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# **Structural Separation Undertaking**

given by Telstra Corporation Limited to the  
Australian Competition and Consumer  
Commission on 29 July 2011 under section 577A  
of the Telecommunications Act 1997

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This Undertaking is given by Telstra Corporation Limited (ABN 33 051 775 556) to the Australian Competition and Consumer Commission on 29 July 2011 under section 577A of the *Telecommunications Act 1997 (Cth)*.

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## Background

- A The Commonwealth Government is proposing to deploy the NBN Co Fibre Network to pass 93% of Australian premises. The Commonwealth Government established NBN Co to construct, own and operate the NBN Co Fibre Network.
- B Under section 577A of the Act, Telstra may give an undertaking to the ACCC that:
- (i) at all times after the Designated Day:
    - (A) it will cease supplying fixed line carriage services to retail customers in Australia using telecommunications networks over which Telstra is in a position to exercise control; and
    - (B) it will not be in a position to exercise control of a company that supplies fixed line carriage services to retail customers in Australia using telecommunications networks over which Telstra is in a position to control;
  - (ii) establishes and maintains appropriate and effective measures to provide transparency and equivalence in the supply of Regulated Services during the period up to the start of the Designated Day; and
  - (iii) provides for appropriate and effective systems, procedures and processes to facilitate monitoring of Telstra's compliance with this Undertaking by the ACCC.
- C On 23 June 2011, the Minister made an instrument under sections 577A(20) and (21) of the Act exempting from the scope of section 577A(1) and the associated provisions certain networks and services.
- D On 23 June 2011, the Minister also made an instrument under section 577A(7) of the Act setting out certain matters that the ACCC is required to have regard to in deciding whether to accept this Undertaking.
- E Telstra gives this Undertaking to the ACCC in accordance with section 577A(1) of the Act in respect of those fixed line carriage services supplied over those telecommunications networks it controls which are not the subject of the Networks and Services Exemption Instrument.
- F On 23 June 2011, Telstra entered into the Definitive Agreements with NBN Co in which Telstra agreed that, as the NBN Co Fibre Network is progressively rolled out in areas, Telstra will disconnect its Copper Network in those areas and disconnect and deactivate the HFC Network, other than in respect of pay TV services, in those areas. These commercial arrangements will allow Telstra to achieve its commitment in this Undertaking to structural separation by the Designated Day.
- G As part of this Undertaking, in accordance with section 577BC of the Act Telstra has also given a draft migration plan to the ACCC.
- H The document attached to this Undertaking as Attachment A (**Conditions Precedent**) nominates events under subsection 577AA(1) of the Act which must

occur before this Undertaking comes into force and is the document which accompanies this Undertaking for the purposes of that subsection.

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



## Part A Definitions and interpretation

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### 1 Defined terms and interpretation

#### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Plan, but is not defined in the Dictionary, has the meaning given to it in the Plan; and
- (c) which is defined in the Act, but is not defined in the Dictionary or the Plan, has the meaning given to it in the Act.

#### 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this Undertaking.

#### 1.3 Order of precedence

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

## Part B Scope and application

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### 2 When this Undertaking comes into force

This Undertaking comes into force when both of the following are satisfied:

- (a) the ACCC accepts this Undertaking and the ACCC's decision to accept this Undertaking is expressed to be subject to the occurrence of each of the events specified in Attachment A (**Conditions Precedent**); and
- (b) each of the events specified in Attachment A have occurred within the period specified by the ACCC in its decision to accept this Undertaking.

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### 3 Withdrawal of this Undertaking

- (a) Telstra may withdraw this Undertaking at any time prior to the time that it is accepted by the ACCC.
- (b) The following events are non-exhaustive examples of when Telstra may elect to withdraw this Undertaking prior to the time that it is accepted by the ACCC:
  - (i) if the Minister varies or revokes an instrument made under section 577A(7) of the Act which is in force at the time this Undertaking is given to the ACCC;
  - (ii) if the Minister varies or revokes the Networks and Services Exemption Instrument;
  - (iii) if the Minister varies or revokes an instrument made under section 577BB(1) of the Act which is in force at the time this Undertaking is given to the ACCC;
  - (iv) if the ACCC rejects a draft migration plan given by Telstra under section 577BC of the Act;
  - (v) if Telstra withdraws a draft migration plan given under section 577BC of the Act prior to the time that it is approved by the ACCC; or
  - (vi) the Minister makes a determination under section 577GA of the Act.

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### 4 Application of this Undertaking

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

## Part C Structural separation

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### 5 Commitment to structural separation

- (a) Telstra undertakes that, at all times after the Designated Day:
  - (i) Telstra will not supply Non-Exempt Services to retail customers in Australia using a Non-Exempt Network over which Telstra is in a position to exercise control; and
  - (ii) Telstra will not be in a position to exercise control of a company that supplies Non-Exempt Services to retail customers in Australia using a Non-Exempt Network over which Telstra is in a position to exercise control.
- (b) Telstra undertakes that, in connection with clause 5(a), it will:
  - (i) take the actions and/or refrain from taking the actions specified in this Undertaking in accordance with, and on the terms specified in, this Undertaking; and
  - (ii) give the ACCC a draft migration plan.
- (c) For the purposes of this Undertaking (including the Plan):
  - (i) the question of whether Telstra is in a position to exercise control of a telecommunications network is to be determined in accordance with section 577Q of the Act; and
  - (ii) the question of whether Telstra is in a position to exercise control of a company is to be determined in accordance with section 577P of the Act.

## Part D Interim Equivalence and Transparency

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### 6 Objective

- (a) The objective of this Part D is to establish appropriate and effective measures to ensure that there is equivalence and transparency in the supply by Telstra of Regulated Services supplied to Wholesale Customers and Comparable Retail Services supplied to Telstra's Retail Business Units.
- (b) Telstra will satisfy the objective of this Part D by means of:
  - (i) complying with the organisational structure, information security, operational and service quality and information equivalence commitments set out in this Part D;
  - (ii) complying with the commitments regarding wholesale customer facing systems set out in this Part D;
  - (iii) complying with the commitments regarding price equivalence and transparency set out in this Part D;
  - (iv) reporting on service activation, fault rectification and other service quality measures, in the form of Equivalence and Transparency Metrics;
  - (v) committing to enforcement measures in relation to the Equivalence and Transparency Metrics, including in the form of offering Service Level Rebates;
  - (vi) establishing the Accelerated Investigation Process and responding to Equivalence Complaints; and
  - (vii) establishing and participating in the ITA Process as an independent, fast track mechanism for resolving equivalence issues and complaints,in accordance with, and subject to, the terms of this Undertaking.

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### 7 Operation of this Part D

#### 7.1 Commencement

- (a) This Part D commences on the Commencement Date.
- (b) However, the Implementation Schedule in clause 20 may specify that a provision of this Part D, or a Schedule that is associated with the provisions of this Part D, takes effect on a date that is later than the Commencement Date.

#### 7.2 Part D ceases on Designated Day

This Part D and the Schedules referred to in clause 20 will cease to have effect at the start of the Designated Day.

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

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

- (a) any supply of services or facilities by Telstra to an NBN Corporation;
- (b) any supply of services by Telstra over the HFC Network, international networks or wireless networks;
- (c) except as expressly provided in this Undertaking (or the Plan), any activities undertaken by Telstra in connection with Migration, including any processes or activities associated with disconnection of Copper Services or HFC Services in Rollout Regions; or
- (d) the supply of services, including any Regulated Services or Comparable Retail Services, by Telstra to Wholesale Customers or Retail Customers, respectively, using the NBN; or
- (e) any supply of services or facilities by Telstra which are not Regulated Services or Comparable Retail Services.

#### **7.4 Part D cannot be directly enforced by Wholesale Customers**

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

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## **8 Telstra organisational structure**

### **8.1 Business Units for Wholesale, Retail and Network Services**

- (a) Telstra will maintain the following Separated Business Units:
  - (i) one or more Wholesale Business Units;
  - (ii) one or more Retail Business Units; and
  - (iii) one or more Network Services Business Units.
- (b) Telstra will maintain:
  - (i) one or more Retail Business Units that are separate from the Wholesale Business Units and Network Services Business Units;
  - (ii) one or more Wholesale Business Units that are separate from the Retail Business Units; and
  - (iii) one or more Network Services Business Units that are separate from the Retail Business Units,including through complying with clauses 8.2 and 8.3.
- (c) The Required Functions of the Separated Business Units are as follows:
  - (i) the Wholesale Business Units will have principal control over and responsibility for the following in relation to the supply of Regulated Services:
    - (A) sales to Wholesale Customers;
    - (B) managing Service Delivery for Wholesale Customers; and

- (C) negotiating access agreements with Wholesale Customers;
- (ii) the Retail Business Units will have principal control over and responsibility for the following in relation to the supply of Comparable Retail Services:
  - (A) sales to Retail Customers; and
  - (B) negotiating supply contracts with Retail Customers,
- (iii) the Network Services Business Units will have principal control over and responsibility for the following in relation to the supply of Regulated Services and Comparable Retail Services:
  - (A) Fault Detection, Handling and Rectification; and
  - (B) Service Activation and Provisioning.
- (d) Except as expressly provided in clauses 8.4 and 8.5:
  - (i) a Retail Business Unit cannot perform a Required Function of a Wholesale Business Unit or a Network Services Business Unit;
  - (ii) a Wholesale Business Unit cannot perform a Required Function of a Retail Business Unit; and
  - (iii) a Network Services Business Unit cannot perform a Required Function of a Retail Business Unit.
- (e) Subject to clause 8.1(f), nothing in this Undertaking:
  - (i) requires a Retail Business Unit, a Wholesale Business Unit and a Network Services Business Unit (as the case may be) to perform a function which is not a Required Function of that kind of Business Unit under clause 8.1(c);
  - (ii) prevents a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit (as the case may be) undertaking any function or responsibility which is not a Required Function of another kind of Separated Business Unit; or
  - (iii) restricts or prevents a Wholesale Customer from choosing to be, with the agreement of a Retail Business Unit, a Retail Customer in respect of a retail service (including a Comparable Retail Service) and, in that event, the Retail Business Unit dealing with that Wholesale Customer as a Retail Customer in relation to the supply of the relevant service.
- (f) Except as expressly provided in clauses 8.4, a Retail Business Unit will not perform any of the following functions:
  - (i) network planning functions;
  - (ii) pricing functions for pricing of wholesale products;
  - (iii) processing and implementing requests to churn or for local number portability in accordance with industry codes, except where the function relates to account validation for inbound numbers to be ported and is already performed by a Retail Business Unit as at the date this Undertaking comes into force;

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

## **8.2 Staffing of Separated Business Units**

- (a) Subject to the remaining provisions of this clause 8.2 and clauses 8.4 and 8.5, Telstra will ensure that:
  - (i) an Employee who is engaged to work for a Wholesale Business Unit:
    - (A) works principally for a Wholesale Business Unit; and
    - (B) is prohibited from undertaking any work for a Retail Business Unit;
  - (ii) an Employee who is engaged to work for a Retail Business Unit:
    - (A) works principally for a Retail Business Unit;
    - (B) is prohibited from undertaking any work for a Wholesale Business Unit; and
    - (C) is prohibited from undertaking any work for Network Services Business Unit; and
  - (iii) an Employee who is engaged to work for a Network Services Business Unit:
    - (A) works principally for a Network Services Business Unit; and
    - (B) is prohibited from undertaking any work for a Retail Business Unit.
- (b) Where a Network Services Business Unit has been requested by a Retail Business Unit to undertake any of the following kinds of work:
  - (i) Fault Detection, Handling and Rectification;
  - (ii) Service Activation and Provisioning; and
  - (iii) work of a kind, and conducted in the circumstances, described in paragraph 2 of Schedule 2,

nothing in this clause 8.2 restricts or prevents an Employee of a Network Services Business Unit from, in the course of that Employee's work, undertaking such work.
- (c) Nothing in this Undertaking restricts or prevents:
  - (i) short-term secondments or transfers of Employees, as required from time to time;
  - (ii) an Employee undertaking any function or activity:

- (A) in the course of responding to a natural disaster, an emergency or a mass service disruption;
  - (B) to meet the requirements of a national security or law enforcement agency;
  - (C) to fulfil requirements under employment or workplace safety legislation;
  - (D) to fulfil requirements under a legislative instrument, industry standard or industry code; or
  - (E) which relates to Telstra's participation in industry forums, including in relation to the consultation, development, maintenance and implementation of industry codes or standards;
- (iii) an Employee who works for a Separated Business Unit from ceasing to work for that Separated Business Unit and commencing to work for another Separated Business Unit; or
  - (iv) an Employee who works for a Separated Business Unit undertaking any function or activity which cannot reasonably be considered to be work that has been undertaken for another Separated Business Unit, including for the avoidance of doubt, and without limitation, the functions and activities described in paragraph 1 of Schedule 2.
- (d) Telstra will ensure that if an Employee who works for a Separated Business Unit has previously worked for another Separated Business Unit (including as part of a secondment to that other Separated Business Unit), that Employee complies with the information security requirements in clause 9 of this Undertaking in relation to any Protected Information which is known to that Employee because he or she previously worked for that other Separated Business Unit.

### **8.3 Wholesale Business Unit**

Without limitation to clause 9, Telstra will ensure that:

- (a) the Wholesale Business Unit(s) are adequately resourced for Telstra to meet the requirements of this Part D;
- (b) the position of the person who has direct responsibility for the management of a Wholesale Business Unit is of the same level of seniority in Telstra's management structure as the position of the person who has direct responsibility for the management of a Retail Business Unit (or where there is more than one Retail Business Unit, is of the same level of seniority in Telstra's management structure as that of the most senior position having direct responsibility for the management of a Retail Business Unit);
- (c) the Employees engaged to work for a Wholesale Business Unit are located in premises that:
  - (i) are physically separate from any premises occupied by Employees engaged to work for a Retail Business Unit (although this does not mean that the Employees need to be located in a separate building);



- (ii) have security measures in place that prevent an Employee engaged who is to work for a Retail Business Unit from gaining access to the premises where the Employees working for that Wholesale Business Unit are located unless:
  - (A) the Employee who is engaged to work for a Retail Business Unit enters the premises for the purposes of meeting with an Employee who is engaged to work for that Wholesale Business Unit; and
  - (B) the entry to the premises by the Employee who is engaged to work for a Retail Business Unit is authorised by an Employee who is engaged to work for that Wholesale Business Unit; and
  - (C) the Employee who is engaged to work for a Retail Business Unit is accompanied, to the extent practicable, while in the premises by an Employee who is engaged to work for that Wholesale Business Unit.

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

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

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

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

- (d) services supplied outside of Australia;
- (e) services supplied in Australia to customers outside of Australia;
- (f) the integration of the supply of and provision of associated services in relation to disability products;
- (g) the provision of emergency call services;
- (h) payphones and payphone carriage services;
- (i) any other services which are described in paragraph 3 of Schedule 2 as services that are not technically or operationally efficient to supply across separate Business Units (and which Telstra will therefore perform as a single shared function), provided that Telstra will ensure that the corresponding safeguards set out in paragraph 3 of Schedule 2, or those approved by the ACCC, are adopted in relation to those services; and
- (j) any other services approved by the ACCC in accordance with clause 8.5.

#### **8.5 ACCC approval of further exempted services**

- (a) Telstra may, from time to time, request the ACCC to approve, in addition to the functions specified in Schedule 2, other functions which are not technically or operationally efficient for Telstra to perform across separate Business Units (and

which Telstra will therefore perform as a single shared function). In doing so Telstra must identify:

- (i) the function being performed;
  - (ii) the Separated Business Unit performing the function (the **first Separated Business Unit**);
  - (iii) the Separated Business Unit for which the function is being performed (the **second Separated Business Unit**);
  - (iv) the reasons why it is technically or operationally efficient for the service to be supplied by the first Separated Business Unit for the second Separated Business Unit; and
  - (v) the corresponding safeguards that will apply to ensure that Telstra does not gain an unfair competitive advantage from the service being supplied by the first Separated Business Unit for the second Separated Business Unit.
- (b) Within 30 Business Days after the date Telstra provided the information referred to in clause 8.5(a), the ACCC may:
- (i) approve the request;
  - (ii) reject the request; or
  - (iii) notify Telstra of the ACCC's concerns, in which case the period under this clause 8.5(b) will be extended by a further 30 Business Days from the date of Telstra's response to the ACCC's concerns.
- (c) If the ACCC does not accept or reject a request within the time prescribed by clause 8.5(b) the ACCC will be deemed to have rejected the specific service identified in the request for the purposes of clause 8.4(j), provided that nothing in this clause prevents Telstra submitting another request in relation to that specific service.

## **8.6 Incentives and employee benefits**

- (a) All incentive remuneration for Employees working for:
- (i) a Wholesale Business Unit will reflect solely the objectives and performance of the Wholesale Business Unit and, if Telstra wishes, any other Business Unit (which is not a Separated Business Unit of a different kind); and
  - (ii) a Network Services Business Unit will reflect solely the objectives and performance of the Network Services Business Unit and, if Telstra wishes, any other Business Unit (not a Separated Business Unit of a different kind);
- (b) Notwithstanding clause 8.6(a), the reward, incentive or payment associated with any incentive or remuneration scheme for Employees working for a Network Services Business Unit or the Telstra Wholesale Business Unit may include giving Telstra shares to an Employee provided the Employee's entitlement to receive the shares is not subject to a pre-condition that attaches to the performance of Telstra's share price.
- (c) Nothing in this Undertaking prevents:

- (i) Employees working for a Wholesale Business Unit or a Network Services Business Unit from participating in Telstra's group-wide Employee benefit arrangements that are not directly or indirectly linked to Telstra's overall performance;
- (ii) Employees working for a Wholesale Business Unit or a Network Services Business Unit who have previously worked for another part of Telstra (including a Separated Business Unit of another kind) from retaining any incentive remuneration or entitlement received as a result of his or her work for the other part of Telstra; or
- (iii) an Employee incentive remuneration scheme that exists as at the date this Undertaking comes into force from continuing to operate on its terms until its expiry (including in respect of Employees who commence work with Telstra prior to the expiry of the relevant scheme).

## **8.7 Compliance processes**

In order to ensure compliance with this clause 8, and without limitation to clause 9, Telstra will:

- (a) maintain systems and processes to record functional movements of Employees between Wholesale Business Units, Retail Business Units and Network Services Business Units;
- (b) maintain systems and processes to record and track the incentive remuneration provided to Employees who work for Wholesale Business Units and Network Services Business Units, and engage a consultant with remuneration expertise annually to verify that the incentive remuneration complies with the requirements of clause 8.6; and
- (c) pursuant to its obligations in clause 21.3, undertake mandatory training for Employees engaged to work for each Retail Business Unit, Wholesale Business Unit and Network Services Business Unit in relation to Telstra's obligations set out in this clause 8 (including that Employees must continue to comply with the information security requirements in clause 9 if they have previously worked for another Separated Business Unit). This training will be provided both as part of the induction of new Employees and regularly for all other affected Employees.

## **8.8 Consequences of a failure to comply**

A failure to comply with the requirements of this clause 8 will not constitute a breach of this Undertaking that is capable of being directly enforced by the ACCC unless the failure:

- (a) is material and is not an isolated incident; and
- (b) forms part of a demonstrable pattern of repeated non-compliance by Telstra,

## **8.9 Customer excellence**

- (a) Nothing in Part D of this Undertaking:
  - (i) is intended to be a disincentive to Telstra management's efforts to encourage the growth of a customer-orientated, problem solving service culture within Telstra to the benefit of Retail Customers and Wholesale Customers alike; and

- (ii) should be applied in a manner which unreasonably stifles or penalises initiative shown by individual Employees to resolve service issues faced by individual Telstra Retail Customers or Wholesale Customers whom the Employee deals with in the course of his or her work.
- (b) Telstra will not be regarded as having breached this Undertaking if the bona fide efforts of an Employee to resolve a customer issue raised by a particular Retail Customer or Wholesale Customer (whether or not the issue was raised directly with that Employee) or which came to the attention of the Employee in the course of providing services to an end user would otherwise be in breach of this Part D, provided that:
- (i) no breach of the rules about use of and access to Protected Information was involved; and
  - (ii) any reward provided to the Employee for his or her conduct is provided as part of a Telstra policy of rewarding Employees who show similar initiative and excellence in customer service across Retail Customers and Wholesale Customers.
- (c) For clarity, if an Employee who works for a Network Services Business Unit attends the premises of an end user that is a customer of a Wholesale Customer or another RSP:
- (i) if the end user is not also a Retail Customer, the Employee must not undertake any Marketing Activity to the end user; and
  - (ii) if the end user is also a Retail Customer, the Employee must not undertake any “win back” or other Marketing Activity related to alternative Telstra products to the product or products supplied by that Wholesale Customer or other RSP to the end user.

#### 8.10 Senior management

- (a) Where an Employee has management responsibilities in relation to a Separated Business Unit that Employee is not required to work principally for that Separated Business Unit and may perform other management functions within Telstra’s business, provided the performance of those functions complies with this clause 8.
- (b) Clause 8.6 will not apply to an Employee where the management responsibilities of the Employee in relation to the relevant Wholesale Business Unit or Network Services Business Unit (as applicable) do not comprise a substantial part of the overall management responsibilities of that Employee.

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## 9 Information Security

### 9.1 Meaning of Protected Information

In this Undertaking, ‘**Protected Information**’ means:

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

- (b) information that is commercially sensitive to a Wholesale Customer which was supplied by that Wholesale Customer and obtained by Telstra for the purpose of, or in the course of, supplying Regulated Services to that Wholesale Customer; and
- (c) confidential information and commercially sensitive information which is derived from information of the kind described in clause 9.1(a) and 9.1(b), whether or not in an aggregate form, that:
  - (i) would enable the identity of that Wholesale Customer to be ascertained; or
  - (ii) would enable the identity of a customer of that Wholesale Customer to be ascertained;
- (d) confidential information and commercially sensitive information of the kind described in clause 9.1(a) and 9.1(b) which relates to a Wholesale Customer but which does not enable the identity of the Wholesale Customer to be ascertained only by reason of the name of the Wholesale Customer not being identified;

but does not include:

- (e) information of the kind described in clause 9.1(c)(i) where the information is aggregated on a national basis; or
- (f) information which is already public.

## **9.2 Examples of Protected Information**

- (a) The following are examples of information which, if provided to Telstra by a Wholesale Customer in the circumstances set out in clause 9.1, would constitute Protected Information related to that Wholesale Customer:
  - (i) forecasts about that Wholesale Customer's likely future requirements for Regulated Services;
  - (ii) the Wholesale Customer's ordering and provisioning details (including details of when and where orders are submitted);
  - (iii) information regarding confirmed plans to purchase a Regulated Service in particular geographical areas;
  - (iv) details of customers of the Wholesale Customer, such as name, address, contact details, account and service numbers;
  - (v) contractual terms which are specific to that Wholesale Customer (including price terms) related to the supply and acquisition of Regulated Services;
  - (vi) any 'service assurance' arrangements between Telstra and that Wholesale Customer in respect of Regulated Services;
  - (vii) information about that Wholesale Customer's network or facilities; and
  - (viii) information disclosed about that Wholesale Customer's business pricing, product development or other commercial strategies.
- (b) Without limitation to clause 9.1, information will not be Protected Information if it is information that is:

- (i) obtained by, or disclosed to, Telstra other than by the relevant Wholesale Customer;
- (ii) provided by a customer of the relevant Wholesale Customer directly to Telstra (for example, where an end user is also a Retail Customer or enquires about services provided by a Retail Business Unit);
- (iii) any information provided by the relevant Wholesale Customer directly to a Business Unit other than the Wholesale Business Unit or other than in connection with the supply of Regulated Services (for example, product orders where the Wholesale Customer is also a customer of the Retail Business Unit and is therefore a Retail Customer).

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

Subject to clause 9.4, Telstra will not use or disclose Protected Information relating to a Wholesale Customer in a manner which would be likely to enable a Retail Business Unit to gain or exploit an unfair commercial advantage over that Wholesale Customer in any market.

### **9.4 Information security measures**

- (a) Telstra will ensure that, subject to clause 9.4(c):
  - (i) Wholesale Business Units do not disclose Protected Information relating to a Wholesale Customer to:
    - (A) any Retail Business Unit unless authorised to do so by that Wholesale Customer; or
    - (B) any Network Services Business Unit otherwise than on a 'need-to-know' basis or where authorised to do so by that Wholesale Customer; and
  - (ii) Network Services Business Units do not disclose Protected Information relating to a Wholesale Customer to any Retail Business Unit unless authorised to do so by that Wholesale Customer.
- (b) The default position under Telstra's processes and systems will be that an Employee who is engaged to work for a Network Services Business Unit has 'no access' and accordingly must establish that they 'need-to-know' Protected Information relating to a Wholesale Customer either for the purposes of performing an agreement with that Wholesale Customer or otherwise as is necessary for that Employee to perform his or her duties effectively, before such Protected Information will be disclosed to that Employee and can be used by that Employee.
- (c) Nothing in this clause 9 prevents the use or disclosure of Protected Information:
  - (i) in the course of undertaking work of the kind referred to in clause 8.2(c) and 8.4, provided that work is undertaken in accordance with the terms of clause 8.2(c) and 8.4; or
  - (ii) to the Adjudicator where Telstra is required to provide that information under the ITA Process.

- (d) Telstra will comply with its obligations under this clause 9.4 in respect of Protected Information, including by establishing, and complying with, the information security measures set out in paragraph 4 of Schedule 2.

#### **9.5 Further restrictions on other information**

- (a) Telstra undertakes that where a Retail Business Unit requests access to information that:
  - (i) is derived from information of the kind described in clause 9.1(a) and 9.1(b); but
  - (ii) is not Protected Information because it has been aggregated (other than on a national basis) and the identity of Wholesale Customers or their customers cannot be ascertained,

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

- (b) For the avoidance of doubt, information of the kind described in clause 9.1(e), 9.1(f) or 9.2(b) is not subject to clause 9.5(a).

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## **10 Service quality and operational equivalence**

### **10.1 Tickets of work for field staff**

As provided in this clause 10, Telstra will maintain systems and processes for issuing tickets of work to field staff so that tickets of work in relation to Regulated Services supplied to a Wholesale Customer and Comparable Retail Services supplied to a Retail Customer using the Copper Network are:

- (a) issued and processed with Telstra's systems using equivalent order management; and
- (b) managed and performed by Telstra field staff in an equivalent manner.

### **10.2 Basic Telephone Service**

- (a) Telstra will use equivalent order management to process BTS service activation orders received from:
  - (i) a Retail Business Unit; and
  - (ii) Wholesale Customers,so that Service Activate and Provision of BTS can occur in an equivalent manner, regardless of whether the BTS service activation order was received from a Retail Business Unit or a Wholesale Customer.
- (b) Telstra will rectify Faults relating to BTS which are reported to Telstra by Wholesale Customers and Retail Customers using equivalent order management.
- (c) Clause 10.2 does not prevent Telstra using separate business support systems or customer interfaces or processes appropriate to the different requirements of Wholesale Customers and Retail Customers to receive orders from them or to log

Faults relating to BTS, which are then to be passed into and processed within Telstra's operational support systems in accordance with clause 10.2(a).

### **10.3 Wholesale ADSL Layer 2**

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

- (i) a Retail Business Unit; and
- (ii) Wholesale Customers,

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

(b) Telstra will rectify Faults which are reported to Telstra by Wholesale Customers or Retail Customers in relation to ADSL Layer 2 services using equivalent order management and otherwise in an equivalent manner.

(c) Clause 10.3(a) does not prevent Telstra using separate business support system or customer interfaces or processes appropriate to the different requirements of Wholesale Customers and Retail Customers to receive orders from them or to log Faults relating to ADSL services, which are then to be passed into and processed within Telstra's operational support systems in accordance with clause 10.3(a).

### **10.4 LSS and ULLS**

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

- (a) completing activations of LSS;
- (b) completing ULL Individual Cutovers; and
- (c) rectifying Faults relating to the LSS and the ULL service,

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

### **10.5 Domestic Transmission Capacity Service**

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

### **10.6 Wholesale billing**

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

### **10.7 Non-compliance**

(a) A failure to meet the requirements of this clause 10 will be addressed through:



- (i) payment to Wholesale Customers of a Service Level Rebate in accordance with clause 16 and Schedule 7;
  - (ii) Telstra's obligations in clause 15 to report on its performance against the Equivalence and Transparency Metrics and to explain, investigate and/or rectify any Reporting Variance that has been identified;
  - (iii) the handling of Equivalence Complaints through the Accelerated Investigation Process under clause 18 and, where applicable, the Adjudicator under clause 19; and/or
  - (iv) referrals by the ACCC to the Adjudicator under clause 11 of Schedule 5.
- (b) Subject to clause 10.7(c), a failure to meet the requirements of this clause 10 will not constitute a breach of this Undertaking if Telstra complies with the requirements of the provisions referred to in clauses 10.7(a)(i), 10.7(a)(ii), 10.7(a)(iii) and 10.7(a)(iv) (as the case requires) in relation to that failure.
- (c) In circumstances where:
- (i) a failure to meet the requirements of this clause 10 is material and is not an isolated incident; and
  - (ii) that failure forms part of a demonstrable pattern of repeated non-compliance by Telstra,
- that failure will constitute a breach of this Undertaking which is capable of being directly enforced by the ACCC.

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## 11 Access to Telstra Exchange Buildings and External Interconnect Facilities

### 11.1 Telstra reservations of Exchange Capacity

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

### 11.2 Management of Exchange Building orders and queues

- (a) Except where it involves utilisation by Telstra of reserved Exchange Capacity, Telstra will:
- (i) process requests for TEBA received from Wholesale Customers in an equivalent manner to internal requests for access to the same Exchange Building for the purpose of supplying Telstra's own retail and wholesale services (other than TEBA); and
  - (ii) otherwise manage queues for Exchange Capacity in Exchange Buildings on a non-discriminatory basis and applying the same queue management principles to TEBA orders and internal requests for Exchange Capacity related to the supply of Telstra's retail and wholesale services (other than TEBA).

- (b) Telstra will provide information to Wholesale Customers on reasonable request in relation to an Exchange Building, setting out:
  - (i) the progress of queued TEBA requests at the relevant location;
  - (ii) any extensions of time granted to Wholesale Customers undertaking work at the relevant location; and
  - (iii) a brief description of any relevant works being undertaken by Telstra at the relevant location and the anticipated construction completion date of those works.
- (c) It is acknowledged that Wholesale Customers submit TEBA requests using different ordering processes to that which Telstra uses to request Exchange Capacity for its own retail or wholesale purposes. Nothing in this clause 11.2 requires Telstra to establish a common ordering process to apply to TEBA requests and such internal retail or wholesale requests.

### 11.3 On site audit prior to Capping an Exchange Building

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

- (a) Telstra has undertaken an on-site audit of the relevant Exchange Building within 30 days prior to the rejection or the Exchange Building becoming a Capped Exchange; and
- (b) the capping of an exchange or rejection of a TEBA order on the basis of a lack of Exchange Capacity has been approved by the TEBA Governance Committee.

### 11.4 Access to External Interconnect Facilities

- (a) Telstra may reserve space for supply of its own retail or wholesale services (other than supply of External Interconnect Facilities) in respect of particular External Interconnect Facilities where it has bona fide documented plans to use the External Interconnect Facilities within 36 months from the date of the reservation (**Telstra reserved capacity**).
- (b) All requests for access to External Interconnect Facilities and Telstra reserved capacity will be placed in a single queue, such that Telstra will:
  - (i) process requests for access to External Interconnect Facilities received from Wholesale Customers in an equivalent manner to internal requests for access to the same External Interconnect Facilities for the purposes of supply of Telstra's own retail or wholesale services (other than supply of External Interconnect Facilities); and
  - (ii) where there are already requests in place from one or more Wholesale Customers for access to an External Interconnect Facility, any Telstra reservation in respect of the same External Interconnect Facility will be placed in the queue behind those existing requests;
  - (iii) otherwise manage queues for requests for access to External Interconnect Facilities on a non-discriminatory basis and applying the same queue management principles to requests received from Wholesale Customers and

internal requests for the purposes of supply of Telstra's own retail or wholesale services (other than supply of External Interconnect Facilities).

- (c) If a request from a Wholesale Customer is withdrawn, or rejected in accordance with a Wholesale Customer's supply terms, and resubmitted by a Wholesale Customer, then the request will be placed at the end of the queue as if it were a new request.
- (d) Telstra is entitled to reject an order from a Wholesale Customer where that External Interconnect Access capacity has been reserved.

### **11.5 Governance arrangements for Exchange Building Facilities and External Interconnect Facilities**

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

- (a) compliance by Telstra with its standard TEBA processes, including the ordering and queue management requirements set out in this clause 11;
- (b) the provision of any information requested from time to time by the ACCC or Adjudicator in relation to TEBA;
- (c) any proposal or request to Cap an Exchange Building;
- (d) material amendments which may be required from time to time to Telstra Technical Specifications and Procedures related to TEBA; and
- (e) any complex decisions related to TEBA orders which require escalation, including any proposal by an individual planner to reject a TEBA order on the basis of a lack of Exchange Capacity.

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## **12 Wholesale Customer Facing Systems**

### **12.1 LOLO and Wholesale B2B Interface**

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

- (a) lodging new orders for Regulated Services including, where relevant, requesting an appointment time for service activation of a Regulated Service;
- (b) modifying or cancelling an existing order for Regulated Services;
- (c) monitoring and tracking an existing order for Regulated Services;
- (d) where a Regulated Service relates to a DSL service:
  - (i) placing transfer orders to transfer a DSL service; and
  - (ii) undertaking line testing to monitor and manage Faults (subject to daily quotas);

- (e) viewing and downloading invoices in respect of Regulated Services; and
- (f) performing Service Qualification (subject to daily quotas, if any, which are reasonable).

## 12.2 Wholesale Customer Portal

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

- (a) viewing planned and unplanned outage notifications in relation to Regulated Services;
- (b) where a Regulated Service relates to a DSL service, undertaking line testing to monitor and manage Faults (subject to daily quotas);
- (c) referring queries, complaints or disputes to Telstra related to the standard of Service Delivery of Regulated Services;
- (d) accessing transactional reporting functionality and metrics; and
- (e) accessing LOLO.

## 12.3 Application assurance

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

## 12.4 Availability of LOLO

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

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# 13 Information Equivalence

## 13.1 Objective of Information Equivalence

- (a) The objective of this clause 13.1 is to establish measures which demonstrate that the quality and timeliness of information provided by Telstra to Wholesale Customers in respect of network activities, circumstances or events that are likely to affect the delivery or operational quality of Regulated Services, is equivalent to the quality and timeliness of information provided by Telstra to Retail Business Units in respect of Comparable Retail Services (**information equivalence objective**).
- (b) Without limitation, the following activities, circumstances or events would be likely to affect the delivery or operational quality of Regulated Services for the purpose of clause 13.1(a):

- (i) a relevant network or system upgrade or enhancement, including any upgrade to operational support systems (such as a billing or ordering system);
  - (ii) a relevant network closure or withdrawal of system functionality;
  - (iii) a planned outage to relevant networks or systems, including where required in order for Telstra to undertake planned maintenance or repair work; and
  - (iv) information about unplanned network events, such as information relating to disaster recovery planning.
- (c) Telstra will satisfy the information equivalence objective by establishing and maintaining customer engagement arrangements with Wholesale Customers, under section 13.2, that enable Telstra to:
- (i) keep each Wholesale Customer informed on a regular periodic basis about the matters set out in clause 13.1(b) to the extent relevant to that customer;
  - (ii) provide a forum for Telstra to consult in good faith about the likely impacts of those matters on Wholesale Customers, including answering questions or responding to reasonable concerns; and
  - (iii) issue a series of network notifications as set out in clause 13.3, which provide Wholesale Customers with periodic information and updates about the matters set out in clause 13.1(b) relevant to the Regulated Services they are acquiring.

## **13.2 Wholesale Customer Engagement**

- (a) Telstra will appoint a manager or customer team, as applicable, in respect of each Wholesale Customer, which is appropriately resourced to enable Telstra to deal with and respond to that Wholesale Customer in a timely and effective manner about the matters set out in clause 13.1(b).
- (b) Telstra will determine whether it will conduct a monthly customer review with a Wholesale Customer having regard to:
- (i) the volume of Regulated Services acquired by the Wholesale Customer;
  - (ii) the nature of the Regulated Services acquired by the Wholesale Customer;
  - (iii) the complexity of the Regulated Services acquired by the Wholesale Customer; and
  - (iv) any other factor that Telstra reasonably considers relevant.
- (c) Without limitation, and subject to agreement between Telstra and a Wholesale Customer, each monthly customer review conducted under this clause 13.2 with that Wholesale Customer will address the following matters (to the extent applicable):
- (i) any of the matters set out in clause 13.1(b);
  - (ii) relevant product, pricing or other commercial information or updates of relevance to that Wholesale Customer;

- (iii) complaints or concerns raised by that Wholesale Customer in respect of Telstra's wholesale performance;
  - (iv) the outcome of any accelerated investigations undertaken by Telstra under clause 18 in response to Equivalence Complaints made by that Wholesale Customer, including any update on rectification activities associated with such complaints;
  - (v) any construction activities being undertaken by that Wholesale Customer in Exchange Buildings, including any extensions of time granted to the Wholesale Customer;
  - (vi) any billing or credit management issues; and
  - (vii) the progress of any TEBA or External Interconnect Access queues which affect that Wholesale Customer.
- (d) Telstra will use monthly customer reviews as a vehicle for consulting in good faith with Wholesale Customers in relation to the supply of Regulated Services, including as a means of:
- (i) updating those Wholesale Customers in relation to relevant network, system or product upgrades or developments;
  - (ii) proactively responding to issues or concerns, without the need for the parties to refer issues to formal complaint or dispute processes; and
  - (iii) reviewing Telstra's compliance with obligations of equivalence and transparency under this Part D.

### **13.3 Network Notifications**

- (a) Without limitation to the information provided to Wholesale Customers through the processes required by clause 13.2, Telstra will keep Wholesale Customers informed of the matters set out in paragraph 13.1(b) by means of:
- (i) publishing Network Notifications, in accordance with Schedule 4; and
  - (ii) providing notice of any Major Network Modernisation or Upgrade, in accordance with Schedule 4.
- (b) Any notification published by Telstra under this clause 13.3 is for information purposes only and represents Telstra's reasonably anticipated view of upcoming operational developments. For the avoidance of doubt, a notification under this clause 13.3:
- (i) does not confer any enforceable rights on any person, including any Wholesale Customer; and
  - (ii) does not constitute a representation that Telstra will act or refrain from acting in any particular way.

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## 14 DSL upgrades

- (a) Telstra undertakes that if it develops a DSL Upgrade it will make an equivalent upgrade to the relevant comparable wholesale DSL service (**Wholesale DSL Upgrade**).
- (b) Telstra undertakes that if it develops a mass market consumer product that allows end users to acquire a Bigpond retail DSL service without having to also acquire a PSTN voice service supplied by Telstra over the same line (**Naked DSL Product**) it will offer the relevant comparable wholesale DSL service to Wholesale Customers on the basis that the end user of the wholesale DSL service is not required to acquire a PSTN voice service over the same line (**Wholesale Naked DSL Product**).
- (c) Telstra undertakes that:
  - (i) it will provide simultaneous commercial launch dates for:
    - (A) the DSL Upgrade and the Wholesale DSL Upgrade; and
    - (B) the Naked DSL Product and the Wholesale Naked DSL Product; and
  - (ii) no less than 28 days prior to the launch date for the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable), Telstra will provide Wholesale Customers with information about the following matters in relation to the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable):
    - (A) the scheduled product launch date;
    - (B) technical specifications;
    - (C) price and non-price terms;
    - (D) geographic availability; and
  - (iii) if requested by a Wholesale Customer after the time that notice is given under clause 14(c)(ii), it will negotiate the terms of the commercial supply of the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) in good faith.
- (d) Nothing in this Undertaking prevents Telstra undertaking bona fide product testing which:
  - (i) makes the DSL Upgrade or Naked DSL Product (as applicable) available to Retail Business Units for the purpose of product trials before the comparable Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) is made available to Wholesale Customers on a commercial basis;
  - (ii) makes a Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) available to one or more Wholesale Customers for the purpose of product trials before the Wholesale DSL Upgrade or Wholesale Naked DSL Product (as applicable) is made available to Wholesale Customers on a commercial basis; or

- (iii) conducting separate and differently designed product trails for the DSL Upgrade and Wholesale DSL Upgrade with Wholesale Customers to reflect the differences between retail and wholesale supply; or
  - (iv) conducting separate and differently designed product trails for the Naked DSL Product and Wholesale Naked DSL Product with Wholesale Customers to reflect the differences between retail and wholesale supply.
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## 15 Equivalence and Transparency Metrics

### 15.1 Equivalence and Transparency Metrics

- (a) Telstra has identified Equivalence and Transparency Metrics relevant to:
  - (i) the operational quality and delivery standard of relevant Regulated Services and Comparable Retail Services supplied using the Copper Network; and
  - (ii) the standard of delivery, in relation to Regulated Services, of:
    - (A) Fault Detection, Handling and Rectification;
    - (B) Service Activation and Provisioning; and
    - (C) availability of LOLO,which are set out in Schedule 3.
- (b) The Equivalence and Transparency Metrics:
  - (i) provide a basis for Telstra to identify system or process issues that have caused non compliance with the requirements of this Part D and, if necessary, remediate any such system or process issues, in accordance with clause 15.3; and
  - (ii) provide a basis for the payment of Service Level Rebates in accordance with, and subject to the terms set out in, clause 16.
- (c) Subject to the conditions set out paragraphs 10 (**Specific Conditions**) and 11 (**General Conditions**) of Schedule 3, on a Quarterly basis Telstra will measure the Variance (if any) between:
  - (i) its performance against the Equivalence and Transparency Metrics in relation to Wholesale Customers; and
  - (ii) its performance against the Equivalence and Transparency Metrics in relation to the Retail Business Units,

**(E&T Performance Result)** except in relation to Metrics 12, 13, 14, 15, 16, 17, 19 and 20, where performance figures will be provided against specified targets.
- (d) For clarity:
  - (i) Metrics 1 to 11 (inclusive) and 18 compare the performance of Comparable Retail Services supplied using the Copper Network to Retail Customers with the performance of Regulated Services supplied using the Copper Network to Wholesale Customers; and



- (ii) the other Metrics are measures of the performance of Regulated Services supplied using the Copper Network to Wholesale Customers and the availability of LOLO against the fixed service level specified.
- (e) To ensure the reliability of the Metrics, if the volume of services orders placed by Wholesale Customers in a Quarter which relate to a Metric (other than Metrics 12 to 15 inclusive and Metrics 19 and 20):
  - (i) is less than 1,500 orders in aggregate for that Quarter; or
  - (ii) is less than 10% of the volume of orders placed for Telstra's Retail Customers for that Metric in that Quarter,

Telstra's performance in relation to that Metric for that Quarter will be disregarded for the purposes of this Undertaking (including in calculating a Reporting Variance) and Telstra will not be required to measure, report, or pay Service Level Rebates in relation to that Metric for that Quarter.

## 15.2 Operational Equivalence Report

- (a) Telstra will provide the ACCC and Adjudicator with a report (**Operational Equivalence Report**) for each Quarter that sets out:
  - (i) the E&T Performance Result for each Metric for that Quarter;
  - (ii) the result that would have been the E&T Performance Result for each Metric for that Quarter if the conditions set out in paragraphs 10 and 11 of Schedule 3 were not applied; and
  - (iii) an explanation of how Telstra has applied the conditions set out in paragraphs 10 and 11 of Schedule 3 when calculating the E&T Performance Result for each Metric for that Quarter.
- (b) The Operational Equivalence Report will be provided to the ACCC and Adjudicator by no later than the two months after the end of the Quarter to which it relates.
- (c) Telstra will also publish a copy of each Operational Equivalence Report on its website within 5 Business Days after the date that the report was provided to the ACCC and the Adjudicator in accordance with clause 15.2(b).

## 15.3 Telstra will report on Equivalence and Transparency Metrics to the Adjudicator

- (a) Subject to the conditions set out in paragraphs 10 (**Specific Conditions**) or 11 (**General Conditions**) of Schedule 3, if the E&T Performance Result calculated under clause 15.1(c) in respect of a Metric demonstrates a Reporting Variance, Telstra will:
  - (i) promptly investigate the cause or causes of the non-compliant result;
  - (ii) at the same time as Telstra provides an Operational Equivalence Report for the Quarter under clause 15.2, it will separately provide to the Adjudicator and the ACCC an accompanying confidential report setting out for each non-compliant result:
    - (A) a reasonably detailed explanation of the reason(s) for the Reporting Variance; and

- (B) if Telstra determines that the result is due, in whole or in part, to any non-compliance by Telstra with this Part D, it will set out any steps being taken to further investigate and/or rectify non compliance, including an estimated timeframe for rectification; and
- (iii) if a notice is given by Telstra under clause 15.3(a)(ii)(B), take the steps identified in that notice as the steps that Telstra will take to further investigate and/or rectify non compliance.

#### **15.4 Calculation of Variances**

For the purposes of clauses 15.2 and 15.3:

- (a) in respect of Metrics 1 to 12 (inclusive) and 20, the Variance threshold is applied to business and residential data separately; and
- (b) in respect of the other Metrics, the Variance threshold is applied to combined business and residential data.

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## **16 Service Level Rebates**

### **16.1 Objective**

- (a) The objective of this clause 16 is to establish a scheme for the payment of service level rebates to Wholesale Customers in the event that Telstra does not meet a Service Level for an Equivalence and Transparency Metric as set out in Schedule 3.
- (b) Wholesale Customers are not required to participate in the scheme and may:
  - (i) continue with any existing service level arrangements agreed with Telstra;
  - (ii) seek to agree alternative service level arrangements with Telstra; or
  - (iii) continue to rely on other entitlements that may be available to the Wholesale Customer, such as under section 118A of the Consumer Protection Act (or its equivalent from time to time).
- (c) Wholesale Customers that do elect to participate in the scheme (by making a request under clause 16.2) must waive any previously agreed service level arrangement with Telstra and there are also arrangements to ensure that Wholesale Customers may elect whether to continue to claim a right of a contribution under section 118A of the Consumer Protection Act.

### **16.2 Telstra will enter into Regulated Services SLA Agreement on request**

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

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## 17 Price Equivalence and Transparency

### 17.1 Price Equivalence and Transparency Measures

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

- (a) making available a Rate Card with reference prices for each of ULLS, LSS, WLR, LCS, PSTN OA, PSTN TA, DTCS, MTAS and the Wholesale ADSL Reference Service (the **Reference Services**);
- (b) establishing and updating the reference offer for Wholesale ADSL Reference Service, from time to time, in accordance with Schedule 8; and
- (c) providing for transparency of Internal Wholesale Prices and External Wholesale Prices for Regulated Services based on fully-allocated internal costs and revenues for those services in accordance with clause 17.3.

### 17.2 Wholesale Rate Card with Reference Prices

- (a) Telstra will publish and maintain a Rate Card with Reference Prices for each of the Reference Services.
- (b) A Reference Price for each Reference Service will be calculated and updated from time to time in accordance with Schedule 8.
- (c) Telstra undertakes that it will supply each of the Reference Services only on the price terms:
  - (i) set out in a Reference Price; or
  - (ii) as otherwise agreed with a Wholesale Customer.
- (d) For clarity, nothing in this clause 17:
  - (i) amends or overrides any existing contracts, including any agreed pricing, which exists as at the Commencement Date; or
  - (ii) prevents Telstra and a Wholesale Customer from agreeing a price (or price structure) for any Reference Service that is different from the current Reference Price for that Reference Service.
- (e) Telstra undertakes to include in the standard form of its wholesale contracts for Reference Services offered to Wholesale Customers after the Commencement Date that, if alternative prices for a Reference Service are not able to be agreed, the Reference Prices set out in this Undertaking (as amended from time to time) will apply.
- (f) The Reference Prices set out from time to time in a Rate Card in respect of a Reference Service that is Regulated Service, apply to the same extent as any pricing set out in a final access determination or interim access determination made by the ACCC under Division 4 of Part XIC of the CCA in respect of that Regulated Service. For example, any exemptions or exclusions applying to pricing for a Regulated Service in particular geographic areas made in a final access determination or interim access determination also apply in respect of the availability of Reference Prices for that Regulated Service.

### **17.3 TEM Reporting and Wholesale Price Equivalence**

- (a) Telstra will provide to the ACCC for each Reporting Period a TEM Report that sets out in respect of each Reporting Period, the fully-allocated costs, revenues and economic return associated with Reportable Wholesale Products and Reportable Retail Products.
- (b) Telstra will:
  - (i) prepare the TEM Report; and
  - (ii) calculate as part of each TEM Report a separate per service External Wholesale Price and Internal Wholesale Price for each of the equivalent Reportable Wholesale Products and Reportable Product Bundles; and
  - (iii) provide Substantiation Reports to the ACCC from time to time in order to explain any differences between the Internal Wholesale Prices and External Wholesale Prices,applying the methodology and otherwise on the terms specified in Schedule 9.
- (c) Telstra undertakes that the TEM Financial Management Reporting System, from which the TEM Reports will be derived, is the internal accounting system that Telstra uses as its primary source of financial data for the preparation of internal management reports in respect of business costs and revenues, including in respect of non-regulated products and services.
- (d) Telstra undertakes to develop and maintain the TEM Financial Management Reporting System so that it is a reliable and fit for purpose management accounting system, including for the purpose of:
  - (i) producing TEM Reports; and
  - (ii) determining the Internal Wholesale Prices,by no later than the date on which the first TEM Report is submitted to the ACCC under Schedule 9.

### **17.4 TEM Reports and Substantiation Reports are not determinative**

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

- (a) be determinative of whether Telstra has or has not acted inconsistently with the CCA in respect of its pricing of any wholesale or retail product; or
- (b) restrict the ACCC in any way in its exercise of its functions under the CCA (including Parts XIB and XIC).

### **17.5 Operation of Price Equivalence and Transparency Framework**

Each of the price equivalence and transparency measures set out in this clause 17, Schedule 8 and Schedule 9 will cease to operate as at the Designated Day.

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## 18 Telstra Accelerated Investigation Process

### 18.1 Establishment and object

- (a) Telstra will establish and maintain an Accelerated Investigation Process to expeditiously investigate any Equivalence Complaints received from Wholesale Customers.
- (b) The object of the Accelerated Investigation Process is to provide an internal process by which Telstra can quickly and flexibly respond to, and resolve, Equivalence Complaints to the reasonable satisfaction of the Wholesale Customer.

### 18.2 Equivalence Complaints

- (a) For the purposes of this Undertaking, an Equivalence Complaint is:
  - (i) a non-price complaint or issue that relates to or is likely to have been caused by a system or process issue affecting Telstra's compliance with obligations set out in Part D of this Undertaking; or
  - (ii) a non-price complaint in connection with a TEBA order or process,(each an **Equivalence Complaint**).
- (b) For the avoidance of doubt, the following are not Equivalence Complaints:
  - (i) a dispute referred to the Adjudicator under clause 31 of the Plan;
  - (ii) any reference of a matter to the Adjudicator by the ACCC under the Plan; and
  - (iii) a complaint or dispute which arises under or in relation to the terms of supply of Regulated Services and which does not relate to system or process issues (for example, a complaint related to the timely supply of an individual order or the late payment of an amount due).

### 18.3 The Accelerated Investigation Process

- (a) As soon as reasonably practicable after receiving an Equivalence Complaint in writing from a Wholesale Customer (**Equivalence Complaint Notice**), Telstra will:
  - (i) determine (acting reasonably) if that matter is an Equivalence Complaint or whether it would be more appropriately dealt with using an alternative complaint or dispute process, and notify that Wholesale Customer accordingly;
  - (ii) if the matter is to be dealt with using the Accelerated Investigation Process, investigate the matters raised in the Equivalence Complaint Notice with a view to resolving the Equivalence Complaint as soon as reasonably practicable;
  - (iii) if Telstra reasonably requires additional information in order to investigate the matters raised in the Equivalence Complaint Notice, provide written notice to the Wholesale Customer requesting the additional information;

- (iv) subject to clause 18.3(b), within 5 Business Days of the date of receipt by Telstra of an Equivalence Complaint Notice, issue a report (**Rectification Plan**) to the relevant Wholesale Customer setting out:
  - (A) the steps that Telstra has taken to investigate and/or resolve the Equivalence Complaint;
  - (B) any explanation or justification for the circumstances giving rise to the Equivalence Complaint;
  - (C) if Telstra has been unable to complete its investigation by the time it issues the Rectification Plan, an estimate of the likely timeframe within which it will have completed its investigation and be in a position to issue its Rectification Plan to that Wholesale Customer; and
  - (D) if applicable, the steps that Telstra will take to resolve the issues giving rise to the Equivalence Complaint, including the timeframe in which those steps will be taken.
- (b) If Telstra has provided a written notice to a Wholesale Customer under clause 18.3(a)(iii), the time referred to in clause 18.3(a)(iv) will be extended by a period equal to the number of days from the date on which the written notice was provided by Telstra and the date on which the information requested in the written notice was received by Telstra.
- (c) The relevant Wholesale Customer may propose amendments to the Rectification Plan in writing to Telstra within 5 Business Days of the date the Wholesale Customer is provided with the Rectification Plan by Telstra under clause 18.3(a)(iii). If Telstra receives any proposed amendments from the Wholesale Customer within the required time it will give reasonable consideration to them, and:
  - (i) if it accepts any or all of the proposed amendments, Telstra will then revise and re-issue the Rectification Plan to that Wholesale Customer as soon as reasonably practicable, but in any event within 5 Business Days of receiving the proposed amendments; and
  - (ii) if it rejects any or all of the proposed amendments, promptly notify that Wholesale Customer of the proposed amendments which it rejects and provide an explanation.
- (d) The relevant Wholesale Customer must notify Telstra within 5 Business Days of the date it receives a Rectification Plan under clause 18.3(a)(iii) or an amended Rectification Plan under clause 18.3(c), whether the Wholesale Customer accepts or rejects the Rectification Plan.
- (e) If the relevant Wholesale Customer does not notify Telstra that it accepts or rejects a Rectification Plan (or, if applicable, amended Rectification Plan) within 5 Business Days under clause 18.3(d), the Wholesale Customer will be deemed to have accepted it.
- (f) Telstra will carry out each of the tasks identified in an accepted Rectification Plan in accordance with the terms of that Rectification Plan.
- (g) If Telstra reasonably determines that it is necessary to vary or amend an accepted Rectification Plan, it will as soon as reasonably practicable:

- (i) notify the relevant Wholesale Customer of the proposed amendments, including explaining the reasons for the proposed amendment and the date on which such amendments will take effect; and
  - (ii) consult in good faith with that Wholesale Customer, including giving reasonable consideration to any suggestions received from the Wholesale Customer in relation to the proposed amendment.
- (h) If the relevant Wholesale Customer does not notify Telstra that it accepts or rejects any proposed amendment(s) to an accepted Rectification Plan suggested by Telstra under clause 18.3(g), within 5 Business Days of the date the Wholesale Customer received notice of the proposed amendment(s), it will be deemed to have accepted those proposed amendments.
- (i) The relevant Wholesale Customer may not refer to the ITA Process an Equivalence Complaint that is the subject of an accepted Rectification Plan, unless:
- (i) there has been a material failure by Telstra to comply with the Rectification Plan; or
  - (ii) Telstra has notified that Wholesale Customer of proposed amendments to the Rectification Plan in accordance with clause 18.3(g), which proposed amendments that Wholesale Customer does not accept.
- (j) A Wholesale Customer's right to refer any failure by Telstra to comply with a Rectification Plan to the ITA Process is that Wholesale Customer's sole and exclusive remedy for such failure.
- (k) Nothing in this clause 18 restricts or prevents a Wholesale Customer and Telstra from agreeing, on a case by case basis, to deal with or attempt to resolve any matter, dispute or complaint which would otherwise be an Equivalence Complaint without referring it to the Accelerated Investigation Process or the ITA Process.

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## 19 Independent Telecommunications Adjudicator

### 19.1 The establishment of the office of the Independent Telecommunications Adjudicator

- (a) Telstra will establish the Office of the Independent Telecommunications Adjudicator as a company limited by guarantee in accordance with Schedule 5.
- (b) Telstra will establish the ITA Process in accordance with, and subject to, the terms specified in Schedule 5.
- (c) The ITA Process will not apply until the Adjudicator is appointed in accordance with Schedule 5 and agrees to be bound by the ITA Process and the terms set out in Schedule 5.

### 19.2 Referral of Equivalence Complaints to the Adjudicator

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

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

- (b) the Equivalence Complaint was referred to Telstra for investigation under the Accelerated Investigation Process and:
  - (i) a Rectification Plan was issued by Telstra to that Wholesale Customer under clause 18.3(a)(iii) setting out Telstra's proposed approach to resolving the Equivalence Complaint; and
  - (ii) the Wholesale Customer has notified Telstra that it rejects the Rectification Plan within 5 Business Days of the date it received the Rectification Plan;
- (c) there has been a material failure by Telstra to comply with an accepted Rectification Plan, including any material failure to meet a timeframe set out in that Rectification Plan; or
- (d) Telstra has notified that Wholesale Customer of proposed amendment(s) to an accepted Rectification Plan in accordance with clause 18.3(g) and the Wholesale Customer rejects those proposed amendment(s) within 5 Business Days of the date it received the proposed amendment(s).

### **19.3 Referral to the Adjudicator of disputes under the Plan**

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

### **19.4 Telstra to enter into ITA Agreements and comply with ITA orders**

- (a) As soon as reasonably practicable after receiving a request to do so by a Wholesale Customer, Telstra will enter into an ITA Agreement with that Wholesale Customer on the terms set out in Schedule 6, so that the Wholesale Customer can participate in the ITA Process.
- (b) Telstra will:
  - (i) act consistently with the Charter of Independence;
  - (ii) cooperate with and assist the Adjudicator in good faith with each investigation, in accordance with Schedule 5;
  - (iii) be bound by and comply with the processes set out in Schedule 5; and
  - (iv) subject to paragraphs 8.5, 12 and 13 of Schedule 5, comply with any determination issued by the Adjudicator, including any determination made in respect of:
    - (A) payment of the Adjudicator's costs; or
    - (B) repayment of the ITA Referral Fee to a Wholesale Customer, in the event that the relevant ITA Dispute is upheld.

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## **20 Implementation**

### **20.1 When provisions of Part D take effect**

Unless otherwise approved by the ACCC in accordance with clause 20.2, the following provisions of Part D of this Undertaking and the associated Schedules below will take effect as follows:



Provision	Date on and from which the provisions take effect
Organisational Structure (clause 8 and Schedule 2)	<p>For all provisions other than clause 8.6, the Commencement Date.</p> <p>For clause 8.6, the later of:</p> <ul style="list-style-type: none"> <li>• 2 months after the Commencement Date; and</li> <li>• the DA Commencement Date.</li> </ul>
Information Security (clause 9)	Commencement Date
Service quality and operational equivalence (clause 10)	Commencement Date
Telstra Exchange and Building Access (clause 11)	<p>The later of:</p> <ul style="list-style-type: none"> <li>• 2 months after the Commencement Date; and</li> <li>• the DA Commencement Date</li> </ul>
Wholesale Customer Facing Systems (clause 12)	<p>The later of:</p> <ul style="list-style-type: none"> <li>• 2 months after the Commencement Date; and</li> <li>• the DA Commencement Date</li> </ul>
Information Equivalence (clause 13 and Schedule 4)	Commencement Date
Equivalence and Transparency Metrics (clause 15 and Schedule 3)	The start of the first Quarter which commences after the Commencement Date
Service Level Rebates (clause 16 and Schedule 7)	<p>The later of:</p> <ul style="list-style-type: none"> <li>• 2 months after the Commencement Date; and</li> <li>• the DA Commencement Date</li> </ul>
Price Equivalence and Transparency (clause 17, Schedule 8 and Schedule 9)	<p>The later of:</p> <ul style="list-style-type: none"> <li>• 2 months after the Commencement Date; and</li> </ul>

	<ul style="list-style-type: none"> <li>the DA Commencement Date</li> </ul>
Telstra Accelerated Investigation Process (clause 18)	<p>The later of:</p> <ul style="list-style-type: none"> <li>2 months after the Commencement Date; and</li> <li>the DA Commencement Date</li> </ul>
Independent Telecommunications Adjudicator Process (clause 19 and Schedule 5 and Schedule 6)	<p>The later of:</p> <ul style="list-style-type: none"> <li>2 months after the Commencement Date; and</li> <li>the DA Commencement Date</li> </ul>
All other provisions of Part D	Commencement Date

## 20.2 ACCC may approve extensions

- (a) If the ACCC receives a request from Telstra to vary a date that is specified in clause 20.1 as the date on which one or more provisions of Part D of this Undertaking and their associated Schedules will take effect the ACCC may:
- approve that request; or
  - reject the request.
- (b) In deciding whether to approve or reject a request given under clause 20.2(a) the ACCC must have regard to:
- whether Telstra has acted in an effective, timely and reasonable manner to implement changes to its organisational structures, processes and/or systems which are necessary to ensure compliance with the applicable provisions;
  - whether any event or circumstance which is beyond Telstra's reasonable control has delayed the implementation of any such changes;
  - the other changes that Telstra is making to its organisational structures, processes and systems in order to comply with its obligations under the Definitive Agreements, the Plan and this Undertaking;
  - reasonable timeframes for implementing changes to organisational structures, processes and systems;
  - the principle that Telstra should not have to incur costs which are unreasonable or disproportionate; and
  - the matters set out in subsection 577A(6) of the Act.

## Part E Compliance and Reporting

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### 21 Compliance processes and management

#### 21.1 Telstra Audit Committee and Director of Equivalence

- (a) The Audit Committee of the Telstra Board (**Audit Committee**) will be responsible for appointing and overseeing the activities of the Director of Equivalence.
- (b) As soon as practicable after this Undertaking comes into force, the Audit Committee will appoint a Director of Equivalence who will:
  - (i) be an executive with responsibilities and duties of the Director of Equivalence as set out in this Undertaking;
  - (ii) be in a role which is independent, in relation to day to day operational management and reporting, from those parts of Telstra's business and relevant activities which are subject to the obligations set out in this Part D, and which the Director of Equivalence is required to oversee; and
  - (iii) be sufficiently senior in Telstra's management structure to permit the person occupying that position to perform the duties of the Director of Equivalence as set out in this Undertaking.
- (c) Without limitation to the other responsibilities of the Director of Equivalence set out in this Undertaking or as otherwise directed by the Audit Committee, he or she will have responsibility for:
  - (i) putting in place effective and appropriate mechanisms for monitoring compliance with Part D and Part E of this Undertaking, including ensuring timely reporting to the ACCC in accordance with clause 22.1;
  - (ii) reporting to the CEO and the Audit Committee from time to time;
  - (iii) increasing awareness within Telstra of the requirements of Part D of this Undertaking;
  - (iv) accepting, facilitating and responding to any requests for information received from the ACCC in relation to this Undertaking;
  - (v) developing and overseeing an ongoing internal education and compliance training program directed towards ensuring Telstra's compliance with this Part D of this Undertaking;
  - (vi) monitoring implementation of measures to respond to any identified non-compliance by Telstra with Part D;
  - (vii) overseeing the operation of the Accelerated Investigation Process, including assessing all Equivalence Complaints received by Wholesale Customers in accordance with clause 18.2; and
  - (viii) monitoring implementation of measures to respond to, and comply with, any order of the Adjudicator.

## 21.2 Equivalence Compliance Statement

- (a) Telstra will, within 90 days of this Undertaking coming into force, issue a policy statement outlining Telstra's commitment to compliance with the requirements of this Part D (**the Equivalence Compliance Statement**).
- (b) Telstra will ensure that the Equivalence Compliance Statement:
  - (i) is written in plain language;
  - (ii) contains a statement of commitment to compliance with this Part D;
  - (iii) contains a strategic outline of how commitment to compliance with this Part D will be realised within Telstra;
  - (iv) contains a guarantee that whistleblowers will not be prosecuted or disadvantaged in any way and that their reports will be kept confidential and secure; and
  - (v) contains a clear statement that Telstra will take action internally against any persons who are knowingly or recklessly concerned in a contravention of this Part D and will not indemnify them.

## 21.3 Compliance Training

- (a) Telstra will ensure that regular (at least once a year) and practical training is undertaken for all relevant Telstra Employees, whose duties could result in them being concerned with conduct that may contravene this Part D.
- (b) Telstra must ensure that the training is conducted:
  - (i) through online training courses; and/or
  - (ii) by a suitably qualified compliance professional or legal practitioner.
- (c) Telstra will ensure that the Equivalence Compliance Statement includes a requirement that awareness of issues relating to compliance with Part D forms part of the induction of all new Telstra directors and Employees whose duties could result in them being concerned with conduct that may contravene Part D.

## 21.4 Supply of Compliance Program Documents to the ACCC

- (a) Within 6 months after the date that this Undertaking comes into force, Telstra will:
  - (i) develop the Equivalence Compliance Statement, compliance training materials to be used under clause 21.3 and any other documents constituting its compliance program with this Part D (**Equivalence Compliance Program**); and
  - (ii) provide a briefing to the ACCC in relation to the Equivalence Compliance Program.
- (b) Telstra will consult with the ACCC on any recommendations of the ACCC about the Equivalence Compliance Program.
- (c) Telstra will provide the ACCC annually with any updated documents forming part of its Equivalence Compliance Program and consult with the ACCC on any

recommendations of the ACCC about changes in its Equivalence Compliance Program.

#### **21.5 Director of Equivalence to prepare Annual Equivalence Report for Audit Committee**

- (a) The Director of Equivalence will coordinate and oversee the preparation of an annual report (**Annual Equivalence Report**), which will be submitted to the Audit Committee not more than 90 Business Days after the last Business Day of each Financial Year, in respect of that Financial Year.
- (b) The Annual Equivalence Report will include for the relevant Financial Year, a summary of (to the extent applicable):
  - (i) any steps taken by Telstra to rectify any non-compliance with Part D identified in the course of investigating non-compliance with Part D;
  - (ii) Equivalence Complaint(s) referred to the Accelerated Investigation Process and/or the Adjudicator during that Financial Year;
  - (iii) compliance by Telstra with any directions or orders made by the Adjudicator during that Financial Year;
  - (iv) compliance by Telstra with its price equivalence obligations under clause 17 during that Financial Year;
  - (v) the findings on the independent consultant's review of whether Telstra's Employee incentive remuneration schemes comply with the requirements of clause 8.6;
  - (vi) compliance training undertaken by Telstra in accordance with clause 21.3;
  - (vii) any investigation or enforcement action by the ACCC undertaken during that Financial Year in respect of Telstra's compliance with Part D;
  - (viii) any areas where the Director of Equivalence has concerns with regard to future breaches of Part D, and whether the Director of Equivalence considers such concerns have not been adequately addressed by Telstra; and
  - (ix) any new steps taken during that Financial Year to promote or facilitate Telstra's compliance with Part D. For example, the Annual Equivalence Report may report on compliance training initiatives undertaken during that Financial Year.

#### **21.6 Disclosure of equivalence performance in annual reports**

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

#### **21.7 Disclosure to the ACCC of the Definitive Agreements and all contracts, arrangements and understandings**

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

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

### 22.1 Reporting to the ACCC

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

- (a) the Operational Equivalence Report to be prepared in accordance with clause 15.2;
- (b) the Annual Compliance Report to be prepared in accordance with clause 22.2; and
- (c) the TEM Report in accordance with the requirements of Schedule 9.

### 22.2 Annual Compliance Report

- (a) Telstra will prepare an annual report (**Annual Compliance Report**) not more than 90 Business Days after the last Business Day of each Financial Year, in respect of that Financial Year.
- (b) The Annual Compliance Report will include for the relevant Financial Year, a summary of (to the extent applicable):
  - (i) the results of the findings of the remuneration consultant that has been engaged for that Financial Year under clause 8.7(b);
  - (ii) compliance by Telstra with the provisions of this Undertaking during that Financial Year, including compliance training in accordance with clause 21.3;
  - (iii) steps Telstra has taken to rectify any identified non-compliance in the current or previous years;
  - (iv) Equivalence Complaint(s) referred to the Accelerated Investigation Process and/or the Adjudicator during that Financial Year;
  - (v) Service Level Rebates paid by Telstra during that Financial Year; and
  - (vi) compliance by Telstra with any directions or orders made by the Adjudicator during that Financial Year.
- (c) Telstra will provide a copy of each Annual Compliance Report to the ACCC on a confidential basis as soon as reasonable practicable after the relevant report has been finalised.

### 22.3 ACCC consultation

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

- (b) For the purposes of consultation, the ACCC may disclose the content of reports that it receives under clause 21.1, except where that content has been identified by Telstra as confidential or commercially sensitive.

#### **22.4 ACCC information requests**

Telstra will use all reasonable endeavours to respond in an effective, timely and complete manner to any request received from the ACCC for information and documents which it reasonably requires for the purpose of monitoring compliance by Telstra with this Undertaking.

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## Schedule 1 — Dictionary

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### 1 Dictionary

In this Undertaking:

<b>ACCC</b>	means the Australian Competition and Consumer Commission.
<b>Accelerated Investigation Process</b>	means the investigation process described in clause 18.2.
<b>Act</b>	means <i>Telecommunications Act 1997</i> (Cth).
<b>ADSL</b>	means an Asymmetric Digital Subscriber Line.
<b>ADSL Availability Notification</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>Adjudicator</b>	means the person appointed from time to time by the ITA to exercise the functions of the independent telecommunications adjudicator.
<b>Annual Equivalence Report</b>	has the meaning given in clause 21.5.
<b>Application Date</b>	has the meaning given in paragraph 2 of Schedule 3
<b>Audit Committee</b>	has the meaning given in clause 21.1.
<b>Available</b>	in relation to LOLO, is to be determined in accordance with paragraph 9(b)(iv) of Schedule 3.
<b>Band 1</b>	means each of the following central business districts: <ul style="list-style-type: none"><li>(a) NSW (City South, Dalley, Haymarket, Pitt, Kent);</li><li>(b) QLD (Charlotte, Edison, Roma Street, Spring Hill);</li><li>(c) South Australia (Flinders, Waymouth);</li><li>(d) Victoria (Batman, Exhibition, Lonsdale); and</li><li>(e) WA (Bulwer, Pier, Wellington).</li></ul>
<b>Band 2</b>	means an area with 108.4 or more services in operation in a



	square kilometre area, which is not a Band 1 area.
<b>Band 3</b>	means an area with 6.56 or more services, but less than 108.4 services, in operation in a square kilometre area, which is not a Band 1 area.
<b>Band 4</b>	means an area with 6.55 or less services in operation in a square kilometre area, which is not a Band 1 area.
<b>Basic Telephone Service or BTS</b>	means the basic telephone service as described in Telstra's standard forms of agreement formulated by Telstra for the purposes of Part 23 of the Act as varied by Telstra from time to time.
<b>Bill</b>	means a bill for charges which meet the requirements for a tax invoice.
<b>Business Day</b>	means a day other than a Saturday, a Sunday or a public holiday in New South Wales or Victoria.
<b>Business Unit</b>	means a part of Telstra.
<b>Call Date</b>	has the meaning given in paragraph 3 of Schedule 3.
<b>Capped Exchange</b>	means a Telstra Exchange Building (excluding the Pitt Street Exchange Building) which the Governance Committee has determined unavailable for Wholesale Customers, including but not limited to the list that Telstra publishes from time to time for the purposes of informing Wholesale Customers and/or other parties about those Exchange Buildings that Telstra regards as Capped Exchanges.
<b>Carriage Service Provider</b>	has the same meaning as in the Act.
<b>Carrier</b>	has the same meaning as in section 7 of the Act.
<b>CCA</b>	means the <i>Competition and Consumer Act 2010</i> (Cth).
<b>CEO</b>	means the person holding the title "Chief Executive Officer" in Telstra from time to time.
<b>Chief Financial Officer</b>	means the person holding that title in Telstra from time to time.
<b>CMUX</b>	means customer multiplexer.
<b>Commencement</b>	means the date on which this Undertaking comes into force in

<b>Date</b>	accordance with clause 2.
<b>Comparable Retail Services</b>	<p>means, in a respect of a Regulated Service, a retail service supplied by Telstra that is comparable to that Regulated Service, including for each of the following wholesale services the retail service identified below as comparable:</p> <ul style="list-style-type: none"> <li>(b) Wholesale Line Rental – the comparable retail service is retail line rental;</li> <li>(c) Domestic PSTN Originating Access Service – the comparable retail service is the local exchange access component of the Basic Telephone Service;</li> <li>(d) Domestic PSTN Terminating Access Service - the comparable retail service is the local exchange access component of the Basic Telephone Service;</li> <li>(e) Local Carriage Service – the local calls component of the Basic Telephone Service;</li> <li>(f) Domestic Transmission Capacity Service – the comparable retail service is the Megalink 2 Mbit/s service;</li> <li>(g) Line Sharing Service – the comparable retail service is Bigpond ADSL Layer 2 Service;</li> <li>(h) Wholesale ADSL Layer 2 Service – the comparable retail service is Bigpond ADSL Layer 2 Service;</li> <li>(i) ULLS – for the purpose of Fault Detection, Handling and Rectification only, the comparable retail service is the component of the Basic Telephone Service comprising a continuous metallic twisted pair between a Telstra local exchange MDF and the network boundary point at an end user premises .</li> </ul>
<b>Consumer Protection Act</b>	means the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> (Cth).
<b>Coordinated Capital Works Program</b>	means a planned Major Network Modernisation and Upgrade with respect to the Wholesale ADSL Layer 2 Service that extends across more than one exchange service area but does not include an Emergency Network Modernisation and Upgrade.
<b>Coordinated Capital Works Program Forecast</b>	has the meaning given in paragraph 11.1 of Schedule 4
<b>Coordinated Capital Works Program</b>	has the meaning given in paragraph 11.2(a) of Schedule 4

## Schedule

<b>Copper Network</b>	<p>means a network in Australia over which Telstra is in a position to exercise control comprising copper or aluminium wire based lines:</p> <ul style="list-style-type: none"><li>(a) from the network boundary point at each Premises up to and including the first electronic remote access multiplexer (for example, a CMUX or RIM) immediately upstream of each such Premises; or</li><li>(b) from the network boundary point at each Premises up to and including the MDF in a Telstra exchange (or similar location) immediately upstream of each such Premises; or</li><li>(c) from the first electronic remote access multiplexer immediately upstream of each Premises up to and including the MDF in a Telstra exchange (or similar location) immediately upstream of each such electronic remote access multiplexer,</li></ul> <p>which is, or has been at any time, used to provide fixed-line carriage services,-and includes each such electronic remote access multiplexer and MDF.</p>
<b>Copper Network Notification</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>Copper Service</b>	means a carriage service provided using a Copper Path.
<b>CPE</b>	means customer premises equipment.
<b>Creation Date</b>	has the meaning given in paragraph 4 of Schedule 4.
<b>Customer Requested Date or CRD</b>	means, in respect of a Metric, the date on which the relevant customer requests Telstra to perform the tasks that are to be measured by that Metric.
<b>DA Commencement Date</b>	means the date that all of the conditions precedent specified in Schedule 1 of the Implementation and Interpretation Deed dated 23 June 2011 between Telstra and NBN Co have been waived or satisfied in accordance with the terms of that deed.
<b>Definitive Agreements</b>	has the meaning given in the Plan.
<b>Designated Day</b>	has the same meaning as in section 577A of the Act.
<b>Director of Equivalence</b>	means the person appointed by the Audit Committee for the purposes of clause 21.1(b).

<b>Distribution Area or DA</b>	has the same meaning as in the Network Deployment Rules.
<b>DISPLAN</b>	means disaster recovery plan.
<b>DISPLAN Notification</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>Domestic PSTN Originating Access Service</b>	means the Regulated Service, domestic PSTN originating access service.
<b>Domestic PSTN Terminating Access Service</b>	means the Regulated Service, domestic PSTN terminating access service.
<b>Domestic Transmission Capacity Service or DTCS</b>	means the Regulated Service, Domestic Transmission Capacity Service.
<b>DSL Upgrade</b>	means new network capability within the Copper Network which is delivered as a Layer 2 connection service and is used to support new or enhanced product features and/or functionality of a Telstra retail DSL service, but for clarification does not include those enhanced product features or functionally.
<b>DSLAM</b>	means a digital subscriber line access multiplexer used to provide broadband services (including for wholesale line rental services as described in the ACCC's Wholesale Line Rental Service – Extension of Declaration (2009)).
<b>E&amp;T Performance Result</b>	has the meaning given in clause 15.1(c).
<b>Eligible Service</b>	has the same meaning as in section 152AL of the <i>Competition and Consumer Act 2010</i> (Cth).
<b>Emergency</b>	means a national security alert or an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic, vandalism, theft or war-like action) which: <ul style="list-style-type: none"> <li>(a) endangers or threatens to endanger the safety or health of persons; or</li> <li>(b) destroys or damages, or threatens to destroy or damage property; and</li> <li>(c) for the purposes of Schedule 4, being an emergency which requires a significant and coordinated response.</li> </ul>

<b>Emergency Network Modernisation and Upgrade</b>	means a Major Network Modernisation and Upgrade that is required and is reasonably necessary and a proportionate response to address an Emergency.
<b>Employee</b>	includes a natural person who is acting as Telstra’s agent, or is engaged by Telstra as a consultant or contractor acting in an equivalent role to an employee or carrying out the role of an employee.
<b>Equivalence and Transparency Metrics</b>	means the metrics for: <ul style="list-style-type: none"> <li>(a) Domestic PSTN Originating Access Service, Domestic PSTN Terminating Service and Local Carriage Service, as set out in paragraph 2 of Schedule 3;</li> <li>(b) Wholesale ADSL Layer 2 Service, as set out in paragraph 3 of Schedule 3;</li> <li>(c) LLS, as set out in paragraph 4 of Schedule 3;</li> <li>(d) ULLS, as set out in paragraph 5 of Schedule 3;</li> <li>(e) Domestic Transmission Capacity Service, as set out in paragraph 6 of Schedule 3; and</li> <li>(f) Bills, as set out in paragraph 7 of Schedule 3;</li> <li>(g) TEBA, as set out in paragraph 8 of Schedule 3; and</li> <li>(h) the availability of LOLO, as set out in paragraph 9 of Schedule 3.</li> </ul>
<b>Equivalence Complaint</b>	has the meaning given in clause 18.2.
<b>Equivalence Complaint Notice</b>	has the meaning given in clause 18.3(a).
<b>ESA Information Notification</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>Exchange Building</b>	means: <ul style="list-style-type: none"> <li>(a) an Exchange Building Facility; and</li> <li>(b) any External Interconnect Facility associated with the same Exchange Building Facility.</li> </ul>
<b>Exchange Building Facility</b>	an exchange building operated by or on behalf of Telstra and any facility which is physically located in an exchange building operated by or on behalf of Telstra, including:

- (a) internal floor space;
- (b) a main distribution space;
- (c) a security system;
- (d) a power system;
- (e) an air conditioning system;
- (f) a rack;
- (g) a cable tray; and
- (h) an interconnection cable.

**Exchange Capacity** in relation to an Exchange Building Facility means:

- (a) floor space at that Exchange Building for installation of equipment; and
- (b) block position on the main distribution frame in that Exchange Building.

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

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

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

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

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

- (a) an External Interconnection Cable; and
- (b) an External Interconnect Duct; and
- (c) a pit that is associated with an External Interconnect Duct.

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

**External Wholesale** means a metric for a Reportable Wholesale Product or Reportable Product Bundle calculated in accordance with

<b>Price</b>	paragraph 4.2 of Schedule 9 and included in a TEM Report.
<b>Fault</b>	means any service difficulty reported to Telstra by a wholesale or retail customer and accepted by the Network Services Business Unit as being Telstra's responsibility to resolve.
<b>Fault Detection, Handling and Rectification</b>	means the process taken by the Network Services Business Unit to resolve Faults (and does not include any commercial terms, rebates, compensation or other commercial arrangements which may be offered by a Business Unit in relation to any Fault or delay). This process commences with the Fault being recorded by the Network Services Business Unit and will involve fault sectionalisation (where facilities of another Carrier's or Carrier Service Provider's network is involved), testing and fault rectification and clearance.
<b>Fault Rectification</b>	in relation to a Fault means the rectification of that Fault.
<b>Financial Year</b>	means a one-year period commencing on 1 July of any year and ending on 30 June of the following year.
<b>General Conditions</b>	has the meaning given in paragraph 11 of Schedule 3.
<b>General Notification</b>	has the meaning given in paragraph 10.1(a)(i) of Schedule 4.
<b>Governance Committee</b>	means the committee or group within Telstra who has the function of determining whether a Telstra Exchange Building is a Capped Exchange, Potentially Capped Exchange or Uncapped Exchange.
<b>Independence Direction</b>	has the meaning given in paragraph 4.2(xiii) of Schedule 5.
<b>Individual Notification</b>	has the meaning given in paragraph 10.1(a)(i) of Schedule 4.
<b>In-place Connection</b>	means a connection of a Basic Telephone Service at a site where a previous working service has been cancelled by the previous account holder and is available for automatic reconnection or reactivation without the need for Telstra to do any other connection work at the customer Premises, the Exchange Building, or any places in between.
<b>Interim Order</b>	means a request by a customer for the installation of a non-permanent working solution.
<b>Interim Service</b>	means a service: <ul style="list-style-type: none"> <li>(a) that provides a customer with a service for voice telephony (or a Service Equivalent to this for a customer with a disability) which may or may not include (at</li> </ul>

Telstra's discretion) a data capability or any enhanced call handling feature; and

- (b) for which that customer is, or may be, charged an amount for the ongoing supply of that service at the location requested by the customer that does not exceed the amount that the customer would have been charged if the customer were supplied with the Basic Telephone Service on request; and
- (c) that is supplied to a customer for a period that does not exceed 6 months from the time of the customer's request for the connection of a Basic Telephone Service or a longer period as agreed with the customer.

**Interconnection Cable**

means a cable connecting one or more twisted metallic pairs between a main distribution frame at an Exchange Building and a Wholesale Customer's equipment installed in, or in close proximity to, that Exchange Building.

**Internal Wholesale Price**

means a metric for a Reportable Wholesale Product or Reportable Product Bundle calculated in accordance with paragraph 4.1 of Schedule 9 and included in a TEM Report.

**ITA**

means the limited by guarantee company established to develop and manage the ITA Process.

**ITA Agreement**

means the agreement entitled "ITA Agreement", the form of which is set out in Schedule 6.

**ITA Dispute**

has the meaning given in paragraph 7.1 in Schedule 5.

**ITA Process**

means the independent telecommunications adjudicator process described in Schedule 5.

**ITA Process Fee**

means the annual administration fee set by the Adjudicator on an annual basis in respect of its administrative and incidental costs, and which is to be levied equally on all participants that have entered into an ITA Agreement.

**ITA Referral Fee**

means the fee set by the Adjudicator from time to time in respect of the relevant Equivalence Complaint referred to the ITA Process.

**Layer 2**

means Layer 2 in the Open Systems Interconnection reference model.

**Local Carriage Service**

means the Regulated Service, local carriage service.



<b>LOLO</b>	means LinxOnline Ordering.
<b>Line Sharing Service or LSS</b>	means the Regulated Service, Line Sharing Service.
<b>Local Carriage Service or LCS</b>	means the Regulated Service, Local Carriage Service.
<b>Major Network Incident Notification</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>Major Network Modernisation and Upgrades</b>	means a modernisation or upgrade that: <ul style="list-style-type: none"> <li>(a) involves the installation of Telstra customer access modules closer to end-users than a Telstra exchange building;</li> <li>(b) requires the removal/relocation of the Wholesale ADSL Layer 2 Service provided from Telstra exchange buildings and the establishment of a new POI (or relocation of an existing POI) for the Wholesale ADSL Layer 2 Service, or alteration of deployment classes of equipment used on the Wholesale ADSL Layer 2 Service; or</li> <li>(c) results in a Wholesale ADSL Layer 2 Service no longer being supplied or adversely affects the quality of that Wholesale ADSL Layer 2 Service (or any services supplied by an Wholesale Customer to their end-users using the Wholesale ADSL Layer 2 Service), but does not mean, or include, an Emergency Network Modernisation Upgrade or an national broadband network (NBN) related upgrade.</li> </ul>
<b>Major Rural</b>	means a township or community group of more than 2,500 people but less than 10,000 people.
<b>Marketing Activity</b>	has the same meaning as in the Plan.
<b>MapInfo</b>	means Pitney Bowes Software Pty Limited (ABN 93 070 492 410).
<b>MDF</b>	means main distribution frame.
<b>Metric</b>	means an Equivalence and Transparency Metric.
<b>Migration</b>	has the same meaning as in the Plan.
<b>Minister</b>	means the minister responsible for administering the relevant legislative provision or legislation.

<b>Minor Rural</b>	means a township or community group of 201 people or more but not more than 2,500 people within a 'standard zone' (as defined under the Consumer Protection Act).
<b>MTAS</b>	has the meaning given in paragraph 1.1(h) of Schedule 8.
<b>Naked DSL Product</b>	has the meaning given in clause 14(b).
<b>National Broadband Network or NBN</b>	has the same meaning as in section 5 of the National Broadband Network Companies Act.
<b>National Broadband Network Companies Act</b>	means the <i>National Broadband Network Companies Act 2011</i> (Cth).
<b>NBN Co</b>	has the same meaning as in section 5 of the National Broadband Network Companies Act.
<b>NBN Corporation</b>	has the meaning as in section 5 of the National Broadband Network Companies Act.
<b>NBN Co Fibre Network</b>	has the same meaning as in the Plan.
<b>Network Deployment Rules</b>	means the industry code entitled 'ACIF C559:2005 Unconditioned Local Loop Service – Network Deployment Rules' registered by the Australian Communications and Media Authority under section 117 of the Act and as amended from time to time.
<b>Network Services Business Unit</b>	means a Business Unit that has principal control over and responsibility for the Required Functions specified in clause 8.1(c)(iii).
<b>Networks and Services Exemption Instrument</b>	means the <i>Telecommunications (Structural Separation – Networks and Services Exemption) Instrument (No. 1) 2011</i> in the form as at the date this Undertaking is given to the ACCC under section 577A of the Act.
<b>Non-Exempt Network</b>	means a telecommunications network other than an Exempt Network over which Telstra is in a position to exercise control.
<b>Non-Exempt Service</b>	means a fixed-line carriage service other than an Exempt Service which is supplied by Telstra to retail customers in Australia.
<b>Notification Process</b>	means the notification process set out in Schedule 4, as described in paragraph 3.1(a) of Schedule 4.

<b>Operational Equivalence Report</b>	means the Quarterly report referred to in clause 15.2(a).
<b>OSS Announcements</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>Part</b>	means a part to this Agreement, being Part A, Part B, Part C, Part D or Part E (as applicable).
<b>Plan</b>	means a final migration plan as defined in section 577BE of the Act.
<b>Planned Event Notification</b>	has the meaning given in paragraph 3 of Schedule 4.
<b>POI</b>	means point of interconnection. A point of interconnection is a physical point of interconnection in Australia between a network operated by a carrier or carriage service provider and another network operated by a service provider.
<b>Potentially Capped Exchange</b>	means a Telstra Exchange Building in which the Governance Committee has determined that Access Seekers may be granted access after out-of-the-ordinary works have been completed.
<b>Pre-determination Conference</b>	has the meaning given in paragraph 8.3 of Schedule 5.
<b>Pre-tax WACC</b>	means a reasonable pre-tax weighted average cost of capital, as determined and applied by Telstra from time to time.
<b>Preliminary Conference</b>	has the meaning given in paragraph 8.2 of Schedule 5.
<b>Premises</b>	has the same meaning as in the Plan. <ul style="list-style-type: none"> <li>(a) an addressable location currently used on an on-going basis for residential, business (whether for profit or not), government, health or educational purposes;</li> <li>(b) a school as defined by the Department of Education, Employment and Workplace Relations;</li> <li>(c) a location within a new development at an addressable location for which NBN Co is the wholesale provider of last resort;</li> <li>(d) an addressable location for a standard telephone service which is activated in compliance with the universal service obligation;</li> <li>(e) a payphone at a location at which Telstra is required to</li> </ul>

install or maintain a payphone in accordance with an instrument made under section 12EF of the Consumer Protection Act;

- (f) a location which NBN Co is directed by the Minister to connect to the NBN Co Fibre Network.

<b>Protected Information</b>	has the meaning given in clause 9.1.
<b>PSTN</b>	means a public switched telephone network.
<b>PSTN OA</b>	means the Regulated Service, Domestic PSTN Originating Access Service.
<b>PSTN TA</b>	means the Regulated Service, Domestic PSTN Terminating Access Service.
<b>Quarter</b>	means the each 3 month period starting from 1 January, 1 April, 1 July or 1 October of any year.
<b>Rate Card</b>	has the same meaning as in paragraph 1.1 of Schedule 8.
<b>Rectification Plan</b>	has the meaning given in clause 18.3(a)(iii).
<b>Reference Service</b>	means a service listed in paragraph 1.1 of Schedule 8.
<b>Reference Price</b>	means a price for a Reference Service determined in accordance with clause 1.2 of Schedule 8.
<b>Regulated Service</b>	has the same meaning as in clause 71 of Schedule 1 to the Act but does not include a service to the extent that an access determination in force in respect of that service provides that the standard access obligations do not apply to Telstra in respect that service.
<b>Remote</b>	means a township or community group of less than or equal to 200 people or township or community group located outside a 'standard zone' (as defined under the Consumer Protection Act).
<b>Reportable Product Bundle</b>	means a bundle of Reportable Wholesale Products listed in paragraph 4.1(a)(vii) of Schedule 9.
<b>Reportable Retail Product</b>	means a product listed in paragraph 3.1(b) of Schedule 9.
<b>Reportable Wholesale Product</b>	means a product listed in paragraph 3.1(a) of Schedule 9.

<b>Reporting Variance</b>	means, in respect of a relevant Metric, a Variance of 2% or more (in negative terms).
<b>Required Function</b>	means a function or responsibility for which a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit is to have responsibility as provided in clause 8.1.
<b>Retail Customer</b>	means a retail customer of Telstra.
<b>Retail Business Unit</b>	means a Business Unit that has principal control over and responsibility for the Required Functions specified in clause 8.1(c)(ii).
<b>Revised Customer Required Date or RCRD</b>	means, where a CRD already applies but the relevant customer requests Telstra to perform the tasks to be measured by the relevant Metric on a later date, that later date.
<b>RIM</b>	means remote integrated multiplexer.
<b>Rollout Region</b>	has the same meaning as in the Plan.
<b>Separated Business Unit</b>	means a Retail Business Unit, a Wholesale Business Unit or a Network Services Business Unit.
<b>Service Activation and Provision</b>	means the process to provision a service undertaken by the Network Services Business Unit (and does not include any commercial terms, rebates, compensation or other commercial arrangements which may be offered by a Business Unit in relation to any service activation or provisioning). This process commences on acceptance or verification of an order by the Network Services Business Unit, may involve the making of appointments and ends on service activation. Service Activation and Provisioning has the corresponding meaning.
<b>Service Delivery</b>	means undertaking the first contact points and other interactions between the Wholesale Business Unit and a Wholesale Customer in relation to service delivery of Regulated Services which the Wholesale Customer acquires from Telstra, but does not include Service Activation and Provisioning or Fault Detection, Handling and Rectification.
<b>Service Level</b>	has the meaning given in paragraph 10 of Schedule 7.
<b>Service Qualification</b>	means the analysis carried out by Telstra in accordance with, and subject to, the service terms applicable to a Regulated Service to confirm whether the Regulated Service can be provided on a particular copper line or to a particular service address.

<b>Specific Conditions</b>	has the meaning given in paragraph 10 of Schedule 3.
<b>SS service</b>	means the Regulated Service, spectrum sharing.
<b>Substantiation Report</b>	means a report prepared by Telstra and submitted to the ACCC in accordance with paragraph 4.4 of Schedule 9.
<b>TEBA</b>	means access to floor space and other facilities such as security, electricity, cable trays and interconnection cables in Telstra Exchange Buildings.
<b>TEBA Governance Committee</b>	has the meaning given in clause 11.5.
<b>TEM Guidelines</b>	means a set of guidelines for preparing TEM Reports, prepared in accordance with paragraph 5 of Schedule 9.
<b>TEM Report</b>	means a report prepared by Telstra and submitted to the ACCC in accordance with paragraph 2.1 of Schedule 9.
<b>Telecard</b>	means a Telecard service as described in Telstra's Our Customer Terms.
<b>Telstra</b>	means Telstra Corporation Limited (ABN 33 051 775 556).
<b>Telstra Economic Model or TEM</b>	means the internal managerial accounting system developed and used by Telstra from time to time to prepare management reports in respect of fully-allocated business costs and revenues for internal business planning purposes, including in respect of non-regulated products and services.
<b>Uncapped Exchange</b>	means an Exchange Building that was a Capped Exchange or Potentially Capped Exchange which the Governance Committee has determined is no longer a Capped Exchange or Potentially Capped Exchange.
<b>Undertaking</b>	means this Structural Separation Undertaking.
<b>ULL Individual Cutover</b>	means the action taken by Telstra to complete a firm request for the provision of ULLS.
<b>ULL service or ULLS</b>	means the Regulated Service, Unconditional Local Loop Service.
<b>Urban</b>	means a township or community group of 10,000 people or more.
<b>Variance</b>	means, when comparing one numerical value with another numerical value, the extent to which there is a difference

between them, expressed as a percentage.

<b>Wholesale ADSL Layer 2 Service</b>	means the Regulated Service, wholesale ADSL layer 2 service.
<b>Wholesale ADSL Reference Price</b>	means a Reference Price for the Wholesale ADSL Reference Service, determined in accordance with paragraph 2 of Schedule 8.
<b>Wholesale ADSL Reference Service</b>	means the meaning given in paragraph 1.1(i) of Schedule 8.
<b>Wholesale B2B Interface</b>	has the meaning given in clause 12.1.
<b>Wholesale Business Unit</b>	means a Business Unit that has principal control over and responsibility for the Required Functions specified in clause 8.1(c)(iii).
<b>Wholesale Customer</b>	a person that receives a Regulated Service from:  (a) Telstra; or  (b) a Related Entity of Telstra,  and which Regulated Service the person uses to provide a Carriage Service to a third party.
<b>Wholesale DSL Upgrade</b>	has the meaning given in clause 14.
<b>Wholesale Naked DSL Product</b>	has the meaning given in clause 14(b).
<b>Wholesale Customer Portal</b>	has the meaning given in clause 12.2.
<b>Withdrawn Order</b>	means an order that has been withdrawn by the customer.
<b>WLR</b>	means the Regulated Service, Wholesale Line Rental.
<b>Working Day</b>	means a day other than:  (a) a Saturday or Sunday; or  (b) a day which is a public holiday in the place where the relevant transaction or work is to be performed.

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## 2 Interpretation

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

- (a) headings are for convenience only and do not affect the interpretation of this Undertaking;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (e) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, paragraph, term, party, schedule or attachment is a reference to a clause, paragraph or term of, or party, schedule or attachment to this Undertaking;
  - (vi) this Undertaking includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) a day is a reference to the 24 hour period commencing at 12:00am on that day;
  - (ix) an agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
  - (x) a monetary amount is in Australian dollars;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (g) in determining the time of day where relevant to this Undertaking, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or



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

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

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

- (a) Functions and activities undertaken by an Employee who works for a Network Services Business Unit which relate to:
  - (i) network construction, rehabilitation, asset management, maintenance or repair (regardless of whether such work will directly or indirectly benefit another Separated Business Unit or its customers); or
  - (ii) network repair where there is a cable cut or cable damage, including any action that is taken to recover the cost of the repair work from the party responsible for the cable cut or damage.
- (b) Dealings between an Employee who works for a Separated Business Unit and an Employee who works for another Separated Business Unit to the extent necessary to:
  - (i) ensure that an end user's issue or complaint is properly identified and referred to the appropriate Business Unit to resolve the issue or complaint;
  - (ii) handover work to the appropriate Separated Business Unit to perform its appropriate functions;
  - (iii) processing and implementing requests to churn or for local number portability in accordance with industry codes; or
  - (iv) enable the proper planning, construction, management and operation of Telstra's networks, systems and resources.

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

- (a) The following functions and activities undertaken in circumstances where an Employee who works for a Network Services Business Unit attends a premises of an end user:
  - (i) any function or activity on the customer side of the network boundary that is undertaken in response to any work order issued prior to the Employee arriving at the premises;
  - (ii) any function or activity which is permitted to be undertaken under clause 8.9 of this Undertaking;
  - (iii) Marketing Activity and sales of Telstra products and/or services if the end user is a Retail Customer.

- (b) For clarity, if an Employee who works for a Network Services Business Unit attends the premises of an end user that is a customer of a Wholesale Customer or another RSP:
    - (i) if the end user is not also a Retail Customer, the Employee must not undertake any Marketing Activity to the end user; and
    - (ii) if the end user is also a Retail Customer, the Employee must not undertake any “win back” or other Marketing Activity related to alternative Telstra products to the product or products supplied by that Wholesale Customer or other RSP to the end user.
  - (c) In circumstances where an Employee who works for a Network Services Business Unit is responding to a request from a Retail Customer (whether or not the request was directly received by the Employee), functions and activities which relate to the installation, configuration, testing and troubleshooting of customer premises equipment and cabling or which relate to other ancillary services that may be requested by the Retail Customer or offered by Telstra from time to time in relation to the installation, configuration, operation and maintenance of customer premises equipment and cabling.
  - (d) The following functions and activities in circumstances where Telstra is considering a complex or sophisticated request of a Retail Customer or is otherwise supplying, or proposes to supply, services to a Retail Customer which involve complex or sophisticated requirements;
    - (i) network design, planning and provisioning;
    - (ii) technical assistance.
  - (e) In all circumstances, functions and activities which relate to IT systems procurement, management and maintenance including provisions of IT support services.
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### **3 Description of work that is not technically and operationally efficient to perform across separate Business Units**

#### **3.1 Work performed by a Wholesale Business Unit**

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

- (a) IPND uploads and error management in accordance with applicable industry codes;
- (b) carrier verification requests for end users who may be Retail Customers or customers of Wholesale Customers;
- (c) supplying billing name and address information to Retail Business Units where an end user has used an override code to access retail services and the Retail Business Unit requires this information to bill the end user for those retail services;
- (d) processes associated with processing and implementing requests to churn or for local number portability including by:

- (i) identifying delays or actions by the Retail Business Unit which may be hindering the completion of the churn and requesting that the Retail Business Unit rectify the delay;
- (ii) removing or changing diversion fault codes associated with customer lines as appropriate to facilitate customer churn;
- (iii) correcting groups of auxiliary services or service extensions which may cause errors in the churn process.

### **3.2 Clerical functions and activities**

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

- (a) is predominately of a process-orientated, functional or clerical nature;
- (b) does not require the Employee to exercise discretion which would have a material impact on the relative treatment of Regulated Services and Comparable Retail Services; and
- (c) can reasonably be considered to be work that is undertaken by the Employee for another Separated Business Unit of a different kind,

the Employee may perform that function or activity.

### **3.3 Applicable safeguards**

If an Employee who works for a Separated Business Unit performs work of the kind described in this paragraph 3 for another Separated Business Unit of a different kind, Telstra will ensure that the Employee complies with the information security requirements in clause 9 of this Undertaking at all times, including the compliance measures set out in paragraph 4 of this Schedule 2.

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## **4 Information security compliance measures**

- (a) Telstra will establish and maintain effective measures to be used to monitor compliance with the information security requirements in clause 9 of this Undertaking, including the means by which Telstra logs requests made by Employees to be authorised for access to Protected Information.
- (b) These measures will specify the programs and policies that Telstra will use to:
  - (i) educate relevant Employees about the information security requirements in clause 9 of this Undertaking; and
  - (ii) ensure compliance by Employees with the information security requirements in clause 9 of this Undertaking.
- (c) For clarity, these measures, and associated training policies and practices, will reflect that any breaches by Employees of the information security arrangements in clause 9 of this Undertaking will be regarded as a serious matter, with the possibility of performance management in appropriate cases.

## Schedule 3 — Equivalence and Transparency Metrics

### 1 Background

The object of the Equivalence and Transparency Metrics set out in this Schedule 3 is to assist Telstra and Wholesale Customers to assess over time:

- (a) the operational quality of relevant Regulated Services supplied over the Copper Network;
- (b) the standard of delivery, in relation to relevant Regulated Services, of:
  - (i) Service Activation and Provisioning;
  - (ii) Fault Detection, Handling and Rectification; and
  - (iii) availability of LOLO; and
- (c) the adequacy and timeliness of wholesale processes, including billing accuracy.

For the avoidance of doubt, Telstra's reported performance in respect of the Equivalence and Transparency Metrics set out in this Schedule 3 is not, and is not intended to be, determinative of any failure by Telstra to comply with the provisions of this Undertaking or the CCA.

### 2 Basic Telephone Service

The metrics in Table 1 are applicable to the Domestic PSTN Originating Access Service, Domestic PSTN Terminating Access Service and Local Carriage Service.

The Equivalence and Transparency Metrics for business and residential customers are to be reported separately.

The measurement and metrics in Table 1 are subject to the conditions set out in this paragraph 2 of this Schedule 3 and otherwise as set out in paragraphs 10 and 11 of this Schedule 3.

**Table 1: Basic Telephone Service – Equivalence and Transparency Metrics**

Metric	Measure	Service level <sup>#</sup> (where applicable)
1	The percentage of Basic Telephone Service customer installation orders provisioned in the relevant Quarter on or by the service level - previous service available for automatic connection (i.e. an In-place Connection).	Urban - 2 Working Days* <sup>^</sup> Major Rural - 2 Working Days* <sup>^</sup> Minor Rural - 2 Working Days* <sup>^</sup> Remote - 2 Working Days* <sup>^</sup>
2	The percentage of Basic Telephone Service customer installation orders provisioned in the relevant Quarter on or by the service level - new service with available cabling and capacity.	Urban - 5 Working Days* <sup>^</sup> Major Rural - 10 Working Days* <sup>^</sup> Minor Rural - 10 Working Days* <sup>^</sup> Remote - 15 Working Days* <sup>^</sup>

Metric	Measure	Service level <sup>#</sup> (where applicable)
3	The percentage of Basic Telephone Service orders provisioned in the relevant Quarter, on or by the service level - new service which requires additional cable or network capacity.	Urban - 20 Working Days <sup>*^</sup> Major Rural - 20 Working Days <sup>*^</sup> Minor Rural - 20 Working Days <sup>*^</sup> Remote - 20 Working Days <sup>*^</sup>
4	The percentage of Basic Telephone Service order appointments that are met in the relevant Quarter.	All locations – appointment between two particular times less than or equal to a 4 hour period - must be at the customer's Premises no later than 15 minutes after the end time of the appointment Urban/Major Rural – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer's Premises no later than the end time of the appointment Minor Rural/Remote - appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance - must be at the customer's Premises no later than 45 minutes after the end time of the appointment Note - Response time is the end time of the calculation. It represents the time that the technician arrived of the appointment and is dependent on Telstra workforce registering their arrival time on their handhelds.
5	The percentage of Basic Telephone Service Faults that are rectified in the relevant Quarter, on or by the service level.	Urban - 1 full Working Day after report of Fault <sup>^*</sup> Major Rural and Minor Rural - 2 full Working Days after report of Fault <sup>^*</sup> Remote - 3 full Working Days after report of Fault <sup>^*</sup>
6	The percentage of Basic Telephone Service Fault appointments that are met in the relevant Quarter.	All locations – appointment between two particular times less than or equal to a 4 hour period - must be at the customer's Premises no later than 15 minutes after the end time of the appointment Urban/Major Rural – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer's Premises no later than the end time of the appointment Minor Rural/Remote – appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance - must be at the customer's Premises no later than 45 minutes after the end time of the

Metric	Measure	Service level <sup>#</sup> (where applicable)
		appointment Note - Response time is the end time of the calculation. It represents the time that the technician arrived of the appointment and is dependent on Telstra workforce registering their arrival time on their handhelds
7	The percentage difference in non-recurring Fault ratio.	Percentage of basic telephone service Faults that are not re-reported within 60 calendar days

# Excludes Interim Orders and Withdrawn Orders and only applies to Basic Telephone Services supplied over the Copper Network.

\* Measured from the Application Date which is the date Telstra receives a correct and valid application from the customer to the Completion Date which is the date recorded in Telstra's relevant provisioning system as the date when all of the relevant stages for that service through which an order can pass are completed or the clearance date if there was a Fault on the connected service.

^ Where the CRD or RCRD is longer than the service level, then the CRD or RCRD will be the service level (or Telstra commitment date).

### 3 Wholesale ADSL Layer 2 Service

The metrics in Table 2 are applicable to the Wholesale ADSL Layer 2 Service.

The Equivalence and Transparency Metrics for business and residential customers are to be reported separately.

The measurement and metrics in Table 2 are subject to the conditions set out in this paragraph 3 of this Schedule 3 and otherwise as set out in paragraphs 10 and 11 of this Schedule 3.

**Table 2: Wholesale ADSL Layer 2 Service – Equivalence and Transparency Metrics**

Metric	Measure	Service level <sup>#</sup> (where applicable)
8	The percentage of services provisioned within service level - where the customer or end-user has an existing and functioning basic telephone service capable of supporting ADSL services.	3 Working Days
9	The percentage of services provisioned within service level - held orders.	20 Working Days
10	The percentage of Faults rectified within service level.	Urban - by the end of the first full Working Day after the Fault report is received* Major Rural and Minor Rural - by the end of 2 full Working Days after the Fault report is received* Remote - by the end of 3 full Working Days after the Fault report is received*

Metric	Measure	Service level <sup>#</sup> (where applicable)
11	The percentage of appointments kept. <sup>#</sup>	Appointment between two particular times less than or equal to a 4 hour period – must be at the customer’s Premises no later than 15 minutes after the end time of the appointment Appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period – must be at the customer’s Premises no later than the end time of the appointment Appointment window between two particular times greater than a 4 hour period but less than or equal to a 5 hour period and the technician is required to travel a long distance - must be at the customer’s Premises no later than 45 minutes after the end time of the appointment

^ Where the CRD or RCRD is longer than the service level, then the CRD or RCRD will be the service level (or Telstra commitment date).

\* Measured from the “Call Date” which is the date the Fault call is received to the earlier of:

- the date and time that the tester enters an actual restore against the order; or
- the date and time the field technician enters as the restore time.

## 4 Line Sharing Service

The measurement and metrics in Table 3 are applicable to the Line Sharing Service.

Equivalence and Transparency Metric 12 is to be reported separately for business and residential customers.

The measurement and metrics in Table 3 are subject to the conditions set out in this paragraph 4 of this Schedule 3 and otherwise as set out in paragraphs 10 and 11 of this Schedule 3.

**Table 3: Line Sharing Service – Equivalence and Transparency Metrics**

Metric	Measure	Service level <sup>#</sup> (where applicable)
12	The percentage of LSS completed within target time.*	3 Working Days
13	The percentage of Faults rectified within target time.**	Urban - by the end of the first full Working Day after the Fault report is received Major Rural and Minor Rural - by the end of 2 full Working Days after the Fault report is received Remote - by the end of 3 full Working Days after the Fault report is received



^ Where the CRD or RCRD is longer than the service level, then the CRD or RCRD will be the service level (or Telstra commitment date).

\* Measured from the Creation Date which is the date Telstra enters the order into the relevant provisioning system to the Completion Date which is the last date recorded against the following stages (where applicable) through which an order can pass:

- Plant assignment;
- Exchange Building activation.

\*\* Measured from the “call date and time” which is the date and time the Fault call was logged by Telstra (in Telstra’s information technology systems) to the date and time the technician records that the Fault is repaired. If the call date and time is after 5pm, the baseline for calculating the service level moves to 9am the next Working Day. For example, if a Band 1 Fault is lodged at 5:30 pm on Monday to meet the service level the Fault must be resolved by the end of the Working Day on Wednesday.

## 5 Unconditioned Local Loop Service

The metrics in Table 4 are applicable to the Unconditioned Local Loop Service.

The measurement and metrics in Table 4 are subject to the conditions set out in this paragraph 5 of this Schedule 3 and otherwise as set out in paragraphs 10 and 11 of this Schedule 3.

**Table 4: Unconditioned Local Loop Service – Equivalence and Transparency Metrics**

Metric	Measure	Service level* (where applicable)
14	The percentage of ULL Individual Cutovers completed on the Customer Requested Date (as defined below)*	90%
15	The percentage of Faults rectified within the target timeframe. **	Band 1 and 2 - by the end of the first full Working Day after the Fault report is received Band 3 - by the end of 2 full Working Days after the Fault report is received Band 4 - by the end of 3 full Working Days after the Fault report is received

\* The Customer Requested Date for the purpose of metric 14 is:

- (a) if an appointment on the date requested by the Wholesale Customer for completion of the Individual Cutover is available in Telstra’s scheduling system for field work (which system is used to schedule field work appointments for both Retail Customers and Wholesale Customers), that date; or
- (b) if an appointment on the date requested is not available, the next available appointment date in Telstra’s scheduling system for field work; or
- (c) if the next appointment date is not acceptable for the Wholesale Customer, the next date that is requested by the Wholesale Customer where an appointment on that date is available in Telstra’s scheduling system.

\*\* Measured from the “call date and time” which is the date and time the Fault call was logged by Telstra (in Telstra’s information technology systems) to the date and time the technician records that the Fault is repaired. If the call date and time is after 5pm, the baseline for calculating the service level moves to 9am the next Working Day.

## 6 Domestic Transmission Capacity Service

The measurement and metrics in Table 5 are applicable to the Domestic Transmission Capacity Service.

The measurement and metrics in Table 5 are subject to the conditions set out in this paragraph 6 of this Schedule 3 and otherwise as set out in paragraphs 10 and 11 of this Schedule 3.

**Table 5: Domestic Transmission Capacity Service – Equivalence and Transparency Metrics**

Metric	Measure	Service level <sup>#</sup> (where applicable)
16	The percentage of Domestic Transmission Capacity Service orders provisioned on or by the target timeframe <sup>*^</sup> .	<p><b>Category 1 Order:</b> Metro – 9 Working Days Country – 19 Working Days</p> <p><b>Category 2 Order:</b> Metro – 19 Working Days Country – 39 Working Days</p> <p><b>Category 3 Order:</b> Metro only – 24 Working Days</p>
17	The percentage of Faults rectified within the target timeframe <sup>**#</sup> .	<p>Urban – 1 Working Day Rural – 2 Working Days Remote – 3 Working Days</p>

\* Measured from the Application Date which is the date that Telstra received a correct and valid application from the customer to the Completion Date which is the date recorded in Telstra’s IT systems that identifies the date when all of the relevant stages through which the order can pass are completed.

^ Where the CRD or RCRD is longer than the service level, then the CRD or RCRD will be the service level (or Telstra commitment date).

\*\* Measured from the “call date and time” which is the date and time the Fault call is logged by Telstra (in Telstra’s IT Systems) to the earlier of:

- the date and time that the tester enters an actual restore against the order; or
- the date and time the field technician enters as the restore time.

If the call date and time is after 5pm, the baseline for calculating the service level moves to 9am the next Working Day.

# The applicable service level is dependent on the location of the Fault, and not the location of the terminating points of the service.

## 7 Billing Timeliness

The metrics in Table 6 are applicable to the provision of Bills by Telstra.

**Table 6: Billing Timeliness – Equivalence and Transparency Metric**

Metric	Measure	Service level <sup>#</sup> (where applicable)
18	Billing Timeliness - Current charges generated in Telstra's systems presented on bill.	Wholesale charges - not older than 95 days Retail charges - not older than 190 days

## 8 Access to Exchange Building Facilities

The measurement and metrics in Table 7 are applicable to access by Wholesale Customers to Telstra Exchange Building Facilities. The measurement and metrics in Table 7 are subject to the conditions set out below as well as the conditions otherwise set out in paragraph 11.

**Table 7: TEBA – Equivalence and Transparency Metrics**

Metric	Measure	Service level <sup>#</sup> (where applicable)
19	The percentage of Joint Completion Inspections (JCIs) completed on the Telstra Committed Date (TCD).*	90%

\* The TCD for each JCI is the date agreed by Telstra and the Wholesale Customer, at which time representatives of both Telstra and the Wholesale Customer (or its agent or contractor) are able to attend at the Exchange Building. Telstra will offer each Wholesale Customer a JCI appointment time which is not more than 15 Business Days after the date Telstra receives the JCI request. Where this date is not suitable for the Wholesale Customer, the TCD will be the next mutually suitable and agreed date (which date may also subsequently be varied by agreement).

A JCI will be completed on a date, irrespective of whether the works which are the subject of the JCI are approved, rejected or made subject to conditional approval (i.e. where final JCI approval is conditional on further minor works being completed by the Wholesale Customer during the period immediately following the inspection).

## 9 Wholesale systems availability

The measurement and metrics in Table 8 are applicable to the availability of LOLO. The measurement and metrics in Table 8 are subject to the conditions set out in this paragraph 9 and in paragraph 11.

**Table 8: Wholesale systems availability – Equivalence and Transparency Metrics**

Metric	Measure	Service level* (where applicable)
20	Availability of LOLO (as determined below)	98% (as determined below)

(a) Telstra will ensure that the availability of LOLO during a Quarter, as calculated in accordance the formula set out in paragraph 9(b), is not less than 0.98.

(b) For the purposes of paragraph 9(a), the formula is:

$$\text{(Total Time – Outage Time) / Total Time}$$

where:

- (i) **Total Time** means the total time in minutes in a Quarter during which LOLO is required to be Available (as determined in accordance with paragraph 9(b)(iii)).
- (ii) **Outage Time** means the total time in minutes in a Quarter during which LOLO is not Available, but does not include:
  - (A) any time that LOLO cannot be accessed because the Wholesale B2B Interface is not Available if LOLO can be accessed in that time using the Wholesale Customer Portal or if LOLO is Available in that time to receive orders directly;
  - (B) any time that LOLO cannot be accessed because the Wholesale Customer Portal is not Available if LOLO can be accessed in that time using the Wholesale B2B Interface or if LOLO is Available in that time to receive orders directly;
  - (C) any time that LOLO is not Available as a result of any unlawful, fraudulent or negligent act or omission of a Wholesale Customer or its employees, agents or contractors;
  - (D) planned outages, being any outage for a period of time where Telstra has given at least 24 hours notice of the outage;
  - (E) outages that occur due to an event or circumstance which is beyond Telstra's reasonable control and which Telstra could not reasonably have avoided or overcome; and
  - (F) where the Wholesale Customer agrees for orders to be processed manually.
- (iii) The Total Time and Outage Time will be calculated to only include the time in which Telstra is contractually obliged to make LOLO Available. For illustration only, at the time of this Undertaking, Telstra is contractually obliged to make LOLO available between 6:00am and 10:00pm Monday to Saturday for a total of 1248 hours per Quarter and this figure may change in accordance with operational needs.
- (iv) LOLO, the Wholesale B2B Interface and the Wholesale Customer Portal are 'Available' when an order requesting the provisioning of a new Regulated Service is capable of being received.

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## 10 Specific Conditions

### 10.1 Activation metrics

- (a) The Basic Telephone Service – activation metric (Metric 2) only applies to a new service and does not apply to orders that have been identified by front of house staff as requiring some pre-provisioning work.
- (b) The Basic Telephone Service – activation metric (Metric 4) does not apply:
  - (i) where the customer unreasonably withholds their agreement to an appointment offered by Telstra;

- (ii) where the customer unreasonably refuses Telstra access to the customer's Premises; or
  - (iii) to commitments where the technician does not need to have customer contact.
- (c) The Wholesale ADSL Layer 2 Service – activation metric (Metric 8) does not apply where some field work outside of the exchange or customer premises work is required to fulfil the activation order.
- (d) LSS and ULLS activation metrics (Metric 12 and Metric 14) do not apply:
- (i) where any field work or exchange work required to fulfil the activation is not part of a standard LSS or ULLS (as applicable) activation order;
  - (ii) if the customer fails to take reasonable steps in a timely manner to cooperate with Telstra in relation to the activation of the service.

## **10.2 Fault and maintenance metrics**

- (a) Faults and maintenance metrics (Metrics 5 to 7, Metrics 10 and 11, Metric 13 and Metric 15) do not apply to:
- (i) a customer caused Fault;
  - (ii) all workable Faults (that is where the service is considered to be capable of receiving and originating calls);
  - (iii) Faults associated with equipment or wiring on the customer side of the network boundary point (and therefore not associated with the network);
  - (iv) consultant or tester fixes (i.e. Faults fixed by front of house operators);
  - (v) tickets of work where no Fault is found to exist; or
  - (vi) if the customer fails to take reasonable steps in a timely manner to cooperate with Telstra in relation to the Fault rectification of the service.
- (b) Faults and maintenance appointment metrics (Metric 6 and Metric 11) do not apply to:
- (i) where the customer unreasonably withholds their agreement to an appointment offered by Telstra; or
  - (ii) where the customer unreasonably refuses Telstra access to the customer's Premises.

## **10.3 Domestic Transmission Capacity Service**

- (a) The Domestic Transmission Capacity Service – activation metric (Metric 16) does not apply to orders (known as held orders) where the installation or provisioning of additional infrastructure is required before the order can be fulfilled. Telstra agrees service levels for such orders on a case by case basis once the scope of work required for an order is determined.

- (b) The Domestic Transmission Capacity Service – Fault and maintenance metric (Metric 17) does not apply to Faults which are subsequently proven to be in the customer's or end user's cabling or equipment.
- 

## 11 General conditions

When calculating the performance of Telstra in relation to Equivalence and Transparency Metrics during a Quarter, Telstra is not required to take into account:

- (a) any Rollout Region which was in the course of being Migrated to the NBN at any time during that Quarter or any other area that is affected by activities being undertaken by NBN Co or Telstra in connection with the rollout of the NBN;
- (b) a failure to meet a Service Level which is caused by activities undertaken by Telstra in order to comply with the Plan;
- (c) a failure to meet a Service Level due to circumstances outside of Telstra's control, including:
  - (i) damage to a Telstra facility by a third party;
  - (ii) natural disaster or extreme weather conditions, including bushfire, flood and cyclone that cause a mass outage of the specified services, or restricts connection or rectification of the specified service or any other form of mass service disruption. (Any services affected by a mass service disruption will still be included in the calculation of the performance against the Equivalence and Transparency Metrics but the relevant timeframe for performance of the particular Metrics will be adjusted to take account of the effect that the mass service disruption has had on Telstra's ability to perform the metric);
  - (iii) Telstra being requested by a public authority to provide emergency communications services to assist in emergency action, and the provision of those services restricts connection to a specified service or rectification of a Fault or service difficulty; or
  - (iv) Telstra being prevented from connecting a specified Copper Service, or rectifying a Fault or service difficulty, because the Wholesale Customer is unable to obtain lawful access to land or a facility;
- (d) a failure to meet a Service Level due to the need for Telstra to redeploy staff or equipment from one or more areas to another area that has been affected by circumstances beyond the control of Telstra, such as an area that has been affected by a natural disaster;
- (e) the supply of Interim Services (including Interim Orders) or other wireless local loops;
- (f) circumstances where the Retail Customer or end user of a Wholesale Customer causes delay or fails to keep an appointment with Telstra without giving at least 24 hours notice;
- (g) any order or Fault repair request which is incomplete, inaccurate or otherwise invalid;

- (h) circumstances where Telstra has reasonable grounds for believing that the Retail Customer or end user of a Wholesale Customer is not creditworthy in respect of charges for connection or use of the service ;
- (i) circumstances where the Retail Customer or end user of a Wholesale Customer unreasonably withholds their agreement to an arrangement offered by Telstra;
- (j) a failure to meet a Service Level which the Wholesale Customer has waived in writing;
- (k) any temporary planned outage or withdrawal of services necessary in order to maintain or upgrade a facility, service or network, and where Telstra has given reasonable notice to the Wholesale Customer of the temporary planned outage or withdrawal; or
- (l) orders which are unable to be processed after they have been received due to the unavailability of LOLO (which will be assessed under Metric 20).

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## Schedule 4 — Network Notifications

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### 1 Confidentiality

Any information provided by Telstra under this Schedule 4 is information that is of a confidential nature and that is subject to obligations of confidentiality.

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### 2 Network Notifications do not apply to NBN activities

- (a) The Copper Network Notifications set out in this Schedule 4 do not apply to require Telstra to notify events, incidents (including any outages), information or activities caused by, or associated with, the Migration.
  - (b) Telstra's requirement to provide notifications related to events, incidents (including any outages), information or activities caused by, or associated with, the Migration are set out in the Plan.
- 

### 3 Copper Network Notifications

#### 3.1 Types of Notifications

- (a) The Notification Process set out in this Schedule 4 consists of a series of short term operational notifications that will be made to Wholesale Customers in relation to:
    - (i) planned events ("**Planned Event Notification**");
    - (ii) availability of ADSL capability ("**ADSL Availability Notification**");
    - (iii) exchange service area information ("**ESA Information Notification**");
    - (iv) major service impacting network incidents ("**Major Network Incident Notification**");
    - (v) other general service or provisioning impacting matters relating to operational support systems ("**OSS Announcements**"); and
    - (vi) disaster recovery plan information ("**DISPLAN Notification**").
  - (b) In each case related only to the Copper Network as more fully described below (together, the **Copper Network Notifications**).
  - (c) In addition to the Network Notifications described in paragraph 3.1(a) of this Schedule 4, Telstra will, on reasonable request from a Wholesale Customer, provide information on the geographic availability of certain Eligible Services that are provided to that Wholesale Customer.
- 

### 4 Planned Event Notifications

- (a) Telstra will provide a Wholesale Customer with a Planned Event Notification in relation to any planned maintenance or repair work that Telstra is intending to



undertake in relation to the Copper Network and that will affect any Regulated Service being supplied by Telstra to that Wholesale Customer.

- (b) To determine when a Planned Event Notification is to be provided to a Wholesale Customer, Telstra will compare the Wholesale Customer's service details with Telstra's maintenance schedule to determine which Wholesale Customers (if any) will be impacted by any planned maintenance or repair work that Telstra is intending to undertake in relation to the Copper Network.
- (c) The terms and conditions that govern the supply of Regulated Services by Telstra to Wholesale Customers will include specific provisions governing the Planned Event Notifications that Telstra will provide for any maintenance or repair work that affects those Regulated Services. The factors taken into account in establishing the appropriate notice periods and other elements of Planned Event Notifications for an Eligible Service will include:
  - (i) whether the planned outage will affect individual wholesale customer services (such as a public switched telephone service (PSTS) or a DSL service) or an underlying carriage service (such as a transmission service), with the latter generally requiring longer notice and more detailed information about the outage;
  - (ii) whether the work is being done during business hours only, or also after hours and on weekends;
  - (iii) the most practical method of informing customers of outages, e.g. electronic mail, letterbox drops or mobile SMS; and
  - (iv) the anticipated length of the planned outage.

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## 5 ADSL Availability Notification

- (a) Telstra will provide information to Wholesale Customers on the availability of ADSL network functionality via the [www.telstrawholesale.com.au](http://www.telstrawholesale.com.au) website ("**ADSL Availability Notification**").
- (b) Telstra will inform Wholesale Customers from time to time as to what information is to be included in the ADSL Availability Notification. The ADSL Availability Notification currently includes information on the following (to the extent applicable):
  - (i) ADSL-enabled ESAs;
  - (ii) proposed ADSL-enabled ESAs;
  - (iii) DAs that are the subject of an ADSL-enablement project that involves installing a DSLAM in remote housing;
  - (iv) DAs that are the subject of a proposed ADSL-enablement project that involves installing a DSLAM in remote housing; and
  - (v) wholesale business DSL-enabled ESAs.

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## 6 Exchange Service Area (ESA) Information Notifications

- (a) Telstra will provide updated ESA and DA boundary information to MapInfo.
- (b) Telstra provides the following information to MapInfo:
  - (i) details of ESA and DA boundaries;
  - (ii) number ranges within the ESA;
  - (iii) ADSL-enabled ESAs;
  - (iv) an indication of which DAs are served by large pair-gain systems and the type of large pair-gain system in those DAs; and
  - (v) the location of exchange buildings.
- (c) Telstra notes that ESA Information Notifications provided under this paragraph 6 of this Schedule 4:
  - (i) only cover historic information and do not provide future planning details; and
  - (ii) are provided to MapInfo on a Quarterly basis on [www.mapinfo.com](http://www.mapinfo.com) and are available to Wholesale Customers who are paid subscribers of MapInfo.

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## 7 Major Network Incident Notifications

In accordance with the terms governing the supply of the relevant Regulated Service, Telstra will provide information to affected Wholesale Customers in circumstances where the provision of an Eligible Service is affected by major service impacting network incidents, such as emergencies, acts of nature, unexpected or inappropriate use of or damage to the network by other customers or other parties.

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## 8 Operational Support System (OSS) Announcements

Where Telstra makes a relevant change to an operational support system (such as a billing or ordering system), Telstra will notify affected Wholesale Customers in accordance with its procedures for making OSS Announcements that exist from time to time.

---

## 9 Disaster Recovery Plan Information (DISPLAN Notification)

- (a) Telstra will provide information upon request to Wholesale Customers on its disaster recovery plan principles. These principles are to guide how and under what circumstances Telstra and the Wholesale Customer will assist each other to recover or provide communications services in the event of an emergency or crisis, including:
  - (i) the sharing of access to generator sets for the provision of power;
  - (ii) the sharing of “cell on wheels” and other resources and facilities;

- (iii) the sharing of transmission bandwidth; and
  - (iv) the building of temporary infrastructure.
- (b) In addition to arrangements with Wholesale Customers, Telstra will have in place internal policies that will be applied (as far as practicable given the nature of the emergency) and communicated to Wholesale Customers as required in the event of an emergency or crisis, governing the following:
- (i) participation in emergency management planning for the provision of communications facilities and services in emergency situations;
  - (ii) provision of consultancy and/or fast track facilitation of requests from designated emergency service organisations;
  - (iii) maintenance of a website providing access to Telstra documents regarding DISPLAN support and access to national contact information;
  - (iv) nomination and provision of appropriate personnel at national, State/Territory and police region/district levels to manage the urgent provision or facilitation of Telstra products and services during emergency situations;
  - (v) provision of a single national point of backup contact; and
  - (vi) provision during emergency situations of certain services.
- 

## 10 Notice to be provided where Telstra undertakes a Major Network Modernisation and Upgrade

### 10.1 Major Network Modernisation and Upgrade notices

- (a) Except were the parties agree otherwise, Telstra undertakes that it will make a Major Network Modernisation and Upgrade by:
- (i) providing the Wholesale Customer with notices in writing in accordance with paragraphs 10.1(b) and 10.2(a) of this Schedule 4 (**General Notification**) and paragraphs 10.1(c) and 10.2(b) of this Schedule 4 (**Individual Notification**); and
  - (ii) consulting with the Wholesale Customer, and negotiating in good faith, any reasonable concerns of the Wholesale Customer, in relation to the Major Network Modernisation and Upgrade.

This paragraph 10.1 of this Schedule 4 does not apply to an Emergency Network Modernisation and Upgrade.

- (b) The period of notices given under a General Notification provided by Telstra to the Wholesale Customer:
- (i) must be an Equivalent Period of Notice; and
  - (ii) in any event, must not be less than 30 weeks before the Major Network Modernisation and Upgrade is scheduled to take effect.

- (c) An Individual Notification must be provided by Telstra to the Wholesale Customer as soon as practicable after the General Notification, but, in any event, not less than 26 weeks prior to the anticipated commencement date of the Major Network Modernisation and Upgrade.

## **10.2 Information to be provided in the notices**

- (a) A General Notification must include information on:
  - (i) the ESA affected by the proposed Major Network Modernisation and Upgrade;
  - (ii) the distribution area affected by the proposed Major Network Modernisation and Upgrade; and
  - (iii) a general description of the proposed Major Network Modernisation and Upgrade, including the indicative timing for the implementation of the Major Network Modernisation and Upgrade.
- (b) An Individual Notification must include the following information in addition to the information provided in the relevant General Notification:
  - (i) the anticipated commencement date for implementing the Major Network Modernisation and Upgrade;
  - (ii) details of the Wholesale Customer's activated Wholesale ADSL Layer 2 Services, or Wholesale ADSL Layer 2 Services in the process of being activated at the date of the notice, that are likely to be affected by the Major Network Modernisation and Upgrade;
  - (iii) the likely action required by the Wholesale Customer as a result of the Major Network Modernisation and Upgrade (including the possible impact of the Major Network Modernisation and Upgrade upon the Wholesale Customer's Wholesale ADSL Layer 2 Services); and
  - (iv) details of who the Wholesale Customer may contact to obtain further information about the Major Network Modernisation and Upgrade.
- (c) An Individual Notification only needs to be given where a Wholesale ADSL Layer 2 Service has been activated or Telstra is in the process of activating that service as at the date of the Individual Notification, and:
  - (i) the Major Network Modernisation and Upgrade will require the Wholesale Customer to take particular action in order to continue to use the Wholesale ADSL Layer 2 Service; or
  - (ii) the Major Network Modernisation and Upgrade will result in the Wholesale ADSL Layer 2 Service no longer being supplied.
- (d) Where Telstra has provided the Wholesale Customer with an Individual Notification, Telstra must provide the Wholesale Customer with updates about the Major Network Modernisation and Upgrade covered by the notice, including:
  - (i) any update or change to the information provided in the Individual Notification;
  - (ii) any new information available at the time of the update about:

- (A) Wholesale ADSL Layer 2 Service provided by Telstra in the relevant ESA that may be available to the Wholesale Customer;
  - (B) how the Wholesale Customer may be impacted by the Major Network Modernisation and Upgrade; and
  - (C) what steps the Wholesale Customer will be required to take to facilitate the Major Network Modernisation and Upgrade; and
- (iii) weekly reports about the anticipated cutover dates for the Wholesale Customer's affected Wholesale ADSL Layer 2 Service, beginning no less than five weeks prior to the anticipated commencement date for the Major Network Modernisation and Upgrade.
- (e) The updates referred to in paragraph 10.1(a) of this Schedule 4 are to be provided regularly (which is not required to be any more frequently than Monthly) after the Individual Notification.

### 10.3 Emergency Network Modernisation and Upgrade

In the event of an Emergency, Telstra may conduct an Emergency Network Modernisation and Upgrade, and

- (a) will use its best endeavours to provide the Wholesale Customer with an Individual Notification prior to the Emergency Network Modernisation and Upgrade being implemented; or
- (b) where it is not practicable for prior notice to be given, Telstra will provide the Wholesale Customer with an Individual Notification as soon as reasonably practicable after the Emergency Network Modernisation and Upgrade is implemented.

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## 11 Coordinated Capital Works Program

### 11.1 Coordinated Capital Works Program Forecast

- (a) Telstra must provide the Wholesale Customer with a written three year Coordinated Capital Works Program forecast in accordance with paragraph 11.1(b) of this Schedule 4 14 Calendar Days from the date this Schedule 4 takes effect (**Coordinated Capital Works Program Forecast**).
- (b) The Coordinated Capital Works Program Forecast will:
  - (i) be for the three year period commencing on the date the forecast is provided;
  - (ii) describe generally Telstra's indicative investment plans (as at the date of the forecast) for its Coordinated Capital Works Program over the next three years;
  - (iii) include an evaluation of the impact that Telstra's indicative investment plans may have on individual ESAs areas and distribution areas; and
  - (iv) specify anticipated timeframes for implementation.

- (c) Telstra must update the Coordinated Capital Works Program Forecast (and provided the update forecasts in writing to the Wholesale Customer) regularly, at not less than six month intervals.
- (d) At the same time as Telstra provides a Coordinated Capital Works Program Forecast under paragraph 11.1 of this Schedule 4, Telstra must provide a copy of the Coordinated Capital Works Program Forecast to the ACCC.

## 11.2 Coordinated Capital Works Program Schedule

- (a) Telstra must provide a written Coordinated Capital Works Program schedule to the Wholesale Customer by giving notice not less than 12 Months before the anticipated commencement date of the Coordinated Capital Works Program in accordance with paragraph 11.2(b) of this Schedule 4 (**Coordinated Capital Works Program Schedule**).
- (b) Telstra must provide the Coordinated Capital Works Program Schedule and make its best endeavours to identify:
  - (i) the ESAs and distribution areas affected;
  - (ii) Telstra's plan for the Coordinated Capital Works Program for each ESA;
  - (iii) the Wholesale Customer's Wholesale ADSL Layer 2 Service(s) in that Exchange that will be affected and the expected impact of the Coordinated Capital Works Program on the Wholesale Customer's Wholesale ADSL Layer 2 Service(s); and
  - (iv) the anticipated timeframe for the implementation of the Coordinated Capital Works Program.
- (c) At the same time as Telstra provides a Coordinated Capital Works Program Schedule under paragraph 11.2(a) of this Schedule 4, Telstra must provide a copy of the Coordinated Capital Works Program Schedule to the ACCC.
- (d) For the avoidance of doubt, Telstra must also comply with paragraphs 10 and 10.2 of this Schedule 4 when complying with paragraphs 11.1 to 11.2(c) of this Schedule 4.

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## 12 Negotiations in good faith

- (a) Except where the parties agree otherwise, Telstra undertakes that it will not commence implementation of a Major Network Modernisation and Upgrade unless:
  - (i) it complies with paragraphs 10.1 to 10.2(e) of this Schedule 4; and
  - (ii) it has consulted with the Wholesale Customer and has negotiated in good faith, and addressed the reasonable concerns of the Wholesale Customer in relation to the Major Network Modernisation and Upgrade.
- (b) Except where the parties agree otherwise, Telstra undertakes that it will not commence the implementation of a Coordinated Capital Works Program unless:
  - (i) it complies with paragraphs 12(a) to 12(b)(ii) of this Schedule 4; and

- (ii) it has consulted with the Wholesale Customer and has negotiated in good faith, and addressed the reasonable concerns of the Wholesale Customer in relation to the Major Network Modernisation and Upgrade.
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## 13 Dispute Resolution

- (a) If a dispute arises in relation to a Major Network Modernisation and Upgrade, or otherwise in relation to any matter under clauses 10, 11 or 12 of this Schedule, then the dispute must be referred to the same dispute resolution process as is used to resolve similar disputes under the Major Network Modernisation and Upgrade provisions, if any, included in a final access determination made by the ACCC.
- (b) For clarity, a dispute in relation to a Major Network Modernisation and Upgrade, or otherwise in relation to any matter under clauses 10, 11, or 12 of this Schedule, is not an Equivalence Complaint and may not be referred to the Adjudicator.

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## Schedule 5 — Independent Telecommunications Adjudicator

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### 1 Background

This Schedule 5 establishes a 'fast track' dispute resolution process under which an independent Adjudicator approved by the ACCC will investigate and resolve ITA Disputes.

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### 2 Independence of the Adjudicator

- (a) The individual that is appointed as the Adjudicator will be independent from Telstra, the Board of the ITA and Wholesale Customers.
  - (b) The following measures will ensure the independence of the Adjudicator:
    - (i) the individual to be appointed as the Adjudicator must be approved by the ACCC in accordance with the appointment process set out in paragraph 5;
    - (ii) the independence of the Adjudicator will be enshrined in a Charter of Independence that must be approved by the ACCC in accordance with paragraph 4.2;
    - (iii) the Adjudicator will have the powers conferred by this Schedule 5, the Charter of Independence and the constitution of the ITA;
    - (iv) the constitution of the ITA must be approved by the ACCC in accordance with paragraph 4.1; and
    - (v) funding for the office of the Adjudicator will be provided in accordance with the arrangements set out in paragraph 5.2.
- 

### 3 ITA Objectives

- (a) The objective of the ITA Process is to provide:
  - (i) a 'fast track' dispute resolution process that will investigate and resolve ITA Disputes involving Wholesale Customers in a manner that:
    - (A) is independent, fast, flexible, pragmatic, efficient and cost effective for all parties;
    - (B) ensures ITA Disputes are managed by an independent expert with extensive relevant practical and technical experience;
    - (C) is directed at undertaking a root cause analysis of each ITA Dispute as a means of achieving, wherever possible, permanent resolution through improvements in relevant processes and arrangements of or between Telstra and the Wholesale Customer; and
    - (D) where possible, achieves an agreed or mediated outcome to any ITA Dispute; and



- (ii) independent expert technical advice to the ACCC, including by responding to matters referred to it by the ACCC under the Plan.
  - (b) To ensure that the process is a 'fast track' dispute resolution process, for most disputes, the ITA Process should not ordinarily take longer than five weeks to complete. However, for more complex ITA Disputes, or those which involve a number of parties, the timeline may be longer than five weeks.
  - (c) For the avoidance of doubt, the ITA Process does not investigate or resolve price-related disputes.
- 

## **4 The establishment of the office of the Independent Telecommunications Adjudicator**

### **4.1 Establishment of the ITA**

- (a) Telstra will establish the ITA in accordance with clause 19 of this Undertaking as soon as reasonably practicable following the Commencement Date.
- (b) The directors of the ITA will be appointed by Telstra and Telstra will be the sole member of the ITA, unless otherwise decided by Telstra.
- (c) Within 90 Business Days after this Undertaking comes into force Telstra will provide the ACCC with a copy of the ITA's draft constitution for approval by the ACCC.
- (d) Before any amendment to the constitution of the ITA is made Telstra must provide the ACCC with a copy of the proposed amendment for approval by the ACCC.
- (e) If the ACCC receives from Telstra a draft constitution of the ITA, or a proposed amendment to the constitution of the ITA, the ACCC may:
  - (i) approve the draft constitution, or the propose amendment; or
  - (ii) otherwise:
    - (A) refuse to approve the draft constitution, or the proposed amendment; and
    - (B) by written notice given to Telstra, give reasons for its refusal and direct Telstra to give to the ACCC, no less than 30 days after the notice is given, a replacement draft constitution or proposed amendment (as the case may be) which complies with the principles in clause 4.1(f) and is otherwise consistent with clause 19 and this Schedule 5.
- (f) The ACCC must approve a draft constitution of the ITA, or any amendment to the constitution of the ITA, if the constitution, after any proposed amendment is made:
  - (i) provides for the appointment process of the Adjudicator set out in clause 5.1 of this Schedule 5;
  - (ii) vests in the Adjudicator the power to resolve ITA Disputes;

- (iii) provides for the Adjudicator to receive, investigate, and facilitate the resolution of ITA Disputes;
- (iv) requires the Adjudicator to have regard to the law, good industry practice and what is fair and reasonable in the circumstances;
- (v) requires the Adjudicator to pursue the objective of fair, just, economical and expeditious resolution of ITA Disputes;
- (vi) requires Telstra to provide full access to the Adjudicator to its records, systems and personnel to facilitate expeditious resolution of ITA Disputes, including confidential information of Telstra but excluding confidential information of another person (unless that person has given consent to the disclosure of the information to the Adjudicator);
- (vii) provides for the Adjudicator to report to the ACCC in relation to any matter;
- (viii) provides for the Adjudicator to perform functions given to it under the Plan, including vesting in the Adjudicator the power to investigate, consult and provide expert advice in respect of matters referred by the ACCC to the Adjudicator under the Plan;
- (ix) provides for the Adjudicator to prepare and propose an annual budget to the Board setting out the resources and funding the Adjudicator considers necessary to meet his or her functions;
- (x) to the extent permitted by the Corporations Act, limits the functions, powers and role of the Board and the members to matters relating to the establishment, maintenance and administration of the ITA as a corporate entity;
- (xi) to the extent permitted by the Corporations Act, provides that to the extent of any inconsistency between a provision of the Charter of Independence and a provision of the constitution, that the Charter of Independence prevails to the extent of the inconsistency;
- (xii) requires the Board to:
  - (A) create a Charter of Independence which guarantees the independence of the Adjudicator that is to be approved by the ACCC;
  - (B) once approved, to deal with the Adjudicator and otherwise administer the ITA Process strictly in accordance with the Charter of Independence; and
  - (C) requires that any amendment to the Charter of Independence be approved by the ACCC before that amendment is made;
- (xiii) requires the Board to engage a suitably qualified probity adviser approved by the ACCC who is to provide the Board with advice on the operation and administration of the ITA Process in accordance with its objectives and the Charter of Independence;
- (xiv) requires the Board to publish an annual report signed by the directors on the compliance with the Charter of Independence, which is to include the report prepared by the Adjudicator referred to in clause 3.2(c)(xiii) only with

redactions of information which is confidential to a party to a dispute handled by the ITA Process; and

- (xv) provides for the Adjudicator to provide information and reports to the ACCC in respect of:
  - (A) the general operation and effectiveness of the ITA Process; and
  - (B) general or specific information about those ITA Disputes it has received.
- (g) Before deciding to approve or reject a draft constitution of the ITA or a proposed amendment to the constitution of the ITA (as the case may be) the ACCC may:
  - (i) undertake public or other consultation which it reasonably considers is necessary or expedient in relation to the constitution of the ITA; and
  - (ii) if an individual has already been appointed as the Adjudicator, seek his or her views about whether the draft constitution or any proposed amendment to the constitution will impact his or her independence.
- (h) If the ACCC rejects the draft constitution of the ITA, or a proposed amendment to the constitution of the ITA, Telstra may submit another constitution or proposed amendment to the constitution (as the case may be) to the ACCC.

#### **4.2 Charter of Independence**

- (a) Telstra will request the ITA to provide a Charter of Independence to the ACCC as soon as reasonably practicable after the ITA is established and its constitution has been approved by the ACCC.
- (b) If the ACCC receives from the ITA a draft Charter of Independence, or a proposed amendment to the Charter of Independence, the ACCC may:
  - (i) approve the draft Charter of Independence, or the propose amendment; or
  - (ii) otherwise:
    - (A) refuse to approve the draft Charter of Independence, or the proposed amendment; and
    - (B) by written notice given to Telstra, give reasons for its refusal and direct Telstra to give to the ACCC, within no less than 30 days after the notice is given, a replacement draft Charter of Independence or proposed amendment (as the case may be) which complies with the principles in clause 4.2(c) and is otherwise consistent with clause 19 and this Schedule 5.
- (c) The ACCC must approve a draft Charter of Independence, or any amendment to the Charter of Independence if the Charter of Independence, after any proposed amendment is made:
  - (i) provides for the Adjudicator to act independently from Telstra, Wholesale Customers, NBN Co, the ACCC and government (whether federal, state or territory);

- (ii) provides for the Adjudicator to serve a term of two years from the date of appointment, at which point his or her appointment will expire, unless Telstra and the ACCC agree to extend or otherwise vary the term of appointment;
- (iii) requires that the Adjudicator is not employed by or does not act as consultant to Telstra or a carriage service provider within the period of at least six months immediately after ceasing for any reason to hold office as the Adjudicator, without the ACCC's prior written consent;
- (iv) requires that the Adjudicator not disclose any information to the Board about a dispute being handled by the Adjudicator other than to the extent strictly necessary for the Board to fulfil its role under the constitution;
- (v) requires that the Adjudicator not formally or informally consult with or seek guidance from the Board or any member of the Board about a dispute being handled by the Adjudicator;
- (vi) provides that the Adjudicator will only cease to hold office as the Adjudicator only in the following circumstances:
  - (A) death or expiry of the term of engagement or employment;
  - (B) performance of any act of fraud, dishonesty or gross misconduct;
  - (C) extended absence without leave of the Board, illness or other failure which substantially impairs the Adjudicator's capacity to fulfil the function of the Adjudicator;
  - (D) breach of the Charter of Independence or of an Independence Direction (as defined in paragraph 3.2(c)(viii) of this Schedule 5);
  - (E) misuse of confidential information of a party received in the course of the performance of the function of Adjudicator;
  - (F) cessation of the ITA Process;
  - (G) with the prior approval of the ACCC; or
  - (H) on any other grounds specified in the Charter of Independence approved by the ACCC;
- (vii) provides a methodology in accordance with which the Board is to determine the remuneration and other benefits provided to the Adjudicator;
- (viii) provides a right for the Adjudicator to report to and deal with the ACCC independently of the Board, including to notify the ACCC of any matter relating to the operation of the ITA Process which in the Adjudicator's opinion threatens or may threaten the independence of the role of Adjudicator;
- (ix) gives the Adjudicator the ability to seek independent legal or other advice when necessary or appropriate at reasonable cost and without prior approval of the Board (a maximum cap may be specified in the Charter);
- (x) provides a process to identify and resolve conflicts of interest on the part of the Adjudicator and for the ACCC to resolve any dispute about whether there

is a conflict of interest involving the Adjudicator in relation to a particular dispute being handled by the ITA Process;

- (xi) requires the Adjudicator to inform the ACCC of any complaint made by a party to a dispute about the independence of the Adjudicator as soon as practicable after that complaint is made;
  - (xii) requires the Adjudicator to provide any information requested by the ACCC for the purposes of investigating a complaint about the independence of the Adjudicator, without a requirement to seek Board consent to provide the information;
  - (xiii) requires the Adjudicator to comply with a direction from the ACCC to take or not take specified action in relation to the Adjudicator's performance of his or her functions in accordance with the Charter or Independence which the ACCC considers is reasonably necessary to ensure that the independence of the Adjudicator (**Independence Direction**); and
  - (xiv) requires the Adjudicator to report annually to the Board and the ACCC on the operation of the ITA Process, including the administration and operation of the ITA Process in compliance with the Charter of Independence.
- (d) Before deciding to approve or reject a draft Charter of Independence or a proposed amendment to the Charter of Independence (as the case may be) the ACCC may:
- (i) undertake public or other consultation which it reasonably considers is necessary or expedient in relation to the Charter of Independence; and
  - (ii) if an individual has already been appointed as the Adjudicator, seek his or her views about whether a draft Charter of Independence or any proposed amendment to the Charter of Independence will impact his or her independence.
- (e) If the ACCC rejects the draft Charter of Independence, or a proposed amendment to the Charter of Independence, the ITA may submit another Charter of Independence or proposed amendment to the Charter of Independence (as the case may be) to the ACCC.

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## 5 Appointment process for the Adjudicator

### 5.1 Nomination and appointment of the Adjudicator

- (a) Telstra will request the ITA to nominate an individual to the ACCC as the Adjudicator as soon as reasonably practicable after the ITA is established and its constitution has been approved by the ACCC.
- (b) The ITA will not nominate an individual as the Adjudicator unless it is satisfied that the individual:
  - (i) has extensive practical and technical experience in telecommunications services, systems and processes and appropriate experience, knowledge and skills to act as the Adjudicator in accordance with the ITA Process in this Schedule 5;
  - (ii) has not been employed by or provided consultancy services to Telstra within two years prior to being appointed as the Adjudicator;

- (iii) does not have any direct financial interest in Telstra;
  - (iv) declares to the ACCC and Telstra any indirect or other interest in Telstra of which the Adjudicator is aware; and
  - (v) is not employed by or does not act as consultant to Telstra or a carriage service provider within the period of at least six months immediately after ceasing for any reason to hold office as the Adjudicator, without the ACCC's prior written consent.
- (c) If the ACCC receives a nomination from the ITA the ACCC may:
- (i) approve the nominated individual as the Adjudicator; or
  - (ii) reject the nominated individual as the Adjudicator.
- (d) Before deciding to approve or reject a nominated individual as the Adjudicator the ACCC must undertake public or other consultation which it reasonably considers is necessary or expedient in relation to the appointment of the Adjudicator, taking into account the need for the relevant individual to:
- (i) be accepted by Wholesale Customers as genuinely independent of Telstra; and
  - (ii) hold sufficient practical and technical experience to perform the role as a technical expert.
- (e) If the ACCC rejects the appointment of the nominated individual as the Adjudicator the ITA may nominate another individual to the ACCC.
- (f) If the Adjudicator has not been appointed within 90 Business Days after the ITA is established and its constitution has been approved by the ACCC, the ITA or the ACCC may request the Chairman of the ACMA to appoint an individual as the Adjudicator.

## **5.2 Establishment and operating costs of the Adjudicator**

- (a) Pursuant to section 152EQ of the CCA, the ACCC will provide administrative and secretariat support for the office of the Adjudicator.
- (b) During the first year of the ITA Process, Telstra will contribute up to a maximum of \$1,000,000 towards the reasonable establishment costs of the office of the Adjudicator.
- (c) The ongoing costs of the office of the Adjudicator will be borne by:
  - (i) an annual ITA Process Fee levied on all participants which have entered into an ITA Agreement;
  - (ii) ITA Referral Fees; and
  - (iii) costs orders issued by the Adjudicator from time to time.

### 5.3 Public information document

Telstra may publish a document, which is approved by the ACCC, to assist Wholesale Customers setting out the objectives and explaining the general operation of the ITA Process.

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## 6 ITA Procedure

### 6.1 Exercise of the Adjudicator's powers and functions

- (a) The Adjudicator must undertake investigations and exercise its functions and powers in a manner that is independent, fast, flexible, pragmatic, efficient and cost effective for all parties to the relevant ITA Dispute.
- (b) Without limitation to paragraph 6.1(a) of this Schedule 5, in undertaking functions and exercising powers under this Schedule 5, the Adjudicator must ensure that:
  - (i) the requirements of procedural fairness are met. This includes but is not limited to making decisions on the basis of the information before it and by having specific criteria upon which its decisions are based, having regard to law, good industry practice and what is fair and reasonable in all the circumstances;
  - (ii) the ITA Process and any decisions of the Adjudicator are objective and unbiased and are seen to be objective and unbiased; and
  - (iii) confidential information of a party (the **disclosing party**) will not be disclosed:
    - (A) to any other party involved in an ITA Dispute; or
    - (B) to any third party,unless the Adjudicator obtains prior written consent from the disclosing party or where disclosure is otherwise required by law.
- (c) The Adjudicator may, at its discretion, join more than one application or investigation where the Adjudicator reasonably considers that the ITA Disputes which are the subject of such applications or investigations are able to be more efficiently and expeditiously dealt with together.

### 6.2 The Adjudicator acts as an expert and not an arbitrator

In exercising its functions and powers under this Schedule 5, the Adjudicator is acting as an expert and not as an arbitrator.

### 6.3 Limitation of liability

The Adjudicator is not liable to any party for, or in respect of, any act or omission in the discharge or purported discharge of its functions or powers under this Schedule 5 unless such act or omission is shown to have been fraudulent.

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## 7 Application to the ITA Process

### 7.1 ITA Disputes

- (a) Telstra or a Wholesale Customer may apply in writing to the Adjudicator to investigate and resolve:
  - (i) an Equivalence Complaint; or
  - (ii) any dispute referred to the Adjudicator by a Wholesale Customer under clause 31 of the Plan,  
  
(ITA Dispute).
- (b) Any application to the Adjudicator under paragraph 7.1(a) must be in writing and include:
  - (i) details of the applicant;
  - (ii) a description of the subject matter of the ITA Dispute; and
  - (iii) any other evidence or material in support of the application.
- (c) For clarity, the Adjudicator must only accept an application under paragraph 7.1(a) if it is satisfied that the complaint relates to an ITA Dispute.

### 7.2 Requirements for applications to the ITA Process

- (a) Before accepting an application in respect of an ITA Dispute under paragraph 7.1(a) of this Schedule 5, the Adjudicator must be satisfied that:
  - (i) the ITA Dispute is either:
    - (A) an Equivalence Complaint in relation to which one of the circumstances set out in clause 19.2(b) of this Undertaking applies; or
    - (B) a dispute referred to the Adjudicator by a Wholesale Customer under clause 31 of the Plan.
  - (ii) Telstra or the relevant Wholesale Customer can demonstrate that it has been materially and detrimentally affected by the issue the subject of the ITA Dispute;
  - (iii) there is in force an ITA Agreement between the relevant Wholesale Customer and Telstra;
  - (iv) Telstra and the Wholesale Customer have each paid the annual ITA Process Fee;
  - (v) Telstra or the relevant Wholesale Customer has paid the ITA Referral Fee (whichever is the referring party);
  - (vi) the ACCC, Telstra or the relevant Wholesale Customer has not already taken action in relation to the relevant event or matter to which the ITA Dispute relates, including any action to notify the event or matter as a complaint or dispute under another dispute resolution process;



- (vii) the relevant event or matter to which the ITA Dispute relates is not the subject of a dispute or difference of any kind between Telstra and NBN Co; and
  - (viii) the Adjudicator will not be required to make an assessment of a third party's involvement in the events or matters to which the ITA Dispute relates or any conduct, systems or processes of a third party, unless the third party has agreed to be joined as a party to the proceedings to be conducted by the Adjudicator in relation to that ITA Dispute and has agreed with Telstra to be bound by the ITA Process on terms which are substantially in the form of the ITA Agreement in Schedule 6.
- (b) The Adjudicator must notify the parties in writing within 2 Business Days of receiving an application under paragraph 7.1(a) of this Schedule 5 whether it accepts the application and whether it will investigate the ITA Dispute under the ITA Process.
  - (c) The Adjudicator's decision whether to accept an application is final and binding upon the parties.

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## 8 Investigation process and timeframe

### 8.1 Telstra to cooperate in good faith and provide reasonable assistance

- (a) Telstra will cooperate in good faith with the Adjudicator, including by providing any information or assistance reasonably requested by the Adjudicator in the course of undertaking an investigation under this Schedule 5.
- (b) Without limitation to paragraph 8.1(a) of this Schedule 5, Telstra will as soon as practicable after receiving notification under paragraph 7.2(b) of this Schedule 5 provide to the Adjudicator:
  - (i) where relevant, the file prepared in the course of reviewing the relevant ITA Dispute under the Accelerated Investigation Process;
  - (ii) a copy of any correspondence related to the relevant ITA Dispute between Telstra and the relevant Wholesale Customer; and
  - (iii) a copy of any decision reached by Telstra following the Accelerated Investigation Process, such as any explanation provided or Rectification Plan offered to the Wholesale Customer.
- (c) If Telstra informs the Adjudicator that it has provided, for the purposes of the ITA Process, any confidential information that cannot be provided to any other parties to the investigation, the Adjudicator may not disclose the information to any other person without the consent of Telstra and will take all reasonable steps to ensure that it does not do so inadvertently.

### 8.2 Preliminary Conference

- (a) Not more than two Business Days after the Adjudicator gives notice to the parties under paragraph 7.2(b) of this Schedule 5, the Adjudicator and representatives of each of Telstra and the relevant Wholesale Customer will meet to:
  - (i) clarify the scope of the ITA Dispute and any other matters in the application;

- (ii) provide feedback to both parties following the Adjudicator's preliminary review of the application;
  - (iii) identify and request from the parties any further material or information which the Adjudicator considers is necessary or expedient to help to resolve the ITA Dispute; and
  - (iv) agree a timetable and process for managing the application,
- (the **Preliminary Conference**).
- (b) The parties must provide any further material requested by the Adjudicator at the Preliminary Conference within 5 Business Days after the date of the Preliminary Conference or such other reasonable time as the Adjudicator may direct.
  - (c) The Adjudicator may request further information or assistance from Telstra or the relevant Wholesale Customer during the course of the investigation, in accordance with paragraph 9 of this Schedule 5.

### **8.3 Draft determination and Pre-determination conference**

- (a) The Adjudicator will use all reasonable endeavours to complete its investigation within 15 Business Days after the date of the Preliminary Conference.
- (b) Upon completing its investigation, the Adjudicator will promptly provide all parties with a draft determination setting out:
  - (i) the Adjudicator's findings of fact;
  - (ii) any process or systemic issues identified by the Adjudicator in respect of either Telstra or the relevant Wholesale Customer; and
  - (iii) the Adjudicator's proposed directions, including as to costs.
- (c) Not more than two Business Days after the Adjudicator has provided its draft determination to the parties under paragraph 8.3(b) of this Schedule 5, the Adjudicator will convene a conference between the parties for the purpose of:
  - (i) explaining the draft determination to the parties and allowing the parties an opportunity to discuss the draft determination; and
  - (ii) providing the parties with a reasonable opportunity to agree in good faith a mediated outcome to the ITA Dispute without the need for the Adjudicator to issue any final determination,

(the **Pre-determination Conference**).

### **8.4 Final Determination**

- (a) In the event that the parties do not reach an agreed or mediated outcome at the Pre-determination Conference, the parties must within three Business Days following the Pre-determination Conference provide written submissions of no more than 10 pages to the Adjudicator responding to the Adjudicator's draft determination.
- (b) As soon as reasonably practicable after the parties have provided their written submissions under paragraph 8.4(a) of this Schedule 5 or, in any event, no later

than five Business Days after the Pre-determination Conference, the Adjudicator will issue its final determination.

- (c) A final determination may include any direction that the Adjudicator considers necessary or expedient in order to achieve a permanent resolution of the relevant ITA Dispute, including without limitation:
  - (i) for an Equivalence Complaint arising out of a 'one off' failure by Telstra to comply with systems or processes with which it is otherwise generally compliant – direct Telstra to perform a service request by a particular deadline;
  - (ii) for an Equivalence Complaint arising from a pattern of failure by Telstra staff to comply with systems and processes with which they are otherwise generally compliant – require Telstra to undertake a compliance program or other compliance activities, such as specified employee training;
  - (iii) for an Equivalence Complaint arising from a systemic failure in Telstra's systems and processes – direct Telstra to provide the Adjudicator with a proposal for the modification of the non-compliant processes or systems to ensure future compliance and the required timeframe, estimated cost and process for implementing such proposal;
  - (iv) for an Equivalence Complaint arising from a failure of any kind by a wholesale customer – direct the relevant Wholesale Customer to take action, including without limitation, requiring it to:
    - (A) undertake a compliance program or other compliance activities, such as specified employee training; and/or
    - (B) provide the Adjudicator with a proposal for modification to that Wholesale Customer's processes or systems to avoid future failures of the same kind and the required timeframe, estimated cost and process for implementing such proposal;
  - (v) for a dispute referred to the Adjudicator under clause 31 of the Plan:
    - (A) direct Telstra to modify its Order Stability Period or to consult in good faith with Wholesale Customers in respect of a modification to the Order Stability Period; and
    - (B) direct Telstra to implement a Modification Proposal under clause 28.5 of the Plan.
- (d) If a direction of the kind referred to in paragraph 8.4(c)(iii) is given by the Adjudicator to a party:
  - (i) that party must provide the Adjudicator with a proposal that complies with the direction within the time specified by the direction, or if no time is specified, within a reasonable period after receiving the direction; and
  - (ii) if the Adjudicator is satisfied that the proposal complies with the direction, that party must implement the proposal in accordance with its terms.
- (e) For the avoidance of doubt, the Adjudicator may make a final determination which does not require any action to be taken by the parties, including without limitation where:

- (i) the Adjudicator's investigation does not identify a system or process failure;
  - (ii) any issue has already been corrected; or
  - (iii) the costs associated with taking action (or further action) would be likely to outweigh any associated benefit(s).
- (f) A final determination may include a direction in relation to the payment of the Adjudicator's costs.
- (g) The parties to the ITA Process will meet their own costs of, associated with and incidental to the ITA Process.
- (h) The parties may agree with each other and the Adjudicator to amend the terms of any directions or orders proposed by the Adjudicator, in order to give effect to the final determination.
- (i) Any directions or orders made by the Adjudicator are subject to monetary caps as follows:
- (i) for one or more ITA Disputes arising from the same conduct by a party (such as failures resulting from substantially the same or related processes or systems) – that party is not required to incur total costs of more than \$1,000,000 in implementing any modification to the relevant systems or processes or otherwise in complying with any other direction of the Adjudicator unless the Adjudicator demonstrates in writing that:
    - (A) the modification, and any other matter which must be undertaken to comply with the direction, is necessary to resolve the cause of the ITA Dispute;
    - (B) the modification, and any other matter which must be undertaken to comply with the direction, will be effective in resolving the cause of the ITA Dispute;
    - (C) the modification, and any other matter which must be undertaken to comply with the direction, is the least cost solution to resolve the cause of the ITA Dispute; and
    - (D) the cost of implementing the modification, and any other matter which must be undertaken to comply with the direction, is outweighed by the relative benefits, including the materiality of the consequences of continuing to rely on existing processes or systems; and
  - (ii) any party to the ITA Process is not required to incur total costs of more than \$10,000,000 in any calendar year in implementing modifications to relevant systems or processes or otherwise in complying with directions issued by the Adjudicator.
- (j) For clarity, the capacity for the Adjudicator to exceed the monetary cap in paragraph 8.4(i)(i) in relation to one or more ITA Disputes arising from the same conduct by a party remains subject to the annual monetary cap that applies in clause 8.4(i)(ii).
- (k) If a party determines that it will not implement a process or system modification because to do so would exceed the monetary caps in paragraph 8.4(i) of this Schedule 5, the other party to the relevant ITA Dispute, or the Adjudicator, may

refer the ITA Dispute to the ACCC for consideration under Part XIB and/or Part XIC of the CCA.

### **8.5 Limitations on the Adjudicator's power to make directions**

- (a) In investigating and resolving ITA Disputes under this ITA Process, the Adjudicator's role is to be focussed on quickly and pragmatically identifying outcomes that need to be improved or corrected and allowing the parties to identify how best to achieve the identified outcome, including through new or modified systems and processes.
- (b) A direction or final determination issued by the Adjudicator under this Schedule 5 has no effect to the extent (if any) to which compliance with the direction is likely to have the effect, whether direct or indirect, of:
  - (i) prescribing or proscribing that Telstra or a Wholesale Customer implement a specific system or process design or technology;
  - (ii) requiring Telstra to develop or supply any product or service;
  - (iii) requiring any system or process of Telstra or a Wholesale Customer to have particular design features;
  - (iv) requiring a party to act inconsistently with any legal or regulatory requirement, including this Undertaking, the Plan or any relevant industry standard or code (whether or not registered), except where the applicable legal or regulatory requirement expressly permits this;
  - (v) imposing a penalty or an award of compensation; or
  - (vi) requiring a party to change its systems or processes in order to compensate for inadequacies in, or consequences caused by:
    - (A) the systems and/or processes of NBN Co;
    - (B) the process of connecting to the NBN; or
    - (C) Pull Through Activities.

### **8.6 Determinations which affect contractual terms**

- (a) Subject to paragraph 8.6(b), a direction or final determination issued by the Adjudicator under this Schedule 5 may not impose or vary any contractual terms or conditions.
- (b) A direction or final determination may require that Telstra offers to vary the non-price terms of the wholesale contract under which it supplies Regulated Services to one or more Wholesale Customers, but only to the extent the Adjudicator considers the variation is necessary to achieve a permanent resolution of the relevant ITA Dispute. For clarity, the power to make a direction or final determination of this kind is subject to clause 8.5.

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## 9 The Adjudicator's investigatory powers

### 9.1 Adjudicator may request information and other assistance from the parties

- (a) Subject to paragraph 9.1(b) of this Schedule 5, at any time during the ITA Process, the Adjudicator may direct a party to an ITA Dispute to provide the Adjudicator with:
  - (i) copies of relevant documents;
  - (ii) information about, or an explanation of, Telstra's operational support systems or business support systems;
  - (iii) access to Employees or contractors involved in processing an order or orders or who may otherwise be able to assist the Adjudicator with the investigation;
  - (iv) copies of any relevant internal process manuals, system design documentation, staff procedures, performance data or compliance monitoring and reports; and
  - (v) physical access to Telstra Exchange Buildings and other facilities in which collocation occurs (for inspection purposes).
- (b) The Adjudicator cannot compel a party to provide:
  - (i) information or documents that are subject to legal professional privilege; or
  - (ii) information or documents that are the subject of confidentiality obligations owed in respect of a third party.

### 9.2 Appoint an independent engineer or auditor

- (a) The Adjudicator may appoint an independent engineer to assess technical issues at any point during the ITA Process provided the appointment is made in accordance with the Charter of Independence.
- (b) Without limitation, an independent auditor may audit a Capped Exchange or Potentially Capped Exchange, including to review:
  - (i) whether there is any currently unused and unreserved capacity;
  - (ii) the reasonableness of any forecasts or reservations made by Telstra; and
  - (iii) any options for making available new or additional capacity.
- (c) If an independent auditor is appointed:
  - (i) the Adjudicator has the power to order Telstra or the relevant Wholesale Customer to pay the costs of the independent auditor; and
  - (ii) the report that is prepared by the independent auditor will also be made available to Telstra and the relevant Wholesale Customer, subject to the protection of any confidential information in accordance with paragraph 6.1 of this Schedule 5.

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## 10 Referral of an ITA Dispute to the ACCC

- (a) Where the Adjudicator considers that an ITA Dispute would be more appropriately dealt with by the ACCC, it may at any time prior to the release of the final determination refer the matter to the ACCC.
- (b) The Adjudicator must immediately close any investigation in respect of a matter which has been referred to the ACCC under paragraph 10(a) of this Schedule 5 and must promptly notify the parties in writing to an investigation that the matter has been referred to the ACCC.
- (c) The Adjudicator may not refer a matter to the ACCC which is the subject of a final determination.

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## 11 Referral of an ITA Dispute to the Adjudicator

Where the ACCC has had a matter referred to it under paragraph 10(a) of this Schedule 5 and considers that a complaint which would be an ITA Dispute would be more appropriately dealt with by the Adjudicator, it may at any time prior to the release of the final determination refer the matter to the Adjudicator.

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## 12 Status of the Final Determination

- (a) Except in the case of manifest error on the face of the document, a final determination of the Adjudicator is final and binding on the parties.
- (b) No party is entitled to appeal from or seek or obtain a review of the Adjudicator's final determination in any court.
- (c) Nothing in this Schedule 5 prevents any party from seeking an interlocutory injunction from a court.
- (d) Any finding of fact made by the Adjudicator in or for the purpose of a final determination must not be tendered or relied upon by the ACCC or any other party in any court proceedings or other dispute resolution process as evidence of those facts.

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## 13 Inconsistency with the Plan

A direction issued by the Adjudicator has no effect to the extent to which it would have the effect of:

- (a) requiring Telstra to seek a variation to the Plan; or
- (b) preventing Telstra from complying with the Plan.

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## Schedule 6 — ITA Agreement

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### Parties

**Telstra Corporation Limited** of 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)  
[insert name] of [insert address] (**Wholesale Customer**)

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### Background

- (a) On 29 July 2011 Telstra gave to the ACCC an Undertaking pursuant to section 577A of the *Telecommunications Act 1997* (Cth) (**SSU**) and the ACCC accepted the Undertaking on [date].
- (b) Telstra established the Independent Telecommunications Adjudicator Process (**ITA Process**) in accordance with the Undertaking for the independent and expedited resolution of ITA Disputes.
- (c) Telstra and the Wholesale Customer agree that either party may refer an ITA Dispute to the Adjudicator for resolution on the terms set out in this deed and the Undertaking.

The parties agree

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## 1 Defined terms and interpretation

Capitalised terms which are not defined in this deed have the same meaning as in the Undertaking.

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## 2 ITA Process

### 2.1 Reference to the ITA Process

- (a) Telstra and the Wholesale Customer agree that either party to this deed may refer an Equivalence Complaint for resolution in accordance with:
  - (i) the Accelerated Investigation Process set out in clause 18 of the Undertaking; and
  - (ii) if the Equivalence Complaint is not resolved by Telstra using the Accelerated Investigation Process, then the ITA Process in accordance with clause 19 and Schedule 5 of the Undertaking.
- (b) Telstra and the Wholesale Customer agree that either party to this deed may refer a dispute of the kind referred to in clause 31 of the Plan for resolution in accordance with the ITA Process, in accordance with clause 19 and Schedule 5 of the Undertaking.



- (c) Each party agrees that that it will comply with, and be bound by, the terms of the ITA Process set out in Schedule 5 of the Undertaking, in respect of any ITA Dispute referred to the ITA Process.
- (d) Without limiting the power of the Adjudicator to refer any ITA Dispute or investigation to the ACCC prior to it making a final determination, a party to this deed must not:
  - (i) commence any arbitration or court proceedings or any other dispute resolution process (including but not limited to any process of the Telecommunications Industry Ombudsman); or
  - (ii) lodge a complaint with the ACCC under Part XIB or XIC of the *Competition and Consumer Act 2010* (Cth),

in relation to an event or matter if that event or matter is the subject of an ITA Dispute that has been referred to the Accelerated Investigation Process or the ITA Process, except where:

- (iii) a party seeks urgent interlocutory or injunctive relief; or
- (iv) the dispute relates to compliance with this deed.
- (e) If a party to this deed has:
  - (i) commenced any arbitration or court proceedings or any other dispute resolution process (including but not limited to any process of the Telecommunications Industry Ombudsman); or
  - (ii) lodged a complaint with the ACCC under Part XIB or XIC of the *Competition and Consumer Act 2010* (Cth),

in relation to a particular event or matter, each party must not refer an ITA Dispute to the Accelerated Investigation Process or the ITA Process in relation to that event or matter.

## **2.2 Both parties to cooperate in good faith and provide reasonable assistance**

- (a) Each party will cooperate in good faith with the Adjudicator, including by providing any information or assistance reasonably requested by the Adjudicator in the course of undertaking an investigation.
- (b) The Wholesale Customer consents to Telstra disclosing to the Adjudicator information that is confidential to the Wholesale Customer, where such disclosure is for the purpose of facilitating:
  - (i) Telstra's compliance with its obligations in respect of the ITA Process; or
  - (ii) the Adjudicator to otherwise undertake a timely investigation and resolution of the ITA Dispute.
- (c) Telstra and the Wholesale Customer agree that they will engage in the ITA Process in good faith and that they will provide all reasonable assistance and information to the Adjudicator.

### 2.3 Decision of the Adjudicator is final and binding

- (a) Telstra and the Wholesale Customer agree that, subject to paragraphs 8.5, 12 and 13 of Schedule 5 of the SSU:
  - (i) any final determination of the Adjudicator is final and binding on each of them; and
  - (ii) each of them undertakes to comply with any directions or orders made by the ITA (including as amended by agreement between each party and the Adjudicator) in order to give effect to its final determination.
- (b) Any finding of fact made by the Adjudicator in or for the purpose of a final determination must not be tendered or relied upon by either party in any court proceedings or other dispute resolution process as evidence of those facts.

### 2.4 Confidentiality of ITA Process

Telstra and the Wholesale Customer agree that:

- (a) their participation in the ITA Process; and
- (b) all information in connection with the ITA Process, including but not limited to a determination or direction of the Adjudicator,

is confidential and must not be disclosed without the written consent of the other party unless disclosure is required by law or the rules of the Australian Stock Exchange.

### 2.5 ITA Referral Fee

The referring party agrees to pay the ITA Referral Fee set by the Adjudicator from time to time in respect of any ITA Dispute referred to the ITA Process.

### 2.6 Annual ITA Process Fee

Telstra and the Wholesale Customer agree to pay an annual administration fee to the Adjudicator (**ITA Process Fee**), in an amount notified by the Adjudicator on an annual basis, in respect of its administrative and incidental costs.

### 2.7 Costs

In the event the Adjudicator makes a direction in a final determination in relation to the payment of the costs of the ITA Process, including any repayment by Telstra of the ITA Referral Fee to the Wholesale Customer, Telstra and the Wholesale Customer agree that they will pay any costs they are directed to pay under such final determination.

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## 3 General

- (a) This deed is governed by the laws of Victoria.
- (b) Each party to this deed submits to the non-exclusive jurisdiction of the courts of Victoria.
- (c) This deed may be executed in any number of counterparts.
- (d) This deed will terminate automatically on the earlier of:

- (i) the start of the Designated Day; or
- (ii) the date on which Part D of the Undertaking otherwise ceases to apply to Telstra for any reason.

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## Schedule 7 — Regulated Services SLA Agreement

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### Parties

**Telstra Corporation Limited** of 242 Exhibition Street, Melbourne, Victoria 3000 (**Telstra**)

[insert name] of [insert address] (**Wholesale Customer**)

Yes, the Wholesale Customer will continue to claim a right of contribution under section 118A of the Consumer Protection Act (or its equivalent from time to time) [tick the box to choose this option]

---

### Background

- (a) On 29 July 2011 Telstra gave to the ACCC an Undertaking pursuant to section 577A of the *Telecommunications Act 1997* (Cth) (**Undertaking** or **SSU**) and the ACCC accepted the Undertaking on [date].
- (b) As part of the Undertaking, Telstra undertook to enter into this deed with the Wholesale Customer on request.

The parties agree

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## 1 Defined terms and interpretation

### 1.1 Dictionary

- (a) Capitalised terms used in this deed have the meaning given in clause 10.
- (b) Capitalised terms used in this deed which are not defined clause 10 have the same meaning as in the Undertaking.

### 1.2 Interpretation

- (a) The rules of interpretation contained in the Undertaking are incorporated into and apply to the terms of this deed.
- (b) For the purposes of this deed a reference to a **claim** includes any claim, assertion of rights, action, demand or proceeding whether arising in contract, equity, statute or otherwise and whether it is present or future, fixed or unascertained, actual or contingent.

### 1.3 Operation of this deed

The provisions of this deed do not apply to any supply of services or facilities by Telstra to the Wholesale Customer which are not Regulated Services.

---

## 2 Telstra will pay Service Level Rebates

- (a) Service Level Rebates will apply in relation to all Equivalence and Transparency Metrics other than Metrics 7 and 18.

- (b) If Telstra does not meet a Service Level for an applicable Equivalence and Transparency Metric as set out in Schedule 3 of the Undertaking it will provide the Wholesale Customers with a Service Level Rebate in accordance with, and subject to, the terms of this deed.
- (c) If the Wholesale Customer has indicated that it will continue to claim a right of contribution under section 118A of the Consumer Protection Act (or its equivalent from time to time) by ticking the box which appears underneath the party details of the Wholesale Customer:
  - (i) Service Level Rebates will not be paid to the Wholesale Customer under this deed in relation to any service in respect of which the Wholesale Customer has a right of contribution under section 118A of the Consumer Protection Act (or its equivalent from time to time); and
  - (ii) nothing in clause 5 will preclude the Wholesale Customer claiming a right of contribution under section 118A of the Consumer Protection Act (or its equivalent from time to time) in relation to the services referred to in clause 2(c)(i).

---

### **3 Service Level Rebates do not apply if there is no Reporting Variance**

If there is no Reporting Variance in an Equivalence and Transparency Metric for a Quarter then Service Level Rebates will not apply in relation to that Metric for that Quarter.

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### **4 Payment of Service Level Rebates**

- (a) Service Level Rebates will be paid by applying a credit against the amount that is to be paid by the Wholesale Customer for the supply of the applicable Regulated Service.
- (b) Telstra will determine the Service Level Rebates that are payable to the Wholesale Customer for each Quarter within 10 Business Days after the Operational Equivalence Report for that Quarter has been published by Telstra.
- (c) If Telstra determines that Service Level Rebates are payable for a Quarter they will be credited to the Wholesale Customer as part of the next Available Billing Cycle for that Wholesale Customer without the need for the Wholesale Customer to submit a claim.
- (d) A Service Level Rebate will not apply, and is not payable by Telstra, in relation to a failure to meet a Service Level if:
  - (i) the failure to meet the Service Level was due to:
    - (A) any of the matters or events set out in the Specific Conditions or General Conditions in paragraph 10 and 11 of Schedule 3 of the Undertaking; or
    - (B) an act or omission of the Wholesale Customer; or
    - (C) an event or circumstance which is beyond Telstra's reasonable control and which Telstra could not reasonably have avoided or overcome; or

- (ii) the applicable Regulated Service to which the Service Level relates is used by the Wholesale Customer to supply a service to another service provider that is entitled to make a claim against Telstra in relation to the same set of events, such as a right of contribution under the provisions of section 118A of the Consumer Protection Act (or its equivalent from time to time);
  - (iii) the Wholesale Customer has elected in writing to opt out of the payment of that Service Level Rebate (which may include an election to opt out of payment of all Service Level Rebates of a particular class or kind);
  - (iv) the Wholesale Customer makes another claim against Telstra for any payment, credit, offset, contribution or other form of compensation in relation to the matters which the Service Level relates.
- (e) Where the Wholesale Customer is in breach of the terms of a wholesale contract under which Telstra supplies a Regulated Service to the Wholesale Customer or the terms on which the Wholesale Customer accesses or uses LOLO, Telstra may withhold payment of all Service Level Rebates to the Wholesale Customer until that breach has been rectified in accordance the applicable terms.
- (f) If a Service Level Rebate is paid to a Wholesale Customer in error, Telstra may recover the amount of that Service Level Rebate from the Wholesale Customer (including by applying a set-off against other Service Level Rebates to be paid to that Wholesale Customer).
- (g) For the avoidance of doubt:
- (i) Service Level Rebates will not be paid where an order is unable to be processed after it has been received due to the unavailability of LOLO (which will be assessed under Metric 20);
  - (ii) a Service Level Rebate that applies in respect of the supply of a Regulated Service will only be credited against the amount that is to be paid by the Wholesale Customer in respect of that Regulated Service and will not be credited against any other amount that is to be paid by the Wholesale Customer to Telstra, including in respect of other services (including other Regulated Services) that are supplied to that Wholesale Customer;
  - (iii) Service Level Rebates constitute a liability to apply a credit against amounts owing by the Wholesale Customer only and do not constitute a liability to pay cash amounts to the Wholesale Customer; and
  - (iv) the Wholesale Customer must not set-off the amount of any Service Level Rebate it has claimed against amounts that it owes to Telstra.

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## 5 Sole remedy

- (a) The right to payment of Service Level Rebates by Telstra under this deed constitutes the Wholesale Customer's sole and exclusive remedy in relation to the matters to be measured by the Equivalence and Transparency Metrics.
- (b) The Wholesale Customer agrees that:
  - (i) the Wholesale Customer must not make a claim against Telstra for any payment, credit, offset, contribution or other form of compensation in relation

to the matters to be measured by the Equivalence and Transparency Metrics under:

- (A) the terms of any wholesale contract under which Telstra supplies the relevant Regulated Service(s); or
  - (B) the provisions of section 118A of the Consumer Protection Act (or its equivalent from time to time);
- (ii) all rights of the Wholesale Customer to make claims of the kind referred to in clause 5(b)(i) cease to have effect on commencement of this deed; and
  - (iii) the Wholesale Customer releases Telstra from all liability (whether current, future or contingent) in relation to claims of the kind referred to in clause 5(b)(i) claims.

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## 6 Term and termination

- (a) This deed commences at the beginning of the first Quarter after this deed is executed by the parties.
- (b) This deed will terminate automatically on the earlier of:
  - (i) the date that the wholesale contract under which Telstra supplies the relevant Regulated Services(s) to the Wholesale Customer terminates, expires or otherwise cease to have effect;
  - (ii) the start of the Designated Day; and
  - (iii) the date on which Part D of the Undertaking otherwise ceases to apply to Telstra for any reason.
- (c) Telstra may terminate this deed by giving written notice to the Wholesale Customer if:
  - (i) the Undertaking is amended such that:
    - (A) Telstra is no longer required to offer to enter into a Regulated Services Agreement with Wholesale Customers which are substantially in the form of the terms of this deed; or
    - (B) the Undertaking permits Telstra to terminate this deed; or
  - (ii) the Wholesale Customer commits a breach of clause 5.

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## 7 Dispute resolution

The dispute resolution provisions of the wholesale contract under which Telstra supplies the relevant Regulated Service(s) to the Wholesale Customer are incorporated into, and form part of, this deed as if those provisions were set out in full in this deed (with such changes as are necessary to give those provisions effect in this deed) and will apply in relation to any dispute or difference of any kind between the parties which relates to the subject matter of this deed.

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## 8 Schedule of rebates

- (a) The amount of the Service Level Rebates that are to be paid by Telstra under this deed will be determined in accordance with the following table:

Metric	Service Level Rebate
1	1 x List Price
2	1 x List Price
3	1 x List Price
4	1 x List Price
5	1 x List Price
6	1 x List Price
8	1 x List Price
9	1 x List Price
10	1 x List Price
11	1 x List Price
12	1 x List Price
13	1 x List Price
14	1 x List Price
15	1 x List Price
16	1 x List Price
17	1 x List Price
19	1 x List Price
20	List Price x Average Hourly Order Rate

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## 9 General

- (a) The GST and other tax related provisions of the wholesale contract under which Telstra supplies the relevant Regulated Service(s) to the Wholesale Customer are incorporated into, and form part of, this deed as if those provisions were set out in full in this deed (with such changes as are necessary to give those provisions effect in this deed).



- (b) The confidentiality provisions of the wholesale contract under which Telstra supplies the relevant Regulated Service(s) to the Wholesale Customer are incorporated into, and form part of, this deed as if those provisions were set out in full in this deed (with such changes as are necessary to give those provisions effect in this deed). For this purpose, the amount of any Service Level Rebates paid to the Wholesale Customer and any information that is disclosed to the Wholesale Customer under or relating to the subject matter of this deed will be deemed to be confidential.
  - (c) This deed is governed by the laws of Victoria.
  - (d) Each party to this deed submits to the non-exclusive jurisdiction of the courts of Victoria.
  - (e) This deed may be executed in any number of counterparts.
  - (f) If:
    - (i) the terms of the Regulated Services Agreement set out in Schedule 7 of this Undertaking are varied; and
    - (ii) Telstra notifies the Wholesale Customer that the variation is to be incorporated into the terms of this deed,the terms of this deed will be automatically amended to incorporate that variation.
- 

## 10 Dictionary

For the purpose of this deed:

- (a) **Available Billing Cycle** means the billing cycle which next commences immediately after Telstra makes the determination required by clause 4(b) above;
- (b) **Average Hourly Order Rate** means, in respect of a Quarter, the average number of firm orders to provision a Regulated Service placed by the Wholesale Customer per hour during the previous Quarter (other than where the order relates to the relocation of a Wholesale ADSL Layer 2 Service, LSS or ULLS);
- (c) **List Price** means:
  - (i) in respect of Metrics 1 to 7 (inclusive), an amount equal to the monthly access price for the supply of the WLR service in the relevant area that is prescribed by the ACCC in an access determination under Division 4 of Part XIC of the CCA from time to time. Where there is no access determination in force the monthly access price for the supply of the WLR service in the relevant area in previous access determination will prevail until a new interim or final access determination is published by the ACCC;
  - (ii) in respect of Metrics 12 and 13, an amount equal to the monthly access price for the supply of LSS in the relevant area prescribed by the ACCC in an access determination under Division 4 of Part XIC of the CCA from time to time. Where there is no access determination in force the monthly access price for the supply of LSS in the relevant area in previous access determination will prevail until a new interim or final access determination is published by the ACCC;

- (iii) in respect of Metrics 14 and 15, an amount equal to the monthly access price for the supply of ULLS in the relevant area prescribed by the ACCC in an access determination under Division 4 of Part XIC of the CCA from time to time;
  - (iv) in respect of Metrics 8 to 11 (inclusive), an amount equal to the monthly Wholesale ADSL Reference Price in the relevant area as determined in accordance with Schedule 8;
  - (v) in respect of Metrics 16 and 17, an amount equal to \$100;
  - (vi) in respect of Metric 19, an amount equal to the annual charge payable by the Wholesale Customer for a single rack space in the relevant exchange, divided by 12; and
  - (vii) in respect of Metric 20, an amount equal to \$5.00.
- (d) **Service Level** means, in respect of a Metric, the applicable service level for that Metric as set out in Schedule 3 of the Undertaking.

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## Schedule 8 — Telstra Reference Prices

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### 1 Telstra to publish a Rate Card with Reference Prices

#### 1.1 Rate Cards

Telstra will publish and maintain a Rate Card with Reference Prices for each of the following Reference Services:

- (a) ULLS;
- (b) LSS;
- (c) PSTN OA
- (d) PSTN TA
- (e) LCS
- (f) WLR
- (g) DTCS
- (h) Mobile Terminating Access Service (**MTAS**); and
- (i) wholesale ADSL2+ services (**Wholesale ADSL Reference Service**).

#### 1.2 Determination of Reference Prices

- (a) The Reference Prices for each of ULLS, LSS, PSTN OA, PSTN TA, LCS, WLR, MTAS and DTCS will be those prices specified for each Reference Service in any:
  - (i) final access determination made by the ACCC and in force under section 152BC of the CCA;
  - (ii) interim access determination made by the ACCC and in force under section 152BCG of the CCA; or
  - (iii) binding rule of conduct made by the ACCC and in force under section 152BD of the CCA.
- (b) Telstra is not required to publish a Reference Price in respect of any of ULLS, LSS, PSTN OA, PSTN TA, LCS, WLR, MTAS or DTCS if and for the period that there is no final access determination or interim access determination in force specifying price terms for the relevant service.
- (c) The Reference Prices which will apply from time to time for the Wholesale ADSL Reference Service (**Wholesale ADSL Reference Price**) will be determined in accordance with paragraph 2 of this Schedule 8.

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## 2 Wholesale ADSL Reference Price

### 2.1 Structure of the Wholesale ADSL Reference Price

- (a) Telstra will publish a separate Wholesale ADSL Reference Price in respect of each of Zone 1 and Zone 2, where:
  - (i) Zone 1 refers to those geographic areas designated 'Metropolitan' from time to time for the purpose of Telstra's standard pricing of wholesale products and services; and
  - (ii) Zone 2 refers to those geographic areas designated 'Rural' or 'Regional' from time to time for the purpose of Telstra's standard pricing of other wholesale products and services.
- (b) Telstra will update the ACCC within 5 Business Days of the date of any change which is made by Telstra to the boundaries of Zone 1 or Zone 2, including by virtue of any change in the defined geographic scope of any of the 'Metropolitan', 'Rural' or 'Regional' regions.
- (c) The Wholesale ADSL Reference Price will take the form of a multi-part tariff which separately identifies that part of the Wholesale ADSL Reference Price referable to the following elements of the service:
  - (i) connection charge;
  - (ii) AGVC Charge (per Mbps per month); and
  - (iii) Port Charge (per SIO per month).
- (d) Notwithstanding that Telstra will separately identify the component parts of the Wholesale ADSL Reference Price, it will operate as a single price for a fixed bundle of elements. For clarity, Telstra is not required to supply individual elements of the bundle at the price specified in the Rate Card for that element unless all of the service elements are supplied to the Wholesale Customer in accordance with the Wholesale ADSL Reference Price.
- (e) The Wholesale ADSL Reference Price will apply only in respect of a Wholesale ADSL Reference Service that reflects from time to time the average speed and data usage characteristics of Telstra's retail BigPond high speed ADSL2+ products, being (as at the Commencement Date):
  - (i) an ADSL2+ service with a download speed of up to a maximum of 20 Mbps; and
  - (ii) average AGVC usage as set out in Schedule 10,and as subsequently agreed with the ACCC or amended from time to time in accordance with the process set out in Schedule 10.
- (f) In determining and updating the characteristics in paragraph 2.1(e) from time to time, under Schedule 10, Telstra does not intend to reflect (and will remove from the relevant calculations) any data usage or proportion of the retail yield not directly associated with the provision of broadband services, including any usage or revenues derived from applications or content which Telstra charges for separately to the rental or usage charge for the underlying broadband connection.

- (g) The Wholesale ADSL Reference Price does not apply in respect of a wholesale ADSL service which is substantially different from the Wholesale ADSL Reference Service.

## 2.2 The Wholesale ADSL Reference Price calculation

- (a) The Zone 1 Wholesale ADSL Reference Price for the Wholesale ADSL Reference Service will be determined as follows:

$$\text{Wholesale ADSL Reference Price} = \text{Retail Price} - \text{SRMARC} - \text{Fixed ARC}_1$$

Where:

**Retail Price** is the retail yield per SIO for Telstra's retail BigPond high speed ADSL2+ products, determined in accordance with paragraph 2.3;

**SRMARC** is the short run marginal component of Avoidable Retail Costs incurred in supplying Telstra's retail ADSL products, determined in accordance with paragraph 2.4;

**Fixed ARC<sub>1</sub>** is the fixed component of Avoidable Retail Costs incurred in supplying Telstra's retail ADSL products determined in accordance with paragraph 2.4 and that Telstra in its discretion elects to include in the calculation of the Zone 1 Wholesale ADSL Reference Price.

- (b) The Zone 2 Wholesale ADSL Reference Price for the Wholesale ADSL Reference Service will be determined as follows:

$$\text{Wholesale ADSL Reference Price} = \text{Retail Price} - \text{SRMARC} - \text{Fixed ARC}_2$$

Where:

**Retail Price** is the retail yield per SIO for Telstra's retail BigPond high speed ADSL2+ products, determined in accordance with paragraph 2.3;

**SRMARC** is the averaged short run marginal component of Avoidable Retail Costs incurred in supplying Telstra's retail ADSL products, determined in accordance with paragraph 2.4;

**Fixed ARC<sub>2</sub>** is the averaged fixed component of Avoidable Retail Costs incurred in supplying Telstra's retail ADSL products determined in accordance with paragraph 2.4 and that Telstra in its discretion elects to include in the calculation of the Zone 2 Wholesale ADSL Reference Price.

- (c) Telstra may choose to allocate any proportion of Fixed ARC include in the calculation of either of the Zone 1 and Zone 2 Wholesale ADSL Reference Prices, provided that:
- (i) the entire Fixed ARC is allocated across the Wholesale ADSL Reference Prices for both Zone 1 and Zone 2; and
  - (ii) there is no double allocation of Fixed ARC.
- (d) Unless otherwise agreed with the ACCC, all cost information used in the calculation will be taken directly from the TEM.

### 2.3 Determination of the Retail Price

- (a) When applying the Wholesale ADSL Reference Price calculation, from time to time, Telstra will adopt a Retail Price which reflects a reasonable and appropriate forward looking view of the likely impact of any current or proposed price changes on the retail yield, taking into account forecast demand for Telstra's retail BigPond high speed ADSL2+ products.
- (b) As soon as reasonably practicable after Telstra submits this Undertaking to the ACCC for approval, but before the Undertaking is accepted by the ACCC, Telstra and the ACCC will agree a methodology to be applied by Telstra in determining the retail yield for the purpose of calculating the Retail Price.
- (c) The methodology agreed by Telstra and the ACCC under sub-paragraph (b) may be varied:
  - (i) at any time by agreement between Telstra and the ACCC; and
  - (ii) otherwise in the course of any review of the operation of this Schedule 8, as contemplated by paragraph 4.
- (d) In accordance with paragraph 2.1(f), Telstra will remove from the retail yield any revenues associated with applications or content which Telstra charges for separately to the rental or usage charge for the underlying broadband connection.

### 2.4 Determination of Avoidable Retail Costs

- (a) Avoidable Retail Costs are those retailing costs that would be avoided by Telstra over the long run if Telstra ceased to supply any ADSL services to Retail Customers and instead supplied the same number of ADSL services to Wholesale Customers. Examples of Avoidable Retail Costs include:
  - (i) retail specific billing or administrative functions;
  - (ii) retail marketing; and
  - (iii) retail customer management and support functions (e.g. retail 'front of house').

However it does not include overhead or corporate costs that would be likely to continue to be required to be incurred by Telstra, notwithstanding that the services were being supplied to Wholesale Customers and no longer to Retail Customers.

- (b) Avoidable Retail Costs for retail ADSL products are reported as part of the 'Retail ADSL' product in each TEM Report.
- (c) As soon as reasonably practicable after Telstra submits this Undertaking to the ACCC for approval, Telstra and the ACCC will agree those individual cost items (or the relevant proportion of cost items) in the TEM Report, which will constitute total Avoidable Retail Costs for the purpose of calculating the Wholesale ADSL Reference Price.
- (d) Telstra will specify the agreed cost items in the TEM Guidelines published in accordance with paragraph 5 in Schedule 9.
- (e) The allocation of line items agreed by Telstra and the ACCC under sub-paragraph (c) may be varied:

- (i) at any time by agreement between Telstra and the ACCC; and
- (ii) otherwise in the course of any review of the operation of this Schedule, as contemplated by paragraph 4.

## **2.5 Determination of SRMARC and Fixed ARC**

- (a) SRMARC will be calculated as the incremental retail costs that Telstra incurs for each incremental unit of demand.
- (b) Fixed ARC will be calculated as that amount of Avoidable Retail Costs that are not SRMARC.
- (c) As soon as reasonably practicable after Telstra submits this Undertaking to the ACCC for approval, Telstra and the ACCC will agree:
  - (i) those individual cost items (or the relevant proportion of cost items) in the TEM Report, which will constitute SRMARC; and
  - (ii) the proportion of total Fixed ARC, which will be allocated by Telstra to each of Zone 1 and Zone 2,for the purpose of calculating the Wholesale ADSL Reference Price.
- (d) Telstra will specify the agreed cost items which constitute SRMARC in the TEM Guidelines published in accordance with paragraph 5 in Schedule 9.
- (e) The allocation of line items and proportion of Fixed ARC allocated between Zones which is agreed by Telstra and the ACCC under sub-paragraph (c) may be varied:
  - (i) at any time by agreement between Telstra and the ACCC; and
  - (ii) otherwise in the course of any review of the operation of this Schedule, as contemplated by paragraph 4.

## **2.6 Principles for allocation of the Wholesale ADSL Reference Price between individual service elements**

- (a) The Wholesale ADSL Reference Price for the Wholesale ADSL Reference Service will be allocated between port, AGVC and connection charges in the following manner:
  - (i) the port charge will be calculated as the Wholesale ADSL Reference Price:
    - (A) less the connection charge amortised over 24 months; and
    - (B) less the AGVC charge multiplied by the average AGVC usage referred to in paragraph 2.1(e) and as updated from time to time in accordance with Schedule 10.
  - (ii) the connection charge will be the standard connection charge applied, from time to time;
  - (iii) the AGVC charge will be the standard AGVC charge applied by Telstra from time to time.

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### 3 Updating the Wholesale ADSL Reference Price

#### 3.1 Initial Wholesale ADSL Reference Price

- (a) The initial Wholesale ADSL Reference Price will be published by Telstra within 3 months of the Commencement Date, and will have effect from the date of publication until varied in accordance with this paragraph 3.
- (b) The Wholesale ADSL Reference Price will be published in the following form:

Element	Zone 1	Zone 2
Connection charge		
AGVC		
Port charge		
<b>Wholesale ADSL Reference Price</b>		

#### 3.2 Updating the Wholesale ADSL Reference Price

- (a) Subject to paragraph 3.4, Telstra undertakes to perform the calculation set out in paragraph 2.2 to determine whether a change is required to the Wholesale ADSL Reference Price for the Wholesale ADSL Reference Service:
  - (i) as soon as reasonably practicable after a TEM Report is submitted to the ACCC for a Reporting Period ending on either 31 December or 30 June of any year in accordance with Schedule 9, provided that any change in the Retail Price or Avoidable Retail Costs during the relevant Reporting Period would lead to a change in the Wholesale ADSL Reference Price of more than +/-3%; and
  - (ii) before Telstra introduces any material price change for a retail BigPond high-speed ADSL product.
- (b) If, having undertaken the Wholesale ADSL Reference Price calculation for a half financial year under paragraph 3.2(a)(i), Telstra determines that a change in the Wholesale ADSL Reference Price is required to be implemented, it will as soon as reasonably practicable and in any event within 10 Business Days:
  - (i) update the published Rate Card to include any necessary change to the Wholesale ADSL Reference Price for the Wholesale ADSL Reference Service;
  - (ii) notify Wholesale Customers of the Wholesale ADSL Reference Price change, including for example by including a general notice on the Wholesale Portal; and
  - (iii) notify the ACCC of the change in the Wholesale ADSL Reference Price.



- (c) If Telstra determines that a proposed material retail ADSL price change under paragraph 3.2(a)(ii) would require a change in the Wholesale ADSL Reference Price, Telstra will not make available the service at the new retail price unless and until it has:
  - (i) updated the published Rate Card to include any necessary change to the Wholesale ADSL Reference Price;
  - (ii) notified Wholesale Customers of the Wholesale ADSL Reference Price change, including for example by including a general notice on the Wholesale Portal; and
  - (iii) notified the ACCC of the change in the Reference Price and the material retail ADSL price change to which it relates.
- (d) The following price changes will not be subject to this paragraph 3.2:
  - (i) A retail ADSL price change which is immaterial, in that it constitutes:
    - (A) a permanent change of 5% or less in the headline monthly charge; or
    - (B) any other permanent reduction in applicable charges which if amortised over the minimum contract period for the relevant plan, would constitute a change of 5% or less of the headline monthly charge for that plan,
  - (ii) a retail ADSL price change which relates to products or plans targeted at Government and Enterprise customers;
  - (iii) any customised or other specialised pricing which is not promoted to the mass market, including any trial pricing which is only made available to a small group of customers.
  - (iv) any bona fide short term discount or promotional offer and provided that:
    - (A) from the date of the first release of the discount or promotional offer into the market, it does not continue for more than 6 months; and
    - (B) Telstra has not previously had any substantially similar discount or promotional offer in the market in respect of a retail ADSL broadband plan at any time within 6 months prior to the date of the first release of the discount or promotional offer into the market.

**3.3 Telstra to provide copies of all Wholesale ADSL Reference Price calculations and respond to ACCC requests for information about an updated Wholesale ADSL Reference Price**

- (a) At the same time as Telstra notifies the ACCC of any change to the Wholesale ADSL Reference Price, it will provide the ACCC with a full confidential version of the calculations used to determine the new Wholesale ADSL Reference Price.
- (b) Without limitation to paragraph 3.3(a), Telstra will promptly respond to any request received from the ACCC for more information in relation to a Wholesale ADSL Reference Price change made under this paragraph 3, including providing information to the ACCC in respect of:
  - (i) the material retail ADSL price change; and

- (ii) the Wholesale ADSL Reference Price calculation that was undertaken as the basis for the Wholesale ADSL Reference Price change.

### **3.4 Wholesale ADSL Reference Price may be suspended if it would lead to sustained below cost prices**

- (a) Where Telstra determines that the relationship between Telstra's retail ADSL pricing and the Wholesale ADSL Reference Price set out in this Schedule 8 is being manipulated by one or more Wholesale Customers such that Telstra is not able to lower its retail ADSL prices in order to compete with lower competitive offers already widely available in the market, without leading to a Wholesale ADSL Reference Price being set which:
  - (i) is inconsistent with pricing which would be made available by an efficient supplier in a workably competitive market; or
  - (ii) would be likely to require Telstra to set the Wholesale ADSL Reference Price for a sustained period at a level below a relevant measure of Telstra's cost of supply,

then Telstra may, prior to undertaking the Wholesale ADSL Reference Price calculation, refer the matter to the ACCC and request that the Wholesale ADSL Reference Price be suspended.

- (b) If the ACCC accepts that the circumstances contemplated in paragraph 3.4(a) have occurred, or would be likely to occur if Telstra was required to undertake the Wholesale ADSL Reference Price calculation, it must permit Telstra to lower retail ADSL prices in order to meet the competitive pricing, without being required to undertake the Wholesale ADSL Reference Price calculation or to update the Wholesale ADSL Reference Price. For clarity, nothing in this paragraph 3 restricts or prevents any of the ACCC's powers under Part IV or XIB of the CCA in respect of any such retail pricing offer.
- (c) If the ACCC does not accept that the circumstances contemplated in paragraph 3.4(a) have occurred, or would be likely to occur if Telstra was required to undertake the Wholesale ADSL Reference Price calculation, Telstra will not be permitted to lower retail ADSL prices without being required to undertake the Wholesale ADSL Reference Price calculation and to update the Wholesale ADSL Reference Price as appropriate.
- (d) Telstra will not make the Wholesale ADSL Reference Price available to, and will not respond to any competitive pricing of, any Related Entity.

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## **4 Review of Wholesale ADSL Reference Price calculation**

### **4.1 ACCC review**

- (a) At any time after the third anniversary of the Commencement Date, where the ACCC reasonably considers that the Wholesale ADSL Reference Price calculation, or the manner of its operation, no longer complies with
  - (i) the SSU Guidance; and
  - (ii) generally accepted economic principles or practice,

it may notify Telstra that it is commencing a review of the operation of this Schedule.

- (b) A notification under paragraph 4.1(a) must specify either:
  - (i) amendments which the ACCC considers may be required to be made to the Wholesale ADSL Reference Price calculation or the manner of its operation; or
  - (ii) that the ACCC considers the operation of the Wholesale ADSL Reference Price should be suspended due to a fundamental change in the operation or competitive dynamics of the market which makes it inappropriate to link the retail and wholesale prices of ADSL as a standalone product, in the manner contemplated by the Wholesale ADSL Reference Price calculation. For example, where a significant proportion of ADSL services supplied in the market are promoted at below cost prices as are not priced as a standalone service but form part of bundled “triple play” content or other offers.
- (c) As soon as reasonably practicable after the ACCC gives notice to Telstra under paragraph 4.1(a), both parties must meet to seek to agree any amendments to, or suspension of, the Wholesale ADSL Reference Price calculation, in order to ensure it complies with the SSU Guidance and generally accepted economic principles or practice.
- (d) If Telstra and the ACCC are not able to agree on the steps to take in response to the notice, the parties must within 20 Business Days of the ACCC giving notice to Telstra under paragraph 4.1(a), each notify the other party of a person (the **Appointer**) that will be its representative in jointly appointing an independent economic expert to review the operation of the Wholesale ADSL Reference Price calculation.
- (e) As soon as reasonably practicable, the Appointers must consult in good faith and agree a suitably skilled and experienced economist to undertake the review, being an economist who is:
  - (i) independent of both parties;
  - (ii) has suitable experience dealing with economic and market issues in the telecommunications sector; and
  - (iii) reasonably available to review the request and respond within a reasonable period.
- (f) Telstra will pay the reasonable costs of the independent economic expert, provided that the ACCC does not commence any more than one review in any consecutive 18 month period (if more than one review is commenced within an 18 month period the ACCC will bear the costs of any such additional reviews).
- (g) The independent economic expert must review the notice issued by the ACCC, including taking into account any further or additional information provided by Telstra or Wholesale Customers.
- (h) As soon as reasonably practicable, and in any event within 60 Business Days of being appointed, the independent economic expert must submit a report to the ACCC and Telstra which sets out the expert’s view of whether:

- (i) the Wholesale ADSL Reference Price calculation or the manner of its operation continues to be consistent with the SSU Guidance and generally accepted economic principles or practice; and
  - (ii) any amendments or changes which the independent economic expert recommends be made to the Wholesale ADSL Reference Price calculation.
- (i) The ACCC may publish the independent economic expert's report (subject to any confidential information identified by Telstra) and seek views on the expert's findings and recommended response.
  - (j) As soon as reasonably practicable after the ACCC has completed any consultation under paragraph 4.1(i), Telstra and the ACCC will meet to seek to agree any changes to the Wholesale ADSL Reference Price calculation, or the manner of its operation, that they agree would improve its consistency with the SSU Guidance or with generally accepted economic principles or practice.

#### 4.2 Telstra request for review

- (a) At any time after the third anniversary of the Commencement Date, where Telstra reasonably considers that the Wholesale ADSL Reference Price calculation, or the manner of its operation, no longer complies with:
  - (i) the SSU Guidance; or
  - (ii) generally accepted economic principles or practice,
 it may submit a request to the ACCC for a review of the operation of this Schedule.
- (b) A request under paragraph 4.2(a) must specify either:
  - (i) amendments which Telstra considers may be required to be made to the Wholesale ADSL Reference Price calculation or the manner of its operation; or
  - (ii) that Telstra considers the Wholesale ADSL Reference Price for the Wholesale ADSL Reference Service should be suspended entirely due to a fundamental change in the operation or competitive dynamics of the market which makes it inappropriate to link the retail and wholesale prices of ADSL as a standalone product, in the manner contemplated by the Wholesale ADSL Reference Price calculation. For example, where a significant proportion of ADSL services supplied in the market are promoted at below cost prices as are not priced as a standalone service but form part of bundled content or other offers.
- (c) As soon as reasonably practicable after Telstra submits a request under paragraph 4.2(a), both parties must meet to seek to agree any amendments to, or suspension of, the Wholesale ADSL Reference Price calculation, in order to ensure it complies with the SSU Guidance and generally accepted economic principles or practice.
- (d) If Telstra and the ACCC are not able to agree on the steps to take in response to a request by Telstra, the parties must within 20 Business Days of Telstra lodging a request under this paragraph 4.2, each notify the other party of a person (the **Appointer**) that will be its representative in jointly appointing an independent economic expert to assess Telstra's request.

- (e) As soon as reasonably practicable, the Appointers must consult in good faith and agree a suitably skilled and experienced economist to assess Telstra's request, being an economist who is:
  - (i) independent of both parties;
  - (ii) has suitable experience dealing with economic and market issues in the telecommunications sector; and
  - (iii) reasonably available to review the request and respond within a reasonable period.
- (f) Telstra will pay the reasonable costs of the independent economic expert.
- (g) The independent economic expert must review the request lodged by Telstra, including taking into account any further or additional information provided by Telstra, the ACCC or Wholesale Customers.
- (h) As soon as reasonably practicable, and in any event within 60 Business Days of being appointed, the independent economic expert must submit a report to the ACCC and Telstra which sets out the expert's view of whether the Wholesale ADSL Reference Price calculation or the manner of its operation would be likely to be more consistent with the SSU Guidance and generally accepted economic principles or practice, if Telstra's request was accepted than if it was rejected.
- (i) The ACCC may publish the independent economic expert's report (subject to any confidential information identified by Telstra) and seek views on the expert's findings and recommended response.
- (j) Within 60 Business Days of receiving a report from the independent economic expert, the ACCC must issue a final determination supported by reasons, which states whether it accepts or rejects Telstra's request, and having regard to the report and recommendation of the independent economic expert.

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## Schedule 9 — TEM Reporting and Internal Wholesale Prices

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### 1 Background

- (a) The TEM financial management reporting system is the internal accounting system that Telstra uses for business management purposes. It is derived independently from, and may deliver different outputs to other accounting systems used by Telstra for regulatory purposes such as the Regulatory Accounting Framework.
- (b) The TEM financial management reporting system relies on the same financial accounts as are used for public reporting purposes, which are prepared in accordance with generally accepted accounting principles and standards as are applicable in Australia. Without limitation, revenue, expense, depreciation and capital will be attributed to products and may be attributed to segments in accordance with the same standard attribution methods and practices used in the Telstra Economic Model when applied for internal business purposes, and as varied from time to time.
- (c) The TEM financial management reporting system is and will remain a primary source of cost, revenue and profitability information used by Telstra as an input for business management decisions, including:
  - (i) product development and pricing decisions; and
  - (ii) remuneration and other management incentives, to the extent that the determination of those incentives relates to cost, revenue or profitability levels.
- (d) Telstra will keep the ACCC informed of any changes or developments in the TEM financial management reporting system that affects the TEM Report by preparing and maintaining a set of reporting guidelines in accordance with paragraph 5.

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### 2 Reporting Period

#### 2.1 TEM Reports

- (a) A TEM Report will be prepared for:
  - (i) the period commencing 1 January 2012 and ending 31 March 2012; and
  - (ii) subsequently, for each three month period commencing on 1 April 2012, (each, a **Reporting Period**).
- (b) The TEM Report for the first Reporting Period will be provided to the ACCC by no later than 31 August 2012.
- (c) The TEM Report for each subsequent Reporting Period will be provided to the ACCC within 60 days after the end of the Reporting Period to which it relates.

## 2.2 Public TEM Reporting

Telstra will provide the following non-confidential information and reports to the ACCC under this Schedule for publication:

- (a) the list of Internal Wholesale Prices and External Wholesale Prices specified in paragraph 4;
- (b) a non confidential version of the TEM Report, which will be provided to the ACCC every 6-months (on the half year and the full year periods), at the same time as the primary and confidential TEM Report is submitted.

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## 3 Reporting Requirements

### 3.1 Reportable Products

- (a) The TEM Report will cover the following wholesale products (together, the **Reportable Wholesale Products**):
  - (i) Unconditioned Local Loop Service;
  - (ii) Line Sharing Service;
  - (iii) Wholesale Line Rental;
  - (iv) Local Carriage Service;
  - (v) PSTN Originating and Terminating Access (**PSTN OTA**); and
  - (vi) Wholesale ADSL products.
- (b) The TEM Report will also cover the following retail products supplied by Telstra over the Copper Network (together, the **Reportable Retail Products**):
  - (i) Line rental and subscription;
  - (ii) Local calls;
  - (iii) National long distance calls;
  - (iv) International direct calls;
  - (v) Fixed to mobile calls;
  - (vi) 13 and 18 calls; and
  - (vii) Retail ADSL products.
- (c) The TEM Report will also separately include as a cost item for applicable Reportable Retail Products:
  - (i) MTAS (fixed to mobile); and
  - (ii) Transmission,but only to the extent that these costs can be identified.

### 3.2 Elements for TEM Reports

- (a) The TEM Report will include, for the relevant Reporting Period to which it relates and for each of the Reportable Products:
- (i) Demand measure;
  - (ii) Revenue;
  - (iii) Expenses;
  - (iv) Depreciation and amortisation;
  - (v) Average of opening and closing book value based on historic cost; and
  - (vi) Pre-tax WACC.

- (b) The TEM Report will also include, for the relevant Reporting Period to which it relates and for each of the Reportable Products:
- (i) Earnings before interest, taxation, depreciation and amortisation (**EBITDA**), calculated in accordance with the following formula:

$$\text{EBITDA} = \text{Revenue} - \text{Expenses};$$

- (ii) EBITDA as a percentage of Sales Revenue;
- (iii) Earnings before interest and taxation (**EBIT**), calculated in accordance with the following formula:

$$\text{EBIT} = \text{EBITDA} - \text{Depreciation and amortisation};$$

- (iv) EBIT as a percentage of Sales Revenue;
- (v) Economic return, calculated in accordance with the following formula:

$$\text{Economic return} = \text{EBIT} - (\text{Pre-tax WACC} \times \text{Average book value}); \text{ and}$$

- (vi) Economic return as a percentage of average book value.

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## 4 Internal and External Wholesale Prices

### 4.1 Internal Wholesale Prices

- (a) Each TEM Report will include the internal wholesale price (**IWP**) for each of the following Reportable Wholesale Products and Reportable Product Bundles for the Reporting Period:
- (i) WLR – specifying a different IWP for in-place and new connection;
  - (ii) ADSL – specifying a different IWP for:
    - (A) in-place and new connection; and
    - (B) Zone 1 and Zone 2.



- (iii) ULLS;
- (iv) LSS;
- (v) LCS;
- (vi) PSTN OTA;
- (vii) MTAS;
- (viii) the following Reportable Product Bundles:
  - (A) the Voice Bundle (comprising WLR, LCS, and PSTN OTA);
  - (B) the Voice and ADSL Bundle (comprising WLR, LCS, PSTN OTA and ADSL); and
  - (C) all of the Reportable Wholesale Products in sub-paragraphs (i) to (vi).
- (b) The IWP for each Reportable Wholesale Product (except MTAS) and Reportable Product Bundle will be calculated as:
 
$$\text{IWP} = (\text{Expenses} + \text{Depreciation and Amortisation} + (\text{Pre-tax WACC} \times \text{Average book value})) / \text{Demand}$$
- (c) The IWP and EWP for MTAS will both be the current regulated price for MTAS specified from time to time in an applicable final access determination or interim access determination.

#### 4.2 External Wholesale Prices

- (a) Each TEM Report will include the external wholesale price (**EWP**) for each of the Reportable Wholesale Products and Reportable Product Bundles set out in paragraph 4.1 for the Reporting Period.
- (b) The EWP for each Reportable Wholesale Product and Reportable Product Bundle will be calculated as:

$$\text{EWP} = \text{Revenue} / \text{Demand}$$

#### 4.3 Further reporting on charge types and product variants

- (a) In addition to the Internal Wholesale Price, for each Reportable Wholesale Product listed in column 1 of Table 1, Telstra will also separately specify the individual charge types listed in column 2.

**Table 1**

Reportable Wholesale Product	Charge types to be specified
WLR	Connection charge Rental charges

<b>ADSL</b>	Connection charge
	AGVC charge
	Rental charges
<b>ULLS</b>	Connection charge
	Rental charges
<b>LSS</b>	Connection charge
	Rental charges
<b>Local calls</b>	Usage charges
<b>PSTN OTA</b>	Usage charges
<b>MTAS</b>	Usage charges

- (b) Telstra will include in the TEM Guidelines information about the allocation methodology used by Telstra to allocate reported costs as set out in Table 1:
- (i) to individual charge types; and
  - (ii) between the relevant Reportable Wholesale Products.

#### 4.4 Substantiation Reports

- (a) Where the TEM Report shows that the EWP for a Reportable Product Bundle is not within +/- 5% of the IWP for that Reportable Product Bundle over the Reporting Period, Telstra will submit a Substantiation Report to the ACCC at the same time as it provides the TEM Report for that Reporting Period.
- (b) A Substantiation Report will include an explanation for the difference between the IWP and the EWP for the Reportable Product Bundle.
- (c) Where a Substantiation Report has been submitted for any Reportable Product Bundle, Telstra will have regard to the reasons set out in that Substantiation Report and the underlying TEM Report when contributing to any subsequent ACCC regulated pricing process, where a decision by the ACCC in that process could be used to align the IWP and EWP for that bundle.

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## 5 TEM Guidelines

### 5.1 Telstra to maintain TEM Guidelines

- (a) Telstra will prepare and maintain a set of guidelines for preparing TEM Reports (**TEM Guidelines**).
- (b) The TEM Guidelines will include:

- (i) a description of the form in which TEM Reports will be provided;
- (ii) the process for deriving each of the items listed in paragraph 3.2 of this Schedule 9 from the Telstra Economic Model; and
- (iii) the process and methodology used for allocating revenue and cost amounts to products and segments in the Telstra Economic Model;
- (iv) those agreed cost items forming part of the Avoidable Retail Cost of the Reference Wholesale ADSL Service under paragraph 2.4 of Schedule 8;
- (v) those agreed cost items that constitute SRMARC in respect of the Reference Wholesale ADSL Service under paragraph 2.5 of Schedule 8; and
- (vi) information in respect of the allocation of reported costs to individual charge types and between Reportable Wholesale Products under paragraph 4.3 of Schedule 9.

## **5.2 Allocation methodology in TEM Guidelines**

Telstra will ensure that the process and methodology used for allocating revenue and cost amounts (including expenses and cost of capital) to the reportable products and segments in the TEM Report, as set out in the TEM Guidelines from time to time, will ensure that:

- (a) it applies allocation factors to allocate the value of each revenue or cost to products and segments, such that:
  - (i) each revenue or cost is allocated to only the products or segments that the revenue or cost (or any proportion of the revenue or cost) relate to;
  - (ii) any revenue or cost is not allocated more than once to any product or segment;
  - (iii) with respect to each revenue or cost, the sum of the amounts allocated to all products and services is equal to the total value of that revenue or cost; and
  - (iv) with respect to costs, the total amount, regardless of excess capacity, will be allocated to products and segments based on the applicable allocation factor.
- (b) to the extent that it is reasonable and practicable to do so, the allocation factors must:
  - (i) reflect causal relationships between the revenue or cost and the products or segments using the revenue or cost; and
  - (ii) be based on a common measure of usage by the products or segments being allocated to.
- (c) to the extent that it is not reasonable or practicable to determine allocation factors consistent with paragraph 5.2(b):
  - (i) revenue or cost amounts should be divided into sub revenue and cost pools, which should then be allocated to products and segments using allocation factors consistent with paragraph 5.2(b); otherwise,

- (ii) the allocation factors must reflect a common measure that reflects a general proxy for usage between the revenue or cost and products or segments using the revenue or cost.

### **5.3 Provision of TEM Guidelines to ACCC**

- (a) The first version of the TEM Reporting Guidelines will be provided to the ACCC no later than 31 August 2011 and will apply to TEM Reports prepared for the 2011/12 Financial Year and for each subsequent Financial Year until the TEM Reporting Guidelines are updated in accordance with paragraph 5.3(b) of this Schedule 9.
- (b) The TEM Guidelines will be reviewed annually by Telstra and where material amendments are made an updated version will be provided to the ACCC no later than 31 January of each year after 2012, during the operation of Part D of this Undertaking.

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## **6 Certification and compliance reporting**

### **6.1 Certification by Chief Financial Officer**

Each TEM Report must include certification by the Chief Financial Officer or delegate that the TEM Report has been prepared in compliance with this Schedule 9.

### **6.2 Annual Compliance Report**

- (a) Telstra will submit to the ACCC an internal report under this paragraph 6 for each Financial Year during the operation of Part D of this Undertaking commencing from the 2011-12 Financial Year (**Annual Compliance Report**).
- (b) The Annual Compliance Report submitted under paragraph 6.2(a) will report on the extent to which Telstra has complied with this Schedule 9 in preparing the TEM Reports prepared and submitted in respect of the previous Financial Year.
- (c) Telstra will submit each Annual Compliance Report to the ACCC within 120 days after the end of the Financial Year to which it relates.

### **6.3 Independent defined procedures review of TEM Reports and the Annual Compliance Report**

- (a) Telstra will retain an independent auditor to conduct a defined procedures review of its preparation of:
  - (i) the TEM Reports; and
  - (ii) the Annual Compliance Report,for the relevant reporting year.
- (b) The independent auditor's report will be provided to the ACCC at the same time as the Annual Compliance Report.

### **6.4 Confidentiality**

Except where otherwise specified, each TEM Report, Substantiation Report, Annual Compliance Report and independent auditor's report will be provided to the ACCC on a confidential basis.

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## Schedule 10 – Average AGVC usage and review process

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### 1 Average AGVC usage as at the Commencement Date

Telstra will, as soon as reasonably practicable after it lodges this Undertaking, and in any event prior to the acceptance of this Undertaking, agree with the ACCC:

- (c) the average AGVC usage to apply for the purposes of paragraph 2.1(e)(ii) of Schedule 8 as at the Commencement Date; and
- (d) the initial Usage Trigger to apply on and from the Commencement Date, for the purpose of clause 2.2; and
- (a) an appropriate and effective confidentiality regime under which Wholesale Customers may request, and Telstra will then specify on a confidential basis, the average AGVC usage and initial Usage Trigger as determined and updated from time to time under this Schedule 10.

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### 2 Updating the average AGVC usage

#### 2.1 Telstra to calculate current average data usage as part of each Wholesale ADSL Reference Price calculation

- (a) Each time Telstra undertakes the Wholesale ADSL Reference Price calculation under paragraph 2.2 of Schedule 8, Telstra will at the same time calculate the then current average data usage characteristics of Telstra's retail BigPond high speed ADSL2+ products.
- (b) In accordance with paragraph 2.1(f) of Schedule 8, Telstra will remove from the average data usage calculation any data usage not associated with the provision of retail BigPond high speed ADSL2+ products, including any usage associated with applications or content which Telstra charges for separately to the rental or usage charge for the underlying broadband connection. For clarity, Telstra will not remove from the calculation any data associated with 'unmetered' content which is bundled as part of a BigPond high speed ADSL2+ product.

#### 2.2 Telstra to update the average data level when Usage Trigger is reached

- (a) To reduce the potential for undesirable volatility in the Wholesale ADSL Reference Price, Telstra will update the average AGVC usage specified in paragraph 1 only where:
  - (i) Telstra identifies that the average usage determined in accordance with paragraph 2.1 has exceeded a Usage Trigger; or
  - (ii) as part of any review of the overall Wholesale ADSL Reference Price calculation as contemplated by paragraph 4 of Schedule 8.
- (b) In the event that a usage calculation undertaken by Telstra under paragraph 2.1 shows that the initial Usage Trigger has been exceeded:
  - (i) the average usage amount to apply for the purpose of paragraph 2.1(e)(ii) of Schedule 8 will be revised to reflect a new level of average use; and

- (ii) Telstra will determine a new Usage Trigger amount.
- (c) The new average usage amount and Usage Trigger amount will be determined by Telstra on the basis of data growth rates and reasonable forecasts at the time the calculation is undertaken, and to a level that would mean the Usage Trigger will be unlikely to be exceeded again within 2 years.
- (d) Telstra will immediately notify the ACCC in the event that it changes either:
  - (i) the average data usage amount; or
  - (ii) the Usage Trigger amount,including providing the ACCC with full confidential versions of all calculations.
- (e) Without limitation to paragraph 2.2(e), Telstra will promptly respond to any request received from the ACCC for more information in relation to a change made under this Schedule 10, including providing information to the ACCC in respect of any data growth rates or reasonable forecasts used to set the new Usage Trigger amount.

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## Attachment A — Conditions Precedent

- (a) This Attachment A is a document which accompanies this Undertaking given by Telstra under section 577A of the *Telecommunications Act 1997* (Cth) (**Act**) and is given under section 577AA of the Act.
- (b) Each of the events specified in clause (c) are events which are nominated by Telstra under subsection 577AA(1) of the Act.
- (c) The events specified in this clause (c) are:
  - (i) the approval of the draft migration plan by the Commission under section 577BDA or 577BDC of the Act;
  - (ii) the making of a declaration under section 577J(3) of the Act;
  - (iii) the making of a declaration under section 577J(5) of the Act; and
  - (iv) pursuant to subsection 577AA(1)(c)(iii) of the Act, the passage of an ordinary resolution by Telstra's members (within the meaning of the *Corporations Act 2001*) who are entitled to vote on the resolution which approves, or has the effect of approving, Telstra taking action to co-operate with NBN Co and the Commonwealth through implementing its obligations under the Definitive Agreements (subject to the satisfaction or waiver of conditions precedent).