



NBN Co Submission to ACCC Consultation Paper on variation of NBN Co SAU

Appendix C – Proposed Drafting of SAU Changes

May 2013

Preface

This Appendix C sets out proposed drafting of SAU changes in regard to a number of matters.

1. Replacement Module Process (proposed as amendments to the main body of the SAU)
2. Product Withdrawal Disallowance (developed in the context of Schedule 1I, but drafting consistent with this is proposed for inclusion in the equivalent schedule in Module 2)
3. Integrated Price Review Mechanism (proposed as a new Schedule 2D)
4. Disallowance Power in regard to New Price for Zero-Priced Reference Offer or Zero-Priced Other Charge associated with the supply of a Reference Offer (developed in the context of Schedule 1C, but drafting consistent with this is proposed for inclusion in Schedules 1D and 2C)
5. Ex-post compliance approach – Module 1 (proposed as amendments to Schedules 1E, 1F and 1G)
6. Calculation of RAB – Module 2 (proposed as amendments to existing clause 2D.7 (which are expected to become clause 2E.7) – this is linked to the RAB Roll Forward Proposal aspect of the Replacement Module Process in item 1)
7. Dispute Resolution (proposed as amendments to Schedule 1H, Annexure 1)
8. Dictionary (proposed definitional changes to Attachment C in relation to the proposed changes set out in this document)

Disclaimer

This document is provided for information purposes only and is not a commitment by NBN Co to vary the SAU in the manner proposed in this document. The contents of this document should not be relied upon as representing NBN Co's final position on the subject matter of this document. Any requirements of NBN Co or views expressed by NBN Co in this document may change as a consequence of legislative and regulatory developments.

1 Replacement Module Process

Notes:

- Please refer to section 2.5 of NBN Co's submission.
- The drafting that follows is to be inserted in the Main Body of the SAU.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

4 Structure of this Special Access Undertaking

4.1 Overview

This Special Access Undertaking comprises the following documents:

- (a) Module 0, which sets out the terms of this Special Access Undertaking and comprises:
 - (i) this main body;
 - (ii) Attachment A (Service Descriptions);
 - (iii) Attachment B (Facilities Access Service); and
 - (iv) Attachment C (Dictionary),which have effect from the SAU Commencement Date until the end of the SAU Term;
- (b) Module 1, which has effect from the SAU Commencement Date and continues in force until 30 June 2023, ~~or later if extended in accordance with clause 4.3~~ **(Initial Regulatory Period)**;
- (c) Module 2, which has effect from the end of the Initial Regulatory Period until the end of the SAU Term **(Subsequent Regulatory Period)**, irrespective of whether a Replacement Module is in effect; and
- (d) any Replacement Modules incorporated into this Special Access Undertaking by a variation accepted by the ACCC pursuant to section 152CBG of the CCA, each of which has effect for the relevant Regulatory Cycle ~~Replacement Module Term~~.

4.2 Description of Module 1

- (a) Module 1 sets out the detailed commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service during the Initial Regulatory Period.
- (b) Module 1 comprises the following schedules:
 - (i) Schedule 1A (Implementation of NBN Access Service, Ancillary Services and the Facilities Access Service);
 - (ii) Schedule 1B (Regulatory Oversight);
 - (iii) Schedule 1C (Reference Offers);
 - (iv) Schedule 1D (Non-Reference Offers and Other Charges);

- (v) Schedule 1E (Regulatory Asset Base);
- (vi) Schedule 1F (Long Term Revenue Constraint Methodology);
- (vii) Schedule 1G (Regulatory information);
- (viii) Schedule 1H (Non-price terms and conditions); and
- (ix) Schedule 1I (Product Development and Withdrawal);
- ~~(x) Schedule 1J (Service Level commitments); and~~
- ~~(xi) Schedule 1K (Reviews).~~

~~4.3 Extension of Initial Regulatory Period~~

- ~~(a) The Initial Regulatory Period will be automatically extended for a period of 12 months (the additional period being the **Extended Initial Regulatory Period**), provided that:
 - ~~(i) NBN Co has lodged a Replacement Module Application by means of an application to vary this Special Access Undertaking pursuant to section 152CBG of the CCA no later than 9 months prior to the end of the Initial Regulatory Period; or~~
 - ~~(ii) both:
 - ~~(A) NBN Co has lodged a new special access undertaking pursuant to section 152CBA of the CCA in relation to the NBN Access Service, Ancillary Services and the Facilities Access Service no later than 9 months prior to the end of the Initial Regulatory Period; and~~
 - ~~(B) the ACCC has not, by 30 June 2023, made an Access Determination in relation to the NBN Access Service or Ancillary Services that covers subject matter that is substantially similar to the subject matter of the new special access undertaking.~~~~~~
- ~~(b) The Extended Initial Regulatory Period will not take effect if the ACCC accepts a Replacement Module Application or a new special access undertaking in relation to the NBN Access Service, Ancillary Services and the Facilities Access Service before the Extended Initial Regulatory Period would have commenced.~~
- ~~(c) An extension of the Initial Regulatory Period under this clause 4.3 will not have the effect of extending the SAU Term.~~

4.44.3 Description of Module 2

- (a) Module 2 sets out long term arrangements that apply in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service ~~during in respect of~~ the Subsequent Regulatory Period.
- (b) Module 2 comprises the following schedules:
 - (i) Schedule 2A (Implementation ~~and Regulatory Cycle~~);
 - (ii) Schedule 2B (Reference Offers);
 - ~~(iii)~~ (iii) Schedule 2C (Pricing Commitments);
 - ~~(iii)(iv)~~ (iv) Schedule 2D (Integrated Price Review Mechanism);
 - ~~(iv)(v)~~ (v) Schedule 2E (Long Term Revenue Constraint Methodology and Regulatory Asset Base); and
 - ~~(v)(vi)~~ (vi) Schedule 2F (Product Development and Withdrawal); and
 - ~~(vi)~~ (vi) Schedule 2F (Service Level commitments).

4.54.4 Description of Replacement Module

- (a) NBN Co will, by way of an application to vary this Special Access Undertaking pursuant to section 152CBG of the CCA, seek to incorporate a Replacement Module (and other changes) into this Special Access Undertaking in accordance with clause 4.5.
- (b) Each Replacement Module will set out the detailed commitments that NBN Co makes in connection with the provision of access to the NBN Access Service, the Ancillary Services and the Facilities Access Service for the Regulatory Cycle ~~Replacement Module Term~~.
- (c) NBN Co acknowledges that:
 - (i) each Replacement Module Application will be assessed by the ACCC as an SAU variation application under section 152CBG of the CCA;
 - (ii) each Replacement Module Application will be accepted or rejected by the ACCC in accordance with section 152CBG of the CCA; and
 - (iii) when determining whether to accept or reject a Replacement Module Application, the ACCC may be assessing proposed key elements of the regulatory arrangements (as described in clauses 4.5(e)(i) to 4.5(e)(v) including forecasts, regulatory values, such as WACC and Reference Offers) which, in combination with Module 2, will be applicable to NBN Co for the Regulatory Cycle; and

(iv) NBN Co may:

(A) withdraw an SAU variation application that contains a Replacement Module Application; and

(B) re-submit an SAU variation application under section 152CBG of the CCA that contains an amended Replacement Module Application for approval by the ACCC,

including for the purpose of having a Replacement Module approved by the ACCC in respect of the relevant Regulatory Cycle.

4.64.5 Commitment to submit a Replacement Module Application

(a) NBN Co will provide a Replacement Module Application to the ACCC in accordance with this clause 4.5.

(b) The ACCC will provide NBN Co with no less than 12 months written notice requiring NBN Co to provide a Replacement Module Application.

(c) In the written notice given by the ACCC under clause 4.5(b), the ACCC must specify:

(i) a Regulatory Cycle of 3, 4 or 5 years, unless fewer than 3 years remain in the SAU Term after the beginning of the next Regulatory Cycle, in which case the ACCC must specify a term that covers the period between the beginning of the next Regulatory Cycle and the end of the SAU Term; and

(ii) the due date for NBN Co to provide an initial Replacement Module Application to the ACCC, which must be ~~NBN Co will~~, no later than 9 months and no more than 18 months prior to:

(A) the end of the Initial Regulatory Period; ~~or and~~

(B) the end of each Regulatory Cycle.

provide the ACCC with a

(d) NBN Co must give an initial Replacement Module Application to the ACCC no later than the due date specified by the ACCC in accordance with clause 4.5(c)(ii).

(e) A Replacement Module Application ~~given to the ACCC by~~ NBN Co, ~~as part of any Replacement Module Application, will~~ must include:

(i) a ~~Regulatory Cycle~~ Replacement Module Term of the same duration as that specified by the ACCC under clause 4.5(c)(i); ~~3, 4 or 5 years~~ (unless fewer than 3 years remain in the SAU Term, in which case,

~~the Replacement Module Term will be for the number of years remaining in the SAU Term);~~

~~(i)(ii)~~ a Reference Offer Proposal established in accordance with clause 4.6;

~~(iii)~~ a LTRCM Proposal established in accordance with clause 4.7;

~~(ii)(iv)~~ a RAB Roll Forward Proposal established in accordance with clause 4.8; and

~~(iii)~~ a Service Level Proposal in accordance with clause 4.9; and

~~(v)~~ any other matters that NBN Co proposes to form part of a Replacement Module, ~~which may include, for example, arrangements relating to regulatory recourse, product development and withdrawal and non-price terms and conditions for inclusion in an SFAA.~~

4.6 Reference Offer Proposal

~~(a)~~ The Reference Offer Proposal must include the composition of each Reference Offer determined in accordance with Schedule 2B (Reference Offers) which will apply during the Regulatory Cycle.

~~NBN Co will, as part of each Replacement Module Application, propose to include Reference Offers, and the composition of each Reference Offer in accordance with Schedule 2B (Reference Offers), within that Replacement Module (Reference Offer Proposal).~~

~~(d)(b)~~ NBN Co is not required to specify Non-Reference Offers as part of a Replacement Module Application.

4.7 LTRCM Proposal

The LTRCM Proposal ~~must include~~ consists of:

- (a) Forecast Nominal ABBRR and Forecast Real ABBRR for each of the Financial yYears in the ~~Replacement Module Term~~ Regulatory Cycle consistent with the principles set out in clause 2E.2.1;
- (b) all necessary forecasts of the inputs required for the calculation of the ABBRR for each of the Financial yYears in the ~~Replacement Module Term~~ Regulatory Cycle, including WACC, asset ~~lifetimes~~ ves and taxation parameters;
- (c) Annual Forecast Revenue for each of the Financial yYears in the ~~Regulatory Cycle~~ Replacement Module Term that are in the Initial Cost Recovery Period and the associated set of annual demand forecasts to which the Annual

Forecast Revenue relate, where all revenue and demand forecast information will use inputs that are consistent with the inputs used to forecast the ABBRR; and

- (d) a proposal of how the net incremental tax effect in connection with:
- (i) any Tax Change Event that has taken effect in the Regulatory Cycle immediately prior to the Regulatory Cycle to which a Replacement Module Application relates (or, in the case of the first Regulatory Cycle, the Initial Regulatory Period); and
 - (ii) any Tax Change Event that may occur in the Regulatory Cycle to which a Replacement Module Application relates,
- will be passed through to Customers Access Seekers and reflected by:
- (iii) increasing the Maximum Regulated Price of NBN Offers;
 - (iv) amending its Annual Forecast Revenues under clause 2E2D.3; and
 - (v) amending the Forecast Real ABBRR and, therefore, the amount that NBN Co is entitled to earn under clause 2E2D.5.1(a) (if applicable).

4.8 RAB Roll Forward Proposal~~Service Level Proposal~~

For the purposes of calculating the Regulatory Asset Base under clause 2E.7, the RAB Roll Forward Proposal must:

- (a) be consistent with the NPV=0 criterion in clause 2E.2.1(b);
- (b) provide for the inclusion in the RAB of NBN Co's Prudently incurred Capital Expenditure by specifying that the nominal value of Capital Expenditure for use in the calculation of *Real Capital Expenditure_t*, will be calculated in accordance with the Capex Roll-in Criteria, and also specifying whether the ACCC will have the power during the Regulatory Cycle to reduce the amount of Capital Expenditure rolled-in to the RAB in accordance with the Capex Roll-in Criteria; and
- (c) provide for depreciation applicable to the opening real value of the Relevant Assets included in the RAB in the current Financial Year, for use in the calculation of *Real Straight Line Depreciation_t* by specifying that such depreciation should be either:
 - (i) set at the value of the forecast real straight line depreciation used in forecasting the ABBRR in accordance with clause 2E.2.1(a)(ii)(A); or
 - (ii) calculated as the straight line depreciation applicable to the opening real value of the Relevant Assets included in the RAB in the current Financial Year *t*, determined using asset lifetimes consistent with those used in forecasting ABBRR in clause 2E.2.1(a)(ii)(B).

- ~~(a) NBN Co will, as part of each Replacement Module Application, include a proposal in respect of the Service Levels and Service Level Rebates (if any) that will apply during that Replacement Module Term (**Service Level Proposal**).~~
- ~~(b) The Service Levels and Service Level Rebates set out in a Service Level Proposal will be consistent with the requirements of clause 2F.2.1.~~

4.9 ACCC Replacement Module Determination ~~Non-acceptance of Replacement Module Applications~~

- ~~(a) This clause 4.10 applies if:
 - ~~(i) the Extended Initial Regulatory Period ends or a Regulatory Cycle ends (the last day of such period being the **Cycle Expiry Date**); and~~
 - ~~(ii) the ACCC has not accepted a Replacement Module Application to have effect commencing immediately following the Cycle Expiry Date.~~~~
- ~~(a) The ACCC must issue a determination no later than 20 Business Days prior to the last day of the Initial Regulatory Period or a Regulatory Cycle (the last day of such period being the **Cycle Expiry Date**) if the ACCC has not accepted a Replacement Module Application to have effect on and from the Cycle Expiry Date (an **ACCC Replacement Module Determination**).~~
- ~~(b) The ACCC Replacement Module Determination must determine the following matters for each Financial Year of the Regulatory Cycle that would have otherwise been covered by a Replacement Module Application: Subject to clauses 4.10(d) and 4.10(e), the following matters will be deemed to apply from the Cycle Expiry Date for the Replacement Module Term proposed in the Replacement Module Application provided by NBN Co under clause 4.6:
 - ~~(i) the Reference Offers provided in the Reference Offer Proposal;~~
 - ~~(ii) the terms of the LTRCM Proposal; and~~
 - ~~(iii) the terms of the RAB Roll Forward Proposal.~~the Service Levels and Service Level Rebates set out in the Service Level Proposal,
as specified in the Replacement Module Application.~~
- ~~(c) In making an ACCC Replacement Module Determination in respect of a Regulatory Cycle under clause 4.9(b), the ACCC must:~~

- (i) be satisfied that the terms and conditions of the ACCC Replacement Module Determination are reasonable, having regard to the criteria in section 152AH of the Competition and Consumer Act;
- (ii) not make an ACCC Replacement Module Determination that would have the effect of preventing NBN Co from engaging in conduct that is reasonably necessary to achieve uniform national pricing of Eligible Services supplied by NBN Co to Service Providers and utilities;
- (iii) make an ACCC Replacement Module Determination that is consistent with, and which does not alter or remove any fixed principles term and condition of this Special Access Undertaking (or have the effect of altering or removing any fixed principles term and condition of this Special Access Undertaking); and
- (iv) publish the reasons for the ACCC Replacement Module Determination on its website.
- (d) NBN Co will comply with the terms of an ACCC Replacement Module Determination for the duration of the Regulatory Cycle, subject to clause 4.9(e).
- (e) If:
- (i) the ACCC has issued an ACCC Replacement Module Determination; but
- (ii) the ACCC subsequently accepts a Replacement Module Application for the upcoming Regulatory Cycle prior to the Cycle Expiry Date,

any ACCC Replacement Module Determination that is in effect in relation to the upcoming Regulatory Cycle as at the date of acceptance of a Replacement Module Application will cease to have effect on the date that the ACCC provides a notice pursuant to section 152CBG(5) of the CCA stating that the variation to this SAU has been accepted.
- ~~(c) If, following the withdrawal or rejection of a Replacement Module Application, NBN Co had, at least 20 Business Days prior to the Cycle Expiry Date, lodged another Replacement Module Application (in this clause 4.10(c), **Updated Replacement Module Application**) that complies with clause 4.6(b), then clause 4.10(b) will apply as though all references to the Replacement Module Application were references to the Updated Replacement Module Application (or the most recent Updated Replacement Module Application, as the case may be).~~

~~If the ACCC makes, before the Cycle Expiry Date, an Access Determination or Binding Rule of Conduct that contains terms relating to the matters~~

~~described in clause 4.10(b), the Access Determination or Binding Rule of Conduct will, to the extent it is not inconsistent with Module 0 and Module 2:~~

~~(i) apply from immediately after the Cycle Expiry Date until the end of the applicable Regulatory Cycle; and~~

~~(ii) prevail over the matters described in clause 4.10(b).~~

~~(d) If the ACCC makes, after the Cycle Expiry Date but no more than 12 months after the Cycle Expiry Date, an Access Determination or Binding Rule of Conduct that contains terms relating to the matters described in clause 4.10(b), the Access Determination or Binding Rule of Conduct will not apply in the first Financial Year of the applicable Regulatory Cycle and will, to the extent it is not inconsistent with Module 0 and Module 2:~~

~~(i) apply from 1 July in the second Financial Year of that Regulatory Cycle until the end of that Regulatory Cycle; and~~

~~(ii) prevail over the matters described in clause 4.10(b).~~

~~(e) NBN Co acknowledges that if a Replacement Module Application is rejected by the ACCC, the ACCC may make an Access Determination or Binding Rule of Conduct that will have effect to the extent it is not inconsistent with the terms of this Special Access Undertaking (including those principles and conditions set out in Module 0 and Module 2) and otherwise complies with Part XIC of the CCA.~~

4.10 Date of effect of Replacement Module

~~If the ACCC accepts a Replacement Module Application, the Replacement Module takes effect from the date specified in the Replacement Module Application.~~

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2 Product Withdrawal Disallowance

Notes:

- Please refer to section 4.3 of NBN Co's Submission.
- The drafting that follows is in the context of Schedule 1I, but drafting consistent with this is proposed for inclusion in the equivalent schedule in Module 2.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

Schedule 11 Product Development and Withdrawal

11.5 Withdrawal

11.5.1 Non-circumvention

NBN Co will not:

- (a) withdraw any Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (in each case, a this clause 11.5, Product Withdrawal); and
- (b) in conjunction with that Product Withdrawal (including both prior to or after the Product Withdrawal), introduce any new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service that is substantially similar to, or comparable with, the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service 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 1C.4 and clause 1D.4.

11.5.2 Notice period for Withdrawals

- (a) Subject to Schedule 1C (Reference Offers) and the remainder of this clause 11.5~~11.5.1~~, NBN Co may will notify the PDF Participants and the ACCC of its intention to undertake a Product Withdrawal by providing withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service and will provide its Customers with no less than:
 - (i) 24 months' written notice of the withdrawal of ~~its intention to withdraw~~ a Product, Product Component, Ancillary Service or type of Facilities Access Service, other than the ~~Tasmania Tri-Area Service and~~ ISS in respect of which NBN Co will provide no less than 6 months' written notice;
 - (ii) subject to clause 11.5.2(a)(iii), 12 months' written notice of the withdrawal of ~~its intention to withdraw~~ a Product Feature; and
 - (iii) 24 months' written notice of the withdrawal of its intention to withdraw a Product Feature where withdrawal will have a material adverse effect on the functionality or performance of a Product or Product Component with which the Product Feature is associated,

and, in each case, will also provide written notice of the transitional arrangements that NBN Co may put in place (if any) to migrate Access Seekers its Customers from the relevant Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.

- (b) NBN Co will have regard to the following factors when considering whether to withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service:
- (i) existing demand for the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
 - (ii) the cost to NBN Co of maintaining and continuing to supply, the existing Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
 - (iii) the functionality offered by an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to the relevant Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service to be withdrawn;
 - (iv) the technical feasibility of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service;
 - (v) the commercial viability of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service; and
 - (vi) the Price of an alternative Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service.
- (c) NBN Co will discuss and consider in good faith any feedback received from the PDF Participants and the ACCC in relation to the impending Product Withdrawal~~withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service~~ and related issues, such as migration.

11.5.3 Categorisation of Product Withdrawal

- (a) NBN Co will include in the notification of a Product Withdrawal under clause 11.5.2(a), the following information:
- (i) whether the Product Withdrawal is, in NBN Co's view, either:

- (A) a Category A Product Withdrawal; or
 - (B) a Category B Product Withdrawal; and
 - (ii) the reasons why NBN Co considers the withdrawal to be a Category A Product Withdrawal or Category B Product Withdrawal.
 - (b) NBN Co will classify a Product Withdrawal as:
 - (i) a Category A Product Withdrawal, if NBN Co considers the Product Withdrawal satisfies one or more of the following:
 - (A) the Product Withdrawal Cost Criterion;
 - (B) the Product Withdrawal Technical Criterion; or
 - (C) the Product Withdrawal No Material Disadvantage Criterion; and
 - (ii) a Category B Product Withdrawal, in all other cases.
 - (c) If NBN Co notifies the ACCC of a Category A Product Withdrawal, the ACCC may invite people to make submissions on NBN Co's classification of a Product Withdrawal as a Category A Product Withdrawal and must consider any submissions that are received within the time limit specified by the ACCC.
 - (d) The ACCC must decide whether the Product Withdrawal is to be classified as either:
 - (i) a Category A Product Withdrawal (**Category A Product Withdrawal Classification Decision**); or
 - (ii) a Category B Product Withdrawal (**Category B Product Withdrawal Classification Decision**),

(each a **Product Withdrawal Classification Decision**)

no later than 60 Business Days after the date of the notice provided by NBN Co under clause 11.5.2(a), subject to any time extension made in accordance with clause 11.5.3(e).
 - (e) The ACCC may, by written notice to NBN Co, extend or further extend the timeframe for making a Product Withdrawal Classification Decision provided that:
 - (i) the extension or further extension is for a period of not more than 3 months; and

- (ii) the notice includes a statement explaining why the ACCC has been unable to make the Product Withdrawal Classification Decision within the timeframe under clause 11.5.3(d) (or the 3 month extension or further extension period).
- (f) Subject to clause 11.5.3(i), the ACCC may request that NBN Co give further information about the Category A Product Withdrawal, in which case the timeframe for making a Product Withdrawal Classification Decision under clause 11.5.3(d) (or any extended decision making timeframe under clause 11.5.3(e)) will be extended for the period of time it takes for NBN Co to provide the requested information.
- (g) In making a Category A Product Withdrawal Classification Decision, the ACCC must:
- (i) be satisfied that the Product Withdrawal is consistent with one or more of the following:
- (A) the Product Withdrawal Cost Criterion;
- (B) the Product Withdrawal Technical Criterion; or
- (C) the Product Withdrawal No Material Disadvantage Criterion; and
- (ii) publish the reasons for its decision on its website.
- (h) If the ACCC is not satisfied that the Product Withdrawal is consistent with clause 11.5.3(g)(i), the ACCC must make a Category B Product Withdrawal Classification Decision.
- (i) If the ACCC does not make a Product Withdrawal Classification Decision by 90 Business Days prior to the expiry date of the applicable notice period in relation to the Product Withdrawal under clause 11.5.2(a), the Product Withdrawal will be a Category A Product Withdrawal.

11.5.4 Category A Product Withdrawal

Unless the ACCC has reclassified the Product Withdrawal as a Category B Product Withdrawal under clause 11.5.3(d), NBN Co may withdraw a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service at any time after the expiry of the applicable notice period for the Product Withdrawal under clause 11.5.2(a).

11.5.5 Category B Product Withdrawal

- (a) The ACCC may make a decision to disallow a Category B Product Withdrawal in accordance with this clause 1A.5.5 (Category B Product Withdrawal Disallowance Decision).
- (b) In making a Category B Product Withdrawal Disallowance Decision, the ACCC:
- (i) must be satisfied that the Product Withdrawal does not promote the long term interests of end-users, having regard to the criteria in section 152AB of the Competition and Consumer Act; and
 - (ii) must have regard to the factors set out in clause 11.5.2(b);
 - (iii) may invite people to make submissions on the Category B Product Withdrawal and must consider any submissions that are received within the time limit specified by the ACCC;
 - (iv) must issue its decision no later than 60 Business Days prior to the expiry date of the applicable notice period in relation to the Product Withdrawal under clause 1A.5.2(a);
 - (v) must publish the reasons for its decision to disallow the Product Withdrawal on its website; and
 - (vi) must specify in its decision the length of time that the disallowance will apply, which must not exceed a maximum of 2 years from the expiry date of the applicable notice period in relation to the Product Withdrawal under clause 11.5.2(a).
- (c) If the ACCC:
- (i) issues a Category B Product Withdrawal Disallowance Decision within the timeframe in clause 11.5.5(b)(iv), NBN Co must not undertake the Product Withdrawal for the duration of the disallowance; or
 - (ii) does not issue a Category B Product Withdrawal Disallowance Decision within the timeframe in clause 11.5.5(b)(iv), NBN Co may undertake the Product Withdrawal at any time after the expiry of the applicable notice period in relation to that Product Withdrawal under clause 11.5.2(a).
- (d) Nothing in this clause prevents NBN Co from issuing a subsequent notice under clause 11.5.2(a) to undertake a Product Withdrawal in relation to that same Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service at any time.

11.5.311.5.6 **Product withdrawal required by law or directed by Shareholder Ministers**

- (a) This clause 11.5 does not apply to the withdrawal of a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service 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;
- (b) In the event of a withdrawal of a Product, Product Component or Product Feature, Ancillary Service or type of Facilities Access service in accordance with 11.5.6(a), NBN Co will, to the extent permitted by law, provide its Customers and the ACCC with written notice of such withdrawal within 20 business days of NBN Co being notified of its requirement to withdraw, subject to that timeframe being consistent with the timing requirements placed on NBN Co to withdraw;
- (a)(c) In the event of a withdrawal of a Product, Product Component or Product Feature, Ancillary Service or type of Facilities Access service in accordance with 11.5.6(a), NBN Co will, to the extent permitted by law, consult with and consider any feedback received from its Customers in relation to the impending withdrawal and related issues, such as migration.

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3 Integrated Price Review Mechanism

Notes:

- Please refer to section 5.2 of NBN Co's Submission.
- The drafting that follows would constitute a new Schedule in Module 2, and would likely be inserted as a new Schedule 2D.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

Schedule 2D Integrated Price Review Mechanism

2D.1 Introduction

2D.1.1 Scope

This Schedule 2D applies for the Subsequent Regulatory Period, irrespective of whether a Replacement Module is in effect, subject to clause 2D.1.3.

2D.1.2 Overview

This Schedule 2D confers functions and powers on the ACCC pursuant to section 152CBA(10A) of the Competition and Consumer Act to undertake a review of the Maximum Regulated Prices of:

- (a) Reference Offers (excluding any Zero-Priced Reference Offers);
- (b) Non-Reference Offers (excluding Zero-Priced Non-Reference Offers);
- (c) Other Charges (excluding any Zero-Priced Other Charges and any Other Charges provided on a “hourly labour rate” or “hourly labour rate plus cost of materials basis”); and
- (d) a New Offer (excluding a Zero-Priced New Offer) or a New Other Charge (excluding a Zero-Priced Other Charge) not in effect as at the effective date of the Price Review Arrangement but in respect of which NBN Co has issued a pricing rationale statement under clause 1D.6(b) or 2C.5(b),

(each a **Reviewable Offer** and together the **Reviewable Offers**).

2D.1.3 Commencement

- (a) Any change to the Maximum Regulated Prices of the Reviewable Offers as a consequence of the operation of this Schedule 2D in the case of the first review of the Reviewable Offers under this Schedule 2D, will not take effect until the commencement of the Subsequent Regulatory Period (or such later time as determined by the ACCC in accordance with this Schedule 2D.
- (b) The ACCC may only commence the process set out in this Schedule 2D at any time after 2 years prior to the commencement of the Subsequent Regulatory Period.

2D.2 Price Review Arrangement

2D.2.1 Initiation of Price Review

- (a) The ACCC may issue a written notice to NBN Co stating that the ACCC wishes to commence a review of the Maximum Regulated Prices for the Reviewable Offers (**Price Review**) if the ACCC has a reason to believe that the Maximum Regulated Prices of the Reviewable Offers that apply as at the date of the written notice (taken in aggregate) are not reasonable, having regard to the criteria in section 152AH of the CCA (**Price Review Notice**).
- (b) The Price Review Notice must include:
 - (i) the reasons for the ACCC's view that the Maximum Regulated Prices of the Reviewable Offers that apply as at the date of the written notice (taken in aggregate) are not reasonable, having regard to the criteria in section 152AH of the CCA; and
 - (ii) the proposed term of the Price Review Arrangement (which must not be more than a period of 5 Financial Years in accordance with clause 2D.2.6(c)(i)).
- (c) The ACCC may issue a Price Review Notice:
 - (i) before the commencement of the Subsequent Regulatory Period, provided that the ACCC does not issue a Price Review Notice more than 2 years prior to the commencement of the Subsequent Regulatory Period; or
 - (ii) at any time during the Subsequent Regulatory Period.
- (d) NBN Co may also initiate a Price Review of the Reviewable Offers, in which case NBN Co will submit a Price Review Notice to the ACCC subject to, and in accordance with, the requirements of this clause 2D.2.1.

2D.2.2 NBN Co to develop Price Review Proposal

- (a) NBN Co will, no later than 120 Calendar Days after the date of issuance of a Price Review Notice (or such other date as is agreed with the ACCC), provide the ACCC with a proposal in relation to the Maximum Regulated Prices for the Reviewable Offers (**Price Review Proposal**).
- (b) The Price Review Proposal must include the following information:

- (i) a proposed Price Review Arrangement developed in accordance with the Price Review Criteria, including the proposed Maximum Regulated Price for each Reviewable Offer for each Financial Year of the proposed term of the Price Review Arrangement (as determined in accordance with clause 2D.2.1(b)(ii));
- (ii) an explanation of the basis on which the proposed Price Review Arrangement meets the Price Review Criteria; and
- (iii) the forecasts and estimates used by NBN Co to apply the Price Review Criteria to the proposed Price Review Arrangement.

2D.2.3 ACCC response to Price Review Proposal

- (a) The ACCC must either:
 - (i) accept the Price Review Proposal;
 - (ii) reject the Price Review Proposal; or
 - (iii) issue a written notice to NBN Co (a **Price Review Variation Notice**) stating that if NBN Co:
 - (A) makes such variations to the Price Review Proposal as are specified in the notice; and
 - (B) gives the varied Price Review Proposal to the ACCC within the period specified in the notice (**Varied Price Review Proposal**),
the ACCC will consider the Varied Price Review Proposal as if the Varied Price Review Proposal had been given instead of the original Price Review Proposal; or
 - (iv) discontinue the Price Review without establishing a Price Review Arrangement, in which case:
 - (A) the Price Review will terminate; and
 - (B) the Maximum Regulated Prices applicable to the Reviewable Offers as at that date of termination of the Price Review will continue to apply.
- (b) The ACCC must make its decision under clause 2D.2.3(a) in accordance with the Price Review Criteria.
- (c) The ACCC must provide a written notice to NBN Co of its decision, including the reasons for the ACCC's decision.

2D.2.4 Acceptance of Price Review Proposal or Varied Price Review Proposal

If:

- (a) a Price Review Proposal is approved by the ACCC, that Price Review Proposal will become a Price Review Arrangement for the designated period specified by the ACCC in its decision; or
- (b) a Varied Price Review Proposal is given by NBN Co and approved by the ACCC, that Varied Price Review Proposal will become a Price Review Arrangement for the designated period specified by the ACCC in its decision.

2D.2.5 ACCC Determined Price Review Arrangement

(a) If:

- (i) the ACCC rejects a Price Review Proposal; or
- (ii) the ACCC rejects a Varied Price Review Proposal, subject to clause 2D.2.3(a)(iii),

the ACCC may either:

- (iii) determine its own Price Review Arrangement (an **ACCC Determined Price Review Arrangement**); or
- (iv) discontinue the review process without establishing a Price Review Arrangement, in which case:
 - (A) the Price Review will terminate; and
 - (B) the Maximum Regulated Prices applicable to the Reviewable Offers as at that date of termination of the Price Review will continue to apply.

(b) The ACCC must not issue an ACCC Determined Price Review Arrangement unless the ACCC:

- (i) has obtained from NBN Co, forecasts and estimates (and an explanation of the basis of those forecasts and estimates) as relevant for the purposes of applying the Price Review Criteria, which NBN Co must provide to the ACCC within 20 Business Days of receipt of a written request (or such other time as may be agreed between NBN Co and the ACCC); and
- (ii) has had regard to the forecasts and estimates (and the explanation of the basis of those forecasts and estimates) provided by NBN Co under clause 2D.2.5(b)(i);

- (c) The ACCC must make an ACCC Determined Price Review Arrangement under clause 2D.2.5(a) in accordance with the Price Review Criteria.
- (d) The ACCC must publish a statement setting out the reasons for its decision in relation to an ACCC Determined Price Review Arrangement.
- (e) If the ACCC issues an ACCC Determined Price Review Arrangement, the ACCC Determined Price Review Arrangement will become a Price Review Arrangement for the designated period specified by the ACCC in its decision.

2D.2.6 Operation of Price Review Arrangement

- (a) The Maximum Regulated Prices applicable to the Reviewable Offers under a Price Review Arrangement take effect from the start of the first Financial Year specified in the Price Review Arrangement (subject to clause 2D.2.6(b)) and operate for each subsequent Financial Year specified in the Price Review Arrangement (subject to clause 2D.2.6(c)).
- (b) The effective date of a Price Review Arrangement must:
 - (i) be no earlier than the date of commencement of the Subsequent Regulatory Period;
 - (ii) not be a date that precedes the date on which the Price Review Arrangement is made; and
 - (iii) be no later than 12 months after the date of the ACCC's decision in relation to the Price Review Arrangement.
- (c) A Price Review Arrangement:
 - (i) must not have a term of more than 5 Financial Years and must not set the Maximum Regulated Price for the Reviewable Offers for a period that exceeds 5 Financial Years;
 - (ii) will supersede the Maximum Regulated Price of the Reviewable Offers that are in effect as at the effective date of the Price Review Arrangement; and
 - (iii) will replace any previous Price Review Arrangement in effect as at the effective date of the subsequent Price Review Arrangement.
- (d) Nothing in clause 2D.2.6(c) prevents the ACCC from issuing a subsequent Price Review Arrangement which replaces a previous Price Review Arrangement, including where the subsequent Price Review

Arrangement has the effect of amending the Maximum Regulated Price for Reviewable Offers in relation to a Financial Year covered by the previous Price Review Arrangement.

- (e) The Maximum Regulated Prices for Reviewable Offers specified in a Price Review Arrangement may:
 - (i) be specified in the form of Maximum Regulated Prices (or as a formula for ascertaining the Maximum Regulated Prices);
 - (ii) be different for each Financial Year of the Price Review Arrangement (e.g. to establish a glide-path in relation to the Maximum Regulated Prices for Reviewable Offers over the period of the Price Review Arrangement); and
 - (iii) provide for one or more of the Maximum Regulated Prices to be adjusted in accordance with, and subject to, Schedule 2C in respect of one or more Financial Years covered by the Price Review Arrangement.
- (f) If a Price Review Arrangement:
 - (i) is in effect in respect of a Financial Year, then:
 - (A) the Maximum Regulated Price for the Reviewable Offers will be the Maximum Regulated Price set out in that Price Review Arrangement for that Financial Year; and
 - (B) Schedule 2C will not apply to those Reviewable Offers in respect of that Financial Year, except where specified otherwise in the Price Review Arrangement in accordance with clause 2D.2.6(e)(iii); or
 - (ii) is not in effect in respect of a Financial Year, then the Maximum Regulated Price for each Reviewable Offer will be determined in accordance with, and subject to, Schedule 2C for that Financial Year.

2D.3 Price Review Criteria

- (a) Subject to clause 2D.3(b), the ACCC must not accept a Price Review Proposal or Varied Price Review Proposal, or issue an ACCC Determined Price Review Arrangement, unless:
 - (i) the ACCC is satisfied that all of the Maximum Regulated Prices of the Reviewable Offers (taken in aggregate) are reasonable,

having regard to the criteria in section 152AH of the Competition and Consumer Act; and

- (ii) the ACCC is satisfied that the present value of forecast Net Revenue, taking into account all services supplied by NBN Co using the Relevant Assets, calculated in accordance with the formula below and evaluated on an expected value basis is likely to be the same or higher under the Maximum Regulated Prices for the Reviewable Offers under the Pricing Review Arrangement than under the Maximum Regulated Prices for the Reviewable Offers that would otherwise apply in each of the following time periods:
- (A) the period between the effective date of the Price Review Arrangement and the end of the Replacement Module Term in which the effective date of that Price Review Arrangement falls (**Period 1**);
 - (B) if Period 1 is less than 5 years, the period between the start of Period 1 and the end of the Financial Year in which falls the fourth anniversary of the effective date of that Price Review Arrangement (**Period 2**); and
 - (C) the period between the start of Period 1 and the SAU Expiry Date (**Period 3**):

$$PV(\text{Net Revenue}_p^{F,S}) = \sum_{t=1}^{T_p} \frac{(\text{Annual Forecast Revenue}_t^S - \text{ABRR}_t^{F,S})}{\prod_{1}^t (1 + \text{WACC}_{\text{nominal vanilla},t}^F)}$$

Where:

$PV(\text{Net Revenue}_p^{F,S})$ is the present value of forecast Net Revenue for period P (being either Period 1, Period 2, or Period 3) in scenario S (being either the scenario with the Price Review Arrangement or without the Price Review Arrangement);

T_p is the number of Financial Years covered by period P, counting from the start of the Financial Year in which the Price Review Arrangement takes effect, such that T is an integer number of Financial Years;

$\text{Annual Forecast Revenue}_t^S$ is Annual Forecast Revenue, defined in accordance with Schedule 2E, under scenario S in Financial Year t and when t=1 the value of Annual Forecast Revenue will cover the whole Financial Year;

$ABBRR_t^{F,S}$ is the forecast ABBRR, defined in accordance with Schedule 2E, under scenario S in Financial Year t and when t=1 the value of forecast ABBRR will cover the whole Financial Year; and

$WACC_{nominal\ vanilla,t}^F$ is the estimated nominal vanilla WACC for Financial Year t, defined in accordance with Schedule 2E.

- (iii) the ACCC is satisfied that, as at the effective date of the Price Review Arrangement, the degree of variability or risk associated with the forecast of NBN Co's net Revenue (as described in paragraph (ii) above) will be the same or lower under the Maximum Regulated Prices for the Reviewable Offers under the Pricing Review Arrangement than under the Maximum Regulated Prices for the Reviewable Offers that would otherwise apply in respect of each of the following time periods:
- (A) Period 1;
 - (B) if Period 1 is less than 5 years, then Period 2; and
 - (C) Period 3;
- (iv) the ACCC is satisfied that:
- (A) the Price Review Proposal, Varied Price Review Proposal or ACCC Determined Price Review Arrangement (as the case may be) does not increase the Maximum Regulated Price that would otherwise apply in respect of any Basic Access Offer for the duration of the Price Review Arrangement; and
 - (B) the Price Review Proposal is based on forecasts and estimates that are consistent with those used in respect of the current Regulatory Cycle under Schedule 2E.
- (v) the ACCC has:
- (A) published the Price Review Proposal, a Varied Price Review Proposal and any proposed ACCC Determined Price Review Arrangement (as the case may be) and invited people to make submissions to the ACCC on each of these documents (as the case may be); and

- (B) considered any submissions that were received within the time limit specified by the ACCC when it published the relevant document and any associated documentation.
- (b) Notwithstanding clause 2D.3(a), the ACCC must not:
 - (i) reject the Price Review Proposal or Varied Price Review Proposal (as the case may be) for a reason that concerns the price-related terms and conditions in the Price Review Proposal that are reasonably necessary to achieve uniform national pricing of Eligible Services supplied by NBN Co to Service Providers and utilities; or
 - (ii) determine an ACCC Determined Price Review Arrangement that would have the effect of preventing NBN Co from engaging in conduct that is reasonably necessary to achieve uniform national pricing of Eligible Services supplied by NBN Co to Service Providers and utilities.

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4 Disallowance Power in regard to New Price for Zero-Priced Reference Offer or Zero-Priced Other Charge associated with the supply of a Reference Offer

Notes:

- Please refer to section 5.2.3.2 of NBN Co's Submission.
- The drafting that follows is in the context of Schedule 1C, but drafting consistent with this is proposed for inclusion in Schedules 1D and 2C.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

Schedule 1C Reference Offers

1C.4 Individual Price Increase Limit from 1 July 2017 until the end of the Initial Regulatory Period

1C.4.1 Individual Price Increase Limit for Reference Offers

(a) Subject to clause 1C.4.3, from 1 July 2017 until the end of the Initial Regulatory Period, NBN Co will ensure that the Price for each Reference Offer specified in any SFAA is not higher than the Maximum Regulated Price of that Reference Offer, as calculated each Financial Year by reference to the Individual Price Increase Limit for that Reference Offer and any relevant increase under clause 1C.5.

(b) The Individual Price Increase Limit of a Reference Offer in year t is the greater of:

(i) \$0; and

(ii) $Price_{t-1} * [(1 + CPI_{t-1}^{March}) * (1 - 1.5\%) - 1]$,

where:

(iii) $Price_{t-1}$ is the average Price specified in any SFAA for the Reference Offer over the immediately preceding Financial Year, calculated as the arithmetic average Price specified in such SFAA on the last day of each month of that Financial Year (in this clause 1C.4.1, **Previous Year's Price**);

(iv) 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;

(v) the Individual Price Increase Limit is rounded to the nearest whole cent; and

(vi) for clarity, the Individual Price Increase Limit will always be a positive or zero value.

(c) From 1 July 2017 until the end of the Initial Regulatory Period, NBN Co will determine the Maximum Regulated Price that NBN Co may charge for a Reference Offer in a Financial Year as the greater of:

(i) the sum of its Previous Year's Price, its Individual Price Increase Limit for that Financial Year and any relevant increase under clause 1C.5; and

- (ii) the sum of the Price in any SFAA on the last day of the previous Financial Year and any relevant increase under clause 1C.5.

1C.4.2 CVC credit and pricing intent

- (a) From the SAU Commencement Date until the earlier of the end of the Initial Regulatory Period or such time as the number of Premises that are NBN Serviceable in a CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), NBN Co will credit each ~~Access Seeker~~ Customer, in respect of that CSA, with an amount equal to the greater of:
 - (i) the charges that would otherwise apply to the supply of a 50 kbps CVC (TC-4) in respect of every BAO, EAO and Asymmetric AVC Offer supplied to that ~~Customer~~ Access Seeker in that CSA as at the start of the relevant billing period; and
 - (ii) the charges that would otherwise apply to the amount of the CVC (TC-4) capacity supplied to that ~~Customer~~ Access Seeker in that CSA during that billing period up to a maximum of 150 Mbps of CVC (TC-4) capacity.
- (b) After such time as the number of Premises that are NBN Serviceable in the CSA exceeds 30,000 (excluding Premises served by means of the NBN Co Satellite Network), and until the end of the Initial Regulatory Period, NBN Co will credit each ~~Customer~~ Access Seeker in respect of each CSA, with an amount equal to the charges that would otherwise apply to the supply of a 50 kbps CVC (TC-4) in respect of every BAO, EAO and Asymmetric AVC Offer supplied to that ~~Customer~~ Access Seeker in that CSA as at the start of the relevant billing period.
- (c) In respect of the credit amount that applies to all of the CVCs for a CSA which are provided by NBN Co to a ~~Customer~~ Access Seeker pursuant to clause 1C.4.2(a) or 1C.4.2(b), the credit amount will be capped at, and will not exceed, the total recurring charges that apply in respect of all CVCs for that CSA which are provided by NBN Co to that ~~Customer~~ Access Seeker.
- (d) Once clause 1C.4.2(a) ceases to apply in respect of all CSAs, NBN Co will annually review the Maximum Regulated Price of the Connectivity Virtual Circuit Offer (TC-4) with a view to reduce the Price as aggregate demand for that Reference Offer increases. In its review, NBN Co will consider the level of aggregate demand for CVC (TC-4) capacity and the information in the most recently published NBN Co Corporate Plan.

1C.4.3 Exceptions to Individual Price Increase Limit

Clauses 1C.1.4, 1C.1.5, 1C.1.3 and 1C.4.1 do not apply to:

- (a) the introduction of a ~~charge applicable~~ new Price to a Zero-Priced Reference Offer in accordance with clause 1C.4.5(b); or
- (b) any notional change in Price of a Reference Offer or the reduction, removal or cessation of the application of a Discount applicable to that Reference Offer. In other words, in determining the Price of a Reference Offer for the purpose of applying the Individual Price Increase Limit, regard must be had to the Price excluding any Discount applicable to that Reference Offer.

1C.4.4 Non-circumvention

For the purpose of ensuring that the Individual Price Increase Limit is not subject to circumvention through the arbitrary reduction, removal or cessation of a Discount that may apply to the Price of a Reference Offer:

- (a) any reduction, removal or cessation of a Discount applicable to a Reference Offer may only occur in accordance with the terms for the reduction, removal or cessation of that Discount specified at the time of initial introduction; and
- (b) at the time of initial introduction of a Discount, NBN Co must specify in the relevant SFAA details of the length of, and any conditions associated with, the relevant Discount.

1C.4.5 Treatment of Zero-Priced Reference Offers

- (a) If a Reference Offer is Zero-Priced, then that Price will remain Zero-Priced, unless ~~NBN Co reasonably considers that~~:
 - (i) ~~Customer~~ Access Seeker behaviour in relation to the use of the Reference Offer results in additional costs to NBN Co;
 - (ii) ~~Customer~~ Access Seeker behaviour in relation to the use of the Reference Offer results in degraded service outcomes for other ~~Customers~~ Access Seekers; or
 - (iii) any other circumstance arises which makes it uneconomic for NBN Co to maintain the relevant Price.

NBN Co is not restricted from introducing a non-Price term or condition under clause 1D.6 in respect of a Reference Offer to address the matters referred to in clauses 1C.4.5(a)(i) to 1C.4.5(a)(iii).

- (b) If NBN Co proposes to introduces a new Price in accordance with clause 1C.4.5(a), NBN Co will provide no less than 36 months' notice to Access Seekers and the ACCC of its intention to introduce the new Price, including the reasons why NBN Co considers that the proposed introduction of a new Price is consistent with any of the criteria under clause 1C.4.5(a).
- (c) The ACCC must make a determination (if any) to disallow the introduction of the new Price (**New Price Disallowance Determination**) no later than 20 Business Days prior to the expiry of the notice period under clause 1C.4.5(b).
- (d) The ACCC may invite people to make submissions on NBN Co's proposal to introduce the new Price in relation to a Zero-Priced Reference Offer and must consider any submissions that are received within the time limit specified by the ACCC.
- (e) The ACCC may request that NBN Co give further information on NBN Co's proposal to introduce the new Price in relation to a Zero-Priced Reference Offer, in which case the timeframe for making a New Price Disallowance Determination will be extended for the period of time it takes for NBN Co to provide the requested information.
- (f) The ACCC may only issue a New Price Disallowance Determination if it is satisfied that the introduction of the new Price for the Zero-Priced Reference Offer is not consistent with any of the criteria in clause 1C.4.5(a).
- (g) The ACCC must publish the reasons for issuing a New Price Disallowance Determination on its website.
- (h) The ACCC must specify in the New Price Disallowance Determination the length of time that the disallowance will apply, which must not exceed a maximum of 2 years from the expiry of the notice period under clause 1C.4.5(b).
- (A) at the end of the notification period in clause 1C.4.5(b)(i), the new Price will become the Price, unless the ACCC makes an Access Determination or Binding Rule of Conduct (or, in the case of the Facilities Access Service Offer, a decision using the same process as described in clause 1B.2.3 specifying the Price) during the 3 month notification period that relates to the new Price notified under clause 1C.4.5(b)(i), in which case the Price will be the price as determined in the Access Determination or Binding Rule of Conduct (or, in the case of the Facilities Access

~~Service Offer, as specified in the decision under clause 1B.2.3); and~~

(i) If the ACCC:

(i) does not make a New Price Disallowance Determination within the required time under clause 1C.4.5(c), the new Price proposed by NBN Co under clause 1C.4.5(b) ~~determined in accordance with clause 1C.4.5(b)(ii)~~ will be the Maximum Regulated Price applicable to that Reference Offer for the Financial Year in which it ~~was is~~ introduced; or

(ii) makes a New Price Disallowance Determination within the required time under clause 1C.4.5(c), that new Price is disallowed by the ACCC and the Reference Offer will remain Zero-Priced for the length of time specified in the New Price Disallowance Determination.

(j) Nothing in this clause 1C.4.5 prevents NBN Co from issuing a subsequent notice under clause 1C.4.5(b) to introduce the new Price in relation to a Zero-Priced Reference Offer at any time following the expiry of the disallowance in a New Price Disallowance Determination.

(k) NBN Co must not introduce a New Other Charge under clause 1D.6 in respect of a Reference Offer if NBN Co's principal purpose in doing so is to circumvent or avoid the operation of the Individual Price Increase Limit for that Reference Offer.

1C.4.6 Treatment of Bundles

If:

(a) a Reference Offer comprises a bundle of one or more Product Components, Product Features, Ancillary Services or types of Facilities Access Service (in this clause 1C.4.6, together a **Bundle**); and

(b) NBN Co offers that Bundle for a single Price,

then that Bundle will be subject to the Individual Price Increase Limit as though it were an individual item.

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5 Ex-post compliance approach – Module 1

Notes:

- Please refer to section 5.3.2.1 of NBN Co's Submission.
- The drafting that follows covers all of Schedule 1E, 1F and 1G.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

Schedule 1E Regulatory Asset Base

1E.1 General

1E.1.1 Scope

This Schedule 1E applies for the Initial Regulatory Period.

1E.1.2 Overview

- (a) Clause 1E.2 sets out how ~~NBN Co~~ the ACCC will calculate the Regulatory Asset Base (or RAB) for the Relevant Assets. The RAB is the regulatory value of Prudently incurred capital investments made from the Cost Commencement Date.
- (b) Clause 1E.3.1 sets out the conditions on which the ACCC will ~~that NBN Co is only permitted to~~ recognise Capital Expenditure in the RAB that has been Prudently incurred or is deemed to have been Prudently incurred.
- (c) Clauses 1E.3.2 to 1E.11 set out the circumstances in which Capital Expenditure will be considered to be Prudently incurred.
- (d) Clause 1E.12 sets out the process and circumstances in which the ACCC may exclude Capital Expenditure from the RAB on an ex-post basis to the extent that such Capital Expenditure has not been Prudently incurred.

1E.2 Calculation of the Regulatory Asset Base

1E.2.1 Calculation of Real 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 ($t+1$).

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

$Real\ RAB_t^{start}$ 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, calculated using the following formula. This Capital Expenditure excludes any capital contributions of network assets.

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

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. The conversion of real values from nominal values will be calculated in accordance with clause 1F.9.4.

$WACC_{vanilla,t}^{nominal}$ is the nominal vanilla WACC in Financial Year t , calculated in accordance with clause 1F.7.1(a).

$Real\ Disposals_t$ 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, calculated using the following formula:

$$Real\ Disposals_t = Real\ Value\ of\ Asset\ Disposals_t * (1 + WACC_{vanilla,t}^{nominal})^{0.5}$$

where:

$Real\ Value\ of\ Asset\ Disposals_t$ is the real value of the Relevant Assets that were actually disposed of during Financial Year t . The conversion of real values from nominal values will be calculated in accordance with clause 1F.9.4.

$WACC_{vanilla,t}^{nominal}$ is the nominal vanilla WACC in Financial Year t , calculated in accordance with clause 1F.7.1(a).

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 1F.9.1.

1E.2.2 Calculation of Nominal RAB

The Nominal RAB will be:

$$\text{Nominal RAB}_t^{\text{end}} = \text{CIF}_t * \text{Real RAB}_t^{\text{end}}$$

and:

$$\begin{aligned} \text{Nominal RAB}_t^{\text{start}} &= \text{Nominal RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real RAB}_{t-1}^{\text{end}} \\ &= \text{CIF}_{t-1} * \text{Real RAB}_t^{\text{start}} \end{aligned}$$

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 1F.9.4(b).

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*).

1E.2.3 Inclusion of initial Capital Expenditure

~~NBN Co~~The ACCC will, pursuant to clause 1E.3.2(h), include all Capital Expenditure incurred from the Cost Commencement Date until the SAU Commencement Date within ~~NBN Co's~~the RAB as described in this Schedule 1E.

1E.2.4 Treatment of Construction in Progress

- (a) NBN Co will separately account for ~~Prudently incurred~~Capital Expenditure that has not been Placed in Service (**Construction in Progress** or **CIP**). CIP will be consistent with the values in NBN Co's audited accounts and will not include any allowance for interest during construction.
- (b) An Annual Construction in Progress Allowance (**ACIPA**) will be calculated each year by the ACCC in accordance with clause 1F.10 and, to the extent that CIP provided it has been Prudently incurred, as

determined by the ACCC under 1E.2.4(c), included by the ACCC in the calculation of the Annual Building Block Revenue Requirement as described in clause 1F.4.

(c) Construction in Progress will be considered to be Prudently incurred to the extent that the ACCC is satisfied that the Capital Expenditure incurred in connection with the Relevant Asset not yet Placed In Service meets the requirements of clauses 1E.3 to 1E.11 (with all references to Capital Expenditure in those clauses considered to be references to Capital Expenditure in connection with the Relevant Asset not yet Placed in Service).

1E.2.5 Provision of Forecast Capital Expenditure

Prior to the commencement of each Financial Year of the Initial Regulatory Period, NBN Co will provide to the ACCC, forecasts in respect of Capital Expenditure in accordance with clause 1G.1.2.

1E.3 Prudently incurred Capital Expenditure

1E.3.1 Pre-condition to the inclusion of Capital Expenditure in the RAB

For the purposes of calculating the RAB for the Relevant Assets pursuant to clause 1E.2.1, Capital Expenditure will ~~only~~ be included by the ACCC in the RAB to the extent that ~~the Capital Expenditure:~~

- (a) ~~has been Prudently incurred in accordance~~ the Capital Expenditure is consistent with:
- (i) the Prudent Cost Condition (in accordance with clause 1E.4);
and
 - (ii) the Prudent Design Condition (in accordance with clause 1E.5);
~~or~~
- subject to any Prudent Capex Disallowance made by the ACCC under clause 1E.12;
- (b) is deemed to have been Prudently incurred in accordance with clause 1E.3.2; ~~or~~
- (c) where the Capital Expenditure does not fall within the scope of clause 1E.3.1(a) or 1E.3.1(b), the ACCC is satisfied that the Capital Expenditure is incurred in a manner that is consistent with:
- (i) the efficient costs of achieving the Capital Expenditure Objectives;

(ii) the costs that a prudent operator would require to achieve the Capital Expenditures Objectives; and

(iii) a realistic expectation of the demand forecast and cost inputs required to achieve the Capital Expenditure Objectives.

1E.3.2 Capital Expenditure deemed to have been Prudently incurred

Capital Expenditure incurred in connection with the following matters will be deemed to be Prudently incurred:

- (a) the interim solution for the NBN Co Satellite Network;
- (b) the Interim Transit Arrangements;
- (c) the Telstra Arrangements;
- (d) the Optus Arrangements;
- (e) the Tasmania Tri-Area Service Arrangements;
- (f) the First Release Trial Sites;
- (g) Third Party Funded Network Changes; and
- (h) Capital Expenditure incurred by NBN Co from the Cost Commencement Date until the SAU Commencement Date.

1E.4 Prudent Cost Condition for Capital Expenditure

1E.4.1 Satisfaction of Prudent Cost Condition for the Relevant Assets

NBN Co satisfies the Prudent Cost Condition in accordance with clause 1E.3.1(a)(i) to the extent that the ACCC is satisfied that Capital Expenditure is incurred by NBN Co:

- (a) in accordance with the Procurement Rules; or
- (b) in connection with the design, engineering and construction of the Relevant Assets pursuant to a contract agreed with a third party in accordance with a competitive tendering and procurement process which includes a process for the management of such 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) pursuant to arrangements which are on arm's length terms; or
- (d) in respect of a good or service in an open and competitive market (e.g. a commodity market); or
- (e) ~~in order~~ to comply with a legal, policy, regulatory or administrative requirement, or a requirement of the Shareholder Ministers; or
- (f) 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; or
 - (ii) such Capital Expenditure is incurred on exceptionally advantageous terms; or
 - (iii) such Capital 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 with that particular supplier or in those particular circumstances having regard to the lifetime cost of acquisition and operation of the assets involved.

1E.4.2 Procurement Rules

NBN Co will develop and maintain procurement rules that contain a competitive tendering and procurement process which satisfies the following conditions:

- (a) 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 anti-competitive conduct among tender participants in contravention of the CCA;
- (b) there must be a clear process for:
 - (i) the calling and conduct of tenders and the involvement of tender participants; and

- (ii) the assessment and awarding of tenders to successful participants,

which meets reasonable requirements of procedural fairness, probity, fair dealing and good industry practice;

- (c) any decision to approve a tender that is not the lowest price tender must be appropriately justified and documented;
- (d) the basis for undertaking the works and services must be in accordance with good industry practice and the basis of payment for works and services must be clearly specified; and
- (e) 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,

(the **Procurement Rules**).

1E.4.3 Provision of the Procurement Rules

NBN Co will provide the ACCC with a copy of the Procurement Rules within 30 days after the SAU Commencement Date and otherwise within 30 days after NBN Co makes any material amendments to the Procurement Rules.

1E.5 Prudent Design Condition for Capital Expenditure

NBN Co will satisfy the Prudent Design Condition in accordance with clause 1E.3.1(a)(ii) to the extent that the ACCC is satisfied that Capital Expenditure incurred by NBN Co is materially consistent with or within the scope of:

- (a) the Network Design Rules, in accordance with clause 1E.6.1 and 1E.6.4;
- (b) a Permitted Variation, as described in clause 1E.6.2; or
- (c) an Endorsed Network Change, in accordance with the process described in clauses 1E.7 to 1E.11.

1E.6 Network Design Rules and Permitted Variations

1E.6.1 Scope of Network Design Rules

Subject to clause 1E.6.4, NBN Co will ensure that, on and from the SAU Commencement Date, the Network Design Rules for the Relevant Assets satisfy the following design scope:

- (a) in respect of the NBN Co Fibre Network:

- (i) the NBN Co Fibre Network is to have a network footprint that is consistent with the coverage obligations set out in the Statement of Expectations as at 17 December 2010;
 - (ii) the NBN Co Fibre Network is to be primarily designed and built using GPON architecture;
 - (iii) the NBN Co Fibre Network is to be capable of delivering the speed requirements specified in the Statement of Expectations; and
 - (iv) NBN Co is to comply with the Statement of Expectations and 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;
- (b) in respect of the NBN Co Wireless Network and the NBN Co Satellite Network:
- (i) the NBN Co Wireless Network and the NBN Co Satellite Network are to have a total network footprint that is consistent with the coverage obligations set out in the Statement of Expectations as at 17 December 2010;
 - (ii) the NBN Co Wireless Network is to be capable of delivering the speed requirements specified in the Statement of Expectations and by the Australian Government;
 - (iii) the NBN Co Satellite Network is to be capable of delivering the speed requirements specified in the Statement of Expectations and by the Australian Government, including an interim satellite solution with a 6 Mbps PIR downlink Data Transfer Rate; and
- (c) in respect of the NBN Co Networks and the Relevant Assets generally:
- (i) the Relevant Assets are to have a network availability that meets any applicable law;
 - (ii) the initial location of POIs within the NBN Co Network will be those identified in the POI List as at the SAU Commencement Date;
 - (iii) NBN Co is to use existing infrastructure for the NBN Co Network where it is economically and technically feasible to do so;

- (iv) there is to be a path for technology upgrade of the Relevant Assets, to the extent possible; and
- (v) other matters set out in the Statement of Expectations are to be addressed to the extent applicable.

1E.6.2 Permitted Variations from Network Design Rules

- (a) NBN Co may vary, change, augment or enhance the design, engineering or construction of the Relevant Assets from that specified in the Network Design Rules where such variation, change, augmentation or enhancement:
 - (i) is contemplated by, or made pursuant to, the Network Design Rules; or
 - (ii) improves the performance or functionality of the Relevant Assets and results in the same or lower Total Cost of Ownership; or
 - (iii) achieves savings in the Total Cost of Ownership; or
 - (iv) is reasonably necessary to establish and maintain the quality, reliability and security of the Relevant Assets or the supply of the Product Components; or
 - (v) is required in connection with a Force Majeure Event; or
 - (vi) is required in order to comply with the Statement of Expectations, or a legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers; or
 - (vii) relates to the maintenance, replacement or re-routing 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
 - (viii) subject to clause 1E.6.3(a), is the subject of an assessment by NBN Co (made at the time NBN Co becomes aware of the need for such variation, change, augmentation or enhancement) that the estimated Capital Expenditure incurred in connection with the relevant variation, change, augmentation or enhancement is likely to be less than the Minor Expenditure Limit; or
 - (ix) is required to address an urgent and unforeseen network issue where it is necessary that the variation, change, augmentation

or enhancement is operational within 6 months of NBN Co becoming aware of urgent and unforeseen network issue and:

- (A) the event or circumstance causing the required variation, change, augmentation or enhancement was not reasonably foreseeable by, and was beyond the reasonable control of, NBN Co; and
- (B) a failure to implement the variation, change, augmentation 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, Product Features, Ancillary Services or the Facilities Access Service,

(each a **Permitted Variation**).

- (b) NBN Co must ensure that each Permitted Variation is designed, engineered and constructed with the objective of achieving the lowest Total Cost of Ownership.

1E.6.3 Minor Expenditure Limit and notification of urgent and unforeseen network issues

- (a) For the purposes of clause 1E.6.2(a)(viii):
 - (i) clause 1E.6.2(a)(viii) will be satisfied if the ACCC is satisfied that NBN Co makeshas made an assessment in accordance with the requirements set out in that clause irrespective of whether the Capital Expenditure actually incurred by NBN Co in connection with the implementation of the relevant variation, change or enhancement actually exceeds the Minor Expenditure Limit; and
 - (ii) clause 1E.6.2(a)(viii) will not be satisfied to the extent that the ACCC is satisfied that NBN Co makeshas made an assessment by dividing an integrated solution into distinct and separate parts merely for the purpose of satisfying the requirements of clause 1E.6.2(a)(viii).
- (b) On 1 July each Financial Year during the Initial Regulatory Period, the Minor Expenditure Limit will automatically increase in accordance with the following formula:

$$New\ MEL = Old\ MEL * (1 + CPI_{t-1}^{March})$$

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 in the immediately preceding Financial Year.

CPI_{t-1}^{March} is the March Quarter CPI immediately prior to the 1 July in which the recalculation is to be performed.

- (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 pursuant to clause 1E.6.2(a)(ix), 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, augmentation or enhancement:
- (i) the date when the variation, change, augmentation or enhancement became or will become operational;
 - (ii) the purpose of the variation, change, augmentation or enhancement; and
 - (iii) the Capital Expenditure and Operating Expenditure associated with the variation, change, augmentation or enhancement.

1E.6.4 Updates to the Network Design Rules

- (a) NBN Co ~~may~~**must** update the Network Design Rules:
- (i) to reflect a variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets in connection with:
 - (A) a Permitted Variation;
 - (B) an Endorsed Network Change;
 - (C) any change to the Statement of Expectations; or
 - (D) any legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers, which has the effect of varying the design scope in clause 1E.6.1; or
 - (ii) in accordance with:
 - (A) the terms of any variation to this Special Access Undertaking made pursuant to clause 7.1 and accepted by the ACCC in accordance with section 152CBG of the CCA; or

- (B) any Access Determination or Binding Rule of Conduct made by the ACCC to the extent it is not inconsistent with the terms of this Special Access Undertaking and which otherwise complies with Part XIC of the CCA,

in which case, NBN Co will promptly provide a copy of the updated Network Design Rules to the ACCC. For the purposes of the remainder of this clause 1E.6.4, the date on which the updated Network Design Rules are provided to the ACCC is the **Revised NDR Date**.

- (b) For the purposes of clause 1E.5(a), the following approach may be applied by NBN Co (at its option or in combination):
 - (i) the Network Design Rules which applied prior to the Revised NDR Date may continue to apply in respect of Capital Expenditure incurred in connection with the design, engineering or construction of the Relevant Assets which is in progress as at the Revised NDR Date; and
 - (ii) subject to clause 1E.6.4(b)(i), the Network Design Rules which apply on and from the Revised NDR Date will apply in respect of any Capital Expenditure incurred after the Revised NDR Date in connection with the design, construction or engineering of the Relevant Assets after the Revised NDR Date.

1E.7 Network Changes: Selection and publication of Preferred Network Change Option

1E.7.1 Network Changes

- (a) NBN Co will ensure that any Network Change is made by NBN Co in accordance with clauses 1E.7 to 1E.11 (which set out the procedure for the identification, selection, consultation and endorsement of a Network Change).
- (b) For the purposes of this Schedule 1E, a **Network Change** means any variation, change, augmentation or enhancement to the design, engineering or construction of the Relevant Assets where Capital Expenditure incurred by NBN Co in connection with that variation, change, augmentation or enhancement is not:
 - (i) materially consistent with or within the scope of the Network Design Rules in accordance with clause 1E.5(a);
 - (ii) materially consistent with or within the scope of a Permitted Variation in accordance with clause 1E.5(b); or

- (iii) deemed to have been Prudently incurred in accordance with clause 1E.3.2.
- (c) Nothing in clauses 1E.7 to 1E.11 prevents NBN Co from:
 - (i) introducing, varying or enhancing Products, Product Components or Product Features that do not require a Network Change, or which fall within the scope of, are identified within, or are contemplated by, the Network Design Rules or a Permitted Variation; or
 - (ii) terminating the process specified in clauses 1E.7 to 1E.11 where NBN Co decides not to proceed with a Network Change (including where the product development process is terminated under Schedule 11 (Product Development and Withdrawal)).

1E.7.2 Procedure for selection and publication of the Preferred Network Change Option

If NBN Co wishes to make a Network Change, NBN Co will:

- (a) identify and assess options for the implementation of the Network Change in accordance with the criteria set out in clause 1E.11 (**Network Change Options**);
- (b) select the Preferred Network Change Option in accordance with clause 1E.7.3;
- (c) prepare and publish the NBN Prudency Implementation Paper in accordance with clause 1E.7.4; and
- (d) seek to have the Preferred Network Change Option endorsed in accordance with clauses 1E.8 to 1E.11.

1E.7.3 Selection of Preferred Network Change Option

NBN Co will select the Network Change Option that NBN Co considers:

- (a) will maximise the Net Economic Benefit (compared to circumstances where no Network Change Option is implemented); or
- (b) if the Preferred Network Change Option is not the Network Change Option that maximises the Net Economic Benefit, is reasonable in the circumstances,

having regard to the interests of NBN Co, any Related Body Corporate of NBN Co, Access Seekers and End Users that acquire Carriage Services and Content

Services supplied by means of the NBN Co Network (**Preferred Network Change Option**).

1E.7.4 Preparation and publication of NBN Prudency Implementation Paper

On completion of its selection of the Preferred Network Change Option, NBN Co will prepare a written report (**NBN Prudency Implementation Paper**) that provides a summary of:

- (a) the Network Change Options;
- (b) the Market Benefits associated with each Network Change Option;
- (c) the Network Change Costs associated with each Network Change Option, described as an estimated range of amounts, if appropriate;
- (d) NBN Co's Preferred Network Change Option, including if, and the extent to which, NBN Co's Preferred Network Change Option will maximise the Net Economic Benefit;
- (e) any changes required to the Network Design Rules if the Preferred Network Change Option was implemented; and
- (f) to the extent the Preferred Network Change Option is not the Network Change Option that maximises the Net Economic Benefit:
 - (i) NBN Co's assessment of any material difference between the Net Economic Benefit in respect of the Preferred Network Change Option and the Network Change Option that would maximise the Net Economic Benefit; and
 - (ii) the reasons for the selection of the Preferred Network Change Option.

Once finalised, NBN Co will publish the NBN Prudency Implementation Paper on an area of NBN Co's Website accessible by ~~Customers that have become members of the PDF~~ PDF Participants and also provide the NBN Prudency Implementation Paper to the ACCC.

1E.8 Network Changes: Customer engagement and endorsement process

1E.8.1 Endorsement of the Preferred Network Change Option

- (a) Following publication of the NBN Prudency Implementation Paper, NBN Co will seek the endorsement of ~~Customersthe PDF~~ Participants in accordance with the customer engagement and endorsement process under this clause 1E.8.

- (b) While the customer engagement and endorsement process in this clause 1E.8 is distinct and separate from the product development process specified in Schedule 1I (Product Development and Withdrawal)}, the two processes may occur in parallel.

1E.8.2 Consultation with Product Development Forum members

- (a) Following publication of the NBN Prudency Implementation Paper, NBN Co will invite ~~Customer~~the PDF Participants to make submissions in relation to the NBN Prudency Implementation Paper in accordance with a published timetable which will provide a reasonable period of time for consultations, having regard to the nature of the proposed Network Change (**Consultation Period**).
- (b) NBN Co may consult with ~~Customer~~PDF Participants through workshops, formal written submissions and such other means as may be contemplated in the PDF Processes.

1E.8.3 Updating the NBN Prudency Implementation Paper

On or following the date of the expiry of the Consultation Period, NBN Co will:

- (a) make available on NBN Co's Website all ~~formal~~ written submissions made by ~~Customer~~the PDF Participants in response to the NBN Prudency Implementation Paper and also provide these written submissions to the ACCC, subject in both cases to any confidentiality restrictions;
- (b) publish an updated NBN Prudency Implementation Paper containing such amendments as NBN Co considers reasonable, taking reasonable account of the submissions and representations made by ~~Customer~~the PDF Participants in response to the NBN Prudency Implementation Paper; and
- (c) notify ~~Customer~~the PDF Participants of the period of time (which must be at least 20 Business Days from the date of publication of the updated NBN Prudency Implementation Paper) within which a Customer may notify NBN Co that it objects to the Preferred Network Change Option.

1E.9 Network Changes: Prudency Dispute resolution mechanism

1E.9.1 Notification by Customers of objection to Preferred Network Change Option

- (a) A Customer may only object to NBN Co's Preferred Network Change Option within the timeframe determined in accordance with clause 1E.8.3(c).
- (b) A Customer may object to NBN Co's Preferred Network Change Option in accordance with, and provided that it complies with, the following conditions:
- ~~(i)~~ ~~the Customer must have entered into an Access Agreement;~~
 - ~~(ii)~~(i) the Customer must have participated in consultations in relation to the Network Change in accordance with clause 1E.8.2;
 - ~~(iii)~~(ii) the Customer must, or is likely to, have a sufficient interest in the subject matter of the objection that is likely to be materially affected by the resolution of the matters that are the subject of the objection; and
 - ~~(iv)~~(iii) the Customer must have a reasonable basis for such an objection based on a material error by NBN Co in the application of the criteria in clause 1E.11 with regard to NBN Co's Preferred Network Change Option,
- (together, the **Prudency Dispute Conditions**).
- (c) If the Customer satisfies the Prudency Dispute Conditions and wishes to object, the Customer must provide written notification to NBN Co and other Customers of the objection within the period of time notified by NBN Co under clause ~~1E.8.3(c)~~1E.8.3(c) and set out detailed reasons for its objection, including a description of the manner(s) in which NBN Co has erred in the application of the criteria in clause 1E.11.

1E.9.2 Formation of a Prudency Dispute

- (a) If NBN Co wishes to proceed with the Preferred Network Change Option and NBN Co:
- (i) has received notification of objections from one or more Customers regarding the Preferred Network Change Option

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

- (A) notify the ACCC of the objections lodged by the Customer(s);
 - (B) provide to the ACCC copies of any documentation received from the Customer(s) in connection with the objection; and
 - (C) provide the ACCC with NBN Co's response to those objections; or
- (ii) has not received any notification of objections from Customers regarding the Preferred Network Change Option, then the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause 1E.10.1.
- (b) Within 5 Business Days after the date that the ACCC receives notification from NBN Co pursuant to clause 1E.9.2(a)(i)(A), the ACCC will determine, in respect of each Customer referred to in such notification, whether:
- (i) the Prudency Dispute Conditions have been satisfied by the Customer, in which case the subject matter of the objection(s) will be deemed to be in dispute (**Prudency Dispute**) and NBN Co, the Customer and the ACCC will proceed in accordance with the remainder of this clause 1E.9 and clause 1E.10; or
 - (ii) the Prudency Dispute Conditions have not been satisfied by the Customer, in which case, provided that no other Customer has satisfied the Prudency Dispute Conditions such that a Prudency Dispute has arisen pursuant to clause 1E.9.2(b)(i), the Preferred Network Change Option will be an Endorsed Network Change pursuant to clause 1E.10.1.

1E.9.3 Customer participation in, and scope of, the Prudency Dispute

- (a) Within 5 Business Days after the date that a Prudency Dispute has arisen pursuant to clause 1E.9.2(b)(i), the ACCC will invite, by way of notice on the ACCC website, other Customers to apply to join the Prudency Dispute (except for Customers that the ACCC has already determined have not satisfied the Prudency Dispute Conditions pursuant to clause 1E.9.2(b)(ii)).
- (b) Within 10 Business Days after the date on which the ACCC invites Customers to join the Prudency Dispute, the ACCC will:

- (i) make a decision to either accept or reject each application that the ACCC has received from a Customer to join the Prudency Dispute, by reference to whether the ACCC considers the Customer has satisfied the Prudency Dispute Conditions;
 - (ii) where the ACCC rejects a Customer's application, provide the Customer with reasons as to why the Customer's application was rejected; and
 - (iii) publish on the ACCC website the details of the Customers that it has determined may join the Prudency Dispute.
- (c) The scope of the Prudency Dispute will be determined by, and limited to, the specific issues in dispute between Customer(s) and NBN Co, as determined by reference to the objections submitted by Customer(s) who have joined the Prudency Dispute pursuant to clauses 1E.9.2(b) and 1E.9.3(b) (the **Prudency Dispute Participants**) and the relevant responses from NBN Co.
- (d) The ACCC may, by written notice to the relevant Prudency Dispute Participants and NBN Co:
- (i) join separate Prudency Disputes together so that they constitute a single Prudency Dispute; or
 - (ii) divide a single Prudency Dispute into multiple Prudency Disputes,
- for the purposes of the efficient administration and resolution of those Prudency Disputes.

1E.9.4 Submissions regarding Prudency Dispute

The ACCC will provide NBN Co and the Prudency Dispute Participants with the opportunity to make written submissions in respect of the Prudency Dispute, provided that any consultation period is between 30 Business Days and 40 Business Days from the date that a Prudency Dispute has arisen pursuant to clause 1E.9.2(b)(i).

1E.9.5 Decision making criteria for Prudency Dispute

- (a) The ACCC must make a decision accepting or rejecting the Preferred Network Change Option (and thereby resolving the Prudency Dispute) by reference to the criteria referred to in clauses 1E.9.5(b) and 1E.9.5(c) and must notify NBN Co and the Prudency Dispute Participants of such decision within 50 Business Days after the final date on which submissions are provided to the ACCC under clause 1E.9.4.

- (b) If NBN Co has selected the Preferred Network Change Option that maximises the Net Economic Benefit relative to other Network Change Options (in accordance with clause 1E.7.3(a)), the ACCC must accept the Preferred Network Change Option unless the ACCC reasonably considers that:
- (i) an alternative Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option; or
 - (ii) a network change option that has not been considered by NBN Co in the NBN Prudency Implementation Paper (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 the Preferred Network Change Option and otherwise satisfies the criteria in clause 1E.11,

in which case, the ACCC may reject the Preferred Network Change Option.

- (c) If NBN Co has selected the Preferred Network Change Option that does not maximise the Net Economic Benefit relative to other Network Change Options but is reasonable in the circumstances in accordance with clause 1E.7.3(b) or the ACCC reasonably considers that an alternative Network Change Option would maximise the Net Economic Benefit and that Net Economic Benefit materially exceeds the Net Economic Benefit of the Preferred Network Change Option (in accordance with clause 1E.9.5(b)(i)), the ACCC will consider whether to accept or reject the Preferred Network Change Option having regard to whether:
- (i) the ACCC considers the Preferred Network Change Option satisfies the criteria in clause 1E.11; or
 - (ii) there is a greater economic benefit associated with the Preferred Network Change Option compared with the situation where no network change is implemented; or
 - (iii) the design scope of the Preferred Network Change Option is not materially different from that which a prudent operator in NBN Co's position would consider to be reasonable.

1E.10 Endorsed Network Change

1E.10.1 Endorsement of the Preferred Network Change Option

- (a) The Preferred Network Change Option will be considered to be endorsed by the ~~PDF Participants Customers~~ and/or the ACCC (as applicable) (and will therefore satisfy the Prudent Design Condition for the purposes of a Network Change pursuant to clause 1E.5(c)) where:
- (i) a Prudency Dispute has arisen and the ACCC makes a decision accepting the Preferred Network Change Option in accordance with clause 1E.9.5; or
 - (ii) no Customer has satisfied the Prudency Dispute Conditions under clause 1E.9.2(b)(i) in respect of the Preferred Network Change Option,
- (each, an **Endorsed Network Change**).
- (b) NBN Co will, within 20 Business Days from the date of the Endorsed Network Change, publish the final NBN Prudency Implementation Paper in respect of that Endorsed Network Change on NBN Co's Website and notify Customers and the ACCC of such publication.

1E.10.2 No endorsement of the Preferred Network Change Option

If the ACCC rejects the Preferred Network Change Option under clause 1E.9.5, then the Preferred Network Change Option will not be considered to be endorsed by the ACCC (and will therefore not satisfy the Prudent Design Condition for the purposes of a Network Change pursuant to clause 1E.5(c)).

1E.10.3 Alternative options to resolve Prudency Dispute

- (a) NBN Co may, at its discretion and at any time after the formation and/or resolution of a Prudency Dispute, undertake one of the following options as an alternative to the Prudency Dispute in respect of the Preferred Network Change Option:
- (i) recommence the process under clause 1E.7.2 in respect of the Network Change or an amended version of the Network Change; or
 - (ii) not pursue the Network Change.
- (b) If NBN Co undertakes one of the options identified in clause 1E.10.3(a) as an alternative to a Prudency Dispute:
- (i) NBN Co will notify Customers and the ACCC of that fact; and

- (ii) the Prudency Dispute will be withdrawn and the ACCC will cease all activities in relation to such Prudency Dispute from the date that NBN Co gives such notice.

1E.11 Identification and assessment of Network Change Options

1E.11.1 Criteria for Network Change Options

- (a) Each Network Change Option must, in NBN Co's opinion:
 - (i) address the Identified Need;
 - (ii) be economically and technically feasible;
 - (iii) be implemented in sufficient time to meet the timelines identified by the PDF (if any) for the expected delivery of, and roadmap for, the new or varied Product, Product Component or Product Feature;
 - (iv) be 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) the long term planning of the NBN Co Network, including the network upgrade pathway;
 - (D) the availability of infrastructure, capital (including both equity and debt) and scarce resources;
 - (E) investment practices of owners and operators of networks with similar characteristics to the NBN Co Network in international markets;
 - (F) the operational and technical complexity of each Network Change Option;
 - (G) operational and technical quality issues associated with each Network Change Option;
 - (H) the likely effect on demand of existing Products, Product Components or Product Features or the new or varied Products, Product Components or Product Features;

- (I) resource and security requirements;
 - (J) the legal, policy, regulatory or administrative requirements applicable to NBN Co, including NBN Co's Non-Discrimination Obligations; and
 - (K) any other factor that NBN Co reasonably considers should be taken into account.
- (b) When assessing a Network Change Option, NBN Co must:
- (i) consider and identify market benefits that could be delivered by each Network Change Option in respect of the Identified Need, including:
 - (A) the likely effect on demand and Prices for existing Products, Product Components or Product Features and/or new or varied Products, Product Components or Product Features;
 - (B) the likely effect on the performance, functionality or features of existing Products, Product Components or Product Features and/or new or varied Products, Product Components or Product Features;
 - (C) cost effects, including:
 - changes in costs for Access Seekers and End Users;
 - changes in Capital Expenditure and/or Operating Expenditure; and
 - cost savings due to differences in the timing of investment;
 - (D) the promotion of competition in relevant markets; and
 - (E) any other value gained or foregone from implementing the Network Change Option with respect to the likely future investment needs of Access Seekers (where this value has not already been included in the other classes of market benefits)

(each a **Market Benefit**); and
 - (ii) consider and quantify, to the extent possible, the classes of Market Benefits, 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 Market Benefits is likely to be disproportionate to the scale, size and potential benefits of each Network Change Option identified by NBN Co; and
- (iii) consider and estimate the following classes of costs associated with each Network Change Option:
- (A) Capital Expenditure;
 - (B) Operating Expenditure; and
 - (C) cost of complying with legal, policy, regulatory or administrative requirements,
- (each a **Network Change Cost**) 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.
- (c) When making an assessment under clause 1E.11.1(b), NBN Co must ensure that it:
- (i) does not include any cost or benefit that cannot be considered to be measured as a Network Change Cost or Market Benefit to NBN Co or 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 Network Change 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 Network Change Costs taken into account by NBN Co;
- (v) includes an assessment of reasonable scenarios of future supply and demand if each Network Change Option were implemented compared to the situation where no option is implemented; and
- (vi) does not, in calculating the Market Benefits associated with each Network Change Option:
 - (A) include the classes of Network Change Costs in clause 1E.11.1(b)(iii); or
 - (B) include the benefits arising from the promotion of competition in relevant markets or any additional value where they have already been accounted for as Market Benefits.

In performing its assessment of the Network Change Options under this clause 1E.11.1, 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.

1E.12 ACCC disallowance of Capital Expenditure not Prudently incurred

1E.12.1 ACCC may disallow Capital Expenditure on ex-post basis

- (a) As part of a LTRCM Determination under Schedule 1F, the ACCC may reduce the amount of Capital Expenditure that is included in the RAB in respect of the Financial Year covered by the LTRCM Determination (Prudency Capex Disallowance).
- (b) Subject to clause 1E.12.2 and 1E.12.3, the ACCC must only make a Prudency Capex Disallowance in respect of the Financial Year covered by a LTRCM Determination if the ACCC is satisfied that the Capital Expenditure is not incurred in a manner that is consistent with:
 - (i) the Prudent Cost Condition under clause 1E.4;
 - (ii) the Prudent Design Condition under clause 1E.5; or
 - (iii) where the Capital Expenditure does not fall within the scope of clause 1E.12.1(b)(i) or 1E.12.1(b)(ii):
 - (A) the efficient costs of achieving the Capital Expenditure Objectives;

(B) the costs that a prudent operator would require to achieve Capital Expenditures Objectives; or

(C) a realistic expectation of the demand forecast and cost inputs required to achieve the Capital Expenditure Objectives.

1E.12.2 ACCC to place itself in position of NBN Co in relation to Capital Expenditure decisions

In making a Prudency Capex Disallowance, the ACCC must only take into account information and analysis that NBN Co could reasonably be expected to have considered or undertaken at the time that NBN Co made the decision to incur the relevant Capital Expenditure.

1E.12.3 Treatment of Capital Expenditure deemed to have been Prudently incurred

The ACCC must not disallow any Capital Expenditure under this clause 1E.12 to the extent that such Capital Expenditure is of the type covered by clause 1E.3.2 (and is deemed to have been Prudently incurred in accordance with that clause).

Schedule 1F Long Term Revenue Constraint Methodology

1F.1 General

1F.1.1 Scope

This Schedule 1F applies for the Initial Regulatory Period.

1F.1.2 Overview

- (a) The ACCC will determine the ABBRR, ICRA and RAB, including the values of all relevant inputs to the ABBRR, ICRA and RAB, in accordance with Schedule 1E and this Schedule 1F, using the information supplied by NBN Co to the ACCC under Schedule 1G (LTRCM Determination).
- (b) The ACCC must issue an LTRCM Determination for each Financial Year no later than 12 months after the end of the Financial Year to which that LTRCM Determination relates.
- (c) In issuing an LTRCM Determination in respect of a Financial Year, the ACCC:
- (i) must consult with NBN Co if the ACCC intends, as part of an LTRCM Determination (including as part of a Prudency Capex Disallowance or Prudency Opex Disallowance), to determine any values that are different to the values submitted by NBN Co to the ACCC under Schedule 1G, and must consider any submissions that are received from NBN Co within the time limit specified by the ACCC;
 - (ii) may invite people to make submissions on the ACCC's determination of the ABBRR, ICRA and RAB, including the values of all relevant inputs to the ABBRR, ICRA and RAB, and must consider any submissions that are received within the time limit specified by the ACCC;
 - (iii) must publish the reasons for the LTRCM Determination on its website in the form of a draft determination and a final determination, subject to any confidentiality arrangements agreed between the ACCC and NBN Co, including:
 - (A) the values adopted by the ACCC for each of the input variables in any calculations and formulae;
 - (B) whether those values have been taken or derived from the information provided by NBN Co under Schedule 1G;

- (C) if not, the rationale for the adoption of those values;
- (D) the details of any assumptions made by the ACCC in undertaking any material qualitative or quantitative analysis for the purposes of the determination; and
- (E) the reasons for making any decisions, or withholding any approvals, and the exercise of any discretion, as referred to in Schedule 1E and this Schedule 1F, for the purposes of the determination.

1F.1.3 Amendment or revocation of LTRCM Determination for wrong information or error

- (a) The ACCC may amend or revoke an LTRCM Determination no later than 6 months after the date of such a determination if the ACCC considers that there is a material error or deficiency in the LTRCM Determination of one or more of the following kinds:
 - (i) a clerical error or an accidental omission;
 - (ii) a miscalculation or a misdescription;
 - (iii) a defect in form; or
 - (iv) a deficiency resulting from the provision of false or materially misleading information to the ACCC.
- (b) If the ACCC revokes an LTRCM Determination under clause 1F.1.3(a), the ACCC must make a new LTRCM Determination in substitution for the revoked LTRCM determination to apply for the remainder of the applicable Financial Year for which the revoked LTRCM Determination was to apply.
- (c) If the ACCC revokes and substitutes an LTRCM Determination under 1F.1.3(a) and 1F.1.3(b), the substituted LTRCM Determination must only vary from the revoked LTRCM Determination to the extent necessary to correct the relevant error or deficiency.
- (d) The ACCC may only revoke and substitute an LTRCM Determination under this clause 1F.1.3, if the ACCC has first consulted with NBN Co and such other persons as the ACCC considers appropriate.

1F.1.4 NBN Co will determine Prices ~~for~~

NBN Co will determine Prices for Reference Offers, Non-Reference Offers and Other Charges in respect of:

- (a) the Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service it supplies during the Initial Regulatory Period; and
- (b) any new Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service introduced under Schedule 1I (Product Development and Withdrawal)),

and ensure that those Prices ~~set out in, or introduced into, any SFAA~~ are consistent with:-

(c) Schedule 1C and Schedule 1D; and

(c)(d) this Schedule 1F Schedule 1F.

1F.2 Initial Cost Recovery Period

1F.2.1 Initial Cost Recovery Period

- (a) NBN Co's RAB will be determined by reference to Prudently incurred Capital Expenditure as set out in Schedule 1E (Regulatory Asset Base).
- (b) ~~NBN Co~~The ACCC will determine ~~its~~NBN Co's ABBRR by reference to:
 - (i) the RAB, which determines:
 - (A) a return on capital; and
 - (B) a return of capital;
 - (ii) Prudently incurred Operating Expenditure;
 - (iii) tax allowances; and
 - (iv) the ACIPA,in accordance with Schedule 1E (Regulatory Asset Base) and this Schedule 1F.
- (c) Any shortfall in NBN Co's Revenues relative to the ABBRR in any given Financial Year will be capitalised in an ICRA and subsequently recovered in later Financial Years of the Initial Cost Recovery Period in accordance with this Schedule 1F.

1F.2.2 Inclusion of Initial Operating Expenditure and Revenue

~~NBN Co~~The ACCC will include:

- (a) pursuant to clause 1F.8.2(k), all Operating Expenditure incurred; and
- (b) Revenue earned,

by NBN Co from the Cost Commencement Date until the SAU Commencement Date within NBN Co's ABBRR and ICRA as described in this Schedule 1F.

1F.2.3 Transition from Initial Cost Recovery Period to Building Block Revenue Period when the ICRA is extinguished

- (a) If the Methodology Change Event occurs during the Initial Regulatory Period:
 - (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 last Financial Year of the Initial Cost Recovery Period, any Revenues earned in excess of that required to recover the ICRA will be deducted from Revenues able to be earned in the first Financial Year of the Building Block Revenue Period.

1F.2.4 Methodology during Building Block Revenue Period

If the Methodology Change Event occurs during the Initial Regulatory Period, then, in accordance with the transitional arrangements in clause 1F.2.3, NBN Co will, ~~in its discretion~~, determine Prices for all existing and new Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service it supplies, provided that it does so in a manner that is consistent with the requirements of the Building Block Revenue Period, namely:

- (a) NBN Co's RAB will be determined by reference to Prudently incurred Capital Expenditure;
- (b) NBN Co's Regulated Revenue will be set by reference to NBN Co's ABBRR attributable to that period in accordance with clause 1F.6.1;
- (c) NBN Co will price its Products, Product Components, Product Features, Ancillary Services and types of Facilities Access Service 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 1F.6.2; and
- (d) 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.

1F.2.5 Likely Methodology Change Event Notice

- (a) NBN Co will use reasonable endeavours to issue a Likely Methodology Change Event Notice to ~~Customers~~Access Seekers and the ACCC on or around 5 years prior to the date that NBN Co expects the Methodology Change Event will occur (irrespective of whether the date that NBN Co expects the Methodology Change Event to occur is in the Initial Regulatory Period).
- (b) NBN Co will issue an updated Likely Methodology Change Event Notice to ~~Customers~~Access Seekers and the ACCC each year following any previous Likely Methodology Change Event Notice until the Methodology Change Event has occurred.

1F.2.6 Pricing Intention Statement

- (a) NBN Co will use reasonable endeavours to issue a Pricing Intention Statement to ~~Customers~~Access Seekers and the ACCC on or around 3 years prior to the date that NBN Co expects the Methodology Change Event will occur (irrespective of whether the date that NBN Co expects the Methodology Change Event to occur is in the Initial Regulatory Period).
- (b) The Pricing Intention Statement will include the following:
 - (i) the forecast average Price change, averaged across all Reference Offers, Non-Reference Offers and Other Charges, in the Financial Year immediately following the Financial Year in which NBN Co expects the Methodology Change Event to occur;
 - (ii) NBN Co's estimate of how the forecast average Price change in clause 1F.2.6(b)(i) will impact on the individual Price of each Reference Offer, Non-Reference Offer and Other Charge;
 - (iii) any transitional arrangements that NBN Co intends to apply in relation to changes in individual Prices; and
 - (iv) a description, in qualitative terms, of how NBN Co has determined the estimated individual Prices and transitional arrangements.
- (c) NBN Co will issue an updated Pricing Intention Statement to ~~Customers~~Access Seekers and the ACCC each year following any previous Pricing Intention Statement until the Methodology Change Event has occurred.
- (d) NBN Co will publish each Pricing Intention Statement on NBN Co's Website for access by ~~Customers and~~ Access Seekers.

1F.3 Designation of Financial Years

The First Financial Year will be designated as year $t = 1$ in all calculations under this Schedule 1F. 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 2 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.

1F.4 Annual Building Block Revenue Requirement

1F.4.1 Calculation of ABBRR

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

where:

$WACC_{vanilla,t}^{nominal}$ is the nominal vanilla WACC in Financial Year t , calculated in accordance with clause 1F.7.1(a).

$Nominal RAB_t^{start}$ is the nominal value of the RAB 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 1F.9.1(c).

$Nominal Opex_t$ is the Operating Expenditure incurred on a Prudent basis in the relevant Financial Year t in accordance with clause 1F.8.

$Net Tax Allowance_t$ is the net regulatory tax required to be paid by NBN Co in the relevant Financial Year t , determined in accordance with clause 1F.9.3.

$Annual Construction in Progress Allowance_t$ is the ACIPA in the relevant Financial Year t , determined in accordance with clause 1F.10.

1F.5 Initial Cost Recovery Account

1F.5.1 Unrecovered Cost

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

$$Unrecovered Cost_t = ABRR_t - Nominal Revenue_t$$

where:

$ABRR_t$ is the nominal Annual Building Block Revenue Requirement calculated in accordance with clause 1F.4.

$Nominal Revenue_t$ is the Revenue earned 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 ABRR) or a negative value (when nominal Revenues exceed the ABRR).

1F.5.2 Initial Cost Recovery Account

During the Initial Cost Recovery Period, the ICRA is:

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

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

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 1F.5.1.

1F.5.3 Carry Forward Revenue Adjustment

- (a) At the end of the final Financial Year of the Initial Cost Recovery Period (t), the balance of the Unrecovered Cost that has not been applied to the ICRA in accordance with clause 1F.5.2 will be the Carry Forward Revenue Adjustment. That is:

$$Carry Forward Revenue Adjustment_t = Unrecovered Cost_t + ICRA_t^{start} * (1 + WACC_{vanilla,t}^{nominal})$$

- (b) 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 1F.6.1.

- (c) For clarity, the Carry Forward Revenue Adjustment will have a negative or zero value.

1F.6 Building Block Revenue Period

1F.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 ABBRR in the relevant Financial Year t , as determined in clause 1F.4.1.

RV_{t-1} is the Revenue Variation from the Financial Year prior to the preceding Financial Year ($t-1$), as determined in clause 1F.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 1F.5.3.

1F.6.2 Revenue Variation

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

$$Revenue\ Variation_t = RR_t - Nominal\ Revenue_t$$

where:

RR_t is the Regulated Revenue in Financial Year t .

$Nominal\ Revenue_t$ is the Revenue earned 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 $t+1$.

1F.7 Cost of Capital

1F.7.1 WACC Calculation

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

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

where:

r_f is the risk-free rate of interest determined each Financial Year in accordance with clause 1F.7.1(b).

- (b) The risk free rate of interest (**rf**) applied to a Financial Year will be calculated on a moving average basis from the mean annualised yield on Commonwealth Government Securities with a maturity of 10 years, averaged over the final 20 Business Days of the preceding Financial Year and using the indicative mid rates published by the Reserve Bank of Australia.
- (c) If there are no Commonwealth Government Securities with a maturity of 10 years on a day in the period referred to in clause 1F.7.1(b), the annualised yield to be used for that day will be calculated by interpolating on a straight line basis from the two Commonwealth Government Securities closest to the 10 year term and which also straddle the 10 year expiry date.
- (d) For each Financial Year t , the real vanilla WACC will be estimated using the following formula:

$$WACC_{vanilla,t}^{real} = \frac{(1 + WACC_{vanilla,t}^{nominal})}{(1 + CPI_t^{June})} - 1$$

where:

CPI_t^{June} means the June Quarter CPI for Financial Year t .

- (e) For any Financial Years preceding the First Financial Year, the same WACC approach set out in clause 1F.7.1(a) will apply, using the risk-free rate of interest relevant for those Financial Years determined in accordance with clause 1F.7.1(b). The real vanilla WACC will continue to be calculated in accordance with clause 1F.7.1(d).

1F.8 Operating Expenditure

1F.8.1 Prudently incurred Operating Expenditure

NBN Co will be considered to have incurred Operating Expenditure on a Prudent basis to the extent the ACCC is satisfied that:

- (a) the Operating Expenditure is deemed to have been Prudently incurred under clause 1F.8.2; or
- (b) the Operating Expenditure is Third Party Operating Expenditure and NBN Co satisfies is incurred in a manner that is consistent with the Prudent Cost Condition in clause 1E.4.1 (as though all references to Capital Expenditure were references to Operating Expenditure) in respect of that Third Party Operating Expenditure; or
- (c) NBN Co:
 - (i) ensures that the Operating Expenditure is incurred in a manner that seeks to achieve value for money and the lowest Total Cost of Ownership; and
 - (ii) manages and controls Operating Expenditure in a manner consistent with the Statement of Expectations, any other legal, policy, regulatory or administrative requirements, or any requirements of the Shareholder Ministers, applicable to procurement by NBN Co.

1F.8.2 Deemed categories of Prudently incurred Operating Expenditure

NBN Co will be deemed to have incurred Operating Expenditure on a Prudent basis in respect of 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 that satisfy the same conditions as under clause 1E.6.2(a)(ix);

- (i) a Force Majeure Event;
- (j) a requirement specifically imposed on NBN Co by law or by the Shareholder Ministers; and
- (k) Operating Expenditure incurred by NBN Co from the Cost Commencement Date until the SAU Commencement Date.

1F.8.3 ACCC disallowance of Operating Expenditure not Prudently incurred

- (a) As part of a LTRCM Determination under this Schedule 1F, the ACCC may reduce the amount of Operating Expenditure that is included in the ABBRR in a Financial Year in accordance with clause 1F.4 (Prudency Opex Disallowance).
- (b) Subject to clause 1F.8.4 and 1F.8.5, the ACCC must only make a Prudency Opex Disallowance as part of a LTRCM Determination if the ACCC is satisfied that NBN Co has not incurred the Operating Expenditure on a Prudent basis in accordance with clause 1F.8.1(b) or 1F.8.1(c) (as the case may be).

1F.8.4 ACCC to place itself in position of NBN Co in relation to Operating Expenditure decisions

In making a Prudency Opex Disallowance, the ACCC must only take into account information and analysis that NBN Co could reasonably be expected to have considered or undertaken at the time that NBN Co made the decision to incur the relevant Operating Expenditure.

1F.8.5 Treatment of Operating Expenditure deemed to have been Prudently incurred

The ACCC must not disallow any Operating Expenditure under this clause 1F.8.3 to the extent that the ACCC is satisfied that such Operating Expenditure is of a type covered by clause 1F.8.2 (and is deemed to have been Prudently incurred in accordance with that clause 1F.8.2).

1F.9 Treatment of Taxation and Depreciation

1F.9.1 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 value of each Asset Type incurred prior to the relevant Financial Year, using asset lifetimes for each Asset Type determined in a manner consistent with NBN Co's

audited accounts. That is, for each Asset Type, the annual Asset Real Straight Line Depreciation in Financial Year t is:

$$\begin{aligned} \text{Asset Real Straight Line Depreciation}_{i,t} \\ = \sum_{k=1}^{t-1} \text{Asset Vintage Real Straight Line Depreciation}_{i,k,t} \end{aligned}$$

where:

$$\text{Asset Vintage Real Straight Line Depreciation}_{i,k,t} =$$

if $L_{i,t}$ is undefined because the Asset Type is non-depreciable then 0; if $L_{i,t} = n/a$, then 0;

else if $L_{i,t} \geq t - k$, then

$$\frac{\text{Net real capex}_{i,k} - \sum_{l=1}^{t-1} \text{Asset Vintage Real Straight Line Depreciation}_{i,k,l}}{L_{i,t} + 1 - (t - k)}$$

else if $L_{i,t} < t - k$, then

$$\text{Net real capex}_{i,k} - \sum_{l=1}^{t-1} \text{Asset Vintage Real Straight Line Depreciation}_{i,k,l}$$

i is the Asset Type.

$L_{i,t}$ is the asset lifetime of the Asset Type in year t .

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

where:

Real Capital Expenditure _{i,k} is the real value of actual Capital Expenditure 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 Value of Disposals _{i,k} is the real value of Disposals of Asset Type i removed from service in Financial Year k .

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

where:

N is the number of Asset Types.

$\text{Asset Real Straight Line Depreciation}_{i,t}$ is the real value of the straight line depreciation of the Asset Type i in Financial Year t .

- (b) The Nominal Straight Line Depreciation is the nominal value of the Real Straight Line Depreciation calculated in accordance with clause 1F.9.1(a).

That is:

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

where:

CIF_t is the Cumulative Inflation Factor as defined in clause 1F.9.4(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:

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

1F.9.2 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 Capital Expenditure value of each Asset Type Placed in Service prior to the relevant Financial Year, using taxation asset lifetimes for each Asset Type determined in a manner consistent with the requirements of the Australian Taxation Office. The nominal Capital Expenditure value used is not adjusted to reflect the timing of actual Capital Expenditure. That is, for each Asset Type, the annual Asset Nominal Tax Depreciation in Financial Year t is:

$$\begin{aligned} \text{Asset Nominal Tax Depreciation}_{i,t} \\ = \sum_{k=1}^{t-1} \text{Asset Vintage Nominal Straight Line Tax Depreciation}_{i,k,t} \end{aligned}$$

where:

*Asset Vintage Nominal Straight Line Tax Depreciation*_{*i,k,t*} =

if $TL_{i,t}$ is undefined because the Asset Type is non-depreciable then 0; if $TL_{i,t} = n/a$ then 0;

else if $TL_{i,t} \geq t-k$, then

$$\frac{\text{Net Nominal Capex}_{i,k} - \sum_{l=1}^{t-1} \text{Asset Vintage Nominal Straight Line Tax Dep}}{TL_{i,t} + 1 - (t - k)}$$

else if $TL_{i,t} < t-k$, then

$$\text{Net nominal capex}_{i,k} - \sum_{l=1}^{t-1} \text{Asset Vintage Nominal Straight Line Tax Dep}$$

i is the Asset Type.

$TL_{i,t}$ is the taxation asset lifetime of the Asset Type *i* in year *t*.

*Net Nominal Capex*_{*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):

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

where:

*Nominal Capital Expenditure*_{*i,k*} is the nominal value of actual Capital Expenditure 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*_{*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 Expense 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.

1F.9.3 Taxation Calculations

For the purposes of calculating the allowance for taxation expenses in the calculation of ABBRR and Unrecovered Cost, ~~NBN Co~~ the ACCC 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 1F.9.5(b).

γ (gamma) is the value of the imputation credits that applies in Financial Year t , as determined in clause 1F.9.5(a).

Taxable Profit _{t} is the calculated profit which is subject to taxation calculated as follows, but subject, for the purposes of corporate taxation: (i) to the inclusion of any capital gains; (ii) the inclusion of any capital losses (but only to the extent that they are offset by any capital gains); (iii) the exclusion of any items to the extent that they are not deductible; and (iv) to the treatment of assets received by NBN Co for nil consideration:

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

where:

Nominal Revenue _{t} is the nominal Revenue in the relevant Financial Year t .

Nominal Opex _{t} is the nominal Operating Expenditure 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 1F.9.1.

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 1F.9.2.

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

1F.9.4 Real Values

- (a) During the Initial Regulatory Period, 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. Except where a specific means of conversion is set out for a particular value, this will be calculated as follows:

$$Real Value_t = \frac{(Nominal Value_t)}{CIF_t}$$

Likewise, in converting real values into nominal values, except where a specific means of conversion is set out for a particular value, the corresponding calculation is:

$$Nominal Value_t = Real Value_t * CIF_t$$

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.:

$$CIF_t = \left\{ \prod_{k=1}^t (1 + CPI_k^{June}) \right\} / (1 + CPI_1^{June})$$

where:

CPI_k^{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 1F, for Financial Years prior to the First Financial Year, the CIF_t is defined as:

$$CIF_t = (1 + CPI_1^{June}) / \left\{ \prod_{k=t}^1 (1 + CPI_k^{June}) \right\}$$

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 $t = -1$.

CPI_k^{June} means the June Quarter CPI for Financial Year (k).

1F.9.5 Tax parameters

For the purposes of this clause 1F.9:

- (a) impact of dividend imputation franking credits (“gamma”): ~~the gamma will be 0.25 throughout~~ will be updated 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 each Financial Year after the First Financial Year in the Initial Regulatory Period, under Part IIIA or Part XIC of the Competition and Consumer Act. As at the SAU Commencement Date, and until the end of the First Financial Year, the gamma will be 0.25; and
- (b) Corporate Tax Rate (τ): In the event of a change in the statutory corporate taxation rate, ~~there will be an immediate NBN Co will immediately~~ update of 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%.

1F.10 Annual Construction in Progress Allowance

1F.10.1 ACIPA calculation

- (a) An ACIPA will be calculated each year and included in the calculation of the Annual Building Block Revenue Requirement as described in clause 1F.4.
- (b) The ACIPA for year t is calculated as follows:

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

where:

CIP_t^{start} is the balance of CIP at the start of Financial Year t .

CIP_t^{end} is the balance of CIP at the end of Financial Year t .

$WACC_{vanilla,t}^{nominal}$ is the nominal vanilla WACC in Financial Year t , calculated in accordance with clause 1F.7.1(a).

Schedule 1G Regulatory information

1G.1 Compliance and forecasting during Initial Regulatory Period

1G.1.1 Scope

This Schedule 1G applies for the Initial Regulatory Period.

1G.1.2 Submission by NBN Co of ~~forecast information~~ Forecast Financial Information

No later than 30 June prior to the commencement of each Financial Year during the Initial Regulatory 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) Capital Expenditure, by Asset Type;
 - (b) Operating Expenditure;
 - (c) Disposals, by Asset Type;
 - (d) the opening value and the closing value of CIP;
- (Forecast Financial Information).

1G.1.3 Provision of Actual Financial Information and variance reasons to ACCC

By 31 October after the end of each Financial Year of the Initial Regulatory Period, NBN Co will provide to the ACCC a report setting out:

- (a) the actual financial information for the following matters in respect of that Financial Year (Actual Financial Information)
 - (i) June Quarter CPI;
 - (ii) Capital Expenditure, by Asset Type;
 - (iii) Revenue;
 - (iv) Operating Expenditure;
 - (v) Nominal Straight Line Depreciation;
 - (vi) Nominal Tax Depreciation Expense;
 - (vii) Disposals, by Asset Type;
 - (viii) opening and closing values of the RAB (nominal and real);

- (ix) opening and closing values of the ICRA (nominal and real);
- (x) Nominal Regulatory Depreciation;
- (xi) the opening and closing value of CIP;
- (xii) Annual Building Block Revenue Requirement;
- (xiii) Unrecovered Cost;

~~(b) — Regulated Revenue;~~

~~(i)(xiv) the Cumulative Inflation Factor;~~

~~(ii)(xv) the risk free rate to be used in the calculation of the nominal vanilla WACC under clause 1F.7.1(b);~~

~~(iii)(xvi) the nominal vanilla WACC to be calculated under clause 1F.7.1(a);~~

~~(iv)(xvii) the Interest Expense to be included under clause 1F.9.3;~~

~~(v)(xviii) the applicable corporate tax rate to be calculated in accordance with clause 1F.9.5(b); and~~

~~(vi)(xix) accounting and tax asset lifetimes in that Financial Year; and~~

~~(Forecast Information).~~

~~(c) — the actual cost information for the matters set out in clauses 1G.1.2(a) to 1G.1.2(t) in respect of that Financial Year (Actual Cost Information); and~~

~~(d)(b) information which sets out any material variance between the Forecast Financial Information and the Actual Cost Financial Information, including reasons for the variances.~~

1G.1.4 Provision of additional information during Building Block Revenue Period

During the Building Block Revenue Period, NBN Co will submit to the ACCC:

- (a) in the first Financial Year of the Building Block Revenue Period, the Carry Forward Revenue Adjustment from the last year of the Initial Cost Recovery Period; and
- (b) by 31 October after the end of each Financial Year of the Building Block Revenue Period, the following additional information in respect of that Financial Year:
 - (i) the Regulated Revenue; and

- (ii) the Revenue Variation.

1G.1.5 ACCC Enhanced Information Request

At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to ~~assess NBN Co's compliance~~determine the ABBRR, ICRA and RAB, including the relevant values associated with the ABBRR, ICRA and RAB, in accordance with Schedule 1E (Regulatory Asset Base) and Schedule 1F (Long Term Revenue Constraint Methodology) and NBN Co must comply with a request made by the ACCC under this clause 1G.1.5.

1G.2 Expenditure compliance and reporting

1G.2.1 Expenditure Compliance Reports

By 31 October after the end of each Financial Year during the Initial Regulatory 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:

~~(a)~~ sets out the total amount of Capital Expenditure incurred in relation to each Asset Type in that Financial Year;

~~(b)~~(a) certifies that, in relation to that Financial Year, the Capital Expenditure included in the NBN Co RAB has been Prudently incurred in accordance with Schedule 1E (Regulatory Asset Base), 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 is deemed to have been Prudently incurred under clause 1E.3.2;
- (B) Capital Expenditure that is materially consistent with, or within the scope of, the Network Design Rules or any Permitted Variations; and
- (C) Capital Expenditure that is materially consistent with, or within the scope of, an Endorsed Network Change; and

(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 is deemed to have been Prudently incurred under clause 1E.3.2;

- (B) Capital Expenditure that has been incurred in accordance with the Procurement Rules; and
- (C) Capital Expenditure that otherwise satisfies the Prudent Cost Condition in one of the other categories under clause 1E.4.1; and

~~(c)~~(b) certifies that, in relation to that Financial Year, the Operating Expenditure included in the ABBRR has been Prudently incurred in accordance with clause 1F.8.

1G.2.2 Expenditure Compliance Information Request

At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to assess the matters contained in a report submitted in accordance with clause 1G.2.1 and NBN Co must comply with a request made by the ACCC under this clause 1G.2.2.

1G.2.3 Procurement Rules compliance

- (a) By 31 October ~~after the end~~ of each Financial Year ~~of during~~ the Initial Regulatory Period, NBN Co will submit to the ACCC a report signed by the Chief Procurement Officer ~~stating that, in relation to that Financial Year, the Procurement Rules satisfy~~satisfied the requirements in clause 1E.4.2.
- (b) At any time, the ACCC may request information from NBN Co that is reasonably necessary for the ACCC to assess compliance of the Procurement Rules with clause 1E.4.2 and NBN Co must comply with a request made by the ACCC under this clause 1G.2.3(b).

1G.3 Price compliance and reporting

- (a) By 31 October after the end of each Financial Year in respect of the Initial Regulatory 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:
 - (i) the Price specified in any SFAA for each of the Reference Offers does not exceed the Maximum Regulated Price for that Reference Offer in that Financial Year;
 - (ii) the Price specified in any SFAA for each of the Non-Reference Offers does not exceed the Maximum Regulated Price for that Non-Reference Offer in that Financial Year;

- (iii) the Price specified in any SFAA for each of the Other Charges does not exceed the Maximum Regulated Price for that Other Charge in that Financial Year; and
- (iv) Prices comply with the requirements of clauses 1C.4.5(c) and 1D4.4(b),

and provide to the ACCC such other information that NBN Co considers is reasonably necessary for the ACCC to assess NBN Co's compliance with clauses 1C.3, 1C.4, 1D.3 and 1D.4.

- (b) At any time, the ACCC may request information from NBN Co in relation to the report submitted under clause 1G.3(a) that is reasonably necessary for the ACCC to assess NBN Co's compliance with clauses 1C.3, 1C.4, 1D.3 and 1D.4 and NBN Co must comply with a request made by the ACCC under this clause 1G.3(b).

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6 Calculation of RAB – Module 2

Notes:

- Please refer to section 5.3.3.3 of NBN Co's Submission.
- The drafting that follows relates to part of the existing Schedule 2D (and is expected to become Schedule 2E), and is related to the RAB Roll Forward Proposal described in the Replacement Module Process drafting in section 1 of this Appendix C.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

Schedule 2E Long Term Revenue Constraint Methodology and Regulatory Asset Base

2E.7 Calculation of the Regulatory Asset Base

2E.7.1 RAB Roll Forward Arrangements

RAB Roll Forward Arrangements means, in relation to a Regulatory Cycle, the terms of the RAB Roll Forward Proposal included in a Replacement Module Application accepted by the ACCC or set out in the ACCC Replacement Module's Determination under clause 4.8.

2E.7.2 Calculation of Real RAB

The Real RAB will be: _____

- (a) at the commencement of the Subsequent Regulatory Period, equal to the Real RAB at the end of the Initial Regulatory Period; and
- (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, calculated using the following formula for the relevant Financial Year (t).~~ This Capital Expenditure excludes any capital contributions of network assets.

$$\text{Real Capex}_t = \text{Real Capital Expenditure}_t * \left[(1 + \text{WACC}_{\text{real vanilla } t}^F) (1 + \text{CPI}_t^{\text{lume}}) \right]^{0.5}$$

where:

Real Capital Expenditure_t is the real value of ~~the actual~~ Capital Expenditure incurred 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, but subject to the determination of the nominal value of such Capital Expenditure for use in this clause 2E.7.2(b) 2D.7.1(b) in accordance with the RAB Roll Forward Arrangements.

$$WACC_{real\ vanilla, t}^F = \frac{1 + WACC_{nominal\ vanilla, t}^F}{1 + CPI_{June, t}^F} - 1$$

where:

$WACC_{nominal\ vanilla, t}^F$ is the forecast-estimated nominal vanilla WACC in Financial Year *t* for the purposes of clause 2D.2.1(a)(iii)(A).

$CPI_{June, t}^F$ is the forecast annual CPI for year *t* for the purposes of clause 2D.2.1(a)(ii).

Real Disposals_t is ~~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,~~ calculated using the following formula for the relevant Financial Year (t):

$$Real\ Disposals_t = Real\ Value\ of\ Asset\ Disposals_t * [(1 + WACC_{real\ vanilla, t}^F)(1 + CPI_t^{June})]^{0.5}$$

where:

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

Real Straight Line Depreciation_t is the straight line depreciation applicable to the opening real value of the Relevant Assets included in the RAB in the current Financial Year *t*, determined in accordance with the RAB Roll Forward Arrangements for use in this clause 2E.7.2(b) and subject to applying the straight line depreciation method using asset lifetimes consistent with those used in forecasting ABBRR in clause 2D.2.1(a)(ii)(C).

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7 Dispute Resolution – Module 1

Notes:

- Please refer to section 6.3 of NBN Co's Submission.
- The drafting that follows is intended to replace the existing Schedule 1H, Annexure 1 and deals with the selection and appointment of the Resolution Advisor and Panel Members and the dispute resolution process that will apply to disputes that are referred to the Resolution Advisor and Panel, as well as the selection of an expert, if the parties agree to go to expert determination but are unable to agree on the identity of the expert.
- Marked up changes reflect NBN Co's Proposed Changes for inclusion in the Notice to Vary, as described in the main body of NBN Co's submission.

Schedule 1H, Annexure 1 Dispute Resolution

Part A Background

1 Dispute resolution regime

- (a) NBN Co will enter into Access Agreements with Customers from time to time during the term of this Undertaking.
- (b) The Access Agreements entered into with Customers are likely to include dispute resolution provisions.
- (c) At the time of lodgement of the Undertaking, NBN Co proposed to include a dispute resolution regime in its Access Agreements with the following features:
 - (i) parties to an Access Agreement try to resolve a dispute commercially through escalation to nominated managers;
 - (ii) if the parties cannot resolve the dispute commercially within a specified time period, the parties can either:
 - (A) agree to extend the time period to allow for the parties to undertake a mediation process;
 - (B) agree to go to expert determination by a single expert applying the Expert Determination Rules of the Institute of Arbitrators & Mediators Australia. The parties can either agree on the identity of the expert or, if they cannot agree, a Resolution Advisor will select the expert; or
 - (C) refer the dispute to a Resolution Advisor to arrange for panel arbitration; and
 - (iii) if the dispute is referred to a Resolution Advisor for panel arbitration, the Resolution Advisor will convene the Panel and the Panel will classify the dispute as a Bilateral or Industry Relevant Dispute (in the latter case the Panel will identify other parties to the dispute), and the Panel will resolve the dispute by way of arbitration in accordance with the CAA (with some modifications as set out in Access Agreements).
- (d) This Annexure 1 of Schedule 1H governs:
 - (i) the selection and appointment of the Resolution Advisor and Panel Members and the dispute resolution process that will apply to disputes that are referred to the Resolution Advisor and Panel; and
 - (ii) the selection of an expert if the parties agree to go to expert determination but are unable to agree on the identity of the expert.

Part B Appointments

2 Appointment of Resolution Advisor

2.1 Approval of the Resolution Advisor and terms of appointment

- (a) Within 5 Business Days after the SAU Commencement Date, or in accordance with clause 6.4, NBN Co must:
- (i) seek views from Customers and Access Seekers on:
 - (A) candidate(s) for the role of Resolution Advisor; and
 - (B) the terms of appointment of the Resolution Advisor(s); and
 - (ii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 5 Business Days after NBN Co requested views under clause 2.1(a)(i).
- (b) NBN Co must, having regard to submissions received from Customers and Access Seekers in accordance with clause 2.1(a), as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions under clause 2.1(a) above:
- (i) nominate one or more Proposed Resolution Advisor(s) to the ACCC by providing the ACCC with a notice in the form prescribed in Appendix 1 to this Annexure 1 (**Resolution Advisor Nomination Notice**); and
 - (ii) attach the proposed terms of appointment of the Resolution Advisor(s) to the Resolution Advisor Nomination Notice.
- (c) After receiving a Resolution Advisor Nomination Notice, the ACCC must decide whether to:
- (i) approve the appointment of the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice as a Resolution Advisor, which includes approving the terms of appointment attached to the Resolution Advisor Nomination Notice; or
 - (ii) not approve the Proposed Resolution Advisor(s) named in the Resolution Advisor Nomination Notice and, at the ACCC's absolute discretion after consultation with NBN Co, Customers and Access Seekers:
 - (A) identify and approve one or more persons as a Resolution Advisor (which may be the Proposed Resolution Advisor(s)); and/or
 - (B) approve the proposed terms of appointment of the Resolution Advisor subject to variation in the form required by the ACCC.
- (d) Without limiting the ACCC's discretion, in making the decisions described in clause 2.1(c) the factors to which the ACCC must have regard include whether:
- (i) the Proposed Resolution Advisor(s) or person identified by the ACCC in clause 2.1(c)(ii)(A) has the qualifications and experience necessary to carry out the functions of Resolution Advisor, including that the person:
 - (A) is a Legal Practitioner or a Dispute Resolution Practitioner; and

- (B) has an understanding of the Australian telecommunications industry or be able to acquire such an understanding quickly;
 - (ii) the Proposed Resolution Advisor(s) or person identified by the ACCC in clause 2.1(c)(ii)(A) is sufficiently independent of each of NBN Co and its Customers and Access Seekers;
 - (iii) the terms of appointment are consistent with, and give effect to, the provisions of this Schedule 1H, Annexure 1; and
 - (iv) the terms of appointment are otherwise acceptable to the ACCC.
- (e) As soon as reasonably practicable, and in any event within 10 Business Days (or such longer period notified by the ACCC to NBN Co), of receiving a Resolution Advisor Nomination Notice, the ACCC must notify NBN Co in writing of its decisions made pursuant to clause 2.1(c).

2.2 Appointment of Resolution Advisor

- (a) NBN Co must:
- (i) within 10 Business Days after receiving notice from the ACCC of its decision pursuant to clause 2.1(e), appoint the person(s) approved by the ACCC pursuant to clause 2.1(c)(i) or clause 2.1(c)(ii)(A) as a Resolution Advisor on the terms of appointment approved by the ACCC pursuant to clause 2.1(c)(i) or clause 2.1(c)(ii)(B); and
 - (ii) forward to the ACCC a copy of the executed terms of appointment within 5 Business Days of its execution.
- (b) A Resolution Advisor will be appointed for a period not exceeding 5 years.
- (c) A Resolution Advisor may be re-appointed for one or more successive terms provided that the Resolution Advisor is re-appointed in accordance with the process set out in this clause 2.

2.3 Obligations and powers of the Resolution Advisor

- (a) NBN Co must procure that the terms of appointment of a Resolution Advisor include obligations on the Resolution Advisor to maintain his or her independence from each of NBN Co and Customers, including by not forming, or maintaining (where an Access Seeker becomes a Customer), any relationship of the types described in clause 2(c) of Appendix 1 to this Annexure 1 (with the exception of relationships described in clause 2(d) of Appendix 1 to this Annexure 1) with either NBN Co or a Customer for the period of his or her appointment as Resolution Advisor.
- (b) NBN Co must include in the terms of appointment of the Resolution Advisor an obligation on the Resolution Advisor to:
- (i) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Resolution Advisor under this Annexure 1 of Schedule 1H;
 - (ii) comply with the Dispute Management Rules and, except where inconsistent with the Dispute Management Rules, the dispute resolution process set out in Appendix 2 to this Annexure 1;
 - (iii) comply with the terms of his or her appointment;
 - (iv) have regard to any Approved Dispute Guidelines published in accordance with clause 7; and

- (v) immediately report any issues that arise in relation to the performance of his or her functions as Resolution Advisor or in relation to compliance with this Annexure 1 to the ACCC and NBN Co.
- (c) NBN Co must:
- (i) comply with the terms of appointment of the Resolution Advisor, including payment of the Resolution Advisor to carry out his or her functions;
 - (ii) take reasonable steps to enforce any material non-compliance by a Resolution Advisor with the terms of his or her appointment;
 - (iii) not interfere with, or otherwise hinder, the Resolution Advisor's ability to carry out his or her functions as the Resolution Advisor;
 - (iv) not appoint the Resolution Advisor, or have any agreements, understandings or arrangements with the Resolution Advisor, to utilise the Resolution Advisor's services for anything other than compliance with this Undertaking until at least 12 months after the Resolution Advisor ceases to act in the role of the Resolution Advisor; and
 - (v) publish the approved terms of appointment of the Resolution Advisor on NBN Co's website (redacting any personal or confidential information of the Resolution Advisor or NBN Co).
- (d) Subject to the Dispute Management Rules and the dispute resolution process set out in Appendix 2 to this Annexure 1, the functions of the Resolution Advisor include:
- (i) where there is no Dispute, administrative functions to establish and maintain the arrangements set out in this Annexure 1; and
 - (ii) in respect to a Dispute:
 - (A) selection of the expert where the parties are unable to appoint an expert within a specified time;
 - (B) selection of Panel Members for a Panel Arbitration; and
 - (C) administrative functions on behalf of the Panel Members (but not as a delegate of the Panel for the performance of the decision-making functions of the Panel in relation to a Dispute).

3 Pool

3.1 Selection and approval of Pool Members

- (a) NBN Co will establish and maintain a pool of persons from which members of a Panel may be selected (each a **Pool Member**, together the **Pool**).
- (b) Before appointing a person to be a Pool Member, NBN Co must:
 - (i) seek views from Customers and Access Seekers on the candidate(s) for appointment to the Pool; and
 - (ii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 5 Business Days after NBN Co requested views under clause 3.1(b)(i); and

- (iii) as soon as reasonably practicable and in any event within 10 Business Days following the deadline for submissions, nominate one or more candidates for appointment to the Pool to the ACCC by providing the ACCC with a written notice setting out the name, expertise and experience of the candidate(s).
- (c) In selecting a person for nomination under clause 3.1(b)(ii), NBN Co will have regard to the:
- (i) submissions in response to NBN Co's request in clause 3.1(b)(i) received from Customers and Access Seekers prior to the deadline for submissions notified to the same by NBN Co;
 - (ii) need for the Pool to comprise members who have a reasonably diverse and balanced range of professional skills and experience, whether commercial, technical, operational or legal;
 - (iii) need for the Pool to comprise a sufficient number of members to enable Panel Arbitrations to proceed in the manner contemplated in Access Agreements;
 - (iv) need for the Pool to contain a reasonable proportion of Legal Practitioners or Dispute Resolution Practitioners in its membership;
 - (v) need for Pool candidates to have an understanding of the Australian telecommunications industry (or be able to acquire such an understanding quickly); and
 - (vi) experience of Pool candidates in dispute resolution procedures, with more weight given to candidates with over 10 years' experience.
- (d) The ACCC must, as soon as reasonably practicable following receipt of a notice of nomination under clause (b)(iii)3.1(b)(iii), approve or reject the selection of persons nominated by NBN Co in that notice
- (e) NBN Co must appoint to the Pool the persons approved by the ACCC under clause 3.1(d) on the Approved Pool Terms.
- (f) A Pool Member may be appointed for a period not exceeding 5 years.
- (g) A Pool Member may be re-appointed for one or more successive terms provided that the member is re-appointed in accordance with the process set out in this Annexure 1 of Schedule 1H.

3.2 Standard terms of appointment of Pool Members

- (a) NBN Co must:
- (i) within 5 Business Days of the SAU Commencement Date seek views from Customers and Access Seekers on the standard terms of appointment of Pool Members;
 - (ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Pool Terms published pursuant to clause 3.2(e); and
 - (iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 5 Business Days after NBN Co requested views under clause 3.2(a)(i) or 3.2(a)(ii).
- (b) NBN Co must:

- (i) have regard to submissions received from Customers and Access Seekers prior to the deadline for responses notified to the same by NBN Co;
 - (ii) as soon as reasonably practicable following the deadline for submissions prepare and submit to the ACCC a proposed set of standard terms of appointment for Pool Members or proposed variations to any published Approved Pool Terms (each the **Proposed Pool Terms**); and
 - (iii) publish the Proposed Pool Terms on NBN Co's website, subject to redacting any personal or confidential information.
- (c) After receiving the Proposed Pool Terms, the ACCC must as soon as reasonably practicable decide whether the ACCC approves the Proposed Pool Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Pool Terms**) and notify NBN Co of its decision.
- (d) The Approved Pool Terms must:
- (i) impose an obligation on the Pool Member to comply with his or her terms of appointment to the Pool;
 - (ii) impose an obligation to comply with the responsibilities of an arbitrator under the CAA in respect to his or her functions as a Pool Member or Panel Member;
 - (iii) impose an obligation to comply with the dispute resolution process set out in Appendix 2 to this Annexure 1, except where inconsistent with the Dispute Management Rules; and
 - (iv) provide for NBN Co to take reasonable steps to enforce any material non-compliance by a Pool Member with the terms of his or her appointment.
- (e) NBN Co must publish the current Approved Pool Terms on NBN Co's website (subject to redacting any personal or confidential information).
-

4 Panel

4.1 Standard Panel Terms of Appointment

- (a) NBN Co must:
- (i) within 5 Business Days of the SAU Commencement Date seek views from Customers and Access Seekers on the standard terms of appointment members of a Panel (**Panel Members**);
 - (ii) otherwise from time to time seek views from Customers and Access Seekers on any variations to any Approved Panel Terms published pursuant to clause 4.1(f), save that this variation procedure shall not apply to variations pursuant to clause 4.1(e); and
 - (iii) notify Customers and Access Seekers of the deadline for submissions, which must be at least 5 Business Days after NBN Co requested views under clause 4.1(a)(i) or 4.1(a)(ii).
- (b) NBN Co must:
- (i) have regard to submissions received from Customers and Access Seekers prior to the deadline for responses notified to the same by NBN Co under clause 4.1(a);
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- (ii) as soon as reasonably practicable following the deadline for responses notified by NBN Co under clause 4.1(a) prepare and submit to the ACCC a set of proposed standard terms of appointment for Panel Members or proposed variations to any published Approved Panel Terms (each the **Proposed Panel Terms**); and
 - (iii) publish the Proposed Panel Terms on NBN Co's website, subject to redacting any confidential information.
- (c) After receiving the Proposed Panel Terms, the ACCC must as soon as reasonably practicable decide whether the ACCC approves the Proposed Panel Terms in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Panel Terms**) and notify NBN Co of its decision.
- (d) The Approved Panel Terms must include a requirement that the Panel Member:
 - (i) comply with the dispute resolution process set out in Appendix 2 to this Annexure 1, except where inconsistent with the Dispute Management Rules; and
 - (ii) have regard to any Approved Dispute Guidelines published in accordance with clause 7.
- (e) The Approved Panel Terms may provide for the Resolution Advisor prior to engagement of the Panel Members by the parties to the dispute, or the Panel following confirmation of its composition, to:
 - (i) insert into the Approved Panel Terms the details of the dispute; and
 - (ii) specify in the Approved Panel Terms any special procedural steps considered by the Resolution Advisor or the Panel in its reasonable belief to aid the efficient resolution of the dispute; and/or
 - (iii) vary the Approved Panel Terms where the parties to the dispute and Panel Members agree to the variation.
- (f) NBN Co must publish the current Approved Panel Terms on NBN Co's website (subject to redacting any personal or confidential information).

5 Costs of retaining the Resolution Advisor and Pool Members

- (a) NBN Co must:
 - (i) pay the Resolution Advisor and/or Pool Members; and
 - (ii) not charge Customers any separate fees or charges,for the costs associated with the appointment and retention of the Resolution Advisor or Pool Members (if any). The costs of the Resolution Advisor and the Panel in respect of a Dispute will be shared equally amongst all of the parties to that Dispute.
- (b) NBN Co will maintain records of any payments made by NBN Co to a Resolution Advisor and/or Pool Members in connection with the appointment of the Resolution Advisor or Pool Members.

Part C Termination of appointments

6 Termination of appointment of Resolution Advisor or Pool Member

6.1 Resignation of the Resolution Advisor

- (a) NBN Co must as soon as reasonably practicable notify the ACCC and Customers in the event that the Resolution Advisor resigns or otherwise stops acting.

6.2 Termination of the Resolution Advisor or Pool Member

- (a) If NBN Co reasonably believes that an event or circumstance has occurred or arisen that is likely to provide grounds for the termination of the appointment of the Resolution Advisor or Pool Member under clause 6.2(d), NBN Co must make a proposal to the ACCC to terminate the appointment of a Resolution Advisor or a Pool Member.
- (b) If a Customer reasonably believes that an event or circumstance has occurred or arisen that is likely to provide grounds for the termination of the appointment of the Resolution Advisor or Pool Member under clause 6.2(d), it may make a proposal to the ACCC to terminate the appointment of a Resolution Advisor or Pool Member.
- (c) Where NBN Co or a Customer submits a proposal under clauses 6.2(a) or 6.2(b):
 - (i) the proposal must describe the event or circumstance giving rise to the belief that grounds for termination exist;
 - (ii) subject to any applicable confidentiality obligations, the NBN Co or Customer must provide the ACCC with any further information reasonably requested by the ACCC in relation to the proposal.
- (d) The ACCC may:
 - (i) approve any proposal by NBN Co; or
 - (ii) direct NBN Co (on its own initiative or following a proposal by a Customer),
to terminate the appointment of the Resolution Advisor or a Pool Member if in the ACCC's view the Resolution Advisor or Pool Member:
 - (iii) has acted inconsistently with the terms of his or her appointment in a material way and it is appropriate in all the circumstances to terminate his or her appointment (relevant circumstances include any failure of the Resolution Advisor or Pool Member to cure its non-compliance within 5 Business Days following his or her receipt of written notice to do so from NBN Co);
 - (iv) where the ACCC becomes aware that any information in respect to a Resolution Advisor provided to it in the Resolution Advisor Nomination Notice, or Pool Member in the nomination notice under clause 3.1(b)(ii) was, or has become, incorrect, inaccurate or misleading; or
 - (v) is, or is likely to be, unable to continue to perform his or her responsibilities as a Resolution Advisor or Pool Member:

- (A) as there is a real danger of bias on the part of that Resolution Advisor or Pool Member that cannot be avoided by delegation of the Resolution Advisor or Pool Member functions in respect to a Dispute; or
 - (B) for a period of 10 Business Days or more due to ill health or other incapacity.
- (e) The ACCC must as soon as reasonably practicable following receipt of a proposal made pursuant to clause 6.2(a) or 6.2(b), consider that proposal and, notify the party making the proposal whether the ACCC will exercise its discretion under clause 6.2(d).

6.3 Termination of Panel Member

- (a) A Pool Member's position as a Panel Member will automatically terminate if that person ceases to be a Pool Member under this Part C.
- (b) The ACCC must not require or permit NBN Co to terminate the appointment of a Pool Member during a period in which the Pool Member is empanelled as a Panel Member for a dispute, unless the reason for termination of a Pool Member is because the ACCC considers that there is a real danger of bias in respect to that Dispute.
- (c) Clause 6.3(b) does not affect the right of any person to terminate the appointment of a Panel Member under the CAA or his or her terms of appointment.

6.4 Replacement of the Resolution Advisor

- (a) NBN Co must:
 - (i) within 3 Business Days of receiving a:
 - (A) resignation notice from a Resolution Advisor; or
 - (B) receiving a notice from the ACCC of the ACCC's approval under clause 6.2(d)(i) or direction pursuant to clause 6.2(d)(ii); or
 - (ii) a calendar month prior to expiry of the term of appointment of a Resolution Advisor, comply with clause 2 of this Annexure 1.

Part D Other approvals

7 Dispute Guidelines

- (a) Within 20 Business Days of the SAU Commencement Date and otherwise from time to time, NBN Co must seek views from:
 - (i) Customers;
 - (ii) Access Seekers;
 - (iii) Resolution Advisor(s) (where appointed); and
 - (iv) Pool Members (where appointed),in respect to guidelines to be applied by a Panel in respect to a dispute, including any guideline criteria for determining whether a Customer should become a party to a panel arbitration for an Industry Relevant Dispute.
-

- (b) NBN Co must:
- (i) have regard to responses received from Customers, Access Seekers, Resolution Advisor(s) and Pool Members (where applicable) prior to the deadline for responses notified to the same by NBN Co under clause 7(a);
 - (ii) as soon as reasonably practicable following the deadline for responses notified by NBN Co under clause 7(a) prepare and submit to the ACCC a draft guideline (**Proposed Dispute Guideline**); and
 - (iii) publish the Proposed Dispute Guideline on NBN Co's website, subject to redacting any confidential information.
- (c) After receiving the Proposed Dispute Guideline, the ACCC must, as soon as practicable, decide whether the ACCC approves the Proposed Dispute Guideline in the form submitted to it or subject to variation in the form required by the ACCC (**Approved Dispute Guideline**) and notify NBN Co of its decision.
- (d) NBN Co must publish the Approved Dispute Guideline on NBN Co's website, subject to redacting any confidential information.

Part E Notices

8 Giving Notices

- (a) Any notice or communication to the ACCC pursuant to this Schedule 1H must be sent to:

Email address: [insert]

Attention: [insert]

With a copy sent to: [insert]

- (b) Any notice or communication to NBN Co pursuant to this Schedule 1H must be sent to:

	Mail Address	Fax Number	Email Address	Attention
NBN Co	Level 11 100 Arthur Street, North Sydney NSW 2060	+61 2 9927 4132	[]	Chief Legal Counsel and Head of Regulatory Affairs & Industry Analysis

- (c) NBN Co or the ACCC must notify each other of a change to its contact details within three Business Days of the change occurring.

9 Definitions and Interpretation

9.1 Definitions

Approved Panel Terms means the standard terms of appointment of Panel Members approved by the ACCC from time to time pursuant to clause 4 of this Undertaking and published on the NBN Co website.

Award means a Panel's final decision in respect of a Dispute.

Billing Dispute means a dispute between the parties which arises because Customer, acting reasonably, considers there is an error in:

(a) the amount of an invoice payable by Customer under an Access Agreement; or

(b) the amount of any Discount, Credit or Rebate provided by NBN Co under an Access Agreement.

Bilateral Dispute means a dispute that is classified as a Bilateral Dispute by a Panel under paragraph 2.1 of Appendix 2 of this Annexure 1.

CAA means the *Commercial Arbitration Act 2010 (NSW)*.

Confirmed Award has the meaning given to that term under paragraph 3.3(a) of Appendix 2 to this Annexure 1.

Dispute means a dispute arising between the parties under the Access Agreement made between the parties that is not a Billing Dispute.

Dispute Management Rules means the provisions in relation to dispute resolution of the Access Agreement relevant to the Dispute.

Dispute Resolution Practitioner means a practising mediator, expert or arbitrator with at least 10 year's dispute resolution experience.

Entity Connected has the meaning given in the *Corporations Act 2001 (Cth)*.

Expert means the expert appointed by NBN Co and Customer to determine the Dispute using Expert Determination.

Expert Determination means the determination of the Dispute by a single expert in accordance with the Dispute Management Rules.

Expert Shortlist means the selection of candidates to act as the expert in relation to a Dispute by the Resolution Advisor in accordance with paragraph 4 of Appendix 2 of Annexure 1 of Schedule 1H of this Undertaking.

Industry Relevant Dispute means a dispute that is classified as an Industry Relevant Dispute by a Panel under paragraph 2.1 of Appendix 2 of this Annexure 1.

Invitee means a person who receives an Invitation.

Invitation means an invitation issued by the Resolution Advisor in accordance with paragraph 2 of Appendix 2 of this Undertaking to either the Customer or an Other NBN Co Customer to apply to join as a party to an Industry Relevant Dispute.

Legal Practitioner means a current or former solicitor, barrister, magistrate or judge in good standing with the legal profession in Australia with at least 10 year's legal experience.

Other NBN Co Customers means a person (other than Customer) who has entered into an Other Wholesale Broadband Agreement with NBN Co (whether or not NBN Co has supplied any products or services to that person).

Other Wholesale Broadband Agreement means an Access Agreement entered into between NBN Co and a customer of NBN Co (other than Customer).

Panel means a panel of three arbitrators constituted by the Resolution Advisor to resolve a Dispute under paragraph 1.2 of Appendix 2 of this Annexure 1.

Panel Arbitration means an arbitration conducted by the Panel in accordance with Appendix 2 of this Annexure 1.

Panel Member has the meaning given to that term in paragraph 1.2 of Appendix 2 of this Annexure 1

Pool means the pool of members constituted in accordance with clause 3 of this Annexure 1.

Pool Member has the meaning given to that term in clause 3.1 of this Annexure 1.

Proposed Resolution Advisor means a candidate nominated by NBN Co to the ACCC in the Resolution Advisor Nomination Notice for appointment as a Resolution Advisor.

Referral means a request by a party to an Access Agreement to the Resolution Advisor to arrange for Panel Arbitration in respect to a Dispute in accordance with the Dispute Management Rules.

Referral Notice means the notice from a party to a dispute to the Resolution Advisor to request the Resolution Advisor to arrange for Panel Arbitration of a Dispute.

Related Entity has the meaning given in the Corporations Act 2001 (Cth).

Related Party has the meaning given in the Corporations Act 2001 (Cth).

Resolution Advisor means the person or persons appointed as such in accordance with clause 2.2 of this Annexure 1

Resolution Advisor Nomination Notice has the meaning in clause 2.1(b) of this Annexure 1.

9.2 Interpretation

Unless the context otherwise requires, in these Dispute Management Rules:

- (a) reference to a clause is a reference to a clause of this Annexure 1 of Schedule 1H;
- (b) reference to a paragraph is a reference to a paragraph of Appendix 2 of this Annexure 1 of Schedule 1H; and
- (c) capitalised terms:
 - (i) if defined in this clause 9, have the meaning set out in clause 9; or

- (ii) if not defined in clause 9, have the same meaning as set out in Attachment C (Dictionary) of the Special Access Undertaking.

Appendix 1 Resolution Advisor Nomination Form

This form sets out the information required by the ACCC in relation to the proposed appointment of the Resolution Advisor under this Undertaking:

Method of Delivery to the ACCC

The completed nomination form, along with the additional requested information is to be provided to the ACCC with the subject line "*Resolution Advisor Nomination Form – NBN Co Special Access Undertaking*" to the below addresses:

[Attention: Group General Manager, Communications Group
GPO Box 520
MELBOURNE VIC 3000]

With an email copies sent to:

[]; and
Attention: []

Information Required

The ACCC requires the following information in order to assess a proposed Resolution Advisor:

1. Proposed Resolution Advisor Details:

- (a) the name of the proposed Resolution Advisor; and
- (b) the name of the proposed Resolution Advisor's employer (if applicable) and contact details including:
 - Address;
 - Contact name;
 - Telephone number;
 - Other contact details.

2. A submission containing the following information:

- (a) Details of the proposed Resolution Advisor's qualifications and experience relevant to his or her proposed role pursuant to the Undertaking.
- (b) The names of the owner/s and/or the directors of the Resolution Advisor 's employer (if applicable).
- (c) Details of any of the following types of relationships between NBN Co or any Customer and the Proposed Resolution Advisor or the Proposed Resolution Advisor's employer (if applicable), or confirmation that no such relationship exists whether within Australia or outside of Australia:

- i. NBN Co or a Customer and the Proposed Resolution Advisor's employer are Associated Entities within the meaning given by section 50AAA of the *Corporations Act 2001 (Cth)*.
 - ii. NBN Co or a Customer is an Entity Connected with the Proposed Independent Auditor's employer.
 - iii. The Proposed Resolution Advisor's employer is an Entity Connected with NBN Co or a Customer.
 - iv. NBN Co or a Customer and the Proposed Resolution Advisor's employer are Related Entities.
 - v. NBN Co or a Customer and the Proposed Resolution Advisor's employer are Related Parties.
 - vi. Any Related Party, Related Entity or Entity Connected with NBN Co or a Customer is a Related Party, Related Entity or Entity Connected with the Proposed Resolution Advisor.
 - vii. NBN Co and the Proposed Resolution Advisor or the Proposed Resolution Advisor's employer have a contractual relationship or had one within the past three years, other than those attached to this form (excluding any prior or existing appointment to the role of Resolution Advisor).
 - ix. the Proposed Resolution Advisor's employer is a supplier of NBN Co or a Customer or has been in the past three years (excluding any prior or existing appointment to the role of Resolution Advisor).
 - xi. Any other relationship between NBN Co or a Customer and the Proposed Resolution Advisor or the Proposed Resolution Advisor's employer that allows one to affect the business decisions of the other.
- (d) Details of whether NBN Co or any Customer is a supplier of the Proposed Resolution Advisor or the Proposed Resolution Advisor's employer (if applicable) or has been in the past three years.
3. A document outlining the terms of appointment of the Proposed Resolution Advisor.

Appendix 2: Dispute Management Process

Part A Panel Arbitration

1 Referral of Disputes and appointment of Panel

1.1 Referral of Dispute to Resolution Advisor

- (a) Where the Resolution Advisor receives a Referral Notice, the Resolution Advisor must notify each party to the Dispute of that fact within 1 Business Day of receipt of the Referral Notice.
- (b) NBN Co must publish on NBN Co's website any procedural requirements in respect to the Referral Notice notified to NBN Co by the Resolution Advisor.
- (c) In making a Referral Notice, a party must comply with any procedural requirements published in accordance with paragraph 1.1(b). Where a party fails to do so, the Resolution Advisor may require the referring party to submit such further information as the Resolution Advisor considers necessary for the Resolution Advisor to assess the nature of the Dispute and the Resolution Advisor may suspend the time in paragraph 1.1(a) until he or she has received the information requested from the party making the Referral.

1.2 Constitution of the Panel

- (a) In accordance with this paragraph 1.2, prior to the expiry of 10 Business Days from the date of service of the notice of the Referral on the parties, the Resolution Advisor must select a Panel to:
 - (i) classify the Dispute as a Bilateral Dispute or Industry Relevant Dispute; and
 - (ii) determine the Dispute.
 - (b) The Resolution Advisor must:
 - (i) consult with the parties to the Dispute on the composition of the Panel, except that this requirement to consult the parties to the Dispute on the composition of the Panel will not apply in respect to a party that is later joined as a party to an Industry Relevant Dispute;
 - (ii) in accordance with paragraph 1.2(d), select 3 current and available members of the Pool for appointment to a panel (each a **Panel Member**, together the **Panel**); and
 - (iii) notify the parties in writing of the identity of the Panel Members.
 - (c) Subject to the provisions of the CAA, the decision of the Resolution Advisor as to the selection of the Panel is final and binding upon all parties to the Dispute.
 - (d) In selecting members of the Pool to be appointed to the Panel, the Resolution Advisor must take into account:
 - (i) the preferences of the parties to the Dispute in respect to Pool Members;
 - (ii) any circumstances likely to give rise to any real danger of bias on the part of any member of the Pool in the performance of his or her duties as a Panel Member, if appointed;
 - (iii) the expertise required to assess the nature of the Dispute; and
-

- (iv) the need for the Panel to include a Legal Practitioner or a Dispute Resolution Practitioner as its chair.
- (e) The Resolution Advisor may, in his or her reasonable opinion no member of the Pool is:
 - (i) eligible for appointment to the Panel; or
 - (ii) sufficiently skilled and experienced to classify and resolve the Dispute,select for appointment to the Panel another person whom he or she reasonably considers to be eligible and sufficiently skilled and experienced, but who is not a member of the Pool and notify the ACCC of such selection. A person so appointed is deemed to have been approved by the ACCC under paragraph 3.1(d) of this Annexure 1 and NBN Co must appoint the person to be a Pool Member on his or her appointment to the Panel.
- (f) The parties will appoint the Panel in accordance with the Dispute Management Rules. The Resolution Advisor must promptly, and within 2 Business Days, following appointment of the Panel, provide the Panel with the information provided to it by the parties pursuant to paragraph 1.1 and such other information he or she received in respect to the Dispute.

2 Classification of Disputes and participation in Industry Relevant Disputes

2.1 Classification of Dispute

- (a) Prior to the expiry of 7 Business Days from the date on which the Panel are provided with the information pursuant to paragraph 1.2(f), the Panel must classify the Dispute.
- (b) In classifying the Dispute, the Panel:
 - (i) must determine the real questions in controversy between the parties (and is not bound by the parties' formulation of the questions); and
 - (ii) have regard to any Approved Dispute Guidelines which address classification.
- (c) The Panel may invite further submissions on classification from the parties to the Dispute prior to making its decision on classification.
- (d) A classification decision of the Panel is made by a majority of the Panel Members.
- (e) The Panel must classify the Dispute as an Industry Relevant Dispute if the Panel considers, based on the materials before it and the facts, matters and circumstances of the Dispute in question, that the resolution of the Dispute will, or is likely to, materially affect Other NBN Co Customers, including by reason of the Non-Discrimination Obligations.
- (f) Any classification by the Panel under paragraph 2.1(e) will be made:
 - (i) irrespective of whether NBN Co and any potentially affected Other NBN Co Customer are currently in dispute; and
 - (ii) subject to reclassification as a Bilateral Dispute in accordance with paragraph 2.3(d).
- (g) The Panel must classify a Dispute as a Bilateral Dispute if the Panel has not classified that Dispute as an Industry Relevant Dispute under paragraph 2.1(e).

- (h) Within 2 Business Days following classification of the Dispute under paragraph 2.1(e) or 2.1(g) the Resolution Advisor must notify NBN Co and Customer in writing of the decision of the Panel in respect to classification.

2.2 Invitation to Other NBN Co Customers to apply to be joined to the Panel Arbitration for an Industry Relevant Dispute

- (a) Within 5 Business Days of the Dispute being classified as an Industry Relevant Dispute, the Resolution Advisor must issue a notice (**Invitation**) in writing to all potentially affected Other NBN Co Customers (each, an **Invitee**). An Invitation must inform each Invitee of the commencement of the Industry Relevant Dispute and of their right to make an application to become a party to the Panel Arbitration for that Industry Relevant Dispute.
- (b) An Invitation must be in the form determined by the Resolution Advisor and must set out:
 - (i) a brief history of the Industry Relevant Dispute (subject to the preservation of the confidentiality of NBN Co's and Customer's confidential information);
 - (ii) the process which the Invitee must comply with in order to make a valid application to become a party to the Panel Arbitration for the Industry Relevant Dispute, including the making of submissions in support of the Invitee's application to be joined as a party to that Panel Arbitration;
 - (iii) the conditions and/or criteria that the Invitee must meet, to the Panel's satisfaction, to become a party to the Panel Arbitration for the Industry Relevant Dispute;
 - (iv) the terms on which the Panel Arbitration will be conducted;
 - (v) the deadline for responses to the Invitation; and
 - (vi) any other information the Resolution Advisor considers relevant to the Invitation.

2.3 Determination of parties to an Industry Relevant Dispute

- (a) The Panel must, within 10 Business Days following the deadline for responses detailed in the Invitation conclusively determine the parties to that Panel Arbitration in accordance with paragraph 2.3(c) and notify the Resolution Advisor of its decision.
- (b) The Resolution Advisor must notify in writing, within 2 Business Days of the Panel's decision pursuant to paragraph 2.3(a):
 - (i) each Invitee of the Panel's decision on the Invitee's application; and
 - (ii) each party to the Panel Arbitration for the Industry Relevant Dispute of the identity of each of the other parties to that Panel Arbitration.
- (c) In considering any application made by an Invitee to become a party to the Panel Arbitration for the Industry Relevant Dispute arising under this Agreement, the Panel must consider:
 - (i) if the Invitee has, or is likely to have, a sufficient interest in the subject matter of that Industry Relevant Dispute that is likely to be materially affected by the resolution of that Industry Relevant Dispute (a **sufficient interest**);
 - (ii) whether the Invitee becoming a party to the Panel Arbitration might unreasonably interfere with the ability of the NBN Co and the Customer to the Panel Arbitration to conduct the proceeding as they wish;

- (iii) whether the Non-Discrimination Obligations apply; and
 - (iv) any Approved Dispute Guidelines addressing the criteria and conditions to be applied in determining whether Other NBN Co Customers should become a party to a Panel Arbitration for an Industry Relevant Dispute.
- (d) If no Invitees have submitted an application in response to an Invitation prior to the deadline for responses detailed in the Invitation, or the Panel determines that no Invitee that has submitted an application in response to an Invitation prior to that deadline should, in the Panel's reasonable opinion having regard to the factors in 2.3(c), be joined to the Panel Arbitration on this Dispute, then the Dispute will then be classified, managed and resolved as a Bilateral Dispute.

3 Panel Arbitration Proceedings

3.1 Panel Arbitration proceedings

- (a) Panel Arbitrations will be conducted in English in Sydney, Australia under the law of New South Wales. The Panel may meet at any other place for consultation among the Panel Members, to attend any inspection, or engage in consultation by any electronic medium, but may not hold any hearing at any place other than Sydney, unless otherwise agreed by all parties to the Dispute.
- (b) The Panel must have regard to, but is not bound to follow, any award previously made by an arbitration panel in respect of a dispute under an Other Wholesale Broadband Agreement, to the extent relevant to the Dispute.
- (c) Where the Panel has regard to any award previously made by an arbitration panel in respect of a dispute under an Other Wholesale Broadband Agreement, the Panel must ensure that the confidentiality of any commercially sensitive information of a party to that previous award is preserved.
- (d) Before making any orders, decisions, determinations or Awards, the Panel must, as part of their decision-making process, have regard to whether the:
 - (i) order, decision, determination or Award; and
 - (ii) implementation of the order, decision, determination or Award by the parties,will or is likely to require NBN Co to treat Customer, any Other NBN Co Customer or any Customer in a manner that does not comply with the Non-Discrimination Obligations.

3.2 Award by the Panel

- (a) The Panel must make its Award in respect of the Dispute as soon as is reasonably practicable, and in any case:
 - (i) in the case of a Bilateral Dispute, will provide the parties with a signed copy of its Award by no later than 30 Business Days after notice of the classification of the Dispute under paragraph 2.1(h), or notice given under paragraph 2.3(b) of a decision pursuant to paragraph 2.3(d) (whichever is the later), or such other date agreed by the parties to the Dispute or determined by the Panel after consultation with the parties;

- (ii) in the case of an Industry Relevant Dispute, will provide the parties with a signed copy of its Award by no later than 50 Business Days following the date on which the last of the notices in paragraph 2.3(b) have been made, or such other date agreed by all of the parties to the Industry Relevant Dispute or determined by the Panel after consultation with the parties.

3.3 Publication of the Award

(a) Within 5 Business Days after:

- (i) the expiry of the period in which a party can exercise its rights under sections 33 (to amend or interpret the Award or make an additional award), 34 (to set aside the Award), or 34A (to appeal a question of law arising out of an Award) of the CAA; or
- (ii) where a party has exercised its rights under sections 33, 34 or 34A of the CAA, the Award is confirmed or varied by the court, or a correction or interpretation of the Award or an additional award is made,

the Panel will give each party to the Panel Arbitration a notice:

- (iii) advising that NBN Co will publish a copy of the Award (as confirmed, varied, corrected, together with any interpretation or additional award) (the **Confirmed Award**) on NBN Co's Website (subject to the confidentiality provisions set out below) for access by Other NBN Co Customers and Access Seekers; and
- (iv) inviting the party to make a written submission to the Panel within 5 Business Days after the date of that notice identifying and justifying any part of the Confirmed Award that the party considers is confidential to them and should not, therefore, be published.

(b) Within 15 Business Days of issuing a notice under paragraph 3.3(a), the Panel must:

- (i) have regard to any written submissions that have been made to the Panel in accordance with the notice in paragraph 3.3(a); and
- (ii) notify NBN Co whether and which parts of the Confirmed Award need to be redacted to protect confidentiality (if any).

(c) When preparing a copy of the Confirmed Award for publication, NBN Co must:

- (i) redact those parts of that Confirmed Award that the Panel has required NBN Co to redact in accordance with paragraph 3.3(c)(ii); and
- (ii) consider and apply any further redactions of the Confirmed Award that NBN Co considers appropriate in all the circumstances.

(d) NBN Co must publish on NBN Co's Website a copy of the Confirmed Award, subject to any redaction in accordance with paragraph 3.3(c), for access by Other NBN Co Customers and Access Seekers.

Part B Expert determination

4 Selection of expert if parties agree to expert determination

4.1 Selection of an expert

(a) If NBN Co and Customer:

- (i) notify the Resolution Advisor that they have agreed to refer a Dispute to expert determination but have failed to agree on the identity of an appropriate expert, within 5 Business Days of such notice; or
- (ii) have not appointed an expert identified by agreement between the parties within the time specified in the Dispute Management Rules and the Resolution Advisor has not previously assisted the parties to identify an expert,

the Resolution Advisor must nominate 3 persons who are suitable and available to determine the Dispute as an expert and notify NBN Co and Customer in writing of the names, qualifications and relevant experience of those 3 persons (the **Expert Shortlist**).

(b) The Resolution Advisor must ensure that any person nominated to the Expert Shortlist must:

- (i) have experience or expertise that is relevant to the nature of the Dispute;
- (ii) be experienced in expert determination procedures; and
- (iii) be independent of the parties to the Dispute, such that no circumstances exist that are likely to give rise to any real danger of bias in the performance of his or her duties in determining the Dispute as an expert, if appointed.

(c) If:

- (i) NBN Co and Customer have not each notified the Resolution Advisor of the identity of an expert selected by agreement from the Expert Shortlist (a **Nominee**) within 5 Business Days of receiving a copy of the Expert Shortlist; or
- (ii) the parties have each notified the Resolution Advisor of the identity of a Nominee but the Nominee has not accepted the terms of appointment, or the parties have not accepted any conditions to that appointment required by the Nominee, within the time specified in the Dispute Management Rules,

then the Resolution Advisor must, as soon as practicable, select an alternative expert from the Expert Shortlist and notify NBN Co and the Customer of that selection.

Part C Single Resolution Advisor responsible for a Dispute

5 Delegation of functions or replacement

(a) The Resolution Advisor to whom a Dispute is referred will be the Resolution Advisor for all aspects of that Dispute under the Dispute Management Rules, except where he or she is replaced, or delegates his or her functions to another Resolution Advisor, in accordance with this Undertaking.

- (b) The Resolution Advisor to whom a Dispute is referred may delegate his or her responsibilities to any other Resolution Advisor where necessary for the purpose of performing his or her responsibilities under the Dispute Management Rules (for example, in the event of temporary illness or holiday absence). Each Resolution Advisor to whom the Dispute is referred or delegated will be fully responsible for the performance of all of his or her responsibilities under the Dispute Management Rules whilst he or she acts as Resolution Advisor in respect to that Dispute.
- (c) If for any reason the Resolution Advisor is unable to continue his or her duties in relation to a Dispute, NBN Co must:
 - (i) whether or not it requires a new Resolution Advisor to be appointed in accordance with clause 2 of Annexure 1 of Schedule 1H, replace that Resolution Advisor with another Resolution Advisor for that Dispute; and
 - (ii) ensure that the replacement Resolution Advisor for that Dispute is independent of the parties to the Dispute.

Part D Variation to Dispute Management Process

6 Timeframes or procedures

- (a) The parties to a Dispute may at any time agree to vary any timeframes, or vary any procedures, detailed in this Appendix 2 and/or the Dispute Management Rules, and if the parties agree to vary any timeframes, the Resolution Advisor, and Panel Members or expert (as applicable) will comply with the timeframes that the parties have agreed.
- (b) Where the parties are unable to agree under paragraph 6(a), a party to a Dispute may request the Resolution Advisor, Panel or expert (as applicable) to vary any timeframes, or vary any procedures, detailed in this Appendix 2 and/or the Dispute Management Rules. The Resolution Advisor, Panel or expert (as applicable) may make such a direction where it reasonably believes that the making of such a direction is fair in all the circumstances. The Resolution Advisor may only make such a direction in relation to a Dispute prior to appointment of the Panel or expert.

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8 Dictionary – Attachment C

Notes:

- The drafting that follows summarises the key definitional changes that NBN Co proposes to make to the Dictionary in Attachment C in relation to the proposed changes set out in this document.

Attachment C – Dictionary

1 Definitions

ACCC Determined Price Review Arrangement has the meaning given to it in clause 1A.2.5(a)(iii).

Capex Roll-in Criteria means roll-in of NBN Co's actual Capital Expenditure in the RAB between each successive Regulatory Cycle in accordance with, and subject to, the following rules:

(a) where NBN Co's actual Capital Expenditure is less than the value of the forecast Capital Expenditure used to set the forecast ABBRR under clause 2D.2.1 for the relevant Financial Year (after accounting for the difference between actual and forecast CPI), the roll-in of NBN Co's actual Capital Expenditure in its entirety; and

(b) where NBN Co's actual Capital Expenditure exceeds the value of the forecast of Capital Expenditure used to set the Forecast Nominal ABBRR under clause 2D.2.1 for the relevant Financial Year (after accounting for the difference between actual and forecast CPI):

i for any actual Capital Expenditure up to the forecast amount, the roll-in of NBN Co's actual Capital Expenditure up to the forecast amount in its entirety; and

ii for any actual Capital Expenditure that exceeds the forecast amount, the roll-in of all of NBN Co's actual Capital Expenditure that exceeds the forecast amount, subject to the ACCC exercising the power, if conferred under the RAB Roll Forward Proposal, to reduce the amount that exceeds the forecast amount on an ex-post basis to the extent that the ACCC is satisfied that such actual Capital Expenditure has not been incurred in a manner that is consistent with:

A the efficient costs of achieving the Capital Expenditure Objectives;

B the costs that a prudent operator would require to achieve Capital Expenditures Objectives; and

C a realistic expectation of the demand forecast and cost inputs required to achieve the Capital Expenditure Objectives.

Capital Expenditure Objectives means Capital Expenditure considered to be required to achieve any of the following objectives:

- (a) to meet or manage the expected demand for the Products, Product Components, Product Features, Ancillary Services or type of Facilities Access Service;
- (b) to comply with the Statement of Expectations, or a legal, policy, regulatory or administrative requirement, or any requirement of the Shareholder Ministers associated with the provision of the Products, Product Components, Product Features, Ancillary Services or type of Facilities Access Service;
- (c) to maintain the quality, reliability and security of supply of the Products, Product Components, Product Features, Ancillary Services or type of Facilities Access Service;
- (d) to maintain the reliability, safety and security of the NBN Co Network; or
- (e) to meet:
 - i in respect of the Initial Regulatory Period, the network design scope, as described in clauses 1E.6.1(a), 1E.6.1(b) and 1E.6.1(c); and
 - ii in respect of the Subsequent Regulatory Period, the following network design scope in connection with the NBN Co Networks and the Relevant Assets:
 - A the Relevant Assets are to have a network availability that meets any applicable law;
 - B NBN Co is to use existing infrastructure for the NBN Co Network where it is economically and technically feasible to do so; and
 - C there is to be a path for technology upgrade of the Relevant Assets, to the extent possible.

Consumer Advocacy Group means a consumer protection body nominated by the ACCC to represent the interests of End Users for such period of time as the ACCC may specify.

Extended Initial Regulatory Period has the meaning given to that term in clause 4.3(a).

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.

Minor Expenditure Limit means:

- (a) as at the SAU Commencement Date, an amount of \$~~100~~50 million; and
- (b) thereafter, such amount calculated under clause 1E.6.3(b).

PDF Participant means:

- (a) a Customer;
- (b) an Access Seeker who NBN Co permits to participate in the PDF in accordance with clause 1I.3.1(b); and
- (c) the Consumer Advocacy Group.

Price Review has the meaning given to it in clause 1A.2.1(a).

Price Review Arrangement means either:

- (a) a Price Review Proposal accepted by the ACCC under clause 1A.2.3;
- (b) a Varied Price Review Proposal accepted by the ACCC under clause 1A.2.3;
or
- (c) an ACCC Determined Price Review Arrangement issued by the ACCC under 1A.2.5,

that establishes the Maximum Regulated Price (or a formula for ascertaining the Maximum Regulated Price) for each and every Reviewable Offer in respect of each Financial Year covered by the arrangement, as determined in accordance with clause 1A.2.6.

Price Review Criteria means the decision-making criteria in clause 1A.3.

Price Review Notice has the meaning given to it in clause 1A.2.1(a).

Price Review Proposal has the meaning given to it in clause 1A.2.2(a).

Price Review Variation Notice has the meaning given to it in clause 1A.2.3(a)(iii).

Product Withdrawal Cost Criterion means a circumstance in which the avoidable costs of supplying a Withdrawn Product exceeds the expected Revenue from that Withdrawn Product over a period of five years, measured from or around the date that NBN Co gives notice under clause 1I.5.2(a) to undertake a Product Withdrawal.

Product Withdrawal Technical Criterion means a circumstance in which:

- (a) the Withdrawn Product needs to be withdrawn because the NBN Co Network can only cost effectively support a limited number of services; and
- (b) not withdrawing the Withdrawn Product would result in NBN Co being faced with the choice of either:
 - (i) withdrawing another Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (as the case may be); or
 - (ii) not introducing a New Offer listed in the Product Roadmap and planned for introduction over a period of five years, measured from or around the date that NBN Co gives notice under clause 11.5.2(a) to undertake a Product Withdrawal; and
- (c) the Withdrawn Product is expected to have less demand than the Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (as the case may be) or New Offer described in paragraph (b)(i) or (b)(ii).

Product Withdrawal No Material Disadvantage Criterion means a circumstance in which:

- (a) NBN Co has already introduced one or more Products, Product Components, Product Features, Ancillary Services or types of Facilities Access Service (as the case may be) which either individually or when taken together :
 - (i) are functionally equivalent or superior to; and
 - (ii) have a Price that is the same or lower than, the Withdrawn Product (**Replacement Product**);
- (b) NBN Co will allow the Access Seeker to migrate from the Withdrawn Product to the Replacement Product without any contractual restriction or penalty; and
- (c) NBN Co has established a transitional arrangement to facilitate the migration of Access Seekers from the Withdrawn Product to the Replacement Product.

Regulatory Cycle means a period of time within the Subsequent Regulatory Period, as determined by the ACCC in accordance with clause 4.5(c)(i), in which either:

- (a) a Replacement Module is in effect; or
- (a)(b) an ACCC Replacement Module Determination is in effect.

Relevant Regulatory Body means the ACCC, the Australian Energy Regulatory (AER) or the Australian Competition Tribunal (ACT) (to the extent that the ACT is exercising the powers of the ACCC or AER).

Reviewable Offer has the meaning given to it in clause 1A.1.2.

Replacement Module Application is ~~an~~the application by NBN Co to the ACCC to vary this Special Access Undertaking under section 152CBG of the CCA by incorporating a Replacement Module in this Special Access Undertaking in accordance with clauses ~~4.5(e)(i) to 4.5(e)(v)~~4.6 and 4.11.

~~**Replacement Module Term** means the term specified by NBN Co in a Replacement Module or a Replacement Module Application~~

~~**Service Level Proposal** has the meaning given to that term in clause 4.9.~~

Varied Price Review Proposal has the meaning given to it in clause 1A.2.3(a)(iii)(B).

Withdrawn Product means a Product, Product Component, Product Feature, Ancillary Service or type of Facilities Access Service (as the case may be) that NBN Co proposes be subject to Product Withdrawal.

3 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, supplements, updates and replacements to that document;
 - (v) a clause, term, party, schedule or annexure is a reference to a clause or term of, or party, schedule or annexure 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 annexures 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;
 - (ix) a monetary amount is in Australian dollars; and
 - (x) a tax includes any additional or replacement tax of a similar nature;
- (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;
- (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; and

(h) every provision, including every right, obligation and undertaking, is a separate and independent provision that will apply in accordance with its own terms and will not be read down by reference to any other provision, unless provided otherwise.

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