Design Condition and Prudent Cost Condition; and
- (b) in respect of Operating Expenditure, such expenditure which is considered to be prudently incurred in accordance with the requirements of clause 10 of Schedule 8 (Prudency).

Prudent Cost Condition means the measures set out in clause 9 of Schedule 8 (Prudency) that seek to ensure that the implementation of the design of the NBN Co Network is efficient.

Prudent Design Condition means the measures set out in clauses 4 - 8 (inclusive) of Schedule 8 (Prudency) that seek to ensure the efficiency of the design of the NBN Co Network.

Real RAB has the meaning given to that term in clause 3.2 of Schedule 7 (Long Term Revenue Constraint Methodology).

Real Straight Line Depreciation has the meaning given to that term in clause 8.1 of Schedule 7 (Long Term Revenue Constraint Methodology).

Regulated Revenue is to be calculated in accordance with clause 6.1 of Schedule 7 (Long Term Revenue Constraint Methodology).

Regulatory Asset Base or **RAB** has the meaning given to that term in clause 3 of Schedule 7 (Long Term Revenue Constraint Methodology).

Regulatory Recourse Dispute has the meaning given to that term in clause 6.1(b) of this Special Access Undertaking.

Related Body Corporate has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

Relevant Assets means the assets that comprise:

- (a) the NBN Co Networks;
- (b) any other telecommunications network owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co;
- (c) all other network elements, platforms (including the NBN Co Platform), systems and functions owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co; and
- (d) any other assets owned or controlled by, or operated by or on behalf of, NBN Co or any Related Body Corporate of NBN Co.

Relevant Regulatory Body means the ACCC, the Australian Energy Regulator or the Australian Competition Tribunal.

Revenue means all revenue earned by NBN Co in connection with the Relevant Assets, including:

- (a) all revenue earned in connection with the Product Components and associated Product Features; and
- (b) all revenue earned in connection with the Ancillary Services,
- (c) but excluding any Taxes, interest, late payment fees or any other similar additional amount earned by NBN Co.

Revenue Variation is to be calculated in accordance with clause 6.2 of Schedule 7 (Long Term Revenue Constraint Methodology).

Rollout Built Date means the date on which a declaration is made by the Communications Minister that the NBN should be treated as built and fully operational, under section 48 of the NBN Companies Act.

Satellite Access Virtual Circuit or **Satellite AVC** has the meaning given to it in clause 3.4 of Schedule 3 (Product Components).

Satellite Basic Access Offer means the offer described in clause 2.4 of Schedule 4 (Price Controlled Offers).

SAU Commencement Date has the meaning given to that term in clause 7.1 of this Special Access Undertaking.

SAU Review Matters means the matters referred to in clause 3.3 of Schedule 9 (Review and variation of aspects of SAU) which are to be the subject of review during the SAU Review Period.

SAU Review Period means the period defined in clause 3.2 of Schedule 9 (Review and variation of aspects of SAU) during which NBN Co is required to review the operation of certain aspects of this Special Access Undertaking.

Service Provider has the meaning given to it in section 86 of the Telecommunications Act.

Shareholder Ministers means the Communications Minister and the Finance Minister.

SIO or Service in Operation means:

- (a) where only a UNI-D on an NTD is being supplied on each NBN Co Network, the supply of a single Access Virtual Circuit for use in conjunction with a single UNI-D; or
- (b) where a UNI-D and UNI-V on an NTD are being supplied on the NBN Co Fibre Network:
 - i the supply of a single Fibre Access Virtual Circuit for use in conjunction with a single UNI-D; and
 - ii the supply of a single Fibre Access Virtual Circuit for use in conjunction with a single UNI-V.

Special Access Undertaking means this special access undertaking.

Statement of Expectations means the letter dated 17 December 2010 to NBN Co from the Shareholder Ministers.

Systems Interfacing Service means a service for the establishment, testing, operation and maintenance of a connection to the NBN Co Platform.

Tasmania Tri-Area Service Arrangements means the arrangements entered into by NBN Co to construct the NBN Co Network and deliver services in Smithton, Scottsdale and Midway Point in Tasmania.

Tax means any tax (including GST), levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

TC-1 means a traffic class implemented by NBN Co that is targeted towards low-bit rate real-time interactive applications.

TC-4 means a traffic class implemented by NBN Co that is targeted towards best-efforts applications.

Telecommunications Act means the *Telecommunications Act 1997* (Cth), as amended from time to time.

Telstra Arrangements means the contracts entered into between Telstra Corporation Limited (ABN 33 051 775 556) and NBN Co Limited on 23 June 2011.

Temporary POI means a Point of Interconnect established temporarily until an Established POI serving the relevant Connectivity Serving Area is established and includes temporary Points of Interconnect serving First Release Trial Sites and new developments.

Term has the meaning given to that term in clause 7.2 of this Special Access Undertaking.

Third Party Funded Network Change means a Network Change, or variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets, in respect of which one or more persons (other than NBN Co or a Related Body Corporate of NBN Co) have agreed to fully fund or underwrite the Capital Expenditure and, if relevant, the Operating Expenditure, to design, engineer or construct that Network Change, variation, change or enhancement in accordance with a contract, arrangement or understanding between NBN Co or a Related Body Corporate of NBN Co and that person.

Third Party Operating Expenditure means Operating Expenditure incurred, or to be incurred, in connection with the supply of goods or services to NBN Co or a Related Body Corporate of NBN Co by a third party in connection with the NBN Co Network, but excludes any Operating Expenditure covered by clause 10.3 of Schedule 8 (Prudency).

Triggered SAU Variation has the meaning given to that term in clause 3.1(b)ii of Schedule 9 (Review and variation of aspects of SAU).

Total Cost of Ownership means all costs incurred or likely to be incurred over the economic life of the Relevant Assets calculated on a net present value basis, including Capital Expenditure, Operating Expenditure and costs that arise in connection with upgrades or expansions of the Relevant Assets (including expansions of the capacity, functionality and geographic reach of the Relevant Assets).

Total Operating Expenditure means the total Operating Expenditure actually incurred by NBN Co, or a Related Body Corporate of NBN Co.

Unrecovered Cost is to be calculated in accordance with clause 5.2 of Schedule 7 (Long Term Revenue Constraint Methodology).

User Network Interface or **UNI** has the meaning given to it in clause 2(a) of Schedule 3 (Product Components).

User Network Interface-Data or **UNI-D** means a data port on an NTD.

User Network Interface-Voice or **UNI-V** means a port on an NTD that incorporates an ATA.

USO means universal service obligation which has the meaning given in Section 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

WACC means weighted average cost of capital, calculated in accordance with clause 7 of Schedule 7 (Long Term Revenue Constraint Methodology).

Wholesale Broadband Agreement means a standard form of access agreement published on the NBN Co website pursuant to section 152CJA of the Competition and Consumer Act that sets out the terms and conditions on which NBN Co will offer to supply, and an Access Seeker may acquire, the Product Components, associated Product Features and Ancillary Services.

Wireless Access Virtual Circuit or **Wireless AVC** has the meaning given to it in clause 3.3 of Schedule 3 (Product Components).

Wireless Basic Access Offer means the offer described in clause 2.3 of Schedule 4 (Price Controlled Offers).

2 Interpretation

In this Special Access Undertaking:

- (a) headings are for convenience only and do not affect interpretation;
- (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 'including', 'particularly', 'such as' and similar expressions are not to be used as words of limitation;
- (e) a reference to:
 - i a person includes a natural person, partnership, joint venture, governmental agency or authority, regulator, association, corporation or other body corporate;
 - ii a person includes its agents, successors and permitted assigns;
 - iii a thing (including a chose in action or other right) includes a part of that thing;
 - iv a document includes all amendments or supplements to that document;

- v a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Special Access Undertaking;
 - vi unless specified otherwise, a reference to a clause in the main body or a schedule is a reference to a clause in the main body or that schedule (as applicable);
 - vii this Special Access Undertaking includes all schedules and attachments to it;
 - viii a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity, or rule of any stock exchange and is a reference to that law as amended, consolidated or replaced and includes any regulations and other subordinate instruments made under or in accordance with those laws; and
 - ix 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 Special Access Undertaking, the relevant time of day is:
- i for the purposes of giving or receiving notices, the time of day where a person receiving a notice is located; or
 - ii for any other purpose under this Special Access Undertaking, the time of day in the place where the person required to perform an obligation is located.

Schedule 2 NBN Access Service

1 Service Description

The NBN Access Service is a Layer 2 service supplied on the NBN Co Network between and including:

- (a) a User Network Interface on a Network Termination Device; and
- (b) the Network-Network Interface at the Point of Interconnect associated with the relevant Network Termination Device,

for the purpose of enabling an Access Seeker (or another Service Provider that is a customer of an Access Seeker) to supply Carriage Services or Content Services.

2 Scope of NBN Access Service

In addition to Layer 2 of the OSI Model at which NBN Co makes the NBN Access Service available to an Access Seeker (or another Service Provider), the NBN Access Service also comprises components from lower levels of the OSI Model, such as Layer 0 and Layer 1 components and some Layer 3 awareness referred to in clause 1.2 of Schedule 3 (Product Components).

3 Boundaries of each NBN Co Network

The network boundary point in respect of each NBN Co Network:

- (a) at the Premises, is the End User side of the UNI; and
- (b) at the Point of Interconnect, is located on the Customer side of the NNI.

Schedule 3 Product Components

1 Overview of Product Components

1.1 Product Components

- (a) During the Term, NBN Co will offer to supply the following Product Components to Customers to enable those Customers to acquire an end-to-end service on the NBN Co Network between a Premises and a Point of Interconnect:
- i a User Network Interface;
 - ii an Access Virtual Circuit;
 - iii a Connectivity Virtual Circuit; and
 - iv a Network-Network Interface.
- (b) Customers must acquire each Product Component referred to in clause 1.1(a) between a Premises and a Point of Interconnect.

1.2 Composition of Access Virtual Circuit and Connectivity Virtual Circuit

The Access Virtual Circuit and Connectivity Virtual Circuit may incorporate some limited Layer 3 awareness to support certain services, including:

- (a) voice telephony services provided using a UNI-V;
- (b) multicast services provided over the NBN Co Fibre Network; and
- (c) the following optional features on the Access Virtual Circuit:
 - i DSCP for priority encoding;
 - ii DHCP Option 82 support; and
 - iii PPoE Intermediate Agent support.

1.3 Other Product Components made available on the SAU Commencement Date

- (a) The Product Components to be supplied by NBN Co on and from the SAU Commencement Date are not limited to those Product Components described in clause 1.1.
- (b) NBN Co will make any additional Product Components available to Customers:
 - i under the Wholesale Broadband Agreement; and

- ii subject to, and in accordance with, the product development process under Schedule 6 (Product development and withdrawal).

2 User Network Interface

- (a) A User Network Interface is a physical interface on the Network Termination Device.
- (b) As at the SAU Commencement Date, NBN Co's standard design for the Network Termination Device may include two types of User Network Interfaces, UNI-D and UNI-V.

3 Access Virtual Circuit

3.1 Types of Access Virtual Circuit

An Access Virtual Circuit, comprises either:

- (a) the Fibre Access Virtual Circuit;
- (b) the Wireless Access Virtual Circuit; or
- (c) the Satellite Access Virtual Circuit.

3.2 Fibre Access Virtual Circuit

- (a) A Fibre Access Virtual Circuit comprises an Ethernet based, Layer 2 virtual connection on the NBN Co Fibre Network that carries traffic to and from a UNI on the Network Termination Device at the Premises, with the Product Features made available by NBN Co, and selected by the Customer, in respect of that Premises.
- (b) A Customer may use a Fibre Access Virtual Circuit in conjunction with a UNI-D or UNI-V (as selected by the Customer).

3.3 Wireless Access Virtual Circuit

A Wireless Access Virtual Circuit comprises an Ethernet based Layer 2 virtual connection on the NBN Co Wireless Network that carries traffic to and from a UNI-D on the Network Termination Device at the Premises, with the Product Features made available by NBN Co, and selected by the Customer, in respect of that Premises.

3.4 Satellite Access Virtual Circuit

A Satellite Access Virtual Circuit comprises an Ethernet based, Layer 2 virtual connection on the NBN Co Satellite Network that carries traffic to and from a UNI-D on the Network Termination Device at the Premises, with the Product Features

made available by NBN Co, and selected by the Customer, in respect of that Premises.

4 Connectivity Virtual Circuit

A Connectivity Virtual Circuit is Ethernet-based, Layer 2 virtual capacity for the transport of Customer traffic from multiple Access Virtual Circuits within a Connectivity Serving Area on an aggregated basis and presented at the Network-Network Interface at the Point of Interconnect associated with that Connectivity Serving Area, with the Product Features made available by NBN Co, and selected by the Customer, in respect of that virtual capacity.

5 Network-Network Interface

The Network-Network Interface is a physical interface between the NBN Co Network and the Customer's network at a Point of Interconnect.

6 Terms of supply

6.1 Coverage of NBN Co Network

The availability of the Product Components and Product Features may vary depending on the service coverage of the NBN Co Network from time to time.

6.2 Availability of Product Components

NBN Co will offer to supply, and a Customer may acquire, the Product Components in respect of those Premises:

- (a) that are NBN Serviceable; and
- (b) when:
 - i the Customer's network is connected to the Point of Interconnect associated with that Premises in respect of which supply of the relevant Product Component is sought;
 - ii all necessary testing of the connectivity between the NBN Co Network and the Customer's network has been successfully completed; and
 - iii the Customer has satisfied any other terms and conditions specified in an Access Agreement to be able to acquire the Product Component.

6.3 Delivery model

Where NBN Co supplies a Network Termination Device at a Premises that:

- (a) has more than one User Network Interface, NBN Co will allow one or more Customers to concurrently supply a Carriage Service or Content Service to that Premises through the utilisation of one or more User Network Interfaces on that Network Termination Device; and
- (b) has only one User Network Interface, NBN Co will only allow one Customer to supply a Carriage Service or Content Service to that Premises at a given point in time through the utilisation of the single User Network Interface on that Network Termination Device.

6.4 Maximum Data Transfer Rate

NBN Co reserves the right not to supply an Access Virtual Circuit to a Network Termination Device when the supply of that Access Virtual Circuit would result in the Maximum Data Transfer Rate for that Network Termination Device being exceeded.

6.5 UNI availability

- (a) NBN Co's supply of an Access Virtual Circuit to a Customer in respect of a Premises is conditional upon there being a User Network Interface available for use by that Customer on the Network Termination Device at the Premises.
- (b) NBN Co will permit a Customer to ascertain whether a User Network Interface is available on a Network Termination Device at a Premises at a particular point in time through the NBN Co Platform.

6.6 UNI and voice AVC capacity

NBN Co may include conditions in the Wholesale Broadband Agreement, in relation to the exercise of the option to use the UNI and any associated AVC voice capacity to avoid inefficient allocation of those resources.

6.7 Points of Interconnect

- (a) NBN Co will specify a Point of Interconnect for each Connectivity Serving Area.
- (b) A Point of Interconnect may serve one or more Connectivity Serving Areas.
- (c) The initial locations of Points of Interconnect are set out in the POI List. New locations of Points of Interconnect may be established in accordance with clause 6.5 of Schedule 11 (Non-price terms and conditions).
- (d) NBN Co may also specify Temporary POIs at which NBN Co will provide interconnection to the NBN Co Network, subject to the provisions of the Access Agreement entered into by NBN Co and the Customer.
- (e) NBN Co will:

- i publish details of the locations of the Established POIs and Temporary POIs, and the associated Connectivity Serving Areas served by the Established POIs and Temporary POIs, on the NBN Co website; and
- ii determine the timetable for the rollout of the Initial POIs and Temporary POIs and provide notice on the NBN Co website of the establishment of those POIs in accordance with clauses 4 and 6 of Schedule 11 (Non-price terms and conditions).

Schedule 4 Price Controlled Offers

1 General

1.1 Price Controlled Offers

The Price Controlled Offers represent those Product Components and Product Features that are subject to price controls in the First Period, as described in Schedule 5 (Price controls).

1.2 Coverage of Price Controlled Offers

This Schedule sets out the applicable Price Controlled Offers during the First Period, which comprise:

- (a) the Basic Access Offers;
- (b) the Connectivity Virtual Circuit Offer; and
- (c) the Network-Network Interface Offer.

2 Basic Access Offers

2.1 General

- (a) The Basic Access Offers are intended to represent NBN Co's entry level access link offering over each NBN Co Network for the First Period, as described further in this clause 2.
- (b) During the First Period, a separate Basic Access Offer will apply in respect of each of:
 - i the NBN Co Fibre Network;
 - ii the NBN Co Wireless Network; and
 - iii the NBN Co Satellite Network.

2.2 Fibre Basic Access Offer

For the First Period, the Fibre Basic Access Offer comprises the following:

- (a) a Fibre Access Virtual Circuit with the following Data Transfer Rates:
 - i 12 Mbps PIR (TC-4) downlink; and
 - ii 1 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the Network Termination Device connected to the NBN Co Fibre Network at the Premises (**Accessed**

NTD), for use in conjunction with the Fibre Access Virtual Circuit described in clause 2.2(a) in respect of the supply of Carriage Services and Content Services to that Premises;

- (c) the option to access and use one available UNI-V on the Accessed NTD, in respect of the supply of voice telephony services to the Premises;
- (d) where voice telephony services are to be supplied to that Premises, a 150 Kbps CIR (TC-1) Data Transfer Rate (symmetrical) Fibre Access Virtual Circuit in respect of voice telephony services, provided at the Customer's option, on either:
 - i the UNI-D on the Accessed NTD, in which case the 150 Kbps CIR (TC-1) Data Transfer Rate will be:
 - A provided through the Fibre Access Virtual Circuit as described in clause 2.2(a) for that UNI-D; and
 - B included within the Data Transfer Rate for the Fibre Access Virtual Circuit described in clause 2.2(a); or
 - ii the UNI-V on the Accessed NTD, in which case the 150 Kbps CIR (TC-1) Data Transfer Rate will be:
 - A provided through a Fibre Access Virtual Circuit for that UNI-V that is separate to the Fibre Access virtual Circuit detailed in clause 2.2(a); and
 - B in addition to the Data Transfer Rate for the Fibre Access Virtual Circuit described in clause 2.2(a); and
- (e) a Maximum Regulated Price as specified in Schedule 5 (Price controls).

2.3 Wireless Basic Access Offer

For the First Period, the Wireless Basic Access Offer comprises the following:

- (a) a Wireless Access Virtual Circuit with the following Data Transfer Rates:
 - i 12 Mbps PIR (TC-4) downlink; and
 - ii 1 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the Network Termination Device connected to the NBN Co Wireless Network at the Premises (**Accessed NTD**) for use in conjunction with the Wireless Access Virtual Circuit described in clause 2.3(a), in respect of the supply of Carriage Services or Content Services to that Premises; and
- (c) a Maximum Regulated Price as specified in Schedule 5 (Price controls).

2.4 Satellite Basic Access Offer

For the First Period, the Satellite Basic Access Offer comprises the following

- (a) a Satellite Access Virtual Circuit with the following Data Transfer Rates:
 - i an interim solution comprising a 6 Mbps PIR (TC-4) downlink until such time as that interim solution is replaced with a long term solution comprising a 12 Mbps PIR (TC-4) downlink; and
 - ii 1 Mbps PIR (TC-4) uplink;
- (b) access to, and use of, one available UNI-D on the Network Termination Device connected to the NBN Co Satellite Network at the Premises (**Accessed NTD**) for use in conjunction with the Satellite Access Virtual Circuit described in clause 2.4(a) in respect of the supply of Carriage Services and Content Services to that Premises; and
- (c) a Maximum Regulated Price as specified in Schedule 5 (Price controls).

3 Connectivity Virtual Circuit Offer

3.1 Connectivity Virtual Circuit Offer

- (a) As at the SAU Commencement Date, the Connectivity Virtual Circuit Offer comprises any symmetrical TC-4 Connectivity Virtual Circuit offered by NBN Co.
- (b) The Maximum Regulated Prices applicable to the Connectivity Virtual Circuit Offer is as specified in or as determined in accordance with Schedule 5 (Price controls).

4 NNI Offer

4.1 NNI Offer

As at the SAU Commencement Date, the NNI Offer comprises:

- (a) Network-Network Interfaces with the following NNI interface capacities:

NNI Bearer Profiles	Interface capacity (Gbps)*	Range (Km)
1000baseLX	1	10
10GbaseLR	10	10

* The speeds actually experienced will depend upon a number of factors including contention ratios; the equipment used; the nature and quality of the downstream product acquired by wholesale and retail downstream customers; the number of simultaneous end users using the relevant downstream product; and the nature and quality of the connection at the relevant Premises.

- (b) Maximum Regulated Prices as specified in or as determined in accordance with Schedule 5 (Price controls).

Schedule 5 Price controls

1 General

- (a) This Schedule 5 sets out:
- i the Maximum Regulated Price for each of the Price Controlled Offers in the First Period; and
 - ii subject to clause 2.1, the basis on which NBN Co may increase Prices for each and every one of the Product Components and associated Product Features, and Ancillary Services during the Term.
- (b) This Schedule 5 does not prevent NBN Co from:
- i agreeing with a Customer a Price payable that is lower than the Maximum Regulated Price for each of the Price Controlled Offers; and/or
 - ii in respect of the First Period, increasing, pursuant to the terms of an Access Agreement, the Price payable by a Customer for each of the Price Controlled Offers, up to the Maximum Regulated Price for that Price Controlled Offer,
- subject to:
- iii the Long Term Revenue Constraint Methodology; and
 - iv any statutory non-discrimination obligations applicable to NBN Co from time to time.

2 Maximum Regulated Prices of Price Controlled Offers in the First Period

2.1 Maximum Regulated Prices

For the First Period, the Maximum Regulated Price applies to the monthly recurring charge only, which:

- (a) for the Basic Access Offer on each NBN Co Network is \$24.00, per SIO, per month;
- (b) for each Connectivity Virtual Circuit Offer is \$20.00 per Mbps (CIR – TC-4 Data Transfer Rate), per month; and

- (c) for the NNI Offer is the following per month charge:

NNI interface port capacity	Per NNI, per Month
Standard Ethernet Interface 1000baseLX-10 km range	\$200
Standard Ethernet Interface 10GbaseLR-10 km range	\$400

2.2 Other Charges

Clause 2.1 does not limit any other charges, such as initial set up charges and charges for additional Access Virtual Circuits on the same UNI-D, that NBN Co may apply to the supply of the Product Components and associated Product Features which comprise the Basic Access Offer, the Connectivity Virtual Circuit Offer or the NNI Offer which do not comprise the monthly recurring charge.

2.3 Changes to Maximum Regulated Prices for Price Controlled Offers

NBN Co:

- (a) will not vary the Maximum Regulated Prices for the Price Controlled Offers in respect of the First Period, including through the exercise of NBN Co's rights under clause 3.1; and
- (b) may vary the Maximum Regulated Prices for the Price Controlled Offers in respect of the period that follows the expiry of the First Period through the exercise of NBN Co's rights under clause 3.1.

3 CPI/2 price control

3.1 Individual Price Increase Limit

- (a) NBN Co will not increase the Price payable by a Customer in respect of each Product Component, associated Product Feature or Ancillary Service (including for an ancillary charge applicable to those Product Components, Product Features or Ancillary Services) (each an **Individual Pricing Item**) by more than CPI/2 in any 12 month period, as determined in accordance with the Individual Price Increase Limit.
- (b) The **Individual Price Increase Limit** in respect of any Individual Pricing Item is calculated as:

$$\text{Individual Price Increase Limit}_t = \text{Price}_{t-1} * \frac{\text{CPI}_{t-1}^{\text{March}}}{2}$$

Where:

- i $Price_{t-1}$ is the Average Price payable by the Customer for the relevant Individual Pricing Item over the immediately preceding Financial Year;
 - ii CPI_{t-1}^{March} is the March Quarter CPI published in the Financial Year preceding the Financial Year to which the Individual Price Increase Limit relates; and
 - iii the Individual Price Increase Limit is rounded to the nearest whole cent.
- (c) For the purposes of clauses 3.1(a) and 3.1(b):
- i the **Average Price** payable by the Customer for the relevant Individual Pricing Item in a Financial Year is calculated as the arithmetic average price payable by that Customer on the last day of each month of that Financial Year
 - ii the Individual Price Increase Limit for each Individual Pricing Item will apply from the start of the first full Financial Year after the SAU Commencement Date;
 - iii NBN Co will not vary the Price payable by a Customer for an Individual Pricing Item in the period between the SAU Commencement Date and the start of the first full Financial Year after the SAU Commencement Date.
- (d) For example, if:
- i the Average Price payable by a Customer for an Individual Pricing Item is \$30.00 over the preceding Financial Year;
 - ii the March Quarter CPI for the period between 1 April to 31 March in that preceding Financial Year is 2.5%,
- then the Individual Price Increase Limit for the following Financial Year is \$0.38, and the maximum Price payable by a Customer for that Individual Pricing Item from 1 July of the following Financial Year would not be permitted to exceed \$30.38, calculated as follows:
- $$\text{Individual Price Increase Limit} = \$30.00 * 2.5\%/2 = \$0.38 \text{ (after rounding)}$$
- and hence, the maximum Price payable = \$30.00 + \$0.38 = \$30.38
- (e) Nothing in this clause 3.1 requires NBN Co to adjust the price of an Individual Pricing Item in the event of a Negative CPI Event.

3.2 Exceptions to Individual Price Increase Limit

Clause 3.1 does not apply to:

- (a) to the setting of the initial Price by NBN Co in respect of a new Product Component, associated Product Feature or Ancillary Service (including for an ancillary charge applicable to those new Product Components, Product Features or Ancillary Services) pursuant to clause 3.4 of this Special Access Undertaking;
- (b) the introduction of a charge applicable to a Product Component, associated Product Feature or Ancillary Service (including for an ancillary charge applicable to new Product Components, Product Features or Ancillary Services) that was initially provided without charge or in respect of which no Price was payable (i.e. \$0.00);
- (c) subject to clause 3.3, any notional change in Price payable for a Product Component, associated Product Feature or Ancillary Service (including for an ancillary charge applicable to those Product Components, Product Features or Ancillary Services) on the reduction, removal or cessation of the application of a discount, allowance, rebate or credit applicable to that Product Component, Product Feature or Ancillary Service; or
- (d) in the circumstances outlined in clause 4 in the Financial Year in which the NBN Co Price Adjustment Proposal is approved and in the following Financial Year.

3.3 Anti-avoidance provision

For the purpose of ensuring that NBN Co does not circumvent, or avoid the operation of, the Individual Price Increase Limit through the arbitrary reduction, removal or cessation of discounts that may apply to the Price of an Individual Pricing Item, NBN Co must ensure that:

- (a) any reduction, removal or cessation of a discount, allowance, rebate or credit applicable to an Individual Pricing Item only occurs in accordance with specified terms for the reduction, removal or cessation of that discount, allowance, rebate or credit specified at the time of initial introduction; and
- (b) at the time of initial introduction of a discount, allowance, rebate or credit, NBN Co makes the Customer aware of the length of, and any conditions associated with, the relevant discount, allowance, rebate or credit.

3.4 Treatment of Bundles

If NBN Co offers a Product Component, associated Product Feature or Ancillary Service as part of a bundle with other Product Components, associated Product Features or Ancillary Services for a particular price (together a **Bundle**), then:

- (a) that Bundle will be considered to be an Individual Pricing Item for the purpose of this clause 3; and
- (b) that Bundle will be subject to the Individual Price Increase Limit under this clause 3.

4 Request by NBN Co to ACCC to approve price increases above CPI/2

- (a) At any time during the Term (including during the First Period but not in respect of the Price Controlled Offers), NBN Co may request the approval of the ACCC to increase a Price payable in respect of a Product Component, associated Product Feature or Ancillary Service more than permitted by the Individual Price Increase Limit (**NBN Co Price Adjustment Proposal**).
- (b) The ACCC must accept an NBN Co Price Adjustment Proposal if it is not inconsistent with:
 - i the long term interests of end-users criteria set out in section 152AB of the Competition and Consumer Act; and.
 - ii any applicable law, regulation, Ministerial determinations or Government policy.
- (c) The ACCC will accept or reject the NBN Co Price Adjustment Proposal within 60 Business Days of receipt of the NBN Co Price Adjustment Proposal.
- (d) The ACCC may extend the period referred to in clause 4(c) by a further 20 Business Days in circumstances where it believes such an extension is reasonably necessary for the purposes of making an informed decision in relation to NBN Co's request.
- (e) If the ACCC has not made a decision within the timeframes referred to in clause 4(c) (as may be extended under clause 4(d)), NBN Co's request will be deemed to have been accepted.
- (f) The ACCC will provide reasons for its decision to accept or reject the NBN Co Price Adjustment Proposal.
- (g) The ACCC may consult with any person in making a decision about whether to accept or reject the NBN Co Price Adjustment Proposal.

Schedule 6 Product development and withdrawal

1 Introduction

- (a) This Schedule 6 (Product development and withdrawal) sets out the process that NBN Co will apply to:
- i the introduction, variation or withdrawal of Product Components, subject to clause 5.1(a); and
 - ii the introduction, variation or withdrawal of Product Features associated with those Product Components, subject to clause 5.1(b),
(Product Development).
- (b) This Schedule 6 (Product development and withdrawal) does not apply in respect of any of the following:
- i Product Components and associated Product Features covered by, or contemplated within, the Initial Product Roadmap;
 - ii the introduction of a Product Component or associated Product Feature, that NBN Co is obliged to offer as a result of a licence condition imposed under section 41(1) of the NBN Companies Act;
 - iii a minor variation or enhancement to a Product Component within the terms of clause 4; and
 - iv the withdrawal of a Product Component or associated Product Feature, that NBN Co is required to withdraw as referred to in clause 5.4.

2 Product Roadmap

- (a) NBN Co will publish and maintain a Product Roadmap for all Product Components and any associated Product Features.
- (b) NBN Co will update the Product Roadmap for all Product Components and any associated Product Features from time to time in accordance with the PDF Processes.
- (c) NBN Co will make the Product Roadmap available to Customers in accordance with the PDF Processes.

3 Product Development

3.1 Product Development Forum

- (a) NBN Co will implement a product development process through which NBN Co will engage with Customers in respect of product development (**Product Development Forum**).
- (b) NBN Co will make the Product Development Forum open to participation by all Customers.
- (c) NBN Co will ensure that the Product Development Forum:
 - i identifies and records all Product Ideas from Customers;
 - ii is the primary forum through which:
 - A Product Ideas are developed, refined and disseminated;
 - B NBN Co will engage in the customer engagement and endorsement process under clause 6 of Schedule 8 (Prudency);
 - iii provides a forum that facilitates an open and consultative dialogue with Customers in respect of Product Ideas for new product components and associated product features and for enhancements and variations to existing Product Components and associated Product Features;
 - iv provides a forum for the development of Product Ideas into Product Components and associated Product Features to be offered to Customers;
 - v provides a forum for Customers to:
 - A obtain information about NBN Co's Product Roadmap, including existing Product Components and associated Product Features;
 - B assist NBN Co to determine whether there is sufficient market demand for proposed Product Ideas; and
 - C provide information and input to assist NBN Co to determine which Product Ideas to develop and in which order of priority; and
 - vi provides a forum for NBN Co to discuss, and Customers to provide feedback in relation to, the withdrawal of Product Components and associated Product Features and related issues.

3.2 PDF Processes

- (a) NBN Co will comply with the PDF Processes.
- (b) To participate in the Product Development Forum, Customers will be required to comply with the PDF Processes pursuant to the terms of their respective Access Agreements.
- (c) NBN Co will not vary the PDF Processes except as required by, and in accordance with, the procedures set out in clause 2 of Schedule 9 (Review and variation of aspects of SAU).

3.3 Public Ideas Forum

- (a) In addition to the Product Development Forum, NBN Co will establish an external forum to allow interested persons (not limited to Customers) to participate and contribute to discussions on subjects including industry trends, new product developments and enhancements to existing Product Components and associated Product Features (**Public Ideas Forum**).
- (b) NBN Co will facilitate communications between the Product Development Forum and the Public Ideas Forum in accordance with the PDF Processes.

3.4 Assessment of Product Ideas

NBN Co will consider, and may weigh as it considers appropriate, such criteria as it determines appropriate in selecting which Product Ideas to develop through the PDF Processes. Those criteria may include the following:

- (a) commercial viability of the Product Idea;
- (b) technical feasibility of the Product Idea;
- (c) potential operational complexity of the Product Idea;
- (d) potential technical and operational quality issues with the Product Idea;
- (e) ascertainable demand for the Product Idea;
- (f) potential implementation issues with the Product Idea;
- (g) resource requirements for the development and implementation of the Product Idea;
- (h) NBN Co's statutory non-discrimination obligations and wholesale-only status;
- (i) potential regulatory considerations related to the Product Idea;
- (j) government policy;

- (k) environmental impact of the Product Idea;
- (l) health and safety concerns related to the Product Idea;
- (m) the Prudency of the Product Idea (assessed in accordance with Schedule 8 (Prudency));
- (n) the intellectual property rights that may be required to develop the Product Idea; and
- (o) any other factor that NBN Co reasonably considers should be taken into account.

3.5 Interaction of Product Development and Prudency

- (a) Where required by Schedule 8 (Prudency), NBN Co will seek endorsement by Customers or the ACCC of NBN Co's preferred option for implementing a Product Idea.
- (b) Nothing in this Schedule 6 (Product development and withdrawal) or the PDF Processes requires NBN Co to implement a Product Idea or provide a new product component or associated product feature until the Prudency of such a Product Idea or product component or associated product feature is endorsed as contemplated under Schedule 8 (Prudency).

3.6 Pricing of new product components and associated product features

Prior to introducing a new product component or associated product feature which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Customers through the Product Development Forum in relation to the price or prices at which such new product components or associated product features will be introduced.

3.7 Service levels for new product components and associated product features

Prior to introducing a new product component or associated product feature which has been the subject of a Product Idea developed through the Product Development Forum, NBN Co will consult with Customers through the Product Development Forum in relation to:

- (a) the service levels applicable to such new product components or associated product features (including any remedies which may apply for breach of the service levels); or
- (b) if NBN Co is unable to offer service levels (including any applicable remedies) prior to the introduction of the new product components or associated product features, the estimated timetable and process of consultation in relation to the introduction of such service levels (including any applicable remedies).

4 Minor Product Changes

- (a) Notwithstanding anything to the contrary in this Schedule 6 (Product development and withdrawal), NBN Co may carry out minor product variations or enhancements which update or improve the functionality or performance of a Product Component or associated Product Feature and which, acting reasonably, NBN Co determines will have no material adverse impact on Customers (**Minor Product Variation**).
- (b) If a Minor Product Variation requires a Network Change, NBN Co will comply with the requirements of Schedule 8 (Prudency) in relation to the Prudency of the Network Change, subject to any of the applicable exceptions under clause 4 of Schedule 8 (Prudency).
- (c) For Minor Product Variations, NBN Co will use the Product Development Forum to notify its Customers of the proposed change and implementation timeframe, including through the Product Roadmap.
- (d) NBN Co will ensure that the withdrawal of the supply of a Product Component or Product Feature is not treated as a Minor Product Variation.

5 Product Withdrawal

5.1 Restrictions on Product Withdrawal

- (a) NBN Co will not withdraw the following Product Components for the duration of the Term:
 - i the User Network Interface;
 - ii the Access Virtual Circuit;
 - iii the Connectivity Virtual Circuit; and
 - iv the Network-Network Interface.
- (b) NBN Co will not withdraw the Product Features comprising the Basic Access Offer during the First Period.

5.2 Anti-avoidance provision

NBN Co will not:

- (a) withdraw any Product Component or Product Feature (**Product Withdrawal**); and
- (b) in conjunction with that Product Withdrawal (including both prior to, or after the Product Withdrawal), introduce any new Product Component or Product Feature that is substantially similar to, or comparable with, the Product

Component or Product Feature that has been subject to a Product Withdrawal,

for the purpose of circumventing, or avoiding the operation of, the Individual Price Increase Limits under clause 3.3 of this Special Access Undertaking and clause 3 of Schedule 5 (Price controls).

5.3 Notice period for Product Withdrawals

- (a) Subject to clauses 5.1 and 5.2, before withdrawing a Product Component or associated Product Feature, NBN Co will provide its Customers with no less than 12 months written notice of:
- i its intention to withdraw a Product Component or associated Product Feature; and
 - ii the transitional arrangements that NBN Co will put in place (if any) to migrate its Customers from the relevant Product Component or associated Product Feature to a replacement, comparable or alternative Product Component or associated Product Feature.
- (b) NBN Co will have regard to the following factors when considering whether to withdraw a Product Component or associated Product Feature:
- i existing demand for the Product Component or associated Product Feature;
 - ii the cost to NBN Co of maintaining the existing Product Component or associated Product Feature;
 - iii the functionality offered by a replacement, comparable or alternative Product Component or associated Product Feature to the relevant Product Component or associated Product Feature to be withdrawn;
 - iv the technical feasibility of a replacement, comparable or alternative Product Component or associated Product Feature;
 - v the commercial viability of a replacement, comparable or alternative Product Component or associated Product Feature; and
 - vi the price of a replacement, comparable or alternative Product Component or associated Product Feature.
- (c) NBN Co will discuss and consider in good faith any feedback received from its Customers through the Product Development Forum in relation to the impending withdrawal of a Product Component or associated Product Feature and related issues, such as migration.

5.4 Product withdrawal required by law or directed by Shareholder Ministers

This clause 5 does not apply to the withdrawal of a Product Component or associated Product Feature that NBN Co is required by law or a Shareholder Minister to withdraw or which NBN Co is prohibited from providing under section 41(3) of the NBN Companies Act.

Annexure 1 PDF Processes

Product Development Forum Processes



NBNCo
Bringing broadband to life



NBN Co Limited (ACN 136 533 741) and NBN Tasmania Limited (ACN 138 338 271)

Product Development Forum Processes

5 December 2011

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Environment

NBN Co asks that you consider the environment before printing this document

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Background

- A NBN Co has established a Product Development Forum, through which NBN Co will:
- seek Customers' feedback on Product Ideas as required by Schedule 6 (Product Development and Withdrawal); and
 - engage with Customers on future investments in network changes which are required to implement Product Ideas as required by Schedule 8 (Prudency).
- B This Annexure 1 to Schedule 6 (Product Development and Withdrawal) sets out the basis on which NBN Co will engage with Customers through the Product Development Forum.

1 Objectives of the PDF

- (a) NBN Co is committed to implementing Product Ideas that its Customers want and from which its Customers gain value.
- (b) The Product Development Forum is designed to promote innovation in NBN Co's development of Product Ideas.

2 Scope of the PDF

2.1 The PDF is the primary forum for the development of Product Ideas

- (a) Before offering a new product component or associated product feature or variation or enhancement to an existing Product Component or associated Product Feature (a **Product Solution**) or amending a Product Solution, that proposed Product Solution will be submitted to the Product Development Forum as a Product Idea, and will be subject to these PDF Processes except as set out in clause 2.1(b).
- (b) NBN Co may offer a Product Solution without submitting it to the Product Development Forum for Product Idea development if an exception set out in Schedule 6 (Product Development and Withdrawal) applies.

2.2 Roadmap

- (a) On or around 1 July each year, NBN Co will publish an updated Product Roadmap setting out the Product Components and associated Product Features then offered by NBN Co and the

Product Solutions which NBN Co expects to introduce in the 3 years following the date of publication.

- (b) Each Product Solution which NBN Co intends to offer to Customers within the period covered by the Product Roadmap will be incorporated into the first Product Roadmap published following the decision to offer the Product Solution.
- (c) The Product Roadmap will be made available on NBN Co's Website.

3 Membership of the PDF

- (a) Each Customer that wishes to participate in the Product Development Forum must register an authorised representative through the Website who will liaise with NBN Co in relation to the Product Development Forum (the **PDF Representative**). NBN Co will send all correspondence regarding the Product Development Forum to that PDF Representative.
- (b) Each Customer acknowledges that, as a condition of a Customer's participation in the Product Development Forum, NBN Co requires agreement to the terms and conditions of a multiparty confidentiality agreement which will be presented to Customers as part of the registration process.
- (c) Each Customer must ensure that the Website contains up-to-date details of the name, mail address, email address and fax number for its PDF Representative.
- (d) Each Customer must update the details of its PDF Representative on the Website to ensure such details remain up to date.
- (e) NBN Co may implement security procedures for participation in the Product Development Forum from time to time (such as authentication of identity), details of which will be available to Customers on the Website. Customers must comply with all such procedures.
- (f) In addition to any other right or remedy available to NBN Co under the Wholesale Broadband Agreement, if a Customer fails to comply with these PDF Processes in relation to the development of a particular Product Idea, NBN Co may, acting reasonably, suspend the Customer's involvement in the Product Development Forum in relation to that Product Idea on a temporary or permanent basis.

4 Development of ideas

4.1 Relationship to Public Ideas Forum

- (a) As set out in clause 3.3 of Schedule 6 (Product Development and Withdrawal), in addition to the Product Development Forum, NBN Co will establish a Public Ideas Forum to allow persons (including persons other than Customers) to participate and contribute to discussions on subjects including industry trends, new product developments and enhancements to existing Product Components and associated Product Features.
- (b) If a Customer wants NBN Co to implement an idea submitted to the Public Ideas Forum, the Customer will submit the idea as a Customer Product Idea to the Product Development Forum in accordance with clause 5.
- (c) If NBN Co wants to implement an idea submitted to the Public Ideas Forum, NBN Co will submit the idea as an NBN Co Product Idea to the Product Development Forum unless an exception applies under clause 2.1(b).

4.2 Idea generation tools

NBN Co will make available to Customers online resources for generating Customer Product Ideas. These tools may include:

- (a) an online forum;
- (b) a register of information about Product Ideas under consideration and existing Product Solutions; and
- (c) updates from NBN Co to Customers summarising selected potential Product Ideas raised in the Public Ideas Forum.

4.3 Specific information requests

- (a) Customers may request specific information regarding NBN Co Networks for the purpose of developing Product Ideas. NBN Co will comply with its obligations under Part 4 of Schedule 1 of the Telecommunications Act in responding to such specific requests.
- (b) NBN Co will consider Customers' requests for specific information from NBN Co in connection with the development of a Product Idea in good faith.

5 Submitting an idea to the PDF

5.1 Customer idea submission

- (a) If a Customer wants NBN Co to consider a Product Idea, the Customer (**Submitting Customer**) may submit details of the Product Idea using the features provided on the Website for that purpose.
- (b) The Submitting Customer must provide at least the following details in relation to a Product Idea, to the extent available:
 - i a detailed description of the concept of the Product Idea;
 - ii a service and functionality description for the Product Idea;
 - iii the proposed commercial use for the Product Idea;
 - iv the proposed service levels (including any remedies which may apply for breach of the service levels) that are proposed to apply to the Product Idea;
 - v any assessment of the technical feasibility of the Product Idea undertaken by, or available to, the Submitting Customer;
 - vi any forecast data, demand analysis or modelling it has regarding the potential demand for the Product Idea (including the reliability of that data);
 - vii any Intellectual Property Rights which NBN Co may have to license, or acquire licences for, to develop and implement the Product Idea; and
 - viii such other information as may be requested by NBN Co on the Website from time to time.
- (c) The Submitting Customer must identify information provided under clause 5.1(b) which it requires NBN Co to treat as Product Development Confidential Information, and clause 12 will apply to such information. Submitting Customers are requested to keep claims for confidentiality of Product Development Confidential Information to a minimum, to allow Product Ideas the best chance of being developed by NBN Co in the Product Development Forum. In the event that NBN Co forms the view that such confidentiality claims preclude the development of a Product Idea, NBN Co will notify the Submitting Customer accordingly and NBN Co may cease consideration of the Product Idea.

5.2 Idea prioritisation

- (a) NBN Co may at any time suspend or change the priority of the assessment and development of Product Ideas based on factors including:
 - i the amount and detail of information available to NBN Co;
 - ii NBN Co's confidence regarding the commercial, technical or regulatory viability of the Product Idea;
 - iii the utility of the proposed Product Idea (by reference to the long term interest of end-users or directions from its shareholders);
 - iv the demand for specific Product Ideas from Customers;
 - v the demonstrated need for the Product Idea;
 - vi the level of engagement of the Submitting Customer in the assessment and development of the Product Idea; and
 - vii government policy.
- (b) Prioritisation under clause 5.2(a) will affect both the schedule for assessment and development of a Product Idea and the resources committed by NBN Co to the development of that Product Idea.

5.3 Publication of ideas

- (a) As soon as possible after receiving a Customer Product Idea, and such additional information listed in clause 5.1(b) as is available, NBN Co will inform all Customers that have registered to participate in the Product Development Forum of the Product Idea and any associated information NBN Co has received, subject to clause 12 in relation to any Product Development Confidential Information in that Product Idea and any associated information.
- (b) NBN Co will maintain a register of Product Ideas submitted and under consideration on an area of its Website which will only be made available to NBN Co and Customers that have registered to participate in the Product Development Forum.
- (c) NBN Co will:
 - i as soon as possible after receiving a Customer Product Idea and such additional information listed in clause 5.1(b) as is available, provide the Submitting Customer with an

estimate for when NBN Co expects to conduct an initial review of the Product Idea; and

- ii update the Submitting Customer if there are material changes to the estimate provided under clause 5.3(c)i.

5.4 Intellectual property

(a) NBN Co and each Customer acknowledge that the terms of the Wholesale Broadband Agreement will apply to the assignment and licensing of, and indemnities relating to, Intellectual Property Rights relating to Product Ideas.

(b) Each Submitting Customer warrants, in relation to each Product Idea it submits, that it has obtained a genuine consent, in writing where necessary, from each individual who has contributed to the Product Idea which:

i allows NBN Co to:

A not identify the authorship of the Product Idea and any element or implementation of it;

B identify the Submitting Customer and NBN Co as the authors of the Product Idea and any element or implementation of it;

C alter (including materially) the style, format, content and implementation of the Product Idea and any element or implementation of it; and

D add to or remove content or information from the Product Idea and any element or implementation of it,

even if to do so constitutes 'derogatory treatment' under section 195AJ of the *Copyright Act 1968* (Cth) which may be prejudicial to those works, for the limited purposes of NBN Co considering, developing, implementing the Product Idea, and offering and supplying the Product Solution proposed in the Product Idea, or any similar or alternative product or service developed by NBN Co;

- ii grants an unconditional and irrevocable waiver (to the extent permitted by law) of each moral right in respect of the works to which that individual may be, or may become, entitled to in any jurisdiction; and

- iii acknowledges that:
 - A failure by NBN Co or any third party to identify the individual as the author of the works will not constitute an infringement of the individual's right to attribution of authorship; and
 - B the consents and waivers in the consent are genuinely given and not obtained from the individual under duress or the making of any false or misleading statement by the Submitting Customer, NBN Co or any third party.

5.5 Third party intellectual property required to implement, offer and supply a Product Solution

- (a) If the implementation, offer or supply of a Product Solution (or any similar or alternative product or service) derived from a Product Idea submitted by Submitting Customer will require any Intellectual Property Rights owned by a third party which is not a Related Body Corporate of the Submitting Customer, the Submitting Customer must disclose the details of those Intellectual Property Rights to NBN Co together with the original submission of the Product Idea.
- (b) NBN Co is entitled not to conduct an initial assessment of a Product Idea under clause 6.3 until NBN Co owns or obtains a licence of any Intellectual Property Right required to be disclosed under clause 5.5(a).
- (c) If, at any time after the initial assessment of a Product Idea, NBN Co determines that implementing, offering or supplying a Product Solution (or any similar or alternative product or service) derived from the Product Idea will require third party Intellectual Property Rights, and that requirement was unknown or undisclosed at the time that the Product Idea was submitted, NBN Co may cease developing the Product Idea in accordance with clause 6.5.
- (d) The Submitting Customer must pay on demand to NBN Co the amount of any Losses suffered or incurred by NBN Co arising out of or in connection with any breach by a Submitting Customer of its obligations pursuant to clause 5.5(a).

5.6 Confidentiality of Product Ideas

- (a) Where NBN Co determines it necessary or desirable in relation to a specific Customer Product Idea, NBN Co may require the Submitting Customer to:

- i grant NBN Co additional rights to use and disclose; and
- ii waive any restrictions under clause 12 of these PDF Processes,

in respect of Product Related Confidential Information in relation to that Customer Product Idea.

- (b) NBN Co is under no obligation to conduct an initial assessment of a Product Idea under clause 6.3 until grants and waivers required under clause 5.6(a) are provided by the Submitting Customer.

6 NBN Co's assessment of a Product Idea

6.1 Criteria for assessment

NBN Co will assess Product Ideas in accordance with Schedule 6 (Product Development and Withdrawal).

6.2 Assessment based on information provided

- (a) Upon receiving a Customer Product Idea, NBN Co may seek and consider further information from the Submitting Customer in assessing the Product Idea.
- (b) If NBN Co does not seek further information about a Product Idea under clause 6.2(a), NBN Co may rely solely upon the information provided by the Submitting Customer to assess the Product Idea under this clause 6.

6.3 Initial assessment

- (a) In initially assessing a Product Idea using the criteria in Schedule 6 (Product Development and Withdrawal), NBN Co will take into consideration that the Product Idea is at an initial stage of development and is likely to be refined and amended through the Product Development Forum.
- (b) NBN Co will, in particular, make allowances in its initial assessment of a Product Idea for:
 - i information asymmetry between NBN Co and the Submitting Customer;
 - ii information available specifically to the Submitting Customer regarding ascertainable demand for the Product Idea.

6.4 Output from NBN Co's initial assessment

- (a) Following its initial assessment of a Product Idea, if in its absolute discretion NBN Co decides to develop the Product Idea, it will, in addition to any other requirements under schedule 8 (Prudency), publish a summary of the Product Idea, including proposed features, functionality, product specification and service levels (including any remedies which may apply for breach of the service levels) as refined by NBN Co (a **Product Construct Paper**).
- (b) To the extent practical, NBN Co will also include in the Product Construct Paper:
 - i pre-conditions for a Customer using the Product Solution proposed in the Product Idea (if any);
 - ii resources that may be required by Customers to use the Product Solution proposed in the Product Idea; and
 - iii NBN Co's reasons for refining the Product Idea as reflected in the Product Construct Paper.
- (c) When NBN Co publishes a Product Construct Paper and documents under clause 6.4(a) and no exception from the Product Development Forum applies under clause 2.1(b), NBN Co will also provide Customers with supplementary information regarding the Customer Consultation processes that will be used to develop the Product Idea, as described in clauses 7 and 8 (together, the **Idea Development Plan**).

6.5 Ongoing assessment

At any time between initial assessment of a Product Idea under clause 6.3 and NBN Co's offer of the Product Solution proposed in the Product Idea to Customers, NBN Co may in its absolute discretion decide to stop developing the Product Idea.

6.6 Rejection of Product Ideas

Following assessment of a Product Idea either under clause 6.3 or clause 6.5, if NBN Co decides in its absolute discretion not to develop the Product Idea, it will publish a notice to that effect to the Product Development Forum (a **Rejection Notice**) giving specific reasons for NBN Co deciding not to develop the Product Idea.

7 Workshops

7.1 Form and structure of Workshops

- (a) As part of an Idea Development Plan for a Product Idea, NBN Co may, after considering the subject matter and nature of a Product Idea, arrange workshops which will be held with Customers to develop the Product Idea (**Workshops**). If NBN Co does not convene Workshops, it will seek the input of Customers through alternative means suited to the particular Product Idea (for example, by seeking written submissions).
- (b) Workshops convened under clause 7.1(a) will vary depending on requirements specific to the Product Idea but, as permitted by law, may include:
 - i commercial workshops;
 - ii technical and engineering workshops;
 - iii operational and support workshops; and
 - iv workshops regarding service levels (including any remedies which may apply for breach of the service levels).
- (c) As part of the Idea Development Plan for a Product Idea, NBN Co will set out the operational structure of the Workshops, which may vary depending on the Product Idea being developed but may include:
 - i online collaboration (for example using wikis or shared documents);
 - ii mailing list discussions;
 - iii teleconferences;
 - iv video conferences; and
 - v face-to-face meetings.
- (d) All Workshop discussions and contributions are without prejudice and, where applicable, will be subject to the confidentiality provisions in clause 12.

7.2 NBN Co will facilitate Workshops

- (a) If Workshops are convened under these PDF Processes, NBN Co will organise and chair (or moderate, if applicable) those Workshops.

NBN Co will organise Workshops to conform to the Idea Development Plan to the extent practical and desirable (for example, by setting schedules for Workshop discussions which ensure the Product Idea can be finalised within the time estimated in the Idea Development Plan).

- (b) NBN Co will co-ordinate communications between Workshops and may, if necessary or desirable, convene meetings or merge discussions of representatives from multiple Workshops for efficiency or to reconcile differences in Product Idea development.
- (c) As NBN Co and Customers develop a Product Idea through Workshops, NBN Co may from time to time issue updated:
 - i Product Construct Papers and associated documents to reflect refinements and changes proposed in the Workshops; and
 - ii Idea Development Plans to add, consolidate, change or remove Workshops, change the operational structure of existing Workshops or change the schedule and resources dedicated to the Product Idea.

7.3 Customer participation in Workshops

- (a) Subject to compliance with these PDF Processes including clause 3, each Customer may participate in each Workshop. If a Customer declines or fails to participate in a Workshop at any time, the Customer may not subsequently amend or query the results or contributions achieved by that Workshop during the period in which the Customer did not participate in the Workshop.
- (b) If a Customer representative to a Workshop does not have sufficient authority, knowledge, experience or expertise to fully participate in a Workshop, NBN Co may raise the issue with the Customer's PDF Representative or other appropriate relationship manager.

8 Formal submissions

8.1 NBN Co may invite Formal Submissions

- (a) From time to time after a Product Construct Paper and any associated papers have been released, NBN Co may request formal submissions from Customers in relation to a Product Idea described in those documents (each a **Formal Submission**).

- (b) NBN Co may notify Customers that Formal Submissions are required by a particular deadline, which NBN Co will ensure is reasonable in all the circumstances.
- (c) NBN Co may extend a deadline notified under clause 8.1(b). If NBN Co extends a deadline, it will extend the deadline for all Customers and notify all Customers of the extension to the deadline.
- (d) To the extent practicable, NBN Co will provide each Customer an equivalent period of time to file a Formal Submission if the Customer wishes to do so.

8.2 Publication of Formal Submissions

- (a) Subject to any written notice that a Formal Submission or a part of a Formal Submission is confidential, NBN Co will publish each Formal Submission on its Website, and each Formal Submission will be publicly available.
- (b) If a Customer notifies NBN Co that a Formal Submission or part of it is confidential, clause 12 will apply to such information.

9 Finalisation of Product Solution

- (a) NBN Co will inform Customers when it determines that the Workshops, Formal Submissions and other contributions provided by Customers have provided sufficient input to allow NBN Co to finalise a Product Construct Paper such that it is satisfactory to NBN Co.
- (b) Following a notification under clause 9(a), NBN Co may further amend the Product Construct Paper to reflect:
 - i refinements to the Product Idea by the Product Development Forum generally, the Workshops, and by NBN Co; and
 - ii prudency considerations arising under Schedule 8 (Prudency) in relation to expenditure which may be incurred in connection with the implementation and supply of the Product Idea.
- (c) NBN Co will publish a final Product Construct Paper for Customers' information.

10 Implementation

- (a) Product Solutions derived from Product Ideas will be implemented, offered and supplied to Customers in accordance with the Wholesale Broadband Agreement and the SAU, including Schedule 6 (Product Development and Withdrawal) and Schedule 8 (Prudency).
- (b) Once NBN Co decides to implement a Product Solution (and following prudency endorsement as contemplated under Schedule 8 (Prudency) where relevant) NBN Co will update the Product Roadmap to include the Product Solution.
- (c) Once any Product Solution is ready to be offered the Product Solution will be offered by NBN Co by amending the Product Components and Product Features available under the Wholesale Broadband Agreement in accordance with the provisions for amendment under the Wholesale Broadband Agreement.
- (d) Nothing in these PDF Processes requires NBN Co to implement or provide the Product Solution or any similar or alternative Product Solution until the prudency of such a Product Solution is endorsed as contemplated under Schedule 8 (Prudency).

11 Communications

11.1 NBN Co communication to Customers

- (a) Any communication from NBN Co to a single Customer in relation to the PDF may be given by:
 - i e-mail to that Customer's PDF Representative;
 - ii letter to that Customer's PDF Representative; or
 - iii any one-to-one messaging application made available on the Website.
- (b) Any communication from NBN Co to more than one Customer may be given by:
 - i e-mail to each relevant Customer's PDF Representative;
 - ii letter to each relevant Customer's PDF Representative;
 - iii notice on the Website; or

- iv other communication technology which NBN Co may notify to Customers from time to time.
- (c) If a communication relates to a particular Workshop topic or discussion, it may be given to a Customer's nominated Workshop representative instead of its PDF Representative. If a Customer does not nominate a Workshop representative in relation to a specific Workshop, NBN Co is not required to send notifications regarding that Workshop to that Customer.
- (d) If NBN Co proposes to consult Customers on matters relating to the Product Development Forum generally, it may provide notice of such consultation in accordance with clause 11.1(b) and such consultation may take place in any way in which a Workshop may take place under clauses 7.1(c) and 7.1(d).

11.2 Customer communications to NBN Co

Any communication from a Customer to NBN Co in relation to the Product Development Forum may be given:

- (a) if a contact form or other communication mechanism exists on the Website for the particular topic of the communication, by submitting that form or using that other communication mechanism;
- (b) otherwise, if related to a particular Workshop topic or discussion, by e-mail to the NBN Co facilitator for that Workshop; and
- (c) otherwise by e-mail to the NBN Co PDF Representative.

11.3 Availability for regular updates

If no Workshops are scheduled in a given six-month period, NBN Co will make available updates in relation to its product development activities in that time and make its representatives available to discuss such updates with Customers.

12 Confidentiality

- (a) Each Customer acknowledges that section 152AXD of the Competition and Consumer Act 2010 imposes an obligation on NBN Co to not discriminate between Access Seekers in developing a new eligible service or enhancing a declared service (as those terms are defined in that Act).

- (b) In order to facilitate NBN Co's compliance with the obligations set out in clause 12(a), all Product Development Confidential Information is subject to the multilateral confidentiality agreement notified to Customers during registration for participation in the Product Development Forum.

13 Dispute resolution procedures do not apply to the PDF

Having regard to the consultative nature of the PDF Processes, the dispute resolution provisions in the Wholesale Broadband Agreement do not apply to:

- (a) the PDF Processes or the implementation of the PDF Processes (including the suspension, prioritisation, assessment, acceptance, rejection, finalisation or implementation of a Product Idea);
- (b) any act or omission of NBN Co in the course of the conduct of the Product Development Forum;
- (c) any participation or non participation by any person in the Product Development Forum; or
- (d) any aspect of the Product Construct Paper,

and no matter or circumstance which arises between participants (including NBN Co) in the Product Development Forum can give rise to a dispute to which the provisions of the Wholesale Broadband Agreement apply, except to the extent that the parties expressly otherwise agree in writing.

Schedule 1 Definitions and Interpretation

1 Definitions

Except where the context otherwise requires, a term or expression that is defined in this clause has the meaning given to it in this clause:

Customer Consultation means the processes set out in clause 7 and (where applicable) clause 8.

Formal Submission has the meaning given to that term in clause 8.1(a).

Idea Development Plan has the meaning given to that term in clause 6.4(c).

PDF Processes means this Annexure 1 of Schedule 6 (Product Development and Withdrawal).

Product Construct Paper has the meaning given to that term in clause 6.4(a).

Product Development Confidential Information means all information regardless of form, which:

- (a) is disclosed under the PDF Processes; and
- (b) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed,

but does not include information:

- (c) which is in or comes into the public domain, other than by disclosure in breach of the Wholesale Broadband Agreement or an obligation of confidence owed to a party under, or a failure to comply with, these PDF Processes;
- (d) which, at the time of first disclosure to or observation by the recipient was already in the lawful possession of that party; or
- (e) which is disclosed to, or observed by, the recipient from a third party (who is not a Customer) who is entitled to disclose it.

Product Solution has the meaning given to that term in clause 2.1(a).

Rejection Notice has the meaning given to that term in clause 6.6.

Website means the website at <http://www.nbnco.com.au>.

Workshop has the meaning given to that term in clause 7.1(a).

2 Interpretation

For clarity, a Product Idea and Product Solution may relate solely to a Product Feature or to a Product Component and its associated Product Features.

Schedule 7 Long Term Revenue Constraint Methodology

1 Initial Cost Inclusion

NBN Co will include all costs incurred and revenues earned between the Cost Commencement Date and the SAU Commencement Date within NBN Co's Regulatory Asset Base (**RAB**) as described in clause 3 and in NBN Co's Initial Cost Recovery Account as described in clause 5.

2 Designation of Financial Years

The First Financial Year will be designated as year $t = 1$ in all calculations under this Schedule. The Financial Year immediately prior to the First Financial Year will be designated as year $t = 0$, with negative numbers being used for any Financial Year prior to that Financial Year (e.g. the Financial Year two years prior to the First Financial Year will be year $t = -1$). The Financial Year immediately after the First Financial Year will be year $t = 2$, and so on.

3 Regulatory Asset Base

3.1 Introduction

NBN Co will calculate a RAB for the Relevant Assets. The RAB is the regulatory value of its capital investments made over the Term.

3.2 Calculation of RAB

The **Real RAB** will be:

- (a) as at the Cost Commencement Date, zero;
- (b) rolled forward annually according to the following methodology:

$$\begin{aligned} \text{Real RAB}_{t+1}^{\text{start}} &= \text{Real RAB}_t^{\text{end}} \\ &= \text{Real RAB}_t^{\text{start}} + \text{Real Capex}_t - \text{Real Disposals}_t \\ &\quad - \text{Real Straight Line Depreciation}_t \end{aligned}$$

Where:

t is the Financial Year being evaluated.

$\text{Real RAB}_{t+1}^{\text{start}}$ is the Real RAB at the start of the next Financial Year ($t+1$).

$\text{Real RAB}_t^{\text{end}}$ is the Real RAB at the end of the current Financial Year (t).

$\text{Real RAB}_t^{\text{start}}$ is the Real RAB at the start of the current Financial Year (t).

$Real\ Capex_t$ is the real Capital Expenditure incurred in the relevant Financial Year (t), adjusted to reflect the timing of actual Capital Expenditure during that Financial Year. This Capital Expenditure excludes any capital contributions of network assets.

The timing adjustment is calculated as follows:

$$Real\ Capex_t = Real\ Capital\ Expenditure_t * (1 + WACC_{vanilla,t}^{real})^{0.5}$$

Where:

$Real\ Capital\ Expenditure_t$ is the real value of the actual Capital Expenditure incurred on a Prudent basis in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets during Financial Year t , recognised at the time that the relevant asset is Placed in Service.

$WACC_{vanilla,t}^{real}$ is the real vanilla WACC in Financial Year (t), calculated in accordance with clause 7.2.

$Real\ Disposals_t$ is the real value of any Disposals of Relevant Assets during the current Financial Year (t), adjusted to reflect the timing of actual disposals during that Financial Year:

$$\begin{aligned} Real\ Disposals_t &= Real\ Value\ of\ Asset\ Disposals_t \\ & * (1 + WACC_{vanilla,t}^{real})^{0.5} \end{aligned}$$

Where:

$Real\ Value\ of\ Asset\ Disposals_t$ is the real value of the Relevant Assets that were actually disposed of during Financial Year t .

$WACC_{vanilla,t}^{real}$ is the real vanilla WACC in Financial Year t , calculated in accordance with clause 7.2(b).

$Real\ Straight\ Line\ Depreciation_t$ is the real value of the depreciation applicable to the Relevant Assets included in the RAB in the current Financial Year t , determined in accordance with clause 8.1(a).

3.3 Calculation of Nominal RAB

The **Nominal RAB** will be:

$$Nominal\ RAB_t^{start} = CIF_t * Real\ RAB_t^{start}$$

$$Nominal\ RAB_t^{end} = CIF_t * Real\ RAB_t^{end}$$

Where:

$Nominal RAB_t^{start}$ is the Nominal RAB at the start of the relevant Financial Year (t);

$Nominal RAB_t^{end}$ is the Nominal RAB at the end of the relevant Financial Year (t);

CIF_t is defined in clause 8.4(b) or 8.4(c);

$Real RAB_t^{start}$ is the Real RAB at the start of the relevant Financial Year (t);

$Real RAB_t^{end}$ is the Real RAB at the end of the relevant Financial Year (t).

3.4 Treatment of Construction in Progress

- (a) NBN Co will separately account for Capital Expenditure that has not been Placed in Service (**Construction in Progress** or **CIP**). Construction in Progress (**CIP**) will be consistent with the values in NBN Co's audited accounts and will not include any allowance for interest during construction.
- (b) The Annual Construction in Progress Allowance or **ACIPA** for year t is calculated as follows:

$$ACIPA_t = CIP_t^{start} * WACC_{vanilla,t}^{nominal} + (CIP_t^{end} - CIP_t^{start}) * (1 + WACC_{vanilla,t}^{nominal})^{0.5}$$

Where:

CIP_t^{start} is the balance of Construction in Progress at the start of Financial Year t .

CIP_t^{end} is the balance of Construction in Progress at the end of Financial Year t .

$WACC_{vanilla,t}^{nominal}$ is the nominal vanilla WACC that applied in Financial Year t , calculated in accordance with clause 7.2(a).

4 Annual Building Block Revenue Requirement

$$ABRR_t = WACC_{vanilla,t}^{nominal} * Nominal RAB_t^{start} + Nominal Regulatory Depreciation_t + Nominal Opex_t + Net Tax Allowance_t + Annual Construction in Progress Allowance_t$$

Where:

$WACC_{vanilla,t}^{nominal}$ is the nominal vanilla WACC that applied in Financial Year t , calculated in accordance with clause 7.2(a).

Nominal RAB_t^{start} is the nominal value of the Regulatory Asset Base at the start of the relevant Financial Year *t*.

Nominal Regulatory Depreciation_t is the nominal Regulatory Depreciation in the relevant Financial Year *t*, calculated in accordance with clause 8.1(c).

Nominal Opex_t is the Operating Expenditure incurred on a Prudent basis in the relevant Financial Year *t* in accordance with clause 10 of Schedule 8 (Prudency).

Net Tax Allowance_t is the net regulatory tax required to be paid by NBN Co in the relevant Financial Year *t*, determined in accordance with clause 8.3.

Annual Construction in Progress Allowance_t is the Annual Construction in Progress Allowance in the relevant Financial Year *t*, determined in accordance with clause 3.4(b).

5 Initial Cost Recovery Account

5.1 Introduction

The Initial Cost Recovery Account (**ICRA**) is calculated for the purposes of assessing whether NBN Co has achieved full recovery of its Annual Building Block Revenue Requirements, and to determine the commencement of the Building Block Revenue Period.

5.2 Unrecovered Cost

- (a) During the Initial Cost Recovery Period, the **Unrecovered Cost** for each Financial Year *t* is:

$$\text{Unrecovered Cost}_t = \text{ABBRR}_t - \text{Nominal Revenue}_t$$

Where:

ABBRR_t is the nominal Annual Building Block Revenue Requirement calculated in accordance with clause 4.

Nominal Revenue_t is the Revenue received by NBN Co in the relevant Financial Year *t*. This Revenue is measured in the nominal dollar value of Financial Year *t*.

- (b) The Unrecovered Cost can be either a positive value (when nominal Revenues are less than the ABBRR) or a negative value (when nominal Revenues exceed the ABBRR).

5.3 Initial Cost Recovery Account (ICRA)

During the Initial Cost Recovery Period, the **Initial Cost Recovery Account** is:

- (a) as at the Cost Commencement Date, zero.
- (b) for each Financial Year of the remainder of the Initial Cost Recovery Period:

$$\begin{aligned} ICRA_{t+1}^{start} &= ICRA_t^{end} \\ &= ICRA_t^{start} * (1 + WACC_{vanilla,t}^{nominal}) + Unrecovered Cost_t \end{aligned}$$

Where:

$ICRA_{t+1}^{start}$ is the ICRA at the start of the next Financial Year ($t+1$).

$ICRA_t^{end}$ is the ICRA at the end of the current Financial Year (t).

$ICRA_t^{start}$ is the ICRA at the start of the current Financial Year (t).

$Unrecovered Cost_t$ is the Unrecovered Cost_t calculated in clause 5.2(a).

5.4 Carry Forward Revenue Adjustment

In the final Financial Year (t) of the Initial Cost Recovery Period, the balance of the Unrecovered Cost that has not been applied to the Initial Cost Recovery Account in accordance with clause 5.3 will be the **Carry Forward Revenue Adjustment**.

That is:

$$\text{Carry Forward Revenue Adjustment}_t = \text{Unrecovered Cost}_t + ICRA_t^{start} * (1 + WACC_{vanilla,t}^{nominal})$$

The Carry Forward Revenue Adjustment will be applied to the calculation of Regulated Revenue in the first Financial Year of the Building Block Revenue Period, as described in clause 6.1.

For the avoidance of doubt, the Carry Forward Revenue Adjustment will have a negative or zero value.

6 Building Block Revenue Period

6.1 Calculation of Regulated Revenue

During the Building Block Revenue Period, the annual **Regulated Revenue (RR)** in Financial Year t is:

- (a) in the first Financial Year of the Building Block Revenue Period:

$$RR_t = ABBRR_t + CFRA_{t-1} * (1 + WACC_{vanilla,t}^{nominal})$$

- (b) in all other Financial Years:

$$RR_t = ABBRR_t + RV_{t-1} * (1 + WACC_{vanilla,t}^{nominal})$$

Where:

$ABRR_t$ is the nominal Annual Building Block Revenue Requirement in the relevant Financial Year t , as determined in clause 4.

RV_{t-1} is the Revenue Variation from the Financial Year prior to the preceding Financial Year ($t-1$), as determined in clause 6.2.

$CFRA_{t-1}$ is the Carry Forward Revenue Adjustment from the final Financial Year of the Initial Cost Recovery Period, as determined in clause 5.4.

6.2 Revenue Variation

- (a) The **Revenue Variation** in each Financial Year t of the Building Block Revenue Period is:

$$\text{Revenue Variation}_t = RR_t - \text{Nominal Revenue}_t$$

Where:

RR_t is the Regulated Revenue in Financial Year t ;

Nominal Revenue_t is the Revenue received by NBN Co in the relevant Financial Year t . This Revenue is measured in the nominal dollar value of Financial Year t .

- (b) This Revenue Variation calculated for Financial Year t will be applied to the Regulated Revenue that is established for Financial Year ($t+1$).
- (c) NBN Co will ensure that its Revenues in the Final Financial Year of the Term will be no more than the Regulated Revenue for that year.

7 Cost of Capital

7.1 Introduction

NBN Co's return on capital will be calculated using the weighted average cost of capital (**WACC**) calculated in accordance with the methodology set out in this clause 7.

7.2 WACC Calculation

- (a) For each Financial Year, the nominal vanilla WACC will be estimated using the following formula:

$$WACC_{\text{vanilla}}^{\text{nominal}} = r_f + 3.50\%$$

Where:

r_f is the risk-free rate of interest determined each Financial Year in accordance with clause 7.2(b).

- (b) The risk free rate of interest (r_f) applied to a Financial Year will be the mean yield on 10 year Commonwealth Government Securities, averaged over the final 20 Business Days of the preceding Financial Year.
- (c) For each Financial Year t , the real vanilla WACC will be estimated using the following formula:

$$\text{WACC}_{\text{vanilla},t}^{\text{real}} = \frac{(1 + \text{WACC}_{\text{vanilla},t}^{\text{nominal}})}{(1 + \text{CPI}_t^{\text{June}})} - 1$$

Where:

$1 + \text{CPI}_t^{\text{June}}$ means the June Quarter CPI for Financial Year t .

- (d) For any Financial Years preceding the First Financial Year, the same WACC approach set out in clause 7.2(a) will apply, using the risk free rate relevant for those Financial Years determined in accordance with clause 7.2(b). The real vanilla WACC will continue to be calculated in accordance with clause 7.2(c).

8 Treatment of Taxation and Depreciation

8.1 Regulatory Depreciation

For the purposes of calculating the regulatory depreciation allowance in the calculation of the RAB in any Financial Year:

- (a) The **Real Straight Line Depreciation** is the sum of the straight line depreciation of the real capital expenditure (**capex**) value of each Asset Type incurred prior to and including the relevant Financial Year, using the asset lifetimes shown in Table 8.1 for each Asset Type. That is, for each Asset Type, the annual Real Straight Line Depreciation in Financial Year t is:

$$\text{Asset Real Straight Line Depreciation}_{i,t} = \sum_{k=q}^t \frac{\text{Net Real Capex}_{i,k}}{L_i}$$

Where:

i is the Asset Type;

L_i is the asset lifetime of the Asset Type;

q is equal to 1 if $t \leq L_i$ and is equal to $(t - L_i + 1)$ when $t > L_i$

$\text{Net Real Capex}_{i,k}$ is the real value of the net capital investment actually incurred in Financial Year k for Asset Type i (i.e. Capital Expenditure less Disposals), adjusted to reflect the timing of actual Capital Expenditure during the Financial Year k .

$$\begin{aligned}
 \text{Net Real Capex}_{i,k} &= (\text{Real Capital Expenditure}_{i,k} \\
 &\quad - \text{Real Asset Disposals}_{i,k}) * (1 + WACC_{\text{vanilla},k}^{\text{real}})^{0.5}
 \end{aligned}$$

Where:

Real Capital Expenditure_{i,k} is the real value of actual Capital Expenditure in Asset Type *i* incurred on a Prudent basis in connection with the design, engineering, construction, replacement and augmentation of Asset Type *i* in Financial Year *k*. Capital Expenditure is recognised at the time the asset is Placed In Service.

Real Asset Disposals_{i,k} is the real value of Disposals of Asset Type *i* removed from service in Financial Year *k*.

WACC_{vanilla,k}^{real} is the real vanilla WACC that applied in Financial Year *k*.

Hence, the total Real Straight Line Depreciation for any Financial Year *t* is the sum of all the Asset Real Straight Line Depreciation values for each Asset Type.

$$\begin{aligned}
 \text{Real Straight Line Depreciation}_t &= \sum_{i=1}^N \text{Asset Real Straight Line Depreciation}_{i,t}
 \end{aligned}$$

Where:

N is the number of Asset Types;

Asset Real Straight Line Depreciation_{i,t} is the real value of the straight line depreciation of the Asset Type.

Table 8.1 Asset Lifetimes

Asset Type	Asset Lifetime (years)
Fibre - Active Equipment:	
Internal NTD – Supply & Install	6
External NTD – Supply & Install	6
OLT Line Card	6
OLT Shelf	6
OLT Rack	10
EFS & EAS Ports	6
EFS & EAS Racks	10
OTP DWDM FAN end shelf and ROADM cards	6
OTP DWDM POI end shelf and ROADM cards	6
OTP Muxponder	6

Asset Type	Asset Lifetime (years)
OTP Transponder	6
OTP amplifier	6
Battery	3
Fibre – Passive Equipment:	
NTP Port – Provide & Install	20
Drop Connector – Provide & Install	20
Optical Fibre Cable	25
Pre-connectorised joints – Supply & Install	25
Splices – Supply	20
FDH Cabinet – Supply & Install	20
Distribution Point Splitter – Supply & Install	20
OLT Fibre Termination Panel	20
OLT Optical Distribution Frame	20
OLT Patch Cables	20
OLT Patch Splices	20
OLT Supply Splices	20
FAN Site Works – Power Generators	20
FAN Site Works – Switchboards and control systems	20
FAN Site Works - Cooling	20
Power Supply Unit and Cabling	16
Fibre – Civil Works:	
Internal Wiring – Provide & Install	30
NTP Port – Provide & Install	20
Cable Hauling	25
Conduit Pipe	30
Trench new routes	30
Duct remediation	30
Prove, rod and rope existing duct	30
Pits	30
Manholes	30
FAN Site Works - Space	30
Wireless:	
NTD – Supply & Install	6
Antenna – Supply & Install	6
Radio Spectrum	15
Microwave backhaul	10
Core Servers – Supply & Install	7
Core Servers – One-off Integration & Install	10
Packet Gateway Servers – Supply & Install	5
Packet Gateway Servers – Software	5
Fibre Hub Box	7
Fibre Hub Microwave	15
Radio Access Network BTS ground lease	20
Radio Access Network BTS O&M	20

Asset Type	Asset Lifetime (years)
Radio Access Network BTS - Hardware & labour refresh	7
Radio Access Network BTS Co-location capex	15
Carriers	8
Satellite:	
Satellite -Connections	6
Satellite -Infrastructure	12
Interim Satellite NTD – Supply & Install	5
Land:	
Land	10,000

For the purposes of this Schedule, the Asset Lifetimes and the categories of Asset Types described in Table 8.1 are indicative only and may change from time to time, including to cover new categories of Asset Types, as determined in a manner consistent with NBN Co’s audited accounts.

- (b) The **Nominal Straight Line Depreciation** is the nominal value of the Real Straight Line Depreciation calculated in accordance with clause 8.1(a).

That is:

$$\begin{aligned} \text{Nominal Straight Line Depreciation}_t \\ = \text{Real Straight Line Depreciation}_t * \text{CIF}_t \end{aligned}$$

Where:

CIF_t is the Cumulative Inflation Factor as defined in clause 8.4(b).

- (c) The **Nominal Regulatory Depreciation** is the difference between the Nominal Straight Line Depreciation and the change in value of the nominal RAB due to inflation:

$$\begin{aligned} \text{Nominal Regulatory Depreciation}_t \\ = \text{Nominal Straight Line Depreciation}_t - 1 + \text{CPI}_t^{\text{June}} \\ * \text{Nominal RAB}_{t-1}^{\text{end}} \end{aligned}$$

8.2 Nominal Tax Depreciation Expense

For the purposes of calculating the tax depreciation expenses used in the calculation of the net tax allowance in any Financial Year:

- (a) the Nominal Tax Depreciation Expense is the sum of the straight line depreciation of the nominal capex value of each Asset Type Placed In Service prior to and including the relevant Financial Year, using the taxation asset lifetimes shown in Table 8.2 for each Asset Type. The nominal capex value used is not adjusted to reflect the timing of actual Capital Expenditure. That

is, for each Asset Type, the annual Nominal Tax Depreciation in Financial Year t is:

$$\begin{aligned} \text{Asset Nominal Tax Depreciation}_{i,t} \\ = \sum_{k=q}^t \frac{\text{Net Nominal Capital Expenditure}_{i,k}}{TL_i} \end{aligned}$$

Where:

i is the Asset Type

TL_i is the taxation asset lifetime of the Asset Type;

q is equal to 1 if $t \leq TL_i$; and is equal to $(t - TL_i + 1)$ when $t > TL_i$

Net Nominal Capital Expenditure $_{i,k}$ is the nominal value of the net capital investment actually incurred in Financial Year k for Asset Type i (i.e. Capital Expenditure less Disposals):

$$\begin{aligned} \text{Net Nominal Capex}_{i,k} \\ = (\text{Nominal Capital Expenditure}_{i,k} \\ - \text{Nominal Asset Disposals}_{i,k}) \end{aligned}$$

Where:

Nominal Capital Expenditure $_{i,k}$ is the nominal value of actual Capital Expenditure in Asset Type i incurred on a Prudent basis in connection with the design, engineering, construction, replacement and augmentation of Asset Type i in Financial Year k . Capital Expenditure is recognised at the time the asset is Placed In Service.

Nominal Asset Disposals Commissioned $_{i,k}$ is the nominal value of Disposals of Asset Type i removed from service in Financial Year k .

Hence, the total Nominal Tax Depreciation for any Financial Year t is the sum of all the Asset Nominal Tax Depreciation values for each Asset Type.

$$\text{Nominal Tax Depreciation}_t = \sum_{i=1}^N \text{Asset Nominal Tax Depreciation}_{i,t}$$

Where:

N is the number of Asset Types;

Asset Nominal Tax Depreciation $_{i,t}$ is the nominal value of the tax depreciation of Asset Type i in Financial Year t .

Table 8.2 Taxation Asset Lifetimes

Asset Type	Asset Lifetime (years)
Fibre - Active Equipment:	
Internal NTD – Supply & Install	6
External NTD – Supply & Install	6
OLT Line Card	6
OLT Shelf	6
OLT Rack	10
EFS & EAS Ports	6
EFS & EAS Racks	10
OTP DWDM FAN end shelf and ROADM cards	6
OTP DWDM POI end shelf and ROADM cards	6
OTP Muxponder	6
OTP Transponder	6
OTP amplifier	6
Battery	3
Fibre – Passive Equipment:	
NTP Port – Provide & Install	20
Drop Connector – Provide & Install	20
Optical Fibre Cable	25
Pre-connectorised joints – Supply & Install	25
Splices – Supply	20
FDH Cabinet – Supply & Install	20
Distribution Point Splitter – Supply & Install	20
OLT Fibre Termination Panel	20
OLT Optical Distribution Frame	20
OLT Patch Cables	20
OLT Patch Splices	20
OLT Supply Splices	20
FAN Site Works – Power Generators	20
FAN Site Works – Switchboards and control systems	20
FAN Site Works - Cooling	20
Power Supply Unit and Cabling	16
Fibre – Civil Works:	
Internal Wiring – Provide & Install	30
NTP Port – Provide & Install	20
Cable Hauling	25
Conduit Pipe	30
Trench new routes	30
Duct remediation	30
Prove, rod and rope existing duct	30
Pits	30
Manholes	30
FAN Site Works - Space	30

Asset Type	Asset Lifetime (years)
Wireless:	
NTD – Supply & Install	6
Antenna – Supply & Install	6
Radio Spectrum	15
Microwave backhaul	10
Core Servers – Supply & Install	7
Core Servers – One-off Integration & Install	10
Packet Gateway Servers – Supply & Install	5
Packet Gateway Servers – Software	5
Fibre Hub Box	7
Fibre Hub Microwave	15
Radio Access Network BTS ground lease	20
Radio Access Network BTS O&M	20
Radio Access Network BTS - Hardware & labour refresh	7
Radio Access Network BTS Co-location capex	15
Carriers	8
Satellite:	
Satellite-Connections	6
Satellite -Infrastructure	12
Interim Satellite NTD – Supply & Install	5
Land:	
Land	10,000

For the purposes of this Schedule, the Asset Lifetimes and the categories of Asset Types described in Table 8.2 are indicative only and may change from time to time, including to cover new categories of Asset Types, as determined in a manner consistent with the requirements of the Australian Tax Office.

8.3 Taxation Calculations

For the purposes of calculating the allowance for taxation expenses in the calculation of Annual Building Block Revenue Requirement and Unrecovered Cost, NBN Co will calculate the **Net Tax Allowance** as:

$$\text{Net Tax Allowance}_t = [\text{Max}(0, \text{Taxable Profit}_t + \text{Tax Loss Carried Forward}_{t-1})] * \tau(1 - \gamma)$$

Where:

τ is the statutory company taxation rate that applies in Financial Year t , as determined in clause 8.5(b).

γ (gamma) is the value of the Imputation Credits that applies in Financial Year t , as determined in clause 8.5(a).

Taxable Profit_t is the calculated profit which is subject to taxation calculated as follows:

$$\begin{aligned} \textit{Taxable Profit}_t &= [\textit{Nominal Revenue}_t - \textit{Nominal Opex}_t \\ &\quad - \textit{Interest Expense}_t \\ &\quad - \textit{Nominal Tax Depreciation}_t] \end{aligned}$$

Where:

Nominal Revenue_t is the Nominal Revenue in the relevant Financial Year *t*.

Nominal Opex_t is the Nominal Opex in the relevant Financial Year *t*.

Nominal Regulatory Depreciation_t is the Nominal Regulatory Depreciation in the relevant Financial Year *t*, as calculated in accordance with clause 8.1(c).

Interest Expense_t is the actual interest expense recorded in NBN Co's statutory accounts in Financial Year *t*.

Nominal Tax Depreciation_t is the nominal tax depreciation expense in the relevant Financial Year (*t*), calculated in accordance with clause 8.2.

Tax Loss Carried Forward_{t-1} is determined as follows:

if t – 1 refers to 2007/08, Tax Loss Carried Forward_{t-1} = 0;

otherwise, Tax Loss Carried Forward_{t-1} =
Min(0, Taxable Profit_{t-1} + Tax Loss Carried Forward_{t-2}) .

8.4 Real Values

- (a) For the purposes of this Special Access Undertaking, when reference is made to real values, this refers to the cost or revenue of the relevant parameter in constant dollar terms of the First Financial Year. In all cases, this will be calculated as follows:

$$\textit{Real Value}_t = \frac{(\textit{Nominal Value}_t)}{\textit{CIF}_t}$$

Where:

t=1 corresponds to the First Financial Year. Thus, if the First Financial Year is 2011/12, *t=2* is Financial Year 2012/13, etc.

Likewise, in converting real values into nominal values, the corresponding calculation is:

$$\text{Nominal Value}_t = \text{Real Value}_t * \text{CIF}_t$$

Where:

$t=1$ corresponds to the First Financial Year.

- (b) The CIF_t is the **Cumulative Inflation Factor** which is the cumulative product of the June Quarter CPI published for each Financial Year from the SAU Commencement Date, relative to the First Financial Year, i.e.:

$$\text{CIF}_t = \left\{ \prod_{k=1}^t (1 + \text{CPI}_k^{\text{June}}) \right\} / (1 + \text{CPI}_1^{\text{June}})$$

Where:

$\text{CPI}_k^{\text{June}}$ is the June Quarter CPI for Financial Year (k). Thus, if the First Financial Year is 2011/12, $k=1$ for that year, and the relevant CPI value is that published for the June quarter of Financial Year 2011/12. For clarity, the Cumulative Inflation Factor for the First Financial Year is 1.0, and thus the nominal values in that year will be the same as the real values for that year.

- (c) In this Schedule 7 (Long Term Revenue Constraint Methodology), for Financial Years prior to the First Financial Year, the CIF_t is defined as:

$$\text{CIF}_t = (1 + \text{CPI}_1^{\text{June}}) / \left\{ \prod_{k=t}^1 (1 + \text{CPI}_k^{\text{June}}) \right\}$$

Where:

t is less than or equal to 0. For example, if the First Financial Year is 2011/12, then the 2010/11 Financial Year is year $t = 0$, and Financial Year 2009/10 would be year $t = -1$.

$\text{CPI}_k^{\text{June}}$ means the June Quarter CPI for Financial Year (k).

8.5 Tax parameters

For the purposes of this clause 8:

- (a) **Impact of Dividend Imputation Franking Credits ("gamma")**: will be updated for each Financial Year to be equal to the value of the gamma parameter Finally Determined by a Relevant Regulatory Body in its most recent consideration, prior to the commencement of the Financial Year, under the Competition and Consumer Act. As at the SAU Commencement Date, the gamma will be 0.25.

- (b) **Corporate Tax Rate (τ):** In the event of a change in the statutory corporate taxation rate, NBN Co will immediately update the corporate tax rate to be equal to the statutory corporate taxation rate that applies for a given Financial Year. As at the SAU Commencement Date, the Corporate Tax Rate will be 30%.

Schedule 8 Prudency

1 General

1.1 Background

This Schedule sets out the basis on which NBN Co will be permitted to recognise Prudently incurred Capital Expenditure and Operating Expenditure in the Long Term Revenue Constraint Methodology.

1.2 Relationship to Long Term Revenue Constraint Methodology

For the purposes of determining:

- (a) whether Capital Expenditure will be considered to be Prudently incurred in connection with the design, engineering and construction of the Relevant Assets, NBN Co will be required to satisfy:
 - i the Prudent Design Condition; and
 - ii the Prudent Cost Condition; and
- (b) whether Operating Expenditure will be considered to be Prudently incurred, NBN Co will be required to comply with clause 10.

1.3 Outline of Schedule

In this Schedule:

- (a) clause 2 sets out the application of the Prudent Design Condition to Capital Expenditure to be incurred in respect of the design, engineering, construction, replacement and augmentation of the Relevant Assets;
- (b) clause 3 sets out the basis on which the initial design scope of the Relevant Assets is established and permitted variations to that initial design scope;
- (c) clause 4 sets out circumstances in which the Prudent Design Condition and the Prudent Cost Condition are deemed to have been satisfied in respect of Capital Expenditure to be incurred by NBN Co;
- (d) clauses 5 to 8 (inclusive) set out the process that NBN Co must follow to be considered to satisfy the Prudent Design Condition in respect of variations, changes, augmentations and enhancements to the design of the Relevant Assets during the Term;
- (e) clause 9 sets out the process that NBN Co must follow to be considered to satisfy the Prudent Cost Condition; and

- (f) clause 10 sets out the basis on which Operating Expenditure will be considered to have been Prudently incurred.

2 Capital Expenditure which satisfies the Prudent Design Condition

- (a) NBN Co will be considered to have incurred Capital Expenditure in connection with the design, engineering, construction, replacement and augmentation of the Relevant Assets in accordance with the Prudent Design Condition to the extent that the design, engineering and construction of those Relevant Assets is materially consistent with or within the scope of:
- i the Network Design Rules;
 - ii Permitted Variations to the Relevant Assets from the design, engineering or construction specified in the Network Design Rules; or
 - iii the categories of Capital Expenditure in respect of which NBN Co is deemed to have satisfied the Prudent Design Condition referred to in clause 4.
- (b) To the extent that clause 2(a) does not apply, NBN Co will only be considered to have incurred such Capital Expenditure in connection with the design, engineering and construction of the Relevant Assets to the extent that NBN Co has complied with clauses 5 to 8 (inclusive).
- (c) Except in respect of the deemed categories of Capital Expenditure referred to in clause 4, NBN Co will also be required to have satisfied or satisfy the Prudent Cost Condition specified in clause 9 in respect of Capital Expenditure.

3 Initial design scope for the Relevant Assets

3.1 Initial Design Scope

- (a) The initial requirements for the Relevant Assets comprising the **Initial Design Scope** include:
- i in respect of the NBN Co Fibre Network:
 - A the NBN Co Fibre Network is to have a network footprint that covers approximately 93% of Premises in Australia;
 - B the NBN Co Fibre Network is to be primarily designed and built using GPON architecture;

- C the NBN Co Fibre Network is to be capable of delivering the speed requirements specified by the Australian Government; and
 - D NBN Co is to comply with the Australian Government's legislative and policy requirements in respect of the deployment of fibre in greenfield locations, including any alternative models contemplated for such deployments;
 - ii in respect of the NBN Co Wireless Network and the NBN Co Satellite Network:
 - A the NBN Co Wireless Network and the NBN Co Satellite Network are to have a total network footprint that covers approximately 7% of Premises in Australia;
 - B the NBN Co Wireless Network is to be capable of delivering the speed requirements specified by the Australian Government;
 - C the NBN Co Satellite Network is to be capable of delivering the speed requirements specified by the Australian Government, including an interim satellite solution with a 6 Mbps PIR downlink Data Transfer Rate; and
 - iii in respect of the NBN Co Networks and the Relevant Assets generally:
 - A the Relevant Assets are to have a network availability that meets any applicable law;
 - B the initial location of Points of Interconnect within the NBN Co Network will be those identified in the POI List as at the SAU Commencement Date;
 - C NBN Co is to use existing infrastructure for the NBN Co Network where it is economically and technically feasible to do so;
 - D there is to be a path for technology upgrade of the Relevant Assets, to the extent possible; and
 - E such other matters as described in the Statement of Expectations which describes the expectations of the Shareholder Ministers in connection with the scope of the NBN Co Network.
- (b) NBN Co will ensure that the Network Design Rules for the Relevant Assets satisfy the Initial Design Scope.

- (c) NBN Co will not vary the Network Design Rules, except as permitted or required by this Schedule 8 (Prudency).

3.2 Variations from Network Design Rules

- (a) NBN Co may vary, change, augment or enhance the design, engineering or construction of the Relevant Assets from the design, engineering and construction specified in the Network Design Rules in any one or more of the following circumstances:
- i as identified within, or contemplated by, the Network Design Rules;
 - ii which improve performance or functionality of the Relevant Assets and which will result in the same or lower Total Cost of Ownership;
 - iii which will achieve savings in the Total Cost of Ownership;
 - iv which are reasonably necessary to establish and maintain the quality, reliability and security of the Relevant Assets or the supply of the Product Components;
 - v which are required in connection with a Force Majeure Event; or
 - vi which are specifically required by law or by the Shareholder Ministers,
- (a **Permitted Variation**).
- (b) NBN Co must ensure, in respect of Capital Expenditure incurred in connection with a Permitted Variation under this clause 3.2, that the Permitted Variation is designed, engineered and constructed with the objective of achieving the lowest Total Cost of Ownership.

4 Deemed satisfaction of the Prudent Design Condition and Prudent Cost Condition

4.1 Categories for deeming

NBN Co will be deemed to have satisfied the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with:

- (a) the interim solution for the NBN Co Satellite Network referred to in clause 4.2;
- (b) the Interim Transit Arrangements, referred to in clause 4.3;
- (c) the Telstra Arrangements, referred to in clause 4.4;

- (d) the Optus Arrangements, referred to in clause 4.5;
- (e) the Tasmania Tri-Area Service Arrangements, referred to in clause 4.6;
- (f) the First Release Trial Sites, referred to in clause 4.7;
- (g) Third Party Funded Network Changes, referred to in clause 4.8; and
- (h) any variations, changes, augmentations and enhancements to the design, engineering and construction of the Relevant Assets from the design, engineering and construction specified in the Network Design Rules to the extent that:
 - i the estimated Capital Expenditure associated with such a variation, change or enhancement is considered to be less than the Minor Expenditure Limit, as set out in clause 4.9; or
 - ii the variation, change or enhancement is urgent and unforeseen under clause 4.10.

4.2 Interim solution for NBN Co Satellite Network

- (a) NBN Co may initially offer the Product Components and associated Product Features using an interim solution for the NBN Co Satellite Network.
- (b) NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with the design, engineering and construction of the interim solution for the NBN Co Satellite Network.

4.3 Interim Transit Arrangements

NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with the design, engineering and construction of the Interim Transit Arrangements.

4.4 Telstra Arrangements

NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with the Telstra Arrangements.

4.5 Optus Arrangements

NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with the Optus Arrangements.

4.6 Tasmania Tri-Area Service Arrangements

NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with the Tasmania Tri-Area Service Arrangements.

4.7 First Release Trial Sites

NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with the First Release Trial Sites.

4.8 Third Party Funded Network Changes

NBN Co will be deemed to satisfy the Prudent Design Condition and the Prudent Cost Condition in respect of Capital Expenditure incurred in connection with Third Party Funded Network Changes.

4.9 Minor variations, changes or enhancements

- (a) For the purposes of clause 4.1(h)i, NBN Co will assess whether Capital Expenditure is likely to be less than the Minor Expenditure Limit at the time NBN Co determines the need for the relevant variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets, irrespective of whether the actual Capital Expenditure incurred in connection with such a variation, change or enhancement exceeds the Minor Expenditure Limit.
- (b) NBN Co must not treat different parts of an integrated solution as distinct and separate for the purpose of creating a situation in which the Capital Expenditure associated with a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets is less than the Minor Expenditure Limit.
- (c) On 1 July each Financial Year during the Term, the **Minor Expenditure Limit** will automatically increase in accordance with the following formula:

$$\text{New MEL} = \text{Old MEL} * (1 + B)$$

Where:

New MEL is the revised Minor Expenditure Limit to take effect from 1 July of that Financial Year.

Old MEL is the Minor Expenditure Limit that applied immediately preceding Financial Year.

B is the percentage March Quarter CPI published immediately prior to the 1 July in which the recalculation is to be performed.

4.10 Urgent and unforeseen variations, changes or enhancements

- (a) For the purposes of clause 4.1(h)ii, a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets is an urgent and unforeseen change to the extent that such a variation, change or enhancement:
- i is required to address an urgent and unforeseen network issue that would otherwise put at risk the safe or reliable operation of the NBN Co Network as described in clause 4.10(b); or
 - ii relates to the maintenance of assets that comprise the NBN Co Network that has a substantial primary purpose other than the augmentation or extension to such network (e.g. straight swap out of assets for assets as part of routine maintenance); or
 - iii is an investment:
 - A for the re-routing of one or more Lines or Facilities that comprise part of the NBN Co Network; and
 - B that has a substantial primary purpose other than the augmentation or extension of the NBN Co Network.
- (b) For the purposes of clause 4.1(h)ii and clause 4.10(a)i, a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets will be required to address an urgent and unforeseen network issue that would otherwise put at risk the safe or reliable operation of the NBN Co Network if each of the following conditions apply:
- i it is necessary that the variation, change or enhancement be operational within 6 months;
 - ii the event or circumstances causing the variation, change or enhancement was not reasonably foreseeable by, and was beyond the reasonable control of, NBN Co; and
 - iii a failure to address the variation, change or enhancement is likely to materially adversely affect the safe and reliable operation of the NBN Co Network or the supply of the Product Components, associated Product Features or Ancillary Services.
- (c) If a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets is required to address an urgent and unforeseen network issue, NBN Co must make the following information available to the ACCC within 6 months of the date that NBN Co identifies the need for such a variation, change or enhancement:

- i the date when the variation, change or enhancement became or will become operational;
- ii the purpose of the variation, change or enhancement; and
- iii the Capital Expenditure and Operating Expenditure associated with the variation, change or enhancement.

5 Prudent Design Condition for Network Changes

5.1 Network Changes and impact on the Network Design Rules

If NBN Co wishes to make a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets and that variation, change or enhancement:

- (a) is not within the scope of, identified within, or contemplated by, the Network Design Rules;
- (b) is not a Permitted Variation; or
- (c) is not otherwise deemed to satisfy the Prudent Design Condition under clause 4,

(each variation, change, augmentation or enhancement, a **Network Change**), then NBN Co must only incur Capital Expenditure in connection with that Network Change in accordance with this clause 5. NBN Co must also satisfy the Prudent Cost Condition in respect of that Network Change.

5.2 Applicable Network Changes

To the extent that NBN Co is required to satisfy the Prudent Design Condition in respect of Network Changes under this Schedule 8 (Prudency), there are two categories of Network Changes:

- (a) Network Changes that would result in the introduction of a new Product Component or Product Feature, or in a variation, change or enhancement to an existing Product Component or Product Feature (**Product-Related Network Change**); and
- (b) other Network Changes that do not fall within the scope of clause 5.2(a) (**Other Network Change**).

5.3 No Change

Nothing this Schedule 8 (Prudency) prevents NBN Co from introducing, varying or enhancing Product Components or Product Features that do not require a Network Change, or which fall within the scope of, are identified within, or contemplated by, the Network Design Rules (or a Permitted Variation).

5.4 Early termination of NBN Co's consultation and reporting obligations

NBN Co may at any time terminate the process specified in clauses 5 to 8 (inclusive), if NBN Co decides not to proceed with a Network Change, including where the product development process is terminated under Schedule 6 (Product development and withdrawal).

5.5 NBN Co analysis of options

- (a) In respect of a Network Change, NBN Co will:
- i assess the Network Change Options determined in accordance with clause 5.5(b) for the Network Change; and
 - ii select an appropriate Network Change Option in accordance with clause 5.6 .
- (b) A **Network Change Option** is an option for the Network Change identified by NBN Co that, in NBN Co's view:
- i can meet the Identified Need;
 - ii is economically and technically feasible;
 - iii in respect of a Product-Related Network Change, can be implemented in sufficient time to meet the timelines identified by the Product Development Forum (if any) for the expected delivery of the new or varied Product Component or Product Feature;
 - iv is a viable option to implement, having regard to:
 - A the Total Cost of Ownership associated with each of the Network Change Options;
 - B the economic life of the assets associated with each of the Network Change Options;
 - C long term planning of the NBN Co Network;
 - D availability of infrastructure, capital (including both equity and debt) and scarce resources;
 - E network upgrade pathway for the NBN Co Network;
 - F the Product Roadmap for the Product Components and Product Features;
 - G investment practices of owners and operators of networks with similar characteristics to the NBN Co Network in international markets;

- H operational and technical complexity of each Network Change Option;
- I technical and operational quality issues associated with each Network Change Option;
- J likely effect on demand of existing Product Components or associated Product Features or the new or varied Product Components or associated Product Features;
- K resource requirements;
- L security requirements;
- M NBN Co's statutory non-discrimination obligations and wholesale only status;
- N legal, policy, regulatory or administrative requirements applicable to NBN Co; and
- O any other factor that NBN Co reasonably considers should be taken into account.

5.6 Selection of Network Change Option

- (a) When making an initial selection of its preferred Network Change Option, NBN Co will select either:
 - i the Network Change Option that, of the Network Change Options identified, NBN Co considers will maximise the Net Economic Benefit if implemented compared to a situation where no option is implemented; or
 - ii an alternative Network Change Option that NBN Co considers is reasonable, provided that NBN Co provides in the NBN Prudency Implementation Paper:
 - A its assessment of the material differences between a Network Change Option which would maximise the Net Economic Benefit and the alternative Network Change Option; and
 - B the reasons for choosing the alternative Network Change Option.
- (b) When considering which Network Change Option to select, NBN Co must have regard to the interests of:
 - i NBN Co and any Related Body Corporate of NBN Co;

- ii Access Seekers; and
 - iii End Users that acquire Carriage Services and Content Service supplied by means of the NBN Co Network.
- (c) In determining which Network Change Option to select, NBN Co must:
- i consider and identify market benefits that could be delivered by each of the Network Change Options identified by NBN Co, including:
 - A the likely effect on demand for existing Product Components or associated Product Features and/or new or varied Product Components or associated Product Features;
 - B the likely effect on the performance, functionality or features of existing Product Components or associated Product Features and/or new or varied Product Components or associated Product Features;
 - C price effects, being the likely effect on the price of existing Product Components or associated Product Features and/or new or varied Product Components or associated Product Features;
 - D cost effects, including:
 - changes in costs for Access Seekers and End-users;
 - changes in Capital Expenditure and/or Operating Expenditure;
 - cost savings due to differences in the timing of investment;
 - E changes in the costs for Access Seekers for Ancillary Services;
 - F competition benefits;
 - G any additional option value (where this value has not already been included in the other classes of market benefits) gained or foregone from implementing the Network Change Option with respect to the likely future investment needs of Access Seekers;
 - ii quantify, to the extent possible, the classes of market benefits which are determined in NBN Co's reasonable opinion to be material; and
 - iii consider market benefits as material unless NBN Co can identify why:

- A a particular class of market benefit is likely not to materially affect the outcome of the assessment of the Network Change Options; or
 - B the estimated cost of undertaking the analysis to quantify the benefit is likely to be disproportionate to the scale, size and potential benefits of each Network Change Option identified by NBN Co.
- (d) In determining which Network Change Option to select as the Network Change, NBN Co must also consider and estimate the following classes of cost:
- i Capital Expenditure associated with the Network Change Option;
 - ii Operating Expenditure associated with the Network Change Option; and
 - iii cost of complying with legal, policy, regulatory or administrative requirements in relation to the Network Change Option,
- by reference to the net present value of the direct costs of each Network Change Option (and the effect that these costs will have on NBN Co's prices). In estimating the classes of cost pursuant to this clause, NBN Co is not required to separately quantify each class of cost.
- (e) For each Network Change Option identified by NBN Co, NBN Co must ensure that it:
- i does not include any cost or benefit that cannot be considered to be measured as a cost or market benefit to NBN Co, any Related Body Corporate of NBN Co, Access Seekers or End Users;
 - ii identifies the method or methods permitted for estimating the magnitude of the different classes of market benefits and costs;
 - iii identifies the appropriate method and value for specific inputs, where relevant, for determining the discount rate or rates to be applied;
 - iv includes sensitivity analysis in respect of any modelling that forms part of the analysis having regard to:
 - A the risks associated with any market benefits not being achieved, or being greater than estimated, or any costs being greater or less than quantified; and
 - B the degree of certainty associated with the market benefits and costs taken into account by NBN Co;

- v includes an assessment of reasonable scenarios of future supply and demand if each Network Change Option identified by NBN Co were implemented compared to the situation where no option is implemented;
 - vi does not, in calculating the market benefits associated with each Network Design Option:
 - A include the classes of costs in clause 5.6(d); or
 - B include competition benefits or any additional option value where they have already been accounted for in other elements of the market benefit.
- (f) In performing its initial assessment of the Network Change Options under this clause 5.6, NBN Co will only be required to apply a level of analysis that is proportionate to the scope and size of the required Network Change.

5.7 Use of independent experts and vendor feedback

- (a) NBN Co may:
 - i retain an independent expert to:
 - A provide guidance to NBN Co on the application of the criteria under clause 5.5(b), used to assess the range of potential Network Change Options; and
 - B provide guidance on NBN Co's selection of Network Change Options under clause 5.6; and
 - ii obtain feedback from one or more infrastructure, equipment or system vendors that NBN Co considers to be capable of implementing one or more of the Network Change Options regarding:
 - A the likely Capital Expenditure and Operating Expenditure associated with the implementation of each of the Network Change Options; and
 - B any alternative Network Change Options.
- (b) NBN Co will take reasonable account of the outcome of any reasonable assessment or feedback provided by an independent expert, or obtained by NBN Co from a vendor, as part of its assessment of the Network Change Options.
- (c) Any independent expert retained by NBN Co:

- i must have at least 10 years relevant experience in the field of telecommunications engineering and design in Australia or internationally;
- ii must be independent from NBN Co, and not have any interests that may conflict with, or may reasonably be seen to be in conflict with, the impartial performance of his or her duties during the term of his or her appointment as the expert; and
- iii need not be a citizen or resident of Australia.

5.8 Preparation and publishing of NBN Prudency Implementation Paper

- (a) Upon the conclusion of its initial assessment, NBN Co will prepare a written report (**NBN Prudency Implementation Paper**) that sets out the following:
 - i a summary of the Network Change Options and NBN Co's preferred Network Change Option;
 - ii a summary of NBN Co's assessment under clause 5.6 for each of the Network Change Options considered by NBN Co;
 - iii a summary of the estimated Capital Expenditure and Operating Expenditure to be incurred in respect of each Network Change Option, described as an estimated range of amounts, if appropriate;
 - iv if NBN Co does not select the Network Change Option that maximises the Net Economic Benefit:
 - A NBN Co's assessment of any material difference between the Net Economic Benefit in respect of NBN Co's preferred Network Change Option and the Network Change Option that would maximise the Net Economic Benefit; and
 - B the reasons for the selection of the alternative Network Change Option;
 - v in the case of a Product-Related Network Change:
 - A the Product Implementation Information in respect of the new or varied Product Component or Product Feature; and
 - B a high level summary of the required changes to the Network Design Rules; and
 - vi in the case of an Other Network Change:
 - A detailed changes required to the Network Design Rules to implement NBN Co's preferred Network Change Option; and

- B a proposed timetable for the design, engineering and construction of NBN Co's preferred Network Change Option.
- (b) NBN Co will publish the NBN Prudency Implementation Paper on an area of the NBN Co website accessible by Customers who have become members of the Product Development Forum.

5.9 Options for approval of NBN Co's preferred Network Change Option

Upon publication of the NBN Prudency Implementation Paper, NBN Co will seek endorsement for NBN Co's preferred Network Change Option as follows:

- (a) in the case of a Product-Related Network Change, NBN Co will either, at its option, seek the endorsement of:
 - i Customers in accordance with the customer engagement and endorsement process under clause 6; or
 - ii the ACCC in accordance with the regulatory endorsement process under clause 7; and
- (b) in the case of an Other Network Change, NBN Co will seek the endorsement of the ACCC in accordance with the regulatory endorsement process under clause 7.

6 Customer engagement and endorsement process

6.1 Application

This clause 6 applies if, in respect of a Product-Related Network Change, NBN Co elects to seek the endorsement of its preferred Network Change Option from its Customers in accordance with clause 5.9(a)i.

6.2 Consultation with Product Development Forum members

- (a) If NBN Co wishes to seek the endorsement of members of the Product Development Forum, NBN Co will invite Customers to make submissions in relation to the NBN Prudency Implementation Paper in accordance with a published timetable which will provide a reasonable period for consultations, having regard to the nature of the proposed Product-Related Network Change (**Consultation Period**). NBN Co may consult with Customers through workshops, formal written submissions and such other means as may be contemplated in the PDF Processes.
- (b) NBN Co will:
 - i take reasonable account of all submissions and representations made by Customers in response to the NBN Prudency Implementation Paper;

- ii make available on the NBN Co website all formal written submissions made by Customers in response to the NBN Prudency Implementation Paper, subject to any confidentiality restrictions; and
 - iii make such amendments to the NBN Prudency Implementation Paper as NBN Co considers reasonable having regard to the submissions and representations made by Customers in response to the NBN Prudency Implementation Paper.
- (c) For the avoidance of doubt, the customer engagement and endorsement process in this clause 6 is separate from the product development process specified in Schedule 6 (Product development and withdrawal). However, the processes may occur in parallel.

6.3 Ability of Customers to endorse or object to NBN Co's preferred Network Change Option

Upon completion of the Consultation Period, NBN Co will:

- (a) publish an updated NBN Prudency Implementation Paper in respect of NBN Co's preferred Network Change Option; and
- (b) notify Customers of a period (to be not less than 20 Business Days) within which a Customer may notify NBN Co that it objects to NBN Co's preferred Network Change Option.

6.4 Dispute resolution mechanism if Customers object to NBN Co's preferred Network Change Option

- (a) A Customer can only object, after the publication of an updated Prudency Implementation Paper and within the timeframe determined in accordance with clause 6.3(b), to NBN Co's preferred Network Change if:
 - i that Customer has ordered Product Components under an Access Agreement;
 - ii that Customer has participated in consultations in relation to a Product-Related Network Change in accordance with clause 6.2(a) and the PDF Processes; and
 - iii the Customer has or is likely to have a sufficient interest in the subject matter of the Prudency Dispute that is likely to be materially affected by the resolution of that Prudency Dispute.
- (b) A Customer may only object to NBN Co's preferred Network Change Option if the Customer has a reasonable basis for such an objection based on an error by NBN Co in the application of the criteria in clause 5.6.

- (c) If a Customer wishes to object to NBN Co's preferred Network Change Option for the Product-Related Network Change pursuant to clause 6.4(b), the Customer must:
- i notify NBN Co and other Customers of that objection within the time notified by NBN Co under clause 6.3(b); and
 - ii provide detailed reasons for its objection, including a description of the manner(s) in which NBN Co's preferred Network Change Option fails to satisfy clause 5.6.

- (d) If:
- i one or more Customers object to NBN Co's preferred Network Change Option; and
 - ii NBN Co considers that NBN Co's preferred Network Change Option is Prudent considering the criteria in clause 5.6; and
 - iii NBN Co wishes to proceed with NBN Co's preferred Network Change Option,

NBN Co must, within 60 Business Days of the date of receipt of the first objection from a Customer:

- iv notify the ACCC of the objections lodged by the Customer;
- v provide to the ACCC copies of any documentation received from the Customer in connection with the objection; and
- vi provide NBN Co's response to those objections to the ACCC,

(a Prudency Dispute).

- (e) If a Prudency Dispute is referred to the ACCC for resolution, then:
- i within 5 Business Days of the date of notification of the Prudency Dispute, the ACCC will determine whether the Customer that has objected satisfies the conditions in clause 6.4(a), and if the ACCC determines that:
 - A the conditions have been satisfied, then the Prudency Dispute will continue; or
 - B the conditions have not been satisfied, then the Prudency Dispute will terminate;
 - ii the scope of the Prudency Dispute will be limited to the specific issues in dispute between Customers and NBN Co, as determined by

reference to the objections submitted by Customers and NBN Co's response;

- iii within 5 Business Days of the date that the ACCC determines that the Customer that has objected satisfies the conditions in clause 6.4(a), the ACCC will invite, by way of notice on the ACCC website, Customers to apply to join the Prudency Dispute;
- iv within 10 Business Days of the date on which the ACCC invites Customers to join the Prudency Dispute, the ACCC will make a decision to either accept or reject each application that the ACCC has received from a Customer to join the Prudency Dispute (and provide details of the Customers that it has determined may join the Prudency Dispute on the ACCC website):
 - A if the Customer has or is likely to have a sufficient interest in the subject matter of the Prudency Dispute that is likely to be materially affected by the resolution of that Prudency Dispute; and
 - B having regard to NBN Co's statutory non-discrimination obligation;
- v the ACCC will provide:
 - A NBN Co;
 - B the Customer whose objection has been determined to meet the conditions in clause 6.4(a); and
 - C the Customers that have been allowed to join the Prudency Dispute,

with the opportunity to make submissions in respect of the Prudency Dispute, provided that:

- D if Customers have joined the Prudency Dispute, any consultation period is no less than 20 Business Days and no more than 40 Business Days from the date that the ACCC accepts those Customers' joining the Prudency Dispute; or
- E if no Customers have joined the Prudency Dispute, any consultation period is no less than 20 Business Days and no more than 40 Business Days from the date that the ACCC has determined that the Customer that made the objection has satisfied the conditions in clause 6.4(a);

- vi the ACCC must make its decision on the Prudency Dispute no later than 50 Business Days after the final date on which submissions may be provided to the ACCC under clause 6.4(e)v; and
- vii the ACCC must determine the Prudency Dispute by reference to the criteria referred to in clause 6.5(a) and 6.5(b).

6.5 Decision making criteria for Prudency Dispute

- (a) If NBN Co has selected the Network Change Option that NBN Co considers to be the Network Change Option that maximises the Net Economic Benefit relative to other Network Change Options, the ACCC must accept NBN Co's preferred Network Change Option unless the ACCC reasonably considers that:
 - i an alternative Network Change Option considered by NBN Co in the NBN Prudency Implementation Paper would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of NBN Co's preferred Network Change Option; or
 - ii a network change option that has not been considered by NBN Co as a Network Change Option (including the option of no network change) would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of NBN Co's preferred Network Change Option.
- (b) If NBN Co has selected the Network Change Option that NBN Co considers is not the Network Change Option that maximises the Net Economic Benefit, the ACCC will approve NBN Co's preferred Network Change Option if:
 - i NBN Co's preferred Network Change Option meets the Identified Need;
 - ii there is a greater economic benefit associated with NBN Co's preferred Network Change Option compared with the situation where no option is implemented; and
 - iii the design scope of NBN Co's preferred Network Change Option is not materially different from that which a prudent operator in NBN Co's position would consider to be reasonable.

6.6 Alternative options to a Prudency Dispute

- (a) NBN Co may, at its discretion, undertake one of the following options as an alternative to a Prudency Dispute in respect of NBN Co's preferred Network Change Option:

- i recommence the process under clause 5.5 in respect of the Product-Related Network Change; or
 - ii undertake the regulatory endorsement process as set out in clause 7 in respect of NBN Co's preferred Network Change Option as an alternative to the customer engagement process; or
 - iii not pursue NBN Co's preferred Network Change Option or the Product-Related Network Change.
- (b) If NBN Co undertakes one of the options identified in clause 6.6(a) as an alternative to a Prudency Dispute:
- i NBN Co will notify its Customers and the ACCC of that fact; and
 - ii the Prudency Dispute will be withdrawn from the date that NBN Co gives such notice.

6.7 Endorsement of NBN Co's preferred Network Change Option

If:

- (a) there is no Prudency Dispute initiated under clause 6.4(d) in respect of a Network Change Option within the prescribed time;
- (b) the Prudency Dispute terminates on the basis that the ACCC determines, pursuant to clause 6.4(e)iB, that the Customer that has objected has not satisfied the conditions in clause 6.4(a); or
- (c) a Prudency Dispute is lodged and the ACCC accepts NBN Co's preferred Network Change Options as specified in the NBN Prudency Implementation Paper,

then:

- (d) NBN Co's preferred Network Change Option will be considered to be endorsed (**Endorsed Product-Related Network Change**); and
- (e) NBN Co will promptly publish the NBN Prudency Implementation Paper in respect of that Endorsed Product-Related Network Change on the NBN Co website as a document endorsed by the Product Development Forum or the ACCC (as applicable).

7 Regulatory endorsement process

7.1 Application

This clause 7 applies:

- (a) if, in respect of a Product-Related Network Change, NBN Co elects to seek the endorsement of its preferred Network Change Option from ACCC in accordance with clause 5.9(a)ii; or
 - (b) in respect of Other Network Changes,
- (each an **ACCC Examinable Network Change**).

7.2 ACCC endorsement process

- (a) NBN Co may seek the ACCC's endorsement of an ACCC Examinable Network Change by submitting the NBN Prudency Implementation Paper in respect of that ACCC Examinable Network Change to the ACCC for endorsement.
- (b) NBN Co will use its reasonable endeavours to provide the ACCC with information reasonably necessary for the ACCC to make a determination whether to endorse or reject the ACCC Examinable Network Change.
- (c) In making its decision whether to endorse or reject the ACCC Examinable Network Change, the ACCC may do any one or more of the following:
 - i conduct a public consultation process in relation to the ACCC Examinable Network Change;
 - ii seek information from relevant industry participants in relation to the ACCC Examinable Network Change; and
 - iii have regard to any previous submissions received by NBN Co from relevant industry participants in relation to the ACCC Examinable Network Change.
- (d) The ACCC will endorse or reject the ACCC Examinable Network Change within 50 Business Days of receipt of the NBN Prudency Implementation Paper pursuant to clause 7.2(a).
- (e) The ACCC may seek an extension of 20 Business Days in circumstances where it believes such an extension is reasonably necessary for the purposes of making an informed decision in relation to the ACCC Examinable Network Change.
- (f) If the ACCC does not make a decision to endorse or reject the NBN Prudency Implementation Paper within the period permitted under this clause 7.2, the ACCC Examinable Network Change will be deemed to be endorsed by the ACCC.

7.3 ACCC endorsement decision

- (a) If NBN Co has selected the ACCC Examinable Network Change that NBN Co considers maximises the Net Economic Benefit, the ACCC must endorse the

ACCC Examinable Network Change, unless the ACCC reasonably considers that:

- i an alternative Network Change Option considered by NBN Co in the NBN Prudency Implementation Paper would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the ACCC Examinable Network Change; or
 - ii a network change option (including the option of no network change) that has not been considered by NBN Co as a Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the ACCC Examinable Network Change.
- (b) If NBN Co has selected the ACCC Examinable Network Change that NBN Co considers is an alternative Network Change Option that is not the Network Change Option that maximises the Net Economic Benefit, the ACCC will endorse the ACCC Examinable Network Change if:
- i the ACCC Examinable Network Change meets the Identified Need;
 - ii there is a greater economic benefit associated with the Network Change Option chosen by NBN Co for the ACCC Examinable Network Change compared with the situation where no option is implemented; and
 - iii the design scope of the ACCC Examinable Network Change is not materially different from that which a prudent operator in NBN Co's position would consider to be reasonable.
- (c) An ACCC Examinable Network Change which is endorsed by the ACCC is an **Endorsed ACCC Examinable Network Change**.
- (d) The ACCC will provide reasons to NBN Co if the ACCC Examinable Network Change is rejected by the ACCC.

8 Satisfaction of Prudent Design Condition following endorsement in respect of Network Changes

8.1 Satisfaction of Prudent Design Condition for a Product-Related Network Change

- (a) This clause 8.1 applies to:
 - i an Endorsed Product-Related Network Change; or

- ii an Endorsed ACCC Examinable Network Change which is a Product-Related Network Change.
- (b) NBN Co will satisfy the Prudent Design Condition in respect of Capital Expenditure incurred in connection with the design, engineering and construction of:

- i the relevant Network Change; and
- ii any variations to the relevant Network Change (a **Permitted Variation**),

to the extent that the new, varied or enhanced Product Component or Product Feature which is delivered by way of the relevant Network Change meets or exceeds the requirements specified in the applicable Product Implementation Information.

8.2 Satisfaction of Prudent Design Condition for an Other Network Change

- (a) This clause 8.2 applies to an Endorsed ACCC Examinable Network Change that is an Other Network Change.
- (b) NBN Co will be deemed to have satisfied the Prudent Design Condition in connection with the design, engineering and construction of the relevant Network Change performed in accordance with the Network Design Rules (including any changes to the Network Design Rules as specified in the NBN Prudency Implementation Paper in relation to that Network Change).
- (c) NBN Co will also satisfy the Prudent Design Condition in connection with variations, changes, augmentations or enhancements to the design, engineering or construction of the relevant Network Change from the design, engineering and construction specified in the Network Design Rules (including any changes to the Network Design Rules as specified in the NBN Prudency Implementation Paper in relation to that Network Change):
 - i as identified within, or contemplated by, the Network Design Rules (including any changes to the Network Design Rules as specified in the NBN Prudency Implementation Paper in relation to that Network Change); or
 - ii which improve performance or functionality of the NBN Co Network and which will result in the same or lower Total Cost of Ownership; or
 - iii which will achieve savings in the Total Cost of Ownership; or
 - iv which are reasonably necessary to establish and maintain the quality, reliability and security of the NBN Co Network or the supply of the Product Components; or

- v which are required in connection with a Force Majeure Event; or
- vi which are specifically required by law or by the Shareholder Ministers

(a **Permitted Variation**).

- (d) NBN Co must ensure that in respect of Capital Expenditure incurred in connection with a Permitted Variation under clause 8.2(c), the Permitted Variation is designed, engineered and constructed with the objective of achieving the lowest Total Cost of Ownership.

8.3 Updating Network Design Rules

Upon completion of the design, engineering and construction of the Permitted Variation, an Endorsed Product-Related Network Change or an Endorsed ACCC Examinable Network Change, NBN Co will update the Network Design Rules to reflect the design, engineering and construction of the Permitted Variation, Endorsed Product-Related Network Change or Endorsed ACCC Examinable Network Change.

9 Prudent Cost Condition

9.1 Application

Unless clause 4 applies, this clause 9 sets out the conditions that NBN Co must fulfil to satisfy the Prudent Cost Condition in respect of Capital Expenditure and Third Party Operating Expenditure incurred in connection with the design, engineering and construction of the Relevant Assets, including Permitted Variations and Network Changes.

9.2 Satisfaction of Prudent Cost Condition for the Relevant Assets

NBN Co will be deemed to have satisfied the Prudent Cost Condition in respect of Capital Expenditure and Third Party Operating Expenditure incurred in connection with the design, engineering and construction of the Relevant Assets (including any variations, changes, augmentations or enhancements to the design, engineering or construction of the Relevant Assets) to the extent that any of the following apply:

- (a) NBN Co incurs Capital Expenditure and/or Third Party Operating Expenditure in accordance with a competitive tendering and procurement process, as specified in the NBN Co Procurement Rules, which complies with the conditions specified in clause 9.3(b); or
- (b) NBN Co incurs Capital Expenditure and / or Third Party Operating Expenditure in connection with the future design, engineering and construction of the Relevant Assets pursuant to a contract agreed with the third party in accordance with a competitive tendering and procurement

process which includes a process for the management of such future design, engineering and construction of the Relevant Assets through a process of contract variations which provides:

- i that reasonable consideration be given to managing the risk of such contract variations;
 - ii for the provision of clear documentary evidence regarding the nature and reasonableness of any such contract variations; and
 - iii that the design, engineering and construction of the Relevant Assets falls within the scope of such a process; or
- (c) NBN Co incurs Capital Expenditure and / or Third Party Operating Expenditure on an arm's length basis; or
- (d) NBN Co incurs Capital Expenditure and/or Third Party Operating Expenditure in respect of a good or service in an open market (e.g. a commodity market); or
- (e) NBN Co incurs the Capital Expenditure and/or Third Party Operating Expenditure as specifically required by a legal, policy, regulatory or administrative requirement, or the Shareholder Ministers; or
- (f) NBN Co incurs the Capital Expenditure and/or Third Party Operating Expenditure and NBN Co's Chief Executive Officer is satisfied that any one or more of the following applies:
- i there is only one potential supplier of a particular good or service and there are no reasonable alternatives or substitutes;
 - ii such Capital Expenditure and / or Third Party Operating Expenditure is incurred on exceptionally advantageous terms;
 - iii such Capital Expenditure and / or Third Party Operating Expenditure falls within a comparable range of benchmarks that would be incurred by a prudent operator in the same or similar position to NBN Co; or
 - iv it is in the best interests of the company to incur such Capital Expenditure and / or Third Party Operating Expenditure with that particular supplier or in those particular circumstances having regard to the lifetime cost of acquisition and operation of the assets involved.

9.3 NBN Co Procurement Rules

- (a) NBN Co will ensure that the NBN Co Procurement Rules will contain a competitive tendering and procurement process which satisfies the conditions in this clause 9.3(b).
- (b) A competitive tendering and procurement process specified in NBN Co's Procurement Rules must satisfy each of the following conditions:
 - i the process must seek to generate an efficient and competitive outcome by encouraging a reasonable and proportionate amount of competitive tension between tender participants and minimising the possibility of collusion amongst tender participants;
 - ii there must be a clear process for the calling and conduct of tenders and the involvement of tender participants, which meet reasonable requirements of procedural fairness, probity, fair dealing and good industry practice;
 - iii there must be a clear process for the assessment and awarding of tenders to successful participants which meets reasonable requirements of procedural fairness, probity, fair dealing and good industry practice, with any decision to approve a tender that is not the lowest price tender being appropriately justified and documented;
 - iv the basis of payment for works and services must be clearly specified and the basis for undertaking the works and services must be in accordance with good industry practice; and
 - v there must be a process for managing contracts (both before and after the award of tenders) that accords with good industry practice and which seeks to achieve value for money and the lowest Total Cost of Ownership.
- (c) On the 1 July immediately following the expiry of the First Period and on the 1 July occurring on each 5 year anniversary of that date, NBN Co must obtain an assessment from an independent expert on the extent to which NBN Co's Procurement Rules remain consistent with good industry practice.
- (d) An independent expert appointed by NBN Co:
 - i must be independent from NBN Co;
 - ii must have relevant expertise in the field of tendering and procurement processes in the telecommunications sector; and
 - iii need not be a citizen or resident of Australia.

- (e) NBN Co will reasonably consider an assessment from an independent expert in relation to good industry practice about NBN Co's Procurement Rules.

10 Prudency of Operating Expenditure

10.1 Operating Expenditure approach

Subject to:

- (a) NBN Co's compliance with clause 10.2 in respect of Third Party Operating Expenditure; and
- (b) the deemed categories of Operating Expenditure in clause 10.3,

NBN Co will be deemed to have incurred Operating Expenditure on a Prudent basis to the extent that:

- (c) NBN Co ensures that Operating Expenditure is incurred in a manner that seeks to achieve value for money and the lowest Total Cost of Ownership; and
- (d) NBN Co otherwise manages and controls Operating Expenditure in a manner consistent with the Statement of Expectations and any other regulatory requirements applicable to procurement by NBN Co.

10.2 Prudency of Third Party Operating Expenditure

In addition to compliance with clause 10.1, if:

- (a) NBN Co incurs, or wishes to incur, Third Party Operating Expenditure; and
- (b) that Third Party Operating Expenditure is not covered in, or contemplated by the categories of Operating Expenditure in respect of which NBN Co is deemed to have satisfied the Prudent Cost Condition under clause 10.3,

then NBN Co must satisfy the Prudent Cost Condition in clause 9 in respect of that Third Party Operating Expenditure.

10.3 Deemed Prudency of categories of Operating Expenditure

Operating Expenditure incurred in connection with:

- (a) the interim solution for the NBN Co Satellite Network;
- (b) the Interim Transit Arrangements;
- (c) the Tasmania Tri-Area Service Arrangements;
- (d) the First Release Trial Sites;
- (e) the Telstra Arrangements;

- (f) the Optus Arrangements;
- (g) Third Party Funded Network Changes, to the extent that Operating Expenditure is funded or underwritten by the relevant Third Party;
- (h) urgent and unforeseen changes under clause 4.10;
- (i) a Force Majeure Event; or
- (j) a requirement specifically imposed on NBN Co by law or by the Shareholder Ministers,

will be deemed to have been incurred on a Prudent basis.

Schedule 9 Review and variation of aspects of SAU

1 General

1.1 Scope

This Schedule 9 provides for a review of the operation of aspects of this Special Access Undertaking as follows:

- (a) NBN Co will review the operation of the customer engagement process and the PDF Processes and will comply with any outcome of such a review in accordance with clause 2; and
- (b) NBN Co will review the SAU Review Matters, in respect of which NBN Co will submit a request for variation of this Special Access Undertaking to the ACCC in accordance with clause 3.

1.2 Obligations on NBN Co to act in good faith

- (a) NBN Co will exercise its rights and perform its obligations under this Schedule 9 in good faith.
- (b) For the purposes of clause 1.2(a), the obligation to act in good faith requires NBN Co to:
 - i act reasonably; and
 - ii undertake its activities in a manner that seeks to facilitate the outcomes that are contemplated within this Schedule 9.

2 Review of customer engagement process and PDF Processes

2.1 NBN Co to provide information and proposal to ACCC

- (a) No later than:
 - i 6 months prior to the third anniversary of this Special Access Undertaking; and
 - ii 6 months prior to the end of the First Period and then every 5 years thereafter;

NBN Co will provide the ACCC with the following information:

- iii the Customer Engagement Information about the operation of the customer engagement process under clause 6 of Schedule 8

- (Prudency) since the start of the First Period or the relevant 5 year period (as the case may be);
- iv the PDF Information about the operation of the PDF Processes since the start of the First Period or the relevant 5 year period (as the case may be); and
 - v an NBN Co Customer Engagement/PDF Review Proposal.
- (b) Upon receipt of the Customer Engagement Information and the PDF Information, and at any time during its consideration of it, the ACCC may request NBN Co to provide additional information about the customer engagement process or the operation of the PDF Processes as may be reasonably required for the performance of the ACCC's review under this clause 2. NBN Co agrees to provide such reasonable information as requested by the ACCC under this clause 2.1(b) as soon as reasonably practicable following receipt of such a request.

2.2 ACCC consideration of customer engagement processes and PDF Processes

- (a) The ACCC will determine:
 - i the extent to which the customer engagement process in clause 6 of Schedule 8 (Prudency) and the PDF Processes (in combination with Schedule 6 (Product development and withdrawal)) are resulting in effective engagement between NBN Co and its Customers in relation to the matters referred to in clause 2.2(b); and
 - ii whether to accept or reject the NBN Co Customer Engagement/PDF Review Proposal.
- (b) When determining the extent to which the customer engagement process in clause 6 of Schedule 8 (Prudency) and the PDF Processes are resulting in effective engagement between NBN Co and its Customers, the ACCC will make this assessment in relation to the following matters:
 - i whether the customer engagement process and the PDF Processes are resulting in the development of new products for End Users in response to demand;
 - ii whether the level of Customer understanding of the customer engagement process and the PDF Processes provides for effective engagement;
 - iii whether NBN Co and Customers (in the aggregate) have devoted sufficient resources to participate in the customer engagement process and the Product Development Forum;

- iv whether the customer engagement process and the PDF Processes provide for an appropriate balance between the interests of NBN Co, Customers and End Users, having regard to the diversity of those interests and the need for trade-offs between those interests;
- v whether Customers are willing to engage with NBN Co through the customer engagement process and the Product Development Forum; and
- vi whether the customer engagement process and the PDF Processes are encouraging the economically efficient use of the NBN Co Network.

2.3 ACCC determination

- (a) Within 60 Business Days of receipt of the information and proposal (if any) under clause 2.1(a), the ACCC will issue a determination in relation to the extent to which the customer engagement process in clause 6 of Schedule 8 (Prudency) and the PDF Processes (in combination with Schedule 6 (Product development and withdrawal)) are resulting in effective engagement between NBN Co and its Customers.
- (b) The ACCC will determine that either:
 - i the customer engagement process requires no variation and that it may continue in its current form; or
 - ii the NBN Co Customer Engagement/PDF Review Proposal should be accepted; or
 - iii the ACCC considers that the customer engagement process and/or the PDF Processes require variation in a manner which is different to the NBN Co Customer Engagement/PDF Review Proposal, including the basis on which it is to be varied, having regard to the matters specified in clause 2.2(b).
- (c) The ACCC must provide reasons for its determination under clause 2.3(a).
- (d) The ACCC may publish its determination made under clause 2.3(a) on the ACCC website, subject to any confidentiality requirements.
- (e) The ACCC may consult with any person in making a determination under clause 2.3(a). The ACCC may consider submissions made by any person in relation to the customer engagement process and the PDF Processes.

2.4 New NBN Co Customer Engagement/PDF Review Proposal

- (a) If the ACCC determines that the customer engagement process requires variation under clause 2.3(b)iii, NBN Co will, not more than 60 Business Days

after the date of that determination, provide the ACCC with a new NBN Co Customer Engagement/PDF Review Proposal.

- (b) The process in clauses 2.2 and 2.3 will be repeated until the ACCC makes a determination under clause 2.3(b)i or 2.3(b)ii.

2.5 Effect of ACCC determination

- (a) If:
- i a review is conducted under this clause 2; and
 - ii the ACCC has not made a determination under clause 2.3(b)i or 2.3(b)ii due a failure to conclude the process described in clause 2.3(b)iii,

then NBN Co must not utilise the customer engagement process in respect of any future Network Changes or the PDF Processes until such time as the ACCC has made a determination under clause 2.3(b)i or 2.3(b)ii.

- (b) If the ACCC makes a determination under clause 2.3(b)ii, then the NBN Co Customer Engagement/PDF Review Proposal will take effect from the commencement of the 5 year period to which it relates.
- (c) NBN Co undertakes to use any NBN Co Customer Engagement/PDF Review Proposal accepted by the ACCC in replacement for the operation of:
- i the customer engagement process described in clause 6 of Schedule 8 (Prudency); and
 - ii the PDF Processes,
- to the extent specified in the accepted NBN Co Customer Engagement/PDF Review Proposal.

2.6 Deemed acceptance of current form of customer engagement process

If the ACCC does not make a determination within the timeframe specified in clause 2.3(a), then the NBN Co Customer Engagement/PDF Review Proposal will be deemed to be accepted.

3 SAU review

3.1 Outline of process for Triggered SAU Variation

- (a) This clause 3 sets out the process by which the operation of the SAU is reviewed during the SAU Review Period, and a variation to the SAU is submitted by NBN Co.
- (b) The process of SAU review comprises the following matters:

- i a review of the matters of described in clause 3.3;
- ii pursuant to section 152CBG of the Competition and Consumer Act, the submission by NBN Co of a request for a variation to this Special Access Undertaking (**Triggered SAU Variation**) during the SAU Review Period that addresses the SAU Review Matters in accordance with clause 3.4; and
- iii where the ACCC does not approve the proposed Triggered SAU Variation, the resubmission of a new variation by NBN Co within 6 months of rejection by the ACCC in accordance with clause 3.5.

3.2 SAU Review Period

- (a) For the purposes of clause 3.1(b)ii and subject to clause 3.2(b), the **SAU Review Period** will be the period extending from:
 - i the date that a declaration is made by the Communications Minister that the NBN should be treated as built and fully operational, under section 48 of the NBN Companies Act; to
 - ii the date that declaration is made by the Finance Minister that conditions are suitable for the entering into and carrying out of an NBN Co sale scheme takes effect, under section 50(6) of the NBN Companies Act.
- (b) If the SAU Review Period has not commenced by 30 June 2027, the SAU Review Period will be from 1 July 2027 to 30 June 2028.

3.3 SAU Review Matters

- (a) NBN Co must conduct a review of the following aspects of the SAU Review Matters:
 - i the approach to prudence of Capital Expenditure and Operating Expenditure , including:
 - A whether, and the extent to which, Capital Expenditure and / or Operating Expenditure should be subject to incentive based prudence mechanisms; and
 - B the role of the ACCC in assessing the prudence of Capital Expenditure and / or Operating Expenditure;
 - ii the process by which Capital Expenditure and Operating Expenditure will be incorporated into future calculations of the Regulatory Asset Base, Annual Building Block Revenue Requirement and the Initial Cost Recovery Account; and

- iii the approach to WACC, including the methodology for setting and reviewing the WACC (or WACC parameters) from time to time.
- (b) In addition to the matters identified in clause 3.3(a), NBN Co may, in its discretion, also review any of the following aspects of the SAU:
- i the treatment of taxation allowance in the calculation of the Annual Building Block Revenue Requirement;
 - ii depreciation profiles;
 - iii valuation of the Regulatory Asset Base and Initial Cost Recovery Account;
 - iv the nature of any price control arrangements;
 - v reporting arrangements; and
 - vi any other matters related to the operation of this Special Access Undertaking.

3.4 Submission of a Triggered SAU Variation

- (a) During the SAU Review Period, NBN Co will provide the ACCC with a Triggered SAU Variation which addresses the SAU Review Matters.
- (b) In preparing a Triggered SAU Variation, NBN Co will have regard to any report made available by:
- i the Productivity Commission under section 49 of the NBN Companies Act; and
 - ii the Parliamentary Joint Committee on the Ownership of NBN Co under clause 3 of Schedule 2 of the NBN Companies Act.

3.5 ACCC to consider NBN Co variation consistent with legislative criteria

Following the submission by NBN Co of a Triggered SAU Variation, the ACCC will assess the requested variation pursuant to sections 152CBG and 152CBH of the Competition and Consumer Act.

3.6 NBN Co to submit new variation if initial variation is rejected

- (a) If the Triggered SAU Variation is rejected in a final decision by the ACCC, NBN Co will submit a new proposed variation to the SAU (**Subsequent SAU Variation**) within 6 months of the final notice of rejection being issued by the ACCC.
- (b) The Subsequent SAU Variation will address, but need not be limited to, the issues raised by the ACCC in its notice of rejection or draft decision issued in relation to the Triggered SAU Variation.

Schedule 10 Reporting

1 Price control reporting

1.1 Reporting in the First Period

By 31 October following the end of each Financial Year of the First Period, NBN Co will submit to the ACCC a report signed by the chief financial officer of NBN Co (or his or her authorised delegate) which certifies that, in respect of that Financial Year:

- (a) the Price payable for the Basic Access Offer in respect of each of the NBN Co Networks did not exceed the Maximum Regulated Price for that Basic Access Offer in that Financial Year;
- (b) the Price payable for the Connectivity Virtual Circuit Offer did not exceed the Maximum Regulated Price for that Connectivity Virtual Circuit Offer in that Financial Year; and
- (c) the Price payable for the NNI Offer did not exceed the Maximum Regulated Price for the NNI Offer in that Financial Year.

1.2 Reporting of compliance with Individual Price Increase Limit

By 31 October following the end of each Financial Year of the Term, NBN Co will submit to the ACCC a report signed by the chief financial officer of NBN Co (or his or her authorised delegate) which certifies that any changes in the Price payable by any Customer in respect of a Product Component, associated Product Feature or Ancillary Service (including ancillary charges) in that Financial Year did not exceed the Individual Price Increase Limit.

2 Long Term Revenue Constraint reporting

2.1 RAB information

- (a) By 31 October following each Financial Year of the Term, NBN Co will submit to the ACCC the following information in respect of that Financial Year:
 - i totals for the Regulatory Asset Base and the Initial Cost Recovery Account, including the following values:
 - A June Quarter CPI;
 - B Capital Expenditure, by Asset Type;
 - C revenue, broken down by Product Component and Product Feature;
 - D Operating Expenditure, by expense type;

- E depreciation (nominal and real);
 - F asset disposals, by Asset Type; and
 - G opening and closing values of the Initial Cost Recovery Account and RAB (nominal and real);
- ii Nominal Regulatory Depreciation;
 - iii the closing value of Construction in Progress;
 - iv Annual Building Block Revenue Requirement;
 - v Unrecovered Cost;
 - vi the Cumulative Inflation Factor;
 - vii the risk free rate used in the calculation of the nominal vanilla WACC under clause 7.2(a) of Schedule 7 (Long Term Revenue Constraint Methodology);
 - viii the nominal vanilla WACC calculated under clause 7.2(a) of Schedule 7 (Long Term Revenue Constraint Methodology);
 - ix the Interest Expense used in relation to clause 8.3 of Schedule 7 (Long Term Revenue Constraint Methodology);
 - x gamma as calculated in accordance with clause 8.5(a) of Schedule 7 (Long Term Revenue Constraint Methodology);
 - xi the applicable corporate tax rate as calculated in accordance with clause 8.5(b) of Schedule 7 (Long Term Revenue Constraint Methodology); and
 - xii accounting and tax asset lifetimes for new Asset Types Placed in Service in that Financial Year, and any changes in accounting and tax asset lifetimes in that Financial Year.
- (b) During the Building Block Revenue Period, NBN Co will submit to the ACCC by 31 October following the end of each Financial Year of the Term the following additional information in respect of that Financial Year:
- i the Regulated Revenue;
 - ii the Revenue Variation; and
 - iii in the first Financial Year of the Building Block Revenue Period, the Carry Forward Revenue Adjustment from the final year of the Initial Cost Recovery Period.

2.2 Forecast information

By 30 June preceding the start of each Financial Year during the Building Block Revenue Period, NBN Co will submit to the ACCC NBN Co's forecasts or estimates of the following information in respect of that Financial Year:

- (a) June Quarter CPI;
- (b) Capital Expenditure, by Asset Type;
- (c) revenue, broken down by Product Component and Product Feature;
- (d) Operating Expenditure, by expense type;
- (e) depreciation (nominal and real);
- (f) asset disposals, by Asset Type;
- (g) opening and closing values of the RAB;
- (h) opening and closing values of the Initial Cost Recovery Account;
- (i) Nominal Regulatory Depreciation;
- (j) Construction in Progress;
- (k) Annual Building Block Revenue Requirement;
- (l) Unrecovered Cost;
- (m) Regulated Revenue;
- (n) Revenue Variation;
- (o) the risk free rate to be used in the calculation of the nominal vanilla WACC under clause 7.2(a) of Schedule 7 (Long Term Revenue Constraint Methodology);
- (p) the nominal vanilla WACC to be calculated under clause 7.2(a) of Schedule 7 (Long Term Revenue Constraint Methodology);
- (q) the Interest Expense to be included under clause 8.3 of Schedule 7 (Long Term Revenue Constraint Methodology);
- (r) gamma to be calculated in accordance with clause 8.5(a) of Schedule 7 (Long Term Revenue Constraint Methodology); and
- (s) the applicable corporate tax rate to be calculated in accordance with clause 8.5(b) of Schedule 7 (Long Term Revenue Constraint Methodology).

3 Prudency information

3.1 Annual Compliance Reports

By the 31 October of each Financial Year during the Term, NBN Co will submit to the ACCC a report signed by the chief financial officer of NBN Co (or his or her authorised delegate) which certifies that, in relation to the immediately preceding Financial Year:

- (a) the Capital Expenditure included in the NBN Co Regulatory Asset Base has been Prudently incurred in accordance with Schedule 8 (Prudency), including:
 - i in respect of the Prudent Design Condition, the allocation of Capital Expenditure incurred in that Financial Year in relation to the following:
 - A Capital Expenditure that has been deemed to meet the Prudent Design Condition under clause 4 of Schedule 8 (Prudency);
 - B Capital Expenditure that NBN Co has incurred in connection with the design, engineering and construction of the Relevant Assets in accordance with the Network Design Rules or any Permitted Variations thereto;
 - C Capital Expenditure that NBN Co has incurred in connection with an Endorsed Product-Related Network Change; and
 - D Capital Expenditure that NBN Co has incurred in connection with an ACCC Examinable Network Change.
 - ii in respect of the Prudent Cost Condition, the allocation of Capital Expenditure incurred in that Financial Year in relation to the following:
 - A Capital Expenditure that has been incurred in accordance with a competitive tendering and procurement process which complies with clause 9.3 of Schedule 8 (Prudency);
 - B Capital Expenditure that has been deemed to meet the Prudent Cost Condition under clause 4 of Schedule 8 (Prudency); and
 - C Capital Expenditure that otherwise satisfies the Prudent Cost Condition in one of the other categories under clause 9.2(b) of Schedule 8 (Prudency); and

- (b) the Operating Expenditure included in the Annual Building Block Revenue Requirement has been Prudently incurred in accordance with clause 9 of Schedule 8 (Prudency).

Schedule 11 Non-price terms and conditions

1 Consultation

- (a) NBN Co is committed to consulting with Access Seekers and the ACCC in relation to the development and ongoing evolution of the Wholesale Broadband Agreement.
- (b) The purpose of this consultation is:
 - i to inform Access Seekers about issues which are relevant to Access Seekers;
 - ii to provide Access Seekers and the ACCC with a mechanism to raise and present their concerns and requirements and to ensure that NBN Co is aware of such concerns and requirements; and
 - iii for NBN Co to take such concerns and requirements into consideration in NBN Co's planning and decision making process.
- (c) NBN Co will develop consultation processes in connection with the Wholesale Broadband Agreement, including the processes for determining the impact that relevant issues may have on Access Seekers and the form and timing of consultations in relation to the Wholesale Broadband Agreement.
- (d) NBN Co will, in good faith:
 - i take into account the material provided by Access Seekers and the ACCC to NBN Co during the course of such consultation; and
 - ii seek to resolve the key issues raised during such consultation.

2 Relationship management

- (a) NBN Co is committed to establishing and maintaining positive working relationships with Customers.
- (b) NBN Co will include terms in the Wholesale Broadband Agreement that require NBN Co and each Customer to:
 - i appoint points of contact within their respective organisations whose roles require them to use reasonable endeavours to facilitate the resolution of issues that may arise between NBN Co and that Customer; and

- ii use these points of contact to facilitate the resolution of issues that may arise between NBN Co and that Customer in the first instance and before raising a dispute.

3 Rollout progress information

3.1 3-year construction rollout plan

On or before 31 March of each year until the Rollout Built Date, NBN Co will publish a 3 year construction rollout plan that includes the following information:

- (a) a high level description of the geographic area in which NBN Co plans to deploy the NBN Co Fibre Network and NBN Co Wireless Network in the 36 months commencing from the 1 July following the publication;
- (b) the expected date on which NBN Co expects to commence work on the NBN Co Fibre Network and NBN Co Wireless Network in that geographic area; and
- (c) the estimated number of Premises within that geographic area.

3.2 1-year construction rollout plan

On a quarterly basis of each year until the Rollout Built Date, NBN Co will publish a 1 year construction rollout plan that includes the following information:

- (a) a high level graphical depiction of the geographic area in which NBN Co plans to deploy the NBN Co Fibre Network and NBN Co Wireless Network in the next 12 month period;
- (b) the dates on which NBN Co expects to commence work on the NBN Co Fibre Network and NBN Co Wireless Network in that geographic area; and
- (c) the estimated number of Premises within that geographic area.

3.3 Monthly ready for service rollout plan

On a monthly basis until the Rollout Built Date, NBN Co will publish a ready for service rollout plan that includes the following information:

- (a) the boundaries of the geographic areas of the NBN Co Fibre Network and NBN Co Wireless Network that have entered the design and construction phase;
- (b) the expected ready for service date for that geographic area;
- (c) the estimated number of Premises within that geographic area; and
- (d) the proposed footprint list, being the Premises that are within the relevant geographic areas that will be ready for service within the next 6 month period.

3.4 Historical footprint list

On a weekly basis until the Rollout Built Date, NBN Co will publish a list that sets out the Premises within geographic areas covered by the NBN Co Fibre Network and NBN Co Wireless Network that are 'live'.

4 POI rollout progress

- (a) On:
- i a quarterly basis during the Term until the completion of the Initial POIs; and
 - ii an annual basis after the completion of the Initial POIs,
- NBN Co will publish updates to the status of the Established POIs (**Points of Interconnect Plan**).
- (b) The Points of Interconnect Plan will include:
- i POI name;
 - ii POI ID;
 - iii Connectivity Serving Area name;
 - iv Connectivity Serving Area ID;
 - v approximate number of Premises to be served by Connectivity Serving Area (on completion);
 - vi forecast date for ODF availability (i.e. when Customers can first start to install equipment to interconnect at POIs);
 - vii forecast date for commissioning of the POI; and
 - viii forecast ready for service date for the first region served by the POI (i.e. when NBN Co expects the first commercial services to be available to End Users served by that POI).

5 Major NBN Upgrades

- (a) This clause 5 applies to **Major NBN Upgrades** that are listed in the NBN Program of Works that will:
- i require a Customer to take particular actions to continue to use a Product Component, associated Product Feature or Ancillary Service after the implementation of that upgrade;

- ii result in a Product Component, associated Product Feature or Ancillary Service no longer being supplied by reason of that upgrade; or
 - iii require a Customer to commit material capital expenditure in response to the implementation of that upgrade,
- but which is not an Emergency NBN upgrade.
- (b) If NBN Co wishes to implement a Major NBN Upgrade, NBN Co must provide as much notice as is reasonable practicable to all Customers of that Major NBN Upgrade, provided that any such notice is given no less than 6 months in advance of the start of implementation works.
 - (c) As soon as reasonably practicable after NBN Co has finalised the implementation plan for the Major NBN Upgrade (**Major Upgrade Plan**), NBN Co will provide a copy of that plan to any Customer which will or is likely to be materially adversely impacted by a Major NBN Upgrade, for that Customer's own internal planning purposes.
 - (d) NBN Co will reasonably consult with those Customers to whom it has provided a Major Upgrade Plan, and will reasonably consider any feedback received in good faith from such Customers, including such matters as timing of the Major NBN Upgrade, the Customer's capability to adapt to the Major NBN Upgrade and the Customer's costs in relation to the Major NBN Upgrade.

6 Review of Points of Interconnect (POI)

6.1 Timing of POI Review Process

- (a) On the 1 July immediately following the expiry of the First Period and each 5 year anniversary of that date, NBN Co will commence a review of the locations of NBN Co's Established POIs.
- (b) NBN Co may also conduct a review of the locations of Established POIs at any time (including following a review by the ACCC of the policies and procedures relating to the identification of listed points of interconnection under section 151DC of the Competition and Consumer Act), provided that it does not commence a review under this clause within 12 months of the completion of any POI review under this clause 6.

6.2 POI Criteria

- (a) Prior to conducting a review of the locations of NBN Co's Established POIs under this clause 6 (**POI Review**), NBN Co will consult with the ACCC in relation to the criteria to be applied by NBN Co in conducting the POI Review.

- (b) NBN Co will conduct consultation, including with Access Seekers, in relation to the criteria to be applied by NBN Co in conducting the POI Review.

6.3 POI Review Process

- (a) When conducting a POI review, NBN Co will undertake the following process:
 - i NBN Co will publish on the NBN Co website a consultation paper outlining:
 - A the Established POI locations;
 - B the criteria applied by NBN Co in conducting the POI review and the application of those criteria to the location of Established POIs;
 - C the proposed timing of the implementation of any changes to the Established POI locations; and
 - D the proposed location of any new POI based on the application of the criteria.
 - ii NBN Co will provide a period of no less than 20 Business Days from the date of publication of the consultation paper for lodgement of submissions with NBN Co on the consultation paper.
 - iii NBN Co will use its reasonable endeavours to complete a POI review within 6 months of its commencement.
 - iv As soon as practicable after completion of a POI review, NBN Co will publish the results of the POI review, including the same level of information required for the consultation paper.

6.4 Closures and Relocations of Established POIs

- (a) Subject to completion of a POI review under clause 6.3, NBN Co may, with the ACCC's prior approval:
 - i close an Established POI; or
 - ii relocate an Established POI,
 in accordance with the published results of the POI review.
- (b) NBN Co will provide Access Seekers with at least 12 months prior notice of a closure or relocation of an Established POI and at least 6 months prior notice of a closure or relocation of a Temporary POI.
- (c) This clause does not apply to the relocation or closure of a POI in response to an Emergency.

6.5 New POIs

- (a) NBN Co may, with the ACCC's prior approval, open a new POI at any time, including where arising from any POI Review under clause 6.3.
- (b) NBN Co will provide Access Seekers with no less than 12 months prior notice of the establishment of a new POI under this clause 6.5.

6.6 Timeframes for ACCC decisions

- (a) The ACCC will approve or reject NBN Co's request:
 - i to close or relocate an Established POI under clause 6.4; or
 - ii to open a new POI under clause 6.5,
 within 60 Business Days of NBN Co's request.
- (b) The ACCC may extend the period referred to in clause 6.6(a) by a further 20 Business Days in circumstances where it believes such an extension is reasonably necessary for the purposes of making an informed decision in relation to NBN Co's request.
- (c) If the ACCC has not made a decision within the timeframes referred to in clause 6.6(a) (as may be extended under clause 6.6(b)), NBN Co's request will be deemed to have been accepted.
- (d) The ACCC will provide reasons for its decision to accept or reject NBN Co's request.
- (e) The ACCC may consult with any person in making a decision about whether to accept or reject NBN Co's request.

6.7 Scope of this clause 6

Except as expressly stated, this clause 6 does not apply in respect of Temporary POIs.

7 Access to NBN Co Platform

7.1 NBN Co Platform

- (a) NBN Co will establish the NBN Co Platform.
- (b) NBN Co will set out in the Wholesale Broadband Agreement the basis on which Customers may connect to and access the NBN Co Platform.

7.2 Key Business Transactions

NBN Co will design the NBN Co Platform to enable Customers to perform the following transactions through the NBN Co Platform:

- (a) activation transactions for Product Components, associated Product Features and Ancillary Services, including:
 - i pre-order enquiries and checks; and
 - ii the submission, modification and tracking of orders;
- (b) assurance transactions, including the submission, modification and tracking of trouble tickets; and
- (c) billing transactions, including:
 - i electronic receipt of invoices; and
 - ii electronic delivery and receipt of enquiries, notices and information regarding invoices,

(each a **Key Business Transaction**).

7.3 NBN Co Platform Information

NBN Co will make available to Customers the following information in relation to the NBN Co Platform:

- (a) the key processes and milestones for the implementation and supply of the NBN Co Platform;
- (b) an overview of the technical design of the NBN Co Platform;
- (c) availability targets for the NBN Co Platform; and
- (d) the terms on which Customers may connect to and interface with the NBN Co Platform, including technical data that is necessary for Customers to connect to and interface with the NBN Co Platform,

(together the **NBN Co Platform Information**).

8 Billing and payment

8.1 Billing Dispute Processes

NBN Co will ensure that the Wholesale Broadband Agreement includes processes in accordance with which Customers can raise a billing dispute if a Customer reasonably considers there is an error in the amount of an invoice payable by that Customer to NBN Co (**Billing Dispute Processes**).

8.2 Right to withhold payment of disputed amounts

NBN Co will ensure that the Wholesale Broadband Agreement gives Customers the right to withhold payment to NBN Co of the disputed portion of an invoiced amount if, prior to the date on which payment of that invoiced amount is due, a Customer

reasonably raises a billing dispute in respect of that invoiced amount, subject to detailed terms addressing such disputes and withholdings.

8.3 Payment of interest

- (a) NBN Co will ensure that the Wholesale Broadband Agreement requires NBN Co to pay interest to Customers if it is determined through the Billing Dispute Processes that Customer has overpaid NBN Co in respect of an invoice issued.
- (b) NBN Co will ensure that the rate of interest referred to in clause 8.3(a) is the same rate of interest that is payable by Customers to NBN Co under the Wholesale Broadband Agreement in the event that Customer fails to pay an invoice by the relevant due date.

9 Credit management

- (a) NBN Co will develop, publish and maintain a credit policy (the **Credit Policy**) as part of the Wholesale Broadband Agreement.
- (b) NBN Co will comply with the Credit Policy.
- (c) NBN Co will ensure that the Credit Policy sets out the following:
 - i NBN Co's requirements in relation to the ongoing creditworthiness of Customers, including the criteria and processes that NBN Co will apply when reviewing and assessing the creditworthiness of Customers;
 - i the points in time at which, or the circumstances in which, NBN Co may review and assess the creditworthiness of a Customer;
 - ii the circumstances in which NBN Co may:
 - A require a Customer to provide a Financial Security or vary an existing Financial Security; and
 - B apply a credit limit in respect of a Customer or vary an existing credit limit in respect of a Customer; and
 - iii the circumstances in which NBN Co may enforce a Financial Security provided by a Customer.

10 Access to Common Property

NBN Co will be responsible for procuring access to Common Property where access to Common Property is required by NBN Co and the Personnel of NBN Co:

- (a) to supply any Product Component or associated Product Feature;

- (b) to deliver, install, connect, inspect, modify, replace, maintain, repair, reinstate, service, perform any other work on or in relation to, disconnect, and remove part of the NBN Co Network, including any NBN Co Equipment, or any other item that is licensed, owned or controlled by NBN Co or, where lawful, any third party network whether or not in relation to the supply of a Product Component or associated Product Feature; or
- (c) to exercise any of its rights or perform any of its obligations in respect of procuring access to Common Property.

11 Confidential information

11.1 Disclosure of confidential information

NBN Co will not disclose to any third party any confidential information disclosed by a Customer to NBN Co in connection with the Wholesale Broadband Agreement, except to the extent that NBN Co:

- (a) is required to do so by law; or
- (b) is otherwise permitted to do so under this Special Access Undertaking or the Wholesale Broadband Agreement.

11.2 Use of confidential information

NBN Co will only use confidential information disclosed by a Customer to NBN Co for:

- (a) the purpose of exercising its rights and performing its obligations under this Special Access Undertaking or a Wholesale Broadband Agreement; or
- (b) purposes that are otherwise contemplated by this Special Access Undertaking, the Wholesale Broadband Agreement or any other agreement between NBN Co and that Customer.

11.3 Network information

Any information in connection with:

- (a) a Customer; or
- (b) any third party who receives a service which relies on a Product Component as an input,

that is generated within the NBN Co Network or any NBN Co Platform or system as a result of the supply of a Product Component by NBN Co to that Customer or is otherwise obtained from that Customer in respect of the supply of a Product Component by NBN Co to that Customer:

- (c) is deemed to be confidential information of that Customer; and

(d) will only be used by NBN Co subject to clause 11.1,

unless that information is aggregated with other information of a similar or related nature, such that the information cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify Customer or any third party who receives a service from that Customer which relies on a Product Component as an input.

12 Default management

If the Wholesale Broadband Agreement gives NBN Co rights to impose contractual remedies in respect of a Customer where that Customer has failed, is unable or has refused to comply with the terms of the Wholesale Broadband Agreement (such as ordering freezes, service reductions and suspensions), NBN Co will:

- (a) notify that Customer before exercising those contractual remedies;
- (b) cease to apply that contractual remedy as soon as reasonably practicable.

13 Risk management

- (a) NBN Co will ensure that:
 - i NBN Co will not be liable to make any payment to a Customer; and
 - ii a Customer will not be liable to make any payment to NBN Co,

for any and all Indirect Losses arising from or in connection with the Wholesale Broadband Agreement or its subject matter, except as expressly provided otherwise by the Wholesale Broadband Agreement.
- (b) NBN Co will ensure that:
 - i NBN Co's liability to each Customer; and
 - ii each Customer's liability to NBN Co,

for all Losses under, arising from or in connection with the Wholesale Broadband Agreement or its subject matter is not limited in respect of:

 - iii negligent or wilful acts or omissions that cause death or personal injury; or
 - iv negligent or wilful acts or omissions that cause damage to tangible property.
- (c) NBN Co will ensure that the Wholesale Broadband Agreement requires:

- i NBN Co (in this clause, an **indemnifying party**) to pay to a Customer (in this clause, an **indemnified party**) on demand an amount equal to all Losses suffered or incurred by that Customer; and
- ii a Customer (in this clause, an **indemnifying party**) to pay to NBN Co (in this clause, an **indemnified party**) on demand an amount equal to all Losses suffered or incurred by NBN Co,

arising from or in connection with:

- iii any breach by the indemnifying party of the confidentiality provisions of the Wholesale Broadband Agreement;
- iv any claims by a third party that the exercise by the indemnified party of any intellectual property rights assigned, transferred or granted, or purportedly assigned, transferred or granted, by or on behalf of the indemnifying party in connection with the Wholesale Broadband Agreement infringes the intellectual property rights of that third party;
- v any death or personal injury of any person to the extent caused or contributed to by:
 - A a negligent act or omission of the indemnifying party in connection with the Wholesale Broadband Agreement;
 - B an act or omission of the indemnifying party in connection with the Wholesale Broadband Agreement intentionally causing or contributing to that death or personal injury;
 - C the indemnifying party's networks, platforms or equipment in connection with the Wholesale Broadband Agreement; and
- vi any damage to tangible property in connection with the Wholesale Broadband Agreement to the extent caused or contributed to by the indemnifying party,

subject to and in accordance with the terms of the Wholesale Broadband Agreement.

14 Contract lifecycle management

14.1 Scope and development of the Wholesale Broadband Agreement

- (a) NBN Co will ensure that the Wholesale Broadband Agreement sets out:

- i all price and non-price terms that apply in connection with access to, and supply and use of, the Product Components, associated Product Features and Ancillary Services; and
 - ii processes for making available to Customers detailed operational and technical information relating to Product Components, associated Product Features and Ancillary Services, including how Customers can access, acquire and use Product Components, associated Product Features and Ancillary Services.
- (b) NBN Co will consult with Customers in respect of the development of the Wholesale Broadband Agreement, including the NBN Co Operations Manual.

14.2 Service levels

- (a) NBN Co intends to introduce further service levels from time to time and will, by no later than 30 June 2012, in respect of the NBN Co Fibre Network introduce a service level regime dealing with matters including network performance, service delivery, communication with Customers and planned and unplanned event management.
- (b) In addition to clause 3.7 of Schedule 6 (Product development and withdrawal), NBN Co will maintain and periodically update a service level regime in respect of those Product Components and associated Product Features for which a service level is introduced.
- (c) NBN Co will consult with Customers about the nature and extent of further service levels.

14.3 Changes to Access Agreements

- (a) In addition to NBN Co's rights in relation to product introduction, variation and withdrawal under Schedule 6 (Product development and withdrawal) and NBN Co's right to set and vary prices in accordance with the terms of this Special Access Undertaking, NBN Co may make other changes to Access Agreements in accordance with the terms of those Access Agreements, including for the purpose of ensuring NBN Co's compliance with its statutory non-discrimination obligations.
- (b) If NBN Co wishes to make a change to an Access Agreement, NBN Co will always give prior written notice of the change to the Customer and also notify the ACCC before making such a change.
- (c) Where an Access Agreement sets out a specific process in accordance with which NBN Co can make a particular change to the Access Agreement, then NBN Co may make that particular change in accordance with that specific process.

- (d) In respect of changes to an Access Agreement other than those referred to in clause 14.3(c), NBN Co may change an Access Agreement if:
- i NBN Co notifies Customers in writing of the proposed change;
 - ii NBN Co gives the Customer an opportunity to consider and provide feedback to NBN Co in respect of the proposed change;
 - iii NBN Co reasonably considers any feedback given by a Customer and / or the ACCC before NBN Co decides to withdraw, vary or proceed with the proposed change;
 - iv upon deciding to proceed with the proposed change, NBN Co notifies Customers and the ACCC in writing:
 - A that NBN Co is proceeding with the change; and
 - B the date on which that change will become effective (being a date that is at least 60 Business Days after that date of that notice, unless the change must take effect sooner in order to comply with an applicable law).
- (e) NBN Co acknowledges that, before the effective date of a change to an Access Agreement referred to in clause 14.3(d), Customers may seek, and that the ACCC may issue:
- i an interim access determination under Division 4 of Part XIC of the Competition and Consumer Act; or
 - ii a binding rule of conduct under Division 4A of Part XIC of the Competition and Consumer Act,
- relating to the proposed change.
- (f) In respect of a change to an Access Agreement referred to in clause 14.3(d), if the ACCC makes:
- i an interim access determination under Division 4 of Part XIC of the Competition and Consumer Act; or
 - ii a binding rule of conduct under Division 4A of Part XIC of the Competition and Consumer Act,
- relating to a change referred to in clause 14.3(d) before the effective date of that change and NBN Co elects to proceed with the change, then NBN Co may only implement the change in a manner consistent with that interim access determination or binding rule of conduct.

Schedule 12 Dispute Management Rules

1 Dispute resolution objectives

NBN Co is committed to resolving Disputes:

- (a) in accordance with processes that are fair, independent, transparent and efficient; and
 - (b) in a manner that ensures that NBN Co is capable of complying with its statutory non-discrimination obligations.
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2 Dispute resolution methods

2.1 Classification, management and resolution of Disputes

- (a) NBN Co acknowledges:
 - i the importance of establishing and preserving the independence of persons appointed as Resolution Advisors and members of the Pool; and
 - ii that the management and resolution of Disputes between NBN Co and a Customer may materially affect other Customers, including by reason of NBN Co's statutory non-discrimination obligations and regardless of whether similar or related Disputes exist between NBN Co and those other Customers.
- (b) NBN Co will ensure that the Wholesale Broadband Agreement contains a process:
 - i for the nomination and appointment of one or more independent persons (each person, a **Resolution Advisor**); and
 - ii for the resolution of disagreements about such appointments,

who, when a Dispute arises, will be responsible for selecting and appointing a panel of three independent arbitrators (the **Panel**) from a pool of arbitrators (the **Pool**) who will be responsible for classifying:

 - iii Disputes that will, or are likely to, materially affect other Customers, including by reason of NBN Co's statutory non-discrimination obligations, as **Industry Relevant Disputes**; and
 - iv all other Disputes as **Bilateral Disputes**.
- (c) A Resolution Advisor or member of the Pool will be appointed for a maximum term of two years. Nothing prevents a Resolution Advisor or a

member of the Pool from being reappointed for one or more successive terms.

- (d) Where a Panel classifies a Dispute as an Industry Relevant Dispute, NBN Co will ensure that the Panel permits the joinder of other Customers to that Industry Relevant Dispute if the Panel considers that such other Customers have, or are likely to have, a sufficient interest in the subject matter of the Industry Relevant Dispute that is likely to be materially affected by the resolution of that Industry Relevant Dispute.
- (e) NBN Co will ensure that:
 - i Bilateral Disputes will be managed and resolved through Panel Arbitration, unless NBN Co and the relevant Customer agree to resolve the Dispute through expert determination or mediation; and
 - ii Industry Relevant Disputes will be managed and resolved through Panel Arbitration, unless no other Customers are joined to the Industry Relevant Dispute (in which case NBN Co will ensure that the dispute is reclassified as a Bilateral Dispute and is managed and resolved accordingly).
- (f) Before the commencement of each Financial Year, NBN Co will ensure that sufficient funds have been allocated in NBN Co's financial budget and approved in accordance with NBN Co's internal approval processes to pay the fees and other amounts owing or reasonably forecast to be owing to a Resolution Advisor or member of the Pool in that Financial Year.

2.2 Commitments regarding conduct of Panel Arbitrations

In respect of Panel Arbitrations, NBN Co will ensure that:

- (a) the arbitrators who constitute the Panel for each Panel Arbitration will be selected from the Pool by a Resolution Advisor;
- (b) Panel Arbitrations will be conducted in accordance with the *Commercial Arbitration Act 2010 (NSW) (CAA)*, except to the extent that the non-mandatory provisions of the CAA are excluded or varied;
- (c) awards made by the Panel in respect of Panel Arbitrations will be published on the NBN Co website, subject to the redaction of any information that the Panel considers is confidential to a party or parties to the arbitration;
- (d) the Panel in respect of a Panel Arbitration must have regard to any award previously made by a Panel in respect of a prior Panel Arbitration; and
- (e) Panels have regard to whether an order, decision, determination or award, and implementation of such orders, decisions, determinations or awards, will or are likely to require NBN Co to treat Customers and Access Seekers in

a manner that does not comply with NBN Co's statutory non-discrimination obligations.